



Construction

in 35 jurisdictions worldwide

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2011



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Greece

Theodoros Skouzos

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1 Joint ventures

Must foreign designers or contractors enter into a joint venture with a local contractor to design, build and be paid for their work? Does the law require that the local contractor control the joint venture?

Foreign designers and contractors may design, build and get paid for their work without any obligation that they enter into a joint venture with a local contractor.

2 Foreign pursuit of the local market

If a foreign designer or contractor wanted to set up an operation to pursue the local market what are the key concerns they should consider before they took such a step?

The main concerns would be the same concerns as any other type of business, that is, immigration and taxation issues. Language may be seen as an important barrier to any type of business establishment in Greece, because even though most Greeks doing business speak English, the only official language in Greece is Greek and assistance will need to be sought from Greek-speaking advisers.

3 Licensing procedures

Must foreign designers and contractors be licensed locally to work and, if so, what are the consequences for working without a licence?

Employment of a workforce that has no valid residence or work permit can lead to administrative and criminal sanctions for both the employer and the employee. Contracting without the necessary administrative licences will incur criminal sanctions. In practice it is difficult to enter into contracts without valid licences because the latter are checked at various stages by the taxation, social security and planning authorities.

4 Labour requirements

Are there any laws requiring a minimum amount of local labour to be employed on a particular construction project?

No.

5 Local labour law

If a contractor directly hires local labour (at any level) for a project, are there any legal obligations towards the employees that cannot be terminated upon completion of the employment?

In principle, no. However, mainly due to the administrative procedures themselves, there are social security and taxation formalities that are observed within specific time frames that follow termination of the employment contract.

6 Health and safety regulation

Are there any specific health and safety rules regulating the construction industry?

Yes, the most important of which are:

- Presidential Decree dated 14 March 1934 'on the health and security of workers and employees of any kind of industrial and craft-based factories, workshops, etc'.
- Presidential Decree No. 778 of 19/26 August 1980 on security measures to be taken during the execution of construction projects. It applies to projects of construction, demolition, repair, decoration, painting of buildings, as well as any type of metallic, engineering, mechanical and electrical installations.
- Presidential Decree No. 1073 of 12/16 September 1981 on security measures to be taken during the execution of projects in building worksites and any type of construction projects run by civil engineers. It applies to any type of site project run by a civil engineer, including building projects.
- Law No. 1396 of 15/15 September 1983 on security measures to be taken in building constructions and other private technical projects. It refers to security measures for the protection of the employees and any third parties during the execution of construction and other technical projects, excluding public projects.

7 Close of operations

If a foreign contractor that has been legally operating decides to close its operations, what are the legal obstacles to closing up and leaving?

As far as its obligations to the state are concerned, a foreign contractor (as well as a local contractor) must have settled its accounts with the social insurance funds and the tax authorities. Failure to do so, except for administrative fines, may incur criminal liability. In relation to any projects undertaken that are not delivered, the consequences are usually stipulated in the contract itself. It is common to include contractual terms for fixed-sum penalties, bank guarantees for good performance, etc. By law, a project would be finalised by the owner through the use of a substitute contractor, at the expense of the contractor at fault.

8 Standard forms of construction contracts

What standard-contract forms are used for construction and design?

There are no standard contract forms. The contracting parties are free to negotiate the contractual terms and do so according to their negotiating power. Subject to special rules applying to contracts with the state, public organisations and local community authorities, construction contracts need not even be in writing. If there is no written contract, articles 681 to 702 of the Civil Code apply. The bigger and more complicated the project, the more sophisticated the contract and its provisions.

9 Price escalations

In typical construction contracts, who assumes the risk of material price escalation and shortages?

Unless there is a contractual provision that stipulates the matter, typical construction contracts in the private sector are governed in that aspect by articles 696 and 697 of the Civil Code. These provide that if the contractor has explicitly guaranteed the cost estimation, it may not claim for any increase in the consideration due to price escalation. If the contractor has not given such a guarantee, it may step back from the contract and the owner of the project will be obliged to pay the consideration for all work completed up to the time of the price escalation. The contractor has a duty to notify the owner about such an event in a timely fashion, and failure to do so may result in losing any right to demand correction of the agreed consideration. But if the price escalation is not due to ordinary increases in costs but due to extraordinary circumstances that would render the performance of the contract with the originally agreed consideration unjust for the contractor, the latter may seek the application of article 388 of the Civil Code. By virtue of this article a court may protect the contractor by measures such as correction of the price or termination of the contract.

