IN-DEPTH

Complex Commercial Litigation

GREECE

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In-Depth: Complex Commercial Litigation (formerly The Complex Commercial Litigation Law Review) is a useful global overview of the core principles and recent developments concerning the fundamental legal issues likely to feature in complex commercial disputes, wherever they may arise. It examines key topics including contract formation and modification; contract interpretation; breach of contract; defences to enforcement; fraud and misrepresentation; dispute resolution; remedies; and much more.

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Greece

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Summary

Introduction

The fundamental rule of Greek contract law, as provided in Article 158 of the Greek Civil Code (the GCC), is that no specific form is required for the conclusion of a commercial contract (constitutive form), except in cases where the law mandates a particular form. Therefore, the contracting parties have the discretion to determine the form of the contract, unless a special form is prescribed by law. Failure to comply with a legally required formality will result in the nullity of the contract in cases of doubt. However, the performance of the contract with knowledge of a defect related to its form may, in some instances, remedy such a defect (Article 159, Paragraph 2, GCC). Non-compliance with a legally required constitutive formality will lead to the nullity of the contract (Article 159, Paragraph 1, GCC). Consequently, adherence to the aforementioned provisions determines the validity or invalidity of the contract.

Regarding the above, Greek law does not prescribe a specific form for the conclusion of arm's-length transactions under the framework of commercial agency, distribution or franchise agreements. This is because, on the one hand, distribution and franchise agreements are not governed by special legislation but are generally subject to the most relevant provisions of the GCC. On the other hand, with respect to commercial agency agreements, Article 8 of Presidential Decree No. 219/1991 (transposing Directive 86/653/EEC on the coordination of the laws of the EU Member States relating to self-employed commercial agents) stipulates that a commercial agency agreement is not subject to any specific form.

From a dispute resolution perspective, this fundamental rule facilitates the plaintiff's task of proving the existence of a commercial agreement. Additionally, the *iura novitcuria* (the court knows the law) principle of the Greek Code of Civil Procedure (GCCP) empowers the court to classify the commercial contract, regardless of how the parties have classified it in writing.

Year in review

From a legislative perspective, this year is marked by the consolidation of the three-tiered first-instance court judicial system through the enactment and implementation of Law No. 5108/2024, titled Consolidation of the First Instance of Jurisdiction, Spatial Restructuring of Civil and Criminal Courts, and Other Provisions. This Consolidation is achieved by abolishing the magistrates' courts as an institution within the country's judicial system, with the aim of establishing courts that ensure the proper distribution of judges and cases proportionate to the population.

Conversely, the covid-19 pandemic brought into focus the conditions under which a contracting party can invoke *force majeure* as a reason for being excused from fulfilling contractual obligations. In this context, the Thessaloniki Court of Appeal (single-member chamber), in its Decision No. 7057/2023,[1] deemed lawful the termination of a work contract by one party and the demand for the return of an advance payment due to *force majeure*, attributed to the spread of covid-19 and the emergency measures implemented by the government to contain it. These circumstances were deemed to be outside thecontrol

of both the claimant and the defendant, unforeseeable and irreversible, thereby falling under the scope of *force majeure* as defined by Article 330 of the GCC.

Similarly, the Athens First Instance Court (multi-member chamber), in its Decision No. 635/2024,[2] ruled that the non-performance of a contractual obligation is not considered a fault when performance is rendered impossible due to covid-19-related governmental restrictions.

Contract formation

Conclusion of an agreement

Regardless the form of the agreement, which pertains to the validity of the agreement, provided that, if any particular form is required by law for a specific transaction, the parties comply with this requirement, one party makes an offer for the conclusion of the agreement and the other party accepts this offer. There is a crucial distinction between the demonstration of an offer or acceptance, or both, on the one hand, and the delivery of an offer or acceptance, or both, on the other. For an agreement to be validly concluded, both the demonstration and delivery of the offer or acceptance, or both, must occur.

Making an offer

When the offering party makes an offer, it is binding for the period during which the other party can accept it, unless the offering party explicitly states that the offer is non-binding, or the nature of the proposed agreement or the specific circumstances, or both, under which the offer is made imply a non-binding character. Additionally, the offer may be revoked or amended, or both, in the meantime, provided that the other party is aware of the revocation or amendment (Articles 185 and 186, GCC).

Generally, apart from instances where the offering party revokes the offer, the offer ceases to exist when it is rejected by the other party, or if it is time-limited and the acceptance is not received within the specified deadline (assuming the accepting party has received the offer). Conversely, if the offer is not time-limited, it expires when the offering party is no longer obligated to wait for a reply.

