



PNG's New Arbitration Laws

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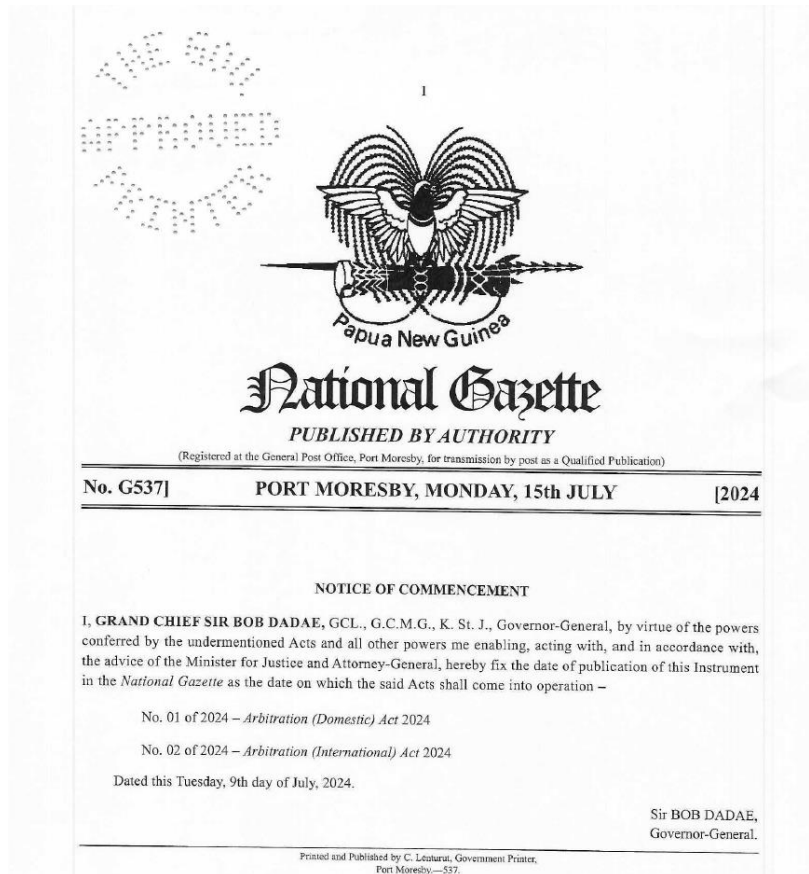
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What is arbitration?

- Alternative dispute resolution process.
- Arguments and evidence presented to an independent third party (the arbitrator).
- Arbitrator/s makes a determination (an “award”).
- Adopts a formal structured process, like litigation.
- The arbitrator/s determination is binding and supported by reasons.

The Arbitration Acts commenced on 9 July 2024





International Arbitration



Arbitration (International) Act

- Enables the enforcement of international arbitration awards in PNG (implementing the New York Convention).
- Sets out the procedure for conducting international arbitration in PNG.

What categorises arbitration as “international arbitration”?

1

One of the parties has its place of business outside PNG.

2

The *seat of the arbitration* is outside the countries in which the parties have their place of business.

3

A *substantial part of the obligations* to be performed is outside the countries in which the parties have their place of business.

4

The *subject matter of the dispute* is most closely connected to a place outside the countries in which parties have their place of business.

5

Parties expressly agree that the subject matter of the arbitration agreement relates to more than one country or territory.

International Arbitration procedure - notable provisions



Time limitation to commencement of proceeding

- Time limits under the *Frauds and Limitations Act* 1988 or any other applicable laws apply.



Appointment of arbitrators

- Parties can agree on a procedure to appoint and to determine the number of arbitrators.
- If there is a failure to agree on the appointment of arbitrator(s), **a suitably qualified body is to be established by the responsible Minister to resolve the matter. Until that body is established, the Chair of the ADR Committee is to resolve the matter.**
- Arbitrator standards, codes of ethics and a process for credentialing of arbitrators may be established by judges of the National Court.



Role of Lawyers

- Parties may represent themselves or engage a lawyer who is qualified in any legal jurisdiction of that party's choice.



Notice to bring proceedings against the State

- The International Act binds the State.
- Section 5 notice under the *Claims By and Against the State Act* does not apply where the State is a party.



Interim measures

- An arbitrator or tribunal can grant interim measures, such as orders to:
 - ✓ maintain or restore the status quo;
 - ✓ preserve evidence; or
 - ✓ take action to prevent or refrain from taking action that is likely to cause current or imminent harm or prejudice to the arbitral process itself.

