




Office of the Governor of Guam

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Office of the People's Speaker
vicente (ben) c. pangelinan

MAY 11 2004

TIME: 5:07 () AM () PM
RECEIVED BY: 

Felix Perez Camacho
Governor

Kaleo Scott Moylan
Lieutenant Governor

11 MAY 2004

Honorable Vicente C. Pangelinan
Speaker
I Mina Bente Siete na Liheslaturan Guåhan
155 Hessler Street
Hagåtña, Guam 96910

Dear Mr. Speaker:

Transmitted herewith is Substitute Bill No. 172, "AN ACT TO REPEAL §§ 42101 THROUGH 42111 OF CHAPTER 42 AND TO ENACT A NEW CHAPTER 42-A RELATIVE TO INTERNATIONAL COMMERCIAL ARBITRATIONS AND TO ENACT A NEW CHAPTER 42-B RELATIVE TO COURT-REFERRED ARBITRATION AND ALTERNATIVE DISPUTE RESOLUTION; TO REPEAL §§ 43101 THROUGH 43108 OF CHAPTER 43 AND TO ENACT A NEW CHAPTER 43-A RELATIVE TO GUAM MEDIATION AND TO ENACT A NEW CHAPTER 43-B RELATIVE TO COURT-REFERRED MEDIATION, ALL CHAPTERS IN TITLE 7, GUAM CODE ANNOTATED," which I have signed into law on May 6, 2004, as Public Law 27-81.

Mr. Speaker, I would like to thank you and your colleagues in *I Mina Bente Siete na Liheslaturan Guåhan* as well as Guam's judiciary, the Guam Bar Association and the many private sector stakeholders for supporting this legislation. With the passage of Bill No. 172, Guam can provide flexible alternatives for conflict resolution for members of our community and provide much-needed relief for congested court dockets.

Furthermore, the passage of Bill No. 172 provides Guam with laws responsive to the demands of the international arbitration community. It is also the first step in developing and marketing Guam as a venue of choice to settle international commercial arbitration cases. This in effect will increase the number of business travelers to Guam who will spend money on lodging, food and transportation, among other things, and will generate taxable Guam sourced income. The improved yield from this segment of the tourism market, who spend more than the typical leisure traveler, will, for local wage earners in the tourism industry, translate into either more jobs or enhanced security of current jobs.

As the Guam Economic Development and Commerce Authority continues to spearhead the development of regional arbitration and mediation opportunities for Guam, Bill No. 172, now

Public Law 27-81, provides it with the most effective tool for developing an effective and focused marketing campaign for Guam.

Sinseru yan Magâhet,

A handwritten signature in black ink, appearing to read 'Camacho', with a long horizontal flourish extending to the right.

FELIX P. CAMACHO

I Maga'lâhen Guåhan

Governor of Guam

Attachment: copy attached of signed bill

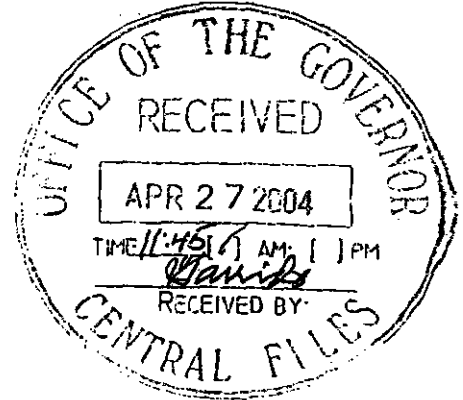
cc: The Honorable Tina Rose Muña-Barnes
Senator and Legislative Secretary



MINA' BENTE SIETE NA LIHESLATURAN GUÅHAN
TWENTY-SEVENTH GUAM LEGISLATURE
155 Hessler Place, Hagåtña, Guam 96910

April 27, 2004


The Honorable Felix P. Camacho
I Maga'lahen Guåhan
Ufisinan I Maga'lahi
Hagåtña, Guam 96910



Dear *Maga'lahi* Camacho:

Transmitted herewith are Bill Nos. 178(LS), 193(COR), 256(LS), 261(LS) and 277(COR), and Substitute Bill Nos. 17(LS), 115(COR), 119(COR), 146(LS), 172(LS), 175(LS), 177(LS), 183(COR), 220(COR), 230(LS), 231(LS), 249(COR), 255(LS) and 258(LS) which were passed by *I Mina' Bente Siete Na Liheslaturan Guåhan* on April 23, 2004.

Sincerely,


TINA ROSE MUNA BARNES
Legislative Secretary

Enclosures (19)

CFI-0404-2294

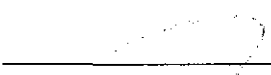
I MINA'BENTE SIETE NA LIHESLATURAN GUÅHAN
2004 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that Substitute Bill No. 172 (LS), "AN ACT TO REPEAL §§ 42101 THROUGH 42111 OF CHAPTER 42 AND TO ENACT A NEW CHAPTER 42-A RELATIVE TO INTERNATIONAL COMMERCIAL ARBITRATIONS AND TO ENACT A NEW CHAPTER 42-B RELATIVE TO COURT-REFERRED ARBITRATION AND ALTERNATIVE DISPUTE RESOLUTION; TO REPEAL §§ 43101 THROUGH 43108 OF CHAPTER 43 AND TO ENACT A NEW CHAPTER 43-A RELATIVE TO GUAM MEDIATION AND TO ENACT A NEW CHAPTER 43-B RELATIVE TO COURT-REFERRED MEDIATION, ALL CHAPTERS IN TITLE 7, GUAM CODE ANNOTATED," was on the 23rd day of April, 2004, duly and regularly passed.

Attested:



Tina Rose Muña Barnes
Senator and Legislative Secretary


vicente (ben) c. pangelinan
Speaker

This Act was received by I Maga'lahaen Guåhan this 27 day of April, 2004,
at 11:45 o'clock A. .M.


Assistant Staff Officer
Maga'lahaen's Office

APPROVED:


FELIX P. CAMACHO
I Maga'lahaen Guåhan

Date: April 30, 2004

Public Law No. 27-81

I MINA'BENTE SIETE NA LIHESLATURAN GUÅHAN
2003 (FIRST) Regular Session

Bill No. 172 (LS)

As substituted by the Committee on
Judiciary and Transportation and amended
on the Floor.

Introduced by:

Committee on Judiciary and
Transportation

by request of *I Maga'lahaen Guåhan*,
the Governor of Guam, in
accordance with the Organic Act
of Guam, as amended.

**AN ACT TO REPEAL §§ 42101 THROUGH 42111 OF
CHAPTER 42 AND TO ENACT A NEW CHAPTER 42-A
RELATIVE TO INTERNATIONAL COMMERCIAL
ARBITRATIONS AND TO ENACT A NEW CHAPTER 42-B
RELATIVE TO COURT-REFERRED ARBITRATION AND
ALTERNATIVE DISPUTE RESOLUTION; TO REPEAL §§
43101 THROUGH 43108 OF CHAPTER 43 AND TO ENACT
A NEW CHAPTER 43-A RELATIVE TO GUAM
MEDIATION AND TO ENACT A NEW CHAPTER 43-B
RELATIVE TO COURT-REFERRED MEDIATION, ALL
CHAPTERS IN TITLE 7, GUAM CODE ANNOTATED.**

Section 1. Legislative Findings and Intent.

Section 2. Sections 42101, 42102, 42103, 42104, 42105, 42106, 42107, 42108, 42109, 42110 and 42111 of Chapter 42, Title 7, Guam Code Annotated, are hereby *repealed*.

Section 3. A new Chapter 42-A of Title 7, Guam Code Annotated, is hereby enacted to *add* new §§ 42101 through 42801.

Section 4. A new Chapter 42-B of Title 7, Guam Code Annotated, is hereby enacted to *add* new §§ 42901 through 42908.

Section 5. Sections 43101, 43102, 43103, 43104, 43105, 43106, 43107 and 43108 of Chapter 43, Title 7, Guam Code Annotated, are hereby *repealed*.

Section 6. A new Chapter 43-A of Title 7, Guam Code Annotated, is hereby enacted to *add* new §§ 43101 through 43507.

Section 7. A new Chapter 43-B of Title 7, Guam Code Annotated, is hereby enacted to *add* new §§ 43601 through 43602.

Section 8. Severability.

Section 9. Effective Dates.

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*
3 recognizes that full, formal court litigation of claims can impose large
4 economic burdens on parties and can delay resolution of disputes for
5 considerable periods. *I Liheslaturan Guåhan* also recognizes that an alternative
6 dispute resolution procedure can improve the quality of justice by improving
7 the parties' clarity of understanding of their case, their access to evidence, and
8 their satisfaction with the process and result. This Act serves to provide
9 quicker, less expensive and potentially more satisfying alternatives to
10 continuing litigation without impairing the quality of justice or the right to
11 trial.

12 **Section 2.** Sections 42101, 42102, 42103, 42104, 42105, 42106, 42107,
13 42108, 42109, 42110 and 42111 of Chapter 42, Title 7, Guam Code Annotated,
14 are hereby *repealed*.

1 time of the conclusion of that agreement, their places
2 of business in different States; or

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

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

7 (B) any place where a substantial part of the
8 obligations of the commercial relationship is to
9 be performed or the place with which the subject
10 matter of the dispute is most closely connected;

11 or

12 (C) the parties have expressly agreed that the subject
13 matter of the arbitration agreement relates to
14 more than one State.

15 (g) An arbitration is domestic if:

16 (1) The arbitration is not an international commercial
17 arbitration as defined in paragraph (f) above; and

18 (2) the place of the arbitration is Guam.

19 (h) For the purposes of paragraph (f) of this Section:

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

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

25 (i) The term commercial should be given a wide interpretation

1 so as to cover matters arising from all relationships of a
2 commercial nature, whether contractual or not. An
3 agreement is *commercial* if it arises out of a relationship of a
4 commercial nature including, but not limited to, any of the
5 following:

- 6 (1) A transaction for the supply or exchange of goods or
7 services.
- 8 (2) A distribution agreement.
- 9 (3) A commercial representation or agency.
- 10 (4) An exploitation agreement or concession.
- 11 (5) A joint venture or other, related form of industrial or
12 business cooperation.
- 13 (6) The carriage of goods or passengers by air, sea, rail, or
14 road.
- 15 (7) Construction.
- 16 (8) Insurance.
- 17 (9) Licensing.
- 18 (10) Factoring.
- 19 (11) Leasing.
- 20 (12) Consulting.
- 21 (13) Engineering.
- 22 (14) Financing.
- 23 (15) Banking.
- 24 (16) The transfer of data or technology.
- 25 (17) Intellectual or industrial property, including

1 trademarks, patents, copyrights and software
2 programs.

3 (18) Professional services.

4 (19) Investment.

5 (j) This Chapter 42-A shall not affect any other law of Guam by
6 virtue of which certain disputes may not be submitted to
7 arbitration or may be submitted to arbitration only
8 according to provisions other than those of this Chapter 42-
9 A including, but not limited to, arbitrations conducted
10 pursuant to 10 G.C.A. §§ 10100-10147.

11 **§42102. Definitions and Rules of Interpretation.** For the
12 purposes of this Chapter 42-A:

13 (a) *Arbitration* means any arbitration whether or not
14 administered by a permanent arbitral institution.

15 (b) *Arbitral tribunal* means a sole arbitrator or a panel of
16 arbitrators.

17 (c) *Court* means a body or organ of the judicial system of a
18 State.

19 (d) Where a provision of this Chapter 42-A, except Section
20 42601, leaves the parties free to determine a certain issue,
21 such freedom includes the right of the parties to authorize a
22 third party, including an institution, to make that
23 determination.

24 (e) Where a provision of this Chapter 42-A refers to the fact that
25 the parties have agreed or that they may agree or in any

1 other way refers to an agreement of the parties, such
2 agreement includes any arbitration rules referred to in that
3 agreement.

4 (f) Where a provision of this Chapter 42-A, other than in
5 Sections 42508 and 42605(b)(1), refers to a claim, it also
6 applies to a counter-claim, and where it refers to a defense, it
7 also applies to a defense to such counter-claim.

8 (g) *Writing* means handwriting, typewriting, printing,
9 photostatting, photographing, photocopying, transmitting
10 by electronic mail or facsimile, and every other means of
11 recording upon any tangible thing, any form of
12 communication or representation, including letters, words,
13 pictures, sounds, or symbols, or combinations thereof, and
14 any record thereby created, regardless of the manner in
15 which the record has been stored.

16 (h) *Award* means any award which meets the requirements of
17 this Chapter 42-A and was awarded by any arbitral tribunal
18 formed under the terms of this Chapter 42-A.

19 **§42103. Receipt of Written Communications.**

20 (a) Unless otherwise agreed by the parties:

21 (1) Any written communication is deemed to have been
22 received if it is delivered to the addressee personally
23 or if it is delivered at his or her place of business,
24 habitual residence or mailing address; if none of these
25 can be found after making a reasonable inquiry, a

1 written communication is deemed to have been
2 received if it is sent to the addressee's last-known
3 place of business, habitual residence or mailing
4 address by registered letter or any other means which
5 provides a record of the attempt to deliver it; and

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

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

10 **§42104. Waiver of Right to Object.** A party who knows that any
11 provision of this Chapter 42-A from which the parties may derogate or
12 any requirement under the arbitration agreement has not been complied
13 with and yet proceeds with the arbitration without stating his or her
14 objection to such non-compliance without undue delay or, if a time-limit
15 is provided therefor, within such period of time, shall be deemed to
16 have waived his or her right to object.

