

IN-DEPTH

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GREECE



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In-Depth: International Arbitration (formerly The International Arbitration Review) provides an analytical overview of what has occurred in each of the important arbitration jurisdictions during the past year, capturing recent developments while putting them in the context of each jurisdiction's legal arbitration structure and selecting the most important matters for comment.

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Greece

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Introduction

Structure of law

Greece is a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (NYC).^[2] Greece has adopted the dualist model which distinguishes between domestic and international arbitration subjecting them to different legal regimes presenting notable differences. Domestic arbitration is regulated by Articles 867–903 of the Greek Code of Civil Procedure (GrCCP), whereas international arbitration is regulated by Law 5016/2023 (formerly applicable was Law 2735/1999). That said, the recently enacted Law 5016/2023, blurs the distinction between the two, and, to some extent, casts doubt to the dualist model per se, as it enables parties to freely opt for the application of its provisions even if the arbitration or dispute at hand presents no element of internationality.

Law 5016/2023 on international commercial arbitration

Through the enactment of Law 2735/1999, Greece adopted the UNCITRAL Model Law on International Commercial Arbitration (1985). Recently (4 February 2023), Law 2735/1999 was replaced by Law 5016/2023, which aims to modernise the Greek law on international commercial arbitration on the basis of UNCITRAL Model Law (2006) as well as on the basis of contemporary trends in case law, practice and legal theory.^[3]

Distinction between international and domestic arbitration

On the basis of the territoriality principle, Law 5016/2023 applies only to international arbitration proceedings seated in Greece.^[4] As to the internationality of arbitration, Article 3(2) of Law 5016/2023 adopts the criteria prescribed in Article 1(3)(a), (b) of the UNCITRAL Model Law. More specifically, an arbitration is deemed to be international if:

1. the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different states; or
2. one of the following places is situated outside the state in which the parties have their places of business:
 - the place of arbitration if determined in, or pursuant to, the arbitration agreement; or
 - any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject matter of the dispute is most closely connected.

Further to the above though, pursuant to Article 3(3)(c) of Law 5016/2023, the arbitration is also deemed international if the parties have explicitly agreed that Law 5016/2023 applies to it, i.e., irrespective of the existence of any element of internationality. Hence, Law 5016/2023 may also apply to purely domestic arbitrations, if the parties so agree.

The commercial character of arbitration

Law 5016/2023 is applicable only to international commercial arbitration proceedings seated in Greece. As to the commercial nature of arbitration, although Law 5016/2023 does not reproduce verbatim the relevant second footnote to Article 1(1) of the UNCITRAL Model Law, case law and legal literature alike delineate its scope in accordance with what is mentioned therein, giving the term 'commercial' a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Hence, also under Greek law, relationships of a commercial nature include – but are not limited to – any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; and carriage of goods or passengers by air, sea, rail or road.^[5]

Structure of the courts and local institutions

Under Greek law, state court jurisdiction in relation to arbitration mainly encompasses (1) state court assistance of arbitration proceedings (e.g., appointment of arbitrators where the parties fail to reach an agreement, adjudication of challenges against an arbitrator, appointment of a substitute arbitrator or assistance in taking of evidence), (2) state court review of arbitral awards (i.e., in the context of setting-aside proceedings against domestic arbitral awards and recognition and enforcement of foreign arbitral awards), and (3) interim relief proceedings prior or parallel to pending arbitrations. Both the state courts and the arbitrators (unless the parties agree otherwise) are vested with authority to grant interim relief; however, state court proceedings take precedence, if initiated first. Interim measures granted by arbitrators are not immediately enforceable though. They have to be recognised and declared enforceable by state courts.

Cases pertaining to the court assistance of arbitration proceedings fall within the jurisdiction of the single-member court of first instance of the place of the applicant's residence or domicile. In case none of these applies, the Athens single-member court of first instance is competent.^[6] Proceedings are conducted in accordance with the provisions of GrCCP that apply to non-contentious proceedings.^[7]

Applications for the setting aside of awards rendered in international arbitration proceedings seated in Greece are tried by the three-member court of appeal of the seat of arbitration or, if the seat of arbitration cannot be determined, of the Athens three-member court of appeal.^[8] The proceedings are conducted in accordance with the provisions of GrCCP that apply to special proceedings for the resolution of monetary disputes under Articles 591 and 614.

