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# The Legal 500 Country Comparative Guides

## Greece

# INTERNATIONAL ARBITRATION

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This country-specific Q&A provides an overview of international arbitration laws and regulations applicable in Greece.

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## GREECE

# INTERNATIONAL ARBITRATION



### 1. What legislation applies to arbitration in your country? Are there any mandatory laws?

Greek law opts for a dual system distinguishing between domestic and international commercial arbitration. Domestic arbitral proceedings are governed exclusively by the provisions of the Seventh Book of the Greek Code of Civil Procedure (GrCCP), articles 867 - 903.

International arbitral proceedings having their seat in Greece are governed by law 2735/1999 which incorporates into the Greek legal order the UNCITRAL Model law on International Commercial Arbitration (1985). Certain provisions of the Seventh Book of GrCCP are made applicable by reference under provisions of Law 2735/1999 also to international commercial arbitral proceedings. This is the case as regards article 867 GrCCP which controls the arbitrability question and article 896 GrCCP which controls the scope of the res judicata effect of the arbitral award. In general, the application of the provisions of the Seventh Book of GrCCP to international arbitral proceedings on an ancillary basis is not precluded as a matter of principle.

Law 2735/1999 does not contain mandatory provisions other than those already included in the UNCITRAL Model law. The prohibition of delocalization and mandatory procedural fairness norms are the most important.

The GrCCP contains a number of mandatory provisions which, among others, (a) safeguard procedural fairness in light of the principle of the procedural autonomy, (b) control the arbitrability question, (c) control the form of the arbitration agreement, (d) control the question of impartiality of arbitrators, (e) control the form of the arbitral award, (f) render invalid any ex ante waiver of the right to ask that the arbitral award be set aside, (g) prohibit arbitrators from granting interim or provisional relief. In addition to these mandatory rules, the GrCCP contains also some parochial mandatory norms such as limitations to the arbitrators' fees.

### 2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Greece is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Greece has acceded to the New York Convention by virtue of Legislative Decree (LD) 4220/1961 (entry into force on October 14, 1962). Under article 28 of the Greek Constitution the provisions of the New York Convention prevail over all conflicting provisions of Greek law. Greece has made both the reciprocity as well as the commercial reservation under article I (3) of the New York Convention.

Regarding both reservations however, it is noted that under article 36 L. 2735/1999, the provisions of said Legislative Decree transposing into Greek law the New York Convention, are generally applicable to all foreign arbitral awards. Hence, they are applicable also to awards made in a country which has not ratified the New York Convention or to an arbitral award rendered in a non commercial dispute.

### 3. What other arbitration-related treaties and conventions is your country a party to?

Greece has ratified the 1923 Geneva Protocol on Arbitration Clauses by virtue of Legislative Decree 4/1926 as well as the 1927 Geneva Convention on the Execution of Foreign Arbitral Awards by virtue of Law 5013/1931. However, under article 7 (II) of the New York Convention their effect has already ceased between Contracting States within the scope application of the New York Convention. Hence, their practical utility is limited only to States bound by said Conventions but not by the New York Convention. Greece has also ratified the 1965 ICSID Convention on the Settlement of Investment Disputes between States and Nationals of Other States ("ICSID Convention") by virtue of Mandatory Law 608/1968 (entry into force on May 21, 1969). Moreover, Greece is a party to several arbitration - related bilateral

conventions, pertaining mainly 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 New York Convention, article 7 (I) applies. Hence, bilateral conventions preceding the New York Convention (its entry into force) are not affected, whereas bilateral conventions concluded afterwards may apply on the basis of the more-favorable-right provision of said article.

#### **4. Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?**

As noted above, Law 2735/1999 incorporated into the Greek legal system the UNCITRAL Model Law, only with minor deviations. Amongst others: (a) Under article 16 para. 3 L. 2735/1999 in case the arbitral tribunal decides on its own jurisdiction by virtue of a preliminary ruling, the parties are not allowed to bring a separate challenge against it before State Courts. It is deemed an integral part of the final award on the merits and may only be challenged as such only once the award is rendered (by virtue of a request for setting it aside). (b) Article 15 L. 2735/1999 provides that in case a replacement arbitrator is appointed, absent an agreement by the parties, the arbitral tribunal may by virtue of a unanimous decision decide that arbitral proceedings will resume from the point of interruption. (c) Article 17 para. 2 L. 2735/1999 provides that the interim or conservative measures granted by the arbitral tribunal shall be imposed - enforced by a decision of the competent One - Member Court of First Instance following petition of the interested party. Para. 3 of the same article provides that said enforcement decision may be revoked or amended by a decision issued by the same State Court. (d) Article 33 L. 2735/1999 does not provide for an additional award as to claims made before the arbitral tribunal but not decided. (e) Article 7 L. 2735/1999 introduces certain provisions unknown to Model Law pertaining to the formal validity of the arbitration agreements. A short reference to them is made further below under Question 8. Further to the above, it has been argued in legal literature that certain differentiations in the (Greek) language of individual provisions of L. 2735/1999 may reflect also differentiations on the merits. We find this approach far-fetched. Absent a clear indication to the contrary based on the drafting history, mere translation questions shall not be elevated to legal ones.

#### **5. Are there any impending plans to reform the arbitration laws in your country?**

Major legislative reforms are currently under way as regards both L. 2735/1999 as well as the Seventh Book of the Greek Code of Civil Procedure (GrCCP).

The dual system will be retained. The provisions of the GrCCP controlling domestic arbitration will be modernized. The new provisions of L. 2735/1999 will incorporate the 2006 amendments to the UNCITRAL Model Law. They will also change the law on major issues, such as arbitrability, grounds for setting aside the award etc in ways not provided for under the UNCITRAL Model Law. For example, the existing draft provides that all disputes are arbitrable as a matter of principle. Non arbitrability becomes thus the rare exception which may be introduced by a specific prohibition in the law regarding certain types of disputes.

#### **6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?**

In principal such institutions in Greece are: (a) The Athens Chamber of Commerce and Industry, (b) The Hellenic Chamber of Shipping, (c) The Piraeus Association for Maritime Arbitration, (d) The Regulatory Authority for Energy. Reference is to be made also to the Technical Chamber of Greece. However, pursuant to well-established case law the scope of its authority is limited only to *stricto sensu* technical disputes. Furthermore, institutional arbitrations are administered by the Athens Bar Association and Thessaloniki Bar Association. Said institutional arbitrations are provided for under article 902 GrCCP. This rule entails a delegation of legislative authority which allows for Presidential Decrees which establish the so - called permanent Arbitration Institutions within the Chambers and delineate their Rules. However, said delegation is fairly limited. Article 902 GrCCP provides that articles 867 - 900 GrCC still apply and stipulates only certain matters which may be regulated differently by virtue of said P.Ds. In light of this arrangement, the respective Arbitral Institutions and their Rules are not to be seen as autonomous, in the sense that Chambers are not entirely free to tailor institutional arbitration proceedings the way they see fit in order to meet the evolving needs of their members and to adjust to the ever-changing business environment. The Presidential Decrees controlling said institutional arbitrations are (a) P.D. 31/1979 as regards Athens Chamber of Commerce and Industry, (b) P.D. 447/1969 as regards the Hellenic Chamber of Shipping, and, (c) P.D. 723/1979 as regards the Technical Chamber