17 **§42105. Extent of Court Intervention.** In matters governed by
18 this Chapter 42-A, no court shall intervene except where so provided in
19 this Chapter 42-A or federal law.

20 **§42106. Court or Other Authority for Certain Functions of**
21 **Arbitration Assistance and Supervision.** The functions referred to in
22 Sections 42203, 42302, 42304, 42305, 42401 and 42402 shall be performed
23 by the Superior Court of Guam.

1 **§42107. Authority to Enact Rules.** The Supreme Court of Guam
2 is authorized to enact rules and procedures implementing the
3 provisions of this Chapter 42-A.

4 **ARTICLE II. ARBITRATION AGREEMENT.**

5 **§42201. Definition and Form of Arbitration Agreement.**

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

12 (b) The arbitration agreement shall be in writing. An agreement
13 is in writing if it is contained in a document signed by the
14 parties or in an exchange of letters, telex, facsimile, electronic
15 mail, telegrams or other means of telecommunication which
16 provide a record of the agreement, or in an exchange of
17 statements of claim and defense in which the existence of an
18 agreement is alleged by one party and not denied by
19 another. The reference in a contract to a document
20 containing an arbitration clause constitutes an arbitration
21 agreement provided that the contract is in writing and the
22 reference is such as to make that clause part of the contract.

23 **§42202. Arbitration Agreement and Substantive Claim Before**
24 **Court.**

25 (a) A court before which an action is brought in a matter which

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

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

10 **§42203. Consolidation.**

11 (a) A party to an arbitration agreement may petition the court
12 or other authority specified in Section 42106 to consolidate
13 separate arbitration proceedings, and the court or other
14 authority specified in Section 42106 may order consolidation
15 of separate arbitration proceedings when:

16 (1) Separate arbitration agreements or proceedings exist
17 between the same parties; or one party is a party to a
18 separate arbitration agreement or proceeding with a
19 third party; and

20 (2) The disputes arise from the same transactions or series
21 of related transactions; and

22 (3) There is a common issue or issues of law or fact
23 creating the possibility of conflicting rulings by more
24 than one arbitrator or panel of arbitrators.

25 (b) If all of the applicable arbitration agreements name the same

1 arbitrator, arbitration panel, or arbitration tribunal, the court
2 or other authority specified in Section 42106, if it orders
3 consolidation, shall order all matters to be heard before the
4 arbitrator, panel, or tribunal agreed to by the parties. If the
5 applicable arbitration agreements name separate arbitrators,
6 panels, or tribunals, the court or other authority specified in
7 Section 42106, if it orders consolidation, shall, in the absence
8 of an agreed method of selection by all parties to the
9 consolidated arbitration, appoint an arbitrator in accordance
10 with the procedures set forth in Section 42302.

11 (c) In the event that the arbitration agreements in consolidated
12 proceedings contain inconsistent provisions, the court or
13 other authority specified in Section 42106 shall resolve such
14 conflicts and determine the rights and duties of the various
15 parties to achieve substantial justice under all the
16 circumstances.

17 (d) The court or other authority specified in Section 42106 may
18 exercise its discretion under this Section to deny
19 consolidation of separate arbitration proceedings or to
20 consolidate separate arbitration proceedings only as to
21 certain issues, leaving other issues to be resolved in separate
22 proceedings.

23 (e) Nothing in this Section shall be construed to prevent the
24 parties to two or more arbitrations from agreeing to
25 consolidate those arbitrations and taking any steps that are

1 necessary to effect that consolidation.

2 **ARTICLE III. COMPOSITION OF ARBITRAL TRIBUNAL.**

3 **§42301. Number of Arbitrators.**

- 4 (a) The parties are free to determine the number of arbitrators.
5 (b) Failing such determination, the number of arbitrators shall
6 be one.

7 **§42302. Appointment of Arbitrators.**

- 8 (a) No person shall be precluded by reason of his or her
9 nationality from acting as an arbitrator, unless otherwise
10 agreed by the parties in the interest of neutrality.
11 (b) The parties are free to agree on a procedure of appointing
12 the arbitrator or arbitrators, subject to the provisions of
13 paragraphs (d) and (e) of this Section.
14 (c) Failing such agreement, appointment of arbitrators shall be
15 made as directed by the court.
16 (d) Where, under an appointment procedure agreed upon by
17 the parties,
18 (1) a party fails to act as required under such procedure,
19 or
20 (2) the parties, or two arbitrators, are unable to reach an
21 agreement expected of them under such procedure, or
22 (3) a third party, including an institution, fails to perform
23 any function entrusted to it under such procedure, any
24 party may request the court or other authority
25 specified in Section 42106 to take the necessary

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

- 4 (e) A decision on a matter entrusted by paragraphs (c) or (d) of
5 this Section to the court or other authority specified in
6 Section 42106 shall be subject to no appeal. The court or
7 other authority, in appointing an arbitrator, shall have due
8 regard to any qualifications required of the arbitrator by the
9 agreement of the parties and to such considerations as are
10 likely to secure the appointment of an independent and
11 impartial arbitrator and, in the case of a sole or third
12 arbitrator, shall take into account as well the advisability of
13 appointing an arbitrator of a nationality other than those of
14 the parties.

15 **§42303. Grounds for Challenge.**

- 16 (a) When a person is approached in connection with his or her
17 possible appointment as an arbitrator, he or she shall
18 disclose any circumstances reasonably likely to give rise to
19 material justifiable doubts as to his or her impartiality or
20 independence. An arbitrator, from the time of his or her
21 appointment and throughout the arbitral proceedings, shall
22 without delay disclose any such circumstances to the parties
23 unless they have already been informed of them by him or
24 her.
- 25 (b) An arbitrator may be challenged only if circumstances exist

1 that give rise to material justifiable doubts as to his or her
2 impartiality or independence, or if he or she does not
3 possess qualifications agreed to by the parties. A party may
4 challenge an arbitrator appointed by him or her, or in whose
5 appointment he or she has participated, only for reasons of
6 which he or she becomes aware after the appointment has
7 been made.

8 **§42304. Challenge Procedure.**

- 9 (a) The parties are free to agree on a procedure for challenging
10 an arbitrator, and the decision reached pursuant to that
11 procedure shall be final.
- 12 (b) Failing such agreement, a party who intends to challenge an
13 arbitrator shall, within fifteen days after becoming aware of
14 his or her appointment as an arbitrator or within fifteen days
15 after becoming aware of any circumstance referred to in
16 Section 42303(b), send a written statement of the reasons for
17 the challenge to the arbitral tribunal. Unless the challenged
18 arbitrator withdraws from his or her office or the other party
19 agrees to the challenge, the arbitral tribunal shall decide on
20 the challenge. If such a challenge is not successful, the
21 challenging party may request, within thirty days after
22 having received notice of the decision rejecting the
23 challenge, the Court or other authority specified in Section
24 42106 to decide on the challenge, which decision shall be
25 subject to no appeal; while such a request is pending, the

1 arbitral tribunal, including the challenged arbitrator, may
2 continue the arbitral proceedings and make an award.

3 **§42305. Failure or Impossibility to Act.**

- 4 (a) If an arbitrator becomes *de jure* or *de facto* unable to perform
5 his or her functions or for other reasons fails to act without
6 undue delay, his or her mandate terminates if he or she
7 withdraws from his or her office or if the parties agree on
8 the termination.
- 9 (b) If a controversy remains concerning any of the grounds
10 referred to in Subsection (a), any party may request the
11 arbitral tribunal to terminate the relevant arbitrator's
12 mandate, provided such request is made to the arbitral
13 tribunal within fifteen days of becoming aware of the
14 grounds referred to in Subsection (a). The arbitral tribunal
15 shall, in its sole discretion, determine whether termination of
16 the arbitrator's mandate is appropriate.
- 17 (c) If the arbitral tribunal does not terminate the mandate, the
18 challenging party may request the court or other authority
19 specified in Section 42106 to decide on the termination of the
20 mandate, provided that such request is made within thirty
21 days of the arbitral tribunal's decision. If no such request is
22 received by the court or other authority specified in Section
23 42106 within thirty days of the arbitral tribunal's decision,
24 the decision of the arbitral tribunal is final and binding. If
25 the court or other authority specified in Section 42106

1 receives a request to decide on the termination of the
2 mandate, the decision shall be final and subject to no appeal.

- 3 (d) If, under this Section or Section 42304(b), an arbitrator
4 withdraws from his or her office or a party agrees to the
5 termination of the mandate of an arbitrator, this does not
6 imply acceptance of the validity of any ground referred to in
7 this Section or Section 42304(b).

8 **§42306. Appointment of Substitute Arbitrator.** Where the
9 mandate of an arbitrator terminates under Sections 42304 or 42305 or
10 because of his or her withdrawal from office for any other reason or
11 because of the revocation of his or her mandate by agreement of the
12 parties or in any other case of termination of his or her mandate, a
13 substitute arbitrator shall be appointed according to the rules that were
14 applicable to the appointment of the arbitrator being replaced. Where
15 any arbitrator is replaced, the entire membership of the arbitral tribunal
16 may require hearings previously held to be repeated, unless otherwise
17 agreed to by the parties.

18 **§42307. Immunity of Arbitrators.**

- 19 (a) An arbitrator, and those acting pursuant to the order or rules
20 of the arbitrator as his or her employees or agents, shall not
21 be held liable for any action performed or omission made in
22 the course of their official duties undertaken pursuant to this
23 Chapter 42-A.
- 24 (b) The institution which administers the arbitration shall not be
25 liable for any action performed or omission made in

1 connection with any arbitration, unless the action performed
2 or omission made is committed with reckless disregard with
3 respect to the rights of one or more of the parties.

- 4 (c) No person who has served as an arbitrator may act as a
5 representative or counsel of a party in any judicial
6 proceedings in respect of a dispute that is the subject of the
7 arbitration proceedings. No person who has served as an
8 arbitrator may be a witness in any such proceedings.

9 **§42308. Arbitrator Writings.** An arbitrator is not required to
10 disclose to the parties, the public, or anyone other than the arbitrator,
11 any writing produced by the arbitrator that has not been deliberately
12 communicated by the arbitrator to one or more of the parties, unless all
13 parties to the arbitration expressly agree otherwise, in writing, or
14 disclosure of the writing is otherwise required by court rule, local rule
15 or other law.

16 **§42309. Ethical and Training Standards for Neutrals.**

- 17 (a) Where the place of the arbitration is in Guam, a person
18 serving as an arbitrator shall comply with the ethics and
19 training standards for neutrals adopted by the Supreme
20 Court of Guam pursuant to this Section. The Supreme Court
21 of Guam shall adopt ethical and training standards for all
22 neutral arbitrators and mediators.
- 23 (b) Subsection (a) does not apply to an arbitration conducted
24 pursuant to the terms of a public or private sector collective
25 bargaining agreement.

1 **ARTICLE IV. JURISDICTION OF ARBITRAL TRIBUNAL.**

2 **§42401. Competence of Arbitral Tribunal to Rule on its**
3 **Jurisdiction.**

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

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

22 (c) The arbitral tribunal may rule on a plea referred to in
23 Paragraph (b) of this Section either as a preliminary question
24 or in an award on the merits. If the arbitral tribunal rules as
25 a preliminary question that it has jurisdiction, any party may

1 request, within thirty days after having received notice of
2 that ruling, the court specified in Section 42106 to decide the
3 matter, which decision shall be subject to no appeal; while
4 such a request is pending, the arbitral tribunal may continue
5 the arbitral proceedings and make an award.

6 **§42402. Power of Arbitral Tribunal to Order Interim Measures.**

- 7 (a) Unless otherwise agreed by the parties, the arbitral tribunal
8 may, at the request of a party, order any party to take such
9 interim measure of protection as the arbitral tribunal may
10 consider necessary in respect of the subject matter of the
11 dispute. The arbitral tribunal may require any party to
12 provide appropriate security in connection with such
13 measure.
- 14 (b) Provided a party can demonstrate by clear and convincing
15 evidence that a request for such interim measures to the
16 arbitral tribunal would prejudice its rights, any party may
17 apply to the court defined in Section 42106 for interim relief.
18 Measures which the court may grant in connection with a
19 pending arbitration include, but are not limited to,
20 preliminary injunction granted in order to protect trade
21 secrets or to conserve goods which are the subject matter of
22 the arbitral dispute.
- 23 (c) In considering a request for interim relief, the court shall
24 give preclusive effect to any and all findings of fact of the
25 arbitral tribunal.

1 (d) Applications may be made to the court under Subsection (b)
2 of this Section on an *ex parte* basis.

3 **§42403. Arbitration Agreement and Interim Measures by Court.**

4 It is not incompatible with an arbitration agreement for a party to
5 request, before the constitution of an arbitral tribunal, from a court an
6 interim measure of protection and for a court to grant such measure.

7 **§42404. Interim Award, Enforcement.** The arbitral tribunal may,
8 at any time during the arbitral proceedings, make an interim,
9 interlocutory or partial arbitral award on any matter with respect to
10 which it may make a final arbitral award. The interim award may be
11 enforced in the same manner as a final arbitral award. This interim
12 award shall not have the effect of terminating the proceedings.

13 **§42405. Interest.** Unless otherwise agreed to by the parties; every
14 person who is entitled to recover damages certain, or capable of being
15 made certain by calculation, under an arbitration award, and the right to
16 recover which is vested in him, upon a particular day, is entitled also to
17 recover interest thereon from that day, except during such time as the
18 debtor is prevented by law, or by the act of the creditor, from paying the
19 debt. Such interest shall be added to the arbitral award.

