

Israel

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1 Arbitration Agreements

1.1 What, if any, are the legal requirements of an arbitration agreement under the laws of your country?

Arbitration agreements in Israel are primarily governed by the Israel Arbitration Law, 5728-1968 ("the Arbitration Law"). The term "arbitration agreement" is defined in Section 1 of the Arbitration Law as "a written agreement to refer to arbitration a dispute which has arisen between parties to the agreement or which may arise between them in the future, whether an arbitrator is named in the agreement or not".

- **Validity:** the agreement should be in writing, although signature of the agreement by the parties is not required. Arbitration agreements are viewed as contracts, and their validity is therefore subject to Israeli general contract laws.
- **Subject matter:** the agreement should clearly define the subject matter of the agreement and the scope of the dispute to be referred to arbitration. An arbitration agreement in a matter which cannot form the subject of an agreement between parties (e.g., mandatory labour rights which cannot be waived; criminal law matters) is invalid (Section 3 of the Arbitration Law; see: question 3.1 below).
- **Privity:** the agreement should clearly state the names of the parties thereto. The arbitration agreement and the power of an arbitrator thereunder shall have a direct effect also in respect of the successors of the parties to the agreement. The power of an arbitrator under an arbitration agreement vests also in a substitute arbitrator, unless a contrary intention appears from the agreement (Section 4 of the Arbitration Law).
- **Default agreement:** Unless a contrary intention appears from the agreement, an arbitration agreement shall be deemed to include the provisions as set out in the Schedule to the Arbitration Law ("the Schedule"), to the extent relevant thereto (Section 2 of the Arbitration Law). The Schedule provides a default arbitration agreement.
- **Good faith:** negotiating as well as executing an arbitration agreement shall be conducted in a customary manner and in good faith.

1.2 Are there any special requirements or formalities required if an individual person is a party to a commercial transaction which includes an arbitration agreement?

The Arbitration Law does not make a distinction between corporate bodies and individual persons.

1.3 What other elements ought to be incorporated in an arbitration agreement?

The arbitration agreement should clearly define the dispute to be referred for arbitration and its scope. As far as international arbitration agreements are concerned, the parties should consider incorporating into their agreement specific instructions as to the substantive law and procedure to be applied; the language of the arbitration; its venue; the exclusive tribunal that is to have jurisdiction over any question arising out of the arbitration agreement and/or the arbitration; and an express clause regarding confidentiality.

1.4 What has been the approach of the national courts to the enforcement of arbitration agreements?

Traditionally, the courts' approach is to favour arbitration as an effective means of settling commercial disputes. Where an action is brought to court involving a dispute which the parties had agreed be referred to arbitration, and a party to the arbitration agreement applies for a stay of the proceedings in the action, the court shall, unless there exist special grounds why the dispute should not be dealt with by arbitration which are accepted by the court, stay the proceedings between the parties to the agreement, provided that the applicant's application was filed in good faith, and no later than the day on which the applicant first pleads to the substance of the action (Section 5 of the Arbitration Law). When an international convention to which Israel is a party applies to the arbitration, and such convention lays down provisions for a stay of proceedings, the court shall exercise its power to stay the court proceedings, subject to those provisions (Section 6 of the Arbitration Law).

1.5 What has been the approach of the national courts to the enforcement of ADR agreements?

The courts actively encourage parties to commercial disputes to adopt ADR measures, such as arbitration and mediation, to resolve their disputes (if appropriate), mostly at the preliminary stage of the litigation (pre-trial).

2 Governing Legislation

2.1 What legislation governs the enforcement of arbitration agreements in your country?

Arbitration agreements in Israel are governed by the Arbitration Law (and the regulations enacted thereunder). In certain instances,

Israeli law provides for statutory (obligatory) arbitration which provides a specific framework for resolution of the dispute. This generally applies (but is not limited) to special types of associations, such as "Cooperative Associations", "Kibbutzim" and other forms of associations in the agricultural sector, which provide for special arbitration mechanisms expressly set out in the pertinent law or in the Articles of Association of the specific association.

2.2 Does the same arbitration law govern both domestic and international arbitration proceedings? If not, how do the laws differ?

The Arbitration Law governs both domestic and international arbitration proceedings. International treaties/conventions that apply to a dispute brought before the court will be considered; a stay of proceedings may be ordered under appropriate circumstances (Section 6 of the Arbitration Law, see question 1.4 above); the confirmation or setting aside of an award by the court will be handled in accordance with the relevant treaty (Section 29(a) of the Arbitration Law).