10 Competition

Do local laws provide any advantage to domestic contractors in competition with foreign contractors?

There is no explicit advantage for local contractors as far as private construction projects are concerned. Public construction projects may equally be undertaken by Greek or other EU member state contractors. Article 15, section 2 of Law No. 1418/1984 stipulates that contractors from non-EU countries that satisfy the formal criteria accepted in public bids may undertake public construction projects 'if their participation is dictated by the international commitments of the state', that is, in cases where a relevant treaty or cooperation agreement has been signed with the respective country.

11 PPP and PFI

Is there a formal statutory and regulatory framework for PPP and PFI contracts?

Yes, there is. It is provided by Law No. 3389/2005. According to that law, the contract for the PPP must stipulate, inter alia:

- the subject matter of the partnership, including the specifications of the project or the service to be provided;
- the methods of inspection and quality control;
- the time frame of execution and delivery;
- the method by which the private contractor shall make profitable use of the project;
- the allocation of risks between the parties;
- the insurance coverage of the project;
- the protection of environment and antiquities;
- the intellectual property rights;
- the way of usage and maintenance of the project;
- the consideration for the use of the project by the public, etc.

A new institutional legal framework for the public works has been put forward by the Ministry of Infrastructures Transports and Networks, and is expected to be enacted within the next semester. The procedures of the public works assignments to private construction companies is expected to change radically. The main goals of this legal change are set to be the following:

- providing motives for private investments in the sector of public construction;
- better quality of the produced public works;
- reduction of the time and cost of the project;
- transparency and anti-bribery measures; and
- environmental provisions.

12 Payment of fees

How may a contractor secure the right to payment of its costs and fees from an owner? May the contractor place liens on the property?

A contractor may secure his right to payment by various legal methods. The most common form of security is a bank guarantee or placing a lien on the property. All are subject to agreement.

13 Tort claims and indemnity

Do local laws permit a general contractor to be indemnified against all acts, errors and omissions arising from the work of a subcontractor, even when the general contractor is negligent?

As it derives from the combination of articles 330, 332 and 334 of the Civil Code, as a general rule, a contractor is liable for any infringement of its obligations, committed either by it or its subcontractors, whether it is an action of negligence or of malice. Any agreement in advance, which restricts or reduces any liability due to malice or gross negligence, is invalid.

14 Liability to third parties

Where a contractor constructs a building that will be sold or leased to a third party, does the contractor bear any potential responsibility to the third party? May the third party pursue a claim against the contractor despite the lack of contractual privity?

Yes, under Law No. 2251/1994 for the protection of consumers, which protects only third parties who qualify as consumers and does not include any liability for damages to the product itself. Also, the contractor may be held liable against a third party in tort.

15 Insurance

To what extent may a contractor obtain insurance to cover its contractual risks?

It is not common to obtain insurance against contractual performance risks. A general professional negligence insurance coverage may be agreed, which would range according to the policy of each individual insurance company. Typically a bank guarantee of 'good performance' of the construction contract is required, which usually ranges from 5 to 10 per cent of the value of the project.

16 Statutory payment protection

Where major projects have been interrupted or cancelled, do the local laws provide any protection for unpaid contractors who have performed work?

As a general rule, provided by article 700 of the Civil Code, when a project has already been started, but is not yet complete, and the construction agreement is terminated by the assignor, at any stage, the contractor is entitled to receive full payment for the project after exempting the expenses that were saved and the profit the contractor realised due to this annulment.

The protection provided by law varies according to whether a creditor is secured or unsecured. If a creditor is secured, he shall enforce his security, which at the contractual stage shall be in the form of a lien on the property and at the stage of execution, shall be in the form of a mandatory liquidation. If the creditor is unsecured, he will be satisfied equally and by analogy to all other creditors, but the employees of the debtor, the Social Security and the state have (inter alia) a priority.

