

# Commercial Arbitration **Greece**

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## Infrastructure

### 1 The New York Convention

*Is your state a party to the New York Convention? Are there any noteworthy declarations or reservations?*

Greece is party to the New York Convention (the Convention), having ratified the treaty on 16 July 1962. Greece transposed the Convention into its national legislation by Legislative Decree 4220/1962. Greece has made two reservations under Article 1(3). The first refers to the general principle of reciprocity: the Convention applies exclusively with respect to arbitral awards issued in another contracting state. The second refers to the commercial nature of the underlying legal relationship: the Convention applies only to those arbitral awards that have ruled on disputes in which the underlying legal relationship has a commercial nature.

### 2 Other treaties

*Is your state a party to any other bilateral or multilateral treaties regarding the recognition and enforcement of arbitral awards?*

Greece is party to several bilateral and multilateral treaties that refer to the provisions of the Convention. Hence, the Convention is widely considered the key legislative text for the recognition and enforcement of foreign arbitral awards in Greece. 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), and the award enforcement provisions contained therein.

### 3 National law

*Is there an arbitration act or equivalent and, if so, is it based on the UNCITRAL Model Law? Does it apply to all arbitral proceedings with their seat in your jurisdiction?*

Law 2735/1999 on International Commercial Arbitration (Law 2735/1999) introduced and, in essence, incorporated into Greek national legislation the vast majority of the provisions of the UNCITRAL Model Law, as the latter was in force at the time of its adoption. Greek law does not yet reflect the amendments to the Model Law adopted by UNCITRAL on 7 July 2006.

Law 2735/1999 applies only to international commercial arbitration proceedings that have their seat in Greece. Domestic arbitration proceedings are governed by Articles 867–903 of the Greek Code of Civil Procedure (GCCP).

### 4 Arbitration bodies in your jurisdiction

*What arbitration bodies relevant to international arbitration are based within your jurisdiction? Do such bodies also act as appointing authorities?*

The most important arbitration bodies practising international arbitration in Greece are (a) the Department of Arbitration of the Athens Chamber of Commerce and Industry (ACCI), which manages arbitration issues regarding commercial disputes; (b) the Piraeus Association for Maritime Arbitration (PAMA), which is a private non-profit association involved in the resolution of maritime disputes by arbitration in Piraeus; (c) the Hellenic Chamber of Shipping, specialising in shipping disputes; and (d) the Regulatory Authority of Energy, which has been introduced in the context of Greece's attempt to liberalise the energy and telecommunications markets. Each of the above bodies can act as appointing authorities in case the parties fail to agree on the appointment of arbitrators.

### 5 Foreign institutions

*Can foreign arbitral providers operate in your jurisdiction?*

As no relevant restriction is set by Greek law, foreign arbitral providers can operate within the Greek territory.

### 6 Courts

*Is there a specialist arbitration court? Is the judiciary in your jurisdiction generally familiar with the law and practice of international arbitration?*

There is no specialist arbitration court established in Greece. Domestic courts are generally familiar with international arbitration proceedings, particularly with respect to issues upon which they are entitled to rule or assist under Law 2735/1999. There is a general deference to arbitral awards in line with the Convention. Moreover, Greek courts are involved in the recognition and enforcement of foreign arbitral awards, while the application of the Convention raises no problems in practice.

## Agreement to arbitrate

### 7 Formalities

*What, if any, requirements must be met if an arbitration agreement is to be valid and enforceable under the law of your jurisdiction? Can an arbitration agreement cover future disputes?*

Under Greek law, the following criteria must be met: (a) the arbitration agreement must be valid under the general requirements for the substantive validity of an agreement set out by Greek law (eg, the

agreement must not have been executed under error, deception or threat); (b) the persons who enter into the arbitration agreement must be capable of concluding such agreement (subjective arbitrability); (c) the dispute must be of an arbitrable nature (arbitrability); (d) the arbitration agreement must have a minimum content (ie, (i) the expressed will of the parties to arbitrate; (ii) reference of the disputes that the parties wish to refer to arbitration; and (iii) the parties' definitive decision to solve the dispute through arbitration); and (e) with respect to international commercial arbitration, the arbitration agreement must satisfy the formalities set out in Article 7 of Law 2735/1999, which essentially incorporated (with certain minor additions) Article 7 of the UNCITRAL Model Law. In domestic arbitration, the arbitration agreement must be in compliance with the formalities set out in Article 869 of GCCP. In any case, the arbitration agreement must be in writing; however, the lack of a written agreement can be cured if both parties agree to arbitrate or otherwise participate in the proceedings without objections or reservations.

An arbitration agreement can cover both past and future disputes, and it can be concluded either prior to or after the dispute has arisen.

