



# REPUBLIC OF PALAU

## OFFICE OF THE PRESIDENT

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**SURANGEL WHIPPS, JR.**

*President*

April 29, 2021  
Serial No. 21-161

The Honorable Hokkons Baules  
President of the Senate  
Eleventh Olbiil Era Kelulau  
Ngerulumud, Palau National Capitol  
Republic of Palau 96940

The Honorable Sabino Anastacio  
Speaker of the House of Delegates  
Eleventh Olbiil Era Kelulau  
Ngerulumud, Palau National Capitol  
Republic of Palau 96940

**RE: Signing Statement for RPPL 11-5, the International Arbitration bill**

Dear Senate President Baules and Speaker Anastacio:

It is my pleasure to sign into law as RPPL 11-5, Senate Bill No. 11-19, HD1, a bill which establishes a mechanism for arbitration in international commercial disputes. This law gives greater effect to the action of the Tenth Olbiil Era Kelulau to ratify the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The framework highlights Palau's capacity to engage in international commercial arbitration and to host international arbitration as a sovereign nation.

The scope of RPPL 11-5 is international commercial arbitration, and the term "international" is given specific meaning within the law. I am receptive to communication from the Council of Chiefs regarding the expansion of the law to local disputes, and look forward to reviewing the law further as we look toward possible future revisions. For the time being, I am pleased that with the passage of this law, Palau takes another step towards establishing itself as an internationally renowned destination for tourism and investment alike by promoting a safe environment with laws are reliable and consistent.

I commend my colleagues in the Olbiil Era Kelulau for taking up this important measure, and I look forward to continuing our work to build back better and enhance the lives of all Palauans.

Sincerely,

Surangel S. Whipps, Jr.  
President of the Republic of Palau

*Attachment*



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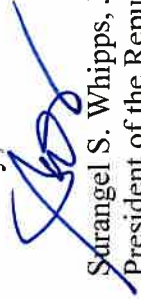
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Surangel S. Whipps, Jr.  
President of the Republic of Palau

*Attachment*

ELEVENTH OLBIL ERA KELULAU

First Special Session, March 2021

RPPL No. 11-5  
Passed as Senate Bill No. 11-19, HD1

AN ACT

To enable and facilitate the use of arbitration as an alternative dispute resolution mechanism in international commercial disputes, and for other related purposes.

THE PEOPLE OF PALAU REPRESENTED IN THE OLBIL ERA KELULAU DO ENACT AS FOLLOWS:

1           Section 1. Legislative Findings. The Olbil Era Kelulau finds that private  
2 businesses around the world often utilize arbitration to resolve commercial disputes, and  
3 that this practice is particularly common for large international companies. Arbitration  
4 is now widely regarded as a preferred means of resolving international commercial  
5 disputes because it provides for speed, expertise, confidentiality, and neutrality. The  
6 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards,  
7 which was ratified by the Tenth Olbil Era Kelulau, enabled arbitration to have world-  
8 wide enforceability. The Olbil Era Kelulau further finds that enacting a legislative  
9 framework for international commercial arbitration can attract foreign investment to  
10 the Republic by assuring foreign investors that they will encounter a stable and  
11 predictable legal environment. The availability of an arbitration regime enables  
12 investors to assess the risk of investment, and gives them confidence that any dispute will  
13 be dealt with impartially.

14           The Olbil Era Kelulau finds that statutory provisions defining arbitration  
15 agreements, requiring courts to refer disputes to arbitration when subject to arbitration  
16 agreements, and clarifying the jurisdiction of the Palau Supreme Court with respect to  
17 arbitrations seated in the Republic are essential. Such provisions will provide clarity to  
18 local courts on the scope of their jurisdiction with respect to arbitration proceedings.  
19 This will greatly strengthen international arbitration in the Republic, and give greater  
20 effect to the decision by the Tenth Olbil Era Kelulau to ratify the New York Convention  
21 on the Recognition and Enforcement of Foreign Arbitral Awards.

22           The Olbil Era Kelulau further finds that the model law promulgated by the  
23 United Nations Commission on International Trade Law (UNCITRAL) provides a well-  
24 tested and widely accepted framework for international commercial arbitration. The

1 enactment of the UNCITRAL model law is a simple way for the Republic to clearly signal  
2 that its law on international commercial arbitration conforms to international  
3 standards. The UNCITRAL model law is a modern and comprehensive international  
4 commercial arbitration law, and representative of international best practices.

5 The overriding objectives of this Division are: (i) to facilitate international trade and  
6 commerce by encouraging the use of arbitration as a method of resolving disputes; (ii)  
7 to facilitate the use of arbitration agreements made in relation to international trade and  
8 commerce; (iii) to facilitate the recognition and enforcement of arbitral awards made in  
9 relation to international trade and commerce; and (iv) to give effect to any obligations  
10 of the Republic which may arise under the Convention on the Recognition and  
11 Enforcement of Foreign Arbitral Awards, adopted in 1958 by the United Nations  
12 Conference on International Commercial Arbitration at its twenty-fourth meeting, at  
13 Schedule A, as ratified by the Republic on March 31, 2020.

14 Section 2. Amendment. Title 14 of the Palau National Code is hereby amended  
15 to be retitled as follows:

16 “TITLE 14

17 CIVIL PROCEEDINGS AND ALTERNATIVE DISPUTE RESOLUTION”

18 Section 3. Amendment. Title 14 of the Palau National Code is hereby amended  
19 to add a new Division 6 as follows:

20 “DIVISION 6

21 INTERNATIONAL COMMERCIAL ARBITRATION

22 Chapter 50

23 General Provisions

24 § 5001. Short title.

25 This Division shall be known and may be cited as the “International Commercial  
26 Arbitration Act of 2021.”

27 § 5002. Definitions.

