

GUIDE TO ARBITRATION PLACES (GAP)

**GREECE**

CHAPTER PREPARED BY

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There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline any and all responsibility.

## IN-HOUSE AND CORPORATE COUNSEL SUMMARY

Greece is a civil law jurisdiction. The Constitution is the supreme source of legislation, which provides *inter alia* that international conventions ratified by Greece and European Union (EU) legislation both prevail over local laws. The backbone of the Greek legal system is comprised of certain fundamental laws voted and amended, from time to time, by the Greek Parliament, including but not limited to codes of legislation regulating criminal, civil and administrative substantive and procedural law matters. The jurisprudence of Greek courts is not considered as a source of law.

Greece is probably the first country where arbitration as a dispute settlement method was ever recorded, at the very dawn of its ancient history. In modern times, Greece keeps up with this legacy, providing an arbitration-friendly legal forum. However, arbitration has not yet become the dominant method of dispute resolution and is reserved usually for large-scale disputes while the majority of disputes are still, for now, resolved through regular court proceedings. Nonetheless, in recent years there has been a growing tendency in Greece to use arbitration as a method for resolving disputes, making the country an attractive option for arbitration, domestic or international.

The Greek legal framework regime welcomes dispute settlement via arbitration. Greece is party to a great number of international treaties related to arbitration, such as the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (Law No. 4220/1961) ("**NYC**"), the 1927 Geneva Convention on the Execution of Foreign Arbitral Awards and the 1923 Geneva Protocol on Arbitration Clauses.<sup>1</sup> With respect to investment disputes, Greece is also party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States ("ICSID Convention"), the 1966 Convention on the Settlement of Investment Disputes (Law 608/1968) and to numerous Bilateral<sup>2</sup> and Multilateral Investment Treaties, such as the 1994 Agreement Establishing the World Trade Organisation and the 1994 Energy Charter Treaty. Notably, Greece is among the first countries that incorporated the UNCITRAL Model Law into Greek legislation, back in 1999.

Greece has adopted a dualistic arbitration legal system, distinguishing between domestic arbitration legislation (mainly found in the Greek Code of Civil Procedure; see Chapter 7, Articles 867-903) and legislation relating to international arbitration, such as the Law on International Arbitration (Law No. 2735/1999), which is based on the UNCITRAL Model Law.

Arbitration in Greece is becoming particularly common in the context of disputes arising out of international contracts. It is remarkable that even the Greek State resorts to arbitration, especially in matters related to public works. Among the most common arbitration matters that involve Greek parties are commercial construction and energy disputes. The majority of these are referred to institutional arbitration.

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<sup>1</sup> However, as per Art. 7 (II) of the NYC, the 1927 Geneva Convention and the 1923 Geneva Protocol don't have effect between contracting States of the NYC. Hence, their practical utility is limited only to States bound by said Conventions but not by the NYC.

<sup>2</sup> Greece is a party to forty seven (47) Bilateral Investment Treaties (as per official information provided by UNCTAD, see here.). In relation to the provisions pertaining to the recognition and enforcement of arbitral awards, given that the vast majority of said conventions exist between Greece and other States which are also signatories to the NYC, Art. 7 (I) of the latter applies. Hence, bilateral conventions preceding the NYC (its entry into force) are not affected, whereas bilateral conventions concluded afterwards may apply on the basis of the more-favourable-right provision of said Article.

Key places of arbitration in the jurisdiction?	Athens.
Civil law / Common law environment? (if mixed or other, specify)	Civil law.
Confidentiality of arbitrations?	Greek arbitration laws do not provide for express confidentiality obligations on the parties involved in domestic arbitration. Such an obligation, respecting the parties' autonomy, may derive from their (express or implicit) agreement. Hearings are usually held in closed session between arbitrating parties and their counsel and advisors. The tribunal's deliberations are always confidential. Arbitral awards are not published but they are registered with a court registry, access to which can be provided in exceptional circumstances and exclusively to persons justifying a legitimate interest.
Requirement to retain (local) counsel?	It is common practice but not a specific legal requirement, except in domestic arbitration proceedings, where there may be an argument for local counsel to be retained.
Ability to present party employee witness testimony?	Parties are in principle allowed to submit witness testimonies of their employees.
Ability to hold meetings and/or hearings outside of the seat and/or remotely?	Parties may choose to hold meetings and/or hearings at venues outside the seat of arbitration and/or remotely. Unless the parties have agreed on a specific venue, the tribunal has discretion to decide where to hold meetings and/or hearings. While there is no restriction to this regard, it is dependent upon the parties' choice and (in its absence) upon tribunal's discretion to hold meetings and/or hearings remotely.
Availability of interest as a remedy?	Interest is a matter of the applicable substantive law. Generally, arbitrators may award interest, provided that the rate is not higher than the statutory limits.
Ability to claim for reasonable costs incurred for the arbitration?	The arbitral tribunal has discretion in respect of the allocation of costs taking into consideration the circumstances of the case.
Restrictions regarding contingency fee arrangements and/or third-party funding?	Both in court and arbitral proceedings, Greek lawyers may enter into contingency fee agreements, but only for up to 20% (or 30% if more than one lawyer is handling the case) of their fees. Third-party funding is not prohibited, although it is not common yet in Greek arbitral practice.
Party to the New York Convention?	Greece has been a contracting party to the NYC since 1961 (Law No. 4220/1961), with two reservations: (i) with regard to reciprocity (the NYC applies exclusively with respect to arbitral awards issued in another contracting state) and (ii) only with respect to commercial disputes (the Convention applies only to those arbitral awards that

	have ruled on disputes in which the underlying legal relationship has a commercial nature), as per Art. I (3) NYC. <sup>3</sup>
Party to the ICSID Convention?	Greece has been a contracting party to the ICSID Convention since 1966, and the ICSID Convention was ratified by Law No. 608/1968.
Compatibility with the Delos Rules?	Not the same scope (institutional Delos Rules v. local arbitration Law). No major deviations in the matters they both regulate. Delos Rules are more up-to-date (2020) and technically detailed than domestic arbitration laws.
Default time-limitation period for civil actions (including contractual)?	Time-limitation is a matter of substantive law. The law of limitation is applicable to all kinds of actions brought before arbitral tribunals. The general limitation period under Greek law is twenty (20) years, however there are several exceptions to this rule, such as the limitation period of five (5) years for commercial claims and torts.
Other key points to note?	<ul style="list-style-type: none"> <li>- The main advantage of arbitration compared to litigation is that it is normally quicker with more flexible procedural rules.</li> <li>- An award issued in Greece within the framework of an international arbitration should be enforceable in other jurisdictions in accordance with the NYC.</li> <li>- All foreign awards can be recognized and enforced in Greece in accordance with the NYC, even if they are issued by an arbitral tribunal of a state that is not a party to the NYC.</li> </ul>
<a href="#">World Bank, Enforcing Contracts: Doing Business</a> score 2020, if available?	146 with a score of 48.1.
<a href="#">World Justice Project, Rule of Law Index: Civil Justice</a> score for 2020, if available?	Greece ranks 47 out of 128 countries with a score of 0.59.

<sup>3</sup> Regarding the reciprocity reservation, however, it is noted that under Art. 36 Law 2735/1999, the latter's provisions transposing into Greek law the NYC are generally applicable to all foreign arbitral awards. Hence, they are also applicable to awards made in a country which has not ratified the NYC.

## ARBITRATION PRACTITIONER SUMMARY

International Commercial Arbitration, as a dispute resolution mechanism in Greece for international disputes, was introduced successfully, quite early, upon the ratification of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1962 and the incorporation of the UNCITRAL Model Law in the Greek legal order via Law 2735/1999 ("**Greek Law on International Arbitration**") in 1999, with only a few deviations from the Model Law.

A dualistic arbitration system is in place in Greece: there is a distinction between domestic and international arbitration, which are each governed by different provisions of law. Domestic arbitration is governed by the Greek Code of Civil Procedure ("**GCCP**"), Chapter 7, Articles 867-903, while international arbitration is primarily governed by the aforementioned Greek Law on International Arbitration (Law No. 2735/1999) with few references to GCCP.<sup>4</sup> Therefore, at the outset of the arbitration process, one of the issues to be assessed is whether the subject-matter of the arbitration is of a domestic or international nature. The relevant guidance is given by Art. 1(2) of the Greek Law on International Arbitration, which follows the UNCITRAL Model Law principles: an arbitration is 'international' if:

(i) the parties to the arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different states; or

(ii) one of the following places is situated outside the state in which the parties have their places of business:

- the place of arbitration (if determined in or pursuant to the arbitration agreement); or
- any place where a substantial part of the obligations of the commercial relationship is to be performed; or
- the place with which the subject-matter of the dispute is most closely connected; or

(iii) the parties expressly agreed that the subject matter of the arbitration agreement relates to more than one country.

