

CARRIAGE OF GOODS BY SEA ACT 2008

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SCHEDULE
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Article 1

Definitions

In these Rules the following expressions have the meanings hereby assigned to them respectively, that is no say.

- (a) “carrier” includes the owner or the charterer who enters into a contract of carriage with a shipper;
- (b) “contract of carriage” applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by water, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter-party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same;
- (c) “goods” includes goods, wares, merchandise and articles of every kind whatsoever, except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried;
- (d) “ship” means any vessel used for the carriage of goods by sea;
- (e) “carriage of goods” covers the period from the time when the goods are loaded on to the time they are discharged from the ship.

Article 2

Risks

Subject to the provisions of Article VI, under every contract of carriage of goods by water the carrier, in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods, shall be subject to the responsibilities and liabilities and entitled to the rights and immunities hereinafter set forth.

Article 3

Responsibilities and Liabilities

1. The carrier shall be bound, before and at the beginning of the voyage, to exercise due diligence to
 - (a) make the ship seaworthy;
 - (b) properly man, equip and supply the ship;
 - (c) make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

Tonga.**No. 6 of 2008**

I assent,

GEORGE TUPOU V,

1st June, 2009.

AN ACT

**RELATING TO THE CARRIAGE OF GOODS BY SEA AND TO
GIVE EFFECT TO THE INTERNATIONAL CONVENTION FOR
THE UNIFICATION OF CERTAIN RULES RELATING TO ACTS
OF LADING**

[8th September, 2008]

BE IT ENACTED by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

Part 1 - Preliminary**1. Short Title**

This Act may be cited as the Carriage of Goods by Sea Act 2008.

2. Interpretation

- (1) In this Act, unless the contrary intention appears –

“Brussels Convention” means the International Convention for the Unification of Certain Rules of Law relating to the bills of lading done at Brussels on 25 August 1924;

“Hague-Visby Rules” means the Hague-Visby Rules incorporating the English translation of the Brussels Convention, incorporating the English text to the Amendments to that Convention by Articles 1 to 5 inclusive of the Visby Protocol and the SDR Protocol as set out in the Schedule;

“SDR Protocol” means the Protocol amending the Brussels Convention, as amended by the Visby Protocol done in Brussels on 21 December 1979;

“Rules” means the Hague-Visby Rules incorporating the English translation of the Brussels Convention, incorporating the English text to the Amendments to that Convention by Articles 1 to 5 inclusive of the Visby Protocol and the SDR Protocol as set out in the Schedule;

“Visby Protocol” means the Protocol amending the Brussels Convention done at Brussels on 23 February 1968.

- (2) A reference in this Act to a non-negotiable document includes a reference to sea waybill.
- (3) A reference in this Act to the Rules is a reference to the English translation of Articles 1 to 10 (inclusive) of the Brussels Convention 1924, incorporating the English text to the amendments made to that Convention by Articles 1 to 5 inclusive of the Visby Protocol and Article 11 of the SDR Protocol as set out in the Schedule.

Part 2 – Application of the Hague-Visby Rules

3. The Hague-Visby Rules to have the force of law

The provisions of the Rules, as set out in the Schedule, shall have the force of law in the Kingdom.

4. Application of the Hague-Visby Rules to contracts

The Rules shall apply to a contract of carriage of goods by sea that –

- (a) is made on or after the commencement of this Act; and
- (b) is a contract –
 - (i) of a kind referred to in Article 10 of the Hague-Visby Rules;
 - (ii) for the carriage of goods by sea from a port or place in the Kingdom to another port or place in the Kingdom, being a contract that is contained in or evidenced by a bill of lading or similar document of title; or
 - (iii) contained in or evidenced by a non-negotiable document (other than a bill of lading or similar document of title), being a contract that contains express provision to the effect that the Rules shall govern the contract as if the document as if the document were a bill of lading.

5. Minister to specify amounts

- (1) The Minister of Finance may specify and vary from time to time the respective amounts that, for the purpose of Article 4, paragraph 5 of the Schedule, are to be taken as the equivalent to the sums expressed in Special Drawing Right which are mentioned in sub-paragraph (a) and (d) of that paragraph.
- (2) Where the Minister of Finance has not made a specification under subsection (1), the respective amounts referred to in subsection (1) shall be specified by the Reserve Bank of the Kingdom.

6. Absolute warranty of sea worthiness not to be implied

There shall not be implied in any contract for the carriage of goods by sea to which the Rules apply by virtue of this Act any absolute undertaking by the carrier of the goods to provide a seaworthy ship.

7. Construction and Juris-diction

- (1) All parties to –
 - (a) a bill of lading or similar document of title; or
 - (b) a non-negotiable document described in section 4(b)(iii) relating to such carriage of goods,
 relating to the carriage of goods from any place in the Kingdom to any place whether in or outside the Kingdom are deemed to have intended to contract according to the laws in force at that place of shipment.
- (2) Any stipulation or agreement (whether made in the Kingdom or elsewhere) shall be illegal, null and void and of no effect in so far as it purports to –
 - (a) preclude, lessen or limit the effect of subsection (1) in respect of a bill of lading or a document mentioned in subsection (1)(b);
 - (b) preclude, lessen or limit the jurisdiction of the courts of the Kingdom in respect of a bill of lading or a document mentioned in subsection (1)(b); or
 - (c) preclude, lessen or limit the jurisdiction of the courts of the Kingdom in respect of a bill of lading or a similar document of title or a non-negotiable document described in section 4(b)(iii) relating to the carriage of goods from any place within or outside the Kingdom to any place in the Kingdom.

8. Saving

Nothing in this Act shall affect the operation of any law for the time being in force limiting the liability of shipowners or others.

9. Binding on the Crown

The provision of the Act shall be binding upon the Crown whenever the Crown is engaged in the carriage of goods by sea in a ship owned or chartered by the Crown.

Passed in the Legislative Assembly this 8th day o September, 2008.

5. (a) Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding 666.67 units of account per package or unit or 2 units of account per kilogram of gross weight of the goods lost or damaged, whichever is the higher.
- (b) The total amount recoverable shall be calculated by reference to the value of such goods at the place and time at which the goods are discharged from the ship in accordance with the contract or should have been so discharged.

The value of the goods shall be fixed according to the commodity exchange price, or, if there be no such price, according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

- (c) Where a container, pallet or similar article of transport is used to consolidate goods, the number of package, or units enumerated in the bill of lading as packed in such article of transport shall be deemed the number of packages or units for the purpose of this paragraph as far as these packages or units are concerned. Except as aforesaid such article of transport shall be considered the package or unit.
- (d) The unit of account mentioned in this Article is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in sub-paragraph (a) of this paragraph shall be converted into national currency on the basis of the value of that currency on the date to be determined by the law of the Court seized of the case. The value of the national currency, in terms of the Special Drawing Right, of a State which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State.

Nevertheless, a State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of the preceding sentences may, at the time of ratification of the Protocol of 1979 or accession thereto or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in its territory shall be fixed as follows.

- (i) in respect of the amount of 666.67 units of account mentioned in sub-paragraph (a) of paragraph 5 of this Article, 10,000 monetary units;

2. Subject to the provisions of Article IV, the carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried.
3. After receiving the goods into his charge, the carrier, or the master or agent of the carrier, shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things:
- (a) the leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage;
- (b) either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper;
- (c) the apparent order and condition of the goods:
- Provided that no carrier, master or agent of the carrier shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received or which he has had no reasonable means of checking.

4. Such a bill of lading shall be *prima facie* evidence of the receipt by the carrier of the goods as therein described in accordance with paragraphs 3(a), (b) and (c).

However, proof to the contrary shall not be admissible when the bill of lading has been transferred to a third party acting in good faith.

5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.
6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the bill of lading.

If the loss or damage is not apparent, the notice must be given within three days of the delivery of the goods.

