Mediation 2021

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Getting The Deal Through

Greece

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LAW AND POLICY

Definitions

1 | Is there any legal definition in your jurisdiction of the terms 'ADR', 'conciliation' and 'mediation'?

There is no legal definition of ADR in Greek law; the term is used in Greece per the international standards to include any method of alternative dispute resolution other than by court or arbitration proceedings.

Conciliation is also not defined in Greek law but, again, the generally acceptable notion of the term is followed, namely the increased role of a mediator in guiding the parties by offering opinions or proposing a solution. In that regard, Greek mediation law (Law 4640/2019, as in force – Law 4640) exceptionally allows a mediator to give parties a non-binding personal opinion; however, only if parties so wish, while the mediator remains neutral in any case (article 13, paragraph 2, Law 4640).

Mediation is defined by Law 4640, in the frame of Directive 2008/52/EC 'on certain aspects of mediation issues in civil and commercial matters' (the EU Mediation Directive), as a structured process with key elements confidentiality and private autonomy, where two or more parties try voluntarily and in good faith to solve a dispute with the assistance of a mediator.

A mediator is the third party who undertakes to mediate by an appropriate, effective and neutral way, facilitating the parties to find a mutually acceptable solution to their dispute (article 2, paragraphs 2 and 3, Law 4640).

Mediation models

2 | What is the history of commercial mediation in your jurisdiction? And which mediation models are practised?

Law 4640 is the current Greek law on mediation that was enacted on 30 November 2019, as in force, and it is the third attempt to introduce the institution in Greece after Law 3898/2010, which transposed initially into domestic law the Directive but it remained of a rather limited application and Law 4512/2018, which also remained inactive due to unconstitutionality (Supreme Court Administrative Plenary Decision 34/2018).

Law 4640 regards civil and commercial mediation in the frame of the EU Mediation Directive and applies the model of facilitative mediation as a rule. Exceptionally, evaluative mediation may apply under conditions (article 13, paragraph 2, Law 4640).

Domestic mediation law

3 | Are there any domestic laws specifically governing mediation and its practice?

Mediation is regulated by Law 4640, which follows the provisions of the EU Mediation Directive as a rule, subject to the following basic notes.

Enforceability of the mediation settlement agreement

The material deviation of Law 4640 from the EU Mediation Directive regards enforceability. In specific, Law 4640 (article 8, paragraph 2) allows each party, acting even unilaterally and irrespectively of the consent of the other parties, to file the mediation settlement agreement with the secretariat of the court that is competent to hear the dispute, together with a state's duty required (currently €50), so that same becomes enforceable, provided the subject matter of the agreement reached may be enforced.

Under the EU Mediation Directive, such a filing by one of the parties requires the explicit consent of the others (article 6, paragraph 1).

Incentives and sanctions

Law 4640 provides for no incentives to mediate nor sanctions for a refusal to mediate (for those cases not falling within a mandatory initial mediation session). So Greece did not choose to enact such an option allowed by the EU Mediation Directive (article 5, paragraph 2).

Compulsory mediation

For certain kinds of disputes specifically listed in Law 4640, a mandatory initial mediation session is required, with applicable sanctions for the party that does not participate although having been properly summoned (articles 4, paragraph 1(d), 6 & 7, Law 4640). So, Greece chose to enact mandatory mediation provisions in the frame of such an option allowed by the EU Mediation Directive (article 5, paragraph 2).

Mediation as a dispute resolution mechanism under Law 4640 is referred to by other laws and legislative pieces in general, such as by:

- the laws on *sociétés anonymes* (article 3, paragraph 2, Law 4548/2018), commercial transformations (article 5, paragraph 2, Law 4601/2019) and commercial trademarks (article 31, Law 4679/2020);
- the bankruptcy code providing for financial mediation (article 15, Law 4378/2020) and the law on 'over-indebted' natural persons currently applicable, providing for similar debtor-creditors mediation process (article 4(ie) Law 3869/2010);
- the very recent transformation of family law regarding the exercise and allocation between parents of the children's parental care after divorce and providing for a special family mediation by mediators registered in a special Registry (articles 8, 15, 21 & 30, Law 4800/2021, to be in force on 16 September 2021);
- the Lawyers' Code, including mediation within the lawyers' duties and work (article 36, paragraph 1, Law 4194/2013); and
- the Code of Civil Procedure, expressly mentioning the courts' and judges' duty to refer cases to mediation, if considered appropriate (articles 116A & 214C).

