Chambers

GLOBAL PRACTICE GUIDE

Definitive global law guides offering comparative analysis from top ranked lawyers

International Arbitration

Second Edition

Israel
Goldfarb Seligman & Co Law Offices

chambers.com

2019

Law and Practice

Contributed by Goldfarb Seligman & Co Law Offices

Contents

Goldfarb Seligman & Co Law Offices is one of Israel's largest law firms and is among the elite group of firms that deliver top-tier legal services at international standards. The professional hallmark of the firm, which traces its history back over 80 years, is the unrelenting pursuit of the highest professional and ethical standards in the service of its clients. Its attorneys have acquired extensive experience in conducting international arbitration proceedings. They represent foreign plaintiffs and defendants in legal proceedings in Israel, including proceedings for the enforcement of foreign verdicts, in addition to international arbitration, and assist foreign entities to receive temporary and permanent compensations from Israeli entities. They also represent Israeli plaintiffs and defendants in legal proceedings held in foreign courts. The acquaintance with foreign laws and understanding of the manner in which legal methods and systems outside Israel operate grant considerable advantage to the legal teams in the firm in conducting such proceedings (as parties to arbitration proceedings), to the benefit of their clients. The firm's legal teams regularly represent clients in various international arbitration proceedings held under the rules of the most prestigious arbitration centres in the world, including the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), the International Centre for Settlement of Investment Disputes (ICSID), and others.

Authors

Zvi Bar-Nathan is a renowned expert in the various fields of commercial litigation and handles litigation in the civil-commercial field, including in the fields of corporate law, contract law, banking law, communications, libel, tender law, and more. Adv. Bar-Nathan is involved in a prominent share of the complex commercial disputes held in Israel, and possesses extensive experience in the representation of clients in international disputes. Among others, Adv. Bar-Nathan represents foreign plaintiffs and respondents in legal proceedings in Israel, represents clients in enforcement proceedings of foreign verdicts and of international arbitration, assists foreign entities to receive temporary and permanent verdicts against Israeli entities, and represents Israeli plaintiffs and respondents in legal proceedings held abroad. Adv. Zvi Bar-Nathan has a significant reputation regarding all aspects of multi-national arbitration and the representation of clients in the framework of such arbitration. He handles many multi-national disputes, and is often approached by companies and individuals for advice on the jurisdictions and laws that apply to their matters. Over the past year, Adv. Bar-Nathan has served as an arbitrator in numerous international arbitration cases. He possesses a significant reputation relating to sensitive commercial disputes in the family law field, which involve significant capital and assets, among others. Adv. Bar-Nathan represents high net worth individuals in complex personal status and inheritance disputes, including commercial disputes relating to family law and estates. He is head of the Commercial and International Litigation Department and a member of the firm's executive committee. From 2012 until 2018, Adv. Bar-Nathan served as a court member in the international court of arbitration in Paris (ICC).

Daphna Kapeliuk is considered as the leading Israeli expert in international and domestic arbitration. She has represented clients in complex international arbitrations under ICC, LCIA, ICDR, UNCITRAL and ICISD rules, among others. She has also represented clients before the Israeli courts in matters concerning domestic and international arbitration, as well as in jurisdictional matters and enforcement of foreign judgments and arbitration awards. As the leading Israeli expert on Israeli arbitration law, she was called upon to provide expert opinions in proceedings held before foreign tribunals. Dr Kapeliuk frequently advises legislators and government bodies on issues concerning arbitration law. She was an invited expert to the meetings of the Constitution, Legislation and Law Committee of the Knesset (Israeli Parliament), with respect to a Bill amending the Arbitration Law, and a Bill amending the Courts Law by including a section on mandatory arbitration. In addition, she was appointed as a member of the Ethics Committee of the Israeli Institute of Commercial Arbitration (IICA), chaired by Supreme Court Justice (Ret.) Ayala Procaccia. The committee's mandate is to recommend ethical rules in arbitration (for arbitrators as well as for disputing parties). Adv. Dr Kapeliuk's main contribution within the committee focuses on ethical rules in international arbitration.

1. General

1.1 Prevalence of Arbitration

In domestic disputes, public court litigation is the preferred method for the resolution of disputes by many commercial players. While domestic arbitration is not very common, international arbitration has gained prevalence in the past decade in Israel. Typically, a contract between two domestic parties will provide for public court litigation but when one of the parties is not domestic, Israel parties will often resort to international arbitration. It should be mentioned that an arbitration seated in Israel is considered domestic. Therefore, any arbitration for which the seat is in Israel, irrespective of the nationality of the parties to it, will not be considered as international.

