The Dispute Resolution Review

Seventh Edition

Editor
Jonathan Cotton

Law Business Research

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THE LAW REVIEWS

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THE RESTRUCTURING REVIEW

THE PRIVATE COMPETITION ENFORCEMENT REVIEW

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EDITOR'S PREFACE

The Dispute Resolution Review covers 48 countries and territories. Disputes have never respected national boundaries and the continued globalisation of business in the 21st century means that it is more important than ever before that clients and lawyers look beyond the horizon of their home jurisdiction.

The Dispute Resolution Review is an excellent resource, written by leading practitioners across the globe. It provides an easily accessible guide to the key aspects of each jurisdiction's dispute resolution rules and practice, and developments over the past 12 months. It is written with both in-house and private legal practitioners in mind, as well as the large number of other professionals and businesspeople whose working lives bring them into contact with disputes in jurisdictions around the world.

This Review is testament to the fact that jurisdictions face common problems. Whether the issue is how to control the costs of litigation, which documents litigants are entitled to demand from their opponents, or whether a court should enforce a judgment from another jurisdiction, it is fascinating to see the different ways in which different jurisdictions have grappled with these issues and, in some cases, worked together to produce a harmonised solution to international challenges. We can all learn something from the approaches taken by the 48 jurisdictions set out in this book.

A feature of some of the prefaces to previous editions has been the impact that the turbulent economic times were having in the world of dispute resolution. Although at the time of writing the worst of the global recession that gripped many of the world's economies has largely passed, it is has left its mark. Old and new challenges and risks remain in many parts of the world such as renewed speculation on the future of the eurozone, the sanctions imposed on Russia, and falls in the price of oil. In some regions, the 'green shoots' of recovery have blossomed while in others they continue to need careful nurturing. Both situations bring their different challenges for those involved in disputes and, while the boom in insolvency-related disputes and frauds unearthed in the recession remain, the coming year could see an increase in investment and acquisitions with a subsequent focus on disputes concerning the contracts governing those investments.

I would like to express my gratitude to all of the contributors from all of the jurisdictions represented in *The Dispute Resolution Review*. Their biographies start at p. 739 and highlight the wealth of experience and learning from which we are fortunate enough to benefit. I would also like to thank the whole team at Law Business Research, in particular Nick Barette, Eve Ryle-Hodges and Shani Bans, who have impressed once again in managing a project of this size and scope, and in adding a professional look and finish to the contributions.

Jonathan Cotton
Slaughter and May
London
February 2015

Chapter 20

GREECE

John Kyriakides and Harry Karampelis[1]

I INTRODUCTION TO DISPUTE RESOLUTION FRAMEWORK

Greece is a civil law country and thus jurisprudence is not considered as a source of law. The current Greek legal system is based on the Roman and German legal systems and as such it relies upon enacted legislation and codes. The Greek Constitution is the supreme law of the state, although Article 28 of the Greek Constitution provides that international conventions ratified by Greece, as well as EU legislation, shall prevail over any other provision of law.

Courts in Greece are divided into administrative, civil and criminal courts. Disputes of an administrative nature are under the jurisdiction of the Council of State and the regular administrative courts (courts of first instance and courts of appeal). Disputes of a civil nature and voluntary jurisdiction are under the jurisdiction of the civil courts. The punishment of criminal law violations falls under the jurisdiction of the criminal courts. The Court of Cassation is the supreme court for all types of civil and criminal law disputes. It examines only legal and not factual issues and it is the highest degree of judicial resort. The checking of public spending, the control of contracts of a significant economic value where the Greek state is one of the contractors, the checking of the finances of public persons, the submission of a report to the parliament for the statement of accounts and balance sheets of the state fall under the jurisdiction of the Court of Auditors. The adjudication of objections to the validity of national parliamentary elections and referendums, and the resolution of conflicting jurisprudence between courts and administrative commissions or between the Council of State and the

1 John Kyriakides is partner and Harry Karampelis is an associate at Kyriakides Georgopoulos Law Firm. The authors wish to acknowledge the valuable contribution of their colleague Katerina Skouteli.

regular administrative courts, or the civil and criminal courts, or between the Court of Auditors and other courts fall under the jurisdiction of the Special Highest Court.

