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by

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Alkistis Christofilou completed her law degree at Athens University and LL.M. studies on EC Commercial Law at the London School of Economics. She has been a member of *IKRP Rokas & Partners* since 1985, and is currently the Deputy Managing Partner of the firm. She has been practicing in Greece and is a legal expert specializing in corporate, insurance, M&A's, financial and contract law. She has thorough regional knowledge of the Balkans through involvement in funded projects and extensive expertise in matters of EU integration in the general fields of free movement of goods, services, individuals and capital, as well as in competition law and consumer protection law, energy and public procurement.

IKRP Rokas & Partners was established in the beginning of 1977 and has developed into an international law firm that spreads across the countries of Central and South-Eastern Europe, with companies in Athens, Belgrade, Bucharest, Kiev, Piraeus, Prague, Sarajevo, Skopje, Sofia, Thessaloniki, Tirana, Warsaw and associated firms in Melbourne, Moscow, Podgorica and Zagreb.

The firm is widely acknowledged by its local and international client companies, as quality driven and dedicated to the support of its clients' quests for competitive advantage – being in the forefront, with a unique understanding of legal and regulatory issues – and it provides full and comprehensive legal services that offer solutions to complicated law matters.

Growth sectors such as energy, telecommunications, infrastructure and project finance have been incorporated into the firm's fields of expertise.

IKRP has been a project leader and member of consortia in various projects concerning the strengthening, modernization and regulation of the insurance, energy & environment, and telecommunications sectors, supporting of public administration and justice reforms, assisting in privatizations in several countries of Central and South-Eastern Europe, and in former USSR States.

Greece

PART A—GENERAL SECTION

(1) THE COURTS AND JURISDICTION

A1.1 Commercial litigation is not initiated in special commercial courts, but in one of the three types of district courts (*Protovathmia Taktika Dikastiria*) depending on the amount in dispute. Interest or other incidental claims are not taken into account. When the amount at issue is not more than EUR 12.000,00 the magistrates court (*Irinodikeio*) is competent; when it is more than EUR 12.000,00 but less than EUR 80.000,00, the one-member first instance court (*Monomeles Protodikio*) has competence; for all other cases competence lies with the multi-member first instance court (*Polymeles Protodikio*).

A1.2 According to Greek law, the monetary value of the claim determines the 'subject-matter competence' of the court and not the jurisdiction, which is determined by the divisions of judicial authority (criminal, civil and administrative jurisdiction) according to the matter to be adjudicated. Competence pertains to the allocation of judicial power within each jurisdictional division. It concerns the court's power to adjudicate specified matters.

A1.3 Greek law recognizes two kinds of competence: territorial (venue) and subject-matter competence. Territorial competence requires special links (e.g., the defendant's domicile or the head office of a defendant legal entity) in order to bring a claim to a particular court. Subject-matter competence depends on the monetary value of the claim as described above.

A1.4 Regardless of the amount in issue, certain civil disputes are assigned by the Code of Civil Procedure (CCP) either to the magistrates court or to the one-member first instance court. The magistrates courts have competence in most cases concerning restrictions on immovable property on behalf of neighbors or the commune, farming, certain kinds of services (e.g., transportation), claims by lawyers for services they rendered before the magistrates, claims of associations and co-operatives against their members for unpaid dues, as well as claims by members against associations and co-operatives for the latters' refusal to perform their obligations (Article 15 CCP).

A1.5 The one-member first instance courts have assigned to them cases concerning labour law, insurance and car accidents, family disputes (especially alimony and child support), claims of lawyers, notaries and civil engineers for their fees and enforcement of foreign judgments (Article 16 CCP). A special chamber of the Piraeus courts of first instance and appeal have been established to try maritime disputes. The territorial competence of the courts covers not only Piraeus but also extends to the entire region of Attica, including Athens.

(a) Enforcement of Foreign Judgments

A1.6 The enforcement of foreign judgments is granted according to a special exequatur procedure (provided by Article 905 of CCP) before the one-member first instance court of the defendant's domicile or residence or, if the defendant has neither, of Athens. The defendant's presence is not required, but in practice he is often notified or summoned so that he cannot subsequently challenge the exequatur through other procedures.

A1.7 Unless otherwise provided by international agreements a foreign judgment is enforced without re-examination of its merits when the following prerequisites are met:

(a) it is enforceable according to the law of the country where issued;
(b) according to Greek law, the foreign court had jurisdiction, although it is enough if such jurisdiction is concurrent rather than exclusive;
(c) the losing party must have been given the opportunity to defend himself in a manner no less favourable than that available to the nationals of the foreign country which passed the judgment;
(d) the foreign judgment must not be inconsistent with an existing Greek judgment in respect of the same case between the same parties (res judicata);
(e) the foreign judgment does not offend morality or public order (e.g., a judgment on a claim arising from a gambling debt).

A1.8 Since 01 March 2002 all decisions issued by the courts of a European Community Member State are governed as far as recognition of their effects and enforceability is concerned by Council Regulation 44/2001 on the jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

(b) Ordinary and Special Proceedings

A1.9 Greek procedural law provides for both ordinary and special civil proceedings, the main difference between the two being that the latter is simpler and speedier. Characteristics of special proceedings are the following: (a) The evidence rules that apply to special proceedings are usually less strict than the rules that apply to ordinary proceedings; (b) where no special rules are stipulated for special procedures, the rules of ordinary procedure apply; (c) the time limit for serving the action is very short; (d) the time limit for appealing against a decision is shorter in most special proceedings than that in ordinary proceedings.

A1.10 Special proceedings are applicable to disputes concerning the following groups of cases:

(1) marriage disputes (Articles 592–613 CCP) such as divorce, annulment of the marriage, validity of the marriage, and relations between the spouses;
(2) relationship between parents and children (Articles 614–622 CCP) such as disputes referring to paternity, the recognition of a parent–child relation or parental care;
(3) disputes on maintenance and custody of children (Articles 681B–681C CCP);
(4) payment orders referring to negotiable instruments (Articles 623–634 CCP). The order is issued by the magistrates or the one-member first instance court without the summoning of the debtor who may challenge the order;

(5) disputes on payment orders referring to negotiable instruments (Articles 635–646 CCP). The aforementioned disputes must be proved immediately otherwise they are transferred to ordinary procedure. The submission of written arguments is compulsory;
(6) disputes relating to leases between landlords and tenants (Articles 0647–662 CCP). These disputes are heard either by the one-member first instance court or the magistrate, depending on the amount of the monthly rent. They have jurisdiction to order the vacation and delivery of the property under lease, the termination of the lease because of non-payment of rent or because of infringement of the terms of the contract;
(7) labour disputes (Articles 663–676 CCP) arising between employers and employees. No pleading by attorneys is necessary;
(8) disputes on fees (Articles 677–681 CCP) of attorneys, engineers, physicians, notaries public, bailiffs for the performance of their services;
(9) disputes arising from motor-vehicle accidents (Articles 681A CCP).

A1.11 In addition to these special proceedings, particular rules apply to the collection of small claims (Articles 466–472 CCP), to an action seeking an account (Articles 473–477 CCP) and to an action for partition of jointly-owned property for which any co-owner has the right to apply (Articles 478–494 CCP).

(c) Provisional Remedies

A1.12 Provisional remedies and protective measures are taken either on matters of urgency or for protection against imminent danger. As a rule, they are administered by the one-member first instance court (Article 683I) except safeguarding measures referring to possession or mere protection which are taken by the magistrates. Their scope is extremely broad. Every claim which urgently needs protection, or which is brought in order to evade an imminent danger, can be presented to the court for a provisional decision, for example, giving security, preliminary mortgage, attachment, temporary adjudication of claims, temporary regulation of the situation, the taking of an inventory of goods and the putting up of security by way of the deposit of funds.

