



OFFICE OF THE GENERAL COUNSEL

## LAW AND POLICY REFORM PROGRAM

*Enabling effective legal systems for a prosperous, inclusive, resilient,  
and sustainable Asia and Pacific*

# Promotion of International Arbitration Reform for Better Investment Climate

*Third South Pacific International Arbitration Conference*

*Session 2: The Pacific Countries and International Arbitration Reform*

**17 March 2021**

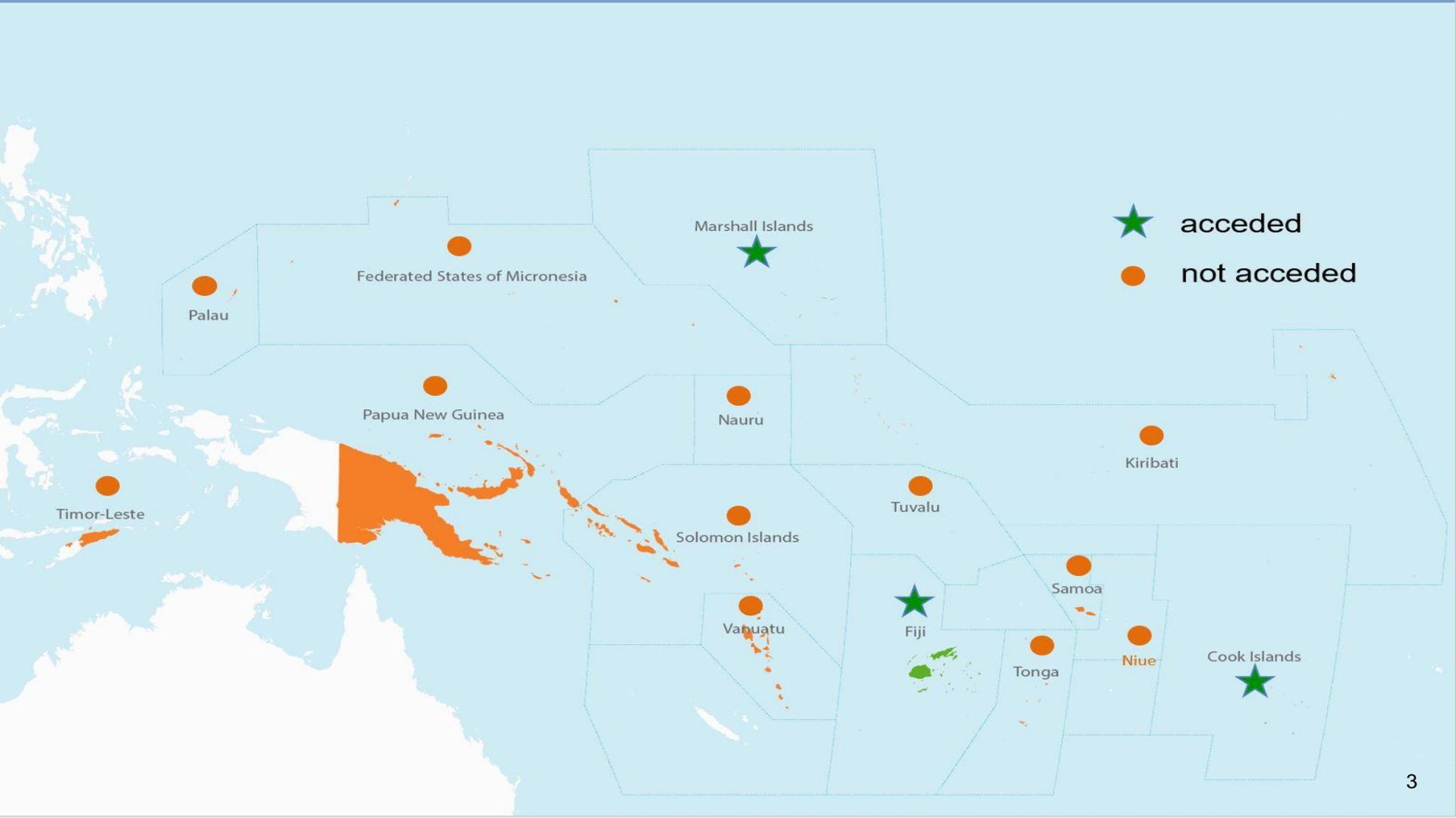
## Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (the "New York Convention")

### Signatories' Map Source: <https://newyorkconvention1958.org/>



*The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.*

# New York Convention - South Pacific Region – Status in 2017



## **ADB's Regional Technical Assistance for the Promotion of International Arbitration Reform for Better Investment Climate in the South Pacific**

1. Assist with accession to the New York Convention
2. Draft an international arbitration act to implement the New York Convention and reflect international best practices (based on UNCITRAL Model Law with add-ons) *\*also help draft related amendments to court rules*
3. Capacity building for effective implementation
  - *Tailored trainings for judiciary, legal practitioners and private sector*

# Enactment of Fiji International Arbitration Act 2017 & Related Amendments to High Court Rules 2018

## International Arbitration Act to Boost Investor Confidence

SHARLES CHAMBERS  
 AND

The introduction and the implementation of the International Arbitration Act in Fiji will give investors and trading partners more confidence in doing business here.

