



Tonga

# **BAIL ACT**

**Chapter 07.06**

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## BAIL ACT

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## BAIL ACT

### AN ACT TO REGULATE THE GRANTING OF BAIL<sup>1</sup>

Commencement [13th November, 1990]

#### 1 Short title

This Act may be cited as the Bail Act.

#### 2 Definition

In this Act, unless the context otherwise requires —

“**conviction**” includes a finding of guilt, a finding that a person is not guilty by reason of insanity and a conviction of an offence for which an order is made placing the offender on probation or discharging him absolutely or conditionally;

“**Court**” includes a judge or a magistrate;

“**police officer**” means a police officer of the rank of sergeant or above, or the police officer in charge of the police station and, for the purpose of granting bail, if no such police officer is available, includes a Justice of the Peace appointed under section 94A of the Magistrate’s Court Act;<sup>2</sup>

“**surrender to custody**” means in relation to a person released on bail, surrendering himself into the custody of the Court or of the police officer (according to the requirements of the grant of bail) at the time and place for the time being appointed for him to do so.

**3 Entitlement to bail**

- (1) Subject to the provisions of this Act, every person —
  - (i) who is arrested for or charged with a criminal offence; or
  - (ii) who has been convicted of a criminal offence and —
    - (a) who has appealed against conviction or sentence; or
    - (b) whose case has been adjourned for the purpose of obtaining further information before he is sentenced,shall be released on bail until the date when he is next due to surrender to custody.<sup>3</sup>
- (2) A person charged with murder or treason may be granted bail only by the Supreme Court or Court of Appeal.

**4 Bail may not be granted**

- (1) A person who is arrested or charged with an offence punishable with imprisonment shall be granted bail unless the Court, or a police officer (in the case of a person arrested) is satisfied that —
  - (i) there are substantial grounds for believing that, if released on bail (whether or not subject to conditions) he will —
    - (a) fail to surrender to custody;
    - (b) commit an offence while on bail; or
    - (c) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;
  - (ii) he should be kept in custody for his own protection or welfare;
  - (iii) the case has been adjourned for inquiries which it would be impracticable to make unless the defendant is kept in custody;
  - (iv) he is already in custody pursuant to a sentence of a Court; or
  - (v) he has already been released on bail in connection with the present proceedings and has been arrested pursuant to section 9 of this Act.
- (2) In taking the decisions required by subsection (1), the Court or police officer shall have regard to all the relevant circumstances and in particular —
  - (a) the nature or seriousness of the offence (and the probable method of dealing with the defendant for it);
  - (b) the character, antecedents, associations and community ties of the defendant;
  - (c) the defendant's record in respect of the fulfilment of obligations under previous grants of bail;
  - (d) the strength of the evidence of his having committed the offence.

- (3) A person who is arrested or charged with any offence not punishable with imprisonment shall be granted bail unless the Court, or police officer (in the case of a person arrested) is satisfied that —
- (i) he has previously been granted bail and has failed to surrender to custody and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody;
  - (ii) he should be kept in custody for his own protection and welfare; or
  - (iii) he is already in custody pursuant to a sentence of a Court.

#### 4A Bail after conviction<sup>4</sup>

- (1) A person who has been convicted of a criminal offence punishable with imprisonment and whose case is adjourned for the purpose of obtaining further information before he is sentenced shall be granted bail if the Court is satisfied that —
- (a) it is unlikely that he will be sentenced to imprisonment; or
  - (b) it would be impracticable to obtain the further information if he is kept in custody; and
  - (c) there are substantial grounds for believing that, if released on bail (whether or not subject to conditions) he will surrender to custody without committing any offence whilst on bail.
- (2) The Court shall not grant bail under subsection (1) where —
- (a) the person is already in custody under a sentence of a Court;
  - (b) the person has in relation to the offence been arrested under section 9; or
  - (c) it is desirable to keep the person in custody for his own protection or welfare.
- (3) In taking the decision required by subsection (1), the Court shall have regard to all the relevant circumstances and in particular —
- (a) the nature of the offence and probable sentence for it;
  - (b) the character, antecedents, associations and community ties of the person; and
  - (c) his record in surrendering to custody at the trial and on other occasions.

