GLG

Global Legal Group

The International Comparative Legal Guide to:

Litigation & Dispute Resolution 2009

A practical insight to cross-border Litigation & Dispute Resolution

Published by Global Legal Group with contributions from:

Aivar Pilv Law Office
Anderson Mori & Tomotsune
Arias & Muñoz
Binder Grösswang
Boga & Associates
Borislav Boyanov & Co.
Bredin Prat
Carey y Cía.
Coronel & Peréz
Dechert LLP
Dittmar & Indrenius
Eversheds Saladžius
Fenech & Fenech Advocates
Gencs Valters Law Firm
Georgiades & Mylonas
Gleiss Lutz
Gómez-Acebo & Pombo Abogados, S.L.P.
Ivor Fitzpatrick & Company
Janežič & Jarkovič
Kim & Chang
Konečná & Šafář
Kromann Reumert
Lloreda Camacho & Co.
Lovells
Lydian
M. & M. Bomchil
Magisters
Meitar Liquornik Geva & Leshem Brandwein
Molitor, Fisch & Associés
Pachiu & Associates
Portilla, Ruy-Diaz y Aguilar, S.C.
Premnath Rai Associates
Schellenberg Wittmer
Sergio Bermudes Advogados
SJ Berwin LLP
Stikeman Elliott LLP
Yukov, Khrenov & Partners

www.ICLG.co.uk

Israel

Dr. Israel (Reli) Leshem

Meitar Liquornik Geva & Leshem Brandwein

Ron Peleg

I. LITIGATION

1 Preliminaries

1.1 What type of legal system has Israel got? Are there any rules that govern civil procedure in Israel?

The origins of the Israeli legal system are based upon the common law tradition. The conduct of the courts and the principles of civil procedure and evidence follow to a large extent the Anglo-American tradition. The doctrine of legal precedent, a characterising feature of the common law, plays an important role in the Israeli legal system, as do other common law principles, such as the adversary system and the availability of equitable rights. At the same time, the ongoing codification process of the civil substantive law in Israel is essentially a continental law codification, influenced by continental law ideas, such as the doctrine of good faith.

Civil procedure in Israel is mainly governed by the Courts Act (Consolidated Version), 5744-1984 (hereinafter: the "**Courts Act**") and the Civil Law Procedure Regulations, 5744-1984 (hereinafter: the "**Procedure Regulations**").

1.2 How is the civil court system in Israel structured? What are the various levels of appeal and are there any specialist courts?

The Israeli court system is a three-tiered structure, comprised of the Magistrate Courts, the District Courts, and the Supreme Court. The Magistrate Courts serve as courts of first instance for most civil claims. The District Courts serve in a double capacity: they sit as courts of appeals for claims heard in the Magistrate Courts, and they act as courts of first instance for larger civil claims, such as disputes over ownership of real property and monetary claims exceeding 2.5 million NIS. The Supreme Court, the highest court in the country, hears appeals from the District Courts. In addition to its role as an appellate court, the Israeli Supreme Court also sits as a High Court of Justice. In this capacity, the court rules as a court of first instance, primarily in actions challenging the acts of the State and its agencies in their governmental capacity.

There are also numerous specialised courts in Israel, such as the labour courts, administrative courts, military courts and religious courts, which have specific jurisdiction in relevant restricted areas. Judgments handed down by these courts are subject to limited review by the Supreme Court, usually sitting as a High Court of Justice.

1.3 What are the main stages in civil proceedings in Israel? What is their underlying timeframe?

The main stages in civil proceedings brought before courts of first instance in Israel are as follows: First, a complaint is filed with the appropriate court. Next, the complaint is served upon the defendant. The defendant then files an answer to the complaint, after which the plaintiff is entitled to respond to the defendant's answer. Once the parties complete the exchange of pleadings, the parties begin the discovery process (comprised mainly of interrogatories and document discovery and production) in preparation for the upcoming trial. At the same time, the parties may engage in a motion practice, in which they may file motions, such as motions to dismiss, motions to amend pleadings, etc. Before the trial begins, the judge presiding over the case will hold a pre-trial hearing or hearings in order to maximise the efficiency of the pre-trial process and the trial, and in order to ascertain whether a settlement can be reached amongst the parties. Once the case is ready for trial, the judge will usually issue a schedule for the submission of the witness statements (in the form of affidavits), and then the Court will set dates for trial. At the trial, the witnesses will be crossed examined on their statements. At the end of the trial, the Court will usually issue a schedule for the submission of post-trial briefs (although the judge may require the parties to deliver oral summations). The presiding judge will then render a judgment.

There is a considerable backlog in the Israeli courts, and thus it may take between three and five years for a civil case involving significant factual issues to reach judgment in the first instance. The minimum underlying timeframe of civil proceedings in Israel is approximately 24 months from the date a complaint is submitted to a first instance court until a decision is rendered by that instance. The process of appeal before a District Court or Supreme Court may last an additional 12 to 24 months each.

1.4 What is Israel's local judiciary's approach to exclusive jurisdiction clauses?

Israeli courts generally respect exclusive jurisdiction clauses. Israeli courts tend to interpret choice of jurisdiction clauses to be non-exclusive unless the language of the clause conveys a clear intention of the parties to be bound by an exclusive jurisdiction clause. Israeli courts will normally stay an action filed in violation of an exclusive jurisdiction clause (whether the exclusive jurisdiction lies with another court in Israel or with a foreign court).

1.5 What are the costs of civil court proceedings in Israel? Who bears these costs?

Court fees in Israel vary depending on the court before which an action is brought and the types of the requested remedies. In general, claims for a defined amount of money are subject to a court fee of 2.5% of the amount sought (1.25% is paid when the action is filed and 1.25% is paid before the trial commences). Any action brought before the District Courts for a sum exceeding approximately 20 Million NIS is subject to a lower fee of 1% (rather than 2.5%) on the portion of the claimed amount which exceeds 20 Million NIS.

