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PREFACE

I am delighted to have taken on the editorship of *The International Arbitration Review* and to present this latest edition in the series.

Those of us who practise in the field of international arbitration are fortunate to have a seemingly endless supply of topical literature at our fingertips. Comprehensive treatises, scholarly journals and articles, and online resources covering the latest arbitration developments are readily accessible to a global audience.

But what if one wants to understand the law and practice of international arbitration through a more focused, jurisdiction-specific lens, while at the same time ensuring that the information one receives is of the highest quality and reflects the latest developments?

That is where this volume comes in. It fills a niche by undertaking a thorough analytical review of arbitration developments over the past year in the world's leading arbitration jurisdictions (and some that are on the ascent). Written by leading practitioners from around the world, the chapters in this volume put recent arbitration developments in the context of each jurisdiction's legal arbitration structure, and provide expert commentary on the most important legislative and judicial developments. They do so in a manner designed to be maximally useful for practitioners, in-house counsel and academics alike.

As in previous editions, the chapters in this volume address developments in both international commercial arbitration and investor–state arbitration, and seek to provide current information on both of these species of international arbitration. Throughout this volume, important investor–state arbitration developments in each jurisdiction are treated as a separate but closely related topic.

I thank all of the authors for their excellent contributions to this volume and welcome any comments or suggestions from readers as to how this volume might be usefully expanded or improved in future editions.

John V H Pierce
Latham & Watkins LLP
New York
June 2023

Chapter 12

GREECE

Dimitris Babiniotis and Emmanouil Mavrantonakis[1]

I INTRODUCTION

i Structure of law

Greece is a contracting state of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (NYC).[2] The Greek legal order follows a dualistic system, treating the regulation of domestic and international arbitration as separate. Domestic arbitration is regulated by Articles 867–903 of the Greek Code of Civil Procedure (GrCCP), whereas international arbitration is regulated by a special legal framework (i.e., by Laws 2735/1999 and 5016/2023). Articles 867–903 of the GrCCP apply on a supplementary basis to matters not specifically regulated by Laws 2735/1999 and 5016/2023.

ii Law 5016/2023 on international commercial arbitration

Through the ratification of Law 2735/1999, Greece adopted the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (the UNCITRAL Model Law).[3] In February 2023, Law 2735/1999 was replaced by Law 5016/2023, the ratification of which aimed to modernise the Greek law of international arbitration by taking the amendments of the UNCITRAL Model Law in 2006 as well as contemporary developments in case law, practice and legal theory into account.[4]

iii Distinction between international and domestic arbitration

On the basis of the territoriality principle, Law 5016/2023 applies only to international arbitration proceedings seated within the Greek legal order.[5] 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:

a the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different states; or

1 Dimitris Babiniotis is a partner and head of the dispute resolution practice and Emmanouil Mavrantonakis is an associate at Zepos & Yannopoulos.

2 The NYC was ratified by Legislative Decree 4220/1961 and entered into force on 16 July 1962.

3 Law 2735/1999 was ratified on 13 August 1999 (Government Gazette No. 167/18 August 1999) and came into force on 18 August 1999.

4 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.

5 See Article 1(1) of Law 2735/1999 and Article 3(1) of Law 5016/2023.

b 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.

Furthermore, in accordance with Article 3(3)(c) of Law 5016/2023, an arbitration is also deemed international if the parties have explicitly agreed that Law 5016/2023 applies to that arbitration.[6]

iv The commercial character of arbitration

Law 5016/2023 is applicable only to international commercial arbitration proceedings seated in Greece. As to the commercial character of arbitration, both above laws comply with footnote 2 of Article 1(1) of the UNCITRAL Model Law giving the term 'commercial' a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. 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.[7]

v Structure of the courts and local institutions

Under Greek law, state court jurisdiction in relation to arbitration extends to (1) the assistance of arbitration proceedings (e.g., appointment of arbitrators where the parties fail to reach an agreement, hearing challenges against an arbitrator, appointment of a substitute arbitrator or assistance in taking of evidence), (2) the state 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) the ordering of interim measures.

