

Public Law 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42104, 42105, 42106, 42107, 42108, 42109, 42110 and 42111 of Chapter 42, Title 7, Guam Code Annotated, are hereby *repealed*.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43101, 43102, 43103, 43104, 43105, 43106, 43107 and 43108 of Chapter 43, Title 7, Guam Code Annotated, are hereby *repealed*.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.

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

**Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* recognizes that full, formal court litigation of claims can impose large economic burdens on parties and can delay resolution of disputes for considerable periods. *I Liheslaturan Guåhan* also recognizes that an alternative dispute resolution procedure can improve the quality of justice by improving the parties' clarity of understanding of their case, their access to evidence, and their satisfaction with the process and result. This Act serves to provide quicker, less expensive and potentially

more satisfying alternatives to continuing litigation without impairing the quality of justice or the right to trial.

**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, and to read as follows:

**“Chapter 42-A.**

**ARTICLE I. GENERAL PROVISIONS.**

**§42101. Scope of Application.**

- (a) This Chapter 42-A shall be known as and may be cited as the *Guam International Arbitration Chapter*.
  - (b) This Chapter 42-A is intended to govern all international commercial arbitrations. It is based on the UNCITRAL Model Law and should be interpreted having regard to international comity.
  - (c) Solely for the purposes of this Chapter 42-A, Guam is considered a State; and the states of the United States, including the District of Columbia, territories and commonwealths of the United States and any foreign nation, shall be considered a different State.
  - (d) The provisions of this Chapter 42-A apply to international commercial arbitration and domestic arbitration, subject to any agreement in force between Guam and any other State or States.
  - (e) The provisions of this Chapter 42-A, except Sections 42202, 42403, and 42702 apply only if the place of the international commercial arbitration is in Guam.
- (a) An arbitration is international if:
- (1) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or
  - (2) one of the following places is situated outside the State in which the parties have their places of business:
    - (A) the place of arbitration if determined in, or pursuant to, the arbitration agreement;
    - (B) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject matter of the dispute is most closely connected; or
    - (C) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one State.
- (g) An arbitration is domestic if:
- (1) The arbitration is not an international commercial arbitration as defined in paragraph (f) above; and
  - (2) the place of the arbitration is Guam.
- (h) For the purposes of paragraph (f) of this Section:
- (1) if a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement; and
  - (2) if a party does not have a place of business, reference is to be made to his

or her habitual residence.

(i) The term commercial should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. An agreement is *commercial* if it arises out of a relationship of a commercial nature including, but not limited to, any of the following:

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

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

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

- (a) *Arbitration* means any arbitration whether or not administered by a permanent arbitral institution.
- (b) *Arbitral tribunal* means a sole arbitrator or a panel of arbitrators.
- (c) *Court* means a body or organ of the judicial system of a State.
- (d) Where a provision of this Chapter 42-A, except Section 42601, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination.
- (e) Where a provision of this Chapter 42-A refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement.
- (f) Where a provision of this Chapter 42-A, other than in Sections 42508 and 42605(b)

(1), refers to a claim, it also applies to a counter claim, and where it refers to a defense, it also applies to a defense to such counter-claim.

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

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

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

(a) Unless otherwise agreed by the parties:

(1) Any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his or her place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it; and

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

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

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

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

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

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

## **ARTICLE II. ARBITRATION AGREEMENT.**

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

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

(b) The arbitration agreement shall be in writing. An agreement is in writing if it is

contained in a document signed by the parties or in an exchange of letters, telex, facsimile, electronic mail, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defense in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

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

(a) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his or her first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

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

**§42203. Consolidation.**

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

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

(b) The disputes arise from the same transactions or series of related transactions; and

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

(b) If all of the applicable arbitration agreements name the same arbitrator, arbitration panel, or arbitration tribunal, the court or other authority specified in Section 42106, if it orders consolidation, shall order all matters to be heard before the arbitrator, panel, or tribunal agreed to by the parties. If the applicable arbitration agreements name separate arbitrators, panels, or tribunals, the court or other authority specified in Section 42106, if it orders consolidation, shall, in the absence of an agreed method of selection by all parties to the consolidated arbitration, appoint an arbitrator in accordance with the procedures set forth in Section 42302.