Furthermore, Greek law provides for several alternative dispute resolution processes:

a Conciliation: according to Article 214A of the Greek Code of Civil Procedure (GCCP), litigants may attempt to reconcile through negotiation, after the occurrence of *lis pendens* and until a final decision is reached, regardless of the standing stage of the trial and by acting outwith its proceedings with or without the engagement of a third person.

b Judicial or court settlement: according to Article 214B of the GCCP disputes of the nature of private law that are qualified for settlement by means of a compromise and that are heard with all or both parties present can be resolved through a judicial or court settlement.

c Amicable dispute resolution prior to litigation: according to Articles 209 seq. of the GCCP interested parties may, prior to bringing an action before the rule of court, submit an application before a magistrate judge of the competent court with local jurisdiction, requesting their conciliatory intervention, not only in cases that are of their *ratione materiae* competency, but also in cases that are of the *ratione materiae* competency of higher courts.

d Mediation: mediation in Greece is regulated by Law 3898/2010 under the title 'Mediation in Civil and Commercial Matters', published in the Official Gazette of the Hellenic Republic, Volume A, No. 211 on 16 December 2010.

e Arbitration: according to Article 867 of the GCCP, arbitration is also recognised as a way of resolving disputes between private parties in commercial transactions.

II THE YEAR IN REVIEW

In mid-November 2014, the Ministry of Justice filed with Parliament a draft law amending considerably the civil procedural rules. The draft law is expected to be the subject of discussion and voting at one of Parliament's sessions in early 2015. According to this draft the new procedural system will apply to civil claims filled after 1 March 2015.

Some of the major amendments that the new rules will introduce, and to which Greece's lawyers object, include the abolition of the courts' obligation to examine witnesses orally at hearings. Consequently, proceedings before the courts of first instance will take place in writing as a general rule. Oral witness testimonies, which in practice are today the predominant source of evidence (along with documents), would be substituted by affidavits, which under the current system are common but of lesser significance.

Furthermore, major amendments affect the enforcement of the judgment. More particularly, under the new regime, if adopted in its current form, oppositions against the enforcement can be filed only at two specific stages and the proceedings thereon become more concise and flexible (allegedly in favour of the creditors).

Another important amendment that the bill intends to introduce concerns labour law cases and, in particular, the legal possibilities of employees, acting as creditors to recover their claims against their former employers in insolvency proceedings. Under the current legal status, employees (along with social security funds, etc.) take priority over

all other classes of creditors. According to the bill in question, this preferred creditor status currently enjoyed by employees will be largely repealed.

At the time of writing this chapter, the draft bill has met with almost unanimous disapproval from both the country's Bar Associations (93 per cent of Greek lawyers in a referendum voted against it) and the judges' unions. Consequently, the information below is based on the provisions of the GCCP in force at the time of writing.

III COURT PROCEDURE

i Overview of court procedure

The procedure before the Greek civil courts is regulated by the GCCP. If a person has a claim against another, he or she is entitled to seek recourse in the courts by filing a lawsuit (or civil claim) before the competent court. Depending on the value of the dispute, the following courts are competent: (1) a magistrate's court (claims up to €20,000), (2) a single-member court (claims between €20,001 and €250,000), and (3) a multi-member court (claims exceeding €250,000). Following the filing of the lawsuit, the court sets a hearing date. The plaintiff is obliged to serve a copy of the lawsuit to the defendant, through a court bailiff for the lawsuit to be considered as duly filed. Thereafter, at a given date (depending on the proceedings) the litigant parties are compelled to file pleadings (also called briefs) and addenda a few days later in support of their own allegations.

The GCCP provides for three different types of procedure:

a an ordinary procedure, applying to most civil and commercial matters;
b 'voluntary' proceedings, such as petitions for probate, adoption; and
c special procedures, which include interim measures, labour and lease disputes and payment order proceedings.

