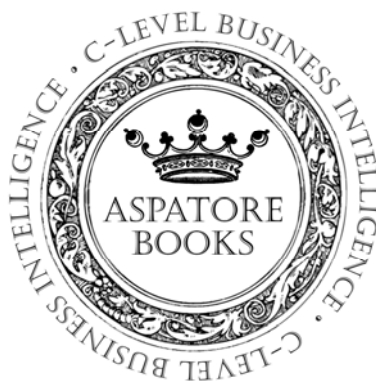


WINNING LEGAL STRATEGIES

# International Arbitration

*A Country-by-Country Look at Alternative Dispute Resolution  
Methods around the Globe*



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# Greece

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## **Common Arbitration Issues in Greece**

Usually arbitration takes place to resolve trade disputes between companies. Commercial arbitration includes disputes relating to any trade transaction for the supply or exchange of goods or services; distribution agreements; commercial representation or agency agreements; factoring; leasing; banking transactions; insurance; and carriage of goods or passengers by air, sea, rail, or road. Furthermore, it covers disputes of a contractual nature or tortious nature. Arbitration clauses are also frequently included in construction and public procurement contracts.

## **Pros and Cons of Arbitration**

As in most countries, the benefit of arbitration in Greece is speed. Furthermore, the parties have greater flexibility in establishing the procedure to be followed. There is no need to follow the Civil Procedure Rules, which can be too restrictive at times. Also, arbitrators normally have a better understanding of the business issues involved in the dispute. It may be advantageous to the parties to have an arbitrator who will not have a strict legalistic approach to the dispute but rather consider the dispute overall, taking into consideration the business issues and understanding between the party. Finally, arbitral awards are not subject to appeal, although they may be subject to an application for setting aside (see below). This can be both an advantage and a disadvantage. However, knowing that there is no appeal, there is a clearer indication as to when the dispute will be over, one way or the other. This creates some sense of certainty as to time. The arbitrations do not drag on forever as some court cases do.

On the other hand, arbitration is considered costly. This is because, in contrast to other jurisdictions (e.g., the U.K. or the U.S.), using the courts is not costly in Greece and may in fact prove extremely inexpensive. Legal cost awards are also relatively insignificant—that is, even when the losing party is required to pay the winning party's legal costs, these are determined in a constructive manner and not on a real basis. Thus, even in serious disputes, legal cost awards often end up being insignificant. This fact makes the court option quite attractive and limits arbitration to important cases in which the cost of the arbitration is seen as worth taking on in view of the

other advantages arbitration is seen to provide, as well as in cases where the parties are from different jurisdictions and thus may not “trust” the national courts or may feel insecure not knowing the procedure followed by the courts.

### **How Arbitration Legal Proceedings are Applied in Greece**

A dual arbitration system is in place in Greece. The Greek Code of Civil Procedure regulates in sufficient detail domestic arbitration. Additionally, in 1999, Greece passed a law (Law 2735/1999) that incorporates, with minor amendments, the UNCITRAL Model Law on international arbitration. In view of this, there is considerable uniformity, in terms of arbitration proceedings, with the other countries that have ratified the Model Law. In the event that an arbitration takes place in Greece and falls under the category of an international commercial arbitration, Law 2735/1999 applies. The provisions of Law 2735/1999 apply to international arbitrations that take place in the Greek territory. The law defines which arbitrations are to be considered as international arbitrations. The definition reproduces the wording of Article 1(3) of the UNCITRAL Model Law.

### **Steps Involved in Arbitration**

In Greece, slightly different rules apply with respect to domestic arbitrations and international arbitrations. However, the differences are not such as to justify an entirely different approach.

Obviously, at the first meeting with the client, you must try to appreciate what the dispute is about and to review the contract and the arbitration clause/agreement in order to ascertain by which rules the arbitration is to be governed (i.e., whether it is a domestic or an international arbitration).

Having reviewed the agreement and understood the nature of the dispute, you should consider whether there is a chance to reach a settlement with the other side prior to seeking to resolve the dispute by arbitration. In order to proceed to arbitration, whether domestic or international, both parties must have agreed to this in the past, or they must reach an agreement once the dispute arises.