According to article 28 of the Bankruptcy Code (Law No. 3,588/2007), contracts outstanding upon the declaration of bankruptcy remain in force. The trustee in bankruptcy, with the referee's permission, has the power to seek the fulfilment of outstanding contracts, by substituting the group of creditors in the place of the debtor, and to demand performance by the contracting party. If the trustee

does not exercise the above power within 10 days of the submission of his or her report, the contracting party has the right to determine a legitimate deadline for the exercise on behalf of the trustee of this right. If the trustee does not reply within the above deadline, or denies the completion, the contracting party has the power to withdraw from the contract, and claim compensation due to non-completion, satisfied as a creditor in bankruptcy. Furthermore, according to article 33 of the Law, the trustee has the authority to transfer to a third party the contractual relationship, in which the contracting party is the debtor. The transfer is allowed regardless of the existence of any contractual terms excluding or limiting it, if the transfer is in the interest of the creditors and the contracting party of the debtor consents to it. If the contracting party refuses to grant its consent, the bankruptcy court, following a petition of the trustee, may authorise the transfer under conditions. Any rights of the contracting party, regarding the termination of the contract according to a contractual clause which provides the termination in case of bankruptcy or for any other reason, are not impaired by the above.

17 Contracting with government entities

Can a government agency assert sovereign immunity as a defence to a contractor's claim for payment?

No.

18 Bribery

If a contractor has illegally obtained the award of a contract, for example by bribery, will the contract be enforceable?

As a general rule, no. The parties involved will incur criminal sanctions.

By the new institutional legal framework for the public works which has been put forward by the Ministry of Infrastructures Transports and Networks (see question 11), contractors who wish to participate in public auctions for the outbidding of a public construction project upon contractual assignment (PPPs), have the obligation to include in their portfolio a special 'declaration of integrity'. By this declaration the participant company shall acknowledge that it has not been engaged in any kind of bribery or corruption methods in order to make a successful contractual assignment of the project. If it is proven after assignment that the constructor used any unlawful or unfaithful methods of corruption, he will be obliged to pay full compensation for the damage incurred to the state.

19 Arbitration

What is the prevailing attitude towards arbitration of construction disputes? Is it preferred over litigation in the local courts?

Arbitration tends to be preferred mainly in large-scale projects, but it is not necessarily always so.

Article 49 of the Introductory Law on the Code of Civil Procedure stipulates that the state may agree to subject a contract with a private body to arbitration, provided that it is in writing, it is subject to the approval of the Legal Council of the State and that it has been ratified by a decision of the minister of economics and of the competent minister (eg, the minister of public works). Also, according to Law No. 3,389/2005 on Public-Private Partnerships, every dispute that may arise in relation to the execution, the interpretation or the validity of public-private partnership agreements or their supplementary agreements is subject to arbitration.

The rules that regulate the appointment of arbitrators, the domicile of the arbitral court (or body), the arbitrators' fees and the language in which the arbitration will take place, shall be provided by the PPP agreement or its supplemental material. The arbitral award is final and irrevocable and is not subject to any ordinary or extraordinary remedy, it constitutes an exemplification order without being necessary to be declared as such by the ordinary courts, and

the opposing parties are committed to obey its terms immediately. Greek substantive law applies when resolving a dispute regarding the construction or the implementation or the validity of the PPP agreement.

20 Foreign corruption

Does local legislation prohibit corrupt practices carried out abroad by persons domiciled in your jurisdiction?

Yes. By virtue of Law No. 2,656/1998, the Convention of the OECD on Combating Bribery of Foreign Officials in International Business Transactions, which was signed in Paris on 17 December 1997, was ratified. Furthermore, Law No. 2802/2000 ratified and provided validity for a Greek law to the Convention on the Fight Against Corruption Involving Officials of the European Communities or Officials of member states of the European Union, which was signed in Brussels on 26 May 1997.

21 Force majeure and acts of God

Under local law are contractors excused from performing contractual obligations owing to events beyond their control?

Yes. According to article 336 of the Civil Code a party is released from its obligation to perform if it can prove that the non-performance is due to any event beyond its control. In such a case, it has a duty to inform the other contracting party of the event without delay. It is very common that contracts stipulate the possible events of force majeure and their impact on the contract in more detail.

22 Dispute resolution mechanisms

What dispute resolution procedures are successfully used to solve construction disputes?

Where parties want to avoid litigation, it is common to provide in contracts that any disputes shall be referred to the arbitration of the Technical Chamber of Greece (see question 23) or the International Chamber of Commerce.

23 Courts and tribunals

Are there any specialised tribunals that are dedicated to resolving construction disputes?