The Court may award legal fees and reimbursement of other litigation expenses in all cases brought before it. The courts in Israel generally order the losing party to cover the legal costs of the prevailing party. An award can be made at the conclusion of the action or at the conclusion of any interim proceedings. The Court has broad discretion in determining the amount of the legal costs to be paid; however, in determining the amount of attorneys' fees, the courts are guided by the recommended minimum tariff for legal fees set in the Rules of the Chamber of Advocates (Recommended Minimum Tariff), 5760-2000. The legal fees ordered by the Court are usually much smaller than the actual fees paid by the parties to their attorneys and do not usually reflect the actual costs expended by the prevailing party. This is particularly true when awarding legal fees to a defendant who successfully defeated an action against him.

1.6 Are there any particular rules about funding litigation in Israel? Are there any contingency/conditional fee arrangements? Are there rules on security for costs?

The Rules of Chamber of Advocates (Professional Ethics), 5726-1966 provides that payment for attorneys' fees may only be rendered in the form of money. The rules preclude an attorney from funding loaning any litigation costs.

Contingency arrangements are permitted under Israeli law and are common in personal injury claims.

Regulation 519(a) of the Procedure Regulations empowers the Court to order the plaintiff to provide security to cover a potential award of legal costs in favour of the defendant. The courts are generally reluctant to implement this Regulation, as it clashes with the plaintiff's right of access to the courts. The courts mainly exercise this authority when the plaintiff is a foreign resident of a country which is not a signatory to the Hague Convention with no assets in Israel or when the plaintiff is a corporation (local or foreign) with no apparent means to pay a potential award of legal costs in favour of the defendant.

2 Before Commencing Proceedings

2.1 Are there any pre-action procedures in place in Israel? What is their scope?

There are no formal pre-action procedures in place in Israel. However, before filing a complaint, it is customary, but not necessary, for the prospective plaintiff to notify his adversary in writing of his intention to file such complaint in order to give the prospective defendant an opportunity to cure the alleged wrong.

2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?

As a general rule, the statute of limitations for a civil claim not based upon a right in land is seven years. However, certain specific laws provide for shorter limitation periods. The statute of limitations for a civil claim founded upon a right in land varies depending upon the manner in which the land is registered with the Israeli Land Registry. If the land is considered "*Mekarkain Musdarim*" (land in which ownership and other rights are fully recorded in the official registry), then it is not subject to any statute of limitations. However, if an individual's claim is based upon a right to land that predates December 1969, the applicable statute of limitations period is 25 years. If the land is considered "*Mekarkain Lo Musdarim*" (land in which ownership and other rights are not fully recorded in the official registry) or if the land is not registered at all, the applicable statute of limitations period is 15 years.

As a general rule, the statute of limitations clock begins to run on the date the cause of action accrues. This rule is subject to a few exceptions: (i) If the cause of action is based on fraud, the statute of limitations begins to run on the date the fraud was discovered by the plaintiff; (ii) if the facts which together comprise the cause of action were unknown to the plaintiff and he could not have learned of them with reasonable efforts, the statute of limitations will begin to run on the date such facts were made known to the plaintiff; (iii) if the defendant admits to the plaintiff's alleged right in writing or before the Court, the statute of limitations will begin to run from the date of such admission; (iv) where the cause of action is damage that was caused by an act or omission of the defendant, the statute of limitations will begin to run from the date on which the damage occurred. However, if the damage was not discovered on the date it occurred, the statute of limitations will begin to run on the day the damage was discovered, provided that the statute of limitations period will expire within 10 years from the date the damage occurred; (v) if the plaintiff was a minor (under the age of 18) when the cause of action accrued, the statue of limitation begins to run only when he reaches the age of 18; (vi) if an action was brought before a court and was dismissed in such a manner that the plaintiff is not stopped from bringing a new action based upon the same cause of action, the period of time between the submission of the complaint and its dismissal will not be included in the statute of limitations period; and (vii) if the defendant was located in a territory where the conditions or diplomatic relations with Israel prevent trying of the case, the time spent in such territory will not be included in the statute of limitations period.

In Israel, time limits imposed by the statute of limitations are treated as a procedural law issue, unless otherwise determined by a specific law.

3 Commencing Proceedings

3.1 How are civil proceedings commenced (issued and served) in Israel? What various means of service are there? What is the deemed date of service? How is service effected outside Israel? Is there a preferred method of service of foreign proceedings in Israel?

Civil proceedings are commenced by filing a complaint (statement of claim) in court. The complaint must include a form which details the nature of the complaint and the relief requested.

Regulation 475 of the Procedure Regulations lists possible means of service to a pro-se party: (i) the pleadings may be personally delivered by a court clerk, an attorney or an agent of the attorney, or another person authorised in writing by the Court for this purpose or an agent of such person; (ii) the Court may deliver pleadings to certain institutions specified in the Procedure Regulations (such as the Prison Services in the case of a defendant who is a prisoner), and such institutions shall be responsible for delivering the

pleadings to the appropriate party; and (iii) the pleadings may be sent via registered mail with a receipt of delivery.

Regulation 475a of the Procedure Regulations provides that if a party is represented by an attorney, the pleadings shall be served in one of the following two ways:)i(by personal delivery, if so ordered by the Court; or)ii(by registered mail with a receipt of delivery.

The deemed date of service is the date upon which the pleadings were received by the recipient.

If a defendant is not present in person in Israel, the plaintiff has two alternative routes of service: (a) to serve the statement of claim on a person or entity within the State of Israel, who is considered to be an "agent" or "representative" of the foreign defendant; or (b) if there is no such "agent" or "representative" - attempt to obtain leave from the Israeli court to serve the statement of claim outside the territory of Israel (this is called "service out of the jurisdiction").

