International
Comparative
Legal Guides

Practical cross-border insights into construction & engineering law

Construction & Engineering Law 2023

10th Edition

Contributing Editors:
Alan Stone & Tom Green
RPC

ICLG.com

Expert Analysis Chapters

Q&A Chapters

Greece


Tasos Kollas


Alexandros Tsirigos

KLC Law Firm

1 Making Construction Projects

1.1 What are the standard types of construction contract in your jurisdiction? Do you have: (i) any contracts which place both design and construction obligations upon contractors; (ii) any forms of design-only contract; and/or (iii) any arrangement known as management contracting, with one main managing contractor and with the construction work done by a series of package contractors? (*NB* For ease of reference throughout the chapter, we refer to "construction contracts" as an abbreviation for construction and engineering contracts.)

There are no standard types of construction contract in Greece (officially the "Hellenic Republic"). Greece is a civil law jurisdiction. The Greek Civil Code ("GCC") provides, on the one hand, the general contract rules which govern every contract (including construction contracts), and on the other hand special contract rules stipulating deviations from and/or additions to general contract rules, as applicable to specific types of contracts.

Articles 681 – 702 GCC regulate the "*contract for works*" (i.e., the construction contract) which is a reciprocal contract by which the contractor undertakes the obligation to perform the works and the employer is obliged to pay the agreed fees. GCC applies to private contracts, as well as to public contracts in a supplementary manner subject to the specific provisions of public works legislation.

Based on the freedom of contract principle (reflected in article 361 GCC), the parties in a construction contract are free to agree on the type and regulate the terms of the construction contract, subject to mandatory law provisions (*jus cogens*). Thus, contracts may include both design and construction obligations, or design only, or management contracting arrangements, and are privately negotiated by the parties.

Standard forms of contract (e.g. FIDIC) may be used in major or industry large-scale projects, based on freedom of contract principle. FIDIC terms or concepts, properly adjusted to take into account Greek law, may also be included in a construction contract.

1.2 How prevalent is collaborative contracting (e.g. alliance contracting and partnering) in your jurisdiction? To the extent applicable, what forms of collaborative contracts are commonly used?

Parties are free to enter into any collaborative contract serving their specific needs. Collaboration between contractors is usual especially in major private or public projects through joint venture schemes or *consortium* agreements. There is no standard form of collaborative contract. See also question 1.1 regarding the freedom of contract principle.

1.3 What industry standard forms of construction contract are most commonly used in your jurisdiction?

There are no industry standard forms of private construction contracts in Greece. That said, FIDIC standard forms of contract are typically used as benchmark for the formulation and negotiation of construction contracts in major or industry large-scale private projects, and/or where the contracting party is a foreign investor. See also question 1.1.

1.4 Are there any standard forms of construction contract that are used on projects involving public works?

Public works contracts and procurement are regulated by specific legislation, in principle by Law 4412/2016 (as amended and in force) which, *inter alia*, transposed the EU Directives on public procurement 2014/24/EU and 2014/25/EU. Contracts for public works are subject to the GCC as well in a supplementary manner; however, in cases of conflict, the legislation for public works prevails.

Public project contracts are governed in principle by standard contract documents ("model tender documents") issued by the Hellenic Single Public Procurement Independent Authority ("HSPPA"), including standard terms published by other public-governmental tendering authorities. Design-build contracts are common in projects involving public works as well as in concession projects.

1.5 What (if any) legal requirements are there to create a legally binding contract (e.g. in common law jurisdictions, offer, acceptance, consideration and intention to create legal relations are usually required)? Are there any mandatory law requirements which need to be reflected in a construction contract (e.g. provision for adjudication or any need for the contract to be evidenced in writing)?

Under Greek law, a contract between two parties is, in principle, a synthesis of at least two concordant declarations of will (articles 185, 192 GCC) with an intention to bind oneself. In order to create a legally binding contract, the following requirements must be met:

- a mutual agreement (offer and acceptance);

- an intention to create a legally binding contract; and
- the capacity of the parties to conclude contracts.

Consideration is not required according to Greek law. In principle, contracts are not subject to any kind of formalities, unless the law expressly provides otherwise (158 GCC). As a matter of standard practice, construction contracts are evidenced in writing.

1.6 In your jurisdiction please identify whether there is a concept of what is known as a "letter of intent", in which an employer can give either a legally binding or non-legally binding indication of willingness either to enter into a contract later or to commit itself to meet certain costs to be incurred by the contractor whether or not a full contract is ever concluded.

The concept of a "*letter of intent*" is recognised in business practice in Greece. To the extent that a letter of intent simply indicates the intent of the parties to engage into negotiations, describes the framework of any negotiations, or describes the matters that may be included into a contract, it does not constitute an "agreement" or an "offer" to contract under Greek law, and thus a letter of intent it is not a binding legal document. Thus, to avoid relevant disputes on whether any such letter is binding, the parties are advised to include an explicit statement that any such letter is not binding and is subject to agreement.

1.7 Are there any statutory or standard types of insurance which it would be commonplace or compulsory to have in place when carrying out construction work? For example, is there employer's liability insurance for contractors in respect of death and personal injury, or is there a requirement for the contractor to have contractors' all-risk insurance?

