
A BILL FOR AN ACT

To enact a new title 44 of the Code of the Federated States of Micronesia (Annotated), as amended, to govern alternative dispute resolution and to enact a new chapter 1 thereof for the purpose of creating an international commercial arbitration law for the FSM, and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

1 Section 1. The Code of the Federated States of Micronesia
2 (Annotated), as amended, is hereby further amended by enacting a
3 new title 44 entitled "Alternative Dispute Resolution".

4 Section 2. The Code of the Federated States of Micronesia
5 (Annotated), as amended, is hereby further amended by enacting a
6 new chapter 1 of title 44 which shall be entitled "International
7 Commercial Arbitration".

8 Section 3. The Code of the Federated States of Micronesia
9 (Annotated), as amended, is hereby further amended by enacting a
10 new subchapter 1 of chapter 1 of title 44 which shall be entitled
11 "General Provisions".

12 Section 4. The Code of the Federated States of Micronesia
13 (Annotated), as amended, is hereby further amended by enacting a
14 new section 101 to chapter 1 of title 44 to read as follows:

15 "Section 101. Short title. This chapter may be cited as
16 the "International Commercial Arbitration Act of 2023"."

17 Section 5. The Code of the Federated States of Micronesia
18 (Annotated), as amended, is hereby further amended by enacting a

1 new section 102 to chapter 1 of title 44 to read as follows:

2 "Section 102. Scope of application. This Chapter shall
3 apply to international commercial arbitration, subject to
4 any agreement in force between the FSM and any other
5 foreign State or States.

6 (1) The provisions of this Act, except Sections 110,
7 111, 123, 126, 144 and 145, apply only if the place of
8 arbitration is in the territory of the Federated States
9 of Micronesia.

10 (2) A commercial arbitration is international if:

11 (a) the parties to an arbitration agreement have,
12 at the time of the conclusion of that agreement, their
13 places of business in different sovereign States; or

14 (b) one of the following places is situated
15 outside the State in which the parties have their places
16 of business:

17 (i) the place of arbitration if determined
18 in, or pursuant to, the arbitration agreement;

19 (ii) any place where a substantial part of
20 the obligations of the commercial relationship is to be
21 performed or the place with which the subject-matter of
22 the dispute is most closely connected; or

23 (c) the parties have expressly agreed that the
24 subject matter of the arbitration agreement relates to
25 more than one country.

1 (4) For the purpose of subsection 3 of this Section:
2 (a) if a party has more than one place of
3 business, the place of business referred to in this
4 Section is the one that has the closest connection to the
5 arbitration agreement;

6 (b) if a party does not have a place of
7 business, reference is to be made to his or her habitual
8 residence.

9 (5) This Act does not affect any other law of the
10 Federated States of Micronesia under which certain
11 disputes may not be arbitrated or may be arbitrated only
12 in accordance with such law.

13 Section 6. The Code of the Federated States of Micronesia
14 (Annotated), as amended, is hereby further amended by enacting a
15 new section 103 to chapter 1 of title 44 to read as follows:

16 "Section 103. Definitions.

17 (1) "arbitral tribunal" means a sole arbitrator or a
18 panel of arbitrators.

19 (2) "arbitration" means any arbitration whether or
20 not administered by a permanent arbitral institution.

21 (3) "arbitration agreement" means an agreement by the
22 parties to submit to arbitration all or certain disputes
23 which have arisen or which may arise between them in
24 respect of a defined legal relationship, whether
25 contractual or not. Provisions relating to the

1 arbitration agreement are set out in Subchapter 2 below.

2 (4) "court" means a body or organ of the judicial
3 system of a State.

4 (5) "data message" means information generated, sent,
5 received or stored by electronic, magnetic, optical or
6 similar means, including, but not limited to, electronic
7 data interchange (EDI), electronic mail, telegram, telex
8 or telecopy.

9 (6) "electronic communication" means any
10 communication that the parties make by means of data
11 messages."

12 Section 7. The Code of the Federated States of Micronesia
13 (Annotated), as amended, is hereby further amended by enacting a
14 new section 104 to chapter 1 of title 44 to read as follows:

15 "Section 104. Rules of interpretation. For the purposes
16 of this Law:

17 (1) "arbitration" means any arbitration whether or
18 not administered by a permanent arbitral institution;

19 (2) "arbitral tribunal" means a sole arbitrator or a
20 panel of arbitrators;

21 (3) "court" means a body or organ of the judicial
22 system of a State;

23 (4) where a provision of this Act, except Section
24 137, leaves the parties free to determine a certain
25 issue, such freedom includes the right of the parties to

1 authorize a third party, including an institution, to
2 make that determination;

3 (5) where a provision of this Act refers to the fact
4 that the parties have agreed or that they may agree or in
5 any other way refers to an agreement of the parties, such
6 agreement includes any arbitration rules referred to in
7 that agreement;

8 (6) where a provision of this Act, other than in
9 Sections 134(1) and 141(2)(a), refers to a claim, it also
10 applies to a counter-claim, and where it refers to a
11 defense, it also applies to a defense to such counter-
12 claim."

13 Section 8. The Code of the Federated States of Micronesia
14 (Annotated), as amended, is hereby further amended by enacting a
15 new section 105 to chapter 1 of title 44 to read as follows:

16 "Section 105. Receipt of written communications.

17 (1) Unless otherwise agreed by the parties:

18 (a) any written communication is deemed to have
19 been received if it is delivered to the addressee
20 personally or if it is delivered at his place of
21 business, habitual residence or mailing address; if none
22 of these can be found after making a reasonable inquiry,
23 a written communication is deemed to have been received
24 if it is sent to the addressee's last-known place of
25 business, habitual residence or mailing address by

1 registered letter or any other means which provides a
2 record of the attempt to deliver it;

3 (b) the communication is deemed to have been
4 received on the day it is so delivered.

5 (2) The provisions of this Section do not apply to
6 communications in court proceedings."

