

ACT 186

H.B. NO. 2003

A Bill for an Act Relating to International Arbitration.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER

§ -1 Short title. This Act shall be known and may be cited as the “Hawaii International Arbitration, Mediation, and Conciliation Act.”

§ -2 Statement of findings and declaration of purposes. The legislature hereby finds and declares that: (a) The rapid expansion of international business, trade, and commerce among nations in the Pacific region provides important opportunities for the State of Hawaii to participate in such business, trade, and commerce; (b) there will inevitably arise, from time to time, disagreements and disputes arising from such business, trade, and commercial relations and transactions that are amenable to resolution by means of international arbitration, mediation, conciliation, and other forms of dispute resolution in lieu of international litigation; (c) it is the policy of this State to encourage the use of arbitration, mediation, and conciliation to reduce disputes arising out of international business, trade, com-

mercial, and other relationships; (d) it is declared that the objective of encouraging the development of Hawaii as an international center for the resolution of international business, commercial, trade, and other disputes be supported through the establishment of certain legal authorities as set forth in this chapter.

§ -3 Policy. It is the policy of the State of Hawaii to encourage the use of arbitration, mediation, and conciliation to resolve disputes arising out of international relationships and to maximize private autonomy over such proceedings by limiting court involvement therein to: (a) the enforcement of decisions, awards and settlement; and (b) ancillary matters in aid of such proceedings.

§ -4 Scope. (a) This chapter shall apply only to the arbitration, mediation, or conciliation of disputes between:

- (1) Two or more persons at least one of whom is a nonresident of the United States; or
- (2) Two or more persons all of whom are residents of the United States if the dispute: (i) involves property located outside the United States; (ii) relates to a contract which envisages enforcement or performance in whole or in part outside the United States; or (iii) bears some other relation to one or more foreign countries.

(b) Notwithstanding subsection (a), this chapter shall not apply to the arbitration, mediation, or conciliation of:

- (1) Any dispute pertaining to the ownership, use, development, or possession of, or a lien of record upon, real property located in this State, unless the parties in writing expressly submit the resolution of that dispute to this chapter; or
- (2) Any dispute involving domestic (family) relations.

(c) If in any arbitration within the scope of this chapter reference must, under applicable conflict of laws principles, be made to the arbitration law of this State, such reference shall be to this chapter.

(d) This chapter shall apply to any arbitration within the scope of this chapter, without regard to whether the place of arbitration is within or without this State:

- (1) If the written undertaking to arbitrate expressly provides that the law of this State shall apply; or
- (2) In the absence of a choice of law provision applicable to the written undertaking to arbitrate, if that undertaking forms part of a contract the interpretation of which is to be governed by the laws of this State; or
- (3) In any other case, any arbitral tribunal or other panel established pursuant to Section 7 below decides under applicable conflict of laws principles that the arbitration shall be conducted in accordance with the laws of this State.

§ -5 Definitions. As used in this chapter:

"Arbitration" shall also encompass, as appropriate, mediation, conciliation, and other forms of dispute resolution as an alternative to international litigation.

"Center" means any center organized as an independent nonprofit educational corporation duly established under the laws of this State, whose principal purpose is to facilitate the resolution of international business, trade, commercial, and other disputes between persons by means of arbitration, mediation, conciliation, and other means as an alternative to the resort to litigation.

"Person" means not only individuals, but corporations, firms, associations, societies, communities, assemblies, inhabitants of a district, or neighborhood, or persons known or unknown, and the public generally and shall include a government

or any agency, instrumentality, or subdivision thereof where it appears, from the subject matter, the sense and connection in which such words are used, that such construction is intended.

“Resident of the United States” means:

- (1) A natural person who maintains sole residence within a state, possession, commonwealth, or territory of the United States or within the District of Columbia; or
- (2) Any other person organized or incorporated under the laws of the United States, any state, possession, commonwealth, or territory thereof, or the District of Columbia.

“Nonresident of the United States” means any person not a “resident of the United States”.