## 8 Arbitrability

*Are any types of dispute non-arbitrable? If so, which?*

The fundamental principle set out in GCCP Article 867 provides for any private law disputes (ie, disputes between individuals, private entities or states (acting as fiscus) and state entities engaging in commercial conduct). The subject matter of the arbitration can be freely disposed by the parties or can be referred to arbitration. Hence, criminal cases, administrative disputes that fall into the competence of the Council of State as specified in Articles 94 and 95 of the Greek Constitution, family disputes (eg, relations between relatives) and tax disputes cannot be referred to arbitration under Greek law. Specifically regarding tax disputes, although in principle they are not arbitrable, they can be referred to arbitration where the state has control over the subject of the dispute. Labour disputes are explicitly exempt from arbitration, save for collective bargaining disputes (Article 15 of Law 1876/1990) and disputes under GCCP Article 663(4), which can be submitted solely to international arbitration as long as they are of a commercial nature (Article 1(4) of Law 2735/1999).

## 9 Third parties

*Can a third party be bound by an arbitration clause and, if so, in what circumstances? Can third parties participate in the arbitration process through joinder or a third-party notice?*

Greek law provides that the arbitration agreement binds only the signatory parties with the exception of (a) the assignee of the contract or claim in a voluntary assignment, who is considered bound by the arbitration clause concluded between the initial parties, provided that such clause is expressly included in the assignment, and (b) the successor of one of the parties, which is also considered to be bound by the arbitration clause in the case of insolvency, death or any other type of universal succession. As a general principle, Greek courts, being in line with the jurisprudence of the European Court of Justice, have ruled that an arbitration clause can be enforced in favour of – but not against – third-party beneficiaries of the contract.

There is also limited Greek case law suggesting that a signatory plaintiff can enforce an arbitration clause against a non-signatory defendant (shareholder or parent company of the plaintiff's counterparty in the arbitration agreement) in cases where there are grounds for piercing the corporate veil or applying the "group of companies" doctrine.

In the absence of a relevant provision under Greek law, third parties may participate in the arbitration by submitting a joinder or a

third-party notice, provided that the parties to the dispute and the tribunal have expressed their consent.

## 10 Consolidation

*Would an arbitral tribunal with its seat in your jurisdiction be able to consolidate separate arbitral proceedings under one or more contracts and, if so, in what circumstances?*

Although Greek law does not address the issue of consolidation, as a matter of principle, an arbitral tribunal may, sua sponte or upon the request of one or both of the parties, consolidate separate arbitral proceedings under one or more contracts, provided that those proceedings have materially similar legal and factual background and all parties agree to such consolidation. The parties may decide to further specify the consolidation process that is to be followed by applying the procedural rules of an arbitral institution, or any other set of procedural rules.

## 11 Groups of companies

*Is the 'group of companies doctrine' (or any other basis for piercing the corporate veil) recognised in your jurisdiction?*

In the event that the choice of law in a contract is Greek law, the group of companies theory is not recognised and, therefore, tribunals do not have jurisdiction over non-signatories to the arbitration agreement under Greek law. Greek courts have been particularly reluctant in applying doctrines such as the group of companies doctrine or any other theory for piercing the corporate veil and have applied the principle sparingly.

The Greek Supreme Court ruled that, even if a company and its shareholders have common interests, this alone does not suffice for the piercing of the corporate veil. It also found 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.

It is only under very specific exceptions that Greek courts have ruled on the application of these principles, mainly in cases 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. This abusive conduct is often evidenced by insufficient financing of the company in question or the intermingling of corporate and individual property.

## 12 Separability

*Are arbitration clauses considered separable from the main contract?*

Under Greek law, the separability doctrine stands. Arbitration clauses are considered separable from the main contract (Article 16(1) of Law 2735/1999). Therefore, the invalidity of the main contract does not in itself affect the validity of an arbitration clause, and vice versa.

## 13 Competence-competence

*Is the principle of competence-competence recognised in your jurisdiction? Can a party to an arbitration ask the courts to determine an issue relating to the tribunal's jurisdiction and competence?*

Pursuant to Article 16(1) of Law 2735/1999, the arbitral tribunal is competent to rule with respect to the existence and the limits of its own jurisdiction (application of the competence-competence principle). This principle is generally recognised and respected by Greek courts.

## 14 Drafting

Are there particular issues to note when drafting an arbitration clause where your jurisdiction will be the seat of arbitration or the place where enforcement of an award will be sought?

As there are no considerable particularities under Greek law, it is generally recommended to follow one of the model clauses proposed by international arbitration institutions, as these provide all the essential elements that the parties should agree to ex ante, so as to mitigate the risk of being considered pathological. As a rule of thumb, the more specific the wording the better, with a view to limiting potential ambiguities arising with respect to the clause's interpretation (eg, the tribunal's power to rule upon claims for torts, or to award specific types of remedies). The typical wording, "[a]ny dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration", would be considered sufficient for these purposes.

## 15 Institutional arbitration

Is institutional international arbitration more or less common than ad hoc international arbitration? Are the UNCITRAL Rules commonly used in ad hoc international arbitrations in your jurisdiction?

At present, ad hoc arbitration is more common because there is no general arbitration institution in Greece. In the absence of any relevant statistics and published jurisprudence, prior experience suggests that the most commonly used rules in ad hoc international arbitration seated in Greece are the LCIA Rules, the UNCITRAL Rules and, in some particular cases, especially to resolve disputes arising in the context of concession agreements, the ICC Rules.