Also, various 'mediation-type' proceedings apply over and beyond Law 4640 for a variety of disputes, such as:

- the Consumer's Ombudsman (Law 3297/2004);
- the Citizen's Ombudsman (Law 2477/1997);

- the Hellenic Financial Ombudsman, also a FIN-NET member regarding cross-border disputes;
- the Mediation and Arbitration Organisation for collective labour disputes (articles 14–15, Law 1876/1990);
- the Labour Inspection Body for individual labour disputes, including same related to violence and harassment at work, which was enacted very recently (article 3, Law 3996/2011 and especially articles 17-18, Law 4808/2021);
- the Committee for solving disputes regarding breaches of IP and related rights on the internet (article 66E, Law 2121/1993); and
- the Committee for out-of-court tax disputes (ministerial decision 127519/2020).

Singapore Convention

4 | Is your state expected to sign and ratify the UN Convention on International Settlement Agreements Resulting from Mediation when it comes into force?

Singapore Convention, which was signed on 7 August 2019 and came into force on 12 September 2020, is being regarded a significant instrument for the international promotion of mediation. Greece is expected to rather wait for any initiatives of the European Union before deciding on the topic.

The lack of uptake of the Singapore Convention in the EU, at least thus far, may be due to the EU Mediation Directive, which aims to achieve a similar outcome to the same within the EU and it requires EU member states to 'ensure that it is possible for the parties, or for one of them with the explicit consent of the others, to request that the content of a written agreement resulting from mediation be made enforceable'. This requirement is subject to exceptions (restrictively applicable and regarding mainly public policy) and the general provisions on recognition and enforcement on enforceable agreements among the EU member states (article 6, especially paragraphs 1 and 4 and preamble, Nos. 19–22).

Incentives to mediate

5 | To what extent, and how, is mediation encouraged in your jurisdiction?

There are no financial incentives to mediate, such as tax allowances or relevant costs' deduction as taxable expenses neither sanctions for a refusal to mediate (for those cases not falling with a mandatory initial mediation session).

Courts (namely, judges) have a duty to encourage mediation by inviting litigants to consider it at any stage of the court proceedings taking into account all circumstances of each case, which should, of course, be appropriate for mediation. The legal background for this is included in articles 116A & 214C of the Code of Civil Procedure, as the latter was supplemented by article 4, paragraphs 1(b) & 2 of Law 4640.

Also, lawyers have a similar duty to show their clients the way towards mediation (article 36, paragraph 1 of the Lawyers Code – Law 4194/2013).

Additionally, before filing a lawsuit on a dispute appropriate for mediation, the plaintiff's lawyer must inform the plaintiff in writing of the possibility of mediation or the obligation for a mandatory initial mediation session (see below); the relevant informative document must be signed by both the lawyer and the plaintiff and it has to be filed with the court either together with the lawsuit or with the submissions; failing to do so results to the inadmissibility of the lawsuit's hearing (article 3, paragraph 2, Law 4640).

Further, in recent years various laws that were enacted on a variety of topics provide especially for mediation as ADR, such as for trademarks, family parental care and other kinds of disputes.

Moreover, for certain kinds of disputes, a mandatory initial mediation session is provided for by Law 4640, in force on different dates as below, such disputes being:

- those with a mediation clause in a written agreement, in force from 30 November 2019,
- certain family disputes, in force from 15 January 2020; and
- disputes adjudicated under the ordinary proceedings and fall within the competence of either the multi-member first instance courts or the single-member ones, in the latter case provided that the value of the dispute exceeds €30,000, in force from 1 July 2020.

An exception applies for such disputes where the litigant is the Hellenic Republic, public law legal entities or local self-government organisations.

The scope of the mandatory initial mediation session, which must take place before the case is heard by a court, is for the parties to be informed by the mediator on the mediation process and its basic principles as well as on the possibility of an out of court solution of their dispute based on the particularities and the nature of the same.