A1.13 The aforementioned remedies are provisional not only because their granting may be combined with an order specifying a time limit within which the plaintiff must bring the principal action, failing which the remedy expires (Article 693 CCP), but also because the court before which the main litigation is pending can always modify or revoke them upon application.

A1.14 Provisional remedies and protective measures are of great practical importance and they are very common in family disputes.

A1.15 It must be stressed that provisional remedies and protective measures cannot be taken by an arbitral tribunal. This is an exclusive privilege of the state court. Nevertheless, an arbitral tribunal may conduct a hearing under the rules of the procedure applicable to provisional remedies.

A1.16 Special authorities have been granted the right to take provisional measures in matters of their competence; such is the Competition Committee.

(2) THE JUDGES

A2.1 Judicial officers are career judges, entering early and remaining for life. They enjoy life tenure provided for by the Constitution. They are appointed after successful completion of a one-year study at the Judges' School, entrance to which is effected by means of an entrance examination conducted every year. They do not normally have significant experience as advocates or trial lawyers before meeting the prerequisites set by law in order to have the right to be appointed as first instance court judges.

A2.2 Officially there are no particular judges who are commercial law specialists, but unofficially it may be possible to ensure that judges with specialist interests try particular commercial cases. Only recently, it has been provided by statute that judges to be appointed to the Piraeus Admiralty Courts (of first instance and appeal) must be specialized in Maritime Law.

(3) THE LEGAL PROFESSION

A3.1 For lawyers, graduation from one of the three law schools of the country (Athens, Thessaloniki, Komotini) is required.

A3.2 Students enter law school after high school at 18. An entrance examination is required. Law study under normal circumstances takes four years. Law graduates are obliged to fulfil an eighteen-month period of training (normally at a law office) after which they have the right to sit for the bar examination. There is no division between attorneys and advocates in Greece. All practicing attorneys are members of one of the Greek bar associations, which are public entities. The promotion of lawyers to rights of audience in the appellate courts is generally a formality, depending mainly on length of practice. Otherwise, there is no formal distinction among practicing attorneys with regard to the functions undertaken by them. They are predominately one-man practitioners but there are several law firms with partners. Law firms are regulated by presidential decree no. 81/2005. The establishment of law firms was first allowed by presidential decree no. 518/1989 and with the assistance of favourable tax rules the number law firms has been increasing.

A3.3 With the exception of only a few, most lawyers and law firms which do civil litigation work handle a number of commercial law and specialize in a particular field to a limited extent.

A3.4 Outside the area of litigation, in recent years certain firms have developed a specialism in investment banking and in mergers, acquisitions of corporations in maritime law, trademark law and to a limited extent in new areas of interest, such as telecommunications, energy law and public procurement.

A3.5 The average Greek lawyer is generally not widely experienced in dealings with overseas clients or overseas witnesses except for those lawyers and law firms which run an international practice.

(a) Legal Charges

A3.6 There exists a Lawyers' Code of Conduct which lays down minimum charging rates but not maximum rates. Particularly in the field of litigation it is not unusual for lawyers to work for a fixed fee and sometimes for fixed expenses which are agreed with the client in

advance. Contingent fees (up to 20%) are permitted, but are mainly used in debt collection or indemnity cases.

A3.7 In general, charges are related to the difficulty of the case and the time taken or anticipated to be taken. In dealing with foreign clients lawyers will often simply use an hourly rate plus expenses.

A3.8 There is no special form which fee notes must take, but generally a detailed breakdown of charges and expenses will be provided if requested by the client.

A3.9 There is no special procedure available to clients for the review of fees charged: recourse must be made to the civil courts which must decide whether the fees are reasonable.

(4) JURISDICTION OVER FOREIGN DEFENDANTS

A4.1 The principles upon which the courts exercise jurisdiction over defendants who are not present within the territory of the state and against whom proceedings would have to be served abroad, depend on the nature of the claim and apply whether the defendant is Greek or alien. Article 3 of Civil Code of Procedure (CCP) stipulates that Greek courts exercise jurisdiction over Greeks and aliens if according to Greek law the court has the competence to adjudicate the claim. The main case where the Greek courts will exercise jurisdiction over foreign defendants overseas is where the defendant has agreed to accept the jurisdiction of the Greek courts. Under the law applicable, an alien enjoys the same rights as a national. Consequently, if the claim derives from a contract the criterion is the law the parties have chosen; if there is no such choice Article 25 of the Civil Code stipulates that the applicable law is to be selected on the basis of all specific circumstances (Proper Law). Since 17 December 2009 the applicable law in contracts within the EU is stipulated by Regulation No. 593/2008 of the European Parliament and of the Council of June 2008 (Rome I), which applies to contractual obligations in civil and commercial matters. Where the claim derives from property rights on a ship the law of the flag (Article 9 of Code of Private Maritime Law) is applicable. If the claim pertains to disputes among heirs the applicable law is the law of the nationality the deceased had when he died (Article 28 of the Civil Code).

A4.2 However, irrespective of nationality, if the defendant is domiciled in a European Union country, international jurisdiction, as far as civil and commercial disputes are concerned, may be exercised since 1 March 2002 as per Council Regulation 44/01 EC of 20 December 2000, on Jurisdiction and the Recognition of Judgments in Civil and Commercial Matters, with the exception of Denmark, for which the 1968 Brussels Convention continues to apply.

A4.3 If the defendant, Greek or foreign, is an individual and has his domicile abroad or is a legal entity and has its seat in a foreign country, special procedural rules govern the service of judicial and extra-judicial documents. These special procedural rules aim to ensure that those documents shall be brought to the notice of the addressee in sufficient time to prepare for the hearing of his case.

A4.4 By Act 1334/1983 Greece ratified the Convention on the service abroad of judicial and extra-judicial documents in civil or commercial matters, signed at the Hague on 15 November 1965. Since 31 May 2001 Council Regulation 1348/2000 applies for the service of judicial or extra-judicial documents when the litigant parties have their domicile

in an EU country. Furthermore, on 1 January 2004, Council Regulation 1206/2001 entered into force, having as its aim improving, simplifying, and accelerating cooperation between Member States regarding the taking of evidence in legal proceedings in civil and commercial matters. In addition, Regulation 805/2004 of the European Parliament and of the Council of 21 April 2004 created a European Enforcement Order for uncontested claims by allowing the free movement of judgments, out-of-court settlements, and authentic instruments. In this way, it is no longer necessary to use an intermediate procedure in the Member State of enforcement prior to recognition and enforcement. Regulation 1896/2006, in force since 2008, created a European order for payment procedure permitting the free circulation of European orders for payment throughout the Member States, applying to civil and commercial matters in cross-border cases. As per 28 December 2006 a *Directorate of Conferment of Pardon and International Judicial Co-operation of the Ministry of Justice* has been designated as Central Authority; this Central Authority undertakes to receive requests for service of documents abroad or for domestic service of documents coming from other contracting states. Finally, Regulation 861/2007 of 11 July 2007 established a European small-claims procedure for all cases concerning sums under EUR 2,000. The procedure is optional and is offered as an alternative to the possibilities existing under the national laws of the Member States; it is applicable from 1 January 2009 in all EU Member States except Denmark.

(5) PROCEDURE FOR A TYPICAL COMMERCIAL CLAIM

A5.1 Regardless of the type of claim, ordinary proceedings in the courts of first instance follow the same pattern.

A5.2 A civil action (*agogi*)[1] starts by the filing of a complaint with the clerk of the court. The clerk fixes a date and time for the hearing of the case and then registers the action in the court register. On the plaintiff's initiative and responsibility a copy of the complaint containing the date and time fixed for the hearing will be served on the defendant at his home or at his place of work at least sixty days prior to the hearing date, or for defendants residing abroad or those of unknown residence at least ninety days prior to the hearing. When service of the copy of the complaint is completed, the action is considered as having been brought and litigation is pending.