## 16 Multi-party agreements

What, if any, are the particular points to note when drafting a multi-party arbitration agreement with your jurisdiction in mind? In relation to, for example, the appointment of arbitrators.

There are no special considerations for conducting multi-party arbitrations in Greece, or for the drafting of the relevant arbitration agreement. However, to avoid any ambiguities that may arise from the interpretation of Law 2735/1999, arbitration agreements should specify the manner of appointment of arbitrators, as well as other procedural details.

## Commencing the arbitration

### 17 Request for arbitration

How are arbitral proceedings commenced in your jurisdiction? Are there any key provisions under the arbitration laws of your jurisdiction relating to limitation periods of which the parties should be aware?

Pursuant to Article 21 of Law 2735/1999, unless otherwise agreed by the parties, arbitral proceedings commence on the date on which the request for arbitration is received by the respondent. The request is served pursuant to the provisions of Article 3 of Law 2735/1999, according to which, unless otherwise agreed by the parties, any written communication is deemed to have been received if it is delivered to the addressee personally, or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address, by registered letter or any other means that provides a record of the attempt to deliver it. The communication is deemed to have been received on the day it is so delivered.

Should the parties refer the dispute to institutional arbitration, the commencement of arbitral proceedings shall be determined on the

basis of the rules that the relevant institution applies for the arbitral proceedings.

There are no key provisions under Law 2735/1999 with respect to limitations periods and, therefore, the commencement of arbitration in itself is not subject to a limitations period. Moreover, arbitration agreements usually avoid any reference to unusually short limitation periods, as such a provision may be deemed abusive by a national court as contrary to the constitutional right of access to justice. However, a party's right to resort to arbitration, where possible, and the time within which such recourse should be made, is determined by the provisions of the law governing the substance of the case in question. Where Greek law is applicable, typical statutory limitation periods will apply, namely five years for claims arising from commercial relations, 20 years for claims arising from contracts and five years for tort claims. However, Greek law provides for various exceptions from the above rules.

## Choice of law

### 18 Choice of law

How is the substantive law of the dispute determined? Where the substantive law is unclear, how will a tribunal determine what it should be?

Parties are free to choose the substantive law that will govern their relationship and to so specify in their contract, or to decide after a dispute has arisen. For any ambiguously drafted choice of law provisions, the arbitral tribunal will attempt to interpret parties' true intent.

In the absence of any selection of law, the arbitral tribunal in international commercial arbitration applies the substantive law determined by the private international law rule that is considered most suitable for the dispute in question (Article 28(2) of Law 2735/1999), while the arbitral tribunal in domestic arbitration applies the Greek law (GCCP Article 890), taking into account any relevant conflict of laws rule.

## Appointing the tribunal

### 19 Choice of arbitrators

Does the law of your jurisdiction place any limitations in respect of a party's choice of arbitrator?

Without prejudice to mandatory national rules, such as GCCP Article 872 (dealing with parties' equality in the appointment of arbitrators), the parties are, in principle, free to select arbitrators in both international commercial arbitrations and domestic ones. In the former, the arbitrators' selection procedure follows the rules set out in Articles 10–11 of Law 2735/1999, which basically reflect Articles 10–11 of the UNCITRAL Model Law. In domestic arbitration, GCCP Article 871A provides for a specific procedure for the selection and appointment of judges as arbitrators.

Article 49 of the Introductory Law of the GCCP, Article 16(2) of Law 4110/2003 (which replaced Article 6(3A) of Law 3086/2002) and Article 8(1) of Legislative Decree 736/1970 list requirements for appointing arbitrators over disputes arising from contracts concluded with the state or state entities in both international and domestic arbitration. The state's arbitrator should be a member of the State Legal Council and is appointed by virtue of a decision of the Minister of Finance and any other competent minister, following an opinion issued by the Plenary of the State Legal Council. Greek law also provides for the appointment of a state arbitrator who is not a member of the State Legal Council, if the nature of the dispute so requires, provided that there is a relevant provision in the arbitration agreement countersigned by the Minister of Finance.

## 20 Foreign arbitrators

[Can non-nationals act as arbitrators where the seat is in your jurisdiction or hearings are held there? Is this subject to any immigration or other requirements?](#)

Unless otherwise agreed by the parties, Greece places no limitation on the appointment of non-nationals as arbitrators in either international commercial or domestic arbitration. Article 11(1) of Law 2735/1999 and GCCP Article 871 do not impose any requirements as to arbitrator nationality.

No specific immigration or other requirements exist. The usual travel and visa requirements apply.

## 21 Default appointment of arbitrators

[How are arbitrators appointed where no nomination is made by a party or parties or the selection mechanism fails for any reason? Do the courts have any role to play?](#)

Article 11 of Law 2735/1999 provides for the default selection mechanism in international commercial arbitration. If a selection mechanism has been agreed upon by the parties but its application fails, any party may request the court to take the necessary measures for the appointment of the arbitrators, unless the agreement that sets out the selection mechanism provides otherwise for securing such selection (Articles 6(1) and 11(3) of Law 2735/1999). In the absence of such mechanism, Article 11(4) of Law 2735/1999 provides for a default mechanism, again with the intervention and assistance of the court of Article 6(1) of Law 2735/1999. A court's decision on the appointment of an arbitrator or arbitrators under Law 2735/1999, Article 11, paragraphs 3–4 cannot be challenged.