of Greece. The institutional arbitration before the Regulatory Authority for Energy is controlled by article 37 of L. 4001/2011. Again, this rule provides for the application of articles 867 – 900 GrCC and/or of the provisions of L. 2735/1999 (depending on the domestic or international nature of arbitration) and introduces specific rules only as to certain matters. Subsequently to the enactment of said law, the Regulatory Authority issued also (by virtue of Decision No. 261/30-3- 2012) a Regulation controlling the arbitration proceedings in the context prescribed by article 37 L. 4001/2011, referring to the application of the provisions of the GrCCP and/or L. 2735/1999. Hence, the comment made above as to the nonexistent self-sufficiency of institutional arbitration rules applies also here. The Piraeus Association for Maritime Arbitration (PAMA) on the contrary, being a private non-profit legal entity established in 2005 in order to promote the resolution of maritime disputes by arbitration in Piraeus has put in place an autonomous set of rules which is described by its drafters as being “in accordance with international standards and the UNCITRAL Model Law for International Commercial Arbitration as adopted by Greece”. With the exception of the institutional arbitrations administered by the Athens Bar Association and Thessaloniki Bar Association, no amendments to other institutional arbitration rules are currently considered.

### **7. Is there a specialist arbitration court in your country?**

No, there is not.

Obviously, this question is to be distinguished from whether a court may act as an “arbitrator” if the parties agree so. GrCCP affords parties the right to agree that an arbitration may be carried out by a state court (for example the Courts of First Instance in Athens) acting as an arbitrator and certain rules apply to this arrangement which remains within the context of arbitration. The parties rarely make use of this option.

### **8. What are the validity requirements for an arbitration agreement under the laws of your country?**

As regards international commercial arbitral proceedings having their seat in Greece, articles 7 para. 3 and 5 L. 2735/1999 incorporate verbatim the provisions of article 7 para. 2 of the Model Law. Hence, both the written form requirement as well as the exchange of letters requirement are preserved. The latter casts doubt on the validity of the conclusion of an arbitration agreement by means of an oral or tacit acceptance of a respective offer

made in writing. At the same time though, article 7 L. 2735/1999 introduces three provisions unknown to the Model Law seeking to ease the written form requirement or the consequences of its absence: (a) In para. 4 it is provided that the form requirement shall be deemed to have been fulfilled in case an arbitration agreement concluded orally is recorded in a document transmitted from one party to the other party or by a third party to both parties, assuming that no objection was made in good time, and that the contents of such documents may be deemed to consist part of the contract with common usage. This provision is similar to Section 1031 (2) of the German Code of Civil Procedure, (b) In para. 6 it is provided that the issuance of a bill of lading making explicit reference to an arbitration clause in a charter party constitutes a valid arbitration agreement. This provision is similar to the former Section 1031 (4) of the German Code of Civil Procedure, (c) In para. 7 it is provided that the lack of written requirement is remedied in case the parties participate in the arbitration proceedings without raising any objection – reservation as to it. This provision is a reproduction of the provision of article 869 para. 1 of the GrCCP controlling domestic arbitration. It is obviously similar to the provision of the Model Law (also incorporated in article 7 para. 3 of Law 2735) that an arbitration is in writing in case it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another.

In relation to domestic arbitration, article 869 para. 1 of the GrCCP adopts also both the written form requirement as well as the exchange of documents requirement. It should be noted that said provision explicitly demands with regard to the exchange of documents (letters, facsimiles etc.) that each of them be signed by the parties. Said provisions of Law 2735/1999 and of Model Law relaxing the written form requirement are unknown to the GrCCP. It is provided though, as mentioned before, in said article, that in case the parties participate in the proceedings without making any reservation or objection the lack of written form requirement is remedied.

### **9. Are arbitration clauses considered separable from the main contract?**

Yes. The separability doctrine is well established both in case law as well as in legal literature. It is also provided for in article 16 para. 1 L. 2735/1999 which incorporates verbatim the respective provision of the Model Law. 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.

That said, case law and legal literature accept that the arbitration agreement is also transferred ipso jure as a procedural collateral in cases of assignment of rights, assumption of debt etc. This position is premised upon certain provisions of the Greek Civil Code and in general is not considered inconsistent to the notion of separability.

**10. Do the courts of your country apply a validation principle under which an arbitration agreement should be considered valid and enforceable if it would be so considered under at least one of the national laws potentially applicable to it?**

The validation principle exists in the draft prepared by the Committee responsible for the reform of L. 2735/1999. It is thus certain that it will soon be incorporated in the law controlling international commercial arbitration in Greece. The respective draft provision 7A provides the following: "1. An arbitration agreement shall be valid if it is valid in accordance with the law (a) to which the parties have subjected it or (b) of the place of arbitration or (c) governing the substantive agreement of the parties".

That said, state courts have not applied a validation principle in order to uphold the validity of an arbitration agreement. The position is that there is only one law applicable to the arbitration agreement to be determined by the courts and that this law conclusively controls the question of validity.

**11. Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?**

The issues of multi-party or multi-contract arbitration are not regulated explicitly in the GrCCP or in L. 2735/1999.

The draft prepared by the Committee responsible for the reform of L. 2735/1999 contains an explicit rule (article 11 A) which, under the caption Multi-party arbitrations provides the following as regards the appointment of arbitrators in multi-party arbitrations: "1. Unless otherwise agreed by the parties, in case the arbitral tribunal is to comprise more than one arbitrator and multiple parties are involved in the arbitration as claimants or respondents, they shall jointly appoint one

arbitrator. If the multiple claimants or respondents fail to make a joint appointment within the time period provided for in the arbitration agreement or, failing such agreement, under article 11(4), the relevant appointment shall be made by the court specified in article 6(1). 2. Where the preceding paragraph applies, the court shall have the power, upon request by a party, to appoint all members of the arbitral tribunal and designate the presiding arbitrator. In that case, the court may, in the light of all circumstances, confirm or revoke any arbitrator appointment. 3. The decision of the court pursuant to this article shall not be subject to appeal".

Regarding consolidation, in the absence of specific provisions, it is accepted that by virtue of a submission agreement i.e. an arbitration agreement concluded ex post as to existing disputes, claims arising under multiple contracts could be submitted to a single arbitral proceeding. The situation is drastically different with regard to arbitration clauses concerning future disputes. This is because such clauses are deemed intrinsically linked to the given legal relationship under which these disputes are anticipated to arise. In domestic arbitration, said nexus is reflected to article 868 GrCCP which provides that legal relationship under which future disputes are anticipated to arise must be clearly stipulated in the arbitration clause as a prerequisite for its validity. But also with regard to international commercial arbitration, the intrinsic nexus between the arbitration clause concerning future disputes and a specific underlying legal relationship is deemed undeniable by case law and legal literature. In light of the above, claims arising under multiple contracts are claims arising under different legal relationships linked to different arbitration clauses. Hence, in the absence of a rule allowing for such a consolidation under Greek law, neither arbitral tribunals nor State Courts may impose it upon the parties. This holds true even if the several arbitration clauses are identical or at least compatible and even if the contracts and/or the disputes at hand are interrelated and/or pose essentially the same factual and legal questions. That being said, party autonomy may allow for such a consolidation of claims arising under different contracts in one single arbitration proceeding. Indeed, provided that the express consent of all parties involved is granted, multiple claims arising under multiple contracts, even signed by different parties, could be tried in a single arbitration. An obvious predicament would be the incompatibility of the various arbitration clauses. However, the agreeing parties may overcome this problem as well by amending the existing arbitration clauses (in all actuality such an arrangement could amount to a new submission agreement). In the context of procedural autonomy, the parties may agree to the application of institutional rules under which the issues at hand are to be decided (see for example the

relevant provisions of ICC Rules 2017). The above hold true also with regard to the consolidation of multiple arbitration proceedings. Assuming that institutional rules providing for the opposite are not applicable, in the absence of specific provisions under Greek law, such a consolidation may not be imposed upon not willing parties. Party autonomy may nevertheless provide for such an arrangement.

