IBA International Construction Projects Committee

ADR in Construction

Greece

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1 Background

1.1 Which type of dispute resolution is most often used in construction matters in your jurisdiction? Can you give reasons why one type of dispute resolution is preferred above another? If there have been changes in preference in the past ten years, what has caused this?

The method of dispute resolution most often used in construction matters is arbitration. Arbitration is preferred over litigation for several reasons. Arbitral proceedings are widely considered to be quicker than court proceedings. Construction contracts also require a high level of knowledge and expertise and arbitration enables the parties to choose international technical experts as arbitrators, who are well-acquainted with construction projects. Many parties also prefer arbitration because arbitral awards are generally final and binding and cannot be appealed before a court. Arbitral awards can only be set aside by the Greek courts for specific reasons (for example, an arbitral award may be set aside if it is contrary to public policy). In 2010 mediation was established in Greece with the enactment of Law 3898/2010 which aims to advance and promote this form of ADR in Greece. More information can be found on the website of the Greek Mediation Institute (http://www.gmi-mediation.com)

1.2 Are there special laws on resolving construction disputes in your jurisdiction (for example statutory adjudication)?

Several concession agreements which were concluded for the construction of motorways in Greece contain complex dispute resolution clauses including:

- the concession agreement for the design, construction, financing, operation, maintenance and exploitation of the Elefsina-Korinthos-Patra-Pyrgos-Tsakona Motorway Project (Law 3621/2007);

- the concession agreement for the design, construction, financing, operation, maintenance and exploitation of the Central Greece Motorway Project (E 65) (Law 3597/2007);

- the concession agreement for the design, construction, financing, operation, maintenance and exploitation of the Korinthos-Tripoli-Kalamata Motorway Project and the Lefktro-Sparti section (Law 3559/2007);

- the concession agreement for the design, construction, financing, operation, maintenance and exploitation of the Ionia Odos Motorway Project from Antirio to Ioannina (Law 3555/2007); and

- the concession agreement for the design, construction, financing, operation, maintenance and exploitation of the Maliakos-Kleidi section of the Patra-Athens-Thessaloniki-Euzoni Motorway (Law 3605/2007).

The abovementioned Agreements have been ratified by law. They all contain similar dispute resolution procedures. In particular, after the Commencement Date of the Concession, a compulsory Technical Dispute Resolution procedure is foreseen for all technical disputes arising between the contracting parties. The dispute resolution mechanism provides for: (a) binding expert determination (Adjudication Panel for Technical Disputes) on technical matters, unless appealed to arbitration on points of law; and (b) arbitration for all other disputes or claims between the parties, including failure to appoint an expert, by exclusion of the jurisdiction of the Greek courts.

A dispute that is not a technical dispute as well as the following aspects of a technical dispute may be resolved by Arbitration: a) the part of a technical dispute that concerns the allocation of liability, b) the financial impacts of a technical dispute part and c) the part of a technical dispute that concerns the allocation of the cost of proceedings to the parties as far as the findings of the Adjudication Panel for Technical Disputes are concerned.

The above mentioned Laws provide that the resolution of disputes by recourse to arbitration is suspended during the course of the Technical Disputes Resolution, if initiated. The procedure of the Technical Disputes Resolution is conducted by three experts, who must have the necessary training and experience. These three experts constitute a three-member Adjudication Committee for Technical Disputes. Two of the experts are appointed by the parties to the dispute and the third expert is appointed by the two experts within a certain time-limit from the appointment of the second Expert. If no agreement can be reached within the time-limit, or no appointment is made within the time limit, each party to the dispute is entitled to request the appointment of the third expert who shall be appointed by the International Centre of Technical Experts Appraisement of the International Chamber of Commerce (ICC) in Paris. The above Laws contain certain provisions with respect to the procedure to be followed as well as the time limits for each procedural step.

If the Adjudication Committee for Technical Disputes decides that the dispute is not of a technical nature, it immediately notifies the parties so that they may refer it to Arbitration. The findings of the Panel with regard to the technical side of the dispute are binding to the parties.

If a dispute is not first dealt with under the Technical Disputes Resolution procedure but is directly referred to Arbitration and one of the parties claims it is a technical dispute, the Arbitral Tribunal decides on the nature of the dispute within a specific time-limit from the raising of the claim. Its decision is final and binding. If the Arbitral Tribunal rules that the dispute is a technical one, then the

dispute shall be referred by the parties to Technical Dispute Resolution. Following the findings of the Technical Dispute Resolution, the dispute shall be referred to Arbitration.

The Arbitration procedure is governed by the Rules of Arbitration of the International Chamber of Commerce subject to the variations provided in the specific Laws.

For the resolution of the technical dispute the Adjudication Committee for Technical Disputes applies the Concession Agreement and the substantive provisions of Greek law. The resolution is concluded with the issuance of a reasoned report. This report is binding to the parties. Regarding Technical Disputes with financial consequences or allocation of liability or allocation of costs, in case a party does not accept the findings on the above issues, it may resort to arbitration, as provided in this Law, within thirty days from the issuance of the report, requesting to change the abovementioned findings.

The regulation of private construction disputes is regulated by a separate chapter of the Greek Civil Code (Articles 681 – 702). Further, L. 3669/2008 codified the various laws, presidential decrees and ministerial decisions, in force since 1984, governing the award and implementation of public works contracts. Special rules on works concessions are included in L. 3389/2005, which is applicable in addition to the provisions of L. 3669/2008. P.D 60/2007 transposed EU Directive 2004/18/EC into Greek legislation and Presidential Decree 59/200 transposed the "Utilities" Directive (2004/17/EC), into the Greek legislation.

1.3 Are there provisions in the legislation concerning civil procedure or in the civil code (if your jurisdiction has one) or other legislation that would apply to binding decisions of non-statutory dispute adjudicators? What type of binding decisions are known in your jurisdiction that are used for construction disputes (please state the names used in the language of your jurisdiction and describe the main characteristics).

Arbitration is the most prevalent form of ADR in Greece. Mediation, non-statutory dispute adjudication and other forms of ADR are not widely used in Greece yet. Arbitral awards have the same binding effects as court decisions in terms of setting precedent (res judicata effect) and enforceability. Mediation agreements which are concluded following the mediation procedure prescribed in Law 3898/2010 which regulates mediation in Greece also have binding effects between the parties as a private agreement and may be rendered enforceable as a court decision. The Greek Code of Civil Procedure applies in this respect.

As far as mediation is concerned, pursuant to Law 3898/2010, once the parties have reached an agreement, the mediator drafts the mediation memorandum which is signed by the mediator, the parties and their lawyers. A party may request the mediator to submit the memorandum to the Secretariat of the Single

Member Court of First Instance located at the district where the mediation took place. Once the memorandum is submitted to the Court and there is an enforceable claim in the memorandum, this memorandum constitutes an enforceable title pursuant to article 904 paragraph 2 of the Code of Civil Procedure. Thus, the provisions of the Greek Code of Civil Procedure are applied.

Three types of binding decisions are known in Greece and are used for construction disputes, namely arbitral awards (*diaititiki apofasi*), mediation memorandae (*praktiko diamesolavisis*) and decisions rendered by the courts. As far as decisions rendered by the civil courts are concerned, one should distinguish between three different stages of the court proceedings: (a) final decisions (*oristiki apofasi*) – judgments disposing of the case before the specific court; (b) final decisions that cannot be subject to an appeal before the Court of Appeal (*telesidiki apofasi*) and, (c) irreversible decisions (*ametakliti apofasi*) that cannot be subject to recourse (*cassation*) before the Supreme Court (*Areios Pagos*).