Accepting an offer

If the offering party has set a deadline, the recipient of the offer must deliver their acceptance within this deadline.

If no deadline is set, then, as described above, the recipient must deliver their acceptance within the time during which the offering party is obligated to expect a reply.

Whether the offering party is no longer obligated to wait for a reply is determined by the special circumstances under which the offer was made, the subject matter of the proposed agreement, its significance, good faith and trade customs. Factors to consider in determining this obligation include whether the recipient was present when the offer

was made, the distance between the offering and recipient parties, and the means used to deliver the offer when the recipient was not present (e.g., telephone, mail, email or other online means).

Proof of agreement's conclusion

Apart from the form that must be applied for the conclusion of an agreement, if such a form is not required by law, then another key consideration when drafting a commercial contract is the value of the transaction to be concluded through the agreement. This is crucial because, in a dispute resolution context, special procedural rules apply regarding the evidentiary form eligible to prove the conclusion of an agreement.

In particular, the GCCP provides that an agreement, as well as any prior, additional or complementary agreements to the main agreement that are drawn up in writing, cannot be proved by witnesses if the value of their subject matter exceeds €30,000, and testimonial evidence against the content of a document is not allowed (Article 393, GCCP). This means that, as a general rule, if the value of the agreement exceeds €30,000, it must be in writing to be considered by the competent court. Exceptionally, testimonial evidence is permitted under the following conditions (Article 394, GCCP):

1. the existence of a document and its content are inferred from the content of an existing valid document that bears evidentiary power according to the provisions of law;
2. a document is difficult to obtain due to physical or moral incapacity. This rule may apply, for example, where one of the parties to the agreement is illiterate;
3. it can be proven that a document was accidentally lost; and
4. testimonial evidence is justified by the nature of the act or the specific circumstances under which it was drafted, particularly in the case of commercial transactions. The specific reference made by law to commercial transactions does not, by itself, imply that testimonial evidence is permissible in such contracts; rather, it is a matter for the court or judge to decide.[3]

Although the general rule above serves as an exception to the principal rule prohibiting testimonial evidence for agreements with a value exceeding €30,000, Greek law provides another exception applicable to any agreement, regardless of its value. Specifically, if the parties have agreed on a specific form for either the conclusion (constitutive form) or proof (evidentiary form) of the agreement, or if the law mandates a specific form for the conclusion or proof of the agreement, then testimonial evidence is admissible only if it can be proven that a document was accidentally lost (Article 394, Paragraph 2, GCCP (see item (c) above).

This means that even if the parties have excluded the use of witnesses from the agreement (for proving the content and performance of the agreement), this exclusion does not apply when it can be demonstrated that a document, which would have been able to prove the plaintiff's or defendant's claim, was accidentally lost. In such cases, testimonial evidence is permitted.

Contract interpretation

General

When the contracting parties are involved in a dispute, provided that Greek courts have jurisdiction to resolve the dispute, the court must interpret the commercial contract in light of the law governing the agreement. In this context, the court should follow a two-stage analysis:

1. determine the governing law; and
2. interpret the contract in accordance with the rules of contract interpretation as prescribed by the governing law.

Statutory framework for determination of the governing law

The determination of the governing law is subject to the national or EU rules applicable at the time to the specific commercial contract. This time-based approach to determining the applicable rules for governing law reflects the European Union's effort to adopt measures related to judicial cooperation in civil matters with cross-border implications for the proper functioning of the internal market. In this context, the provision of Article 25 of the GCC has been effectively abolished since the European Union adopted the Rome Convention on the law applicable to contractual obligations in 1980, which was later replaced in 2008 by EU Regulation No. 593/2008 on the law applicable to contractual obligations (the Rome I Regulation).

According to the time scope of each of the above statutory frameworks, Article 23 of the GCC applies to contracts concluded before 1 April 1991; the Rome Convention applies to contracts concluded between 1 April 1991 and 16 December 2009, while the Rome I Regulation applies to civil or commercial contracts (Article 1, Paragraph 2, of the Rome I Regulation designates the categories of contracts excluded from the Regulation's scope) concluded from 17 December 2009, to the present. It should be noted that all three statutory frameworks generally provide for the freedom of choice of the contracting parties in determining the governing law. However, this general rule is not without limitations, as addressed below, but before examining the applicable exceptions to the freedom of choice principle, an analysis of the means used for the designation of the governing law should be conducted. This analysis is based on the current legal framework provided by the Rome I Regulation.

