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LITIGATION & ARBITRATION PRACTICE

Law 5016/2023: New Provisions on International Commercial Arbitration

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BY ELECTRA LIVANI

On February 4th, 2023, Law 5016/2023 under title "International Commercial Arbitration- Arrangements for the functioning of the Hellenic Court of Audit and other urgent provisions" entered in force by repealing the pre-existing Law 2735/1999 on international commercial arbitration.

Law 5016/2023 is divided in four parts. In its first part, with title "International Commercial Arbitration" in essence Law 5016/2023 repeats the provisions of former Law 2735/1999, whilst at the same time redefines the legal framework governing the institution of international commercial arbitration. Significant innovations are introduced by incorporating modernized practices of the international legal community. In particular, Law 5016/2023 integrates the UNCITRAL Model Law on International Commercial Arbitration (1985) of the United Nations Commission on International Trade Law with its amendments, as adopted in 2006.

The United Nations, recognizing the value of arbitration as a contractually selected mandatory adjudication of a certain dispute, which arises in international commercial relations, deemed necessary to establish a model law on arbitration that would be acceptable to States with different legal, social and economic systems. For this purpose, the Model Law on International Commercial Arbitration (1985) was drafted. At this point, it should be mentioned that, before undertaking the Model Law project, UNCITRAL had adopted a set of Rules for Arbitration (1976) and for Conciliation (1980). The widely adopted Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 1958 (the New York Convention) co-existed. However, it became obvious that it was necessary to create a more active "mechanism" to achieve harmonization in the area of the international arbitration process.

When the UNCITRAL Model Law on International Commercial Arbitration was drafted, the General Assembly of the United Nations recommended (in Resolution 40/72 of December, 11th 1985) that *"all States give due consideration to the Model Law on International Commercial Arbitration, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice".*

Through Law 2735/1999, the Model Law was incorporated into the Greek legal framework and now through Law 5016/2023, the Model Law is incorporated with its amendments of 2006 in an attempt to harmonize the provisions of national law with the continuous development in the field of international arbitration.

As is well known, arbitration is a private form of a final and binding dispute resolution mechanism, presided over by a tribunal or a single arbitrator, acting in a quasi-judicial manner. As such, the aim of Law 5016/2023 is to establish international arbitration into the Greek legal framework as a product of the parties' autonomy. In this respect, pursuant to article 1 of Law 5016/2023 the parties to an agreement are free: ***a)*** *to decide on the submission of their disputes to arbitration,* ***b)*** *to select the arbitrators,* ***c)*** *to configure the arbitration procedure, and* ***d)*** *to select the applicable law for the resolution of their dispute.*

The same spirit runs through the entire text of Law 5016/2023, which redefines the purpose of the legislation, regulating international commercial arbitration, by way of introducing important amendments through the following provisions:

- **Article 3:** establishes the general principle that, any dispute may be, in principle, subject to arbitration (provided of course that a specific agreement between the parties is in place), unless a law specifically excludes the resolution of such disputes through arbitration.

- **Article 10:** provides that the arbitration agreement may be in the form of a clause in a contract or a separate agreement. In each of the above cases, the arbitration agreement must be expressed in writing, and be **a)** a letter, telegram, fax, facsimile or another mean of telecommunication that records the agreement or **b)** an eRecording that allows both the subsequent ascertainment of its origin from a specific publisher and the access to the content of the agreement. The law expressly states that the eRecording of the arbitration agreement is assimilated to the written form. Two fundamental requirements that must apply to any form of electronic digital transaction are also established **i)** the origin of the "document", **ii)** the possibility of verifying the authenticity of this origin *a posteriori*.

- **Article 11:** defines that the arbitration agreement, in addition to Article 10, shall be determined by the law either of the place where the parties concluded their agreement, or of the place of arbitration, or the law governing the substantive agreement of the parties.

- **Article 16:** refers to multilateral arbitrations and resolves the issue of the appointment of a common arbitrator if the tribunal consists of more than one arbitrator and the arbitration involves more parties either as claimants or respondents. If most of the parties are unable to reach the appointment of a common arbitrator within the period provided for in the arbitration agreement or, in the absence thereof, within thirty (30) days, the appointment shall be made by the competent single-member court, as defined by paragraph 1 of article 9 of the Law.

- **Article 19:** regulates the arbitrator's challenge procedure, accepting that parties can agree on an arbitrator's exception. On the other hand, if the parties do not reach an agreement on the matter, then, the arbitral tribunal has the authority to rule on the petition for the exemption of an arbitrator, without the participation of this particular arbitrator.

- **Article 22:** establishes the arbitrator's liability in the exercise of his (her) duties, predicting that he (she) is liable only for fraud and gross negligence.

- **Article 24:** explicitly regulates both the participation of third parties in arbitration proceedings, and the consolidation of arbitrations, i.e. it adjusts the issue of determining the conditions for multilateral arbitrations, adopting as such, an international innovation.

- **Article 25:** recognizes the possibility for the arbitral tribunal to order interim measures or even issue interim injunctions in urgent cases, in order to prevent imminent danger, wherever it presumes the existence of such a right.

- **Article 31:** makes an explicit distinction between the terms of "Request to Arbitration", provided for in article 29 and "Statement of Claim".

- **Article 43:** adds an extra ground under which an arbitral award may be annulled by the competent Court, if, for instance, the arbitral

award was based on a false testimony or was influenced by the fact that the arbitrator was biased (article 544, paras. 6 and 10 Greek Civil Procedure Code). It also clarifies that no one can file a claim for annulment based on his own acts or omissions. Paragraphs 6 and 7 of this article are also critical, as the former provides that the result of the annulment of an award is the revival of the arbitration agreement, unless the parties agree otherwise, and the later provides that parties can waive from the petition for annulment in writing, whilst maintaining the grounds of annulment for invocation in the enforcement proceedings.

- **Article 44:** provides that in the event of third parties being bound from the arbitration agreement, the arbitral award is enforceable against them as well.

- **Article 45:** provides that the recognition and enforcement of foreign arbitral decisions shall be in accordance with the New York Convention (1958).

On a concluding comment, Law 5016/2023 is expected to significantly contribute to the improvement of the way arbitrations are conducted in the Greek territory. It introduces a fresh, modernized and in some respects innovative legal framework, which is in line with the global reforms concerning international commercial arbitration, especially by considering the features and needs in this legal field. The new regime aims at enhancing the extroversion of the Greek economy and the strengthening of Greek exports and business transactions. It is thus anticipated that the new framework will further assist with the attraction of foreign investments, given that international investors usually prefer to resolve their disputes through arbitration rather than through recourse to national courts.

Contact Us



John Kyriakides
MANAGING PARTNER
j.kyriakides@kglawfirm.gr



Vicky Kriketou
PARTNER
v.kriketou@kglawfirm.gr

Follow Us

ATHENS OFFICE

28, Dimitriou Soutsou Str.,
115 21 Athens

T +30 210 817 1500
F +30 210 685 6657-8
E kg.law@kglawfirm.gr

THESSALONIKI OFFICE

31, Politechniou Str.,
551 34 Thessaloniki

T +30 2310 441 552
E kg.law@kglawfirm.gr

www.kglawfirm.gr

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