Applications for the recognition and declaration of enforceability of foreign arbitral awards are filed with the single-member court of first instance of the place of the obligor's residence or domicile or, in the alternative, with the Athens single-member court of first instance, and are tried according to the rules applicable to non-contentious proceedings (Articles 740–781 GrCCP).

Trends or statistics relating to arbitration

Institutional arbitration has a strong presence in Greece. In the majority of cases, the parties submit their disputes to arbitration conducted under the auspices of principal arbitration institutions, such as the International Court of Arbitration of the ICC and the London Court of International Arbitration. There are also several domestic arbitration institutions of public nature, such as, indicatively, the Athens Chamber of Commerce and Industry, the Athens Bar Association and the Hellenic–German Chamber of Commerce and Industry. They are, however, still in the process of strengthening their footprint with a long way to go. Furthermore, in an effort to promote institutional arbitration in Greece, Article 46 of Law 5016/2023 allows for the first time for the establishment of privately owned arbitration institutions. The Athens Mediation & Arbitration Organization is such an institution that has recently been quite active and successful in making a difference.

Year in review

Developments affecting international arbitration: changes brought by Law 5016/2023

This year's contribution focuses again on the new legal framework of international arbitration established by Law 5016/2023. Apart from the matters already addressed above, the most significant changes brought about by Law 5016/2023 pertain to the scope of the objective arbitrability, the form and validity of arbitration agreements, multiparty arbitration, the setting-aside proceedings and the *res judicata* effect of arbitral awards.

Arbitrability and validity of the arbitration agreement

Under Article 3(4) of Law 5016/2023, any dispute is arbitrable unless the law explicitly provides otherwise. This arbitration-friendly provision broadens the scope of arbitrability under Greek law by establishing a presumption of arbitrability of all kinds of disputes.

Article 11(1) of Law 5016/2023 introduces a *lex validitatis* conflict rule that controls the substantive validity of the arbitration agreement by establishing. It provides that an arbitration agreement is deemed valid if it is valid either under the law applicable to it or under the *lex arbitri* or under the law applicable to the merits of the dispute. Said *lex validitatis* applies not only to set-aside proceedings but also at the referral stage, when despite the existence of an arbitration agreement, a complaint is filed with Greek state courts.

As regards the formal validity of the arbitration agreement, Law 5016/2023 does away with the strict 'in writing' requirement and provides only in Article 10(1)(b) that the arbitration shall be recorded in a document the content of which has been agreed upon by the parties either expressly or tacitly.

Lastly, according to Article 11(2) of Law 5016/2023, the initiation of insolvency proceedings against a party to an arbitration agreement does not affect the validity of that agreement, unless otherwise provided by law.

Composition of the arbitral tribunal and arbitrators' liability

As regards the composition of the arbitral tribunal, of particular importance is Article 16(1) of Law 5016/2023 prescribing that, save any agreement to the contrary, in multiparty arbitrations, all parties on each side shall jointly nominate their co-arbitrator and that if they fail to do so within the time frame provided in the arbitration agreement or within 30 days, the co-arbitrator shall be appointed by the state courts. Article 16(2) then provides that in the case of state court intervention, following any party's request, all members of the arbitral tribunal may be court appointed.

In accordance with the newly added provision of Article 22 of Law 5016/2023, arbitrators are liable only for wilful misconduct and gross negligence. The same threshold applies to the secretary of the arbitral tribunal under Article 27(4) of Law 5016/2023.

With respect to the subjective scope of the arbitration proceedings, Article 24(1) of Law 5016/2023 provides that, absent any parties' agreement to the contrary, the tribunal may accept the participation of a third party, bound by the arbitration agreement, to the proceedings as claimant, respondent or intervening party, having the same rights and obligations as the initial parties.

Res judicata effect and enforceability of domestic arbitral awards

According to Article 44(2) of Law 5016/2023, arbitral awards rendered in international commercial arbitration proceedings seated in Greece, immediately produce res judicata effect and enforceability. Under the newly introduced provision of Article 44(2) of Law 5016/2023, the res judicata effect of arbitral awards also extends to prejudicial questions adjudicated by the arbitral tribunal, under the condition that such matters fall within the objective scope of the arbitration agreement.