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

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

resolved in separate proceedings.

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

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

#### **§42301. Number of Arbitrators.**

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

#### **§42302. Appointment of Arbitrators.**

- (a) No person shall be precluded by reason of his or her nationality from acting as an arbitrator, unless otherwise agreed by the parties in the interest of neutrality.
- (b) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (d) and (e) of this Section.
- (c) Failing such agreement, appointment of arbitrators shall be made as directed by the court.
- (d) Where, under an appointment procedure agreed upon by the parties,
  - (1) a party fails to act as required under such procedure, or
  - (2) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or
  - (3) a third party, including an institution, fails to perform any function entrusted to it under such procedure, any party may request the court or other authority specified in Section 42106 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.
- (e) A decision on a matter entrusted by paragraphs (c) or (d) of this Section to the court or other authority specified in Section 42106 shall be subject to no appeal. The court or other authority, 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 and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

#### **§42303. Grounds for Challenge.**

- (a) When a person is approached in connection with his or her possible appointment as an arbitrator, he or she shall disclose any circumstances reasonably likely to give rise to material justifiable doubts as to his or her impartiality or independence. An arbitrator, from the time of his or her appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him or her.
- (b) An arbitrator may be challenged only if circumstances exist that give rise to material justifiable doubts as to his or her impartiality or independence, or if he or she does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him or her, or in whose appointment he or she has participated, only for

reasons of which he or she becomes aware after the appointment has been made.

**§42304. Challenge Procedure.**

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

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

- (a) If an arbitrator becomes *de jure* or *de facto* unable to perform his or her functions or for other reasons fails to act without undue delay, his or her mandate terminates if he or she withdraws from his or her office or if the parties agree on the termination.
- (b) If a controversy remains concerning any of the grounds referred to in Subsection (a), any party may request the arbitral tribunal to terminate the relevant arbitrator's mandate, provided such request is made to the arbitral tribunal within fifteen days of becoming aware of the grounds referred to in Subsection (a). The arbitral tribunal shall, in its sole discretion, determine whether termination of the arbitrator's mandate is appropriate.
- (c) If the arbitral tribunal does not terminate the mandate, the challenging party may request the court or other authority specified in Section 42106 to decide on the termination of the mandate, provided that such request is made within thirty days of the arbitral tribunal's decision. If no such request is received by the court or other authority specified in Section 42106 within thirty days of the arbitral tribunal's decision, the decision of the arbitral tribunal is final and binding. If the court or other authority specified in Section 42106 receives a request to decide on the termination of the mandate, the decision shall be final and subject to no appeal.
- (d) If, under this Section or Section 42304(b), an arbitrator withdraws from his or her office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this Section or Section 42304(b).

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

the parties.

**§42307. Immunity of Arbitrators.**

- (a) An arbitrator, and those acting pursuant to the order or rules of the arbitrator as his or her employees or agents, shall not be held liable for any action performed or omission made in the course of their official duties undertaken pursuant to this Chapter 42-A.
- (b) The institution which administers the arbitration shall not be liable for any action performed or omission made in connection with any arbitration, unless the action performed or omission made is committed with reckless disregard with respect to the rights of one or more of the parties.
- (c) No person who has served as an arbitrator may act as a representative or counsel of a party in any judicial proceedings in respect of a dispute that is the subject of the arbitration proceedings. No person who has served as an arbitrator may be a witness in any such proceedings.

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

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

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

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

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

- (a) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.
- (b) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defense. A party is not precluded from raising such a plea by the fact that he or she has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.
- (c) The arbitral tribunal may rule on a plea referred to in Paragraph (b) of this Section either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a

preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in Section 42106 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

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

- (a) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure.
- (b) 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 defined in Section 42106 for interim relief. Measures which the court may grant in connection with a pending arbitration include, but are not limited to, preliminary injunction granted in order to protect trade secrets or to conserve goods which are the subject matter of the arbitral dispute.
- (c) In considering a request for interim relief, the court shall give preclusive effect to any and all findings of fact of the arbitral tribunal.
- (d) Applications may be made to the court under Subsection (b) of this Section on an *ex parte* basis.

