

Draft Law “On Arbitration”

Newsletter

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Draft Law “On Arbitration in the Republic of Albania”

On 24.04.2023, the Council of Ministers submitted to the Parliament the draft law “*On Arbitration in the Republic of Albania*”.

The Draft Law aims to regulate the procedures of domestic and international arbitration when the place of arbitration is in the Republic of Albania, and enforceability of arbitral awards.

The draft law is based on UNCITRAL Model Law on International Commercial Arbitration of 1985 and includes aspects from arbitration laws of Germany, Italy, France, Spain, Kosovo, Croatia, and Serbia, according to the explanatory report submitted to the Parliament.

The Arbitration Agreement

Arbitration can only take place if both parties have agreed so in writing. Subject to an arbitration agreement, any claim concerning an economic interest.

The arbitration agreement must satisfy few formal requirements. It must be in a written form, in a document signed by the parties or an exchange of written communication between the parties such as telefaxes, telegrams, emails or other means of telecommunication or electronic communication which provide a record of the arbitration agreement.

An arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. In other words, the Draft Law preserves the validity and enforceability of the arbitration clause of a contract, even when the primary contract results invalid and unenforceable.

Arbitrators and Composition of Arbitral Tribunal

Appointment of Arbitrators

The parties are free to determine the number of arbitrators. In absence of any agreement, the arbitral tribunal shall be composed of three arbitrators.

If the parties have agreed to arbitrate the dispute through the *ad hoc* arbitration, each party shall appoint one arbitrator within 30 (thirty) days from the beginning of the arbitration procedure. The two arbitrators thus appointed shall within 30 (thirty) days jointly appoint the third arbitrator who shall act as chairman of the arbitral tribunal. If the parties have agreed to arbitrate the dispute with a sole arbitrator, they shall appoint him within 30 (thirty) days from the beginning of the arbitration procedure.

If the arbitral tribunal cannot be established pursuant to the agreement or the above-mentioned procedure, each of the parties may ask the district court where the seat of arbitration is located to appoint the remaining arbitrator or arbitrators. Such appointment shall not be subject to appeal.

Challenges of Arbitrators

An arbitrator may only be challenged if the following circumstances exist:

- The arbitrator does not meet the requirements expressly agreed upon by the parties.
- The arbitrator has previously given advice or assistance to or defended one of the parties in the same matter or has appeared as a witness.

- The arbitrator or the arbitrator's spouse have an interest in the proceedings.
- The arbitrator or the arbitrator's spouse has family ties up to the fourth degree of kinship, is living with or has a close friendship with one of the parties or their legal representatives.
- The arbitrator is connected to one of the parties, by an employment relationship or by a permanent consultancy relationship or has previously appeared as a witness or as a representative of a party.
- The arbitrator or the arbitrator's spouse has a serious hostility with one of the parties or their legal representatives.
- The arbitrator is a legal guardian or custodial of one of the parties.
- Any other circumstance that doubts the undependability or impartiality of the arbitrator.

The parties are free to decide on the procedural rules for challenging arbitrators. In the absence of any agreement, the parties submit a written challenging request within 15 (fifteen) days of the appointment of the tribunal, or when they become aware of any circumstance that may cause such a challenge.

An unsuccessful challenge may also be taken to district court where the seat of arbitration is located within 30 (thirty) days after notice of the decision of the arbitral tribunal. The court decision is not subject to any appeal.

Further, if the mandate of an arbitrator terminates according to the provisions of the Draft Law, a substitute arbitrator must be appointed in accordance with the rules applicable to the original appointment.

Jurisdiction of the Arbitral Tribunal

According to the draft law, the arbitral tribunal is competent to decide on its own jurisdiction and to determine the validity of the arbitration agreement. Objections to the jurisdiction of the arbitral

tribunal must be made no later than upon submission of the statement of defense. The Parties may also contest the jurisdiction of the arbitral tribunal, even when they have participated in the appointment of the arbitrators.

If the arbitral tribunal decides in favor of its jurisdiction, each party may appeal it to the district court where the seat of arbitration is located, within 30 (thirty) days after notice of the decision of the arbitral tribunal.