The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

Subject to paragraph *6bis* the carrier and the ship shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered. This period may, however, be extended if the parties so agree after the cause of action has arisen.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

6. *bis* An action for indemnity against a third person may be brought even after the expiration of the year provided for in the preceding paragraph if brought within the time allowed by the law of the Court seized of the case. However, the time allowed shall be not less than three months, commencing from the day when the person bringing such action for indemnity has settled the claim or has been served with process in the action against himself.
7. After the goods are loaded the bill of lading to be issued by the carrier, master or agent of the carrier, to the shipper shall, if the shipper so demands, be a “shipped” bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the “shipped” bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted the same shall for the purpose of this Article be deemed to constitute a “shipped” bill of lading.
8. Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect.
A benefit of insurance or similar clause shall be deemed to be a clause relieving the carrier from liability.

Article 4

Rights and Immunities

1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with the provisions of paragraph 1 of Article 111.

Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this article.

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from
 - (a) act, neglect, or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship;
 - (b) fire, unless caused by the actual fault or privity of the carrier;
 - (c) perils, dangers and accidents of the sea or other navigable waters;
 - (d) act of God;
 - (e) act of war;
 - (f) act of public enemies;
 - (g) arrest or restraint of princes, rulers or people, or seizure under legal process;
 - (h) quarantine restrictions;
 - (i) act or omission of the shipper or owner of the goods, his agent or representative;
 - (j) strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general;
 - (k) riots and civil commotions;
 - (l) saving or attempting to save life or property at sea;
 - (m) wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods;
 - (n) insufficiency of packing;
 - (o) insufficiency or inadequacy of marks;
 - (p) latent defects not discoverable by due diligence;
 - (q) any other cause arising without the actual fault and privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.
3. The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.
4. Any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed to be an infringement or breach of these Rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

- (ii) in respect of the amount of 2 units of account mentioned in sub-paragraph (a) of paragraph 5 of this Article, 30 monetary units.

The monetary unit referred to in the preceding sentence corresponds to 65.5 milligrams of gold of millesimal fineness 900. The conversion of the amounts specified in that sentence into the national currency shall be made according to the law of the State concerned. The calculation and the conversion mentioned in the preceding sentences shall be made in such a manner as to express in the national currency of that State as far as possible the same real value for the amounts in sub-paragraph (a) of paragraph 5 of this Article as is expressed there in units of account.

States shall communicate to the depository the manner of calculation or the result of the conversion as the case may be, when depositing an instrument of ratification of the Protocol of 1979 or of accession thereto and whenever there is a change in either.

- (e) Neither the carrier nor the ship shall be entitled to the benefit of the limitation of liability provided for in this paragraph if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result.
- (f) The declaration mentioned in sub-paragraph (a) of this paragraph, if embodied in the bill of lading, shall be *prima facie* evidence, but shall not be binding or conclusive on the carrier.
- (g) By agreement between the carrier, master or agent of the carrier and the shipper other maximum amounts than those mentioned in sub-paragraph (a) of this paragraph may be fixed, provided that no maximum amount so fixed shall be less than the appropriate maximum mentioned in that sub-paragraph.
- (h) Neither the carrier nor the ship shall be responsible in any event for loss or damage to, or in connection with, goods if the nature or value thereof has been knowingly mis-stated by the shipper in the bill of lading.
6. Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, master or agent of the carrier has not consented, with knowledge of their nature and character, may at any time before discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment.

If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

Article 4bis

Application of Defences and Limits of Liability

1. The defences and limits of liability provided for in these Rules shall apply in any action against the carrier in respect of loss or damage to goods covered by a contract of carriage whether the action be founded in contract or in tort.
2. If such an action is brought against a servant or agent of the carrier (such servant or agent not being an independent contractor), such servant or agent shall be entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under these Rules.
3. The aggregate of the amounts recoverable from the carrier, and such servants and agents, shall in no case exceed the limit provided for in these Rules.
4. Nevertheless, a servant or agent of the carrier shall not be entitled to avail himself of the provisions of this Article, if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

Article 5

Surrender of Rights and Immunities, and Increase of Responsibilities and Liabilities

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and liabilities under the Rules contained in any of these Articles, provided such surrender or increase shall be embodied in the bill of lading issued to the shipper.

The provisions of these Rules shall not be applicable to charter-parties, but if bills of lading are issued in the case of a ship under a charter-party they shall comply with the terms of these Rules. Nothing in these Rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

Article 6

Special Conditions

Notwithstanding the provisions of the preceding Articles, a carrier, master or agent of the carrier and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, so far as this stipulation is not contrary to public policy, or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care and discharge of the goods carried by water, provided that in this case no bill of lading has been or shall be issued and that the terms agreed

shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such. Any agreement so entered into shall have full legal effect.

Provided that this Article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement.

Article 7

Limitations on the Application of the Rules

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to, or in connection with the custody and care and handling of goods prior to the loading on and subsequent to the discharge from the ship on which the goods are carried by sea.

Article 8

Limitation of Liability

The provisions of these Rules shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of vessels.

Article 9

Liability for Nuclear Damage

These Rules shall not affect the provisions of any International Convention or national law governing liability for nuclear damage.

Article 10

Application

The provisions of these Rules shall apply to every bill of lading to the carriage of goods between ports in two different States if:

- (a) the bill of lading is issued in a Contracting State, or
- (b) the carriage is from a port in a Contracting State, or
- (c) the contract contained in or evidenced by the bill of lading provides that these Rules or legislation of any State giving effect to them are to govern the contract, whatever may be the nationality of the ship, the carrier, the shipper, the consignee, or any other interested person.

hange ko ia kuo fakatonutonu'aki 'a e Tu'utu'uni Fakavaha'apule'anga Visby na'e fakahoko 'i Brussels 'i he 'aho 21 'o Tisema 1979;

“Ngaahi Tu'utu'uni” 'oku 'uhinga ki he Ngaahi Tu'utu'uni Hague-Visby 'oku ne fakatahataha'i 'a e liliu faka-Pilitania 'o e Konivesio Brussels, 'o fakatau atu 'a e hiki faka-Pilitania ki he Ngaahi Fakatonutonu ki he Konivesio 'aki 'a e Kupu 1 ki he 5 'o kau ai 'a e Tu'utu'uni Fakavaha'apule'anga Visby pea mo e Tu'utu'uni Fakavaha'apule'anga SDR 'o hange kuo fakaha 'i he Tepile;

“Tu'utu'uni Fakavaha'apule'anga Visby” 'oku 'uhinga ki he Tu'utu'uni Fakavaha'apule'anga 'oku ne fakatonutonu 'a e Konivesio Brussels na'e fakahoko 'i Brussels 'i he 'aho 23 'o Fepueli 1968.

- (2) Ko ha lau 'i he Lao ni ki ha tohi ngaue 'ikai lava fetongi 'oku kau ai 'a e 'uhinga ki he tohi uta koloa 'i tahi (sea waybill).
- (3) Ko ha lau 'i he Lao ni ki he Ngaahi Tu'utu'uni 'oku 'uhinga ia ki he liliu faka-Pilitania 'o e ngaahi Kupu 1 ki he 10 (kau kotoa ki ai) 'o e Konivesio Brussels 1924, 'a ia 'oku fakatahataha'i ai 'a e hiki faka-Pilitania ki he ngaahi fakatonutonu na'e fakahoko ki he Konivesio ko ia 'aki 'a e Kupu 1 ki he 5 'o kau atu ki ai 'a e Tu'utu'uni Fakavaha'apule'anga Visby mo e Kupu 11 'o e Tu'utu'uni Fakavaha'apule'anga SDR 'o hange ko ia kuo fakaha 'i he Tepile.

Konga 2 - Ngaue'aki 'o e Ngaahi Tu'utu'uni Hague-Visby

3. Ke fakahoko 'a e Tu'utu'uni Hague-Visby ko e lao

Ko e ngaahi kupu 'o e Ngaahi Tu'utu'uni, 'o hange kuo fakaha atu 'i he Tepile, kuo pau ke fakahoko ko e lao 'i he Pule'anga ni.