A5.3 Two or more persons may unite as co-plaintiffs or co-defendants (joinder of parties) if the subject in dispute is based on a common right or a common obligation or if the rights or obligations rely on the same legal and factual cause or if the issue in dispute consists of similar claims or obligations.

A5.4 If the defendant wishes to pass on the plaintiffs claim to a third party by reason of some legal right (such as a contract of indemnity or other similar transaction or a tort claim) he may join the third party to the proceedings by notification served on him. The proceedings will continue with all three parties participating and the final judgment will decide the rights of all the parties arising out of the plaintiffs claim.

[1] The term 'civil action' denotes the legal document in which the legal and formal demand of the party made and insisted on in court is written. A civil action may support any claim (civil, commercial, etc.).

A5.5 A third party may oppose a court decision or an extra-judicial act, if he did not take part or was not invited to take part in the proceedings and the court decision or extra-judicial act prejudices his interests. A third party opposition (*tritanakopi*) is brought before the court of this party's general jurisdiction or before the court which has passed the decision. The opposition by a third party has no suspensive effect by itself. However, upon request of the third party, the court may suspend the enforceability of the decision on the grounds that enforcement before his case is heard is likely to be strongly prejudicial to the third party's interests.

A5.6 Once the litigation is pending, no future extension or modification of plaintiffs claim is permitted, no other court has the right to hear the same claim, the limitation period is interrupted and interest accrues on all monetary claims. The limitation period restarts after each judicial act; this is important for rights with short prescriptions.

A5.7 No pre-action formalities are required for either plaintiff or defendant. The plaintiff has the right to bring an action without any previous notice to the prospective defendant. However in the proceedings before the one-member and multi-member first instance courts, both parties must develop their factual and legal positions within the written pleadings. Additionally the parties must submit the evidentiary and procedural means that they intend to set forth. In multi-member first instance courts the pleadings must be submitted and filed with the court clerk twenty days before the hearing. Written pleadings cannot change the claim; they can only support and clarify it. Fifteen days before the hearing, each party has the right to file written confutation to the other party's arguments and to comment on the evidence material. Within eight days after the hearing written pleadings can be amended or expanded with new arguments refuting the arguments presented by the other party during the hearing of the case.

A5.8 When the hearing is held, the parties appear before the court, represented in most cases by their lawyers. First instance courts must examine evidence immediately. Upon such examination, a final judgment is issued. The decision is not issued at the end of the hearing, but at a later stage. In exceptional circumstances, when the court decides that there is need of a supplemental hearing (254 CCP) for clarification and/or gap-filling purposes a repetitive hearing takes place on the specific issues pointed out by the court.

A5.9 During the hearing, the witnesses are examined according to the principles of immediacy and verbal statements. Each party has to prove the facts which are required to establish his claim or counterclaim. The following means of proof under the CCP are likely to be encountered in commercial litigation: admission; site visits (local inspection); expert reports; written or oral testimony and examination of parties; documentary evidence and presumptions. Evidence is recorded by a Secretary appointed by the court whose note of the oral evidence has to be approved at each hearing by the lawyers appearing for each party. Hearings are taped recorded before the First Instance Multi-Member Court of Athens. Testimony and documentary evidence remain the most common methods of proof.

A5.10 The examination of the evidence is to be completed in a single hearing. Depending on the complexity of the case, after a few weeks or months, the court issues its final decision based on the evidence submitted by the parties in the hearing and by their written pleadings.

A5.11 The CCP does not provide for pre-trial hearings. Only in cases of imminent danger of destruction of vital evidence does Greek law allow pre-trial examination. It does,

however, provide for a procedure to attempt the amicable resolution of the dispute (Article 214 A CCP).

A5.12 The court may of its own motion appoint experts to give a written report on facts, the understanding of which requires expert knowledge. The motion will also specify the place, time and subject of the expert opinion, and the time restriction for its submittal (not to exceed sixty days). If the court appoints an expert, each party has the right to appoint technical counsel with the relevant expertise and qualifications. Experts do not have the right to investigate, they simply give their opinion on concrete facts.

A5.13 Contracts and collective agreements cannot be proved by witnesses if the value exceeds EUR 5,900 (Article 393 CCP).

A5.14 The date and time of the hearing are fixed by a judge or a judicial clerk when filing the civil action (*agogi*). The waiting time depends on the number of cases the court has on its list to be tried.

A5.15 At first instance a trial will usually be completed between one or two years after the commencement of proceedings, although the delay may be considerably longer in very complex cases or where the parties obstruct the procedure. There are no pre-trial procedures other than the service on the defendant, on the plaintiff's initiative and responsibility, of a copy of the civil action (*agogi*) containing the date and time fixed by the judicial clerk for the first hearing. This service must be effected at least sixty days before the first hearing if the defendant is domiciled in Greece; or ninety days prior to it when he is domiciled abroad or is of unknown residence. When the service of such copy is completed, the action is considered as having been brought and the litigation is pending. In addition in cases heard before the multi-member First Instance Courts, it is mandatory that the plaintiff calls the defendant to discuss an out of court settlement in advance of the hearing.

A5.16 The procedure before the court is adversarial and not inquisitorial. Therefore:

(a) A court may not grant the plaintiff relief which he has not requested nor can it go beyond the request submitted. Conversely, the plaintiff may withdraw the complaint if the hearing has not yet taken place, otherwise with the defendant's consent, and the defendant may acknowledge the claim, without any further enquiry by the court.
(b) The court has no authority to take into consideration facts not submitted or proven by a party.
(c) All procedural steps have to be taken by the parties, not by the court. For instance, all hearings of the case are fixed upon a party's initiative; judicial documents, including judgments, are served on a party's initiative and not on the initiative of the court.

A5.17 The first instance courts evidentiary proceedings take place before the court and are recorded in the minutes taken by the court clerk. Experts can give oral evidence if the court gives leave but if it is not satisfied that such evidence would usefully add to their written reports, leave will not be given. Cross-examination of witnesses, including expert witnesses, does take place, but on a much smaller scale than occurs in common law systems, such as that of England and the United States.

A5.18 The nature of the evidence determines whether it will be given in a written or oral form. Testimonies and examination of the parties are presented orally but are recorded in the minutes taken by the court clerk. Documents and expert reports are given in a writing.

Sometimes experts are asked by the court to be present during the hearing of the case and are examined in relation to their report. Facts can be proved by documents alone, if these documents meet the requirements of the CCP as to their irrefutable validity.

A5.19 The court may appoint an expert to give a written report concerning certain facts alleged by the parties, the understanding and evaluation of which require a highly specialized knowledge and expertise. This does not commonly happen in commercial litigation, although in cases with a high technical element, such as maritime collision cases, such experts are commonly used. The court has to appoint an expert if a party demands it and the need for highly specialized knowledge is obvious. The appointment is made by a judicial decision of the court before which the case is tried, specifying the facts for which the expert's view is required. Experts may be public officers or private individuals and are chosen from an experts' roster which every court possesses and which is compiled by the judicial authorities. The experts may ask to be exempted from this duty because of a conflict of interest. A party may also ask for the exception of an expert for similar reasons. If the request is accepted by the court another expert is appointed from the same roster. The expert's report is not binding on the court, and by court order it is specified on which matters experts can give evidence.

A5.20 The first instance courts adhere to a verbal rather than a written procedure.

A5.21 Damages are assessed by the court on the basis of evidence of the damage actually suffered.