In the above cases, the failure to file with the court, together with the submissions, the minutes of the mandatory initial mediation session including the minimum contents of Law 4640 results in the inadmissibility of the hearing (articles 2, paragraph 5, 6, 7 and 44, as in force, Law 4640).

Sanctions for failure to mediate

6 | Are there any sanctions if a party to a dispute proposes mediation and the other ignores the proposal, refuses to mediate or frustrates the mediation process?

Yes, but only regarding the disputes falling within the mandatory initial mediation session (articles 6 and 7, Law 4640). The court may impose a fine of €100–500, depending on the circumstances, to the party that does not attend the mandatory initial mediation although it had been properly summoned. No recourse against such a decision is allowed unless the case is also challenged in its merits (article 7, paragraph 6, Law 4640).

Prevalence of mediation

7 | How common is commercial mediation compared with litigation?

The application of Law 4640 is rather recent, whereas there are no official data or statistics allowing a complete and concrete view.

However, empirical evidence shows that mediation culture is expanding basically due to:

- the mandatory initial mediation session for disputes that Law 4640 provides for; and
- the pandemic, during which courts closed down, whereas mediations could still take place online.

MEDIATORS

Accreditation

8 | Is there a professional body for mediators, and is it necessary to be accredited to describe oneself as a 'mediator'? What are the key requirements to gain accreditation? Is continuing professional development compulsory, and what requirements are laid down?

There is no professional body for mediators.

Accreditation is required to describe oneself as a mediator, who as a rule must be:

- a third-level education graduate or a holder of an equivalent education title of a non-Greek recognised institution;

- trained by a special organisation certified by the Central Mediation Committee or holder of an equivalent accreditation title issued by another EU member state; and
- accredited by the Central Mediation Committee and registered with the Mediators' Registrar.

Special requirements and conflicts apply in specific conditions (articles 12, paragraph 1, 28 & 29, Law 4046).

Central Mediation Committee and the certified training organisations are specifically regulated (articles 10–11 and 22–27, Law 4640 respectively).

Continuing professional development is compulsory and consists of a minimum of 20 hours' training every three years provided by Greek or non-Greek certified training organisations (article 27.B, Law 4640).

Liability

9 What immunities or potential liabilities does a mediator have? Is professional liability insurance available or required?

Mediators are liable for fraud only (article 5, paragraph 7, Law 4640).

Professional liability insurance is not mandatory, and it may be available if any individual mediator so wishes. However, it is not common in practice.

Mediation agreements

10 Is it required, or customary, for a written mediation agreement to be entered into by the parties and the mediator? What would be the main terms?

A written mediation agreement is required; same is entered into by the parties and the mediator and its main terms are such parties' basic personal details, same of any other participating party (eg, a technical expert), mediator's fee and the subject matter of the mediation. The agreement may further include any other terms, such as procedural ones, that the parties may consider appropriate (articles 5, paragraphs 1 and 3, 7, paragraph 7 and 18, paragraph 1, Law 4640).

Appointment

11 How are mediators appointed?

Mediators are appointed by the parties or by a third party chosen by the parties. Unless agreed otherwise, one mediator is appointed (article 5, paragraph 2, Law 4640).

For those cases for which a mandatory initial mediation session is required, in the absence of the parties' consent on the mediator, the same is appointed by the Central Mediation Committee following a request to it by any party. Detailed regulation applies on how the above committee makes the appointment and what happens if the one initially appointed refuses to accept the nomination (article 7, paragraph 1, Law 4640).

Conflicts of interest

12 Must mediators disclose possible conflicts of interest? What would be considered a conflict of interest? What are the consequences of failure to disclose a conflict?

Any conflict of interest prohibits a mediator from accepting a mediation duty and enforces him or her to stop acting if already accepted, notifying the parties accordingly. Conflict of interest cases are indicatively mentioned in Law 4640, such as any personal or professional relationship with the parties or their lawyers, collection of fees in the past for services provided to any of the parties, any economic or other kind of interest, direct or indirect, related to the mediation at issue. The conflict is provided rather broadly and covers any involvement in the future by the mediator, by any means, to the case he or she handled, between the same parties (article 14, Law 4640).