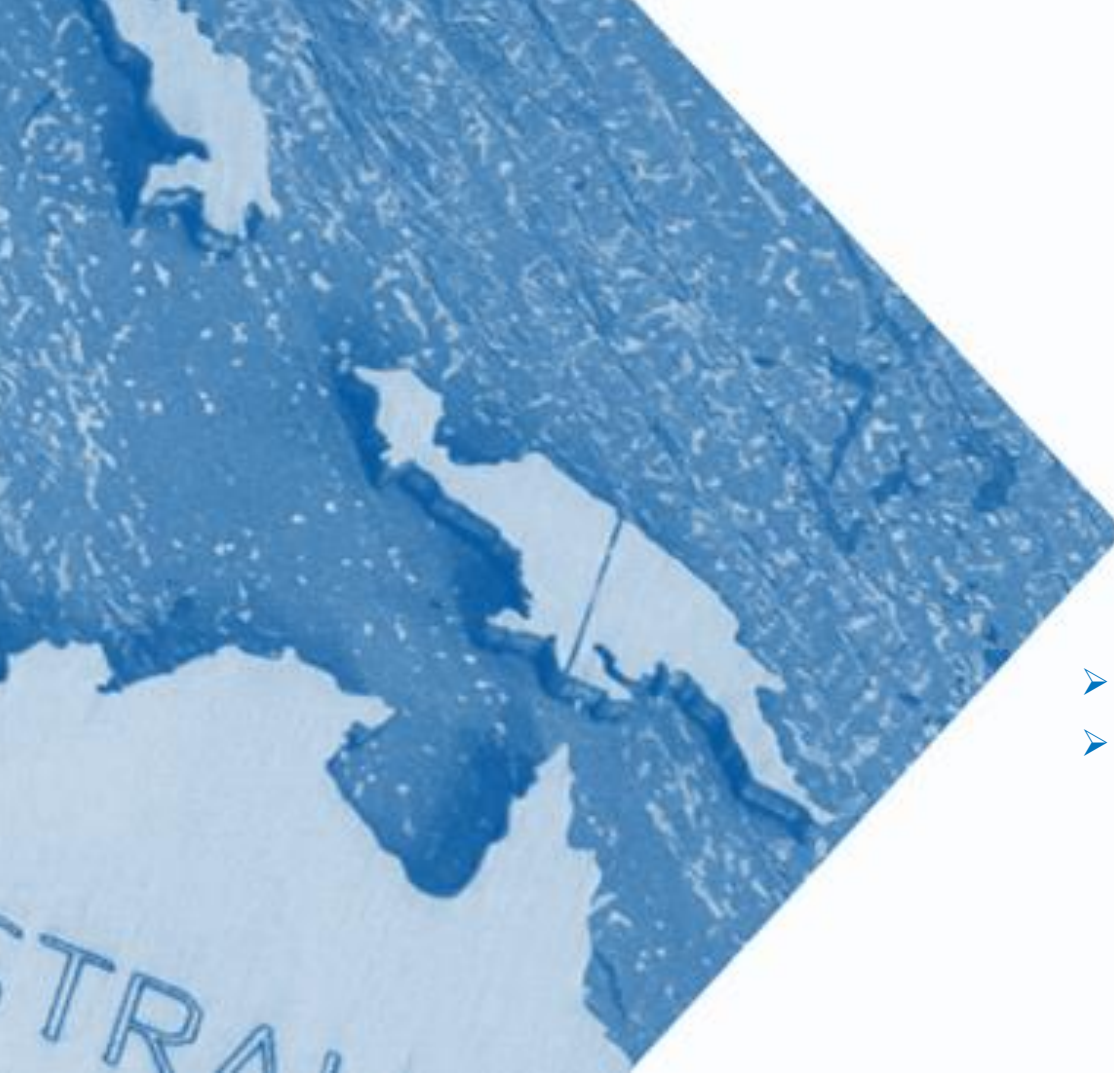


Confidentiality

- All documents and matters relating to any international arbitration are confidential.

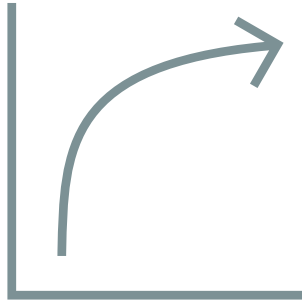


Domestic Arbitration



Arbitration (Domestic) Act

- Rules for conducting domestic arbitration
- Creates a referral system for the Court.



National Court Commercial Track

599 current cases

2 Judges

Domestic Arbitration procedure - notable provisions



Time limitation to commencement of proceeding

- Time limits under the *Frauds and Limitations Act 1988* or any other applicable laws apply.



Appointment of arbitrators

- Parties can agree on a procedure to appoint and to determine the number of arbitrators.
- If there is a failure to agree on the appointment of arbitrator(s), **a suitably qualified body is to be established by the responsible Minister to resolve the matter. Until that body is established, the Chair of the ADR Committee is to resolve the matter.**
- Arbitrator standards, codes of ethics and a process for credentialing of arbitrators may be established by judges of the National Court.