According to Article 118 of the GCCP, the claim must contain reference to (1) the court or judge before which the writ shall be heard; (2) the type of the writ (lawsuit, petition, appeal, recourse, etc.); (3) the full names (or trade names) of all the litigant parties and their addresses; (4) the scope of the writ in a clear, unambiguous and concise manner; and (5) the date and signature of the plaintiff or of his or her representative attorney when representation by a lawyer is compulsory.

No evidence and no exhibit documentation are filed along with the claim. Through their briefs the parties are expected to prove their allegations, develop their position and refer to the documentation and affidavits that they adduce to the court and that form part of the exhibits of the case. The plaintiff has the burden of proving his or her own allegations and must convince the court with argumentation and exhibits that the relief sought must be adjudicated. The means of evidence under the GCCP include, among others, affidavits, documentary evidence, witness testimonies, expert opinions and confession; the first three being the ones most commonly used. Most means of evidence are freely evaluated by the courts; others, such as confession before the court or public documents, provide full proof of their content.

ii Procedures and time frames

The defendant has to be summoned by the plaintiff 60 days prior to the hearing, or 90 days if the defendant resides abroad or his or her residence is unknown.

The general time frame required for a case from initiation to service of judgment (at the first instance court level only) usually exceeds two years and, in some exceptional cases, may even take more than four years. Of course there are proceedings, such as labour law disputes, which usually are completed in a shorter period.

The issuance of the judgment is usually expected to occur within four to eight months after the hearing. Article 307 of the GCCP provides that a judge must render a decision at the latest within eight months from the hearing.

Upon issuance of the judgment, the defeated party has the right to file an appeal. An appeal can only be filed once and within a deadline of 30 days (or 60 days if the appellant is resident abroad or is of unknown residence), starting from service of the judgment to the defeated party. If none of the parties serves the judgment to its adversary, the deadline for filing an appeal is three years starting from the publication of the judgment. Failing to file an appeal within these deadlines renders the judgment final and irrevocable.

The defeated party has the right to file a cassation appeal against the judgment of the appeal court before the Supreme Court of Greece. The deadline for filing a cassation appeal is 30 days from service to the adversary of the judgment under review (or 90 days in the case of litigants residing abroad or of unknown residence). As with appeals, if the judgment under review is not served by either of the parties, the deadline to file a cassation appeal is three years, starting from the publication of the judgment.

Urgent or interim applications available

The GCCP also contains a Chapter (5th Book) on 'safety measures' (i.e., injunctions). In disputes involving an element of urgency, or to avert an imminent danger, the court can order interim remedies, such as the granting of a guarantee, the inscription of a pre-notation of mortgage, the seizure of the assets of the defendant, injunctions (i.e., an order to abstain from performing a certain action), the application for the production of certain documents, etc. The 'safety measures application' is filed with the secretariat of the competent single-member court of first instance. Upon filing, a certain date of hearing is allocated and the writ is served to the defendants for their knowledge and to attend the trial and defend the petition. In theory, this procedure is considered 'fast-track' in the sense that the hearing is scheduled in a relatively short period, the hearing takes place without the presence of a court secretary (therefore no minutes are kept) and the sole presiding judge issues his or her decision in a shorter period than required in the ordinary proceedings. In practice, however, and particularly in Athens, because of the great number of cases being addressed before the Athens First Instance Court, it may take a petitioner anything between four and 12 months to achieve the granting of the interim remedy. The main criterion for success in the granting of interim remedies is to demonstrate to the court that there exists an element of urgency or a necessity to avert an imminent danger. Interim measures are temporary by nature. This means that, at the very latest, 30 days following the granting of the remedy, the petitioner must file his or her 'ordinary' lawsuit against the defendant. Failure to do so means that the remedy awarded is *ex officio* withdrawn.

iii Class actions

Class actions are not common in Greece. Law 2251/1994 on Consumer Protection alone provides for such actions in line with European Union Directive 93/13/EEC, as amended by Presidential Decree 301/2002 (implementing Directive 98/27/EC), Law 3587/2007 and Joint Ministerial Decisions Z1-891/2013 (implementing Directive 2011/83/EU) and 27764/2014.