4. Ngaue'aki 'o e Ngaahi Tu'u-tu'uni Hague-Visby 'i he ngaahi aleapau

Kuo pau ke ngaue'aki 'a e Ngaahi Tu'utu'uni ki ha aleapau ki he feuta'aki koloa 'i tahi, –

- (a) na'e fakahoko 'i he pe hili 'a e 'aho kamata'anga 'o e Lao ni; pea
- (b) 'a ia ko e aleapau –
 - (i) 'oku tatau mo ia 'oku lau ki ai 'a e Kupu 10 'o e Ngaahi Tu'utu'uni Hague-Visby;
 - (ii) ki he feuta'aki koloa 'i tahi mei ha taulanga pe feitu'u 'i he Pule'anga ki ha taulanga pe feitu'u kehe 'i he Pule'anga ni, 'a ia ko e aleapau 'oku kau ki he pe 'oku fakamo'oni'i 'aki ha tohi fakaheka koloa pe ko ha tohi ngaue tatau 'oku ne fakamo'oni'i 'a e taha 'oku 'a'ana 'a e koloa; pe
 - (iii) kau 'i he pe fakamo'oni'i 'aki ha tohi ngaue 'oku 'ikai malava ke liliu (non-negotiable) (kehe mei he tohi fakaheka koloa pe ko ha tohi ngaue tatau 'oku ne fakamo'oni'i 'a e taha 'oku 'a'ana 'a e koloa), ko ha aleapau 'oku kau ai ha ngaahi kupu

LAO KI HE FEUTA'AKI KOLOA 'I TAHI 2008

Fokotu'utu'u 'o e Ngaahi Kupu

Konga 1 – Talateu

1. Hingoa nounou
2. 'UHINGA'I LEA

Konga 2 – Ngaue'aki 'a e Ngaahi Tu'utu'uni Hague-Visby
3. Ke fakahoko 'a e Ngaahi Tu'utu'uni Hague-Visby ko e lao
4. Ngaue'aki 'a e Ngaahi Tu'utu'uni Hague-Visby
5. Minisita ke ne fakaha 'a e lahi
6. 'E 'ikai fakapapau 'oku fu'u matu'aki lelei ke ngaue'aki 'a e vaka 'i tahi
7. Fa'u mo e Mafai
8. Ngaahi Tu'utu'uni ke tauhi
9. Ha'i 'a e Kalauni

Tepile

Ngaahi Tu'utu'uni Hague-Visby



'Oku ou loto ki ai,
SIAOSI TUPOU V,
1 'o Sune, 2009.

KO E LAO

**FELAVE'I MO E FEUTA'AKI KOLOA 'I TAHI MO NGAUE'AKI
'A E NGA'HI KONIVESIO FAKAVAHA'A-PULE'ANGA KI HONO
FAKATAHATAHA'I 'O HA NGA'HI TU'UTU'UNI PAU FELAVE'I
MO E NGA'HI TOHI FAKAFEUTA'AKI KOLOA**

[8 'o Sepitema, 2008]

'OKU TU'UTU'UNI 'e he Tu'i mo e Fale Alea 'o Tonga 'i he Fakataha
Alea 'o e Pule'anga 'o pehe:

Konga 1 – Talateu

1. Hingoa nounou

'E ui 'a e Lao ni ko e Lao ki he Feuta'aki Koloa 'i Tahī 2008.

2. 'Uhingā'i lea

(1) 'I he Lao ni, tukukehe 'o ka fakaha hano 'uhinga kehe –

“Konivesio Brussels” 'oku 'uhinga ki he Konivesio Fakavaha'a-Pule'anga
ki hono Fakatahataha'i 'a e Ngaahi Tu'utu'uni Pau 'o e Lao felave'i
mo e ngaahi tohi fakaheka koloa na'e fakahoko 'i Brussels 'i he 'aho
25 'o 'Akosi 1924;

“Ngaahi Tu'utu'uni Hague-Visby” 'oku 'uhinga ki he Ngaahi Tu'utu'uni
Hague-Visby kuo fakakau atu ki ai 'a e liliu faka-Pilitania 'o e Konivesio
Brussels, 'o fakakau atu 'a e hiki faka-Pilitania ki he Ngaahi Fakatonutonu
ki he Konivesio 'aki 'a e Kupu 1 ki he 5 'o kau atu ki ai 'a e Tu'utu'uni
Fakavaha'apule'anga Visby mo e Tu'utu'uni Fakavaha'apule'anga SDR 'o
hange kuo fakaha 'i he Tepile;

“Tu'utu'uni Fakavaha'apule'anga SDR” 'oku 'uhinga ki he Tu'utu'uni
Fakavaha'apule'anga 'oku ne fakatonutonu 'a e Konivesio Brussels, 'o

- (a) fakapapau'i ko e vaka 'oku fe'unga ke ngaue'aki 'i tahi;
- (b) 'omi 'a e kau kauvaka 'oku fe'unga 'a hono tokolahi, fakanaunau ke kakato mo tokonaki 'a e vaka.
- (c) fakapapau'i ko e ngaahi 'ana, ngaahi loki 'aisi mo fakamokomoko, mo e ngaahi kongā kehe 'o e vaka 'a ia 'oku uta ai 'a e koloa ke taau mo malu ki hono tali, uta mo tolonga.
2. Fakatatau ki he ngaahi tu'utu'uni 'o e Kupu IV, kuo pau ki he taha uta koloa ke ne fakahoko totonu mo tokanga'i lelei hono fakaheka, fetuku, tuku ki hono tuku'anga, 'ave, tauhi mo hono fakahifo 'a e ngaahi koloa 'oku feuta'aki.
3. Hili 'a hono tali 'a e ngaahi koloa ke ne tokanga'i, kuo pau ki he taha uta koloa pe ko e 'eikivaka pe ko e fakafofonga 'o e taha uta koloa, 'i hano fiema'u mei he taha 'oku ne 'omi 'a e ngaahi koloa ke fakaheka, ke ne tuku atu ki he taha 'oku ne 'omai 'a e ngaahi koloa ke fakaheka ha tohi fakaheka koloa 'o fakaha ai, 'o kau ai 'a e ngaahi me'a ko 'eni:
- (a) ngaahi faka'ilonga mahino 'oku fiema'u ke fakapapau'i 'aki 'a e ngaahi koloa 'o hange ko ia kuo 'oatu 'i ha tohi 'e he taha 'oku ne 'omai 'a e ngaahi koloa ke fakaheka kimu'a pea kamata fakaheka 'a e ngaahi koloa ko ia, ka ko e ngaahi faka'ilonga ko ia 'oku sitapa'i pe fakaha mahino 'i he koloa 'o kapau 'oku 'ikai ke kofukofu ai 'a e faka'ilonga ki he 'osi 'a e folau;
- (b) 'a e lahi 'o e ngaahi kofukofu pe ngaahi me'a 'oku uta movetevete, pe ko e lahi, pe mamafa, 'o hange ko ia 'e hoko, pea kuo 'oatu 'i he tohi nima 'o e taha 'oku ne 'omai 'a e ngaahi koloa ke fakaheka;
- (c) ko e hokohoko mahino mo e tu'unga 'o e ngaahi koloa:
- Ka kuo pau 'e 'ikai ko e ngafa 'o e taha uta koloa, 'eiki vaka pe fakafofonga 'o e taha uta koloa ke ne fakaha pe fakamatala'i 'i he tohi fakaheka koloa ha faka'ilonga, fika, lahi, pe mamafa 'a ia 'oku 'i ai 'ene ngaahi 'uhinga fakapotopoto ke ne mahalo'i totonu ke fakafofonga'i 'a e ngaahi koloa na'a ne tali pe 'oku 'ikai ke 'i ai ha'ane founga fakapotopoto ke vakai'i.
4. Kuo pau ko e tohi fakaheka koloa ko ia ko ha fakamo'oni fe'unga ia hono tali 'e he taha uta koloa 'a e ngaahi koloa 'o hange ko ia kuo fakamatala'i 'i ai 'o fakatatau ki he ngaahi palakalafi 3(a), (b) mo e (c).
- Neongo ia, kuo pau 'e 'ikai tali ke ngaue'aki 'a e tohi fakaheka koloa ko ha fakamo'oni kuo 'ikai tali 'e ha taha uta koloa 'i he taimi 'oku 'ave ai 'a e tohi fakaheka koloa ki ha taha kehe 'oku ne fakahoko ngaue 'i he loto tau'atina.
5. Kuo pau ke lau kuo tukupa 'a e taha 'oku ne 'omai 'a e ngaahi koloa ke fakaheka ki he taha uta koloa 'i he taimi 'o e fakaheka 'oku tonu 'a e ngaahi faka'ilonga, fika, lahi mo e mamafa, 'a ia kuo ne pea kuo pau ke malu'i 'e he taha 'oku ne 'omai 'a e ngaahi koloa ke fakaheka 'a e taha uta koloa mei he ngaahi mole, maumau mo e ngaahi fakamole

kuo fakaha mahino kuo pau ke pule'i 'e he Ngaahi Tu'utu'uni 'a e aleapau 'o hange pe 'a e tohi ngaue ko ia ko ha tohi fakaheka koloa.