Freedom of choice as the rule for determining the governing law

The contracting parties are free to determine the law that will govern their commercial agreement (Article 3, Rome I Regulation). Only national laws can be applied as governing law, while the parties retain the right to designate the application or exclusion of certain international treaty-based rules (e.g., Article 6 of the United Nations Convention on Contracts for the International Sale of Goods provides that the parties may exclude

its application). When the parties agree to apply Greek law as the governing law of their contract, and simultaneously agree to apply such international treaty-based rules, these rules take precedence over the corresponding provisions of Greek law (as provided by Article 28, Paragraph 1 of the Constitution of Greece). The governing law for the commercial agreement may be designated either explicitly or implicitly . Specific rules also apply in the absence of a designated governing law.

Explicit determination

To explicitly designate the governing law, the parties have several options:

1. to specify in the contract the national law that will govern their agreement;
2. to specify the governing law after the signing of the contract (Article 3, Paragraph 2, Rome I Regulation); and
3. to designate different national laws to apply to different issues or parts within the same contract (this is the method of *dépeçage*, as provided by Article 3, Paragraph 1, Rome I Regulation).

Implicit determination

An implied choice of law must be clearly evident from the provisions of the contract or the circumstances of the case. Therefore, in case of doubt, it should be assumed that no choice of governing law has been made. The most common situation where an implied choice of law is recognised is when the parties, particularly during a dispute, reference the provisions of a specific law in their submissions (as seen in Decision No. 1502/1969 of the Athens Court of Appeal[4]), or when one party invokes the provisions of that law and the other party remains silent (as held in Decision No. 4468/1991 of the Athens Court of Appeal[5] and Decision No. 128/1994 of the Piraeus Court of Appeal[6]).

Lack of choice

When there is no explicit or implicit choice of governing law, the applicable law is determined by specific rules or rebuttable presumptions established by Article 4, Paragraph 1 of the Rome I Regulation for specific categories of contracts, without prejudice to Articles 5 and 8 of the Regulation. In this context, particularly regarding distribution and franchise agreements, in the absence of a chosen applicable law, the Rome I Regulation indicates that the law of the country where the distributor or franchisee has their habitual residence shall apply. Moreover, if the contract is concluded within the framework of a branch, agency or any other establishment, or if, according to the contract, the obligation is to be performed by such a branch, agency or other establishment, Article 19, Paragraph 2 of the Rome I Regulation specifies that the place of habitual residence is the location of the branch, agency or other establishment.

When the contract does not fall under any of the categories provided for in Paragraph 1 of the Rome I Regulation, or when the contract is mixed or complex, involving more than one of the categories mentioned in Article 1 of the Rome I Regulation, the contract

will be governed by the law of the country in which the party responsible for fulfilling the characteristic performance of the contract has their habitual residence. However, if the governing law cannot be determined using the above rules or rebuttable presumptions, the judge, in the event of a dispute, shall apply the laws of the country with which the contract is most closely connected. This rule is applicable only in exceptional cases where the judge considers that the place of habitual residence, where the characteristic performance is to be fulfilled, plays a less crucial role compared to the rebuttable presumptions provided by Article 4 of the Rome I Regulation.

Restrictions on the freedom to choose the governing law

In accordance with the provisions of the Rome I Regulation, where all other elements relevant to the situation at the time of the choice are located in a country other than the country whose law has been chosen, the choice of the parties shall not prejudice the application of provisions of the law of that other country that cannot be derogated from by agreement (Article 3, Paragraph 3, Rome I Regulation). In addition, where all other elements relevant to the situation at the time of the choice are located in one or more EU Member States, the parties' choice of applicable law other than that of an EU Member State shall not prejudice the application of provisions of EU law, where appropriate as implemented in the EU Member State of the forum, which cannot be derogated from by agreement (Article 3, Paragraph 4, Rome I Regulation). The Rome I Regulation provides similar restricting provisions in Article 6, Paragraph 2; Article 8, Paragraph 1; and Article 9.

Finally, apart from the provision of the Rome I Regulation, Greek law establishes another reason that leads to the restriction of the parties' freedom to choose the governing of their agreement law. More specifically, Article 33 of the GCC provides that a provision of foreign law shall not be applied if its application would be contrary to good morals or public order in general.

