

# KLC

LAW FIRM

## Arbitration Newsletter

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January - July 2023

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Wind of Change: The new Greek Law on International Commercial Arbitration

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## Editorial

### **Wind of change: The new Greek Law on International Commercial Arbitration**

The recently enacted law No. 5016/2023 published in the Hellenic Government Gazette no. A 21/04.02.2023 as amended by Law No. 5043/2023 (the “**Law**”) has replaced law No. 2735/1999 on International Commercial Arbitration which was applicable in Greece for nearly 25 years. The Law aims at modernizing the national rules on international commercial arbitration, considering the 2006 amendments to the UNCITRAL Model Law, the international developments, and the contemporary trends in international arbitration, as well as the need for linguistic improvements and clarity to the text of the previous law 2735/1999. This editorial presents an overview of the main novelties observed in each Chapter of the Law.

In Chapter B (“General Provisions”), the key innovations aim at **enlarging the scope of disputes** covered by the Law. First, Art. 3.2.c, broadens the subjective and territoriality scope of the disputes covered by the Law, clarifying that the Law may be applicable upon parties’ agreement, irrespective of any other condition (such as for the arbitration to involve solely Greek parties). Second, Art. 3.4 broadens the objective scope of the disputes covered, setting a presumption over the arbitrability of any dispute, absent any express provision to the opposite.

Chapter C (“Arbitration Agreement”) has been reformed to address today’s need of **electronic, flexible, and remote transactions**, by encompassing in the meaning of “document” (Art. 10.2) in which an arbitration agreement can be enclosed, an electronic recording that allows its origin from a particular issuer to be established a posteriori and access to the content of the agreement. The law drafters decided not to identify which means are considered as “electronic recording” - as the UNCITRAL Model Law does- in order to encompass in its scope all

possible future forms of electronic recordings. One step forward of the formal validity of the arbitration agreement, the Law deals also with the latter's substantive validity, establishing in Art. 11.1 a specific conflict-of-law rule to this regard.

In Chapter D ("Composition of the Arbitral Tribunal") a number of novelties have been introduced, to ensure the **fast and unobstructed appointment and fulfilment of an arbitrator's mandate.**

- The Law provides now explicitly for the possibility of choosing a sole arbitrator in Art. 14.1 and, unlike UNCITRAL Model Law, it regulates the appointment of arbitrators in multiparty arbitrations in Art. 16.
- Moreover, in Art. 17 it sets a time limit of 90 days as of the request for arbitration, for the composition of the tribunal (irrespective of the reasons of delay).
- Art. 19.2 entrusts to the arbitral tribunal itself the decision on an arbitrator's challenge, without the participation of the challenged arbitrator, as was the norm under the previous legal regime.

- In a similar vein, Art. 21.1 repeals the requirement of the unanimous decision of the arbitral tribunal for the replacement of an arbitrator.
- Among the Law's innovations is the establishment of a clear rule on arbitrators' and secretaries' liability, limited to instances of willful misconduct and gross negligence (Art. 22).

Chapter E ("Jurisdiction of the Arbitral Tribunal") includes three distinctive provisions, resolving, to an extent, matters that are considered among the "gray areas" of international arbitration. First, in Art. 23.4 it provides specifically for the **challenge of a partial award on jurisdiction**, before the competent national courts. Second, it thoroughly regulates the framework of **multi-party arbitrations**, focusing on the possible forms of expansion of the *ratione personae* scope of the arbitral proceedings and the status quo of the new parties in Art. 24.1. In the second paragraph, the consolidation of arbitral proceedings is regulated, under the premise that such proceedings are covered by the same arbitration agreement.

Lastly, among the most important novelties of Chapter E, is the power provided to the arbitral tribunal to order **interim measures** as well as interim orders in urgent cases, as per Art. 25. The said article is a total reformulation of the equivalent article of the previous regime, where the only matter regulated was the mere possibility of the tribunal to order the interim measures “it considers necessary” but neither their form (decision or order), nor the conditions for their issuance. Now, all these outstanding matters are settled, with paragraph 2 providing for the requirements for an interim measure to be issued and paragraph 4 establishing the enforceability of the tribunal’s decision up to the final award.

In Chapter F (“Conduct of the arbitration proceedings”) the two notable provisions are found in Art. 27.3, where **confidentiality** is specifically regulated, in contrast with the previous law and Art. 35, which establishes the standard practice of **document production** in international arbitration.

