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Practical cross-border insights into technology sourcing

Technology Sourcing 2022

Second Edition

Contributing Editor:
Mark Leach
Bird & Bird LLP

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From the Publisher

Dear Reader,

Welcome to the second edition of *ICLG – Technology Sourcing*, published by Global Legal Group.

This publication provides corporate counsel and international practitioners with comprehensive jurisdiction-by-jurisdiction guidance to technology sourcing laws and regulations around the world, and is also available at www.iclg.com.

This year the expert analysis chapters cover contracting for AI solutions, and strategic sourcing across technology and business services.

The question and answer chapters, which in this edition cover 18 jurisdictions, provide detailed answers to common questions raised by professionals dealing with technology sourcing laws and regulations.

As always, this publication has been written by leading technology sourcing lawyers and industry specialists, for whose invaluable contributions the editors and publishers are extremely grateful.

Global Legal Group would also like to extend special thanks to contributing editor Mark Leach of Bird & Bird LLP for his leadership, support and expertise in bringing this project to fruition.

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1 Procurement Processes

1.1 Is the private sector procurement of technology products and services regulated? If so, what are the basic features of the applicable regulatory regime?

No, procurement by private sector entities is not subject to regulation in Greece.

1.2 Is the procurement of technology products and services by government or public sector bodies regulated? If so, what are the basic features of the applicable regulatory regime?

The acquisition of works, supplies or services by contracting authorities through a public contract is regulated by a) Law 4412/2016 on public procurement of works, supplies and services, as amended and in force (adaptation to Directives 2014/24/EU and 2014/25/EU), b) the contract notice provisions, as well as the terms of the contract, and c) the provisions of the Greek Civil Code (GCC), which are applied in a supplementary way. Contracting authorities may be the State, local authorities, entities governed by public law, etc. According to this legislation, the general rules applicable to public procurement procedures, such as the equal treatment of the economic operators, transparency, etc., are set. The same Law 4412/2016 also regulates the procedures to be followed when awarding a public contract, including the awarding criteria, the grounds for exclusion of economic operators from public contracts, and the specific characteristics related to the performance of a contract, depending on the nature of the contract and whether it is a works, services or supplies contract.

2 General Contracting Issues Applicable to the Procurement of Technology-Related Solutions and Services

2.1 Does national law impose any minimum or maximum term for a contract for the supply of technology-related solutions and services?

Public law: The duration of the contract is defined in the relevant contract documents. The law explicitly provides that the duration of an agreement shall not exceed four years, except in special circumstances. It is also provided that in public procurement procedures for the supply of goods and the provision of general services, tenders shall be valid and binding for economic operators for a period specified in the contract documents, which may not exceed 12 months from the closing date for the submission of tenders (art. 97 para. 4 law 4412/2016, as amended and in force).

Private law: Regarding the private sector, there is no such provision under Greek law. As a general note, the duration of an agreement for the supply of goods can be freely determined by the parties.

2.2 Does national law regulate the length of the notice period that is required to terminate a contract for the supply of technology-related services?

Public law: No, this is left to the parties to negotiate. Contracting authorities have the right to terminate a public contract during the course of the agreement for reasons provided for in art. 133 of Law 4412/2016, as amended and in force (for more information about art. 133 of law 4412/2016, see the answer to question 2.6 below), which does not stipulate prior notice.

Private law: In general, notice of termination of contracts under Greek law is not subject to a certain time limit, and the parties are allowed to freely determine the time limit for giving such notice. It is also possible to terminate a contract for good cause at any time and without notice. However, there are certain types of contracts, such as trade agency contracts, for which a period for termination is provided under specific acts.

2.3 Is there any overriding legal requirement under national law for a customer and/or supplier of technology-related solutions or services to act fairly according to some general test of fairness or good faith?

Public law: Generally, in accordance with Greek civil law, parties shall execute a contract in good faith.

According to art. 18 para. 1 of law 4412/2016, as amended and in force, contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent manner, respecting the principles of proportionality, mutual recognition, protection of the public interest, protection of the rights of individuals, protection of competition and protection of the environment and sustainable development.

Private law: As regards all contracts concluded between legal entities and/or individuals, the parties have a duty of good faith and fair dealings. These principles underpin Greek law and their scope has been further elaborated by case law. Any conduct of a party that deviates from good faith and fair dealings, besides constituting a breach of the contractual obligations, also constitutes unlawful conduct, which entitles the injured party to claim compensation for the damage caused by the breach.

2.4 What remedies are available to a customer under general law if the supplier breaches the contract?

The following remedies are available:

Public law

- Compensation for pre-contract negotiations (arts. 197, 198 of the Civil Code).
- Right of unilateral termination of the contract (art. 133 of Law 4412/2016, as amended and in force).
- Penalty clauses in public works and services contracts (arts. 148 and 218 of Law 4412/2016, as amended and in force).
- Right of exclusion of the economic operator from the competition in question, as well as from future competitions (art. 73 para. 4 subpar. f, art. 74 para. 1 of Law 4412/2016, as amended and in force).
- Penalties for late delivery of supply (art. 207 of Law 4412/2016, as amended and in force).
- Penalties for rejection of contractual materials including the replacement of such materials (art. 213 of Law 4412/2016, as amended and in force).
- Disqualification of the economic operator.