28 Unless the context requires otherwise, for the purposes of this Division:

1 (a) “Arbitral tribunal” means a sole arbitrator, a panel of arbitrators, or an  
2 emergency arbitrator appointed pursuant to the rules of arbitration agreed to or  
3 adopted by the parties.

4 (b) “Arbitration” means any arbitration whether or not administered by a  
5 permanent arbitral institution.

6 (c) “Arbitration agreement” means an arbitration agreement defined and in the  
7 form as provided under this Division.

8 (d) “Court” means a body or organ of the judicial system of the Republic of Palau.  
9 § 5003. Rules of interpretation.

10 (a) Where a provision of this Division, except Section 5601, leaves the parties free  
11 to determine a certain issue, such freedom includes the right of the parties to authorize  
12 a third party, including an institution, to make that determination.

13 (b) Where a provision of this Division refers to the fact that the parties have  
14 agreed or that they may agree, or in any other way refers to an agreement of the parties,  
15 such agreement includes any arbitration rules referred to in that agreement.

16 (c) Where a provision of this Division, other than in Sections 5508(a) and  
17 5605(b)(1), refers to a claim, it also applies to a counter-claim, and where it refers to a  
18 defense, it also applies to a defense to such counter-claim.

19 (d) In the interpretation of this Division, regard is to be had to its international  
20 origin and to the need to promote uniformity in its application and the observance of  
21 good faith.

22 (e) In exercising powers under this Division, a court must have regard to the  
23 overriding objectives of this Division and to the fact that (i) international arbitration  
24 is an efficient, impartial, enforceable, and timely method by which to resolve  
25 commercial disputes; and (ii) international arbitration awards are intended to  
26 provide certainty and finality.

27 (f) Questions concerning matters governed by this Division which are not  
28 expressly settled within it are to be settled in conformity with the general principles on  
29 which this Division is based.

30 § 5004. Scope of application.



1 (a) This Division shall apply to international commercial arbitration commenced  
2 on or after the effective date of this Division under an arbitration agreement whenever  
3 made, subject to any agreement in force between the Republic and any other foreign  
4 State or States.

5 (b) The provisions of this Division, except Sections 5102, 5103, 5409, 5410, 5411,  
6 5801 and 5803, apply only if the place of arbitration is within the territory of the  
7 Republic.

8 (c) An arbitration shall be considered to be “international” if:

9 (1) the parties to an arbitration agreement have, at the time of the  
10 conclusion of that agreement, their places of business in different countries; or  
11 (2) one of the following places is situated outside the countries in which  
12 the parties have their places of business:

13 (A) the place of arbitration if determined in, or pursuant to, the  
14 arbitration agreement;

15 (B) any place where a substantial part of the obligations of the  
16 commercial relationship is to be performed or the place with which the  
17 subject-matter of the dispute is most closely connected; or

18 (3) the parties have expressly agreed that the subject matter of the  
19 arbitration agreement relates to more than one country.

20 (d) For the purposes of subsection (c) of this section:

21 (1) if a party has more than one place of business, the place of business is  
22 that which has the closest relationship to the arbitration agreement; and

23 (2) if a party does not have a place of business, reference is to be made to  
24 its habitual residence.

25 (e) This Division shall not affect any other law of the Republic by virtue of which  
26 certain disputes may not be submitted to arbitration or may be submitted to arbitration  
27 only according to provisions other than those of this Division.

28 (f) Disputes that are commercial in nature but whose subject matter concerns the  
29 ownership of land and natural resources in the Republic, or intellectual property rights  
30 arising from Palauan traditional knowledge, including but not limited to knowledge of

1 endemic species, are outside the scope of international commercial arbitration provided  
2 in this act. These disputes are non-arbitrable. They shall be considered “beyond the  
3 scope” of arbitration under Sections 5701 and 5803, and reserved to the jurisdiction of  
4 the courts of Palau.

5 § 5005. Receipt of written communications.

6 (a) Unless otherwise agreed by the parties:

7 (1) any written communication is deemed to have been received if it is  
8 delivered to the addressee personally or if it is delivered at his, her, or its place of  
9 business, habitual residence, or mailing address; if none of these can be found  
10 after making a reasonable inquiry, a written communication is deemed to have  
11 been received if it is sent to the addressee’s last-known place of business, habitual  
12 residence, or mailing address by registered letter or any other means which  
13 provides a record of the attempt to deliver it; and

14 (2) the communication is deemed to have been received on the day it is so  
15 delivered.

16 (b) The provisions of this Section do not apply to communications in court  
17 proceedings.

18 § 5006. Waiver of right to object.

19 A party who knows that any provision of this Division from which the parties  
20 may derogate or any requirement under the arbitration agreement has not been  
21 complied with and yet proceeds with the arbitration without stating his, her, or its  
22 objection to such non-compliance without undue delay or, if a time-limit is provided  
23 therefor, within such period of time, shall be deemed to have waived his, her, or its right  
24 to object.

25 § 5007. Extent of court intervention.

26 In matters governed by this Division, no court shall intervene except where so  
27 provided in this Division.

28 § 5008. Court or other authority for certain functions of arbitration assistance  
29 and supervision.

1 The functions referred to in Sections 5202(c), 5202(d), 5204(c), 5205, 5301(c), and  
2 5701(b) shall be performed by the Palau Supreme Court.

3 Chapter 51

4 Arbitration Agreement

5 § 5101. Definition and form of arbitration agreement.

6 (a) “Arbitration agreement” is an agreement by the parties to submit to  
7 arbitration all or certain disputes which have arisen or which may arise between them  
8 in respect of a defined legal relationship, whether contractual or not. An arbitration  
9 agreement may be in the form of an arbitration clause in a contract or in the form of a  
10 separate agreement.