2.3 Is the law governing international arbitration based on the UNCITRAL Model Law? Are there significant differences between the governing law and the Model Law?

The Arbitration Law predates the UNCITRAL Model Law and, thus, is not based on it.

3 Jurisdiction

3.1 Are there any subject matters that may not be referred to arbitration under the governing law of your country? What is the general approach used in determining whether or not a dispute is "arbitrable"?

Under Section 3 of the Arbitration Law, an arbitration agreement in a matter which cannot form the subject matter of an agreement between the parties is invalid. Issues that may not be referred to arbitration, include matters regulated in mandatory legislation, such as labour rights which cannot be waived; criminal law matters; matters which the law expressly prohibits from being the subject matter of an arbitration agreement or the arbitration of which is contrary to public policy.

3.2 Is an arbitrator permitted to rule on the question of his or her own jurisdiction?

By default, an arbitrator is not authorised to rule on the question of his jurisdiction, unless expressly authorized to do so, by the parties to the arbitration (see: Originating Motion (District Court, Tel-Aviv) 1365/01 Vilner Properties (1985) Ltd. v. Kermital I.L Ltd., et. al.).

3.3 What is the approach of the national courts in your country towards a party who commences court proceedings in apparent breach of an arbitration agreement?

The court will stay the proceedings between the parties to the arbitration agreement, provided that the defendant (who is also a party to the arbitration agreement), applies in good faith for a stay of the court proceedings, i.e., the defendant has been, and is still prepared to do everything required to ensure the commencement

and continuation of the arbitration, and that the application was filed no later than the day on which the applicant first pleads to the substance of the action (Section 5 of the Arbitration Law).

3.4 Under what circumstances can a court address the issue of the jurisdiction and competence of the national arbitral tribunal?

There is no national arbitral tribunal in Israel.

3.5 Under what, if any, circumstances does the national law of your country allow an arbitral tribunal to assume jurisdiction over individuals or entities which are not themselves party to an agreement to arbitrate?

- The arbitrator may summon witnesses to give evidence or produce documents (Section 13(a) of the Arbitration Law). Enforcement of such an order on a third party who is not a party to the arbitration agreement, and who refuses to cooperate might require the court's intervention (Section 16(a)(2) of the Arbitration Law). The court has a discretion whether to enforce the arbitrator's order, or cancel the summons (Section 13(c) of the Arbitration Law).
- An arbitration agreement and the power of the arbitrator thereunder shall have effect not only on the parties to the agreement, but also on their successors, unless a contrary intention appears from the agreement (Section 4 of the Arbitration Law). Accordingly, the arbitral award will bind the parties to the arbitration and their respective successors (Section 21 of the Arbitration Law).

4 Selection of Arbitral Tribunal

4.1 Are there any limits to the parties' autonomy to select arbitrators?

The parties to the arbitration agreement have general autonomy in arbitrator selection, including with respect to the qualifications and experience of the candidates as well as the selection process to be applied.

4.2 If the parties' chosen method for selecting arbitrators fails, is there a default procedure?

The court may, on the application of a party, appoint an arbitrator, where a dispute arises in a matter with respect to which there exists an agreement to refer the dispute to arbitration, and an arbitrator has not been appointed thereunder (Section 8 of the Arbitration Law). Another scenario which could necessitate the court's intervention is where the office of an arbitrator has fallen vacant, whether as a consequence of his resignation, death or removal. The court may appoint a substitute arbitrator, unless a contrary intention appears from the arbitration agreement (Section 12 of the Arbitration Law).

4.3 Can a court intervene in the selection of arbitrators? If so, how?

The Arbitration Law provides for limited intervention, such as when the parties to the arbitration agreement fail to agree on the appointment of an arbitrator (Section 8 of the Arbitration Law); to fill a vacancy (Section 12 of the Arbitration Law); or to remove an arbitrator in certain circumstances (the arbitrator betrayed the parties' confidence; his conduct causes an unduly delay of justice; inability to perform his duties) (Section 11 of the Arbitration Law).

4.4 What are the requirements (if any) as to arbitrator independence, neutrality and/or impartiality?

The arbitrator is obliged, under Section 30 of the Arbitration Law, to act loyally towards the parties. This duty has been interpreted broadly, as the duty to act in utmost good faith (*uberrimae fidei*) towards the parties; fairly, impartially, independently and without any conflict of interests. The arbitrator ought to disclose to the parties any connection or relationship he might have with any of them or with regard to the subject matter of the dispute; as well as any criminal or disciplinary record (if any).

5 Procedural Rules

5.1 Are there laws or rules governing the procedure of arbitration in your country? If so, do those laws or rules apply to all arbitral proceedings sited in your country?