7 Section 9. The Code of the Federated States of Micronesia
8 (Annotated), as amended, is hereby further amended by enacting a
9 new section 106 to chapter 1 of title 44 to read as follows:

10 "Section 106. Waiver of rights to object. A party who
11 knows that any provision of this Act from which the
12 parties may derogate, or any requirement under the
13 arbitration agreement has not been complied with, and yet
14 proceeds with the arbitration without stating his
15 objection to such non-compliance without undue delay or
16 within a time-limit provided therefor, shall be deemed to
17 have waived his right to object."

18 Section 10. The Code of the Federated States of Micronesia
19 (Annotated), as amended, is hereby further amended by enacting a
20 new section 107 to chapter 1 of title 44 to read as follows:

21 "Section 107. Extent of court intervention. In matters
22 governed by this Act, no court shall intervene except
23 where so provided in this Act."

24 Section 11. The Code of the Federated States of Micronesia
25 (Annotated), as amended, is hereby further amended by enacting a

1 new section 108 to chapter 1 of title 44 to read as follows:

2 “Section 108. FSM Supreme Court authority for certain
3 functions of arbitration assistance and supervision. The
4 functions referred to in Sections 113 (3), 113(4),
5 115(3), 116, 118(3) and 143(2) shall be performed by the
6 FSM Supreme Court.”

7 Section 12. The Code of the Federated States of Micronesia
8 (Annotated), as amended, is hereby further amended by enacting a
9 new subchapter 2 of chapter 1 of title 44 which shall be entitled
10 “Arbitration Agreement”.

11 Section 13. The Code of the Federated States of Micronesia
12 (Annotated), as amended, is hereby further amended by enacting a
13 new section 109 to chapter 1 of title 44 to read as follows:

14 “Section 109. Form of arbitration agreement.

15 (1) An arbitration agreement may be in the form of an
16 arbitration clause in a contract or in the form of a
17 separate agreement.

18 (2) The arbitration agreement shall be in writing.
19 In writing includes an agreement recorded in any form and
20 contained in, including but not limited to, an electronic
21 communication whose information is accessible so as to be
22 useable for subsequent reference, an exchange of
23 statements of claim and defense in which the existence of
24 an agreement is alleged by one party and not denied by
25 the other, a contract that makes reference to any

1 document containing an arbitration clause, provided that
2 the reference is such as to make that clause part of the
3 contract."

4 Section 14. The Code of the Federated States of Micronesia
5 (Annotated), as amended, is hereby further amended by enacting a
6 new section 110 to chapter 1 of title 44 to read as follows:

7 "Section 110. Substantive claim before court.

8 (1) A court before which an action is brought in a
9 matter which is the subject of an arbitration agreement
10 shall, if a party so requests not later than when
11 submitting his first statement on the substance of the
12 dispute, refer the parties to arbitration unless it finds
13 that the agreement is null and void, inoperative or
14 incapable of being performed.

15 (2) Where an action referred to in paragraph (1) of
16 this Section has been brought, arbitral proceedings may
17 nevertheless be commenced or continued, and an award may
18 be made, while the issue is pending before the court."

19 Section 15. The Code of the Federated States of Micronesia
20 (Annotated), as amended, is hereby further amended by enacting a
21 new section 111 to chapter 1 of title 44 to read as follows:

22 "Section 111. Interim measures by court. It is not
23 incompatible with an arbitration agreement for a party to
24 request, before or during arbitral proceedings, from a
25 court an interim measure of protection and for a court to

1 grant such measure.”

2 Section 16. The Code of the Federated States of Micronesia
3 (Annotated), as amended, is hereby further amended by enacting a
4 new Subchapter 3 of chapter 1 of title 44 which shall be titled
5 “Composition of Arbitral Tribunal”.

6 Section 17. The Code of the Federated States of Micronesia
7 (Annotated), as amended, is hereby further amended by enacting a
8 new section 112 to chapter 1 of title 44 to read as follows:

9 “Section 112. Number of arbitrators.

10 (1) The parties are free to determine the number of
11 arbitrators, provided that the number of arbitrators is
12 an odd number.

13 (2) Failing such determination, the number of
14 arbitrators shall be three.”

15 Section 18. The Code of the Federated States of Micronesia
16 (Annotated), as amended, is hereby further amended by enacting a
17 new section 113 to chapter 1 of title 44 to read as follows:

18 “Section 113. Appointment of arbitrators.

19 (1) No person shall be precluded by reason of his
20 nationality from acting as an arbitrator, unless
21 otherwise agreed by the parties.

22 (2) The parties are free to agree on a procedure of
23 appointing the arbitrator or arbitrators, subject to the
24 provisions of subsections (4) and (5) of this Section.

25 (3) Failing such agreement,

1 (a) in an arbitration with three arbitrators,
2 each party shall appoint one arbitrator, and the two
3 arbitrators thus appointed shall appoint the third
4 arbitrator; if a party fails to appoint the arbitrator
5 within thirty days of receipt of a request to do so from
6 the other party, or if the two arbitrators fail to agree
7 on the third arbitrator within thirty days of their
8 appointment, the appointment shall be made, upon request
9 of a party, by the FSM Supreme Court, as specified in
10 Section 108;

11 (b) in an arbitration with a sole arbitrator, if
12 the parties are unable to agree on the arbitrator, he/she
13 shall be appointed upon request of a party by the FSM
14 Supreme Court, as specified in Section 108.

15 (4) Where, under an appointment procedure agreed upon
16 by the parties,

17 (a) a party fails to act as required under such
18 procedure; or

19 (b) the parties, or two arbitrators, are unable
20 to reach an agreement expected of them under such
21 procedure; or

22 (c) a third party, including an institution,
23 fails to perform any function entrusted to it under such
24 procedure, any party may request the FSM Supreme Court,
25 as specified in Section 6, to take the necessary measure,

1 unless the agreement on the appointment procedure
2 provides other means for securing the appointment.