Specifically, according to Article 10, consumer organisations, to protect the general interests of consumers, may bring class actions before the multi-member court of first instance of the respondent's residence or registered seat within six months from the unlawful conduct of the service provider or the supplier of goods, with the aim of obtaining the prohibition of such conduct and claiming damages and restitution.

iv Representation in proceedings

In principle, each litigant is obliged to appear before the court represented by an attorney-at-law. Exceptionally, in interim measure proceedings and in ordinary proceedings regarding small claims (up to €5,000 – Article 466 GCCP), the litigant is allowed to appear before the court without legal representation. Whenever deemed necessary, the court may oblige the litigant to appoint an attorney-at-law to defend his or her case. The presence of an attorney is no longer imperative during the signing of certain types of contracts such as the founding of *sociétés anonymes* and donations.

v Service out of the jurisdiction

In most cases, the court serves the claim out of jurisdiction pursuant to one of the international instruments to which Greece is a party. The EU Service Regulation (Council Regulation No. 1393/2007/EC) applies to service of judicial and extrajudicial documents in civil or commercial matters in EU Member States.

Greece is also a signatory state of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters of 15 November 1965, pursuant to which service of legal documents occurs via a central authority appointed in each Member State. The legality of service is then assessed based on the law of the jurisdiction where service is effected.

vi Enforcement of foreign judgments

Greece is party to all EU regulations in the field of 'judicial cooperation in civil matters'. A large number of these regulations are important for international business transactions.

Judgments of EU Member State courts of a civil and commercial nature are enforceable in Greece, following their declaration as enforceable under Regulation (EC) 44/2001. Judgments regarding social security, arbitration, insolvency proceedings, inheritance issues and matrimonial property issues do not fall under said Regulation and are regulated by separate legal instruments. Furthermore, under Regulation (EC) 805/2004, European Enforcement Orders are directly enforceable in Greece. Furthermore, Regulation 861/2007 of the European Parliament and of the Council of 11 July 2007 establishes a European small claims procedure. In addition, Regulation (EC) 2201/2003 applies to foreign judgments regarding matrimonial matters and matters of parental responsibility, regulating their enforceability in Greece.

vii Assistance to foreign courts

According to Council Regulation 1206/2001 on the taking of evidence in civil and commercial matters, Greek civil courts will provide their assistance to Member State courts in taking evidence for use in judicial proceedings either commenced or contemplated. Furthermore, Greece is a contracting state of the Hague Convention of 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, according to which a judicial authority of a contracting state (including non-EU states) may, in accordance with the provisions of the law of its state, request the competent authority of another contracting state, by means of a letter of request, to obtain evidence or to perform some other judicial act. The latter does not cover the service of judicial documents or the issuance of any process by which judgments or orders are executed or enforced, or orders for provisional or protective measures. The relevant central authority for Greece is the Ministry of Justice and particularly the Department of International Judicial Cooperation in Civil Cases.

viii Access to court files

Almost all civil hearings are conducted in public; consequently, all members of the public may obtain information on ongoing proceedings.

However, a member of the public may not obtain pleadings or evidence in relation to ongoing proceedings unless he or she demonstrates a specific legitimate interest, namely that his or her rights or obligations are directly affected by the outcome of the case.

ix Litigation funding

There are no provisions for litigation funding by a disinterested third party. Although the notion of third-party funding is not very popular, several insurance companies offer legal expenses protection thus covering the costs of litigation.

IV LEGAL PRACTICE

i Conflicts of interest and Chinese walls

Under Article 233 of the Criminal Code, it is forbidden to represent both parties in the same case, unless they so agree, and a sentence of imprisonment is imposed upon violators of said provision.