5. Minisita ke ne fakaha 'a e ngaahi mahu'inga

- (1) 'E ngofua ki he Minisita Pa'anga ke ne fakaha mo liliu 'i he taimi ki he taimi 'a e lahi takitaha 'a ia, ki he taumu'a 'o e Konga 4, palakalafi 5 'o e Tepile, 'e lau 'oku mahu'inga tatau mo e ngaahi mahu'inga 'oku tatau mo e ngaahi mahu'inga 'oku fakaha 'i he Totonu No Makehe (Special Drawing Right) 'a ia 'oku lau ki ai 'a e palakalafi si'i (a) mo e (d) 'o e palakalafi ko ia.
- (2) Kapau 'oku te'eki ke fakahoko 'e he Minisita Pa'anga ha fakaha 'i he kupu si'i (1), ko e mahu'inga takitaha 'oku lave ki ai 'i he kupu si'i (1), kuo pau ke fakaha'i pau ia 'e he Pangike Pule Fakafonua 'o e Pule'anga ni.

6. 'E 'ikai fakapapau 'oku fu'u matu'aki lelei ke ngaue'aki 'a e vaka 'i tahi

Kuo pau 'e 'ikai ke faka'uhinga'i 'i ha aleapau ki ha feuta'aki koloa 'i tahi 'a ia 'oku ngaue'aki 'a e Ngaahi Tu'utu'uni koe'uhi ko e Lao ni ha matu'aki fakapapau 'e he taha uta koloa ke ne ngaue'aki ha vaka 'oku fe'unga ke ngaue'aki 'i tahi.

7. Fa'u mo e Mafai

- (1) Ko e fa'ahi kotoa pe ki ha –
- (a) tohi fakaheka koloa pe tohi ngaue tatau 'oku ne fakamo'oni'i 'a e taha 'oku 'a'ana 'a e koloa; pe
- (b) tohi ngaue 'oku 'ikai malava ke liliu (non-negotiable) 'a ia kuo fakamatala'i 'i he kupu 4(b)(iii) 'oku felave'i mo hono feuta'aki ko ia 'o e koloa,
- felave'i mo e feuta'aki koloa mei ha feitu'u 'i he Pule'anga ni ki ha feitu'u kehe pe 'i loto pe 'i tu'a mei he Pule'anga ni, 'e lau ia ne nau taumu'a ke nau aleapau 'o fakatatau ki he ngaahi lao 'oku ngaue'aki 'i he feitu'u ko ia 'o e uta.
- (2) Kuo pau ki ha tu'utu'uni pe felotoi (pe na'e fakahoko 'i he Pule'anga ni pe ha feitu'u kehe) ke ta'efakalao, tamate'i pea fakata'e'aonga'i pea 'e 'ikai ke ngaue'aki 'o ka a'u ki ha tu'unga te ne fakatupu ke –
- (a) ta'ofi, fakasi'isi'i pe fakangatangata 'a e ngaue 'a e kupu si'i (1) 'i he'ene felave'i mo ha tohi fakaheka koloa pe ko ha tohi ngaue 'oku lau ki ai 'a e kupu si'i (1)(b);
- (b) ta'ofi, fakasi'isi'i pe fakangatangata 'a e mafai 'o e ngaahi fakamaau'anga 'o e Pule'anga ni 'i he'ene felave'i mo ha tohi fakaheka koloa pe ko ha tohi ngaue kehe 'oku lau ki ai 'a e kupu si'i (1)(b); pe

- (c) ta'ofi, fakasi'isi'i pe fakangatangata 'a e mafai 'o e ngaahi fakamaau'anga 'o e Pule'anga ni 'i he'ene felave'i mo ha tohi fakaheka koloa pe tohi ngaue tatau 'oku ne fakamo'oni'i 'a e taha 'oku 'a'ana 'a e koloa pe ko ha tohi ngaue 'oku 'ikai malava ke liliu (non-negotiable) 'oku fakamatala'i 'i he kupu 4(b)(iii) fekau'aki mo e feuta'aki koloa mai ha feitu'u 'i loto pe 'i tu'a mei he Pule'anga ni ki ha feitu'u pe 'i he Pule'anga ni.

8. Ngaahi Tu'utu'uni ke fakahaofi

Kuo pau ke 'oua na'a 'i ai ha me'a 'i he Lao ni te ne uestia 'a e ngaue 'o ha lao kehe 'oku lolotonga ngaue'aki ki hono fakangatangata 'a e me'a ke 'eke mei a kinautolu 'oku 'onautolu 'a e vaka pe ni'ihī kehe.

9. Ha'i 'a e Kalauni

Kuo pau ki he ngaahi kupu 'o e Lao ni ke ne ha'i 'a e Kalauni 'i ha taimi pe 'e kau atu ai 'a e Kalauni ki ha feuta'aki koloa 'i tahi 'i ha vaka 'o'ona pe vaka no 'e he Kalauni.

Na'e tali 'i he Fale Alea 'i he 'aho ni 8 'o Sepitema, 2008.

TEPILE

NGAAHI TU'UTU'UNI HAGUE-VISBY

Kupu 1

'UHINGA'I LEA

'I he Ngaahi tu'utu'uni ko e ngaahi kupu'i lea ko 'eni kuo faka'uhinga'i takitaha, 'a ia ko e,

- (a) "taha uta koloa" 'oku kau ai 'a e taha 'o'ona pe ko e taha 'oku ne no pea 'oku ne tohi aleapau mo e taha 'oku ne 'omai 'a e ngaahi koloa ke fakaheka;
- (b) "tohi aleapau ki he feuta'aki" 'oku ngaue'aki pe ki ha tohi aleapau ki he feuta'aki 'oku kau ki ai ha tohi fakaheka koloa pe tohi ngaue tatau 'oku ne fakamo'oni'i 'a e taha 'oku 'a'ana 'a e koloa, 'o kapau 'oku kau 'a e tohi ngaue ko ia ki he feuta'aki koloa 'i tahi, kau ai ha fa'ahinga tohi fakaheka koloa pe tohi ngaue tatau 'o hange kuo fakaha kuo foaki pe fakatatau ki ha taha no vaka mei he taimi 'a ia 'oku pule'i ai 'e he tohi fakaheka koloa ko ia pe tatau 'oku ne fakamo'oni'i 'a e taha 'oku 'a'ana 'a e koloa 'a e ngaahi va 'i he vaha'a 'o e taha uta koloa mo e taha 'oku ne ma'u ha tohi pehe;
- (c) "ngaahi koloa" 'oku kau ki ai 'a e ngaahi koloa, 'u me'a ngaohi, ngaahi koloa fakatau mo e ngaahi me'a kehekehe pe 'o ha fa'ahinga pe, tukukehe 'a e fanga manu mo'ui mo e uta 'a ia 'oku fakaha 'i he aleapau ki he feuta'aki na'e fakaheka ki he funga vaka pea na'e fakaheka pehe;
- (d) "vaka" 'oku 'uhinga ki ha vaka 'oku ngaue'aki ki he feuta'aki koloa 'i tahi;
- (e) "feuta'aki koloa 'i tahi" 'oku 'uhinga ki he vaha'a taimi mei he taimi hono fakaheka 'a e koloa ki he taimi 'e fakahifo ai mei he vaka.

Kupu 2

Ngaahi Fakatu'utamaki

Fakatatau ki he ngaahi tu'utu'uni 'o e Kupu VI, ko e tohi aleapau feuta'aki koloa kotoa pe 'i tahi, ko e taha uta, 'i he'ene felave'i mo hono fakaheka, fetuku, tuku ki hono tuku'anga, 'ave, tauhi, tokanga'i mo hono fakahifo 'o e ngaahi koloa ko ia, kuo pau ke fakatatau ki he ngaahi ngafa mo e ngaahi mo'ua pea ma'u 'a e ngaahi totonu mo e ngaahi fakahaofi 'e fakaha atu heni.

