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Enforcement of Judgments 2021

Greece

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Law and Practice

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1. IDENTIFYING ASSETS IN THE JURISDICTION

1.1 Options to Identify Another Party's Asset Position

The identification of another party's asset position can be of great importance with respect to the enforcement of monetary claims. By their nature – and in contrast with claims for specific action(s)/omission(s)/tolerance – enforceable monetary claims are deemed to be satisfied through the interference with the defendant's property. In order for an enforceable monetary claim to be satisfied as per the court's (or tribunal's) order(s), the claimant is, as a rule, in charge of locating the defendant's assets that are likely to meet the amount of its successful claim. Naturally, this requirement involves investigative work and may prove to be more fruitful if carried out prior to the issuance of the enforceable decision or award, or even (to the extent possible) before the initiation of the proceedings.

Immovable Property

The research required for the above purpose is considerably facilitated by public record-keeping. The most important source of publicly available information regarding another party's asset position in Greece is through research in the public registries of immovable property. Each registry provides information on the ownership status of the immovable property located within its area of territorial competence. The relevant registrations depict the status of the party's (natural or legal person's) immovable property. The information is listed by the owner's name (thereby facilitating person-oriented research) and is kept in hard copies, accessible to intermediaries only (ie, attorneys, notaries) by an on-site visit to the registry.

Apart from the aforementioned traditional title search, a new possibility has recently been implemented. More specifically, towards a more

efficient and facilitated title and encumbrances search, ministerial decision 11206/15.04.2021 (Government Gazette B' 1539/15.04.2021) stipulates that all the necessary information on the status of a person's immovable property can be accessed remotely. Specified persons and professionals, including lawyers and court bailiffs, are now enabled to conduct an online, free-of-charge search in respect of the titles that have already been digitised and can be found at the newly introduced cadastral offices. The above-mentioned option is currently available in 121 cadastral offices nationwide. What is of essence is that this method of asset identification can be used at any point; ie, even prior to the initiation of judicial proceedings.

Movable Property

The identification of another party's movable property is a more complicated procedure, subject to numerous restrictions under Greek law. It is noted, from the outset, that no publicly available records are kept regarding the financial position of Greek citizens. Greek companies, on the other hand, are obliged to publish their annual financial statements in the Greek general commercial registry. The relevant financial statements are publicly accessible via the website of the general commercial registry.

In many cases, however, the assets identified via the accessible public records will not meet the amount of the claim. Complications relating to difficulties in locating the defendant's assets are addressed by the legislator through the insertion in the Greek Code of Civil Procedure (GCCP) of certain provisions aiming at the identification of the defendant's assets at a later stage of the proceedings. More specifically (under circumstances specified below), the court may order the defendant to submit a list of its assets.

Summary

Apart from the above, there are no other means by which a party can lawfully identify another party's asset position within Greek jurisdiction.

2. DOMESTIC JUDGMENTS

2.1 Types of Domestic Judgments

Domestic courts' judgments are divided into several categories, on the basis of different criteria.

On the basis of the participation or non-participation of all the parties to the proceedings, court decisions are classified as default or contentious judgments, while, on the basis of their subject, court decisions can address the substantive claim or dismiss the case at an earlier stage due to procedural nullities (ie, a claim may be deemed inadmissible and thus dismissed before the case is examined in its substance).

One of the most critical distinctions under Greek civil procedural law is based on the kind of protection sought by the claimant and granted (or denied) by the court. Judgments are, accordingly, classified as declaratory, formative or decisions for specific performance.

Notably, all the decisions that reject the claimant's action are classified as declaratory ones. A declaratory judgment confirms the existence or non-existence of the pertinent legal relationship, while a decision for specific performance goes one step beyond, by obliging the defendant to comply with the content of the decision through acts/omissions/tolerance of a legal status. Following this remark, it is noted that a judgment for specific performance may be rendered to an executory title (as defined below) under Greek civil procedural law. Formative judgments, finally, are the expression of the court's – exceptional – power to modify an existing legal relationship

and create a new legal status. One of the most distinctive examples in this regard is the court's power to readjust contractual obligations in cases of frustration of the contract's purpose.

Furthermore, court decisions are distinguished on the basis of the level of maturity of the case into final and non-final judgments. The issuance of a final decision precludes the court from the power to further examine the claim. Final decisions accept or reject, in total or in part, the main and/or auxiliary claim(s) and terminate the proceedings; they are, thus, issued upon the procedural stage when the court has formed a firm legal opinion on the matter brought before it. Non-final decisions, on the other hand, postpone the progress of the proceedings and/or order the conduct of certain procedural actions (preparatory to the final judgment on the case).

Final judgments can be further rendered definitive (when they cannot be subject to the ordinary remedies of appeal and/or opposition against default) or irreversible (when they are no longer subject to the extraordinary remedies of cassation and/or reopening). Definitive and irreversible judgments have the force of *res judicata*.

Ultimately, the efficiency of the judicial system is secured through the provision of injunctive relief by the court, either prior to the initiation of, or during, the proceedings.