Unless otherwise agreed by the parties, the arbitral tribunal may order interim protective measures. The party who obtained the order is obliged to compensate the other party if the interim measure results unjustified and causes a damage.

Arbitral Proceedings and Awards

Arbitral Proceedings

Unless otherwise agreed by the parties, the arbitral proceedings commence on the date on which the respondent party receives the request for arbitration. The parties are free to determine the procedural rules governing the arbitration including seat, place of hearings, language of arbitration, written proceedings as well as appointment of experts and submission of evidence. If the parties fail to agree, the arbitral tribunal determines the rules based on the provisions of this Draft Law, which are in line with UNCITRAL Model Law on International Commercial Arbitration of 1985.

The parties may terminate the arbitral proceedings if they reach a settlement for resolving the dispute. Also, the arbitral tribunal may terminate the proceedings if:

- The claimant fails to submit his statement without any reasonable cause.
- The claimant withdraws the claim, unless the arbitral tribunal decides that the respondent has a justified interest in resolving the dispute.
- The parties do not follow the arbitral proceedings regardless the request of the

arbitral tribunal or when this latter concludes that continuing the proceedings becomes unnecessary or impossible.

Arbitral Awards

The arbitral tribunal shall decide based on the rules of law chosen by the parties. In the absence of any agreement with regard to the chosen law, the arbitral tribunal shall apply the law determined by the rules of private international law. In any other case the tribunal applies the Albanian law.

Moreover, the arbitral tribunal may also decide *ex aequo et bono* or *amiable compositeur* if the parties have expressly authorized it.

All the decisions of the arbitral tribunal must be made and signed by the majority of the members (arbitrators). Arbitrators may submit dissenting opinions in writing when they disagree with the decision of the majority.

The award has the same effect as a final court judgment.

The Annulment of the Arbitration Award

Proceedings for annulment of an arbitration award must be initiated before the Court of Appeal of the Republic of Albania.

According to the provisions of this Draft Law, the grounds that justify the annulment of the arbitration award are listed as follow:

- One of the parties to the arbitration agreement was affected by some incapacity.
- The arbitration agreement is not valid under the law to which the parties have submitted it or, if nothing has been indicated in this regard, by virtue of the Albanian Law.
- One of the parties has not been duly notified of the appointment of an arbitrator or of the arbitration

proceedings or has not been able, for any other reason, to assert its rights.

- The award refers to a dispute not provided for the arbitration agreement or contains decisions that exceed the terms of the arbitration agreement; however, if the provisions of the award that refer to matters submitted to arbitration can be separated from those that are not, only the latter may be annulled.
- The appointment of the arbitration tribunal or the arbitration proceedings has not been in accordance with the agreement of the parties unless such agreement conflicted with a provision of this Draft Law.
- The award was rendered on a matter not amenable to arbitration.
- The award is contrary to public policy.

The appeal of annulment does not suspend the execution of the arbitration award, unlike otherwise requested by the interested party due to the possibility of an irreparable damage caused from the execution of the award. The recourse to the Supreme Court against the decision with regard to the annulment of the arbitration award of the Appeal Court is not allowed.

Recognition and Enforcement of Arbitral Awards

Albania has ratified the European Convention on International Commercial Arbitration, Geneva dated 21.04.1961 (Law no. 8687, dated 9.11.2000) and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York dated 10.06.1958 (Law no. 8688 dated 09.11.2000), which regulate the process of enforcement and recognition of foreign and international awards.

The competent jurisdiction of this process is the Court of Appeal of the Republic of Albania.

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If you wish to know more on issues highlighted in this edition, you may approach your usual contact at our firm or the following:

info@bogalaw.com

Tirana Office

40/3 Ibrahim Rugova Str.

1019 Tirana

Albania

Tel +355 4 225 1050

Fax +355 4 225 1055

www.bogalaw.com

www.bogalawip.com

Pristina Office

50/3 Sylejman Vokshi Str.

10000 Pristina

Kosovo

Tel +383 38 223 152

Fax +383 38 223 153

www.bogalaw.com

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