3 (5) A decision on a matter entrusted by subsection
4 (3) or (4) of this Section to FSM Supreme Court, as
5 specified in Section 6, shall be subject to no appeal.
6 The FSM Supreme Court, in appointing an arbitrator, shall
7 have due regard to any qualifications required of the
8 arbitrator by the agreement of the parties and to such
9 considerations as are likely to secure the appointment of
10 an independent and impartial arbitrator and, in the case
11 of a sole or third arbitrator, shall take into account as
12 well the advisability of appointing an arbitrator of a
13 nationality other than those of the parties.”

14 Section 19. The Code of the Federated States of Micronesia
15 (Annotated), as amended, is hereby further amended by enacting a
16 new section 114 to chapter 1 of title 44 to read as follows:

17 “Section 114. Grounds for challenge of arbitrator’s
18 appointment.

19 (1) When a person is approached in connection with
20 his/her possible appointment as an arbitrator, he/she
21 shall disclose any circumstances likely to give rise to
22 justifiable doubts as to his/her impartiality or
23 independence.

24 (2) From the time of an arbitrator’s appointment and
25 throughout the arbitral proceedings, an arbitrator shall

1 disclose to the parties without delay any circumstances
2 likely to give rise to justifiable doubts as to he/she
3 impartiality or independence, if he/she has not done so.

4 (3) A party may challenge an arbitrator he/she
5 appointed or participated in appointing if he/she became
6 aware of valid grounds for challenging the arbitrator
7 after appointing the arbitrator. An arbitrator may be
8 challenged only if circumstances exist that give rise to
9 justifiable doubts as to his/her impartiality or
10 independence, or if he/she does not possess
11 qualifications agreed to by the parties."

12 Section 20. The Code of the Federated States of Micronesia
13 (Annotated), as amended, is hereby further amended by enacting a
14 new section 115 to chapter 1 of title 44 to read as follows:

15 "Section 115. Challenge procedure.

16 (1) The parties are free to agree on a procedure for
17 challenging an arbitrator, subject to the provisions of
18 subsection (3) of this Section.

19 (2) Failing such agreement, a party who intends to
20 challenge an arbitrator shall, within fifteen days after
21 becoming aware of the constitution of the arbitral
22 tribunal or after becoming aware of any circumstance
23 referred to in Section 114(2), send a written statement
24 of the reasons for the challenge to the arbitral
25 tribunal. Unless the challenged arbitrator withdraws from

1 his office or the other party agrees to the challenge,
2 the arbitral tribunal shall decide on the challenge.

3 (3) If a challenge under any procedure agreed upon by
4 the parties or under the procedure of paragraph (2) of
5 this Section is not successful, the challenging party may
6 request the FSM Supreme Court, within thirty days after
7 having received notice of the decision rejecting the
8 challenge, as specified in Section 108, to decide on the
9 challenge, which decision shall be subject to no appeal;
10 while such a request is pending, the arbitral tribunal,
11 including the challenged arbitrator, may continue the
12 arbitral proceedings and make an award."

13 Section 21. The Code of the Federated States of Micronesia
14 (Annotated), as amended, is hereby further amended by enacting a
15 new section 116 to chapter 1 of title 44 to read as follows:

16 "Section 116. Termination for failure to act diligently
17 or inability to perform.

18 (1) If an arbitrator becomes de jure or de facto
19 unable to perform his functions or fails to act without
20 undue delay, the arbitrator may withdraw thus terminating
21 he/she mandate or the parties may agree on the
22 termination of he/she mandate. If a controversy on the
23 grounds for termination remains, any party may request
24 the FSM Supreme Court, as specified in Section 108, to
25 decide on the termination of the mandate of the

1 arbitrator, which decision shall be subject to no appeal.

2 (2) The removal of an arbitrator from office or the
3 termination of his or her mandate by a party under this
4 Section or Section 115(2) does not imply acceptance of
5 the validity of any ground referred to in this Section or
6 Section 114(2)."

7 Section 22. The Code of the Federated States of Micronesia
8 (Annotated), as amended, is hereby further amended by enacting a
9 new section 117 to chapter 1 of title 44 to read as follows:

10 "Section 117. Appointment of substitute arbitrator.
11 Where the mandate of an arbitrator terminates under
12 Sections 115 or 116 or for any other reason or because of
13 his/her withdrawal from office for any other reason or
14 because of the revocation of his/her mandate by agreement
15 of the parties, a substitute arbitrator shall be
16 appointed according to the rules applied for the
17 appointment of the arbitrator being replaced."

18 Section 23. The Code of the Federated States of Micronesia
19 (Annotated), as amended, is hereby further amended by enacting a
20 new subchapter 4 of chapter 1 of title 44 which shall be entitled
21 "Jurisdiction of Arbitral Tribunal".

22 Section 24. The Code of the Federated States of Micronesia
23 (Annotated), as amended, is hereby further amended by enacting a
24 new section 118 to chapter 1 of title 44 to read as follows:

25 "Section 118. Competence of arbitral tribunal to rule on

1 its jurisdiction.

2 (1) The arbitral tribunal may rule on its own
3 jurisdiction, including any objections with respect to
4 the existence or validity of the arbitration agreement.
5 For that purpose, an arbitration clause which forms part
6 of a contract shall be treated as an agreement
7 independent of the other terms of the contract. A
8 decision by the arbitral tribunal that the contract is
9 null and void shall not entail ipso jure the invalidity
10 of the arbitration clause.

11 (2) A plea that the arbitral tribunal does not have
12 jurisdiction shall be raised not later than the
13 submission of the statement of defense. A plea that the
14 arbitral tribunal has exceeded its authority shall be
15 made as soon as the party raises the issue of excess of
16 authority in the arbitral proceedings. The arbitral
17 tribunal may, in either case, admit a later plea if it
18 considers the delay justified. A party is not precluded
19 from raising such a plea by the fact that he/she has
20 appointed or participated in the appointment of an
21 arbitrator.