2.2 Enforcement of Domestic Judgments

The enforcement of judgments under Greek civil procedural law takes different forms, mainly on the basis of the nature of the claim pursued. More specifically, the GCCP contains different provisions with respect to the enforcement of claims for rendering movable assets, claims for rendering immovable assets, claims for action, claims for omission and/or tolerance and monetary claims.

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Another distinction is made on the basis of the objective (directed towards the debtor's property) or personal (directed towards the debtor) character of the enforcement. Objective enforcement can involve the debtor's property in its entirety (thorough enforcement) or with regard to the specific assets that suffice for the satisfaction of the creditor's claim (individual enforcement). Global enforcement is initiated only in the event of bankruptcy proceedings, while claims pursued on the basis of the GCCP are always pursued on an individual basis. Furthermore, the methods of enforcement are also classified on the basis of the way of satisfaction of the creditor as direct or indirect (judging by the immediate or indirect effect of the enforcement) and principal or auxiliary (judging by the exact or inexact relief of the debtor's claim).

Finally, the enforcement of judgments shall be conducted automatically or be carried out by means of material actions. An automatic enforcement is held in the event that the defendant is condemned to a declaration of will (Article 949 of the GCCP), whereby the declaration of will is considered to be made (by way of a legal fiction) once the judicial decision has been rendered definitive. The most common way of enforcement, however, involves material actions.

Means of Enforcement

The means of enforcement available under Greek civil procedural law are set out in the GCCP and are limited to the following (numerus clausus of the means of enforcement):

- the removal of movable property;
- the eviction of the defendant from the real estate property;
- the attachment of the defendant's property;
- the defendant's personal detention;
- the compulsory administration of the defendant's property; and

- (as a quasi means of enforcement) the defendant's oath of manifestation.

Although the principle of free disposition of the subject matter of the trial is of paramount importance under Greek civil procedural law, it does not extend to the claimant's freedom to choose the type and/or the means for the enforcement of its claim. This policy mainly reflects the legislator's inclination towards the protection of the public interest, in general, and of the debtor, particularly, by establishing a transparent and foreseeable procedure, in the context of which all the parties involved can effectively exercise their legal rights. It must be highlighted, however, that in the context of indirect enforcement for monetary claims, the creditor is awarded with the right to choose the means and the items on which its claim will be enforced, cumulatively and/or sequentially.

Greek law does not provide for a gradus executionis regarding the means or the items on which the claim will be enforced. Nonetheless, the prevailing opinion under Greek law holds that while the freedom of choice of the means of enforcement for monetary claims is absolute (provided that the conditions set forth by the law are met), the freedom of choice of the specific item on which the order will be enforced is subject to the provisions on the abusive exercise of rights (Article 281 of the Greek Civil Code). On that note, it is advisable that the creditor does not pursue the attachment of the debtor's immovable property in the event that they can be fully satisfied through the attachment of movable assets.

Finally, insolvency proceedings are governed by a special regime, laid out in detail in the new Greek Insolvency Code (Greek Law 4738/2020, as amended and in force).

Enforcement of Greek Court Decisions

The procedure followed for the enforcement of domestic court decisions (or other executory titles) is strictly regulated by Greek civil procedural law. More specifically, the GCCP sets out the procedural steps and formalities that shall be followed for a claim to be enforced, as well as the procedural nullities that are imposed in the event that the pertinent provisions are not respected.

The main requirements for the provision of legal protection in the form of enforcement proceedings are:

- the existence of an executory title;
- the existence of a certain and fixed claim;
- the appending of an executory mark/formula to the executory title;
- the locus standi of the parties to the proceedings;
- the existence of a legitimate interest; and
- compliance with the procedure provided by law.

In this last regard, the procedural steps for the enforcement of a claim incorporated in an executory title runs as follows. Once the claimant holds an executory title, care must be taken so as to affix the executory title with the executory mark; otherwise, the procedure shall be considered as null and void. The executory mark is affixed to the original document, which shall be then kept with the court. Thereupon, the secretary of the court (or a notary, if the executory title is a notarial document) issues and delivers to the claimant a unique copy of the executory title, bearing the executory mark, called “*apografo*” (the executory transcript).

In the event that the enforcement is initiated prior to the issuance of the executory transcript, it is null and void. Following the issuance of the executory transcript, the claimant’s attorney

shall issue a copy thereof and take care of its service to the debtor. The service of the copy of the executory transcript to the debtor marks the initiation of the enforcement proceedings.

The GCCP contains detailed provisions with regard to the service of documents, including the service of the copy of the executory transcript. Following a recent revision of the GCCP, the service of documents may also be carried out by electronic means (new Article 122A of the GCCP). In the event of intra-EU service of documents, Regulation (EC) No 1393/2007 shall apply (subject to the reservations regarding Denmark). The copy of the executory transcript is served to the debtor by a judicial officer (bailiff) and is accompanied by a mandate for voluntary compliance or compulsory enforcement (executory mandate). No further executory actions can take place prior to the lapse of three working days since the service of the executory mandate.

If the debtor does not voluntarily abide by the mandate, the creditor may instruct the judicial officer to proceed with the enforcement. The executory instruction is noted upon the executory transcript and shall make express reference to the items on which the claim will be enforced, unless the enforcement aims to the satisfaction of a monetary claim, whereby a mere reference to the attachment of the debtor’s property shall suffice.

