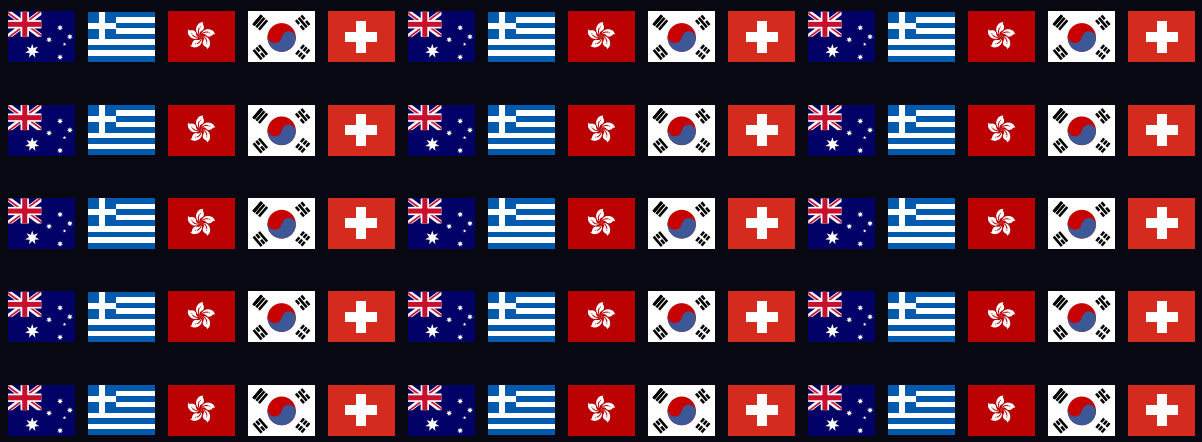
FINANCIAL SERVICES LITIGATION

Greece



LEXOLOGY
Getting The Deal Through

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Quick reference guide enabling side-by-side comparison of local insights into nature of claims; specialist courts and procedures; arbitration, alternative dispute resolution and out-of-court settlements; disclosure, data protection and related case management issues; enforcement and remedies; changes in the regulatory landscape since the financial crisis; and recent trends.

Generated 27 July 2023

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NATURE OF CLAIMS

Common causes of action

What are the most common causes of action brought against banks and other financial services providers by their customers?

Greek law recognises two main causes of liability: tort and contractual. Contractual liability arises from breach of contract, whereas tort liability arises from a breach of statute obligations. The existence of an agreement between two parties does not exclude the possible parallel existence of tort liability of one party to the agreement towards the other. Supreme Court Decision No. 1028/2015 found that the criterion for tort liability to apply despite the existence of a contract is whether the behaviour of one party towards the other would also establish tort liability even if there was no agreement between them. In that case, the plaintiff may choose between the two legal bases to bring an action against their counterparty, but they can be indemnified only once for the damage suffered.

The most common cause of action brought against banks and other financial services providers is tort (ie, the alleged breach of a statute). The typical scenario is the filing of a civil action by an investor against a bank or other financial institution (eg, an investment firm or fund manager), seeking damages arising from selling to that client one or more financial instruments (usually debt instruments such as bonds or notes, but also shares or units of collective investment schemes in some instances) that subsequently lost value or whose issuer became insolvent or that suffered a write-off for any reason. The most common allegation by a client is that the bank or financial institution either provided untrue statements while advising, promoting or selling the product to the client, or failed to provide the necessary risk warnings or disclose product-related and issuer-related information that was crucial to the client for assessing the prospects and risks related to the particular investment, especially as far as structured products, perpetual notes or low-rated bonds are concerned.

Other sources of action involve claims against investment firms or banks for defective provision of investment services, mainly arising from the execution of on-exchange trades for the purchase of transferable securities without proper instruction by the investor or despite those in existence. Often, these disputes may also relate to the handling of the margin account of the client and the due application of the margin lending rules in the relationship between an investor and their broker or the lending bank. A recent court of appeals decision accepted that a bank, acting as both broker and lender in a margin loan for a client, is liable for the damage the client suffered as a result of its delay to address timely a margin call, which resulted in the client's loss of opportunity to sell their securities for higher prices during an abrupt drop of the portfolio securities.

