



Construction

in 31 jurisdictions worldwide

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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 a quite 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

Are there any labour laws applicable to construction and infrastructure projects?

Yes, and they are very strict. Minimum wages are fixed by collective employment agreements. Insurance contributions, overtime and related issues are fixed by law. Building and construction licences are issued following approval by the local social insurance office of the labour requirements of every project according to objective criteria, such as the surface of the building that is under construction. Part of the applicable social insurance contributions are payable in advance

as a prerequisite for obtaining a licence and a large percentage is payable during the progress of the works.

Especially with regard to foreign technical entities which have settled in Greece, by exemption, overtime is permitted without restrictions, under the condition that overtime is dictated by the needs of the enterprise and that the employees working overtime will receive not only the extra legal payment but also the relative proportional accrual imposed. So, in the case of the abovementioned enterprises, the restriction of the time limits on overtime work does not apply and these enterprises may allow as many hours of overtime as they want. It has also been sustained (Legal Council of the State opinion 86/1970) that, in order for the foreign technical enterprises to perform overtime, no previous permission from the Labour Inspection Authority nor any other competent authority is required, nor is any requirement of notification.

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, who has been legally working, 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 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 expenses 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, 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

In certain forms of construction such as PPP and PFI, where the contractor is responsible for long-term quality control and maintenance, how is the risk of additional future costs considered and mitigated?

This is subject to contractual agreement. As a matter of principle, the private contractor will undertake a significant proportion of all risks involved in the project (article 2 paragraph 1 of Law No. 3,389/2005 on public-private partnerships).

12 Payment of fees

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

Yes, they can, 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 Insurance

Do local laws require the maintenance of any specific type of insurance on construction projects?

No. 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.

15 Insolvency and bankruptcy

If a contractor files for insolvency, or is declared insolvent, may its contract be terminated for default and a new contractor retained to prevent delay on the project?

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.

16 Contracting with government entities

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

No.

17 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.

18 Arbitration

Can a government agency agree to arbitrate disputes privately rather than go to court?

Yes. 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 which 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 supplements. The arbitral award is final and irrevocable and is not subject to any ordinary or extraordinary remedy, 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. For the resolving of a dispute regarding the construction or the implementation or the validity of the PPP agreement, Greek substantive law applies.

19 Foreign corruption

Do local laws prohibit illegal actions in foreign jurisdictions?

Yes. By virtue of Law No. 2,656/1998, the Convention of 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 to 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.

20 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.

21 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 22) or the International Chamber of Commerce.

22 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 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.

23 Dispute review boards

Are dispute review boards (DRBs) used?

No.

24 Mediation

How is mediation defined? And is it commonly used to resolve project disputes?

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 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 a very good effort to promote mediation as an alternative dispute resolution procedure. Following EU Council Directive of 21 May 2008 on 'mediation in civil and commercial disputes', progress is expected to take place on the matter.

25 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.

26 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 in regard to article 897 paragraph 6, many of the provisions of the General Building Code (Law No. 1577/1985) and the 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.

27 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, that:

- 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.

28 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.

29 Other international legal considerations

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

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

30 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 pure statements of intent rather than creating obligations.

31 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 of the present article. Most of them include provisions for the taxation of profits arising from construction projects.

32 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.

33 Removal of profits and investment

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

No.

34 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 that 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 of 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.

Update and trends

The current economic climate (increasing interest rates, escalation of material prices) has been detrimental to the private construction initiative. Real estate prices have frozen during the recent months. A couple of years ago, the introduction of VAT on new buildings and the modification of taxation system for property ownership troubled the market, by generating an artificial demand during the period before the changes were introduced, which now has to be absorbed so that the market is balanced.

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