This Chapter focuses principally on issues of arbitration practice in Greece and the interpretation and application on the relevant legislative framework for international arbitration and international arbitral awards, namely the Greek Law for International Arbitration and the NYC.

Date of arbitration law?	The Greek Law on International Arbitration was introduced in 1999 (Law 2735/1999), published in the Hellenic Official Gazette No. 167/A/18.8.1999) and has not undergone any subsequent amendments since. A revision process is currently under way.
UNCITRAL Model Law? If so, any key changes thereto? 2006 version?	By Law 2735/1999 (Greek Law on International Arbitration), Greece adopted the 1985 UNCITRAL Model Law with only minor amendments. It does not yet reflect the amendments to the Model Law adopted by UNCITRAL on 7 July 2006, but it is expected to be revised in 2021 to include those amendments.
Availability of specialised courts or judges at the key seat(s) in the	No. Ordinary Greek Civil Courts handle arbitration-related matters. The Court of Appeal is competent to review applications for the annulment of arbitral awards, while the single-member Court of

<sup>4</sup> The application of the provisions of Chapter 7 of the GCCP to international commercial arbitral proceedings on an ancillary basis is not precluded as a matter of principle, but it has been drastically limited, if not extinguished, by the application of the UNCITRAL Model Law together with the NYC.

jurisdiction for handling arbitration-related matters?	First Instance is competent to provide assistance needed in relation to arbitral proceedings. It also handles, at first instance, requests for recognition and enforcement of foreign arbitral awards. Domestic courts are generally familiar with international arbitration proceedings, particularly with respect to issues upon which they are entitled to rule or assist in accordance with Greek arbitration laws.
Availability of <i>ex parte</i> pre-arbitration interim measures?	The courts may grant <i>ex parte</i> interim measures in rather exceptional circumstances, subject to the discretion of the judge.
Courts' attitude towards the competence-competence principle?	The arbitral tribunal may rule on its own jurisdiction as per Article 16(1) of the Greek Law on International Arbitration. This principle is generally recognised and respected by Greek courts.
May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?	In principle yes; however, if the ruling on jurisdiction is in the form of an interim or final award, it should contain reasons.  In specific, under Art. 16, para 3. of Greek Law on International Arbitration a preliminary ruling on jurisdiction is permitted and it is considered as part of the final award. This final award must contain a reasoning; art. 31 para. 2 (" <i>Type and Content of Arbitral Award</i> ") of Greek Law on International Arbitration requires that the award shall include a reasoning (including on any jurisdictional matter addressed in a preliminary ruling), except if the parties have agreed otherwise. <sup>5</sup> As per prevailing legal theory <sup>6</sup> Art. 31 applies to all types of awards (whether interim or final). If the ruling on jurisdiction (or other issues) does not amount to an interim or final award, reasons may follow in the subsequent (interim or final) award.
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	Only the grounds set out in the NYC (as per Article 36 of Greek Law on International Arbitration).
Do annulment proceedings typically suspend enforcement proceedings?	Annulment proceedings do not automatically suspend the enforceability of the award. However, in the event that a competent court considers that at least one ground for annulment has a high prospect of success, it may at its discretion order the suspension of enforcement (with or without provision of security).
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	There is no publicly known legal precedent in the jurisprudence of Greek courts in this respect. The idea of an <i>a-national</i> award, <i>i.e.</i> not connected to a specific legal order, is unfamiliar; thus, enforcement of an award despite its annulment remains unlikely.
If an arbitral tribunal were to order a hearing to be conducted remotely (in whole or in part) despite a party's objection, would	In view of the absence of a common agreement of the parties on a remote hearing, the arbitral tribunal enjoys wide discretion in shaping the procedure as it deems appropriate, such as conducting the hearing remotely. Nothing in the Greek Law on International

<sup>5</sup> The same applies for domestic arbitrations as per Art. 892 para. 2(e) GCCP.

<sup>6</sup> K. Calavros, 'International Commercial Arbitration', 2019, Sakkoulas Ed., p. 498 ("*Calavros*").

<p>such an order affect the recognition or enforceability of an ensuing award in the jurisdiction?</p>	<p>Arbitration nor in the arbitration-related provisions contained in the GCCP seems to suggest that a hearing should be strictly physical.</p> <p>The objection of one of the parties, does not, <i>ipso facto</i> affect the recognition or enforceability of an ensuing award, insofar as the mandatory provisions of Greek Law are respected. The party seeking to oppose enforcement could, theoretically, challenge the recognition or enforceability of such award only in cases a violation of its right to be heard or on other grounds set forth in Art. 34 of Greek Law on International Arbitration, including violation of public policy, could be substantiated.</p>
<p>Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?</p>	<p>Arbitration of private disputes of public bodies is in principle permitted.</p> <p>State or State entities which agree to arbitration may not invoke their sovereign immunity to challenge or avoid the jurisdiction of the arbitral tribunal and such defence is in principle deemed waived. Although there are several opinions in theory on the matter of whether the State, on the basis such immunity, can challenge the enforcement process, assets that serve economic or commercial activity regulated by private law are in principle subject to enforcement.</p> <p>In the context of domestic arbitrations, the Greek State is permitted to sign an arbitration agreement and appoint arbitrators only upon receipt of an opinion of the Plenary of the Legal Council of State and a subsequent decision of the Minister of Finance and the (other) competent Minister.<sup>7</sup> This rule does not apply to arbitration agreements included in contracts with foreign legal or natural persons.</p> <p>Arbitration is mandatory for disputes arising out of contracts entered into by Public-Private Partnerships ('PPPs') (Law No. 3389/2005) or disputes relating to the protection of foreign investments under Legislative Decree no. 2867/1953.</p>
<p>Is the validity of blockchain-based evidence recognised?</p>	<p>There is no publicly known legal precedent in the jurisprudence of Greek courts in this respect. However, according to Article 19 of the Greek Law on International Arbitration the parties are in principle free to determine the rules, including the taking and types of evidence.</p>
<p>Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?</p>	<p>Blockchain arbitration in general is a recent concept and has not been developed or regulated in Greek legislation, either in theory or in practice. As a starting point it is to be noted that the wording of the written form required for an arbitration agreement and for an arbitral award ("<i>document signed by [...] other means of telecommunication recording an agreement</i>")<sup>8</sup> is broad enough to encompass such types of document. It may be premature to establish concrete answers on blockchain questions, however, it</p>

<sup>7</sup> Art. 49, para. 1 rec. B' of Introductory Law of the GCCP and Art. 8 para. 2 of Statutory Law No. 736/1970.

<sup>8</sup> Art. 26(3) of Greek Arbitration Law and Art. 869 GCCP.

	<p>should be mentioned, as a matter of theory, that blockchain arbitration which is conducted exclusively on a digital basis could raise issues regarding its compliance with the main procedural rules and principles of arbitration, such as the neutrality of the arbitral tribunal, the right to be heard or even with the rules of public policy.</p>
<p>Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?</p>	<p>As above.</p>
<p>Other key points to note?</p>	<p>Partial awards are recognized and enforced in accordance with the NYC.</p> <p>Duration of proceedings to obtain a court decision on the recognition of enforceability of a foreign arbitral award at first instance is usually between 2 and 12 months (depending on the Court's caseload). Such court decision is subject to appeal, the process for which may last between 8 and 12 months.</p> <p>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.</p>

## JURISDICTION DETAILED ANALYSIS

### 1. The legal framework of the jurisdiction

#### 1.1 Is the arbitration law based on the UNCITRAL Model Law? 1985 or 2006 version?

Yes. The Greek Law on International Arbitration is closely modelled upon the 1985 UNCITRAL Model law, as this was in force at the time of its adoption, with some minor variations.

#### 1.2 When was the arbitration law last revisited?

It has not been revised since its adoption in 1999 and thus it does not reflect the amendments to the Model Law adopted by UNCITRAL on 7 July 2006. A revision of the Greek Law on International Arbitration is under way and expected during 2021 which is likely to reflect the amendments to the Model Law adopted by UNCITRAL on 7 July 2006.