### **12. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?**

By virtue of the principle informed by the consent maxim, only signatories are bound by the arbitration agreement. However, an arbitration agreement is binding upon third parties in cases of assignment, assumption of debt, succession, merger or other types of corporate transformations, and subrogated claims. Also in rare cases in which the piercing of the corporate veil is found to be justified a shareholder may be bound by the arbitration agreement concluded by the legal entity. Under similar substantive law grounds, the arbitration agreement may be deemed binding upon non-signatory companies of the same group. These however are to be understood as exceptional cases. Greek case law confirms this assessment. (See also answer to Question 47 below)

### **13. Are any types of dispute considered non-arbitrable? Has there been any evolution in this regard in recent years?**

The arbitrability question is currently controlled by article 867 GrCCP as regards domestic and international commercial arbitration alike. It provides 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 its subject matter. Certain classes of disputes which meet said prerequisite are nevertheless expressly excluded on the basis of other considerations. This holds true for example as regards labor disputes, the exclusion of which is premised upon the perceived necessity to protect the interests of employees. Said doctrine is well-established in legal literature and case law.

However, in the draft prepared by the Committee responsible for the reform of L. 2735/1999 a different approach favoring arbitrability is accepted. Article 1 par. 4 of the draft provides that "Any dispute may be submitted to arbitration unless prohibited by law". It is thus anticipated that arbitrability will become the rule not necessarily pegged to the power of the parties to

dispose of the subject matter of the dispute and non-arbitrability will become the exception to be introduced only by means of an explicit and specific legal prohibition.

### **14. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?**

There are no recent court decision concerning the choice of law applicable to an arbitration agreement where no such law has been determined by the parties. According to the latest published Supreme Court decision on the matter (SC nr. 1219/2014) and the prevailing view in legal doctrine, articles V(I)(a) of the 1958 NY Convention and 34§2 (a) (aa) L. 2735/1999, introduce a general conflict of law rule, under which in the absence of parties' agreement either explicit or implied on the choice of law governing the substantive validity of the arbitration agreement, the latter will be governed by the law of the place that the arbitral award was made or it will be made by virtue of parties' agreement.

### **15. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?**

In domestic arbitration, pursuant to article 890 para. 1 of GrCCP the arbitral tribunal shall apply the substantive provisions of Greek law, unless the arbitration agreement provides otherwise. The parties may agree on the application of foreign law or vest in the arbitral tribunal the authority to decide *ex aequo et bono*. Party autonomy as to the choice of applicable substantive law is nevertheless limited in the sense that according to para. 2 of the same article parties may not evade the application of Greek public order provisions. In international commercial arbitral proceedings having their seat in Greece, article 28 of Law 2735/1999 provides that the arbitral tribunal shall apply the substantive rules of law chosen by the parties. Even a tacit choice of law suffices. The parties are not obliged to designate the substantive law of a particular State. The choice of *lex mercatoria* is also available to them. Under the interpretational rule provided for in para. 1, unless it is otherwise provided, the designation of the law of a particular State is deemed as direct reference to its substantive rules and not to its conflict of law rules. Absent such a designation of applicable substantive rules of law by the parties, the arbitral tribunal shall determine the applicable substantive law on the basis of the conflict of law rules that it deems appropriate to the

dispute at hand. The arbitral tribunal may decide the case *ex aequo et bono* only if the parties have explicitly vested such authority in it. It is also provided that, in any event, the arbitral tribunal shall take into account and decide in accordance with the terms of the contract and with the usages of the trade applicable to the transaction at hand.

**16. Have the courts in your country applied the UNIDROIT or any other transnational principles as the substantive law? If so, in what circumstances have such principles been applied?**

In the context of set aside proceedings Greek Courts respect the choice of the parties to have a-national rules applied to the dispute provided for under article 28 par. 1 of L. 2735/1999 (see the answer to Question 15 above).

Apart from arbitration, in the Greek legal system, state courts may only apply rules of law of a particular state. Transnational principles of substantive law are not deemed nor treated as positive law controlling the dispute and are therefore not applied as such by state courts. Regularly however, Greek courts make reference to such principles in order to justify their interpretation of specific provisions of state laws which are informed by them. In addition, incorporation by reference in a contract of transnational rules, such as UNIDROIT Principles or perhaps CISG in cases where the Convention as such is not applicable, are not deemed as a choice of law by the parties, but amount to incorporation by reference of such rules into the contract, which entails that they are binding to the extent that they are not in contradiction with mandatory rules of the applicable law.

**17. In your country, are there any restrictions in the appointment of arbitrators?**

In domestic arbitration pursuant, to article 871 para. 2 GrCCP, as arbitrators may not be appointed (a) persons that have no legal capacity or have limited legal capacity, (b) persons deprived of their citizen right to vote and to be elected due to a prior criminal conviction, (c) legal entities. In addition, article 871A GrCCP provides for certain conditions and limitations regarding the appointment of acting judges as arbitrators. Further to said explicit restrictions it is unanimously accepted in case law and legal literature under the principle *nemo iudex in causa sua* and the maxim of fair trial that a person may not be validly appointed as arbitrator in a

dispute involving his own interests. There is no restriction as to the nationality of the arbitrator. In international commercial arbitral proceedings having their seat in Greece, article 11 para. 1 L. 2735/1999 applies incorporating verbatim the provisions of the Model Law. It provides in particular, that, unless otherwise agreed, no person shall be precluded by reason of his nationality from acting as an arbitrator. Furthermore, same article provides that in case the appointment of an arbitrator takes place by Court intervention, the Court shall duly consider any qualifications provided for under the agreement of the parties as well as matters pertaining to the independence and impartiality of the arbitrator. It is also provided that the Court shall examine whether it would be prudent to appoint an arbitrator of a nationality different than those of the parties.

**18. Are there any default requirements as to the selection of a tribunal?**

In domestic arbitration, the procedure applicable to the selection of the tribunal is designated by the parties either in the arbitration clause or by a subsequent agreement. Absent such agreement, the provisions of articles 872 et seq. GrCCP provide for default rules aiming to facilitate the constitution of the arbitral tribunal. Pursuant to these rules each party shall appoint one arbitrator and then the co-arbitrators thus appointed shall appoint the chairman of the arbitral tribunal. The law sets specific timeframes for each of the above appointments. In case a co-arbitrator and/or the chairman of the arbitral tribunal is not timely appointed the law provides for court intervention in order to facilitate the constitution of the arbitral tribunal. In international commercial arbitral proceedings having their seat in Greece, articles 10 and 11 L. 2735/1999 apply absent an agreement by the parties controlling the selection of the arbitral tribunal. Said provisions incorporate verbatim the provisions of Model Law. Hence, in case the parties have not determined the number of arbitrators, the arbitrators pursuant to article 10 shall be three and are appointed pursuant to the procedure set forth in article 11 para. 4.

