

The International Comparative Legal Guide to:

# Class and Group Actions 2010

A practical insight to cross-border Class and Group Actions work



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### 1 Class/Group Actions

#### 1.1 Do you have a specific procedure for handling a series or group of related claims? If so, please outline this.

Until 2006, class actions in Israel were permitted only when they asserted a cause of action created by specific statutes that explicitly recognised the tool of class actions such as the Consumer Protection Law, 5741-1981, the Companies Law, 5759-1999, the Antitrust Law, 5748-1988 and others. In addition, Rule 29 of the Civil Procedure Regulations, 5744-1984 (the “Civil Procedure Regulations”) also permitted class actions based on “general” causes (such as tort law, contract law, unjust enrichment).

The legal framework for class actions, as described above, was unsatisfactory. First, the specific laws that allowed class actions did not use uniform language to regulate class actions. As a result, different types of class actions (e.g., class actions under the Companies Law, class actions under the Consumer Protection Law) were treated differently by the courts. Second, the Supreme Court held in a landmark decision in *State of Israel v. Eshet Project and Human Resources Management Ltd.*, P.D. 57(3) 220, 237 that class actions are a unique and powerful tools and can be created only by statutes and not by subordinate legislation (such as the civil rules of procedure).

Against this background, the Class Actions Law, 5766-2006 was enacted in Israel (hereinafter: the “Class Actions Law”), regulating the procedure of filing and managing and terminating class actions. The Class Action Law replaced all the specific statutory provisions that preceded it. Under Article 1 of the Class Actions Law, the purpose of the Law is to set out uniform rules regarding the filing and management of class actions, improvement of protection of rights, and the advancement of exercise of the right of access to the courts, enforcement of the law and deterrence of breach thereof, the awarding of an adequate remedy to persons injured by the breach of the law and efficient and exhaustive management of claims.

Generally, the Class Action Law is pro-plaintiffs. Since the enactment of the Class Actions Law, the number of class actions has grown significantly. There has also been a significant increase in the number of court certifications of class actions and settlements involving compensation of some sort to the class. Class Actions have now become a very common legal tool, primarily in consumers’ claims.

#### 1.2 Do these rules apply to all areas of law or to certain sectors only e.g. competition law, security/financial services. Please outline any rules relating to specific areas of law.

Article 3(a) of the Class Actions Law provides that only claims that fall under one of the categories set forth in the Second Schedule of the Class Actions Law or under an express statutory provision permitting the filing of a class action, can be filed as a class action.

The Second Schedule of the Class Actions Law contains some twelve categories of claims, in a large variety of areas of the law (torts, contracts, insurance, etc.).

The most notable categories are: (a) claims against a “supplier” under the Consumer Protection Law; (b) insurance-related claims; (c) claims against banks pertaining to client-bank relations; (d) claims under the Antitrust Law; claims involving securities; (e) claims regarding environmental hazards; (f) claims of discrimination under law; (g) most claims based on labour relations; and (h) claims against governmental and local authorities for the restitution of unlawful payments.

#### 1.3 Does the procedure provide for the management of claims by means of class action (whether determination of one claim leads to the determination of the class) or by means of a group action where related claims are managed together, but the decision in one claim does not automatically create a binding precedent for the others in the group?

Class actions in Israel are handled by the lead plaintiff on behalf of the entire group. The court’s ruling on the motion to certify the claim as a class action is both to the benefit of and binding against the entire group. Likewise, the verdict in the lead plaintiff’s case amounts to *res judicata* and binds the entire group on whose behalf the action was run (Article 24 of the Class Actions Law).

#### 1.4 Is the procedure “opt-in” or “opt-out”?

Article 11 of the Class Actions Law provides that the mechanism for inclusion in a group in a class action is an “opt out” mechanism. In other words, where a court certifies a class action, all of the members of the group defined by the court will be deemed to have agreed to the filing of the class action on their behalf. A plaintiff wishing to be excluded from the group may give notice to the court of his desire not to be included in the group, within 45 days of the date of publication of the notice of certification of the class action, or on such later date prescribed by the court.

However, in special circumstances, the court may order that the claim only be certified as a class action on behalf of those members of the group who have given written notice to the court of their desire to join the group, provided that there is a reasonable possibility of identifying and locating the members of the group on whose behalf the motion to certify the class action was filed. These circumstances may arise, under Article 12(a) of the Class Actions Law, when there is a reasonable possibility that claims might be filed for the same cause of action by a considerable portion of the members of the group, or where the sums of the individual claims is substantial.

