

AN ACT

To provide for a system of arbitration of controversies.

BE IT ENACTED BY THE MARSHALL ISLANDS NITIJELA:

PART I. - PRELIMINARY.

1 Section 1. Short title.

2 This Act may be cited as the Arbitration Act 1980.

3 Section 2. Interpretation.

4 In this Act -

5 "agreement" includes, but is not limited to -

6 (a) an agreement providing for valuations,
7 appraisals and similar proceedings; and

8 (b) an agreement between employers and
9 employees, or between representatives of employers and
10 employees;

11 "arbitration agreement" means, subject to Section
12 3, a written agreement to submit a controversy to
13 arbitration -

14 (a) whether the agreement is general or
15 specific; and

16 (b) whether or not a controversy that
17 is the subject of the agreement already exists; and

18 (c) whether or not the agreement is part
19 of or is associated with or related to some other
20 agreement (oral or written);

1 "award" means an award made, in accordance
2 with this Act, pursuant to an arbitration agreement,
3 and includes an award made pursuant to an unwritten
4 agreement to submit a controversy to arbitration:

5 "civil action" means a civil action in the
6 High Court:

7 "controversy" means, subject to Section 3,
8 a controversy that is the subject of an arbitration
9 agreement, whether the question is a question of law
10 or of fact, or a mixed question of law and fact:

11 "neutral arbitrator" means an arbitrator who is -

12 (a) appointed jointly by the parties; or

13 (b) appointed jointly by the arbitrators

14 selected by the parties; or

15 (c) in default of appointment under
16 Paragraph (a) or (b), appointed by the High Court:

17 "party", in relation to an arbitration agreement,
18 means a party to the agreement -

19 (a) who seeks to arbitrate a controversy
20 pursuant to the agreement; or

21 (b) against whom the arbitration of
22 a controversy pursuant to the agreement is sought; or

23 (c) who is made a party to such an
24 arbitration by order of the neutral arbitrator -

25 (i) on application by any party;

26 (ii) on application of any party

1 to the arbitration; or
2 (iii) on his own motion;
3 "service" means personal service by registered
4 or certified mail, on the person to be served or
5 his attorney;

6 "written agreement" includes a written agreement
7 that has been extended or renewed by an oral or implied
8 agreement.

9 Section 3. Application of this Act.

10 (1) This Act does not apply to or in relation to an
11 agreement that expressly excludes its application.

12 (2) This Act applies to and in relation to an
13 award whether or not it was made in the Marshall Islands.

14 PART II. - ENFORCEMENT OF ARBITRATION AGREEMENTS.

15 Section 4. Validity of arbitration agreements.

16 A written agreement to submit to arbitration an
17 existing controversy or a controversy arising after the
18 agreement is valid, enforceable and, except on such grounds
19 that exist for the revocation of any contract, irrevocable.

20 Section 5. Orders to arbitrate.

21 (1) Subject to Subsections (2) and (3), on the
22 petition of a party to an arbitration agreement alleging
23 that a party to the agreement refuses to arbitrate a
24 controversy in accordance with the agreement, the High
25 Court shall order the petitioner and the respondent to
26 arbitrate the controversy, if it determines that a written

1 agreement to arbitrate the controversy exists.

2 (2) The High Court may refuse to make an order
3 under Subsection (1) if -

4 (a) the right to compel arbitration has
5 been waived by the petitioner; or

6 (b) grounds exist for the revocation of the
7 arbitration agreement; or

8 (c) subject to Subsection (3), a party
9 to the agreement is also a party to a pending court
10 action or special proceeding with a third party, arising
11 out of the same transaction or a related transaction,
12 and there is a possibility of conflicting rulings on a
13 common issue of law or fact.

14 (3) In a case to which Subsection (2)(c) applies,
15 the High Court may, if it thinks it proper to do so, make
16 any order that is just and practicable in the circumstances
17 including, but not being limited to -

18 (a) an order delaying the issuing of an
19 order to arbitrate; or

20 (b) a stay of judicial proceedings; or

21 (c) an order permitting intervention or
22 joinder in judicial proceedings referred to in that
23 paragraph.