**19. Can the local courts intervene in the selection of arbitrators? If so, how?**

Both in domestic, as well as in international commercial arbitral proceedings having their seat in Greece, court intervention is provided upon request of a party to the arbitration agreement in all cases in which either the parties' agreed procedure as regards the selection of the tribunal or the default rules applicable absent such

agreement may not be implemented for various reasons. The Court competent to try the respective motion is the One Member Court of First Instance having its seat in the district where the arbitration proceedings shall take place according to the arbitration agreement, otherwise the One Member Court of First Instance of the domicile of the requesting party, or of the place of its residence, or absent a place of residence the One Member Court of First Instance in Athens. The Court tries the motion under the rules set forth in articles 739 et seq. GrCCP controlling the so called "non-contentious proceedings". Against the decision of the Court no legal remedy may be taken (appeal, petition for cassation etc.). A request for revocation and/or amendment may be filed nevertheless until the commencement of arbitral proceedings.

## **20. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?**

In international commercial arbitral proceedings having their seat in Greece, articles 12, 13 and 14 L. 2735/1999 provide for the challenge of an arbitrator incorporating verbatim the respective provisions of the Model Law. The Court competent to adjudicate the challenge is the one mentioned under Question 19 above. Although the parties may agree on a specific challenge procedure, they may not exclude the exercise of judicial control over the decision of the tribunal dismissing a challenge request which is provided under article 13 para. 3.

In domestic arbitration the parties may jointly revoke the appointment of an arbitrator (article 883 para. 1 of the GrCCP). In case such an appointment has taken place by virtue of a Court decision, a request for its revocation must be filed and be accepted by the same Court. Challenges against arbitrators are tried by state Courts. The law incorporates by reference the grounds for challenge applicable to state court judges which are thus made applicable also to arbitrators. These grounds include lack of impartiality. Case law however interprets said provisions broadly in the context of arbitration accepting that a valid ground for challenging an arbitrators exists, for example, in some types of issue-conflict, even though such a ground would never be accepted as regards state court judges. Hence, the application of the same rules to state court judges and arbitrators alike, nevertheless yields different results.

Pursuant to article 883 para. 2 in fin GrCCP, pending such challenge the arbitral tribunal postpones the proceedings. The arbitrator challenged shall also temporarily refrain from exercising his duties. However,

according to the prevailing view in legal literature, said prohibitions are in fact *leges imperfectae* in the sense that the award may be set aside only in case it was made by an arbitrator who had already been successfully challenged.

## **21. Have there been any recent developments concerning the duty of independence and impartiality of the arbitrators**

A recent development as regards impartiality standards is a growing body of case law according to which the Greek State may not appoint as arbitrators Members of the Legal Council of the State i.e. of the Body of the Administration the members of which are vested with the power, amongst others, to represent the State before the Courts.

## **22. Have there been any recent decisions in your concerning arbitrators' duties of disclosure, e.g., similar to the UK Supreme Court Judgment in *Halliburton v Chubb*?**

There is no recent decisions on the matter of arbitrators' duties of disclosure.

## **23. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?**

In domestic arbitration, absent an agreement to the contrary, the arbitration agreement is deemed terminated in case the appointment of a substitute arbitrator is for any reason not feasible (article 885 GrCCP). The rule applies only to arbitrators jointly appointed by the parties either in the arbitration clause or subsequently. This is because the law presupposes that an arbitrator appointed by one of the parties or by a third party may always be substituted in the same way. Said rule undeniably encompasses a strong presumption against a truncated tribunal's authority to continue with the proceedings: A truncated tribunal is deemed incapacitated. The situation must be remedied by the appointment of a substitute arbitrator. In case this is not feasible the arbitration agreement ceases to exist. In international commercial arbitral proceedings having their seat in Greece article 15 L. 2735/1999 applies. As noted above however (see answer under Question 4) said provision incorporates a rule unknown to the Model Law, according to which, once the replacement arbitrator is appointed, absent an agreement by the parties, the arbitral tribunal may by virtue of a

unanimous decision decide that arbitral proceedings will resume from the point of “interruption”. The very notion of “interruption” of proceedings suggests that a truncated tribunal may not proceed. This is the only plausible interpretation of the Greek law, even though article 15 of the Model Law does not explicitly foreclose such authority.

#### **24. Are arbitrators immune from liability?**

Arbitrators are not immune from liability. Nevertheless, pursuant to article 881 GrCCP the arbitrators may be held liable only for gross negligence or intentional breach of their duties. Same rule applies to judges regarding the violation of their duties. In case the conduct of the arbitrator constitutes a criminal act, such as bribery for example, apart from the fact that he may be subject to prosecution, the aggrieved party may bring a tort claim against him under article 914 of the Greek Civil Code. Specific procedural requirements apply. Claims against arbitrators shall take the form of a special remedy provided for under article 73 para. 5 of the Introductory Law to the GrCCP, the so-called action for judicial misconduct. This remedy must be filed within 6 months from the time the arbitrator’s wrongful act or omission takes place (see however the analysis below). In case the claim against the arbitrator is premised upon an erroneous award, it is argued in legal literature, that, by analogy to what is applicable to State Court judges, the aggrieved party must first exhaust all available remedies against the award. In case the aggrieved party succeeds in his request for setting aside the award, an action for judicial misconduct is precluded for lack of damage. On the contrary, in case the request is dismissed, the aggrieved party must file side action within six months.

#### **25. Is the principle of competence-competence recognized in your country?**

The principle of competence - competence is unanimously accepted in legal literature and case law. It is also the law as regards both domestic as well as international commercial arbitral proceedings. With regard to the former, article 887 para. 2 GrCCP provides that, unless the parties agree otherwise, the arbitrators have jurisdiction to decide on their own jurisdiction. With regard to the latter, article 16 para. 1 L. 2735/1999 provides the same without the reservation of a contrary agreement by the parties.

No negative effect of competence - competence is however recognised.

#### **26. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?**

The idea that a party initiating litigation proceedings before State Courts is in breach of an obligation to arbitrate is somewhat odd to Greek case law. Courts place emphasis on the principle that such a complaint is to be regarded admissible since the existence of a valid arbitration clause is fashioned as a procedural defense to be pleaded by defendant and not as an admissibility requirement. For that reason it is highly unlikely that a claim for damages would succeed even if the breach of the arbitration agreement is apparent. Legal literature however accepts a different position and rightly so. In case however such a claim is adjudicated by the arbitrators following referral Greek courts are not in position to second-guess such an award in the context of set aside proceedings.

#### **27. How are arbitral proceedings commenced in your country? Are there any key provisions under the arbitration laws relating to limitation periods or time bars of which the parties should be aware?**

As regards domestic arbitration, the commencement of arbitral proceedings is not regulated in the GrCCP. The prevailing view is that commencement of arbitral proceedings may be perceived differently depending on the legal issue for which it matters. Hence, for the procedural and substantive legal consequences pegged to the filing of the Request, such as *lis pendens* and interruption of the statute of limitations, the arbitral proceedings are deemed commenced once the Request together with the appointment of claimant’s arbitrator is notified to the respondent. The same holds true as to the question of applicable law in case a change in legislation occurs. On the contrary, for the application of time limits imposed upon the arbitral tribunal as regards the issuance of its award, the first hearing before the tribunal is identified as commencement of arbitration proceedings. In international commercial arbitral proceedings having their seat in Greece, the issue is regulated by article 21 L. 2735/1999 which incorporates verbatim the respective rule of the Model Law: Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent. The most notable exception to the above arrangements, both in domestic as well as international commercial arbitration, is when the parties have agreed to the application of

institutional arbitration rules which provide otherwise, mainly that the arbitration commences once the Request is received by the Secretariat of the arbitral institution. There are no limitation periods or time bars as regards commencement of arbitration proceedings. Substantive law statutes of limitation obviously apply in any event.