The Arbitration Law generally upholds the parties' autonomy and flexibility as to how the arbitration proceedings are to be conducted. Accordingly, the parties are free to determine the procedural rules to be adopted by the arbitrator. Unless a contrary intention appears from the arbitration agreement, an arbitration agreement shall be deemed to include the provisions set out in the Schedule, which provide that the arbitrator shall not be bound by the substantive law, the rules of evidence or the rules of procedure practised before the courts (Schedule, Section N).

The Arbitration Law and the Arbitration Procedure Regulations, 5729-1968 ("the Arbitration Regulations") govern the procedure of issues which require the court's assistance or intervention (e.g., time for filing an application to set aside an arbitral award (Section 27 of the Arbitration Law); or an application for the confirmation or setting aside of an award (Regulations 8 and 9 of the Arbitration Regulations).

5.2 In arbitration proceedings conducted in your country, are there any particular procedural steps that are required by law?

As mentioned in question 5.1 above, the Arbitration Law generally upholds the parties' autonomy and flexibility as to how the arbitration proceedings are to be conducted.

5.3 Are there any rules that govern the conduct of an arbitration hearing?

Rules that govern the conduct of an arbitration hearing include, inter alia, the following:

- **Arbitrator's duty towards the parties:** the arbitrator shall act loyally towards the parties (Section 30 of the Arbitration Law). The arbitrator is obliged to act fairly and impartially, applying due process, allowing each party the opportunity to argue its case and deal with that of its opponent.
- **Timeframe:** unless a contrary intention appears in the arbitration agreement, the arbitrator shall make an award within three months from the date on which he commenced dealing with the dispute, or the date on which he received written notice from a party requesting him to deal with it (whichever is the earlier); provided that the arbitrator may extend such period by up to three additional months (Schedule, Section O).
- **Award's format:** the arbitral award shall be in writing and shall be signed and dated by the arbitrator (Section 20 of the Arbitration Law).

- **Arbitrator's fees:** where the arbitrator has not been paid the whole or part of his remuneration timeously, he may delay the continuation of the hearing or the making or delivery of an award until all outstanding fees are paid (Section 33 of the Arbitration Law).

5.4 What powers and duties does the national law of your country impose upon arbitrators?

In general, the Arbitration Law generally upholds the parties' autonomy and flexibility to define the powers and duties of the arbitrator. The Arbitration Law (Section 13), expressly grants the arbitrator powers to summon witnesses to give evidence or produce documents.

With respect to duties of the arbitrator: see question 4.4 above.

5.5 Do the national courts have jurisdiction to deal with procedural issues arising during an arbitration?

The courts have jurisdiction to deal with procedural issues such as the appointment and removal of an arbitrator, under certain circumstances (Sections 8, 9, 11 and 12 of the Arbitration Law); cancellation of the summons of a witness by the arbitrator (Section 13(c) of the Arbitration Law); extending the deadline for granting an arbitral award by the arbitrator (Section 19 of the Arbitration Law). In addition, the court has auxiliary powers intended to assist the arbitrator regarding the summoning and sanctioning of witnesses; the taking of evidence; ordering substituted service of notices or documents; ordering the attachment of property, preventing the departure of a person from Israel, depositing security for the furnishing of assets, appointing a receiver; and granting a mandatory or prohibitive injunction (Section 16 of the Arbitration Law; see also question 6.2 below).

It should be noted, however, that the general approach of the courts in interpreting the Arbitration Law is the abstention from judicial intervention, save in limited circumstances, in order to strengthen the status of arbitration as alternative means for dispute resolution.

5.6 Are there any special considerations for conducting multiparty arbitrations in your country (including in the appointment of arbitrators)? Under what circumstances, if any, can multiple arbitrations (either arising under the same agreement or different agreements) be consolidated in one proceeding? Under what circumstances, if any, can third parties intervene in or join an arbitration proceeding?

The Arbitration Law does not cater for the consolidation of arbitral proceedings, nor for the intervention of third parties in arbitration proceedings. Any such consolidation or intervention would require the preliminary approval and consent of the parties to the arbitration (see e.g., Originating Motion (Tel-Aviv) 411/96 Samarov v. De Shalit (Dinim Mehozi 32(3) 75)).

5.7 What is the approach of the national courts in your country towards ex parte procedures in the context of international arbitration?