Failure by the mediator to disclose a conflict would result to disciplinary sanctions imposed by the Central Mediation Committee within a range provided for by Law 4640, depending on the circumstances, but it would not affect a possibly successful mediation outcome.

Also, the mediator could be exposed to civil and criminal liability subject to the particular requirements of each case (article 17 and 5, paragraph 7, Law 4640).

Fees

13 Are mediators' fees regulated, or are they negotiable? What is the usual range of fees?

Mediator's fees may be freely agreed by a written agreement with the parties.

In the absence of a written agreement, Law 4640 fixes mediator's fees exceptionally for the cases for which a mandatory initial mediation session is required as follows: €50 for the initial mandatory mediation session irrespectively of its duration and €80 per hour for a subsequent mediation procedure (if the parties so choose). The above amounts may be adjusted by a ministerial decision and the cost is borne equally by the parties. The mediator's duty is to have parties fully informed on his or her fees (article 18, Law 4640).

In practice and regarding non-mandatory mediation performed through mediation organisations, mediator's fees are a lump sum based on the amount of the dispute and the expected duration of the process.

PROCEDURE

Counsel and witnesses

14 Are the parties typically represented by lawyers in commercial mediation? Are fact- and expert witnesses commonly used?

The parties have to participate in a mediation together with their lawyers except for consumer and small amount disputes where a lawyer's presence is not mandatory.

Fact and expert witnesses may participate only if it is considered necessary and based on the parties' consent, in agreement with the mediator. Such third parties have to co-sign the relevant agreements (articles 5, paragraph 1 and 8, paragraph 1, Law 4640).

Consumer disputes are those involving a 'consumer' as the term is defined in the basic law on the 'protection of consumers' being EU originated, namely 'any natural person acting for reasons not falling within its commercial, business, handicraft or professional services activity' (article 1a, paragraph 1, Law 2251/1994, as in force).

Small-amount disputes are those valued up to €5,000 and falling within the competence of the so-called justice of the peace courts (low first-instance courts) (articles 466-471, Code of Civil Procedure).for

Procedural rules

15 Are there rules governing the mediation procedure? If not, what is the typical procedure before and during the hearing?

The mediation process is flexible and may be freely determined by the mediator and the parties. A mediator's duty is to secure that the parties understand the mediation process and consent thereto, being free to walk away at any time and without any consequences (articles 5, paragraph 3 and 15, paragraphs 1 and 5, Law 4640).

As a rule, pre-hearing separate contacts between the mediator and the parties as well as their lawyers take place and short submissions with basic documentation are sent to the mediator. Then, on the day of the mediation a joint opening session and as many private sessions as needed take place, with a final joint session for the conclusion of an agreement or the confirmation of the non-agreement, as a case may be.

Tolling effect on limitation periods

16 | Does commencement of mediation interrupt the limitation period for a court or arbitration claim?

The agreement to mediate or, the mediator's notification to the parties for a mandatory initial mediation session (where applicable) suspend the prescription and the statute of limitation as well as any procedural deadlines that have started running, throughout the duration of the mediation; such periods and deadlines continue after the end of the mediation process by any means (article 9, Law 4640).

Enforceability of mediation clauses

17 | Is a dispute resolution clause providing for mediation enforceable? What is the legal basis for enforceability?

A valid (written) mediation clause is enforceable and requires a mandatory initial mediation session to take place, by law. The minutes of such mandatory initial mediation session have to be filed with the court together with the submissions so that the hearing of the case is considered admissible (articles 2, paragraph 7, 4, paragraph 1(e) and 6, paragraph 1(c)).

Confidentiality of proceedings

18 | Are mediation proceedings strictly private and confidential?

Mediation proceedings are in principle private and confidential depending on the parties' choice, subject to exceptions. In particular, prior to the commencement of the mediation process, all participants (namely the mediator, the parties and their legal representatives as well as any third participating party) have to agree in writing that they will keep the confidentiality of the same.

Regarding the contents of the mediation agreement, the parties may agree to keep them confidential (this being the rule), subject to formality requirements related to its implementation and the public order.