Interpretation of commercial contracts

When Greek courts are competent to adjudicate a dispute arising from a contract, they will apply the interpretation rules provided by the governing law of the contract. If the parties have designated different governing laws for each part or term of their agreement, then the interpretation rules provided by each governing law shall apply to the respective terms of the contract.

The fundamental principle of Greek law is that contracts must be interpreted according to the true intention of the parties, in light of good faith and trade customs at the time of signing the contract (Article 200, GCC). This means considering not only the written text of the contract but also the parties' expressed intentions at the time of signing. This rule applies when Greek law has been designated as the governing law of the contract, either explicitly or implicitly, or when the parties did not choose a specific national law but, according to the rules addressed above, Greek law is applicable.

Good faith refers to the conduct expected in transactions as judged by a prudent and knowledgeable person. Trade customs, however, are the customary practices in such transactions. When making its assessment, the court considers the interests of the parties, particularly the interests of the party whose protection is sought by the term to be

interpreted. The court also takes into account the nature and purpose of the transaction, the circumstances under which the parties made their declarations of intent, local and linguistic customs, the parties' previous transactions and conduct, the negotiations that preceded the transaction and how one party's statements were likely to be perceived by the other party (Decision No. 1134/2019 of the Supreme Court).[7]

Dispute resolution

Structure of the Greek judicial system in civil and commercial law cases

The GCCP provides for a three-tiered first-instance court system in civil law cases, with jurisdiction generally determined by the amount in dispute, subject to specific exceptions. More specifically:

1. the jurisdiction of the magistrates' courts is reserved for all disputes that can be valued in money, where the value of the subject matter does not exceed the sum of €20,000;
2. the single-member courts of first instance have jurisdiction over all disputes that can be valued in money, where the value of the subject matter exceeds €20,000 but does not exceed €250,000; and
3. the jurisdiction of the multi-member courts of first instance extends to all disputes where the magistrates' courts or the single-member courts of first instance do not have jurisdiction, meaning disputes that are valued in money and where the value of the subject matter exceeds the sum of €250,000.

Law No. 5108/2024, titled Consolidation of the First Instance of Jurisdiction, Spatial Restructuring of Civil and Criminal Courts, and Other Provisions, most of which enters into force on 16 September 2024, has led to the consolidation of the first-instance jurisdiction of the civil and criminal justice system. This consolidation is achieved by abolishing the magistrates' courts as an institution within the country's judicial system, with the aim to ensure a proper distribution of judges and cases in proportion to the population.

Commercial disputes fall under the jurisdiction of the aforementioned courts. However, these courts have specialised divisions assigned to adjudicate commercial matters, such as issues related to competition and industrial property law.

Alternative dispute resolution

In the context of alternative dispute resolution (ADR), four major categories are identified:

Negotiation

Negotiation involves an attempt to resolve the dispute through the process of extrajudicial amicable settlement, as provided under Article 214A of the GCCP. In an extrajudicial amicable settlement, the parties may reach a compromise after the commencement of

litigation and up until the final judgment is rendered, without requiring a trial hearing. This is performed by signing a private deed of settlement, which the parties may also choose to have ratified by the court.

Mediation

Mediation is regulated by Law No. 4640/2019, which generally follows the provisions of the EU Mediation Directive. A mandatory initial mediation session is required for the following civil and commercial disputes:

1. family disputes (for lawsuits filed as of 15 January 2020);
2. disputes under the standard civil procedure that fall within the jurisdiction of the single-member court of first instance, where the value of the subject matter exceeds €30,000 (for lawsuits filed as of 15 March 2020); and
3. disputes arising from contracts that contain a valid mediation clause (for lawsuits filed as of 30 November 2019).

Sanctions apply to parties that do not participate in a mandatory initial mediation session despite having been properly summoned.

Conciliation

Conciliation is a procedure in which a neutral third party, usually of high prestige, attempts *ex officio* to recommend a solution to the parties to resolve the dispute or reach a settlement. In Greece, conciliation interventions are typically conducted by the competent magistrate's court.

Arbitration

International commercial arbitrations with their seat in Greece are governed by Law No. 5016/2023, which is based on the UNCITRAL Model Law. Domestic arbitration, however, is governed by Articles 867–903 of the GCCP. Key differences between domestic and international arbitration include the validity of an agreement to waive the right to set aside the award before it is issued, which is not permitted in domestic arbitration, and the arbitral tribunal's power to order interim measures, which is also not allowed in domestic arbitration.