22 (3) The arbitral tribunal may rule on a plea referred
23 to in subsection (2) of this Section either as a
24 preliminary question or in an award on the merits. If
25 the arbitral tribunal rules as a preliminary question

1 that it has jurisdiction, any party may request within
2 thirty days after receiving notice of that ruling, the
3 FSM Supreme Court, as specified in Section 108 to decide
4 the issue of jurisdiction. The decision of the court
5 shall be subject to no appeal. While the request of the
6 party to the court is pending, the arbitral tribunal may
7 continue the arbitral proceedings and make an award. If
8 the arbitral tribunal decides on jurisdiction in the
9 award on the merits, the judicial review of the
10 jurisdiction of the arbitral tribunal is provided for in
11 Sections 143 and 145 of this Act."

12 Section 25. The Code of the Federated States of Micronesia
13 (Annotated), as amended, is hereby further amended by enacting a
14 new subchapter 5 of chapter 1 of title 44 which shall be entitled
15 "Interim Measures and Preliminary Orders".

16 Section 26. The Code of the Federated States of Micronesia
17 (Annotated), as amended, is hereby further amended by enacting a
18 new section 119 to chapter 1 of title 44 to read as follows:

19 "Section 119. Power of arbitral tribunal to order
20 interim measures.

21 (1) Unless otherwise agreed by the parties, the
22 arbitral tribunal may, at the request of a party, grant
23 interim measures.

24 (2) An interim measure is any temporary measure,
25 whether in the form of an award or in another form, by

1 which, at any time prior to the issuance of the award by
2 which the dispute is finally decided, the arbitral
3 tribunal orders a party to:

4 (a) Maintain or restore the status quo pending
5 determination of the dispute;

6 (b) Take action that would prevent, or refrain
7 from taking action that is likely to cause, current or
8 imminent harm or prejudice to the arbitral process
9 itself;

10 (c) Provide a means of preserving assets out of
11 which a subsequent award may be satisfied; or

12 (d) Preserve evidence that may be relevant and
13 material to the resolution of the dispute."

14 Section 27. The Code of the Federated States of Micronesia
15 (Annotated), as amended, is hereby further amended by enacting a
16 new section 120 to chapter 1 of title 44 to read as follows:

17 "Section 120. Request for interim measure and conditions
18 for granting interim measures.

19 (1) The party requesting an interim measure under
20 Section 119(2)(a), (b) and (c) shall satisfy the arbitral
21 tribunal that:

22 (a) Harm not adequately reparable by an award of
23 damages is likely to result if the measure is not
24 ordered, and such harm substantially outweighs the harm
25 that is likely to result to the party against whom the

1 measure is directed if the measure is granted; and

2 (b) There is a reasonable possibility that the
3 requesting party will succeed on the merits of the claim.
4 The determination on this possibility shall not affect
5 the discretion of the arbitral tribunal in making any
6 subsequent determination.

7 (2) With regard to a request for an interim measure
8 under Section 119(2)(d), the requirements in subsections
9 (1)(a) and (b) of this Section shall apply only to the
10 extent the arbitral tribunal considers appropriate.

11 (3) The arbitral tribunal may require the party
12 requesting an interim measure to provide appropriate
13 security in connection with the measure.”

14 Section 28. The Code of the Federated States of Micronesia
15 (Annotated), as amended, is hereby further amended by enacting a
16 new section 121 to chapter 1 of title 44 to read as follows:

17 “Section 121. Applications for preliminary orders and
18 conditions for granting preliminary orders.

19 (1) Unless otherwise agreed by the parties, a party
20 may, without notice to any other party, make a request
21 for an interim measure together with an application for
22 a preliminary order directing a party not to frustrate
23 the purpose of the interim measure requested.

24 (2) The arbitral tribunal may grant a preliminary
25 order provided it considers that prior disclosure of

1 the request for the interim measure to the party
2 against whom it is directed risks frustrating the
3 purpose of the measure.

4 (3) The conditions defined under Section 120 apply
5 to any preliminary order."

6 Section 29. The Code of the Federated States of Micronesia
7 (Annotated), as amended, is hereby further amended by enacting a
8 new section 122 to chapter 1 of title 44 to read as follows:

9 "Section 122. Specific Regimes for Preliminary
10 Orders.

11 (1) Immediately after the arbitral tribunal has made
12 a determination in respect of an application for a
13 preliminary order, the arbitral tribunal shall give
14 notice to all parties of the request for the interim
15 measure, the application for the preliminary order, the
16 preliminary order, if any, and all other communications,
17 including by indicating the content of any oral
18 communication, between any party and the arbitral
19 tribunal in relation thereto.

20 (2) At the same time, the arbitral tribunal shall
21 give an opportunity to any party against whom a
22 preliminary order is directed to present its case at the
23 earliest practicable time.

24 (3) The arbitral tribunal shall decide promptly on
25 any objection to the preliminary order.

1 (4) A preliminary order shall expire after twenty
2 days from the date on which it was issued by the arbitral
3 tribunal. However, the arbitral tribunal may issue an
4 interim measure adopting or modifying the preliminary
5 order, after the party against whom the preliminary order
6 is directed has been given notice and an opportunity to
7 present its case.

8 (5) A preliminary order shall be binding on the
9 parties but shall not be subject to enforcement by a
10 court. Such a preliminary order does not constitute an
11 award."

12 Section 30. The Code of the Federated States of Micronesia
13 (Annotated), as amended, is hereby further amended by enacting a
14 new section 123 to chapter 1 of title 44 to read as follows:

15 "Section 123. Recognition and enforcement of interim
16 measures.

17 (1) An interim measure issued by an arbitral tribunal
18 shall be recognized as binding and, unless otherwise
19 provided by the arbitral tribunal, enforced upon
20 application to the competent court, irrespective of the
21 country in which it was issued, subject to the provisions
22 of subsection (3) of this Section.

23 (2) The court of the State where recognition or
24 enforcement is sought may, if it considers it proper,
25 order the requesting party to provide appropriate

1 security if the arbitral tribunal has not already made a
2 determination with respect to security or where such a
3 decision is necessary to protect the rights of third
4 parties.