In private contracts, the parties are in principle free based on freedom of contract to agree on any insurance scheme and regulate the relevant risks of the contract. Although some legislative provisions have been adopted providing an obligation to have in place third-party civil liability insurance in private construction works (design and construction), in practice such provisions have not been activated since their application depends on the issuance of further special legislative acts which have not been issued.

With respect to the relevant risks in relation to private construction contracts, according to article 698 GCC, as long as the works are in progress, the risk of the works is borne by the contractor. The risk is transferred to the employer as of the delivery of the works project to him, or from the point where the employer is in default as to the acceptance of the works. The employer bears the risk of accidental destruction or deterioration of the materials supplied by the employer. Article 698 GCC is a provision of non-mandatory law, and the contracting parties may elect to regulate their contractual relationship in a different manner.

A compulsory insurance that must be in place when carrying out construction work is employees' insurance through the National Social Security Fund (social security insurance); this insurance does not cover any civil liability in respect of death and personal injury.

As a matter of practice, it is very usual that the contractor and the employer are insured against the relevant special risks of the project, especially for works – projects that are subject to financing by financial institutions. Based on the particularities of each construction project, it may be appropriate that the parties also request advice from insurance advisors.

1.8 Are there any statutory requirements in relation to construction contracts in terms of: (a) labour (i.e. the legal status of those working on site as employees or as self-employed sub-contractors); (b) tax (payment of income tax of employees); and/or (c) health and safety?

Contractors engaged in construction projects have several obligations deriving from generally applicable legislation, including obligations to obtain several licences and permits required for the execution of the works (environmental, building, installation and operation licenses, requirements in relation to health & safety, planning, employment, anti-corruption and bribery, etc.).

By way of example, article 662 GCC, provides that the employer is obliged to make such arrangements regarding the conditions and the premises of work where the works are performed, as well as the accommodation, installations, machinery, or tools that are necessary to protect the life and health of the employees.

In the case of private construction contracts, and depending on the nature and the specific provisions of the construction contract, registration with other competent authorities may be required under labour and social security legislation (e.g., the owner of the project may need to be registered with the competent social security authorities as "employer" and pay the relevant social security contributions calculated on the basis of a minimum presumed number of required wages).

Contractors are subject to tax registration and other reporting formalities for tax purposes. Import duties may also be applicable depending on the type/origin of equipment imported into Greece by the contractor.

1.9 Are there any codes, regulations and/or other statutory requirements in relation to building and fire safety which apply to construction contracts?

There are numerous mandatory technical standards and norms, included in laws, codes and regulations, that may be complied in relation to the performance of technical works in relation to building and fire safety (e.g., minimum standards for earthquake protection, electricity connection works standards etc.), depending also on the size and particularities of the relevant project, e.g., Law 4067/2012 (as in force) (New Building Regulation) and Presidential Decree 41/2018 (as in force) on building fire safety. Based on the particularities of each construction project, it may be appropriate that the parties request advice also from special technical advisors and experts.

1.10 Is the employer legally permitted to retain part of the purchase price for the works as a retention to be released either in whole or in part when: (a) the works are substantially complete; and/or (b) any agreed defects liability period is complete?

Article 694 GCC provides that the fees of the contractor must be paid upon the delivery of the works. If the parties have agreed that the delivery of the works and the payment of the fees will be made in milestones, the fees are payable upon the delivery-completion of the relevant milestone. However, this provision is not mandatory law, and so the parties may agree differently, i.e., it can be agreed as matter of contract that the employer will be permitted to retain part of the purchase price for the works as a retention to be released either in whole or in part when the works are substantially complete and/or any agreed defects liability period is complete or a prepayment of the fees (or part thereof), installment payments etc.

1.11 Is it permissible/common for there to be performance bonds (provided by banks and others) to guarantee the contractor's performance? Are there any restrictions on the nature of such bonds? Are there any grounds on which a call on such bonds may be restrained (e.g. by interim injunction); and, if so, how often is such relief generally granted in your jurisdiction? Would such bonds typically provide for payment on demand (without pre-condition) or only upon default of the contractor?

As a matter of standard practice, especially in large construction projects, it is very common that the performance of the obligations of the contractor is secured by a number of performance bonds (letters of guarantee) issued in principle by banks and/or insurance companies (e.g., advance payment bond, performance bond, retention bond, warranty bond etc.). In general, parties are free to agree on the security scheme in relation to the performance of contractor's obligations. Such bonds/letters of guarantee are in principle on first demand, i.e., immediately payable by the issuer upon the first demand of the beneficiary without any right or obligation of the issuer to verify the substance or the validity of the claim and/or raise any objection for payment based on the principle "pay first, litigate later".

1.12 Is it permissible/common for there to be company guarantees provided to guarantee the performance of subsidiary companies? Are there any restrictions on the nature of such guarantees?

Company guarantees, issued by a parent and/or affiliated company to guarantee of the performance of the obligations of a subsidiary company if the later defaults on its obligations, are common. The existence of a legal claim, based on a contractual obligation or otherwise, is a necessary requirement for holding a collateral in the form of company guarantee. In general, parties are free to agree on the terms of such company guarantee. According to article 849 GCC, a contract for guarantee is considered null and void unless it is in writing.

1.13 Is it possible and/or usual for contractors to have retention of title rights in relation to goods and supplies used in the works? Is it permissible for contractors to claim that, until they have been paid, they retain title and the right to remove goods and materials supplied from the site?