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

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

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

**§42406. Costs.**

- (a) Unless otherwise agreed by the parties, the costs of an arbitration shall be at the discretion of the arbitral tribunal.
- (b) In making an order for costs, the arbitral tribunal may include as costs any of the following:
  - (1) The fees and expenses of the arbitrators and expert witnesses;
  - (2) Legal fees and expenses;
  - (3) Any administration fees of the institution supervising the arbitration, if any; and
  - (4) Any other expenses incurred in connection with the arbitral proceedings.
- (c) In making an order for costs, the arbitral tribunal may specify any of the following:

- (1) The party entitled to costs;
  - (2) The party who shall pay the costs;
  - (3) The amount of costs or method of determining that amount; and
  - (4) The manner in which the costs shall be paid.
- (d) For the purposes of this Chapter 42-A, costs are defined as the costs described in this Section.

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

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

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

- (a) Subject to the provisions of this Chapter 42-A, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.
- (b) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Chapter 42-A, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

**§42503. Place of Arbitration.**

- (a) The parties are free to agree on the location of arbitration within Guam.
- (b) Notwithstanding the provisions of paragraph (a) of this Section, the arbitral tribunal may, unless otherwise objected to by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

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

- (a) the institution nominated by the parties. Such a request must include a demand for arbitration that includes the contact details for the respondent to the arbitral proceeding; and the institution nominated by the parties, upon receipt of the request, shall notify the respondent of the receipt of the request for arbitration; or
- (b) the respondent, if no such institution referred to in Subsection (a) of this Section has been nominated by the parties.

**§42505. Language.**

- (a) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.
- (b) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

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

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

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

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

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

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

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

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

#### **§42508. Default of a Party.**

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

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

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

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

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

(a) Unless otherwise agreed by the parties, the arbitral tribunal:

(1) may appoint one or more experts to report to it on specific issues to be

determined by the arbitral tribunal; or

(2) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his or her inspection.

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

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

**§42511. Specific Powers of the Tribunal in Taking Evidence.** The arbitrators selected, either as prescribed in this Chapter 42-A or otherwise, or a majority of them, may summon, in writing, any person to attend before them or any of them as a witness at a time and place therein specified. The fees for such attendance shall be the same as the fees of witnesses before the Superior Court of Guam. A summons to produce books or tangible items therein designated, to produce documents or to permit inspection of books, documents or tangible items at a time and place therein specified may be joined with a command to appear as witness, or may be issued separately. A summons shall issue in the name of the arbitrator or arbitrators, or a majority of them, and shall be directed to the said person and shall be served in the same manner as subpoenas to appear and testify before the court. An attorney representing a party before the arbitral tribunal may issue and sign a summons on behalf of the tribunal. If any person or persons so summoned shall refuse or neglect to obey said summons, upon petition, the court may compel such person or persons to obey said summons, or punish said person or persons for contempt in the same manner provided by law for failure to obey a subpoena.

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

## **ARTICLE VI. MAKING OF AWARD AND TERMINATION OF PROCEEDINGS.**

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

(a) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

(b) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

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

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

**§42602. Decision Making by Panel of Arbitrators.** In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a

majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

#### **§42603. Settlement.**

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

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

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

(a) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

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

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

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

#### **§42605. Termination of Proceedings.**

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

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

- (1) the claimant withdraws his or her claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his or her part in obtaining a final settlement of the dispute;
- (2) the parties agree on the termination of the proceedings; or
- (3) the arbitral tribunal finds that the continuation of the proceedings has, for any other reason, become unnecessary or impossible.

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

#### **§42606. Correction and Clarification of Award; Additional Award.**

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

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

- (2) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give a clarification of a specific point or part of the award. If the arbitral tribunal considers the request to be justified, it shall make the correction or give the clarification within thirty days of receipt of the request. The clarification shall form part of the award.
- (b) The arbitral tribunal may correct any error of the type referred to in paragraph (a)(1) of this Section on its own initiative within thirty days of the date of the award.
- (c) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.
- (d) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, clarification or an additional award under paragraphs (a) or (c) of this Section.
- (e) The provisions of Section 42604 shall apply to a correction or clarification of the award or to an additional award.