With respect to domestic arbitration, a similar court-assisted default appointment mechanism is provided under GCCP Article 878.

## 22 Immunity

[Are arbitrators afforded immunity from suit under the law of your jurisdiction and, if so, in what terms?](#)

Greek law does not provide for arbitrators' immunity. Pursuant to GCCP Article 881, arbitrators are liable for wilful misconduct and gross negligence. Hence, a party may file a claim for damages according to the provisions of Article 73 of Introductory Law of the GCCP, which provides for a suit for miscarriage of justice.

## 23 Securing payment of fees

[Can arbitrators secure payment of their fees in your jurisdiction? Are there fundholding services provided by relevant institutions?](#)

There is no provision under Greek law dealing with the power of a tribunal to require security of fees in international commercial arbitration. However, it is not uncommon in practice for arbitrators to impose such a requirement, either on their own initiative or upon a party's request. Among the above-mentioned arbitral bodies (see question 4), the ACCI, PAMA and RAE Rules require for partial or total payment of all costs, including the arbitrators' fees, in advance.

In domestic arbitration, the claimant is required to pay in advance half of the arbitrators' fees. The same proportion of advance payment is required by any other third party, by request of which the object of the dispute is broadened. In any case, the exact prepayment amount will be determined by the arbitral tribunal (GCCP Article 882).

## Challenges to arbitrators

### 24 Grounds of challenge

[On what grounds may a party challenge an arbitrator? How are challenges dealt with in the courts or \(as applicable\) the main arbitration institutions in your jurisdiction? Will the IBA Guidelines on Conflicts of Interest in International Arbitration generally be taken into account?](#)

Article 12(2) of Law 2735/1999 provides that an arbitrator may be validly challenged only for justifiable doubts as to his or her impartiality, independence or possession of the qualifications agreed to by the parties. However, a party may challenge an arbitrator appointed by it, or in whose appointment it has participated, only for reasons of which it becomes aware after the appointment has been made. Under Law 2735/1999 (provided that the parties have not agreed on a different procedure), if the challenged arbitrator does not resign or the parties do not agree to the challenge, the arbitral tribunal shall decide on the challenge, and if the tribunal rejects it, then the challenging party may resort to the domestic courts.

Though not binding, the IBA Guidelines are generally taken into account.

### Interim relief

#### 25 Types of relief

[What main types of interim relief are available in respect of international arbitration and from whom \(the tribunal or the courts\)? Are anti-suit injunctions available where proceedings are brought elsewhere in breach of an arbitration agreement?](#)

Under Article 17 of Law 2735/1999 (unless otherwise agreed by the parties), the arbitral tribunal may order provisional and protective measures upon request of one of the parties. Should a party fail to voluntarily comply with the measures ordered by the tribunal, such measures must be validated by the competent Court of First Instance, upon request by one of the parties, pursuant to Article 17(2) of Law 2735/1999. The arbitral tribunal may choose at its own discretion the type of the "provisional and protective" measures that it considers adequate and appropriate. The arbitral tribunal shares competence with the national courts, which can always offer interim relief to any of the parties (Article 9 of Law 2735/1999). However, the competence of the tribunal does not extend to offering interim relief against a third party to the arbitration, in which case national courts have exclusive competence.

In domestic arbitration, arbitral tribunals are explicitly prohibited to order provisional measures, and any relevant agreement between the parties is considered null and void (GCCP Articles 685 and 889). Greek law does not provide for anti-suit injunctions.

#### 26 Security for costs

[Does the law of your jurisdiction allow a court or tribunal to order a party to provide security for costs?](#)

There is no provision under Law 2735/1999 providing for security for costs. Hence, such possibility cannot be excluded and the arbitral tribunal may order such a security ex officio, upon a relevant request by one of the parties, or even in the context of interim relief measures (see question 25).

With respect to domestic arbitration, see question 23.

## Procedure

### 27 Procedural rules

Are there any mandatory rules in your jurisdiction that govern the conduct of the arbitration (eg, general duties of the tribunal and/or the parties)?

Rules considered as public order rules are mandatory in all cases, including the conduct of international commercial arbitration. These rules mainly concern the fundamental principles of fair trial and, therefore, guarantee equal treatment of the parties, adversarial procedure and due process.

### 28 Refusal to participate

What is the applicable law (and prevailing practice) where a respondent fails to participate in an arbitration?

Unless otherwise agreed for by the parties, should a respondent who has been duly notified under the applicable provisions refuse or unjustifiably fail to participate in an international commercial arbitration, the arbitral proceedings continue *ex parte* (Article 25 of Law 2735/1999) as the respondent cannot be forced to participate. A respondent's absence from the proceedings is interpreted neither as a silent admission of the claimant's allegations, nor as a silent denial thereof. The claimant still bears the burden of proof of its allegations before the tribunal.