11 (b) An arbitration agreement shall be in writing. For the purpose of determining  
12 whether an arbitration agreement is in writing, the following shall apply:

13 (1) an arbitration agreement is in writing if its content is recorded in any  
14 form, whether or not the arbitration agreement or contract has been concluded  
15 orally, by conduct, or by other means;

16 (2) an arbitration agreement is in writing if it is contained in an exchange  
17 of statements of claim and defense in which the existence of an agreement is  
18 alleged by one party and not denied by the other;

19 (3) the requirement that an arbitration agreement be made in writing can  
20 be satisfied by an electronic communication if the information contained therein  
21 is accessible so as to be useable for subsequent reference; “electronic  
22 communication” means any communication that the parties make by means of  
23 data messages; “data message” means information generated, sent, received or  
24 stored by electronic, magnetic, optical, or similar means, including, but not  
25 limited to, electronic data interchange (EDI), electronic mail, telegram, telex, or  
26 telecopy; and

27 (4) the reference in a contract to any document containing an arbitration  
28 clause constitutes an arbitration agreement in writing, provided that the  
29 reference is such as to make that clause part of the contract.

30 § 5102. Arbitration agreement and substantive claim before court.



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

6 (b) Where an action referred to in Subsection (a) has been brought, arbitral  
7 proceedings may nevertheless be commenced or continued, and an award may be made,  
8 while the issue is pending before the court.

9 (c) If the court refuses to refer the parties to arbitration, any provision of the  
10 arbitration agreement providing that an award is a condition precedent to the bringing  
11 of legal proceedings in respect of any matter shall have no effect in relation to those  
12 proceedings.

13 (d) If the court refers the parties to arbitration under Subsection (a), it shall make  
14 an order staying the legal proceedings in that action.

15 (e) A decision of the court to refer the parties to arbitration under Subsection (a)  
16 shall be subject to no appeal.

17 (f) For any appeal of a decision of a court to refuse to refer the parties to  
18 arbitration under Subsection (a), leave of the court making that decision shall be  
19 required.

20 (g) A decision of the court to refuse leave under Subsection (f) shall be subject to  
21 no appeal.

22 § 5103. Arbitration agreement and interim measures by court.

23 It is not incompatible with an arbitration agreement for a party to request,  
24 before or during arbitral proceedings, from a court an interim measure of protection  
25 and for a court to grant such measure.

26 § 5104. Death, bankruptcy, or winding up of party to arbitration agreement.

27 (a) Unless otherwise agreed by the parties, an arbitration shall not be discharged  
28 by the death, bankruptcy, or winding up of a party, and may be enforced by or against  
29 the representatives of that party.

1 (b) Subsection (a) does not affect the operation of any written law by virtue of  
2 which a substantive right or obligation is extinguished by death, bankruptcy, or winding  
3 up.

4 Chapter 52

5 Composition of Arbitral Tribunal

6 § 5201. Number of arbitrators.

7 (a) The parties are free to determine the number of arbitrators.

8 (b) Failing such determination, the number of arbitrators shall be three.

9 § 5202. Appointment of arbitrators.

10 (a) No person shall be precluded by reason of his or her nationality from acting  
11 as an arbitrator, unless otherwise agreed by the parties.

12 (b) The parties are free to agree on a procedure for appointing the arbitrator or  
13 arbitrators, subject to the provisions of Subsections (d) and (e) of this section. Failing  
14 such agreement:

15 (1) in an arbitration with three arbitrators, each party shall appoint one  
16 arbitrator, and the two arbitrators thus appointed shall appoint the third  
17 arbitrator; if a party fails to appoint an arbitrator within thirty days of receipt  
18 of a request to do so from the other party, or if the two arbitrators fail to agree  
19 on the third arbitrator within thirty days of their appointment, the appointment  
20 shall be made, upon request of a party, by the Palau Supreme Court; or

21 (2) in an arbitration with a sole arbitrator, if the parties are unable to  
22 agree on the arbitrator, the arbitrator shall be appointed, upon request of a party,  
23 by the Palau Supreme Court.

24 (c) Any party may request the Palau Supreme Court to take a necessary measure,  
25 unless the agreement on the appointment procedure provides other means for securing  
26 the appointment, when, under an appointment procedure agreed upon by the parties:

27 (1) a party fails to act as required under such procedure; or

28 (2) the parties, or two arbitrators, are unable to reach an agreement  
29 expected of them under such procedure; or

1 (3) a third party, including an institution, fails to perform any function  
2 entrusted to it under such procedure.

3 (d) A decision on a matter entrusted by Subsections (b) or (c) to the Palau  
4 Supreme Court shall not be subject to appeal. The Palau Supreme Court, in appointing  
5 an arbitrator, shall have due regard to any qualifications required of the arbitrator by  
6 the agreement of the parties and to such considerations as are likely to secure the  
7 appointment of an independent and impartial arbitrator and, in the case of a sole or  
8 third arbitrator, shall take into account as well the advisability of appointing an  
9 arbitrator of a nationality other than those of the parties.

10 § 5203. Grounds for challenge.

11 (a) When a person is approached in connection with his or her possible  
12 appointment as an arbitrator, he or she shall disclose any circumstances likely to give  
13 rise to justifiable doubts as to his or her impartiality or independence. An arbitrator,  
14 from the time of his or her appointment and throughout the arbitral proceedings, shall  
15 without delay disclose any such circumstances to the parties unless they have already  
16 been informed of them by him or her.