2.3 Costs and Time Taken to Enforce Domestic Judgments

The time necessary for the enforcement of domestic judgments has been materially abridged following an extensive revision of the GCCP, by virtue of Law 4335/2015. This pursuit is mainly reflected in the amendment of the GCCP’s provisions on the conduct of a forced auction. As per the current GCCP, the exact date of the auction shall be provided in the attachment report and shall be set at a point later than

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seven months from the conclusion of the attachment proceedings. If the auction is not eventually held on the date stipulated on the attachment report, a new auction is conducted within two months starting from the date upon which the interested party filed a statement for the continuation of the proceedings.

The aforementioned abridgement of the proceedings has been further enhanced by a reform of the procedure of challenging the acts of enforcement. More specifically, in the event of an indirect enforcement, a challenge can be filed within 45 days starting from the date of the attachment; in the event of a direct enforcement, the challenge can be filed within 30 days since the service of the mandate/precept for enforcement on the debtor.

Impact of COVID-19 on the Greek Judicial System

Unsurprisingly, the outbreak of the COVID-19 pandemic has affected the operation of the Greek judicial system. More specifically, the operation of the Greek civil courts, with the exception of a small number of procedures, was suspended for a period of approximately five months, as part of a nexus of governmental measures aiming to restrain the expansion of the virus. The extraordinary legislation introduced by the Greek government imposed, inter alia, the suspension of enforcement procedures.

The recent reopening of the Greek civil courts (on 6 April 2021) was coupled with the enactment of transitory procedural provisions, aiming to preserve the procedural rights of the parties, while minimising the expenses stemming from the rescheduling of hearings initially set to take place during the moratorium period. As a further exceptional measure, auctions over movable and immovable assets, ship(s) and aircraft, which were scheduled to take place from November 7th until May 13th, were cancelled.

Garnishee Orders

It has already been stressed that the right of the creditor to choose the means of enforcement applies only to the extent the claim is a monetary one. In this instance, among the most effective – and certainly among the most common – ways to the creditor’s satisfaction is through the service of a garnishee order to Greek credit institutions where the debtor may hold an account. More specifically, in the event of service of a garnishee order, the credit institution shall be obliged to answer with a positive or negative third-party declaration, doing so within eight days from the service of such order.

If the third-party declaration is omitted or is inaccurate, the third party (eg, the credit institution) is liable towards the creditor for any damage suffered due to the lack of declaration or its erroneous content. It is noted that, be that as it may, the most common case is that not only credit institutions are served with garnishee orders. Such an order may be served to any third party who appears to be obliged to pay money (on the basis of a debtor’s claim against them) or transfer movable assets (eg, under their role as a custodian) to the debtor.

Costs in Enforcing Domestic Judgments

Finally, with regard to the allocation of the costs incurred in the process of enforcing domestic judgments, the GCCP stipulates that the claimant shall prepay the costs for the enforcement of its claim, which eventually are to be covered by the debtor. More specifically, the claimant shall pay all the amounts necessary for the conduct of the enforcement proceedings (including the fees of the bailiff, the notary, the attorney, the stamp duties and the auction costs) and then recover the amount from the debtor. The recoverable amount is limited to the expenses deemed necessary for the conduct of the enforcement proceedings and does not extend to amounts

incurred due to the claimant's error(s), negligence or excessive diligence.

2.4 Post-judgment Procedures for Determining Defendants' Assets

As has already been indicated above, the determination of another party's asset position can be – at least partly – accessed, even prior to the initiation of court proceedings, through publicly available sources (such as the immovable property registry and the general commercial registry).

In the event, however, that the claimant is successful in obtaining an enforceable judicial decision (or another executory title), it shall ultimately have access to private information concerning the defendant's movable assets and claims towards third parties. The most common method of asset identification used by creditors holding an executory title is directed towards the amounts held in bank accounts in the name of the defendant.

With respect to access to the defendant's bank accounts for the enforcement of monetary claims, this can be achieved by means of servicing a garnishee order to any branch of the Greek credit institutions in which the debtor may hold an account.

Following these remarks, it must be highlighted that during the past decade, the frequency of use of this method of enforcement has increased considerably. This development is mainly attributed to the fact that the scope and rigidity of the credit institutions' confidentiality duty has been revised by the legislator (through the insertion of Article 24 of Greek Law 2915/2001), thereby giving precedence to the claimant's legitimate interest to enforce its claim. Thus, banking secrecy may no longer protect the debtor to the detriment of a claimant equipped with an executory title. The relatively small pool of credit institu-

tions active in the Greek territory further facilitates the process.

Finally, the GCCP contains express provisions to enable the creditor to satisfy an enforceable claim if the above methods fail. More specifically, if (i) the creditor's enforceable claim is not fully satisfied or not likely to be fully satisfied through attachment procedures, and (ii) the creditor has filed a relevant claim to the court, the debtor may be ordered to submit a list of its assets (including claims and immovable property that has been transferred to third parties up to five years prior to the filing of the claim for the submission of the list). The debtor shall also take an oath (oath of manifestation), verifying that the submitted list includes all the aforementioned assets and that the debtor made every effort to identify all its property. This procedure is considered as a "quasi" means of enforcement.