**28. In what circumstances is it possible for a state or state entity to invoke state immunity in connection with the commencement of arbitration proceedings?**

A State which agrees to arbitration may not invoke its sovereign immunity in order to challenge and escape the jurisdiction of the arbitral tribunal. Such a defense is deemed waived.

Even more the correct view is that the State or a State entity may not invoke specific rules that control its capacity to agree to arbitration in order to escape its obligation to arbitrate the dispute.

**29. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?**

In domestic arbitration, pursuant to article 887 para. 1 GrCCP, unless otherwise agreed in the arbitration agreement, the case is tried and an award is rendered even if a summoned party defaults or fails in any other way to take part in the proceedings by pleading its assertions and submitting evidence. In international commercial arbitral proceedings having their seat in Greece, the issue is regulated by article 25 L. 2735/1999 which incorporates verbatim the respective rule of the Model Law. Hence, unless otherwise agreed by the parties, arbitral proceedings are terminated in case claimant fails to file his statement of claim in accordance with article 23 para. In case the respondent fails to file his statement of defense according to the same article, the proceedings advance but the tribunal is not allowed to treat this failure per se as an admission of material facts pertaining to claimant's allegations. In case any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it. State courts may not compel the parties to the arbitration agreement to arbitrate. State Courts may only refer the dispute to arbitration in case a respective defense is raised as regards a complaint filed with them.

**30. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?**

L. 2735/1999 on international commercial arbitration is silent on the subject matter of intervention/joiner to pending arbitration proceedings. Pursuant to the prevailing view, third parties, even if they will be bound by the res judicata effect of the award are not permitted to intervene voluntarily in the pending arbitration proceedings, unless they have signed or they are bound under any applicable legal theory by the arbitration agreement. The debate which obviously touches upon constitutional principles of procedural fairness is still ongoing. However, the position that a party has a constitutional right pertaining to access to justice that allows it to intervene in cases in which it will be bound by the res judicata effect of the award, remains in the minority. Same holds true as regards the similar position that all parties that are bound by the res judicata effect of the award shall be deemed parties to the arbitration agreement as well.

Only in case the third party consents and the initial parties agree to it, the third party may intervene in the arbitral proceedings. In fact such a consent granted by all parties involved amounts to a new submission agreement. It is argued that in case such an agreement is entered prior to the constitution of the arbitral tribunal, the latter is bound by it. The matter is not however settled in case law or legal literature. Further on, the issue as to whether such an agreement shall be binding upon the arbitral tribunal in case it has already been constituted, is rather controversial, as it relates to the legal nature of the relationship established between parties and the arbitral tribunal as well as to the limits to parties' autonomy vis a vis the tribunal.

In any case, in the context of procedural autonomy, the parties may agree to the application of institutional rules under which the issues at hand are to be decided (See also Answers to Questions 11, 31 and 47).

In the absence of any statutory provisions in L. 2735/1999, an arbitral tribunal does not have power to allow for an intervention, in case of absence of all parties' consent, unless, in the context of procedural autonomy, parties have agreed on the application of institutional rules under which such power is vested to the arbitral tribunal.

### 31. Can local courts order third parties to participate in arbitration proceedings in your country?

A third party not bound by the arbitration agreement may not be compelled to participate in the arbitration proceedings. Same holds true as regards third parties exceptionally bound by the arbitration agreement which are nevertheless not willing to participate (See also Answer to Question 12 above). They may not be compelled to do so (see also Answers to Questions 11 and 30 above). For that reason, procedural devices provided for under the GrCCP as regards State Court proceedings, such as compulsory joinder of third parties, are not applicable to arbitration. GrCCP provides for specific instances in which a state court decision produces effects (*res judicata*, enforceability) against or in favor of third parties. The same provisions apply also with regard to arbitral awards. (See also Answers to Questions 30 and 47).

### 32. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

In domestic arbitration, arbitral tribunals are prohibited from granting interim or conservative measures of any kind pursuant to article 889 para. 1 GrCCP. Hence the parties to the arbitration agreement must pursue State Court litigation in order to seek interim relief. In international commercial arbitral proceedings having their seat in Greece, article 17 L. 2735/1999 provides that, unless otherwise agreed by the parties, the arbitral tribunal upon request may grant the interim measures that it deems necessary in relation to the subject matter of the dispute. The arbitral tribunal is not obliged to order only the specific interim or conservative measures which are explicitly provided for under the respective provisions of the GrCCP. As already noted (see answer to Question 4) the authority of the arbitral tribunal to grant interim relief is seriously impeded by the fact that the interim or conservative measures granted must be implemented – enforced by virtue of a State Court decision on a second stage upon request. This means that compliance with the measures ordered by the arbitral tribunal at the first stage i.e. prior to State Court intervention is essentially voluntary. That being said, the parties to the arbitral proceedings for obvious reasons tend to comply with the ordered measures. Article 17 must be read in conjunction with article 9 L. 2735/1999 which provides that the arbitration agreement does not prohibit the parties from resorting to State Courts and request interim relief before or during arbitral proceedings. As already noted above (see answer to

Question 1) article 9 is applicable to any and all international commercial arbitral proceedings regardless of the place of arbitration. In light of the above, in international commercial arbitral proceedings both the arbitral tribunals as well as State Courts are vested with the authority to grant interim relief. According to the prevailing view, any conflict between the two jurisdictions shall be resolved in favor of the forum in which the request for interim relief was firstly filed. Said authority of State Courts is obviously of essence, given the absence of emergency arbitrator provisions in Greek law, at the phase while the constitution of the arbitral tribunal is still pending.

### 33. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

Greek Courts are rather hostile towards the notion of anti-suit and/or anti-arbitration injunctions which is of common law origin and strange to civil law jurisdictions, including Greece. No Greek Court would ever grant such an injunction irrespective as to whether it aims at the preservation of a foreign court's or an arbitral tribunal's jurisdiction to adjudicate a certain matter between the same parties.

Even more Greek Courts have resisted on public policy grounds the enforcement of such orders, aiming at restraining their jurisdiction. In particular, it has been held that the enforcement of an anti-suit injunction violates Greek public policy, due to violation of court's jurisdiction to exercise its adjudicative power, which amounts to state's sovereignty infringement as well as to a violation of the constitutional right to access to justice. In this respect, Greek Courts cite also the CJEU decision in the seminal case *West Tankers* according to which although proceedings designed to enforce a right to arbitrate do not fall per se within the scope of the Brussels Regulation (Reg. EU No. 44/2001), if they interfere with a Member State's jurisdiction to resolve a question of disputed jurisdiction under the Brussels Regulation, they are inadmissible.

As per anti-arbitration injunctions, namely an order issued against a party or an arbitral tribunal to preclude the initiation or continuation of arbitration proceedings, there is no legal basis for the issuance thereof by a Greek Court. In any case article 8 § 2 L. 2735/1999 (8§2 UN Model Law) provides that *lis pendens* established by the initiation of proceedings before a State Court between the same parties on the same subject matter, does not preclude the initiation and continuation of arbitration proceedings between the same parties and on the same subject matter as well as the issuance of an

arbitral award.