The parties to the arbitration must be given an appropriate opportunity to state their case and to produce evidence (Section 24(4) of the Arbitration Law). It is the arbitrator's duty towards the parties to conduct the arbitration applying due process (Section 30 of the Arbitration Law). Conducting an ex parte hearing is an exception. According to Section J of the Schedule (which provides a default arbitration agreement): "the arbitrator shall not hold a

hearing in the absence of a party unless he has warned that party, in writing or orally, that he will proceed at that hearing in that party's absence if it does not attend".

When a party who has been duly summoned to a hearing fails to appear, the arbitrator may hold such hearing in the party's absence; when a party has been called upon to state its case at a prescribed time and fails to do so, the arbitrator may determine the dispute in that party's absence (Section 15(a) of the Arbitration Law). Nevertheless, the arbitrator may, at the request of a party made to him within 30 days from the date on which a copy of the award (given in the party's absence) was delivered to such party, set aside the award and reopen the hearing, if the arbitrator is satisfied that the party was absent or did not state its case for justifiable cause (Section 15(b) of the Arbitration Law).

When interpreting the phrase "duly summoned", emphasis should be placed on whether that party had prior knowledge as to the date of the arbitration hearing, rather than as to the manner of delivery of the summons, and whether it was in compliance with all of the formalities. If a party had such prior knowledge, then the assumption is that it was granted an appropriate opportunity to argue its case (see: Leave for Civil Appeal 6130/98 Hevra Kablanit Lebinyan Yerushalyim V. R.A.M Mehandesim, Supreme Court Judgments, Takdin Elyon 99(1), 710).

6 Preliminary Relief and Interim Measures

6.1 Under the governing law, is an arbitrator permitted to award preliminary or interim relief? If so, what types of relief? Must an arbitrator seek the assistance of a court to do so?

Unless a contrary intention appears from the arbitration agreement, the arbitrator is permitted to award certain preliminary and interim relief. According to the Arbitration Law (and the Schedule), the arbitrator may: summon witnesses to give evidence or produce documents, and award them remuneration and expenses (Section 13(a) of the Arbitration Law); order the parties to the arbitration to answer interrogatories, disclose and produce documents (Schedule, Section H); issue a declaratory order, grant a mandatory or prohibitive injunction and make an order for specific performance (Schedule, Section Q); and issue directives as to the expenses of the parties, and the giving of security for the costs of the arbitration (Schedule, Section R; see: question 6.4 below).

Nevertheless, the question as to the extent of the arbitrator's authority to grant interim relief (e.g., a mandamus order or a prohibitive injunction) is under dispute. For example, a provisional attachment order may not be granted by an arbitrator (Civil Appeal 603/80 Establishment Nahal v. Holiday Inns Inc., PD Vol. 25(iii), 393 and 395). Further, an arbitrator may not issue a warrant preventing the departure of a person from Israel. In general, it could be stated that the parties may authorize the arbitrator to award any interim relief the execution of which does not require the intervention of governmental authorities.

6.2 Is a court entitled to grant preliminary or interim relief in proceedings subject to arbitration? In what circumstances? Can a party's request to a court for relief have any effect on the jurisdiction of the arbitration tribunal?

The court may assist the arbitrator by granting interim remedies as the arbitrator's ruling or awards do not necessarily bind third parties (such as witnesses), governmental bodies or related authorities.

The Arbitration Law (Section 16) expressly provides that, with respect to arbitration, the court has the same powers to grant relief as it has in respect of an action brought before it, in connection with the following matters: (1) the summoning of witnesses and the determination of their remuneration and expenses; (2) the adoption of coercive and punitive measures against a witness who has not responded to a summons of the arbitrator or the court or who refuses to testify; (3) the taking of evidence forthwith or out of the jurisdiction; (4) substituted service of notices or documents on the litigants; (5) the attachment of property, the prevention of departure of a person from Israel, security for the furnishing of assets, the appointment of a receiver or the issuing of a mandatory or prohibitive injunction.

Application for relief under Section 16 of the Arbitration Law may be filed by a party to the arbitration or the arbitrator (Section 16(c) of the Arbitration Law). The use of the court's auxiliary powers under Section 16 do not derogate from the powers of the arbitrator under the arbitration agreement or under the Arbitration Law (Section 16(d)).

6.3 In practice, what is the approach of the national courts to requests for interim relief by parties to arbitration agreements?

As stated in question 5.5 above, the general approach of the courts in interpreting the Arbitration Law is the abstention from judicial intervention, save in limited circumstances, in order to strengthen the status of arbitration as alternative means for dispute resolution. The tendency of the courts is to refer the parties - when possible and appropriate - to file requests for interim relief, to the extent permitted with the arbitrator (see, e.g. Leave for Appeal 158/77 Segal v. Nafit, Investments and Development Ltd., PD 31(iii) 389).