A5.22 There is no fixed trial time reserved for each case. If no witnesses are examined, then cases are dealt with in just a few minutes, that is, the time required for the lawyers to declare their presence on behalf of their clients or to ask the court for an adjournment of the case and for the court's clerk to verify that the parties have duly submitted their written pleadings.

A5.23 In commercial matters the one-member first instance courts usually render their decisions within two to five months after the hearing of the case. Although a new law provides that the judge must render his judgment within eight months after the hearing, in several cases before the multi-member first Instance Court, judges render their decision even after the expiring of the eight month deadline.

A5.24 A judicial decision opens by mentioning the composition of the court, and in the case of a multi-member first instance court's decision, it makes special mention of the judge who drafted the decision. Thereafter, it states the names of the litigants and those of their lawyers. Furthermore after a brief description of the object of the dispute it states the court's reasoning, legal and factual, at the end stating the operative part of the decision.

A5.25 A witness living abroad (Greek or foreign) can testify before the Greek consul, who in such a case acts as judge. Foreigners living in Greece render their testimony under the same procedural rules as residents, with the assistance of an official interpreter. For EU residents, Council Regulation 1206/2001 provides for means of cooperation between the courts of the Member States in the taking of evidence in civil and commercial matters.

(6) FOREIGN LAW IN THE GREEK COURTS

A6.1 According to Article 337 of the CCP, foreign law, foreign customs and foreign business usages are taken into account by Greek courts of their own motion, without requiring formal proof. However, if the court is not familiar with the content of such law,

custom or usage, it may order it to be proved or it may use any other appropriate means for that purpose such as a court-appointed expert. The court is not obliged to limit itself to the evidence provided by the parties. It must be noted that Article 559 of the CCP treats foreign law as if it were domestic law as far as an appeal to the Supreme Court is concerned. (Appeals to the Supreme Court (*Arios Pagos*) are allowed on legal grounds only.) Greece has ratified the 1968 London Convention on Information on Foreign Law and its 1978 Protocol (Acts 593/1977 and 1709/1987).

(7) PRECEDENT

A7.1 The constitutionally assured independence of the judiciary is understood to give Greek courts the right to decide on every matter brought before them without being bound to follow previous decisions of other courts on similar cases. Nevertheless, a decision of the Supreme Court upon a legal matter usually influences a lower court.

(8) ATTACHMENT OF PROPERTY TO SECURE ENFORCEMENT OF A JUDGMENT

A8.1 The plaintiff may apply to the court before which the case is pending for an attachment of the defendant's property. This application is tried according to the procedure for provisional remedies. For such an application to be accepted, the plaintiff must establish the strong probability that a future enforcement of a favourable court decision on his behalf will not be possible because the defendant will, in the meantime, have lost or disposed of his property. If the plaintiff obtains the attachment, the defendant will also suffer certain penal consequences if he ignores it.

A8.2 The attachment of the defendant's property can be revoked on the latter's request, provided he establishes there is no danger that the plaintiff will be unable to enforce a future decision, or because there is no underlying substantive right of the plaintiff to be protected, or because he offers adequate relief to the plaintiff in the form of an acceptable guarantee.

(9) INTEREST ON AMOUNTS DUE

A9.1 In relation to the failure to discharge monetary obligations, Greek law provides for interest for delay in payment which functions as a statutory relief of the creditor's damage caused by the debtor's default. Such delay interest does not preclude a claim for further damages. The rate for interest for delay is fixed by law from time to time and is the European Central Bank's interest plus seven points, currently approximately 12% per annum. It runs from the time the debtor was due to perform the contract. Thus, in every monetary claim the court awards interest for delay.

A9.2 Further damages are also awarded if the plaintiff proves his claim by adducing the appropriate evidence. Damages include positive damage as well as lost profit, that is the profit the plaintiff could reasonably expect in the ordinary course of events, taking into

account the preparations and arrangements made. It must be noted that from the service of an action and until a final judgment is reached, additional interest for delay accrues to the plaintiff. However, if the injured party contributed to the damage or to the extent of the damage, the court may either reduce the claim for damages or even refuse to award damages altogether.

(10) SECURITY FOR COSTS

A10.1 The CCP does not oblige foreigners to deposit a guarantee for legal costs before the proceedings start. The defendant may ask the court to order the foreign plaintiff to deposit a guarantee (e.g., money, letter of guarantee, mortgage on property in Greece) for legal costs, provided he substantiates that the plaintiff may not be in a position to honour an eventual decision ordering him to pay costs.

(a) Incidence of Costs

A10.2 Legal costs are usually paid by the loser. However, if the court forms the view that the loser had justified doubts as to the outcome of the case, as well as in marital and family disputes, the costs will be divided between the parties. Accordingly the order in respect of legal costs may not always follow the outcome of the trial.

(11) ENFORCEMENT OF JUDGMENT

A11.1 A domestic judgment of the first instance district courts that has not been appealed within the time limits provided by the law, or that has been declared as enforceable regardless of its being subject to an appeal or not ('provisionally enforceable') may be enforced according to the following procedures. The party who won the case serves on the other party a certified copy of the judgment inviting him by a formal notice written at the end of the judgment to comply with the operative part of the judgment within three days. If the latter party does not comply with the notice, then the former party gives an order to a bailiff—who is the authorized person for such a function—to effect the enforcement. If there are objections concerning the validity of the enforceable judgment or the enforcement procedure, the law grants the right for a respective motion (*anakopi*) before the one-member first instance court. Judgments can be enforced against all kinds of property of the defendant including land and buildings, chattels, debts, bonds and securities (personal belongings such as clothes or furniture necessary for every day life of the defendant or objects necessary for his work are excluded from enforcement). The provisions of the CCP apply supplementary to the Conventions to which Greece is a party (see section (4) above).

(12) APPEALS AGAINST FIRST INSTANCE DECISIONS

A12.1 Final decisions of the first instance district courts (*Protovathmia Dikastiria*) may be appealed by either party. Appeals against the decisions of the magistrates' courts (*Irinodikio*)

are heard by the multi-member first instance court (*Polymeles Protodikio*). Appeals against the decisions of the first instance court (*Protodikio*) (one or multi-member) (*Monomeles* or *Polymeles*) are heard by the Court of Appeal (*Efetio*). The general time limit for appeal (*Efesi*) is thirty days from the service of the decision attacked. If the interested party resides abroad or his residence is unknown the time limit is sixty days. If no service of the decision took place, the time limit is three years from the issue of the final decision.

A12.2 An appeal is initiated by filing a written complaint with the clerk of the court that rendered the decision to be appealed. The grounds of appeal may refer to questions of fact, including the evaluation of evidence, and to questions of substantive or procedural law. Such grounds for appeal must be made known thirty days before the appeal hearing. Written submissions are filed until the case is heard. Additional statements and denials may be set forth by the parties until the twelfth hour of the third day of the hearing. New claims may not be raised on appeal, neither can the appellate court grant relief beyond the issues which the appellant has presented on appeal. The respondent may file an appeal of his or her own within the same thirty-day time limit for the parts of the decision that have a negative effect on him or her. Should the thirty-day time limit be lost, he or she may present a cross-appeal but only within the ambit of the parts of the decision appealed by the counter party or those necessarily related to them.

A12.3 Court of Appeal procedure is quite similar to that followed before the multi-member first-instance court, with an important difference being that when the appellant files a written appeal with the clerk of the court which rendered the decision, the latter simply registers the appeal. The fixing of the date and time for the hearing takes place on the initiative of either the appellant or the respondent who must bring for that purpose a certified copy of the appeal to the clerk of the appellate court and must then serve on the other party a certified copy of the appeal containing the date and time fixed. It is worth mentioning that often, for the sole purpose of delaying the enforcement procedure, the party who lost the case at the first instance district court files an appeal even though he is fully aware that his appeal is hopeless.