2.5 Challenging Enforcement of Domestic Judgments

As has already been indicated, the enforcement procedure is strictly regulated under Greek civil procedural law. In conformity with this approach, any omission(s) and/or defect(s) linked to the enforcement procedure would typically lead to the declaration of the nullity of the procedural act, without a need to prove the incurring of any damage to the defendant thereof. This rigid perception regarding the adherence to procedural formalities is counterbalanced by the establishment of strict deadlines for the filing of such procedural objections, thereby ensuring that the protection of the debtor does not undermine the effectiveness of the enforcement procedure to the detriment of the creditor.

Grounds to File an Opposition

The exclusive remedy of the debtor against acts of enforcement is the opposition to the enforcement (Article 933 of the GCCP). In other words, the defendant cannot seek provisional protec-

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tion against acts of enforcement. The grounds on which the defendant can file an opposition to the enforcement pertain to:

- the validity of the executory title;
- the enforcement procedure; or
- the claim.

Process for Submitting and Ruling on an Opposition

The opposition to the enforcement is filed before the Single-Member Court of First Instance, unless the decision was issued by the District Civil Court (*Eirinodikio*) – whereby the opposition shall also be filed before the latter. Apart from the debtor, the enforcement can be challenged by third parties having right(s) on the item(s) on which the order is being enforced (Article 936 of the GCCP).

The hearing of the opposition must be determined within 60 days after the filing thereof, while the summons of the defendant shall be made 20 days prior to the hearing.

The filing of an opposition to the enforcement initiates a trial on the enforcement procedure, which is governed by a special regime, instead of the standard provisions on civil procedure. The GCCP adopts a tiered approach with regard to opposition against the defectiveness and/or nullity of procedural acts. The enforcement procedure is formed by a chain of distinctive acts that simultaneously maintain their autonomy. More specifically, defects and/or nullities pertaining to each act are to be adduced by the filing of separate oppositions to the enforcement within separate timeframes.

In the event that an act of enforcement is not challenged in a timely fashion, the alleged nullity and/or defectiveness is cured and cannot be brought before the court at a later stage. Moreover, although the individual acts of enforcement

form a sequence, the annulment of a particular act does not affect the validity of the ones to follow. As a result, the effective protection of the defendant is achieved by the cumulative challenge of each part of the chain.

As per the GCCP (Article 933 paragraph 6), the court shall issue its decision on the opposition to the enforcement within 60 days from the hearing of the case. No procedural defect or nullity arises, however, if the decision is issued after the lapse of the 60-day time limit.

Available Remedies

The remedies available for setting aside the court's decision on the opposition to the enforcement differ, depending on the type of the executory title initiating the enforcement (Article 937 of the GCCP). More specifically, if the enforcement was initiated by a court decision or an order for payment, the court's decision can be challenged only by an appeal. In the event that the enforcement was initiated by virtue of any other executory title, it can be challenged by any remedy apart from an application to set aside a judgment by default.

2.6 Unenforceable Domestic Judgments

Following the above remarks, it is underlined that not all types of domestic court judgments are enforceable under Greek civil procedural law. More specifically, only definitive decisions of Greek courts that are issued in favour of an action for specific performance and/or decisions that have been declared by the court as provisionally (temporarily) enforceable are considered as executory titles – being, thus, enforceable under Greek civil procedural law.

The executory title is a document that incorporates claims satisfiable by means of enforcement. The acquisition of an executory title is the first requirement for the initiation of the enforce-

ment proceedings. For the sake of clarity, it is noted that the executory titles under Greek civil procedural law are not limited to the definitive or provisionally enforceable decisions of Greek courts. Other executory titles include:

- arbitral awards;
- minutes of Greek courts that incorporate a settlement or the definition of judicial expenses;
- notarial documents;
- orders for payment and surrender of leased real estate property issued by Greek courts;
- foreign titles that have been declared as enforceable; and
- other orders or actions that are recognised by law as enforceable (eg, summaries of auction reports as per Article 1005 paragraph 2 of the GCCP).

2.7 Register of Domestic Judgments

Court decisions are accessible exclusively to the parties to the proceedings and can be requested from the court. The relevant case file will be kept with the court, even after the satisfaction of the pertinent claim.

3. FOREIGN JUDGMENTS

3.1 Legal Issues Concerning Enforcement of Foreign Judgments

The enforcement of foreign judgments in the Greek territory raises a number of legal issues, mainly stemming from the application of different pieces of legislation in the field of cross-border enforcement of judgments.

More specifically, although the GCCP contains express provisions with respect to the enforcement of foreign judgments within the Greek territory, it holds an express reservation in favour of the application of international treaties and European Union (EU) regulations (Article 905 of

the GCCP). For the sake of completeness, it is clarified that, even in the absence of the GCCP's reservation, the supremacy of ratified international treaties and EU law over Greek national law (such as the GCCP) derives from Article 28 of the Greek Constitution.

3.2 Variations in Approach to Enforcement of Foreign Judgments

In view of the foregoing remarks, the procedural steps that are to be observed for the enforcement of a foreign judgment in Greece shall be diversified so as to adhere to the legal framework applicable on each occasion.

