

ARBITRATION NEWSLETTER

August – December 2023

EDITORIAL

New regime of setting aside proceedings in Greece: turning the spotlight on article 43 of recent Law no. 5016/2023 on international commercial arbitration

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KLC ARBITRATION NEWS

EDITORIAL

By **Alexandros Tsirigos, Tasos Kollas, Anastasis Kardamakis**

New regime of setting aside proceedings in Greece: turning the spotlight on article 43 of recent Law no. 5016/2023 on international commercial arbitration

In our previous newsletter (see [here](#)), we embarked on a high-level presentation of the key changes to Greece’s international commercial arbitration legal regime, through the enactment of Law no. 5016/2023 (the “**Arbitration Law**”). Zooming in on this revised version of the UNCITRAL Model Law, one cannot but observe the novelties introduced at the post – award

stage, pertaining, particularly, to the challenging of the rendered award before State Courts. Indeed, Greece’s legislature pushed for some notable amendments to the setting aside proceedings, as enshrined in article 43 of Arbitration Law. These are presented below:

First, new grounds for seeking recourse against arbitral awards have been introduced while a slightly expansive approach is being observed compared to the previous legal regime (Law no. 2735/1999). The award whereby the tribunal declines to exercise its jurisdiction may now be challenged (art. 43 § 2 para. i), along with an award which was rendered based on fraudulent evidence (e.g., false testimony), found so either by a criminal court or by public admission of guilt of the party at fault (art. 43 § 2 para. v). Bribery

of arbitrators or chief misconduct on their part, both declared by way of a final criminal court judgement, shall also lead to the setting aside of the award (art. 43 § 2 para. v).

Second, art. 43 § 3 clarifies that the three-month deadline for the submission of the application for setting aside commences on the day when the award is served to the party making that application (by a process server, pursuant to the rules of the Code of Civil Procedure), thus ending a long feud among Greek scholars thereon. If a request for interpretation or correction of the award is pending, said deadline shall commence on the date of service of the additional award.

Third, art. 43 § 4 stipulates that a party may not create a ground for setting aside the award, by its own acts or omissions. Said provision is but a mere application of the general notion of “*exceptio doli generalis*” in the field of annulment proceedings. For instance, a party may not request the setting aside of an award for alleged lack of jurisdiction, albeit it had elected not to contest the tribunal’s power during the arbitration proceedings.

Fourth, art. 43 § 5 grants the Court of Appeal the power, when seized with an application for setting an award aside, to stay the setting aside proceedings and remit the case to the arbitral tribunal, in order to give the tribunal an opportunity to resume the arbitral proceedings or take any other action deems appropriate to eliminate the grounds for setting aside. Said power may be exercised at the request of a party or even *ex officio*. Upon remission, the Court of Appeal sets a time limit within which the tribunal must reconvene and issue a new award, rectifying any defects found in the previous one (e.g., by affording the parties the opportunity to submit post-hearing briefs, an action previously omitted). Failure to act within the prescribed (or

extended thereafter) time limit, shall result in the award eventually being set aside.

Fifth, art. 43 § 6 provides for the post – annulment stage. Unless otherwise agreed by the parties, the arbitration agreement is revived. Thus, the previously rendered *functus officio* arbitral tribunal regains its mandate to adjudicate the dispute, solely to the extent the award was set aside.

Finally, by virtue of art. 43 § 7, the parties may, at any time, even prior to commencing arbitral proceedings, waive their right to challenge the award. Said waiver must be recorded in an explicit, specific and written agreement. This constitutes a major shift from the previous legal regime, where such agreements concluded prior to the issuance of an arbitral award were deemed null and void. However, even if a waiver agreement is indeed reached under the Arbitration Law, the parties are not precluded from invoking grounds for setting aside during the enforcement proceedings of the award (through the motion provided for under art. 933 of the Code of Civil Procedure).

Whilst not deviating from the normative standards of the UNCITRAL Model Law, new setting aside provisions in the Arbitration Law afford greater protection, predictability and flexibility to the parties. At the same time, the power of remission vested upon the Court of Appeal opens new pathways for an *in favorem arbitrationis* and less restrictive approach to handling challenges against arbitral awards. All things considered, the new framework for setting aside proceedings constitutes a significant step towards the modernisation of the international commercial arbitration regime in Greece.