#### 1.5 Is there a minimum threshold/number of claims that can be managed under the procedure?

There is no threshold requirement under the Class Actions Law for a minimum number of members of a group. However, one of the conditions for certification of a claim as a class action is that management of the claim as a class action is efficient and fair (Article 8(a)(3) of the Class Actions Law). The general perception of the courts is that it is not "efficient and fair" to run class actions for a small number of potential class members.

#### 1.6 How similar must the claims be? For example, in what circumstances will a class action be certified or a group litigation order made?

Article 8(a)(1) of the Class Actions Law provides that the court will certify a class action if the claim raises substantial questions of fact or law that are common to all of the members of the group. The courts have interpreted this Article broadly and liberally, and have held that it is not necessary that all of the substantial questions of fact or law relevant to the claim will be common to all members of the group in order for the class action to be certified.

#### 1.7 Who can bring the class/group proceedings e.g. individuals, group(s) and/or representative bodies?

Under Article 4(a) of the Class Actions Law, the following persons/entities may file a motion to certify a claim as class action: (1) a private person who has a cause of action in respect of which a class action may be filed (see the answer to question 1.2 above), giving rise to issues of fact or law that are common to the members of the group; (2) a public authority, in a claim or on grounds that may be filed as a class action which is within the ambit of one of the public purposes of such public authority and which raises issues of fact or law that are common to all of the members of the group; and (3) an organisation acting within its powers and public purposes, provided that the court is convinced that under the circumstances it is difficult for the motion to be filed by a private individual (with the exception of the Israeli Consumer Council which is permitted to file a motion to certify a class action even where there is no difficulty in having the action filed by a private individual).

#### 1.8 Where a class/group action is initiated/approved by the court must potential claimants be informed of the action? If so, how are they notified? Is advertising of the class/group action permitted or required? Are there any restrictions on such advertising?

Article 25 of the Class Actions Law sets out the conditions under which notice must be published to the members of the group, including the ruling of the court certifying the class action. The wording, form and method of presentation of the notice must be approved by the court. Likewise, the court may set the date and

method of publication of the notice to all of the members of the group. Under Article 14(a) of the Class Actions Law, a notice to members of the group certifying a class action must define the group on behalf of whom the class action will be conducted; the identity of the lead plaintiff and counsel; the causes of action and common issues of law and fact; and the remedies being claimed. In addition, notice must be given of the ruling of the court certifying the class action to the Managing Director of the Courts (administrative position) for the purpose of being recorded in the Class Actions Register (Article 14(b) of the Class Actions Law).

#### 1.9 How many group/class actions are commonly brought each year and in what areas of law e.g. have group/class action procedures been used in the fields of: Product liability; Securities/financial services/shareholder claims; Competition; Consumer fraud; Mass tort claims, e.g. disaster litigation; Environmental; Intellectual property; or Employment law.

In 2007, 138 motions to certify claims as class actions were filed in the Israeli courts, with the following segmentation to subject matters: 38% involved consumer fraud claims; 20% were administrative claims; 16% accounted for claims against banks and insurance companies; 6% were product liability claims; 4% alleged securities law violations; 4% labour law claims; 1% antitrust claims; and 11% general breach of rights claims and others. In 2008, 195 motions to certify claims as class actions were filed, with the following segmentation to subject matters: 28% consumer fraud claims; 26% claims against banks and insurance companies; 22% administrative claims; 6% labour law claims; 3% antitrust claims; 2% product liability claims; 1% securities claims; and 12% general breach of rights claims and others.

#### 1.10 What remedies are available where such claims are brought e.g. monetary compensation and/or injunctive/declaratory relief?

The court has broad discretion in awarding remedies in class actions. Under Article 20 of the Class Actions Law, the court may decide to award monetary compensation or another remedy to the members of the group, and may rule on the manner in which such compensation is divided up between the members of the group. In addition, where monetary compensation for the members of the group is not practical, the court may order the award of any other remedy that is to the benefit of the group, in whole or in part, or to the benefit of the public. The court will not award punitive damages in a class action. The court will also not award compensation without proof of damage (there are few exceptions set out in the law). However, the court may award compensation for non-financial loss.

## 2 Actions by Representative Bodies

#### 2.1 Do you have a procedure permitting collective actions by representative bodies e.g. consumer organisations or interest groups?