Under article 695 of the Greek Civil Code, the contractor has, as a security for his claims arising from the contract, a legal pledge on the movables in his possession which belong to the employer and which the contractor has constructed or repaired. This provision is not mandatory law, thus the parties may agree differently and exclude such right of the contractor. No such right is available to the contractor in relation to the construction of immovable works, in which case the goods and supplies used in the works are deemed to be incorporated into the works and thus the title of property is transferred to the employer. In practice, it is common to negotiate specific provisions in construction contracts regarding the retention of title rights and transfer of ownership over goods and supplies used in the works.

2 Supervising Construction Contracts

2.1 Is it common for construction contracts to be supervised on behalf of the employer by a third party (e.g. an engineer)? Does any such third party have a duty to act impartially between the contractor and the employer? If so, what is the nature of such duty (e.g. is it absolute or qualified)? What (if any) recourse does a party to a construction contract have in the event that the third party breaches such duty?

Greek law does not provide the notion of the engineer as described, for example, in FIDIC contracts (Red & Yellow books), however the concept of supervision is usual. As a matter of contract and especially for large construction projects, the parties often agree that the employer may appoint a third-party consultant or engineer to supervise the works. However, the engineer's role is not usually so decisive as in FIDIC contracts, where the determinations of the engineer may be final and binding upon the parties. There are no standard norms and regulations regarding the engineer's statutory duty of impartiality in such cases, but it is a matter of contractual formulation/negotiation between the parties. Public contracts are regulated by specific legislation where statutory provisions regarding supervision apply.

2.2 Are employers free to provide in the contract that they will pay the contractor when they, the employer, have themselves been paid; i.e. can the employer include in the contract what is known as a "pay when paid" clause?

See question 1.10 regarding article 694 GCC and time of payment. This provision is not mandatory law, thus the parties may agree differently, e.g., a "pay when paid" clause. However, the enforceability of any such clause, as with every contractual clause, will be subject to the non-violation of the principles, *inter alia*, of good faith, which plays a crucial role with respect to the interpretation and performance of contractual obligations (articles 173, 200, 281 and 288 GCC) or the prohibition of abusive exercise of rights (article 281 GCC).

2.3 Are the parties free to agree in advance a fixed sum (known as liquidated damages) which will be paid by the contractor to the employer in the event of particular breaches, e.g. liquidated damages for late completion? If such arrangements are permitted, are there any restrictions on what can be agreed? E.g. does the sum to be paid have to be a genuine pre-estimate of loss, or can the contractor be bound to pay a sum which is wholly unrelated to the amount of financial loss likely to be suffered by the employer? Will the courts in your jurisdiction ever look to revise an agreed rate of liquidated damages; and, if so, in what circumstances?

Greek law provides for the notion of the penalty instead of the liquidated damages notion applicable in common law jurisdictions. A monetary penalty clause is a contract whereby a party (debtor) promises to pay a specific monetary amount to the other party (creditor), in case the debtor does not timely or properly fulfil its obligations (article 404 GCC), without it being necessary for the creditor to prove that it has suffered prejudice (article 405 GCC). Penalty clauses are valid and enforceable under Greek law, and explicitly regulated in the GCC (articles

404 – 409) subject to mandatory provisions of GCC, e.g., on limitations of liability, or on the fundamental principles (breach of good faith and conduct contrary to good morals (*bonos mores*), abuse of right etc).

According to article 409 GCC, if the penalty which has been agreed is disproportionate or excessive, the court/tribunal, following an application of the debtor, may reduce it to the "due/proper measure" considering all pertinent circumstances at the judge's/arbitrator's discretion. This provision protects the debtor (usually the weaker party on whom the creditor can impose onerous terms) and is a mandatory law; an agreement on a waiver of this right is not valid (article 409 par. 2 GCC). As a matter of defence against a penalty, any party may argue as a matter of mandatory law that a penalty clause is, in principle: (a) an invalid restriction of liability in the event wilful misconduct (intentional breach) or gross negligence; and/or (b) disproportionate/excessive.

3 Common Issues on Construction Contracts

3.1 Is the employer entitled to vary the works to be performed under the contract? Is there any limit on that right?

The parties in a construction contract are free to include a right of the employer to vary the works to be performed under the contract as well as to agree on the relevant terms (e.g., process, entitlement to additional cost etc.). In the absence of an agreement, the parties may negotiate any variation to the works which will be an amendment to the contract; it may also be a matter of interpretation, based on the general principles of contract law (e.g., good faith), whether any variation or change in the works instructed by the employer falls under the scope of the initial contract and therefore it is obligatory for the contractor to perform. To the extent, however, that it can be proved that the performance of any such works is excluded from the obligations/contractual scope of the contractor, then an additional agreement (either new or amendment) will be required.

Public contracts are subject to specific provisions of specific legislation applicable to public works (mainly articles 156-155 of Law 4412/2016 (as in force)).

3.2 Can work be omitted from the contract? If it is omitted, can the employer carry out the omitted work himself or procure a third party to perform it?

Subject to any relevant and applicable provisions of the contract or/and any additional agreement of the parties, works cannot be omitted by the contractor; in such a case the contractor would be in breach of contract and the employer would be entitled to exercise their rights under the contract and the law (e.g., claim for compensation). The employer may carry out the omitted work himself or procure a third party to perform it, and it can then claim the relevant costs from the contractor, without prejudice to any other rights of the employer under the contract and the applicable law.