20 **§42406. Costs.**

21 (a) Unless otherwise agreed by the parties, the costs of an
22 arbitration shall be at the discretion of the arbitral tribunal.

23 (b) In making an order for costs, the arbitral tribunal may
24 include as costs any of the following:

25 (1) The fees and expenses of the arbitrators and expert

1 witnesses;

2 (2) Legal fees and expenses;

3 (3) Any administration fees of the institution supervising
4 the arbitration, if any; and

5 (4) Any other expenses incurred in connection with the
6 arbitral proceedings.

7 (c) In making an order for costs, the arbitral tribunal may
8 specify any of the following:

9 (1) The party entitled to costs;

10 (2) The party who shall pay the costs;

11 (3) The amount of costs or method of determining that
12 amount; and

13 (4) The manner in which the costs shall be paid.

14 (d) For the purposes of this Chapter 42-A, *costs* are defined as
15 the costs described in this Section.

16 **ARTICLE V. CONDUCT OF ARBITRAL PROCEEDINGS.**

17 **§42501. Equal Treatment of Parties.** The parties shall be treated
18 with equality and each party shall be given a full opportunity of
19 presenting his or her case.

20 **§42502. Determination of Rules of Procedure.**

21 (a) Subject to the provisions of this Chapter 42-A, the parties are
22 free to agree on the procedure to be followed by the arbitral
23 tribunal in conducting the proceedings.

24 (b) Failing such agreement, the arbitral tribunal may, subject to
25 the provisions of this Chapter 42-A, conduct the arbitration

1 in such manner as it considers appropriate. The power
2 conferred upon the arbitral tribunal includes the power to
3 determine the admissibility, relevance, materiality and
4 weight of any evidence.

5 **§42503. Place of Arbitration.**

6 (a) The parties are free to agree on the location of arbitration
7 within Guam.

8 (b) Notwithstanding the provisions of paragraph (a) of this
9 Section, the arbitral tribunal may, unless otherwise objected
10 to by the parties, meet at any place it considers appropriate
11 for consultation among its members, for hearing witnesses,
12 experts or the parties, or for inspection of goods, other
13 property or documents.

14 **§42504. Commencement of Arbitral Proceedings.** Unless
15 otherwise agreed by the parties, the arbitral proceedings in respect of a
16 particular dispute commence on the date on which a request for that
17 dispute to be referred to arbitration is received by:

18 (a) the institution nominated by the parties. Such a request
19 must include a demand for arbitration that includes the
20 contact details for the respondent to the arbitral proceeding;
21 and the institution nominated by the parties, upon receipt of
22 the request, shall notify the respondent of the receipt of the
23 request for arbitration; or

24 (b) the respondent, if no such institution referred to in
25 Subsection (a) of this Section has been nominated by the

1 parties.

2 **§42505. Language.**

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

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

15 **§42506. Statements of Claim and Defense.**

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

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

6 **§42507. Hearings and Written Proceedings.**

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

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

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

24 (d) Unless otherwise agreed by the parties, all oral hearings and
25 meetings in arbitral proceedings shall be held in camera.

1 **§42508. Default of a Party.**

2 Unless otherwise agreed by the parties, if, without showing
3 sufficient cause,

4 (a) the claimant fails to communicate his or her statement of
5 claim in accordance with Section 42506(a), the arbitral
6 tribunal shall terminate the proceedings;

7 (b) the respondent fails to communicate his or her statement of
8 defense or the claimant has failed to communicate his or her
9 statement of reply (where applicable), in accordance with
10 Section 42506(a), the arbitral tribunal may impose monetary
11 sanctions on such party, and grant such party an extension
12 of time to file a defense or reply. If such party remains in
13 noncompliance with Section 42506(a) after the extension has
14 expired, the tribunal may enter a default award in favor of
15 the opposing party;

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

20 **§42509. Expert Appointed by Arbitral Tribunal.**

- 21 (a) Unless otherwise agreed by the parties, the arbitral tribunal:
- 22 (1) may appoint one or more experts to report to it on
23 specific issues to be determined by the arbitral
24 tribunal; or
- 25 (2) may require a party to give the expert any relevant

1 information or to produce, or to provide access to, any
2 relevant documents, goods or other property for his or
3 her inspection.

4 (b) Unless otherwise agreed by the parties, if a party so requests
5 or if the arbitral tribunal considers it necessary, the expert
6 shall, after delivery of his or her written or oral report,
7 participate in a hearing where the parties have the
8 opportunity to put questions to him or her and to present
9 expert witnesses in order to testify on the points at issue.

10 **§42510. Court Assistance in Taking Evidence.** The arbitral
11 tribunal or a party with the approval of the arbitral tribunal may request
12 from a competent court of Guam assistance in taking evidence. The
13 court may execute the request within its competence and according to
14 its rules on taking evidence.

15 **§42511. Specific Powers of the Tribunal in Taking Evidence.**
16 The arbitrators selected, either as prescribed in this Chapter 42-A or
17 otherwise, or a majority of them, may summon, in writing, any person
18 to attend before them or any of them as a witness at a time and place
19 therein specified. The fees for such attendance shall be the same as the
20 fees of witnesses before the Superior Court of Guam. A summons to
21 produce books or tangible items therein designated, to produce
22 documents or to permit inspection of books, documents or tangible
23 items at a time and place therein specified may be joined with a
24 command to appear as witness, or may be issued separately. A
25 summons shall issue in the name of the arbitrator or arbitrators, or a

1 majority of them, and shall be directed to the said person and shall be
2 served in the same manner as subpoenas to appear and testify before
3 the court. An attorney representing a party before the arbitral tribunal
4 may issue and sign a summons on behalf of the tribunal. If any person
5 or persons so summoned shall refuse or neglect to obey said summons,
6 upon petition, the court may compel such person or persons to obey
7 said summons, or punish said person or persons for contempt in the
8 same manner provided by law for failure to obey a subpoena.

9 **§42512. Choice of Parties; Qualification.** The parties may appear
10 in person or be represented or assisted by any person of their choice. A
11 person assisting or representing a party is required to be licensed to
12 practice law in at least one State.

13 **ARTICLE VI. MAKING OF AWARD AND TERMINATION OF**
14 **PROCEEDINGS.**

15 **§42601. Rules Applicable to Substance of Dispute.**

- 16 (a) The arbitral tribunal shall decide the dispute in accordance
17 with such rules of law as are chosen by the parties as
18 applicable to the substance of the dispute. Any designation
19 of the law or legal system of a given State shall be construed,
20 unless otherwise expressed, as directly referring to the
21 substantive law of that State and not to its conflict of laws
22 rules.
- 23 (b) Failing any designation by the parties, the arbitral tribunal
24 shall apply the law determined by the conflict of laws rules
25 which it considers applicable.

1 (c) The arbitral tribunal shall decide *ex aequo et bono* or as
2 *Amiable Compositeur* only if the parties have expressly
3 authorized it to do so.

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

7 **§42602. Decision Making by Panel of Arbitrators.** In arbitral
8 proceedings with more than one arbitrator, any decision of the arbitral
9 tribunal shall be made, unless otherwise agreed by the parties, by a
10 majority of all its members. However, questions of procedure may be
11 decided by a presiding arbitrator, if so authorized by the parties or all
12 members of the arbitral tribunal.

13 **§42603. Settlement.**

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

19 (b) An award on agreed terms shall be made in accordance with
20 the provisions of Section 42604 and shall state that it is an
21 award. Such an award has the same status and effect as any
22 other award on the merits of the case.

23 **§42604. Form and Contents of Award.**

24 (a) The award shall be made in writing and shall be signed by
25 the arbitrator or arbitrators. In arbitral proceedings with

1 more than one arbitrator, the signatures of the majority of all
2 members of the arbitral tribunal shall suffice, provided that
3 the reason for any omitted signature is stated.

4 (b) The award shall state the reasons upon which it is based,
5 unless the parties have agreed that no reasons are to be
6 given or the award is an award on agreed terms under
7 Section 42603.

8 (c) The award shall state its date and the place of arbitration as
9 determined in accordance with Section 42503(a). The award
10 shall be deemed to have been made at that place.

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

14 **§42605. Termination of Proceedings.**

15 (a) The arbitral proceedings are terminated by the final award
16 or by an order of the arbitral tribunal in accordance with
17 Paragraph (b) of this Section.

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

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

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

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

4 (c) The mandate of the arbitral tribunal terminates with the
5 termination of the arbitral proceedings, subject to the
6 provisions of Sections 42606 and 42701(e).

7 **§42606. Correction and Clarification of Award; Additional**
8 **Award.**

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

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

15 (2) if so agreed by the parties, a party, with notice to the
16 other party, may request the arbitral tribunal to give a
17 clarification of a specific point or part of the award. If
18 the arbitral tribunal considers the request to be
19 justified, it shall make the correction or give the
20 clarification within thirty days of receipt of the
21 request. The clarification shall form part of the award.

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

25 (c) Unless otherwise agreed by the parties, a party, with notice

1 to the other party, may request, within thirty days of receipt
2 of the award, the arbitral tribunal to make an additional
3 award as to claims presented in the arbitral proceedings but
4 omitted from the award. If the arbitral tribunal considers
5 the request to be justified, it shall make the additional award
6 within sixty days.

7 (d) The arbitral tribunal may extend, if necessary, the period of
8 time within which it shall make a correction, clarification or
9 an additional award under paragraphs (a) or (c) of this
10 Section.

11 (e) The provisions of Section 42604 shall apply to a correction or
12 clarification of the award or to an additional award.

13 **ARTICLE VII. ENFORCEMENT OF CERTAIN AWARDS.**

14 **§42701. Application for Setting Aside as Exclusive Recourse** 15 **Against Arbitral Award.**

16 (a) This Section only applies where the place of the arbitration is
17 Guam and neither the Federal Arbitration Act nor the New
18 York Convention on the Recognition and Enforcement of
19 Foreign Arbitral Awards apply.

20 (b) In any of the following cases the court may make an order
21 vacating the award upon the application of any party to the
22 arbitration:

23 (1) where the award was procured by corruption, fraud,
24 or undue means;

25 (2) where there was evident partiality or corruption in the

1 arbitrators, or either of them;

2 (3) where the arbitrators were guilty of misconduct in
3 refusing to postpone the hearing, upon sufficient cause
4 shown, or in refusing to hear evidence that is pertinent
5 and material to the controversy; or of any other
6 misbehavior by which the rights of any party have
7 been prejudiced; or

8 (4) where the arbitrators exceeded their powers, or so
9 imperfectly executed them that a mutual, final, and
10 definite award upon the subject matter submitted was
11 not made.

12 (c) If an award is vacated and the time within which the
13 agreement required the award to be made has not expired,
14 the court may, in its discretion, direct a rehearing by the
15 arbitrators.

16 (1) If an award is vacated because of a violation of (b)(2)
17 or (3) above, the court shall direct a rehearing by the
18 arbitrator or arbitrators found not to be in violation of
19 (b)(2) or (3) and the additional arbitrator or arbitrators
20 shall be selected or appointed pursuant to Article III of
21 this Chapter.

22 (d) Notice of a motion to vacate an award must be served upon
23 the adverse party or his attorney within three months after
24 the award is filed or delivered. If the adverse party is a
25 resident of Guam, such service shall be made upon the

1 adverse party or his attorney as prescribed by law for
2 service of notice of motion in an action in the same court. If
3 the adverse party shall be a nonresident, then the notice of
4 the application shall be served in like manner as other
5 process of the court. For the purposes of the motion, any
6 judge who might make an order to stay the proceedings in
7 an action brought in the same court may make an order, to
8 be served with the notice of motion, staying the proceedings
9 of the adverse party to enforce the award.

- 10 (e) The court, when asked to set aside an award, may, where
11 appropriate and so requested by a party, suspend the setting
12 aside proceedings for a period of time determined by it in
13 order to give the arbitral tribunal an opportunity to resume
14 the arbitral proceedings or to take such other action as, in
15 the arbitral tribunal's opinion, will eliminate the grounds for
16 setting aside.

17 **§42702. Recognition and Enforcement, Papers Filed with Order**
18 **on Motions; Judgment; Docketing; Force and Effect; Enforcement.**

- 19 (a) This Section only applies where the place of the arbitration is
20 Guam and neither the Federal Arbitration Act nor the New
21 York Convention on the Recognition and Enforcement of
22 Foreign Arbitral Awards apply.
- 23 (b) If the parties, in their agreement, have agreed that a
24 judgment of the court shall be entered upon the award made
25 pursuant to the arbitration, and shall specify the court, then

1 at any time within one year after the award is made any
2 party to the arbitration may apply to the court so specified
3 for an order confirming the award, and thereupon the court
4 must grant such an order unless the award is vacated,
5 modified, or corrected as prescribed in Sections 42606 and
6 42701. If no court is specified in the agreement of the parties,
7 then such application may be made to the court. Notice of
8 the application shall be served upon the adverse party, and
9 thereupon the Court shall have jurisdiction of such party as
10 though he had appeared generally in the proceeding. If the
11 adverse party is a resident of Guam, such service shall be
12 made upon the adverse party or his attorney as prescribed
13 by law for service of notice of motion in an action in the
14 same court. If the adverse party shall be a nonresident, then
15 the notice of the application shall be served by the marshal
16 of any district within which the adverse party may be found
17 in like manner as other process of the court.