Less frequently, actions against financial institutions and other market participants have a more technical or 'sophisticated' background, such as the activity of a market participant (ie, an issuer or its director, main shareholder or financial adviser) in a market abuse situation, a takeover bid or squeeze-out procedure in relation to a listed stock, and the effectiveness and enforceability of financial collateral arrangements and matters related to the settlement of derivative contracts. Professional counterparties are more likely to claim on the basis of contractual liability. Most recently, a court of first instance decision judged that minority shareholders of an issuer whose shares were compulsorily sold to the majority shareholder following a squeeze-out procedure are entitled to additional consideration because the price offered to them by the majority shareholder was lower than the fair price indicated by independent evaluators. On the other hand, a 2019 court of appeals decision rejected the application for annulment of the squeeze-out transfer and the return of the transferred stock to the initial owner (minority shareholder), judging that such mandatory transfer is not opposed to Greek constitutional principles so long as the consideration paid is fair.

Law stated - 02 June 2023

Non-contractual duties

In claims for the mis-selling of financial products, what types of non-contractual duties have been recognised by the court? In particular, is there scope to plead that duties owed by financial institutions to the relevant regulator in your jurisdiction are also owed directly by a financial institution to its customers?

In Supreme Court Decision No. 1738/2013, the Court decided that the violation of regulatory provisions governing the operation of a financial institution (bank, investment firm, fund manager or insurance company), to the extent the rules are laid down to protect the interests of clients (such as the conduct of business rules provided by the Markets in Financial Instruments Directive (MiFID I and MiFID II), can give rise to a tort claim action filed by a client, provided that there is at least some degree of negligence by the financial institution, as well as a causal connection between that violation and the damage suffered by the client. This means that no such liability applies in relation to regulatory provisions that do not directly affect the legal relationship between a financial institution and its client, such as the main organisational rules of banks and investment firms (eg, the obligation to have an internal audit or compliance operation).

In practice, it is common for clients to raise claims against financial institutions for the sale of one or more financial products, alleging that the financial institution has violated certain obligations or prohibitions arising from the MiFID (or the pre-existing Investment Services Directive (ISD)) conduct of business rules, such as the obligation to 'act fairly, honestly and professionally', to 'provide marketing information that is fair, clear and not misleading' and to 'obtain the necessary information regarding the client's or potential client's knowledge and experience in the investment field relevant to the specific type of product or service' when providing investment services such as investment advice or discretionary portfolio management. The client has the burden to prove that as a result of the violation or omission by the financial institution, they were enticed into the wrong investment decision as well as suffered specific financial damage from the investment, however in case the client qualifies as a 'consumer', the burden of proof in respect of the violation and the fault of the services provider is reversed.

Therefore, based on the general principle of article 914 of the Civil Code, which states that 'whoever acting unlawfully and in fault causes a pecuniary damage to another party, is obliged to compensate same', a client may seek damages from a bank or other financial institution that resulted from the violation of regulatory provisions in the course of rendering financial services to the client. Additionally, the competent supervisory authority (the Hellenic Capital Market Commission for investment firms and fund managers or the Bank of Greece for banks and insurers) is also entitled to impose administrative sanctions for the same alleged violations, but this does not prejudice the right of a client to seek damages from such institution via a civil lawsuit.

Even in the event no particular legal or regulatory provision has been violated, the client may still seek damages suffered if they prove that a particular behaviour of a financial institution was contrary to the general civil law principle of 'acting in good faith' (article 288 of the Civil Code) and that they suffered specific economic damage because of this behaviour.

MiFID II was implemented by Law No. 4514/2018 on markets in financial instruments and other provisions, which came into force in January 2018. Up until now, we are not aware of any natural or legal person that has raised any claim against any financial institution based on the new MiFID II regime; therefore, there is no new case law rebutting the above analysis, which we estimate the provisions of Law No. 4514/2018 do not radically affect.

Law stated - 02 June 2023

Statutory liability regime

In claims for untrue or misleading statements or omissions in prospectuses, listing particulars and periodic financial disclosures, is there a statutory liability regime?

