

# PAPUA NEW GUINEA ADOPTS NEW ARBITRATION LAWS

On 9 July 2024, Papua New Guinea's (PNG) Arbitration (Domestic) Act 2024 (Domestic Arbitration Act) and Arbitration (International) Act 2024 (International Arbitration Act) came into force (collectively Arbitration Acts<sup>1</sup>).

The Arbitration Acts repealed the previous legislation, Arbitration Act 1951, and position PNG in line with the UNCITRAL Model Law on International Arbitration (**UNCITRAL Model Law**). The International Arbitration Act also gives effect to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (**New York Convention**) to which PNG acceded on 17 July 2019.

The modernisation of PNG's arbitration legal framework is the result of assistance provided by the Asian Development Bank (**ADB**) as part of the ADB's programme to encourage foreign investment in the South Pacific. The ADB recognises the importance of implementing a dispute resolution mechanism that is capable, fair and reliable in order to promote foreign investment, trade and finance<sup>2</sup>. PNG's economy benefits from a strong agricultural, forestry and fishing sector and a rich minerals and energy extraction sector that account for the majority of its exports to countries, including within the South Pacific, Australia and the United States<sup>3</sup>. To continue to foster PNG's economic growth and encourage foreign investment, the implementation of a robust international arbitration framework is essential to ensure the efficient resolution of cross-border disputes.

## ADB's Promotion of International Arbitration Reform

The ADB invests in the Asia Pacific to support the region achieving greater prosperity, resilience and sustainability<sup>4</sup>. The ADB recognised that a lack of confidence in existing dispute resolution mechanisms in the South Pacific countries was preventing the flow of foreign investment and trade into these economies.

In 2016, the ADB published a Technical Assistance Report for the Promotion of International Arbitration Reform for Better Investment Climate in the South Pacific<sup>5</sup>. The report detailed the ADB's plan to modernise and implement international arbitration regimes in the 14 South Pacific countries with which the ADB works, including Fiji, PNG, Tonga, Vanuatu and the Solomon Islands. The ADB's reform programme, led by Gary B. Born and Sydney barrister Daniel Meltz AM as expert consultants, has resulted in Fiji, Timor-Leste, Tonga, Palau and now PNG benefiting from these reforms.

## Relevant Provisions of the Domestic Arbitration Act and International Arbitration Act

The Arbitration Acts largely adopt the UNCITRAL Model Law. The UNCITRAL Model Law is designed to harmonise the legal framework for arbitration in States to provide uniformity in the approach and conduct of arbitrations and to ensure the recognition and enforceability of arbitral awards.

PNG's repealed *Arbitration Act 1951* was modelled on the United Kingdom's repealed *Arbitration Act 1889*, neither of which were based on the UNCITRAL Model Law.

<sup>1</sup> as announced in the National Gazette No. G537 published 15 July 2024.

<sup>2</sup> [Papua New Guinea Accedes to New York Convention on Arbitration | Asian Development Bank \(adb.org\)](#).

<sup>3</sup> [Overview: Development news, research, data | World Bank](#).

<sup>4</sup> [Papua New Guinea Accedes to New York Convention on Arbitration | Asian Development Bank \(adb.org\)](#).

<sup>5</sup> [ADB, Promotion of International Arbitration Reform for Better Investment Climate in the South Pacific \(Technical Assistance Report, November 2016\)](#).

The Arbitration Acts are very similar and give effect to a number of the same provisions. Both provide the legal framework required to refer disputes to arbitration with the support and supervision of the PNG courts. This purpose is reflected throughout, as there is limited involvement from the PNG courts in the arbitral process. One of the objectives of the Domestic Arbitration Act is to relieve the burden on the courts by referring matters to domestic arbitration (as explained further below).<sup>6</sup>

The International Arbitration Act facilitates international trade and commerce by encouraging the use of arbitration and implementing PNG's obligations under the New York Convention to recognise and enforce arbitration agreements and arbitral awards.<sup>7</sup>

The Arbitration Acts adopt many provisions from the UNCITRAL Model Law, including provisions relating to scope and application, the definition of an arbitration agreement, the appointment of an arbitral tribunal, the competence and jurisdiction of the tribunal, the power of the tribunal and the court to grant interim measures, and the grounds upon which an award may be set aside or refused recognition or enforcement. By adopting the UNCITRAL Model Law, PNG's arbitration law is now in line with other leading Asia Pacific States including Australia, Singapore and Hong Kong.