Yes, the Permanent Court of Arbitration of the Technical Chamber of Greece, founded by article 1 of the Presidential Decree No. 723/1979. It is a permanent (standing) court of arbitration constituted by the Technical Chamber of Greece in order to arbitrate technical disputes. As technical disputes are defined as all disputes arising from study or design contracts, maintenance execution contracts, or any other relevant contract with regard to technical projects, constructions, facilities and, in general, issues that fall within the scientific knowledge or experience of the members of the Technical Chamber of Greece.

24 Dispute review boards

Are dispute review boards (DRBs) used? Are their decisions treated as mandatory, advisory, final or interim?

Not applicable to this jurisdiction.

25 Mediation

Has the practice of voluntary participation in professionally organised mediation gained acceptance and, if so, how prevalent is the practice and where are the mediators coming from?

Mediation is the procedure by which two parties in dispute negotiate with the assistance of a third party in order to isolate the issues upon which they disagree and develop alternative solutions that are mutually acceptable. Mediation is not commonly used to resolve

Update and trends

The economic crisis has so far resulted in a progressively negative impact on the status of construction companies. Specifically, during the first half of 2010 a reduction of the total construction activity (private and public sector) was reported at a percentage of 20.2 per cent in comparison with the corresponding period of 2009.

Furthermore, due to the fiscal national crisis and the severe measures taken in accordance with EU and IMF indications and the Memorandum of Understanding of 3 May 2010 between them and the Greek government, among other fiscal provisions, there is the strict provision for reduction of public investments by €500 million. The biggest challenge of the Greek economy under current circumstances is the achievement of an economic growth rate combined with private investments. Thus, the Ministry of Infrastructures Transports and Networks has already begun public consultation on a new institutional legal framework for public-private partnerships and public works, which is estimated to encourage the forwarding of new construction projects of €1 billion that will be auctioned until the end of 2010.

project disputes. Except for the provision of article 214A of the Code of Civil Procedure, which simply leaves room for mediation, there is no express definition of it in any statute. The SA and Limited Companies Association recently founded the Centre for Mediation and Arbitration, in an effort to promote mediation as an alternative dispute resolution procedure. Following the EU Council Directive of 21 May 2008 on 'mediation in civil and commercial disputes', progress is expected to take place on the matter. The relevant committee for implementation of the said Directive has already been formed.

26 Confidentiality in mediation

Are statements made in mediation confidential?

Due to the lack of any statutory provision, the only source for our answer is the feedback from the Centre for Mediation and Arbitration. According to that, confidentiality is a vital element of the procedure to be followed.

27 Arbitral award

Is there any basis upon which an arbitral award issued by a foreign or international tribunal may be rejected by your local courts?

According to article 897 of the Code of Civil Procedure, an arbitral award may be annulled, in full or partially, only with a court order for the following reasons:

- (i) if the arbitration agreement is invalid;
- (ii) if at the time of its issuance the arbitration agreement is no longer effective;
- (iii) if those issuing the award were appointed contrary to the terms of the arbitration agreement or contrary to the provisions of the law or if the parties had revoked them, or if they proceeded despite the fact that a motion for their exception was accepted;
- (iv) if those issuing the award acted in excess of the power provided to them by the arbitration agreement or the law;
- (v) if the provisions of articles 886 paragraph 2, 891, 892 of the Code of Civil Procedure were breached;
- (vi) if it is contrary to rules of public policy or to the moral standards;
- (vii) if it is inapprehensible or includes contradictory provisions; or
- (viii) if there is ground for review according to article 544 of the Civil Code.

It must be noted, in relation to point (vi) above, that with regard to article 897 paragraph 6, many of the provisions of the General

Building Code (Law No. 1577/1985) and articles 3 and 7 of the presidential decree dated 3 September 1983, which regulate the issues of building work permits, are defined as rules of public policy.

28 Governing law and arbitration provider

If a foreign contractor wanted to pursue work and insisted by contract upon international arbitration as the dispute resolution mechanism, which of the customary international arbitration providers is preferred and why?

The International Chamber of Commerce in Paris may be considered as one of the most commonly preferred international arbitration providers. Generally, there is no preference as to which national law would apply, but Greek law would of course naturally be preferred by Greek contractors. As a general rule, the stronger party will prefer that the applicable law is the law of the country where it is established. If there is no choice, it should consider the following factors in choosing the applicable arbitration court:

- it is familiar with the applicable rules;
- it can work in the language used; and
- the jurisdiction and the establishment are well reputed and provide for sufficiency, fairness and speed.

29 International environmental law

Is your jurisdiction party to the Stockholm Declaration of 1972? What are the local laws that provide for preservation of the environment and wildlife while advancing infrastructure and building projects?