One of the most critical sources of legislation with respect to the enforcement of foreign judgments in Greece is, as anticipated, EU law. The free circulation of intra-EU judgments in civil and commercial matters has consistently been one of the objectives of the EU. This ambition is distinctly reflected in the provisions of Regulation (EU) No 1215/2012, On jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the "EU Enforcement Regulation"). It is, however, noted that the scope of the EU Enforcement Regulation excludes from its scope, inter alia, bankruptcy proceedings.

With respect to intra-EU enforcement (and subject to the status of Denmark), Article 39 of the EU Enforcement Regulation provides that a judgment (including a decree, order, decision or writ of execution, as well as a decision on the determination of costs or expenses by an officer of the court) given in a member state of the EU, and being enforceable in that member state, shall be enforceable in any other member state without any declaration of its enforceability being required.

Apart from the applicable provisions of EU origin, Greece has also entered into a number of bilateral or multilateral treaties (inter alia, with

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the USA, Georgia, Albania, Armenia, Lebanon, Ukraine) regarding the enforcement of foreign court decisions, many of which are still in force, thereby superseding the provisions of the GCCP.

In view of the above remarks and limitations, the scope of the GCCP is narrowed to the enforcement of decisions issued in states that cumulatively:

- do not fall within the scope of the EU Enforcement Regulation; and
- have not entered into an agreement for judicial assistance with Greece.

In the event that these conditions are met and the GCCP applies, the foreign title cannot be enforced prior to the declaration of its enforceability by the Greek courts.

3.3 Categories of Foreign Judgments Not Enforced

The enforcement of foreign judgments in the Greek territory is subject to certain limitations that are set out in detail in the pertinent pieces of legislation.

More specifically, the enforceability of intra-EU judgments is governed by the provisions of the EU Enforcement Regulation. As per Article 45 therein, the recognition of an intra-EU judgment shall be refused:

- if such recognition is manifestly contrary to the Greek *ordre public*;
- where the judgment was given in default of appearance, if the defendant was not served with the document that instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable them to arrange for their defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for them to do so;

- if the judgment is irreconcilable with a judgment given between the same parties in Greece;
- if the judgment is irreconcilable with an earlier judgment given in another EU state or in a third state involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in Greece; or
- if the judgment conflicts with the provisions of the EU Enforcement Regulation with regard to special and exclusive jurisdictions (chapter II therein).

The enforceability of judgments that fall within the scope of international treaties, to which Greece is a party, shall be assessed in light of the specific provisions of the applicable treaty.

Finally, as per the GCCP, a foreign title can be declared enforceable by the Greek courts if the following conditions are fulfilled:

- it is enforceable according to the law of the state of issuance; and
- it does not violate the Greek *ordre public* and/or *boni mores*.

In the event that the foreign title is a court judgment, the GCCP sets certain additional requirements for the recognition of its enforceability. More specifically, the additional requirements to this effect are the following:

- the foreign court that issued the decision must be competent to judge on the case as per the provisions of Greek international private law;
- the losing party was not deprived of the right to a fair trial (ie, the party was not deprived of the right to be heard, to defend its case and participate in the procedure on a *pari passu* basis); and

- the absence of an irreconcilable judgment of the Greek courts between the same parties on the same matter.

3.4 Process of Enforcing Foreign Judgments

In relation to the process for enforcing foreign judgments, Greek civil procedural law, as incorporated in the GCCP, makes no distinction between executory titles with regard to the process followed for the enforcement thereof. The distinction between domestic and foreign judgments is of essence only in terms of the insertion of the additional procedural stage of recognising the enforceability of foreign judgments.

The Single-Member Court of First Instance is competent for declaring the foreign title as an executory one under Greek law. The territorial jurisdiction of the court is identified on the basis of the debtor's domicile/seat or (if the relevant information is unknown) temporary residence. In the absence of information on the debtor's whereabouts, the competent Single-Member Court of First Instance will be the one of Athens.

Apart from the above, the procedure provided for the enforcement of a foreign judgment (provided that it has been declared as enforceable, if necessary) is identical to the one provided for the enforcement of any other executory title.

3.5 Costs and Time Taken to Enforce Foreign Judgments

The costs and time required for the enforcement of foreign judgments do not deviate from the standard of enforcing domestic court decisions. The progress of the enforcement proceedings may be slightly delayed in the event that the foreign judgment needs to be declared as enforceable by the Greek courts.

With respect to the allocation of costs between the parties, the relevant provisions of the GCCP

shall apply. The party seeking enforcement shall prepay the procedural cost and then recover it from the debtor. The recoverable amount is limited to the expenses deemed necessary for the conduct of the enforcement proceedings and does not extend to amounts incurred due to the claimant's error(s), negligence or excessive diligence.

3.6 Challenging Enforcement of Foreign Judgments

As indicated in **2.5 Challenging Enforcement of Domestic Judgments**, the exclusive remedy available against the acts of enforcement is the opposition of the debtor (Article 933 of the GCCP) or a third party having rights over the attached property (Article 936 of the GCCP) against the enforcement. In this respect, the enforcement procedure may be challenged by the debtor on grounds pertaining to procedural nullities, to the claim or to the validity of the foreign judgment. In this last regard, attention must be paid in the identification of the legal framework governing the prerequisites for a foreign judgment's enforceability in the Greek territory.