Private law

- Termination.
- Actual and moral damages.
- Price reduction, if the breach relates to defects or the product not meeting the agreed specification. The product may also need to be replaced.

The limitation period for claims arising between traders is five years from the date of their accrual. Claims arising from the sale of goods are subject to a limitation period of two years.

2.5 What additional remedies or protections for a customer are typically included in a contract for the provision of technology-related solutions or services?

Public law: In addition to the above remedies, if the contractor is declared disqualified, the following sanctions may be imposed:

a) the guarantee will be forfeited in full;
b) the advance payment will be collected and any interest due must be paid; and
c) the contractor must pay the difference between the new award price for the delivery of the goods by a new contractor and the initial award price, multiplied by a factor of between 1.01 and 1.05.

Also, the customer may withhold payment.

Beyond all this, the customer can seek compensation for any further actual damages.

Private law: In addition to the remedies available at law, the customer could seek the following protections:

- provision of credit for the payment;
- inspection of the product upon delivery and immediate replacement of defective products or products lacking the agreed properties;
- confirmation that the consumer is liable for accidental destruction or defects of the product only after the product has been delivered;
- if the defect is not due to the costumer's behaviour, repair of the product by experts suggested and verified by the supplier in case of defects, within a certain period of time, or replacement of the product if repair is not possible;
- termination of the contract in the event that the supplier is declared bankrupt, forced into compulsory administration or liquidation;
- the option to become a guarantor of the products already purchased until the payment, so that they do not form part of the bankruptcy estate in the event that they have been sold with retention of title;
- the submission of a letter of guarantee (issued by a credit institute) and in addition the submission of a parental company letter of guarantee; and
- punitive damages for failure to execute the contract or the continuous supply of defective goods.

2.6 How can a party terminate a contract without giving rise to a claim for damages from the other party to the contract?

Public law: The contractor can terminate a contract in case of *force majeure*. In this case, the contractor is obliged to report in writing to the customer and to provide the customer with the necessary evidence of the events constituting *force majeure* within 20 days of their occurrence (art. 204 of Law 4412/2016, as amended and in force). In view of the above, contractual parties cannot be held liable for breaches of contract that resulted from events of *force majeure*.

Contracting authorities may terminate unilaterally a public contract during its performance (art. 133 of Law 4412/2016, as amended and in force) when:

a) the contract has been substantially modified, in a way that would require a new procurement procedure;
b) the contractor, at the time of the award of the contract, fell into one of the grounds for exclusion and should therefore have been excluded from the procurement procedure; or
c) the contract should not have been awarded to the contractor due to a serious breach of its obligations under the Treaties and Directive 2014/24/EU.

Private law: The parties are free to agree on the terms of the contract; the breach of such terms will justify the termination of the contract. Claims by the other party for damages are not justified if termination of the contract is in line with the causes set out in the contract, provided that the period of notice has been met (if any). In addition, the parties may terminate the contract immediately for good cause. Such good cause may be, in line with case law, the party's permanent inability to fulfill its contractual obligations, the seizure of its assets resulting in the impossibility of performing its contractual obligations, an unforeseen change of conditions that renders the performance of the contract as such impossible, *force majeure*, etc. In such circumstances, claims for compensation cannot be successfully pursued.

2.7 Can the parties exclude or agree additional termination rights?

Public law: The parties are free to agree on additional termination rights but they cannot exclude the ones provided for in the relevant legislation. In practice, the parties always follow the statutory provisions.

Private law: Under Greek law, in principle, contractual freedom allows the parties to either exclude or agree additional termination rights. However, a party cannot be excluded from terminating the contract when one of the above indicative good reasons applies, nor can an excessive or extremely limited period be set for exercising the right.

2.8 To what extent can a contracting party limit or exclude its liability under national law?

Public law: In principle, any limitations on liability cannot

limit the implementation of the provisions of Law 4412/2016, as amended and in force, and the relevant contract notice provisions, in relation to damages, penalty clauses and sanctions. In any case, the terms agreed in a contract must also be in accordance with good faith, otherwise they might be considered null and void.

Private law: Under Greek law, the contracting parties of an agreement are allowed to limit the liability in advance by virtue of a contractual provision, but only up to a certain degree. Greek law does not recognise such a limitation where there has been wilful misconduct or gross negligence. Therefore, under Greek law, it is only possible to validly agree upon the exclusion or limitation of liability arising out of simple negligence. Where there is liability established on wilful misconduct or gross negligence, there is no limit to the damages that can be awarded. Apart from the above, any limitation of liability must conform with the general principles of *bona mores*, as well as the requirements of good faith. In view of this, any clauses that excessively limit the liability of the party in the strongest bargaining position are likely to be judged as abusive and, consequently, null and void. In view of this, all clauses relating to the limitation of liability must be restrictively construed as to their scope of application. It is, however, possible to validly exclude or limit liability for all types of liability following the occurrence of the event giving rise to liability by means of a subsequent agreement between the parties, (e.g., by way of a settlement agreement).

Regarding the sale of goods, a limitation period shorter than the two years set out in the law is not valid.

2.9 Are the parties free to agree a financial cap on their respective liabilities under the contract?

Public law: There is no statutory financial cap on liability. The parties do not agree on a financial cap, because it is not possible for the cap to be less than the actual damages.