Interim measures imposed by arbitral tribunals

As per Article 25 of Law 5016/2023 introducing a new provision of Greek law of international arbitration, parallel to the jurisdiction Greek courts to order interim measures pursuant to Article 12 of Law 5016/2023 in conjunction with Articles 682 et seq. GrCCP, upon a party's request, arbitral tribunals seated in Greece may order any interim measure deemed necessary for the avoidance of an imminent risk pertinent to the subject matter of arbitration or the arbitration proceedings. Under extremely urgent circumstances, upon a party's request, the arbitral tribunal may issue a provisional order, even in ex parte proceedings, should the arbitral tribunal deem that informing the other party could undermine the effectiveness of the provisional order. In case a provisional order is issued ex parte, the party against whom it is issued is summoned following 24 hours from the issuance of the provisional order.

Under Article 25(5) of Law 5016/2023 interim measures ordered by arbitral tribunals must be recognised and declared enforceable by the competent Greek court upon application of any interested party. Recognition and declaration of enforceability are denied in case (1) the interim measure ordered runs afoul Greek international public policy, or (2) a petition for equivalent interim relief is already pending before a competent Greek court. From the latter it follows that even though both state courts and arbitrators are authorised to grant interim relief, the authority of state courts takes precedence over the authority of arbitrators.

Article 25(5) of Law 5016/2023 applies also to interim relief awards rendered by tribunals seated abroad, as provided in Article 3(1) of Law 5016/2023.

Annulment proceedings against international arbitral awards rendered in Greece

Notwithstanding the *res judicata* effect and the enforceability of international arbitral awards rendered in Greece, annulment proceedings may be initiated on the basis of the exclusive list of annulment grounds prescribed in Article 43(2) of Law 5016/2023. Under Article 43(3) of Law 5016/2023, an application for the setting aside of an arbitral award may be filed within three months of the date of service of that award by a court bailiff.

Article 43(2)(a)(ae) introduces a new ground for the annulment of an arbitral award in cases where there is a ground for review under Article 544(6) and (10) GrCCP (i.e., in cases of procedural fraud and corruption on the part of arbitrators). In such cases, the application for the annulment must be filed within the time limit prescribed by Article 545(3) GrCCP.

In accordance with the newly introduced provision of Article 43(7) of Law 5016/2023, parties may validly waive, even *ex ante*, their right to apply for the annulment of the arbitral award. Such a waiver is premised on a written, express and specific agreement of the parties. If the right to apply for the annulment of an arbitral award is waived, the parties may still raise annulment grounds as grounds for challenging the enforcement proceedings initiated on the basis of the award.

According to Article 43(6) of Law 5016/2023, subject to any agreement of the parties to the contrary, annulment of an arbitral award results in the revival of the arbitration agreement.

As an alternative to annulment, Article 43(5) of Law 5016/2023 provides that, in case the defect of the arbitral award constituting an annulment ground is curable, the state court may refer the dispute back to the arbitral tribunal to remedy the situation. By doing so, the state court sets a respective time limit which may not without good cause exceed 90 days.

Under Article 44(3) of Law 5016/2023, the filing of an application for the annulment of an arbitral award does not result in a stay of the enforceability of the award. The competent court may, however, order the stay of the award's enforceability until a final judgment on the application for the annulment is rendered and only if it finds that the set-aside application is likely to succeed.

Recognition and enforcement of foreign arbitral awards

The Greek State ratified the NYC by virtue of Legislative Decree No. 4220/1961 which entered into force on 16 July 1962. On 18 April 1980, Greece proceeded to make the reservations of reciprocity and commerciality, in accordance with Article 1(3) NYC.^[9] That said, these reservations have already been rendered moot, as under Article 45(1) of Law 5016/2023 the NYC controls the recognition and enforcement of any foreign arbitral award. Hence, the NYC applies either directly within its prescribed scope or indirectly, by virtue of said legislative reference, outside of it.

Arbitration developments in local courts

One of the most notable developments is the prevalence in Supreme Court case law of the position that only rules serving exclusively public interests may be deemed to form part of the international public policy of Greece on the basis of which both domestic and international arbitral awards rendered in Greece are reviewed (see indicatively Supreme Court decisions nos 295/2022 and 1312/2022). This narrow understanding of international public policy has led the Supreme Court to exclude fundamental principles of private law from its domain, like, among others, the *clausula rebus sic stantibus* doctrine.