#### 4B Bail whilst awaiting appeal<sup>5</sup>

- (1) A person who has been convicted of and sentenced to imprisonment for a criminal offence and who has appealed or applied for leave to appeal against that conviction or sentence shall be granted bail if the Court is satisfied that —
- (a) there is a reasonable prospect of the appeal succeeding; or

- (b) the appeal is unlikely to be heard before the whole or a substantial portion of the sentence has been served; and
  - (c) there are substantial grounds for believing that, if released on bail (whether or not subject to conditions) he will surrender to custody without committing any offence whilst on bail.
- (2) In taking the decision required by subsection (1), the Court shall have regard to all the relevant circumstances and in particular —
- (a) the nature of the offence and length of the sentence;
  - (b) the grounds of appeal;
  - (c) the character, antecedents, associations and community ties of the person; and
  - (d) his record in surrendering to custody at the trial and on other occasions.

## **5 Requirements when bail is granted<sup>6</sup>**

A person granted bail —

- (i) shall surrender to custody;
- (ii) may be required, before release on bail —
  - (a) to give security by himself or on his behalf; and/or
  - (b) to provide a surety or sureties,to secure his surrender to custody;
- (iii) may be required by a Court or a police officer at any time to comply with such requirements as appear necessary to secure that —
  - (a) he surrenders to custody;
  - (b) he does not commit an offence while on bail;
  - (c) he does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person;
  - (d) he makes himself available for the purpose of enabling enquiries or a report to be made to assist the Court in dealing with him for the offence;
- (iv) may be ordered not to leave Tonga pending trial and to surrender his passport and travel documents to ensure compliance with such order.

## **6 Conditions of bail may be imposed or varied**

- (1) Where a Court or a police officer has granted bail, a Court, or a higher Court on appeal, may on application —
- (a) by or on behalf of the person to whom bail was granted; or
  - (b) by the prosecutor or a police officer,



vary the conditions of bail or impose conditions in respect of bail which has been granted unconditionally.<sup>7</sup>

- (2) Where a police officer withholds bail the person arrested shall be brought before a Court as soon as practicable and in any event within 24 hours after such withholding.

## **7 Record of decision**

- (1) Where —
  - (a) a Court or a police officer grants or withholds bail; or
  - (b) a Court or a police officer imposes or varies any condition of bail,that Court or police officer shall make a written record of such decision and the reasons for it. A copy of the record shall be given to the person in relation to whom the decision was taken as soon as practicable after it has been made, but no longer than 24 hours after it was made.<sup>8</sup>
- (2) Where a Magistrate's Court withholds bail from a person the Court shall inform him that he may apply to the Supreme Court to be granted bail.

## **8 Offence absconding by person released on bail**

- (1) If a person who has been released on bail fails without reasonable cause to surrender to custody he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 or 1 year imprisonment or both.
- (2) It shall be for the accused to prove that he had reasonable cause for his failure to surrender to custody.

## **9 Liability to arrest for absconding or breaking conditions of bail**

- (1) If a person who has been released on bail —
  - (a) fails to surrender to custody; or
  - (b) absents himself from the Court without the Court's leave at any time after the time he has surrendered to custody,the Court may issue a warrant for his arrest.
- (2) A person who has been released on bail may be arrested without warrant —
  - (a) if the arresting officer has reasonable grounds for believing that that person is not likely to surrender to custody;
  - (b) if the arresting officer has reasonable grounds for believing that person is likely to break any of the conditions of bail or has reasonable grounds for suspecting that that person has broken any of those conditions; or

- (c) in a case where that person was released on bail with one or more sureties, if a surety notifies a police officer in writing that that person is not likely to surrender to custody and that for that reason the surety wishes to be relieved of his obligations as a surety.
- (3) (a) A person arrested pursuant to subsection (2) shall be brought as soon as practicable and in any event within 24 hours after his arrest before a Magistrate who may remand him in custody or grant him bail subject to the same or different conditions from those originally imposed.
- (b) For the purposes of this subsection no account shall be taken of public holidays or any Saturday or Sunday in any period of 24 hours after his arrest.