17 (b) An arbitrator may be challenged only if circumstances exist that give rise to  
18 justifiable doubts as to his or her impartiality or independence, or if he or she does not  
19 possess qualifications agreed to by the parties. A party may challenge an arbitrator  
20 appointed by him or her, or in whose appointment he or she has participated, only for  
21 reasons of which he or she becomes aware after the appointment has been made.

22 § 5204. Challenge procedure.

23 (a) The parties are free to agree on a procedure for challenging an arbitrator,  
24 subject to the provisions of Subsection (c).

25 (b) Failing such agreement, a party who intends to challenge an arbitrator shall,  
26 within fifteen days after becoming aware of the constitution of the arbitral tribunal or  
27 after becoming aware of any circumstance referred to in Section 5203(b), send a written  
28 statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged  
29 arbitrator withdraws from his or her office or the other party agrees to the challenge,  
30 the arbitral tribunal shall decide on the challenge.

1 (c) If a challenge under any procedure agreed upon by the parties or under the  
2 procedure of Subsection (b) is not successful, the challenging party may request, within  
3 thirty days after having received notice of the decision rejecting the challenge, the Palau  
4 Supreme Court to decide on the challenge, which decision shall not be subject to appeal;  
5 while such a request is pending, the arbitral tribunal, including the challenged  
6 arbitrator, may continue the arbitral proceedings and make an award.

7 (d) An arbitrator who is challenged under Subsection (b) is entitled to withdraw  
8 from his or her office as an arbitrator.

9 (e) The mandate of a challenged arbitrator terminates in one of the following  
10 circumstances:  
11 (1) the arbitrator withdraws from his or her office;  
12 (2) the parties agree to the challenge;  
13 (3) the challenge is upheld according to the parties' agreed procedure or  
14 by the arbitral tribunal, and no request is made for the Palau Supreme Court to  
15 decide the challenge; or  
16 (4) the Palau Supreme Court, upon request to decide on the challenge,  
17 upholds the challenge.

18 § 5205. Failure or impossibility to act.

19 (a) If an arbitrator becomes de jure or de facto unable to perform his or her  
20 functions or for other reasons fails to act without undue delay, his or her mandate  
21 terminates if he or she withdraws from his or her office or if the parties agree on the  
22 termination. Otherwise, if a controversy remains concerning any of these grounds, any  
23 party may request the Palau Supreme Court to decide on the termination of the  
24 mandate, which decision shall not be subject to appeal.

25 (b) If, under this section or Section 5204(b), an arbitrator withdraws from his or  
26 her office or the parties agree to the termination of the mandate of an arbitrator, such  
27 withdrawal or termination does not imply acceptance of the validity of any ground  
28 referred to in this section or Section 5203(b).

29 (c) The mandate of the arbitrator shall terminate on the arbitrator's death.

30 § 5206. Appointment of substitute arbitrator.

1 Where the mandate of an arbitrator terminates under Sections 5204 or 5205, he  
2 or she withdraws from office for any other reason, his or her mandate is revoked by  
3 agreement of the parties, or in any other case of termination of his or her mandate, a  
4 substitute arbitrator shall be appointed according to the rules that were applicable to  
5 the appointment of the arbitrator being replaced.

6 § 5207. Liability and immunity.

7 (a) An arbitrator is not liable for anything done or omitted to be done by the  
8 arbitrator in good faith in his or her capacity as an arbitrator.

9 (b) The appointing authority, or an arbitral or other institution or person  
10 designated or requested by the parties to appoint or nominate an arbitrator, shall not be  
11 liable for anything done or omitted to be done in the discharge or purported discharge  
12 of that function unless the act or omission is shown to have been in bad faith.

13 (c) The appointing authority, or an arbitral or other institution or person by  
14 whom an arbitrator is appointed or nominated, shall not be liable, by reason only of  
15 having appointed or nominated him or her, for anything done or omitted to be done by  
16 the arbitrator or his or her employees or agents in the discharge or purported discharge  
17 of his or her functions as an arbitrator.

18 (d) This section shall apply to an employee or agent of the appointing authority  
19 or of an arbitral or other institution or person as it applies to the appointing authority,  
20 institution, or person himself or herself.

21 Chapter 53

22 Jurisdiction of Arbitral Tribunal

23 § 5301. Competence of arbitral tribunal to rule on its jurisdiction.

24 (a) The arbitral tribunal may rule on its own jurisdiction, including any  
25 objections with respect to the existence or validity of the arbitration agreement. For that  
26 purpose, an arbitration clause which forms part of a contract shall be treated as an  
27 agreement independent of the other terms of the contract. A decision by the arbitral  
28 tribunal that the contract is null and void shall not entail ipso jure the invalidity of the  
29 arbitration clause.



1 (b) The power of the arbitral tribunal to rule on its own jurisdiction under  
2 Subsection (a) includes but is not limited to the power to decide on any of the following  
3 issues:

- 4 (1) whether the tribunal is properly constituted;  
5 (2) what matters have been submitted to arbitration in accordance with  
6 the arbitration agreement; and  
7 (3) the existence and validity of the arbitration agreement.

8 (c) A plea that the arbitral tribunal does not have jurisdiction shall be raised not  
9 later than the submission of the statement of defense. A party is not precluded from  
10 raising such a plea by the fact that he, she, or it has appointed, or participated in the  
11 appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of  
12 its authority shall be raised as soon as the matter alleged to be beyond the scope of its  
13 authority is raised during the arbitral proceedings. The arbitral tribunal may, in either  
14 case, admit a later plea if it considers the delay justified.

15 (d) The arbitral tribunal may rule on a plea referred to in Subsection (c) either  
16 as a preliminary question or in an award on the merits. If the arbitral tribunal rules as  
17 a preliminary question that it has jurisdiction, any party may request, within thirty days  
18 after having received notice of that ruling, the Palau Supreme Court to decide the  
19 matter, and the Court's decision shall not be subject to appeal; while such a request is  
20 pending, the arbitral tribunal may continue the arbitral proceedings and make an  
21 award.