Role of Lawyers

- Parties may represent themselves however, if they wish to engage a lawyer, that lawyer must be qualified to practice in PNG.



Notice to bring proceedings against the State

- The Domestic Act binds the State.
- Unlike international arbitration, notice under the Claims By and Against the State Act applies where the State is a party.
- The Act provides scope for parties to exclude the notice requirement through agreement.



Interim measures

- The Domestic Act also allows for interim orders to be made by the arbitrator or tribunal.



Court-annexed arbitration

- Subject to limited exceptions, the Domestic Act gives the National Court power to refer any matter before it for resolution by arbitration. This power can be exercised by it on its own motion or with consent of the parties.



Confidentiality

- Like the international act, all documents and matters relating to any domestic arbitration are confidential.

➤ The role of the National Court

- Supervisory role in both domestic and international arbitration.
- Supervisory powers include:
 - ✓ dismiss /stay court proceedings in favour of arbitration;
 - ✓ determine claims of disqualification of arbitrators on account of bias;
 - ✓ assist in receiving evidence;
 - ✓ recognising and enforcing of arbitral awards.

➤ The case for a PNG Arbitration Institute

- Envisaged in legislation.
- Independent Peak Body
 - Research
 - Accreditation and Training
 - Practice
- Administration of domestic and international arbitration.
- Develop and administer Rules consistent with legislation and modelled on regional examples:
 - ACICA
 - Resolution Institute
 - SIAC

➤ A body to resolve arbitral tribunal composition issues (Domestic Act)

(2) Where the parties fail to determine the number of arbitrators, the number of arbitrators shall be one.

18. APPOINTMENT OF ARBITRATORS.

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

(2) Parties are free to agree on a procedure of appointing the arbitrator or arbitrators.

(3) Where the agreement under Subsection (2) fails -

(a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators shall appoint the third arbitrator. If a party fails to appoint an arbitrator within 30 days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within 30 days of their appointment, the appointment shall be made, upon request of a party, by the authority specified in Section 19; and

(b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, that arbitrator shall be appointed, upon request of a party, by the authority specified in Section 19.

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

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

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

(c) a third party, (which for the avoidance of doubt, could include an arbitral institution), fails to perform any function entrusted to it under such procedure,

any party may request the authority specified in Section 19 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment

(5) The authority specified in Section 19, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator.

(6) In appointing a sole or third arbitrator, the authority specified in Section 19 shall take into account, in addition to the considerations mentioned above, the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties, where the parties are of different nationalities.

(7) A decision on a matter vested by Subsections (3) or (4) to the authority specified in section 19 shall be subject to no appeal or review.

19. MINISTER TO APPOINT BODY TO RESOLVE ARBITRAL TRIBUNAL COMPOSITION ISSUES.

(1) The Minister may, by notice in the National Gazette, appoint a suitably qualified body to resolve the matters specified in Section 18(3) and (4).

(2) The Minister may, by notice in the National Gazette, revoke any appointment made under Subsection (1).

(3) Until the Minister otherwise determines in accordance with Subsection (1) and (2), the matters specified in Section 18(3) and (4) shall be resolved by the Chair of the Alternative Dispute Resolution Committee of the Court.

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➤ A body to resolve arbitral tribunal composition issues (International Act)

(2) Where the parties fail to determine the number of arbitrators, the number of arbitrators shall be three.

17. APPOINTMENT OF ARBITRATORS.

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

(2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators.

(3) Where the parties fail to agree under Subsection (2) -

(a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators shall appoint the third arbitrator; or

(b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, that arbitrator shall be appointed, upon request of a party, by the authority specified in Section 18.

(4) If a party fails to appoint an arbitrator within 30 days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within 30 days of their appointment, the appointment shall be made, upon request of a party, by the authority specified in Section 18.

(5) Where under an appointment procedure agreed upon by the parties -

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

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

(c) a third party (which for the avoidance of doubt, could include an arbitral institution), fails to perform any function entrusted to it under such procedure,

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(7) A decision on a matter vested by Subsection (3) or (4) to the authority specified in Section 18 shall be subject to no appeal or review.

18. MINISTER TO APPOINT BODY TO RESOLVE ARBITRAL TRIBUNAL COMPOSITION ISSUES.

(1) The Minister may, by notice in the National Gazette, appoint a suitably qualified body to resolve the matters specified in Sections 17(3) and 17(5).

(2) The Minister may, by notice in the National Gazette, revoke any appointment made under Subsection (1).

(3) Until the Minister otherwise determines in accordance with Subsections (1) and (2), the matters specified in Sections 17(3) and 17(5) shall be resolved by the Chair of the Alternative Dispute Resolution Committee of the Court.



> Questions

Thank you!

[Heralding in a new era – PNG's arbitration regime \(allens.com.au\)](https://allens.com.au)



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