18 (c) The party moving for an order confirming, or setting aside
19 an award or part of an award shall, at the time such order is
20 filed with the clerk for the entry of judgment thereof, also
21 file the following papers with the clerk:

22 (1) The agreement referred to in Section 42201 as a duly
23 certified copy thereof; the selection or appointment, if
24 any, of an additional arbitrator or umpire; and each
25 written extension of the time, if any, within which to

1 make the award.

2 (2) The duly authenticated original award or duly
3 certified copy thereof.

4 (3) Each notice, affidavit, or other paper used upon an
5 application to confirm, modify, or correct the award,
6 and a copy of each order of the court upon such an
7 application.

8 (d) All documents filed pursuant to this Section if not made in
9 English, shall be filed with a duly certified translation into
10 English.

11 (e) The judgment shall be docketed as if it were rendered in an
12 action.

13 (f) The judgment so entered shall have the same force and
14 effect, in all respects, as, and be subject to all the provisions
15 of law relating to, a judgment in an action; and it may be
16 enforced as if it had been rendered in an action in the court
17 in which it is entered.

18 **ARTICLE VIII. MISCELLANEOUS ARBITRATION PROVISIONS.**

19 **§42801. Proceedings Begun by Libel in Admiralty and**
20 **Seizure of Vessel or Property.** If the basis of jurisdiction be a cause of
21 action otherwise justiciable in admiralty, then, notwithstanding
22 anything herein to the contrary, the party claiming to be aggrieved may
23 begin his proceeding hereunder by libel and seizure of the vessel or
24 other property of the other party according to the usual course of
25 admiralty proceedings, and the Superior Court of Guam shall then have

1 jurisdiction to direct the parties to proceed with the arbitration and shall
2 retain jurisdiction to enter its decree upon the award.”

3 **Section 4.** A new Chapter 42-B of Title 7, Guam Code Annotated, is
4 hereby enacted to *add* new §§ 42901 through 42908 and to read as follows:

5 **“Chapter 42-B.**

6 **ARTICLE I. COURT-REFERRED ARBITRATION AND ALTERNATIVE**
7 **DISPUTE RESOLUTION.**

8 **§42901. Actions in the Superior Court.**

- 9 (a) The Supreme Court of Guam is authorized to establish and
10 promulgate rules and procedures for arbitration for such
11 civil actions, except custody cases in which the authority is
12 separately provided for, as the Supreme Court of Guam
13 finds appropriate in order to encourage the prompt and
14 equitable resolution of disputes.
- 15 (b) The Supreme Court of Guam is authorized to establish and
16 promulgate rules and procedures for alternative dispute
17 resolution for any civil, probate or domestic actions, except
18 custody cases in which the authority is separately provided
19 for, as the Supreme Court of Guam deems appropriate in
20 order to encourage the prompt and equitable resolution of
21 disputes.
- 22 (c) Upon stipulation of the parties, any action, except custody
23 cases in which the authority is separately provided for, may
24 be submitted to an alternative method of resolving disputes
25 established by rules and procedures to be promulgated by

1 the Supreme Court of Guam, including, without limitation,
2 binding arbitration, a settlement conference, mediation,
3 early neutral evaluation, case evaluation, expert fact finding
4 or a binding short trial or any combination of these
5 processes, which method may result in a binding disposition
6 of the action.

7 (d) Arbitrators shall be selected and compensated in accordance
8 with rules adopted by the Supreme Court of Guam and the
9 Supreme Court of Guam shall further establish standards,
10 compensation and certification for all personnel conducting
11 alternative dispute resolution programs in the courts of
12 Guam.

13 (e) The rules and regulations promulgated by the Supreme
14 Court of Guam pursuant to this Section shall be submitted to
15 *I Liheslaturan Guåhan* for approval. Said rules and
16 regulations shall be deemed approved unless otherwise
17 acted upon by *I Liheslaturan Guåhan* within ninety (90) days
18 plus one (1) Legislative Day of receipt.

19 (f) Any arbitration conducted pursuant to §42901(a) shall be
20 defined as a 'court-referred arbitration.'

21 **§42902. Funding of Court-Referred Arbitration or Other**
22 **Alternative Dispute Resolution Programs.** Court-referred arbitration
23 and other alternative dispute resolution programs should be accessible
24 to all parties regardless of financial status and the Judicial Council may
25 adopt and levy fees to implement provisions of this Chapter 42-B.

1 **§42903. Finality of Award; *De Novo* Trial; Request.**

2 (a) An arbitral award resulting from a Court-referred
3 arbitration shall be final unless a request for a *de novo* trial is
4 filed within thirty days after the date the arbitrator files the
5 award with the court.

6 (b) Any party may elect to have a *de novo* trial, by court or jury,
7 as the law permits both as to law and facts. Such trial shall
8 be calendared, insofar as possible, so that the trial shall be
9 given the same place on the active list as it had prior to
10 arbitration, or shall receive civil priority on the next setting
11 calendar.

12 (c) If a party attempts to withdraw a request for a *de novo* trial,
13 after the expiration of the thirty day period referred to in
14 Subsection (a) of this Section, such an attempted withdrawal
15 shall not be valid, unless all parties stipulate in writing to
16 agree to such a withdrawal.

17 **§42904. Judgment on Trial *De Novo* Equal to or Less Favorable**
18 **than Arbitration Award for Party Electing; Payment of Nonrefundable**
19 **Costs and Fee.**

20 (a) If the judgment upon the trial *de novo* is not more favorable
21 in either the amount of damages awarded or the type of
22 relief granted for the party electing the trial *de novo* than the
23 court-referred arbitration award, the court shall order that
24 party to pay the following nonrefundable costs and fees
25 incurred in the trial *de novo*, unless the court finds, in writing

1 and upon motion, that the imposition of such costs and fees
2 would create such a substantial economic hardship as not to
3 be in the interest of justice:

4 (1) To the Superior Court, the costs of the arbitration, less
5 any amount paid pursuant to paragraph (4);

6 (2) To the other party or parties, all costs including legal
7 fees and expenses, and the party electing the trial *de*
8 *novo* shall not recover his or her costs including legal
9 fees and expenses;

10 (3) To the other party or parties, the reasonable costs of
11 the services of expert witnesses, who are not regular
12 employees of any party, actually incurred or
13 reasonably necessary in the preparation or trial of the
14 case; and

15 (4) To the other party or parties, the costs of the
16 arbitration paid by the other party or parties, pursuant
17 to Subsection (b) of Section 42908. Such costs and fees,
18 other than the compensation of the arbitrator, shall
19 include only those incurred from the time of election
20 of the trial *de novo*.

21 (b) If the party electing the trial *de novo* has proceeded in the
22 action *in forma pauperis* and has failed to obtain a more
23 favorable judgment, the costs and fees under paragraphs (2)
24 and (3) of Subsection (a) shall be imposed only as an offset
25 against any damages awarded in favor of that party.

1 (c) If the party electing the trial *de novo* has proceeded in the
2 action *in forma pauperis* and has failed to obtain a more
3 favorable judgment, the costs under paragraph (1) of
4 Subsection (a) shall be imposed only to the extent that there
5 remains a sufficient amount in the judgment after the
6 amount offset under Subsection (b) has been deducted from
7 the judgment.

8 **§42905. Award; Writing, Signature and Filing; Entry in**
9 **Judgment Book; Force and Effect.** All arbitration awards resulting
10 from court-referred arbitration shall be in writing, signed by the
11 arbitrator and filed in the court in which the action is pending. Such an
12 award shall conform with the requirements of Section 42604 of this
13 Chapter 42-B. If there is no request for a *de novo* trial and the award is
14 not vacated, the court-referred arbitration award shall be entered as a
15 judgment of the court in the amount of the award. Such award shall
16 have the same force and effect as a judgment in any civil action or
17 proceeding, except that it is not subject to appeal and it may not be
18 attacked or set aside except as provided by Section 42701 of this Chapter
19 42-B or Guam Rule of Civil Procedure 60.

20 **§42906. Reference to Arbitration Proceedings or Award During**
21 **Trial; Grounds for New Trial.** Any reference to the court-referred
22 arbitration proceedings or court-referred arbitration award during any
23 subsequent trial shall constitute grounds for a new trial and/or
24 amendment of judgment for the purposes of Guam Rule of Civil
25 Procedure 59.

1 **§42907. Application of Chapter to Actions with Public Agency**
2 **or Entity as Party.** This Article shall apply to any civil action otherwise
3 within the scope of this Chapter 42-B in which a party to the action is a
4 public agency or public entity but shall not waiver the limits on liability
5 of a public agency or public entity otherwise provided by law.

6 **§42908. Administrative Costs; Compensation of Arbitrators;**
7 **Payment.**

8 (a) All costs of court-referred arbitrations conducted pursuant
9 to Section 42901(a), including the compensation of
10 arbitrators, shall be paid for in equal shares by the parties,
11 unless the Superior Court of Guam determines that the
12 imposition of these costs would create such a substantial
13 economic hardship for any party as not to be in the interest
14 of justice. The determination as to substantial economic
15 hardship may be reviewed by the court.

16 (b) All costs of court-referred arbitrations conducted pursuant
17 Section 42901(c), including the compensation of the
18 arbitrators, shall be paid for in equal shares by the parties.”

19 **Section 5.** Sections 43101, 43102, 43103, 43104, 43105, 43106, 43107 and
20 43108 of Chapter 43, Title 7, Guam Code Annotated, are hereby *repealed*.

21 **Section 6.** A new Chapter 43-A of Title 7, Guam Code Annotated, is
22 hereby enacted to *add* new §§ 43101 through 43507 and to read as follows:

23 **“Chapter 43-A.**

24 **ARTICLE I. MEDIATION.**

25 **§43101. Short Title.** This Chapter 43-A shall be known as and

1 may be cited as the *Guam Mediation Chapter*.

2 **§43102. Definitions.** For purposes of this Chapter 43-A, the
3 following terms apply:

4 (a) *Mediation* means a process in which a neutral person or
5 persons facilitate communication between the disputants to
6 assist them in reaching a mutually acceptable agreement.

7 (b) *Mediator* means a neutral person who conducts a mediation.
8 *Mediator* includes any person designated by a mediator
9 either to assist in the mediation or to communicate with the
10 participants in preparation for a mediation.

11 (c) *Mediation consultation* means a communication between a
12 person and a mediator for the purpose of initiating,
13 considering, or reconvening a mediation or retaining the
14 mediator.

15 (d) *Writing* means handwriting, typewriting, printing,
16 photostatting, photographing, photocopying, transmitting
17 by electronic mail or facsimile, and every other means of
18 recording upon any tangible thing, any form of
19 communication or representation, including letters, words,
20 pictures, sounds, or symbols, or combinations thereof, and
21 any record thereby created, regardless of the manner in
22 which the record has been stored.

23 **§43103. Validity, Irrevocability and Enforcement of Agreements**
24 **to Mediate.** An agreement in a writing to settle a controversy by
25 mediation shall be valid, irrevocable, and enforceable, save upon such

1 grounds as exist at law or in equity for the revocation of any contract.

2 **§43104. Conduct of Proceedings; Criteria; Other Codes.** The
3 mediator or mediators may conduct the mediation proceedings in such
4 a manner as they consider appropriate. Except as otherwise provided in
5 this Chapter 43-A, other provisions of this Code, the Guam Rules of
6 Evidence (Title 6 of the Guam Code Annotated), or the Guam Rules of
7 Court (Title 7, Appendix A of the Guam Code Annotated), shall not
8 apply to mediation consultations.

9 **§43105. Representation.** The parties may appear in person or be
10 represented or assisted by any person of their choice. A person assisting
11 or representing a party need not be a member of the legal profession or
12 licensed to practice law in Guam.

13 **§43106. Agreement to Stay Judicial or Arbitral Proceedings;
14 Time Period.** Unless otherwise agreed by the parties, the agreement to
15 submit a dispute to mediation shall be deemed an agreement between
16 or among those parties to stay all judicial or arbitral proceedings from
17 the commencement of mediation until the termination of mediation
18 proceedings, provided, however, that nothing in this Section shall
19 prevent a party to a mediation from pursuing injunctive or other
20 temporary relief during the course of the mediation.

21 **§43107. Limitations; Tolling.** All applicable limitation periods,
22 including periods of prescription, shall be tolled or extended upon the
23 commencement of mediation proceedings to mediate a dispute under
24 this Chapter 43-A and all limitation periods shall remain tolled and
25 periods of prescription extended as to all parties to the mediation

1 proceedings until the tenth (10th) day following the termination of
2 mediation proceedings. For purposes of this Section, mediation
3 proceedings are deemed to have commenced as soon as (a) a party has
4 requested mediation of a particular dispute or disputes, and (b) the
5 other party or parties agree to participate in the mediation proceeding.

6 **§43108. Nonwaiver of Rights or Remedies by Submission to**
7 **Mediation.** By submitting to mediation, no party shall be deemed to
8 have waived any rights or remedies which that party would have had if
9 mediation had not been initiated, other than those set forth in any
10 mediation settlement agreement which results from the mediation or as
11 otherwise prescribed in this Chapter 43-A.