5 (3) Recognition or enforcement of an interim
6 measure may be refused only:

7 (a) At the request of the party against whom it
8 is invoked if the court is satisfied that:

9 (i) Such refusal is warranted on the
10 grounds set forth in Section 145(1)(a)(i), (ii), (iii),
11 (iv), or (v); or

12 (ii) The arbitral tribunal's decision with
13 respect to the provision of security in connection with
14 the interim measure issued by the arbitral tribunal has
15 not been complied with; or

16 (iii) The interim measure has been terminated
17 or suspended by the arbitral tribunal or, where so
18 empowered, by the court of the State of the seat of
19 arbitration or under the law of which that interim
20 measure was granted; or

21 (b) If the court finds that:

22 (i) The interim measure is incompatible
23 with the powers conferred upon the court unless the court
24 decides to reformulate the interim measure to the extent
25 necessary to adapt it to its own powers and procedures

1 for the purposes of enforcing that interim measure and
2 without modifying its substance; or

3 (ii) Any of the grounds set forth in Section
4 145 (1)(b)(i) or (ii), apply to the recognition and
5 enforcement of the interim measure.

6 (4) Any determination by the court under subsection 3
7 of this Section shall be made only for the purpose of the
8 application for recognition and enforcement of the
9 interim measure. The court to which the application for
10 recognition or enforcement is made shall not proceed to a
11 review of the substance of the interim measure."

12 Section 31. The Code of the Federated States of Micronesia
13 (Annotated), as amended, is hereby further amended by enacting a
14 new section 124 to chapter 1 of title 44 to read as follows:

15 "Section 124. Disclosure of relevant circumstances.

16 (1) The arbitral tribunal may require any party
17 promptly to disclose any material change in the
18 circumstances on the basis of which the measure was
19 requested or granted.

20 (2) The party applying for a preliminary order shall
21 disclose to the arbitral tribunal all circumstances that
22 are likely to be relevant to the arbitral tribunal's
23 determination whether to grant or maintain the order, and
24 such obligation shall continue until the party against
25 whom the order has been requested has had an opportunity

1 to present its case. Thereafter, subsection (1) of this
2 Section shall apply."

3 Section 32. The Code of the Federated States of Micronesia
4 (Annotated), as amended, is hereby further amended by enacting a
5 new section 125 to chapter 1 of title 44 to read as follows:

6 "Section 125. Modification, suspension and termination
7 of interim measures and preliminary orders.

8 (1) The arbitral tribunal may modify, suspend or
9 terminate an interim measure or a preliminary order it
10 has granted,

11 (a) upon application of any party; or

12 (b) on the arbitral tribunal's own initiative,
13 in exceptional circumstances and upon prior notice to the
14 parties.

15 (2) The party who is seeking or has obtained
16 recognition or enforcement of an interim measure shall
17 promptly inform the enforcing court of any termination,
18 suspension or modification of that interim measure."

19 Section 33. The Code of the Federated States of Micronesia
20 (Annotated), as amended, is hereby further amended by enacting a
21 new section 126 to chapter 1 of title 44 to read as follows:

22 "Section 126. Court-ordered interim measures. A court,
23 including the FSM Supreme Court, has the same power to
24 issue an interim measure in an arbitration proceeding as
25 it does in a court proceeding, regardless of the seat of

1 the arbitration. The court shall exercise this power in
2 accordance with its own procedures, taking into account
3 the specificities of international arbitration.”

4 Section 34. The Code of the Federated States of Micronesia
5 (Annotated), as amended, is hereby further amended by enacting a
6 new subchapter 6 of chapter 1 of title 44 which shall be entitled
7 “Conduct of Arbitral Proceedings”.

8 Section 35. The Code of the Federated States of Micronesia
9 (Annotated), as amended, is hereby further amended by enacting a
10 new section 127 to chapter 1 of title 44 to read as follows:

11 “Section 127. Equal treatment of parties. The parties
12 shall be treated with equality and each party shall be
13 given a full opportunity of presenting he/she case.”

14 Section 36. The Code of the Federated States of Micronesia
15 (Annotated), as amended, is hereby further amended by enacting a
16 new section 128 to chapter 1 of title 44 to read as follows:

17 “Section 128. Determination of rules of procedure.

18 (1) Subject to the provisions of this Act, including
19 but not limited to Sections 102 and 129, the parties are
20 free to agree on the procedure to be followed by the
21 arbitral tribunal in conducting the proceedings.

22 (2) Failing such agreement, the arbitral tribunal
23 may, subject to the provisions of this Act, conduct the
24 arbitration in such manner as it considers appropriate.
25 The power conferred upon the arbitral tribunal includes

1 the power to determine the admissibility, relevance,
2 materiality and weight of any evidence.”

3 Section 37. The Code of the Federated States of Micronesia
4 (Annotated), as amended, is hereby further amended by enacting a
5 new section 129 to chapter 1 of title 44 to read as follows:

6 “Section 129. Place of arbitration.

7 (1) The parties are free to agree on the place of
8 arbitration. Failing such agreement, the place of
9 arbitration shall be determined by the arbitral tribunal
10 having regard to the circumstances of the case, including
11 the convenience of the parties.

12 (2) If the place of arbitration is in the Federated
13 States of Micronesia, the provisions of this Act shall
14 apply, subject to the provisions of Section 102.

15 (3) Notwithstanding the provisions of subsection 1 of
16 this Section, the arbitral tribunal may, unless otherwise
17 agreed by the parties, meet at any place it considers
18 appropriate for consultation among its members, for
19 hearing witnesses, experts or the parties, or for
20 inspection of goods, other property or documents.”

21 Section 38. The Code of the Federated States of Micronesia
22 (Annotated), as amended, is hereby further amended by enacting a
23 new section 130 to chapter 1 of title 44 to read as follows:

24 “Section 130. Commencement of arbitral proceedings.
25 Unless otherwise agreed by the parties, the arbitral

1 proceedings in respect of a particular dispute commence
2 on the date on which a request for that dispute to be
3 referred to arbitration is received by the respondent.”