3.3 Are there terms which will/can be implied into a construction contract (e.g. a fitness for purpose obligation, or duty to act in good faith)?

GCC provides, among others, for general contract rules which govern every contract (including construction contracts) as a matter of mandatory law. Greek contract law is premised on certain fundamental principles underpinning/pervading all private contracts, such as, among others: the general principle of good faith, which plays a crucial role with respect to the interpretation and performance of contractual obligations (articles 173, 200, 281 and 288 GCC); the general duty not to cause prejudice to third parties and to refrain from acts contrary to good morals (articles 914 and 919 GCC); the prohibition of the abusive exercise of rights (article 281 GCC); and the principle that the contract must not be contrary to a prohibitory provision of law, or contrary to *bonos mores* (article 178 GCC). In addition, based on the good faith principle, the contractor has an obligation to keep the employer informed regarding the budget, the evidence of the works and costs incurred, and the provision to the employer of the manuals regarding the operation and maintenance of the project.

For example, under Greek law, when totally unforeseen circumstances and conditions change the parties' agreement and, as a result, the parties' obligations are untenable, the court can rule the termination of the contract and the reasonable reimbursement of the parties (articles 288 and 388 GCC). Parties may elect to exclude the application of any non-mandatory law provisions.

3.4 If the contractor is delayed by two concurrent events, one the fault of the contractor and one the fault or risk of the employer, is the contractor entitled to: (a) an extension of time; and/or (b) the costs arising from that concurrent delay?

When both parties are in parallel/concurrent delay, either party's contribution to the delay will be individually assessed (and therefore reflected in the relevant time schedule individually), so the contractor's potential entitlement for an extension of time and/or additional costs is principally a matter of causation and factual evidence.

In general, and subject to contract provisions specifically regulating the matter differently, under article 685 GCC, if during the performance of the works for some reason the timely or proper performance of the works is at risk, the contractor is obliged to advise the employer accordingly without delay; failing to do so, contractor will be liable for the prejudicial consequences.

According to article 686 GCC, if the contractor delays the commencement or/and the execution of the works in accordance with the contract and the timely completion of the works becomes impossible, the employer may rescind the contract and obviously the contractor will not be entitled to an extension of time, provided however that the employer has not delayed the works by its fault. For any delay caused by the employer's fault, the contract will, in principle, be entitled to an extension of time.

In addition, as a matter of general principles of contract law, the principle of contributory negligence may also apply pursuant to article 300 GCC providing that if a person who has suffered loss (injured party) has contributed to such loss through its own fault (including by failing to mitigate its loss or warn the other party thereof), the court at its discretion may refrain from adjudicating any damages claimed by the injured party or may reduce its amount as the court may deem fit.

3.5 Is there a statutory time limit beyond which the parties to a construction contract may no longer bring claims against each other? How long is that period and when does time start to run?

The general statutory limitation for claims under contractual liability is 20 years (article 249 GCC). However, specifically as

regards claims of the employer arising from defects in the works, the statutory limitation period is: (a) 10 years from the approval of the works with respect to buildings/immovable works or other immovable infrastructures; and (b) six months from the approval of the works with respect to all other works (article 693 GCC). Certain other claims, such as the entitlement of the contractor to payment under the contract or the claim of the employer for non-performance or inadequate performance (other than with respect to defects), are subject to a statutory limitation of five years (article 250 GCC). As regards claims in tort, the general statutory limitation is five years starting from the date on which the injured party became aware of the damage and of the identity of the compensating party (article 937 GCC), and in any case, within 20 years from the date on which the tortious conduct took place. The statutory limitation provisions are mandatory law, and may not be excluded or modified (shortened) contractually.

If the parties stipulate in the contract a liability time limit in the meaning of article 556 GCC with respect to a defect or lack of an agreed quality, i.e., if the contractor guaranteed for a specific time period the proper operation of the works, then in case of doubt, the statutory limitation starts from the point where the defect has arisen instead of the date of approval of the works (thus the statutory limitation period is practically prolonged).

3.6 What is the general approach of the courts in your jurisdiction to contractual time limits to bringing claims under a construction contract and requirements as to the form and substance of notices? Are such provisions generally upheld?

See answer to question 3.5. In principle, the statutory limitation provisions are mandatory law and may not be excluded or modified (shortened) contractually. However, it is supported under Greek legal theory that time limitation of liability, and thus contractual time limits to bringing claims, may be found valid in the event of mere negligence; any such limitation would be invalid in case of gross negligence or wilful misconduct. See also answer to question 3.20 regarding article 332 GCC and clauses limiting liability for wilful misconduct (intentional breach) or gross negligence. A statutory limitation period is interrupted if the debtor recognises the claim in any way.

3.7 Which party usually bears the risk of unforeseen ground conditions under construction contracts in your jurisdiction?

Usually, the employer undertakes to provide unhindered access to the site to the contractor and thus in principle bears the risk of unforeseen ground conditions unless the parties agree otherwise. Article 685 GCC, par. 2, provides that if during the performance of the works, the side designated by the employer has defects, the contractor is obliged to notify the employer in this respect without delay otherwise the contractor will be liable for the prejudicial consequences. In addition, general provisions of GCC may apply. For example, see answer to question 3.3 regarding totally unforeseen circumstances and conditions.