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

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

- (a) This Section only applies where the place of the arbitration is Guam and neither the Federal Arbitration Act nor the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards apply.
- (b) In any of the following cases the court may make an order vacating the award upon the application of any party to the arbitration:
- (1) where the award was procured by corruption, fraud, or undue means;
  - (2) where there was evident partiality or corruption in the arbitrators, or either of them;
  - (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence that is pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
  - (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.
- (c) If an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.
- (1) If an award is vacated because of a violation of (b)(2) or (3) above, the court shall direct a rehearing by the arbitrator or arbitrators found not to be in violation of (b) (2) or (3) and the additional arbitrator or arbitrators shall be selected or appointed pursuant to Article III of this Chapter.

(d) Notice of a motion to vacate an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered. If the adverse party is a resident of Guam, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served in like manner as other process of the court. For the purposes of the motion, any judge who might make an order to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.

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

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

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

(b) If the parties, in their agreement, have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in Sections 42606 and 42701. If no court is specified in the agreement of the parties, then such application may be made to the court. Notice of the application shall be served upon the adverse party, and thereupon the Court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of Guam, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court.

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

- (1) The agreement referred to in Section 42201 as a duly certified copy thereof; the selection or appointment, if any, of an additional arbitrator or umpire; and each written extension of the time, if any, within which to make the award.
- (2) The duly authenticated original award or duly certified copy thereof.
- (3) Each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award, and a copy of each order of the court upon such an

application.

- (d) All documents filed pursuant to this Section if not made in English, shall be filed with a duly certified translation into English.
- (e) The judgment shall be docketed as if it were rendered in an action.
- (f) The judgment so entered shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered.

#### **ARTICLE VIII. MISCELLANEOUS ARBITRATION PROVISIONS.**

**§42801. Proceedings Begun by Libel in Admiralty and Seizure of Vessel or Property.** If the basis of jurisdiction be a cause of action otherwise justiciable in admiralty, then, notwithstanding anything herein to the contrary, the party claiming to be aggrieved may begin his proceeding hereunder by libel and seizure of the vessel or other property of the other party according to the usual course of admiralty proceedings, and the Superior Court of Guam shall then have jurisdiction to direct the parties to proceed with the arbitration and shall retain jurisdiction to enter its decree upon the award.”

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

#### **“Chapter 42-B.**

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

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

- (a) The Supreme Court of Guam is authorized to establish and promulgate rules and procedures for arbitration for such civil actions, except custody cases in which the authority is separately provided for, as the Supreme Court of Guam finds appropriate in order to encourage the prompt and equitable resolution of disputes.
- (b) The Supreme Court of Guam is authorized to establish and promulgate rules and procedures for alternative dispute resolution for any civil, probate or domestic actions, except custody cases in which the authority is separately provided for, as the Supreme Court of Guam deems appropriate in order to encourage the prompt and equitable resolution of disputes.
- (c) Upon stipulation of the parties, any action, except custody cases in which the authority is separately provided for, may be submitted to an alternative method of resolving disputes established by rules and procedures to be promulgated by the Supreme Court of Guam, including, without limitation, binding arbitration, a settlement conference, mediation, early neutral evaluation, case evaluation, expert fact finding or a binding short trial or any combination of these processes, which method may result in a binding disposition of the action.
- (d) Arbitrators shall be selected and compensated in accordance with rules adopted by the Supreme Court of Guam and the Supreme Court of Guam shall further establish standards, compensation and certification for all personnel conducting alternative dispute resolution programs in the courts of Guam.
- (e) The rules and regulations promulgated by the Supreme Court of Guam pursuant to this Section shall be submitted to *I Liheslaturan Guåhan* for approval. Said rules and

regulations shall be deemed approved unless otherwise acted upon by *I Liheslaturan Guåhan* within ninety (90) days plus one (1) Legislative Day of receipt.

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

**§42902. Funding of Court-Referred Arbitration or Other Alternative Dispute Resolution Programs.**

Court-referred arbitration and other alternative dispute resolution programs should be accessible to all parties regardless of financial status and the Judicial Council may adopt and levy fees to implement provisions of this Chapter 42-B.