### 29 Admissible evidence

What types of evidence are usually admitted, and how is evidence usually taken? Will the IBA Rules on the Taking of Evidence in International Commercial Arbitration generally be taken into account?

Pursuant to Article 19 of Law 2735/1999 and GCCP Article 886, parties in both international commercial arbitration and domestic arbitration have the right to determine the rules applying to the arbitral proceedings. Hence, the taking of evidence can be agreed to by the parties and specific rules may come into force. These rules shall not contradict (a) the principles of due process and equal treatment of the parties; (b) the public order provisions of *lex fori*; and (c) the mandatory provisions of Law 2735/1999 (eg, Article 27, which provides for court assistance in taking evidence) and, with regard to domestic arbitrations, the mandatory provisions of the GCCP. In practice, evidence such as documents, witnesses (including cross-examination) and experts that report on specific issues are rather common in arbitral proceedings. In the absence of a valid agreement setting out the rules for taking evidence, these are determined by the arbitral tribunal.

With respect to the taking of evidence, see question 30.

Tribunals take the IBA Rules on the Taking of Evidence in International Commercial Arbitration into account, with respect to document disclosure.

### 30 Court assistance

Will the courts in your jurisdiction play any role in the obtaining of evidence?

Courts' involvement in the taking of evidence in international commercial arbitration is provided in Article 27 of Law 2735/1999, which constitutes a mandatory provision that the parties cannot alter by contract. The arbitral tribunal, or a party with the approval of the arbitral tribunal, may request assistance from the competent national court in taking evidence (Article 27 of Law 2735/1999). The court may execute the request within its competence and according to the provisions of the GCCP. Such request is considered admissible by the court only in the case where the arbitral tribunal is indeed proven incapable of taking such evidence itself. The arbitral tribunal's denial of a request for assistance in gathering evidence may constitute a valid reason for setting

aside the arbitral award, to the extent proven that the party was prevented from meeting its burden of proof.

### 31 Document production

What is the relevant law and prevailing practice relating to document production in international arbitration in your jurisdiction?

Greek law contains no provisions relating to the production of documents. In the absence of a specific agreement between the parties, the arbitral tribunal will conduct the procedure of document production during the arbitration proceedings as it deems appropriate. In addition, the tribunal can seek assistance from domestic courts for gathering evidentiary documents. Such request will be ruled upon in accordance with the provisions of the GCCP.

Greek courts regularly take the IBA Rules into account.

### 32 Hearings

Is it mandatory to have a final hearing on the merits?

Law 2735/1999 does not require a final hearing on the merits. This issue is to be determined by the parties, as they are free to set the rules of the procedure (Article 19 of Law 2735/1999).

In domestic arbitration, as per GCCP Article 886, all details of the arbitration proceedings, including hearings, are determined by the arbitral tribunal.

### 33 Seat or place of arbitration

If your jurisdiction is selected as the seat of arbitration, may hearings and procedural meetings be conducted elsewhere?

Unless the parties have agreed otherwise, the arbitral tribunal may hold hearings and procedural meetings at any place it considers appropriate (Article 20 of Law 2735/1999). The fact that hearings or procedural meetings may be conducted at a place other than the place where the arbitration is seated does not mean that the seat of arbitration changes.

There are no similar provisions with respect to domestic arbitration.

## Award

### 34 Majority decisions

Can the tribunal decide by majority?

Unless otherwise agreed by the parties, a multi-member arbitral tribunal rules by majority. If a majority cannot be achieved, the opinion of the tribunal's chairperson prevails. The above provisions apply in both international commercial arbitration and domestic arbitration (Article 29 of Law 2735/1999 and GCCP Article 891, respectively).

Furthermore, in international commercial arbitration, procedural matters can be resolved by the full panel or by the the chairperson, if the parties have so authorised.

### 35 Limitations to awards and relief

Are there any particular types of remedies or relief that an arbitral tribunal may not grant?

Arbitral tribunals seated in Greece can provide a range of remedies or relief. The applicable substantive law determines the types of remedies that are available. For example, even though the Greek law generally does not recognise punitive damages, a tribunal may still order them if the law governing the dispute so allows. But, should the applicable substantive law be that of another state, tribunals that have their seat in Greece may not grant relief or remedies that are in conflict with Greek public policy as the concept of the latter is defined in Article 33 of Greek Civil Code. Such an award may be annulled following a successful submission of an application for setting aside an award under Article 34 of Law 2735/1999.

### 36 Dissenting arbitrators

Are dissenting opinions permitted under the law of your jurisdiction? If so, are they common in practice?

Despite the absence of an explicit reference in Greek law, dissenting opinions are permitted, and are often found in international commercial arbitration awards held under Law 2735/1999.

### 37 Formalities

What, if any, are the legal and formal requirements for a valid and enforceable award?

Law 2735/1999 provides for the formal requirements (eg, the mandatory minimum content) for a valid and enforceable award in international commercial arbitration in Greece. According to Article 31 of Law 2735/1999, the award must be in writing, must be signed by the arbitrators and must state (a) its date; (b) the place of the arbitration; and (c) the grounds for the ruling, unless the parties have agreed otherwise or the award is an award on agreed terms (ie, a settlement).