An organisation may file a motion to certify a class action for a claim which falls within the ambit of one of the public purposes of the organisation, provided that the court is convinced that there is a difficulty, under the circumstances of the case, in having the motion to certify the class action filed by a private individual.

The Israeli Consumer Council may file a motion to certify a class action even if the motion can be filed by a private individual without difficulty.

Moreover, under Article 15 of the Class Actions Law, the court may allow a public authority or organisation which are not a lead plaintiff to join as a party to the hearing of a motion to certify a class action if the court finds such to be necessary for the efficient management of the proceedings.

### 2.2 Who is permitted to bring such claims e.g. public authorities, state appointed ombudsmen or consumer associations? Must the organisation be approved by the state?

The public authorities that are permitted to file motion to certify class actions under Article 4 of the Class Actions Law (see the answer to question 1.7 above), are set out in the First Schedule of the Class Actions Law and they are: the Commission for Equal Rights for Persons with Disabilities; the Israel Nature and Parks Authority; and the Commission for Equal Opportunities in the Workplace.

In addition, an organisation may file a motion to certify a class action if the claim falls within the scope of its public purposes, if the court is convinced that filing of such a claim by an individual member of the group involved difficulties.

### 2.3 In what circumstances may representative actions be brought? Is the procedure only available in respect of certain areas of law e.g. consumer disputes.

A public authority or organisation may file a motion to certify a class action in any claim, provided that: (a) the claim falls within the scope of powers and purposes of the public authority or organisation; (b) the claim and grounds are listed in the Second Schedule of the Class Actions Law as permissible grounds for a class action (see the answer to question 1.2 above); and (c) the claim raises issues of fact or law that are common to all of the members of the group.

### 2.4 What remedies are available where such claims are brought e.g. injunctive/declaratory relief and/or monetary compensation?

The Class Actions Law does not prescribe any special remedies for motions to certify class actions filed by a public authority or organisation. Under Article 20(c) of the Class Actions Law, where it is not possible to identify the members of the group, the court may order that remedies be awarded in favour of the group in whole or in part, or in favour of the public at large.

## 3 Court Procedures

### 3.1 Is the trial by a judge or a jury?

There is no jury system in Israel. All cases are heard by professional judges (with minor exceptions, such as the labour court, where cases are heard by panels of a professional judge and two representatives from the public). The Israeli judiciary comprises of three layers of courts: the Magistrate Courts, which deal with small civil claims; the District Courts that handle larger civil claims and appeals on judgments of the Magistrate Courts; and the Supreme Court (the highest court in Israel) which hears appeals on judgments of the District courts. In addition, there are special courts and tribunals that have special jurisdiction such as the Labour Courts, the Administrative Courts, etc.

### 3.2 How are the proceedings managed e.g. are they dealt with by specialist courts/judges? Is a specialist judge appointed to manage the procedural aspects and/or hear the case?

A motion to certify a class action will be heard by the competent court having jurisdiction over the matter, depending on the total amount claimed in the motion to certify (at present, the limit of the jurisdiction of the Magistrate Court is NIS 2,500,000, approximately US\$ 625,000). There are no judges who specialise in class actions only. However, in the District Courts in which most of the motions to certify class actions are filed, there are certain judges who have accumulated considerable experience in handling motions to certify class actions and they preside over most of the certification motions.

In addition, motions to certify class actions on issues that fall within special jurisdiction are conducted by the relevant special courts or tribunals. Thus, a motion to certify a class action relating to a matter of labour law will be heard by the Labour Court, and a motion to certify a class action dealing with restitution against state authorities will be heard in the Court of Administrative Affairs.

### 3.3 How is the group or class of claims defined e.g. by certification of a class? Can the court impose a 'cut-off' date by which claimants must join the litigation?

Article 10 of the Class Actions Law provides that an order certifying a class action, must define the group on whose behalf the class action is to be conducted. The court may also define sub-groups where it finds that some of the members of the group have questions of fact or law in common which are not common to all the members of the group.

A person whose cause of action arises after an order for the certification of a class action is issued will not be included in the group. However, the court has discretion to permit the joinder of a person to the group even if the person was not part of the group defined in the verdict certifying the class action up until such date as the court may set.