1.4 What are the legal differences in your jurisdiction between arbitration and binding decisions (adjudication)? Are there specific procedural rules for arbitration that do not apply to binding decisions/adjudication/expert determination decisions?

The main difference between arbitration and binding decisions rendered following mediation, which is the most prevalent form of ADR in Greece apart from arbitration, is that arbitration decisions have the same binding effect as a court decision, constitute res judicata and are enforceable while mediation decisions are binding as a private agreement and may be rendered enforceable only if one of the parties makes a relevant request.

Further, article 895 of the Greek Code of Civil Procedure (GCCP) applicable to *domestic arbitrations* provides that arbitral awards shall not be subject to any means of recourse. However, the aforementioned article adds that an arbitration agreement may provide for and may allow the parties to file a recourse against an arbitral award before other arbitrators (article 895 § 2 of the GCCP). In addition, an action for the acknowledgement of the non-existence of an arbitral award may be filed in specific cases (article 901 § 1 of the GCCP). More specifically, a party may file an action for the acknowledgement of the non- existence of an arbitral award or raise a relevant objection during a different trial for the following restrictive reasons: (a) if an arbitration agreement has not been concluded (b) if the arbitration award was rendered on a subject matter that cannot be subjected to arbitration (c) if the award was rendered following arbitration proceedings against a non-existent natural or legal person. If non- existence of the arbitral award is acknowledged then the award has no legal effects.

Similarly, article 35 of Law 2735/1999 applicable to *international commercial arbitrations* stipulates that arbitral awards are not subject to any means of recourse, unless the arbitration agreement provides otherwise. The parties can

only file an action to set aside an award for certain restrictive reasons, including breach of public policy. The aim of this action is not to review the decision regarding its legal and factual or evidential basis but to check whether certain prerequisites have been complied with.

Domestic and international arbitral awards are thus binding on the parties and constitute *res judicata* if the arbitration agreement does not provide for any recourse before other arbitrators or if the limitation period for such recourse has expired (articles 895 § 2 and 896 of the GCCP and article 35 § 2 of Law 2735/1999). Mediation agreements are only binding between the parties. If one party makes a relevant request the memorandum of mediation can be filed with the Secretariat of the Court of First Instance and constitutes an enforceable title.

Specific procedural rules for domestic and international commercial arbitrations do exist. The Greek Code on Civil Procedure (GCCP) regulates *domestic arbitrations* (articles 867 882-903 of GCCP). *International commercial arbitrations* are governed by Law 2735/1999 (Law on International Commercial Arbitration – LICA) based on the UNCITRAL Model Law. Both Law 2735/1999 and the Greek Code of Civil Procedure provide for an action to set aside an arbitral award.

Expert determination decisions rendered for disputes in relation to the concession agreements ratified by law described above in question 1.2 follow the procedure described in these laws.

1.5 Does your country have special institutions (arbitral or otherwise) dealing with construction disputes? What is the role of these institutions, for example are they supervising the proper conduct of the proceedings or involved in appointments?

Article 902 of the Greek Code of Civil Procedure authorizes the establishment of permanent arbitrations by presidential decrees. These are voluntary arbitrations organized and held on a permanent basis by chambers, stock exchange markets, and professional associations of persons which constitute legal entities of public law following an opinion by their board of directors. The presidential decrees that provide for their establishment are issued following a suggestion by the Minister of Justice and the Minister who is responsible for the supervision of the aforementioned entities.

A special institution dealing with construction disputes is the Arbitral Institute of the Technical Chamber of Commerce of Greece (TEE). This is a permanent mechanism for arbitration which was established by Presidential Decree 723/1979. The Presidential Decree in question stipulates that the provisions of the Greek Code of Civil Procedure (GCCP) governing domestic arbitrations (articles 867 ff.) apply unless the Presidential Decree itself or the arbitration agreement provides otherwise. The Presidential Decree also sets out additional rules governing TEE (The Permanent Arbitral Tribunal of the Technical Chamber of

Greece, website: http://portal.tee.gr/) arbitrations. Only disputes of a technical nature can be submitted to arbitration held by TEE. In this respect, recourse to TEE for arbitration is quite commonly used.

1.6 How prevalent is mediation for construction disputes in your country? What other forms of non-binding dispute resolution for construction disputes are used in your country (for example dispute review boards)? Are hybrid forms of dispute resolution used for construction disputes (for example recommendations that become binding after some time if not contested)?

Mediation of construction disputes is not prevalent in Greece. It is, on the contrary, still very rare.

Non-binding dispute resolution and hybrid forms of dispute resolution are not commonly used in Greece, although certain concession agreements for large motorway construction projects have provided for such mechanisms (please see question 1.2 above).

For example, pursuant to Law 3621/2007 (in relation to the concession agreement for the design, construction, financing, operation, maintenance and exploitation of the Elefsina-Korinthos-Patra-Pyrgos-Tsakona Motorway Project), technical disputes are to be resolved by a special Committee which is a type of Dispute Adjudication Board. The Committee is comprised of three experts who should possess the necessary education and experience to resolve the specific dispute.

The party which initiates the Technical Disputes Resolution procedure has to notify the other party by bailiff regarding the scope of the dispute and its claims. It should appoint one expert. Within twenty days from notification the other party has to appoint the second expert and put forward its view on the dispute. If twenty days pass and the other party does not appoint an Expert or it denies to appoint one, then the party which initiated the procedure can request from TEE to appoint the second Expert. This request has to be submitted within ten days from the day that twenty days lapse or ten days from the denial of the other party to appoint an expert. TEE then appoints the expert by drawing from its list of experts. Within twenty days from the appointment of the second expert the two arbitrators appoint the third. If no agreement is reached, or the twenty days lapse and no agreement is reached, each party to the dispute is entitled to request the appointment of the third expert who shall be appointed by the International Centre of Technical Exports Appraisement of the International Chamber of Commerce (ICC) in Paris .

The decision of the Committee is binding on the parties and constitutes res judicata. If the parties disagree with the Committee's decision, they can resort to arbitration, but only with respect to the parts of the Committee's decision

concerning liability, parts of the decision having financial consequences for the parties, or the distribution of costs between the parties. Only technical disputes may be subject to this procedure however these disputes may have financial repercussions. The Committee's technical determinations are, however, final, and cannot be submitted to arbitration or other means of recourse. The parties can nevertheless resort to arbitration with regard to the differences that are not of a technical nature. The costs of the procedure of Technical Dispute Resolution are determined by the Committee. They are paid in advance by the party which initiated the procedure and they are allocated to the parties by the Committee's decision depending on each case, pursuant to certain provision of the Greek Code of Civil Procedure which sets the fees of arbitrators as percentages of the value of the dispute.

1.7 Would FIDIC Red Book type DAB decisions be considered valid evidence in subsequent arbitration or court proceedings in your jurisdiction? What would the role of these DAB decisions be for further proceedings?

FIDIC Red Book type DAB decisions can be considered as valid evidence in subsequent arbitration proceedings. Article 19 of law 2735/1999 applicable to *international arbitrations* provides that the parties are free to agree on the procedural rules for taking evidence. Failing such an agreement, the arbitral tribunal has the power to conduct the arbitration in any manner it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence. Similarly, article 886 of the GCCP applicable to *domestic arbitrations* stipulates that the parties agree on the procedure and failing such an agreement, the arbitral tribunal determines at its discretion the procedural rules.

In court proceedings, the following means of evidence are admissible: documentary evidence, presumptions, admittance of the claim, inspections, expert evidence, parties' testimony and witness statements (article 339 of the GCCP). There is no special category under which a DAB ruling would fall.