Kupu 3

Ngaahi Ngafa mo e Ngaahi Mo'ua

1. Kuo pau ko e ngafa 'o e taha uta koloa, ki mu'a pea 'i he kamata 'a e folau tahi, ke ne tokanga lelei ke –

kimu'a hono uta pea kuo fakahu ki he tohi fakaheka koloa, kuo pau 'e 'ikai ala mo'ua 'a e taha uta koloa pe vaka 'i ha mole pe maumau ki ha pe fekau'aki mo e ngaahi koloa 'i ha fa'ahinga lahi pe 'e lahi hake 'i he 'iuniti 'e 666.67 'a hono lau ki he kofukofu takitaha pe 'iuniti pe 'iuniti 'e 2 'a hono lau ki he kilo takitaha 'o e mamafa fakakatoa 'a e ngaahi koloa na'e mole pe maumau, pe ko fe pe 'ia naua 'oku ma'olunga taha.

- (b) Ko e lahi fakakatoa 'e ala ma'u fakafoki mai kuo pau ke fika'i 'aki hano ngaue'aki 'a e mahu'inga 'o e ngaahi koloa ko ia 'i he feitu'u mo e taimi na'e fakahifo ai 'a e koloa mei he vaka 'o fakatatau ki he aleapau pe ki he founda na'e totonu ke fakahifo 'aki.

Kuo pau ki he mahu'inga 'o e ngaahi koloa ke tu'uma'u 'o fakatatau ki he mahu'inga 'o e fakafetongi koloa pe, 'o kapau 'oku 'ikai ke 'i ai ha mahu'inga pehe, fakatatau ki he mahu'inga lolotonga 'i he maketi, pe, 'o kapau 'oku 'ikai ke 'i ai ha mahu'inga fakafetongi koloa pe mahu'inga lolotonga 'i he maketi, ke ngaue'aki 'a e mahu'inga angamaheni 'o e koloa 'oku fa'ahinga mo tu'unga tatau.

- (c) 'I he taimi 'oku ngaue'aki ai ha koniteina, paleti pe ko ha me'angaue tatau ki hono fe'aveaki ke fakatahataha'i 'a e ngaahi koloa, ko e lahi 'a e ngaahi kofukofu pe 'iuniti 'oku fokotu'u 'i he tohi fakaheka koloa 'i hono fa'oaki 'i he ngaahi me'a ngaue ki hono fe'aveaki kuo pau ke lau ko e lahi ia 'a e ngaahi kofukofu pe 'iuniti ki he taumu'a 'o e palakalafi ko 'eni 'i ha 'uhinga ki he ngaahi kofukofu pe 'iuniti ko 'eni. Tukukehe 'o hange na'e fakaha 'i mu'a kuo pau ki he me'angaue ki hono fe'aveaki ko ia ke lau ko e kofukofu pe ko e 'iuniti.

- (d) Ko e 'iuniti 'o e 'akauni 'oku lave ki ai 'a e Kupu ko 'eni ko e Tu'unga Fakapa'anga Fakavaha'apule'anga 'i hono faka'uhinga'i 'e he Sino'i Pa'anga Fakavaha'a-pule'anga. Ko e lahi 'oku lave ki ai 'i he palakalafi si'i (a) 'o e palakalafi ko 'eni kuo pau ke liliu ia ki ha tu'unga pa'anga fakafonua 'o makatu'unga 'i he mahu'inga 'o e tu'unga pa'anga ko ia 'i he 'aho 'e tu'utu'uni ki ai 'a e lao 'o e Fakamaau'anga 'oku nau ngaue ki ai. Ko e mahu'inga 'o e tu'unga pa'anga fakafonua, 'i he'ene fakatatau ki he Tu'unga Fakapa'anga Fakavaha'apule'anga, 'o ha Fonua ko ha memipa 'o e Sino'i Pa'anga Fakavaha'a-pule'anga, kuo pau ke fika'i 'o fakatatau ki he founda 'o e fakafuofua 'oku ngaue'aki 'e he Sino'i Pa'anga Fakavaha'a-pule'anga 'o ngaue'aki 'i he 'aho 'oku 'uhinga ki ai ki he'ene ngaahi ngaue mo e ngaahi fehu'aki. Ko e mahu'inga 'a e tu'unga pa'anga fakafonua, fakatatau ki he Tu'unga Fakapa'anga Fakavaha'apule'anga, 'o ha Fonua 'oku 'ikai ko ha memipa 'o e Sino'i Pa'anga Fakavaha'apule'anga, kuo pau ke fika'i ia 'i ha founda 'e tu'utu'uni 'i he Fonua ko ia.

Neongo ia, ko ha Fonua 'oku 'ikai ke memipa 'i he Sino'i Pa'anga Fakavaha'apule'anga pea ko 'enau lao 'oku 'ikai ke ne fakangofua

kotoa pe na'e tupu pe hoko mei ha hala 'i he ngaahi fakamatala ko ia. Kuo pau 'e 'ikai fakangatanga 'e he totonu 'a e taha uta koloa ki he malu'i ko ia 'a hono ngafa mo hono ngaahi mo'ua 'i he tohi aleapau ki he feuta'aki koloa ki ha taha kehe mei he taha 'oku ne 'omai 'a e ngaahi koloa ke fakaheka.

6. Tukukehe 'o kapau 'e 'omai tohi 'i loto 'i he 'aho 'e tolu ki he taha uta koloa pe ko hano fakafetongi 'i he taulanga ha fakaha 'o e mole pe maumau pea ko e natula fakalukufua 'o e mole pe maumau ko ia kimu'a pe 'i he taimi 'e 'ave ai 'a e ngaahi koloa ki he taha 'oku totonu ke 'oatu ki ai 'i he tohi aleapau feuta'aki, pe 'o kapau ko e mole pe maumau 'oku 'ikai ke 'ilonga, kuo pau 'e hoko 'a e 'oatu ko ia ko ha fakamo'oni fe'unga na'e 'oatu 'e he taha uta koloa 'a e ngaahi koloa na'e fakamatala'i 'i he tohi fakaheka koloa.

'O kapau 'oku 'ikai ke 'ilonga 'a e mole pe maumau, kuo pau ke 'oatu 'a e tohi fakaha 'i loto 'i he 'aho 'e tolu mei hono 'oatu 'o e ngaahi koloa.

'E 'ikai ke fiema'u ke 'oatu 'a e tohi fakaha 'o kapau ko e tu'unga 'o e ngaahi koloa ko ia 'i he taimi na'e ma'u ai 'oku lolotonga fakahoko ki ai ha savea'i pe sivi'i 'e he ongo fa'ahi fakatou'osi.

Fakatatau ki he palakalafi *6bis* kuo pau 'e tukuange 'a e taha uta koloa mo e vaka, 'i ha hoko ha fa'ahinga me'a, mei he ngaahi mo'ua kotoa pe 'o tatau ai pe pe ko e ha felave'i mo e ngaahi koloa, tukukehe 'o ka fakahoko 'a hono faka'ilo 'i loto 'i he ta'u 'e taha mei hono 'oatu pe ko e 'aho na'e totonu ke 'oatu ai. Neongo ia 'e ngofua ke fakaloloa 'a e vaha'a taimi ko 'eni, 'o kapau 'e felotoi ki ai 'a e ongo fa'ahi hili 'a e hoko 'a e me'a na'a ne fakatupu ke fakahoko 'a e faka'ilo.

'I ha hoko pe fakakaukau 'e hoko ha mole pe maumau, kuo pau ke fetokoni'aki fakapotopoto 'a e taha uta koloa mo e taha 'oku ne tali 'a e koloa 'i hono sivi mo lau 'o e ngaahi koloa.