### 2. The arbitration agreement

#### 2.1 How do the courts in the jurisdiction determine the law governing the arbitration agreement?

When referring to the “*law governing the arbitration agreement*”, three different laws may be applicable: (i) the law governing the substance of the arbitration agreement; (ii) the law governing the formal validity of the arbitration agreement; and (iii) the law governing the parties’ capacity to conclude the arbitration agreement.<sup>9</sup>

(i) The law governing the substance of the arbitration agreement is found by way of application of the relevant conflict of laws rules. In this regard, Art. V(1)(a) NYC contains such a rule, according to which arbitral agreements are governed by the law chosen by the parties and, in the absence of a choice of law, by the law of the place of arbitration. Accordingly, Art. 34(2) recital a, subparagraph (aa) of the Greek Law on International Arbitration defaults to Greek law, in the absence of an express choice. However, some courts, have applied, in practice, the law governing the contract in which the arbitration clause is contained (without further justification), based on the premise that the substantive contract law applies also to arbitration agreements, as per Art. 28(1) of Greek Law on International Arbitration (and Art. 869(2) GCCP for domestic arbitration).<sup>10</sup>

(ii) The formal validity of the arbitration agreement is regulated by the substantive rules of the relevant international treaties (NYC) and instruments (UNCITRAL Model Law) on international arbitration, which have been incorporated into the Greek legal system. Art. II(1) NYC requires the arbitration agreement to be in writing. The same rules are adopted by the Greek Law on International Arbitration (Art. 7(3) and (4)). Due to the existence of those substantive rules directly applicable to matters of form, the quest for the law applicable is redundant; the Greek Courts, refer directly to the provisions of the Greek Law on International Arbitration and the NYC, making in certain cases reference also to Greek contract law, for interpretative reasons.<sup>11</sup>

(iii) The NYC guides the inquiry of the law applicable to the parties’ capacity to conclude the arbitration agreement, in Art. V(i)(a), pointing to the law applicable to each party. Under Greek law, this is the law of each party’s nationality as per Art. 7 of Greek Civil Code or the law of the seat of a legal person as per Art. 10 Greek

<sup>9</sup> Calavros, p. 81; Julian D.M. Lew, ‘The Law Applicable to the Form and Substance of the Arbitration Clause’, ICCA Congress Series no 9, 1999, p. 118; Gary Born, International Commercial Arbitration, I, 2014, p. 489.

<sup>10</sup> See, for instance, Greek Supreme Court, Judgement No. 1532/2008.

<sup>11</sup> See, for instance, Greek Supreme Court, Judgement No. 35/2019; multimember First Instance Court of Thessaloniki, Judgement No. 24435/2011.

Civil Code. The same rule is to be found in Art. 34(2) recital (a) subparagraph (aa) of the Greek Law on International Arbitration.<sup>12</sup> The courts typically apply the Greek law provisions directly in this regard.<sup>13</sup>

## **2.2 In the absence of an express designation of a 'seat' in the arbitration agreement, how do the courts deal with references therein to a 'venue' or 'place' of arbitration?**

In the absence of an express designation of a 'seat', the courts have considered the reference to a 'venue' or 'place' of arbitration as an indication of the will of the parties as regards the seat of arbitration and subsequently the choice of the *lex arbitri*.<sup>14</sup> More often than not, the terms are used interchangeably. However, the Greek Law on International Arbitration clearly distinguishes between the seat of arbitration (Art. 20, para. 1) and its possible venues (Art. 20, para. 2).

## **2.3 Is the arbitration agreement considered to be independent from the rest of the contract in which it is set forth?**

Yes. The separability doctrine is stipulated in Art. 16(1) of the Greek Law on International Arbitration and it is well established in Greek jurisprudence and legal literature. Hence, the invalidity, illegality or termination of the underlying contract does not adversely affect the arbitration clause and vice versa. Furthermore, since the arbitration agreement is considered a separate agreement, it may be governed by a law different than that of the underlying contract.

## **2.4 What are the formal requirements (if any) for an enforceable arbitration agreement?**

The formal requirements for a valid arbitration agreement comprise the written form of the agreement and the exchange of letters requirement (Art. 7 of the Greek Law on International Arbitration), which are a verbatim adoption of the UNCITRAL Model Law: the arbitration agreement must be contained either in a document signed by the parties or in an exchange of letters, telefaxes, telegrams or other means of telecommunication which provide a record of the agreement. At the same time though, this Art. 7 introduces three variations to the UNCITRAL Model Law, seeking to ease the written form requirement or the consequences of its absence:

- (i) this form requirement is deemed to have been complied with if the arbitration agreement is contained in a document transmitted from one party to the other or by a third party to both parties; if no objection is raised in a timely manner, the contents of such document are considered to be part of the contract in accordance with common usage;
- (ii) Art. 7(6) of the Greek Law on International Arbitration specifically qualifies as an arbitration agreement the issuance of a bill of lading which makes explicit reference to an arbitration clause in a charter party;
- (iii) the lack of a written form is cured if both parties participate in the arbitration without any reservations (Art. 7(7) the Greek Law on International Arbitration - see also Art. 869(1) GCCP for domestic arbitrations).

A document fulfilling the above form requirements can incorporate an arbitration clause by reference to another document, *e.g.*, general terms and conditions.

In relation to domestic arbitration, the above provisions, relaxing the written form requirement, have not been introduced into the GCCP. Art. 869(1) GCCP adopts both the written form requirement as well as the

<sup>12</sup> Calavros, p. 84.

<sup>13</sup> See, for instance, Greek Supreme Court, Judgement No. 1658/2014.

<sup>14</sup> See, for instance, Greek Supreme Court, Judgement No. 2019/2014 where the Court took for granted that the parties, by stating that "*the arbitration shall be conducted in Paris*", had opted for Paris as the 'venue' of arbitration, and based on that choice, further considered that the *lex arbitri* shall be French Law. See also, multimember Court of First Instance of Athens, Judgement No. 3853/2018.

exchange of documents requirement, explicitly requiring, however, with regard to the exchange of documents (letters, facsimiles etc.), that each of them be signed by the contracting parties. It is provided, though, that if the parties participate in the proceedings without making any reservation or objection, the lack of written form requirement is remedied.

In addition to the above formalities, in order for an arbitration agreement to be enforceable, the following prerequisites must be fulfilled:

- (i) the arbitration agreement must be drafted in a way that plainly (a) expresses the will of the parties to submit their future disputes deriving from a specific legal relationship to arbitration;<sup>15</sup> (b) refers to the disputes (even in broad terminology, *e.g.* “any disputes arising under this Agreement”) that the parties wish to refer to arbitration; and (c) expresses the parties’ definitive decision to resolve the dispute via arbitration, excluding, simultaneously the jurisdiction of state courts.<sup>16</sup>
- (ii) the parties shall have the legal capacity (according to the law of their nationality) to enter into such an agreement (Art. 34(2)(a) subparagraph (aa) Greek Law on International Arbitration);
- (iii) the arbitration agreement must be valid under the general requirements for the substantive validity of an agreement (Art. 34(2)(a) subparagraph (aa) Greek Law on International Arbitration) set out by Greek Civil Code (*e.g.*, the agreement must not have been executed under error, deception or threat); and
- (iv) the disputes covered by the arbitration agreement must be arbitrable (Art. 34(2)(b) subparagraph (aa) Greek Law on International Arbitration with reference to Art. 867 GCCP).

## **2.5 To what extent, if at all, can a third-party to the contract containing the arbitration agreement be bound by said arbitration agreement?**

In accordance with the principle of privity of contract, an arbitration agreement in principle only binds the signatories to it. In limited circumstances, third persons may become party to an arbitration agreement as a matter of law, rather than as a result of express consent: for example, when the third party is a holder of a legal position that in substance is legally identical to that of a party to the agreement (*e.g.* an arbitration agreement signed by a general partnership extends to its general partner), in cases of assignment, assumption of debt,<sup>17</sup> succession, merger or other types of corporate transformations, and subrogated claims.<sup>18</sup> There is also limited court jurisprudence suggesting that an arbitration agreement can be enforced against a non-signatory third party shielded by the corporate veil of an entity having signed an arbitration agreement in cases where there are grounds for piercing the corporate veil. Under similar considerations, the arbitration agreement may be deemed binding upon non-signatory companies of the same group, although the ‘group of companies’ doctrine has not been expressly recognized by Greek courts. Such an extension of the arbitration clause has been applied only in exceptional circumstances,<sup>19</sup> mainly in cases

<sup>15</sup> Towards this criterion, Greek jurisprudence has been quite relaxed: it has been held that the arbitration agreement can be valid even if it is considerably broad, as long as it depicts the basic legal relationship from which the disputes subjected to arbitration may arise (Greek Supreme Court, Judgement No. 1219/2014).