Shirley Gonsalves, Director General of the Ministry of Trade, said the Government, Deans of Law, and the Arbitration Institute of the South Pacific, all believe that the Act will contribute to economic growth by providing a platform for increasing regional and international investor confidence.

In the inaugural South Pacific International Arbitration Conference, organized by the Asian Development Bank (ADB), the Government of Fiji and the United Nations Commission on International Trade Law (UNCITRAL) Regional Center for Asia and the Pacific.

He said the act would lead to greater economic development in the region.

"The Act provides an alternative, cost-effective and time-efficient means of dispute resolution between parties."

"Additionally, awards under the Act are recognized in 107 countries, which include Fiji's major sources of foreign direct investment such as the Peoples Republic of China, Australia, the United States of America and New Zealand. By enacting and implementing the Act, Fiji complies with its obligations under the New York Convention."

"Moreover, compliance with the New York Convention and other relevant international treaties will contribute to restoring the FDI environment for investment, which creates new jobs and eventually leads the Fiji economy."

"In addition to the work on the International Arbitration Act, the Fijian Government has been working closely with UNCITRAL and other multilateral partners on a number of legislative reforms that will improve the ease of doing business in Fiji and help improve the business environment, allowing Fiji's firms to compete internationally."

"The Act will substantially contribute to the growth of the sector."

"Last year Fiji was selected by the United Nations Commission on the Law of International Commerce and the United Nations Commission on Contracts for the International Sale of Goods."

"These are just some of the areas that Fiji is reforming and we believe that there will be a positive impact on doing business in Fiji and it will have a positive impact on the Fiji economy."

Mr. Gonsalves said the introduction of the International Arbitration Act to Fiji would provide a better investment climate and boost investor confidence.

He added that confidence is a key factor in attracting investment and that the Act will contribute to economic growth by providing a platform for increasing regional and international investor confidence.



From left: Deputy Director General of the Ministry of Trade, Shirley Gonsalves, Director General of the Ministry of Trade, Charles Chambers, ADB International Arbitration Institute Director General, Charles Chambers, and the Hon. Justice of the High Court, Justice of the High Court, Justice of the High Court, Justice of the High Court.

International Arbitration and how it works in practice was an important part of the implementation and the use of international arbitration, and it was understood that this would assist practitioners to gain a better understanding of the purposes of international arbitration.

### About the conference

The conference, the first of its kind on international arbitration in the Pacific, brought together over 100 delegates including government officials, justice ministers, judges, law practitioners, press, other representatives, other development partners, and experts in dispute resolution to further discuss investment and trade-related issues and to work with stakeholders to reduce the risk and cost of doing business in the Pacific.

International arbitration is a private dispute resolution mechanism that involves parties from different countries submitting their dispute to a neutral arbitrator or panel. It is typically preferred to litigation because it is faster, less costly, and more confidential.

The panel will resolve their disputes in the form of an arbitral award, which is enforceable in the 157 countries that adopted the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the New York Convention.

Fiji has undertaken an international arbitration reform, having joined the New York Convention, and then enacted its International Arbitration Act in 2017.

## High Court Strikes Out ATSET'S CLAIM AGAINST GOVERNMENT AND ATS

The High Court of Fiji at Lautoka has struck out and dismissed the application by the owners of Air Transport Services (ATS) against the Government of Fiji and the Air Transport Services (ATS) for the recovery of sums of money and costs of proceedings.

In its application, ATSET had sought that: the re-assignment of 10 per cent of the proceeds of ATS from CAAP to the Government of Fiji; and the revocation of ATS which expressly guaranteed the payment of 10 per cent of ATS to the Government of Fiji.

The court held that the application was dismissed with costs. The court held that the application was dismissed with costs.