A12.4 Fresh evidence is admissible on appeal. However, the court may reject the new evidence on the grounds that it was not produced by the interested party before the first instance district court through gross negligence or that it is now produced with the intention of unduly prolonging the procedure.

A12.5 The costs of appeal are more substantial than those of the first instance procedure.

(13) ARBITRATION IN GREECE

A13.1 The adoption of Law 2735/1999 in Greece reflects the legal framework of international commercial arbitration as created by the United Nations Committee of International Trade Law (UNCITRAL). Therefore, other than the traditional route of judicial means for the solution of commercial disputes, parties may also look to the sphere of arbitration as mandated by Article 867 of the greek CCP. Arbitration is a judgment which not only parallels that of judicial decisions, but also delivers rapid results while lightening courts' case loads. Commercial differences are the essence of arbitration as they usually regard property issues. The agreement for arbitration is written and relates to current as well as future disagreements (Articles 868, 869 GCCP). For matters still pending

in court, the parties may agree to seek arbitration resolution so long as a motion is made at or before the first hearing.

A13.2 There may be one or more referees appointed on a panel, just as there could be in a regular court. If the arbitration clause of the parties' agreement does not assign referees or the method of their assignment, each party may appoint one referee with the name and address of each referee given to the other. In such cases, the referees are obliged to appoint a third referee and inform the disagreeing parties of that appointment.

A13.3 If there is no timely appointment of a referee(s) or a third referee by the parties, the one-member first instance court will complete the assignment. Each one-member first instance court holds a reference catalogue with individuals meeting referee criteria as mandated by the Ministry of Justice. According to Article 878 of the GCCP, the proper venue for such court appointment is the one-member first instance court that is stipulated in the parties' arbitration agreement. If the parties have not been specified, then the one-member first instance court of the permanent residence of the person making the application will be the proper venue. Finally, if there is no applicable permanent residence, the one-member first instance court of the country's capital serves as default venue.

PART B—PARTICULAR CLAIMS

(1) CLAIMS FOR BREACH OF CONTRACT FOR SALE OF GOODS

B1.1 By the contract of sale the seller must transfer ownership and deliver the goods or rights sold to the buyer and the buyer must pay the price agreed upon.

B1.2 Suppose the deal is a contract to sell identified goods of a value of EUR 80,000 and the seller refuses or neglects to transfer ownership and deliver the goods sold within the agreed time period or on the date agreed upon. The buyer may demand that the seller performs the contract within a fixed time period, declaring at the same time that after the expiration of that period he will not accept a delayed delivery. If the seller does not comply with this demand the buyer has a claim for compensation on account of total non-performance, including losses (actual losses and/or lost profits) resulting in the ordinary course of events from the seller's breach of contract. In exchange he must fulfil his own obligation, that is to give credit for the agreed price. If the seller performed only part of the contract within the period fixed by the buyer, the buyer may refuse to accept such incomplete performance and claim compensation as stated above. Nevertheless, in both cases if the buyer prefers, he may rescind the contract claiming an equitable[2] compensation which amounts to a lesser sum of money.

B1.3 The buyer starts a civil action by filing a complaint with the clerk of the multi-member first instance court of the defendant's residence. The court fixes a date and time for the hearing of the case and the clerk registers the action in the court register. The buyer-plaintiff serves a certified copy of the complaint containing the date and time fixed for the hearing on the seller-defendant at his home or at his place of work at least sixty days prior to the first hearing, or for defendants residing abroad at least ninety days before the hearing. If the sum in dispute were less than EUR 80,000, the competent court would be the one-member first instance court. The procedure for commencing and serving such action is the same as for the multi-member court.

B1.4 Prior to the first hearing of the case the buyer-plaintiff needs to invite the defendant to attempt an amicable resolution of the dispute. Failure to comply with this procedure renders the court hearing unacceptable. Article 214 A Code of Civil Procedure (CCP) states that when a writ is subject to the multi-member court of first instance, the parties are obliged to meet and attempt to settle out of court. The writ has to be submitted to the multi-member court of first instance indicating the exact time and date of the hearing as well as the litigants' obligation to meet and try to resolve their dispute alternatively out of court. The aforementioned writ needs to be served to the counter party. The served writ includes an invitation to the defendant to appear at the offices of the claimant's lawyer. The limitation period set for the meeting to take place is five days after the writ has been served and thirty-five days before the trial. If the meeting is unsuccessful, then the lawyers need to submit to court special reports pointing out the reasons for the failure. If the court has been persuaded, the formal court hearing will commence.

[2] Note that Greek courts have established that equitable compensation is one which is just, fair and right in consideration of the facts and circumstances of the individual case.

B1.5 The parties have to submit their written pleadings to court twenty days before the hearing before the multi-member court, while submission is made on the day of the hearing if before the one-member first instance court. In their pleadings the buyer-plaintiff and the seller-defendant state their factual positions and legal arguments although in theory they are supposed to develop only their factual positions as the law is supposed to be known by the court (*Jura novit curia*). With their pleadings the litigant parties submit their documentary evidence. The procedure before the First Instance Courts is both oral and in writing, with witnesses being examined before the court and submissions being made orally as well as in writing. In our case the plaintiff must state in the pleadings that the seller is in default, that is that he has not transferred ownership or that he did not deliver the goods sold or both within the time period agreed upon or at the date fixed by the parties. He must also state the damage he claims to have suffered as a result. If he does not, he will not receive full compensation for the damage but only default interest on the amount of any unpaid monetary sum which may be due, although this is not a probable remedy where there has been breach of contract by a seller of goods.

B1.6 The seller-defendant may state in the pleadings that he was not in default, as he did not accomplish his contractual obligations due to reasons for which he is not responsible, for example, loss of the goods sold by reason of a fortuitous event or destruction of those goods because of a third person's fraud or negligence, unless this third person is employed by the seller. The defendant must state that as soon as he became aware of the situation beyond his control, he informed the buyer without delay. If he omitted to do so he may be liable for compensation.

B1.7 At the proceedings before the multi-member first instance court the evidence has to be produced at the hearing. Since 2001 (when Article 396 of CCP was abolished by law No. 2915/2001), there is no provision in the CCP regarding the number of witnesses that may be examined by each party. In practice though one witness can be examined for each litigant party.

B1.8 In the multi-member court, after the evidence has been produced, depending on the complexity of the case the court issues its final decision after two to six months.

B1.9 Besides delay in performance there are other common examples of breaches of sale contracts. The Civil Code provides that if the goods sold are defective at the time the risk passes to the buyer, or if the goods are not of the quality agreed upon, the buyer can alternatively claim reduction of the agreed price, or replacement of the defective good, or the dissolution of the sale. Cumulatively the law provides the buyer the right to claim the damages that cannot be compensated by the aforementioned claims. The seller may plead by way of defence that he is not liable, as these defects were known to the buyer at the time the contract was concluded. Articles 560-561 invest rights of recourse in cases of successive sales.

B1.10 Another example of breach of contract occurs when the seller does not transfer ownership of the goods sold free from any third party right (legal defect). The buyer has a claim for compensation, but contrary to the general rules concerning the burden of proof, the buyer-plaintiff is obliged to prove the existence of the legal defects, for example, existence of mortgage, pre-notice of mortgage, pledge, servitude, etc. The seller may plead by way of defence that the buyer had knowledge of the existing defects at the time the contract of sale was concluded. If this contention is proved, the seller is not liable for any defect in title except mortgage, pre-notice of mortgage, pledge and attachment for which the Civil Code provides that the seller is liable, even if the buyer had knowledge of their existence.