Regulation 482(a) allows an Israeli plaintiff to avoid the need to obtain leave for service out of the jurisdiction if there is an individual or company located in Israel which is deemed an "agent" of the foreign defendant. The service on the Israeli "agent" will be deemed valid if the degree of intensity of the relationship between the Israeli "agent" and the foreign defendant is such that one may reasonably assume, as a point of law, the "agent" would advise the foreign defendant of the proceedings instituted against him. The analysis in determining whether an Israeli entity qualifies as an "agent" of a foreign defendant for the purposes of service is made on a 'case by case' basis.

The Court may grant a motion for service out of the jurisdiction only if the claim falls under one of the categories listed in Regulation 500 of the Procedure Regulations. These categories include, *inter alia*: (i) claims in which relief is sought in connection with an action or omission that occurred in Israel; (ii) claims for breach of contract that was entered into in Israel, was to be performed, in whole or in part, in Israel or is governed by Israeli law; and (iii) claims in which there is at least one Israeli defendant and the foreign defendant is a necessary party thereto. The application under Regulation 500 is made by the plaintiff *ex parte*.

When a motion pursuant to Regulation 500 is granted, the Court will order to serve the foreign defendant in accordance to the Hague Convention on Civil Procedure.

3.2 Are any pre-action interim remedies available in Israel? How do you apply for them? What are the main criteria for obtaining these?

Numerous pre-action interim remedies are available. Such remedies include restraining orders, attachment orders, stay of exit orders, and the appointment of a receiver for the defendant's property.

An application for an interim remedy must be made in writing. The applicant must attach to the application a written undertaking to compensate the defendant for any damage suffered by him as a result of the interim remedy, if the interim remedy is vacated or the main action is ultimately dismissed or discontinued. The Court may grant a request for a temporary remedy before a complaint is filed if the Court is convinced that such an act is justified, and provided that its validity is contingent upon the submission of a complaint within seven days from the date the order was granted or within a different time period determined by the Court. In deciding whether to grant the request for temporary relief, the Court will weigh the following considerations: (i) the damage that will be caused to the plaintiff if the temporary relief is not granted vs. the damage to be caused to the defendant or others if such relief is granted; (ii) whether the application was made in good faith and whether the granting of the relief is just and appropriate under the circumstances and does not inflict unreasonable harm; and (iii) the *prima facie* cause of action and the likelihood that it will be proved in trial according to the preponderance of evidence standard of proof in a civil action.

The request for a pre-action interim remedy may be requested *ex parte* or *inter parte*. The Court will grant a pre-action *ex parte* request for interim remedy only if it is convinced that the balance of convenience clearly tilts in the direction of the applicant and he shows a prima facie chance of success in the action.

3.3 What are the main elements of the claimant's pleadings?

Regulation 9 of the Procedure Regulations provides that a complaint must contain the following:

1. The name of the court before which the complaint is brought.
2. The name, ID number, home address and mailing address of the plaintiff.
3. The name, ID number, and home address of the defendant.
4. If the plaintiff or defendant is a corporation, this fact must be noted together with the form of incorporation (i.e., partnership, LLC, etc.).
5. If the plaintiff or defendant is an incompetent, this fact must be noted.
6. The main facts which constitute the cause of action and the date on which the cause of action accrued.
7. The requested relief.
8. The amount the plaintiff agreed to set-off or ceded.
9. The value of the complaint, to the extent its value can be quantified.

In addition, pursuant to Regulation 71 of the Procedure Regulations, a complaint may contain only facts and not evidence. The scope of an initial pleading (statement of complaint, statement of defence and answer to the defence) is limited and should state in a general (but not vague) manner the legal and factual arguments a party intends to argue in the course of the trial. The initial pleadings define the scope of the dispute, and have significance later on when determining relevancy issues for discovery purposes and submission of evidence.

3.4 Can the pleadings be amended? If so, are there any restrictions?

Regulation 91(a) of the Procedure Regulations provides that the Court may, at any time, order the deletion or correction of any portion of a party's pleadings that is unnecessary or likely to interfere with, delay, or complicate a fair hearing of the action.

Pursuant to Regulation 92 of the Procedure Regulations, the Court may, at any time, allow a party to change or correct his pleadings in such a manner and under such conditions as seem just, in order to enable the Court to rule on the real disputes that arose between the parties. A correction or addition of a factual claim must be supported by a written affidavit which confirms the veracity of the new fact. A request of amendment of pleadings will not be allowed if it deprives a party of a material right (e.g., the amendment adds a cause of action that is already barred by statue of limitations at the time of the addition), is made in bad faith, has been unduly delayed, or brings about an unfair or unjust result to a party. When a plaintiff is allowed to amend his complaint, the defendant will also be allowed to amend his defence without regard to the scope of the plaintiff's amendment.

4 Defending a Claim

4.1 What are the main elements of a statement of defence? Can the defendant bring counterclaims/claim or defence of set-off?

In the defendant's answer to the complaint, the defendant must deny each factual statement alleged by the plaintiff which the defendant believes to be false. Any factual statement not denied by the defendant will be deemed as admitted by him. The Procedure Regulations provide that a broad denial of all factual allegations is not sufficient; rather, the defendant must specifically refer to each factual claim whose accuracy he does not admit. The common practice, especially in commercial disputes, is that the defendant elaborates on his perspective of the factual and legal allegations contained in the complaint, rather than just denying the plaintiff's statements and arguments.

Pursuant to Regulation 52 of the Procedure Regulations, the defendant may include a defence of set-off in his statement of defence. Additionally, the defendant may bring a counterclaim against the plaintiff at the time of filing of his statement of defence. The counter claim does not need to be limited to the subject matter of the complaint.

