



Tonga

OBTAINING EVIDENCE FOR FOREIGN COURTS RULES

1988 Revised Edition



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Arrangement of Rules

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Made by the Judge of the Supreme Court

Commencement. [31 May, 1973]

1 Short title.

These Rules may be cited as the Obtaining Evidence for Foreign Courts Rules.

2 Interpretation

In these rules—

“**Registrar**” means Registrar of the Supreme Court.

3 Application.

These rules apply in relation to the taking of evidence in the Supreme Court of Tonga for use before a Court or other tribunal of a foreign country before which there is pending any civil or commercial matter, being a country with which there subsists a Convention on Legal Proceedings in Civil and Commercial Matters providing for the taking of such evidence.

4 Ex-parte application.

In order that such evidence may be taken an application for an order of a Judge of the Supreme Court must be made ex-parte to the Registrar by a person duly

authorised to make such application on behalf of the foreign court or tribunal in question and must be supported by affidavit.

5 Documents required.

There must be attached to the affidavit in support thereof the letter of request, certificate or other document evidencing the desire of the court or tribunal to obtain, for the purpose of a matter pending before it, the evidence of the witness to whom the application relates or the production of any documents and, if the letter of request, certificate or other document is not in the Tongan language, a translation thereof in that language.

6 Role of Solicitor-General.

Where a letter of request or other document is received by the Registrar for the taking of such evidence and no person is named in the document as the person who will make the necessary application, the Registrar shall send the document to the Solicitor-General who shall make an application to a Judge of the Supreme Court for an order as described in rule 4 and take such other steps as may be necessary, to give effect to the request.

7 Taking of Evidence.

The compulsory measures to be taken for the attendance of witnesses and the fees to be charged for the obtaining of such evidence shall be according to the Laws of Tonga and the evidence shall be taken and recorded according to the rules and practice of the Supreme Court of Tonga pertaining to the examination and cross-examination of witnesses and each and every witness shall sign his deposition in the presence of the judge taking the evidence.

Provided that if the requesting State requests some alternative procedure not incompatible with the laws of Tonga the court may follow such alternative procedure.

8 Registrar's Certificate.

The depositions referred to in rule 7 shall be signed by the judge taking the evidence and when so completed the Registrar shall give a certificate sealed with the seal of the Supreme Court identifying the documents annexed thereto, that is to say, the letter of request, certificate or other document from the Court or tribunal out of the jurisdiction requesting the taking of such evidence, the order of the Court and the deposition taken in pursuance of the order and shall send the certificate with the documents annexed to the Chief Secretary and Secretary to

Cabinet for transmission through diplomatic consular channels to the foreign Court or tribunal.