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## GOVERNMENT OF FIJI GAZETTE SUPPLEMENT

No. 38 FRIDAY, 9th NOVEMBER 2018

[LEGAL NOTICE No. 85]

HIGH COURT ACT 1875

### High Court (Amendment) Rules 2018

In exercise of the powers conferred on me by section 25 of the High Court Act 1875, I hereby make these Rules—

*Short title and commencement*

- 1.—(1) These Rules may be cited as the High Court (Amendment) Rules 2018.
- (2) These Rules come into force on the date of publication in the Gazette.

*Order 74 allocated*

- 2. The High Court Rules 1988 is amended by allocating the following Order 74—  
 “ORDER 74—INTERNATIONAL ARBITRATION PROCEEDINGS

*Definitions (O.74, r.1)*

- 1. Words and phrases used in this Order have the same meaning as under the Act and the International Arbitration Act 2017 unless the context or express provision otherwise requires.

*Application of Order (O.74, r.2)*

- 2. This Order applies to the powers of the Court under the International Arbitration Act 2017 in relation to proceedings for international arbitration.

*Applications to the Court (O.74, r.3)*

- 3.—(1) Every application to the Court—
  - (a) to appoint an arbitrator under section 16(3) or (4) of the International Arbitration Act 2017;
  - (b) to decide on the challenge of an arbitrator under section 18 of the International Arbitration Act 2017;
  - (c) to decide on the termination of the mandate of an arbitrator under section 19 of the International Arbitration Act 2017;
  - (d) to appeal against the ruling of the arbitral tribunal under section 22 of the International Arbitration Act 2017; or
  - (e) to set aside an award under section 52 of the International Arbitration Act 2017,

must be made by originating summons and supported by an affidavit.

## PNG's Accession to the New York Convention (July 2019) Arbitration Bill in Progress ....

### Economist hails O'Neill's call to strengthen arbitration rules

By PETER ESILA

AN international economist says Prime Minister Peter O'Neill's call to accede to the New York Convention is good news for opening Papua New Guinea to more investors.

Prof Jordi Paniagua, of the University of Valencia, Spain, said countries like PNG could significantly increase foreign direct investment (FDI) by strengthening arbitration regimes.

"Since 2003, there is an increasing number of companies which have invested in PNG," he said.

"Today, we have approximately US\$20 billion (K67.4bil) foreign direct investment in PNG and around 12,000 jobs directly created by these foreign companies, so that is sizeable.

"PNG is really open to foreign investment, and as PNG prime minister said, it is not only in capital investment, it is also jobs."

Paniagua said the largest share of investments was in extractive industries like oil and natural gas.

This is followed by more individual sectors like business services, food and tobacco, metals and financial services.

"The largest investment partner in PNG is naturally Australia because they are very close, not only geographically but historically," Paniagua said.

"The rest of the players are China, Korea, India.

"You can also see South Africa, USA, Netherlands, Great Britain.

"Why are these countries crossing half of the world to come here?"

"First is because these countries



Prime Minister Peter O'Neill and Deputy Chief Justice Ambeng Kandakasi meeting at the international mediation and arbitration conference in Port Moresby on Monday. – Nationalpic by GEVOKILA ALFRED

are big countries. Second is that these are all the countries that have a common law: Germany, Canada, USA, India, Australia, Singapore, Fiji."

Paniagua said a country's economic size, distance from PNG, and most importantly PNG's ability to change its contractual environment were reasons for trade and

FDI. "Contracts are not complete when we have differences in the legal system," he said.

"PNG can increase contractual environment by increasing the quality of arbitration.

"I am really happy that PNG is going to rectify the New York Convention.

"Countries that have a better

arbitration quality receive more investment across nearly every single sector, and they will invite more investors.

"Commercial disputes happen any time.

"Arbitration provides an effective and predictable dispute settlement mechanism which is flexible, confidential and final."

savings and loan set  
be proud of."

### Develop should b priority Pacific:

DEPUTY Prime  
Treasurer Charles  
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focused on delivering  
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He said this in  
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## Palau's Accession to the New York Convention (March 2020) International Arbitration Bill Submitted to National Congress (OEK)....



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### Palau accedes to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards

With its accession to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the 'New York Convention'), Palau becomes the 163rd State Party to the Convention. The Convention will enter into force for Palau on 29 June 2020. ([view press release](#))



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## Arbitration bill submitted to OEK

by Leilani Reklai  
October 16, 2020

A proposed legislation to establish rules and procedures for facilitation of an alternative way for resolving international business disputes was submitted to OEK by President Remengesau this week.

International Commercial Arbitration provides international businesses doing business in Palau another way to resolve disputes beside going to courts.

One of the benefits of such law is said to make Palau more foreign investment friendly. It would give companies in Palau option not to go overseas to resolve commercial disputes but to do so in Palau.