In domestic arbitration, similar formal requirements for a valid and enforceable award are set out in GCCP Article 892.

In international commercial arbitration one original copy of the award must be delivered to each party. Unless otherwise agreed by the parties and if the award is to be enforced in Greece, the arbitrator or one of the arbitrators (appointed by the tribunal) is obliged, if requested, to file the original of the award with the secretariat of the competent Court of First Instance (Article 32(5) of Law 2735/1999).

A similar provision exists for domestic arbitration (GCCP Article 893).

### 38 Time frames

What time limits, if any, should parties be aware of in respect of an award? In particular, do any time limits govern the interpretation and correction of an award?

In international commercial arbitration, the application for setting aside an award must be made within three months of the date of receipt of the award by the challenging party or, if a request for correction or interpretation had been made under Article 33 of Law 2735/1999, from the date of communication of that request by the arbitral tribunal.

Moreover, unless a different time limit has been agreed by the parties, each party may request the tribunal to correct formal errors of the award or interpret the latter within 30 days following its delivery. The request shall also be notified to the other party. The tribunal shall make the corrections or the interpretation within 30 days as of receipt of the request. The tribunal may extend the time limit it deems it necessary (Article 33 of Law 2537/1999). In any case, the tribunal may correct ex officio any formal error of the award within 30 days from its issuance.

In domestic arbitration, the time limit for setting aside the award is three months as of service of the award (GCCP Article 899). Furthermore, similar options are available under GCCP Article 894 for the correction or the interpretation of the award. As opposed to international commercial arbitration, in domestic arbitration the request for interpretation or correction may be submitted by any person who has signed the arbitration agreement (while in international commercial arbitration the request can be filed only by a party that has participated in the arbitral proceedings), and there is no time limit either with respect to the submission of the request or the examination of such request by the tribunal.

### Costs and interest

#### 39 Costs

Are parties able to recover fees paid and costs incurred?

Does the 'loser pays' rule generally apply in your jurisdiction?

The concept of "loser pays" or "costs follow events" rule does not always apply. Reimbursement of fees and costs incurred may be subject to the arbitration agreement. Should there be no relevant provision in the arbitration agreement, the arbitral tribunal will decide on the matter based on the claims alleged, evidence presented and outcome. In practice, to allocate the fees and expenses payable by each of the parties, the tribunal will most certainly take into account the circumstances of the case and the outcome of the proceedings. Hence, it may order each party to bear its own costs, divide the costs proportionally or apply the "loser pays" rule.

#### 40 Interest on the award

Can interest be included on the principal claim and costs? Is there any mandatory or customary rate?

The law governing the substance of the case is the one determining whether the principal claim and the costs is subject to interest and how the latter is calculated. Under Greek law, interest can be included on both the principal claim and costs. Furthermore, Greek law provides for a mandatory maximum. The current rates are 7.25 per cent for default interest (interest accrued for the time up until the filing of the request for arbitration), 9.25 per cent for interest accrued from the filing of the request up until the issuance of a final ruling, and 10.25 per cent for interest accrued for the time after the issuance of the final arbitral award.

The parties are free to determine the interest rate on claims and costs provided that this rate does not exceed the lawful maximum. In the absence of an agreement, the tribunal will apply the maximum interest rate.

### Challenging awards

#### 41 Grounds for appeal

Are there any grounds on which an award may be appealed before the courts of your jurisdiction?

Article 34 of Law 2735/1999 explicitly states that an arbitral award may not be appealed against (ie, it cannot be challenged on the merits).

However, an arbitral award can be challenged for reasons of law, by means of a court application filed within three months (see question 38). The grounds for setting aside an award are exhaustively enumerated in the said mandatory provision. In sum, a party seeking to oppose enforcement of an award must show one of the following: (a) the arbitration agreement was not valid under the law the parties had chosen or the law of the state in which the arbitration was held; (b) the arbitral award adjudicated a dispute that falls outside the arbitration agreement or transcends the arbitration agreement; (c) the party against which enforcement of the awards is being sought was not duly notified of the appointment of arbitrators or the arbitration, and thus it was impossible for that party to participate in the arbitral proceedings, prepare its defence and produce its evidence; (d) the arbitral proceedings or the formation of the arbitral tribunal conflict with the arbitration agreement or, absent an arbitration agreement, conflict with the law of the place of the arbitration; or (e) the arbitral award is not yet binding on the parties or has been set aside or suspended by an authority having jurisdiction in the country under the law of which the award was issued.

Parties seeking to oppose enforcement of an award on the basis of Greek public policy have a heavy burden. A court will not set aside an arbitral award on the basis of contravening public policy just because the arbitral tribunal erroneously interpreted and applied the law or has

insufficient reasoning, unless the combination of these factors and the operative part of the award create a situation that runs afoul of public policy in Greece.

The parties may agree to recourse against the award before another arbitral tribunal (Article 35(2)).