## **10 Sureties**

- (1) This section applies where bail is granted subject to the provision of a surety or sureties pursuant to section 5 (ii) of this Act.
- (2) For the purpose of considering the suitability of a proposed surety regard may be had (among other things) to —
  - (a) the surety's financial resources;
  - (b) his character and any previous convictions; and
  - (c) his proximity (as to kinship, residence or otherwise) to the person for whom he is to be a surety.
- (3) Where a Court grants a person bail on such a condition but is unable to release him because no suitable surety is available, the Court shall fix the amount in which the surety is to be bound for the purpose of enabling the recognizance of the surety to be entered into later.
- (4) The recognizance of the surety may be entered into before any of the following persons, namely a police officer who is either of the rank of inspector or above or in charge of a police station, a Magistrate, or a registrar of the Supreme Court.
- (5) Where a surety seeks to enter into his recognizance before any person in accordance with subsection (4) but that person declines to take his recognizance because he is not satisfied of the surety's suitability, the surety may apply to the Court which fixed the amount of the recognizance in which the surety was to be bound for that Court to take his recognizance and that Court shall, if satisfied of his suitability, direct his recognizance to be taken.
- (6) Where pursuant to subsection (4) a recognizance is entered into otherwise than before the Court that fixed the amount of the recognizance, the same consequences shall follow as if it had been entered into before that Court.
- (7) If a person who has been released on bail fails without reasonable cause to surrender to custody the Court may —

- (a) order that the whole or any part of his security be forfeited to the Crown; and/or
  - (b) unless cause be shown to the contrary within such period as the Court may direct, order that the whole or any part of the security given by any surety be forfeited to the Crown.
- (8) Payment of any sum adjudged to be paid under subsection (7) may be enforced, as if it were a fine and as if the adjudication were a conviction for an offence.
- (9) A Court may review a decision made under subsection (7) if it is satisfied on an application made by or on behalf of the accused or any surety that the accused did have reasonable cause for his failure to surrender to custody.

## 11 Forms

- (1) If a person is granted bail by a Court, the recognizance of bail shall be in Form 1 of the Schedule hereto.
- (2) If a person is granted bail by a police officer, the recognizance of bail shall be in Form 2 of the Schedule hereto.

**SCHEDULE**

**FORM 1**

*(Section 11 (1))*

**RECOGNIZANCE OF BAIL GRANTED BY COURT**

No ..... Court, district of .....

Whereas the undersigned ..... of ..... (hereinafter called the “defendant”) was this day charged before the above Court for that he on the ..... day of ..... 20 ..... at ..... did \*

Now therefore the defendant hereby binds himself to perform the following obligation

- + To attend the Magistrate’s Court at ..... at ..... am/pm on the ..... day of ..... 20..... to answer the aforesaid charge;
- or
- + To attend the sessions of the Supreme Court to be held at ..... next after the date of these presents and there to surrender himself and stand his trial upon such charge as may be preferred against him.
- \* To comply with the conditions of bail appearing below.

And the defendant together with the undersigned sureties hereby acknowledge themselves to forfeit to the Crown the sums following to be levied on their several goods, namely the defendant the sum of \$ ..... and the sureties the sum of \$ ..... each, in case the defendant fails to perform the above obligation.

.....  
.....  
.....  
.....

**CONDITIONS OF BAIL**

Taken before me this.....day of.....20.....

.....  
+ Judge/Magistrate

- \* Here state the particulars of charge.
- + Strike out whichever is not applicable.

FORM 2

(Section 11(2))

**RECOGNIZANCE OF BAIL GRANTED BY POLICE OFFICER**

No .....Court, district of .....

Whereas the undersigned ..... of ..... (hereinafter called the “accused”) was arrested on the ..... upon allegation of having committed the offence of \*.....

Now therefore the accused hereby binds himself to perform the following obligation

- + To attend the police station at ..... at ..... am/pm on the ..... to facilitate the investigation of the offence alleged; or
- + To attend the Magistrate’s Court at ..... at ..... am/pm on the ..... to answer to charges that may be laid against him.
- \* To comply with the conditions of bail appearing below the accused together with the undersigned sureties hereby acknowledge themselves to forfeit to the Crown the sums following to be levied on their several, goods, namely the accused the sum of \$ ..... and the sureties the sum of \$ .....each, in case the accused fails to perform the above obligation.

.....  
.....  
.....  
.....

**CONDITIONS OF BAIL**

Taken before me this.....day of.....20.....

.....  
Police officer

- \* Here state the particulars of allegation.
- + Strike out whichever is not applicable.

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**ENDNOTES**

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<sup>1</sup> **Act 27 of 1990,**

**Amending Acts**

Amending Acts	Commencement
Act 14 of 1991	25 October 1991
Act 16 of 2012	27 November 2012

<sup>2</sup> Inserted by Act 16 of 2012

<sup>3</sup> Amended by Act 14 of 1991

<sup>4</sup> Inserted by Act 14 of 1991

<sup>5</sup> Inserted by Act 14 of 1991

<sup>6</sup> Amended by Act 16 of 2012

<sup>7</sup> Amended by Act 16 of 2012

<sup>8</sup> Amended by Act 16 of 2012