Cases pertaining to the court assistance of arbitration proceedings are under the jurisdiction of the single-member court of first instance of the place of the applicant's residence or domicile. In case none of those applies, the Athens single-member court of first instance is competent.[8] Actions for the annulment of domestic arbitral awards fall under the jurisdiction of the three-member court of appeal of the seat of arbitration or, if the seat of arbitration cannot be specified, of the Athens three-member court of appeal.[9]

Annulment proceedings against domestic arbitral awards are heard in accordance with the special proceedings for the resolution of monetary disputes under Articles 591 and 614 GrCCP. 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

6 i.e., irrespective of any agreement of the parties that the subject matter of the arbitration agreement relates to more than one country.

7 See p. 37 of the Explanatory Statement of the draft of Law 5016/2023.

8 See Article 9(1) of Law 5016/2023.

9 See Article 6(2) of Law 5016/2023.

obligor's residence or domicile or, in the alternative, with the Athens single-member court of first instance, under the voluntary jurisdiction proceedings of Articles 740–781 GrCCP. Application for interim measures must be filed with the competent court according to Article 682 et seq. GrCCP.

vi 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 the main arbitration institutions, such as the International Court of Arbitration and the London Court of International Arbitration. There are also several local arbitration institutions operating in the country, such as the Athens Mediation & Arbitration Organization, the Athens Chamber of Commerce and Industry, the Athens Bar Association[10] and the Hellenic–German Chamber of Commerce and Industry. Each of those arbitration institutions has adopted its own set of Arbitration Rules.[11] Furthermore, in an effort to promote institutional arbitration in Greece, Article 46 of Law 5016/2023 regulates the establishment of arbitration institutions seated in Greece.

II THE YEAR IN REVIEW

i Developments affecting international arbitration: changes brought by Law 5016/2023 in a nutshell

Following last year's contribution to this review and the short analysis of Law 2735/1999,[12] this year's contribution focuses on the new legal framework of international arbitration established by Law 5016/2023. Apart from the internationality of arbitration and the jurisdiction of the Greek courts already addressed above, the most significant changes brought 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.

ii Arbitrability and validity of the arbitration agreement

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

Article 11(1) of Law 5016/2023 acknowledges the principle of *in favorem validitatis* in relation to the arbitration agreement by establishing a conflict-of-law rule. That rule provides that an arbitration agreement is valid if such an agreement is deemed valid under (1) the law applicable to the arbitration agreement, (b) the *lex loci arbitri* or (c) the *lex contractus*.

10 Recently established in accordance with Presidential Decree No. 91/2020.

11 The Arbitration Rules of the above arbitration institutes may be found at the following links: https://www.iccwbo.gr/en/about; https://www.eodid.org/en/; https://acci.gr/en/directorate-of-international-commercial-relations/#1632482710545-2cac9826-0a15; https://www.dsa.gr/sites/default/files/news/attached/diaitisia_dikigorikoy_syllogoy_athinon-ta206.pdf; and https://griechenland.ahk.de/gr/ypiresies/nomika-kai-foroi/diaitisia-kai-diamesolabisi.

12 Zepos & Yannopoulos's contribution to Carter, James (ed), *The International Arbitration Review*, 13th ed., Chapter 12 – Greece, may be found at the following link: https://thelawreviews.co.uk/title/the-international-arbitration-review/greece.

Article 43(2)(a)(aa) of Law 5016/2023 providing for an annulment ground in the case of the absence of a valid arbitration agreement explicitly refers to Article 11(1) of the same Law as regards the determination of the validity of the arbitration agreement. Moreover, 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.

Article 10(1) of Law 5016/2023 is in line with the general rule that an agreement to arbitrate must be in writing. Article 10(4), however, introduces a progressive approach releasing the arbitration agreement from any strict formal requirement by providing that, in any event, the parties' unconditional participation in the arbitration proceedings serves as evidence of a valid agreement to arbitrate. The requirement of a written form thus simply serves evidentiary purposes of the arbitration agreement.

iii Composition of the arbitral tribunal and arbitrators' liability

As regards the composition of the arbitral tribunal, Article 14(1) of Law 5016/2023 provides that the number of arbitrators shall not be an even number. Particular reference is made to Article 16(1) of Law 5016/2023 prescribing that, save any agreement to the contrary, in multiparty arbitrations, all parties on each side jointly nominate their co-arbitrator. In the alternative, following any party's request, all members of the arbitral tribunal are appointed by the court indicated under Article 9(1) of Law 5016/2023.

