

LITIGATION, ARBITRATION AND DISPUTE RESOLUTION: Special Edition

## Modernisation of Greek Legislation on International Commercial Arbitration

This briefing provides a general overview of Law 5016/2023 which aims to modernize Greek legislation on International Commercial Arbitration by adopting the UNCITRAL Model Law on International Commercial Arbitration (1985 with amendments as adopted in 2006) and taking into account newer trends in international arbitration.

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#### A. Introduction

1. Law 5016/2023 on International Commercial Arbitration (Govt Gazette Issue A 21/4-02-2023) (the **Law**) introduces a modernization of the existing national legislation applicable to International Commercial Arbitration proceedings.
2. It abolishes Law 2735/1999 which previously governed International Commercial Arbitration proceedings and transposed into Greek law the UNCITRAL Model Law on International Commercial Arbitration (1985) but was not updated to include the UNCITRAL Model Law's amendments as adopted in 2006 or other recent trends.
3. The aim of the new legislation is twofold:
  - a. to encourage any potential parties to refer their disputes to arbitration; and

- b. to establish Greece as an attractive seat for international arbitral proceedings.
4. An overview of the most important parts of the new Law is presented below under Sections B-I.

#### B. Purpose and Object of Law 5016/2023

1. The main purpose of the Law is to establish international arbitration as a dispute resolution mechanism deriving from the principle of party autonomy, where the parties are freely allowed to:
  - a. refer any disputes to arbitration;
  - b. appoint their arbitrators;
  - c. determine the procedure to be followed; and
  - d. determine the applicable law.
2. The object of the Law is to incorporate into Greek legislation:
  - a. the UNCITRAL Model Law's amendments as adopted in 2006; and
  - b. the latest trends in international theory and practice of international arbitration.

#### C. Scope of Application

1. The Law applies to international commercial arbitration proceedings if the seat of arbitration is in Greece.
2. An arbitration is deemed to be international if:
  - a. the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their place of business in different States; or
  - b. one of the following places is situated outside the State in which the parties have their places of business:

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- i. the place of arbitration as determined in the agreement or pursuant to the procedure determined in the arbitration agreement;
  - ii. any place where a substantial part of the obligations of the commercial relationship are to be performed; or
  - iii. the place with which the subject-matter of the dispute is most closely connected; or
- c. the parties have expressly agreed that the provisions of the Law are applicable.

## D. Arbitration Agreement

1. The arbitration agreement may be in the form of an arbitration clause (as part of a contract) or a separate agreement.
2. It must however be set out in a document, the content of which has been agreed by the parties expressly or tacitly.
3. The requirement for arbitration agreements to be in writing may also be met by an electronic communication as well as any electronic form, provided that the editor is identifiable and the agreement contained therein is accessible.
4. The parties are free to:
  - a. include the arbitration procedure they prefer to follow in the agreement, and if they cannot reach an agreement on this, the clauses of the Law pertaining to procedure apply;
  - b. define the place where the arbitration will be held and the language it will be held in; and
  - c. decide on the number of arbitrators, provided that this is an odd number, and in the absence of agreement on this, the tribunal will be made up of 3 arbitrators.
5. Only a written agreement is valid, unless the parties participate in the arbitration proceedings without raising any objection.

## E. Jurisdiction of the Arbitral Tribunal, Arbitral Proceedings and Applicable Law

1. The arbitral tribunal has the power to decide whether it has jurisdiction over the referred dispute or not, including to rule on any objections with respect to the existence or validity of the arbitration agreement.
2. The arbitral tribunal may, at the request of either party, grant interim measures regarding the dispute or arbitral proceedings, as well as preliminary orders.
3. The recognition and enforcement of interim measures remain within the competence of the regular courts, if requested by either of the parties.
4. The arbitration agreement does not preclude the parties from applying to any competent court for the issuance of interim measures which relate to the object of the arbitration before or after the commencement of the arbitration.

5. The arbitral tribunal may decide the dispute *ex aequo et bono* or as *amiable compositeur* only following the explicit authorization of the parties.
6. The parties shall be treated with equality and be given the opportunity to present their case and produce evidence.
7. With respect to the production of evidence, the arbitral tribunal can appoint one or more experts to report on specific issues and may also require either party to provide experts with any relevant information.
8. The Law provides that arbitral tribunals must apply the substantive law determined by the parties. When the parties have not chosen the applicable law, the arbitral tribunal shall apply the law determined by the conflict of laws rules it considers applicable.