The conflict of interest issue is governed by the ethical rules established by the various Bars. Under the Ethical Code of the Athens Bar, an attorney is entitled to act for a current client against a former one, provided that the new case is irrelevant to the old one and the attorney does not disclose or use the information he or she has obtained when he or she was representing the former client.

ii Money laundering, proceeds of crime and funds related to terrorism

In Greece, issues of money laundering are governed by Law 3691/2008, as amended by Laws 3875/2010 and 3932/2011, implementing Directives (EC) 2005/60 and (EC) 2006/70. By virtue of Law 3424/2005, as amended by Law 3691/2008, the list

of persons and legal entities that are obliged to abide by its provisions includes lawyers and public notaries (Article 5 of Law 3691/2008). With regards to money laundering or the funding of terrorism, one of the most important obligations imposed on lawyers is to report to the competent authority any transaction that seems suspicious or unusual, without informing, however, their client or a third party suspected to be involved in such an action that such a report has been filed. Lawyers are also obliged to verify the identity of their clients.

Nevertheless, lawyers are not obliged to provide information on facts that have been disclosed to them by their clients within the offering of legal advice or the preparation of their defence. In cases where any of the above-mentioned duties are breached, lawyers and public notaries can face serious criminal charges.

iii Data protection

The legal framework governing the processing of personal data includes Law 2472/1997, as amended by Law 3471/2006. Pursuant to Article 7A Paragraph 1(e), lawyers are discharged from the obligation to notify or seek permission from the Hellenic Data Protection Authority to process personal data regarding the provision of legal services to their clients, under the condition that they are bound by legal privilege and such data is not announced or notified to any third parties.

iv Other areas of interest

Lawyers are also entitled to translate documents from and into languages in which they are proficient (Article 36 Paragraph 2(c) of the Greek Lawyer's Code (Law 4194/2013)) and to produce authenticated copies from originals presented to them (Article 36 Paragraph 2(b) of the Greek Lawyer's Code (Law 4194/2013)).

V DOCUMENTS AND THE PROTECTION OF PRIVILEGE

i Privilege

Legal privilege aims at the protection of the free and trustful contact and communication between the lawyer and the client.

The protection afforded by legal privilege starts as from the initial contact with a lawyer, be it in writing or oral communication, and continues irrespective of the termination of the professional relationship between the client and the lawyer or the payment of lawyer's fees, the retirement of the lawyer, the client's death or the use of the services of a different lawyer.

The information covered by legal privilege mostly relates to facts not publicly known and information not publicly available.

Provisions relating to legal privilege are included in several legislative texts. The main provisions referring to legal privilege are Article 38 and Article 36 Paragraph 3 of the Greek Lawyers' Code of Conduct, Articles 232, 233 and 371 of the Criminal Code, Articles 212, 261 and 262 of the GCCP, Articles 400 seq. of the GCCP dealing with the discharge of lawyers from their obligation to testify as witnesses before civil courts, Article 26 of Law 3691/2008 on money laundering and Article 7A Paragraph 1(e) of Law 2472/1997 on 'the protection of the individual from the processing of personal data'.

The Lawyers' Code of Conduct does not make any distinction between in-house lawyers and 'independent' lawyers; therefore legal theory takes the view that the provisions relating to legal privilege cover in-house lawyers as well.

Recent trends actually include the restriction of legal privilege because of the national and international efforts towards combating money laundering and terrorism.

ii Production of documents

There is no obligation to disclose documents under the GCCP (i.e., the rule of 'discovery' does not apply) and generally speaking each side is free to adduce the documents that prove its own allegations. Obviously, the parties have a general duty of truth under the GCCP (Article 116), but that does not mean that they are expected to adduce every document in their possession.

According to the GCCP, the litigant parties are obliged to file briefs before the court. Briefs are always accompanied by documents related to the lawsuit (a party is either the respondent or the defendant) so as to support the claim or counter-argue it, respectively.