The confidentiality obligation prohibits all participants to a mediation from testifying before a court or an arbitral tribunal on the case or submit or refer to data related to the mediation process, subject to public order issues mainly regarding the protection of minors or the avoidance of any harm caused to a person.

A mediator's duty is to stress to the parties their confidentiality obligation before mediation commences.

Safeguarding confidentiality is a key duty of the mediator, subject to legal requirement for the contrary, a public order issue or parties' agreement to the contrary. Breach by a mediator of such duty is considered a serious disciplinary offence (articles 2, paragraph 2, 5, paragraphs 5 and 6, 7, paragraph 3, 15, paragraph 2, 16 and 17.B.4, Law 4640).

Success rate

19 | What is the likelihood of a commercial mediation being successful?

The application of Law 4640 is recent, whereas there are no official data or statistics allowing a complete and concrete view.

SETTLEMENT AGREEMENTS

Formalities

20 | Must a settlement agreement be in writing to be enforceable? Are there other formalities?

A settlement agreement must be in writing and takes the form of minutes, including minimum contents provided for by law, namely:

- the name and tax registration number of the mediator;
- the date and place of mediation;
- the names of the parties, their legal representatives and any third parties who may have participated;
- a reference to the way the parties resorted to mediation; and
- the settlement agreement or parties' non-agreement.

The settlement agreement is signed by the parties, their legal representatives and the mediator. If no settlement is reached, the minutes may be signed by the mediator alone.

Any party may file the mediation settlement agreement with the secretariat of the court that is competent to hear the dispute, together with a state's duty required (currently €50). Following such filing:

- the mediation settlement agreement becomes enforceable, provided the subject matter of the agreement reached may be enforced;
- the filing of any subsequent lawsuit regarding the subject matter of the agreement reached is inadmissible and any pending litigation is terminated; and
- the mediation settlement agreement may be used for the registration or the waiver of a mortgage.

If the mediation settlement agreement concerns transactions being subject to a notarial formality, the same must be further met per the general rules.

It is also a mediator's duty to properly inform the parties on the way their mediation settlement agreement may become enforceable, as a case may be (articles 8 and 15, paragraph 6, Law 4640; articles 904, paragraph 2(h) and 293, paragraph 1(c), Code of Civil Procedure).

Challenging settlements

21 | In what circumstances can the mediation settlement agreement be challenged in court? Can the mediator be called to give evidence regarding the mediation or the alleged settlement?

Like the agreement for the submission to mediation, the mediation settlement agreement, which is made in writing and signed by the parties, their lawyers and the mediator, is a contract (articles 4, paragraph 5 and 8, paragraphs 1 and 2, Law 4640). Thus, it may be challenged in court under the general rules, such as for lack of a legal capacity to contract, deception, threat, error, breach of the good morals principle and breach of public order (especially articles 127–200, Civil Code).

Especially regarding good morals (*bonos mores*) and public order, a mediator may terminate the mediation process if the dispute is being settled in a way contrary to the same, following reasoned information to the parties thereon (article 15, paragraph 4(a), Law 4640).

Confidentiality requirement prohibits the mediator (as well as all other participants to a mediation) from testifying before a court or an arbitral tribunal on the mediated case or submit or refer to data related to the mediation process, subject to public order issues mainly regarding the protection of minors or the avoidance of any harm caused to a person (article 5, paragraph 6, Law 4640).

Enforceability of settlements

22 Are there rules regarding enforcement of mediation settlement agreements? And on what basis is the mediation settlement agreement enforceable?

Mediation settlement agreements must be in writing, including minimum contents and signed by the parties, their legal representatives and the mediator. Any party may file the mediation settlement agreement with the secretariat of the court being competent to hear the dispute, together with a state's duty required (currently €50), so that it becomes enforceable, provided the subject matter of the agreement reached may be enforced. If the mediation settlement agreement concerns transactions being subject to a notarial formality, the same must be further met per the general rules. It is also a mediator's duty to properly inform the parties on the way their mediation settlement agreement may become enforceable, as the case may be (articles 8 and 15, paragraph 6, Law 4640 and 904, paragraph 2(h), Code of Civil Procedure).