4 Section 39. The Code of the Federated States of Micronesia
5 (Annotated), as amended, is hereby further amended by enacting a
6 new section 131 to chapter 1 of title 44 to read as follows:

7 “Section 131. Language.

8 (1) The parties are free to agree on the language or
9 languages to be used in the arbitral proceedings,
10 provided that an English translation of the award is
11 provided. Failing such agreement, the arbitral tribunal
12 shall determine the language or languages to be used in
13 the proceedings. This agreement or determination, unless
14 otherwise specified therein, shall apply to any written
15 statement by a party, any hearing and any award, decision
16 or other communication by the arbitral tribunal.

17 (2) The arbitral tribunal may order that any
18 documentary evidence shall be accompanied by a
19 translation into the language or languages agreed upon by
20 the parties or determined by the arbitral tribunal.

21 (3) If the FSM Supreme Court is required to intervene
22 in the proceedings, in accordance with the provisions of
23 this Act, it may require the translation into English of
24 any documents used in the arbitration proceedings and
25 necessary to make its determination.”

1 Section 40. The Code of the Federated States of Micronesia
2 (Annotated), as amended, is hereby further amended by enacting a
3 new section 132 to chapter 1 of title 44 to read as follows:

4 “Section 132. Statement of claim and defense.

5 (1) Within the period of time agreed by the parties
6 or determined by the arbitral tribunal, the claimant
7 shall state the facts supporting his/her claim, the
8 points at issue and the relief or remedy sought, and the
9 respondent shall state his/her defense in respect of
10 these particulars, unless the parties have other wise
11 agreed as to the required elements of such statements.
12 The parties may submit with their statements all
13 documents they consider to be relevant or may add a
14 reference to the documents or other evidence they will
15 submit.

16 (2) Unless otherwise agreed by the parties, either
17 party may amend or supplement his/her claim or defense
18 during the course of the arbitral proceedings, unless the
19 arbitral tribunal considers it inappropriate to allow
20 such amendment having regard to the delay in making it.”

21 Section 41. The Code of the Federated States of Micronesia
22 (Annotated), as amended, is hereby further amended by enacting a
23 new section 133 to chapter 1 of title 44 to read as follows:

24 “Section 133. Hearings and written proceedings.

25 (1) Subject to any contrary agreement by the parties,

1 the arbitral tribunal shall decide whether to hold oral
2 hearings for the presentation of evidence or for oral
3 argument, or whether the proceedings shall be conducted
4 on the basis of documents and other materials. However,
5 unless the parties have agreed that no hearings shall be
6 held, the arbitral tribunal shall hold such hearings at
7 an appropriate stage of the proceedings, if so requested
8 by a party.

9 (2) The parties shall be given sufficient advance
10 notice of any hearing and of any meeting of the arbitral
11 tribunal for the purposes of inspection of goods, other
12 property or documents.

13 (3) All statements, documents or other information
14 supplied to the arbitral tribunal by one party shall be
15 communicated to the other party. Also any expert report
16 or evidentiary document on which the arbitral tribunal
17 may rely in making its decision shall be communicated to
18 the parties."

19 Section 42. The Code of the Federated States of Micronesia
20 (Annotated), as amended, is hereby further amended by enacting a
21 new section 134 to chapter 1 of title 44 to read as follows:

22 "Section 134. Default of a party. Unless otherwise
23 agreed by the parties, if, without showing sufficient
24 cause,

25 (1) the claimant fails to communicate his/her

1 statement of claim in accordance with Section 132(1), the
2 arbitral tribunal shall terminate the proceedings;

3 (2) the respondent fails to communicate his/her
4 statement of defense in accordance with Section 132(1),
5 the arbitral tribunal shall continue the proceedings
6 without treating such failure in itself as an admission
7 of the claimant's allegations;

8 (3) any party fails to appear at a hearing or to
9 produce documentary evidence, the arbitral tribunal may
10 continue the proceedings and make the award on the
11 evidence before it."

12 Section 43. The Code of the Federated States of Micronesia
13 (Annotated), as amended, is hereby further amended by enacting a
14 new section 135 to chapter 1 of title 44 to read as follows:

15 "Section 135. Expert appointed by arbitral tribunal.

16 1) Unless otherwise agreed by the parties, the
17 arbitral tribuna:

18 (a) may appoint one or more experts to report to
19 it on specific issues to be determined by the arbitral
20 tribunal;

21 (b) may require a party to give the expert any
22 relevant information or to produce, or to provide access
23 to, any relevant documents, goods or other property for
24 his inspection.

25 (2) Unless otherwise agreed by the parties, if a

1 party so requests or if the arbitral tribunal considers
2 it necessary, the expert shall, after delivery of his/her
3 written or oral report, participate in a hearing where
4 the parties have the opportunity to put questions to
5 him/her and to present expert witnesses in order to
6 testify on the points at issue."

7 Section 44. The Code of the Federated States of Micronesia
8 (Annotated), as amended, is hereby further amended by enacting a
9 new section 136 to chapter 1 of title 44 to read as follows:

10 "Section 136. Court assistance in taking evidence. The
11 arbitral tribunal or a party, with the approval of the
12 arbitral tribunal, may request assistance in taking
13 evidence from a competent court in the Federated States
14 of Micronesia. The court may execute the request within
15 its competence and according to its rules on taking
16 evidence."

17 Section 45. The Code of the Federated States of Micronesia
18 (Annotated), as amended, is hereby further amended by enacting a
19 new subchapter 7 of chapter 1 of title 44 which shall be entitled
20 "Making an Award and Termination of Proceedings".