3.8 Which party usually bears the risk of a change in law affecting the completion of the works under construction contracts in your jurisdiction?

The parties are free to include relevant provisions in their contract. In the absence of any contractual arrangement, each party will bear the risk of a change in law affecting its scope of responsibilities, and obligations under the contract with respect to the completion of the works, subject to any relevant applicable law provisions. The general provisions of GCC with respect to unforeseen circumstances (articles 288 and 388 GCC) may also apply – see questions 3.3 and 3.7.

3.9 Which party usually owns the intellectual property in relation to the design and operation of the property?

In principle, the creator of the relevant products (i.e., a designer or an architect) is the owner of the intellectual property rights, however the economic right to use and exploit the materials is transferred to the employer as a matter of standard practice. The moral part of intellectual property remains with the creator.

3.10 Is the contractor ever entitled to suspend works?

There is no explicit provision in the special contract rules applicable to contracts for works in relation to the right of the contractor to suspend the works. The contractor may establish or exercise the right of suspension under the general principles of the GCC (e.g., *force majeure*, or the inability to perform in the event that the employer does not co-act with the contractor if it is required for the execution of the works). The parties can freely agree in the contract any event/circumstances under which the contractor could be entitled to suspend the works. In principle, if the employer is not fulfilling its main obligation to pay the contract price, it becomes a debtor in default and will be liable towards the contractor under the general provisions of GCC.

As a matter of general principles of contract law, the debtor, on certain conditions of non-performance by the other party, is entitled to suspend his own performance. In these cases, the law grants him purely defensive rights (pleas), which have temporary effect, leading only to the suspension of the performance and not the negation (rejection) of the right of the creditor. These provisional remedies are stipulated in the GCC and are the "right of retention" (*jus retentionis*) (articles 325 – 329 GCC) and the "plea of unperformed contract" (articles 374 – 378 GCC). Rights of suspension may also be established under a *force majeure* event.

3.11 Are there any grounds which automatically or usually entitle a party to terminate the contract? Are there any legal requirements as to how the terminating party's grounds for termination must be set out (e.g. in a termination notice)?

As regards the employer, one of the remedies available to the employer under Greek law is the right to rescind the contract in case of major defects rendering the project useless, if the project lacks the agreed qualities (article 689 GCC), in cases where the commencement of the works or the progress of the works is delayed in a way that is contrary to the contract and the timely completion of the project would be impossible (article 686 GCC), or in cases where the actual budget of the project exceeds the budget guaranteed by the contractor (article 697 GCC).

Furthermore, article 700 GCC provides that the employer has the right of termination for convenience by notice to the contractor at any time up to the completion of the works, provided that he pays all the remaining contract price, minus any cost savings/benefits for the contractor as a result of early termination. Such right is not mandatory law and can, in principle, be excluded by an agreement of the parties under the contract.

As regards the contractor, the GCC's provisions on contract for works do not contain an explicit right of termination by

the contractor. As per the general provisions of the GCC, the contractor could establish a right to terminate the contract on the basis of the following provisions (the same principles apply also to termination by the employer, in a manner complementary to the special contract rules applicable to contracts for works): (a) employer's default (articles 383, 387 GCC); (b) termination for "serious ground" (article 288 GCC); (c) termination in case of material change in circumstances (article 388 GCC); and (d) the inability to perform without default (articles 336, 380 GCC).

3.12 Do construction contracts in your jurisdiction commonly provide that the employer can terminate at any time and for any reason? If so, would an employer exercising that right need to pay the contractor's profit on the part of the works that remains unperformed as at termination?

As a matter of market practice, it is common for the parties to agree that the employer can terminate at any time and for any reason. See question 3.11 regarding article 700 GCC (termination for convenience).

3.13 Is the concept of *force majeure* or frustration known in your jurisdiction? What remedy does this give the affected party? Is it usual/possible to argue successfully that a contract which has become uneconomic is grounds for a claim for *force majeure*?

Although the GCC does not include explicit references to *force majeure*, this concept is recognised under Greek law. Parties are also free to include contractual arrangements in relation to *force majeure* in their contract. According to the subjective theory, which is prevalent in Greek case law, *force majeure* encompasses events which could not have been foreseen and could not have been averted even by measures of extreme care and prudence on the part of the debtor. *Force majeure* applies only as long as there is a causal link between the *force majeure* event and the impossibility or delay of performance. As soon as the *force majeure* event ceases to cause impossibility or delay of performance, a debtor who does not perform is in default. The affected party has an obligation to promptly notify the other party of any *force majeure* event (articles 336, 288 GCC). In the case of permanent frustration of the contract, a right to terminate may be granted to the affected party. Other remedies-claims that the affected party may invoke are related with the suspension of the contract, the temporary waiver of contractual obligations, the adjustment of the contract price, etc. See also questions 3.3 and 3.7 regarding unforeseen circumstances. The provisions of failure to perform contractual obligations (article 335-336) may be also invoked.

3.14 Is there any legislation or court ruling that has been specifically enacted or handed down to provide relief to parties to a construction contract for delay, disruption and/or financial loss caused by the COVID-19 pandemic? If so, what remedies are available under such legislation/court ruling and are they subject to any conditions? Are there any other remedies (statutory or otherwise) that may be available to parties whose construction contracts have been affected by the COVID-19 pandemic?