STAYS IN FAVOUR OF MEDIATION

Duty to stay proceedings

23 Must courts stay their proceedings in favour of mediation?

Courts (judges) have a rather broad duty to encourage mediation by inviting litigants to consider it at any stage of the court proceedings, taking into account all circumstances of each case, which should, of course, be appropriate for mediation, although they are not specifically required to stay proceedings in favour of mediation. Specifically:

> *a) The court encourages, at any stage of the trial and in any proceedings, the compromised solution of the dispute, the choice of mediation as means of out of court dispute solution, supports relevant initiatives of the litigants and it may propose ways of comprise evaluating the actual and legal conditions; and*
> *b) The court recommends to the litigants recourse to mediation proceedings, if this is appropriate based on the conditions of the case, as law requires. In case the recommendation is accepted, the hearing of the case is adjourned for a time period of three (3) to six (6) months.*
> (articles 116A & 214C, respectively, of the Code of Civil Procedure).

The latter provision was supplemented and expanded by article 4, paragraphs 1(b) & 2 of Law 4640, which indicates the important role that the courts may and should play by guiding the litigants (and their legal representatives as a result) to mediation and advancing its application to the fullest extent possible.

MISCELLANEOUS

Other distinctive features

24 Are there any distinctive features of commercial mediation in your jurisdiction not covered above?

Online mediation is specifically provided for by Law 4640 as an alternative to a mediation with the physical presence of the parties, allowing the latter flexibility on the way it may be performed (article 5, paragraph 3, Law 4640).

Covid-19 expedited the use of online mediation for two basic reasons, namely: the general lockdown of 2020 and 2021 and courts' suspension of operation due to the lockdown that caused a number of parties to consider mediation as the only realistic alternative for the settlement of their disputes. In practice, online mediation proved that it may work without problems, assisted by technology resolving any technical issues occasionally arising. So, the absence of any litigation proceedings available and the possibility for such online dispute resolution by mediation at any time during the pandemic lockdown accelerated a cultural shift towards mediation. It is believed that such a shift will continue.

Great assistance to the uninterrupted online mediation was given by the platforms of trustworthy mediation organisations providing the safeguards needed for a safe and secure online environment.

UPDATE AND TRENDS

Opportunities and challenges

25 What are the key opportunities, challenges and developments which you anticipate relating to mediation in your jurisdiction?

The necessity of mediation as an out-of-court dispute settlement process, either under Law 4640 or by the use of similar types of proceedings available, will increase progressively in the coming years, providing for the required speedy, cost-effective and realistic solutions, which are otherwise not available.

The main reasons for this are the litigation deadlocks in terms of length, cost, uncertainly of proceedings, lack of trust and technological infrastructure and facilities in the 'clicks' age calling for speedy, immediate, clear and trustworthy dispute solutions. Mediation was promoted by the restrictions imposed due to the pandemic and the online proceedings available, and such a boost is considered essential for its future.

It is in the hands of the appropriate mediators and mediation institutions to enhance the trustworthiness and value of mediation assisting parties' cultural shift towards it.

Regarding the EU, there is a trend towards the use of mediation broadly and especially in the digitally operating markets; so, the enactment of relevant EU legislation will affect Greece as it will become part of the domestic law. A notable example is Regulation (EU) 2019/1150 on online intermediation services, regarding P2B and providing for a permanent mediation mechanism for the relevant disputes (articles 12–13), thus referring to Law 4640 as a result.

Coronavirus

26 What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

An emergency legislation body was enacted in Greece following the emergence of the pandemic around mid-March 2020. Such urgent and exceptional legislation follows the development of the numerous effects that the pandemic brought to daily life. Thus, it is being periodically modified, and adjusted to the needs of any specific period as the effects are medically monitored by competent bodies and specialists.

Court operation has been suspended for many months, either completely or partially during 2020–2021 depending on the phase of the pandemic; things may be returning to the normal progressively and by stages; however, the time for this remains uncertain.

On the contrary, mediation was not interrupted and, in any case, minimally affected due to the alternative of an online process specifically allowed by Law 4640 (article 5, paragraph 3).

Within that online environment, what interested parties may basically check for in advance is trustworthy online mediation platforms operated by a number of mediation organisations or other generally known platforms in the case of ad hoc online mediations – in each case, of course, after checking on the mediator.

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