B1.11 Not only the seller may be liable for breach of contract but also the buyer. The latter may be in default, if he refuses to take delivery of the goods sold. In that case if the said goods are destroyed during the period, the seller has a claim for damages relating to the extra amounts he has been obliged to pay in order to effect proper delivery of such goods and to keep them during the time when the buyer was in default.

(2) CLAIM FOR RIGHTS IN A MINERAL CONCESSION

B2.1 The procedures for the issuance of licenses regarding mineral concessions fall within administrative law. However, the procedures for cases involving disputes over mineral rights are the same all other matters in civil courts.

(3) CLAIMS FOR TITLE TO OR DAMAGE TO GOODS

B3.1 We are here concerned only with claims in relation to movable goods. Claims concerning real estate are not dealt with in this section.

B3.2 Irrespective of the means by which ownership was acquired, ownership is protected by a variety of actions. The most important is the ownership action (*diekdikitiki agogi*). By this action the dispossessed owner requests the recognition by the court of his property right and the restitution of the goods by the defendant. The action is brought before the competent court according to the general rules of the procedural law (see A5).

B3.3 The ownership action must set forth succinctly and sufficiently the following:

(a) a detailed description of the goods in dispute;
(b) the plaintiff's legal title to ownership of the goods (transfer from a previous owner, bona fide transfer from a non-owner inheritance, etc.);
(c) the act of the defendant constituting interference with the plaintiff's right of ownership (possession or detention of the goods);
(d) the fact that defendant's possession or detention still exists;
(e) the value of the goods;
(f) a request for the recognition of the plaintiff's ownership and the restitution of the goods by the defendant.

B3.4 There are two presumptions in relation to movable property:

(a) The actual possessor of movables is presumed to be owner; however, this presumption may not be raised against a previous owner who was deprived of the goods by theft or loss. The presumption may, however, be raised against the previous owner in relation to money or bearer bonds.
(b) The previous possessor of goods shall be presumed to have been their owner during the period of his possession.

B3.5 If ownership is attacked otherwise than by appropriation or retention of the goods, the owner may demand that the offender cease such attack and its non-recurrence in the future (*arnitiki agogi* – negatory action). A further claim for compensation in accordance with the provisions concerning tort may not be excluded.

(4) CLAIMS FOR MONEYS DUE UNDER INSURANCE OR REINSURANCE CONTRACTS

B4.1 The procedure and the courts concerned are the same as for a sale of goods claim above.

(5) CLAIM TO ENFORCE A CORPORATE SHARE SALE TRANSACTION

B5.1 The procedure and the courts concerned are the same as for a sale of goods claim above.

(6) CLAIM TO ENFORCE COPYRIGHT/TRADEMARK

(a) Copyright

B6.1 In the frame of intellectual property, authors, composers, painters, designers, architects, directors, sculptors, engravers of original or adapted or copied or translated works, choreographers, and even creators of computer programs, enjoy for their lifetime two rights: the moral right and the property right. Specifically, on the one hand creators have among others the exclusive power to perform and to prevent the fragmentation of their creation (moral right) and on the other hand they have the exclusive right to reap the remuneration of any reproduction of their works, to permit or to allow the public performance, translation, adaptation, circulation, radio-television broadcast and the import of reproductions of their creations (property right). The law includes an exclusive provision for plays, musicals, fragments and extracts, which states that public performance is allowed without the previous authorization of the creator under certain specified circumstances, such as public performance of an extract for the support of one's opinion, of a musical play for the description of timeliness or of a play in case of an official or instructional ceremony.

B6.2 It is worth mentioning that musicians, actors, singers and generally performers have no rights based on the intellectual property but the so-called *syggenika* (related) rights because their contribution is not an intellectual creation. Musicians, actors and singers have among others the right to permit or to forbid the performance of their interpretation in musical or theatrical plays, as well as the right to demand a reasonable reward for the use of their interpretation by any means such as electromagnetic waves, satellites, cable etc. and demand remuneration for private copying by a third party.

B6.3 The law also protects their heirs for seventy years, calculated from 1 January of the year following the death of the creator. However, the exclusive right to permit the translation of a work and in case of plays, to authorize their public performance extends for ten years calculated from 31 December of the year in which they were published. In addition, the law protects the musicians, actors and singers for fifty years from the date of their performance/interpretation but never for a shorter time than the lifetime of the interpreter/performer.

B6.4 Whoever knowingly infringes the copyright of the above-mentioned creators may be imprisoned for at least one year. Terms of imprisonment of up to two years are nearly always altered to fines by the courts.

B6.5 The author may request the public prosecutor's prohibition of an unauthorized theatrical or musical performance of his work; the prosecutor is obliged to prohibit the performance.

B6.6 Generally, every prejudiced owner of a copyright has a claim to:

(a) be officially acknowledged as the author of a specified intellectual creation;
(b) demand that the offender stops the infringement of his copyright not only in the present but also in the future;
(c) demand the seizure of the works which were put in the market in violation of the owner's copyright. After the pronouncement of the court's decision he may dispose of such seized works;
(d) demand compensation for the material and moral damages he has suffered due to the violation of his copyright (general damages). A further claim for damages based on the provisions of the law referring to torts is not excluded.
(e) Demand the publication of the operative part of the decision at the expense of the defendant in the daily press.

B6.7 Greece has signed and ratified by law the Bern Convention of 1886 on the protection of literary and artistic works, as amended by the Brussels Act of 1948. Greece has ratified as well the Rome Convention of 1961 concerning the recognition of performing rights and the Trips Convention of 1994 relating to the rights of intellectual property in the trade sector.

B6.8 Claims for the protection of copyright may be brought before either the one-member or the multi-member first instance court.

B6.9 The procedure is the same as that described in relation to a claim for breach of contract for sale of goods (B1).

B6.10 Where provisional remedies or conservatory measures are to be claimed to protect the owner's right in the copyright, the procedure is the same as that for other protective remedies before the first instance district court.

(b) Trademarks

B6.11 The registration of a trademark presupposes the fulfilment of several essential conditions and a formality, that is registration in the public book of trademarks. The essential conditions are among others the distinctive character of the trademark and its compatibility with public order and good morals ('absolute grounds of refusal') and the non-counterfeit or imitation of a former trademark ('relevant grounds of refusal'). Furthermore the formal procedure for obtaining the registration of a trademark is as follows:

(1) the application must be filed with the Trademarks department of the Ministry of Development, such application being signed and filed by the applicant's attorney;
(2) copies of the trademark and a government fee must be deposited together with the application, along with a power of attorney and five copies of the product catalogue.

B6.12 Upon filing the application, the trademark is given a number and its order of priority is reckoned from the application date. In addition, a date is fixed for the application to come up for hearing by the Trademark Administration Committee which is set up by a counsel at the Legal Council of State, a head of section at the Ministry of Development and a representative appointed by the Chambers of Commerce and Industry. This date is usually for three to five months later.

B6.13 The hearing always takes place in the afternoon. A decision in favour of registration is issued after a period of one to two months. Should the acceptance of a trademark be challenged or should it be considered to infringe an existing one, the attorney may request a deadline for the submission of a memorandum. The taking of a decision then may last longer.

B6.14 A decision may be challenged in the following manner:

(a) Any third party claiming a legal interest against the registration of the trademark may file an opposition (*tritanakopi*) with the Trademark Administration Committee within four months of the decision.
(b) An appeal against Trademark Administrative Committee decisions may be filed wit the first instance administrative court within sixty days from service of the decision. If the plaintiff resides abroad, the deadline is ninety days. An appeal may be filed only by the party whose application for registration was rejected by the Trademark Administrative Committee. An appeal against the decision of the three-member administrative first instance court may be filed with the second-instance administrative court within a deadline of sixty days from the notification of that decision to the parties.
(c) Recourse to the Council of State (Simvoulio tis Epikrateias), the Supreme Administrative Court, may be taken against the decision of the second-instance administrative court.