1.8 What form of ADR is considered to be cost effective for construction disputes in your jurisdiction? Please explain what type of costs is usually allocated to which party and how this compares to court litigation.

As mentioned above, arbitration is the most widely used form of ADR in Greece. According to paragraph 1 of article 882 of the GCCP the party that initiates the proceedings pays half of the fees of the arbitrators and chairman in advance. Any party which puts forward a claim whereby it widens the subject of the dispute has the same obligation with regard to advance costs. According to paragraph 3 of article 882 of the GCCP, the arbitral award must set out and determine the fees and arbitration expenses, including the secretary's fees. The arbitral award must also determine which party shall bear these fees and expenses. In order to make this determination, the provisions governing the allocation of costs in court

litigation apply mutatis mutandis to arbitration (paragraph 5 of article 882). In particular, in court litigation the party that lost the case is liable to pay the legal expenses the amount of which is determined by the Court. Also the arbitral award may determine that the parties are jointly liable for the payment of the fees and costs.

Article 32 paragraph 4 of law 2735/1999 applicable to international arbitrations stipulates that *"the arbitral tribunal shall allocate the arbitration costs between the parties, including costs for the support of their statements of claim and defence by taking into consideration the particulars of the case and especially the outcome of the arbitration, unless otherwise agreed by the parties. If no such costs have been determined by the end of the proceedings, such determination and allocation may be effected by a separate arbitral award."*

2 Dispute resolution agreements

2.1 What are the requirements for a valid arbitration agreement and a valid multi-party arbitration agreement? Would clause 20.6 of the FIDIC Red Book be considered a valid arbitration clause? Would this clause prevent a party from seeking interim measures from a competent court?

According to article 868 of the GCCP, an arbitration agreement regarding future disputes is valid only if it is made in writing and if it refers to a specific legal relationship out of which disputes may arise. An arbitration agreement is also deemed to have been made in writing if it is contained in an exchange of letters, telex, telegrams or other means of telecommunication signed by the parties. The LICA also imposes this written form requirement. In particular, article 7 para. 3 stipulates that the arbitration agreement must be in writing and can be included in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication that record the agreement. The LICA goes one step further as it provides that the written form requirement is deemed to have been fulfilled: when a verbal arbitration agreement has been recorded in a document transmitted by one party to the other party or by a third party to all parties and when no objections regarding the document's content have been raised within a reasonable period of time (article 7 para. 4). Under both the GCCP and the LICA, the lack of written form is cured if the parties participate without reservation in the arbitral proceedings. In this respect, a clause such as the 20.6 of the FIDIC Red Book would be considered a valid arbitration clause under Greek Law.

In addition, arbitration agreements are governed by the substantive provisions applicable to contractual obligations. For example, a party to an arbitration agreement must be capable of concluding such an agreement.

There are no special considerations for conducting multiparty arbitrations in Greece, or for consolidating multiple arbitrations in one proceeding. Such a consolidation would be possible in principle, if all involved parties agree to it. Third parties may neither intervene nor join an arbitration, unless the parties and the arbitral tribunal accept such intervention or joinder

Under Greek law, when a dispute is submitted to arbitration, the courts no longer have competence to rule on the case and have to refer the case to arbitration. In international arbitrations, following a request by the parties, the arbitral tribunal may order the interim measures that it considers appropriate. However, the arbitration agreement does not prevent the court to order interim measures on the subject of arbitration before or after the commencement of the arbitration proceedings. (Article 9 Law 2735/2009). In national arbitrations, the party which seeks to obtain interim measures should address the national courts, as the arbitrators cannot order interim measures.

2.2 Are there any restrictions on enforceability or validity of arbitration clauses regarding standard forms of contracts, including consumer protection laws or similar laws? Is this the same for other forms of ADR?

Pursuant to article 897 of the Greek Code of Civil Procedure, an arbitration decision may be annulled if the arbitration clause is invalid. An arbitration clause will be invalid if its subject matter cannot be freely disposed by the parties or it concerns interim measures (since, as already noted, under Greek law the arbitral tribunal is not entitled to award preliminary or interim relief in national arbitrations (Article 889 §1 GCCP).) or voluntary proceedings, (i.e. when there is no substantial dispute, but the applicant asks the Court to reach a decision, which in theory could be rendered by an administrative authority, e.g. adoption cases, requests for union recognition)

Further, a decision rendered by arbitration may be annulled if the decision is contrary to public order or morality. As far as consumer protection laws are concerned, Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts provides that a national court hearing an action for enforcement of an arbitration award which has become final and was made in the absence of the consumer is required, where it has the legal and factual elements necessary for that task available to it, to assess of its own motion whether the arbitration clause at issue is unfair. It can only do so, however, if under its national rules of procedure, it can carry out such an assessment in similar actions of a domestic nature. If that is the case, it is for that court or tribunal to establish all the consequences thereby arising under national law, in order to ensure that the consumer is not bound by that clause (Case 40/08).

2.3 In the standard conditions that are mostly used for construction projects in your country, is there a clause on arbitration? If so, is reference made to

an arbitral institution and the rules of this institution? Are other forms of dispute resolution more common in these standard conditions?

Most agreements for the performance of construction projects in Greece contain a clause for the resolution of disputes either under the arbitration rules of the Technical Chamber of Greece (TEE) or under the Rules of Arbitration of the International Chamber of Commerce (ICC).

2.4 May arbitration agreements bind non-signatories (for example subcontractors)? If so, under what circumstances? Is this different for other forms of ADR?

Under Greek law, arbitration agreements will only bind non-signatories under specific circumstances. For example, the heir or successor of a party to an arbitration agreement may be bound by the arbitration agreement. Similarly, an assignee or an insurer who has compensated an insured party may be bound by an arbitration agreement. The Greek courts have also held that an arbitration agreement concluded by a legal entity may bind its members through the piercing of the corporate veil theory. Further, it has been held that an arbitration agreement between a subsidiary and a third party may bind the parent company. Subcontractors are not bound by an arbitration agreement unless the subcontract agreement refers to the arbitration agreement.

2.5 If expert determination is not supported by legislation and the binding nature of expert determination derives solely from the agreement of the parties to submit their dispute to the expert, is this process mandatory and is any resulting determination binding on the parties? What needs to be in the contract to ensure this?

Apart from arbitration, expert determination may be used in the context of the dispute resolution procedure provided for in the concession agreements abovementioned which were concluded for the construction of motorways in Greece and have been ratified by law. This procedure of the Technical Disputes Resolution is conducted by three experts. These three experts constitute a three-member Adjudication Committee for Technical Disputes which renders binding decisions on the parties regarding technical matters.

If an expert is appointed by the Court or a party requests an expert determination to take place in the process of ordinary court proceedings, the expert determination is limited to the factual aspects of the dispute and the court evaluates freely this expert determination so as to reach a decision (see art. 387 GCCP).

2.6 Construction contracts may contain dispute resolution clauses requiring several tiers of dispute resolution processes typically culminating in arbitration or court litigation. In your jurisdiction, would a party be allowed

to skip one or more tiers before starting litigation or arbitration? How would a contractual multi-tiered dispute resolution process be characterized in your jurisdiction? Is the multi-tiered dispute resolution clause common in construction contracts and if so, are there problems with the use of this type of clause?

Construction contracts in Greece sometimes, but not very often, contain multi-tiered dispute resolution clauses, as illustrated by two recent major construction contracts which contained clauses requiring three tiers of dispute resolution processes, culminating in arbitration.