<sup>16</sup> Calavros, p. 76. An arbitration clause drafted in a way that leaves open the possibility of resorting to state courts, would, most probably, be considered void or invalid by Greek Courts. See for example multimember First Instance Court of Athens, Judgement No. 2377/1987, where a clause providing for arbitration before the final settlement of the dispute via litigation was not considered a binding arbitration clause. The Greek courts have reached the same conclusion in cases where the arbitration agreement states that the arbitral award will serve as a basis for “reconsideration” of the dispute by the Courts at a next stage, Supreme Court, Judgements No. 1558/2014, No. 32/2009 and 620/1971.

<sup>17</sup> Indicatively, such approach is accepted for almost 50 years now; Greek Supreme Court Plenary session, Judgement No. 176/1976, Greek Court of Appeal, Judgement No. 4830/1977.

<sup>18</sup> See, for instance, multimember Court of First Instance of Piraeus, Judgement No. 916/1969, single-member Court of First Instance of Piraeus, Judgement No. 2975/1982.

<sup>19</sup> The Greek Supreme Court has held that, even if a company and its shareholders have common interests, this alone does not suffice for the piercing of the corporate veil. It has also ruled that the mere fact that a company’s shareholders appear to be performing the company’s main business is equally insufficient to allow the piercing of the corporate veil.

involving abusive use of the corporate structure by the main shareholder for purposes of circumventing the law, fraudulently causing damage to a third person, or avoiding a shareholder's personal obligations. In the absence of a relevant provision under Greek law, third parties may participate in the arbitration by submitting a joinder request, provided that the parties to the dispute and the tribunal have expressed their consent.

## 2.6 Are there restrictions to arbitrability?

The question of arbitrability<sup>20</sup> is addressed in Art. 867 GCCP,<sup>21</sup> and applies to domestic and international arbitrations alike (pursuant also to Art. 1(4) of Greek Law on International Arbitration), providing that any private law dispute may be referred to arbitration as long as the parties are vested under law with the power to freely dispose of the dispute's subject matter. Accordingly, the following categories of disputes, have been considered to be non-arbitrable:

- (i) criminal law matters, as per Art. 96 and 97 of the Greek Constitution;
- (ii) tortious claims related to personal (but not property) damage, such as matters relating to the protection of personality;
- (iii) family law matters (e.g. divorce, adoption, relations between relatives etc.);
- (iv) insolvency and antitrust issues (with the exception of claims founded on unfair competition);
- (v) matters falling under the exclusive jurisdiction of specific State authorities (e.g. issues relating to obtaining patent certificates from the State and to the registration or cancellation of a trademark)<sup>22</sup> or adjudicating bodies, such as the exclusive jurisdiction of the administrative courts to annul state acts as per Art. 94(1) and 95 of the Greek Constitution ('annulment administrative disputes'). However, with respect to the arbitrability of 'administrative disputes of substance', such as tax disputes, there is currently turmoil in Greek jurisprudence: the Supreme Special Court has issued a judgement<sup>23</sup> stating that Art. 94(1) of the Greek Constitution does not preclude the arbitrability of tax disputes arising out of a specific legal relationship.<sup>24</sup> To this effect, the GCCP also provides for the arbitrability of administrative disputes, in Art. 871A(5), recital b, in a generic manner, without, however, making any distinction between annulment administrative disputes and administrative disputes of substance (such as the tax disputes);
- (vi) consumer-related matters;<sup>25</sup> and
- (vii) labour law matters, the exclusion of which is premised upon the perceived necessity to protect the interests of employees,<sup>26</sup> with two exceptions: (a) commercial disputes between professionals or craftsmen or between them and their clients, relating to the supply of goods or the manufacture of a product, under Art. 614 (4)(a) GCCP, which can be submitted solely to international arbitration under Art. 1(4) of the Greek Law on International Arbitration,<sup>27</sup> and (b) arbitration as a *sui generis*

<sup>20</sup> Since the lack of arbitrability of the dispute essentially deprives the arbitral tribunals of their jurisdiction, the prevailing view in Greece is that the issue of arbitrability is a matter of jurisdiction rather than admissibility.

<sup>21</sup> Greek Supreme Court Plenary session, Judgement No. 8/1996.

<sup>22</sup> However, any private law disputes deriving from such non-arbitrable matters (e.g. issues concerning licence fees, damages resulting from a patent infringement, or from the violation of a licence agreement) can be submitted to arbitration.

<sup>23</sup> Supreme Special Court, Judgement No. 24/1993.

<sup>24</sup> However, this does not mean that the arbitrator will have the authority to cancel the administrative act that imposes a tax burden.

<sup>25</sup> Art. 2(7)(z)(ee) of Law 2251/1994 on consumer protection considering arbitration clauses in consumer contracts as abusive.

<sup>26</sup> Artt. 867 and 614(3) GCCP.

<sup>27</sup> Art. 1(4) of Greek Law on International Arbitration, directs to Art. 663 recital 4 of GCCP, but the latter provision, after the recent amendments of GCCP, is transposed to Art. 614(4)(a) of GCCP.

method of dispute settlement, which is provided for collective bargaining employment disputes (Art. 14 and 16 of Law 1876/1990).<sup>28</sup>

### 3. Intervention of domestic courts

#### 3.1 Will the courts stay litigation if there is a valid arbitration agreement covering the dispute?

Irrespective of whether the seat of the arbitration is within or outside of the jurisdiction, under Greek court procedural norms, the existence of a valid arbitration clause is fashioned as a procedural defence to be pleaded by the defendant and not as an admissibility requirement. As such, the court seized in a matter which is the subject of an arbitration agreement must, if the respondent raises the relevant objection, reject the action, unless the court finds that the arbitration agreement is null and void, inoperative or incapable of being performed. If the respondent though does not raise the relevant objection, the judge is not allowed to examine on its own initiative whether an arbitration clause applies. It is to be noted that this jurisdictional objection must be raised by the defendant party at the very first hearing / procedural step of the court procedure (*i.e.* prior to any response of the party on the substance of the claim), otherwise such objection is inadmissible.<sup>29</sup> Thereafter, the participation in court proceedings is considered a tacit waiver by the parties of the arbitration agreement.

#### 3.2 How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings?

Greece does not have a tradition of anti-suit injunctions. According to the ECJ's *Gazprom* decision, the Brussels I Regulation does not prevent a member state from recognising anti-suit injunctions issued by arbitral tribunals.<sup>30</sup> However, following the reaction of Greek courts towards court-ordered anti-suit injunctions,<sup>31</sup> an anti-suit injunction issued by an arbitral tribunal is not very likely to be recognized (during the recognition and enforcement stage of the arbitral anti-suit injunction, as per Art. V NYC), for public policy considerations.<sup>32</sup>

#### 3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates anti-suit injunctions/anti-arbitration injunctions or orders, but not only)

Greek courts will not issue anti-suit injunctions restraining foreign court proceedings brought in breach of arbitration clauses. They may grant interim measures in order to support arbitrations conducted in foreign seats (such as freezing orders or orders to secure evidence) provided that Greek courts have international jurisdiction for interim relief.

### 4. The conduct of proceedings

#### 4.1 Can parties retain foreign counsel or be self-represented?

While representation by counsel is the norm, there is no specific requirement on this in the Greek Law on International Arbitration. It is, nonetheless, forbidden to exclude representation by legal counsel in domestic

<sup>28</sup> The arbitration referred to in Law 1876/1990, regarding labor disputes, is of a *sui generis* nature, and it shall not be equated to regular commercial arbitration proceedings, as per Greek Law on International Arbitration or GCCP. Those rules do not apply to the former. The arbitral award, based on the labor-law regulated proceedings is equated to a collective employment agreement (Art. 16(8) of in Law 1876/1990).

<sup>29</sup> Art. 263(b) GCCP.

<sup>30</sup> ECJ, Judgment of 13 May 2015, C-536/13 (*Gazprom v Lithuania*).

<sup>31</sup> Court of Appeal of Piraeus, Maritime Bench, Judgements No. 100/2004 and No. 31/2012.

<sup>32</sup> Said public policy considerations are the restrictions imposed on a party's direct access to justice and the violation of national sovereignty, by limiting the jurisdiction of Greek courts, as per the reasoning given in the court decisions mentioned above.

arbitrations.<sup>33</sup> In international arbitration cases, in Greek practice, there are no restrictions for retaining foreign counsel.