“Written undertaking to arbitrate” shall mean a writing in which a person undertakes to submit a dispute to arbitration, without regard to whether that undertaking is sufficient to sustain a valid and enforceable contract or is subject to defenses. A written undertaking may be part of a contract, may be a separate writing, and may be contained in correspondence, telegrams, telexes, or any other form of written communication.

§ -6 Consent to jurisdiction. Conducting arbitration in this State, or making a written agreement to arbitrate which provides for arbitration within this State subject to this chapter, shall constitute a consent by the parties to that arbitration or undertaking to the exercise of in personam jurisdiction by the circuit courts of this State but only for the purposes of such arbitration.

§ -7 Certain legal authorities for international commercial disputes resolution. (a) A center shall not be considered a department, agency, or public instrumentality of this State, and shall not be subject to the laws of this State applying to departments, agencies, and public instrumentalities of this State, except that a center shall be subject to all of the laws of this State pertaining to nonprofit corporations.

(b) A center shall permit the participants to an arbitration to select any body of rules and procedures for the conduct, administration, and facilitation of that proceeding, whether such rules and procedures have been prepared by private arbitral organizations, created by the participants themselves, or by the center.

(c) A center shall have the authority pursuant to this chapter to establish from time to time such rules and procedures for the conduct, administration, and facilitation of the resolution, whether by arbitration, mediation, conciliation, or otherwise, of all disputes subject to this chapter.

(d) In furtherance of the foregoing, a center shall have the authority pursuant to this chapter to adopt rules providing, without limitation and by way of illustration only, that any arbitral tribunal or other panel established pursuant to such rules shall:

- (1) Determine the relevance and materiality of the evidence without the need to follow formal rules of evidence;
- (2) Be able to utilize any lawful method that it deems appropriate to obtain evidence additional to that produced by the parties;
- (3) Issue subpoenas or other demands for the attendance of witnesses or for the production of books, records, documents, and other evidence;
- (4) Be empowered to administer oaths, order depositions to be taken or other discovery obtained, without regard to the place where the witness or other evidence is located, and appoint one or more experts to report to it;

- (5) Fix such fees for the attendance of witnesses as it deems appropriate;
- (6) Make awards of interest, reasonable attorney's fees and costs of the arbitration, mediation, or conciliation as agreed to in writing by the parties, or in the absence of such agreement, as it deems appropriate; and

(e) In exercising the powers conferred upon it by this chapter, such arbitral tribunal, or other panel may apply for assistance from any court, tribunal or governmental authority in any jurisdiction. Any application to a court hereunder shall be made and heard in a summary way in the manner provided for the making and hearing of motions, except as otherwise herein expressly provided.

§ -8 Arbitral tribunal or panel; powers. The arbitral tribunal or panel established pursuant to section 7 of this chapter or a majority of them, may summon in writing any person to attend before it or any of them as a witness and in a proper case to bring certain described books, papers, records and documents. The fees for attendance shall be the same as the fees of witnesses before the circuit courts of this State. The summons shall issue in the name of the arbitral tribunal or panel and be signed by a majority of them, shall be directed to such person, and shall be served in the same manner as subpoenas to testify before a court of record. If any person so summoned to testify refuses or neglects to obey the summons, upon petition the circuit court may compel the attendance of such person before the arbitral tribunal or panel, or punish such person for contempt in the same manner now provided for the attendance of witnesses or the punishment of them in the circuit court.

§ -9 Enforcement. (a) Arbitral or other awards or settlements issued pursuant to this chapter by the center shall be enforced by the circuit courts of this State as permitted by law and consistent with the United States Arbitration Act, 9 U.S.C. §201, et seq., and the enforcement provisions of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, as implemented by 9 U.S.C. §201, et seq., unless subsection (b) below is applicable.

(b) Where the parties specifically submit to jurisdiction of this chapter pursuant to section 6, the center may require those parties residing in countries not signatories to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, as implemented by 9 U.S.C. §201 et seq., and not having sufficient assets otherwise within the jurisdiction of the circuit courts of this State, to post such bonds or other security as the center shall deem appropriate to assure reasonable likelihood of enforcement of any award or other relief ultimately ordered by the center in the proceeding."

SECTION 2. This Act shall take effect upon its approval.

(Approved June 7, 1988.)