24 Section 6. Consolidation of arbitrations.

25 (1) Where there are separate arbitration agreements,
26 either between the same parties or some of them, or

1 between the same parties or some of them and other
2 parties, the High Court may in an appropriate case, on
3 petition by one of those parties, order a consolidation
4 of any arbitration proceedings, if in its opinion it is
5 just and convenient to do.

6 (2) If in a case to which Subsection (1) applies
7 different arbitrators have been selected, or if there is
8 no provision for consolidated proceedings, the High
9 Court may appoint the arbitrators under Section 7(2)(d)(ii) or
10 (e).

11 Section 7. Appointment of arbitrators.

12 (1) Subject to this Act, if an arbitration agreement
13 provides for a method of appointing arbitrators, that
14 method shall be followed.

15 (2) If -

16 (a) an arbitration agreement does not
17 provide for a method of appointing arbitrators; or

18 (b) the method provided for fails or
19 cannot be followed; or

20 (c) an arbitrator fails to act, the High
21 Court shall, on petition by a party, appoint an arbitrator
22 in the following manner:

23 (d) the Court shall nominate two or more
24 neutral arbitrators from a list of possible arbitrators

25 compiled - -

- 1 (i) by the parties jointly or
2 (ii) in default, by the Court and
3 (e) if the parties fail to agree on the
4 appointment from the list.

5 PART III. - CONDUCT OF ARBITRATIONS.

6 Section 8. Number of arbitrators.

7 (1) Unless otherwise provided in the arbitration
8 agreement or otherwise agreed by the parties, an arbitration
9 shall be made by a single neutral arbitrator.

10 (2) If there is more than one arbitrator, then:

11 (a) if there is no neutral arbitrator, the
12 functions of the neutral arbitrator under this Act shall
13 be performed by a majority of the arbitrators and

14 (b) if there is more than one neutral
15 arbitrator -

16 (i) the functions of the neutral
17 arbitrator shall be exercised by a majority of the neutral
18 arbitrator; and

19 (ii) by unanimous agreement of
20 neutral arbitrators the functions of the neutral
21 arbitrator (other than the power to make or correct an
22 award) may be delegated to one of their number,
23 and references in this Act to the neutral arbitrator shall
24 be read and construed accordingly.

(3) A delegation under Subsection (2)(b)(ii) is
revocable, in writing, at will, and no such delegation prevents

1 the exercise of a function by a majority of the neutral arbitrators.

2 Section 9. Procedure generally.

3 (1) Unless otherwise provided in the arbitration
4 agreement or otherwise agreed by the parties, the succeeding provisions
5 of this section apply in arbitrations.

6 (2) The neutral arbitrator shall appoint a time and
7 place for the hearing, and shall serve at least seven days' notice
8 of the hearing on the parties.

9 (3) The neutral arbitrator may adjourn or postpone
10 the hearing, but shall not postpone the hearing beyond the time
11 (if any) provided in the arbitration agreement, or agreed to by the
12 parties, for the making of an award.

13 (4) The neutral arbitrator, or one of the arbitrators
14 performing under Section 8(2) the functions of the neutral arbitrator
15 elected by the arbitrators performing those functions, shall preside
16 at the hearing.

17 (5) The neutral arbitrator shall rule on the admission
18 and exclusion of evidence and on questions of procedure, and has
19 all powers necessary for the conduct of the proceedings.

20 (6) The parties are entitled to be heard, to present
21 evidence and to cross-examine witnesses appearing at the hearing,
22 but rules of judicial evidence and procedure need not be observed.

23 (7) On a party's request, testimony shall be under
24 oath, and the neutral arbitrator may administer oaths for that purpose.