### 3.4 Do the courts commonly select 'test' or 'model' cases and try all issues of law and fact in those cases, or do they determine generic or preliminary issues of law or fact, or are both approaches available? If the court can order preliminary issues do such issues relate only to matters of law or can they relate to issues of fact as well, and if there is trial by jury, by whom are preliminary issues decided?

Management of class actions in Israel is divided into two stages.

In the first stage, the court examines whether the conditions permitting the claim to be heard as a class action are fulfilled. In this context, the court should rule whether: (1) the action raises common questions of fact or law that are common to all of the members of the group, and where there is a reasonable possibility that such questions will be ruled upon in the group's favour; (2) the class action is the most effective and fairest method of ruling on the dispute; (3) the interests of the members of the group will be adequately represented and managed; and (4) the interest of the group will be represented and managed in good faith (Article 8 of the Class Actions Law). Only where the court finds that these conditions are fulfilled, cumulatively, will it certify hearing the claim as a class action. It should be emphasised that in the initial, preliminary stage of certification of the class action, the court must also examine the lead plaintiff's cause of action in depth and must rule whether, *prima facie*, there is a reasonable possibility that the matter will be ruled upon in the plaintiff's favour at the end of the proceedings.

In the second stage, the court hears the claim itself (including a full

evidentiary hearing) where the class is represented by the lead plaintiff and lead attorney. The court's ruling on the lead plaintiff's case binds all of the members of the group, as defined by the court.

### 3.5 Are any other case management procedures typically used in the context of class/group litigation?

There are no special procedures employed in managing class action proceedings.

### 3.6 Does the court appoint experts to assist it in considering technical issues and, if not, may the parties present expert evidence? Are there any restrictions on the nature or extent of that evidence?

Under Rule 130 of the Civil Procedure Regulations, the court may appoint an expert in any case, at any time. The parties may request to cross-examine the expert appointed by the court. Rule 130 applies to class actions as well.

In addition, under Article 19(b) of the Class Actions Law, when approving a settlement in a class action the court must obtain the opinion of a person with expertise in the field of the class action, who will examine the benefits of the settlement to all of the members of the group, and such other matters as the court may instruct (hereinafter: the "Examiner"). The court is entitled not to appoint an examiner if it finds that such an opinion is not required, for special reasons so be specified in the decision. The parties may respond to the Examiner's opinion.

### 3.7 Are factual or expert witnesses required to present themselves for pre-trial deposition and are witness statements/expert reports exchanged prior to trial?

In a motion to certify a class action, the parties should address in their pleadings the entire factual and legal background and arguments. The defendant should file a complete written response, alleging and elaborating on all defences and arguments, including arguments on the merits of the claim (along with arguments opposing the claim to be heard as a class action). The parties have to attach to their pleadings affidavits in support of the facts set out in the briefs and expert opinions (where necessary). Where an affidavit or expert opinion is not filed together with the pleadings in the motion to certify, these may only be submitted subsequently with the leave of the court (See: Rule 241 of the Civil Procedure Regulations). In proceedings for certification of a class action, witnesses and experts may be cross-examined by the opposing party.

### 3.8 What obligations to disclose documentary evidence arise either before court proceedings are commenced or as part of the pre-trial procedures?

The plaintiff or defendant in a class action may demand discovery of documents at the stage of the motion to certify. However, the scope of discovery at that stage is very limited and restricted to specific documents or a small group of documents. According to the ruling of the Supreme Court in Leave for Civil Appeal 10052/02 **Yifat v. Delek Motors**, P.D. 57(4) 513 (2003), the primary conditions for ordering the production of documents to a plaintiff at the certification stage are: (1) the documents requested must be relevant to proving the threshold conditions for certification of the class action; (2) the plaintiff must present initial evidentiary foundation for his claim; and (3) the restrictions that apply to discovery at later stages of the case apply to discovery at this stage as well, for instance: preservation of commercial secrets.

### 3.9 How long does it normally take to get to trial?

Despite the fact that the proceedings in a motion to certify a class action are preliminary proceedings, they consume considerable time. Usually, motions to certify class actions are lengthy, and contain detailed pleadings, supported by affidavits and frequently also by expert opinions. The Civil procedure regulations require the defendants to respond to the motion to certify the class action within 20 days from receipt of the motion. Respondents normally seek and receive extensions of time. After the response is submitted the parties may engage in a short motion practice and then the motion is set for an oral hearing in which the witnesses and experts who submitted affidavits and expert opinions are cross-examined. Thereafter, the parties submit their post-hearing briefs and the judge then issues the decision certifying the class action or denying certification. The time from filing of a class action until a decision on certification normally takes between 18 and 36 months.