22 Chapter 54

23 Interim Measures and Preliminary Orders

24 § 5401. Power of arbitral tribunal to order interim measures.

25 (a) Unless otherwise agreed by the parties, the arbitral tribunal may, at the  
26 request of a party, grant interim measures.

27 (b) An interim measure is any temporary measure, whether in the form of an  
28 award or in another form, by which, at any time prior to the issuance of the award by  
29 which the dispute is finally decided, the arbitral tribunal orders a party to:

1 (1) maintain or restore the status quo pending determination of the  
2 dispute;  
3 (2) take action that would prevent, or refrain from taking action that is  
4 likely to cause, current or imminent harm or prejudice to the arbitral process  
5 itself;  
6 (3) provide a means of preserving assets out of which a subsequent award  
7 may be satisfied; or  
8 (4) preserve evidence that may be relevant and material to the resolution  
9 of the dispute.  
10 § 5402. Conditions for granting interim measures.  
11 (a) The party requesting an interim measure under Section 5401(b)(1), (2), or (3),  
12 shall satisfy the arbitral tribunal that:  
13 (1) harm not adequately reparable by an award of damages is likely to  
14 result if the measure is not ordered, and such harm substantially outweighs the  
15 harm that is likely to result to the party against whom the measure is directed if  
16 the measure is granted; and  
17 (2) there is a reasonable possibility that the requesting party will succeed  
18 on the merits of the claim; the determination on this possibility shall not affect  
19 the discretion of the arbitral tribunal in making any subsequent determination.  
20 (b) With regard to a request for an interim measure under Section 5401(b)(4),  
21 the requirements in Subsection (a) shall apply only to the extent the arbitral tribunal  
22 considers appropriate.  
23 § 5403. Applications for preliminary orders and conditions for granting  
24 preliminary orders.  
25 (a) Unless otherwise agreed by the parties, a party may, without notice to any  
26 other party, make a request for an interim measure together with an application for a  
27 preliminary order directing a party not to frustrate the purpose of the interim measure  
28 requested.

1 (b) The arbitral tribunal may grant a preliminary order provided it considers  
2 that prior disclosure of the request for the interim measure to the party against whom it  
3 is directed risks frustrating the purpose of the measure.

4 (c) The party requesting a preliminary order shall satisfy the arbitral tribunal of  
5 the fulfillment of the conditions imposed under Section 5402(a), provided that the harm  
6 to be assessed under Section 5402(a)(1), is the harm likely to result from the order being  
7 granted or not.

8 § 5404. Specific regime for preliminary orders.

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

15 (b) At the same time as giving the notice required under Subsection (a), the  
16 arbitral tribunal shall give an opportunity to any party against whom a preliminary  
17 order is directed to present its case at the earliest practicable time.

18 (c) The arbitral tribunal shall decide promptly on any objection to the  
19 preliminary order.

20 (d) A preliminary order shall expire after twenty days from the date on which it  
21 was issued by the arbitral tribunal. However, the arbitral tribunal may issue an interim  
22 measure adopting or modifying the preliminary order, after the party against whom the  
23 preliminary order is directed has been given notice and an opportunity to present its  
24 case.

25 (e) A preliminary order shall be binding on the parties but shall not be subject to  
26 enforcement by a court. Such a preliminary order does not constitute an award.

27 § 5405. Modification, suspension, termination.

28 The arbitral tribunal may modify, suspend, or terminate an interim measure or  
29 a preliminary order it has granted, upon application of any party or, in exceptional

1 circumstances and upon prior notice to the parties, on the arbitral tribunal's own  
2 initiative.

3 § 5406. Provision of security.

4 (a) The arbitral tribunal may require the party requesting an interim measure to  
5 provide appropriate security in connection with the measure.

6 (b) The arbitral tribunal shall require the party applying for a preliminary order  
7 to provide security in connection with the order unless the arbitral tribunal considers it  
8 inappropriate or unnecessary to do so.

9 § 5407. Disclosure.

10 (a) The arbitral tribunal may require any party promptly to disclose any material  
11 change in the circumstances on the basis of which an interim measure was requested or  
12 granted.

13 (b) The party applying for a preliminary order shall disclose to the arbitral  
14 tribunal all circumstances that are likely to be relevant to the arbitral tribunal's  
15 determination whether to grant or maintain the order, and such obligation shall  
16 continue until the party against whom the order has been requested has had an  
17 opportunity to present its case. Thereafter, Subsection (a) shall apply.

18 § 5408. Costs and damages.

19 The party requesting an interim measure or applying for a preliminary order  
20 shall be liable for any costs and damages caused by the measure or order to any party if  
21 the arbitral tribunal later determines that, in the circumstances, the measure or the  
22 order should not have been granted. The arbitral tribunal may award such costs and  
23 damages at any point during the proceedings.

24 § 5409. Recognition and enforcement of interim measures.

25 (a) An interim measure issued by an arbitral tribunal shall be recognized as  
26 binding and, unless otherwise provided by the arbitral tribunal, enforced upon  
27 application to a competent court, irrespective of the country in which it was issued,  
28 subject to the provisions of Section 5410.

1 (b) The party who is seeking or has obtained recognition or enforcement of an  
2 interim measure shall promptly inform the court of any termination, suspension, or  
3 modification of that interim measure.

4 (c) The court of the country where recognition or enforcement is sought may, if  
5 it considers it proper, order the requesting party to provide appropriate security if the  
6 arbitral tribunal has not already made a determination with respect to security or where  
7 such a decision is necessary to protect the rights of third parties.