Similarly, in domestic arbitration, GCCP Article 895 provides that the arbitral award is not subject to appeal, while parties have the power to agree to recourse against the award before another arbitral tribunal. In this case, the arbitration agreement will determine the procedure to be followed. With respect to the grounds for setting aside the award, GCCP Article 897 (which is mandatory) provides for an exhaustive list.

#### 42 Other grounds for challenge

*Are there any other bases on which an award may be challenged, and if so what?*

In international commercial arbitration, there are no grounds for challenge of an arbitral award other than the ones mentioned in question 41 and prescribed by Article 34 of Law 2735/1999.

In domestic arbitration, Greek law also provides for the recognition/declaration of the non-existence of an arbitral award if: (a) there is no arbitration agreement at all; (b) the dispute was of non-arbitrable nature; or (c) the award was issued in arbitration involving a non-existing individual or legal entity (Article 901 of GCCP).

#### 43 Modifying an award

*Is it open to the parties to exclude by agreement any right of appeal or other recourse that the law of your jurisdiction may provide?*

Is it open to the parties to exclude by agreement any right of appeal or other recourse that the law of your jurisdiction may provide?

Parties may not waive their right to challenge the arbitral award prior to the time of its issuance. Such waiver will be considered null and void (GCCP Article 900). Moreover, because Article 897, which provides for the grounds for setting aside an arbitral award, is mandatory, the parties cannot exclude any of these grounds by entering into a private agreement.

### Enforcement in your jurisdiction

#### 44 Enforcement of set-aside awards

*Will an award that has been set aside by the courts in the seat of arbitration be enforced in your jurisdiction?*

Pursuant to Article 5(1)(e) of the Convention, recognition and enforcement of an arbitral award may be refused should the party against which enforcement is sought prove that the award in question has been set aside by a competent authority of the country in which, or under the law of which, that award was issued. Therefore, the grounds on which the award has been quashed are considered, in principle, irrelevant and the set-aside decision will be recognised and enforced (pursuant to the relevant legislation, such as Regulation 1215/2012, the Lugano Convention on bilateral agreements, etc), unless it is deemed contrary to Greek public policy.

#### 45 Trends

*What trends, if any, are suggested by recent enforcement decisions? What is the prevailing approach of the courts in this regard?*

The Convention is being applied uniformly by Greek courts, which strongly tend to recognise and enforce foreign arbitral awards.

#### 46 State immunity

*To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?*

No tendency towards the acceptance or rejection of the invocation of sovereign immunity can be detected with certainty in Greek jurisprudence.

### Further considerations

#### 47 Confidentiality

*To what extent are arbitral proceedings in your jurisdiction confidential?*

Greek law is silent on the issue of confidentiality. However, the private nature of arbitration tends to favour both confidentiality and secrecy of hearings, submissions, notes, evidence and awards, which, in principle, are not accessible to third parties. Should the parties want to ensure confidentiality in every step of the procedure, they should include a relevant clause in the arbitration agreement or in the terms of reference. The fact that the original of the award is filed with the competent First Instance Court (see question 37) does not render the award publicly available. One has to establish a legitimate interest to acquire a copy of it.

#### 48 Evidence and pleadings

*What is the position relating to evidence produced and pleadings filed in the arbitration? Are these confidential? Is there any way that they might be relied on in other proceedings (whether arbitral or court proceedings)?*

There is no relevant provision in Greek law. Parties are free to determine the level of confidentiality in the arbitral proceedings. In practice (unless otherwise agreed in the arbitration agreement), evidence produced, pleadings filed or information disclosed during the arbitral proceedings might be invoked and relied upon in any of the subsequent proceedings.

#### 49 Ethical codes

*What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your jurisdiction?*

The Lawyer's Code of Ethics is in force in Greece. This ethical code applies to counsels and arbitrators as long as they are registered attorneys under Greek law. In international commercial arbitration, the IBA Rules of Ethics for International Arbitrators, though not binding, are also taken into account.

#### 50 Procedural expectations

*Are there any particular procedural expectations or assumptions of which counsel or arbitrators participating in an international arbitration with its seat in your jurisdiction should be aware?*

There are no particular expectations or assumptions that counsels or arbitrators should be aware of.

## KNOW-HOW ► FIRM

## M&amp;P Bernitsas Law Offices

M & P Bernitsas Law Offices is one of the leading commercial law firms in Greece and, with over 50 attorneys, one of the largest firms in the country. We provide our clients with sound and practical legal solutions based on their commercial reality, perspective, concerns and priorities, assisting them to achieve their goals by taking a proactive approach in identifying opportunities and risks within an often volatile and difficult legal environment. We are proponents for an international level of service and enjoy long-term relationships with clients across all our practice areas. Since the firm was founded in 1946, we have consistently been at the forefront of shaping Greece's legal and regulatory framework, and have acted in most of the pioneering transactions to have taken place in Greece, involving groundbreaking changes in the regulatory and legislative structure.

Our litigation, arbitration and dispute resolution practice has a strong track record in major administrative, civil and commercial and corporate crime disputes. We offer a highly specialised level of representation before courts and industrial tribunals in Greece and Europe, the ICC and other arbitral tribunals, and also have significant experience in the recognition and enforcement of foreign judgments and arbitral awards. Our international arbitration practice focuses mainly on disputes arising in the context of concession and production site development agreements.