**4.2 How strictly do courts control arbitrators' independence and impartiality? For example: does an arbitrator's failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances be of a gravity such as to justify this outcome?**

Arbitrators may be challenged only if circumstances give rise to justified doubts as to their impartiality or independence, or if they do not meet the prerequisites established by the parties.<sup>34</sup> Though not binding, the IBA Guidelines on Conflicts of Interest in International Arbitration are generally taken into account in international arbitrations by tribunals seated in Greece, but not necessarily by the courts. Arbitrators are under the continuous obligation throughout the arbitral proceedings to disclose any element that may give rise to justifiable doubts as to their impartiality or independence.<sup>35</sup> The breach of such obligation may trigger different consequences: it could stand, alone, as a ground for challenge, or a ground for annulment or non-recognition/enforcement of the award, without excluding potential claims for damages by the parties, facing the overturn of their award, based on Art. 881 GCCP.<sup>36</sup>

A sensitive issue in Greek jurisprudence in matters of independence/impartiality of the arbitrators arose when the Greek courts were faced with the exploitation of a provision enabling the appointment of a member of the Legal Council of State (*i.e.* the Body of the Administration, the members of which are vested with the power, amongst others, to represent the State before the Courts) as arbitrator, in cases where the Greek State itself was party to the arbitration.<sup>37</sup> In this context, a growing body of case law<sup>38</sup> is being developed, according to which the Greek State may not appoint as arbitrators Members of its the Legal Council, and more importantly, it may not use such an appointment abusively, *i.e.* itself raising the appointment as a ground for challenging the arbitrator or the award (!).

**4.3 On what grounds do courts intervene to assist in the constitution of the arbitral tribunal (in case of *ad hoc* arbitration)?**

A party may request the court to appoint an arbitrator if a party fails to act as required under an appointment procedure agreed upon by the parties, unless the procedure provides other means for securing the appointment. The court will intervene accordingly if the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or if a third party fails to perform any function entrusted to it under such procedure.<sup>39</sup> The Court vested with such power is the single-member Court of First Instance of the applicant's place of residence<sup>40</sup> and its decision is not subject to appeal.

**4.4 Do courts have the power to issue interim measures in connection with arbitrations? If so, are they willing to consider *ex parte* requests?**

In international arbitration, State courts may order interim measures, either before or after the commencement of arbitration, but after the constitution of the tribunal such power is concurrent with the tribunal's power to order interim measures.<sup>41</sup> The competent Court issuing interim measures is the single-

<sup>33</sup> Art. 886(3) GCCP.

<sup>34</sup> Art. 12(2) Greek Law on International Arbitration. Typical examples of disqualifying arbitrators in Greek court jurisprudence are cases where the arbitrator previously participated in a related arbitration in his/her capacity as a witness, expert or advisor of a party (Greek Supreme Court, Plenary session, Judgement No. 13/1995).

<sup>35</sup> Art. 12 Greek Law on International Arbitration.

<sup>36</sup> Calavros, p. 210.

<sup>37</sup> Art. 6 (3A) of the Greek Law 3086/2002, as modified per Art. 103 of Greek Law 4139/2013.

<sup>38</sup> See, for instance, single-member First Instance Court of Athens, Judgement No. 4778/2013, 7685/2008 etc.

<sup>39</sup> Art. 11(3) Greek Law on International Arbitration and, similarly, Art. 878 GCPP for domestic arbitration.

<sup>40</sup> Art. 6(1) Greek Law on International Arbitration.

<sup>41</sup> Art. 9 and 17 Greek Law on International Arbitration.

member Court of First Instance of the applicant's place of residence.<sup>42</sup> Said authority of State Courts is crucial, given the absence of emergency arbitrator provisions in the Greek Law on International Arbitration, at the stage when the constitution of the arbitral tribunal is still pending. State courts are also competent to enforce an interim measure ordered by the tribunal. In domestic arbitration, only State courts may order interim measures, either before or after the commencement of arbitration.<sup>43</sup>

Greek courts may grant *ex parte* requests, potentially with the provision of appropriate security.<sup>44</sup>

#### **4.5 Other than arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration?**

Art. 18 of the Greek Law on International Arbitration enshrines the principle of equal treatment and the right of each party to an effective and fair legal hearing. Subject to the mandatory provisions of the Greek Law on International Arbitration, the parties are free to determine the procedure themselves or by reference to a set of arbitration rules.<sup>45</sup> In the absence of an agreement by the parties and any stipulations in the Greek Law on International Arbitration, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate.<sup>46</sup> Similar rules govern the conduct of domestic arbitrations.<sup>47</sup>

##### **4.5.1 Does it provide for the confidentiality of arbitration proceedings?**

Greek arbitration law does not expressly provide for the confidentiality of arbitration proceedings. The basis for the arbitrators' duty of confidentiality in Greece is contractual, *i.e.* it is dependent upon the parties' agreement.<sup>48</sup> Such agreement can be either explicit, found in the arbitration clause or the Terms of Reference, or implicit, by way of choosing specific institutional arbitration rules that govern the proceedings, which provide for confidentiality obligations.<sup>49</sup>

While there is no express provision on confidentiality, in practice, neither the arbitral proceedings nor the hearings in the arbitration are public. Furthermore, arbitrators are barred from disclosing the tribunal's deliberations, and the counsel involved must comply with professional duties of confidentiality to which they are subject under Greek law.<sup>50</sup> The fact that the original of the award is filed with the competent First Instance Court does not render the award publicly available; a legitimate interest must be established in order to acquire a copy of the award.

##### **4.5.2 Does it regulate the length of arbitration proceedings?**

There is no express provision in the Greek Law on International Arbitration regulating the duration of arbitration proceedings and there does not appear to be any case law on the question of whether the excessive length of arbitral proceedings can be an annulment ground.

Only in the context of domestic arbitration, Article 884 GCCP provides that, in the case of excessively lengthy proceedings, the single-member First Instance Court may set a deadline for the issuance of the award or the continuance of the arbitration proceedings, upon a relevant party request. It would not be surprising for this remedy to be applicable also in the context of *ad hoc* international arbitrations. Furthermore, still in the

<sup>42</sup> Art. 6(1) Greek Law on International Arbitration.

<sup>43</sup> Art. 889 and 685 GCCP.

<sup>44</sup> Art. 17(2) Greek Law on International Arbitration.

<sup>45</sup> Art. 19(1) Greek Law on International Arbitration.

<sup>46</sup> Art. 19(2) Greek Law on International Arbitration.

<sup>47</sup> Art. 886(2) GCCP.

<sup>48</sup> P. Giannopoulos, Chapter on "the legal basis of the duty of confidentiality of arbitrators", at 'Corruption, Arbitration and Public Order', Sakkoulas Ed. 2017, p. 221.

<sup>49</sup> Generally, most institutional arbitration rules, provide for the confidentiality of the arbitral proceedings, and the parties will be subject to those, upon their choice.

<sup>50</sup> Such as the duties of confidentiality of counsel, described in Art. 5(c), 38, and 39(5) of Greek Code of Lawyers (Law No. 4194/2013).

context of domestic arbitrations, Article 885 GCCP provides that the arbitration agreement ceases to be effective when, *inter alia*, the deadline for its effectiveness stipulated therein (if any) lapses or the deadline set for the issuance of the arbitral award in Article 884 GCCP expires. Lengthy proceedings might also trigger the danger of annulling an arbitral award if the arbitration agreement ceases to apply, as per the annulment ground of Article 897(2) GCCP for domestic arbitrations.

#### **4.5.3 Does it regulate the place where hearings and/or meetings may be held, and can hearings and/or meetings be held remotely, even if a party objects?**

The parties are free to agree on the place of arbitration. In the absence of such agreement, the place of arbitration shall be determined by the arbitral tribunal which shall pay regard to the circumstances of the case, including the suitability of the place for the parties.<sup>51</sup> The arbitral tribunal may, unless otherwise agreed by the parties, meet at any venue it considers appropriate for an oral hearing, to hear witnesses, experts or the parties, for consultation among its members or for inspection of property or documents.<sup>52</sup> Similar provisions are to be found in domestic arbitration law.<sup>53</sup>

As regards specifically the possibility of conducting remote meetings and/or hearings, since there is no restriction to this regard, it is dependent upon the parties' agreement and (in its absence) upon the tribunal's discretion to hold meetings and/or hearings remotely.<sup>54</sup> The objection of one of the parties, while it shall be considered and addressed, does not, *ipso facto*, preclude the possibility of a remote hearing, insofar as mandatory provisions (such as the principle of equality of parties and the right to be heard) are respected. Notably, while the tribunals are bound to hold a hearing upon a party's request, as per Article 24(1)(b) of Greek Law on International Arbitration, it seems that nothing in the said law nor in the arbitration-related provisions contained in the GCCP suggests that a hearing should be strictly physical. In addition, the procedural discretion entertained by arbitral tribunals in shaping the procedure seems to confirm that arbitrators can opt for any type of hearing they deem appropriate, including but not limited to a remote one.<sup>55</sup> There are reported cases where meetings and part of the hearings were conducted remotely, especially given the Covid-19-related restrictions and circumstances.