6. *bis* 'E malava ke fakahoko ha hopo ki ha malu'i 'o ha taha kehe hili 'a e 'osi 'a e ta'u 'e taha 'oku fakaha 'i he palakalafi kimu'a kapau 'e fakahoko 'a e faka'ilo ko ia 'i loto 'i he taimi 'oku fakangofua 'e he lao 'o e Fakamaau'anga 'oku 'i ai 'a e hopo. Neongo ia, kuo pau ko e taimi 'oku fakangofua 'e 'ikai to e si'i hifo 'i he mahina 'e tolu, 'o kamata mei he 'aho na'e 'osi ai 'a e hopo 'a e taha 'oku ne fakahoko 'a e kole fakalao ko ia pe kuo 'osi tufa atu ki ai 'a e hopo ki hono faka'ilo ia.
7. Hili hono fakaheka 'a e ngaahi koloa, ko e tohi fakaheka koloa 'e 'oatu 'e he taha uta koloa, 'eikivaka pe fakafetongi 'o e taha uta koloa ki he taha 'oku ne 'omai 'a e ngaahi koloa ke fakaheka, kuo pau, kapau 'e fiema'u 'e he taha 'oku ne 'omai 'a e ngaahi koloa ke fakaheka, ko e "tohi fakaheka koloa" te ne fakaha kuo fakaheka 'a e koloa (shipped bill of lading), ka kuo pau ke momoi 'e he taha 'oku ne 'omai 'a e ngaahi koloa ke fakaheka ha tohi ngaue tatau 'oku ne fakamo'oni'i 'a e taha 'a'ana 'a e koloa ko ia 'i he'ene ma'u 'a e "tohi fakaheka

koloa” te ne fakaha kuo fakaheka ‘a e koloa (shipped bill of lading). Ka ‘i he loto ki ai ‘a e taha uta koloa, ko e tohi ngaue ko ia ‘e ngofua ke fakatokanga‘i ‘i he taulanga ‘oku fakaheka ai ‘a e uta ‘e he taha uta koloa, ‘eikivaka pe fakafofonga ‘o e taha uta koloa ‘aki ‘a e hingoa pe ngaahi hingoa ‘o e vaka pe ngaahi vaka ‘a ia kuo fakaheka ki ai ‘a e ngaahi koloa pea mo e ‘aho pe ngaahi ‘aho ‘o e fakaheka, pea ‘i hono fakatokanga‘i ia ko e ngaahi me‘a ko ia, ‘o fakatatau ki he taumu‘a ‘o e Kupu ko ‘eni, kuo pau ke lau ia ko ha “tohi fakaheka koloa” te ne fakaha kuo fakaheka ‘a e koloa (shipped bill of lading).

8. Kuo pau ke tamate‘i pe fakata‘e‘aonga‘i pea ‘ikai ‘aonga fakalao he kupu, fakapapu pe felotoi ‘i ha alepau ki he feuta‘aki koloa ‘oku ne faka‘ata ‘a e taha uta koloa pe vaka mei ha mo‘ua ‘i ha mole pe maumau ‘a e pe fekau‘aki mo e ngaahi koloa ‘a ia na‘e tupunga mei ha ta‘etokanga, ngaue hala pe ‘ikai fakahoko ‘o e ngaahi ngafa mo e ngaahi fatongia ‘oku tu‘utu‘uni ‘e he Kupu ni, pe fakasi‘isi‘i ‘a e mo‘ua ko ia ‘o kehe ia mei he fiema‘u ‘a e Ngaahi Tu‘utu‘uni ni.

Kuo pau ‘e lau ha kupu ‘oku ne ‘oatu ha monu‘ia ‘i ha malu‘i pe kupu tatau mo ia ko ha kupu ‘oku ne faka‘ata ‘a e taha uta koloa mei ha mo‘ua.

Kupu 4

Ngaahi Totonu mo e Ngaahi Fakahaofi

1. Kuo pau ‘e ‘ikai ke ngofua ke faka‘ilo ‘a e taha uta koloa pe vaka koe‘uhi ko ha mole pe maumau ‘oku hoko koe‘uhi na‘e ‘ikai fe‘unga ki he ngaue‘aki ‘a e vaka ‘i tahi tuku kehe kapau na‘e hoko ‘a e mole pe maumau ko ia ‘i he ‘ikai tokanga lelei ‘a e taha uta koloa ke fakapapu‘i ko e vaka ‘oku fe‘unga ke ngaue‘aki ‘i tahi mo ‘omai ‘a e kau kavaka ‘oku fe‘unga hono tokolahi mo tokonaki ‘a e vaka pea mo fakapapu‘i ko e ngaahi ‘ana, ngaahi loki ‘aisi mo fakamokomoko pea mo e ngaahi feitu‘u kotoa ‘i he vaka ‘a ia ‘oku tuku‘anga koloa ‘oku fe‘unga mo malu ke tali, uta mo tolonga ‘a e ngaahi koloa ‘o hange ko e palakalafi 1 ‘o e Kupu 111.
‘I ha taimi pe ‘e hoko ai ha mole pe maumau koe‘uhi ko e ‘ikai fe‘unga ‘a e vaka ke ngaue‘aki ‘i tahi, kuo pau ke fakamo‘oni‘i ‘e he taha uta koloa pe ha toe hala ‘oku ne pehe ‘oku tonu ke faka‘ata ia mei he kupu ko ‘eni.
2. Kuo pau ‘e ‘ikai ke hilifaki ki he taha uta koloa pe vaka ha ‘eke koe‘uhi ko ha mole pe maumau kuo hoko pe na‘e tupu mei ha –
 - (a) ngaue na‘e fai, ta‘etokanga, pe ta‘e fakahoko ‘e he ‘eikivaka, tangata kavaka, pailate pe kau ngaue ‘a e taha uta koloa ha me‘a kau ki he faifolau pe pule‘i ‘o e vaka;
 - (b) vela, tukukehe kapau na‘e tupu mei he ngaue kovi pe kaunga ki ai ‘a e taha uta koloa;
 - (c) ngaahi me‘a fakatupu tu‘utamaki, ngaahi fakatu‘utamaki mo e ngaahi fakatamaki fakafokifa ‘i tahi pe ngaahi tahi ala lava ha fefolau‘aki ai;

- (d) tu‘utu‘uni ‘a e Ta‘e Ha Mai;
 - (e) tau;
 - (f) ngaue ‘a ha fili;
 - (g) puke pe ta‘ofi ha kau pilinisi, kau taki pe kakai, pe puke ‘i ha fekau‘aki mo ha ngaue fakalao;
 - (h) ngaahi fakangatangata ‘a e kolonitini;
 - (i) ngaue pe ‘ikai ke fai ‘e he taha ‘oku ne ‘omai ‘a e ngaahi koloa ke fakaheka pe taha ‘o‘ona ‘a e koloa, ha no fakafofonga (agent) pe fakafofonga (representative);
 - (j) angatu‘u ‘a e kau ngaue, pe ko e tapuni ‘a e ngaahi falengaue, pe ta‘ofi ngaue neongo pe ko e ha hono tupu‘anga, pe ko ha konga pe fakalukufua;
 - (k) ngaahi angatu‘u mo e maveuveu fakasivile;
 - (l) malu‘i pe feinga ke malu‘i ha mo‘ui pe koloa ‘i tahi;
 - (m) holo ‘a hono lahi pe mamafa pe ko ha mole pe maumau kehe tupu mei ha maumau ‘e malava hoko, tu‘unga pe tonounou ‘i he koloa;
 - (n) ta‘efe‘unga hono fa‘oaki;
 - (o) ta‘efe‘unga pe ta‘e‘aonga ‘a e ngaahi faka‘ilonga;
 - (p) ngaahi me‘a kovi ‘i hono anga ‘e ‘ikai ke lava ke ‘ilo neongo ‘a e tokanga elei;
 - (q) ha tupu‘anga kehe ‘a ia ‘oku ‘ikai ke tefito ‘aki ‘a e ngaue kovi mo‘oni pe ta‘etokanga pe kaunga ‘a e taha uta koloa, pe ngaue kovi pe ta‘etokanga ‘a e kau fakafofonga pe kau ngaue ‘a e taha uta koloa, ka kuo pau ‘oku ‘i he tokotaha ‘a ia ‘oku ne kole ke faka‘ata ia ke ne fakamo‘oni na‘e ‘ikai ke hoko ‘a e mole pe maumau ‘i he ngaue kovi pe ta‘etokanga ‘a e kau fakafofonga pe ngaue ‘a e taha uta koloa.
3. Kuo pau ‘e ‘ikai ngofua ke ‘eke ha me‘a meiate ia ‘oku ne ‘omai ‘a e ngaahi koloa ke fakaheka mole pe maumau kuo hoko ki he taha uta koloa pe vaka koe‘uhi ko ha me‘a na‘e tupunga pe ko ha ola ‘o ha ngaue na‘e ‘ikai fakahoko, ngaue kovi pe ta‘etokanga ‘a e taha ‘oku ne ‘omai ‘a e ngaahi koloa ke fakaheka koloa pe ko hano fakafofonga pe kau ngaue.
 4. Kuo pau ‘e ‘ikai lau ko e mavahe mei he halanga vaka ha fakahaofi pe feinga ke fakahaofi ha mo‘ui pe koloa ‘i tahi pe ko ha mavahe fakapotopoto pe ko ha maumau (infringement) pe maumau‘i (breach) ‘o e Ngaahi Tu‘utu‘uni ni, pe ko e tohi alepau ki he feuta‘aki, pea kuo pau ke ‘oua na‘a ‘eke mei he taha uta koloa ha mole pe maumau na‘e tupu mei ai.
 5. (a) Tukukehe ka kuo fakaha ‘e he taha ‘oku ne ‘omai ‘a e ngaahi koloa ke fakaheka ‘a e natula mo e mahu‘inga ‘o e ngaahi koloa ko ia