Issues to be taken into account in considering whether to proceed with arbitration rather than following the court procedure (provided, of course, that the client has this option) include the following:

- **Costs:** In Greece, arbitration costs may turn out to be considerably higher than the costs of a normal trial. A cost-benefit analysis should therefore precede any decision to use arbitration. Generally, arbitration is preferable in important cases involving high financial stakes.
- **Time:** Generally, arbitration is a much quicker process, with the parties determining to a great extent the procedure and speed.
- **Complexity:** If the dispute is technical and a deep understanding of technical or business issues is important to the understanding of the dispute, trying to explain to the court the technicalities of the dispute may be a problem, so it may be more appropriate to appoint an arbitrator who is familiar with such matters.
- **Local principles:** Conversely, if the application of local principles of law and fairness or good moral standards is likely to work in favor of the client, a judge may be preferable to an arbitrator.

Otherwise, preparation for arbitration does not differ substantially from preparation for any other court case. You must understand the dispute, collect all the facts and evidence, and be well prepared on the issues of law. As is the case with any court procedure, arbitration requires a great deal of preparation and must be taken as seriously as a court dispute.

Choosing the arbitrator is, obviously, the next and most important step. Considerations taken into account may include the arbitrator's nationality and/or fluency in the language of the arbitration and his or her academic credentials and renown, legal background (common law or civil law), and professional background.

Following this choice, you should notify the other party about your intention to initiate the arbitration and about the appointment of the arbitrator, inviting the defendant to proceed to the appointment of the second arbitrator. The appointment of the third arbitrator is obviously

crucial. Normally, a number of possible alternatives have already been discussed with the party's arbitrator prior to his or her nomination.

Depending upon the conclusions reached at the stage when the desirability of the arbitration is discussed with the client, the next important step is to decide whether to oppose the validity of the arbitration clause or not and the grounds on which this should be done.

Furthermore, throughout the arbitration, the parties must consider whether they wish to apply for any interim measures such as an injunction. Pursuant to the rules, the arbitral tribunal has authority to grant interim measures provided the parties have not agreed otherwise. This jurisdiction of the tribunal does not limit the jurisdiction granted to the court to decide on such interim measures.

Another important step in the arbitration process is the agreement, to the extent not provided by law, of the procedural rules to govern the arbitration. If no agreement between the parties is reached, the arbitral tribunal decides on this matter.

### **The Greek Legal System**

The Greek legal system is a civil law system. A major distinction is made between public and private law. Public law is the law that regulates the structure and organization of the state and its agencies—including local government entities and other public law legal persons—as well as the legal relationships between the state and private parties. Criminal law is also systematically subsumed under public law. Private law is the law governing the relationships among private parties. It includes what is generally known as “civil law” proper (i.e., the law governing contracts, torts, family law, property, inheritance, etc.) but also commercial law. Three major court systems operate: Administrative courts apply an inquisitorial system and try administrative law disputes. Criminal courts also apply an inquisitorial system and try criminal offenses. Civil courts (including specialized commercial and admiralty courts) apply an adversarial system and try private disputes (which include also commercial disputes).

The existing Constitution (initially voted in 1975 and twice amended since) protects private property, safeguards most recognized human rights, and provides for the principle of separation of powers. The Constitution explicitly requires all courts to perform what is known as a “diffuse” constitutionality review of legislation and to refrain from applying unconstitutional legislation.

Jurisprudence is not considered to be a “source of law” properly speaking (i.e., precedents do not make law, as in the common law tradition); however, precedents are extremely important in understanding and interpreting statutory law.

Greece is a member of the European Union. EU legislation is therefore applicable in Greece, either directly or via its incorporation by virtue of domestic statutes. The Constitution explicitly provides that EU law takes precedence over domestic law. However, from the national perspective, the Constitution itself stands above EU law.

### **The Basics of Greek Arbitration Laws**

The rules included in the Greek Code of Civil Procedure govern domestic arbitration. UNCITRAL rules are now also part of domestic law, by virtue of Law 2735/1999; they govern international arbitration taking place in Greece. There are no dramatic differences between the UNCITRAL Model Law and Law 2735/1999.

It is important to note that the arbitral award is not subject to appeal, and it constitutes *res indicata* within the meaning of Greek Civil Procedure Rules and is immediately enforceable.

However, arbitral awards are subject to an application to set aside. In the case of international arbitrations governed by Law 2733/1999, this is the application envisaged in UNCITRAL Model Rule 34. An equivalent application is provided for domestic arbitration by Article 897 of the Code of Civil Procedure. However, in the case of domestic arbitrations, the possible grounds for setting aside the arbitral award are considerably broader.