The first of these contracts related to the Athens International Airport. This has been ratified by Law 2338/1995 and provided for the following dispute resolution mechanism. At first any disputes are referred to a Resolution Board which comprises of the Minister of National Economy (or any person the Minister has designated in a decision published in the Government Gazette) and the Vice Chairman of the Board of Directors. Their joint and unanimous decision is final and binding on the parties. If the Minister of National Economy (or his Designate) and the Vice Chairman of the Board of Directors are unable to reach a joint and unanimous decision within 28 days from the reference to the issue to the Board, any party may request that the dispute is transferred either (a) to a Mediation panel, if the Minister (or his Designate) and the Vice Chairman consent to the referral or (b) to arbitration, if the Minister (or his Designate) and the Vice Chairman do not consent to the referral or agree that the dispute should be referred to arbitration. So, if the Resolution Board does not consent to the referral to a Mediation Panel, the dispute is referred to arbitration.

The procedure before the Mediation Panel is initiated by one of the parties with a written notice. A three- member Panel is constituted within 90 days from the submission of the notice. The Greek State and the Vice Chairman of the Board of Directors each designate one member of the Panel, who then appoint together the third member and chairman of the Panel. In the case of disagreement, the chairman of the Panel is appointed by the President of the Technical Chamber of Greece. The parties are free at all times to settle the dispute between themselves, even after the mediation procedure has begun. Moreover any party may hand notice of withdrawal from this mediation procedure, in which case the Mediation Panel ceases to have any power over the dispute. If the parties do not achieve settlement of the dispute beforehand, the Mediation Panel makes a recommendation which is not binding. If the parties agree to a settlement, they have to draft a formal settlement agreement. This will only be legally binding if it is in writing and signed by the authorized representatives of the parties. In the event that a settlement is not reached or the Mediation Panel's recommendation is not accepted by the parties, or a party hands a notice of withdrawal from the panel mediation procedure, then the dispute can be referred to arbitration under the rules of the London Court of International Arbitration (LCIA). The arbitration

award is final and binding. It is not subject to any means of appeal and it may be directly enforced without the need for further procedures.

The second contract concerned the Rio-Antirio Bridge and provided for a) amicable settlement, even while a formal dispute resolution mechanism was already in process, b) a procedure before the adjudication panels and in particular a technical and financial panel. A dispute is referred to the appropriate panel within 20 days as from the notification of the act or document which gave rise to the dispute. Each party shall communicate the names of two persons to the other party to the dispute, which shall then choose one of the two as a member to the Panel. The two appointed members shall thereafter jointly appoint the third member and chairman of the panel. A decision of the Adjudication Panel which is unanimous is final and binding on the parties. A decision of the Adjudication Panel which is not unanimous will be final and binding on the parties only if the parties do not refer the dispute to arbitration within 30 days from its notification c) arbitration. The parties can resort to arbitration only for the disputes which were not resolved through a unanimous decision of the Adjudication Panel or for the disputes which were resolved by a non-unanimous decision but this decision was not appealed within a time limit of 30 days from its notification. Thus, if a unanimous decision is reached by the Adjudication Panel, the dispute may not be referred to arbitration. The arbitration award is final and binding and it is not subject to any means of appeal.

3 ADR and jurisdiction

3.1 Are there disputes that can only be decided by a court or by an administrative law tribunal/court? What type of disputes regarding construction projects cannot be subjected to ADR? (For example, are disputes relating to decennial liability arbitrable?)

Certain disputes are indeed not arbitrable, and can only be decided by a court or by an administrative law tribunal/court. According to article 867 of the GCCP, all private law disputes, which would be resolved by a civil court, may be submitted to arbitration only if the parties are allowed to freely dispose of the subject-matter of the dispute. Parties cannot freely dispose of matters of personal status (such as marital disputes) and employment law matters. Further, private law disputes arising from agreements concluded with the Greek State and other public entities may be resolved by arbitration, under the same condition i.e. that the parties can freely dispose of the subject matter. Thus, the general rule is that the subject matters that cannot be resolved by ADR are those that cannot be freely disposed of by the parties, as the State has retained the power to decide on them. It is to be noted that the Public Works Act as well as the Law regulating Public and Private Partnerships include provisions as to which disputes with public entities can be resolved by arbitration. Specifically, the Greek State and public law entities can agree to arbitration only for the disputes that arise from the execution of the

public work but not the validity of the tender and the award of the contract as these are matters deriving from the exercise of public power.

3.2 Is there a restriction on the matters that may be the subject of a binding expert determination or other binding third party decision?

Only matters of fact may be subject to an expert determination. When expert determination is used in court proceedings, the opinion of the experts is freely evaluated by the Court.

When expert determination is sought in the context of an arbitration, the arbitrators are free to evaluate the resulting determination depending on the system of assessment of evidence they have chosen i.e. whether the Tribunal needs to be fully convinced based on the evidence or whether it can decide on an issue without it being necessary that it is fully convinced which is the case of interim measures.
Expert determination may also be used in the context of the concession agreements mentioned above where the findings of the Adjudication Panel which is comprised of experts are binding to the parties.

3.3 Are there any restrictions on the type of arbitral awards or binding decisions that may be issued (for example, may a FIDIC Red Book type DAB rule on questions of fact only or also on questions of law and are there any restrictions on the issues that this DAB may decide)?

An arbitration agreement confers on an arbitrator(s) the right to perform a "judicial" function. Such an agreement differs from an expert determination agreement, which confers on a third party the right to determine defined factual issues.

3.4 Are public entities barred from settling disputes by ADR (arbitration, DAB/DRB and/or mediation)?

Public entities are barred from settling specific disputes by ADR. The Public Works Act (Law 3669/2008) applies to projects and works carried out by certain public entities. As stipulated in article 1 of the Public Works Act, its provisions apply to all works scheduled and executed by public sector bodies as defined in article 14 of Law 2190/1994. These are certain public law entities including regional and local public authorities, legal entities of public or private law which are controlled or financed by the state and public companies. However, the scope of application of this Act changes as the definition of "public sector" is not static. In accordance with article 77 of the Public Works Act, a dispute arising out of a public works contract can be submitted to the competent court pursuant to the provisions of the Code of Administrative Procedure or the GCCP, subject to certain provisions contained in the Act. Article 78 of the Act adds, however, that an arbitration clause may be included in an invitation to tender or in the agreement

for the performance of a project. Thus disputes arising from the validity of the tender or the award of the tender cannot be resolved by ADR. Thus not all disputes arising from construction contract between the government or the state and a contractor would be regarded as a private law dispute. This depends on whether the State has retained the power to decide on the subject matter of the dispute.

As far as mediation is concerned, article 2 of Law 3898/2010 provides that only private law disputes can be subject to mediation. Further, several concession agreements concluded with public entities and ratified by law provide for complicated dispute resolution methods.

3.5 Do state parties enjoy immunities in your jurisdiction? Under what conditions?

The Public Works Act (Law 3669/2008) stipulates that an arbitration clause may be approved and included in a public invitation to tender or in a public works contract for the performance of a project. The Greek courts have ruled that disputes arising out of *the performance of a public works contract* can be settled by arbitration provided that they arise either from a) rules regulating private law relationships, which can be freely disposed of, or b) rules conferring discretionary powers to the competent public authorities. Disputes regarding the validity of an invitation to tender and the award of a contract may not, however, be settled by arbitration.

3.6 Can procurement disputes be decided by ADR? If so, are there special requirements for this type of dispute or is only arbitration allowed?