12 **ARTICLE II. EVIDENCE.**

13 **§43201. Admissibility of Evidence; Nondisclosure; Exception.**
14 When persons agree to participate in mediation under this Chapter 43-
15 A:

- 16 (a) Evidence of anything said or of any admission made in the
17 course of the mediation is not admissible in evidence, and
18 disclosure of any such evidence shall not be compelled, in
19 any civil or criminal action in which, pursuant to law,
20 testimony may be compelled to be given. However, this
21 Subsection does not limit the admissibility of evidence if all
22 parties participating in mediation consent to its disclosure;
- 23 (b) In the event that any such evidence is offered in
24 contravention of this Section, the arbitration tribunal or the
25 court shall make any order which it considers to be

1 appropriate to deal with the matter, including, without
2 limitation, orders restricting the introduction of evidence, or
3 dismissing the case without prejudice; and

- 4 (c) Unless the document otherwise provides, no document
5 prepared for the purpose of, or in the course of or pursuant
6 to, the mediation, nor any copy thereof, is admissible in
7 evidence, and disclosure of any such document shall not be
8 compelled in any arbitration or civil action in which,
9 pursuant to law, testimony may be compelled to be given.

10 **§43202. Mediator's Writings.**

- 11 (a) Any writing produced by the mediator shall not be disclosed
12 to the parties, the public, or anyone other than the mediator,
13 unless all parties to the mediation expressly agree otherwise
14 in writing, or disclosure of the writing is otherwise
15 mandated by court rule, local rule or other law.
- 16 (b) Neither a mediator nor anyone else may submit to a Court
17 or other adjudicative body, and a court or other adjudicative
18 body may not consider, any writing by the mediator
19 concerning a mediation conducted by the mediator, other
20 than a report that is mandated by court rule, local rule or
21 other law, unless all parties to the mediation expressly agree
22 otherwise in writing.

23 **§43203. Otherwise Admissible Evidence.**

- 24 (a) Evidence otherwise admissible or subject to discovery
25 outside of a mediation or a mediation consultation shall not

1 be or become inadmissible or protected from disclosure
2 solely by reason of its introduction or use in a mediation or a
3 mediation consultation.

4 (b) This Section does not limit any of the following:

5 (1) the admissibility of an agreement to mediate a
6 dispute;

7 (2) the effect of an agreement not to take a default or
8 an agreement to extend the time within which to
9 act or refrain from acting in a pending civil
10 action; or

11 (3) disclosure of the mere fact that a mediator has
12 served, is serving, will serve, or was contacted
13 about serving as a mediator in a dispute.

14 **§43204. Protections Before and After Mediation Ends.** Anything
15 said, any admission made, or any writing that is inadmissible, protected
16 from disclosure, and confidential under this Chapter 43-A before a
17 mediation ends, shall remain inadmissible, protected from disclosure,
18 and confidential to the same extent after the mediation ends.

19 **ARTICLE III. TERMINATION.**

20 **§43301. Termination Circumstances.** The mediation proceedings
21 may be terminated as to all parties by any of the following:

22 (a) A written declaration of the mediator or mediators, after
23 consultation with the parties, to the effect that further efforts
24 at mediation are no longer justified, on the date of the
25 declaration.

1 (b) A written declaration of the parties addressed to the
2 mediator or mediators to the effect that the mediation
3 proceedings are terminated, on the date of the declaration.

4 (c) The signing of a mediation settlement agreement by all of
5 the parties, on the date of the agreement.

6 **§43302. Termination-Particular Parties.** The mediation
7 proceedings may be terminated as to particular parties by either of the
8 following:

9 (a) A written declaration of a party to the other party and the
10 mediator or mediators, if appointed, to the effect that the
11 mediation proceedings shall be terminated as to that
12 particular party, on the date of the declaration.

13 (b) The signing of a mediation settlement agreement by some of
14 the parties, on the date of the agreement.

15 **ARTICLE IV. COSTS/TERMINATION.**

16 **§43401. Mediation Costs; Inclusions.** Subject to any contrary
17 agreement between or among the parties, upon termination of the
18 mediation proceedings, the mediator shall fix the costs of the mediation
19 and give written notice thereof to the parties. As used in this Section,
20 'costs' includes only the following:

21 (a) A reasonable fee to be paid to the mediator or mediators.

22 (b) The travel and other reasonable expenses of the mediator or
23 mediators.

24 (c) The travel and other reasonable expenses of witnesses
25 requested by the mediator or mediators with the consent of

1 the parties.

2 (d) The cost of any expert advice requested by the mediator or
3 mediators with the consent of the parties.

4 (e) The costs of any court or other institution's administration of
5 the mediation.

6 **§43402. Equality of Costs Among Parties; Expenses.** Subject to
7 any contrary agreement between or among the parties, the costs referred
8 to in §43401 shall be borne equally by the parties. All other expenses
9 incurred by a party shall be borne by that party.

10 **§43403. Enforcement of Mediation Settlement After Termination**
11 **of Mediation.**

12 (a) Any party to a mediation settlement agreement as described
13 in §§ 43301(c) and 43302(b) above, may enforce that
14 mediation settlement agreement at the Superior Court of
15 Guam by filing a motion for summary judgment without
16 filing a complaint, by serving the other party or parties to
17 that mediation settlement agreement with:

18 (1) a summons,

19 (2) a copy of the signed mediation settlement agreement,
20 and

21 (3) a notice of motion for summary judgment and the
22 supporting papers.

23 (b) The summons served under Subsection (a)(1) of this Section
24 shall require the defendant to submit answering papers on
25 the motion within the time provided in the notice of motion.

1 The minimum time such motion shall be noticed to be heard
2 is thirty days after service. If the plaintiff sets the hearing
3 date of the motion later than thirty days, the plaintiff may
4 require the defendant to serve a copy of defendant's
5 answering papers upon the plaintiff within such extended
6 period of time, not exceeding ten days, prior to such hearing
7 date.

8 (c) No default judgment may be entered pursuant to Guam
9 Rule of Civil Procedure 55(a) prior to the hearing date of the
10 motion. If the motion is denied, the moving and answering
11 papers shall be deemed the complaint and answer,
12 respectively, unless the court orders otherwise.

13 (d) Both the summons and the motion for summary judgment
14 referred to in Subsections (a)(1) and (3) must be created in
15 accordance with the applicable Guam Rules of Civil
16 Procedure.

17 (e) The purpose of this Section is to encourage mediation and to
18 expedite the enforcement of mediated settlement agreements
19 by allowing a party or parties to move for summary
20 judgment in lieu of filing a complaint.

21 (f) Nothing in this Section should be interpreted to restrict the
22 rights of the parties to enforce the mediation settlement
23 agreement in any way or other manner permitted under the
24 laws of Guam.

25

1 **ARTICLE V. MEDIATOR AND MISCELLANEOUS PROVISIONS.**

2 **§43501. Mediator as Arbitrator; Ineligibility for Appointment;**
3 **Exception.** No person who has served as mediator may act as an
4 arbitrator or as a representative or counsel of a party in any arbitral or
5 judicial proceedings with respect to a dispute that is the subject of the
6 mediation proceedings. No person who has served as a mediator may
7 be a witness in any such arbitral or judicial proceedings.

8 **§43502. Costs for Seeking to Compel Mediator.** If a person
9 subpoenas or otherwise seeks to compel a mediator to testify or produce
10 a writing as defined in §43102(d), and the court or other adjudicative
11 body determines that the testimony or writing is inadmissible under
12 this Chapter 43-A, or protected from disclosure under this Chapter 43-
13 A, the court or adjudicative body making the determination shall
14 award reasonable attorney's fees and costs to the mediator against the
15 person seeking the testimony or writing.

16 **§43503. No Consent to Court Jurisdiction Upon Failure of**
17 **Mediation.** Neither the request for mediation, the consent to participate
18 in the mediation proceedings, the participation in such proceedings, nor
19 the entering into a mediation agreement or settlement shall be deemed
20 as consent to the jurisdiction of any court in Guam in the event
21 mediation fails.

22 **§43504. Service of Process; Immunity of Participants in**
23 **Mediation.** Neither the mediator or mediators, the parties, nor their
24 representatives shall be subject to service of process on any civil matter
25 while they are present in Guam for the purpose of arranging for or

1 participating in the mediation pursuant to this Chapter 43-A.

2 **§43505. Action for Damages; Nonliability of Mediators.**

3 (a) A mediator, and those acting pursuant to the order or rules
4 of the mediator as his or her employees or agents, shall not
5 be held liable for any action performed or omission made in
6 the course of their official duties undertaken pursuant to this
7 Chapter 43-A.

8 (b) The institution which administers the mediation shall not be
9 liable for any action performed or omission made in
10 connection with any mediation, unless the action performed
11 or omission made is committed with reckless disregard with
12 respect to the rights of one or more of the parties.

13 **§43506. Conflicts/Superiority Provision.** In the event that any
14 provision of this Chapter 43-A conflicts with the provisions of any other
15 Title, Chapter or Section of the Guam Code Annotated, the provisions of
16 this Chapter 43-A shall be controlling.

17 **§43507. Ethical and Training Standards for Mediators.** A person
18 serving as a mediator shall comply with the Ethical and Training
19 Standards for Neutrals adopted by the Supreme Court of Guam
20 pursuant to Section 42309.”

21 **Section 7.** A new Chapter 43-B of Title 7, Guam Code Annotated, is
22 hereby enacted to *add* new §§ 43601 through 43602 to read as follows:

23 **“ARTICLE I. COURT-REFERRED MEDIATION.**

24 **§43601. Actions in the Superior Court.**

25 (a) The Supreme Court of Guam is authorized to establish and

1 promulgate rules and procedures for mediation for such
2 civil, probate or domestic actions, except custody cases in
3 which the authority is separately provided for, as the
4 Supreme Court of Guam deems appropriate in order to
5 encourage the prompt and equitable resolution of disputes.

6 (b) Upon stipulation of the parties, any action, except custody
7 cases in which the authority is separately provided for, may
8 be submitted to mediation established by rules and
9 procedures to be promulgated by the Supreme Court of
10 Guam, which mediation may result in a binding disposition
11 of the action.

12 (c) Mediators shall be selected and compensated in accordance
13 with rules adopted by the Supreme Court of Guam and the
14 Supreme Court of Guam shall further establish standards,
15 compensation and certification for all mediators in the
16 courts of Guam.

17 (d) Any mediation conducted pursuant to §43601(a) shall be
18 defined as a 'court-referred mediation.'

19 (e) The rules and regulations promulgated by the Supreme
20 Court of Guam pursuant to this Section shall be submitted to
21 *I Liheslaturan Guåhan* for approval. Said rules and
22 regulations shall be deemed approved unless otherwise
23 acted upon by *I Liheslaturan Guåhan* within ninety (90) days
24 plus one (1) Legislative Day of receipt.

25 **§43602. Funding of Court-Referred Mediation.** Court-

1 referred mediation should be accessible to all parties regardless of
2 financial status and the Judicial Council may adopt and levy fees to
3 implement provisions of this Chapter 43-B.”

4 **Section 8. Severability.** *If any provision of this Act or its application to*
5 *any person or circumstance is found to be invalid or contrary to law, such*
6 *invalidity shall not affect other provisions or applications of this Act which*
7 *can be given effect without the invalid provisions or application, and to this*
8 *end the provisions of this Act are severable.*

9 **Section 9. Effective Dates.** Sections 1, 2, 3, 5, 6 and 8 are effective
10 immediately upon enactment of this Act. Sections 4 and 7 are effective upon
11 promulgation and enactment of rules mentioned therein by the Supreme
12 Court of Guam.



2181

Committee on Judiciary & Transportation

I Mina' Bente Siete Na Liheshlaturan Guahan

*Twenty-Seventh
Guam Legislature*

CHAIRMAN:
Senator F Randall
Cunliffe

Vice Chairman:
Senator John M.
Quinata

Members:
Senator Robert
Klitzkie

Senator Lou A.
Leon Guerrero

Senator Jesse
Anderson Lujan

Senator Tina R.
Muña-Barnes

Senator Rory J.
Respicio

Senator Antoinette
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March 30, 2004

The Honorable Vicente C. Pangelinan
Speaker
I Mina' Bente Siete Na Liheshlaturan Guahan
155 Hesler Street
Hagatna, Guam 96910

Dear Speaker Pangelinan:

The Committee on Judiciary & Transportation, to which **BILL: 172(LS)** "AN ACT TO REPEAL AND REENACT §§ 42101 THROUGH 42111 OF CHAPTER 42 AND TO ENACT A NEW CHAPTER 42-A RELATIVE TO INTERNATIONAL COMMERCIAL ARBITRATIONS AND TO ENACT A NEW CHAPTER 42-B RELATIVE TO COURT-REFERRED ARBITRATION AND ALTERNATIVE DISPUTE RESOLUTION, TO REPEAL §§ 43101 THROUGH 43108 OF CHAPTER 43 AND TO ENACT A NEW CHAPTER 43-A RELATIVE TO INTERNATIONAL COMMERCIAL MEDIATION AND TO ENACT A NEW CHAPTER 43-B RELATIVE TO COURT-REFERRED MEDIATION, ALL CHAPTERS IN TITLE 7, GUAM CODE ANNOTATED" was referred, wishes to report its findings TO PASS BILL 172 (LS) AS SUBSTITUTED BY THE COMMITTEE ON JUDICIARY & TRANSPORTATION.