Private law: If liability is established on the basis of wilful misconduct or gross negligence, there is no limit to the damages awarded and the parties to a contract cannot impose a cap on total liability. However, the parties are free to agree a financial cap on their respective liabilities under the contract in cases where liability arises out of simple negligence.

2.10 Do any of the general principles identified in your responses to questions 2.1–2.9 above vary or not apply to any of the following types of technology procurement contract: (a) software licensing contracts; (b) cloud computing contracts; (c) outsourcing contracts; (d) contracts for the procurement of AI-based or machine learning solutions; or (e) contracts for the procurement of blockchain-based solutions?

No, the same principles generally apply across all of these types of technology procurement contract.

3 Dispute Resolution Procedures

3.1 What are the main methods of dispute resolution used in contracts for the procurement of technology solutions and services?

Public law: The main dispute resolution methods are judicial and administrative. Depending on the type of contract, a clause for the arbitration of disputes may also be included in the contract documents. More specifically, any dispute between the contracting parties shall be settled by bringing an action or claim before the Administrative Court of Appeal of the Region in which the contract is being executed (art. 205A, 175 of Law 4412/2016, as amended and in force). Before an appeal can be brought before the Administrative Court of Appeal, a preliminary administrative procedure must be followed. In particular, in the context of supply or services contracts, recourse may be brought before the body performing the contract (art. 205 of Law 4412/2016, as amended and in force). In the case of works contracts, an objection may be lodged before the competent body. In work contracts of a specific budget, an arbitration clause may be approved and included for the settlement of any dispute arising from the performance, interpretation or validity of the contract.

In addition, the contract may include provisions that stipulate that parties must attempt to settle a dispute before seeking relief.

Private law: The main methods of dispute resolution used in contracts are:

- The (extrajudicial) resolution of disputes by negotiation between the parties, which is allowed without restriction. Such negotiation may take place at any time.
- Non-mandatory mediation. Such mediation takes place before a certified mediator at the joint request of the parties or at the proposal of one of the parties. The parties may elect the mediator themselves, otherwise the mediator will be appointed by the Central Mediation Committee.
- Judicial resolution of the dispute, by filing an action in the Court of First Instance of the place in which the contract was signed or in which the defendant is domiciled.

4 Intellectual Property Rights

4.1 How are the intellectual property rights of each party typically protected in a technology sourcing transaction?

Background IP: By virtue of the corresponding agreement's definitions and clauses, pre-existing IP rights belonging to each party are laid out/defined, further determining whether and, in the affirmative, which rights of each party the other party can make use of, and to what extent.

Foreground IP: In case of the creation/development of new IP rights, the agreement should contain relevant clauses in relation to the ownership and, in certain cases, the licensed use by the licensee.

4.2 Are there any formalities which must be complied with in order to assign the ownership of Intellectual Property Rights?

By virtue of the respective applicable mandatory Greek law legal provisions, any transfer and assignment and any licensing IP rights should be in writing. In relation to IP rights, the registration of which is recorded in a public register (such as trademarks, patents, designs, utility models), the *inter-partes* force and validity of the transfer of such rights and the assignment and/or license – always by virtue of a written agreement – is not affected by the non-recordal of the latter in the public register; however, the force and validity of a transfer and assignment and/or licence *vis-à-vis* third parties can be claimed only if it has been recorded in the public register. It is therefore advisable to record such rights.

4.3 Are know-how, trade secrets and other business critical confidential information protected by national law?

In transposition of Directive (EU) 2016/943 of the EU Parliament and the EU Council and by virtue of art. 1 of Greek

Law 4605/2019, arts. 22A to 22K were added to Greek Law 1733/1987 (on technology transfer, inventions and technological innovation), on the protection of undisclosed know-how and business information (trade secrets) against unlawful acquisition, use and disclosure.

Confidential information is usually the subject of an agreement between the parties.

Clauses regarding trade secrets and confidentiality include, *inter alia*, definitions on what constitutes confidential information and trade secrets, the duration of the obligation to maintain the confidentiality of the information (depending on the type and importance of the information, the obligation to maintain confidentiality indefinitely is recommended – this should always be the case for trade secrets) and on the use and its extent of its use by the parties.

5 Data Protection and Information Security

5.1 Is the manner in which personal data can be processed in the context of a technology services contract regulated by national law?

Provision of technology services is not considered a specific processing situation under Chapter 9 of the GDPR. As a result, the legal and regulatory framework on data protection applies also with regards to data processing when providing technology services. Key data processing obligations laid down by the GDPR and GDPR Greek implementing law (Law 4624/2019) are the obligation to enter into data processing agreements, to adopt adequate technical and organisational measures and to provide notices to data subjects.

It should be noted that specific rules are in place in relation to the confidentiality of electronic communications and telecommunications, including the processing of traffic and location data, and information security requirements are imposed upon certain technology providers (see question 5.3).

5.2 Can personal data be transferred outside the jurisdiction? If so, what legal formalities need to be followed?

Personal data can be transferred outside Greece; however, restrictions are established under Chapter 5 of the GDPR in relation to the transfer of personal data outside the European Economic Area. In particular, cross-border data transfers are allowed only to countries for which an adequacy decision has been issued by the European Commission or if one of the safeguards or the derogations of the GDPR applies in the relevant case.

It should be noted that there are no national-specific rules restricting data transfers other than the aforementioned.