[ry/world-news/](#)

Search ...

### Latest News

**HHS team says vac  
"tested and safe"**

March 12, 2021

## Tonga's Accession to the New York Convention (June 2020) & Enactment of International Arbitration (*Fakatonuonu Fakavaha'apule'anga*) Act 2020



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### Tonga accedes to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards

With its accession to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"), Tonga becomes the 164th State Party to the Convention. The Convention will enter into force for Tonga on 10 September 2020. [\(view press release\)](#)



Tonga

## INTERNATIONAL ARBITRATION ACT 2020



Sione Vuna Fa'otusia, Former Deputy Prime Minister and Minister of Justice  
Temaleti Manakovi'a Pahulu of Kolomotu'a, CEO of Ministry of Justice  
Nuku'alofa, Tonga, February 2020

## Timor-Leste: Arbitration Reform in Progress...

- Approval by the Council of Ministers in October 2019 to accede to the New York Convention and put in place implementing arbitration law (<http://timor-leste.gov.tl/?p=23241&lang=en>)
- Draft Arbitration Law submitted to Parliament in Q1 2020
- Recommendation for the Portuguese version of the Arbitration Law to track the Portuguese version of the UNCITRAL Model Law
- Recommendation to publish the Arbitration Law in an English version that is as authoritative as the Tetum and Portuguese versions

### *National Parliament approves Timor Leste's accession to the United Nations Convention on the recognition and enforcement of foreign arbitral awards*

Tue. 02 of February of 2021, 15:45h



Minister for Foreign Affairs and Cooperation, Julião da Silva.

The National Parliament discussed and approved, today, February 2<sup>nd</sup>, 2021, with 31 votes in favour, zero votes against and three abstentions, the Resolution Proposal 3/V(2<sup>nd</sup>), concerning Timor Leste's accession to the 1958's New York Convention on the recognition and enforcement of foreign arbitral awards.

The plenary session was attended by the Minister of the Presidency of the Council of Ministers, Fidelis Manuel Leite Magalhães, the Minister of Justice, Manuel Cárceres da Costa and the Vice-

The Minister of the Presidency of the Council of Ministers presented a general framework on the Resolution Proposal and defended the importance of Timor-Leste's accession to this Convention, as it is an important incentive to intensify trade relations with abroad and a factor in promoting foreign investment. The Convention has already been ratified by more than 160 countries and is considered the most important multilateral agreement under international Arbitration Law.

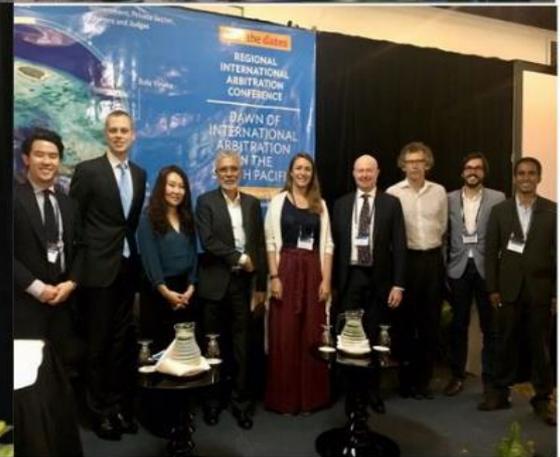
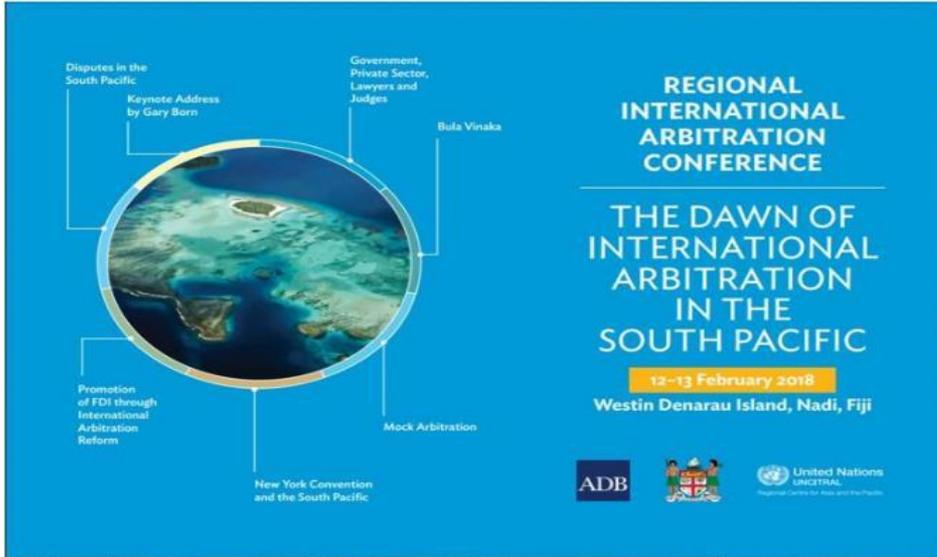
## Current Status in the Pacific

