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**STANDING COMMITTEE ON JUSTICE, LAW AND  
HUMAN RIGHTS**

**REPORT ON THE INTERNATIONAL  
ARBITRATION BILL 2017**

**(BILL NO. 37 OF 2017)**



**PARLIAMENT OF THE REPUBLIC OF FIJI  
Parliamentary Paper No. 109 of 2017**

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*September 12, 2017*

*Published and Printed by the Department of Legislature, Parliament House, SUVA*



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## **LIST OF ACRONYMS AND ABBREVIATED PHRASES**

ADB	- ASIAN DEVELOPMENT BANK
HFC	- HOME FINANCE COMPANY LIMITED
MODEL LAW	- UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION
NEW YORK CONVENTION	- THE CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS
SG	- SOLICITOR GENERAL
UNCITRAL	- UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

## CHAIR'S FOREWORD

Investment in Fiji has been one of the steadiest contributors to the gross domestic product (GDP) over the years. However, it is believed that there is potential for more improvement. This has seen a need to improve on the contributing factors that impact investment and one such way is having systems in place that attract foreign trade into the country.

Therefore the Fijian Government has taken cue from the international trade arena and saw where Fiji is lacking, and that is, having a commercial dispute resolution regime that is attractive to trade. Thus the introduction of the International Arbitration Bill 2017. This Bill would see a system that establishes independent arbitral mechanisms. It would respond to public concerns by offering strict guarantees of independence, transparency and legitimacy.

It would bring much needed coherence to the global system of investment dispute settlement. This would also be a more efficient means of dispute resolution than the current multitude of bilateral investment dispute resolution mechanism. A tribunal would ensure a uniform approach to international arbitration by aligning the Fijian domestic and international law together.

The UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) which Fiji has acceded to is widely considered as the foundation instrument for international arbitration. This Bill has been drafted according to the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law (UNCITRAL).

This honourable Parliament tasked the Standing Committee on Justice, Law & Human Rights to scrutinise the said Bill in its July sitting and to return a report in this sitting of the House. The Committee straightaway commenced its work and read the Bill, called for public submissions, invited and consulted experts and relevant stakeholders to obtain widest possible views on it.

The Committee after deliberations and consultations as part of its scrutiny consulted the drafters and their drafting experts and was satisfied that since the Bill was based on International Model Law, no amendment was required to achieve its objectives.

This Report will cover the Standing Committees' role in reviewing the *International Arbitration Bill* to ensure that all due processes regarding the Bill has been followed and to also ensure that the provisions contained in the Bill would contribute to the achievement of the Bill's objectives.

Some of the pertinent areas which the Bill addresses are as follows:

- a) having laws in Fiji which are accommodative to foreign investment;
- b) the need for having better investment climate thus increasing regional and international investor confidence;
- c) any international commercial dispute which has been determined by the arbitration will be subject to the application of the Bill unless such dispute is not

- c) any international commercial dispute which has been determined by the arbitration will be subject to the application of the Bill unless such dispute is not capable of determination by arbitration under any law of the country or the arbitration agreement is contrary to the public policy of Fiji;
- d) jurisdiction of a court or other tribunal to determine a matter does not stop parties to an agreement from resorting to arbitration;
- e) arbitrators, their representative and their institution have immunity for acts or omissions arising in the discharge or purported discharge of an arbitrator's functions as an arbitrator, unless the act or omission is shown to have been done in bad faith;
- f) the promotion of uniformity of Fiji's national laws pertaining to international arbitration proceedings;
- g) aligning Fiji's international arbitration law with international best practices;
- h) establishing Fiji as a venue of choice for international arbitrations and bring in an influx of foreign spending to the country; and
- i) step forward for arbitration in Fiji in providing alternative, cost effective and time efficient means of dispute resolution.

At this juncture I would like to thank the Honourable Members of the Justice, Law and Human Rights Committee for their deliberations and input, the alternate members who made themselves available when the substantive members could not attend, the consultants, the staff and officers of the Research Unit and secretariat, the entities who accepted the invitation of the Committee and made themselves available to make submissions and the members of the public for taking an interest in the proceedings of the Committee and Parliament.

I on behalf of the Committee commend the *International Arbitration Bill 2017* to the Parliament and seek support of all the members of this August house for the Bill since it is designed to achieve commercial and economic development which in turn will benefit all Fijians.



Hon. Ashneel Sudhakar  
CHAIRPERSON, STANDING COMMITTEE ON  
JUSTICE, LAW AND HUMAN RIGHTS

## 1.0 INTRODUCTION

### 1.1 Background

The Standing Committee on Justice, Law and Human Rights, hereinafter referred to as the Committee, mandated by Standing Orders 109 (2) and 110 of the Standing Orders of Parliament, was referred the *International Arbitration Bill 2017* for review on July 14, 2017. The Committee was referred the Bill pursuant to Standing Order 51 and was tasked with scrutinising the Bill and to table a report on it in the September 2017 Parliament Sitting.

### 1.2 Objectives of the Bill

The objectives of the Bill can be derived from the long title, which are;

- a) to provide for the conduct of international arbitrations based on the Model law adopted by the United Nations Commission on International Trade Law on International Commercial Arbitration;
- b) to promote the uniformity of national laws pertaining to international arbitration proceedings;
- c) to align the administration of arbitrations in the country to the Model Law of the United Nations Commission on International Trade Law (UNCITRAL); and
- d) to and to give effect to the New York convention on the recognition and enforcement of foreign arbitral awards and for related matters.

### 1.3 Procedure and Program

The Committee had its first meeting for the deliberation on the Bill on Tuesday, July 18, 2017 and for three (3) weeks thereafter. It read through the Bill and did its own deliberation of the Clauses in the Bill with the assistance of a UNDP consultant, Mr. Kevin Deveau. The Committee also invited various stakeholders to make submissions on the Bill and called for submissions from the public and other interested stakeholders by advertising through the local newspaper (Fiji Times) via a press release, which was released by the Parliament Media Unit. Copy of the news article containing the press on the Bill is Attached as Appendix A. on July 19 and 20, 2017 and the parliament website. The Committee was also briefed by the following officials who are the drafters of the Bill from the Solicitor General's (SG's) Office and their consultants:

- i. Ms. Tracey Wong, Deputy Solicitor General;
- ii. Mrs. Lyanne Vaurasi, Deputy Chief Draftsperson;
- iii. Ms. Romanu Pranjivan, Legal Officer;
- iv. Ms. Yabaki Vosadrau, Legal Officer;
- v. Ms. Christina Pak, ADB Representative (SG's Office Consultant); and
- vi. Mr. Daniel Meltz, International Arbitration Expert, 12 Floor - an Australian Law Firm (SG's Office Consultant).