5.3 Are there any legal and/or regulatory requirements concerning information security?

Requirements concerning information security for operators of essential services and digital service providers are set out in Greek Law 4557/2018, which transposes the Directive on Security of Network and Information Systems (NIS Directive) into the Greek legal system. Said obligations aim at ensuring a high security level of networks and information and include, among others: (i) the obligation to take appropriate and proportionate technical and organisational measures to manage the risks posed to the security of network and information systems used and to prevent and minimise the impact of security incidents; and (ii) the obligation to notify the National Cybersecurity Authority or the competent CSIRT without undue delay of incidents that have a substantial impact on the provision of its service.

In addition, information security requirements are imposed upon electronic communications service/network providers (PECS/ PECN). The following requirements are set forth by law:

In addition to GDPR-related security obligations, PECS/ PECN shall take appropriate and proportionate technical and organisational measures to appropriately manage the risks posed to the security of networks and services. Having regard to each specific case, those measures shall ensure a level of security appropriate to the risk presented. In particular, measures such as encryption shall be taken to prevent and minimise the impact of security incidents on users and on other networks and services (Greek Law 4727/2020). In this respect, it is explicitly provided that PECS shall, *inter alia,* adopt a security policy in order to protect the security of services and of the network.

PECS/PECN are also required to take appropriate technical and organisational measures to protect data retained for the purpose of criminal investigation. To that effect, they shall draft and implement a specific Security Policy Plan. They shall also appoint an officer responsible for Security of the Data Retention System (i.e., the system on which data retained for the purpose of criminal investigation, detection and prosecution of certain serious crimes are kept), to whom monitoring of the implementation of the dedicated security policy, which aims to ensure security of aforementioned types of data, is assigned. Finally, they shall implement measures such as logical separation of data, encryption and access control (Greek Law 3917/2011).

6 Employment Law

6.1 Can employees be transferred by operation of law in connection with an outsourcing transaction or other contract for the provision of technology-related services and, if so, on what terms would the transfer take place?

In Greece, the outsourcing of services does not necessarily result in a transfer of undertaking (TUPE application). The determination of whether an outsourcing arrangement constitutes a transfer of undertaking requires an assessment of the facts of the specific case. More specifically, an outsourcing arrangement might trigger the application of the TUPE rules for example, when an organised grouping of resources that has the objective of pursuing an economic activity is transferred to an external provider.

In practice, the assessment of whether a specific business transaction constitutes a transfer of undertaking, and therefore triggers the application of the Greek TUPE provisions, depends on various factors that should be examined in each case. Such factors include, *inter alia*:

(a) the type of the business to be transferred;
(b) whether or not any tangible assets will be transferred to the transferee;
(c) the intangible assets of the business to be transferred and the value of the same;
(d) whether the employees dedicated to the business will also be transferred to the transferee; and
(e) the degree of similarity between the activities carried on before and after the transfer.

In addition to the above, in case the transferred services constitute an autonomous business unit (i.e., 'an organised grouping with a view to carrying out an economic activity – whether this activity is essential or ancillary', as described above), which will

retain its identity and will be continued by the transferee, the Greek TUPE rules will usually apply.

However, the applicability of the Greek TUPE provisions is considered unlikely when there is no transfer of any asset (tangible or intangible) whatsoever and therefore no transfer of an autonomous business unit will take place.

6.2 What employee information should the parties provide to each other?

In case of a transfer of undertaking, the employment agreements of the affected employees are automatically transferred to the new employer (transferee) and the latter undertakes all rights and obligations of the existing employment agreements at the date of the realisation of the transfer (i.e., indefinite-term employment contracts, fixed-term contracts, part-time contracts, contracts of lending of services of employees, etc.), without the obligation to sign new employment agreements.

In case of a business transfer, both employers have an obligation to inform employee representatives (trade union/works council) in writing regarding the exact or the eventual date of the transfer, the reasons of the transfer, the legal, financial and social consequences of the transfer as far as the employees are concerned and the measures to be taken regarding the employees (if any). There is no specific time schedule regarding the information process to be followed. In practice, a period of 20 days prior to the actual transfer (closing) is generally considered reasonable for the information process.

In the absence of employee representation (i.e., when there are no trade unions or works councils in the company), all affected employees need to be informed, individually and in writing, regarding the above.

Consultation with the employee representatives is required only if there will be changes to the employees' employment terms and conditions. The results of said consultation are drafted in minutes, which can either be an agreement or the final position of the two parties involved. Depending on the extent of the measures to be taken, the relative period needs to be readjusted (i.e., 20 days prior to the transfer might be sufficient or not sufficient for the same).

If no changes will be made to employees' terms of employment, no consultation obligation exists (only obligations regarding information).

Therefore, the transferor must provide details to the transferee regarding the above points.

6.3 Is a customer or service provider allowed to dismiss an employee for a reason connected with the outsourcing or other services contract?

In case of a business transfer, the law prohibits the implementation of dismissals when the cause of the dismissal is the transfer itself, but also provides for an exception for dismissals that need to take place for technical, financial and organisational reasons, under the condition, though, that Greek employment law is not violated.

This means, for example, that the transferee may proceed to terminations due to reorganisation (e.g., if it wants to abolish completely a specific department, or because there is more than one employee covering the same position, etc.). On the other hand, the transferor cannot validly dismiss the employees solely because the transferee wants to hire only some of them and the transferee cannot validly dismiss personnel just because there are a lot of employees.