8 § 5410. Grounds for refusing recognition or enforcement of interim measures.

9 (a) Recognition or enforcement of an interim measure may be refused only:

10 (1) at the request of the party against whom it is invoked if the court is  
11 satisfied that:

12 (A) such refusal is warranted on the grounds set forth in Section  
13 5803(a)(1)(A), (B), (C) or (D);

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

17 (C) the interim measure has been terminated or suspended by the  
18 arbitral tribunal or, where so empowered, by the court of the state in  
19 which the arbitration takes place or under the law of which that interim  
20 measure was granted; or

21 (2) If the court finds that:

22 (A) the interim measure is incompatible with the powers conferred  
23 upon the court unless the court decides to reformulate the interim  
24 measure to the extent necessary to adapt it to its own powers and  
25 procedures for the purposes of enforcing that interim measure and  
26 without modifying its substance; or

27 (B) any of the grounds set forth in Section 5803(a)(2)(A) or (B)  
28 apply to the recognition and enforcement of the interim measure.

29 (b) Any determination made by the court on any ground in Subsection (a) shall  
30 be effective only for the purposes of the application to recognize and enforce the interim



1 measure. The court where recognition or enforcement is sought shall not, in making that  
2 determination, undertake a review of the substance of the interim measure.

3 § 5411. Court-ordered interim measures.

4 The Palau Supreme Court shall have the same power of issuing an interim  
5 measure in relation to arbitration proceedings, irrespective of whether their place is in  
6 the territory of the Republic, as it has in relation to proceedings in the Court. The Palau  
7 Supreme Court shall exercise such power in accordance with its own procedures in  
8 consideration of the specific features of international arbitration.

9 Chapter 55

10 Conduct of Arbitral Proceedings

11 § 5501. Equal treatment of parties.

12 The parties shall be treated with equality and each party shall be given a full  
13 opportunity to present its case.

14 § 5502. Representation in arbitral proceedings.

15 Unless otherwise agreed by the parties, a party may appear in person before an  
16 arbitral tribunal and may represent itself or be represented by any other person of  
17 that party's choosing.

18 § 5503. Determination of rules of procedure.

19 (a) Subject to the provisions of this Division, the parties are free to agree on the  
20 procedure to be followed by the arbitral tribunal in conducting the proceedings.

21 (b) Failing such agreement, the arbitral tribunal may, subject to the provisions  
22 of this Division, conduct the arbitration in such manner as it considers appropriate. The  
23 power conferred upon the arbitral tribunal includes the power to determine the  
24 admissibility, relevance, materiality, and weight of any evidence.

25 § 5504. Place of arbitration.

26 (a) The parties are free to agree on the place of arbitration. Failing such  
27 agreement, the place of arbitration shall be determined by the arbitral tribunal having  
28 regard to the circumstances of the case, including the convenience of the parties.

29 (b) Notwithstanding Subsection (a), the arbitral tribunal may, unless otherwise  
30 agreed by the parties, meet at any place it considers appropriate for consultation among

1 its members, for hearing witnesses, experts or the parties, or for inspection of goods,  
2 other property, or documents.

3 § 5505. Commencement of arbitral proceedings.

4 Unless otherwise agreed by the parties, the arbitral proceedings in respect of a  
5 particular dispute commence on the date on which a request for that dispute to be  
6 referred to arbitration is received by the respondent.

7 § 5506. Language.

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

13 (b) The arbitral tribunal may order that any documentary evidence shall be  
14 accompanied by a translation into the language or languages agreed upon by the parties  
15 or determined by the arbitral tribunal.

16 § 5507. Statements of claim and defense.

17 (a) Within the period of time agreed by the parties or determined by the arbitral  
18 tribunal, the claimant shall state the facts supporting its claim, the points at issue, and  
19 the relief or remedy sought, and the respondent shall state its defense in respect of these  
20 particulars, unless the parties have otherwise agreed as to the required elements of such  
21 statements. The parties may submit with their statements all documents they consider  
22 to be relevant or may add a reference to the documents or other evidence they will  
23 submit.

24 (b) Unless otherwise agreed by the parties, either party may amend or  
25 supplement its claim or defense during the course of the arbitral proceedings, unless the  
26 arbitral tribunal considers it inappropriate to allow such amendment having regard to  
27 the delay in making it.

28 § 5508. Hearings and written proceedings.

29 (a) Subject to any contrary agreement by the parties, the arbitral tribunal shall  
30 decide whether to hold oral hearings for the presentation of evidence or for oral

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

5 (b) The parties shall be given sufficient advance notice of any hearing and of any  
6 meeting of the arbitral tribunal for the purposes of inspection of goods, other property,  
7 or documents.

8 (c) All statements, documents, or other information supplied to the arbitral  
9 tribunal by one party shall be communicated to the other party. Any expert report or  
10 evidentiary document on which the arbitral tribunal may rely in making its decision  
11 shall be communicated to the parties.

12 § 5509. Default of a party.

13 Unless otherwise agreed by the parties, if, without showing sufficient cause:

14 (1) the claimant fails to communicate its statement of claim in accordance with  
15 Section 5507(a), the arbitral tribunal shall terminate the proceedings.

16 (2) the respondent fails to communicate its statement of defense in accordance  
17 with Section 5507(a), the arbitral tribunal shall continue the proceedings without  
18 treating such failure in itself as an admission of the claimant's allegations.

19 (3) any party fails to appear at a hearing or to produce documentary evidence,  
20 the arbitral tribunal may continue the proceedings and make the award on the evidence  
21 before it.

22 § 5510. Expert appointed by arbitral tribunal.