Details of the Committee's deliberations are provided in this Report.

The Committee was mindful of the provisions in Standing Order 111(1)(a) and ensured that its meetings were open to the public and the media, except during deliberations and discussions to develop and finalise this Report.

## **1.4 Committee Members**

The substantive members of the Standing Committee on Justice, Law and Human Rights are:

- i. Hon. Ashneel Sudhakar (MP) (Chairman)
- ii. Hon. Mataiasi Niumataiwalu (MP) (Deputy Chairman)
- iii. Hon. Lorna Eden (MP) (Member)
- iv. Hon. Semesa Karavaki (MP) (Member)
- v. Hon. Niko Nawaikula (MP) (Member)

During the period of the deliberation on the Bill, the following change in membership arose and alternate memberships were made pursuant to Standing Order 115 (5) where necessary:

- i. Hon. Mikaele Leawere (MP) (Alternate Member for Hon. Niko Nawaikula)
- ii. Hon. Alivereti Nabulivou (MP) (Alternate Member for Hon. Lorna Eden)

## **2.0 INTERNATIONAL ARBITRATION BILL 2017**

### **2.1 Introduction**

The International Arbitration Bill, hereinafter also referred to as the Bill, once enacted, is set to place Fiji on the main international arbitration stage by aligning the administration of arbitrations in the country to the *Model Law of the United Nations Commission on International Trade Law (UNCITRAL)*.

Previously, arbitrations were subject to the *Arbitration Act of 1965*, which only covered local commercial disputes and did not provide for matters pertaining to international commercial disputes and arbitration. This position was somewhat a deterrent for foreign investors. Thus the Fijian Government saw the need for the introduction of a law that is more accommodative to foreign investment.

Fiji acceded to the New York Convention in 2010, and now the introduction of the Bill would fill this void and increase regional and international investor confidence.

These changes are deemed necessary as it brings Fiji's arbitration laws in line with international norms and standards. The force of law will still be overseen by the executive powers within Fiji but the arbitral procedures between international parties will be governed by the laws outlined in UNCITRAL Model Law.



## **2.2 Written and oral submissions received**

As part of its deliberation, the Committee conducted public consultation and heard and received submissions on the Bill.

Submissions were received in writing and heard from relevant stakeholders, on various dates falling between and including July 24 to 26, 2017. Organisations and individuals that made submissions to the Committee:

- i. Fiji Chamber of Commerce;
- ii. The Judiciary;
- iii. Home Finance Company Limited (HFC)
- iv. Investment Fiji;

The Committee heard the oral submissions and read the ones in writing and took all pertinent matters raised into consideration.

The Committee would like to extend its gratitude to all those who participated and provided essential contribution to the Committee's work.

## **2.3 Submissions**

The submissions of the above-mentioned organisations are summarised and provided in this Report. Copies of the submissions are attached as 'APPENDIX B'.

## **3.0 COMMITTEE'S OBSERVATIONS, DELIBERATION AND ANALYSIS OF THE BILL**

### **3.1 Impact of the Bill**

The Committee noted that the Bill would ensure that laws in Fiji are more accommodative of foreign investment. It would ensure that any international commercial dispute and award administered by the UNCITRAL Model Law can also be covered by the laws in Fiji.

Any international commercial dispute which the parties have agreed to submit to arbitration and which has been determined by the arbitration will be subject to the application of the Bill. Such disputes are only exempt from the application of the Bill if it is not capable of determination by arbitration under any law of the country or the arbitration agreement is contrary to the public policy of Fiji.

Arbitration may not be excluded solely on the ground that an enactment confers jurisdiction on a court or other tribunal to determine a matter falling within the terms of an arbitration agreement.

The Bill also grants arbitrators immunity and their institutions and representatives for acts or omissions arising during the course of the discharge or purported discharge of that arbitrator's functions as arbitrator, unless the act or omission is shown to have

been done in bad faith. However the Committee also noted that there is no penalty for breach of confidentiality.

The Bill would promote the uniformity of national laws pertaining to international arbitration proceedings. The passing of this Bill would improve the access to justice for companies doing business outside the country and foreign companies in Fiji and an essential tool for doing business across borders. Besides the Bill aligning Fiji's international arbitration law with international best practices it could, inter alia, establish Fiji as a venue of choice for international arbitrations and bring in an influx of foreign spending to the country.

The enactment of the Bill is a positive step forward for arbitration in Fiji as it provides an alternative, cost effective and time efficient means of dispute resolution.

### **3.2 Analysis of the Bill – First Reading of the Bill and Deliberation by the Committee**

Apart from the impact of the Bill noted by the Committee, its deliberation on the Bill by reading through the Bill Clause by Clause resulted in numerous issues being noted. These issues were discussed and deliberated on with the assistance of the consultant, Mr Kevin Deveaux. Mr Deveaux is a consultant assisting the Committee made possible by the support of the UNDP Parliament Support Project. Discussions with Mr. Deveaux resulted in pertinent issues being noted and these are as follows:

- No specific definition of the application or jurisdiction of the Bill, that is, it just states that it covers international arbitration, whereas in the Model Law it states that it applies to international commercial arbitration.
- The Limitation Act applies to the Bill but it should be noted that this Bill creates different limitation periods that may apply to different matters under arbitration.
- Issue with the discharging of arbitration, where death, bankruptcy or winding up does not discharge the arbitration proceedings, however this might be not be consistent with Civil Procedure and Court Rules.
- References to 'courts' and 'other authority' in Clause 16 seem to be redundant, as there is no definition of what 'other authority' refers to.
- Certain Clauses seem redundant for example Clauses 18(4) and (5) since the matters prescribed in these Clauses are already covered in Clauses 18(2) and (3).
- An arbitrator is not liable for actions done in good faith as part of his or her duties.
- The appointing authority or a person that appoints an arbitrator will not be liable for any actions done by an arbitrator.
- No definition of 'appointing authority' in the Bill.
- The arbitration tribunal has power to decide its own jurisdiction including determining if the panel is properly constituted and what matters have been submitted for arbitration.
- The arbitration tribunal has power to impose interim measures and interim awards.
- Confidentiality of arbitration proceedings or any awards is provided for in the Bill, however it was noted that having exemptions to the confidentiality clause would not be good public policy.
- Limited jurisdiction of the courts in interfering with arbitration proceedings.—

- The inclusion of the power to make regulations would seem redundant as the proposed law is in line with the Model Law, which already has all the necessary provisions to deal with international arbitration. Thus the question arises; what regulations are required under this law?

