

Alternative Dispute Resolution FACT SHEET

THE VENUE OF CHOICE FOR ARBITRATION

Guam is a superb “neutral” location for the arbitration of international contractual disputes. To create a transparent and arbitration-friendly environment on May 6, 2004, the 27th Guam Legislature (with the complete support of the Honorable Felix P. Camacho, Governor of Guam and the United Judicial Council of the Guam Supreme and Superior Courts) passed into law, Public Law 27-81 the “Guam International Arbitration Law”. Based on the United Nations Commission on International Trade Law (UNCITRAL), it is intended to govern all international commercial arbitrations in Guam. Among its most notable provisions:

1. Based on UNCITRAL Model Law and International Comity.
2. Access to the Guam courts to enforce Settlements and Awards
3. New Supreme Court of Guam rule permitting temporary practice by foreign lawyers
 - a. A “foreign lawyer” must be a member in good standing of a recognized legal profession in a foreign jurisdiction
 - b. Foreign lawyers may provide temporary services for pending or potential arbitration, mediation or other alternative dispute resolution proceeding on Guam

ALTERNATIVE DISPUTE RESOLUTION PROCEDURES:

I. ARBITRATION

Basic Default Provisions:

1. Where the number of arbitrators is not stated, a sole arbitrator will be appointed (§42301)
2. Where no place of arbitration is stated, the arbitration will be on Guam unless the arbitral tribunal decides otherwise (§42503)
3. The arbitral tribunal will determine the language to be used during the course of the arbitration (§42505)

Getting Arbitration Started:

1. Claimant can initiate the arbitral proceeding by informing the institution of the claim, or where no institution is specified, the Claimant must notify the respondent (§42504)
2. Respondent must then file a statement of defense. If respondent fails to file statement of defense monetary sanctions will be imposed and respondent will then be given an extension of time
3. If respondent is still in non-compliance after the expiration of the extension, the arbitral tribunal may enter a default award (§42508)

During the Arbitration:

1. Arbitral tribunal can appoint an expert to provide advice (§42509)

2. Arbitral tribunal has the power to issue a summons to require witnesses to attend the arbitral proceeding (§42571)
3. All hearings are in camera (§42507(d))

The Award:

1. If parties settle, the arbitral tribunal can enter the settlement as an award (§42603)
2. The form of the award is as per the New York Convention (§42604)
3. Parties have 30 days to seek correction and/or clarification of the award (§42606)
4. Successful party can seek costs, interest and expenses as part of the award (§42405, 42406)

Interim Measures:

1. Before the arbitral tribunal is constituted (§42403) – “it is not incompatible with an arbitration agreement for a party to request, before the constitution of an arbitral tribunal, from a court an interim measure of protection and for a court to grant such measure”
2. After the Arbitral Tribunal is constituted (§42402) – “provided a party can demonstrate by clear and convincing evidence that a request for such interim measures to the arbitral tribunal would prejudice its rights, any party may apply to the court...for interim relief...”

II. MEDIATION (under Guam law)

1. Statute of limitations are tolled during a mediation (§43107)
2. Statements made during a mediation not admissible in evidence (§43201)
3. Documents prepared for/pursuant to mediation cannot be compelled in later proceedings (§43201)
4. Mediators writings shall not be disclosed to the parties (unless otherwise agreed) (§43202)
5. Materials made by the mediator cannot be submitted to a court unless such disclosure is required by law (§43202)
6. The mediator can create a Mediation Settlement Agreement which must be signed by the parties (§43301(c))

Summary Enforcement of Mediation Settlement Agreements:

1. A party to a Mediation Settlement Agreement can obtain summary judgment without filing a complaint by filing a summons, a notice of motion for summary judgment and supporting papers, and a copy of the signed Mediation Settlement Agreement
2. Defendant may be required to file answering papers (defendant will have at least 30 days to prepare these)
3. Court can issue judgment based on the Mediation Settlement Agreement (§43301(c))