23 (a) Unless otherwise agreed by the parties, the arbitral tribunal:

24 (1) may appoint one or more experts to report to it on specific issues to be  
25 determined by the arbitral tribunal; and

26 (2) may require a party to give the expert any relevant information or to  
27 produce, or to provide access to, any relevant documents, goods, or other  
28 property for the expert's inspection.

29 (b) Unless otherwise agreed by the parties, if a party so requests or if the arbitral  
30 tribunal considers it necessary, the expert shall, after delivery of his or her written or

1 oral report, participate in a hearing where the parties have the opportunity to put  
2 questions to him or her and to present expert witnesses in order to testify on the points  
3 at issue.

4 § 5511. Court assistance in taking evidence.

5 The arbitral tribunal or a party with the approval of the arbitral tribunal may  
6 request from a competent court of the Republic assistance in taking evidence. The court  
7 may execute the request within its competence and according to its rules on taking  
8 evidence.

9 § 5512. Confidentiality.

10 (a) Unless otherwise agreed by the parties, all documents and matters relating to  
11 the arbitration shall be confidential and no party may publish, disclose, or communicate  
12 any information relating to:

- 13 (1) the arbitration proceedings; and
- 14 (2) any awards in the arbitration.

15 (b) Nothing in Subsection (a) prevents the publication, disclosure, or  
16 communication of information referred to in Subsection (a) by a party:

17 (1) if the publication, disclosure, or communication is made to protect or  
18 pursue a legal right or interest of the party;

19 (2) if the publication, disclosure, or communication is made to enforce or  
20 challenge the award referred to in Subsection (a) in legal proceedings before a  
21 court or other judicial authority in or outside the Republic;

22 (3) if the publication, disclosure, or communication is made to any  
23 government body, regulatory body, court, or tribunal and the party is obliged by  
24 law to make the publication, disclosure, or communication;

25 (4) if the publication, disclosure, or communication is pursuant to an order  
26 made by the arbitral tribunal allowing a party to do so. Such an order may only  
27 be made at the request of a party and after giving each of the parties an  
28 opportunity to be heard; or

29 (5) if the publication, disclosure, or communication is made to a  
30 professional or any other adviser of any of the parties.

1

Chapter 56

2

Making of Award and Termination of Proceedings

3

§ 5601. Rules applicable to substance of dispute.

4

(a) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given country shall be construed, unless otherwise expressed, as directly referring to the substantive law of that country and not to its conflict of laws rules.

8

9

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

10

11

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

12

13

(d) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

15

16

§ 5602. Decision making by panel of arbitrators.

17

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

19

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21

§ 5603. Settlement.

22

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

25

26

(b) An award on agreed terms shall be made in accordance with the provisions of Section 5604 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

28

29

§ 5604. Form and contents of award.



1 (a) The award shall be made in writing and shall be signed by the arbitrator or  
2 arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the  
3 majority of all members of the arbitral tribunal shall suffice, provided that the reason  
4 for any omitted signature is stated.

5 (b) The award shall state the reasons upon which it is based, unless the parties  
6 have agreed that no reasons are to be given or the award is an award on agreed terms  
7 under Section 5603.

8 (c) The award shall state its date and the place of arbitration as determined in  
9 accordance with Section 5504(a). The award shall be deemed to have been made at that  
10 place.

11 (d) After the award is made, a copy signed by the arbitrators in accordance with  
12 Subsection (a) of this section shall be delivered to each party.

13 § 5605. Termination of proceedings.

14 (a) The arbitral proceedings are terminated by the final award or by an order of  
15 the arbitral tribunal in accordance with Subsection (b).

16 (b) The arbitral tribunal shall issue an order for the termination of the arbitral  
17 proceedings when:

18 (1) the claimant withdraws its claim, unless the respondent objects thereto  
19 and the arbitral tribunal recognizes a legitimate interest on its part in obtaining  
20 a final settlement of the dispute;

21 (2) the parties agree on the termination of the proceedings; or

22 (3) the arbitral tribunal finds that the continuation of the proceedings has  
23 for any other reason become unnecessary or impossible.

24 (c) The mandate of the arbitral tribunal terminates with the termination of the  
25 arbitral proceedings, subject to the provisions of Sections 5606 and 5607(d).

26 § 5606. Correction and interpretation of award; additional award.

27 (a) Within thirty days of receipt of the award, unless another period of time has  
28 been agreed upon by the parties:

1 (1) a party, with notice to the other party, may request the arbitral  
2 tribunal to correct in the award any errors in computation, any clerical or  
3 typographical errors, or any errors of a similar nature; and  
4 (2) if so agreed by the parties, a party, with notice to the other party, may  
5 request the arbitral tribunal to give an interpretation of a specific point or part  
6 of the award.  
7 (b) If the arbitral tribunal considers the request under Subsection (a) to be  
8 justified, it shall make the correction or give the interpretation within thirty days of  
9 receipt of the request. The interpretation shall form part of the award.  
10 (c) The arbitral tribunal may correct any error of the type referred to in  
11 paragraph (a)(1) of this section on its own initiative within thirty days of the date of the  
12 award.  
13 (d) Unless otherwise agreed by the parties, a party, with notice to the other party,  
14 may request, within thirty days of receipt of the award, the arbitral tribunal to make an  
15 additional award as to claims presented in the arbitral proceedings but omitted from the  
16 award. If the arbitral tribunal considers the request to be justified, it shall make the  
17 additional award within sixty days.  
18 (e) The arbitral tribunal may extend, if necessary, the period of time within which  
19 it shall make a correction, interpretation, or an additional award under this section.  
20 (f) The provisions of Section 5604 shall apply to a correction or interpretation of  
21 the award or to an additional award.

22 Chapter 57

23 Recourse Against Award

24 § 5701. Application to set aside as exclusive recourse against arbitral award.