### 3.3 Analysis of the Bill – Synopsis of the submissions received

Submissions on the Bill were also received from key and interested stakeholders. The Committee took note of these submission and the summaries of these submissions are provided as follows:

#### *i. Fiji Chamber of Commerce and Industry*

The Fiji Chamber of Commerce and Industry made a submission on the Bill and the main issues noted are as follows:

- Such law has been long overdue and is a significant step towards a new era for resolution of disputes and making Fiji become the next arbitration hub as aspired.
- *Definition of disputes*: “dispute” would be generally interpreted as requiring the making of a claim by one party and the rejection of it by the other. Therefore a definition of ‘disputes’ should be given and it should be a wide interpretation to be construed by reference to the subject matter of the contract.
- *Section 55 – definition of public policy*: Anything that violates a law and is against good moral when made the object of contract is against ‘public policy’, and, therefore, void and not susceptible to enforcement. Thus public policy should be given an interpretation in the Bill but should only be interpreted as far as it aims to broaden the public interest of honesty and fair dealing and not to violate a basic notion of Fijian law.
- *No definition of jurisdiction and courts* – The Bill when read as a whole shows that that the jurisdiction of the courts could encompass the Magistrate Courts as in Clause 12. Jurisdiction matters when dealing with awards thus a definition would assist in clarifying which provisions are covered by the different courts in the court hierarchy.
- *Section 16 3(b) the Appointment of the Arbitrator for International Arbitration*: Appointments of an arbitrator for international arbitration should be made by the Chief Justice as this would instil confidence in the international community, promote independence and also give confidence to more investment.
- *Taking Evidence in Arbitral Proceedings (Section 44)*: Taking of evidence may be assisted by the courts, however, there is no provision covering documents or property to be inspected. The Bill also does not cover and provide for penalties for persons failing to attend in accordance with any order of the court or making any other default or refusing to give evidence or guilty of any contempt of the arbitral tribunal. It also does not extend to any documents to be produced or property to be inspected. It had been suggested that this be included in the Bill.
- *No reasons for the Award (Section 49(2))*: The Bill provides that no reasons may be provided to the parties with regards to the award. This can give a perception that the decision was not fairly or properly reached by the arbitrator and cause the parties involved to feel aggrieved and in turn can undermine the Fiji jurisdiction as a place of arbitration (Section 37). It is also noted that this provision contradicts Section 54(b)(ii) and 55(1)(a) in terms of the principles of

transparency and fairness. It had been suggested that the wording on Clause 49(2), "...unless parties have agreed that no reasons are to be given..." be removed.

- *Interim Orders (Division 5)*: The Bill provides for interim orders, however, there is no time period as to when the arbitration proceedings should commence after the order has been granted. It is suggested that a timeline of 90 days be given and to commence from the date of filing of the petition, in order to drive the parties to arbitration and ensure that parties refrain from misusing this provision.
- *Cap the fees of the Arbitrator (Section 56 - Regulations)*: If international arbitration does take place in Fiji then it is suggested that the Regulations adopt a model fees guidelines for cases of arbitrations other than international commercial arbitrations and in cases where parties have agreed to the rules of an arbitral institution, to ensure that the arbitration process does not become very expensive.
- *Application of the new Act*: The Bill does not specify whether the amendments will have a retrospective or prospective effect for court actions concerning arbitration and the arbitration proceedings.

## **ii. Investment Fiji**

Investment Fiji provided a submission on the Bill and the main issues noted are as follows:

- Investment Fiji has done a comparative analysis of Fiji with Singapore in terms of time and cost for enforcing contracts and has shown that Fiji stands at 86 in the ranking of 180 countries on the ease of enforcing contracts based on assessments on time, cost and quality of court procedural requirements.
- In comparison to Fiji, Singapore's dispute resolution system takes 164 days which is more efficient and effective compared to 397 days in Fiji.
- This Bill will provide confidence to existing and potential investors and exporters in doing business in Fiji as contractual arbitration can provide an efficient, neutral and private means to settle complex commercial disputes.
- The inclusion of provisions which define confidentiality such as Clause 45 of Division 6 would be an advantage as the proceedings in the arbitration will not only be kept private between the parties but will remain absolutely confidential and will not be divulged to third parties.
- With regards to the point above, Investment Fiji proposed that only parties to the arbitration, their legal representatives and those specifically authorised can attend the arbitration hearing.
- The Bill provides for flexibility in procedures by allowing parties to choose and determine the procedures for an arbitration proceeding.
- This Bill aims to solve disputes through 'res judicata' and is usually final and binding. The grounds upon which the decisions of arbitration can be challenged and set aside are limited.
- The reduction in cost and time taken for dispute resolution will be added advantages to the investors and exporters in having their matters resolved within a short period of time.

- The Bill is a step forward for Fiji in potentially leading to the setup of a Pacific International Arbitration Centre (PIAC) like the Singapore International Arbitration Centre (SIAC).
- The Bill will stimulate the growth of international business confidence.

### **iii. *The Judiciary***

The Judiciary also made a submission on the Bill and the main issues noted are as follows:

- Bill as it affects the Judiciary; at the moment the options would be for parties when dealing with disputes, they can either pursue matters in the court proceedings or they can go to mediation or they can go to arbitration
- The Bill is designed to attract trade to Fiji. It dovetails the arbitration proceedings arising out of an international dispute to our own laws by adopting the United Nations Commission on International Trade Law (UNCITRAL) Model Law which aims to protect international trade.
- Having such a law will certainly make Fiji ready to deal with matters that will appeal to the larger corporations in the world.
- It is all about trying to make sure the laws will fit in with the concerns and interests of international traders.
- In a way it will relieve the workload of courts but there is still a part to play as provided in Clause 44, where assistance of the court is needed for compiling evidence.
- Certain drafting issues were noted such as:
  - the use of personal pronouns as in Clauses 4(4)(b) and 34, is moot as the Bill would not be dealing with individuals per se but it may well be that that is just a term or phrase for the purposes of legislation which will be read-in to include, of course, corporate bodies.
  - the use of the term 'other authority' also seems moot as it is not defined in the Bill, thus a definition could assist in clarity.
- The Bill is designed to stop one party trying to somewhat filibuster or derail the proceedings and delay the outcome of the arbitration. This is achieved by allowing the arbitration proceeding to continue even when a particular matter concerning the arbitration is referred to court.
- The Bill provides for swift and decisive arbitration proceedings by limiting appellate scrutiny. Arbitration also makes use of experts and technical proficiency, thus making the determination into a particular issue subject to arbitration very efficient and quick.