In private construction contracts, there is no specific legislation enacted to provide relief under the COVID-19 pandemic. For public works contracts, specific, non-binding guidelines have been issued by the Hellenic Single Public Procurement Independent Authority and opinions by the Legal Council of State, providing that COVID-19 pandemic can be treated as unforeseen circumstances, which may result in the amendment of the terms of the contract, subject to the decision of the competent tendering authority.

In terms of court rulings (which do not have the force of precedent/case law), there is no general tendency, and each case is assessed on an *ad hoc* basis. COVID-19 or similar pandemic events will, in principle, be treated as unforeseen circumstances, and/or *force majeure* events, regulated by any relevant provisions of the contract and the applicable law. The general provisions of GCC with respect to unforeseen circumstances may also apply. See also questions 3.3, 3.7 and 3.12.

3.15 Are parties, who are not parties to the contract, entitled to claim the benefit of any contractual right which is made for their benefit? E.g. is the second or subsequent owner of a building able to claim against the contractor pursuant to the original construction contracts in relation to defects in the building?

Under the rule of "privity of contracts", rights and obligations are exclusively conferred to the contracting parties. Exceptions to that rule, according to which third parties may acquire the right to enforce a contract, are found in practice, in certain cases of contractual stipulations for the benefit of third parties, lease and sublease of immovable property, construction contracts (between the employer and the contractor's employees), etc.

In general, there must be either a special law provision or a specific explicit or implicit obligation under the contract to the effect that the contractor will assume certain responsibilities towards a third entity (410 GCC). It is then the third party which obtains the right to claim a certain benefit or exercise a right under the contract in its own name.

The application of the general provisions of law for liability in tort of the contractor against third parties cannot be excluded. In case of construction of a building that will be sold or leased by its employer to a third party, the contractor may bear direct (civil and criminal) responsibility towards the third party not as a matter of contract (i.e., as an exception to the rule of "privity of contract") but as a matter of law (tort), e.g., if the building is not compliant with the minimum specifications provided by law in terms of safety of buildings; provided, however, that any such defect can attributed to the contractor.

3.16 On construction and engineering projects in your jurisdiction, how common is the use of direct agreements or collateral warranties (i.e. agreements between the contractor and parties other than the employer with an interest in the project, e.g. funders, other stakeholders, and forward purchasers)?

As a matter of practice, if funders provide financing in construction projects, the scheme of direct agreements may be used, based on which the contractor undertakes certain obligations towards the funders or/and certain commitments to comply with contractual provisions and requirements imposed by the funders. The use of direct agreements is not particularly common, except in large-scale projects and/or in project finance.

3.17 Can one party (P1) to a construction contract, who owes money to the other (P2), set off against the sums due to P2 the sums P2 owes to P1? Are there any limits on the rights of set-off?

Set-off right of claims between the parties under a contract is possible, and explicitly provided in articles 440 GCC *et seq*. The

main conditions under the GCC are the following: (a) claims subject to set-off need to be mutual, i.e., the debtor of one claim must be the creditor of the other, and of the same nature (e.g., of monetary nature); (b) both claims must be due; and (c) the one party (P1) must declare by giving notice to the other party (P2) regarding the exercise of the set-off right. The parties can freely agree a set-off mechanism based on different contractual arrangements in the contract.

3.18 Do parties to construction contracts owe a duty of care to each other either in contract or under any other legal doctrine? If the duty of care is extra-contractual, can such duty exist concurrently with any contractual obligations and liabilities?

Any party under any contract (including construction contracts) owes a duty of care to the counterparty, mainly based on the good faith principle (288 GCC). Article 288 GCC aims at ensuring the existence of a minimum level of fairness, reasonableness, and decency in transactions, and as a provision of mandatory law (*jus cogens*), also imposing free-standing, ancillary obligations on parties. Good faith under Greek law is a dynamic notion and therefore its exact content and scope is left to be determined on the facts of each case by courts – in respect of which they have wide discretionary power. The application of the principle of good faith exists concurrently with any contractual obligations and liabilities. This intervenes in the relation between two parties to a contract by limiting, complementing or weakening the rights or obligations that arise by virtue of parties' contract or the law, either by increasing or reducing the obligations of a party.

3.19 Where the terms of a construction contract are ambiguous, are there rules which will settle how that ambiguity is interpreted?

Greek courts take a broad approach to the question whether vagueness or ambiguity exists. As a matter of practice, if a Greek Court is faced with contractual language that could be interpreted in more than one way, or with a factual background that puts into doubt the meaning of the allegedly "clear/plain" wording of a contract, the court will proceed to interpret the contract pursuant to articles 173 and 200 GCC (the main rules regulating the process of contractual interpretation) providing that when interpreting a declaration of will, the true intention shall be sought without adherence to the words, as well as that contracts shall be interpreted in accordance with the requirements of good faith, taking also into consideration trade usages.

3.20 Are there any terms which, if included in a construction contract, would be unenforceable?

In principle, terms in a construction contract (and every contract under Greek law) that are contrary to mandatory law provisions (*jus cogens*) would be unenforceable. As regards specific provisions of GCC for contract for works, terms that are contrary to the statutory limitation periods regarding the claims of the employer arising from defects in the works (article 693 GCC) or terms contrary to article 702 GCC pursuant to which the workers employed by a contractor for the construction of a building or other immovable installation shall have a direct claim against the employer with respect to their salaries up to the amount that the employer owes to the contractor will be null and void. As a matter of general contract law, for example, pursuant to article 332 GCC, clauses limiting liability for wilful misconduct (intentional breach) or gross negligence are null and void; the same applies for terms that are contrary to a prohibitory provision of law (article 174 GCC) or contrary to *bonos mores* (article 178 GCC) etc.