For an arbitration agreement to be valid, it must be in the form of either an arbitration clause within a contract or a separate agreement. Both options must be documented in a form that the parties have expressly or implicitly agreed upon. This form may include an exchange of letters, telegrams, telexes or other means of telecommunication that record the agreement, or an electronic record that allows for subsequent verification of its origin by a specific publisher and access to the content of the agreement.

Breach of contract claims

General

A prerequisite for the non-breaching party to claim a breach of a contract term is that the concluded contract is valid in accordance with the rules addressed above under III. Under Greek Law, and in legal terminology, the term "breach" encompasses all instances of contractual obligation pathology, including non-performance, default, and improper performance.[8]

Non-performance of an obligation

epending on which party's fault prevents the obligation from being fulfilled.

Non-performance of an obligation without debtor's fault

If there is a no-fault initial or subsequent impossibility of performance, there is no breach of a contractual obligation, and thus, the contract is terminated without liability for either party, as the counterparty is also released from their obligation to fulfill their counter-performance.

Non-performance of an obligation due to the other party's fault

If a contracting party is unable to perform its contractual obligations due to the fault of the other contracting party, the latter is not released from the obligation to provide the counter-performance. This rule also applies when the performance of an obligation is partially impossible. However, any benefit that the party released from the obligation due to the impossibility of performance receives, or fraudulently fails to receive, shall be deducted from the counter-performance. The same applies if the performance of one party becomes impossible without their fault while the other party is in default regarding its acceptance.

Non-performance of an obligation due to the debtor's fault

Under Greek law, fault is attributed to a contracting party that fails to perform their contractual obligation due to intent or negligence, including even slight negligence, which is assessed based on the standard of a reasonably prudent person. The existence of fault is a key condition for establishing liability for the breach of a contractual obligation. It should be noted that in business-to-business contracts, the parties may agree to exclude slight negligence as a basis for liability.[9]

Debtor's default

A debtor of a due obligation is considered in default if a judicial or extrajudicial notice has been given by the creditor. This means that the fulfillment of the obligation is still possible even after the time within which it was supposed to be fulfilled has passed, and the obligation does not lose its essence merely due to the delay. Therefore, if there is a simple delay without the conditions of default being met, the obligation remains unaffected. The legal effects of default occur only if the conditions set by law are met.

For a debtor's default to occur, the following conditions must be satisfied:

1. the obligation must be due and payable, not subject to a resolutive or suspensive condition;
2. the delay must be due to the debtor's fault, which is presumed; and
3. an extrajudicial or judicial notice must be given to the debtor by the creditor.

Improper performance

The inability to fulfill the obligation and the debtor's default, as regulated in detail by the GCC, do not exhaust the cases of abnormal contract performance due to the debtor's fault. Inadequate or improper performance of the obligation refers to cases of contractual breaches by the debtor that cannot be classified under the concepts of non-performance of an obligation or default.[10]0

For a case of improper performance to be established, the following conditions must be met:

1. the existence of the debtor’s fault;
2. the creditor must grant a reasonable deadline to the debtor to rectify the inadequacy; and
3. the inadequacy must be substantial to the extent that the creditor is not adequately served by the improper performance.

Creditor’s default

Creditor’s default occurs when the creditor does not accept a possible, genuine and proper offer of performance from the debtor (Article 349, GCC). The creditor’s default does not require any fault on their part. In other words, the debtor is obligated to provide the performance, and the creditor is entitled to accept the offer of performance. The creditor also defaults if, despite being requested by the debtor, they fail to undertake the required action or cooperation necessary for the debtor’s performance (Article 351, GCC). Moreover, if the debtor is obligated to perform only in exchange for a counter-performance, the creditor becomes in default if they are willing to accept the offered performance but do not provide the requested counter-performance (Article 353, GCC).[11]

The creditor's default ceases (for the future) if the creditor declares their readiness to accept the performance. In this case, if the debtor fails to perform, the debtor then becomes in default. Additionally, the creditor's default is lifted upon the agreement of the parties involved or with the extinguishment of the debt in any manner (e.g., through a public deposit).[12]

Burden of proof

The creditor, acting as the plaintiff, bears the burden of proof regarding the non-performance of an obligation, debtor’s default or improper performance, but not the

fault of the debtor. Fault is presumed in favour of the creditor, meaning that it is assumed to exist, and it is up to the debtor, acting as the defendant, to prove that the breach of their obligation is due to an event for which they are not responsible.