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 liability also applies to the secretary to the arbitral tribunal under Article 27(4) of Law 5016/2023.

With respect to the subjective scope of the arbitration proceedings, Article 24 of Law 5016/2023 on third-party joinder and consolidation of proceedings introduces an innovative provision on multiparty arbitration not provided under the UNCITRAL Model Law. Under Paragraph 1 of that provision, a third party purported to be bound by the arbitration agreement may be joined in the arbitration proceedings as claimant, respondent or intervening party, having the same rights and obligations as the initial parties. Paragraph 2 of the above provision allows for the arbitral tribunal to consolidate multiple arbitrations into a single set of arbitration proceedings, either before it or before another arbitral tribunal. Article 24 of Law 5016/2023 applies, save any parties' agreement to the contrary.

iv Res judicata effect and enforceability of domestic arbitral awards

According to Article 44(1) of Law 5016/2023, once rendered, a domestic arbitral award produces the effects of res judicata. Domestic arbitral awards are considered final and binding upon the parties and are not subject to an appeal on points of law or fact. The judicial review of domestic arbitral awards is limited to procedural irregularities of the arbitration proceedings (e.g., invalidity of the arbitration agreement, due process violations, excess of the arbitral tribunal's authority, non-arbitrability and public policy violations, etc.) and does not extend to a de novo review on the merits of the case. Even in cases of manifestly erroneous application of the law or determination of the facts, arbitral awards are final and binding.

Under the newly introduced provision of Article 44(2) of Law 5016/2023, the res judicata effect of arbitral awards also extends to prejudicial matters adjudicated by the arbitral tribunal, under the condition that such matters fall within the objective scope of the arbitration agreement. As regards its subjective scope, the res judicata effect of arbitral awards extends to third parties that are bound by the arbitration agreement.

As prescribed in Article 44(2) of Law 5016/2023 and in Article 904(2)(b) GrCCP, once rendered, domestic arbitral awards are enforceable without any further recognition or declaration of enforceability.

v Annulment proceedings against domestic arbitral awards

Notwithstanding the res judicata effect and the enforceability of domestic arbitral awards, 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 reconsideration 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 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 has been waived, the parties may still raise any annulment grounds in the context of a challenge aiming to quash enforcement proceedings.

According to Article 43(6) of Law 5016/2023 and provided that there is no agreement of the parties to the contrary, the 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 if the defect of the arbitral award constituting an annulment ground is curable, the state court may refer the dispute to the arbitral tribunal for the latter to correct its award. By doing so, the state court sets a time limit for the correction of the arbitral award, which may not exceed 90 days unless there is a good cause.

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.

vi Recognition and enforcement of foreign arbitral awards

Greece is a contracting state of the NYC, which was ratified by virtue of Legislative Decree No. 4220/1961 and as provided for in Article 45(1) of Law 5016/2023. The rules of the NYC are applicable to the recognition and enforcement of foreign arbitral awards. Recognition and enforcement of a foreign arbitral award rendered in another contracting state of the NYC may thus not be refused in Greece, unless it is held that a ground for refusal provided in Article V NYC applies. Upon ratification of the NYC, the Greek state made a commerciality and reciprocity reservation in accordance with Article 1(3) NYC.

Despite the above reservations, in accordance with Article 45(1) of Law 5016/2023, the provisions of the NYC are applicable to the recognition and enforcement of all foreign awards, irrespective of whether the state of origin is a contracting state to the NYC and of whether the subject matter of the arbitration pertains to a commercial dispute. In that sense, both the commerciality and the reciprocity reservations made by Greece do not seem to restrict the scope of application of the NYC.

vii Arbitration developments in local courts

Both domestic and foreign arbitral awards are subject to a minimal judicial review by the Greek courts in order for a minimum of procedural justice in the arbitration proceedings to be guaranteed. Public policy consideration makes no exception from that rule. According to the well-established case law of Greek courts, the notion of public policy is to be interpreted narrowly.[13]

Domestic arbitral awards may be annulled under Article 43(2)(b)(bb) of Law 5016/2023, and foreign arbitral awards may not be recognised and declared enforceable under Article V(2)(b) of the NYC if their recognition and enforcement would result in a violation of Greek international public policy (*ordre public international*). Corresponding to Article 33 of the Greek Civil Code (GrCC), international public policy extends only to a set of principles reflecting the political, social, financial and moral fundaments of the Greek legal order, the violation of which may not be tolerated.[14]