The last noteworthy novelties of the Law are to be found in Chapter G (“Rendering the award and termination of the arbitral proceedings”) and specifically in Art. 43.

**Additional grounds for annulment** of an arbitral award were introduced and the procedure of adjudicating an application for annulment was defined, by express reference to the procedure for resolving property disputes under Articles 614-622B of the Greek Civil Procedure Code (Art. 9 para. 2). It was further clarified that the parties cannot establish grounds for annulment based on their own acts or omissions (Art. 43.4) so that such tactics observed in practice are avoided. Finally, and in the context of specifically addressing third party situations in arbitral proceedings, it is regulated that the arbitral award may be enforceable against third parties if they are bound by the arbitration agreement (Art. 44.2).

It remains to be seen, whether the Law paves the way for a modernized and practical approach in Greek arbitral practice, however it is certain that the gray areas (such as interim measures, multi-party arbitrations etc.) of the arbitral practice are not anymore at the mercy of interpretation or analogous application/ application by reference of the Greek Civil Procedure Code, but they are specifically regulated.



# Construction & Infrastructure Industry

## **Application to intervene in Italian court proceedings amounted to breach of anti-suit injunction**

The London Court of Appeal found that the Italian engineering group Tecnimont violated an anti-suit injunction in aid of an ICC arbitration, preventing the Contractors from commencing foreign proceedings to restrain payment of the bonds issued (212 million euro claim), by applying to intervene in Italian Court Proceedings. To read the full judgement, click [here](#).



## Energy Industry

### **European Commission proposes a coordinated EU withdrawal from the Energy Charter Treaty**

On July the 7th, the European Commission has proposed that the EU, its Member States, and Euratom withdraw, in a coordinated manner, from the Energy Charter Treaty, on the basis that the Treaty is no longer compatible with the EU's enhanced climate ambition under the European Green Deal and the Paris Agreement.

To read the full Press release of the EC, click [here](#) and for the European Council and Commission decisions, click [here](#).

### **Norwegian solar investors filed separate ICSID claims against Honduras**

Two groups of Norwegian solar energy investors, including a Norwegian state-owned development fund brought separate ICSID claims against Honduras arising out of two solar energy projects.

For the case details, click [here](#) and [here](#).

## **Azerbaijan lodges ECT claim against Armenia**

Azerbaijan has launched an Energy Charter Treaty claim against Armenia – the first known inter-state arbitration under the treaty. A key feature of Azerbaijan's inter-state ECT claims against Armenia is the latter's illegal exploitation of Garabagh region's rich hydropower resources.

To read the full article, click [here](#).

## **Costa Rica and Enel to settle hydro dispute**

The Costa Rican Institute of Electricity (ICE) has announced that the investment arbitration filed against Costa Rica by Green Powder and Enel Green Colombia at ICSID in October 2021 has been finalised. During the negotiations of the power purchase agreements from two hydroelectric plants, ICE and both companies settled the dispute. The agreement will come into effect once the Public Services Regulator Authority (ARESEP) approves the new power purchase agreements.

To read the full article, click [here](#).

## Life Science & Pharma

### **Sanofi wins ICC case over recalled heartburn drug**

French pharmaceuticals group Sanofi says an ICC tribunal rejected rival drugmaker Boehringer Ingelheim's (BI) claims to be indemnified by Sanofi in cancer lawsuits linked to heartburn drug Zantac in the United States.

To read the full press release, click [here](#).



## **Novartis loses \$940M arbitration case against Mitsubishi Chemical over Gilenya royalties**

Japan's Mitsubishi Tanabe Pharma Corporation says it has defeated an ICC claim brought by Switzerland's Novartis over royalties for a treatment for multiple sclerosis – a dispute understood to be worth around US\$3 billion.

To read the full article, click [here](#).

## M&A and Corporate

### **London Stock Exchange wins forex data dispute**

The operators of the London Stock Exchange and the FTSE 100 Index have asked a US court to enforce an US\$11.5 million AAA-ICDR award in a dispute related to the US\$27 billion acquisition of a foreign exchange data business.

To read the full article, click [here](#).