6.4 Does the national law allow for the national court and/or arbitral tribunal to order security for costs?

Unless a contrary intention appears from the arbitration agreement, an arbitrator is authorised to order security for costs with respect to the payment of all or part of the costs of the parties, including attorneys' fees and the remuneration and expenses of the arbitrator (Section 2 of the Arbitration Law; Schedule, Section R).

7 Evidentiary Matters

7.1 What rules of evidence (if any) apply to arbitral proceedings in your country?

See question 5.1 above.

7.2 Are there limits on the scope of an arbitrator's authority to order the disclosure of documents and other disclosure of discovery (including third party disclosure)?

An arbitrator has the identical power to summon witnesses to give evidence or produce documents as a court has in an action brought before it (Section 13(a) of the Arbitration Law). This power cannot however, be enforced against third parties, without the intervention of the court (Section 16 of the Arbitration Law; see question 7.3 below).

Unless a contrary intention appears in the arbitration agreement, the arbitrator may direct the parties to the arbitration to respond to interrogatories, disclose and produce documents and to perform any

other act connected with the conduct of the arbitration, as a court might order in an action brought before it (Schedule, Section H).

7.3 Under what circumstances, if any, is a court able to intervene in matters of disclosure/discovery?

A party to the arbitration or the arbitrator himself, may file an application with the court in connection with the following issues: to summon witnesses; in order to adopt coercive and punitive measures against a witness who fails to respond to a summons of an arbitrator or the court or who refuses to testify; or for the purpose of taking evidence forthwith or abroad. In this regard, the court has the identical powers to grant relief as it has in respect of a "regular" action brought before it (Section 16 of the Arbitration Law).

7.4 What is the general practice for disclosure / discovery in international arbitration proceedings?

It is impossible to specify the general practice for disclosure or discovery in international arbitration proceedings (i.e., when one of the parties does not reside in Israel). Disclosure and discovery are subject to the agreement of the parties in the arbitration agreement or (in the absence of such agreement) are within the discretion of the arbitrator. It is possible that local parties will be influenced by the rules of discovery that apply to litigation conducted before the Israeli courts, i.e., discovery of all documents and information relevant to the question in dispute.

7.5 What, if any, laws, regulations or professional rules apply to the production of written and/or oral witness testimony? For example, must witnesses be sworn in before the tribunal? Is cross-examination allowed?

The parties are free to agree, within the framework of the arbitration agreement, whether or not witnesses will provide oral or written testimony in the arbitration proceedings; as well as the manner of their cross-examination (if at all). Unless a contrary intention appears in the arbitration agreement the arbitrator may decide on the procedure to be applied in this regard. As to the arbitrator's authority to summon witnesses to give evidence or produce documents see question 7.2 above.

A witness, who testifies in arbitration proceedings, shall have the same duties and rights (including immunities) of a witness who testifies in court. With regard to testifying under oath, Section 14 of the Arbitration Law provides that the evidence of a witness shall be taken under oath or by affirmation, unless the arbitrator and the parties have agreed otherwise. However, since the courts are no longer authorized to take the evidence of a witness under oath, but only by affirmation, it is believed that the same rule would apply to arbitration proceedings. According to the Schedule (Section J), before taking evidence, the arbitrator must warn the witness of his obligation to testify truthfully, failing which the witness will be liable to the penalties prescribed by law.

7.6 Under what circumstances does the law of your Country treat documents in an arbitral proceeding as being subject to privilege? In what circumstances is privilege deemed to have been waived?

Communications between an attorney and a client as well as documents prepared in relation to litigation or in anticipation thereof are considered privileged. Privilege is deemed to have been

waived upon the expressed consent or intention of a party to whom the privilege applies, or by implied waiver.

8 Making an Award

8.1 What, if any, are the legal requirements of an arbitral award?

The arbitral award shall be in writing and signed and dated by the arbitrator. In the case of arbitration before a tribunal of arbitrators, the signatures of the majority of them shall be sufficient if the award indicates that the other arbitrators are unable or unwilling to sign it (Section 21 of the Arbitration Law). As to the timeframe for giving the award, see question 5.3 above.