### **iv. *Home Finance Company Limited (HFC)***

HFC also provided a submission on the Bill and the main issues noted are as follows:

- Such a law is very much supported as it addresses the wide divergent approaches taken in international arbitration throughout the world and provides a modern and easily adapted alternative to dispute resolution.
- The possibility of Fiji becoming an attractive international arbitration destination remains to be seen.

- However the Bill would enhance stability, investment and future projections as the international community is geared towards settling disputes via Model Law on international arbitration.
- The Bill gives effect to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which allows foreign arbitral awards to be recognised and enforceable in National/Local Courts.
- Challenges faced with regards to protection of investor rights across the continents would be addressed as international arbitration is becoming the preferred mode of commercial dispute resolution.
- Foreign businesses would benefit as it provides recourse against and by private or commercial enterprises. There will be provision of a variety of dispute resolution mechanisms which are flexible, consent-based, robust, expedient and universally understood.
- The Bill when enacted would replace the bilateral treaties between other countries which typically provide for state-state mediation or arbitration as the preferred method of dispute resolution.
- This law would promote a more cost effective means of dispute resolution and would preserve goodwill and at least not escalate the dispute.
- Finally the Bill gives parties to a dispute the chance to choose the rules and procedures for arbitration, which is something that the parties to an agreement and dispute would definitely favour. This adds to the attractiveness of doing business with countries that have such laws.

### **3.4 Analysis of the Bill – Further deliberation by the Committee**

After hearing the submissions, the Committee consulted the drafting team (SG's Office) and the consultants. The following is a summary of those discussions:

#### ***SG's Office and Consultants' views:***

Issues raised were addressed when the Committee was briefed on the Bill by the representatives from the SG's Office and their consultants, Ms Christina Pak and Mr Daniel Meltz. Ms Pak is a Senior Counsel with the Asian Development Bank and Mr Meltz is an international arbitration expert from Australia. They assisted the SG's Office in the drafting of the Bill. The broad background of the Bill and the main points noted from the briefing were as follows:

- ADB has been assisting Governments of countries in the South Pacific in finding ways in increasing foreign direct investment and stimulate private sector development. The Bill is the implementation of the ADB's findings that legal reforms are needed in Fiji, which would assist in attracting trading partners, and one such reform relates to modern international arbitration regime.
- In the international trade investment arena, the common trend is that disputes are resolved via arbitration and this has contributed to more trade being carried out among countries that have laws to cater for arbitration. Thus it would benefit Fiji greatly to also be part of this trend.

- The Bill would provide equal access to modern trading systems where the main means of dispute resolution is arbitration.
- The Bill would strengthen Fiji's position in international trade and would contribute to the growth of foreign trade investment and prevent diversion of these to other countries.
- The Clauses in the Bill closely mirror the Model Law, which is a product of the best practices regarding arbitration that could be applied internationally. This means that jurisprudence on the international arbitration has been created. Thus it was advised that given that there is jurisprudence on international arbitration, the wordings of the Bill should be left as is.
- The Bill also has additional Clauses which are not in the Model Law such as Clauses 18(4), (5), 21, 22(2) 23(3), 35, 45, 55 and 56. These Clauses were adopted from laws of jurisdictions that have well established arbitration regimes such as Singapore, Australia and Hong Kong, thus were part of the jurisprudence on international arbitration.

***Other matters noted by the consultants***

- The consultants also advised that the implementation and enforcement of the Bill would depend on the judiciary and those other institutions that will play a role, once it becomes law.
- Therefore it was advised that capacity building and training would also have to be carried out so that the law is implemented as way it was intended and to be also according to international standards.

### **3.5 Analysis of the Bill – Looking at other jurisdictions**

The Committee also resolved, as part of its deliberation, to consider the position of other countries with respect to such similar law. It was noted the Bill is a first of its kind for Fiji and for the small island states of the South Pacific region, thus relied on the advice from Mr Deveaux and the briefing from the SG's Office and their consultants in order to assist the Committee in obtaining information about other jurisdictions with similar laws.

The briefing sessions conducted showed that Fiji would greatly benefit from the enactment of this Bill.

According to Ms Pak and Mr Meltz, such law had been introduced into one hundred and fifty seven (157) jurisdictions, but excludes majority of the South Pacific countries. International arbitration has become the principal means for resolving disputes in international trade, as such the law proposed for Fiji has been adopted by many countries to enhance international trade.

Mr Deveaux provided information on the application of international arbitration law in Canada, which is the first country in the world to adopt the Model Law and have through the years adopted best practices on arbitration. Laws for international arbitration in Canada have been modified but does not embellish what is provided in the Model Law.

However it should be noted that the modifications have been made to suit the circumstances in Canada and the Americas. Similarly modifications have been made in various other countries such as Hong Kong, Mauritius and Singapore and now Fiji to suit the respective circumstances of the countries.

### **3.6 Outcome of deliberation**

After deliberation the Committee noted that the Bill is a first of its kind for Fiji and for most of the small island countries of the South Pacific. Since the Bill is adopted from the Model Law and also from other countries that have similar laws, jurisprudence has been set in other countries and it would be beneficial that Fiji follow-suit. It was advisable that the wordings of the new law not to stray away from this set jurisprudence and the Model Law. Deliberation and the advice from the consultants have confirmed the Committee's stance on the Bill; and that is, the Bill need not be amended.

### **3.7 Gender analysis**

The Committee also took into account the provisions of Standing Order 110(2), where a committee conducts an activity listed in clause (1), the committee shall ensure that full consideration will be given to the principle of gender equality so as to ensure all matters are considered with regard to the impact and benefit on both men and women equally.

The Committee noted that the wording of the Model Law, which the Bill had been adopted from, was drafted with non-contemporary language. Therefore the Committee acknowledges the consideration given to this fact when the Bill was drafted to have contemporary language which was gender neutral, for example the use of the personal pronouns 'his' and 'her'.

The Committee considered that access to arbitral tribunal is not discriminatory and is open to all regardless of gender. The Committee was satisfied with the gender analysis conducted on the Bill.

## **4.0 CONCLUSION**

After adhering to due process and the requirements of the Standing Orders of Parliament, the Committee in its deliberation believes that this Bill is beneficial for Fiji. It also made observations on the Bill as highlighted above. These observations were carried out with consultation with the drafters and consultants. As a result it was noted that the Bill is a first of its kind for Fiji and is a composition of international best practices, laws of well-established arbitration jurisdictions and international conventions that specifically provide for international arbitration. The Committee therefore resolved in consensus that no amendments be made to the Bill.