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

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

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

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

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

(a) If the judgment upon the trial *de novo* is not more favorable in either the amount of damages awarded or the type of relief granted for the party electing the trial *de novo* than the court-referred arbitration award, the court shall order that party to pay the following nonrefundable costs and fees incurred in the trial *de novo*, unless the court finds, in writing and upon motion, that the imposition of such costs and fees would create such a substantial economic hardship as not to be in the interest of justice:

- (1) To the Superior Court, the costs of the arbitration, less any amount paid pursuant to paragraph (4);
- (2) To the other party or parties, all costs including legal fees and expenses, and the party electing the trial *de novo* shall not recover his or her costs including legal fees and expenses;
- (3) To the other party or parties, the reasonable costs of the services of expert witnesses, who are not regular employees of any party, actually incurred or reasonably necessary in the preparation or trial of the case; and
- (4) To the other party or parties, the costs of the arbitration paid by the other party or parties, pursuant to Subsection (b) of Section 42908. Such costs and fees, other than the compensation of the arbitrator, shall include only those incurred from the time of election of the trial *de novo*.

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

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

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

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

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

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

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

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

**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 and to read as follows:

**“Chapter 43-A.  
ARTICLE I. MEDIATION.**

**§43101. Short Title.** This Chapter 43-A shall be known as and may be cited as the *Guam Mediation Chapter*.

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

- (a) *Mediation* means a process in which a neutral person or persons facilitate communication between the disputants to assist them in reaching a mutually acceptable agreement.
- (b) *Mediator* means a neutral person who conducts a mediation. *Mediator* includes any person designated by a mediator either to assist in the mediation or to communicate with the participants in preparation for a mediation.
- (c) *Mediation consultation* means a communication between a person and a mediator for the purpose of initiating, considering, or reconvening a mediation or retaining the mediator.
- (d) *Writing* means handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

**§43103. Validity, Irrevocability and Enforcement of Agreements to Mediate.** An agreement in a writing to settle a controversy by mediation shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

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

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

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

**§43107. Limitations; Tolling.** All applicable limitation periods, including periods of prescription, shall be tolled or extended upon the commencement of mediation proceedings to mediate a dispute under this Chapter 43-A and all limitation periods shall remain tolled and periods of prescription extended as to all parties to the mediation proceedings until the tenth (10<sup>th</sup>) day following the termination of mediation proceedings. For purposes of this Section, mediation proceedings are deemed to have commenced as soon as (a) a party has requested mediation of a particular dispute or disputes, and (b) the other party or parties agree to participate in the mediation proceeding.

**§43108. Nonwaiver of Rights or Remedies by Submission to Mediation.** By submitting to mediation,

no party shall be deemed to have waived any rights or remedies which that party would have had if mediation had not been initiated, other than those set forth in any mediation settlement agreement which results from the mediation or as otherwise prescribed in this Chapter 43-A.

## **ARTICLE II. EVIDENCE.**

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

- (a) Evidence of anything said or of any admission made in the course of the mediation is not admissible in evidence, and disclosure of any such evidence shall not be compelled, in any civil or criminal action in which, pursuant to law, testimony may be compelled to be given. However, this Subsection does not limit the admissibility of evidence if all parties participating in mediation consent to its disclosure;
- (b) In the event that any such evidence is offered in contravention of this Section, the arbitration tribunal or the court shall make any order which it considers to be appropriate to deal with the matter, including, without limitation, orders restricting the introduction of evidence, or dismissing the case without prejudice; and
- (c) Unless the document otherwise provides, no document prepared for the purpose of, or in the course of or pursuant to, the mediation, nor any copy thereof, is admissible in evidence, and disclosure of any such document shall not be compelled in any arbitration or civil action in which, pursuant to law, testimony may be compelled to be given.

**§43202. Mediator's Writings.**

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

**§43203. Otherwise Admissible Evidence.**

- (a) Evidence otherwise admissible or subject to discovery outside of a mediation or a mediation consultation shall not be or become inadmissible or protected from disclosure solely by reason of its introduction or use in a mediation or a mediation consultation.
- (b) This Section does not limit any of the following:
  - (1) the admissibility of an agreement to mediate a dispute;
  - (2) the effect of an agreement not to take a default or an agreement to extend the time within which to act or refrain from acting in a pending civil action; or
  - (3) disclosure of the mere fact that a mediator has served, is serving, will serve, or was contacted about serving as a mediator in a dispute.