B6.15 From the day of filing the application (registration of trademark) until the final and irrevocable registration of the trademark, the applicant has a right of protection of his trademark against any third party registering the same or a similar trademark for ten years. It is noteworthy that the declaration of the registration of a trademark and its recording in the public book of trademarks do not provide the registrant with a right over the trademark. The registrant enjoys the full protection of registered trademarks (B6.18) only after the Trademark Administration Committee's decision accepting the trademark becomes irrevocable.

B6.16 Should the beneficiary make no essential use of the trademark for five years from registration, or should the trademark have been registered in violation of the Trademark Law, a third party who has a legitimate interest may request before the Trademark Administration Committee or the administrative court that the trademark be deleted.

B6.17 A right to a trademark may be assigned either by contract or by succession. The assignment is binding vis-a-vis third parties upon registration in the Register of Trademarks.

B6.18 The trademark is deleted from the register following a decision of the Trademark Administration Committee or the courts, if:

(i) the beneficiary does not use it for five consecutive years;
(ii) the beneficiary enterprise has seized works for five consecutive years;

(iii) the trademark has become commonly used because of the beneficiary's abstaining from protecting it;
(iv) its use may result in the public being misled as to the nature, the quality or the geographic origin of the goods or services designated by the trademark;
(v) if the trademark has been registered in violation of the law, and more specifically if it did not meet the qualifications for registration which are provided under Articles 3 and 4 of the Trademark Law.

(c) Protection of Registered Trademarks

B6.19 The beneficiary of a duly registered trademark enjoys three types of protection: administrative, civil and penal.

(i) Administrative Protection

B6.20 The beneficiary of a duly registered trademark who believes that a new registration offends his exclusive right thereon, has the right to intervene before the Trademark Administrative Committee, which is competent to judge the application for the new registration. In his intervention the above beneficiary will ask for the rejection of the new registration on the grounds that the trademark under consideration constitutes a counterfeit or an imitation of his own duly registered trademark and that both trademarks identify the same or similar products.

B6.21 Where the beneficiary of a duly registered trademark becomes aware of the breach after the Trademark Administration Committee has pronounced its decision he has the right either to enter an opposition against the decision before the Trademark Administration Committee, unless he had intervened during the hearing, or to appeal against the decision before the administrative first instance court (see B6.14 above).

B6.22 Recourse to all instances of the administrative courts is also available, as described under B6.14 above.

(ii) Civil Protection

B6.23 The basic legal remedy is an injunction, that is, the discontinuance of the infringement and its future prevention. Damages may also be sought by means of an ordinary action for damages. A claim for damages prescribes with the lapse of three years following the year the infringement occurred. Civil courts may also order the seizure of all infringing goods and materials, the publication of the operative part of the decision at the expense of the defendant and the destruction of goods bearing the counterfeit trademark or the removal of the infringing signs from the infringing products.

B6.24 These claims are brought before the one-member first instance civil courts in the common way. The procedure is the same as that described for claims for breach of contract for the sale of goods (B1).

B6.25 Interim measures can be ordered by the civil courts according to the general rules, in case of urgency or for protection against imminent danger. The competence of the court depends either on the place where the company of the trademark in question provides its goods/services or it has its head offices.

B6.26 Those who intentionally violate the provisions of the Trademark Law are liable to prison sentences of at least three months and a fine.

(7) CLAIMS TO AN INTEREST IN A BANK DEPOSIT

B7.1 The procedure and the courts concerned are the same as for a sale of goods claim (B1).

(8) CLAIM FOR RECOVERY FOR CHARTER HIRE OR DAMAGES UNDER A CHARTERPARTY

B8.1 The Greek Code of Private Maritime Law (LD 3899/1958) together with the CCP and the Greek Civil Code, where necessary, form the legal framework under the provisions of which a claim for recovery of charter hire or damages under a charterparty may be brought before the Greek courts.

B8.2 For this purpose the plaintiff must establish that the Greek courts have jurisdiction to hear the case, and this can be established contractually by express provision in the charterparty; in case of lack of such provision, the jurisdiction of the Greek courts may be established under the general provisions of the CCP and the treaties which Greece has ratified and enacted by law.

B8.3 It should be noted that in normal commercial practice, most charterparties include an arbitration clause, as well as a provision as to the governing law of the contract. It is, therefore, rather rare for the Greek courts to have jurisdiction in cases where a foreign choice of forum clause or an arbitration clause is inserted. A clause which appears quite often is the arbitration clause of the Greek Chamber of Shipping.

B8.4 If the Greek courts do have jurisdiction to hear the case and Greek Law is the *lex contractus,* then the charterer may sue the carrier if the latter failed to comply with his obligations as contained in Chapter B, Title Six of the Greek Code of Private Maritime Law. Chapter C of Title Six also provides for the carrier's liability. There is no special procedure for admiralty or commercial cases in Greece. Therefore if a suit is brought before the Greek courts it will be heard in the usual way. In this case the one-member or the multi-member court of first instance will be competent to hear the case. If the latter is competent it will issue an intermediate judgment requiring witnesses to be examined and then the court will issue its final judgment. It must be noted, however, that a special admiralty division exists in the Piraeus first instance and appeal court with a territorial competence over the whole area of Attica, including Athens.

B8.5 This judgment may be appealed to the Court of Appeal.

B8.6 As already stated this kind of case is rare for Greek courts. What is rather more frequent is the procedure for seizure or arrest of a vessel which is in the Greek territorial waters or is registered under Greek flag, if a case for recovery of charter hire/damages is pending before an overseas forum (see B10 below).

(9) CLAIM FOR AN AMOUNT DUE UNDER A JOINT TRADING VENTURE

B9.1 The procedure and the courts concerned are the same as for a sale of goods claim (B1).

(10) ARREST OF VESSELS

B10.1 Although in general terms vessels are submitted to the legislative regulation of moveables, the arrest of vessels and enforcement on them are regulated by the provisions of the CCP on immovables.

B10.2 Under the judicial system in Greece, the arrest of vessels may be effected on either of two bases:

(i) as a result of an enforceable judgment against the shipowner for any type of claim, in which case the arrest is referred to as 'seizure', such an arrest being in most cases followed by the public auction of the arrested vessel to satisfy the claim; or
(ii) as a 'conservatory measure', thus providing security to the creditor in respect of his claim. The result of a conservatory arrest is the detention of the vessel and the prohibition of its being disposed of or burdened any further by the debtor.

B10.3 This section deals with arrest as a conservatory measure.

(a) Jurisdiction

B10.4 The competent court to hear the petition for arrest is generally the one-member court of first instance by way of summary proceedings, unless the main case is submitted in the competency of the county court or the main case is pending in the multi-member court. Thus it is possible for any other court before which a case is heard on the merits, to pronounce an order for the arrest of a vessel.

B10.5 *Ratione loci*, the claimant may apply to the following courts:

(a) the area court where the vessel is registered;
(b) the area where the vessel is actually situated;
(c) in case of collision in Greek territorial waters, before the court which is nearest to the place where the collision took place.

B10.6 It is also possible to apply before other courts which, depending on the case are considered competent *ratione loci*, such as the court of the domicile or residence of the defendant, or, in case of claims arising from a contract, the court of the place where the contract was concluded and/or performed.

(b) Procedure

(i) Filing

B10.7 As explained, the petition is filed with the secretariat of the competent court and the hearing date is fixed by the judge on duty. Usually the hearing is fixed for the nearest

available hearing of the court. The judge also determines the time limit before which the application must be served upon the defendant, prior to the hearing.