ARBITRATION ALERTS

ARBITRATION IN GREECE

Greece sees off lottery company's covid claim

Greece has defeated an LCIA claim worth at least €70 million brought by the country's lottery provider, which claimed it was not liable for fees as a result of operating restrictions during the covid-19 pandemic. To read the full press release, click [here](#).

The Achmea saga: Greece's Supreme Administrative Court holds that arbitral tribunal lacks jurisdiction to hear tax matters in a commercial arbitration dispute

The Council of State has found that an ICC Tribunal (commercial arbitration) lacked jurisdiction to decide on a series of tax matters arising out of a concession agreement between a private company and the Greek State. Following the CJEU's reasoning in C-284/16 (which pertained, however, to international investment arbitration), the Council's second Chamber determined that the arbitrators may have had to examine issues of EU law, albeit they would be unable to submit a request for a preliminary ruling under Article 267 TFEU. To read judgement no. 601/2023 (in Greek), click [here](#)

Greek Court holds that a committee comprised by a lawyer and an accountant aimed at resolving disputes between the parties does not constitute an arbitral tribunal

The Dodecanese Court of Appeal has held that a clause stipulating that all disputes between the parties *"shall be resolved by an Arbitration Committee, consisting of one Lawyer and one Accountant on each side and in the event of failure to reach a solution, the courts of Rhodes*

shall have jurisdiction to resolve any such matter or dispute" does not constitute an arbitration clause. To read judgement no. 203/2023 (in Greek), click [here](#)



ENERGY

Canadian miner launches ICC claim against Panama

Canada's First Quantum Minerals has filed an ICC claim against Panama after its copper mining concession was declared unconstitutional by the country's Supreme Court – as two related investment treaty cases loom. To read the full press release, click [here](#).

RWE to withdraw ECT claim against Netherlands

German energy company RWE is withdrawing its Energy Charter Treaty claim against the Netherlands over coal phase-out legislation – months after a German court ruled it was inadmissible. To read the full article, click [here](#).

China's energy deficit: opportunities for lawyers?

A panel at GAR Live Beijing considered the energy challenges facing China, the increase in

energy disputes concerning Chinese companies, and the opportunities for arbitration lawyers in China and overseas. To read the full article, click [here](#).

UN tribunal hears states on climate change

Arbitration practitioners from several well-known law firms and chambers have appeared before a UN tribunal that has been asked to clarify states' obligations to protect the world's oceans from the effects of climate change. To read the full article, click [here](#).



LIFE SCIENCE & PHARMA

US pharma group in LCIA dispute over vaccine licence

A US biotech company is pursuing LCIA proceedings in a US\$950 million dispute with an Indian pharmaceutical manufacturer over the termination of licence to develop a covid-19 vaccine, US court filings in a related lawsuit have shown. To read the full press release, click [here](#).

TECH

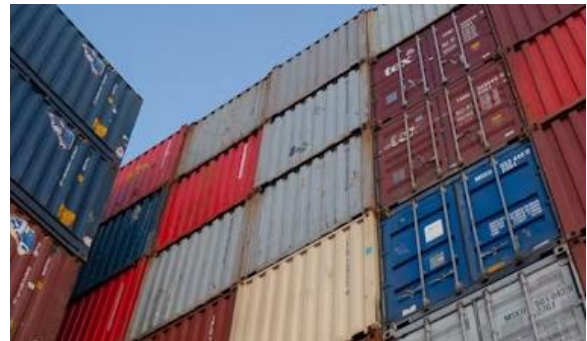
Singapore court refuses to stay crypto users' class action

The Singapore High Court has refused to stay a representative action brought by users of collapsed cryptocurrency company Terraform

despite a SIAC arbitration clause in its terms and conditions. To read the full press release, click [here](#).

AI in IA: survey highlights fear over arbitrator tech skills

This year's Bryan Cave Leighton Paisner survey has found that practitioners have a low level of confidence in the technical capability of arbitrators to use artificial intelligence tools – and were overwhelmingly in favour of regulating how the technology is used. To read the full article, click [here](#).



INTERNATIONAL ARBITRATION

COMMERCIAL

UK parliament to vote on new arbitration law

King Charles III has announced that the UK government will be introducing new arbitration legislation to implement the reforms suggested earlier this year by the Law Commission of England and Wales. To read the full press release, click [here](#).