## F. Termination of Proceedings - Award

1. Arbitral proceedings are terminated by a final award or order of the tribunal in cases where continuation proceedings have become unnecessary or impossible.
2. Arbitration awards may be set aside for the grounds listed in the Law by way of an action filed before the Three Member Court of Appeal of the district the arbitral award was issued in or, if this is not clear, the Three Member Court of Athens, within three months of their issuance and are not subject to remedies.
3. Initiating legal proceedings to set aside an award does not suspend its enforcement, unless the Three Member Court of Appeal grants one pending issuance of a final and unappealable judgement on whether valid grounds exist for setting aside the award.

## G. Intervention of the Regular Courts

1. The regular courts remain competent only for matters related to certain functions of arbitration assistance and supervision and are authorized to interfere in the proceedings in limited circumstances, such as:
  - a. to appoint, challenge and/or terminate the mandate of an arbitrator;
  - b. to assist in taking evidence;
  - c. to order interim measures before or during arbitral proceedings at the request of one of the parties; and/or
  - d. to set aside the arbitral award.
2. At the request of either party, a Court of Law will refer a matter which is the subject of an arbitration agreement to arbitration during the first hearing, unless it finds that the agreement is null and void, inoperative or incapable of being performed.

## H. Innovations

1. The Law encompasses innovations in relation to the previous legal framework on international commercial

arbitration and the Model Law, specifically:

- a. it establishes the general principle that all disputes are subject to arbitral proceedings, unless prohibited by law;
- b. it provides that, unless the parties have agreed otherwise, if the arbitral tribunal is constituted by more than one arbitrator and more than one party is participating in the proceedings either as claimants or respondents (ie in a multi-party arbitration), the co-claimants or co-respondents will jointly appoint one arbitrator; if they fail to do so, the regular court will make the appointment; at the request of any party, the regular courts can also appoint the entire arbitral tribunal and confirm or revoke the appointment of arbitrators in multi-party arbitrations or in any case where the arbitral tribunal has not been appointed within 90 days following referral to arbitration;
- c. it gives power to arbitral tribunals to grant participation to any third party who is bound by the arbitration agreement in the arbitration proceedings as claimant, defendant or intervener if it has legal interest to do so;
- d. it gives arbitral tribunals the power to merge and hear other relevant disputes between the parties at the request of either or both which may be pending before the same or another tribunal, a pioneering provision since nothing similar exists in the Model Law and or the 2006 amendments of UNCITRAL;
- e. it allows arbitral tribunals to grant a preliminary order until issuance of the interim measures requested by a

party for a period of 20 days, unless the tribunal ruling on the interim measures decides otherwise;

- f. it grants arbitral tribunals the authority to order production of certain documents which are in the possession of either party and may substantially affect the outcome of the arbitration;
- g. it regulates the operation of the organizations for institutional arbitration, stipulating the form and prerequisites for establishing such organizations, which must be sociétés anonymes with a minimum share capital of €100,000 or legal entities governed by public law;
- h. it stipulates that organizations for institutional arbitration must submit a declaration of their operation for approval by the Ministry of Justice which is responsible for overseeing them; and
- i. it provides that any organization of institutional arbitration which is validly established abroad is allowed to provide institutional arbitration services in Greece.

## I. Pending Arbitration Proceedings Under the Previous Regime

1. Any international commercial arbitrations which commenced before the entry into force of the new Law on 4 February 2023 and are still pending shall continue to be governed by the provisions of the previous regime under Law 2735/1999.
2. All international commercial arbitrations commencing after 4 February 2023 are governed by the new Law.

## Contacts



**Christos Paraskevopoulos**  
Partner  
E [cparaskevopoulos@bernitsaslaw.com](mailto:cparaskevopoulos@bernitsaslaw.com)



**Fotini Karra**  
Senior Associate  
E [fkarra@bernitsaslaw.com](mailto:fkarra@bernitsaslaw.com)

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