In the case of debtor's default, the creditor must demonstrate in their lawsuit and submissions that the debtor was in default and that either:

1. a deadline had been set by the creditor for the debtor to perform the obligation, which passed without fulfillment; or
2. it was not necessary to set a deadline according to the law.[13]

In the case of improper performance, the creditor bears the burden of proving that the debtor's obligation was not property performed.

In the case of creditor's default, the debtor bears the burden of proving that they made a genuine and proper offer of performance and that the creditor did not accept it (Articles 349 and 350, the GCC). The creditor also defaults if, despite being invited by the debtor, they fail to undertake the required act or cooperation necessary for the debtor to fulfill the obligation (Article 351, GCC). However, the creditor is not in default if they can prove that the debtor was unable to perform the obligation at the time of the offer or that the counter-performance the creditor was supposed to undertake was not provided (Article 352, GCC).

Defences to enforcement

General

Greek law provides a variety of defence claims depending on the circumstances of the case and the type of contract concerned. For instance, in a dispute where the debtor claims creditor's default, the creditor may rebut the claim by proving that the debtor was unable to perform the obligation at the time of the offer.

However, unlike the special defences to enforcement claims provided by law for specific categories of alleged breaches of contractual obligations, this section will focus on the general rules provided by the GCC, which may apply to any enforcement claim brought by a claimant.

Force majeure

Under Greek aw, the concept of *force majeure* is addressed within the framework of the GCC, particularly concerning commercial contracts. *Force majeure* refers to unforeseeable and uncontrollable events that prevent a party from fulfilling their contractual obligations. Such events typically include natural disasters (e.g., earthquakes and floods), war, pandemics, strikes or government actions that hinder performance.

Specifically, Article 330 of the GCC provides that a party may be exempt from liability for an alleged breach of contract if it is demonstrated that the failure to perform was due to

an external cause beyond the party's control and that the party could not have avoided or overcome the obstacle even with the utmost diligence. The party invoking *force majeure* must prove that the event was both unforeseeable and unavoidable.

Moreover, when the parties have included a respective *force majeure* clause in their contract, the party invoking *force majeure* must promptly notify the other party and provide evidence that the event qualifies as *force majeure*. It is common for such clauses to require the affected party to take reasonable steps to mitigate the effects of the *force majeure* event and resume performance as soon as possible. If the party invoking *force majeure* fails to fulfill this obligation, provided it is reasonable and in compliance with good faith and trade customs, the *force majeure* defence may be rejected.

If the *force majeure* event significantly disrupts the contractual balance but does not entirely prevent performance, Greek law may allow for partial performance or renegotiation of the contract terms to reflect the new circumstances.

Limitation period for claims

According to Article 251 of the GCC, the general limitation period for enforcing contractual claims is 20 years. This means that a claim related to a breach of contract must be brought within 20 years from the date on which the claim could reasonably have been discovered. However, certain types of claims have shorter limitation periods. For instance, claims related to defects in goods may need to be brought within two years from the date of delivery, depending on the nature of the goods and the terms of the contract. As a general rule, the limitation period commences when the aggrieved party becomes aware, or should reasonably become aware, of the breach and the party liable for it. This principle ensures that parties have a reasonable time to bring their claims after discovering the breach.

Limitation of liability

Greek law imposes restrictions on the extent to which liability can be limited or excluded. These restrictions are intended to protect parties from unfair or unconscionable contract terms. As a general rule, liability cannot be excluded in cases of intent or gross negligence. Any contractual clause that limits liability for intentional acts or gross negligence is null and void according to Articles 330 et seq. of the GCC. However, parties may agree to limit liability for minor negligence under certain conditions.

Unforeseen change of circumstances

Greek law aims to protect the contracting party whose performance of the undertaken obligation has become impossible due to material changes that took place after the conclusion of the agreement. In particular, Article 388 of the GCC provides that if the circumstances on which the parties primarily based the conclusion of a contract, in view of good faith and trade customs, have changed afterwards due to extraordinary reasons that could not have been foreseen, and as a result of this change, the debtor's obligation has become excessively burdensome in relation to the counter-performance, the court may, at its discretion and upon the debtor's request, adjust the obligation to a reasonable level or decide to terminate the contract in whole or in part if it has not yet been performed. If the termination of the contract is decided, the obligations arising from it are extinguished,

and the parties have a mutual obligation to return any benefits received according to the provisions on unjust enrichment.