Articles 60 and 61 of Law 4706/2020 set out a liability regime in connection with claims for untrue or misleading statements or omissions in prospectuses. Article 60 of Law No. 4706/2020, implementing the respective provision of article 11 of Regulation No. 2017/1129 (the Prospectus Regulation), provides for civil liability for untrue or misleading statements or omissions in prospectuses. Persons potentially liable include, among others, the issuer, its directors and the adviser. Paragraph 4 of the same article further states that persons responsible for a prospectus' contents must be clearly identified in the prospectus. Furthermore, Article 61 provides that this liability regime covers investors who acquired transferable securities within 12 months from the issuance of the prospectus and that under that regime, the burden of proof on the degree of fault about the untrue or incomplete statements in the prospectus is not on the plaintiff or investor (as would normally be the case under the common law regime) but on the defendants or persons responsible for the prospectus. On the other hand, the plaintiff or investor must demonstrate the causal link between the fault of the defendants concerning the untruth and incompleteness of the prospectus and its loss. The liability regime, set out in articles 60 and 61 of Law 4706/2020, applies for three years from the publication of the prospectus, after the lapse of which the relevant claims are time-barred and can thereafter be only pursued on the basis of common law provisions.

Law stated - 02 June 2023

Duty of good faith

Is there an implied duty of good faith in contracts concluded between financial institutions and their customers? What is the effect of this duty on financial services litigation?

The general good faith principle of article 288 of the Civil Code is applicable on top of contractual arrangements or specific statutory obligations. Even in circumstances where a financial institution is compliant with the 'letter' of its statutory obligations, it can still be liable towards the client for failing to meet the 'spirit' of the protective regime by application of the aforementioned good faith principle. A manifestation of this general law principle in the MiFID environment is article 25 of Law No. 4514/2018, imposing the obligation to investment services providers to act fairly, honestly and professionally towards their clients.

The court of appeals has judged that the intensity of the good faith obligation of a financial services provider towards its client is even higher because of the specialised nature of this activity, and as a result, the provision of all information enabling the client to make an informed investment decision is of high importance to the client.

Law stated - 02 June 2023

Fiduciary duties

In what circumstances will a financial institution owe fiduciary duties to its customers? What is the effect of such duties on financial services litigation?

According to dominant legal theory and case law in Supreme Court Decision No. 244/2016 (as well as Supreme Court Decisions Nos. 1350/2018, 1351/2018, 354/2022 and 1319/2022), because the customer approaches a bank or other financial institution, a general banking relationship is established, regardless of whether the contact culminates in the execution of a written contract. As a result of the establishment of this legal relationship, the bank or financial

institution has a 'fiduciary duty' towards those clients; namely, a general obligation to take care and protect their interests in accordance with the good faith principle. This means that the bank, regardless of whether there is a specific financial services agreement, has the obligation to act for the benefit of the client and provide them with the appropriate advice, guidance and enlightenment in respect of the purported financial activity.

Furthermore, upon the establishment of this relationship, the bank or financial institution must identify important factors of the investment profile of the client, such as the personal characteristics (eg, age and health), personal needs and objectives, risk tolerance, financial ability, knowledge and experience of the client in the financial area and assess the client's capability to understand the risks they take by proceeding with a particular financial activity. Having determined and weighed all this, the bank or financial institution must provide the client with sufficient advice and guidance concerning financial products to allow them to make a well-informed investment decision, regardless of whether the initiative for the particular investment activity was of the client or whether they were solicited by that financial institution. From a technical perspective, the breach of this duty does not constitute a breach of contract but rather establishes tort liability.

Law stated - 02 June 2023

Master agreements

How are standard form master agreements for particular financial transactions treated?

There is no court precedent in connection with the application, interpretation and enforcement of standard form master agreements such as the International Swaps and Derivatives Association Master Agreement because, typically, those master agreements are governed by foreign (usually English) law, and, in addition to that, the respective disputes are mostly referred to foreign courts or arbitrators.

Law stated - 02 June 2023

Limiting liability

Can a financial institution limit or exclude its liability? What statutory protections exist to protect the interests of consumers and private parties?

Contractual exclusion of liability is generally permitted; however, such exclusion is not effective to the extent it covers wilful misconduct and gross negligence, pursuant to article 332 of the Civil Code. This protective law provision applies equally in favour of both professional and retail clients. As a result, financial institutions may successfully limit only their liability for minor negligence.

Apart from the above, additional restrictions apply to pre-formulated contracts that include general terms and conditions to be executed or accepted by persons qualifying as 'consumers' for the purposes of Consumer Protection Law No. 2251/1994. This Law protects consumers who are unable to negotiate personally the terms in these types of contracts. Therefore, when the counterparty of a financial institution is a person who can be classified as a consumer (ie, a natural person acting for purposes that are outside their trade, business, craft or profession), the bank or financial institution is not allowed to exclude its liability even for minor negligence, again on penalty of nullity.