ADB Pacific DMC	Accession to NY Convention	NY Convention Implementing Law	Arbitration Legislation	Basis of Legislation
Cook Islands	Yes (2009)	Yes	2009 Arbitration Act	1985 UNCITRAL Model Law, with amendments as adopted in 2006
Fiji	Yes (2010)	Yes	2017 International Arbitration Act	1985 UNCITRAL Model Law, with amendments as adopted in 2006
Kiribati	No	n/a	1980 Kiribati Arbitration Act	1950 English Arbitration Act
Marshall Islands	Yes (2006)	No	1980 Arbitration Act	Unclear
Federated States of Micronesia	No	n/a	n/a	n/a
Nauru	No	n/a	n/a	n/a
Niue	No	n/a	1908 Arbitration Act	1908 New Zealand Arbitration Act
Palau	Yes (2020)	No <i>(Arbitration Bill submitted to National Congress)</i>	n/a	n/a
Papua New Guinea	Yes (2019)	No <i>(Arbitration Bill in progress)</i>	1951 Arbitration Act	1889 English Arbitration Act
Samoa	No	n/a	1976 Arbitration Act	1889 English Arbitration Act
Solomon Islands	No	n/a	1987 Arbitration Act	1889 English Arbitration Act
*Timor-Leste <i>(categorized as a Southeast DMC at ADB)</i>	No <i>(Parliament approval in February 2021)</i>	n/a	n/a	n/a
Tonga	Yes (2020)	Yes	2020 International Arbitration Act	1985 UNCITRAL Model Law, with amendments as adopted in 2006
Tuvalu	No	n/a	1992 Arbitration Act	1950 English Arbitration Act
Vanuatu	No	n/a	No general arbitration legislation, but the 1983 Trade Disputes Act permits arbitration	n/a

# Capacity Building for Judges, Lawyers & Private Sector



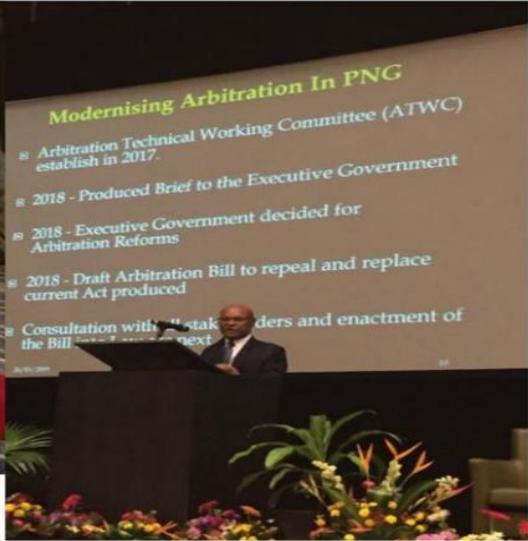
## First South Pacific International Arbitration Conference



# Second South Pacific International Arbitration Conference



▲ Ms. Athita Komindr (leftmost) and Mr. Damien J. Eastman (rightmost) gave opening remarks. Chief Justice Gibuma Gibbs Salika (second from left) served as keynote speaker. Deputy Chief Justice Ambeng Kandakasi (third from left) led in organizing the conference on behalf of the Papua New Guinea judiciary.



Session 1: Mr. Abhinav Bhushan (speaker), Ms. Christina Pak (moderator), Ms. Catherine Green, Mr. Wesley Pang, Mr. Kevin Nash, Mr. Steven Finizio, and Prof. Khory McCormick (speakers) stressed what the arbitration community is doing to meet client needs and innovating to address emerging issues.



Session 2: Mr. Peter McQueen, Mr. Kevin Nash, Mr. José Augusto Fernandes Teixeira, Mr. George Koi, Ms. Maryanne Tusaisi (participants), and Mr. Daniel Mello (facilitator) walked the participants through a typical arbitration process.



▲ Cultural performances entertained the participants.

# 3RD South Pacific International Arbitration Conference

De-Risking Investment in the South Pacific Through a  
World Class International Arbitration Disputes Regime

17 March 2021, 09:30-16:00 Sydney Time  
Yallamundi Rooms, Sydney Opera House and Virtual via Zoom