Note, though, that each litigant party is obliged to disclose the documents he or she uses or adduces before the court, according to Article 450 Paragraph 1 of the GCCP entitled 'Document disclosure'. Furthermore, according to Paragraph 2 of said provision, each litigant party or any third party has the obligation to disclose any documents he or she may possess and that may be used as evidential material, according to the court's opinion, unless there is a 'serious cause' that would justify their refusal or incapacity to disclose such documents. According to the prevailing theory and jurisprudence, a serious cause exists in cases where someone is allowed to refuse to testify before an authority or court; for example, when he or she is a close relative to a litigant party, or he or she is prevented from testifying because of confidentiality restrictions deriving from the nature of his or her profession (e.g., lawyers who have advised the litigant parties, public notaries, doctors or priests).

In cases where a dispute has not yet been brought for adjudication before the courts, any person that has a 'lawful interest' in a document being disclosed may request so by following the procedure of filing a petition for interim measures against the party that withholds the crucial document without significant reason.

The courts seldom require the disclosure or discovery of documents in ongoing proceedings unless one of the parties files such a motion and the motion is accepted. Obviously, this only applies to parties involved in the proceedings.

VI ALTERNATIVES TO LITIGATION

i Overview of alternatives to litigation

The vast majority of cases in Greece are resolved through recourse of the parties to litigation or through the direct negotiations that the parties may conduct at any stage of the case and prior to the issuance of the court judgment. A smaller fraction of disputes are resolved through arbitration while the method of mediation in commercial law disputes is still in its very early stages.

ii Arbitration

Greek Law provides for two different categories of rules, to apply to domestic and international arbitration respectively.

International arbitration proceedings fall within the scope of Law No. 2735/1999, on International Commercial Arbitration, which incorporated the UNCITRAL Model Law in the Greek legal system. Domestic arbitration proceedings are regulated by the provisions of Articles 867–903 of the GCCP. The Greek legal framework is supplemented by numerous international conventions, such as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958).

In Greece, there are two major arbitral bodies: the Athens Chamber of Commerce and Industry (ACCI) and the Hellenic Chamber of Shipping (HCS), which have both published relevant rules. The latter was established in 1936 and, as its name suggests, carries out arbitration relating to shipping disputes.

Other Greek authorities have also established arbitration bodies (for example, the lawyers' Bar Association, and the Technical Chamber of Greece) to deal with specific kinds of disputes.

The magistrate's courts also hold a list of arbitrators (Article 879 GCCP).

Traditionally, Greek law provided for a uniform treatment both of domestic and international arbitration. However, following the enactment of Law 2735/1999 on international arbitration, it is this particular law that governs international arbitration and where gaps are found relevant provisions of the GCCP on arbitration are applied. The Greek lawmaker's primary concern is to safeguard the principle of equality between the parties. Moreover, as to confidentiality, there are no specific provisions in Greek law. Therefore, confidentiality basically rests on the parties' will. Lastly, no language restrictions exist in the Greek legal framework.

Parties are free to decide on the procedural rules of the arbitration subject to mandatory rules of the law (Article 19 of Law 2735/1999). Unless otherwise agreed by the parties, the arbitral tribunal consists of three arbitrators. The arbitral tribunal decides whether there will be a hearing of the case or whether the whole procedure will be conducted in writing (Article 24 of Law 2735/1999), unless the parties have stipulated the kind of procedure they wish the tribunal to follow. When the parties have not specifically excluded, in their agreement, the possibility of a hearing taking place, the arbitral tribunal is obliged to conduct such a hearing if either party so desires. Law 2735/1999 provides for a specific time frame within which the parties have to proceed with all necessary actions. According to Article 23(1) the respondent has to submit his or her defence within 30 days from the time he or she was notified that the claimant had submitted the request for arbitration, provided that the request contains the facts of the case and a specific claim. On the contrary, if a claim is not asserted in the request, the claimant has to submit such a claim within a period not specifically determined by law but left to the parties' discretion or the arbitral tribunal's order. The parties are also obliged to submit any documents or to indicate any other kind of evidence that they intend to use within this time frame, which is eventually fixed based upon a common agreement or by the arbitral tribunal.