Law stated - 02 June 2023

Freedom to contact

What other restrictions apply to the freedom of financial institutions to contract?

Consumer Law No. 2251/1994 also includes an indicative list of clauses that are considered per se unfair and abusive and consequently could be deemed ineffective by a court in the context of a dispute between the services provider and a consumer. Inter alia, the following clauses are considered abusive per se:

- those that give the service provider, without reasonable cause, an overly long deadline for accepting the consumer's proposal to sign a contract;
- those that restrict the contractual duties and responsibilities of the service provider;
- those that provide for a contract termination notice period that is too short for the consumer or too long for the service provider;
- those that entail the prolongation or renewal of a contract for too long a time period, if the consumer does not terminate it within a certain period;
- those that allow the service provider to amend or terminate a contract unilaterally without providing any specific, special and significant reason; or
- those that allow a service provider to terminate a contract of indefinite duration without a reasonable notice period.

The capacity of a consumer is not automatically awarded for all purposes to all investors who trade outside their professional activities. Consistent with case law established by the Court of Justice of the European Union (CJEU), Greek Supreme Court Decision No. 1738/2009, and more recently Greek Supreme Court Decision No. 847/2020, ruled that a person who used to be involved in risky, speculative or leveraged trade activity does not qualify as a consumer and therefore is not entitled to the protection and benefits provided to consumers under the Lugano Convention 1988. Lower courts tend to accept that the same differentiation must be made to determine whether a person deserves protection under the local Consumer Protection Law No. 2251/1994. However, in light of the most recent CJEU rulings on this matter, some court of appeals decisions issued in 2021 ruled that the type and risk of the trading activity, as well as the personal skills and knowledge of a client, are not decisive factors for the characterisation of that client as a consumer and the crucial factor in the context of this analysis should be whether the purpose of the activity is connected with the satisfaction of that person's personal or professional needs. As a general rule, the status of consumer will be deemed on a case-by-case basis, taking into consideration all personal characteristics of a particular investor, however there could be a trend of widening the scope of the consumer definition as far as investors and users of financial services are concerned.

Law stated - 02 June 2023

Litigation remedies

What remedies are available in financial services litigation?

The remedies available in financial services litigation include damages, restitution of moral damage and rescission of a particular transaction. The latter is not so common because often the challenged transaction in financial services litigation is not between the plaintiff (client) and the defendant (bank or financial institution); the typical structure is that the bank or financial institution has only acted as an intermediary or investment adviser, while the client has purchased a financial product from a third party directly or with the intermediation of the financial institution. The third party is often unknown and, in any event, not liable to a rescission of the particular transaction.

Injunctive relief is also possible in the Greek judicial system, and because of delays in the issuance of a final judgment,

the filing of a petition for injunctive relief is rather usual and advisable. The issuance of a court order for injunctive relief requires the plaintiff to invoke the existence of an imminent danger to their claim (eg, consisting of the forthcoming insolvency of a defendant or possible loss or destruction of evidence). Injunctive measures may take several forms, including a provisional seizure of the defendant's assets, a charge on the defendant's real property or the issuance of an order against the defendant to provide sufficient guarantee to the plaintiff.

Law stated - 02 June 2023

Limitation defences

Have any particular issues arisen in financial services cases in your jurisdiction in relation to limitation defences?

The general rule in respect of civil claims is that for tort liability there is a five-year limitation period, and for contractual liability there is a general limitation period of 20 years, whereas in respect of particular contracts (eg, commercial sales and professionals' fees), the limitation period is five years.

The pre-MiFID regime governing stock exchange trades of Law No. 3632/1928 provided that disputes between brokers and their clients from on-exchange transactions were subject to a very short limitation period of one year from the date of the respective trade. Legal disputes ensued in respect of that provision and specifically on whether it included all financial obligations arising from an on-exchange trade – which the courts tended to deny. However, since November 2007, when MiFID was first transposed into Greek law, this provision was abolished, and the matter is no longer of any practical interest.

Consequently, there are no particular issues in respect of limitation defences, and as a result, lawsuits must be filed and served to the defendant within five or 20 years from the alleged harmful incidents, depending on their legal basis (tort or contract respectively).

Law stated - 02 June 2023

PROCEDURE

Specialist courts

Do you have a specialist court or other arrangements for the hearing of financial services disputes in your jurisdiction? Are there specialist judges for financial cases?

