

# Client Alert

International Arbitration Practice Group

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## Enactment of the New Georgia International Commercial Arbitration Code Solidifies Atlanta's Status as a Hub for International Arbitration

On May 2, 2012, Georgia Governor Nathan Deal signed S.B. 383, replacing Part 2 of the Georgia Arbitration Code pertaining to international transactions with a new Georgia International Commercial Arbitration Code, O.C.G.A. § 9-9-20, *et seq.* The stated purpose of the new statute “is to encourage international commercial arbitration . . . to enforce arbitration agreements and arbitration awards, to facilitate prompt and efficient arbitration proceedings . . . and to provide a conducive environment for international business and trade.” The new law will apply to international arbitration agreements entered into on or after July 1, 2012.

King & Spalding Partner Meghan Magruder and Counsel Shelby Guilbert assisted in the drafting of Georgia’s new law, which is based largely on the 1985 United Nations Commission on International Trade Law (UNCITRAL) Model Law, as amended in 2006. In adopting the Model Law, Georgia now joins over fifty civil and common law jurisdictions around the world that have adopted some version of the Model Law. Georgia’s adoption of the 2006 Model Law amendments will ensure greater uniformity and predictability to international businesses that choose to arbitrate their disputes in Georgia. Georgia’s new law also incorporates several non-UNCITRAL provisions that represent international best practice, including:

- Streamlined provisions governing applications for interim relief
- The ability of the parties to choose any superior court in the State of Georgia to provide assistance and supervision in aid of arbitration
- A provision allowing non-Georgia parties to opt out of certain grounds for judicial review of an arbitration award
- Provisions permitting the consolidation of multiple arbitral proceedings upon the agreement of the parties
- Enhanced subpoena powers allowing arbitrators to assist in the taking of evidence without the need for court intervention

In addition to its new statute, Georgia has promulgated pro-arbitration bar rules, further signaling Georgia’s openness to international arbitration. For example, parties may select counsel and arbitrators of their choice in

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arbitral proceedings seated in Georgia, even if those lawyers are not licensed to practice law in any U.S. jurisdiction. Ga. R. Prof. Conduct 5.5(e)(3). Furthermore, under recent 2011 amendments to the Georgia Uniform Superior Court Rules, non-U.S. lawyers may now represent their clients on a *pro hac vice* basis in Georgia courts in judicial proceedings ancillary to international arbitrations. Uniform Superior Court Rules of the State of Ga. R. 4.4. And although judicial disputes arising out of international arbitration are often governed by the Federal Arbitration Act and therefore handled in federal courts, the Eleventh Circuit Court of Appeals in Atlanta, Georgia has recently issued a string of pro-arbitration decisions, which should provide sophisticated parties greater confidence when selecting Atlanta as a seat for an international arbitration. Recent noteworthy pro-arbitration decisions include:

- The elimination of domestic arbitration law as a basis for vacating international arbitration awards. *Industrial Risk Insurers v. M.A.N. Gutenhoffnugsbutte*, 141 F.3d 1434 (11th Cir. 1998).
- The exclusion of “manifest disregard for the law” as a ground for vacating arbitration awards. *Frazier v. CitiFinancial Corp.*, 604 F.3d 1313 (11th Cir. 2010).
- A willingness to impose sanctions to deter baseless challenges to arbitration awards. *World Business Paradise, Inc. v. Suntrust Bank*, 403 Fed. Appx. 468 (11th Cir. 2010).

## ***King & Spalding’s Ongoing Efforts in Promoting International Arbitration and Enforcing International Commercial Arbitration Agreements in Georgia***

King & Spalding is a strong supporter of the Atlanta International Arbitration Society (ATLAS), a non-profit organization that seeks to enhance Atlanta’s stature and position as a venue for the resolution of international commercial and investment disputes and to nurture the growth of an international arbitration community in the southeastern United States. ATLAS was instrumental in the passage of Georgia’s new arbitration law and bar rules, and recently hosted a 3-day international arbitration event in Atlanta attended by nearly 200 people from 17 U.S. states and 19 foreign countries, including the heads of nearly all the major international arbitral institutions. King & Spalding Partner Brian White is the Vice-President of ATLAS, and Meghan Magruder and Shelby Guilbert serve on the ATLAS Legislative Working Group that drafted the recently enacted legislation. For more information about ATLAS, its website is located at [www.arbitrateatlanta.org](http://www.arbitrateatlanta.org).

In addition to promoting more international arbitration in Georgia, Ms. Magruder, Mr. White, and Mr. Guilbert recently assisted Mahindra & Mahindra, Ltd., the largest Indian automobile manufacturer, in the enforcement of an international arbitration agreement after Mahindra was sued in Georgia for breach of a distribution agreement and various U.S. law violations. Mahindra’s contract included an international arbitration agreement providing for the application of the 1976 UNCITRAL Rules and King & Spalding successfully compelled arbitration of all of the claims. After an international arbitration tribunal was properly constituted under the UNCITRAL Rules, and confirmed its jurisdiction to hear the dispute originally filed in Georgia, the tribunal ultimately dismissed the distributors’ claims and awarded Mahindra the costs of the arbitration.

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