The voting record is as follows:

TO PASS

5


NOT TO PASS

—

TO ABSTAIN

—

Sincerely,


F. RANDALL CUNLIFFE

CHAIRMAN

Attachments



Committee on Judiciary & Transportation

I Mina' Bente Siete Na Liheslaturan Guåhan

*Twenty-Seventh
Guam Legislature*

MEMORANDUM

TO: JUDICIARY & TRANSPORTATION COMMITTEE MEMBERS
FROM: JUDICIARY & TRANSPORTATION COMMITTEE CHAIRMAN
SUBJECT: BILL 172(LS)

Transmitted for your information and action is the committee report on **BILL 172(LS)** AN ACT TO REPEAL §§ 42101 THROUGH 42111 OF CHAPTER 42 AND TO ENACT A NEW CHAPTER 42-A RELATIVE TO INTERNATIONAL COMMERCIAL ARBITRATIONS AND TO ENACT A NEW CHAPTER 42-B RELATIVE TO COURT-REFERRED ARBITRATION AND ALTERNATIVE DISPUTE RESOLUTION, TO REPEAL §§ 43101 THROUGH 43108 OF CHAPTER 43 AND TO ENACT A NEW CHAPTER 43-A RELATIVE TO INTERNATIONAL COMMERCIAL MEDIATION AND TO ENACT A NEW CHAPTER 43-B RELATIVE TO COURT-REFERRED MEDIATION, ALL CHAPTERS IN TITLE 7, GUAM CODE ANNOTATED, AS **SUBSTITUTED BY THE COMMITTEE ON JUDICIARY & TRANSPORTATION**

This memorandum is accompanied by the following:

1. Committee Voting Sheet
2. Committee Report
3. Bill 172(LS)
4. Public Hearing Sign-in Sheet
5. Notice of Public Hearing

Please take the appropriate action on the attached voting sheet. Should you have any questions regarding the report or the accompanying documents, please do not hesitate to contact me or my Committee Director, Mr. Joshua Tenorio.

Sincerely,


F. RANDALL CUNLIFFE

Attachments

CHAIRMAN:
Senator F Randall
Cunliffe

Vice Chairman:
Senator John M.
Quinata

Members:
Senator Robert
Klitzkie

Senator Lou A.
Leon Guerrero

Senator Jesse
Anderson Lujan

Senator Tina R.
Muña-Barnes

Senator Rory J.
Respicio

Senator Antoinette
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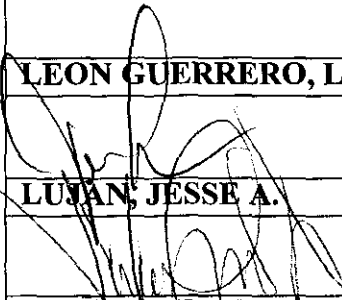
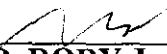

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COMMITTEE ON JUDICIARY & TRANSPORTATION

Voting Record Sheet

BILL NO. 172 (LS) – AN ACT TO REPEAL §§ 42101 THROUGH 42111 OF CHAPTER 42 AND TO ENACT A NEW CHAPTER 42-A RELATIVE TO INTERNATIONAL COMMERCIAL ARBITRATIONS AND TO ENACT A NEW CHAPTER 42-B RELATIVE TO COURT-REFERRED ARBITRATION AND ALTERNATIVE DISPUTE RESOLUTION, TO REPEAL §§ 43101 THROUGH 43108 OF CHAPTER 43 AND TO ENACT A NEW CHAPTER 43-A RELATIVE TO INTERNATIONAL COMMERCIAL MEDIATION AND TO ENACT A NEW CHAPTER 43-B RELATIVE TO COURT-REFERRED MEDIATION, ALL CHAPTERS IN TITLE 7, GUAM CODE ANNOTATED, AS SUBSTITUTED BY THE COMMITTEE ON JUDICIARY & TRANSPORTATION

COMMITTEE MEMBERS	TO PASS	NOT TO PASS	TO ABSTAIN
 CUNLIFFE, F RANDALL, Chairman	✓		
QUINATA, JOHN M., Vice Chairman			
KLITZKIE, ROBERT			
LEON GUERRERO, LOU A.			
 LUJAN, JESSE A.	✓		
MUNA-BARNES, TINA R.			
 RESPICIO, RORY J.	<i>no</i>		
 SANFORD, ANTOINETTE D.	✓		

MINA' BENTE SIETE NA LIHESLATURAN GUÅHAN
COMMITTEE ON JUDICIARY & TRANSPORTATION
SENATOR F. RANDALL CUNLIFFE - CHAIRMAN



COMMITTEE REPORT

ON

BILL 172(LS) AN ACT TO REPEAL §§ 42101 THROUGH 42111 OF CHAPTER 42 AND TO ENACT A NEW CHAPTER 42-A RELATIVE TO INTERNATIONAL COMMERCIAL ARBITRATIONS AND TO ENACT A NEW CHAPTER 42-B RELATIVE TO COURT-REFERRED ARBITRATION AND ALTERNATIVE DISPUTE RESOLUTION, TO REPEAL §§ 43101 THROUGH 43108 OF CHAPTER 43 AND TO ENACT A NEW CHAPTER 43-A RELATIVE TO INTERNATIONAL COMMERCIAL MEDIATION AND TO ENACT A NEW CHAPTER 43-B RELATIVE TO COURT-REFERRED MEDIATION, ALL CHAPTERS IN TITLE 7, GUAM CODE ANNOTATED, AS SUBSTITUTED BY THE COMMITTEE ON JUDICIARY & TRANSPORTATION

Introduced by the Committee on Judiciary & Transportation
By Request of I Maga'lahaen Guåhan, the Governor of Guam,
In Accordance with the Organic Act of Guam

March 25, 2004

OVERVIEW

The Committee on Judiciary and Transportation held a public hearing at 9:00 a.m. on November 14, 2003 on the following measure:

BILL 172(LS) – AN ACT TO REPEAL AND REENACT §42101 THROUGH §42106, TO REPEAL §42107 THROUGH §42111, AND TO ADD NEW SECTIONS §42201 THROUGH §42909, ALL IN CHAPTER 42 OF TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO INTERNATIONAL COMMERCIAL ARBITRATIONS AND DOMESTIC ARBITRATIONS

SENATORS PRESENT AT THE PUBLIC HEARING WERE:

Judiciary Chairman F. Randall Cunliffe
Vice Chairman John Quinata
Senator Robert Klitzkie
Senator Lou Leon Guerrero
Senator Rory J. Respicio

I. SYNOPSIS OF BILL

On August 1, 2003, Governor Felix P. Camacho transmitted proposed legislation to establish a comprehensive statutory framework for the arbitration and mediation of domestic and international disputes on Guam. Citing the movement of various states and the federal government to adopt laws providing mechanisms for Alternative Dispute Resolution (ADR) and the enactment of the Federal Arbitration Act (FAA), the Governor proposed that Guam follow suit and adopt two statutes to accomplish the following:

- (1) The establishment of the Guam International Mediation and Arbitration Center;
- (2) The repeal and reenactment of the local civil arbitration law found in Chapter 42 of Title 7 of the Guam Code Annotated, which would revise and establish an framework for arbitration; and
- (3) The repeal and reenactment of the local mediation statutes to establish a framework for the mediation of civil cases found in Chapter 43 of Title 7 of the Guam Code Annotated.

The first bill, introduced by the Committee on Judiciary and Transportation as Bill 172(LS) is relative to Arbitration while the second bill, also introduced by the Committee on Judiciary & Transportation as **Bill 185(COR) AN ACT TO REPEAL AND REENACT SECTIONS §43101 THROUGH §43108, AND TO ADD NEW §43201 THROUGH §43604, ALL IN CHAPTER 43 OF TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO THE EARLY RESOLUTION OF DISPUTES THROUGH MEDIATION**, is relative to mediation.

II. SUMMARY OF TESTIMONY

The Committee on Judiciary & Transportation held a hearing for Bill 172(LS) and Bill 185(COR) on November 14, 2003. Although the bills were heard independently, it became clear that the legislation would have to be addressed together, as Bill 185(COR) made references to the Guam International Mediation and Arbitration Center proposed in Bill 172 (LS). Therefore, the Committee includes the transcripts of the hearings for both bills in this Committee Report. The substitute version of Bill 172 (LS) merges the intent and content of both Bill 172 and Bill 185.

The following individuals provided testimony to the Committee relative to Bill 172(LS):

- Mr. Gerald Perez, Administrator of the Guam Economic Development & Commerce Authority (GEDCA) provided written testimony IN FAVOR of the legislation
- Mr. Bruce Bradley, a Research Attorney employed with the Supreme Court of Guam provided oral testimony IN FAVOR of the legislation
- Attorney Richard A. Pipes provided written testimony IN OPPOSITION of the legislation

The following individuals provided testimony to the Committee relative to Bill 185(COR):

- Mr. Gerald Perez, Administrator of the Guam Economic Development & Commerce Authority (GEDCA) provided written testimony IN FAVOR of the legislation
- Mr. Bruce Bradley, a Research Attorney employed with the Supreme Court of Guam provided oral testimony IN FAVOR of the legislation
- Attorney Patrick Wolff of Inafa' Maolek, provided oral and written testimony IN OPPOSITION of the legislation as currently drafted, but IN SUPPORT of the intent
- Attorney Dan Sommerfleck, Director of Guam Legal Services, provided oral testimony IN FAVOR of the legislation

In Governor Camacho's correspondence, he expressed his position that passage of the proposed legislation would accomplish the following:

- Provide much-needed relief for congested court dockets
- Provide flexible alternatives for conflict resolution
- Facilitate the establishment and marketing of Guam as a center for the conduct of international commercial arbitration

The Governor emphasized that the establishment of the Guam International Mediation and Arbitration Center is one component of his economic recovery plan. The Governor believes that Guam is well positioned to operate the center due to its geographic location between the United States and Asia and will attract additional visitors to Guam. According to the Governor, the draft legislation is based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration, as well as California law. The Governor pointed to the review of the draft law by Justice Francis Tydingco-Gatewood and Judge Michael J. Bordallo, who are chairing the Supreme Court of Guam's Subcommittee on Alternative Dispute Resolution.

Bill 172(LS) Hearing

During the hearing, Attorney Bradley reported that there was an ongoing review of Bill 172 & Bill 185 by the Subcommittee on Alternative Dispute Resolution, which includes a dozen attorneys, judges and justices and Retired Chief Justice Benjamin J.F. Cruz. However, he indicated that the Unified Judiciary is in support of Bill 172(LS) and Bill 185(COR) subject to ongoing technical review by the Subcommittee.

Senator Klitzkie indicated his support for the legislation.

Senator Leon Guerrero indicated her position that the Committee suspend action on Bill 172 pending the position submitted by the Supreme Court of Guam.

Attorney Richard Pipes submitted written testimony opining that as drafted, Bill 172 would be unconstitutional and inorganic because it unreasonably restricts a person's right of access to the Superior Court of Guam. "Specifically, Section 42901 requires that all cases with amounts in controversy less than \$250,000 be referred for involuntary "arbitration or mediation" at the Guam International Mediation and Arbitration Center (GIMAC)." Attorney Pipes further stated that the decision by the Presiding Judge to refer a case to GIMAC is not appealable and noted that the proposed charges are in excess of the current fee structure of the Superior Court of Guam. Attorney Pipes questioned the sustainability of the GIMAC and requested that the bill be rejected in its current form.

GEDCA Administrator Gerald Perez provided written testimony in favor of the legislation citing the following:

- Guam as a stable US flag domicile would be a favored "neutral" location and a forum of choice for US and Asian contract disputes
- Industry trend shows decline in use of Asian based arbitration centers with a correlating increase in European center usage
- Asian centers are encountering credibility issues, for example Hong Kong is viewed as an extension of China and is thus not an acceptable dispute resolution center for US corporations
- Japanese attorneys prefer locations such as Guam as they are at a competitive disadvantage in Hong Kong and Singapore centers where they compete against large in-country law firms
- Japan's arbitration process is too slow, expensive and based on antiquated arbitration rules
- Rising cost of litigation in USA court system and time delays caused by court scheduling system
- US Court mandated arbitration for smaller (dollar value) cases

Mr. Perez reiterated his support for the passage of both Bill 172 and 185.

Bill 185(COR) Hearing

Attorney Patrick Wolff of Inafa' Maolek requested that §43105, §43501, §43202, §43601, §43602, §43603, §43604 be revisited. He emphasized and elaborated his position which is stated as follows:

1. §43105: Representative Participation in Mediation is not a good idea. Mediation in its pure form calls for active participation by the disputants (real parties to the conflict). Rare exceptions (e.g. incapacitation) to party participation are allowed on a case-by-case bases, but §43105 would dangerously reverse the presumptions of disputant empowerment in mediation.
2. §43501 is well intended, but fails to recognize that a MED-ARB process may indeed be the process desired by the disputant.
3. §43202: Mediators should not be prevented from routinely providing to the referral source a cover letter acknowledging that a mediation occurred and attaching any Agreement reached by the parties.
4. §43601: There should be no preference for referrals to GIMAC. Judges should not be burdened with the need to justify why cases are not referred to GIMAC for mediation.
5. §43602: Must be changed to allow for co-mediation (as practiced by Inafa' Maolek). Referral to Inafa' Maolek does not necessitate the selection of a particular mediator. Inafa' Maolek will screen the referral at the intake state and select mediators, from Inafa' Maolek's pool of mediators to match the dispute/disputants. Please do not get locked into a GIMA approach inconsistent with the above.
6. §43603: Inafa' Maolek's flat fee approach to each mediation session provides a less expensive alternative. This option must be included in any Bill 185 language.
7. §43604: Notion of "recommended settlement" is inconsistent with the definition of mediation and the role of the mediator. We philosophically object to this provision as the norm for mediation.