Greek civil procedure does not provide for any special court or jurisdiction for the hearing of financial disputes. Unofficially, as a matter of internal organisation and to optimise the operation of the courts, care is usually taken for complex financial cases to be assigned to judges with sufficient knowledge and experience.

From an administrative law perspective, pursuant to article 25 of Law No. 3371/2005, the decisions of the Hellenic Capital Market Commission imposing administrative sanctions (eg, monetary fines and revocation of licences) for violations of the financial regulatory regime are brought before the Athens Administrative Court of Appeal.

Law stated - 02 June 2023

Procedural rules

Do any specific procedural rules apply to financial services litigation?

Greek law does not provide for any specific procedural rules applicable to financial litigation. The general provisions of

Greek civil procedural law will apply.

Law stated - 02 June 2023

Arbitration

May parties agree to submit financial services disputes to arbitration?

Greek law generally recognises the right of the parties to submit any type of dispute (including financial disputes) for arbitration. The primary and general source of law for domestic arbitration are articles 867 to 903 of the Civil Procedure Code.

Law stated - 02 June 2023

Out-of-court settlements

Must parties initially seek to settle out of court or refer financial services disputes for alternative dispute resolution?

Law No. 4640/2019, further implementing Directive 2008/52/EC, introduced an alternative dispute resolution framework for civil and commercial matters. Recourse to the Law's mediation procedure is, for the most part, optional for the parties. However, for certain categories of disputes (namely all cases under the competence of the Multi-Member Court of First Instance and any case under the competence of the Single-Member Court of First Instance, which has a claim value greater than €30,000), article 6 of the Law, provides for a 'mandatory initial session'.

For any case falling under those categories, the prior conclusion of an initial session of mediation is set as a necessary condition of admissibility for related actions brought before national courts. Mediators, who are not necessarily legal professionals, must have certain qualifications, as set out in article 12 of Law No. 4640/2019. If the parties fail to reach an agreement on the person to be appointed as mediator, then a mediator is appointed by the central mediation committee.

Upon the conclusion of the initial session, a report is signed by the mediator and the parties. If the parties fail to reach an agreement and an action is brought before the civil courts, the signed report must be submitted alongside other relevant documents. Pursuant to paragraph 14, article 74 of Law No. 4690/2020, articles 6 and 7 of Law No. 4640/2019 came into force on 1 July 2020, making mediation an essential part of several civil cases in Greece.

Law stated - 02 June 2023

Pre-action considerations

Are there any pre-action considerations specific to financial services litigation that the parties should take into account in your jurisdiction?

Greek procedural law does not provide for any specific pre-action procedure, and as a result, there are no such considerations that parties must take into account. As a general rule, judicial notices are not legally required and are not prerequisites for the main litigation unless special circumstances (eg, an agreement between the parties) require them. The parties must only adhere to the Civil Procedure Rules regarding the prior service of the summons for the court hearing, as well as the notification regarding the witnesses or testifiers in respect of a particular case.

As far as the post-action procedure is concerned, based on the Civil Procedure Rules, when a lawsuit is filed, the plaintiff must serve the lawsuit to the defendant within 30 days of filing, and both parties (plaintiff and defendant) must

file their pleadings to the court within 90 days of filing, starting after the end of the aforementioned 30-day period. If the defendant resides outside Greece or has an unknown address, the 30-day deadline is extended to 60 days.

Law stated - 02 June 2023

Unilateral jurisdiction clauses

Does your jurisdiction recognise unilateral jurisdiction clauses?

Under Greek law, the parties are allowed to agree on the territorial competence of the court in respect of all their future disputes arising out of a particular legal relationship. Once executed, the jurisdiction clause is binding for all contracting parties.

The execution of unilateral jurisdiction clauses, whereby one party can only bring proceedings in one specified jurisdiction while the other may choose to bring concurrent proceedings in an unlimited number of jurisdictions, is not prohibited in Greek law.

Law stated - 02 June 2023

DISCLOSURE

Disclosure obligations

What are the general disclosure obligations for litigants in your jurisdiction? Are banking secrecy, blocking statute or similar regimes applied in your jurisdiction? How does this affect financial services litigation?