As aforementioned, the Public Works Act applies to projects and works carried out by certain public entities (Law 3669/2008). In accordance with article 77 of the Public Works Act (Law 3669/2008), every dispute arising between the contracting parties from a public works contract is resolved by filing an action with the competent court pursuant to the provisions of the Code of Administrative Procedure or the Code of Civil Procedure subject to certain provisions contained in the Law. Despite this provision, article 78 of the Public Works Act adds that an arbitration clause may be approved and included in an invitation to tender or in the agreement for performance of a project.

Approval of the arbitration clause and the terms of the arbitration will be determined by joint decision of the Minister of Environment, Physical Planning and Public works, the Minister of Economics and Finance and the competent Minister for each project. Thus only disputes for the execution of the public works contract may be resolved by arbitration, not disputes that relate to the previous stage regarding the validity of the tender and the award of the contract.

Public disputes cannot be subject to mediation. Further, several concession agreements concluded with public entities and ratified by law provide for complicated dispute resolution methods. Please also view the previous question.

3.7 In the FIDIC Red Book, Appendix General Conditions of Dispute Adjudication Agreement, Annex procedural rules under 8 is stated "The Employer and the Contractor empower the DAB, among other things to (b) decide upon the DAB's own jurisdiction and as to the scope of the dispute referred to it". In your jurisdiction, in a situation where there are several interrelated contracts between the employer and the contractor (not all with a DAB clause), would the DAB be allowed to decide on issues outside the contract with the DAB clause? If the DAB purports to make a decision on a matter not referred to it, will that decision be deemed to have been made outside its jurisdiction?

There is no such precedent in Greece. However based on the principle that a contract cannot confer rights or impose obligations arising under it on any party except the parties to the contract, it seems unlikely that a DAB would be allowed to decide on issues outside the contract with the DAB clause and if it purported to make a decision on a matter not referred to it, that decision would be deemed to have been made outside its jurisdiction.

4 Arbitrators, adjudicators, dispute board members, mediators.

4.1 Are there special rules on arbitrator appointment or the appointment of tribunals or entities issuing binding decisions (such as DABs) regarding construction disputes in your jurisdiction? Do arbitrators, adjudicators etc. need to have special qualifications?

Arbitrations for construction disputes may be administered by the Technical Chamber of Greece (TEE). The interested parties may choose the arbitrators from the Chamber's list of arbitrators. In order to be included in the list, the arbitrators should be members of TEE with relevant experience and 15 years of professional experience as certified mechanics who have completed the relevant studies and hold a degree. It is not necessary that they are lawyers.

Only technical disputes can be submitted to arbitration at TEE. Technical disputes are defined to be all disputes which arise from agreements for the study, the execution, maintenance, operation or other intervention in relation to technical projects, constructions, installations and, in general, issues that fall under the scientific knowledge or experience of TEE Members. Disputes that are not technical but are indirectly connected with this kind of project such as for example disputes for the scope of works determined in the agreement cannot be submitted to arbitration at TEE as this would require legal knowledge. TEE arbitrators decide based on their scientific knowledge and experience.

4.2 If there are special arbitral institutions for construction arbitrations, do these have a system of lists with names of arbitrators? Do these institutions appoint the arbitrators or do the parties appoint the arbitrators? Do the parties have to choose from these lists or are they free to have arbitrators that are not on the list? How are these lists composed? Is there a difference with other forms of ADR?

The Technical Chamber of Greece (TEE) administers arbitrations on matters related to construction of technical works pursuant to the provisions of presidential decree 723/1979. The arbitral tribunal is composed of one or more arbitrators and a chairman. If the arbitration agreement does not provide for the number of arbitrators, the arbitration is carried out by two arbitrators and a chairman. If the arbitration agreement does not provide otherwise, the party submitting the request for arbitration chooses one arbitrator, and requests that the other party nominate the second arbitrator within 8 days. As mentioned above, the arbitrators and the chairman can only be appointed by the Chamber's list of arbitrators. The Managing Commission of the TEE compiles the list of arbitrators every two years. An invitation to submit applications for inclusion on the list of arbitrators is published beforehand in the Chamber's information bulletin. The TEE's Managing Commission chooses at least one hundred arbitrators. In order to be included in the list, the arbitrators should be members of the TEE with relevant experience and 15 years of professional experience as certified mechanics. The TEE arbitrators do not rule on matters of law.

4.3 In your jurisdiction, do arbitral tribunals and tribunals issuing binding decisions regarding construction disputes usually include a lawyer? If not, are there requirements that the secretary added to the tribunal must be a lawyer? Would the presence of a lawyer, either as member of the tribunal or as secretary added to the tribunal, be required if these tribunals are to rule on issues of law?

Yes, arbitral tribunals and tribunals issuing binding decisions regarding construction disputes usually do include a lawyer. However, this is not a prerequisite. As far as domestic arbitrations are concerned, the GCCP provides that any natural person can be appointed as an arbitrator. The only restriction is that neither legal entities nor persons who are judicially incompetent, competent for specific acts or deprived from the exercise of their civil rights can be arbitrators.
As far as arbitrations carried out under the auspices of the TEE are concerned, the arbitrators are not lawyers. Pursuant to Presidential decree 723/1979, the president of TEE appoints the secretary for the arbitration from the TEE's employees. This secretary is also not a lawyer.

4.4 In construction industry arbitrations, how often do arbitrators belong to the engineering/construction profession? Are panels integrated both by

lawyers and construction professionals possible/common? Is there a difference with other forms of ADR?

In construction industry arbitrations, arbitrators do not usually belong to the engineering/construction profession, with the exception of arbitrations carried out under the auspices of the TEE. As aforementioned, arbitral tribunals under the auspices of the TEE are composed of arbitrators who are included in the list of arbitrators drafted by the Managing Commission of the TEE, who should be members of the TEE with relevant experience and 15 years of professional experience as certified mechanics.

4.5 Are arbitrators and tribunals issuing binding decisions allowed to use their own technical expertise without consulting the parties regarding the results of using this expertise?

Regarding domestic arbitrations, the GCCP provides that arbitrators should apply substantive legal provisions, if it is not provided otherwise in the arbitration agreement. The parties can provide in the arbitration agreement that the resolution of the dispute will take place based on foreign substantive legal provisions, trade usages, or the usages of a particular sector or *e*x aequo et bono.

An arbitrator should remain impartial with regard to his/her own personal knowledge for the case. The arbitrator is not free to use his own personal knowledge when rendering an arbitral award as the parties would not be able to check the sources of this knowledge. An arbitrator is however free to use common knowledge, regarding the conditions prevailing in a certain area or the market conditions.
In permanent arbitrations held in TEE, the arbitrators use their technical expertise.

4.6 Do the most used rules for construction arbitrations contain a rule for the tribunal to apply the rules of law to the merits of a case or do these rules contain a rule that the tribunal decide "ex æquo et bono", as "amiable compositeur", or in "equity"? Is there a difference with other forms of ADR?

The most widely used rules for construction arbitrations do not contain a rule for the tribunal to apply the rules of law to the merits of a case or a rule that the tribunal decides *"ex æquo et bono"*, as *"amiable compositeur"*, or in *"equity"*. As far as domestic arbitration is concerned, pursuant to article 890 paragraph 1 of the GCCP, *"subject to any different provision in the arbitration agreement, the arbitrators shall apply the provisions of substantive law."* Thus, unless agreed otherwise, the tribunal will resolve a dispute by applying the applicable substantive law. However, the parties can also agree that the tribunal will decide *"ex aequo et bono"*. This means that the arbitrators will not be bound to apply a national set of substantive rules to the merits of the case. Instead they can apply general principles of law. For example, the arbitrators can apply articles 200 and

288 of the Greek Civil Code which establish the principles of good faith and trade usages. It should be noted, however, that pursuant to paragraph 2 of article 890 of the GCCP, the arbitration agreement may not exclude the application of rules of public policy.