Such prohibition on dismissing employees because of the actual transfer covers both the transferor and the transferee. In practice, however, greater importance is placed on terminations before the transfer.

In any case, Greek courts examine meticulously the condition of each reorganisation procedure in order to ensure the correct application of the legal criteria that determine who will be dismissed first (i.e., an employee's performance, seniority, family status, possibility of finding a new job, etc.), the necessity of the dismissals in relation to other measures that could have been taken instead, etc.

Kindly also note that employees protected against dismissal (protected union officials, pregnant employees/new mothers/new fathers, forced hires, etc.) continue to be protected in the case of transfer and when a business is reorganised, such employees would be last to go, unless of course a significant reason exists that could justify the termination of their employment (for example, permanent abolition of their job position or department). It goes without saying that, regarding these employees, a thorough examination of the facts of the case needs to be undertaken in order to avoid or reduce the eventual risks. Additionally, specific documentation should be used and procedures should be followed.

If no transfer exists, dismissal is allowed, as long as the provisions of Greek law related to employee dismissal are followed.

6.4 Is a service provider allowed to harmonise the employment terms of a transferring employee with those of its existing workforce?

In case of a TUPE transfer, in practice, employers propose to the transferred employees the full or partial harmonisation of salaries and benefits in order to avoid administrating different categories of employees. Such harmonisation process needs to be shared and discussed with the employees' representatives, but, given that they constitute mainly individual terms of employment, the consent of each and every employee needs to be granted. In case all or some employees refuse the proposal of the transferee, then the latter will have to administrate the specific employees separately.

6.5 Are there any pensions considerations?

As per Greek TUPE provisions, an exception is made for pension schemes, where the new employer is entitled to either continue, amend or terminate the existing scheme following the specific procedures provided by the law. Therefore, the new employer has three options:

(a) accept the insurance contract under the same terms and conditions;

(b) amend the existing pension plan, in which case the new employer should enter into negotiations with the employee representatives regarding the changes in order to reach an agreement; or

(c) decide not to continue the application of said plan. This must be declared before the transfer date, in which case it will be terminated and liquidated as per its own rules, i.e., each employee will receive what he/she is entitled to at the date of liquidation. In this latter case, neither the transferor (under the condition that it has fulfilled his obligations) nor the transferee will be liable regarding the terminated pension scheme.

6.6 Are there any employee transfer considerations in connection with an offshore outsourcing?

In case the offshore outsourcing meets the above criteria and is therefore characterised as a transfer of business (or business unit) on a local level, then the employees dedicated to the unit shall, by virtue of law, automatically be transferred to the third party (new employer).

A transfer to a company outside Greece, however, may be considered a detrimental change to the employee's agreed terms of employment.

7 Outsourcing of Technology Services

7.1 Are there any national laws or regulations that specifically regulate outsourcing transactions, either generally or in relation to particular industry sectors (such as, for example, the financial services sector)?

The Bank of Greece issued Executive Committee Act no. 178/5/2.10.2020 adopting the guidelines of the European Banking Authority (EBA) on outsourcing arrangements (EBA/GL/2019/02). These guidelines also incorporate EBA recommendations on outsourcing to Cloud service providers. The new Act abolishes the existing framework for outsourcing laid down in Annex 1 to Bank of Greece Governor's Act 2577/9.3.2006.

The aim of the Act is to establish a harmonised framework for the outsourcing of functions by all the institutions supervised by the Bank of Greece. Its scope, therefore, encompasses not only credit institutions, but also financial institutions, including payment institutions and e-money institutions.

The new outsourcing framework provides a clear definition of outsourcing, as well as of critical or important functions. In addition, it includes specific internal governance requirements and obligations of institutions, both before entering into an outsourcing arrangement and during the term of the arrangement, with a view to a more effective management of the risks entailed by outsourcing. Stricter requirements apply to the outsourcing of critical or important functions, given the higher risk entailed.

Under the new framework, institutions are required to inform the Bank of Greece of their intended arrangements for the outsourcing of critical or important functions before they enter into any outsourcing agreement, but without the need for a relevant approval decision from the Bank of Greece, so as to facilitate and accelerate the outsourcing process. However, where it is judged that the relevant supervisory requirements are not met, the Bank of Greece may decide not to allow the outsourcing of functions or may request the termination of any outsourcing agreement in force.

In order to ensure adequate and standardised information on outsourcing arrangements by all institutions, the new framework introduces the obligation for institutions to maintain a register of information on all outsourcing agreements, following the template provided in the Annex to the Act. Institutions shall make available to the Bank of Greece, upon request, this register, as well as any other information necessary for the exercise of effective supervision.

7.2 What are the most common types of legal or contractual structure used for an outsourcing transaction?

As there is no regulated outsourcing contract under Greek law, the legal and contractual types depend upon the respective outsourcing products and/or services. So, the contractual structure and details must be assessed on an individual basis, mainly depending on the scope, type and circumstances of the planned outsourcing. Due to the legal complexity of outsourcing contracts, the legal classification of the contract types often varies (such as service contracts, rental contracts, purchase contracts and works contracts). As a result, explicit contract tailoring is required. Taking the aforementioned into consideration, the most common types of legal or contractual structure used include:

- **Direct Outsourcing**: The simplest outsourcing structure is a direct outsourcing between the customer and the supplier.
- **Multi-sourcing**: In a multi-sourcing contract, the customer enters into contracts with different suppliers for separate elements of its requirements.
- **Indirect Outsourcing**: In an indirect outsourcing, the customer appoints a supplier (usually based in Greece) that immediately subcontracts to a different supplier (such subcontractors are usually based outside Greece).