The principle of banking secrecy provides a wide spectrum of general disclosure restrictions. However, it also provides specific exemptions, according to which the disclosure of information is permitted in certain circumstances. One of these circumstances is the use of client information to the extent necessary to support or refute a lawsuit during the court hearing. The Personal Data Protection Law No. 2472/1997 provides that such use is permitted to the extent necessary. Under the General Data Protection Regulation (EU) 2016/679 (GDPR) , respective restrictions are provided. Law No. 4624/2019, adopting measures in accordance with the GDPR, came into force on 26 August 2019.

Law stated - 02 June 2023

Protecting confidentiality

Must financial institutions disclose confidential client documents during court proceedings? What procedural devices can be used to protect such documents?

Three issues need examining:

1. whether a financial institution is (or may be) obliged to provide certain information despite its will;
2. whether and to what extent a financial institution is able to provide client information to the court to effectively support its allegations; and
3. whether there are other circumstances where a financial institution can be obliged to provide client information to courts and authorities other than civil courts (eg, administrative or criminal proceedings or investigations).

In respect of point (1), subject to the general duty of all litigant parties laid down by the Civil Procedure Rules (article

116 of the Civil Procedure Code) to present the truth as they know it without unclear or ambiguous expressions, there are generally no rules obliging parties to disclose certain information, unless the disclosure is specifically ordered by the court. Therefore, a financial institution may only disclose such an amount of information as is deemed appropriate to effectively support its allegations during a particular trial. However, this does not mean that any litigant is permitted to knowingly present untrue allegations to the court (eg, a financial institution stating that an event never took place while the files of that institution show that the event actually took place). Under some conditions (knowledge of the falsehood and purpose of obtaining profit), such behaviour could be criminally punishable as fraud. On the other hand, a financial institution could legitimately deny providing information or furnish documents that include personal data of third parties (ie, not the opposing party and not the financial institution itself) because those third parties are covered by the banking secrecy obligation.

Regarding point (2), a financial institution, despite the existence of the banking secrecy duty, may disclose to the court all documents that include confidential information concerning the opposing party to effectively support its allegations, but it cannot disclose personal data of third parties without the prior written consent of those third parties.

With regard to point (3), a financial institution must disclose client information in the context of administrative or criminal court proceedings or investigations (eg, for money laundering, terrorism or other financial crimes) if requested by the Bank of Greece, the district attorney or the tax authorities.

Law stated - 02 June 2023

Disclosure of personal data

May private parties request disclosure of personal data held by financial services institutions?

As a general rule, disclosure of personal data is not permitted without the prior consent of the subject of the data. However, article 902 of the Civil Code and article 450 of the Civil Procedure Code provide the possibility for a person or entity to apply for the issuance of a court order by which another person or entity (including a financial institution) is ordered to disclose certain documents and the information included therein. To the extent those documents include personal data of third parties, the court may reject the request to issue the order if it deems that the interest of the subject of the personal data is more important than the interest of the applicant for the disclosure of those documents and information.

Law stated - 02 June 2023

Data protection

What data governance issues are of particular importance to financial disputes in your jurisdiction? What case management techniques have evolved to deal with data issues?

The Civil Procedure Rules do not provide for a disclosure or discovery process. Parties are expected to provide all evidence that they rely on. However, article 902 of the Civil Code and article 450 of the Civil Procedure Code provide the possibility for a person or entity to apply for the issuance of a court order by which another person or entity (including a financial institution) is ordered to disclose certain documents and the information included therein. In general, there are no data governance issues that could be considered of importance in Greece.

Law stated - 02 June 2023

INTERACTION WITH REGULATORY REGIME

Authority powers

What powers do regulatory authorities have to bring court proceedings in your jurisdiction? In particular, what remedies may they seek?

The competent authorities that are responsible for supervising the exercise of investment and banking activities in Greece, namely the Hellenic Capital Market Commission (HCMC) and the Bank of Greece respectively, may impose immediately enforceable administrative sanctions (reprimand, monetary fine, revocation of licence, issuance of an order to cease or not repeat certain behaviour or activity, a public announcement regarding the illegal activity, etc) where they deem that a supervised entity has violated the applicable regulatory provisions. However, they are not entitled to bring court proceedings against those entities. The regulators may issue enforceable administrative legal acts by which they impose sanctions or take measures against supervised persons or entities with immediate legal effect, and the affected persons or entities may challenge these enforceable decisions by filing an appeal before the administrative courts. In other words, disputes between regulators and supervised persons or entities are always brought before the administrative courts with the initiative of the latter.