9 Appeal of an Award

9.1 On what bases, if any, are parties entitled to appeal an arbitral award?

Under the Arbitration Law an arbitral award cannot be appealed, but only set aside (wholly or partially), supplemented, amended or remitted to the arbitrator (for such purpose). Section 24 of the Arbitration Law specifies the following limited grounds for setting-aside an arbitral award: (1) there was no valid arbitration agreement; (2) the arbitral award was granted by an arbitrator who was not properly appointed; (3) the arbitrator acted without authority or exceeded the authority vested in him under the arbitration agreement; (4) a party was denied a suitable opportunity to state his case or to produce evidence; (5) the arbitrator failed to decide on any of the matters referred to him for determination; (6) the arbitrator failed to give a reasoned award, despite being required to do so under the arbitration agreement; (7) it was agreed in the arbitration agreement that the arbitrator should rule according to law, but the arbitrator failed to do so; (8) the award was granted after the period for making it had expired; (9) the arbitral award contravenes public policy; and (10) there exists a ground according to which a court would have set aside a final, non-appealable judgment. It should be noted that the general approach of the courts is minimum intervention in arbitral awards. Accordingly, the grounds for setting aside an arbitral award are narrowly interpreted.

9.2 Can parties agree to exclude any basis of appeal or challenge against an arbitral award that would otherwise apply as a matter of law?

Parties to arbitration cannot agree to deny judicial review of an arbitral award.

9.3 Can parties agree to expand the scope of appeal of an arbitral award beyond the grounds available in relevant national laws?

Parties to arbitration cannot agree to expand the scope of judicial review of an arbitral award.

9.4 What is the procedure for appealing an arbitral award in your country?

A party to the arbitration proceedings may apply to a court to set aside an arbitral award, within 45 days of the date the award was

given (if in the presence of the applicant) or from the date it was served upon the applicant (if the award was made in the absence of the applicant). The application should be submitted as an originating motion; should specify the grounds for setting aside the arbitral award; and should be supported by an affidavit if it includes any factual statements (Regulation 9 of the Arbitration Regulations).

10 Enforcement of an Award

10.1 Has your country signed and/or ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Has it entered any reservations? What is the relevant national legislation?

Israel is a party to the 1958 New York Convention, and ratified it on June 7, 1959. No reservations were entered.

The Regulations for the Execution of the New York Convention 5738-1978, were published on August 6, 1978 and entered into force 30 days thereafter.

10.2 Has your country signed and/or ratified any regional Conventions concerning the recognition and enforcement of arbitral awards?

Israel has not signed any regional conventions with neighbouring states.

10.3 What is the approach of the national courts in your country towards the recognition and enforcement of arbitration awards in practice? What steps are parties required to take?

As stated above (questions 5.5, 6.3), the general approach of the courts in interpreting the Arbitration Law is the abstention from judicial intervention, save in limited circumstances. Accordingly, the courts are inclined to uphold arbitration awards and so minimise the scope of judicial intervention with arbitrators' rulings.

The court may, on the application of a party, confirm an arbitral award (although confirmation of the award is not a pre-condition for its validity). When the award has been confirmed, it shall in all respects, (save in the event of an appeal), be treated as a judgment of the court (Section 23 of the Arbitration Law).

The steps required to be taken by a party in order to confirm an arbitral award are: to file a written application with the court in the form of a notice, using the specified form; to include therewith a copy of the arbitral award signed by the arbitrator; and to provide copies of the application to facilitate service thereof on the other parties to the arbitration (who will then be considered as respondents to the application) (Regulation 8 of the Arbitration Regulations).

10.4 What is the effect of an arbitration award in terms of res judicata in your country? Does the fact that certain issues have been finally determined by an arbitral tribunal preclude those issues from being re-heard in a national court and, if so, in what circumstances?

According to Section 21 of the Arbitration Law, unless a contrary intention appears from the arbitration agreement, the arbitral award will bind the parties and their successors as res judicata. Therefore, an arbitral award prevents parties to the arbitration from re-litigating any claims that were or could have been raised in the original proceedings.

11 Confidentiality

11.1 Are arbitral proceedings sited in your country confidential? What, if any, law governs confidentiality?

The Arbitration Law does not include any provision relating to confidentiality, although in general, parties treat arbitration proceedings as such and may include a specific provision relating to confidentiality in the arbitration agreement. Absent an express provision regarding confidentiality in the arbitration agreement, it is believed that the parties to the arbitration as well as the arbitrator are subject to a duty of confidentiality, on the grounds of custom; the right to privacy (see: the Law of Privacy, 5741-1981; as well as the Basic Law: Human Dignity and Liberty, 5752-1992 which provides a basic right to privacy, and prevents "violation of the confidentiality of conversation, or of the writings or records of a person"); and the general duty to perform a contract in good faith. The arbitrator's loyalty duty towards the parties (Section 30 of the Arbitration Law) may be interpreted as including a duty to maintain the arbitration proceedings in confidence. The foregoing obligation is also subject to public policy considerations.