7.3 What is the usual approach with regard to service levels and service credits in a technology outsourcing agreement?

When negotiating the contract, the parties usually try to identify and agree a set of objectives and tangible criteria to measure the supplier's performance (key performance indicators (KPIs) or service levels) together. These service levels need to be combined with a:

- process for recording and reporting on success or failure in achieving the targets; and
- formula under which financial compensation is paid to the customer if targets are not met. These are referred to as service credits or liquidated damages.

The aim of service credits is to compensate the customer for poor service, without the need to pursue a claim for damages or terminate the contract, and to motivate the supplier to meet the performance targets.

The supplier will want to ensure that the stated service credits are the sole remedy of the customer for the particular failure concerned, but this should be without prejudice to the customer's wider rights in relation to more serious breaches of the contract or persistent failures in performance. Service credits are generally enforceable, provided they are a genuine pre-estimate of the customer's loss or can be shown to protect a legitimate commercial interest of the customer and are not a contractual penalty.

7.4 What are the most common charging methods used in a technology outsourcing transaction?

A basic fee is normally combined with fees based on usage, also known as "compensation on a time basis". In such cases, the works are billed at actual cost, on a *pro rata* basis of the works requested and the volumes dealt with. It is, therefore, not possible to know in advance the total cost of the outsourcing arrangement. Final costs can only be estimated.

Other alternative charging methods include:

- subscription models;
- cost plus, where the customer pays the supplier both the actual cost of providing the services and an agreed profit margin;
- a true fixed price in cases where there will be a regular and predictable volume and scope of services and the customer wants to have greater certainty over its budget; and

- a flat-rate global price, i.e., the price is fixed and includes all the works agreed under the contract. If other works are then carried out, they will be charged additionally.

7.5 What formalities are required to transfer third-party contracts to a service provider as part of an outsourcing transaction?

The parties should carefully check the terms of such contracts at an early stage in order to ensure if they are able to assign the contract and, if so, if the counterparty's consent is required. In case the counterparty's consent is required, they must confirm and attempt to obtain such consent if necessary.

Alternatively, if the terms of the contract permit, the customer can retain ownership of the contract and allow the supplier to supply the services to the counterparty as agent of the customer on a 'back-to-back' basis.

It should also be considered whether the burden of the contract should also transfer to the supplier, either by:

- novation; or
- express indemnity (which leaves some residual risk with the transferor).

The concept of a contract being leased or licensed is not generally recognised under Greek law.

Further to complying with assignment requirements – and depending on the respective service and the contractual relationship – predominantly it is the data protection requirements under the GDPR that must be fulfilled. In particular, in the case of a processor/sub-processor relationship, consent of controller for the user of the sub-processor must be obtained and a data protection agreement as per. art.28 § 4 of the GDPR is required.

7.6 What are the key tax issues that can arise in the context of an outsourcing transaction?

There are no specific Greek tax provisions applicable to outsourcing arrangements. Consequently, each outsourcing arrangement will be specific to its own particular facts and will raise different tax issues depending on the type of services being outsourced, the structure of the outsourced transaction and the nature of the parties involved.

In the context of outsourcing arrangements, depending on both the parties involved and the nature of the services/assets supplied, Greek VAT (24%) will usually be applicable.

Moreover, the disposal of assets and/or the supply of services shall generate taxable business income subject to corporate income tax of 22% at the level of the supplier. At the level of the recipient entity, the general deductibility criteria should be fulfilled for the expenses occurring in the context of an outsourcing transaction, in order for said expenses to be deducted from the taxable income of the recipient entity. In particular, the deduction of expenses for tax purposes is subject to general conditions, notably: (i) the expenses should be incurred for the benefit of the taxpayer; (ii) they should correspond to real transactions that have been effected in line with the arm's-length principle; and (iii) they should be recorded in the taxpayer's accounting books and should be evidenced by appropriate documentation.

In addition, in case the involving parties are considered related entities for income tax purposes, any outsourcing transaction should be performed at arm's length and be properly documented/reported to the Greek tax authorities (if the relevant Greek TP reporting thresholds are met).

Last but not least, it should be noted that from an indirect tax point of view, if the assets that are transferred constitute a self-standing business from a business perspective, the transaction should be considered a transfer of business of going concern ("TOGC") and should not be subject to VAT but instead to stamp duty at 2.4%. Stamp duty is imposed on the higher amount between the actual sales price and the net equity of the business segment transferred.

8 Software Licensing (On-Premise)

8.1 What are the key issues for a customer to consider when licensing software for installation and use on its own systems (on-premise solutions)?

Some of the key contractual issues for customers to consider in relation to the above-described on-premise solutions are:

- responsibility of the vendor to deliver the product (software);
- the number of users allowed to use the software;
- intragroup use (companies within the same group may not be allowed to use the software unless they are expressly granted a licence as separate entities/users);
- third-party (customer's third-party service providers) access to the software;
- the geographical extent of the licence and/or geographical limitations related to accessing the software;
- license to reproduce/make copies of the software and relevant payment information;
- limits on the number of devices onto which the software can be uploaded;
- a description of the customer's needs and wording regarding modification of the software to meet such needs. Also, regulation of whether additional costs would be incurred and/or not, depending on the modifications and on when those modifications would take place;
- description of all open source code (OSS) and tools with respective clauses on due use as per the OSS respective licences by the vendor;
- representations and warranties and relevant indemnity clauses: adequate protection should be sought related to the performance of the software and/or on the infringement of third-party IP rights;
- clauses/wording related to the vendor securing business continuity for the client in case of termination of the agreement.