## Deviation from the UNCITRAL Model Law

The Arbitration Acts feature some key differences from the UNCITRAL Model Law:

- **Court Referrals to Arbitration:** The Domestic Arbitration Act allows the PNG court, of its own motion or with the consent of the parties, to refer a matter for resolution by arbitration that is not already the subject of an arbitration agreement.<sup>8</sup> In contrast, the UNCITRAL Model Law does not grant this power to the national courts. Rather, the parties must agree to refer the matter to arbitration.
- **Statutory time bars and condition precedent:** The Arbitration Acts provide that all arbitrations be commenced in accordance with the six year time limit for commencing legal proceedings under the Frauds and Limitations Act 1988.<sup>9</sup>
- **Legal representation:** Under the Domestic Arbitration Act, a party may appear before an arbitral tribunal as self-represented or represented by a duly qualified legal practitioner who is admitted in PNG.<sup>10</sup> Under the International Arbitration Act, a party may appear before an arbitral tribunal as self-represented or represented by a qualified legal practitioner from any jurisdiction of that party's choice.<sup>11</sup> However, a practicing certificate is not required to be held pursuant to section 35 of the Lawyers Act 1986, in connection with the arbitral proceedings.<sup>12</sup>
- **Confidentiality and privacy:** The UNCITRAL Model Law is silent in relation to the confidentiality of arbitral proceedings. Similar to other jurisdictions, the Arbitration Acts expressly provide that an arbitration will be confidential and hearings private.<sup>13</sup> The confidentiality provisions provide that no party may publish, disclose or communicate any information relating to an arbitration proceeding or arbitral award. The usual exceptions to confidentiality are included, such as where it is necessary to protect or pursue a legal right or interest of the party, necessary to enforce or challenge an arbitral award, or where an arbitral order permits a party to do so.

## Comment

The enactment of the Arbitration Acts marks a future where PNG will be considered a jurisdiction with a modern arbitration framework. As stated by the ADB, the primary benefits of legislating an effective commercial dispute resolution and enforcement regime that aligns with the UNCITRAL Model Law are an increase in foreign investor confidence, as well as greater economic development.<sup>14</sup>

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<sup>6</sup> *Arbitration (Domestic) Act 2024 (Domestic Arbitration Act)* s 2(1).

<sup>7</sup> *Arbitration (International) Act 2024 (International Arbitration Act)* s 2(1).

<sup>8</sup> Domestic Arbitration Act s 7(1).

<sup>9</sup> Domestic Arbitration Act s 11(1); International Arbitration Act s 10(1).

<sup>10</sup> Domestic Arbitration Act s 40.

<sup>11</sup> International Arbitration Act s 39(2).

<sup>12</sup> International Arbitration Act s 39(3).

<sup>13</sup> Domestic Arbitration Act s 49; International Arbitration Act s 49.

<sup>14</sup> [ADB, Promotion of International Arbitration Reform for Better Investment Climate in the South Pacific \(Technical Assistance Report, November 2016\).](#)

For more information, please contact the authors of this article:



**JO DELANEY**

Partner, Sydney

**T** +61 (0)2 9320 4621

**E** jo.delaney@hfw.com



**NIVVY VENKATRAMAN**

Senior Associate, Sydney

**T** +61 (0)2 9320 4690

**E** nivvy.venkatraman@hfw.com



**NATALIE JARMUSZ**

Law Graduate, Sydney

**T** +61 (0)2 9320 4684

**E** natalie.jarmusz@hfw.com



**NICOLA GARE**

Knowledge Counsel, London

**T** +44 (0)20 7264 8158

**E** nicola.gare@hfw.com

**hfw.com**

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