4.2 What is the time-limit within which the statement of defence has to be served?

The summons served upon a defendant states that the defendant must submit a statement of defence within 30 days of service of the summons. The Court may, however, grant the defendant a longer period of time to submit his statement of defence. So long as a default judgment is not issued, the statement of defence may still be filed even if the 30 days have elapsed.

4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on liability by bringing an action against a third party?

A defendant may commence third party proceedings in an action in which he is sued in one of three situations:

1. The defendant alleges that he is entitled to reimbursement from the third party for any obligations that may be imposed upon him as a result of a negative ruling in the main action.
2. The defendant alleges that he is entitled to relief from the third party, and such relief is intertwined with the main action, and the main element of that relief is the relief requested by the plaintiff.
3. A question or disagreement between the defendant and third party which is intertwined with the main action is essentially the same issue disputed between the plaintiff and the defendant, and it is proper that it be resolved between the defendant and third party as well.

Third party proceedings are commenced by filing a third party notice (which has substantially the same elements as a complaint) at the time of filing of the statement of defence or at such later time as allowed by the Court.

4.4 What happens if the defendant does not defend the claim?

Regulation 97(a) of the Procedure Regulations provides that in the event that the defendant does not submit a statement of defence by the designated date for such submission, the Court will issue a judgment based upon the claimant's pleadings alone. If the action is not for a set amount of money, the Court may require from the plaintiff proof that substantiates his claim before a judgment will be rendered.

It should be noted that while the Israeli courts do not look favourably upon a defendant who submits a statement of defence after the deadline for its submission, the courts will not disregard a late-filed statement of defence if submitted before a hearing held regarding the plaintiff's request that the Court issue a default judgment.

4.5 Can the defendant dispute the court's jurisdiction?

A party interested in disputing the local jurisdiction of the Court to hear the case or the personal jurisdiction of the Court over him must do so at the first possible opportunity. Otherwise, he will be deemed to have accepted the Court's jurisdiction.

A party may dispute the Court's *subject-matter* jurisdiction (i.e. when the subject matter of the litigation is within the jurisdiction of another court or tribunal) at any stage of the proceedings. However, the rule, which was strictly applied in the past, has become more relaxed in cases where the Court feels that the challenge to the Court's subject-matter jurisdiction was intentionally delayed in order to obtain a tactical advantage. Also, it was held that once a court of first instance has issued its judgment, the party may no longer raise such a claim before a court of appeals.

5 Joinder & Consolidation

5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?

Regulation 24 of the Procedure Regulations provides that at any stage of the proceedings, the Court may join an additional defendant (hereinafter: the "**New Defendant**") in the following situations:)i(the New Defendant should have been included as a defendant in the original complaint; or)ii) the presence of the New Defendant in the litigation is necessary in order to enable the Court to render an effective judgment on all questions connected to the action.

5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?

Regulation 520 of the Procedure Regulations provides that the Court may consolidate two proceedings pending in the same court provided that the two proceedings deal with similar questions of law or fact.

The president of the Supreme Court or the deputy president has the power to transfer a case from one region to another in order to allow the consolidation of cases that are pending before courts of the same instance in two or more regions.

5.3 Do you have split trials/bifurcation of proceedings?

The judge presiding over a case may order that the proceedings in the case be split or bifurcate if he or she believes that such procedure will make the hearing of the case more efficient. Bifurcation of proceedings is especially common in personal injury cases, in which the trial will initially focus on the question of liability, and only then (if liability is found to exist) the trial will continue to deal with the question of damages.

6 Duties & Powers of the Courts

6.1 Is there any particular case allocation system before the civil courts in Israel? How are cases allocated?

The Minister of Justice, relying on the power granted to him by the Courts Act, established six judicial regions spread throughout the country. In each region, sits one District Court and several Magistrate Courts. In determining the proper court in which a civil claim can be filed, the plaintiff needs to determine (i) which court (i.e., the District Court, the Magistrate Court or perhaps a specialised court such as the Labour Court) has subject-matter jurisdiction in the case, and (ii) in which region lies the local jurisdiction of the court that will hear the case. A court will have local jurisdiction to hear a case if any of several factors specified in the Procedure Regulations is within the region of the Court.

6.2 Do the courts in Israel have any particular case management powers? What interim applications can the parties make? What are the cost consequences?

Once an action is submitted to the appropriate court, the Court's case routing department, headed by the president of the Court, will determine which judge will preside over the action. Complex, large-scale cases will be assigned by the president of the Court to a presiding judge.

Please see the answer to question 3.2 regarding interim applications.

6.3 What sanctions are the courts in Israel empowered to impose on a party that disobeys the court's orders or directions?

If a party fails to abide by the order of the Court relating to discovery or fails to appear at a scheduled hearing, the Court has the power to strike out the pleadings of such party. If the plaintiff's pleadings are struck out, the claim is deemed dismissed. If the defendant's pleadings are struck out, the plaintiff can obtain a default judgment. The Court will not normally use such sanctions unless the party in question is warned that the Court will resort to such sanctions if he persists in his disobedience.

Pursuant to the Israeli Contempt of Court Ordinance, 1929, Israeli courts have the power to fine or imprison a party who does not obey a court. Such sanctions can be issued only when the disobedient party is present in court and after he is given an opportunity to argue.

In addition, article 72 of the Courts Act provides that an individual that acts in a violent manner or otherwise disturbs the court proceedings may be punished by up to three months imprisonment or fined, provided that the judge warned such party to cease from acting in such manner.

An order for the imprisonment of a party is quite rare and occurs only in very extreme circumstances.