1 (8) If the High Court has ordered a party to arbitrate
2 the controversy, the neutral arbitrator may hear and may determine
3 the controversy notwithstanding the failure of that party to
4 appear, provided that the party has been served with due notice
5 to appear.

6 (9) If a neutral arbitrator who has been duly served
7 with notice of the hearing fails to participate in the arbitration, the
8 remaining neutral arbitrator or neutral arbitrators (if any)
9 may make the award.

10 (10) If a neutral arbitrator intends to base an award
11 on information not obtained at the hearing, he shall disclose the information,
12 and circumstances surrounding the acquisition of it, to all parties, and
13 shall give all parties a chance to meet it.

14 Section 10. Subpoenas.

15 (1) On application by a party or on his own motion, the
16 neutral arbitrator may issue subpoenas for the attendance of witnesses
17 or for the production of books, records, documents and other evidence.

18 (2) Except for the parties to the arbitration and their
19 agents, officers and employees, all witnesses appearing in answer
20 to a subpoena are entitled to receive fees and mileage in the same amount
21 and in the same circumstances as witnesses in civil actions in the High
22 Court.

23 (3) The fee and mileage of a subpoenaed witness are payable
24 by the party that requested the subpoena, and in the case of a witness

1 subpoenaed on the motion of the neutral arbitrator shall be paid in the
2 manner provided for payment of the neutral arbitrator's fees and expenses
3 under Section 18.

4 Section 11. Depositions.

5 (1) On application by a party, the neutral arbitrator may
6 order the deposition of a witness to be taken for use as evidence,
7 but not for discovery, if the witness cannot be compelled to attend the
8 hearing or if such exceptional circumstances exist as make it desirable,
9 in the interests of justice and with due regard to the importance
10 of presenting evidence orally at the hearing, to allow the deposition
11 to be taken.

12 (2) The deposition shall be taken in the same manner
13 as in civil actions in the High Court.

14 Section 12. Discovery in certain cases.

15 (1) Notwithstanding anything in this Act, the succeeding
16 provisions of this section apply in an arbitration under this Act -

17 (a) arising out of the death of or injury to
18 a person caused by the wrongful act or neglect of another; or

19 (b) to which the parties agree that those provisions
20 shall apply.

21 (2) The parties have the right to make discovery in the same
22 manner as in civil actions in the High Court and, by leave of the neutral
23 arbitrator, to have a deposition taken for the purposes of discovery.

24 (3) The neutral arbitrator may enforce the rights, remedies,

1 procedurs, duties, liabilities and obligations of discovery by the
2 imposition of the same terms, conditions, consequences, liabilities,
3 sanctions and penalties as can be imposed in the same circumstances in
4 a civil proceeding in the High Court, but may not order arrest or
5 imprisonment.

6 Section 13. Making of awards.

7 An award shall be in accordance with the opinion of this
8 majority of the arbitrators.

9 Section 14. Form of awards.

10 (1) An award shall be in writing, signed by the arbitrators
11 concurring in the decision and served on each party by the neutral
12 arbitrator.

13 (2) An award shall include a determination of all the
14 questions submitted to the arbitrators the decision of which is necessary
15 in order to determine the controversy.

16 Section 15. Time for making awards.

17 (1) The award in an arbitration shall be made within such
18 time -

19 (a) as is provided in the arbitration agreement; or

20 (b) as is agreed between the parties; or

21 (c) in default of any such provision or agreement

22 as is ordered by the High Court on application by a party.

23 (2) The parties may extend the time either before or
24 after its expiration.

25 (3) A party shall be deemed to have waived his right

1 to object unless he gives to the neutral arbitrator notice of his objection
2 before service of a signed copy of the award on the applicant.

3 Section 16. Correction of awards.

4 On written application by a party made within 45 days after
5 service of a signed copy of the award on the applicant, the neutral arbitrator
6 may correct the award as to -

7 (a) an evident miscalculation of figures or an evident
8 mistake in the description of any person, thing or property referred
9 to in the award; or

10 (b) a matter of form, not affecting the merits.