Law stated - 02 June 2023

Disclosure restrictions on communications

Are communications between financial institutions and regulators and other regulatory materials subject to any disclosure restrictions or claims of privilege?

As a general rule, all communications between regulators and the supervised entities (including financial institutions) are confidential and cannot be disclosed to any third party. However, certain exemptions apply, such as:

- disclosure of information in the context of a criminal investigation;
- upon request of the Ministry of Finance;
- when this information is included in a decision of the board of directors of the HCMC; or
- in the context of the exchange of information with a foreign regulator, etc.

Law stated - 02 June 2023

Private claims

May private parties bring court proceedings against financial institutions directly for breaches of regulations?

Private parties may only seek compensation before civil courts against financial institutions for damages they suffered as a result of the breach of the applicable rules or contractual arrangements by those financial institutions. It is not possible for private parties to initiate civil or administrative court proceedings against those financial institutions for alleged violations of the applicable rules without the existence of personal damage suffered by the parties.

From an administrative law perspective, if a private party (eg, a client or an investor) believes that a financial institution has violated the applicable regulatory regime, it may file a complaint to the respective supervisory authority, and that authority is obliged to further investigate the case and impose a sanction on that institution if it deems that a violation has indeed taken place. However, the sanction does not automatically provide any benefit to the person or entity that

filed the complaint.

On the other hand, if that violation also constitutes a criminal violation (eg, in the event the alleged violation is market manipulation or the use of inside information, which under some conditions also constitute criminal violations), the above private party may file a criminal complaint to the district attorney to further investigate the case and proceed to a criminal trial. The party that filed the complaint cannot be a party in that trial, and it is not granted any benefit from the potential outcome of the trial unless it proves that it has personally suffered specific damage as a result of the behaviour of the financial institution (and through a civil case against the defendant).

Law stated - 02 June 2023

In a claim by a private party against a financial institution, must the institution disclose complaints made against it by other private parties?

Greek law does not provide for the obligation of financial institutions to disclose complaints made against it by other private parties; therefore, a financial institution is not obliged to act likewise, unless specifically requested by the court, the district attorney or the supervisory authority.

Law stated - 02 June 2023

Enforcement

Where a financial institution has agreed with a regulator to conduct a business review or redress exercise, may private parties directly enforce the terms of that review or exercise?

No. The Greek regulatory regime does not provide for the possibility of regulators to impose such measures nor are they part of any local practice.

Law stated - 02 June 2023

Changes to the landscape

Have changes to the regulatory landscape following the financial crisis impacted financial services litigation?

Financial litigation has not been significantly affected by the changes to the regulatory landscape following the global financial crisis of 2008. However, events related to the Greek debt crisis caused an increase in the number of financial litigation cases within Greece. One such case was the private sector involvement (PSI) plan of 2012, by which a write-off of 53.5 per cent of the face value of Greek government bonds was applied. The PSI led to a large number of actions being filed by private as well as professional investors as plaintiffs against the Greek state. In some cases, investors also turned against the financial institutions (mainly banks) that sold them the respective products. In a similar high-profile case, a large number of people who invested in securities issued or guaranteed by Lehman Brothers filed actions against a major international bank that had sold these products in great quantities to retail clients in Greece.

In the banking services sector, new disputes between credit institutions and borrowers arose as a result of the financial crisis, with the majority of them relating to the existence of a large number of bank loans to retail clients in foreign currency, such as the Swiss franc. Many borrowers suffered significant damage (eg, increased repayable amount) as a result of the increase in the value of the Swiss franc against the euro, which led them to seek protection from the courts by challenging the respective terms of their loan agreement.

Certain statutes for the protection of distressed borrowers came into effect after 2010 as a response to the Greek

financial crisis. Many borrowers obtained court protection by resorting to these statutes. In respect of foreign currency loans (most usually Swiss francs), which was a major dispute over the past decade, the Supreme Court, in Decision No. 4/2019, resolved the case in favour of lender banks, stating that the contractual clause setting out the obligation of the borrower to perform loan repayment either in the agreed foreign currency or in euros but on the basis of the exchange rate (of foreign currency to euro) applicable at the time of repayment cannot be challenged as abusive because it falls outside the protective scope of the respective consumer law provision.