Top Ranked by: IFLR 1000 The Guide to the World's Leading Financial Law Firms 2016 | Chambers Global 2016 | Chambers Europe 2016 | The Legal 500 EMEA 2016.

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## George Atié

George joined the firm in 2005. He has a broad administrative and commercial litigation and arbitration practice, with a focus on insurance, product, telecoms, medical and pharmaceutical related disputes, and disputes arising from a variety of contracts, such as the sale and purchase of shares, moveable and immovable property, lease and intellectual property agreements. George has an expertise in advising on pre-litigation risk management, conducting due diligence to opine on case viability. He also acts in debt recovery and enforcement and insolvency proceedings, including the application of Article 99 and in director and shareholder related disputes. George has extensive experience in acting in technical and commercial disputes arising from concession agreements between the State and companies which have been awarded tenders.

George has recently been invited by the International Chamber of Commerce Hellas to participate in the team formed to translate the International Chamber of Commerce Arbitration Rules into Greek.

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## Milka Chasioti

Milka joined the firm in 2008. She has experience in representing companies across a variety of industry sectors, including automobile, electronics, pharmaceuticals, cosmetics, and clothing manufacturing, in litigation arising from their entry into all types of commercial agreements, as well as civil law litigation, in particular tort and succession disputes. Milka advises on the issues and risks arising from the performance or termination of contractual relationships and represents clients in negotiations, at court and in settlement proceedings. Milka also acts in debt recovery and recognition and enforcement of Greek and foreign judgments and arbitral awards proceedings. She also has experience in advising high net worth individuals on estate and inheritance matters and regularly participates in due diligence reviews carried out in the context of mergers and acquisitions.

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## KNOW-HOW ► FIRM

## Foley Hoag

Foley's world-renowned International Litigation & Arbitration practice represents sovereign states before the International Court of Justice (ICJ) in The Hague, the International Tribunal of the Law of the Sea, inter-state arbitration under the auspices of the Permanent Court of Arbitration, and investor-state arbitration before the International Centre for the Settlement of Investment Disputes (ICSID). Foley Hoag also represents states, state-owned and private enterprises, and individuals in international commercial, energy and construction arbitration, conducted under both common law and civil law rules. This includes before all major arbitral fora, including the International Chamber of Commerce (ICC), International Centre for Dispute Resolution (ICDR), London Court of International Arbitration (LCIA), Arbitration Institute of Stockholm Chamber of Commerce (SCC), and tribunals constituted under the UNCITRAL Rules. A top international law firm, lawyers are trained in both the common and civil law systems, fluent in more than 15 languages, and highly regarded for their skill in both written and oral advocacy.

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*Foley Hoag has been the counsel of choice for sovereign states on issues such as international treaties, international investment law and dispute resolution, delimitation of maritime and land boundaries, sovereign and diplomatic privileges and immunities, international environmental law, the use of force and the law of armed conflict, international trade and sanctions, and human rights.*

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## Constantinos Salonidis

Dr Constantinos Salonidis has extensive experience in international dispute resolution, especially in cases before arbitration panels administered under the ICSID, UNCITRAL and ICC Arbitration Rules. He has represented several European, Asian and Latin American States in investment treaty arbitration matters involving a diverse range of industries such as banking, hydrocarbons, health insurance, tobacco, port operations, steel manufacturing and mining. Constantinos also regularly advises sovereign clients and private parties on a wide range of private and public international law issues, including maritime delimitation, title to territory, treaty negotiation, challenge of arbitral awards, and regulatory compliance with obligations arising from international investment treaties. He is on the Panel of Arbitrators and Mediators of the Kuala Lumpur Regional Arbitration Center, and has also served as an expert for the Organization of American States' project on the role of the judiciary in international commercial arbitration. He holds graduate, postgraduate and doctorate degrees from Democritus University of Thrace, an LLM from Georgetown University School of Law, and the prestigious Diploma in Public International Law of The Hague Academy of International Law (2006). Constantinos has written extensively on topics of international and international investment law and lectures frequently at several universities and academic institutions in the United States and abroad.

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Christina Hioureas is the Chair of the United Nations Practice Group at Foley Hoag LLP. She represents States, private entities, and individuals on international disputes and public international law matters, including: investment treaty claims (ICSID, UNCITRAL); international commercial arbitration (ICC, ICDR, Swiss Rules) and litigation; treaty drafting and interpretation; international human rights; law of the sea; and energy law and gas pricing disputes. She also advises States before the United Nations and its bodies. Hioureas has served as a delegate at the UN, handling the Sixth Committee to the General Assembly (Legal Affairs), UN Commission on International Trade Law (UNCITRAL), and matters before the Security Council. She is an elected Term Member at the Council of Foreign Relations and has served as an Adjunct Professor of Law at Fordham University School of Law. She received her JD from the University of California Berkeley School of Law and her BA from UC Berkeley in Political Science and Peace & Conflict Studies. Ms. Hioureas has been recognized in *Legal 500*, *Chambers*, and the *Global Arbitration Review*.

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