The Committee through this report commends the *International Arbitration Bill* (Bill No. 37) of 2017 to the Parliament.



# **APPENDICES**

**APPENDIX A**

**COPIES OF NEWSPAPER ARTICLE/ADVERTISMENT ON  
BILL NO. 37**



## FIJI PARLIAMENT NEWS

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Parliament of Fiji  
PO Box 2352  
Government Buildings  
SUVA, Fiji.

PR46/2017

18<sup>th</sup> July 2017

### **SUBMISSIONS ON BILL NO. 37 OF 2017**

The Standing Committee on Justice, Law and Human Rights ('Committee') has been tasked with scrutinizing and making necessary amendments to the **International Arbitration Bill, 2017 (Bill No. 37 of 2017)**.

The Committee invites members of the public and key stakeholders wishing to express their views on the Bill to lodge written submissions through email addresses [ira.komaisavai@parliament.gov.fj](mailto:ira.komaisavai@parliament.gov.fj) or [jackson.cakacaka@parliament.gov.fj](mailto:jackson.cakacaka@parliament.gov.fj) or via correspondence addressed to:

The Chairperson  
Standing Committee on Justice, Law and Human Rights  
PO Box 2352  
Government Buildings  
SUVA

Members of the public and stakeholders wishing to make oral submissions may show their interest by emailing the above mentioned email addresses.

Written submissions should be submitted to the Secretariat no later than **4pm on Thursday 27<sup>th</sup> July 2017**.

Oral submissions on the Bill will be heard by the Standing Committee on **Tuesday, 25<sup>th</sup> July 2017 and Wednesday 26<sup>th</sup> July 2017**.

For more information on the Bill, please click here - <https://goo.gl/tywVZW>

-End-

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## Submissions open on arbitration bill

LICE MOVONO  
Tuesday, July 18, 2017

**Update: 5:25PM SUBMISSIONS** from the public are now invited from those who would like to have a say in the finalisation of Bill No. 37 of 2017.

The bill calls for an act to make provisions for the conduct of international arbitration based on the model law adopted by the United Nations Commission on International Trade Law on International Commercial arbitration.

According to a statement from the Fijian Parliament secretariat, the Standing Committee on Justice, Law and Human Rights is tasked with scrutinising International Arbitration Bill.

"The Committee invites members of the public and key stakeholders wishing to express their views on the Bill to lodge written submissions through email addresses [ira.komaisavai@parliament.gov.fj](mailto:ira.komaisavai@parliament.gov.fj) or [jackson.calacataka@parliament.gov.fj](mailto:jackson.calacataka@parliament.gov.fj)," the statement said.

Submissions can also be mailed to the parliament mailing address but those who want to make an oral submissions should indicate using the email address.

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## **APPENDIX B**

### **COPIES OF SUBMISSIONS RECEIVED BY THE STANDING COMMITTEE ON JUSTICE, LAW AND HUMAN RIGHTS**



## **International Arbitration Bill 2017:**

### **Introduction**

It's a reflection of the UNITRAL Model Law on International Commercial Arbitration

***Singapore Approach-*** Singapore has taken the conscious decision of adopting a dual regime approach with respect to arbitration. In formulating this approach, the Singapore Legislature was conscious that parties should be given the full freedom to choose if they prefer a regime that involves more, or less, curial supervision by opting into or out of either the "domestic" regime or the "international" regime under the Arbitration Act (Cap 10, 2002 Rev Ed).

***Intervention of Courts-*** For international arbitrations, the court's intervention is limited to specific instances. The principle that the courts shall not interfere in arbitral proceedings is a fundamental theme underlying the Bill. Indeed the Bill contemplates of only three situations where judicial authority may intervene in arbitral proceedings. These are:

- a) Appointment of arbitrators, where the parties' envisaged method for the same fails;
- b) Ruling on whether the mandate of the arbitrator stands terminated as per the Bill
- c) Provide assistance in taking evidence.

**The Fiji Chamber of Commerce and Industry has the following comments in its promotion of international investor confidence and promotion of international confidence in Fiji:**

#### **1. Interpretations:**

##### ***a. Disputes***

Like other ways of dispute settlement, the process of arbitration, to work effectively needs the support of the system of law.

***"Dispute" for the purposes of arbitration -*** The general definition of "dispute" requires the making of a claim by one party and the rejection of it by the other and to be given a wide interpretation. Dispute must be construed by reference to the subject matter of the contract. If the arbitration agreement provides for arbitration only if "disputes" or "differences" or "controversies" exist, then the subject matter of the proceedings would fall outside the terms of the arbitration agreement if:

- (a) There is no "dispute", "difference" or "controversy", as the case may be; or
- (b) The alleged "dispute" is unrelated to the contract, which contains the arbitration agreement.

*b. Section 55- definition Public Policy-* Whatever tends to injustice of operation, restraint of liberty, commerce, natural or legal rights, whatever tends to the obstruction of justice or to the violation of a statute and whatever is against good moral when made the object of contract is against 'public policy', and, therefore, void and not susceptible to enforcement.

The Supreme Court of India in the *Renu Sagar* case has clarified that enforcement of foreign award being governed by the principles of private international law, the doctrine of public policy, as applied in the field of international law alone would be attracted. The court further clarified that "*a mere infraction of a domestic law per se would not amount to a conflict with the public policy of India*".

Thus 'public policy' should be only so interpreted as far as it aims to broaden the public interest of honesty and fair dealing, of not violating a basic notion of Fijian law.

*c. No definition of jurisdiction and courts-* Section 12 discusses about the court – it could mean Magistrates court as well and in other Divisions it could mean the High Court. This does matter because of jurisdiction issues when it comes to Awards as well. In the explanatory note it keeps mentioning the High Court that is not necessarily correct when you read the bill as a whole.

**2. Section 16 3(b) the Appointment of the Arbitrator for International Arbitration-** Whilst parties to a domestic dispute may approach the "court" or a body, the parties in an international commercial arbitration should be able to approach the highest judicial officer of the country, The Model Law defines court as "a body or organ of a body or organ of the judicial system of a State. Section 9 of the Bill states that the High Court shall be the court to appoint the arbitrator as per Section 16(3).

We suggest that Section 16 should further state specifically that the Chief Justice appoint the arbitrator when it comes to international commercial arbitration. This will instill confidence in the international community, promote independence and also give confidence to more investment.