4. ARBITRAL AWARDS

4.1 Legal Issues Concerning Enforcement of Arbitral Awards

As per Greek civil procedural law, reflected in the GCCP, an arbitral award is a decision issued by one or more arbitrator(s) on the merits of a private law dispute. The enforcement of arbitral awards in the Greek territory raises a number of legal issues, mainly stemming from the classification thereof into different categories (domestic/foreign, international/national) on the basis of different legislative sources.

The distinction between domestic and foreign arbitrations is based on the applicable *lex arbitri*. In the event that the parties have agreed to the

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application of Greek law as the *lex arbitri* (ie, if the seat of the tribunal is located in Greece), the arbitration shall be considered as a domestic one and shall result in the issuance of a domestic award.

Domestic Awards

Domestic awards are further divided into national and international on the basis of the character of the dispute. This distinction reflects globally acceptable standards in the field and derives from Greek Law 2735/1999, largely incorporating the UNCITRAL Model Law of 1985 on International Commercial Arbitration (the “UNCITRAL Model Law”). Greek Law 2735/1999 is considered as *lex specialis* to the GCCP regarding the procedural issues arising in the context of enforcing international arbitral awards on commercial matters. More specifically, Greek Law 2735/1999 provides, *inter alia*, the definition of international commercial arbitration and contains express provisions on the matter of the recognition and enforceability of arbitral awards made in Greece on the merits of international commercial disputes. A dispute is considered as international if one of the following conditions applies.

- The parties to an arbitral agreement have, at the time of the conclusion of that agreement, their places of business in different states.
- One of the following places is situated outside the state in which the parties have their places of business:
 - (a) the place of arbitration if determined in, or pursuant to, the arbitral agreement; or
 - (b) 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.
- The parties have expressly agreed that the subject matter of the arbitral agreement relates to more than one country.

National arbitrations are not expressly defined in Greek civil procedural law, rather resulting by contrast to the definition of international and foreign arbitrations. More specifically, an arbitration (and the award issued thereby) is considered as national if it is made in Greece and does not fall within the scope of Greek Law 2735/1999 on international arbitration. Domestic arbitrations are conducted pursuant to the GCCP.

The enforceability of domestic (ie, national and international) arbitral awards is expressly provided in the GCCP and in Greek Law 2735/1999. In the same spirit as court judgments, only the awards ruling in favour of a claim for specific performance are enforceable. Unlike domestic court judgments, however, domestic arbitral awards do not need to be definitive in order to be enforceable, given that they are not subject to a challenge through ordinary remedies (unless otherwise provided in the arbitral agreement). It is noted, for the sake of clarity, that arbitral awards dismissing the claim may be enforceable regarding their provisions on costs.

Foreign Awards

As per Article 36 of Law 2735/1999, the recognition and enforcement of foreign arbitral awards on commercial matters is conducted pursuant to the provisions of Greek Legislative Decree 4220/1961, incorporating the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “NY Convention”).

As per Article 1 of the NY Convention, an arbitral award is considered as foreign if it is made in the territory of a state other than the state where the recognition and enforcement of such award are sought. This broad definition is, however, narrowed in view of the fact that Greece has incorporated the NY Convention under the reservations of Article 1 paragraph 3 thereof (ie, on a reciprocal basis and on the condition of

the commercial nature of the dispute) and is a party to certain bilateral treaties (inter alia, with the USA, Cyprus, Germany, Romania, Lebanon, Hungary, Syria, Tunisia, Albania, China, Georgia, Armenia), which may take precedence over the NY Convention, depending on their antecedence over the NY Convention (Article 7 paragraph 1 of the NY Convention). As a result, the enforcement of foreign arbitral awards is regulated either by the NY Convention, the GCCP or a bilateral treaty.

Summary of the Recognition and Enforcement of Arbitral Awards in Greece

In view of the above observations, the legislative framework regarding the recognition and enforcement of arbitral awards in Greece briefly stands as follows: national arbitral awards are enforced pursuant to the provisions of the GCCP, in the same spirit as domestic court decisions; international arbitral awards are enforced as per the provisions of Law 2735/1999; arbitral awards issued by tribunals seated in a state other than Greece (foreign awards) are enforced either pursuant to the provisions of Law 4220/1961, if they pertain to a commercial dispute, or pursuant to the provisions of the GCCP, following the declaration of their enforceability (Article 906 of the GCCP), in the (rather unusual) event that they do not pertain to a commercial dispute, or by one of the applicable bilateral treaties Greece has entered into.

4.2 Variations in Approach to Enforcement of Arbitral Awards

The procedural steps for the enforcement of arbitral awards in the Greek territory is diversified on the basis of the classification of the arbitral award(s) into domestic, international and foreign, as per **4.1 Legal Issues Concerning Enforcement of Arbitral Awards**.

More specifically, as indicated in **2.6 Unenforceable Domestic Judgments**, domestic arbitral

awards are included in the exclusive list of executory title, thereby being enforceable ipso iure, without a need for judicial ratification.