#### **4.5.4 Does it allow for arbitrators to issue interim measures? In the affirmative, under what conditions?**

Pursuant to the Greek Law on International Arbitration, unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order such provisional or conservatory measures of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute.<sup>56</sup> Should a party fail to voluntarily comply with the measures ordered by the tribunal, such measures must be validated by the competent state court (single member Court of First Instance), upon request by one of the parties, pursuant to Art. 17(2) of the Greek Law on International Arbitration (from which it derives that the relevant order of the arbitral tribunal does not take the form of an award, so as to be directly enforceable). However, the competence of the tribunal does not extend to ordering interim relief against a third party to the arbitration, in which case national courts have exclusive competence.<sup>57</sup>

<sup>51</sup> Art. 10(1) Greek Law on International Arbitration.

<sup>52</sup> Art. 20(2) Greek Law on International Arbitration.

<sup>53</sup> Art. 886(1) GCCP.

<sup>54</sup> To this end, the draft new Law on International Arbitration (to be passed) has an additional reference enabling the arbitral tribunal to conduct meetings and or hearings "*in whichever way it deems appropriate*".

<sup>55</sup> ICCA, "Does a Right to a Physical Hearing Exist in International Arbitration?", GREECE - Ioannis Vassardanis, ICCA Reports, p. 3.

<sup>56</sup> Art. 17(2) Greek Law on International Arbitration.

<sup>57</sup> Calavros, p. 290.

To the contrary, in domestic arbitration, arbitrators are not allowed to award interim relief or other equivalent forms of provisional measures, and only State courts hold such power.<sup>58</sup>

There is no defined statutory threshold for issuing interim measures. The Greek Law on International Arbitration does not include Art. 17A *et seq.* of the UNCITRAL Model Law. The arbitral tribunal is free to apply its own standard. In practice, this will usually come down to balancing (i) the nature of the relief requested and (ii) the risk of harm that cannot be adequately repaired by monetary compensation.<sup>59</sup>

**4.5.5 Does it regulate the arbitrators' right to admit/exclude evidence? For example, are there any restrictions to the presentation of testimony by a party employee?**

The arbitral tribunal is empowered to determine the admissibility of evidence, to take evidence and to freely assess such evidence.<sup>60</sup> The intervention of state courts is reserved to evidentiary rulings and actions that may not be taken by the arbitral tribunal. These include cases entailing the imposition of penalties for non-compliance or the use of coercive means to secure the taking of evidence.

There are no restrictions to the presentation of testimony by a party employee. There is no difference between the testimony of a witness specially connected with one of the parties (such as a party employee) and the testimony of unrelated witnesses. The tribunal decides on the weight of the evidence adduced before it.

**4.5.6 Does it make it mandatory to hold a hearing?**

Subject to the agreement of the parties, in international arbitration, the arbitral tribunal shall decide whether to hold oral hearings or whether the proceedings shall be conducted on the basis of documents and other material only. Unless the parties have agreed that no oral hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings if requested by any party.<sup>61</sup>

Similarly, in domestic arbitration, the arbitration procedure, including oral hearings, is freely determined by the tribunal if there is no agreement by the parties.<sup>62</sup> Case law accepts that arbitrators may deviate from the procedure followed by state courts and are free to determine a tailor-made procedure and dispense with formalities, including an oral hearing (documents-only arbitration).

**4.5.7 Does it prescribe principles governing the awarding of interest?**

Greek Law on International Arbitration does not provide for any rules on the awarding of interest. This question is, rather, governed by the substantive law applicable to the merits of the dispute. Generally, arbitrators may award interest, provided that its rate is not higher than the one imposed by law. Under Greek substantive law, pre- and post-award interest can be included on the principal claim and costs incurred as regards default interest. Controversy exists as to litigation interest, *i.e.* interest accrued only by virtue of initiation of litigation.<sup>63</sup>

**4.5.8 Does it prescribe principles governing the allocation of arbitration costs?**

The arbitral tribunal shall allocate the costs of the arbitration between the parties in the manner deemed appropriate, unless the parties agree otherwise. The award on costs is issued in the form of an arbitral award. The arbitration costs include necessary costs incurred by the parties for the proper pursuit of their claim or

<sup>58</sup> Artt. 685 and 889 of the GCCP.

<sup>59</sup> Calavros, 290.

<sup>60</sup> Art. 19(2) Greek Law on International Arbitration.

<sup>61</sup> Art. 24(1) Greek Law on International Arbitration.

<sup>62</sup> Art. 886(1) GCCP.

<sup>63</sup> According to the prevailing view in case law, a request for arbitration does not trigger litigation interest since the Request for Arbitration is merely notified and not *stricto sensu* 'served upon' the Respondent (service of process is a prerequisite for litigation interest under Greek law), while the opposite view argues that this is merely a technicality.

defence. The tribunal has discretion in its allocation but shall take into consideration the circumstances of the case and in particular the outcome of the proceedings. Where it considers it to be appropriate, an arbitral tribunal may also take into account the conduct of the parties during the arbitral proceedings.

## 4.6 Liability

### 4.6.1 Do arbitrators benefit from immunity from civil liability?

Greek law does not provide for arbitrators' immunity. Pursuant to Art. 881 GCCP (applicable by analogy also to international arbitrations)<sup>64</sup> arbitrators, same as ordinary judges, are liable for wilful misconduct and gross negligence,<sup>65</sup> a rule which mirrors the liability of judges for the violation of their duties. A relevant malpractice action can be filed (requesting, only, damages),<sup>66</sup> within a strict deadline of six months from the act or omission<sup>67</sup> (Art. 73(5) of the Introductory Law of the GCCP). However, if the arbitral award that had been delivered as a result of an arbitrator's wilful misconduct or gross negligence was eventually annulled, there would be no damage and, therefore, no legal basis to file a malpractice action.<sup>68</sup> In practice, malpractice actions against judges and, even more so, arbitrators are very rare<sup>69</sup> and only an extremely small percentage thereof is upheld.<sup>70</sup>

### 4.6.2 Are there any concerns arising from potential criminal liability for any of the participants in an arbitration proceeding?

An arbitrator may face criminal liability for bribery,<sup>71</sup> forgery of the arbitral award or the deliberation minutes containing the result of the tribunal's vote,<sup>72</sup> breach of arbitral confidentiality regarding privileged information,<sup>73</sup> and concealment of a legal ground for exception of his/her duties.<sup>74</sup> In such cases, the criminal liability might serve also as a basis for a civil claim for damages for the non-pecuniary losses suffered.<sup>75</sup>

## 5. The award

### 5.1 Can parties waive the requirement for an award to provide reasons?

Yes, parties can waive the requirement to provide reasons for an award.<sup>76</sup> It is also possible for parties to agree on the wording of a (settlement) award, unless the latter is contrary to public policy.<sup>77</sup>

<sup>64</sup> K.Kerameus, D. Kondilis, N. Nikas, 'Interpretation of Code of Civil Procedure', Sakkoulas Ed., 2<sup>nd</sup> Edition, 2020, p. 740.

<sup>65</sup> The arbitrator's liability may arise in cases where (s)he breaches his/her principal obligations, *i.e.* when (s)he refuses to arbitrate (Athens Court of Appeal, Judgement No. 5891/1985) or when (s)he does not participate in the arbitral process, unreasonably obstructing it or leading it to a quagmire. An arbitrator might also be held liable in certain narrowly defined circumstances, if (s)he breaches his/her secondary duties such as the confidentiality of the procedure or his/her disclosure obligations, S. Kousoulis, 'Arbitration', Sakkoulas Ed. 2004, pp. 50-51.

<sup>66</sup> K.Kerameus, D. Kondilis, N. Nikas, 'Interpretation of Code of Civil Procedure', Sakkoulas Ed., 2<sup>nd</sup> Edition, 2020, p. 739.

<sup>67</sup> Academic literature specifies that the wording "from the act or omission" means "from the knowledge of the act or omission", K.Kerameus, D. Kondilis, N. Nikas, 'Interpretation of Code of Civil Procedure', Sakkoulas Ed., 2<sup>nd</sup> Edition, 2020, p. 739.

<sup>68</sup> S. Kousoulis, 'Arbitration', Sakkoulas Ed. 2004, p. 52.

<sup>69</sup> K. Kerameus, 'Civil Procedural Law', Sakkoulas Ed. 1980, p. 350.

<sup>70</sup> Only few cases of malpractice action against arbitrators were recorded the past five years, mostly in a domestic arbitration setting and none of them was upheld. See indicatively, multimember First Instance Court of Athens, Judgement No. 361/2016 and No. 2989/2014.

