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 (Annotated), as amended, is hereby further amended by enacting a new title 44 entitled "Alternative Dispute Resolution".

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

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

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

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

5. Section 5. The Code of the Federated States of Micronesia (Annotated), as amended, is hereby further amended by enacting a
new section 102 to chapter 1 of title 44 to read as follows:

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

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

(2) A commercial arbitration is international if:

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

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

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

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

(c) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.
(4) For the purpose of subsection 3 of this Section:

(a) if a party has more than one place of business, the place of business referred to in this Section is the one that has the closest connection to the arbitration agreement;

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

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

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

“Section 103. Definitions.

(1) “arbitral tribunal” means a sole arbitrator or a panel of arbitrators.

(2) “arbitration” means any arbitration whether or not administered by a permanent arbitral institution.

(3) “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. Provisions relating to the
arbitration agreement are set out in Subchapter 2 below.

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

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

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

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

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

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

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

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

(4) where a provision of this Act, except Section 137, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to
authorize a third party, including an institution, to
make that determination;

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

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

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

“Section 105. Receipt of written communications.

(1) Unless otherwise agreed by the parties:

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

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

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

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

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

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

“Section 107. Extent of court intervention. In matters
governed by this Act, no court shall intervene except
where so provided in this Act.”

Section 11. The Code of the Federated States of Micronesia
(Annotated), as amended, is hereby further amended by enacting a
new section 108 to chapter 1 of title 44 to read as follows:

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

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

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

"Section 109. Form of arbitration agreement.

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

(2) The arbitration agreement shall be in writing.
In writing includes an agreement recorded in any form and
contained in, including but not limited to, an electronic
communication whose information is accessible so as to be
useable for subsequent reference, an exchange of
statements of claim and defense in which the existence of
an agreement is alleged by one party and not denied by
the other, a contract that makes reference to any
document containing an arbitration clause, provided that
the reference is such as to make that clause part of the
contract.”

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

“Section 110. Substantive claim before court.

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

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

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

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

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

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

"Section 112. Number of arbitrators.

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

(2) Failing such determination, the number of arbitrators shall be three."

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

"Section 113. Appointment of arbitrators.

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

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

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

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

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

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

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

(c) a third party, including an institution, fails to perform any function entrusted to it under such procedure, any party may request the FSM Supreme Court, as specified in Section 6, to take the necessary measure,
unless the agreement on the appointment procedure
provides other means for securing the appointment.

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

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

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

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

(2) From the time of an arbitrator’s appointment and
throughout the arbitral proceedings, an arbitrator shall
disclose to the parties without delay any circumstances likely to give rise to justifiable doubts as to he/she impartiality or independence, if he/she has not done so.

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

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

“Section 115. Challenge procedure.

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

(2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in Section 114(2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from
his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

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

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

“Section 116. Termination for failure to act diligently or inability to perform.

(1) If an arbitrator becomes de jure or de facto unable to perform his functions or fails to act without undue delay, the arbitrator may withdraw thus terminating he/she mandate or the parties may agree on the termination of he/she mandate. If a controversy on the grounds for termination remains, any party may request the FSM Supreme Court, as specified in Section 108, to decide on the termination of the mandate of the
arbitrator, which decision shall be subject to no appeal.

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

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

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

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

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

“Section 118. Competence of arbitral tribunal to rule on
its jurisdiction.

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

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

(3) The arbitral tribunal may rule on a plea referred to in subsection (2) of this Section either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question
that it has jurisdiction, any party may request within
thirty days after receiving notice of that ruling, the
FSM Supreme Court, as specified in Section 108 to decide
the issue of jurisdiction. The decision of the court
shall be subject to no appeal. While the request of the
party to the court is pending, the arbitral tribunal may
continue the arbitral proceedings and make an award. If
the arbitral tribunal decides on jurisdiction in the
award on the merits, the judicial review of the
jurisdiction of the arbitral tribunal is provided for in
Sections 143 and 145 of this Act.”

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

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

“Section 119. Power of arbitral tribunal to order
interim measures.

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

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

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

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

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

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

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

“Section 120. Request for interim measure and conditions for granting interim measures.

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

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

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

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

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

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

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

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

(2) The arbitral tribunal may grant a preliminary 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.”

Section 29. The Code of the Federated States of Micronesia
(Annotated), as amended, is hereby further amended by enacting a
new section 122 to chapter 1 of title 44 to read as follows:
“Section 122. Specific Regimes for Preliminary
Orders.
(1) Immediately after the arbitral tribunal has made
a determination in respect of an application for a
preliminary order, the arbitral tribunal shall give
notice to all parties of the request for the interim
measure, the application for the preliminary order, the
preliminary order, if any, and all other communications,
including by indicating the content of any oral
communication, between any party and the arbitral
tribunal in relation thereto.
(2) At the same time, the arbitral tribunal shall
give an opportunity to any party against whom a
preliminary order is directed to present its case at the
earliest practicable time.
(3) The arbitral tribunal shall decide promptly on
any objection to the preliminary order.
(4) A preliminary order shall expire after twenty
days from the date on which it was issued by the arbitral
tribunal. However, the arbitral tribunal may issue an
interim measure adopting or modifying the preliminary
order, after the party against whom the preliminary order
is directed has been given notice and an opportunity to
present its case.

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

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

“Section 123. Recognition and enforcement of interim
measures.

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

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

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

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

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

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

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

(b) If the court finds that:

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

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

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

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

“Section 124. Disclosure of relevant circumstances.