### 3.10 What appeal options are available?

A decision denying a motion to certify a complaint as a class action, can be appealed as of right. A decision certifying a class action is appealable by leave from the higher court. When the decision to certify the claim or deny certification is issued by a district court the appeal and leave to appeal are submitted to the Supreme Court. When the decision to certify the claim or deny certification is issued by a magistrates' court the appeal and leave to appeal are submitted to the district court.

## 4 Time Limits

### 4.1 Are there any time limits on bringing or issuing court proceedings?

The Limitation Law, 5718-1958 (hereinafter: the "**Limitation Law**") sets out the general limitation period for claims not involving land at 7 years, for claims involving land at 15 years, and for claims involving registered land at 25 years (Article 5 of the Limitation Law).

In addition, a specific, shorter limitation period has been set out in a number of specific statutes such as: claims for insurance proceeds have a 3-year limitation period (Article 31 of the Insurance Contract Law, 5741-1981); and certain claims relating to securities have 2-year limitation periods (Article 31(b) of the Securities Law).

Under Article 21 of the Class Actions Law, a class action for the restitution of moneys paid to public authorities can affect only payments made to the public authority in the period of 24 months preceding the date of filing of the motion to certify the claim as a class action.

Filing a motion to certify affects the limitation period in the following manner: If the court certifies the motion, all members of the group are deemed to have filed a claim on the date on which the motion to certify the class action was filed (Article 26(a) of the Class Actions Law). If the court dismisses the motion to certify the class action, the claim of a member of the group on behalf of whom the motion to certify was filed will not be barred by limitation until the later of: (a) the end of the original period of limitation; or (b) one year after the court issued its order denying the certification of the class action (Article 26(b) of the Class Actions Law).

**4.2 If so, please explain what these are. Does the age or condition of the claimant affect the calculation of any time limits and does the Court have a discretion to disapply time limits?**

Where the plaintiff is a minor, the period of limitation will be tolled until the plaintiff reaches the age of 18 (Article 10 of the Limitation Law). Similarly, where the plaintiff has a mental disability, the time during which the plaintiff had no guardian, or during which the guardian was unaware of the cause of action, shall not be taken into account in calculating the time (Article 11 of the Prescription Law).

The court cannot extend the limitation period. However, the parties may agree, by way of a written contract, to a longer or shorter limitation period (Article 19 of the Limitation Law).

**4.3 To what extent, if at all, do issues of concealment or fraud affect the running of any time limit?**

In cases of fraud or deception, the limitation period starts to run as of the date on which the plaintiff becomes aware of the fraud or deception (Article 7 of the Limitation Law). Likewise, if the plaintiff was not aware nor could have been aware of the material facts constituting his cause of action, the limitation period shall commence on the date on which the plaintiff discovers such facts (Article 8 of the Limitation Law).

## 5 Remedies

**5.1 What types of damage are recoverable e.g. bodily injury, mental damage, damage to property, economic loss?**

The court has broad discretion in awarding remedies in class actions. The court may award compensation for all kinds of damages, including non-financial loss, but subject to proof of damage. In claims dealing with equality of rights for persons with disabilities (under Item 9 of the Second Schedule to the Class Actions Law), the court may award compensation without proof of damage (Article 20(e) of the Class Actions Law).

**5.2 Can damages be recovered in respect of the cost of medical monitoring (e.g. covering the cost of investigations or tests) in circumstances where a product has not yet malfunctioned and caused injury, but it may do so in future?**

The court may award compensation for future damage, provided that the existence of the damage or the possibility of the existence damage has been proven to the court. Class Action Law does not address this issue in specific nor deny it. No Class Action case has raised this issue as yet, and therefore no such remedy has been awarded in Israel. However, such a remedy was granted in individual injury cases.

**5.3 Are punitive damages recoverable? If so, are there any restrictions?**

The court may not award penal damages in class actions (Article 20(e) of the Class Actions Law).

**5.4 Is there a maximum limit on the damages recoverable from one defendant e.g. for a series of claims arising from one product/incident or accident?**

There is no restriction as to the maximum sum that may be awarded

against a defendant. However, the court may take into account, in its ruling, the rate of compensation and the method of payment thereof, and the damage that might be caused to the defendant, to the public that requires the defendant's services and to the public at large due to payment of the compensation, as compared with the benefit expected as a result of award of the compensation to the members of the group (Article 20(d) of the Class Actions Law).