In principle, any counterclaim must be filed simultaneously with the respondent's defence. It is, however, accepted that a counterclaim may also be filed at a subsequent

stage of the proceedings. It is widely argued that a counterclaim cannot be filed after the end of the final hearing. Some would consider, though, that a flexible approach should be taken and the respondent should not be deprived of the right to file a counterclaim, even after the hearing of the claim, provided the respondent is not seeking to do so as a delaying tactic.

The parties may determine the rules for evidence to apply in the arbitration. They may do so either indirectly, when deciding upon the procedural rules, or directly, by determining specific evidence to be deemed admissible. If the parties have not made an agreement providing for the applicable rules on evidence, or their agreement is void, it will be up to the arbitral tribunal to determine which rules are the most appropriate. Therefore, depending on what the parties have agreed or what the tribunal has decided, evidence from witnesses may be provided either orally or in writing or both, and cross-examination of witnesses may or may not be allowed. The procedure for disclosing documents will be determined either by an agreement between the parties or by the tribunal. If the parties have not agreed otherwise, the arbitral tribunal may appoint one or more experts, to submit a technical report to the tribunal on certain disputed matters, and invite each party to provide them with all the relevant information and access to documents, goods or other objects (Article 26 of Law 2735/1999). Unless the parties have agreed otherwise, the experts, after submitting their written or oral reports, and upon the request of either party or the tribunal, are obliged to participate in a hearing, in which the parties may ask questions and call other witnesses or technical advisers. The arbitral tribunal, or either one of the parties following the tribunal's consent, may ask for the assistance of the competent state court for evidence purposes. The court may grant this request and assist the tribunal through the gathering of evidence according to the provisions of the GCCP.

Articles 35 of Law 2735/1999 and Article 895 of the GCCP clearly stipulate that an arbitral award is not subject to appeal. The parties to arbitration proceedings are entitled only to file for recourse against the award for flaws emanating either from the arbitration agreement itself or for procedural flaws in the arbitral proceedings or award.

More specifically, Article 34 of Law 2735/1999, provides that recourse to a court against an arbitral award may be made only through a petition seeking to set aside the award. The reasons for setting aside an award are specific and are exhaustively mentioned in Article 34 of the Model Law.[2]

The grounds provided in Article 34(2) are divided into two categories:

a Grounds that are to be proven by a party are as follows:

- lack of capacity of the parties to conclude an arbitration agreement; lack of a valid arbitration agreement;
- lack of notice of appointment of an arbitrator or of the arbitral proceedings or inability of a party to present its case;
- the award deals with matters not covered by the submission to arbitration; and

2 Law 2735/1999 reflects the reasons for setting aside an arbitral award as contained in Article 34 of the UNCITRAL Model Law.

- the composition of the arbitral tribunal or the conduct of arbitral proceedings is contrary to the effective agreement of the parties or, in the absence of such an agreement, to the Model Law.

b Grounds that a court may consider *ex officio* are as follows:

- non-arbitrability of the subject matter of the dispute; or
- violation of public order.

Article 897 of the GCCP also provides for similar reasons for setting aside an award.

Furthermore, Article 36 of Law 2735/1999 provides for the recognition and enforcement of New York Convention awards. Recognition and enforcement of foreign arbitral awards are governed by Articles 903, 905 and 906 of the GCCP.

A foreign arbitral award is recognised automatically (without any further procedure) in Greece, provided that the recognition requirements set out in Article IV Paragraph 1 of the New York Convention are met and none of the grounds for refusal referred to in Article V of the Convention exists.

Greece has maintained reservations according to which it will only recognise and enforce awards under the New York Convention where the award is issued in a contracting state and the dispute is considered to be a commercial one under Greek law.

The competent court is the single-member court of first instance of the place where the debtor is domiciled or resides. In the event that the debtor is not domiciled or does not reside in Greece, the court's jurisdiction will depend on whether founding international jurisdiction is possible by virtue of another provision: if, for example, the debtor has assets in Greece.