6.4 Do the courts in Israel have the power to strike out part of a statement of case? If so, in what circumstances?

The Court may strike out all or part of the pleadings of a party if: (i) the complaint or a part thereof fails to show a cause of action; (ii) the complaint or a part thereof is oppressive and vexatious; (iii) the complaint was brought before a court that lacks local or subject-matter jurisdiction; (iv) an insufficient court fee was paid and the plaintiff did not pay the required fee within the time allotted for such payment; (v) the court lacks subject-matter jurisdiction over all or part of the claim; (vi) that part of the action has already been tried and decided (res judicata) in an earlier legal process; (vi) all or part of the claim is barred by the statute of limitations; or (vii) there exists any other reason for which the Court concludes that the claim is bound to fail, irrespective of any additional proceedings in the claim.

The Court will exercise its power to strike out an action or a part thereof sparingly and only when it is convinced that the claim or any part thereof has no chance of succeeding and there is nothing that can be done (including by way of amending the claim) to save it.

6.5 Can the civil courts in Israel enter summary judgment?

The courts in Israel do not have authority to enter a summary judgment as such term is known in the U.S. legal system. The court does have authority to strike out or dismiss all or part of the claim at any stage of the proceedings if it determines that the claim is bound to fail and cannot be saved by way of amendment of the pleadings or otherwise. The Court also has authority to enter a full or partial judgment for the plaintiff against one or more defendants at any stage of the proceedings if it determines that the relevant defendant has not presented any legally valid defence to a claim or to part thereof. When considering the striking out of a claim or the entering of judgment for the plaintiff before trial, the Court must normally assume that all the facts stated in the complaint and statement of defence are true and correct and can be proven at trial. At this stage, the Court does not concern itself with the question of whether the parties can in fact prove such facts.

6.6 Do the courts in Israel have any powers to discontinue or stay the proceedings? If so, in what circumstances?

If the plaintiff requests that the Court discontinue his claim, the Court may so order, pursuant to Regulation 154 of the Procedure Regulations.

If the parties fail to take action to move the claim forward, the Court may, after giving the parties an opportunity to show cause, discontinue the claim.

There are several situations in which an Israeli court may stay the proceedings pending before it: (i) if another action between the same parties and concerning the same issues is pending before another court; (ii) if there is a foreign competent court where it shall be far more convenient for the litigation to proceed; or (iii) if the parties are parties to a binding arbitration agreement regarding the subject matter of the litigation.

7 Disclosure

7.1 What are the basic rules of disclosure in civil proceedings in Israel? Are there any classes of documents that do not require disclosure?

Pre-trial disclosure (discovery) in civil matters comprises of (i) document discovery and production; and (ii) answers to interrogatories.

A party to civil litigation in Israel is generally allowed to demand from the other parties discovery of all documents which are in the possession or under the control of such parties and relevant to the issues in dispute. Relevant documents are both "helpful" documents and "damaging" documents, namely those documents that may help to prove the case of a party as well as those documents that may help to disprove it. "Relevancy" in the context

of document discovery in Israel is narrowly construed in comparison to the U.S. practice. Relevant documents are those documents that are directly relevant to the issues in dispute and not those that are only remotely relevant.

Each party is allowed to submit interrogatories to the opposing parties. Answers to interrogatories must be in the form of an affidavit. The Court may exempt a party from answering specific questions contained in the interrogatories if they are not reasonably relevant to the issues in the litigation, are unnecessarily broad, require an unreasonable effort to answer, or are unduly long.

If a party does not comply with his adversary's request to answer interrogatories, disclose documents or produce documents, the Court may issue an order directing such non-complying party to comply with the request. If a party fails to abide by the court order, the Court may strike out his pleadings.

The classes of documents that are exempt from discovery are discussed in the answer to question 7.2 below.

7.2 What are the rules on privilege in civil proceedings in Israel?

Privileged documents (i.e., documents that a party to litigation or a witness cannot be required to disclose or present) fall into two categories: those that benefit from absolute privilege (e.g., communications between an attorney and his client) and those that benefit from relative privilege. The court has discretion to order the disclosure of documents that enjoy relative privilege (e.g., communications between a patient and his physician).

Some of the statutory privileges recognised by Israeli law include the attorney-client privilege, physician-patient privilege, clergy privilege, and psychologist/social worker-client privilege. In addition, Israeli courts have recognised non-statutory privileges, such as documents that have been created in preparation for legal proceedings and a journalist's privilege not to reveal his sources.

Regulation 119 of the Procedure Regulations provides that if a party is requested to produce a document which he claims is privileged, the Court may view such document in order to ascertain whether the claim of privilege is proper.

7.3 What are the rules in Israel with respect to disclosure by third parties?

A third party may not be compelled to disclose documents within the discovery process in an action to which he is not a party.

Though a third party cannot be compelled to disclose documents in the discovery process, such third party may be summoned as a witness for the purpose of testifying or bringing a particular document to court.

7.4 What is the court's role in disclosure in civil proceedings in Israel?

As mentioned above, the Court oversees the discovery of documents and the response to interrogatories. The Court has the power to order parties to disclose the existence of or produce documents. The Court has discretion to limit or deny requests for documents and to limit or deny requests for answers to interrogatories. The Court also has the power to decide whether a claim of privilege is appropriate.

The Court may strike out the pleadings of a party who refuses to obey a court order regarding disclosure of documents or answers to interrogatories.

7.5 Are there any restrictions on the use of documents obtained by disclosure in Israel?

There is no statutory or regulatory provision that restricts a party from using a document received in discovery for other purposes. Except in respect of commercial secrets (see below), courts do not have the power to issue, nor have they developed a practice of issuing, protective or restrictive orders in respect of documents discovered in the action. However, there is one Supreme Court precedent which states that parties who receive documents in discovery may only use such documents for the sole purposes of the litigation within which they were discovered.

When a party is required to discover documents or information that contain commercial secrets, the Court has power to grant an order to ensure that the commercial secret is not disclosed to any person who is not involved in the litigation.