21 Section 46. The Code of the Federated States of Micronesia
22 (Annotated), as amended, is hereby further amended by enacting a
23 new section 137 to chapter 1 of title 44 to read as follows:

24 "Section 137. Rules applicable to substance of dispute.
25 (1) The arbitral tribunal shall decide the dispute in

1 accordance with such rules of law as are chosen by the
2 parties to be applicable to the substance of the dispute.
3 Any designation of the law or legal system of a given
4 State shall be construed, unless otherwise expressed, as
5 directly referring to the substantive law of that State
6 and not to its conflict of laws rules.

7 (2) Failing any designation by the parties, the
8 arbitral tribunal shall apply the law determined by the
9 conflict of laws rules which it considers applicable.

10 (3) The arbitral tribunal shall decide ex aequo et
11 bono or as amiable compositeur only if the parties have
12 expressly authorized it to do so.

13 (4) In all cases, the arbitral tribunal shall decide
14 in accordance with the terms of the contract and shall
15 take into account the usages of the trade applicable to
16 the transaction."

17 Section 47. The Code of the Federated States of Micronesia
18 (Annotated), as amended, is hereby further amended by enacting a
19 new section 138 to chapter 1 of title 44 to read as follows:

20 "Section 138. Decision-making by panel of arbitrators.
21 In arbitral proceedings with more than one arbitrator,
22 any decision of the arbitral tribunal shall be made,
23 unless otherwise agreed by the parties, by a majority of
24 all its members. However, questions of procedure may be
25 decided by a presiding arbitrator, if so authorized by

1 the parties or all members of the arbitral tribunal.”

2 Section 48. The Code of the Federated States of Micronesia
3 (Annotated), as amended, is hereby further amended by enacting a
4 new section 139 to chapter 1 of title 44 to read as follows:

5 “Section 139. Settlement.

6 (1) If, during arbitral proceedings, the parties
7 settle the dispute, the arbitral tribunal shall terminate
8 the proceedings and, if requested by the parties and not
9 objected to by the arbitral tribunal, record the
10 settlement in the form of an arbitral award on agreed
11 terms.

12 (2) An award on agreed terms shall be made in
13 accordance with the provisions of Section 140 and shall
14 state that it is an award. Such an award has the same
15 status and effect as any other award on the merits of the
16 case.”

17 Section 49. The Code of the Federated States of Micronesia
18 (Annotated), as amended, is hereby further amended by enacting a
19 new section 140 to chapter 1 of title 44 to read as follows:

20 “Section 140. Form and contents of award.

21 (1) The award shall be made in writing and shall be
22 signed by the arbitrator or arbitrators. In arbitral
23 proceedings with more than one arbitrator, the signatures
24 of the majority of all members of the arbitral tribunal
25 shall suffice, provided that the reason for any omitted

1 signature is stated.

2 (2) The award shall state the reasons upon which it
3 is based, unless the parties have agreed that no reasons
4 are to be given or the award is an award on agreed terms
5 under Section 139.

6 (3) The award shall state its date and the place of
7 arbitration as determined in accordance with Section
8 129(1). The award shall be deemed to have been made at
9 that place.

10 (4) After the award is made, a copy signed by the
11 arbitrators in accordance with subsection (1) of this
12 Section shall be delivered to each party."

13 Section 50. The Code of the Federated States of
14 Micronesia (Annotated), as amended, is hereby further amended by
15 enacting a new section 141 to chapter 1 of title 44 to read as
16 follows:

17 "Section 141. Termination of proceedings.

18 (1) The arbitral proceedings are terminated by the
19 final award or by an order of the arbitral tribunal in
20 accordance with subsection (2) of this Section.

21 (2) The arbitral tribunal shall issue an order for
22 the termination of the arbitral proceedings when:

23 (a) the claimant withdraws his claim, unless the
24 respondent objects thereto and the arbitral tribunal
25 recognizes a legitimate interest on his/her part in

1 obtaining a final settlement of the dispute;

2 (b) the parties agree on the termination of the
3 proceedings;

4 (c) the arbitral tribunal finds that the
5 continuation of the proceedings has for any other reason
6 become unnecessary or impossible.

7 (3) The mandate of the arbitral tribunal terminates
8 with the termination of the arbitral proceedings, subject
9 to the provisions of Sections 142 and 143(4)."

10 Section 51. The Code of the Federated States of Micronesia
11 (Annotated), as amended, is hereby further amended by enacting a
12 new section 142 to chapter 1 of title 44 to read as follows:

13 "Section 142. Correction and interpretation of award;
14 additional award.

15 (1) Within thirty days of receipt of the award,
16 unless another period of time has been agreed upon by the
17 parties:

18 (a) a party, with notice to the other party, may
19 request the arbitral tribunal to correct in the award any
20 errors in computation, any clerical or typographical
21 errors or any errors of similar nature;

22 (b) if so agreed by the parties, a party, with
23 notice to the other party, may request the arbitral
24 tribunal to give an interpretation of a specific point or
25 part of the award.

1 If the arbitral tribunal considers the request to be
2 justified, it shall make the correction or give the
3 interpretation within thirty days of receipt of the
4 request. The interpretation shall form part of the
5 award.

6 (2) The arbitral tribunal may correct any error of
7 the type referred to in subsection (1)(a) of this Section
8 on its own initiative within thirty days of the date of
9 the award.

10 (3) Unless otherwise agreed by the parties, a party,
11 with notice to the other party, may request, within
12 thirty days of receipt of the award, the arbitral
13 tribunal to make an additional award as to claims
14 presented in the arbitral proceedings but omitted from
15 the award. If the arbitral tribunal considers the
16 request to be justified, it shall make the additional
17 award within sixty days.

18 (4) The arbitral tribunal may extend, if necessary,
19 the period of time within which it shall make a
20 correction, interpretation or an additional award under
21 subsection (1) or (3) of this Section.

22 (5) The provisions of Section 140 shall apply to a
23 correction or interpretation of the award or to an
24 additional award."

25 Section 52. The Code of the Federated States of Micronesia

1 (Annotated), as amended, is hereby further amended by enacting a
2 new subchapter 8 of chapter 1 of title 44 which shall be entitled
3 "Setting Aside an Award".