Attorney Dan Sommerfleck of Guam Legal Services expressed concern with §43601 (b) & (d). Attorney Sommerfleck spoke in length about government contracts and suits against the government and the potential for resolution of such cases to be delayed unnecessarily by the mediation process. Attorney Sommerfleck expressed his position that domestic cases would not be resolved under the GIMAC format.

Senator Lou Leon Guerrero raised questions relative to the role of GIMAC for medical malpractice arbitration. In response to her question, Attorney Sommerfleck responded that it is based on whether the parties are willing to reach an agreement.

Attorney Bradley stated his agreement with the statements made by Attorney Sommerfleck and pointed to Attorney Wolff's membership on the Unified Judiciary Subcommittee reviewing both bills. Attorney Bradley stated that the Supreme Court would incorporate there concerns in their official position.

Supreme Court Position

Chairman Cunliffe left the proceedings on Bill 172(LS) and Bill 185(COR) open in anticipation of the position of the Supreme Court of Guam. On February 16, 2004, Chief Justice F. Philip Carbullido submitted the Supreme Court's position on Bill 172 & Bill 185. Chief Justice Carbullido submitted a revised Substitute Bill No. 172 (LS) which would take the place of both Bill 172 and Bill 185. Chief Justice Carbullido emphasized the membership of the Governor's Legal Counsel on the subcommittee. Chief Justice Carbullido listed the membership of the Subcommittee as follows:

- Chief Justice F. Philip Carbullido
- Justice Frances Tydingco-Gatewood
- Justice Robert Torres
- Judge Michael J. Bordallo
- Retired Chief Justice Benjamin J.F. Cruz
- Sister Mary John Cristobal
- Attorney Patrick Wolff
- Attorney Eduardo Calvo
- Attorney Vicki Renacia
- Attorney Shannon Taitano
- Attorney Tricia Ada
- Attorney John Weisenberger
- Attorney Kristan Finney
- Attorney Ignacio Aguiqui
- Attorney Thomas Roberts
- Attorney Thomas Tarpley
- Attorney Bruce Bradley
- Attorney Jennifer Calvo
- Attorney Raymond Souza

Chief Justice Carbullido submitted the following guide to the Subcommittee's proposed Substitute:

1. Chapter 42 of Title 7 relative to Arbitration is repealed and reenacted as Chapter 42-A and 42-B regarding arbitration and other forms of alternative dispute resolution
2. Chapter 43 relative to Mediation is repealed and reenacted as Chapter 43-A and 43-B regarding Mediation.
3. Chapter 42-A would address international arbitration
4. Chapter 43-A would address international mediation
5. Chapter 42-B would address local court-referred arbitration and alternative dispute resolution
6. Chapter 43-B would address local court-referred mediation
7. The Supreme Court of Guam is charged with establishing and promulgating rules and procedures to achieve the goals of the proposed Chapter 42-B and 43-B

Chief Justice Carbullido stated that it was the Subcommittee belief that the enactment of Chapters 42-B and 43-B would relieve congestion of cases currently within the Superior Court of Guam through the implementation of various alternative dispute resolution models. Chief Justice Carbullido reiterated his support for the legislature's passage of the proposed Substitute Bill 172(LS) as submitted by the Supreme Court of Guam.

- * **The Governor's correspondence of August 1, 2003 transmitting the proposed legislation introduced as Bill 172(LS) and Bill 185(COR) is attached with this Committee Report.**
- * **Chief Justice Carbullido's letter of February 16, 2004 relative to Bill 172(LS) and Bill 185(COR) is attached with this Committee Report.**
- * **Transcripts and written testimony for Bill 172(LS) and Bill 185(COR) are included with this Committee Report.**

III. FINDINGS AND RECOMMENDATION

The Committee on Judiciary and Transportation finds favor with the proposed Substitute Bill 172(LS) as offered by the Supreme Court of Guam Subcommittee and has made further amendments relative to technical corrections. Therefore, the Committee on Judiciary & Transportation makes a recommendation that Bill 172(LS), As Substituted by the Committee on Judiciary & Transportation DO PASS.

Committee on Judiciary & Transportation
November 14, 2003
Testimony on Bill No. 172

Bill No. 172 (LS) – AN ACT TO REPEAL AND REENACT §42101 THROUGH §42106, TO REPEAL §42107 THROUGH 42111, AND TO ADD NEW SECTIONS §42201 THROUGH §42909, ALL IN CHAPTER 42 OF TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO INTERNATIONAL COMMERCIAL ARBITRATIONS AND DOMESTIC ARBITRATIONS. (At the request of I Maga' Lahren Guahan)

Chairman: Moving on to Bill No. 172, an act to repeal and reenact §42101 through 42106, to repeal 42107 through 42111, and to add new sections 42201 through 42909, all in Chapter 42 of Title 7, Guam Code Annotated, relative to international commercial arbitrations and domestic arbitrations. ... [End of Side B, Tape 1] ...please come up ... Mr. Jay Perez has submitted a written testimony in favor of Bill 172. Mr. Bradley you may proceed.

Bradley: Thank you. Good morning, Senators. Bruce Bradley, I'm a Research Attorney with the Supreme Court of Guam. Briefly, I would like to state that there is currently a subcommittee of the Supreme Court, of actually the Unified Judiciary on Alternative Dispute Resolution, and the co-chairs of that subcommittee are Justice Frances Tydingco-Gatewood and Judge Michael Bordallo from the Superior Court. I am on that committee as well, and it's comprised of about a dozen local practitioners and as well as the judge and justices, and the Retired Supreme Court Chief Justice Benjamin Cruz. Mr. Pat Wolff is also on the committee, whose here in the audience today. The Committee is spending a lot of time in its meetings, and will continue to meet regarding this proposed bill and 185, which addresses mediation. I also believe, Senator Tina Muna-Barnes, has submitted Bill 115, which addresses child custody and mediation in that context. The Committee is planning to prepare written comments and testimony at a later date regarding both 172 and 185. Justice Gatewood requested that I appear today, and let the Senators know that we continue to work closely with the Governor's Office on this bill as well as 185. We'll submit written testimony at a later date. Thank you.

Chairman: Thank you, Mr. Bradley. Senator Respicio. ...[Senator Respicio wants to wait for the written testimony?] ... Senator Klitzkie

Klitzkie: How much later?

Bradley: I believe a letter was sent yesterday by Chief Justice Carbullido requesting a 30-day extension.

Klitzkie: Mr. Acting Chairman, I think we probably ought to do something with this rather quickly and let the Governor win one once in awhile. ...[background laughing]... Thank you, Mr. Chairman.

Chairman: Senator Leon Guerrero.

Leon Guerrero: Are they have been requesting ... not reporting this out and putting it in the session until we get the testimonies and the comments from this subcommittee?

Bradley: Yes, your honor ... I believe so ... your honor ... that's my usual context ...

Leon Guerrero: I feel honored to call me your honor ... and in regards to Senator Klitzkie's comments, I want the Governor to win one, but I also want the Governor to win one that is a good win, we need to wait and get the comments of these experts here, because if there's something that maybe by chance were missing and they bring it up to our attention, it will strengthen and make this a better piece

of legislation. I agree with Senator Klitzkie, but we need to make sure it is close to the best arbitration legislation.

Bradley: Thank you, Senator. I believe that's accurate. The Subcommittee is in support of both this 172 and 185, and is taking a close look at the real nuts and bolts details, not just technical, and not just numbering and editorial matters, but making sure that it does comport with other jurisdictions and other places that it tackles the same sort of mediation and arbitration legislation. Thank you.

Quinata: Are you here for the Unified Judiciary or ...

Bradley: I'm just here today specifically on behalf of Justice Tydingco-Gatewood and the Subcommittee, which is a component of the Unified Judiciary, so technically, yes.

Quinata: Thank you, Mr. Bradley. Bill No. 172 has now been publicly heard. Moving on to Bill No. 173 ...

**Testimony of Mr. Gerald S. A. Perez,
Administrator, Guam Economic Development & Commerce Authority**

**on BILL No. 172(LS) AN ACT TO REPEAL AND REENACT §42101 THROUGH §42106, TO
REPEAL §42107 THROUGH 42111, AND TO ADD NEW SECTIONS §42201 THROUGH §42909,
ALL IN CHAPTER 42 OF TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO INTERNATIONAL
COMMERCIAL ARBITRATIONS AND DOMESTIC ARBITRATIONS**

And

**BILL 185(COR) AN ACT TO REPEAL AND REENACT SECTIONS § 43101 THROUGH § 43108,
AND TO ADD NEW § 43201 THROUGH § 43604, ALL IN CHAPTER 43 OF TITLE 7, GUAM CODE
ANNOTATED, RELATIVE TO THE EARLY RESOLUTION OF DISPUTES THROUGH MEDIATION**

Good morning, Mr. Chairman, members of the Committee on Judiciary and Transportation, ladies and gentlemen. I am unable to attend today's public hearing, but trust that my written testimony will be incorporated into the record.

My name is Gerald S. A. Perez, and I am the Administrator of the Guam Economic Development & Commerce Authority (GEDCA). I am submitting this written testimony in support of Bills 172 "the Guam Arbitration Act" and Bill 185 "the Guam Mediation Act". If enacted into law, these two bills provide the mechanism for Guam to develop into a regional arbitration and mediation center, potentially worth millions of dollars in new money for Guam and job security to many white collar employees.

As we all know, Guam's economy is struggling to manage the impact of an unprecedented combination of natural disasters and complex economic forces over which Guam has little or no direct control. Our 11% unemployment rate is nearly double the national average, and the need to revitalize our economy cannot be overemphasized.

I will not speak to the legal issues entailed in these two bills. These I leave to those in the legal community more qualified to do so. In terms of economic development, however, enacting Bills 172 and 185 into law significantly enhances the island's economic revitalization. We believe that a viable regional arbitration facility in Guam will expand the island's professional services employment, strengthen our tourism sector, and diversify our economic base in the process.

As a resort community, Guam is an attractive geographic venue for alternative dispute resolutions in Asia, a region where hundreds of cases are now handled largely in Hong Kong and Singapore. Capturing a share of this market offers significant potential for Guam in view of the following consideration:

- Guam as a stable US flag domicile would be a favored "neutral" location and a forum of choice for US and Asian contract disputes.
- Industry trend shows decline in use of Asian based arbitration centers with a correlating increase in European center usage.
- Asian centers are encountering credibility issues, for example Hong Kong is viewed as an extension of China and is thus not an acceptable dispute resolution center for US corporations
- Japanese attorneys prefer locations such as Guam as they are at a competitive disadvantage in Hong Kong and Singapore centers where they compete against large in-country law firms.
- Japan's arbitration process is too slow, expensive and based on antiquated arbitration rules
- Raising cost of litigation in USA court system and time delays caused by court scheduling system
- US Court mandated arbitration for smaller (dollar value) cases

The economic significance of a Guam based regional arbitration center in light of the following:

- Job creation – direct employment with the center (approximately 3-5 jobs) and indirect employment with the increased activity in the financial services sector, tourism sector and general services sector
- Increased tax revenues for the government from the centers activities as it will be generating registration, fee and rental income estimated at \$418,750 for the first year, and projected at \$1.5 million by the fifth year of operation. There are also indirect revenue opportunities for vendors providing administrative support services (for example copying, transcription, secretarial, etc. and financial services (for example banks, accounting, etc.)
- A Guam Arbitration & Mediation Center will draw more upscale visitors to Guam who will spend money at hotels, food and transportation, etc. and will generate taxable Guam sourced income. In addition, normal settlement of arbitration cases can take any where from 1-3 weeks thus necessitating a longer stay.
- Increased opportunity for Guam's local bar. First, under the proposed legislation, smaller domestic cases will be referred to the Center for mandatory arbitration or mediation. Those cases will not often justify the expense of using an off island arbitrator, thus members of the local bar will have the opportunity to earn fees acting as arbitrators. Second, with large international arbitrations, global firms will usually choose to associate with members of the local bar for their expertise in local court rules and customs.

The number of people involved in arbitration cases will vary according to the nature, duration, and magnitude of each particular case. However, it is constructive to review a hypothetical case involving 10-12 people over a week to 10-day period. Such a profile can potentially bring over \$40 million in new money to the island by the 5th year of operation and over \$11 million in tax revenues. Last year alone, for instance, there were more than 1,000 arbitration cases handled in Asian centers. Pursued aggressively, this opportunity can broaden and solidify aspirations for a more diversified economic base.

The legal community has already taken the first steps in moving this industry forward with the creation of a non-profit organization called "The Guam International Mediation and Arbitration Center". This entity is currently focused on the development of a modern, state of the art facility from which arbitration and mediation cases can be professionally facilitated. Once the facility is completed, the center will then focus its attention on the development of an international marketing campaign targeting US corporations who have a strong presence in Asia and Asian Corporations who have intricate contractual relationships with US companies.

In addition to facilitating the resolution of disputes, the center may also be positioned as a source of continuing legal education series and seminars. Now that Guam and other jurisdictions in the region have adopted mandatory continuing legal education requirements, the center will not only offer CLE seminars to members of the Guam Bar, but also to ex-patriot US attorneys practicing in countries in the Asia-Pacific region.

The two immediate challenges before us today are creating the legal framework and institutional capacity to attract and grow a meaningful share of this regional arbitration market. Passing Bills 172 and Bill 185 into law fulfills the first challenge, which can then spur the second into action.