8 Evidence

8.1 What are the basic rules of evidence in Israel?

Generally, the rules of evidence in Israel are based on the Anglo-American principles. Cross-examination by opposing counsel is the cornerstone of the evidentiary process. A party may call any individual to testify, provided that such person's testimony is admissible and relevant. Reluctant witnesses may be subpoenaed by the Court. Witnesses generally submit written affidavits in lieu of direct examination. With very few exceptions, a statement of a person who is not available for cross-examination in court is inadmissible. A document can be introduced into evidence only by its author or recipient.

8.2 What types of evidence are admissible, which ones are not? What about expert evidence in particular?

As a rule, any evidence that is relevant and does not fall into one of the exceptions below will be admissible. Such exceptions include hearsay evidence, opinions of non-expert witnesses and privileged documents and communications.

An expert opinion is submitted to the Court in written form in advance of the trial. At the trial, the expert is subject to cross-examination by counsel for the opposing party. An expert does not need to possess any special or formal qualifications. Foreign law needs to be proven by an expert on such foreign law. No expert opinion can be introduced on matters of Israeli law.

8.3 Are there any particular rules regarding the calling of witnesses of fact? The making of witness statements or depositions?

In civil claims, the testimony in chief of witnesses is usually submitted in the form of affidavits in advance of the trial. At the trial, the witnesses who submitted affidavits are cross-examined by opposing counsel. The Procedure Regulations provide that any individual who submitted an affidavit in an action must appear for cross-examination on the date of trial unless the opposing party waived his right that such witness appear.

If a party wishes to present at trial the testimony of a witness who is not willing to cooperate with such party for the purpose of submitting ahead of trial his written testimony in chief, the party may request from the Court to subpoena the witness for the purpose of testifying at trial.

There are no dispositions in the Israeli civil litigation process.

8.4 What is the court's role in the parties' provision of evidence in civil proceedings in Israel?

The Court decides all questions of relevancy as well as admissibility of the evidence offered at the trial. The Court does not take an active role in the introduction of evidence. The Court has the power to call witnesses on its own behalf, but this power is very rarely used. The Court does not usually take an active part in the examination of the witnesses and presents its own questions to the witnesses only for the purpose of clarifying an issue during the examination of a witness.

9 Judgments & Orders

9.1 What different types of judgments and orders are the civil courts in Israel empowered to issue and in what circumstances?

Decisions in civil actions fall under two categories: (i) "judgments" or "partial judgments", which are the final decisions in the case ("Judgments") or a final decision in respect of a part of the case ("Partial Judgment"); and (ii) "decisions" that do not conclude the dispute between the parties "("Decisions"). Judgments and Partial Judgments can be appealed to a higher court as of right while other decisions of a court can be appealed to a higher court only by leave of the higher court.

Judgments and other decisions do not need to be in a certain rigid form, and judges have broad discretion as to the form as well as the substance of their decisions. The remedies that are available in civil cases are generally broad and usually include payment of monetary compensation, damages and restitution, specific performance, audit of accounts and declaratory judgment. The Court may issue injunctions, appoint a temporary or permanent receiver and attach property.

9.2 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

Israeli courts have the power to order the payment of damages. In cases where the precise amount of damages does not lend itself to easy calculation, the Court has the power to assess the damages based on its best estimate. In some cases, the Court has power to award "proportional damages" (i.e., when the precise cause of injury is unknown but one can determine on the basis of available statistical information the likelihood that the defendant's actions caused the injury).

A judgment requiring a party to pay money will routinely include a requirement to also pay interest and linkage differences on such money. The interest and linkage differences will normally be calculated from the time the cause of action accrued. Linkage differences mean the difference between the Israeli average cost of living index at the time the cause of action accrued and the average cost of living index at the time the defendant satisfies the judgment. The interest rate is prescribed by the Awarding of Interest and Linkage Law, 5721-1961.

For answer regarding courts' powers to make rulings on costs of the litigation, please see answer to question 1.5, *supra*.

9.3 How can a domestic/foreign judgment be enforced?

Domestic judgments can be enforced by the Execution Office established by the Execution Law, 5727-1967. The Execution Office has broad powers to enforce judgments, including the ability to issue an order of imprisonment against a judgment debtor that has not paid his judgment debt.

If a defendant fails to comply with an injunction or order for specific performance, the plaintiff can request that the Court initiate contempt proceedings against the defendant pursuant to the Contempt of Court Ordinance. In contempt proceedings, the Court may impose sanctions on the defendant until he complies with the judgment. Such sanctions include daily fines or imprisonment.

The enforcement of foreign judgments is governed by the Foreign Judgments Enforcement Law, 5218-1958. The law provides that a foreign judgment may be declared enforceable by Israeli courts if the following conditions are met: (i) the laws of the country in which the judgment was rendered recognise that the judgment was rendered by a court that had proper authority to render such decision; (ii) the judgment is no longer subject to appeal; (iii) the obligation in the judgment is enforceable according to the Israeli laws of enforcement of judgments; and (iv) the judgment is executable in the country in which it was rendered. Notwithstanding the above conditions, the law notes that a foreign judgment will not be declared enforceable if it suffers from certain fundamental flaws, such as the fact that it was obtained through fraud, for instance.

Once a foreign judgment is declared by the Israeli court as enforceable, it shall be treated the same way as a court's judgment.

9.4 What are the rules of appeal against a judgment of a civil court of Israel?

A final judgment of a Magistrate Court may be appealed before a District Court. A final judgment of a District Court sitting as a court of first instance may be appealed before the Supreme Court. Such appeals are permitted by law as of right.