**5.5 How are damages quantified? Are they divided amongst the members of the class/group and, if so, on what basis?**

The court has broad discretion questioning the process of quantification and division of the damage. Under Article 20(a) of the Class Actions Law, the court may award: (1) monetary compensation at such rates as it may rule to each of the members of the group whose right to compensation is proven; (2) monetary compensation to each member of the group who proves his entitlement to receive compensation in the manner and on the date prescribed by the court (with respect to determination of the method of proof of damages by members of the group and the method of distribution of the damages among the members of the group, the court may appoint an expert with appropriate expertise); and (3) payment of compensation in a total sum provided that the total sum of compensation can be precisely calculated based on the evidence laid before the court. In such a case, the court will prescribe the method of calculating each member's portion of the total compensation.

Additionally, in the event where payment of compensation to members of the group or any of them is not practical, the court may order the award of some other remedy to the group or part thereof, or to the benefit of the public (Article 20(c) of the Class Action Law).

**5.6 Do special rules apply to the settlement of claims/proceedings e.g. is court approval required?**

The Class Actions Law sets out a special arrangement regarding settlements in class action proceedings (Articles 18 and 19 of the Class Actions Law). As noted below, the arrangement set out in the law to approve settlements in class actions is complicated, lengthy, involves legal costs and there is no certainty that the settlement will indeed be approved by the court.

A settlement in a class action must be approved by the court. Therefore, parties wishing to approve a settlement file within court will file a motion to approve the settlement, supported by affidavits which provide due disclosure of all of the substantial matter relating to the settlement. Additionally, the settlement may include an agreed recommendation regarding payment of the fees and expenses of the lead plaintiff and its counsel. The court receiving a motion to approve a settlement may set it aside *in limine*, or may instruct that it be published to the members of the group, and that a notice containing a copy of the motion for approval of the settlement be sent to the Attorney-General, to the Managing director of the Courts and to any other person as the court may instruct. A person who is a member of a group, public authority, public organisation and the Attorney General may submit a reasoned objection to the settlement and the parties have the right to respond to such objections.

The court shall approve the settlement in the event that it finds that the settlement is appropriate, fair and reasonable considering the interests of the members of the group. If a motion to approve a settlement is filed before the action is certified as a class action, the court should also examine whether there are questions of fact and law in common to all of the members of the group, and whether conclusion of the proceedings by way of settlement is the efficient and fair method of ruling on the claim. Prior to approving a

settlement, the court should appoint an independent examiner with expertise in the field that the certification motion deals with, in order to obtain his opinion as to the advantages and disadvantages of the settlement in terms of all of the members of the group, and any other matter that the court may instruct him. The court's decision as to whether to approve or set aside the settlement has to be reasoned and shall include, *inter alia*, the definition of the group to which the settlement applies, the causes of action and the questions of fact and law common to all of the members of the group, and the main points of the settlement. The court must take into account the following factors in its ruling: (1) the difference between the remedy proposed under the settlement and the remedy that the members of the group would have received had the court ruled in favour of the group; (2) objections submitted to the settlement; (3) the stage which the proceedings are at; (4) the examiner's opinion; (5) the risks and chances of the continued running of the proceedings as against the advantages and disadvantages of the settlement; and (6) the causes of actions and remedies that the settlement will give rise to a *res judicata* with respect to the members of the group.

The court may approve the settlement on such conditions as it may deem them to be necessary in order to protect the interests of the members of the group, to enforce the law or to oversee performance of the settlement. In addition, in ruling on approval of the settlement, the court is to prescribe compensation for the lead plaintiff and his counsel, and is entitled to take into account the agreed recommendation of the parties in this regard, as well as other considerations regarding calculation of remuneration in class actions as set out in the answer to question 6.1 below.

A member of the group may notify the court that he is not interested in having the settlement apply to him. In such a case, the court's ruling approving the settlement will not amount to *res judicata* with respect to such member.

## 6 Costs

### 6.1 Can the successful party recover: (a) court fees or other incidental expenses; (b) their own legal costs of bringing the proceedings, from the losing party? Does the 'loser pays' rule apply?

As a rule, in civil cases in the Israel Court order the losing party to bear the legal cost and attorney's fee of the winning party. This rule applies also to class actions, however Class Action Law provides with additional rules, as follows.