ki he tauhi mo tokanga'i pea mo e fetuku 'o e ngaahi koloa 'i he te'eki ai ke fakaheka mo e fakahifo mei he vaka 'a ia na'e feuta'aki ai 'a e koloa 'i tahi.

Kupu 8

Fakangatangata 'o e mo'ua

Kuo pau ki he Ngaahi Tu'utu'uni ni ke 'oua na'a ne uesia 'a e ngaahi totonu mo e ngaahi ngafa 'a e taha uta koloa 'i he lao 'i he taimi 'oku ngaue'aki ai felave'i mo e fakangatangata 'a e mo'ua 'a kinautolu 'a e vaka.

Kupu 9

Mo'ua 'i he maumau tupu mei he ivi 'atomi

Kuo pau ki he Ngaahi Tu'utu'uni ni ke 'oua na'a ne uesia 'a e ngaahi tu'utu'uni 'o ha Konivesio Fakavaha'apule'anga pe lao fakafonua 'oku ne pule'i 'a e mo'ua ki he maumau tupu mei he ivi 'atomi.

Kupu 10

Ngaue'aki

Kuo pau ki he ngaahi kupu 'o e Ngaahi Tu'utu'uni ni ke ngaue'aki ki he tohi fakaheka koloa kotoa pe fekau'aki mo e feuta'aki koloa 'i he vaha'a 'o ha ongo taulanga 'o ha Fonua kehekehe 'e ua 'o kapau:

- (a) ko e tohi fakaheka koloa na'e foaki 'i ha Fonua Aleapau;
- (b) ko e feuta'aki mei ha taulanga 'o e Fonua Aleapau; pe
- (c) ko e aleapau 'oku 'i ha pe fakamo'oni'aki ha tohi fakaheka koloa 'oku ne fakaha ko e ngaahi Tu'utu'uni ni pe lao 'o ha Fonua 'oku nau ngaue'aki ke nau pule'i 'a e aleapau, pe ko fe pe 'a e fonua lesisita 'a e vaka, taha uta koloa, konisaini pe ha to e taha fekau'aki.

BY AUTHORITY:

Metuisela Falesiva, General Manager
2009.

'a hono ngaue'aki 'a e ngaahi tu'utu'uni 'i he ngaahi setesi na'e ha 'i mu'a, 'e ngofua ki ai 'i he taimi 'e fakalao ai 'a e Tu'utu'uni Fakavaha'apule'anga 'o e 1979 pe felotoi ki ai pe 'i ha taimi pe hili ia, ke nau fakaha ko e ngaahi fakangatangata 'o e mo'ua 'oku tuku atu 'e he Konivesio ko 'eni ke ngaue'aki 'i hono ngaahi fonua kuo pau ke fokotu'u 'o anga pehe ni:

- (i) 'i he'ene felave'i mo e lahi 666.67 'a e 'iuniti 'a e 'akauni 'oku lave ki ai 'i he palakalafi si'i (a) 'o e palakalafi 5 'o e Kupu ko 'eni, 'iuniti fakapa'anga 'e 10,000;
- (ii) 'i he'ene felave'i mo e lahi ko e 'iuniti 'e 2 'a e 'akauni 'oku lave ki ai 'a e palakalafi si'i (a) 'o e palakalafi 5 'o e Kupu ko 'eni, 'iuniti fakapa'anga 'e 30.

Ko e 'iuniti fakapa'anga 'oku lave ki ai 'a e ngaahi setesi 'oku ha 'i mu'a 'oku fakatatau ia ki he milikalami koula 'e 65.5 'oku milesimolo 'e 900 hono haohaoa (millesimal fineness 900). Ko e liliu 'o e ngaahi lahi 'oku fakaha pau 'i he setesi ko ia ki he tu'unga pa'anga fakafonua kuo pau ke fakahoko 'o fakatatau ki he lao 'o e Fonua fekau'aki. Ko e fika'i mo e liliu 'oku lave ki ai 'a e setesi na'e ha 'i mu'a kuo pau ke fakahoko 'i ha founa ke fakaha 'i he tu'unga pa'anga fakafonua 'o e Fonua ko ia ki he fakangatangata ko e mahu'inga totonu tatau ki he lahi 'i he palakalafi si'i (a) 'o e palakalafi 5 'o e Kupu ko 'eni 'o hange kuo fakaha atu 'i he ngaahi 'iuniti 'o e 'akauni.

Kuo pau ki he ngaahi fonua ke nau fakaha ki he fakahu'anga 'a e founa 'a hono fika'i pe ko e ola 'a hono liliu pe ko fe pe 'e ngaue'aki, 'i he taimi 'e fakahu atu ai ha ngaahi tohi ngaue ki hono fakalao 'a e Tu'utu'uni Fakavaha'apule'anga 'o e 1979 pe felotoi ki ai mo ha taimi pe 'e fakahoko ha liliu ki ai.

- (e) Kuo pau ki he taha uta koloa pe ko e vaka ke 'oua na'a 'i ai ha'a na totonu ki ha monu'ia mei hono fakangatangata 'o e mo'ua kuo tukuatu 'i he palakalafi ko 'eni 'o kapau kuo fakamo'oni'i ko e maumau na'e tupu ia mei ha ngaue pe 'ikai ke fakahoko 'a e ngaue 'e he taha uta koloa 'aki 'a e taumu'a ke maumau'i, pe ta'etokanga pea ne 'ilo 'e ala hoko ai ha maumau.
- (f) Ko e fakaha 'oku 'uhinga ki ai 'i he palakalafi si'i (a) 'o e palakalafi ko 'eni, 'o kapau kuo 'osi fokotu'u ki he tohi fakaheka koloa, kuo pau ko ha fakamo'oni fe'unga, ka kuo pau ke 'oua na'a ne ha'i pe tu'utu'uni aofangatuku ki he taha uta koloa.
- (g) 'I ha felotoi 'a e taha uta koloa, 'eikivaka pe fakafofonga 'o e taha uta koloa mo e taha 'oku ne 'omai 'a e ngaahi koloa ke fakaheka, ko e ngaahi lahi ma'olunga taha kehe mei he me'a 'oku ha 'i he palakalafi si'i (a) 'o e palakalafi ni 'e ngofua ke toki fokotu'u, ka kuo pau ke 'oua na'a fokotu'u ha lahi ma'olunga taha ke si'i hifo 'i he lahi ma'olunga taha taau 'oku lave ki ai 'a e palakalafi si'i ko ia.

(h) Kuo pau ki he taha uta koloa pe vaka ke 'oua na'a na kau atu 'i he hoko ha mole pe maumau ki he, pe felave'i mo e, ngaahi koloa 'o kapau ko e natula 'a hono mahu'inga na'e 'ilo ki ai ka na'e hala 'a hono fakaha 'e he taha na'a ne 'omai 'a e ngaahi koloa ke fakaheka 'i he tohi fakaheka koloa.

