



LAW 5016/2023 ON INTERNATIONAL COMMERCIAL ARBITRATION

A. INTRODUCTION

International commercial arbitration is a popular and effective means of resolving commercial disputes between parties from different countries. As it offers greater flexibility, expertise, and confidentiality than traditional court litigation, parties often resort to this alternative dispute resolution (ADR) procedure to achieve a higher level of confidentiality and privacy, which is particularly sought after in commercial disputes that involve sensitive business information or reputational risks.

Until recently, the domestic legal framework governing international commercial arbitrations was delineated by Law 2735/1999 (GGI A' 167/1999). However, successive developments in international transactions and business practices had already rendered this framework obsolete, with its modernization being urgently required.

The national legislator addressed this issue by passing on 4 February 2023 Law 5016/2023 (GGI A' 21/2023) (the "**Law**"). The Law aims to modernize the domestic legal framework governing international commercial arbitration and harmonize its provisions with the Model Law of the United Nations Commission on International Trade Law (UNCITRAL), as amended and in force.

B. SCOPE

The Law solidifies international arbitration in the Greek legal system as a product of the parties' autonomy, so that the parties may freely: (a) decide the submission of their disputes to arbitration, (b) select the arbitrators, (c) customize the arbitral procedure and (d) choose the applicable law for the resolution of their dispute (Article 1 of the Law).

In fact, the Law incorporates in the Greek legal order the Model Law of the United Nations Commission on International Trade Law (UNCITRAL) of 2006 on international commercial arbitration, as amended and in force, as well as the newest trends in the international theory and practice of international arbitration (Article 2 of the Law).

Compared to the provisions of the previous legal framework, the Law introduces the following innovations:

- (i) It establishes the general principle that all disputes are in principle arbitrable, unless prohibited by law. In other words, this provision creates a **presumption of arbitrability** for all disputes, unless applicable law explicitly excludes a particular dispute, or category of disputes, from being subject to arbitration;
- (ii) It resolves the issue of the appointment of arbitrators by court order on a multi-member arbitral tribunal. The said provision applies in case the parties fail to appoint a single-member or multi-member arbitral tribunal within ninety (90) days as of the recourse to arbitration;
- (iii) It sets out the requirements of multi-party arbitration in clarity;
- (iv) It grants the arbitral tribunal the power to order any interim measures deemed necessary regarding the scope of the dispute, or to issue a provisional order;
- (v) It grants that arbitral tribunal the power to compel the parties to adduce documents or other evidence at their disposal, that are likely to have a material impact on the outcome of the arbitration.

C. STRUCTURE OF THE LAW

The Law is compartmented by forty five (45) articles, which have been grouped in chapters, as follows:

- Chapter A (Articles 1 – 2) consolidate the purpose and scope of the Law;
- Chapter B (Articles 3 – 9) sets forth general provisions that apply in international commercial arbitration proceedings;
- Chapter C (Articles 10 – 13) Law refers to the arbitration agreement, including matters of formality and validity;
- Chapter D (Articles 14 – 22) regulates matters regarding the composition of the arbitral tribunal and the arbitrators' liability;
- Chapter E (Articles 23 – 25) Law determines the jurisdiction of the arbitral tribunal;
- Chapter F (Articles 26 – 36) refers to the arbitral procedure;
- Chapter G (Articles 37 – 42) encompasses provisions regarding the issuance of the arbitral award and the completion of the arbitration;
- Chapter H (Article 43) Law refers to the annulment of the arbitral award; whereas
- Chapter I (Articles 44 – 45) provides for the recognition and enforcement of the arbitral awards.

D. INTERIM MEASURES ORDERED BY THE ARBITRAL TRIBUNAL

A very important innovation introduced by the Law is the one prescribed in Article 25 thereof.

In particular, the arbitral tribunal may:

- (a) order, upon a party's request, by any appropriate means or by an arbitral award, such interim measures as it considers necessary with respect to the subject matter of the dispute or the arbitral proceedings, unless otherwise agreed by the parties (article 25 par. 1), and
- (b) issue, in extremely urgent circumstances and upon a party's request, a provisional order for the settlement of the situation until the decision on the interim measure is issued (article 25 par. 3).

The above provision regarding interim measures constitutes one of the most innovative provisions of the Law, since the arbitral tribunal has the competence to:

- (a) order interim measures, depending on the circumstances, by any appropriate means, such as e-mail, telephone or written order, as well as arbitral award, and
- (b) refrain from ordering the requested interim measures but adopt any measures deemed necessary in relation to the subject matter of the dispute instead. This means that the arbitral tribunal is not bound by the relevant requests of the parties and shall order such interim measures as are necessary, either for the subject matter of the dispute or for the arbitral proceedings themselves (e.g. provisional measures to safeguard evidence or the confidentiality of the proceedings).



E. TRANSITIONAL PROVISIONS – ENTRY INTO FORCE

Under Article 73, the Law entered into force as of its publication in the Government Gazette Issue, that is on 4 February 2023, unless otherwise specified in its provisions.

In parallel, Law 2735/1999 is considered abolished, with the sole exception to , arbitrations that had been initiated before the Law entered into force of. These proceedings continue to be governed by Law 2735/1999, whereas other than that any arbitration agreement referred to in Law 2735/1999 shall be henceforth deemed as referring to the respective provisions of the Law.

F. CONCLUDING REMARKS

The Law envisages establishing a modern legal framework on international commercial arbitration in Greece, reflecting and promoting the autonomy of the parties. Further than this, it places emphasis on the selection of the arbitration seat, establishing this principle as the crucial legal link connecting each arbitration with the legal system, in the premises of which the arbitration is conducted.

The regulations under the Law are expected to further render Greece in an attractive venue of international arbitrations, compared to other OECD and EU member - states.

In fact, the new legal framework will corroborate the extrovert profile of the Greek economy and facilitate significantly direct foreign investments, since investors typically seek to resolve any disputes arising from their investments through arbitration, without resorting to a notoriously slow and burdensome legal system.

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