The recognition of other foreign awards is conducted in accordance with Article 903 of the GCCP unless there is a bilateral agreement between Greece and the state of the award's origin providing otherwise.

A foreign arbitral award is recognised without any further procedure if all of the following requirements are met:

a the arbitration agreement is valid according to the provisions of the applicable law;

b the subject of the arbitral award is arbitrable according to Greek law;

c the award is not subject to any kind of appeal or revocation;

d the defeated party had the opportunity to defend itself during the arbitration proceedings;

e the award is not contrary to a judgment issued by a Greek court on the same dispute that creates a *res judicata* for the parties to the foreign arbitral award; and

f the award is not contrary to the rules of Greek public order or to good morals in Greece.

The enforcement of other foreign awards is conducted in accordance with Articles 905 and 906 of the GCCP unless there is a bilateral agreement between Greece and the state of the award's origin providing otherwise.

iii Mediation

Mediation is not a common form of alternative dispute resolution in Greece. Law 3898/2010, which implements Directive (EC) 2008/52, governs, among other

matters, confidentiality issues, enforcement of agreement procedures and the certification process for mediators. Mediation can be an option for resolving a wide range of disputes of a civil or commercial nature, such as marital, labour or intellectual property disputes. In every first instance court, there is a list of judges who are appointed for one year to serve as mediators.

iv Other forms of alternative dispute resolution

Several other methods of dispute resolution are also recognised, such as conciliation, expert resolution and banking ombudsman. Nonetheless, these methods are also less frequently encountered in practice.

VII OUTLOOK AND CONCLUSIONS

Reform of the Greek legal system, particularly as regards the speed of proceedings to sufficiently address the exigencies of a modern economy, has been long awaited.

It remains to be seen whether the new and most recent amendments to be introduced will improve the efficiency of the national courts thereby leading to a faster but still high-quality, fair and equitable award of justice.

Appendix 1

ABOUT THE AUTHORS

JOHN KYRIAKIDES

Kyriakides Georgopoulos Law Firm

John joined Kyriakides Georgopoulos in 1999 and has been a partner since 2004. His practice covers a range of contractual disputes, arbitration, white-collar crime and financial crime.

He regularly advises foreign clients and handles litigation with respect to cases involving defective products, acting mainly for international producers or manufacturers. He is particularly experienced in product liability in the automotive sector, in all sorts of civil and commercial law disputes and often represents clients in cases involving breach of the law of obligations and torts, intellectual property and agency and distribution disputes. He regularly represents corporate clients before the criminal courts and investigating authorities, acting as 'civil party' (plaintiff) in cases involving fraud, embezzlement, forgery, perjury, breach of fiduciary duty and other types of criminal offences. He also acts as an attorney for the defence in cases involving criminal liability of corporate executives in all sorts of crimes (felonies and misdemeanours).

John is a member of the International Chamber of Commerce (ICC-Hellas) Commission of Arbitration, a member of the board of directors of the Hellenic American Chamber of Commerce and a member of the Greek Association of Penal Law. He is fluent in English and French and eligible to practise before the Supreme Court of Greece.

HARRY KARAMPELIS

Kyriakides Georgopoulos Law Firm

Harry joined the firm in September 2012 and works for the litigation department of the firm. He practises civil, commercial and criminal law. He has been involved in criminal litigation concerning most types of business crime, financial fraud, product criminal liability and money laundering. He also has experience in the field of civil

litigation and has also practised litigation and consulting in a wide range of administrative and public law cases.

Before joining Kyriakides Georgopoulos, Harry was a trainee in the Legal Council of the State, for the Ministry of Justice and a member of the youth section of the Marangopoulos Foundation for Human Rights (2005–2007), and a member of the Penal and Criminology Research Laboratory of Athens Law School (2005–2007). He is currently a member of the Greek Association for Law and Economics, the International Bar Association, the Greek Association of Penal Law and various NGOs (Amnesty International, Greenpeace, etc.). Harry is admitted before the Court of Appeals and is fluent in Greek, English, French, German and Spanish.

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