As far as international arbitration is concerned, pursuant to paragraph 1 of article 28 of Law 2735/1999, the arbitrators must apply the substantive law provisions that the parties have chosen as being applicable to the substance of the dispute. Pursuant to paragraph 3 of article 28, the arbitral tribunal can decide *"ex aequo et bono"* or as *"amiable compositeur"* only if the parties have expressly authorised it to do so. Any such decision cannot, however, be contrary to domestic public policy.

5 ADR procedure

5.1 Are arbitrators and others making binding decisions required to follow any minimum due process rules? Does a party usually have a right to have legal representation?

Arbitrators in both domestic and international arbitrations are indeed required to follow minimum due process rules. In particular, article 886 § 2 of the GCCP on domestic arbitrations stipulates that the parties must have the same rights and obligations during the arbitral proceedings and the principle of equality between the parties must be complied with. The Greek courts have ruled, in this respect, that a breach of the principle of equality of arms constitutes a ground for the annulment of an arbitral award. Article 886 § 3 of the GCCP also provides that the parties have a right to be represented by their lawyer(s), or have their lawyer(s) in attendance. The parties cannot waive the right of equality and the right to be heard. Thus a party cannot have rights not provided to the other party and all the parties should be invited to submit their claims and be informed about the other party's claims. This, however, does not mean that a party is obliged to participate in the proceedings as long as it is properly invited to participate.

Law 2735/1999 governing international arbitrations contains a similar provision. According to article 18, the principle of equality between the parties must be respected during the course of the arbitral proceedings, and each party must have the opportunity to present its case and to adduce evidence.

5.2 Is the focus in the arbitral procedure and the procedure for tribunals issuing binding decisions on written submissions or on oral presentations?

According to article 886 § 2 of the GCCP, which is applicable to domestic arbitrations, the parties must be invited to appear at a hearing, to develop their arguments verbally or in writing, at the discretion of the arbitrators, and to adduce evidence.

Article 18 of the LICA, which is applicable to international arbitrations, stipulates that each party has the opportunity to present its case and to produce evidence. According to article 24 para. 1 of the LICA, the arbitral tribunal shall decide whether oral hearings will be held or whether the proceedings will be conducted on the basis of documents and other materials, unless otherwise agreed by the parties. If the parties have not excluded the possibility of an oral hearing, and one or more parties request it, then the arbitral tribunal must conduct an oral hearing at an appropriate stage of the proceedings.

5.3 Are there rules on evidence in the laws or your country and/or the arbitration rules and/or the rules for tribunals issuing binding decisions most commonly used or is this left to the discretion of the tribunal?

As far as international arbitrations are concerned, article 19 of law 2735/1999 provides that the parties are free to agree on the procedural rules for the taking of evidence. Failing such an agreement, the arbitral tribunal has the power to conduct the arbitration in any manner it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Similarly, article 886 of the GCCP applicable to domestic arbitrations stipulates that the parties may agree on the procedure, and, failing such an agreement, the arbitral tribunal may determine the procedural rules at its discretion. The parties may in particular agree that the provisions of the GCCP are applicable which are the rules applying to evidence in court proceedings (335-465 of the GCCP).

5.4 Is a hearing mandatory for all forms of ADR?

As per article 886 § 1 of the GCCP, which is applicable to domestic arbitrations, it is in the arbitrators' discretion to set out the rules governing the proceedings unless otherwise agreed in the arbitration agreement. According to article 886 § 2 of the GCCP, the parties must be invited to appear at the hearings, to develop their arguments verbally or in writing, at the discretion of the arbitrators. The hearing is not mandatory.

According to article 24 para. 1 of LICA applicable to international arbitrations, the arbitral tribunal shall decide whether oral hearings will be held or whether the proceedings will be conducted on the basis of documents and other materials, unless otherwise agreed by the parties. If the parties have not excluded the possibility of an oral hearing, and one of the parties requests it, then the arbitral tribunal must conduct an oral hearing at an appropriate stage of the proceedings.

5.5 In the FIDIC Red Book Appendix General Conditions of Dispute Adjudication Agreement, Annex procedural rules under 8 is stated (c) ***conduct any hearing as it thinks fit, not being bound by any rules or***

***procedures other than those contained in the Contract and these Rules*". Under your jurisdiction, would the DAB still be bound to conduct a hearing according to rules of "natural justice"? If so, what would this mean for conducting the hearing?**

In Greece there is no precedent on such cases. Arbitration is the most prevalent form of ADR. However it can be noted that the right to a fair hearing is a mandatory law provision thus a DAB would be bound by it.

5.6 What types of experts are mostly used in construction arbitrations (for example, technical experts, delay and disruption experts etc.)? Is there a difference on this topic between arbitration and court litigation in your jurisdiction? Are experts used in the same manner in procedures for tribunals issuing binding decisions?

In international arbitrations the arbitral tribunal may appoint one or more experts which it will choose depending on their specific knowledge in relation to each case, unless the parties have agreed otherwise and wish to appoint the experts themselves. In construction arbitrations held in TEE the arbitrators must necessarily hold the relevant experience and 15 years of professional experience as certified mechanics. Experts are more frequently used in arbitrations than in court proceedings. In Court proceedings, the Court chooses the experts from a list of experts, but if there is no such list or the Court considers it necessary, it appoints the experts it considers appropriate for the case. In specific dispute resolution procedures such as those provided for in concession agreements the procedure of the Technical Disputes Resolution is conducted by three experts, who must have the necessary training and experience.

5.7 Are these experts mostly party appointed or appointed by the tribunal? Is there a difference as to the evidential value? How are the costs of experts allocated?

Pursuant to article 26 paragraph 1 of Law 2735/1999 *"if the parties have not agreed otherwise, the arbitral tribunal may appoint one or more experts and order them to submit a report on the issues under dispute. It may also order the parties to give to the experts all necessary information or to provide documents or other objects to the expert so that they can be evaluated".* Thus, the arbitral tribunal shall appoint one or more independent experts. However the parties more often agree that they will either each appoint an expert, or appoint an expert together. They may even agree that expert evidence should not be submitted. There is no difference as to the evidential value of the opinions of tribunal-appointed or party-appointed experts. The costs of experts in court proceedings are included in the judicial costs. The arbitral tribunal decides on the allocation of costs based on the outcome of the arbitration.

The arbitral tribunal may order that the expert appointment and submitting the subsequent findings or report are mandatory but it cannot implement coercive measures. However, the arbitrators may resort to the Magistrates' Court (*Eirinodikeio*) and to request that the Court orders the necessary measures so that the work of the expert can take place. The arbitrators are free to evaluate the resulting findings/report depending on the system of assessment of evidence they have chosen i.e. whether the Tribunal needs to be fully convinced based on the evidence or whether it can decide on an issue without it being necessary that it is fully convinced which is the case of the procedure followed for interim measures.

5.8 Is the expert supposed to be independent to the parties/counsel?

Yes, the experts should be independent to the parties/counsel. In domestic arbitrations, the parties can agree that the rules of evidence of the GCCP apply. According to these rules, the experts have the right to ask to be excluded from the proceedings or the parties can ask that the experts are excluded in specific circumstances prescribed by law. These include the following: if they are parties to the case, or they are connected with one of the parties as co-owners in relation to the matter of the dispute, or co-liable, or are liable for compensation or they have direct or indirect interest in the case. Also if they have a family relationship with a party to the case of certain degree prescribed by law or they are or have been wife or husband or engaged to one of the parties. Also if they are related to a certain degree of relationship prescribed by law with a person who receives a salary or amounts of money for the services it provides or for another reason from a natural person or legal entity which has a direct or indirect interest in the case. In international arbitrations, there can be no request for the exclusion of the expert.