Foreign arbitral awards, on the other hand, are subject to different provisions, which are further diversified according to the nature of the dispute to which they pertain.

4.3 Categories of Arbitral Awards Not Enforced

Most types of arbitral awards are enforceable in Greece. The distinction between national, international and foreign awards only affects the procedural steps that must be observed in order for the award to be enforced; it does not influence the outcome of the procedure.

More specifically, in the same spirit as civil courts' decisions, only the awards issued in favour of a claim for specific performance may be enforceable and thereby considered as executory titles.

4.4 Process of Enforcing Arbitral Awards

With regard to the process of enforcing arbitral awards in Greece, a distinction may be drawn right from the outset between the enforcement of:

- a national arbitral award;
- an international arbitral award; and
- a foreign arbitral award.

National Arbitral Awards

The enforcement of national arbitral awards is achieved, to a great extent, in the same manner as the enforcement of domestic court decisions, given that the final national arbitral awards are listed in the GCCP as executory titles, being, hence, enforceable ipso iure. Unlike domestic court judgments, however, national arbitral awards do not need to be rendered definitive in order to be enforceable, given that they are not

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subject to a challenge through ordinary remedies (unless otherwise stipulated in the arbitral agreement).

International Arbitral Awards

The enforcement of international arbitral awards on commercial disputes is conducted in accordance with Greek Law 2735/1999. It is underlined that the provisions of Greek Law 2735/1999, although mainly reflecting the UNCITRAL Model Law, are partly differentiated thereof. More specifically, as per the UNCITRAL Model Law, the party applying for the enforcement of an international award would have to supply the duly authenticated original award or a duly certified copy thereof, the original arbitral agreement or a duly certified copy thereof, as well as a duly certified translation thereof into Greek (if the award or agreement was not made in Greek). Greek Law 2735/1999, on the other hand, makes no reference to these procedural prerequisites, stipulating that international arbitral awards have the force of *res judicata* and are enforceable upon their issuance.

A further divergence from the UNCITRAL Model Law is adopted in relation to the enforceability of interim measures. Unlike the UNCITRAL Model Law, Greek Law 2735/1999 does not empower the arbitral tribunal to order enforceable interim measures without the involvement of the Greek civil courts. More specifically, the interim measures ordered by the arbitral tribunal must be appended with the executory formula in order to be considered as enforceable.

Foreign Arbitral Awards

As regards foreign arbitral awards falling within the scope of Legislative Decree 4220/1961, their enforcement is conducted in accordance with the NY Convention. More specifically, as per Article IV of the NY Convention, in order to obtain the recognition and enforcement of a foreign arbitral award, the applicant shall, at the

time of the application, supply the duly authenticated original award or a duly certified copy and the original agreement referred to in Article II of the NY Convention or a duly certified copy.

If the award or agreement is not Greek, the party applying for recognition and/or enforcement of the award shall produce the Greek translation of these documents. As per the NY Convention (and the ratifying Greek Legislative Decree 4220/1961), the translation shall be certified by an official or sworn translator, or by a diplomatic or consular agent. In this respect, the Greek courts have accepted that lawyers fall within the scope of “official translators” and are, therefore, qualified to provide the required translations.

The aforementioned documents (ie, the award, arbitral agreement and – where applicable – the translations) are essential for the admissibility of the claim and their existence is examined by the court *ex officio*.

Finally, foreign arbitral awards that do not fall within the scope of Legislative Decree 4220/1961 are not enforced pursuant to the NY Convention but in accordance with the provisions of the GCCP on the enforcement of foreign arbitral awards. The procedure followed for the enforcement of a foreign arbitral award in Greece is similar to the one provided for foreign judgments. More specifically, the party wishing to enforce a foreign arbitral award in Greece shall file an application for its recognition and enforcement before the Single-Member Court of First Instance of the residence (or the temporary domicile) of the debtor (or, in the event of unknown residence and temporary domicile, before the Single-Member Court of First Instance of Athens). The application is heard in *ex parte* (non-contentious) proceedings, subject to the court’s power to summon any third party that has a legitimate interest to take part in the

proceedings (Articles 906, 747 and 748 of the GCCP).

Apart from the above remarks, the procedure provided for the enforcement of arbitral awards is identical to the one provided for the enforcement of any other executory title. However, the power of an arbitral tribunal to issue an enforceable award does not add up to a power of ordering the competent judicial officers to proceed with compulsory enforcement. In other words, even if the intervention of a domestic court is not necessary for the declaration of an award's enforceability, it shall be inevitable in the context of compulsory enforcement, due to strict public policy concerns entangled with the enforcement procedure.

4.5 Costs and Time Taken to Enforce Arbitral Awards

The costs and time needed for the enforcement of arbitral awards do not deviate from the standard of the enforcement of domestic court decisions. The progress of the enforcement proceedings may be slightly delayed in the event that the enforceability of the arbitral award must be declared by the Greek courts (ie, in the event of enforcement of foreign arbitral awards).