6. Ko hano fakaheka 'o ha ngaahi koloa velangofua, fa'a pa pe natula fakatu'utamaki 'a ia na'e 'ikai fakangofua 'e he taha uta koloa, 'eikivaka pe fakafofonga 'o e taha uta koloa koe'uhi 'oku nau 'ilo hono fa'ahinga natula mo e anga, 'oku ngofua 'i ha taimi te'eki ke hoko 'a e taimi totonu ke fakahifo ai, ke fakahifo 'a e koloa ko ia 'i ha potu pe, pe faka'auha pe ngaohi ia ke 'oua na'a to e tupu mei ai ha fakatu'utamaki 'e he taha uta koloa 'ikai to e 'eke ha pa'anga huhu'i, pea kuo pau ke 'eke mei he taha na'a ne 'omai 'a e ngaahi koloa ke fakaheka 'a e ngaahi naunau mo e ngaahi fakamole fakapa'anga na'e tupu hangatonu pe ta'efakahangatonu mei he fakaheka koloa ko ia.

'O kapau ko e ngaahi koloa ko ia na'e fakaheka 'i ha 'ilo ki ai pe lotu ki ai, pea hoko 'o fakatu'utamaki ki he vaka pe ngaahi uta, 'e ngofua 'i he founga tatau pe, ke fakahifo 'a e koloa ko ia 'i ha feitu'u pe faka'auha pe ke ngaohi ia ke 'oua na'a to e fakatupu fakatu'utamaki 'e he taha uta koloa 'o 'ikai ke 'i ai ha mo'ua 'a e taha uta koloa tukukehe 'i he 'avalisi lukufua, 'o kapau 'oku 'i ai.

Kupu 4bis

Fakahoko 'a e ngaahi Taukapo mo e ngaahi Fakangatangata 'o e mo'ua

1. Ko e ngaahi taukapo mo e ngaahi fakangatangata 'o e mo'ua 'oku 'oatu 'i he Ngaahi Tu'utu'uni ni kuo pau ke ngaue'aki 'i ha hopo ko hono faka'ilo 'o ha taha uta koloa 'i he'ene felave'i mo ha mole pe maumau 'a e ngaahi koloa 'oku kau ki ha tohi aleapau ki he feuta'aki 'o tatau ai pe pe ko e hopo 'i he aleapau pe ko e sivile (tort).
2. 'O kapau 'e fakahoko ha faka'ilo 'o ha taha ngaue pe ko ha fakafofonga 'o e taha uta koloa (ko e taha ngaue pe ko e fakafofonga ko ia 'oku 'ikai ko ha taha aleapau fakatautaha), kuo pau ki he taha ngaue pe fakafofonga ko ia ke 'i ai 'a 'ene ngofua ke 'ataa ke 'i ai 'a 'ene totonu ki he ngaahi taukapo mo e ngaahi fakangatangata 'o e mo'ua 'oku ma'u 'e he taha uta koloa ke ne 'o hake 'i he Ngaahi Tu'utu'uni ko 'eni.
3. Ko e fakakatoa 'a e lahi 'e ala ma'u mei he uta, mo e taha ngaue mo e fakafofonga ko ia, kuo pau ke 'oua na'a lahi hake 'i he fakangatangata 'oku 'oatu 'i he Ngaahi Tu'utu'uni ko 'eni.
4. Neongo ia, kuo pau ki ha taha ngaue pe fakafofonga 'o e uta ke 'oua na'a 'ata ke ne ngaue'aki 'a e ngaahi kupu 'o e Kupu ni, 'o kapau na'e fakamo'oni'i ko e maumau na'e tupu mei ha ngaue pe 'ikai ke fakahoko ha ngaue 'e he taha ngaue pe fakafofonga 'aki 'a 'ene lotu ke fakatupu ha maumau pe ta'etokanga mo 'ene 'ilo 'e ala hoko 'a e maumau.

Kupu 5

Momoi 'a e ngaahi totonu mo e ngaahi fakahaofi pea mo e fakalahi 'o e ngaahi ngafa mo e ngaahi mo'ua.

Kuo pau ke 'ata 'a e taha uta ke momoi kotoa pe konga 'o 'ene ngaahi totonu mo hono ngaahi fakahaofi pe ke fakalahi ha fatongia pe mo'ua 'e taha koe'uhi ko e Ngaahi Tu'utu'uni 'oku 'i ha taha 'o e ngaahi Kupu ni, ka kuo pau ke fokotu'u 'a e momoi pe fakalahi pehe 'i he tohi fakaheka koloa kuo 'oatu 'e he taha 'oku ne 'omai 'a e ngaahi koloa ke fakaheka.

Kuo pau ke 'oua na'a ngaue'aki 'a e ngaahi kupu 'o e Ngaahi Tu'utu'uni kia kinautolu 'oku nau no vaka, 'a ia 'o kapau 'e 'oatu ha tohi fakaheka koloa koe'uhi ko ha vaka no 'e ha ni'ihiki kuo pau ke fai pau ki he ngaahi tu'unga 'o e Ngaahi Tu'utu'uni ni. Kuo pau 'e 'ikai ke 'i ai ha me'a 'i he Ngaahi Tu'utu'uni ni te ne ta'ofi ha to e fakalahi atu ki he tohi fakaheka koloa ha tu'utu'uni fakalao 'o kau ki he 'avalisi lukufua.

Kupu 6

Ngaahi Tu'utu'uni Makehe

Neongo ko e ngaahi tu'utu'uni 'oku tu'u 'i he ngaahi Kupu kimu'a kuo pau 'oku 'ata ki ha taha uta koloa, 'eikivaka pe fakafofonga 'o e taha uta koloa, ke fakahoko 'i ha tohi aleapau 'oku kau ki ha fa'ahinga koloa neongo pe ko e ha 'a e alea 'oku ha ai 'oku kau ki he ngafa mo e mo'ua 'o e taha uta koloa koe'uhi ko e ngaahi koloa ko ia pea mo e ngaahi totonu mo e ngaahi fakahaofi 'o e taha uta koloa koe'uhi ko e ngaahi koloa ko ia pe ko 'ene fakapapau'i ko e vaka 'oku fe'unga ki he ngaue'aki 'i tahi mo e me'a 'oku fa'a fakahoko 'e he kakai pe ki he tauhi pe fa'a fakahoko 'e he kau ngaue pe kau fakafofonga 'i he me'a fekau'aki mo hono fakaheka, fetuku, tuku ki hono tuku'anga, 'ave, tauhi, tokanga pea mo fakahifo 'o e ngaahi koloa 'oku feuta'aki 'i tahi, ka kuo pau koe'uhi ko e me'a ni na'e 'ikai ke tuku atu pe kuo pau ke tuku atu ha tohi fakaheka koloa pea ko e ngaahi me'a na'e felotoi ki ai kuo pau ke fokotu'u 'i ha tali totongi 'a ia kuo pau ko ha tohi 'oku 'ikai malava ke fetongi pea ke fakaha 'a e tapui ko ia 'i he tohi ko ia. Ka fakahoko ha tohi aleapau 'o hange ko ia kuo pau ke fakahoko ko e lao.

Kuo pau 'e 'ikai kau 'a e Kupu ni ki he ngaahi feuta'aki fakakomesiale angamaheni 'oku fakahoko 'i he founga fefakatau'aki angamaheni, ka ki he ngaahi feuta'aki pe 'a ia ko e anga mo e tu'unga 'o e me'a ke uta pe ko e ngaahi me'a 'oku kau ki ai, ngaahi tu'utu'uni mo e ngaahi tu'unga 'a ia ke fakahoko ai 'a hono uta 'e fakahoko ko e me'a totonu ke kau ki ha fakalahi 'o e ngaahi tu'utu'uni.

Kupu 7

Fakangatangata ki hono ngaue'aki 'o e ngaahi tu'utu'uni

Kuo pau ke 'ikai ke 'i ai ha me'a 'i he Tu'utu'uni ni te ne ta'ofi ha uta pe ha taha fakaheka koloa ki he kau atu 'i ha tohi aleapau, pe fakapapau, pe tu'utu'uni, pe ha alea ta'ofi, pe faka'ata 'oku kau ki he ngafa pe mo'ua 'o e taha uta koloa pe vaka koe'uhi ko ha mole pe maumau pe 'oku kau