3.21 Where the construction contract involves an element of design and/or the contract is one for design only, are the designer's obligations absolute or are there limits on the extent of his liability? In particular, does the designer have to give an absolute guarantee in respect of his work?

Under Greek law there is no statutory provision rendering the designer's obligations "absolute" and/or requiring the designer to give an absolute guarantee in respect of his work. Parties are free to include contractual arrangements in the contract subject to the provisions of mandatory law. In principle, general clauses limiting liability for wilful misconduct (intentional breach) or gross negligence are null and void. In other words, the parties may limit their contractual liability only for simple (not gross) negligence. The application of the general provisions of law for liability in tort of the designer cannot be excluded.

3.22 Does the concept of decennial liability apply in your jurisdiction? If so, what is the nature of such liability and what is the scope of its application?

In principle yes, to the extent it refers to the 10-year statutory limitation period applicable to buildings/immovable works. As noted in the answer to question 3.5 regarding the claims of the employer arising from defects in the works, the statutory limitation period is 10 years from the approval of the works with respect to buildings/immovable works or other immovable infrastructures. Article 692 GCC provides that after the approval of the works by the employer, the Contractor shall be released from any liability for its deficiencies, unless and to the extent that upon delivery of the works such deficiencies could not have been ascertained by means of a proper examination or where they were fraudulently concealed by the contractor (latent/hidden defects).

4 Dispute Resolution

4.1 How are construction disputes generally resolved?

Parties in private construction contracts are free to agree on the dispute-resolution procedure applicable to the dispute. Disputes are resolved in principle by litigation with recourse to the national courts or by (domestic or international) arbitration. Alternative forms of dispute resolution, such as mediation or adjudication by expert, may also apply.

4.2 Do you have adjudication processes in your jurisdiction (whether statutory or otherwise) or any other forms of interim dispute resolution (e.g. a dispute review board)? If so, please describe the general procedures.

See also question 4.1. Under the Greek legal system, there is no statutory adjudication process in construction contracts, nor is it common place to use standard industry practice adjudication process, such as the Dispute Adjudication Board (DAB) under FIDIC contracts. However, as a matter of contract, parties are free to agree on a relevant adjudication procedure and/or

an expert determination process, subject to the provisions of mandatory law, and provided that the rights of access to justice and judicial protection are not violated.

4.3 Do the construction contracts in your jurisdiction commonly have arbitration clauses? If so, please explain how, in general terms, arbitration works in your jurisdiction.

In general, the Greek legal framework regime welcomes general dispute settlement, including disputes arising from construction contracts, via arbitration. Arbitration is particularly common in the context of disputes arising out of international contracts, especially for large-scale and complex infrastructure projects. The majority of these are referred to institutional arbitration.

Greece has adopted a dualistic arbitration legal system, distinguishing between domestic arbitration legislation (mainly found in the Greek Code of Civil Procedure (the "GCCP"); chapter 7, articles 867-903), and legislation relating to international arbitration, namely Law 5016/2023 on International Arbitration (recently enacted), which is based on the UNCITRAL Model Law (including its 2006 amendments). Within the framework of an international arbitration, parties are free (principle of freedom of contract) to select and agree on the place, language and governing law of the arbitration.

4.4 Where the contract provides for international arbitration, do your jurisdiction's courts recognise and enforce international arbitration awards? Please advise of any obstacles (legal or practical) to enforcement.

Greece is a signatory party of the New York Convention (ratified by Legislative Decree 4220/1961) ("NYC"), which means that foreign arbitral awards are enforceable unless there are specific grounds for refusal. In addition, pursuant to article 45 of the new Law 5016/2023 on International Arbitration, the provisions of the NYC are generally applicable to all foreign arbitral awards. The Greek Code of Civil Procedure also applies. Greek courts have generally adopted a favourable position towards foreign arbitral awards and have thus refused recognition and enforcement only in exceptional cases, related mostly to public policy grounds. Any party opposing the recognition of an international award may invoke any of the grounds listed in Art. V of the NYC, while the court may, on its own motion, refuse recognition and enforcement only if it rules that the subject matter of the dispute was not arbitrable under Greek law, or that the recognition and enforcement of the award would be contrary to Greek international public policy (article V(2) of the NYC). A revision of the substance of the award is strictly forbidden.

4.5 Where a contract provides for court proceedings in your jurisdiction, please outline the process adopted, any rights of appeal and a general assessment of how long proceedings are likely to take to arrive at: (a) a decision by the court of first jurisdiction; and (b) a decision by the final court of appeal.

Court proceedings in Greece (litigation) in relation to commercial (including construction) disputes is regulated mainly by the provisions of the GCCP. There are no specialist civil courts in Greece, i.e., handling disputes about construction, buildings, and engineering. The structure of the Greek civil courts includes:

- Courts of First Instance (*Protodikeio*);
- Courts of Appeal (*Efeteio*), to which the defeated party is entitled to file an appeal against the decision of first instance court and challenge the legal, as well as the factual, grounds of the judgement; and
- the Supreme Court (*Areios Pagos*) seated in Athens which is a court of cassation and entitled to review questions of law/legal defects of the judgements of the Courts of Appeal.