The function for the Chief Justice or his designate advisedly, with a view to ensure that the nomination of the arbitrator is made by a person occupying high judicial office or his designate, who would take due care to see that a competent, independent and impartial arbitrator is nominated.

### **3. Taking Evidence in Arbitral Proceedings (Section 44):**

The arbitrators cannot force unwilling witnesses to appear before them and for this court's assistance is provided for in Section 44 of the Bill. Under this provision the arbitral tribunal or a party with the approval of the tribunal may apply to the court seeking its assistance in taking evidence (this is also provided for in the Model Law).

However, there is no provision stating that any person failing to attend in accordance with any order of the court or making any other default or refusing to give evidence or guilty of any contempt of the arbitral tribunal, shall be subject to penalties and punishment as she/he may incur for like offences in suits tried before the court. It also does not extend to any documents to be produced or property to be inspected.

We suggest that this be included in the Bill.

#### **4 No reasons for the Award (Section 49(2))**

This section is mirrored on international standards however we suggest that if the decision is not recorded and given to the two parties concerned in writing it can give a perception that the decision was not fairly or properly reached by the arbitrator.

The parties involved may later feel aggrieved and this in turn can undermine the Fiji jurisdiction as a place of arbitration (Section 37). If the parties feel concerned about the disclosure of the hearing/proceedings or award Section 45 provides for confidentiality of such issues.

We also submit that this provision contradicts Section 54(b)(ii) and 55(1)(a) in terms of the principles of transparency and fairness. We suggest that we do away with the wordings "*unless parties have agreed that no reasons are to be given*".

#### **5. Interim Orders (Division 5):**

The Bill provides for interim orders, however, there is no time period as to when the arbitration proceedings should commence after the order has been granted

We suggest a timeline of 90 days to ensure that the practice of the parties of misusing this provision, by strategically obtaining We further suggest that the 90 (ninety) day period commence from the date of filing of the petition, in order to drive the parties to arbitration.

#### **6. Cap the fees of the Arbitrator (Section 56- Regulations)**

When drafting Regulations we suggest that model fees guidelines be introduced in cases of arbitrations other than international commercial arbitrations and in cases where parties have agreed to the rules of an arbitral institution, with a view to ensure that the arbitration process does not become very expensive.

#### **7. Application of the new Act:**

The Bill does not specify whether the amendments will have a retrospective or prospective effect for court actions concerning arbitration and the arbitration proceedings. We suggest this be included:

*"Nothing contained in this Act shall apply to the arbitral proceedings commenced in accordance with the Arbitration Act 1965, before the commencement of this Act unless the parties otherwise agree but this Act shall apply in relation to arbitral proceedings commenced on or after the date of commencement of this Act".*

#### **Conclusion:**

This Act is long overdue and is a significant step to herald in a new era for resolution of disputes in Fiji. With these amendments we hope that Fiji will become the next arbitration hub as aspired.





4<sup>th</sup> August, 2017.

The Chairman  
Honourable Ashneel Sudhakar,  
Chairperson to the Standing Committee on Justice  
Law and Human Rights  
Parliament Complex  
Government Buildings  
Suva.

Dear Sir,

**Re: HFC Bank's Submission on the International Arbitration Bill 2017**

We refer to the above matter and provide herewith HFC Bank's written submission on the subject.

**HOME FINANCE COMPANY LIMITED'S SUBMISSION ON INTERNATIONAL  
ARBITRATION BILL 2017**

**1. PURPOSE**

- 1.1** This paper provides a brief on HFC Bank's position in terms of the International Arbitration Bill of 2017.

**2. BACKGROUND**

- 2.1** Home Finance Company Limited trading as HFC Bank is a fully-fledged commercial Bank serving corporate customer small and medium sized enterprises, as well as consumer segment. It is the only local Bank in Fiji with 75% shares held by FNNF and 25% share with Unit Trust of Fiji.
- 2.2** The Bank was founded in 1962 with basic operations of financing housing loans to assist Civil Servants and it was not until March 2014 when it commenced banking and became a fully-fledged Commercial Bank. The Bank currently holds around 10% of the market share in the Fijian banking sector and has an asset size of over FJD 835 million.

**3. HFC BANK'S POSITION IN TERMS OF THE INTERNATIONAL ARBITRATION  
BILL 2017**

- 3.1** HFC Bank is supportive of the International Arbitration Bill 2017 which is developed to address the wide divergent approaches taken in International Arbitration throughout the world and to provide a modern and easily adapted alternative to dispute resolution.

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HFC Bank is interested in raising the following points for the Government's consideration:

- i. This Bill would enhance stability, investment and future projections of the way the International Community is geared towards settling disputes. After the enactment of the Bill, it would make provisions for the conduct of International Arbitrations based on the model law adopted by the United Nations Commission on International Trade Law on International Commercial Arbitration. It would also give effect to the New York Convention on the recognition and enforcement of Foreign Arbitral Awards and for related matters.
- ii. This Bill has incorporated the UN Commission on International Trade Law's model law on International Commercial Arbitration. The incorporation of the model law will allow for the recognition and enforcement of Foreign Arbitral Award provisions by giving effect to the New York Convention within its ambit. These provisions are currently contained in a separate Act.
- iii. Arbitration is increasingly becoming the preferred mode of commercial dispute-resolution and the chosen path of recourse for the protection of investor rights across the continent. This new Bill would address the challenges currently faced and would enhance and facilitate International Arbitrations
- iv. With the enactment of this Bill it will benefit mostly the Foreign Businesses as they are understandably cautious about litigating disputes in the local Courts, where it can be difficult to enforce the decisions of foreign Courts. This Bill will allow Foreign Businesses recourse against and by private or commercial enterprises in locally seated arbitration. Whether the country does become an attractive International Arbitration destination remains to be seen. Therefore with the enactment of the Bill, it will provide a variety of dispute-resolution mechanisms that are flexible, consent based, robust, expedient and universally understood. Another benefit of this Bill for the business sector is that it has globally adopted the New York Convention, which allows for the relatively simple enforcement of a Foreign Arbitral decision in National Courts, where the assets of a company may lie.
- v. The Bill when it is enacted will largely replace bilateral investment treaties between other Countries that will typically provide for State-to-State mediation or arbitration as the preferred method of dispute resolution.

#### **4. RECOMMENDATION**

HFC Bank therefore supports the enactment of the International Arbitration Bill 2017 as it is cost effective and the parties have far more flexibility in choosing what rules will be applied to their dispute (they can choose to apply relevant industry standards or the law of a Foreign Country, or a unique set of rules used by the Arbitration service such as the preferred language, preferred place of arbitration, confidentiality of information, determination of the rules of procedure to suit the needs of the parties to the arbitration proceedings. Alternative Dispute Resolution is more likely to preserve goodwill or at least not escalate the conflict, which is especially important in situations where there is a continuing relationship.