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

(2) The party applying for a preliminary order shall disclose to the arbitral tribunal all circumstances that are likely to be relevant to the arbitral tribunal’s determination whether to grant or maintain the order, and such obligation shall continue until the party against whom the order has been requested has had an opportunity
to present its case. Thereafter, subsection (1) of this Section shall apply.”

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

“Section 125. Modification, suspension and termination of interim measures and preliminary orders.

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

(a) upon application of any party; or

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

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

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

“Section 126. Court-ordered interim measures. A court, including the FSM Supreme Court, has the same power to issue an interim measure in an arbitration proceeding as it does in a court proceeding, regardless of the seat of
the arbitration. The court shall exercise this power in accordance with its own procedures, taking into account the specificities of international arbitration.”

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

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

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

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

“Section 128. Determination of rules of procedure.

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

(2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Act, conduct the arbitration in such manner as it considers appropriate.

The power conferred upon the arbitral tribunal includes
the power to determine the admissibility, relevance, materiality and weight of any evidence.”

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

“Section 129. Place of arbitration.

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

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

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

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

“Section 130. Commencement of arbitral proceedings.

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

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

“Section 131. Language.

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

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

(3) If the FSM Supreme Court is required to intervene in the proceedings, in accordance with the provisions of this Act, it may require the translation into English of any documents used in the arbitration proceedings and necessary to make its determination.”
Section 40. The Code of the Federated States of Micronesia
(Annotated), as amended, is hereby further amended by enacting a
new section 132 to chapter 1 of title 44 to read as follows:

"Section 132. Statement of claim and defense.

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

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

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

"Section 133. Hearings and written proceedings.

(1) Subject to any contrary agreement by the parties,
the arbitral tribunal shall decide whether to hold oral
hearings for the presentation of evidence or for oral
argument, or whether the proceedings shall be conducted
on the basis of documents and other materials. However,
unless the parties have agreed that no hearings shall be
held, the arbitral tribunal shall hold such hearings at
an appropriate stage of the proceedings, if so requested
by a party.

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

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

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

“Section 134. Default of a party. Unless otherwise
agreed by the parties, if, without showing sufficient
cause,

(1) the claimant fails to communicate his/her
statement of claim in accordance with Section 132(1), the
arbitral tribunal shall terminate the proceedings;
(2) the respondent fails to communicate his/her
statement of defense in accordance with Section 132(1),
the arbitral tribunal shall continue the proceedings
without treating such failure in itself as an admission
of the claimant’s allegations;
(3) any party fails to appear at a hearing or to
produce documentary evidence, the arbitral tribunal may
continue the proceedings and make the award on the
evidence before it.”

Section 43. The Code of the Federated States of Micronesia
(Annotated), as amended, is hereby further amended by enacting a
new section 135 to chapter 1 of title 44 to read as follows:
“Section 135. Expert appointed by arbitral tribunal.
1) Unless otherwise agreed by the parties, the
arbitral tribuna:
(a) may appoint one or more experts to report to
it on specific issues to be determined by the arbitral
tribunal;
(b) may require a party to give the expert any
relevant information or to produce, or to provide access
to, any relevant documents, goods or other property for
his inspection.
(2) Unless otherwise agreed by the parties, if a
party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his/her written or oral report, participate in a hearing where the parties have the opportunity to put questions to him/her and to present expert witnesses in order to testify on the points at issue.”

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

“Section 136. Court assistance in taking evidence. The arbitral tribunal or a party, with the approval of the arbitral tribunal, may request assistance in taking evidence from a competent court in the Federated States of Micronesia. The court may execute the request within its competence and according to its rules on taking evidence.”

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

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

“Section 137. Rules applicable to substance of dispute.

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

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

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

(4) 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.”

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

“Section 138. Decision-making by panel of arbitrators.
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.”

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

“Section 139. Settlement.

(1) 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.

(2) An award on agreed terms shall be made in accordance with the provisions of Section 140 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.”

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

“Section 140. Form and contents of award.

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

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

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

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

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

“Section 141. Termination of proceedings.

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

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

(a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his/her part in
obtaining a final settlement of the dispute;

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

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

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

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

“Section 142. Correction and interpretation of award;
additional award.

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

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

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.
If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.

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

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

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

(5) The provisions of Section 140 shall apply to a correction or interpretation of the award or to an additional award.”
(Annotated), as amended, is hereby further amended by enacting a new subchapter 8 of chapter 1 of title 44 which shall be entitled "Setting Aside an Award". Section 53. The Code of the Federated States of Micronesia (Annotated), as amended, is hereby further amended by enacting a new section 143 to chapter 1 of title 44 to read as follows:

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

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

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

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

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

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

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings; or
(iv) the party making the application was unable to present his/her case;

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

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

(b) the court finds that:

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

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

(3) An application for setting aside may not be made after three months have elapsed from the date on which
the party making that application had received the award
or, if a request had been made under Section 142, from
the date on which that request had been disposed of by
the arbitral tribunal.

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

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

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

“Section 144. Recognition and enforcement.

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

(2) 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 English, the court may request the party to supply an English translation.”

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

“Section 145. Grounds for refusing recognition or enforcement.

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

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

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

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

(iii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral
proceedings or was otherwise unable to present his/her case; or

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

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

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

(b) if the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of the Federated States of Micronesia; or
(ii) the recognition or enforcement of the award would be contrary to the public policy of the Federated States of Micronesia.

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

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

Date: 5/18/23

Introduced by: /s/ Isaac V. Figir

Isaac V. Figir