**34. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?**

Both in domestic as well as in international commercial arbitral proceedings the maxim of the procedural autonomy of the parties allows them to designate at will the evidentiary proceedings to be followed. Absent such a designation, the arbitral tribunal determines the appropriate evidentiary proceedings. In almost all cases, the arbitral tribunal would consult with the parties and seek their consent with regard to evidentiary matters. Both the parties as well as the arbitral tribunals are free to designate a unique evidentiary proceeding tailored to the dispute at hand or to choose from sets of evidentiary rules which are readily available and adopt them as a whole or with certain deviations. The latter is obviously the rule both in domestic as well as in international commercial arbitral proceedings. That being said, in domestic arbitration the parties and the arbitral tribunals tend to opt for the relaxed, yet not sophisticated, evidentiary rules which are applicable to State Court interim relief proceedings under the GrCCP. In international arbitral proceedings the parties and the arbitral tribunals tend to opt for sophisticated sets of rules amongst which the IBA Rules on the Taking of Evidence in International Arbitration hold a prominent position. Both in domestic as well as in international commercial arbitral proceedings having their seat in Greece court intervention is provided for by article 888 GrCCP and article 27 L. 2735/1999 respectively, in order to facilitate and aid the taking of evidence. The competent Court is the Court of Peace in the district of which the procedural acts for the taking of evidence are to be carried out. That being said, it should be noted that the arbitral tribunal maintains full control over the evidentiary proceedings. The intervention of State Courts is reserved only with regard to evidentiary rulings and actions that may not be taken by the arbitral tribunal because they entail the imposition of penalties for not compliance or the use of coercive means to secure the taking of evidence. Such instances constitute the exception rather than the rule.

**35. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting**

**proceedings in your country?**

There are no arbitration-specific rules of conduct pertaining to attorneys acting as counsels and/or as arbitrators in the Greek legal system. The Code of Lawyers (Law 4194/2013) and the Lawyer's Code of Conduct are generally applicable and there may be instances in which their provisions are of interest also with regard to arbitration proceedings.

**36. In your country, are there any rules with respect to the confidentiality of arbitration proceedings?**

No, there are no rules with respect to the confidentiality of arbitration proceedings. The debate whether confidentiality is to be regarded as the default rule or subject to a specific agreement of the parties is still ongoing.

**37. Are there any recent decisions in your country regarding the use of evidence acquired illegally in arbitration proceedings (e.g. 'hacked evidence' obtained through unauthorized access to an electronic system)?**

There is no recent decisions in Greece on the matter of use of evidence illegally acquired in particular in the context of arbitral proceedings.

**38. How are the costs of arbitration proceedings estimated and allocated?**

In domestic arbitral proceedings the final allocation of costs is made in the final award pursuant to article 882 para. 3 GrCCP. In international commercial arbitral proceedings having their seat in Greece the allocation of costs may also be made with a separate award following the issuance of the final award pursuant to article 32 para. 4 L. 2735/1999. In domestic arbitration the fees and expenses of the arbitral tribunal are regulated in articles 882 and 822A GrCCP. They are calculated as a percentage of the amount in controversy given the subject matter of the dispute based on a specific scale. In the event that such a valuation is objectively not feasible the fees shall be determined by the Arbitral Tribunal *ex aequo et bono*. The allocation of costs is governed by the provisions of articles 176 et seq. GrCCP which are applicable also to Court proceedings (application by analogy). The principal rule is that "costs follow the event", meaning that the unsuccessful party is ordered to pay the costs of the successful party (articles

176, 178 GrCCP). That being said, it is not rare for arbitral tribunals to set off the costs between the parties on the premise that the dispute at hand involved the resolution of especially complex legal questions (article 179 GrCCP). In international commercial arbitral proceedings having their seat in Greece the allocation of costs is governed by the agreement of the parties. Absent such an agreement the allocation is made by the arbitral tribunal which, pursuant to article 32 para. 4 L. 2735/1999 shall consider the circumstances of the case, and, most importantly its outcome. Hence the rule that “costs follow the event” in the said sense is also dominant in this context. In any event, said provision allows the arbitral tribunal significant room and latitude to decide on the costs. Obviously, it prevails as *lex specialis* over the provisions of articles 176 et seq. GrCCP which are applied by analogy to domestic arbitration. Both in domestic as well as in international commercial arbitral proceedings arbitration costs include obviously legal fees and expenses. The arbitral tribunal’s allocation of cost is subject to scrutiny by State Courts upon a challenge brought against the award by any interested party.

### **39. Can pre- and post-award interest be included on the principal claim and costs incurred?**

This question is governed by the substantive law applicable to the merits of the dispute. Under Greek substantive law all questions posed are to be answered in the affirmative as regards default interest. Controversy exists as to litigation interest i.e. interest accrued only by virtue of initiation of litigation. 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). In legal literature the opposite view prevails on the assumptions that this is merely a technicality and that arbitration proceedings constitute litigation not to be distinguished by State Court proceedings in relation to litigation interest.

It is to be noted however that Greek substantive and procedural law does not grant state courts and arbitrators by analogy the authority to grant interest *ipso jure*. A specific prayer for relief must exist.

### **40. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a**

### **requirement that the award be reasoned, i.e. substantiated and motivated?**

Awards rendered in domestic or international commercial arbitral proceedings having their seat in Greece produce immediately *res judicata* effect and enforceability (article 896 para. 2 GrCCP, article 35 para. 2 L. 2735/1999). As regards foreign awards, Greece is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. In addition, pursuant to article 36 L. 2735/1999 the provisions of the New York Convention 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 NY Convention).

Case law proclaims that the award must be reasoned i.e. must set forth the facts upon which the tribunal premised its decision under the law applied. This requirement however is not applied vigorously and definitely not in the same manner that a similar ground for cassation existing as regards state courts decision is applied. Only outright arbitrary awards or awards lacking even a minimum of factual findings are at risk to be set aside by State Courts.

### **41. What is the estimated timeframe for the recognition and enforcement of an award? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?**

Awards rendered in domestic or international commercial arbitral proceedings having their seat in Greece produce immediately *res judicata* effect and enforceability (article 896 para. 2 GrCCP, article 35 para. 2 L. 2735/1999).

As regards foreign awards, Greece is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. In addition, pursuant to article 36 L. 2735/1999 the provisions of the New York Convention 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 NY Convention).

A decision by the State Courts declaring a foreign award enforceable is to be anticipated within a timeframe of 4 – 8 months from the time the petition is filed.

There is still controversy as to whether the party wishing to have a foreign award declared enforceable in Greece

is obliged or not to summon the other party to the court proceedings initiated for that purpose. The prevailing view is that the award debtor must be summoned and thus granted the opportunity to raise the defenses provided for under article V 1 of the New York Convention. There is however case law taking the opposite view i.e. the view that the trial proceeds ex parte and that the award debtor may only intervene requesting that the motion is dismissed or bring a third party challenge afterwards in order to quash the decision declaring the award enforceable. It is noted that under this second approach, even if the award debtor is summoned to the trial by notification, he does not become a party to this trial in case he does not additionally file an intervention.

#### **42. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?**

Domestic awards produce res judicata effect and are immediately enforceable. They are not thus subject to review in that sense.