In addition to those appeals permitted as of right, Israeli law provides that in some cases a judgment not entitled to appeal as of right may be appealed provided that the appellant court grants leave to appeal. For instance, a judgment issued by a District Court sitting as a court of appeals may be appealed before the Supreme Court if the Supreme Court agrees to hear such appeal. In determining whether an appeal is permitted by law as of right or whether leave to appeal is necessary, an important distinction is to be drawn between a *Judgment* and a *Decision* (for a description of these terms, please see the answer to question 9.1, *supra*). Whereas a *Judgment* is entitled to one appeal as of right, a Decision may only be appealed if leave to appeal is granted. A *Decision* rendered by a Magistrate Court is appealable before a District Court, and a *Decision* of a District Court is appealable before the Supreme Court. The Procedure Regulations provide that only one judge shall preside over such appeals.

Israeli courts strictly enforce the rules regarding the deadlines for submitting appeals or motions to grant leave to appeal. The deadline for filing an appeal permitted as of right is 45 days from the date of the judgment being appealed. The deadline for filing a motion to grant leave to appeal is 30 days from the date of the judgment being appealed, unless the law provides otherwise. The deadline for filing an appeal after leave to appeal was granted is 30 days from the date such leave was granted. The courts will agree to waive such deadlines in very rare circumstances and only for "special reasons".

Regarding appeals that require leave to appeal, Regulation 403(a) of the Procedure Regulations provides that a motion to grant leave to appeal shall be submitted in writing and shall briefly detail the applicant's oppositions to the judgment rendered. With respect to appeals permitted as of right, Regulation 414 of the Procedure

Regulations provides that the appellant's pleadings should summarily state the appellant's opposition to the judgment being appealed. During the course of the appeal, the appellant will be stopped from relying on an argument not mentioned in his pleadings unless the Court grants special permission to rely on such argument. The Court will grant such permission only on rare occasion. Once the initial concise motion papers have been submitted, the parties are permitted to submit lengthy briefs detailing all the factual allegations arising out of the action.

The Procedure Regulations provide that an appellant or a party submitting a motion to grant leave to appeal must provide security to cover the costs of the defendant in the event that the appeal will be denied. When an appeal is filed, the Court shall determine the sum of such security and the date on which it shall be deposited. Such security is usually given in the form of a bank cheque. In cases in which the Court decided to waive the applicable court fee for the appeal, the Court has discretion to waive the security requirement as well, but such authority is rarely exercised.

As a general rule, the filing of an appeal does not stay execution of the judgment on appeal. A party that wishes to request a stay of execution order must file a motion for such order with the court that rendered the original judgment. If such court refuses to grant a stay of execution order, the appellant court has discretion to grant such order. In considering whether to grant a stay of execution order, the courts will weigh the following considerations: (i) what is the likelihood that the judgment on appeal will be reversed; and (ii) assuming the appellant prevails on the appeal, will he suffer irreversible damage by virtue of the fact that the reversed judgment was already executed. When the judgment is one involving a monetary payment, the courts will usually not stay the execution of such payment.

The appellate court has the authority to grant interim remedies during the course of an appeal. For a discussion regarding possible interim remedies, please see the answer to question 3.2, *supra*.

II. DISPUTE RESOLUTION

1 Preliminaries

1.1 What methods of dispute resolution are available and frequently used in Israel? Arbitration/Mediation/Tribunals/Ombudsman? (Please provide a brief overview of each available method.)

In Israel there are two widely-used extra-judicial means of dispute resolution: arbitration and mediation.

An action will be submitted to an arbitrator if the parties agreed prior to the conflict that should a dispute arise in their dealings, it will be brought before an arbitrator. Even if no such agreement exists, the parties may decide, during the course of litigation, to submit the action to an arbitrator. In such a case, the Court will, at the request of one of the parties, suspend the action until further notice from the parties. The decision of an arbitrator is binding upon the parties.

Alternatively, if no arbitration agreement exists between the parties, the Court may, at the request of both parties, submit the action to a mediator. The mediator will attempt to resolve the conflict, though his decision will not bind the parties. Once the Court transfers an action to a mediator, all court proceedings will be suspended for a period to be determined by the Court.

Aside from the above extra-judicial means of dispute resolution, article 79a of the Courts Act provides that the Court itself may rule on an action in the form of a compromise. This authority is subject to the parties' consent. Courts commonly urge parties to allow the Court to exercise its discretion under this regulation. It became a common tool used by courts to end trials and it is used both before and in the course of the trial.

1.2 What are the laws or rules governing the different methods of dispute resolution?

The Courts Act establishes the courts' authority to refer an action to an arbitrator or a mediator or to issue a ruling in form of a compromise. The specific laws of arbitration in Israel are governed by the Israeli Arbitration Act, 5728-1968 (hereunder: the "Arbitration Act") and the Arbitration Procedure Regulations, 5729-1968. The laws of mediation in Israel are governed by the Court Regulations (Mediation), 5753-1993.

1.3 Are there any areas of law in Israel that cannot use arbitration/mediation/tribunals/Ombudsman as a means of dispute resolution?

Article 3 of the Arbitration Act provides that an agreement that refers to arbitration a matter that may not be the subject of arbitration is invalid. Such matters include legal rights that cannot be waived or compromised (e.g., certain employee rights), disputes involving criminal behaviour or resulting therefrom (e.g., the distribution of stolen goods between two thieves), and matters in which arbitration would be against the public interest (e.g., child custody and support).

In addition, special restrictions apply when the State is a party to arbitration or mediation. Before transferring an action from the court system to an arbitrator, the State must receive an approval from the Attorney General. Before referring an action to a mediator, the State must receive an approval from the Attorney General or other applicable governmental body as noted in the instructions of the Attorney General on this topic.