  
Usenia Losalini  
Manager Legal Services

## **CONFIDENTIAL**

# **INVESTMENT FIJI SUBMISSION TO STANDING COMMITTEE ON JUSTICE LAW AND HUMAN RIGHTS**

## **“INTERNATIONAL ARBITRATION BILL, NO. 37 OF 2017”**

### **1.0 INTRODUCTION**

The objective of Investment Fiji is to develop a sustainable and successful nation by stimulating investment and export. In order to execute the provision of powers granted through the Foreign Investment (Budget Amendment Act 2016 and other subsequent related acts) it is mandatory that there is a smooth transition of registering investors and exporters and playing a proactive approach throughout their business journey. As such, any improvements in facilitating investment and trade is welcome by Investment Fiji.

The proposed International Arbitration Bill, NO.37 of 2017 provides a platform of enforcing contracts in respect of either dispute between investors or between different businesses. Globally, according to World Bank, Fiji is ranked 86 out of 190 economies on the ease of enforcing contracts based on the following assessment of the time, cost and quality of procedural requirements in 2017. The rankings for comparator economies and the regional average provide other useful benchmarks for assessing the efficiency of contract enforcement in Fiji.

Effective commercial dispute resolution has many benefits. Speedy trials are essential for small enterprises, which may lack the resources to stay in business while awaiting the outcome of a long court dispute. As per proposed International Arbitration Bill, NO.37 of 2017, Investment Fiji hereby submits the following observation and comments.

### **2.0 BACKGROUND**

International Arbitration Bill, NO.37 of 2017 has very important features in facilitating and promoting Investment Fiji's mission and vision. The International Arbitration Bill will provide a platform for Investors and Exporters as an alternative to national courts, a private mechanism for dispute resolution, selected and controlled by the parties and final & binding determination of parties' rights and obligation.

As part of the observation/review Investment Fiji also referred to the ease of doing business rankings for major countries in the field of engaging contracts which is a measure of the time, cost and quality of court procedural requirements.

Currently, Fiji stands at 86 in the ranking of 190 economies on the ease of enforcing contracts based on the following assessment of the time, cost and quality of procedural requirements.

**Table 1: Breakdown of Fiji' Ranking for Engaging Contract's**

Indicator	Fiji
<b>Time (days)</b>	<b>397</b>
Filing and service	36
Trial and judgment	206
Enforcement of judgment	155
<b>Cost (% of claim)</b>	<b>38.9</b>
Attorney fees	28.6
Court fees	0.3
Enforcement fees	10.0
<b>Global Ranking</b>	<b>86</b>

Source: Doing Business database- World Bank 2017

Investment Fiji noted that countries that have excelled in enforcing contracts such as Korea, Singapore, Australia, Norway and China have introduced certain measures such as establishment of arbitration board. United Nations Commission on International Trade Law (UNCITRAL) provides international bench marking practices. Table 2 below shows the year of establishment of arbitration board laws for top 5 countries who have adopted, implemented and executed their engagement contract rankings.

**Table 2: Top 5 Countries Ease of Engaging Contract Ranking - 2017**

Institution	Country	Establishment	Rank(Enforcing Contracts) 2017
Korean Commercial Arbitration Board	Republic of Korea	1966	1
Singapore International Arbitration Centre	Singapore	1991	2
Australian Centre for International Commercial Arbitration	Australia	1985	3
The Arbitration and Alternative Dispute Resolution Institute of the Oslo Chamber of Commerce	Norway	2004	4
Chinese International Economic and Trade Arbitration Center	China	1956	5

Source: Doing Business database- World Bank

## 2.1 Comparative Analysis- Fiji and Singapore

Singapore established the International Arbitration Centre (SIAC) in July 1991 as a not for profit non-governmental organization to meet the demands of the international business community for a neutral, efficient and reliable dispute resolution institution in Asia. The SIAC is committed to complete neutrality and independence in its role as an international arbitral institution.

Globally, according to World Bank, Singapore stands at 2nd in the ranking of 190 economies on the ease of enforcing contracts based on the following assessment of the time, cost and quality of procedural requirements. In comparison to Fiji, Singapore's dispute resolution systems are very efficient and effective as it takes 164 days (*equates to 41% of Fiji's Time (days)*) to solve the dispute compared to 397 days in Fiji.

**Table 3: Comparative Analysis on details on time and cost for enforcing contracts -2017**

Indicator	Fiji	Singapore	East Asia & Pacific average
Time (days)	397	164	560
Filing and service	36	6	45
Trial and judgment	206	118	328
Enforcement of judgment	155	40	195
Cost (% of claim)	38.9	25.8	49.1
Attorney fees	28.6	20.9	39
Court fees	0.3	2.8	4
Enforcement fees	10.0	2.1	5
Global Ranking	86	2	

Source: Doing Business database- World Bank

## 3.0 OBSERVATIONS

### 3.1 Investor Confidence

Investment Fiji strongly believes as an advocate of promoting investment and trade, the introduction of International Arbitration Bill will provide confidence to existing and potential investors and exporters to feel 'comfortable' in doing business in Fiji. Historically, growing trade in the global economy has encouraged parties involved in local and international trading to seek productive, definite and private means of settling disputes. These dispute resolution objectives, reflecting an ever more practical business outlook, have encouraged the growth of international commercial arbitration, sustained by the dispute resolution procedures and services offered by an array of arbitral institutions. In short, contractual arbitration can provide an efficient, neutral and private means to settle complex commercial disputes. Like all other binding agreements, however, one must be careful in the drafting to ensure that the desired effect, in this case confidentiality, is achieved.

### **3.2 Confidentially**

As per the proposed International Arbitration Bill 2017 part 2, division 6 section (45) defines terminology of confidentiality. The advantages of this confidentiality clause takes into account private nature of commercial disputes. The proceeds in the arbitration will not only be kept private between the parties but will remain absolutely confidential. This means that the existence of the arbitration, the subject matter, the evidence, the documents that are prepared for and exchanged in the arbitration, and the arbitrators' awards cannot be divulged to third parties. Due to the confidentiality clause in the bill, Investment Fiji proposes that only parties to the arbitration, their legal representatives and those who are specifically authorized by each party can attend the arbitration hearing.