(ii) Provisional Order

B10.8 The applicant may, upon submitting the arrest petition, apply for a provisional order to be issued before the hearing and the issuance of a judgment. The court may issue a provisional order of its own motion. Usually the provisional arrest is granted when the defendant has no other assets in the jurisdiction or in order to prevent sailing of the vessel. In case the vessel carries the Greek flag, the provisional order usually imposes prohibition of change of the legal status of the vessel. In the case of foreign flag ships it prohibits departure from the port. The judge on duty issuing the provisional order usually specifies that the order is revoked, if an acceptable bank guarantee is deposited with a bailee or proof of it with the court clerk for the amount specified.

(iii) Hearing

B10.9 The hearing is oral and both parties appear represented by attorneys. Cross-examination of witnesses of both parties may take place at the hearing. At the end of the oral procedure the parties have the right to submit written pleadings, within a short time period fixed by the judge.

B10.10 The applicant should prove on the balance of probabilities that he has prima facie evidence for this case and that upon issue of the final judgment there will be no assets to satisfy his claim. If the applicant has discharged his burden of proof then most probably the judge will issue a decision allowing the arrest of the vessel.

(iv) Guarantee

B10.11 The judgment will usually make provision for revocation of the arrest, if a bank guarantee is filed with the court's secretariat for an amount fixed by the judgment.

B10.12 The judgment may also order the applicant to provide a guarantee to the defendant for his possible damage or loss if the applicant's claim fails. The arrest of a vessel is not enforced until the applicant has provided the guarantee. If the guarantee is not provided within the time set by the court, the arrest is revoked.

(v) General

B10.13 The arrest of a vessel presupposes that the court's decision specifies precisely the vessel in question. The judgment must be served upon the defendant, the harbour authorities and the ships' register. The arrest can be maintained only if, within thirty days from the service of the judgment, a proper writ of action is filed and served upon the defendant.

B10.14 The law permits the arrest of a vessel even if it is already under a previous arrest.

(11) ENFORCEMENT OF FOREIGN JUDGMENTS

B11.1 The prerequisites for the enforcement of a foreign judgment have been dealt with at A (b)(ii).

B11.2 The procedure for the granting of the exequatur to a foreign judgment is the following:

(a) the party who has the right to enforce the foreign judgment must file a petition before the one-member first instance court of the defendant's domicile or residence or, if the defendant has neither, of Athens;
(b) the petitioner must prove that the foreign judgment is enforceable in the country where issued;
(c) the petitioner must prove the foreign judgment in question meets the requirements set forth in Article 323 of the CCP which are the following:
  (i) the foreign court must have had jurisdiction according to Greek law; it suffices if such jurisdiction is concurrent;
  (ii) the foreign judgment must have res judicata effects under the law of the country where issued;
  (iii) the party who lost must have been given the opportunity to defend itself in a manner no less favourable than that available to the nationals of the country where the judgment was given;
  (iv) the foreign judgment must not be contradictory to a Greek judgment on the same matter between the same parties; this requirement is valid not only for earlier but also for subsequent Greek judgments; (v) the foreign judgment must not be contrary to good morals and to Greek public order (e.g., enforceability of a claim arising from a gambling debt).

B11.3 The petitioner must submit his written pleadings at the hearing at the latest. Together with the pleadings the petitioner must submit:

(a) the foreign judgment with an official translation;
(b) any other document proving the enforceability of the foreign judgment, for example, a certification by the foreign authority, or a legal opinion issued by a lawyer of the foreign jurisdiction; or by the Greek Institute of Private International Law;
(c) if a foreign judgment concerns a divorce, a certification or even a notice on the document of the judgment itself stating that the judgment is irrevocable according to the law of that country.

B11.4 The defendant may present his objections subject to the condition that they are immediately proved and they have occurred after the issue of the foreign judgment (e.g., that he has paid the debt, he set off a claim of his against the claim of the petitioner, or the debt was released).

B11.5 If the petition is accepted by the court, the petitioner is given a certified copy of the foreign judgment which is then enforceable (*apografo*).

B11.6 The decision of the one-member first instance court can be appealed.

B11.7 For decisions issued by a court of a European Community country the procedure provided by Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters which replaced for the EU Member States the Brussels Convention of 1968/1978/1982. Nevertheless, the Brussels Convention provides the *ipso iure* recognition of a state's judgment by any authority of the EU Member States.

B11.8 Under the laws on protection of foreign capital (LD 2687/53 and Act 27/75), the vessels submitted to its legal regime may be excluded from the enforcement of a foreign judgment on them, following an approval by the authorities on the registration of Greek flag vessels. The vessels not only should fly the Greek flag, but also exceed a tonnage of 1500 register tons.

(12) ENFORCEMENT OF FOREIGN/DOMESTIC ARBITRAL AWARDS

(a) Foreign Arbitral Awards

B12.1 In determining whether an arbitral award is foreign or domestic, the prevailing view in Greece, in both doctrine and case law, considers the *lex arbitri*, that is, the law that governs the arbitral procedure, as the crucial factor. So, if the *lex arbitri* applied was not the Greek law, then the arbitral award will be foreign and not domestic. The relevant provisions of the Greek law on enforcement and recognition of foreign arbitral awards are found in the CCP, and in particular Articles 906 (enforcement) and 903 (recognition). Greece has also ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (Legislative Decree 4240/1961) and the International Convention on the Settlement of Investment Disputes of 1966 (Act 608/1968). The main criterion in considering an arbitral award as foreign under the New York Convention, is the place where it was issued. Greece is also a party to several bilateral treaties on the recognition and enforcement of arbitral awards (e.g., USA, Germany, Hungary, Romania, Yugoslavia, Cyprus, Lebanon and Syria).

B12.2 A foreign arbitral award can be enforced in Greece only if it is an enforceable instrument under the law of the country where it was rendered. Even then a foreign arbitral award is not considered automatically an enforceable instrument in Greece, as it is the case with domestic arbitral awards. It must receive an exequatur by the one-member first instance court of the place of domicile or residence of the debtor, or (if there is none) the Athens one-member first instance court. The exequatur is given only if the following requirements are satisfied:

(i) the arbitration agreement is valid under the law by which it is governed;
(ii) the arbitral subject matter is arbitrable under the Greek law;
(iii) the award cannot be challenged by means of an appeal or a motion to set aside or any other procedure questioning its validity;
(iv) the defeated party was not deprived of its rights of defence during the arbitral procedure;
(v) the award is not contrary to a judgment of a Greek court rendered in the same case and having a res judicata effect amongst the same parties;

(vi) the award is not contrary to public policy (*ordre public international*) or to good morals. It must be stressed, though, that the above provisions of the Greek CCP apply without prejudice to the provisions of international conventions to which Greece is a party (e.g., New York Convention, bilateral treaties). Apart from the above, the enforcement procedure is the same as in the case of a domestic arbitral award.

(b) Domestic Arbitral Awards

B12.3 An arbitral award is considered domestic when the arbitral procedure was governed by Greek law. According to Greek law, an arbitral award is an enforceable instrument. The first procedural step to enforce a domestic arbitral award is to file the award with the one-member first instance court of the place where it was rendered. It must also be noted that a motion to set aside the award does not necessarily suspend its enforcement. Suspension is though possible if the court is satisfied that the motion to set aside is likely to succeed.

B12.4 Apart from filing the award with the competent one-member first instance court, the procedure to enforce a domestic judgment applies also to domestic arbitral awards. A certified copy of the arbitral award in the name of the Greek people is issued by the judge of the above-mentioned court. A notice is placed at the bottom of this copy, which is then serviced to the debtor. If the latter does not voluntarily comply with the award, the creditor gives an order to a marshal to levy execution. In any case the debtor may challenge the enforcement proceedings by filing a motion to the competent one-member first instance court. A third party may similarly oppose such proceedings.