8.2 What are the key issues to consider when procuring support and maintenance services for software installed on customer systems?

Some of the key contractual key issues for customers to consider in relation to support and maintenance services installed on customer's systems are:

- whether the support will take place remotely and/or on site, or a combination of both;
- depending on the business and its needs, ensuring appropriate and accredited (if possible/applicable) level of provision of services;
- categorising the types of services and whether additional costs would be incurred (e.g. ensuring no additional support maintenance costs would be incurred for necessary updates and/or upgrades so as to secure due function of the software, including updates that secure compliance with applicable legal provisions);
- the total number of hours, the timeframe and the respective potential increase in cost depending on the time of provision of the service should be specified;

- matters related to access to commercially sensitive information and/or personal data and/or sensitive information should also be covered; and
- clauses/wording related to the vendor securing business continuity for the client in case of termination of the agreement.

8.3 Are software escrow arrangements commonly used in your jurisdiction? Are they enforceable in the case of the insolvency of the licensor/vendor of the software?

Escrow agreements are not very widely used in Greece; however, they are starting to be all the more in transactions related to IT/software/technology development entities where source code and other related rights are involved. In some cases, public procurement related contracts may provide for the execution of escrow agreements as a prerequisite.

9 Cloud Computing Services

9.1 Are there any national laws or regulations that specifically regulate the procurement of cloud computing services?

Public law: For the procurement of Cloud computing services, the abovementioned Law 4412/2016, as amended and in force, is applicable. The contract notice provisions, the terms of the contract and the provisions of the GCC are also in force and are applied in a supplementary way.

Greek Law 4727/2020 on Digital Governance ("Digital Governance (Transposition to the Greek Legislation of Directive (EE) 2016/2102 and the Directive (EE) 2019/1024) – Electronic Communications (Transposition to the Greek Law of Directive (EE) 2018/1972) and other provisions") includes a number of provisions relevant to Cloud computing services. Specifically, art. 87 provides for the following three government Clouds: the Government Cloud of the Public Sector (G-Cloud); the Government Cloud of the Research and Education Sector (RE-Cloud); and the Governmental Cloud of the Health Sector (H-Cloud), managed by the General Secretariat for Public Administration Information Systems (Γ.Γ.Π.Σ.Δ.Δ.), the National Network of Infrastructures for Research and Technology (E.Δ.Υ.Τ.Ε. S.A) and the e-Government of Social Security (Η.ΔΙ.Κ.Α. S.A), respectively. As per art. 85, the above three entities shall procure Cloud computing services as a priority for public sector bodies as a whole over any other technological solutions for the purpose of data storage, hosting of information systems and applications of public sector bodies, provision of Cloud services to public sector bodies, the performance of their responsibilities, and the design and productive operation of technological infrastructures and information systems. Moreover, in order to promote the use of the Cloud by the Greek public administration, art. 87 para. 8 stipulates that the Ministry of Digital Governance shall design and implement a digital marketplace for Cloud services and applications in which public sector entities and Cloud service providers shall register, posting in particular the Cloud services provided, technical details and procurement costs.

9.2 How widely are cloud computing solutions being adopted in your jurisdiction?

Cloud computing solutions have recently been adopted in the public sector in light of Greece's general efforts to integrate new digital technologies and ensure the interconnection and interoperability of Public Sector Systems. A number of regulatory reforms to increase the reliability and security of Cloud critical infrastructures are further included in the country's Recovery and Resilience Plan.

In the private sector, Cloud computing solutions have been widely adopted within the past few years, while private investments in Cloud-based solutions and applications are steadily increasing.

9.3 What are the key legal issues to consider when procuring cloud computing services?

Public: The provisions of the Greek procurement framework (Law 4412/2016, as amended and in force) aim to serve the public interest and ensure a prevailing position of the contracting authorities with respect to the conclusion and execution of the public contracts. The aforementioned principles (public interest and the customer's prevailing position) constitute fundamental doctrines governing the interpretation and implementation of Greek public tender law.

Data protection: One important issue that customers need to consider when procuring Cloud computing services is to confirm that their data is stored on servers located in countries that provide an adequate level of protection in terms of their data. Companies that use Cloud service providers located outside the European Economic Area must make sure that requirements laid down in Chapter V of the GDPR are met and they must enter into adequate data processing agreements with them.

10 AI and Machine Learning

10.1 Are there any national laws or regulations that specifically regulate the procurement or use of AI-based solutions or technologies?

Public law: For the procurement of AI-based solutions, the abovementioned Law 4412/2016, as amended and in force, is applicable, as well as the contract notice provisions, the terms of the contract and the provisions of the GCC, which are applied in a supplementary way.