This extraordinary change of the circumstances is strictly and narrowly interpreted by the courts. In this context, the Supreme Court with its Decision No. 998/2014[14] held that the general economic crisis that emerged from the beginning of 2010 and the imposition of strict austerity measures (fiscal and tax) with the cascading effects on all aspects of Greek society constitute extraordinary and unforeseeable events within the meaning of Article 388 of the GCC, as they could not have been anticipated under normal conditions, whereas random events that usually occur cannot be characterised as either extraordinary or unforeseeable. These random events include:

1. changes in the value of currency relative to foreign currencies, provided they do not exceed the usual range;
2. the increase in the value of property due to the devaluation of the drachma and the consequent rise in the cost of living; and
3. the increase in the value of property due to heightened demand for similar rental properties.

Contributory negligence

Under Greek law, as outlined in Article 300 of the GCC, if the injured party has contributed to the damage through their own fault, the court has the discretion to either deny compensation or reduce the amount awarded. This can occur in various situations, including when the injured party fails to prevent or mitigate the damage or does not adequately alert the debtor to potential risks. A reason for reducing or denying compensation due to contributory negligence cannot be invoked if there is no obligation to compensate. However, it is sufficient that such an obligation exists regardless of the basis for the liability of the party causing the damage, whether it arises from a breach of a contractual obligation, a tort or otherwise.[15]

Fraud, misrepresentation and other claims

General

In addition to the defences to enforcement claims addressed above, Greek law provides protection for a party that entered into a contract as a result of misrepresentation, fraud or duress. A party that concluded a contract under these circumstances is entitled to seek the annulment of the contract from the competent court. This claim can be made either directly by filing a lawsuit seeking the annulment of the contract or, if sued by the other party, by counterclaiming. In the latter case, the party may invoke the defences provided by Articles 140 (misrepresentation), 147 (fraud) or 150 (duress) of the GCC, or file a lawsuit to rebut the other party's claim.

The claim for annulment of the contract due to misrepresentation, fraud or duress is subject to a two-year deadline for filing the lawsuit. This deadline begins the day following the conclusion of the contract. If the misrepresentation, fraud or threat continued after the legal act, the two-year period begins from the time when the situation ceased. In no case is annulment permitted after 20 years have passed since the conclusion of the contract.

Misrepresentation

Misrepresentation refers to an incorrect understanding of the actual circumstances necessary to determine one's will. This includes:

1. a false belief about the circumstances;
2. a lack of knowledge (ignorance) of these circumstances; and
3. incorrect knowledge or ignorance of the law.

Greek aw stipulates that such misrepresentation must be significant and not intentional on the part of the contracting party for the latter to be entitled to seek the annulment of the contract due to misrepresentation.

Misrepresentation is considered significant when it pertains to a point so crucial to the entire transaction that, had the contracting party known the true circumstances, they would not have entered into the transaction. For example, if a contracting party signs a document mistakenly believing it contains specific content with certain consequences, while it actually includes different content, they are in a state of misrepresentation. This misrepresentation is deemed significant if it pertains to a point so crucial to the entire transaction that the misled party would not have undertaken it had they known the true circumstances.[16]

To determine whether a point is considered 'crucial', the following factors should be taken into account:

1. the type of contract;
2. the interest of the contracting party in relation to the point addressed by the mistaken declaration; and
3. the importance of that point for the purpose pursued by the agreement.[17]

As for incorrect knowledge or ignorance of the law, this does not apply when it concerns not the legal consequences that the declaration of intent directly aims to achieve, but rather consequences that arise from the law itself, irrespective of the person's intention.

Fraud

Greek law provides that anyone who was deceived by fraud into making a declaration of intent is entitled to seek the annulment of the contract. If the declaration is addressed to someone else and the fraud was committed by a third party, annulment can only be requested if the contracting party to whom the declaration was addressed, or a third party who immediately acquired rights from it, knew or should have known about the fraud.

Fraud is understood as any deceptive behavior or scheme performed intentionally (including recklessness) that causes or reinforces a mistaken belief in the declarant, such that this behavior was decisive in the formation of the contract on certain critical points. Deceptive behavior can occur in various ways, such as presenting false facts as true (whether past,

present, or future) that could affect the contracting party's will, incompletely disclosing true facts, or concealing or omitting the truth.

The conditions that must be met for the annulment of a contract due to fraud are as follows:

1. the declarant must have been deceived;
2. the deception must be fraudulent; and
3. there must be a causal link between the deception and the contracting party's declaration of intent.