11 Section 17. Powers of the High Court in relation to awards.

12 (1) Any party may petition the High Court to confirm, correct
13 or vacate the award in the arbitration.

14 (2) Subject to the succeeding provisions of this section,
15 the High Court shall confirm the award, and enter judgement in conformity
16 with it as if it were a judgement in a civil action before the High Court.

17 (3) In confirming an award, the High Court may -

18 (a) exercise the powers of correction of the neutral
19 arbitrator under Section 16; or

20 (b) otherwise correct the award if the arbitrator exceeded
21 his powers but the award can properly be corrected without affecting the
22 merits of the decision on the controversy,
23 and judgement shall be entered under Subsection (2) accordingly.

24 (4) The High Court shall vacate the award if, and only if -

25 (a) the award was procured by corruption, fraud or other
26 improper means; or

1 (b) there was corruption in any of the arbitrators

2 in his capacity as such; or

3 (c) the rights of a party were substantially prejudiced

4 by the misconduct of a neutral arbitrator; or

5 (d) the arbitrator exceeded his powers and the

6 award cannot properly be corrected under Subsection (3)(b); or

7 (e) the rights of a party were substantially

8 prejudiced by

9 (i) the refusal of the arbitrator to adjourn

10 or postpone the hearing on sufficient cause being shown; or

11 (ii) the refusal of the arbitrator to hear

12 the evidence material to the controversy; or

13 (iii) other conduct of the arbitrator contrary

14 to this Act.

15 (5) If an award is vacated, the High Court may order a rehearing -

16 (a) before new arbitrators; or

17 (b) if the award was vacated under Subsection

18 (4)(d) or (e) - before the same arbitrators,

19 and in the absence of agreement between the parties the High Court

20 shall fix the time for the award to be made on the rehearing, and may

21 give such directions as to the rehearing as it thinks just and proper.

22 (6) Subject to Subsection (5), the provisions of this Act

23 apply to and in relation to a rehearing under that subsection in the

24 same way that they apply to an original hearing.

25 Section 18. Effect of awards.

26 (1) If an award is confirmed, the judgement entered in

1 accordance with Section 17(2)

2 (a) has the same force and effect as any other
3 judgement in a civil action before the High Court; and

4 (b) is subject to all provisions of law relating
5 to such as judgement; and

6 (c) may be enforced in the same manner as such
7 a judgement.

8 (2) An award that has been vacated is null and void and
9 of no effect.

10 (3) An award that has neither been confirmed nor vacated
11 has the same force and effect as a written contract between the parties
12 to the award.

13 PART IV. - MISCELLANEOUS.

14 Section 19. Arbitrator's fees and expenses.

15 (1) Subject to Subsection (2), unless the arbitration
16 agreement provides otherwise or the parties agree otherwise, each party
17 shall pay his pro rata share of the expenses and fees of the neutral
18 arbitrator, together with other expenses of the arbitration incurred or
19 approved by the neutral arbitrator, as assessed by the neutral arbitrator.

20 (2) Each party shall bear his own attorney fees, witness fees
21 and mileage for witnesses called by him and other expenses incurred
22 for his own benefit.

23 Section 20. Effective date.

24 This Act shall be effective on the date on which it becomes
25 law.

Certificate

I hereby certify:

(1) that the above Nitijela Bill No. 57 has been passed
by the Marshall Islands Nitijela on the 3rd day of December 1980; and

(2) that I am satisfied that Bill No. 57 has been passed
in accordance with the Constitution of the Marshall Islands and the Rules
of the Nitijela.

I hereby place my signature before the Clerk of the Nitijela this 30th
day of December, 1980.

/s/ Atlan Anien
Atlan Anien, Speaker
Marshall Islands Nitijela

Attest:

/s/ Donald F. Capelle
Donald F. Capelle, Clerk
Marshall Islands Nitijela

Concurred by High Commissioner Adrian P. Winkel 1/19/81