2 Dispute Resolution Institutions

2.1 What are the major dispute resolution institutions in Israel?

Anyone is eligible to serve as an arbitrator or mediator according to Israeli law. Article 79b(b) of the Courts Act provides that the parties, with the Court's approval, shall appoint an arbitrator for their dispute. Arbitrators chosen by the parties are often retired judges or attorneys. Alternatively, parties may choose an arbitrator from a list of arbitrators provided by the Chamber of Advocates. If the parties fail to reach an agreement regarding the identity of the arbitrator, the Court may appoint one from a list provided by the parties, or in the absence of such list, at his own discretion. In the case of mediation, if a mediator is not agreed upon by the parties, the Court may appoint a mediator from a list of mediators provided by the court system.

2.2 Do any of the mentioned dispute resolution mechanisms provide binding and enforceable solutions?

Article 21 of the Arbitration Act provides that the judgment of an arbitrator is binding upon the parties. In addition, pursuant to article 23(a) of the Act, the Court may choose to approve the judgment of the arbitrator, in which case the judgment will be considered for all purposes as a judgment of the Court. However, the Court may, upon the request of a party, choose to nullify,

complete or correct the judgment of an arbitrator, or return it to the arbitrator, in the event that the judgment is legally deficient, as defined in article 24 of the Act.

3 Trends & Developments

3.1 Are there any trends in the use of the different dispute resolution methods?

In order to reduce the heavy workload on the courts, judges are proactive in attempting to convince litigants to explore possibilities of alternate dispute resolution ("ADR"). Judges spend time and exert efforts to obtain the consent of litigants to refer disputes to arbitration or mediation. As the courts' workload is constantly increasing, this trend is expected to continue and even intensify over the next few years.

New centres, both private and governmental, have been established for the purpose of further developing the field of dispute resolution. The Israeli courts in particular are strong proponents of extra-judicial dispute resolution, mainly due to the overloaded court system in Israel.

3.2 Please provide, in no more than 300 words, a summary of any current issues or proceedings affecting the use of those dispute resolution methods in Israel?

The Procedure Regulations were recently amended to include a provision obligating the parties to a court action to attend a preliminary session with a mediator prior to the first hearing in the case. The purpose of such session is to explore the option of using mediation as a means to resolve the conflict. The parties, however, are not obligated to agree to resolve the conflict through mediation.

The importance of ADR has penetrated other areas of law as well. One such area of law that has witnessed an increase in the use of extra-judicial means of conflict resolution is family law. Article 26(a)(4) of the Family Court Act, 5755-1995 provides that the Attorney General may enact regulations dealing with the procedures for referring a family court action to a mediator.

Dr. Israel (Reli) Leshem

Meitar Liquornik Geva & Leshem Brandwein
16 Aba Hillel St.
Ramat Gan
Israel

Tel: +972 3 610 3650
Fax: +972 3 610 3631
Email: leshem@meitar.com
URL: www.meitar.com

Dr. Israel (Reli) Leshem leads Meitar's Litigation group. He represents local and international companies in complex civil litigation in court and arbitration. Dr. Leshem also represents clients in international arbitration and coordinates their cross-border litigation in foreign jurisdictions. He was selected by Chambers Global Guide as a leading litigation counsel and superior arbitrator. Dr. Leshem was educated at Tel-Aviv University (LL.B. 1973-1977) and Harvard Law School (S.J.D. 1982-1984). He is a member of the Israeli Bar (1978) and the New York Bar (1984). He worked in Cravath Swaine & Moore in New York (1984-1986). From 1986 to 1988 he was a partner at Zadok & Co. and from 1988 to 1994 he was a senior partner at Lipa Meir, Leshem & Co. In 1994 Dr. Leshem established the law firm of Leshem Brandwein (that merged in 2003 with Meitar, Liquornik, Geva & Co, in the largest legal merger ever in Israel). Dr. Leshem is considered one of the leading experts on civil procedure in Israel. He is one of the five members of the Minister of Justice's Advisory Committee on Civil Procedure. He was a senior lecturer on Civil Procedure at Tel-Aviv University Law School and taught several courses on arbitration law. He is the Chair of the Israel Bar Association Continuing Legal Education on Civil Procedure and Evidence.

Ron Peleg

Meitar Liquornik Geva & Leshem Brandwein
16 Aba Hillel St.
Ramat Gan
Israel

Tel: +972 3 610 3811
Fax: +972 3 610 3712
Email: ronp@meitar.com
URL: www.meitar.com

Ron Peleg, is a member of the firm's litigation Group. Ron represents Israeli and international clients in civil and commercial disputes in courts and arbitrations. Ron handles complex international litigation and gained vast experience representing and appearing before all judicial instances in cases involving corporate law, commercial law, environmental law, administrative law and product liability. Ron also specialises in the field of pharmaceutical law and represents multinational pharmaceutical companies in matters involving product liability, regulation and class actions. Ron holds an LL.B (2000, Magna cum laude) from Tel Aviv University and was admitted to the Israeli Bar in 2001. Ron is the former Associate Editor of "Tel Aviv University Law Review". Ron was chosen by Chambers Global Guide as an "up and coming" litigator that "…works on highly complex matters involving foreign clients". Accolades poured in from impressed clients: "He goes the extra mile and fully investigates every case to gain maximum understanding." Other commentators describe him as "a brilliant young lawyer with great analytical skills and plenty of energy".

MEITAR
MEITAR LIQUORNIK GEVA & LESHEM BRANDWEIN

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 articled 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. Our practice ranges from securities class actions to product liability crises, from alleged fixing of oil prices to biotechnology IP, and from FDA fraud to international contract arbitration. Meitar's litigation group represents a variety of clients: from multi-national industrial companies (chemicals, pharmaceuticals, infrastructure, telecommunications, electronics, software, oil and gas) to financial institutions, and from local industrial companies (food, oil & gas, irrigation and water treatment, high-tech, weapons, textile, cellular operators, cable TV and medical devices) to governmental institutions and large municipalities. Meitar regularly represents many companies in large and complex claims involving contracts, securities, antitrust, commercial torts, misappropriation of IP, product liability and environmental issues.