Narrow interpretation of public policy is evidenced in recent Decisions Nos. 295/2022 and 1312/2022 of Areios Pagos, the Hellenic Supreme Court.[15] In those judgments, Areios Pagos ruled that judicial review of possible public policy violations serves only public interests aiming to safeguard the fundamental principles of the Greek legal order. In contrast thereto, public policy does not cover any mandatory provisions (*jus cogens*) of Greek law serving private interests of the parties, such as the principle of good faith under Articles 288 and 388 GrCC and the abuse of rights under Article 281 GrCC. Any erroneous interpretation and application of such legal provisions do not result in violation of international public policy.

In line with its established case law, in its recent Decision No. 295/2022, Areios Pagos ruled that an arbitral tribunal does not exceed its authority in cases of erroneous interpretation and application of the substantive law. As long as the dispute adjudicated by the arbitral tribunal falls within the scope of the arbitration agreement, the arbitral award may not be annulled due to excess of the arbitral tribunal's authority.

viii 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

13 Narrow interpretation of the notion of public policy applies also to Article 897 No. 6 GrCCP in relation to the annulment proceedings against national arbitral awards.

14 The interpretation of public policy violations in accordance with Article 33 GrCC (international public policy) is now also prescribed in Article 43(2)(b)(bb) of Law 5016/2023.

15 Those judgments are in line with the established case law of the Greek courts. See, for example, Areios Pagos (Plenum), Judgment No. 14/2015 and Areios Pagos, Judgment No. 359/2018.

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.

In relation to the developments of the Greek case law on investor–state disputes, special reference should be made to recent Judgment No. 246/2022 of the Hellenic Supreme Administrative Court (HCS). In said judgement, 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.

III OUTLOOK AND CONCLUSIONS

In the field of international arbitration, the past year has been rich in developments in Greece. The ratification of Law 5016/2023 aims to modernise the Greek law of international commercial arbitration by adopting the amendments in the UNCITRAL Model Law of 2006 and current trends of international arbitration practice. Law 5016/2023 has replaced the former Law 2735/1999, except for international arbitration proceedings already commenced prior to its entering into force (i.e., prior to 3 February 2023), which are still under Law 2735/1999. This parallel application of Laws 2735/1999 and 5016/2023 will inevitably result in an unequal treatment of arbitration proceedings based on a random time factor.

The following points constitute the most significant innovations of Law 5016/2023: (1) the application of the conflict-of-law rule of *in favorem validitatis* to the validity of arbitration agreements, under Article 11(1); (2) the requirement of a written form of arbitration agreements serving evidentiary purposes, under Article 10(4); (3) the innovative provisions of Articles 16(1) and 24 on third-party joinder and consolidation of arbitration proceedings; (4) the extension of the res judicata effect of arbitral awards to prejudicial matters adjudicated by the arbitral tribunal falling within the scope of the arbitration agreement, under Article 44(2); (5) the parties' freedom to waive their right to apply for the annulment of the arbitral award at any time, according to Article 43(7); (6) the revival of the arbitration agreement as a result of the annulment of the arbitral award; and (7) the referral of the arbitral award to the arbitral tribunal as an alternative to annulment in cases of curable annulment grounds.

The well-established annual series of events Athens Arbitration Days, which brings together leading international arbitration practitioners and scholars each October, serves as proof of the strong presence of international arbitration in Greece.

Last year's case law affirms that judicial review of domestic and foreign arbitral awards remains minimal. No de novo review on the merits of the case is exercised. The consideration of international public policy does not cover every mandatory provision of Greek law but is to be interpreted rather narrowly, extending only to principles reflecting the political, social, financial and moral fundaments of the Greek legal order.

In the aftermath of the *Achmea* and *PL Holdings* decisions of the CJEU, the recent Decision No. 246/2022 of the HCS casts doubts on the validity and binding effect of arbitration clauses pertaining to concession agreements with the Greek state. It remains to be seen whether this uncertainty as to the future of arbitration in Greece will be lifted by future decisions of the Greek courts.