#### **43. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts**

No such specific limitation is explicitly imposed. The question is dealt with in the context of arbitrability. Public order considerations are also obviously applicable.

#### **44. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?**

In domestic arbitration, parties are not allowed to take an appeal against the arbitral award before the State Courts (article 895 para. 1 GrCCP). The arbitration agreement may provide for an appeal to be taken before other arbitrators (article 895 para. 1 GrCCP), however this is obviously something different. According to article 897 GrCCP, an arbitral award rendered in domestic arbitration may be set aside, in whole or in part, only by virtue of a court decision on the following grounds: (1) if the arbitration agreement is null and void; (2) if the award was rendered after the arbitration agreement had ceased to exist; (3) if the arbitrators that rendered the award were appointed in violation of the provisions of the arbitration agreement, or of the law, or if the parties had already revoked them, or if they rendered the award

despite the fact that they had already been successfully challenged; (4) if the arbitrators that rendered the award acted in excess of the powers vested in them by the arbitration agreement or by the law; (5) if the provisions of paragraph 2 of article 886 GrCCP [regarding the principle of equal treatment], or of articles 891 GrCCP [regarding the majority vote] and 892 GrCCP [regarding the form of the award] were violated; (6) if the award is contrary to public policy rules or to morality; (7) if the award is incomprehensible or contains contradictory dicta; (8) if there are grounds for the reopening of proceedings pursuant to article 544 GrCCP [this is an extraordinary legal remedy provided against final State Court decisions premised upon grounds pertaining to vast procedural irregularities as well as fraudulent conduct]. Said request for setting aside the award is adjudicated by the Court of Appeals in the district of which the award was made (article 898 GrCCP). The procedure applicable is that provided for special property disputes pursuant to articles 614 et seq. GrCCP. Against the decision rendered by the Court of Appeals the aggrieved party may file a petition for cassation with the Supreme Court. The request for setting aside the award shall be filed within three months from the date the award was notified to the party. Both this term as well as the filing of the request per se do not prevent the enforcement of the award. Following the filing said competent court may order the stay of the enforcement proceedings, with or without a guarantee, until a final decision is issued, in case it deems that a ground pleaded is likely to succeed. Not only the parties to the arbitration proceedings but also third parties are allowed to challenge the arbitral award assuming that they have legal standing i.e. under the condition that they are bound by its res judicata effect (see Answer to Question 31 above). Furthermore, in domestic arbitration article 901 GrCCP provides for an additional remedy against the arbitral award, namely the action seeking a binding declaration that the award is non-existent on the following grounds: (a) that an arbitration agreement was never concluded, (b) that the subject matter of the dispute resolved by the award was non-arbitrable, and, (c) that the award was rendered against a non-existent respondent. This declaratory action is not subject to any time limitation. Apart from that, what has already been stated as regards the request for setting aside the award applies by analogy to the request for a binding declaration of the non-existence of the award. This is true with regard to the competent court (CoA), the procedure (non ordinary special proceedings), the available legal remedies against the decision (petition for cassation before the Supreme Court) and the fact that the enforcement of the challenged award is not ipso jure stayed. It is noted that the non-existence of the award on said grounds may also be pleaded by means of an affirmative defense. This is due to the fact that the

award.

As regards international commercial arbitral proceedings having their seat in Greece, article 34 L. 2735/1999 incorporates the provisions of Model Law as to the grounds for setting aside the award. The distinction between grounds that must be pleaded by the plaintiff and grounds that are considered *ipso jure* is thus preserved. As it is well known, said grounds are almost identical to those provided under article V of the New York Convention. That being said, in legal literature it is argued that their interpretation may differ given that the legal consequences pegged to the annulment of the award are different compared to the legal consequences pegged to the refusal of its recognition and enforcement in a specific country. The same procedural rules as to the request for setting aside an award rendered in domestic arbitral proceedings apply with regard to the competent court (CoA), the legal standing (parties to the arbitration proceedings and third parties bound by the *res judicata* effect of the award), the procedure (special property disputes), the available legal remedies against the decision (petition for cassation before the Supreme Court), the time limitation for filing the request (three months) and the fact that the enforcement of the challenged award is not *ipso jure* stayed. It is disputed whether third parties which are not bound by the *res judicata* effect of the Award (see Answer to Question 31 above) but are nevertheless adversely affected by it may bring a third-party-challenge against parallel to their right to challenge the award on said specific grounds. The question is posed both in domestic as well as in international commercial arbitral proceedings. A third-party-challenge is a specific remedy provided for under article 583 GrCCP against judicial decisions or extrajudicial acts which adversely affect the interest of third parties which were not heard in the process. Many commentators answer this question in the affirmative. See also Answer to Question 47 below.

The draft prepared by the Committee responsible for the reform of L. 2735/1999 expands the grounds for challenging an award. The respective article 34 (2) provides the following: "2. An arbitral award may be set aside by the court specified in article 6(2) only if: a) the party making the application pleads and furnishes proof that: aa) a party to the arbitration agreement referred to in article 7 lacked the capacity to conclude the agreement pursuant to the law applicable to the party's capacity, or the arbitration agreement is not valid pursuant to article 7A(1) or, notwithstanding the existence of a valid arbitration agreement, the arbitral tribunal declined jurisdiction; or bb) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or was otherwise unable to present its case

through no fault of its own; or cc) the award deals with a dispute not contemplated by or not falling within the terms of the arbitration agreement, or contains decisions on claims not submitted to arbitration. If, however, the dispositions that fall within the arbitration agreement can be separated from those that do not, only the part of the award which relates to dispositions that do not fall within the arbitration agreement may be set aside;ot;335559740":360}">

1. dd) the composition of the arbitral tribunal or the arbitral proceedings were not in accordance with the agreement of the parties, or, failing such agreement, the composition of the tribunal or the arbitral procedure was not in accordance with this Law; ee) a ground for revision is extant under article 544 paragraphs (6) or (10) of the Code of Civil Procedure. b) The court finds, of its own motion or otherwise, that: aa) the subject-matter of the dispute is not capable of settlement by arbitration under Greek law; or bb) the award is in conflict with international public policy within the meaning of article 33 of the Civil Code, irrespective of whether Greek or foreign law was applied in the case at hand".

#### **45. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?**

Pursuant to article 900 GrCCP the parties may not *ex ante* waive their right to challenge the award. An *ex post* waiver is always deemed valid. Nevertheless, an *ex ante* waiver may be deemed valid in case the respective agreement entailing the arbitration clause is ratified by law which then prevails over article 900 GrCCP as *lex specialis*. This is common in contracts entered into by the Greek State. Same principles apply, according to case law and the prevailing view in legal literature, to international commercial arbitral proceedings having their seat in Greece.

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

As noted above (see Answer to Question 28) a State which agrees to arbitration may not invoke its sovereign immunity in order to challenge and escape the jurisdiction of the arbitral tribunal. Such a defense is

deemed waived. The issue however whether this waiver of immunity from jurisdiction is extended in order to encompass also a waiver of immunity from enforcement is disputed. There are commentators who answer this question in the affirmative on the basis that the conclusion of an arbitration agreement aims also to secure that its outcome i.e. the award will be of use to the parties. Other commentators argue, on the contrary, that the two notions are to be clearly distinguished and that a State still enjoys immunity from enforcement regardless of the fact that it entered into an arbitration agreement which resulted in the award which is sought to be enforced against it. In any event, the practical consequences of the controversy are somewhat limited, in light of the fact that State assets which serve a commercial or economic, in the broader sense, activity regulated by private law are not protected.