The use of AI is not regulated in Greece by law; however, AI is recognised as one of the key points of Greece's Digital Strategy for 2020–2025, which includes the country's conditions for the development and use of AI-based technologies. Greece is now taking the final steps in developing a National Strategy for the utilisation of AI and working on issues related to data collection and quality, ethical dimensions and skills for AI. The key areas of focus are economic growth, with the use of AI and the application of AI to the public sector. Further, following the European Commission's proposal in April 2021, a new EU Regulation – the Artificial Intelligence Act – is expected to come into force.

10.2 How is the data used to train machine learning-based systems dealt with legally? Is it possible to legally own such data? Can it be licensed contractually?

Data used to train machine learning systems could, in some cases, be protected as confidential information and the use thereof by third parties could be provided for under the respective agreement(s).

Under Greek Law 2121/1993 on the protection of intellectual property ("Greek IP Law"), some data and databases (i.e., a collection of independent works, data or other materials

arranged in a systematic or methodical way and individually accessible by electronic or other means) could be copyright protected and therefore also licensed contractually.

[Note on ownership: Under Greek law, the owner of any copyright work needs to be a natural person and such person always maintains the moral rights. For entities/employers of employees that are also creators, Greek IP Law provides that all exploitation/use/economic rights to the works related to computer programs automatically vests with the employer (provided that a written employment agreement has been executed). For works of independent contractors, however, the transfer and assignment of written agreements should take place.]

10.3 Who owns the intellectual property rights to algorithms that are improved or developed by machine learning techniques without the involvement of a human programmer?

Algorithms cannot be the object of copyright protection since they do not constitute the expression of an original creation. The source and machine code (software), the preparatory work and the structure of a computer program can be protected, but not the algorithm, which is considered an idea/principle on which elements of a computer program are based. In matters of ownership of the elements that can be protected under copyright, our "Note on ownership" included in our answer to question 10.2 above also applies in this case.

11 Blockchain

11.1 Are there any national laws or regulations that specifically regulate the procurement of blockchain-based solutions?

Public law: For the procurement of blockchain-based solutions, the abovementioned law 4412/2016, as amended and in force, is applicable, as well as the contract notice provisions, the terms of the contract and the provisions of the GCC, which are applied in a supplementary way.

While blockchain technology is used to some extent in the public domain, there have not yet been any large-scale applications. Notably, the Hellenic Blockchain Hub (a non-profit organisation of executives from the public and private sector) has recently entered into a memorandum of co-operation with various organisations including the Supreme Council for Personnel Selection (ASEP). Blockchain-based technologies are most widely being adopted in the IT, financial, fintech and insurance sectors, as well as in public administration, while interest in the energy and maritime industry is also steadily growing.

11.3 What are the key legal issues to consider when procuring blockchain-based technology?

Public law: See our answer to question 9.3 above.

In some instances, while all users of a particular public blockchain system may have access to the data on the network, no single party may take responsibility for the availability or security of the network. This attribute conflicts with the thrust of privacy and data protection laws, which require the party controlling personal data to safeguard the security and privacy of that data, thus making it important to determine whether a party qualifies as a controller or a processor under the GDPR based on their respective activities. Nevertheless, many blockchain systems are operated by all the users in a peer-to-peer network environment, which makes the aforementioned distinction even more complex.

IP-related issues that should be addressed include, *inter alia*:

- IP rights and protections should reflect the regulations of the jurisdictions involved in the transaction;
- whether new works should be owned solely or jointly and how they should be owned;
- licensing of IP and relevant permissions and limits; and
- IP infringement indemnification.

Private law*:* In this case, the party responsible for the state of the product at each stage of its manufacture, storage, transport, sale and delivery to the consumer should be specified in order to distinguish at all times who is liable for any defects or destruction of the product.

Konstantinos Vouterakos leads the firm's TMT practice, advising on communications and information technology law. He represents both national and international clients with respect to regulatory issues under the jurisdiction of the National Telecommunications and Post Commission (EETT), the principal telecommunications regulator in Greece. Konstantinos acts for a variety of TMT clients and handles various information technology matters. He has represented various clients in many projects and aspects related to the above subject-matters, *inter alia*, in the granting of licences for the installation of electronic communication networks and the rendering of relevant services, in public consultations and bidding procedures, and advises on regulatory compliance issues in alignment with the electronic communications framework.

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KG Law Firm's TMT practice represents national and international clients with respect to regulatory issues under the jurisdiction of the National Telecommunications and Post Commission (EETT), the principal telecommunications regulator in Greece, and other competent regulatory authorities. We deliver advice that is not only legally accurate, but also has the commercial awareness needed to guide our clients forward towards sustainable long-term results.

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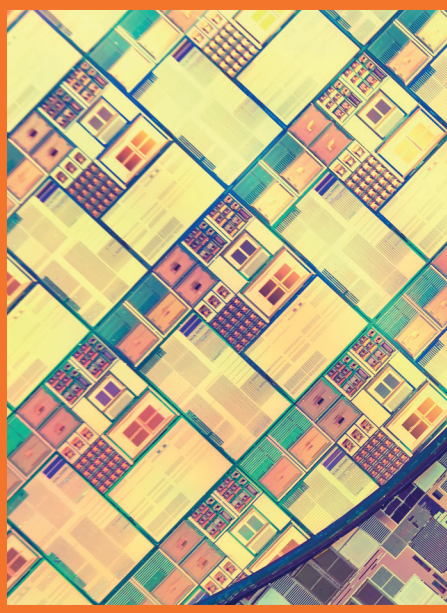

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