Report urges new approach to arbitrator selection

A report launched during Hong Kong Arbitration Week has found that most lawyers take an

informal, ad hoc approach to selecting arbitrators – and recommends they adopt a more systematic process to limit bias in their choices. To read the full article, click [here](#).

Latvia's lack of set-aside provisions ruled unconstitutional

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



INVESTMENT TREATY ARBITRATION

Cement investors lose treaty claim against Bolivia

Bolivia says it has defeated a Peruvian group's US\$270 million investment treaty claim over the nationalisation of a stake in a cement producer. To read the full article, click [here](#).

Libyan fund launches treaty claim against Belgium

Libya's sovereign wealth fund is pursuing a treaty claim against Belgium over the freezing of its assets, as it succeeds in lifting the last remaining attachments obtained by a pair of award creditors in France. To read the full article, click [here](#).

CJEU adviser says UK breached EU law by enforcing Micula award

An advocate general of the Court of Justice of the European Union (CJEU) has advised that the UK courts' enforcement of an ICSID award against Romania infringed EU law – despite the UK's withdrawal from the EU. To read the full article, click [here](#).

UK court rejects Russia's immunity defence in Yukos case

The Commercial Court in London has found that Russia cannot invoke sovereign immunity as a defence to enforcement of awards worth nearly US\$60 billion won by the former majority shareholders of Yukos Oil Company. To read the full article, click [here](#).

ARBITRAL INSTITUTIONS

New hearing centre to open in Paris

A new facility for hosting international arbitration hearings is set to open next year in Paris, following efforts by Delos Dispute Resolution and an international design committee, ending the current dearth of space in the city. To read the full article, click [here](#).

Online dispute resolution platform launches in London

CMS UK disputes head Guy Pendell and Iain Quirk KC of Essex Court Chambers have launched a new online dispute resolution service, which promises a binding award within two months and to resolve arbitration challenges within three days. To read the full press release, click [here](#)

LCIA raises fee cap

The London Court of International Arbitration is set to raise its cap on arbitrator fees and other arbitration costs, and is also revising its terms and conditions for cases at the institution. To read the full article, click [here](#).

ICC launches disability inclusion guide

The ICC International Court of Arbitration has launched a guide to disability inclusion in arbitration and alternative dispute resolution. To read the full article, click [here](#).

KLC ARBITRATION NEWS

KLC authored the updated chapter of Delos Dispute Resolution Guide to Arbitration Places (GAP) for arbitration in Greece

We are delighted to share that KLC authored the updated chapter of Delos Dispute Resolution Guide to Arbitration Places (GAP) for arbitration in Greece. The GAP is designed to assist in-house counsel, corporate lawyers and arbitration practitioners with efficiently accessing key insights into numerous jurisdictions. The chapter begins with two summaries for in-house and corporate counsel and arbitration practitioners and are followed by a detailed analysis of arbitration in Greece. Congratulations also to Delos on organizing and publishing this consolidated valuable and useful tool for the international arbitration community. To read the chapter, click [here](#)

KLC's associate Anastasis Kardamakis authored a paper on the power of remission under Greece's new international commercial arbitration law

A paper (in Greek) by KLC's associate Anastasis Kardamakis titled "*The Court of Appeal's power to remit the dispute to the arbitral tribunal during set aside proceedings: remarks on art. 43 § 5 of Law no. 5016/2023*" has been published in the journal of Applications of Civil Law and Civil Procedure, vol. 12/2023, at p. 1393 et seq., edited by Nomiki Bibliothiki. To read the paper, click [here](#).

KLC organized an arbitration cocktail event on the sidelines of the Athens Arbitration Days 2023

KLC organized an exclusive arbitration cocktail event on the sidelines of the Athens Arbitration Days (17-20 October 2023). Arbitration practitioners, in-house legal counsels, conference speakers, as well as selected friends and colleagues with active involvement and interest in the field of arbitration, joined us and had the opportunity to share experiences and discuss cases in relaxed and welcoming venue. To read more about the event, click [here](#)

The content of this Arbitration Newsletter is produced by KLC Law Firm. It is designated only for general information purposes and does not provide, and should not be construed as, legal advice.

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