5.9 Does the expert normally give written evidence or oral evidence?

Pursuant to article 26 paragraph 2 of law 2735/1999, *"[u]nless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue"*. The expert's report can be written or oral. Further, the parties may request a hearing to take place so that they can examine the experts.

5.10 Can the tribunal ignore the expert statements in its decision, even if the tribunal has appointed the expert? Does the tribunal need to give reasons for following or not following the statement of an expert? Can part of the decision by the tribunal be "delegated" to the expert?

Pursuant to article 19 of law 2735/1999, *"[s]ubject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal*

in conducting the proceedings. 2. Failing such agreement, the arbitral tribunal may [...] conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence." Thus, if the parties have not decided to bind the tribunal to follow the restrictions of the GCCP regarding the means of evidence to be followed and the weight of evidence, the tribunal is free from the restrictions of the GCCP with respect to evidence. Thus the arbitral tribunal decides on the weight of the evidence and in particular whether something should be evaluated in relation to a case. Pursuant to article 31 of Law 2735/1999 the arbitral award should contain reasoning, unless the parties have agreed that no reasoning is needed or the arbitral award in fact contains the terms of agreements of the parties. The award can contain the expert's statement in its reasoning but the award is signed by the arbitrators.

5.11 Is "hot tubbing" (this involves experts from the same discipline, or sometimes more than one discipline, giving evidence at the same time and in each other's presence) a feature in construction arbitrations or procedures of tribunals issuing binding decisions in your jurisdiction?

Law 2735/1999 governing international commercial arbitrations provides that the arbitral tribunal may appoint one or more experts, unless otherwise agreed by the parties (article 26 para. 1). The expert is required to participate in the court hearing once he or she has submitted his or her verbal or written report on specific matters, unless otherwise agreed by the parties. This requirement only applies when one of the parties submits such a request or when the arbitral tribunal deems it necessary. During the court hearing in question, the parties may ask questions and invite expert witnesses (article 26 para. 2 of Law 2735/1999). "Hot tubbing" is allowed.

5.12 Are site visits by the arbitral tribunal and tribunals issuing binding decisions regulated by the laws of your country and/or by the arbitration and other rules most used in your country? If not, are they allowed/mandatory?

In domestic arbitrations it can be agreed that the rules of the GCCP apply. Thus site visits by the arbitral tribunal will be regulated by the procedural rules of taking evidence of the GCCP (articles 355 to 367). It will be at the arbitrator's discretion to proceed with site visits or not. The rule is that the evidentiary proceedings are carried out before and by the arbitral tribunal. However, the possibility of carrying out evidentiary proceedings before the competent Magistrate's Court is also foreseen on an exceptional basis, including carrying out site visits (article 886 I 1 CCP). The Magistrate's Court is a permanent ordinary court of Justice which has competence for certain disputes including disputes for lease agreements and disputes of a monetary value for an amount up to 20.000 euros. The arbitral tribunal does not have the power to oblige the parties to certain measures for taking evidence. Only ordinary courts have this power. Thus

the arbitral tribunal may request from the Magistrate's Court to order certain coercive measures during the site visit so as to obtain the necessary evidence.

5.13 Do all parties need to be present during the site visit and be given an opportunity to comment on the findings of the tribunal?

Pursuant to article 357 of the GCCP, the arbitral tribunal sets the time, place and date of the site visit. The parties are thus notified and given the opportunity to be present during the site visit.

5.14 How common and how important are generally witness testimonies in construction arbitrations and other forms of ADR in your jurisdiction? Under the rules most often used in your jurisdiction for construction disputes, are there any restrictions on either not admitting testimony, or not giving value to the declaration of witnesses that are employees or consultants of the party presenting their testimony?

Article 339 of the GCCP sets out certain types of evidence that may be adduced in arbitration proceedings. These include witness testimony, which is the most commonly used type of evidence in domestic and international arbitration. Third parties which are not parties to the arbitration and have not signed the arbitration agreement can be examined as witnesses. The parties to the arbitration agreement and their legal representatives cannot appear as witnesses (article 888 paragraph 1 of the GCCP).They can only be examined as the parties of the case. However, third parties which have not signed the arbitration agreement but are bound by the objective limits of the arbitration agreement can be examined as witnesses (and not parties to the case). The arbitration agreement is binding on the parties to the agreement (objective limits of the arbitration). However there are certain exceptions when the agreement may be binding to parties that have not signed the agreement for example when the third party's legal position is in fact the same to that of the party to the arbitration agreement (this is the case for general partnership companies where the partners are jointly liable with the company for its debts).

5.15 Under the rules most often used in your jurisdiction for construction disputes, what degree of discretion do the arbitrator(s) or tribunals issuing binding decisions have in weighing evidence, including balancing potentially contradictory pieces of evidence or disregarding any piece of evidence? Are there any rules on valuation of evidence in the law or in such rules?

Pursuant to article 19 of law 2735/1999, *"[s]ubject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings. 2. Failing such agreement, the arbitral tribunal may [...] conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence."* Thus the arbitral

tribunal is free to evaluate evidence subject to the agreement between the parties. The parties may in particular decide that the tribunal will be bound by the restrictions set out in the GCCP but this is not the default rule, they may choose any evidence procedure they wish.

If the parties have not decided on the system of evidence i.e. that the tribunal should be bound by the restrictions of the GCCP or any other system of evidence, then it is in the tribunal's discretion to evaluate evidence that do not comply with these restrictions. For example, pursuant to article 339 of the GCCP, the means of evidence are as follows: admittance of the claim, inspection, expert evidence, documentary evidence, parties' testimony, witness statements and presumptions. The parties may however decide that the tribunal is free to use forms of evidence that are not on this list.

6 Interim measures and interim awards

6.1 Are measures devoted to preserving a situation of fact or of law, to preserving evidence or ensuring that the ultimate award in a case will be capable of enforcement allowed in your jurisdiction? Are these measures usually decided by the arbitral tribunal or by a judge?

Measures devoted to preserving a situation of fact or of law are allowed in Greece. These measures will either be decided by the arbitral tribunal or by a judge, depending on whether we are in the presence of a domestic or an international arbitration.

As far as domestic arbitrations are concerned, such measures are decided by a judge. In particular, article 685 of the GCCP provides that an arbitration agreement is not valid for interim measures of protection. Further, article 889 of the GCCP provides that arbitrators cannot order, modify or revoke interim measures of protection.

The legal regime regarding international arbitrations is different. The arbitral tribunal has the power to order any interim measures of protection it deems necessary in relation to the subject-matter of the dispute, unless the parties have agreed otherwise (article 17 of LICA). The arbitral tribunal will order such interim measures upon a party's request. Further, article 9 of LICA stipulates that an arbitration agreement does not prevent a court from ordering any interim measures of protection relating to the subject-matter of the dispute before or after the commencement of the arbitral proceedings.

6.2 In the FIDIC Red Book Appendix General Conditions of Dispute Adjudication Agreement, Annex procedural rules under 8 is stated *(g) decide upon any provisional relief such as interim or conservatory measures (...)* The FIDIC Red Book has no explicit provisions for DAB decisions that have a

provisional nature. It is not clear if, how and when these should be followed by decisions that are meant to be final and binding. Would this lead to problems in your jurisdiction?

DAB decisions are binding on the parties as a contract but are not binding on the courts. In our jurisdiction, arbitral awards are enforceable however domestic arbitrators may not issue interim measures thus a DAB decision that has a provisional nature would not be enforceable.