The process and the main stages in civil proceedings are in principle summarised as follows:

- filing an action with the competent Court of First Instance which must set out, *inter alia*, the full particulars of the claim and the factual background;
- service of the action to the defendant through a court bailiff;
- filing of pleadings and documentary evidence, including affidavits and witness statements, as well as supplementary pleadings by which each party responds to the pleadings of the other party;
- trial/hearing (in principle a typical process) and issuance of judgment (first instance judgement);
- filing of an appeal by the defeated party and issuance of judgment (court of appeal judgement); and
- filing of an appeal of cassation before the Supreme Court.

Time of issuance of judgments depends, in principle, on the workload of the competent court and the complexity of the case. For example, Courts of Attica, Greece (Athens, Piraeus) have a very increased workload as they are dealing with disputes concerning a very large part of the population of the country. Normally it may take at least one to three years for each level of jurisdiction.

4.6 Where the contract provides for court proceedings in a foreign country, will the judgment of that foreign court be upheld and enforced in your jurisdiction? If the answer depends on the foreign country in question, are there any foreign countries in respect of which enforcement is more straightforward (whether as a result of international treaties or otherwise)?

In general, Greek courts accept the recognition and enforcement of foreign judgments in accordance with the applicable provisions of EU law, international and/or local law. It is also noted that the Recast Brussels Regulation has facilitated and simplified the enforcement procedure, and established the free circulation of the EU judgments falling within its ambit. Absent any applicable special regime under EU regulations or multilateral international conventions and bilateral treaties, the domestic legislation governing the recognition and enforcement of foreign judgments in Greece is the GCCP. Where EU regulations or international conventions and bilateral treaties are applicable, these instruments supersede the national provisions of the GCCP. In general, if a foreign judgment is contrary to public policy or *bonos mores*, it will not be recognised and enforced in Greece.

Tasos Kollas is a Senior Associate at KLC Law Firm. He is a practising lawyer with experience in the fields of business transactions and commercial law, construction law and projects (construction, energy etc.) across the entire transaction cycle from due diligence, negotiation and drafting to dispute resolution. In addition, he advises clients on matters of corporate law. He also deals with dispute resolution, including litigation and commercial arbitration, and represents clients before the Greek courts and arbitral tribunals.

KLC Law Firm
10 Kapsali Str.
10674 Athens
Greece

Tel: +30 210 7264 500
Email: tasos_kollas@klclawfirm.com
URL: www.klclawfirm.com

Alexandros Tsirigos is a Partner at KLC Law Firm. He is a practising lawyer with experience in a range of business transactions, energy law, construction matters, and dispute resolution cases, focusing on M&A transactions in various market sectors, and major international commercial arbitration cases.

KLC Law Firm
10 Kapsali Str.
10674 Athens
Greece

Tel: +30 210 7264 500
Email: alexandros_tsirigos@klclawfirm.com
URL: www.klclawfirm.com

KLC Law Firm is one of the top law firms in Greece, with solid experience and in-depth expertise in all fields of practice, and specialised in all legal aspects of the construction industry. It collaborates with multiple international and foreign top-calibre law firms, offices, experts and consultants in and outside Europe. KLC's name is linked to many landmark business deals, as well as construction projects and dispute resolution cases in Greece and abroad, including construction disputes. The firm is in general a leading name for construction projects, an array of dispute resolution and litigation at all court levels, including international arbitration, recognition and enforcement of foreign judgments and arbitral awards. It has dealt with complex construction-related disputes, whether domestic or multi-jurisdictional, before various dispute resolution fora, in cooperation with leading financial and technical experts. KLC has also developed and keep growing particular know-how in FIDIC-based projects.

www.klclawfirm.com

KLC
LAW FIRM

ICLG.com

Current titles in the ICLG series

Alternative Investment Funds
Anti-Money Laundering
Aviation Finance & Leasing
Aviation Law
Business Crime
Cartels & Leniency
Class & Group Actions
Competition Litigation
Construction & Engineering Law
Consumer Protection
Copyright
Corporate Governance
Corporate Immigration
Corporate Investigations
Corporate Tax
Cybersecurity
Data Protection
Derivatives
Designs
Digital Business
Digital Health
Drug & Medical Device Litigation
Employment & Labour Law
Enforcement of Foreign Judgments
Environment & Climate Change Law
Environmental, Social & Governance Law
Family Law
Fintech
Foreign Direct Investment Regimes
Franchise
Gambling
Insurance & Reinsurance
International Arbitration
Investor-State Arbitration
Lending & Secured Finance
Litigation & Dispute Resolution
Merger Control
Mergers & Acquisitions
Mining Law
Oil & Gas Regulation
Patents
Pharmaceutical Advertising
Private Client
Private Equity
Product Liability
Project Finance
Public Investment Funds
Public Procurement
Real Estate
Renewable Energy
Restructuring & Insolvency
Sanctions
Securitisation
Shipping Law
Technology Sourcing
Telecoms, Media & Internet
Trade Marks
Vertical Agreements and Dominant Firms

The International Comparative Legal Guides are published by: global legal group