4 Section 53. The Code of the Federated States of Micronesia
5 (Annotated), as amended, is hereby further amended by enacting a
6 new section 143 to chapter 1 of title 44 to read as follows:

7 "Section 143. Application for setting aside an award as
8 exclusive recourse against arbitral award.

9 (1) An application to a court for setting aside an
10 arbitral award in accordance with paragraphs (2) and (3)
11 of this Section shall be the only available recourse
12 against an arbitral award.

13 (2) An arbitral award may be set aside by the FSM
14 Supreme Court only if:

15 (a) the party making the application furnishes
16 proof that:

17 (i) a party to the arbitration agreement
18 was under some incapacity; or

19 (ii) the arbitration agreement is not valid
20 under the law to which the parties have subjected it or,
21 failing any indication thereon, under the law of the
22 Federated States of Micronesia; or

23 (iii) the party making the application was
24 not given proper notice of the appointment of an
25 arbitrator or of the arbitral proceedings; or

1 (iv) the party making the application was
2 unable to present his/her case;

3 (v) the award deals with a dispute not
4 covered by or not falling within the terms of the
5 submission to arbitration, or contains decisions on
6 matters beyond the scope of the submission to
7 arbitration, provided that, if the decisions on matters
8 submitted to arbitration can be separated from those not
9 so submitted, only that part of the award which contains
10 decisions on matters not submitted to arbitration may be
11 set aside; or

12 (vi) the composition of the arbitral
13 tribunal or the arbitral procedure was not in accordance
14 with the agreement of the parties, unless such agreement
15 was in conflict with a provision of this Act from which
16 the parties cannot derogate, or, failing such agreement,
17 was not in accordance with this Act; or

18 (b) the court finds that:

19 (i) the subject-matter of the dispute is
20 not capable of settlement by arbitration under the law of
21 the Federated States of Micronesia; or

22 (ii) the award is in conflict with the
23 public policy of the Federated States of Micronesia.

24 (3) An application for setting aside may not be made
25 after three months have elapsed from the date on which

1 the party making that application had received the award
2 or, if a request had been made under Section 142, from
3 the date on which that request had been disposed of by
4 the arbitral tribunal.

5 (4) The court, when asked to set aside an award, may,
6 where appropriate and so requested by a party, suspend
7 the setting aside proceedings for a period of time
8 determined by it in order to give the arbitral tribunal
9 an opportunity to resume the arbitral proceedings or to
10 take such other action as in the arbitral tribunal's
11 opinion will eliminate the grounds for setting aside."

12 Section 54. The Code of the Federated States of Micronesia
13 (Annotated), as amended, is hereby further amended by enacting a
14 new subchapter 9 of chapter 1 of title 44 which shall be entitled
15 "Recognition and Enforcement of Awards".

16 Section 55. The Code of the Federated States of Micronesia
17 (Annotated), as amended, is hereby further amended by enacting a
18 new section 144 to chapter 1 of title 44 to read as follows:

19 "Section 144. Recognition and enforcement.

20 (1) An arbitral award, irrespective of the country in
21 which it was made, shall be recognized as binding and,
22 upon application in writing to the competent court, shall
23 be enforced subject to the provisions of this Section and
24 of Section 145.

25 (2) The party relying on an award or applying for its

1 enforcement shall supply the original award or a copy
2 thereof. If the award is not made in English, the court
3 may request the party to supply an English translation.”

4 Section 56. The Code of the Federated States of Micronesia
5 (Annotated), as amended, is hereby further amended by enacting a
6 new section 145 to chapter 1 of title 44 to read as follows:

7 “Section 145. Grounds for refusing recognition or
8 enforcement.

9 (1) Recognition or enforcement of an arbitral award,
10 irrespective of the country in which it was made, may
11 be refused only:

12 (a) at the request of the party against whom it
13 is invoked, if that party furnishes to the competent
14 court where recognition or enforcement is sought proof
15 that:

16 (i) a party to the arbitration
17 agreement was under some incapacity;

18 (ii) or the said agreement is not
19 valid under the law to which the parties have subjected
20 it or, failing any indication thereon, under the law of
21 the country where the award was made; or

22 (iii) the party against whom the award
23 is invoked was not given proper notice of the
24 appointment of an arbitrator or of the arbitral

1 proceedings or was otherwise unable to present his/her
2 case; or

3 (iv) the award deals with a dispute not
4 covered by or not falling within the terms of the
5 submission to arbitration, or it contains decisions on
6 matters beyond the scope of the submission to
7 arbitration, provided that, if the decisions on matters
8 submitted to arbitration can be separated from those not
9 so submitted, that part of the award which contains
10 decisions on matters submitted to arbitration may be
11 recognized and enforced; or

12 (v) the composition of the arbitral
13 tribunal or the arbitral procedure was not in accordance
14 with the agreement of the parties or, failing such
15 agreement, was not in accordance with the law of the
16 seat of arbitration; or

17 (vi) the award has not yet become binding on
18 the parties or has been set aside or suspended by a
19 court of the country in which, or under the law of
20 which, that award was made; or

21 (b) if the court finds that:

22 (i) the subject-matter of the dispute is
23 not capable of settlement by arbitration under the law
24 of the Federated States of Micronesia; or

1 (ii) the recognition or enforcement of the
2 award would be contrary to the public policy of the
3 Federated States of Micronesia.

4 (3) If an application for setting aside or suspension
5 of an award has been made to a court referred to in
6 subsection (1)(a)(vi) of this Section, the court where
7 recognition or enforcement is sought may, if it
8 considers it proper, adjourn its decision and may also,
9 on the application of the party claiming recognition or
10 enforcement of the award, order the other party to
11 provide appropriate security."

12 Section 57. This act shall become law upon the approval by
13 the President of the Federated States of Micronesia or upon its
14 becoming law without such approval.

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16 Date: 5/18/23

Introduced by: /s/ Isaac V. Figir
Isaac V. Figir

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