Another notable development is noted below in the investor–state disputes section.

Investor–state disputes

As of 1969, Greece has been a contracting state of the 1965 International Centre for Settlement of Investment Disputes Convention of the World Bank on the Settlement of Investment Disputes. The Greek state has also signed over 30 bilateral investment treaties (BITs), 28 of which are still in force (indicatively, the Greece–China BIT in 1991, the Greece–Russian Federation and the Greece–Egypt BITs in 1993, and the Greece–United Arab Emirates in 2014). As an EU Member State, Greece has signed the Agreement for the Termination of Bilateral Investment Treaties between the Member States of the European Union, which entered into force on 29 August 2020. Said Agreement was ratified through Law 4827/2021 on 10 September 2021.

The most notable development relating to investor–state disputes is certainly the recent judgment no. 246/2022 of the Hellenic Supreme Administrative Court (HCS), in which the HCS applied the Court of Justice of the European Union's (CJEU) reasoning in *Achmea* (C-284/16) and *PL Holdings* (Case C-109/20) to the arbitration clause included in a concession agreement ratified by law. Finding that concession agreements qualify as investment contracts, the HCS ruled that the above arbitration clause was contrary to Articles 267 and 344 TFEU. On this basis, the HCS held that administrative courts are entitled (and obliged) to try the merits of the dispute *de novo* without being bound by the findings of the arbitrators in the rendered award.

Outlook and conclusions

The enactment of Law 5016/2023 aims to modernise the Greek law of international commercial arbitration by adopting the UNCITRAL Model Law (2006), and, also, what is described by the legislature as 'current trends'. It remains to be seen, however, whether certain individual provisions of the new law, departing from the Model Law, such as the *lex validitatis* or the provision submitting annulment grounds to enforcement proceedings in case of an *ex ante* waiver will serve the arbitration process well.

The decision of the HCS equating, in essence, contract-based arbitration involving the state with investment arbitration on the basis of dispute resolution clauses contained in BITs is certainly a negative development. If this case law prevails, it may mean the end of arbitration in major sectors of state activity.

Endnotes

- 1 Dimitris Babiniotis is a partner and head of the dispute resolution practice and Emmanouil Mavrantoukakis is an associate at Zepos & Yannopoulos. [^ Back to section](#)
- 2 The NYC was ratified by Greek Legislative Decree 4220/1961 and entered into force in the Greek legal order on 16 July 1962 (https://lawdb.intrasoftnet.com/nomos/2_nomothesia_rs_sub.php, last accessed on 24 April 2024). [^ Back to section](#)
- 3 See Article 2 of Law 5016/2023 and p. 37 of the Explanatory Statement of the draft of Law 5016/2023. In accordance with Article 48 of Law 5016/2023, all arbitration proceedings that had already commenced prior to the ratification of Law 5016/2023 are still being regulated by Law 2735/1999. In contrast thereto, arbitration agreements referring to Law 2735/1999 are to be interpreted as referring to Law 5016/2023 (kodiko.gr/nomologia/download_fek?f=fek/2023/a/fek_a_21_2023.pdf&t=d5f5b4105ab8543b76af72b0bd4f6d25, last accessed on 24 April 2024). [^ Back to section](#)
- 4 Article 3(1) of Law 5016/2023 (kodiko.gr/nomologia/download_fek?f=fek/2023/a/fek_a_21_2023.pdf&t=d5f5b4105ab8543b76af72b0bd4f6d25, last accessed on 24 April 2024). [^ Back to section](#)
- 5 See also p. 37 of the Explanatory Statement of the draft of Law 5016/2023 (https://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=910ab666-e842-4761-a659-af8e017aa4f6, last accessed on 24 April 2024). [^ Back to section](#)
- 6 See Article 9(1) of Law 5016/2023. [^ Back to section](#)
- 7 See Articles 740 et seq. GrCCP. [^ Back to section](#)
- 8 See Article 6(2) of Law 5016/2023. [^ Back to section](#)
- 9 <https://www.newyorkconvention.org/countries> (last accessed on 24 April 2024). [^ Back to section](#)

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