



TOML RIGHTS AND THE SPONSORSHIP AGREEMENT

BRIEF

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WHAT IT MEANS FOR TONGA

Under the agreement, TOML is granted extensive rights, enforceable in foreign jurisdictions, which privilege the rights of the investor over the country, its people and environment.

On 4 August 2025, The Metals Company (TMC) subsidiary, Tonga Offshore Mining Limited, (TOML), signed a sponsorship agreement with the Kingdom of Tonga. This agreement outlines the rights and responsibilities of each party as it relates to TOML mining in the International Seabed Area. Under the agreement, TOML is granted extensive rights, enforceable in foreign jurisdictions, which privilege the rights of the investor over the country, its people and environment.

The sponsorship agreement is a contract that provides guarantees to TOML and allows it to sue the government if it thinks the agreement has been broken in some way through a process known as investor-state dispute settlement (ISDS). Under the agreement, the investor's rights are enforceable through arbitration under the United Nations Commission on International Trade Law (UNCITRAL) Rules. The case would be heard in Singapore under Singapore's law, not in the Kingdom of Tonga under Tongan law.

This briefing note is based on the memorandum:

"Signing it Away: Implications of UNCITRAL Enforcement of TOML Rights under the Sponsorship Agreement", prepared by Dr Jane Kelsey, Professor Emeritus at the University of Auckland, Aotearoa New Zealand

The Pacific Network on Globalisation (PANG) sought a legal assessment of the sponsorship agreement's provisions on international arbitration. This identified a number of major concerns, including:

OPEN-ENDED AND ONE-SIDED OBLIGATION TO TOML

The Tongan Government is required to “do all things reasonably necessary to give effect to TOML having the full benefit of the Sponsorship”, which is very vague and contestable.

JURISDICTION

TOML's rights under the agreement sit above all Tongan law with the exception of the Seabed Minerals Act 2020. Any changes to the 2020 Act only apply if they are consistent with the sponsorship agreement. This effectively gives TOML a waiver from the sovereign authority of the Kingdom of Tonga, aside from the existing Act.

DRAWS ON OLD STYLES OF INVESTMENT TREATIES

The sponsorship agreement borrows from controversial older generation investment treaties that grant extensive rights to foreign investors, but the TOML agreement has even fewer limits on those rights. Disputes that are conducted under UNCITRAL Rules have no system of precedent, which creates uncertainty about how clauses will be interpreted and there is no appeal. The ad hoc arbitration panels are often criticised for a pro-investor bias. There is no provision for Tonga to counter claim against TOML if it breaches the agreement

POTENTIALLY CRIPPLING AWARDS OF DAMAGES

These investor-state dispute processes are increasingly being used by energy and mining companies to sue governments in

offshore tribunals for regulations and decisions that support action on climate change or conservation. Damages awards often exceed US\$100 million, something that would be devastating for Tonga.

LACK OF TRANSPARENCY

Under the UNCITRAL rules for this kind of agreement there is no obligation to publish information about the existence of a dispute or its outcome, including the amount of a compensatory award, even to Tonga's Parliament.



EXCESSIVE RIGHTS GIVEN TO TOML

There are numerous guarantees to TOML that provide potential grounds for the company to bring a claim against the Kingdom of Tonga for allegedly breaching the Agreement. These provisions are very broadly worded, which invites disputes over interpretation and could prevent Tonga from taking necessary action to protect its financial, political and ecological stability.

- The guarantee of ‘fair and equitable treatment’ to TOML is the provision investors most commonly use to challenge proposed or actual changes to regulations, laws or policies that adversely affect the investment’s value or profits. Investors claim a “legitimate expectation” that laws which applied at the time they invested will remain unchanged through the lifetime of their investment, which is highly unlikely given the novelty of DSM. The sponsorship agreement has an extreme version that lacks even minimal exceptions. This can tie the Tongan government’s hands, despite what happens with DSM and how long the TOML’s operations last.
- “Expropriation” refers to a government interfering with an investment either directly (eg. taking over a company through nationalising) or indirectly (eg. new environmental regulations that impact on its activities and profits). Under the sponsorship agreement this could affect all manner of government policies and severely limit what the government can and cannot do to regulate deep-sea mining, its impacts and development options.
- Tonga grants TOML “full security and protection”, which includes quelling protests or actions that might impede its operations, and “complete and unconditional” legal protection. This requires the Tongan government to block any domestic legal action taken against TOML for harms caused by TOML activity or that reviews the government’s decisions if that would impede TOML’s rights. This protection might also apply to challenges at international law, for example to a decision by Tonga to sponsor deep-sea mining without the authority of the International Seabed Authority.
- In addition, should the Tongan government change any law that TOML says would limit, reduce or withhold rights or benefits under the agreement, the company can seek to renegotiate the agreement and if they can’t agree, TOML can terminate it.

CHILLING EFFECT

Such extensive rights for TOML under the sponsorship agreement give TOML significant leverage to pressure the Tongan government not to implement anything that may be needed to address the impacts of deep-sea mining.

The TOML Sponsorship Agreement grants the company sweeping rights that limit Tonga’s ability to regulate deep-sea mining, protect its people and environment, and respond to emerging challenges.

Without safeguards, Tonga faces significant financial, environmental, and governance risks, while TOML gains substantial leverage over national policy.

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