The court may order remuneration to the lead plaintiff even where the motion to certify the class action is set aside, or the claim itself is set aside, for reasons that are to be recorded and in accordance with the considerations set out in question 6.4 below.

The court may set remuneration for an organisation that took part as a party to a hearing in a class action where such is justified in light of the trouble taken by the organisation, and the organisation's contribution to the proceedings.

In addition, where the court instructs members of the group to prove their entitlement to compensation, the court may award costs to members of the group for the effort and time invested in proving their entitlement (Article 20(b)(2) of the Class Actions Law).

Recently, the courts have been awarding significant legal costs in rulings setting aside motions to certify class actions, particularly in cases of motions that are farfetched, in order to prevent the filing of unsuitable claims that cause unnecessary expense.

### 6.2 How are the costs of litigation shared amongst the members of the group/class? How are the costs common to all claims involved in the action ('common costs') and the costs attributable to each individual claim (individual costs) allocated?

The lead plaintiff and his counsel bear all of the costs of running the class action proceedings.

### 6.3 What are the costs consequences, if any, where a member of the group/class discontinues their claim before the conclusion of the group/class action?

Since the members of the group do not bear the costs of the proceedings, notice by a member of the group of his desire not to be included in the group has no bearing on the question of costs in the proceedings.

### 6.4 Do the courts manage the costs incurred by the parties e.g. by limiting the amount of costs recoverable or by imposing a 'cap' on costs? Are costs assessed by the court during and/or at the end of the proceedings?

If the court certifies a claim as a class action, Article 22 of the Class Actions Law sets out the considerations that the court should take into account in deciding the rate of remuneration to the lead plaintiff. The court should take into account the following: (1) the effort invested by the lead plaintiff and the risk that he undertook in filing and running the class action; (2) the benefit that the claim brought to members of the group; and (3) the level of public importance of the class action.

Article 23 of the Class Actions Law sets out the considerations involved in awarding fees to counsel for the lead plaintiff. These considerations include the considerations referred to above regarding remuneration to the lead plaintiff and in addition court considers the manner in which the claim was run by counsel for the lead plaintiff and the gap between the remedies sought in the class action and those actually obtained.

The court may award partial fees to counsel for the lead plaintiff on account of total fees, even prior to proceedings to hear the class action, if the court finds that to do so is justified, and taking into account the considerations set out above (Article 23(c) of the Class Actions Law).

## 7 Funding

### 7.1 Is public funding e.g. legal aid, available?

Under Article 27 of the Class Actions Law, a fund has been set up to finance class actions (hereinafter: the "**Fund**"). The function of which is to assist lead plaintiffs in financing motions to certify class actions.

In addition a lead plaintiff in a class action, for a cause of action arising out of a connection to a security issued by the government, a future contract, a security of a public company, or a unit in a unit trust may request that the Securities Authority bear his costs. (See: Article 209 of the Companies Law, 5759-1999, and Article 41 of the Unit Trust Investment Law, 5754-1994.)

### 7.2 If so, are there any restrictions on the availability of public funding?

Financing of class actions by the Fund is based on egalitarian tests to be prescribed by the Minister of Justice, and in claims in which there is public importance. As of 2009 the fund has been formed,

however no specific procedures have been set. It should be emphasised that the fund will not be active, until a procedure to allocate grants has been established.

The Securities Authority may bear the costs of the lead plaintiff in the cases set out above, in such sum and on such conditions as it may prescribe, if it is persuaded that there is a public interest in the claim and that there is a reasonable chance that the court will certify it as a class action.

### 7.3 Is funding allowed through conditional or contingency fees and, if so, on what conditions?

The Class Actions Law does not provide rules regarding the grant of finance by the Fund. The provisions regarding the activities of the Fund, including the method in which financing is to be provided, are to be legislated by the Minister of Justice.

### 7.4 Is third party funding of claims permitted and, if so, on what basis may funding be provided?

The Class Actions Law does not make provisions regarding the financing of a claim by third parties. However the lead plaintiff and his counsel are obligated to try the case *bonne fide* for the interest of the members of the group. Financing of a claim by third party might challenge the real interest of the plaintiff and its good faith.

## 8 Other Mechanisms

### 8.1 Can consumers' claims be assigned to a consumer association or representative body and brought by that body? If so, please outline the procedure.