<sup>71</sup> Art. 237(1) and (4) Greek Penal Code.

<sup>72</sup> Art. 243 Greek Penal Code.

<sup>73</sup> Art. 251(1) Greek Penal Code.

<sup>74</sup> Art. 254 Greek Penal Code.

<sup>75</sup> S. Kousoulis, 'Arbitration', Sakkoulas Ed. 2004, pp. 51-52.

<sup>76</sup> Art. 31(2) Greek Law on International Arbitration and Art. 894 GCCP for domestic arbitration.

<sup>77</sup> Art. 30 Greek Law on International Arbitration.

## 5.2 Can parties waive the right to seek the annulment of the award? If yes, under what conditions?

The parties cannot *ex ante* waive the right to seek the annulment of the award and such potential waiver is null and void.<sup>78</sup> Moreover, Art. 897 GCCP, which provides for the grounds for setting aside an arbitral award, is of mandatory nature, therefore the parties cannot exclude any of these grounds by entering into a private agreement.<sup>79</sup> To the contrary, the *ex post* waiver of the right to seek annulment is possible.<sup>80</sup> The Greek Court of Appeal has ruled that the *ex ante* waiver of the right is possible only if it is ratified by law.<sup>81</sup>

## 5.3 What atypical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?

Not applicable.

## 5.4 Is it possible to appeal an award (as opposed to seeking its annulment)? If yes, what are the grounds for appeal?

No, there is no *révision au fond* within Greek arbitration law. A setting aside application is the only challenge that can be brought before the Greek courts in relation to an international arbitral award issued in Greece. In domestic arbitration, a party may in addition to a setting aside application also request that a court declare the inexistence of an arbitral award (Art. 901 GCCP).

## 5.5 What procedures exist for the recognition and enforcement of awards, what time-limits apply and is there a distinction to be made between local and foreign awards?

Awards rendered in domestic or international commercial arbitral proceedings having their seat in Greece produce immediately *res judicata* effect and enforceability.<sup>82</sup>

As regards foreign arbitral awards, in terms of procedure, a party seeking to have the award recognized and enforced in Greece has to submit an application before the single-member First Instance Court of the district where the debtor's domicile or residence is located;<sup>83</sup> in the absence of such domicile or residence in Greece, the competent court is the Athens First Instance Court.<sup>84</sup> The application needs to be accompanied by the arbitral award and the arbitration agreement (in originals or certified copies, all duly translated). The party opposing such recognition 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 (Art. V(2) of the NYC). A revision of the substance of the award is strictly forbidden. The judgement of the First Instance Court can be appealed before the Court of Appeal and subsequently, before the Supreme Court (on the limited grounds of appeal before the Supreme Court as per Art. 559 GCCP). Once the *exequatur* order is obtained, the arbitral award becomes an enforceable title.

<sup>78</sup> Art. 900 GCCP. The courts have accepted only exceptionally the *ex ante* waiver of the right to seek annulment, in cases when such decision/agreement (by or with the Greek State which was the party waiving its right) has been ratified by law (the latter being subsequent and more specific to Art. 900 GCCP). See, for instance, Supreme Court Judgement No. 812/1984, No. 1264/2018 and No. 1185/2017. While there is no express provision to this regard in the Greek Law for International Arbitration, legal theory argues that an *ex ante* waiver of the right to seek annulment would be in breach of Art. 34 of Greek Law for International Arbitration, which is of mandatory nature (related to the 'access to justice' constitutional right), K. Calavros, 'Annulment and Nonexistence of arbitral awards', Sakkoulas Ed. 2017, pp. 46-47.

<sup>79</sup> S. Kousoulis, 'Arbitration Law', Sakkoulas Ed. 2006 ("*Kousoulis*"), p. 150.

<sup>80</sup> A contrario argument to Art. 900 GCCP, Kousoulis, p. 149.

<sup>81</sup> Greek Court of Appeal, Judgement No. 2080/1982.

<sup>82</sup> Art. 35(2) Greek Law on International Arbitration, for international arbitration and Art. 896(2) GCCP, for domestic.

<sup>83</sup> As a matter of Greek law, there is no time-limit for the application to recognize any foreign decision, be it a judgement or an arbitral award (subject to any provisions of the substantive applicable law which may relate impede actual enforcement, e.g. statute of limitations, abusive exercise of rights etc.).

<sup>84</sup> Artt. 905(1) and 906 of the GCCP.

## 5.6 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?

As per Art. 35(3) of Greek Arbitration Law and Art. 899(3) GCCP, the commencement of annulment proceedings does not automatically suspend the enforceability of the award. However, the competent court may at its discretion order suspension of enforcement (with or without provision of security).

It is also possible to apply for a stay of the enforcement proceedings in the event the enforcement objection is rejected by the First Instance Court and the losing party files an appeal against that decision. The competent court can order the stay of enforcement proceedings, if it finds that enforcement will cause irreparable harm to the party requesting the stay and that the motion has a high likelihood of success (Art. 937 GCCP).

## 5.7 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?

There is no reported case-law on the matter. In principle, an award that has been set aside by the courts at the seat of arbitration **may** not be enforced under Art. V(1)(e) NYC. The historically predominant view in Greece has been that the NYC shall not be interpreted as granting discretion to State courts to enforce or not an award on the grounds set therein; the straightforward result of such view was that courts were obliged to refuse the recognition and enforcement of an annulled award.<sup>85</sup> Modern approaches, however, have reversed this approach, following the prevailing view at an international level.<sup>86</sup> In Greece, the idea of an *α-national award*, *i.e.* not connected to a specific legal order, is unfamiliar; thus, enforcement of an award despite its annulment remains unlikely. This is corroborated by the fact that the Greek Law on International Arbitration is based on the UNCITRAL Model Law, which, arguably, attributes an important role to the seat of arbitration. To this end, there are strong academic voices promoting the territoriality approach, based on which the award is anchored with its seat and its potential annulment has a direct impact on its non-enforcement in another legal order.<sup>87</sup> Intermediate approaches also exist in this regard, but, still, they always pay heed to the 'guidance' given by NYC: they promote the possibility of enforcement of an annulled award, only if the ground for its annulment was not within those stipulated in NYC.<sup>88</sup> Altogether, while Greek legislation and jurisprudence are silent on the matter, it is very doubtful that Greek Courts will 'take the leap of faith' and uphold an annulled award.

## 5.8 Are foreign awards readily enforceable in practice?

Greece is a signatory party of the NYC, which means that foreign arbitral awards are enforceable unless there are specific grounds for refusal. In addition, pursuant to Art. 36 of the Greek Law on International Arbitration, the provisions of the NYC are generally applicable to all foreign arbitral awards, hence also to awards that for any reason would otherwise not fall within their ambit (for example, awards made in a country which is not a signatory to the NYC). The existence of a ground for refusal is not accepted lightly. In particular, the Greek Court of Appeal has established a high threshold for violations of public policy according to which not every breach of mandatory Greek law will be sufficient but, rather, only violations that run counter to what are perceived as the most fundamental principles and doctrines of the Greek legal system, as well as the European legal system (Art. 33 of the Greek Civil Code). Consequently, arbitral awards are rarely set aside for violation of the Greek public order.

<sup>85</sup> G. Verveniotis, 'International Commercial Arbitration I', Sakkoulas Ed. 1990, p. 140-141; S. Kousoulis, 'Arbitration', Sakkoulas Ed. 2004, p. 301.

<sup>86</sup> See, for instance, D. Mpampiniotis, 'Regarding the recognition and enforcement of foreign arbitral awards that have been annulled in their seat', Sakkoulas Ed. 2018, H. Pamboukis, 'The annulled arbitration award', DID, 1/2018, para. 40 et.

<sup>87</sup> K. Calavros, 'The private international law of international arbitration' Sakkoulas Ed. 2020, p. 219-221.

<sup>88</sup> D. Mpampiniotis, 'Regarding the recognition and enforcement of foreign arbitral awards that have been annulled in their seat', Sakkoulas Ed. 2018.

There are no time limits for issuing the exequatur order. The issuance of a court judgment on the recognition of enforceability of a foreign arbitral award at first instance takes usually between 2 and 12 months (depending on the Court's caseload). Such court decision is subject to appeal, the process for which may last between 8 and 12 months.

## 6. Funding arrangements

### 6.1 Are there laws or regulations relating to, or restrictions to, the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction? If so, what is the practical and/or legal impact of such laws, regulations or restrictions?