Another topic expected to be 'hot' in the coming years is the activity in cryptocurrencies and potential disputes arising from transactions in cryptocurrencies. To date, the number of court decisions on this matter is limited and such disputes have been only brought before lower courts. The initial reaction of such lower courts appears to be rather negative towards transactions on cryptocurrencies, as a district court of first instance has judged that no obligation shall arise from a loan granted in cryptocurrencies. However, it remains to be seen whether this trend will be confirmed in higher court rulings.

Law stated - 02 June 2023

Complaints procedure

Is there an independent complaints procedure that customers can use to complain about financial services firms without bringing court claims?

There is no independent complaints procedure that can replace the filing of claims to the court by a client or counterparty of a Greek financial institution.

However, certain channels exist that can facilitate a client seeking to discuss a possible grievance or dissatisfaction with the products and services of a financial institution, either with the financial institution itself or with the authorities. More specifically, a private party can file a complaint with the competent supervisory authority or the district attorney to have the case investigated from a regulatory or criminal perspective.

A private party may seek to discuss the matter directly with the financial institution itself. This can be achieved in two ways: either directly with the financial institution or with the mediation of the Ombudsman on Banking and Investment Services, which is a special authority attached to the Ministry of Commerce (General Secretariat of Consumer Protection), competent to intermediate, following a complaint filed by a client, a particular dispute between a financial institution and a client, with the purpose of attaining an amicable solution, if possible.

This does not affect the right of a private party to directly address its complaint to the financial institution itself. Greek law sets forth sufficient procedures to facilitate this route. More specifically, banks and other financial institutions operating in Greece are obliged to duly incorporate and maintain a special department that is responsible for handling customers' complaints or grievances concerning the products and financial services they provide. One could, therefore, consider this as not being an independent procedure; however, it is supervised by regulatory authorities.

Banks and other financial institutions must notify their clients, in a clear and comprehensive manner, of the procedure for the application and examination of the complaints. The outcome of the internal investigation of the financial institution that was initiated following the complaint must also be disclosed to the involved clients within 45 days of its receipt. Furthermore, banks and other financial institutions must inform the Bank of Greece, on an annual basis, of the number of complaints received, the progress of cases under examination and the average time to respond to complaints. The Bank of Greece provides, on its official website, a list of the options available for making a complaint, for the benefit of investors.

Customers may file complaints against financial institutions before the Bank of Greece, which is however not entitled to either act as a mediator between the customer and the financial institution concerned or oblige the financial institution to indemnify the customer, but only to investigate the regulatory aspects of the case and possibly impose sanctions to

the credit institution if it establishes that it is in breach of the applicable laws and regulations (which in practice may provide a good supporting argument to the customer once they decide to bring the case against the sanctioned financial institution before courts).

Law stated - 02 June 2023

Recovery of assets

Is there an extrajudicial process for private individuals to recover lost assets from insolvent financial services firms? What is the limit of compensation that can be awarded without bringing court claims?

Yes. In respect of investment firms, after the revocation of their licence, a special liquidation procedure commences, during which all clients and counterparties of the investment firm must declare their claims against the firm to the special liquidator. The claims will be satisfied out of the assets of the insolvent firm, and if the assets do not suffice, the Investment Services Guarantee Fund will compensate all claims that arise from the provision of investment services, up to the amount of €30,000, which is the maximum compensation amount per client.

In the case of the insolvency of a Greek credit institution, there is a similar procedure. In that case, the Deposit Guarantee Fund will provide compensation up to the amount of €100,000, which is the maximum compensation amount per depositor, and €30,000 per investor, for services other than deposit taking.

Law stated - 02 June 2023

UPDATE AND TRENDS

Challenges and trends

What are the principal challenges currently facing the financial services litigation landscape in the past year? What trends are apparent in the nature and extent of financial services litigation? Are there any other noteworthy features that are specific to financial services litigation in your jurisdiction?

The modernisation of the civil procedure via the reduction of costs, complexities and timing involved still remains a challenge, although certain positive steps have been taken in this direction via the latest amendments to the Civil Procedure Code, including a pilot judgment procedure initiated in 2021. The newly established mediation procedure does not seem to be delivering as expected. It is more a formal prerequisite for the continuation of the proceedings in the court of first instance, rather than an alternative, effective way to accelerate the litigation process.

Law stated - 02 June 2023

Jurisdictions

Australia	Gilbert + Tobin
Greece	Souriadakis Tsibris
Hong Kong	RPC
South Korea	Kim & Chang
Switzerland	Bär & Karrer