No. According to article 24 of the Greek Constitution, the protection of the natural and cultural environment is an obligation of both the state and individuals. In order to preserve it, the state is required to take special preventive or repressive measures, within the framework of the principle of viable growth. Forests and forest areas cannot be declassified unless their agricultural exploitation or other use is considered to be of vital importance to the national economy and dictated by the public interest.

The development, urban planning and expansion of the cities, and in general of the built-up areas, comes under the regulative competence and control of the state, in order to serve functionality and development of built-up areas and ensure that the highest possible living standards are met. The relative technical choices and decisions are taken in accordance with the rules of science. The formation of a National Land Registry is an obligation of the state.

In order for an area to be classified as residential, part of the land must be made available for use for the creation of roads, squares and general public spaces, without any compensation to the owners from the competent authority, and the owners must contribute to the expense of the creation of basic communal urban structures, as provided for by law. The participation of property owners within the residential area, in its exploitation and general layout according to an approved plan, may be provided for by law in exchange for properties of equivalent value or parts of property per floor, out of the spaces defined as developable or of buildings in that area. The above provisions also apply to the restructuring of already existing residential areas.

The free areas resulting from the restructuring are used for the creation of communal areas, or they are disposed of in order to cover the expenses of the urban restructuring as provided for by law. Monuments, as well as traditional areas and elements, are protected by the state. The law shall provide the necessary restrictive measures for the protection of properties, as well as the method of compensation to the owners.

By the minister's Decree No. D6/B/5825/2010 of 9 April 2010, issued according to Law No. 3661/2008 (EU Directive 2002/91/EC), specific requirements for the issuance of an environmental technical study for the energy attribution of the buildings are set as well as the minimum requirements of the architectural designing and the

structure materials of the buildings that shall be constructed or renovated after the 9 July 2010.

30 Other international legal considerations

Are there any other important legal issues that may present obstacles to a foreign contractor attempting to do business in your jurisdiction?

Not in particular. However, the legislative framework is so complex in general that consultancy will be required in most cases.

31 International treaties

Is your jurisdiction a signatory to any investment agreements for the protection of investments of a foreign entity in construction and infrastructure projects? If so, how does your model agreement define 'investment'?

There are numerous protocols (agreements) for the mutual promotion of investments between Greece and (especially) neighbouring former socialist countries, which include, inter alia, construction and infrastructure projects. There is no standard definition of the term investment. Many of those agreements contain statements of intent rather than creating obligations.

32 Tax treaties

Has your jurisdiction entered into double taxation treaties pursuant to which a contractor is prevented from being taxed in various jurisdictions?

Yes, Greece is a member of the OECD and has entered into more than 42 treaties for the avoidance of double taxation at the time of writing. Most of them include provisions for the taxation of profits arising from construction projects.

33 Currency controls

Are there currency controls that make it difficult or impossible to change operating funds or profits from one currency to another?

No. They have been abolished by article 5 of Law No. 2,842/2000.

34 Removal of profits and investment

Are there any controls or laws that restrict removal of profits and investments from your jurisdiction?

No.

35 Contractual matrix of international projects

What is the typical contractual matrix for a major project in your jurisdiction in terms of the contractual relationships among the various construction project participants?

In large private construction projects, it is common for one main contractor to be in charge of all subcontractors, so that the owner of the project is contractually linked only with the first. In major public (but also in many private) construction projects it is also common for two or more contractors to set up a joint venture in order to undertake the work. Under Greek law, a joint venture resembles the French *société en nom collectif*, that is, the common-law 'partnership' under the condition that it is publicised according to the Commercial Code.

Especially for public construction projects, the law imposes certain conditions:

- all members of the construction joint venture must be registered in the relevant categories of the Registry of Contractors' Enterprises;
- the deed of establishment of the consortium (joint venture) must be notified to the owner of the project; and
- the members of the contracting joint venture may not be more than three, if the project was assigned to one enterprise, or double the original number of contracting enterprises, if the project was assigned to a joint venture of contracting enterprises.

The participation of the main contractor in the contractual joint venture in total must be at least 50 per cent. Any other enterprise that participates in the contracting joint venture must have a minimum participation of 15 per cent. If the main contractor is a joint venture, it must maintain a total percentage of participation of at least 50 per cent. Any other contracting enterprise must have a minimum participation of 15 per cent.

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