The Israeli Consumer Council may submit a motion to certify a class action on behalf of consumers, even if there is no difficulty for an individual to file the motion.

In addition, the court may permit the Israeli Consumer Council to join as a party to the proceedings in a motion to certify if it finds that such is necessary for the purpose of the efficient hearing of the proceedings.

Note that the Israeli Consumer Council may also assist consumers in consumer claims that are not class actions in which case the court may award compensation to the Israeli Consumer Council in addition to the remedy awarded to the plaintiff (Article 31 of the Consumer Protection Law).

### 8.2 Can consumers' claims be brought by a professional commercial claimant which purchases the rights to individual claims in return for a share of the proceeds of the action? If so, please outline the procedure.

The Class Action Law does not provide rules on such procedure.

### 8.3 Can criminal proceedings be used as a means of pursuing civil damages claims on behalf of a group or class?

Under Article 77 of the Courts Law [Consolidated Version] 5744-1984, where the ruling of a court in criminal proceedings against a defendant becomes absolute, the court may, at the plaintiff's request, hear civil proceedings filed against the convicted defendant. In such a case, the findings and conclusions set out in the criminal proceedings shall be deemed to have been found in the civil proceedings as well (Article 42D of the Evidence Ordinance [New Version], 5731-1971).

In addition, under Article 42D of the Evidence Ordinance [New Version] 5731-1971, findings and conclusions in an absolute ruling in criminal proceedings convicting the defendant are admissible in civil law as prima facie evidence of the contents of them if the convicted defendant is a party to civil proceedings. The defendant is entitled to adduce evidence to contradict the findings and conclusions only with the leave of the court and on such special grounds as shall be set out.

### 8.4 Are alternative methods of dispute resolution available e.g. can the matter be referred to an Ombudsperson? Is mediation or arbitration available?

The Class Actions Law does not allow for alternative methods of resolution of class actions.

### 8.5 Are statutory compensation schemes available e.g. for small claims?

The Class Actions Law does not prescribe the possibility of receiving statutory compensation.

### 8.6 What remedies are available where such alternative mechanisms are pursued e.g. injunctive/declaratory relief and/or monetary compensation?

As set out in question 8.4 above, the Class Actions Law does not allow for alternative methods of resolution of class actions.

## 9 Other Matters

### 9.1 Can claims be brought by residents from other jurisdictions? Are there rules to restrict 'forum shopping'?

The Class Actions Law does not regulate the procedure for handling claims filed by foreign residents and therefore, in such a case, the rules of private international law employed in Israel will apply.

### 9.2 Are there any changes in the law proposed to promote class/group actions in Israel?

The Class Actions Law, which was enacted in 2006, sets out a number of substantial innovations which significantly facilitate the filing and managing of class actions by plaintiffs. The new law is pro plaintiffs. Since its enactment the number of motion filed with courts has increased dramatically. The new law is comprehensive and introduced several new rules and procedures, as elaborated throughout this chapter.

A prominent, and unique provision in this regard is set out in Article 8(c)(2) of the Class Actions Law, which states that if the court finds that the conditions for certification of the class action have been met but the lead plaintiff seeking certification of the class action has not proven that he has a cause of action, the court may certify the class action and order that the lead plaintiff be replaced.

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Meitar Liquornik Geva & Leshem Brandwein (Meitar) is Israel's leading international law firm, one of the three largest law firms in Israel, comprised of 120 attorneys and over 30 articulated clerks. The firm is ranked as one of the leading commercial and corporate law firms in Israel by Chambers Global and the European Legal 500. Meitar successfully, effectively and professionally handles complex and innovative legal matters in almost all areas of commercial and business law as well as commercial and business litigation. The firm's Litigation group, headed by Dr. Israel ("Reli") Leshem, numbers seven partners and some 25 associates. It has earned a solid reputation for effectively handling, at the highest professional levels, a broad variety of complex civil cases. Meitar regularly represents many companies in large and complex claims involving contracts, securities, antitrust, commercial torts, misappropriation of IP, product liability and environmental issues. Meitar has an established practice of defending multinational and Israeli clients in class actions. Meitar handles effectively and successfully class actions on wide range of areas of law, *inter alia*, pharmaceutical, securities, product liability, consumer fraud and Environmental. On these matters Meitar defends a variety of clients - Multinational pharmaceutical companies, Industrial companies, financial institutions, Communication companies, Insurance companies, large municipalities, and more.