HYPOTHETICAL ARBITRATION CASE

Taxable Expenses:	Unit Cost/Fee	single case	Year 1 5 cases	Year 2 10 cases	Year 3 25 cases	Year 4 50 cases	Year 5 100 cases
Travel Expense:							
Airfare - Business Class							
NY - GU (RT)	\$5,783/pax	\$23,132	\$115,660	\$231,320	\$578,300	\$1,156,600	\$2,313,200
LA - GU (RT)	\$4,595/pax	\$9,190	\$45,950	\$91,900	\$229,750	\$459,500	\$919,000
HK - GU (RT)	\$1,438/pax	\$8,628	\$43,140	\$86,280	\$215,700	\$431,400	\$862,800
Hotel (corporate rate)	10 rooms @ \$150	\$15,000	\$75,000	\$150,000	\$375,000	\$750,000	\$1,500,000
Rental Car - 4 cars	@ \$370 weekly	\$1,480	\$7,400	\$14,800	\$37,000	\$74,000	\$148,000
Per Diem (Gov't Rate)	@ \$150/day	\$15,000	\$75,000	\$150,000	\$375,000	\$750,000	\$1,500,000
Entertainment	@ \$600/day	\$72,000	\$360,000	\$720,000	\$1,800,000	\$3,600,000	\$7,200,000
Arbitration Expense:							
Legal Expense:							
Local Counsel Retainer	\$150/hr X 40 hrs	\$6,000	\$30,000	\$60,000	\$150,000	\$300,000	\$600,000
Arbitrator Fee	\$300/hr X 40 hrs	\$12,000	\$60,000	\$120,000	\$300,000	\$600,000	\$1,200,000
ADR Center Fees:							
Registration Fee	flat fee	\$1,000	\$5,000	\$10,000	\$25,000	\$50,000	\$100,000
Administrative Fee	case value @\$100K	\$3,500	\$17,500	\$35,000	\$87,500	\$175,000	\$350,000
Electronic Filing (document storage)	\$0.01/pg @ 75,000 pgs X 9 months	\$3,375	\$16,875	\$33,750	\$84,375	\$168,750	\$337,500
War room rental	\$200/day X 3 days	\$600	\$3,000	\$6,000	\$15,000	\$30,000	\$60,000
Business Services expense	copying, binding, transcription, etc.	\$3,000	\$15,000	\$30,000	\$75,000	\$150,000	\$300,000
TOTAL Arbitration cost		\$173,905	\$869,525	\$1,739,050	\$4,347,625	\$8,695,250	\$17,390,500
Multiplier @ 1.75%		\$304,334	\$1,521,670	\$3,043,340	\$7,608,350	\$15,216,700	\$30,433,400
TOTAL		\$478,239	\$2,391,195	\$4,782,390	\$11,955,975	\$23,911,950	\$47,823,900
Tax Revenues:							
DT @ 11%		\$1,650	\$8,250	\$16,500	\$41,250	\$82,500	\$165,000
GRT @ 6%		\$28,694	\$143,472	\$286,943	\$717,359	\$1,434,717	\$2,869,434
Payroll tax @ 20%		\$48,400	\$264,000	\$528,000	\$1,315,600	\$2,631,200	\$5,262,400
Income tax @ 28%		\$29,814	\$149,072	\$298,144	\$745,360	\$1,490,720	\$2,981,440

Assumptions:

1. case duration - 10 days
2. Participants - 12

Sources:

1. Travel Exp - vendor quotes
2. Arbitration Exp - Industry Stats
3. Tax - averages



SUPREME COURT OF GUAM

SUITE 300 GUAM JUDICIAL CENTER
120 WEST O'BRIEN DRIVE, HAGÄTÑA, GUAM 96910-5174
(671) 475-3413 (671) 475-3164 FAX

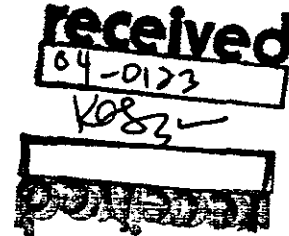


F. PHILIP CARBULLIDO
CHIEF JUSTICE

fpcarbullido@guamsupremecourt.com
www.guamsupremecourt.com

February 16, 2004

Honorable F. Randall Cunliffe
I Mina' Bente Siete Na Liheslaturan Guåhan
Chairman, Committee on Judiciary & Transportation
215 Chalan Santo Papa, Suite 106 & 107F
Hagätña, Guam 96910



Re: **Bills Numbered 172 and 185 Regarding Arbitration and Mediation**

Dear Mr. Chairman:

As you know, the Supreme Court's Subcommittee on Alternative Dispute Resolution has focused its attention in recent months on review of current Bills 172 and 185 regarding international arbitration and mediation as well as domestic court-referred alternative dispute resolution. The Governor originally submitted his proposed legislation to the Legislature on August 1, 2003, which was then assigned to your Committee. The legislation will establish a comprehensive statutory framework for the arbitration and mediation of international and domestic disputes on Guam. The members of the subcommittee are in universal agreement that this legislation is very important and have dedicated significant time, thought and effort in their review and consideration of the proposed legislation.

Transmitted herewith is proposed substitute Bill 172 that the Supreme Court's subcommittee recommends take the place of both current Bills 172 and 185. As will be explained more fully below, the proposed substitute Bill 172 merges both current Bills 172 and 185. Thus, no further action on Bill 185 will be necessary if the enclosed proposed substitute Bill 172 is adopted. We have also enclosed a redline version of proposed substitute Bill 172 as compared to current Bill 172 for your ready reference.

As mentioned above, Governor Camacho originally submitted two pieces of proposed legislation to the Legislature on August 1, 2003, which became Bills 172 and 185. The Governor's legal counsel, Ms. Shannon Taitano, sits on our subcommittee and has been involved in the work we have done which has resulted in our recommended substitute Bill 172. We are informed that Ms. Taitano, on behalf of the Governor, fully supports the enclosed proposal as it will achieve the Governor's goals which were originally addressed by his initial submission in August, 2003.

The members of the subcommittee have taken their review of Bills 172 and 185 very

Honorable F. Randall Cunliffe

February 16, 2004

Page 2

seriously and have come to the enclosed recommended substitute Bill 172 after extensive work to this end. The subcommittee was originally chaired by Justice Frances Tydingco-Gatewood and co-chaired by Judge Michael J. Bordallo and included as members retired Chief Justice Benjamin J.F. Cruz, Sister Mary John Cristobal and attorneys Patrick Wolff, Eduardo Calvo, Vicki Renacia, Shannon Taitano, Tricia Ada, John Weisenberger, Kristan Finney, Ignacio Aguigui, Thomas Roberts and Thomas Tarpley. Subsequently attorneys Bruce Bradley, Jennifer Calvo and Raymond Souza joined the subcommittee.

After the subcommittee's initial review of Bills 172 and 185, the co-chairs decided to split the subcommittee into separate groups to fully consider each of the proposed bills. At that time, Chief Justice F. Philip Carbullido joined the subcommittee and took the lead regarding review of proposed Bill 172. Bill 172 focused primarily on international arbitration but also contemplated domestic court-referred arbitration. Attorneys Ed Calvo, Ray Souza, Ike Aguigui, Bruce Bradley, Tom Tarpley, Tim Roberts and Jennifer Calvo joined the Chief Justice. Upon his investiture, Justice Robert Torres also joined this component of the subcommittee as co-chair. The remaining members of the subcommittee were then able to focus on proposed Bill 185 regarding mediation.

As will be evident upon your review of the enclosed proposed substitute Bill 172, it now includes both of the Governor's originally proposed bills which are currently Bill 172, regarding arbitration, and Bill 185, regarding mediation. Proposed substitute Bill 172 will accomplish several goals simultaneously. Current Guam law regarding arbitration and mediation is found in Chapters 42 and 43 of Title 7, Guam Code Annotated. Proposed substitute Bill 172 will repeal both Chapters 42 and 43 and will enact language to be codified in its place. Thus, Guam law regarding arbitration and mediation will still be found in Chapters 42 and 43, respectively. Specifically, propose substitute Bill 172 will create Chapters 42-A and 42-B regarding arbitration as well as other forms of alternative dispute resolution and Chapters 43-A and 43-B regarding mediation.

Proposed Chapter 42-A will address international arbitration and proposed Chapter 43-A will address international mediation. These two chapters will be instrumental in the creation of Guam's International Mediation and Arbitration Center," which will be known as "GIMAC." Proposed Chapter 42-B will specifically address local court-referred arbitration and alternative dispute resolution and proposed Chapter 43-B will specifically address local court-referred mediation. The Supreme Court of Guam will be charged with establishing and promulgating rules and procedures to achieve the goals of both proposed Chapters 42-B and 43-B. The subcommittee believes that there is great potential for relieving congestion within the Superior Court of Guam through implementation of various alternative dispute resolution models. Proposed Chapters 42-B and 43-B will provide the statutory basis for such achievements.

Honorable F. Randall Cunliffe

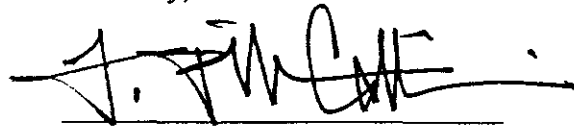
February 16, 2004

Page 3

As is evident from the above explanation as well as from review of the enclosed documents, the subcommittee has devoted considerable time and energy to its efforts regarding the proposed alternative dispute resolution legislation. The members have done so in hopes of assisting as much as possible in the process of updating Guam's laws in this area to better serve the needs of the parties availing themselves of the courts and to help alleviate the perennial problem of congestion in the courts. Guam has the potential to benefit greatly from this legislation in many ways and we respectfully request that your Committee and the Legislature as a whole act expeditiously in its consideration of our proposed substitute Bill 172 to replace current Bills 172 and 185.

We look forward to your support and the favorable consideration of your colleagues

Sincerely,



F. Philip Carbullido
Chief Justice and Co-Chair,
Subcommittee On Alternative Dispute
Resolution (Arbitration)



Robert J. Torres
Justice and Co-Chair, Subcommittee on
Alternative Dispute Resolution (Arbitration)

Enclosure:

cc: Justice Frances Tydingco-Gatewood
Judge Michael J. Bordallo
All Committee Members

Law Offices Of
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PAI

received
11-20-03 11:30 AM

November 20, 2003

VIA FACSIMILE

Senator F. Randall Cutille
Twenty-Seventh Guam Legislature
215A Chalan Santo Papa Road, Suite 101F
Hagatna, Guam 96910

Re: Bill 172

Dear Senator Cutille:

I understand that a public hearing was held on Bill 172 last week. Because of prior commitments, I was unable to attend and testify. Please accept this letter as my written testimony in opposition to Bill 172.

It is my opinion that, as drafted, Bill 172 would be unconstitutional and inorganic because it unreasonably restricts a person's right of access to the Superior Court of Guam. Specifically, Section 42901 requires that all cases with amounts in controversy less than \$250,000 be referred for involuntary "arbitration or mediation" at the Guam International Mediation and Arbitration Center ("GIMAC"), which is, as I understand it, a proposed private corporation to be established to conduct these proceedings. The decision of the Presiding Judge to refer a case to GIMAC is not appealable. Further, I understand that GIMAC will charge a minimum of \$2500 from each party to perform their "services", as opposed to the \$120 to be charged by the Superior Court for filing a case. Obviously, the scheme proposed by Bill 172 would substantially restrict a person's right to pursue a claim in court.

While Bill 172 allows dissatisfied claimants to request a *de novo* trial in the Superior Court, after paying exorbitant fees for arbitration, and attempts to pay lip service to the delay that would be experienced by the few litigants who could afford GIMAC by purporting to have the Court give such cases "civil priority", the whole scheme proposed in Sections 42901, *et seq.*, is fatally flawed and unconstitutional.

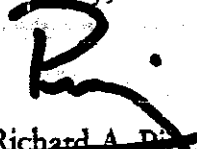
Letter to Senator F. Randall Cunliffe
Twenty-Seventh Guam Legislature
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Page 2

I question the motivation behind this proposed legislation. If passed into law, it would take away more than 90% of the civil cases the Superior Court now handles and create a private, unregulated dispute resolution system that parties are required to submit themselves to at great cost. As I have been told, GIMAC would be formed at the instigation of a large, international law firm to handle a number of commercial disputes that are expected to arise out of the Olympics to be held in Beijing. Because non-Chinese companies are reluctant to agree to dispute resolution in China's courts, Guam has been identified as a possible alternative site that both China and the outside investors and vendors could agree upon for arbitration.

Conceptually, this is not a problem. However, because setting up and maintaining GIMAC would be expensive and no one knows how much international arbitration business Guam would actually get, GIMAC's proponents need a stable source of income to support the operations of GIMAC. Hence, the Judicial Arbitration provisions of Bill 172.

In my view, Bill 172 is ill-conceived, unconstitutional, unnecessary, and would require litigants to shoulder the cost of maintaining GIMAC when they have no interest in it. It should not be passed into law in its present form. If you have any questions, feel free to contact me.

Sincerely,



Richard A. Dines

cc: Senator Ben Pangalinan
Senator Mark Forbes
Senator Robert Klitzkie
Senator Lou Leon Guerrero
Senator Ray Tenorio
F. Philip Carbullido - Chief Justice, Supreme Court of Guam
Joaquin C. Arriola, Jr. - President, Guam Bar Association

R:AP/nsh/pers/cor