Duress

Greek law provides that a contracting party who has been illegally coerced into making a declaration of intent through a threat or in a manner contrary to good faith by another person or by a third party has the right to seek the annulment of the contract. The threat must, under the specific circumstances, cause fear in a reasonable person and expose the life, physical integrity, freedom, honor, or property of the threatened person or those closely connected to them to significant and immediate danger. More specifically, a threat is considered to be the situation created by the announcement of harm to the threatened party, which generates psychological pressure and leads the latter to believe that they must enter into a contract to avoid the occurrence of the harm.

The conditions that must be met for the annulment of a contract due to duress are as follows:

1. the threat must involve harm to the life, physical integrity, freedom, honor or property of the threatened person or those closely connected to them;
2. the risk of harm must be imminent, meaning real, significant and sufficient to induce fear in a reasonable person; and
3. the threat must be illegal or contrary to good morals.[18]

Remedies

Non-performance of an obligation

In the case of non-performance due to the debtor's fault, the creditor has the following alternative rights:

1. to request mutual release of the parties from their respective obligations, thereby releasing themselves from the obligation to provide consideration and reclaim any performance already rendered;
2. to claim damages (positive interest) for the loss suffered due to the non-performance; and
3. to withdraw from the contract, resulting in the release of both parties from their contractual obligations, and at the same time, to request reasonable compensation, which is not full compensation for the loss suffered.

Debtor's default

In the event that the debtor defaults, the creditor may alternatively exercise the following rights:

1. claim damages (positive interest) while rejecting the delayed performance; or
2. withdraw from the contract and request reasonable compensation, which is not full compensation for the loss suffered.

However, there is a condition for the creditor to be entitled to exercise these rights. Specifically, before exercising the aforementioned rights, the creditor must first grant the debtor a reasonable deadline to fulfill their obligation, simultaneously declaring that if this deadline passes without result, the creditor will reject the performance. Partial performance by the debtor within this period is not sufficient. A deadline need not be set, and the creditor may immediately exercise the above rights in the following cases:

1. if the debtor's overall behaviour indicates that it would be futile to set a deadline (e.g., the debtor has already stated that they will not comply, or it is evident that, for objective reasons, they cannot meet any reasonable deadline; the same applies if the debtor ignores repeated demands from the creditor and generally shows complete indifference to fulfilling their obligation);
2. if the creditor no longer has an interest in the execution of the contract (e.g., there is no longer an interest if the purpose of the contract was to meet the creditor's seasonal needs and the season has passed); and
3. if the parties have agreed that no deadline needs to be set.

Improper performance

When the conditions for improper performance are met, the creditor may either:

1. withdraw from the contract; or
2. reject the improper performance and seek compensation not only for the inadequacy but also for the total non-performance of the obligation, as if the performance had been impossible due to the debtor's fault.

Creditor's default

The GCC provides that the creditor does not fall into default if the debtor was not in a position to fulfill the obligation at the time of the offer or the action that the creditor was supposed to undertake (Article 352, the GCC). The creditor bears the burden of proof that the debtor was not in a position to fulfill the obligation at the time of the offer or the action that the creditor was supposed to undertake.

Outlook and conclusions

Greek contract law offers a robust framework designed to address various aspects of contractual obligations, including the formation, performance, breach and enforcement of contracts. This framework provides both protection and flexibility to contracting parties,ensuring that agreements are honored while also offering remedies and defences when issues arise.

One of the key strengths of Greek contract law lies in its detailed provisions that govern non-performance, debtor and creditor defaults, improper performance and the circumstances under which a contract may be annulled due to factors such as misrepresentation, fraud or duress. These provisions reflect a balance between the need to enforce contracts and the recognition that parties may sometimes face unforeseen or uncontrollable events, such as *force majeure*, which can impede their ability to fulfill contractual obligations.

The law also emphasises the importance of good faith and the true intention of the parties when interpreting contracts, providing a fair and equitable approach to dispute resolution. This is particularly evident in the rules surrounding contract interpretation, which require courts to consider not only the written terms but also the context and circumstances under which the agreement was made.

Overall, Greek contract law and the rules governing the procedure before the competent civil courts aim to provide a comprehensive and fair legal framework that balances the interests of all parties involved. This legal framework protects against unfair practices, offers clear guidelines for enforcement and allows for flexibility in addressing unforeseen circumstances. As a result, parties entering into contracts under Greek law or Greek jurisdiction, or both, can do so with confidence, knowing that their rights and obligations are clearly defined and that there are mechanisms in place to resolve disputes fairly and efficiently.

Endnotes

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