Violation of confidentiality of the arbitration proceedings by third parties (e.g., by publishing minutes of the arbitration, or arbitrator's decisions), could amount to breach of the parties' (to the arbitration agreement) right to privacy.

11.2 Can information disclosed in arbitral proceedings be referred to and/or relied on in subsequent proceedings?

The duty of the parties to the arbitration to act in good faith (which is widely interpreted by the Israeli courts), could prevent a referral to information which was disclosed during arbitral proceedings, in subsequent proceedings, on the ground that such information was disclosed solely for the purpose of the arbitration (unless a contrary intention appears from the arbitration agreement). The case law on this point is mixed, and in some cases discovery was ordered (taking into account, inter alia, the terms and conditions of the arbitration agreement, and the public interest).

11.3 In what circumstances, if any, are proceedings not protected by confidentiality?

The proceedings (or any part thereof) are not protected by confidentiality when: (1) the parties agreed otherwise (either explicitly or implicitly; but see section 11.1 above); (2) if either party seeks the intervention of the court (e.g., challenging a procedural order of the arbitrator; filing an application for interim relief; applying for the setting aside of an arbitral award); (3) where the public interest so requires (e.g., in the context of a formal investigation by the tax authorities an arbitrator was ordered to produce documents relating to one of the parties to the arbitration).

12 Remedies / Interests / Costs

12.1 Are there limits on the types of remedies (including damages) that are available in arbitration (e.g., punitive damages)?

Unless agreed otherwise by the parties to the arbitration agreement, the arbitrator may grant any relief which a court is competent to grant (Section 2 of the Arbitration Law, and Schedule, Section Q), including punitive damages (see: Leave for Civil Appeal 918/91

Azani Nachshon v. Shimon Yosef (Supreme Court Judgment, Takdin Elyon 91(1) 1242). It should be noted, however, that it is not common for the Israeli courts to award punitive damages.

12.2 What, if any, interest is available?

The parties may include in the arbitration agreement, a provision relating to interest. If no such provision is included, the arbitrator will be entitled to award interest in accordance with the Law for Determining Interest and Linkage Differentials, 5721-1961, from the date of filing the claim until the date of payment.

If no provision as to the payment of interest is included in the arbitral award, a party may approach the arbitrator with a request to rectify or supplement the arbitral award by including therein interest (Section 22(a)(3) of the Arbitration Law).

The court is authorised, within the framework of an application for confirmation of an arbitral award, to award interest from the date the application was filed (but not with respect to the period prior to filing such application).

12.3 Are parties entitled to recover fees and/or costs and, if so, on what basis? What is the general practice with regard to shifting fees and costs between the parties?

Unless a contrary intention appears from the arbitration agreement, the arbitrator may issue directives as to the payment of all or part of the costs of the parties, including attorneys' fees, and the remuneration and costs of the arbitrator (absent such directives, the arbitrator's fees shall be borne equally by the parties), as well as the deposit of these amounts or the giving of security for the payment thereof (Section 2 of the Arbitration Law; Schedule, Section R).

In giving such directives the arbitrator is likely to consider, inter alia, the value of the claim, the award eventually given, and the conduct of the parties during the proceedings. The successful party is usually awarded court costs and attorneys' fees.

Traditionally, attorneys' fees granted by the courts and in arbitrations often amounted to a small percentage of the actual fees paid, however recent case law has shifted towards more realistic awards by the courts (see: High Court of Justice 891/05, Civil Appeal 2617/00 In Re: Tnuva Cooperative Center for Marketing Agricultural Products Ltd.; Supreme Court Decision). This ruling could similarly have an effect on the scope of fees and costs awarded in arbitration proceedings.

12.4 Is an award subject to tax? If so, in what circumstances and on what basis?

The tax rules which apply to arbitration awards are identical to those applying to judgments given by a court. However, as the taxation of judicial awards under Israeli law is an extremely complex issue, no single and definite answer may be provided. As a general rule though, an arbitration award will be taxed in the same manner as an amount received in the ordinary course of business (and not as part of an arbitral award).

13 Investor State Arbitrations

13.1 Has your country signed and ratified the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (1965)?

Israel is party to the Washington Convention on the Settlement of

Investment Disputes Between States and Nationals of Other States (1965) which it signed on June 6, 1980 and which was subsequently ratified on July 22, 1983.

13.2 Is your country party to a significant number of Bilateral Investment Treaties (BITs) or Multilateral Investment treaties (such as the Energy Charter Treaty) that allow for recourse to arbitration under the auspices of the International Centre for the Settlement of Investment Disputes (ICSID)?