With respect to the allocation of costs between the parties, the parties are free to include a clause in their arbitral agreement. In the absence of such clause, the matter is resolved by the arbitral tribunal in accordance with the *lex fori* (ie, Greek civil procedural law). As a result, the party seeking enforcement shall pre-pay the procedural cost and then recover it from the debtor. The recoverable amount is limited to the expenses deemed necessary for the conduct of the enforcement proceedings and does not extend to amounts incurred due to the claimant's error(s), negligence or excessive diligence.

4.6 Challenging Enforcement of Arbitral Awards

The Greek legislative framework on the delivery and enforcement of arbitral awards does not (in principle) deviate from the internationally dominant standards in the field; the process of challenging arbitral awards is no exception to this rule.

It has already been indicated above that the exclusive remedy available to the debtor against the acts of enforcement is the opposition to the enforcement (Article 933 of the GCCP). The enforcement procedure may be challenged on grounds pertaining to procedural nullities, to the claim or to the validity of the arbitral award. In this last regard, attention must be paid in the identification of the legal framework governing the prerequisites for the award's validity.

National Arbitration

With respect to national arbitration, the parties can request the annulment of the award partially or in its entirety, for any of the following reasons:

- due to the nullity of the arbitral agreement;
- if the award was issued after the termination or expiry of the arbitral agreement's effective term;
- if the choice of arbitrators was not in compliance with the terms of the arbitration agreement or the law, or the arbitrators have been revoked or exempted;
- if the arbitrators have surpassed the powers granted to them by the arbitral agreement or the law;
- if the award was not issued in compliance with the principles of parties' procedural equality and/or the arbitrators did not reach a decision in a way abiding by the arbitral agreement or the law and/or formal requirements of the arbitral award were not respected;

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- the award offends the Greek ordre public and/or boni mores; or
- one of the grounds for the reopening of a trial (Article 895 of the GCCP) is met.

In addition to the above, the GCCP contains specific provisions regarding the declaration of the award as non-existent due to:

- entire lack of an arbitral agreement;
- inarbitrability of the subject matter of the dispute; or
- non-existence of a party to the proceedings.

Foreign Arbitral Awards

With regard to foreign arbitral awards falling within the scope of Greek Law 2735/1999, those may be set aside if the claimant furnishes proof that:

- a party to the arbitral agreement was under some incapacity or the agreement is not valid under the law to which the parties have subjected it, or, failing any indication thereon, under Greek law; or
- the claimant was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or was otherwise unable to present their case; or
- the award deals with a dispute not contemplated by, or not falling within, the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award that contains decisions on matters not submitted to arbitration may be set aside; or
- the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with Law 2735/1999.

Moreover, in the context of examining the application to set aside the award, the court ex officio examines if (i) the subject matter of the dispute is inarbitrable under Greek law, or (ii) the award is in conflict with the Greek ordre public, in the meaning of Article 33 of the Greek Civil Code.

The enforceability of foreign arbitral awards on commercial disputes is regulated in accordance with the provisions of the NY Convention. As per the relevant provisions, foreign arbitral awards on commercial disputes are presumably enforceable; however, the recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the Greek courts proof pertaining to:

- the arbitral agreement's invalidity; or
- the inability of the party against which the award was invoked to present its case (particularly if it was not given proper notice of the arbitral proceedings); or
- the award deciding beyond the scope of the arbitral agreement; or
- the non-conformity of the composition of the arbitral tribunal or the arbitral procedure with the arbitral agreement or the applicable law; or
- the lack of a final and conclusive award.

Recognition and enforcement of an arbitral award may also be refused in the event that the Greek courts find (i) the subject matter of the difference is inarbitrable under Greek law, or (ii) the recognition or enforcement of the award would be contrary to the Greek ordre public.

The enforceability of foreign arbitral awards that do not pertain to commercial disputes is regulated by the GCCP. In this instance, the enforceability of the award shall be declared enforceable by the court of first instance unless:

- the arbitral agreement is invalid under its governing law;
- the subject matter of the dispute is inarbitrable under Greek law;
- the foreign award is not yet final and conclusive;
- the defendant was deprived of its right of defence in the course of the arbitral proceedings;
- a Greek court judgment has been issued on the same dispute between the same parties; and
- the award violates the Greek ordre public and/or the boni mores.

The mere challenge of an arbitral award before the Greek civil courts does not affect the validity of the enforcement proceedings, which are subject exclusively to the remedy of opposition to the enforcement.

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Koutalidis Law Firm is situated in Athens and consists of 50 partners and associates. The firm has recently handled, or is currently handling, a substantial number of high-value and very complicated court cases before all levels of the Greek judicial system and a significant number of arbitrations (either institutional or ad hoc), most of them international, also involving enforcement proceedings. Key clients of the firm's arbitration, litigation and mediation department

include a number of major companies, such as Hochtief, Vinci, Tecnimont, Invensys, Aegean Motorway, Fraport Greece, Aegean Airlines, Deutsche Bank, Alpha Bank, National Bank of Greece, Cyprus Popular Bank, ANEK, Intrasoft International, and the Hellenic Republic Asset Development Fund; major pharmaceutical companies/distributors, such as Genesis Pharma and Jacovides Hellas; Crete Golf; Athens Papermill; and shipping and industry magnates.

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