7 Awards, decisions, recommendations, negotiated agreement

7.1 Is a binding decision (for example the decision of a DAB) enforceable in your country? If not directly enforceable, what steps must be taken to get a binding decision enforced? Would FIDIC Red Book clause 20.7 allow enforcing a DAB decision directly through court in your jurisdiction (skipping the arbitration)?

According to the GCCP, arbitral awards are binding and enforceable in Greece. Unless the arbitration agreement provides for an appeal before another arbitral tribunal, the award is enforceable as soon as it has been rendered. However, a party seeking enforcement of an award must apply for a leave for enforcement – the exequatur – which can be granted ex parte by a judge of the Single-Member Court of First Instance where the award was filed to be declared enforceable (Article 918 (2d) of the GCCP). This is the Court of First Instance where the debtor has his or her residence, or temporary residence, and if the debtor has no residence the Court of the capital of the State. If the judge refuses to grant the leave for enforcement, the party may seek exequatur before the competent judicial authority. Once leave for enforcement has been granted, the enforcement proceedings begin with a formal notice by the person initiating the enforcement of an award. This formal notice invites the party against whom enforcement is sought to fulfill the award. If that party fails to comply with the formal notice within three business days after having been served, the other party may proceed with the enforcement by giving an order to the bailiff to proceed to forced execution. The bailiff has the power to seize the assets of the debtor and drafts a relevant report for all the actions he has conducted.

DAB decisions are only binding to the parties as a contract. There is no precedent on the enforcement of DAB decisions but it seems they might be enforceable as arbitral awards. Foreign arbitral awards are rendered enforceable subject to certain prerequisites such as that they are not contrary to public policy but no re-examination of the merits takes place.

7.2 Does the award or binding decision have to be reasoned?

As far as domestic arbitrations are concerned, pursuant to article 892 paragraph 2 of the GCCP, an arbitral award must contain the grounds on which the award was rendered. Pursuant to article 93 paragraph 3 of the Greek Constitution, all judicial decisions have to be reasoned. However, this article of the Constitution only refers to judicial decisions, and not arbitral awards. Thus, the parties to an arbitration may agree that no reasons are to be given in an arbitral award.

In international arbitrations, pursuant to article 31 paragraph II of law 2735/1999, the parties may agree that no reasons are to be given or the award is an award on agreed terms under article 30. Under Article 30 if the parties agree to a compromise, the arbitral tribunal declares that the arbitral proceedings cease. If the parties make a request, the arbitral tribunal renders an arbitral award declaring this compromise and containing the terms of agreement of the parties.

7.3 Are dissenting opinions in arbitral awards allowed in your jurisdiction and if so, can they be added as a separate opinion to the award? Are they allowed in other forms of ADR?

Dissenting opinions in arbitral awards are allowed in Greece. It has been accepted by recent jurisprudence that arbitral awards, similar to judicial decisions, should contain any dissenting opinion, as well as identify the arbitrator who dissented.

7.4 Can an award or (binding) decision be corrected, clarified or reconsidered? If so, can the tribunal do this on its own accord or only if parties request it to do so?

As far as arbitral awards are concerned, pursuant to article 894 of the GCCP, *"a correction or interpretation of the arbitral award in accordance to the provisions of articles 315 and 316 may be made by those who issued the award at the request of one of the parties to the arbitration agreement; such request must be notified to the other parties and to the arbitrators. Article 320 shall also be applicable in this context."* Pursuant to article 315 of the GCCP, which applies to judicial decisions, the court may correct a decision by issuing a new decision following a request by the parties or on its own accord where it contains typographical or computational mistakes, or where the operative part of the decision was not complete or there contained some inaccuracy. Pursuant to article 316 of the GCCP, if the decision is formulated in a way that raises doubt or is unclear, the court has the power to interpret its decision at the request of the parties with a new decision. However, this interpretation cannot change the operative part of the decision.

8 Enforcement of and challenges to awards and decisions

8.1 What steps would a party have to take to get to the enforcement of binding third party decisions in your jurisdiction?

Article 905 of the GCCP stipulates that enforcement proceedings may be carried out in Greece as soon as a foreign title has been declared enforceable by the Single-Member Court of First Instance at the place where the party against whom enforcement is sought has its domicile or residence. If the party in question does not have a domicile or a residence, then the case must be brought before the Athens Single-Member Court of First Instance. The Court will declare the judgment enforceable provided that it is enforceable in accordance with the law of its origin and that it is not contrary to public policy and morality. Where the foreign title is a judicial decision, then the conditions set out in article 323 par. 2 to 5 must be fulfilled.

According to the Council Regulation (EC) 44/2001 on jurisdiction, recognition and enforcement of judgments, a judgment rendered and enforceable in a Member State shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there. The application is submitted to the Single-Member Court of First Instance and the procedure for the application is governed by Greek law. A party seeking recognition or applying for a declaration of enforceability needs to produce a copy of the judgment, which satisfies the conditions necessary to establish its authenticity; these criteria are established by the Court.

8.2 In your opinion, would the New York Convention allow recognition and enforcement of FIDIC Red Book DAB-type awards deemed to be the equivalent to arbitral awards through contractual arrangement?

There is no precedent on the recognition and enforcement of FIDIC Red Book DAB-type awards as being equivalent to arbitral awards in Greece.

8.3 Would your country allow the enforceability of a foreign arbitration award which in turn enforces a FIDIC Red Book type DAB decision?

Greece allows the enforceability of foreign arbitral awards. There is no precedent on the enforcement of foreign arbitral awards that enforce FIDIC Red Book type DAB decisions. However, it seems that such a foreign arbitral award would be enforceable.

8.4 Are there any remedies (which possibly cannot be waived) to challenge a FIDIC Red Book type DAB decision in case of fraud, failure to follow minimum due process or other serious irregularity? Will these remedies make a DAB decision unenforceable in court without first having to go through arbitration (clause 20.6 FIDIC Red Book)?

Only arbitral awards and mediation agreements can become enforceable in Greece. There is no precedent on DAB decisions. In any event, under Greek law a foreign arbitral award will not be enforceable if the party that was defeated was deprived of the right of defense or the award is contrary to public order or trade

usages. Consequently a DAB decision would not be enforceable under these grounds.

8.5 Would a binding expert determination be subject to review on the merits by the law courts on your jurisdiction?

An expert determination may be subject to review by the law courts when it is considered that the determination was not based on fairness (article 371 of the Greek Civil Code). Thus, the parties may contest the determination before the Courts as unfair or biased.

9 Trends and developments

9.1 Please comment on any new trend or developments relating to ADR in construction in your country.

Following the introduction of Law 3898/2010 for the regulation of mediation, a presidential decree and two ministerial decisions have been issued regulating procedural issues such as mediators' fees, the licensing of centers for the training of mediators, and the procedure for the recognition of certificates for accredited mediators. However, mediation is still not widely used in Greece (the first mediation in Greece took place in 2010). Recently, law 4055/2012 on "fair trial and its reasonable duration" added article 214B to the Greek Code of Civil Procedure. This article introduced "Judicial Mediation" in cases of private disputes, which is optional and confidential. A judge is appointed as mediator in each Court of First Instance. The parties may resort to separate and joint hearings with the judge- mediator who may suggest to the parties non-binding proposals to resolve the dispute. If the parties reach an agreement, a mediation memorandum is signed. This is submitted to the Court's Secretariat and becomes an enforceable title.

10 Other Important Issues

10.1 Please comment on any other important topics affecting ADR in construction in your jurisdiction.