### **Solvay Wins Environmental Case Against Edison**

Belgian chemicals group Solvay Solvay has announced that the International Chamber of Commerce's arbitration tribunal has found Edison liable for breaching environmental representations and warranties relating to a two-decade old M&A. Edison has paid nearly €92 million to satisfy the ICC award that held it liable.

To read the full article, click [here](#).



## Tech

### **Blackberry faces JAMS claim over patent sale**

Canadian software company Blackberry is facing a JAMS arbitration over a collapsed US\$600 million deal to sell most of its patent portfolio.

To read the article, click [here](#).

### **Refusal of enforcement of a Crypto award in UK on public policy grounds**

The English Commercial Court has refused to enforce a foreign-seated arbitration award on the grounds that to do so would be contrary to public policy. The case concerned a dispute between Mr Chechetkin and the Payward group, which operates the Kraken cryptoasset trading platform. Payward received a favourable arbitration award in California which it sought to enforce in England.

To read the full article, click [here](#).

# International Commercial Arbitration

## **Review of the Arbitration Act 1996**

The Law Commission (the body responsible for considering and recommending legislative change to the UK government) has now published two consultation papers addressing several areas for potential reform including confidentiality, independence of arbitrators and disclosure, discrimination, immunity of arbitrators, jurisdictional challenges against arbitral awards, and the proper law of the arbitration agreement. The proposals are provisional, and subject to formal consultation exercise.

To access the consultation papers, click [here](#).



## **Belgian Supreme Court Confirms Arbitrability of Exclusive Distribution Agreements in Landmark Judgment**

In a landmark decision of April 7th, 2023, the Belgian Supreme Court (C.21.0325) has ruled that disputes under the Belgian rules on the unilateral termination of exclusive distribution agreements of indefinite duration are not overriding mandatory provisions and can be submitted to arbitration. By this decision the Court departed itself from established case law.

To read the article, click [here](#).

## **Timor-Leste joins the New York Convention**

Timor-Leste has become the 172nd country to accede to the New York Convention – and it is now in force in the southeast Asian state.

To read the full press release, click [here](#).

## **Singapore courts rules on confidentiality of tribunal deliberations**

The Singapore courts recently issued two decisions in June 2023 upholding the confidential nature of a Tribunal's deliberation, which is protected by the implied obligation of confidentiality under Singapore law.

To read the article, click [here](#) and for the decisions click [here](#) and [here](#).

## **Swiss court refuses to attach Spain's assets due to lack of nexus to Switzerland**

The Swiss Federal Supreme Court upheld the decision of a cantonal court which rejected a request to attach assets allegedly belonging to Spain and located in Switzerland in aid of enforcement of an ICSID award, affirming that an ICSID award holder targeting a foreign state's assets must demonstrate the matter has a "sufficient domestic connection" to Switzerland.

To read the full judgement of the Swiss Federal Tribunal, click [here](#).

## **Real Madrid loses sponsorship battle with Abu Dhabi fund**

Spanish football club Real Madrid has lost a \$435 million ICC claim against an Emirati sovereign wealth fund that it accused of abandoning a sponsorship agreement to help finance the redevelopment of its stadium.

To read the full article, click [here](#).

## **Latvia's lack of set-aside provisions ruled unconstitutional**

On February 24, 2023, the Latvian Constitutional Court issued a long-awaited [Judgement in case 2022-03-011](#) confirming that the current control mechanism over arbitration in Latvia is incomplete and unconstitutional. To read the full article, click [here](#).

## **Alstom award enforced in France despite bribery claim**

The Versailles Court of Appeal confirms the exequatur on 14 March 2023 of an ICC award against Alstom after finding that the French transport group had not provided sufficient evidence to support its bribery defence – the latest in a line of French court decisions dealing with corruption allegations in arbitration. To read the full article, click [here](#).

## **Hong Kong lifts ban on outcome-related fees**

Hong Kong has lifted its ban on success fees in arbitration and related court proceedings, following the publication of an official report setting out reform proposals.

To read the full article, click [here](#).

## **Unrestricted review of antitrust awards in Germany**

The German courts can review the merits of arbitral awards relating to competition law, the country's Federal Supreme Court (Bundesgerichtshof) has ruled.

To read the award, click [here](#).



# Investment Treaty Arbitration

## **Ukraine's Government approves draft Law on termination of BIT with Russia**

Ukraine's parliament is considering legislation to terminate the country's bilateral investment treaty with Russia in light of the war.