**§43204. Protections Before and After Mediation Ends.** Anything said, any admission made, or any

writing that is inadmissible, protected from disclosure, and confidential under this Chapter 43-A before a mediation ends, shall remain inadmissible, protected from disclosure, and confidential to the same extent after the mediation ends.

### ARTICLE III. TERMINATION.

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

- (a) A written declaration of the mediator or mediators, after consultation with the parties, to the effect that further efforts at mediation are no longer justified, on the date of the declaration.
- (b) A written declaration of the parties addressed to the mediator or mediators to the effect that the mediation proceedings are terminated, on the date of the declaration.
- (c) The signing of a mediation settlement agreement by all of the parties, on the date of the agreement.

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

- (a) A written declaration of a party to the other party and the mediator or mediators, if appointed, to the effect that the mediation proceedings shall be terminated as to that particular party, on the date of the declaration.
- (b) The signing of a mediation settlement agreement by some of the parties, on the date of the agreement.

### ARTICLE IV. COSTS/TERMINATION.

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

- (a) A reasonable fee to be paid to the mediator or mediators.
- (b) The travel and other reasonable expenses of the mediator or mediators.
- (c) The travel and other reasonable expenses of witnesses requested by the mediator or mediators with the consent of the parties.
- (d) The cost of any expert advice requested by the mediator or mediators with the consent of the parties.
- (e) The costs of any court or other institution's administration of the mediation.

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

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

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

- (1) a summons,
- (2) a copy of the signed mediation settlement agreement, and

- (3) a notice of motion for summary judgment and the supporting papers.
- (b) The summons served under Subsection (a)(1) of this Section shall require the defendant to submit answering papers on the motion within the time provided in the notice of motion. The minimum time such motion shall be noticed to be heard is thirty days after service. If the plaintiff sets the hearing date of the motion later than thirty days, the plaintiff may require the defendant to serve a copy of defendant's answering papers upon the plaintiff within such extended period of time, not exceeding ten days, prior to such hearing date.
- (c) No default judgment may be entered pursuant to Guam Rule of Civil Procedure 55 (a) prior to the hearing date of the motion. If the motion is denied, the moving and answering papers shall be deemed the complaint and answer, respectively, unless the court orders otherwise.
- (d) Both the summons and the motion for summary judgment referred to in Subsections (a)(1) and (3) must be created in accordance with the applicable Guam Rules of Civil Procedure.
- (e) The purpose of this Section is to encourage mediation and to expedite the enforcement of mediated settlement agreements by allowing a party or parties to move for summary judgment in lieu of filing a complaint.
- (f) Nothing in this Section should be interpreted to restrict the rights of the parties to enforce the mediation settlement agreement in any way or other manner permitted under the laws of Guam.

## ARTICLE V. MEDIATOR AND MISCELLANEOUS PROVISIONS.

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

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

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

**§43504. Service of Process; Immunity of Participants in Mediation.** Neither the mediator or mediators, the parties, nor their representatives shall be subject to service of process on any civil matter while they are present in Guam for the purpose of arranging for or participating in the mediation pursuant to this Chapter 43-A.

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

- (a) A mediator, and those acting pursuant to the order or rules of the mediator as his or

her employees or agents, shall not be held liable for any action performed or omission made in the course of their official duties undertaken pursuant to this Chapter 43-A.

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

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

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

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

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

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

(a) The Supreme Court of Guam is authorized to establish and promulgate rules and procedures for mediation for such civil, probate or domestic actions, except custody cases in which the authority is separately provided for, as the Supreme Court of Guam deems appropriate in order to encourage the prompt and equitable resolution of disputes.

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

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

(d) Any mediation conducted pursuant to §43601(a) shall be defined as a ‘court-referred mediation.’

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

**§43602. Funding of Court-REFERRED Mediation.** Court-referred mediation should be accessible to all parties regardless of financial status and the Judicial Council may adopt and levy fees to implement provisions of this Chapter 43-B.”

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

**Section 9. Effective Dates.** Sections 1, 2, 3, 5, 6 and 8 are effective immediately upon enactment of this

Act. Sections 4 and 7 are effective upon promulgation and enactment of rules mentioned therein by the Supreme Court of Guam.