The decision of the Court of Appeals on the application to set aside is in turn subject to a petition for annulment before the Supreme Court. This possibility exists in both domestic and international arbitrations.

### **The Arbitration System**

As explained above, the law distinguishes between domestic and international arbitrations. Different sets of rules apply, depending on whether the arbitration is domestic or international. The information provided below focuses on international commercial arbitrations taking place in Greece.

#### *Basic Pleadings*

Pursuant to Law 2735/1999, the claimant files his or her request for arbitration, which sets out his or her claim and the facts upon which it relies. The respondent has thirty days from the date of service of the request to file his or her answer.

#### *Description of Arbitration Trial*

Unless otherwise agreed by the parties, the arbitral tribunal consists of three arbitrators. Unless a contrary agreement exists between the parties, the tribunal decides whether an oral hearing is required or whether the procedure will be based on written submissions by the parties. However, if one of the parties requests an oral hearing then the arbitral tribunal is obliged to have one (unless there is a prior agreement between the parties that no oral hearing will take place). However, based on Law 2735/1999, the parties must be treated with equality and each party shall be given a full opportunity to present his or her case. Furthermore, subject to the provisions of the law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings. Failing such agreement, the arbitral tribunal may conduct the arbitration in such a manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, and weight of any evidence.

*Burden of Proof and Nature of Evidence*

The burden of proof is on the claimant to prove his or her case.

Unless the parties have agreed otherwise, the arbitral tribunal may appoint experts to provide an opinion on certain issues and to ask the parties to provide information to the expert. The expert may then be called to give oral evidence. Furthermore, the arbitral tribunal or a party with the approval of the arbitral tribunal may request from the competent court assistance in taking evidence. The court may execute the request within its competence and according to the provisions of the Code of Civil Procedure on taking evidence.

*Document Disclosure Requirements*

Generally, the notion of disclosure as such is not known in the Greek legal system. However, one may suppose that the parties in an international arbitration may agree beforehand to apply disclosure rules.

*Damages*

The arbitral award is made in writing and is signed by the arbitrator(s). The award states the reasons upon which it is based unless the parties have agreed that no reasoning is required or it is an award that is based on a settlement. In the event of settlement, the arbitral tribunal shall terminate the proceedings, and if requested by the parties, the arbitral tribunal shall record the settlement in the form of an arbitral award on agreed terms, provided that the settlement is not contrary to public policy.

*Attorneys' Fees*

Pursuant to Law 2735/1999, and unless otherwise agreed by the parties, the arbitral tribunal, taking into consideration the particulars of the case and especially the outcome of the arbitration, shall allocate between the parties the costs of the arbitration, including costs for the support of their statement of claim and defense. If no such costs have been determined by

the termination of the proceedings, such determination and allocation may be effected by a separate arbitral decision.

Existing rules regulating the legal profession in Greece allow lawyers to agree to be remunerated on a contingency basis. However, the rules set a 20 percent ceiling. To make sure that a contingency fee agreement will be respected and enforced, a lawyer must file a copy of the agreement with the Bar Association.

### **Changes in Arbitration**

The main change in arbitration that has taken place in Greece in the last five years is the enactment of Law 2735/1999, which regulates international commercial arbitrations. Prior to the entry into force of this law, the Civil Procedure Rules did not distinguish between domestic and international arbitrations. The fact that Law 2735/1999 is based on the UNCITRAL Model Law makes it easier for foreign countries to understand the arbitration process and not to fear that they may be faced with peculiarities of the Greek legal system. This means that more foreign companies are inclined to agree to refer their disputes to arbitration based on Law 2735/1999 rather than to some other international forum such as the Court of Arbitration based on the rules of the International Chamber of Commerce, which could be a more expensive process.

As mentioned above, Greece is a full member of the EU; to the extent that company law is becoming increasingly harmonized throughout the EU, companies in Greece will face the same challenges as companies established in other EU member states. EU enlargement may, however, result in greater insecurity regarding the operation of the official court system, especially in the new member states. For example, Greek companies are more and more involved in doing business in the Balkans. In some Balkan countries it is feared that the legal system is not yet fully developed and the court system is not considered fully trustworthy. In such cases, companies are increasingly including arbitration clauses in their commercial agreements.

## Resources

A useful book addressing international arbitration in Greece, written in English, is: Stelios Koussoulis, *Issues of International Arbitration and the New Greek Law on International Commercial Arbitration* (Athens: Ant. N. Sakkoulas Publishers, 1999).

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