#### **47. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?**

Awards rendered in domestic or international commercial arbitral proceedings having their seat in Greece produce immediately res judicata effect and enforceability (article 896 para. 2 GrCCP, article 35 para. 2 L. 2735/1999). GrCCP provides for specific instances in which a state court decision produces effects (res judicata, enforceability) against or in favor of third parties. The same provisions apply also with regard to arbitral awards.

As regards foreign arbitral awards on the basis of the prevailing "theory of extension" the res judicata effect of the award is controlled by the law of the place where the award was made. This effect is "extended" as it stands to Greece as the place of enforcement.

As regards the second question, the following clarification must be made: The petition for recognition and enforcement of foreign awards is tried under the rules set forth in articles 739 et seq. GrCCP controlling the so called "non-contentious proceedings" which do not follow closely the adversarial model which presupposes the existence of a plaintiff and of a defendant in any event. A request in "non-contentious proceedings" in general does not need to be addressed against an opposing party. For that reason, the applicable rules do not provide a definite answer on whether the award debtor shall be named defendant and/or summoned to the proceedings. The existing case law is contradictory whereas in legal literature the prevailing view is that the award debtor shall be summoned to the proceedings under the NY Convention

in order to be able to raise the defenses there provided as means of resisting the recognition and enforcement of the award. In the context of this controversy, those who purport the view that the award debtor shall not be named defendant nor summoned to the proceedings necessarily treat him as "third party" in order to allow him to bring afterwards a third-party-challenge under article 583 GrCCP against the decision rendered. The same holds true as regards not summoned third parties which are bound by the res judicata effect of the award. As regards third parties to the arbitration proceedings per se, which are not bound by the res judicata effect of the award but are nevertheless otherwise adversely affected by it, the question whether they are allowed to bring a third-party-challenge under article 583 GrCCP is disputed. As noted above a similar issue is posed with regard to the award itself, i.e. it is disputed whether said third parties are allowed to bring a third-party-challenge against the award per se (reference is made obviously to awards made in Greece either in domestic or international commercial arbitral proceedings). However, the question in the context discussed here is somewhat different in the sense that the third-party-challenge is not brought against a foreign award (such a challenge would not be governed by Greek law and would not be tried by Greek courts) but against the decision recognizing and declaring it enforceable. Hence, it seems that such a remedy under article 583 GrCCP which generally allows third party challenges against court decisions may not be precluded as a matter of principle, assuming always that legal standing exists.

#### **48. Have there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?**

No. The concept of third-party funding is unknown to Greek law. This does not mean however that this arrangement would be considered prohibited. On the contrary, the combination of traditional instruments of contract and procedural law could result in a functional equivalent.

#### **49. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?**

No, it is not. State Court intervention remains the only available solution for interim relief prior to the constitution of the arbitral tribunal. Experienced lawyers are nevertheless aware of the problem and for that reason strongly advise in favor of arbitration clauses providing for the application of institutional arbitration

rules, such as the ICC Rules, which afford parties this option. However the decisions made by emergency arbitrators are not readily enforceable in Greece.

**50. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?**

No there aren't.

**51. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?**

No. It is not even identified as an issue.

**52. Have there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?**

No. Both questions are disputed in legal literature. The prevailing view is that a foreign award already annulled in the country where it was made shall not be recognized in Greece and that recognition or non-recognition elsewhere of an award made in Greece is, as a matter of principle, indifferent to the outcome of the request for setting aside the award filed with the Greek courts.

**53. Have there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?**

No. Corruption is seldom pleaded before the Greek Courts. In case this is done courts apply usual standard for proving of corruption. The party that invokes corruption in order to base its prayers for relief upon this allegation has the burden to prove its existence.

**54. Have there been any recent court decisions in your country considering the judgment of the Court of Justice of the**

**European Union in Slovak Republic v Achmea BV (Case C-284/16) with respect to intra-European Union bilateral investment treaties or the Energy Charter Treaty? Are there any pending decisions?**

No.

**55. Have there been any recent decisions in your country considering the General Court of the European Union's decision Micula & Ors (Joined Cases T-624/15, T-694/15 and T-694.15), ECLI:EU:T:2019:423, dated 18 June 2019? Are there any pending decisions?**

No.

**56. What measures, if any, have arbitral institutions in your country taken in response to the COVID-19 pandemic?**

Arbitral institutions in Greece have not implemented particular reforms towards greater use of technology. However, most sets of arbitration rules do not encompass provisions, which would restrict parties from agreeing on the adoption of greater use of technology, including virtual hearings.

**57. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?**

There is no consensus in legal doctrine and jurisprudence with regard to the impact of insolvency on the enforceability of an arbitration agreement. It is argued that, the declaration of a party to bankruptcy, upon the conclusion of an arbitration agreement, does not affect the enforceability thereof and the trustee in bankruptcy may initiate arbitral proceedings for the resolution of a certain dispute pertinent to the bankrupt assets. Supreme Court in 2009, held that mandatory rules controlling the results of bankruptcy, i.e. the suspension of proceedings against debtor for the satisfaction of claims pertinent to the bankrupt assets, do not form part of the international public policy, therefore alleged violation of such rules does not constitute valid ground for setting aside a domestic

arbitral award on public policy grounds, pursuant to article 897§6 GrCCP.

**58. In your country, does the insolvency of a party affect the enforceability of an arbitration agreement?**

There is no consensus in legal doctrine and jurisprudence with regard to the impact of insolvency on the enforceability of an arbitration agreement. It is argued that, the declaration of a party to bankruptcy, upon the conclusion of an arbitration agreement, does not affect the enforceability thereof and the trustee in bankruptcy may initiate arbitral proceedings for the resolution of a certain dispute pertinent to the bankrupt assets. Supreme Court in 2009, held that mandatory rules controlling the results of bankruptcy, i.e. the suspension of proceedings against debtor for the satisfaction of claims pertinent to the bankrupt assets, do not form part of the international public policy, therefore alleged violation of such rules does not constitute valid ground for setting aside a domestic arbitral award on public policy grounds, pursuant to article 897§6 GrCCP.

**59. Is your country a Contracting Party to the Energy Charter Treaty? If so, has it expressed any specific views as to the current negotiations on the modernization of the Treaty?**

Greece is a contracting party to Energy Charter Treaty. Greece, being an EU Member State, is represented by the EU's proposal for the modernization of the Treaty. According to EU's proposal, the main aims may be summarized as follows: a) to bring Treaty's provisions on investment protection in line with those agreements concluded by the EU and its Member States, b) to safeguard that Treaty better reflects climate change and clean energy transition goals and facilitate a transition to a low-carbon, ore digital and consumer-centric energy system, therefore contributing to the objectives of the Paris Agreement and decarbonation ambition, c) reform the Treaty's investor-to-state dispute settlement mechanism in line with the EU's work in the ongoing multilateral reform process in the United Nations Commission on International Trade Law (UNCITRAL).

**60. Have there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?**

There are no recent developments in Greece with regard to disputes on climate change or human rights.

**61. Has your country expressed any specific views concerning the work of the UNCITRAL Working Group III on the future of ISDS?**

Greece has not expressed any specific views concerning the UNCITRAL Working Group III on the future of ISDS.

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