### **3.3 Flexible procedure**

Investment Fiji believes that the introduction of the Bill will lay down the foundation of a principal factor differentiating a national court from the arbitration system and will provide flexibility in enforcing procedures. It is also necessary to highlight, that all of the major international arbitration rules give authority and power to the arbitrators to determine the procedure that they consider appropriate, subject always to party autonomy.

### **3.4 Final and binding**

The purpose of the arbitration is to solve disputes through 'res judicata' and are usually final and binding. There are no or very limited grounds on which arbitrators' awards can be appealed to the national courts on the basis that the arbitrators' conclusions are wrong. Equally, the grounds upon which the decisions of arbitrators can be challenged and set aside are limited to where the arbitrators have either exceeded the jurisdictional authority in the arbitration agreement or have committed some serious breach of natural justice.

### **3.5 Saves time and cost**

Due to the inherent advantages of reduction of cost and time taken to solve disputes through the introduction of the International Arbitration Bill, Investment Fiji believes this will assist investors and exporters. If the parties have agreed to resolution, they can seek the involvement of an arbitrator at very short notice; if they are able to present their cases to the arbitrator within a short period, the whole matter can be resolved with great expedition.

## **4.0 RECOMMENDATION**

4.1 This Bill is very timely and Fiji has potential to set up the Pacific International Arbitration Centre (PIAC) like Singapore International Arbitration Centre (SIAC).

4.2 The Bill will provide impetuous result of the growth of international business confidence.

## **APPENDIX C**

### **BRIEF BIO'S OF CONSULTANTS**

**KEVIN DEVEUAX**  
**DEVEUAX INTERNATIONAL GOVERNANCE CONSULTANTS INC.**

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Kevin Deveau is a Canadian lawyer who was elected to the Nova Scotia House of Assembly in 1998 for the constituency of Cole Harbour-Eastern Passage. He was re-elected in 1999, 2003 and 2006. During his time as an MP, he was the Deputy Speaker for the House from 1999-2003 and the Official Opposition House Leader from 2003-2007.

In March, 2007, Kevin resigned his seat in the House of Assembly to work full time as a Senior Parliamentary Technical Adviser with the United Nations Development Programme (UNDP) in Hanoi, Vietnam. In August, 2008, he was appointed to the post of global Parliamentary Development Policy Adviser in New York with UNDP's Democratic Governance Group, where he was in charge of the Global Programme for Parliamentary Support (GPPS) and provided guidance to more than 60 UNDP Country Offices working with national parliaments and political parties.

In August 2012 he completed his work with UNDP and returned to Canada to practice law and to provide consulting services to parliaments. He has worked with the World Bank, the EU, DFID, FCO, UN Women, International IDEA and UNDP in the past years.





Christina Pak is Senior Counsel of the Asian Development Bank (ADB). She specializes in international finance and has been working on multi-sector projects across the Southeast and East Asia regions. She is also a member of ADB's Climate Change thematic group, and develops and implements environmental law, climate finance and international arbitration law reform technical assistance projects under ADB's Office of the General Counsel's Law and Policy Reform Program. Prior to joining ADB, Christina worked as in-house counsel for two major financial institutions in Singapore and as a capital markets and structured finance associate at two large New York City law firms. She obtained her Juris Doctor from Rutgers-Newark School of Law and Bachelor of Science degrees from Rutgers University in international environmental studies and journalism. She is admitted in the States of New York and New Jersey and is a Member of the Chartered Institute of Arbitrators, International Union for Conservation of Nature World Commission on Environmental Law, and the International Bar Association.

## DANIEL MELTZ - 12 WENTWORTH SELBORNE CHAMBERS ARBITRATION PROFILE



### Admissions

Barrister: 2003 Solicitor: 1994 (New South Wales) 2000 (England & Wales)

### Qualifications

B.Ec (Soc Sc), University of Sydney  
LLB, University of Sydney

Daniel Meltz has over 15 years of experience in international commercial arbitration having practiced in the field in Sydney, London and Zurich. Daniel regularly appears as lead counsel or junior counsel in both institutional and *ad hoc* arbitrations in Australia and overseas.

He is listed in the 2017 edition of *Who's Who Legal* for International Arbitration as well as *Best Lawyers in Australia* for Alternative Dispute Resolution. He was a founding member and long-time board member of Asia-Pacific Forum for International Arbitration and has lectured, written and spoken widely on the area. Daniel is Adjunct Professor in the Faculty of Law at the University of Technology, Sydney and is a Fellow of the Australian Centre of International Commercial Arbitration.

Daniel commenced his career in Sydney with a major Australian law firm. He was subsequently appointed as staff attorney/legal secretary with the Claims Resolution Tribunal for Dormant Accounts in Zurich, which, under the aegis of former US Federal Reserve Chairman Paul Volcker, arbitrated World War II-era claims on unclaimed Swiss bank accounts. Daniel then relocated to London where he spent several years in the International Commercial Arbitration Group at Clifford Chance.

Since being called to the Bar Daniel has had particular experience as counsel in the oil & gas, mining, construction, aerospace and military sectors both in the South Pacific and wider Asia Pacific region Daniel has also appeared on stay, enforcement and resisting enforcement cases before the courts. In 2017 Daniel was appointed by the Asian Development Bank on an international arbitration law reform project in the South Pacific.

### Arbitration Experience (including the following):

Advising, together with a London-based Queen's Counsel, a South Pacific national petroleum authority in an oil and gas arbitration pertaining to a project sharing contract

Party nominated arbitrator in an ICC arbitration with a Singapore seat in relation to an Asia Pacific joint venture dispute in the construction sector

Advising and appearing as lead counsel in an UNCITRAL Arbitration between a Singaporean-listed company and a US aerospace company in a dispute concerning a spacecraft.

Advising and appearing in 2 ICC Arbitrations as junior counsel for a listed Australian oil and gas explorer in claims in excess of \$75 million against its joint venture partner in the South Pacific.

Advising and appearing as lead counsel for a technology company in New South Wales applying for a stay of litigation proceedings in favour of AAA arbitration in a South Pacific Seat under the *International Arbitration Act 1974* (Cth).

UNCITRAL arbitration involving a dispute over a gas pipeline in waters off Indonesia.

ICC arbitration between an arms manufacturer and a sovereign state concerning the termination of a partially discharged contract as part of legal team. Hearings took place at the Peace Palace, The Hague.

ICC Arbitration a US technologies company and a Saudi Arabian cable manufacturer concerning a telecommunications project in Saudi Arabia as solicitor.

Advising in relation to the preparation of pleadings by an Irish contractor before the United Nations Compensation Commission (UNCC) as solicitor.