To read the full article, click [here](#).

## **Azerbaijan sues Armenia for wartime environmental damage**

Azerbaijan has started the first known inter-state arbitration under the Bern Convention on the Conservation of European Wildlife and Natural Habitats, accusing Armenia of destroying the environment and biodiversity during nearly 30 years of "illegal occupation" of its territories.

To read the full article, click [here](#).

## **New members on ICSID roster**

Fifteen member states have nominated 63 individuals to ICSID's panels of arbitrators and conciliators.

To read the full press release click [here](#).

## **Ghana defeats Chinese company's treaty claim**

An UNCITRAL tribunal has rejected a Chinese company's US\$55 million investment treaty claim against Ghana over a cancelled contract to build an intelligent traffic management system, finding it was for the country's courts to determine whether there had been expropriation.

To read the full article, click [here](#).



# Arbitral Institutions

## **LCIA did not receive a single arbitrator challenges in 2022**

Based on the Annual Report on 2022, the Institution did not receive any arbitrator challenge last year. It is further noteworthy that Non-British arbitrators were selected by the LCIA Court in 63% of LCIA Court appointments despite 85% of LCIA Arbitrations being governed by English law and 88% of arbitrations seated in London.

To access the full report, click [here](#).

## **ICC defeats French lawsuit over conduct of arbitration**

The French Court of Cassation has dismissed a €39 million lawsuit brought against the International Chamber of Commerce by an arbitration user that complained it was treated unfairly.

To read the full article, click [here](#)



## **IBA task force to review conflict guidelines**

The International Bar Association has formed a new task force to review its guidelines on conflicts of interest in international arbitration, with amendments expected to be finalised next year.

To read the full article, click [here](#).

## **DIAC first report**

On 8 June 2023, the Dubai International Arbitration Centre (DIAC) published its first ever Annual Report, highlighting key updates from 2022.

To read the full report, click [here](#).

## **Swiss Arbitration centre names new court members**

The Swiss Arbitration Centre has appointed new members to its arbitration court, which now has gender parity.

To read the full article, click [here](#).



## **CEPANI makes diversity a rule**

The Belgian Centre for Arbitration and Mediation (CEPANI) has included an express requirement in its new arbitration rules to consider diversity and inclusion when appointing arbitrators.

To read the new Article, click [here](#).



## KLC's News

### **KLC co-organized with DELOS ARBITRATION a webinar Construction Dispute Resolution in the East Mediterranean**

On Thursday 1st of June, KLC organised a joint event with Delos on construction dispute Resolution in the East Mediterranean. This webinar addressed different aspects and characteristics of construction arbitration in Eastern Mediterranean region. The panel comprised by practitioners, arbitrators and experts that shared their practical experience on contractual issues arising in construction disputes, dispute boards and dispute avoidance. The webinar dealt also with the management of a dispute in parallel with project execution and the panelists elaborated on the cultural aspects of an East Med arbitration, the applicable arbitration framework and recent developments.

Panagiotis Krystallis, Senior Associate of our firm, moderated the panel, comprised also by Taner Dedezade (Howard Kennedy), Louk Korovesis (Kroll), Dr. Zeina Obeid (Obeid & Partners), and Dara Sahab (Squire Patton Boggs).

For more details, see [here](#).

## **Speaking at the ICC Hellas – Athens Bar Association Conference about the new Law on International Commercial Arbitration**

KLC's associate, Lito Dokopoulou, was a panelist at the ICC Hellas – Athens Bar Association joint Conference, held at the Athens Bar Association premises on the 6th of April. The overriding topic was the novelties of the new Law on International Commercial Arbitration, No. 5016/2023, while Lito, covered the changes in the arbitral proceedings section of the Law. For more information, see [here](#).

## **KLC participated in the 5th International Arbitration Conference**

KLC Law Firm was present at the 5th International Arbitration Conference, organised by NOMIKI BIBLIOTHIKI and EODID Athens Mediation & Arbitration Organization on June the 28th. The panel discussions were ranging from the Modernization of the Greek regulatory framework for arbitration and Achmea's decision spillover effect to Greek jurisprudence to the role of a litigation funder in the Greek market and disclosure to TPF agreements. EODID Institutional Arbitration, was also discussed, as EODID is the only provider of institutional international commercial arbitration in Greece. For more information, see [here](#).



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