Israel is currently a party to 13 Bilateral Investment Treaties ("BITs"), which provide for ADR under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. Countries which have entered into BITs with Israel include: Argentina; Bulgaria; China; Estonia; France; Germany; Hungary; India; Kazakhstan; Latvia; Lithuania; Poland; and Romania.

Israel is neither a member nor observer of the Energy Charter Treaty.

13.3 Does your country have standard terms or model language that it uses in its investment treaties and, if so, what is the intended significance of that language?

We are not aware of any formal standard terms or model language.

13.4 In practice, have disputes involving your country been resolved by means of ICSID arbitration and, if so, what has the approach of national courts in your country been to the enforcement of ICSID awards?

We are not aware of any disputes being resolved by ICSID arbitration.

13.5 What is the approach of the national courts in your country towards the defence of state immunity regarding jurisdiction and execution?

The precedent ruling on the issue of state immunity was set in the matter of Leave for Civil Appeal 7092/94 Her Majesty the Queen in Right of Canada v. Sheldon G. Adelson et al (Supreme Court Judgment). In this case it was held that the immunity of the foreign sovereign is not absolute, but relative and limited. State immunity would only apply upon exercise by the foreign sovereign of governmental power (*acta jure imperii*) within the realm of public law. Such immunity would not apply in cases where the foreign state is acting within the realm of private law (*jure gestionis*).

14 General

14.1 Are there noteworthy trends in the use of arbitration or arbitration institutions in your country? Are certain disputes commonly being referred to arbitration?

Commercial disputes are occasionally referred to arbitration, in order to avoid a hearing involving sensitive commercial and business-related issues before a court sitting in public (*in curia*). The traditional approach of the courts in Israel is to abstain from judicial intervention in arbitration proceedings, save in limited circumstances. Arbitration of commercial disputes are commonly referred to retired Supreme Court Justices (as well as to some District Court Judges and prominent lawyers). The Israeli Institute

of Commercial Arbitration provides an alternative venue for arbitrating commercial disputes.

14.2 Are there any other noteworthy current issues affecting the use of arbitration in your country?

In recent years, the Israeli courts have placed more emphasis on alternative dispute resolution (arbitration included) as part of an effort to resolve commercial disputes swiftly and efficiently and to ease the considerable workload and backlog encountered by parties

wishing to litigate through the regular court system. As part of this trend, the courts are taking a pro-active role in analysing cases in their preliminary stages of litigation (i.e., pre-trial) and assessing the probability of successful mediation; parties are being encouraged by the courts to consider settlement negotiations and/or mediation at different stages throughout the trial, with the option of resuming the litigation if such alternative measures prove unsuccessful; the court is authorised to recommend a compromise to the parties and rule accordingly, without giving any reasoning, if the parties agree thereto.



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Alex Hertman is a senior partner at the firm and heads its International Dispute Resolution Group. Alex specialises in complex corporate, banking and commercial litigation. Widely acknowledged as one of Israel's top litigators, Alex is highly recommended by *European Legal Experts*, *European Legal 500* and *Which Lawyer?* for his banking and commercial litigation expertise. Alex has further been praised by *Chambers Global Guide* for his "standard of excellence" and "professional integrity": with a reputation for being "brilliant in court," Alex "gets good results with no shortcuts." Often compared to "a top QC," Alex has successfully represented corporate and individual clients in multimillion US dollar litigation, high-profile class actions, international arbitration, landmark appellate cases and petitions to the Israel Supreme Court.

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Eyal is a member of the Israel Bar (1998) and the New York State Bar (2003). During his stay in New York, Eyal worked as an associate lawyer at the law firm Schindler, Cohen & Hochman LLP. Eyal also holds a Master Degree (Bachelor of Civil Law (B.C.L)) which he received from Worcester College, Oxford University, England (2000).

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Founded in 1921, S. Horowitz & Co. is one of Israel's leading and largest corporate and commercial law practices. It is a full-range law firm, comprising of over 90 fee-earners, many of whom are multilingual and have qualified and practised as lawyers in the United States, England and South Africa. The firm is widely known for the breadth and depth of its expertise and experience, including in: mergers and acquisitions, joint ventures, banking, dispute resolution, venture capital, commercial law, intellectual property, information technology, project and asset financing, energy and infrastructure, capital markets, financial services, telecommunications, biotechnology, antitrust, tax, real estate, labour law and environmental law. S. Horowitz & Co. has been recognised as being a leader or first in its field in Israel by all the leading directories.