Third-party funding, while uncommon in Greek arbitral practice, is not prohibited. In the absence of a regulatory framework and any publicly available precedent, any party is free to conclude a relevant agreement with a third party, on the basis of the general principle of freedom of contract (Art. 361 of the Greek Civil Code) or could resort by analogy to the existing regulation regarding contingency fee agreements in litigation. Greek law recognises and regulates, to a certain extent, lawyer funding schemes in the form of contingency fee agreements. However, only contingency fees of up to 20% (or 30% if more than one lawyers are handling the case) fees are permitted.<sup>89</sup> A contingency fee agreement is valid only when the lawyer undertakes to provide his/her services up to the final adjudication of the case, without receiving any remuneration if he/she fails to do so<sup>90</sup> (even if the latter takes place through compromise).<sup>91</sup>

## 7. Arbitration and technology

### 7.1 Is the validity of blockchain-based evidence recognised?

There is no publicly known legal precedent in the jurisprudence of Greek courts in this respect, as blockchain questions are fairly new. However, according to Article 19 of the Greek Law on International Arbitration, the parties are in principle free to determine the rules applicable to the arbitral process, including the taking and types of evidence, subject to mandatory provisions of the Greek Law on International Arbitration. In the absence of an agreement of the parties on these rules or issues, the arbitral tribunal will determine the applicable rules. Evidence in the form of electronic-technology data is in principle accepted in arbitration.

### 7.2 Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?

Blockchain arbitration in general is a recent concept and has not been developed or regulated in Greek legislation, theory and practice. It may be premature to establish concrete answers on blockchain questions. As a starting point it is to be noted that the wording of the written form required for an arbitration agreement and for an arbitral award ("*document signed by [...] other means of telecommunication recording an agreement*")<sup>92</sup> does not expressly invalidate blockchain. Notably, taking into account the addition to the definition of document ("*an electronic recording which allows subsequent confirmation of the identity of its author and access to the content of the agreement*") of the draft (new) Law on International Arbitration (to be passed), there could soon be a more solid legal standing to this regard.

While it may be premature to establish concrete positions, it should be mentioned, as a matter of theory, that blockchain arbitration which is conducted exclusively on digital basis may raise issues regarding its

<sup>89</sup> Art. 60 para. 1, Greek Code of Lawyers (Law No. 4194/2013).

<sup>90</sup> Art. 60, para. 4, Greek Code of Lawyers (Law No. 4194/2013).

<sup>91</sup> Art. 71 Greek Code of Lawyers (Law No. 4194/2013) and indicatively, Supreme Court Judgement No. 59/2007.

<sup>92</sup> Art. 26(3) of Greek Law on International Arbitration and Art. 869 GCCP.

compliance with the general procedural rules and principles in arbitration, such as the neutrality of the arbitral tribunal, the right to be heard or even with the rules of public policy.

**7.3 Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?**

Refer to answer for question 7.2.

**7.4 Would a court consider an award that has been electronically signed (by inserting the image of a signature) or more securely digitally signed (by using encrypted electronic keys authenticated by a third-party certificate) as an original for the purposes of recognition and enforcement?**

The issue of e-signatures or digital signatures on arbitral awards is matter of a general discussion among the international arbitration community as in some cases or fora may raise enforceability issues. In principle, as a matter of Greek law, electronic documents issued by natural or legal entities using an authorized electronic signature or an approved electronic stamp are accepted by public authorities and courts throughout the country.<sup>93</sup> In the context of arbitration, however, issues relating to the electronically or digitally signed awards should be carefully addressed taking also into account the unfamiliarity of the state Courts with tech issues, the lack of any specific case-law and the absence of explicit provisions in the field of international arbitration.

In domestic arbitrations, there is an explicit requirement for an arbitral award to bear a handwritten signature.<sup>94</sup> Such requirement does not explicitly exist in the Greek Law on International Arbitration which provides that an original signed hard copy of the arbitral award should be communicated to each of the parties, without however specifying whether such signature should be handwritten or can be electronic.<sup>95</sup> Practically however, the enforcement of arbitral awards in Greece is subject to certain requirements that may involve the need for the parties and arbitrators to get a hard copy of the award bearing the handwritten signature(s) of the arbitrator(s). In the context of international arbitrations, securely digitally signed awards (by using encrypted electronic keys authenticated by a third-party certificate) would, most likely be acceptable but relevant potential arguments to the contrary at the stage of enforcement cannot be excluded; having an award signed by inserting the image of a signature could more easily raise non-enforceability issues. Parties should bear in mind that the safest approach would be to have the award signed through hand written signatures. It is noteworthy that the new definition of document of the draft (new) Law on International Arbitration (to be passed) provides that *“an electronic recording which allows subsequent confirmation of the identity of its author and access to the content of the agreement”*. It remains to be seen if the said law and the evolving case law will provide further clarity in the future on the issue of the use of electronic signatures, of either type, for arbitral awards.

**8. Is there likely to be any significant reform of the arbitration law in the near future?**

Yes, a reform is expected during 2021 – the Greek Law on International Arbitration is currently under revision.

**9. Compatibility of the Delos Rules with local arbitration law**

The Delos Rules have not exactly the same scope with local arbitration laws, as the Greek Law under review. Being institutional rules, they include provisions shaping the arbitration provision (such as model arbitration and choice of law clauses, provisions regarding the initiation of a “Delos arbitration” etc. ) and regulating the relationship between the parties, the tribunals and Delos (such as provisions regarding the liability of the arbitrators or Delos’ employees, provisions regarding the costs and taxes paid to Delos) which are provisions that are not (and cannot) provided for in local arbitration laws since they are institution-specific. As regards the matters regulated by both the Delos Rules and the Greek law on international arbitration (*i.e.* place of

<sup>93</sup> Art. 15 of Law No. 4727/2020.

<sup>94</sup> Art. 892, para. 1 GCCP.

<sup>95</sup> Art. 31, para 1 and 4 of Greek Law on International Arbitration.

arbitration, constitution of tribunal awards *etc.*), there are no major deviations, but the Delos Rules are more up-to-date (in force since 2020) Moreover, the Delos Rules are more technically detailed, as most institutional rules in comparison with arbitration laws. Overall, the two sets of rules are compatible.

#### 10. Further reading: Historical note

As noted at the start of this chapter, Greece is probably the first country where arbitration as a dispute settlement method was ever recorded, at the very dawn of its ancient history. Indeed, a stele, discovered in excavations of a water conduit, is the record of a settlement by a board of arbitrators, dated with confidence (because of a reference to the eponymous Athenian archon for that year) back to 363 BC. It comes from Athens at the time when Aristotle and Demosthenes were young men and was intended to be perpetual evidence of an arbitral award between two parts of the Salaminioi clan (*genos* "Σαλαμίνιοι"). It was a long and complete inscription in Pentelic marble, very illuminating for the whole process of arbitration, an important part of Athenian justice. The matter at issue was the administration of sacrifices made to various divinities and heroes, by two branches of the clan of Salaminioi. This was a private arbitration. There were five arbitrators, presumably two from each side and a fifth chosen by those four. The members of the tribunal were called by the name normal for arbitrators: *diatetai* ("διατηται"). The process by which they produced their result was called mediating: *diellaxan* ("διαλλάξαν"). The parties agreed to accept their determination after it had been made. The award does not set out the issues between the parties. The arbitrators reveal nothing of their reasons. After all, the settlement is the only thing that matters and puts an end to all claims by the parties.<sup>96</sup>

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<sup>96</sup> For more information, see in English, 'Two ancient Greek Arbitration Awards found in Athens with an introduction by Derek Roebuck' ('Ancient Greek Arbitration', 2001, p. 287 *et seq.*) at [trans-lex.org](https://trans-lex.org).

## ARBITRATION INFRASTRUCTURE AT THE JURISDICTION

Leading national, regional and international arbitral institutions based out of the jurisdiction, <i>i.e.</i> with offices and a case team?	ϕ
Main arbitration hearing facilities for in-person hearings?	Athens Mediation & Arbitration Organisation (EODID) offers housing and accommodation services in relation to arbitrations ( <a href="https://www.eodid.org/en/egkatastasis/">https://www.eodid.org/en/egkatastasis/</a> ). Large hotels can also accommodate hearings for arbitrations in venues-conference rooms.
Main reprographics facilities in reasonable proximity to the above main arbitration hearing facilities?	Services are offered in practice in-house by the venues/arbitration hearing facilities, such as EODID or by third party service providers based mainly in Athens or Thessaloniki.
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	ϕ
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	Usually, the venues offering hearing facilities, collaborate with local service providers and offer interpretation services in one package.
Other leading arbitral bodies with offices in the jurisdiction?	ϕ