25 (a) Recourse to a court against an arbitral award may be made only by an  
26 application to set aside in accordance with Subsections (b) and (c).

27 (b) An arbitral award may be set aside by the Palau Supreme Court only if:

28 (1) the party making the application furnishes proof that:

29 (A) a party to the arbitration agreement was under some  
30 incapacity; or the arbitration agreement is not valid under the law to

1 which the parties have subjected it, or is not valid under the law of the  
2 Republic where such controls; or

3 (B) the party making the application was not given proper notice  
4 of the appointment of an arbitrator or of the arbitral proceedings or was  
5 otherwise unable to present its case; or

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

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

18 (2) the court finds that:

19 (A) the subject-matter of the dispute is not capable of settlement by  
20 arbitration under the law of the Republic; or

21 (B) the award is in conflict with the public policy of the Republic.

22 (c) An application for setting aside may not be made after three months have  
23 elapsed from the date on which the party making that application had received the  
24 award or, if a request had been made under Section 5606, from the date on which that  
25 request had been disposed of by the arbitral tribunal.

26 (d) The court, when asked to set aside an award, may, where appropriate and so  
27 requested by a party, suspend the setting aside proceedings for a period of time  
28 determined by the Court in order to give the arbitral tribunal an opportunity to resume  
29 the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion  
30 will eliminate the grounds for setting aside.

Chapter 58

Recognition and Enforcement of Awards

§ 5801. Recognition and enforcement.

(a) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to a competent court, shall be enforced subject to the provisions of this section and Section 5803.

(b) The party relying on an award or applying for its enforcement shall supply the original award or a copy thereof. If the award is not made in an official language of the Republic, the court may request the party to supply a translation thereof into such language.

§ 5802. Evidence of awards and arbitration agreements.

(a) In any proceedings in which a party seeks the enforcement of an award by virtue of this Chapter, the party it shall produce to the court:

(1) the duly authenticated original award or a duly certified copy; and

(2) the original arbitration agreement under which the award purports to have been made or a duly certified copy.

(b) For the purpose of Subsection (a), an award shall be deemed to have been duly authenticated, and a copy of an award or agreement shall be deemed to have been duly certified, if:

(1) it purports to have been authenticated or certified, as the case may be, by the arbitrator or, where the arbitrator is a tribunal, by an officer of that tribunal, and it has not been shown to the court that it was not in fact so authenticated or certified; or

(2) it has been otherwise authenticated or certified to the satisfaction of the court.

(c) If a document or part of a document produced under Subsection (a) is written in a language other than English, there shall be produced with the document a translation, in the English language, of the document or that part, as the case may be, certified to be a correct translation.

1 (d) For the purposes of Subsection (c), a translation shall be certified by a  
2 diplomatic or consular agent in the Republic of the country in which the award was  
3 made or otherwise to the satisfaction of the court.

4 (e) A document produced to a court in accordance with this section is, upon mere  
5 production, receivable by the court as prima facie evidence of the matters to which it  
6 relates.

7 § 5803. Grounds for refusing recognition or enforcement.

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

10 (1) at the request of the party against whom it is invoked, if that party  
11 furnishes to the competent court where recognition or enforcement is sought  
12 proof that:

13 (A) a party to the arbitration agreement was under some  
14 incapacity; or the said agreement is not valid under the law to which the  
15 parties have subjected it or, failing any indication thereon, under the law  
16 of the country where the award was made; or

17 (B) the party against whom the award is invoked was not given  
18 proper notice of the appointment of an arbitrator or of the arbitral  
19 proceedings or was otherwise unable to present its case; or

20 (C) the award deals with a dispute not contemplated by or not  
21 falling within the terms of the submission to arbitration, or it contains  
22 decisions on matters beyond the scope of the submission to arbitration,  
23 provided that, if the decisions on matters submitted to arbitration can be  
24 separated from those not so submitted, that part of the award which  
25 contains decisions on matters submitted to arbitration may be recognized  
26 and enforced; or

27 (D) the composition of the arbitral tribunal or the arbitral  
28 procedure was not in accordance with the agreement of the parties or,  
29 failing such agreement, was not in accordance with the law of the country  
30 where the arbitration took place; or



1 (E) the award has not yet become binding on the parties or has been  
2 set aside or suspended by a court of the country in which, or under the law  
3 of which, that award was made; or  
4 (2) if the court finds that:  
5 (A) the subject-matter of the dispute is not capable of settlement  
6 by arbitration under the law of the Republic; or  
7 (B) the recognition or enforcement of the award would be contrary  
8 to the public policy of the Republic.  
9 (b) If an application for setting aside or suspension of an award has been made  
10 to a court referred to in Subsection (a)(1)(E), the court where recognition or enforcement  
11 is sought may, if it considers it proper, adjourn its decision and may also, on the  
12 application of the party claiming recognition or enforcement of the award, order the  
13 other party to provide appropriate security.

14 § 5804. Public policy.

15 (a) Without limiting the generality of Sections 5410(a)(2)(B), 5701(b)(2)(B) and  
16 5803(a)(2)(B) of this Division, it is declared, for the avoidance of any doubt, that, for the  
17 purposes of those sections, an interim measure or award is in conflict with, or is contrary  
18 to, the public policy of the Republic if:

19 (1) the making of the interim measure or award was induced or affected  
20 by fraud or corruption; or  
21 (2) a breach of the rules of natural justice occurred in connection with  
22 the making of the interim measure or award.”

23 Section 4. Effective Date. This Act shall take effect upon its approval by the  
24 President of the Republic, or upon its becoming law without such approval.

Approved this 29<sup>th</sup> day of April, 2021.

  
HE Surangel S. Whipps, Jr.  
President  
Republic of Palau