1.2 Trends

Following the surge in international arbitrations involving Israeli parties, and as a consequence, the need for substantial funding in conducting the proceedings, there has been a growing interest in Israel in third-party funding. Third-party funding is allowed in Israel, and its use by Israeli parties in international arbitration is becoming more prominent. With the growing costs of international arbitration, Israeli parties often opt to apply to third-party funders to enable them to pursue settlement of their disputes.

1.3 Key Industries

There has been no increase in international arbitration activity in Israel in 2019 in a specific industry. However, there is a growing number of complex international arbitrations in the energy and infrastructure sectors. Additionally, as many technology firms and start-ups are more and more involved in the international arena, there are more arbitrations involving technology disputes.

1.4 Arbitral Institutions

The leading arbitration institutions used in Israel in international arbitration are the International Chamber of Commerce (ICC) and the London Court of International Arbitration (LCIA). As Israeli players are not very well acquainted with all arbitral institutions, they usually opt for the most common choice – ICC or LCIA. Israeli parties opt less often for the International Centre for Dispute Resolution (ICDR) or China International Economic and Trade Arbitration Commission (CIETAC), and feel more at ease with the ICC and LCIA.

2. Governing Legislation

2.1 Governing Law

The Israeli Arbitration Law, 1968 (Arbitration Law) governs all arbitrations conducted in Israel. The criteria for determining whether an arbitration is domestic or international is not defined in the Arbitration Law. However, Section 1 of the Arbitration Law defines a 'foreign award' as an award rendered outside Israel. Hence, an international arbitration is an arbitration seated outside of Israel. The Arbitration Law is not based on the UNCITRAL Model law. It provides specific provisions regarding international arbitration with respect to stay-of-court proceedings and enforcement of foreign awards. Israel is a signatory to the New York Convention, and its provisions apply to international arbitration. There have been some debates over the possibility of adopting the UNCITRAL Model law. The debates focused on whether the Model Law should be adopted only for international arbitration or for domestic arbitration as well. There has been no progress in the discussion and to date it remains a hypothetical idea.

2.2 Changes to National Law

There have been no changes in relation to international arbitration in the Arbitration Law in 2018. However, in November 2018, an amendment to the Arbitration Law changed the definition of the court having jurisdiction with respect to arbitration. Prior to the amendment, the court that had jurisdiction was the District Court. The amendment 'court' was made to "the court having jurisdiction, in accordance with any law, in the matter agreed to be referred to arbitration". Thus, the rules regarding substantive jurisdiction of the courts in court litigation apply also to arbitration.

3. The Arbitration Agreement

3.1 Enforceability

The Arbitration Law applies to arbitration agreements in writing. Section 1 of the Arbitration Law defines an arbitration agreement 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".

The Arbitration Law does not require that the arbitration agreement be signed. However, the signature could be used as a matter of evidence in order to prove acceptance by referring to the signature. When a party to an arbitration agreement is a legal entity, the law that governs the specific legal entity determines the conditions required for a signature to be binding.

The Arbitration Law does not recognise an oral arbitration agreement. However, an oral arbitration agreement is considered to be a contract by the Contracts Law. Thus, while the Arbitration Law does not apply to oral arbitration agreements, the general provision of contract law applies.

3.2 Arbitrability

Under Section 3 of the Arbitration Law "an arbitration agreement in a matter which cannot be the subject of an agreement between the parties is invalid". According to Section 30

of the Contracts Law (General Part), 1973, a contract which in its formation, content or purpose is illegal, immoral or against public policy is void. The following matters cannot be settled by arbitration: criminal matters, claims regarding the juridical status of a person, inalienable statutory rights, real property rights of non-parties, and claims regarding mandatory statutory rights such as employment rights.

3.3 National Courts' Approach

When a party files a claim before a state court in a dispute that is subject to an international arbitration agreement, the court will at first wait for the defendant's reply to see if it agrees to its jurisdiction or requests a stay of proceedings due to the arbitration clause. When a party does not object to the jurisdiction of the court, the court will hear the dispute submitted to it.

Stay of proceedings in domestic arbitrations is subject to Article 5 of the Arbitration Law. The Article provides as default that the stay of proceedings in international arbitrations (ie, arbitrations not seated in Israel) is governed by Article 6 of the Arbitration Law. The Article incorporates the enforcement provision of Article II(3) of the New York Convention which, by implication, denies the court any discretionary power and directs it to 'refer the parties to arbitration' unless it finds that any of the exceptions enumerated in the Article, that is, that the agreement 'is null and void, inoperative or incapable of being performed' exist.

Despite broad international acceptance of the mandatory referral rule in Article II(3) of the Convention, Israeli courts have not fully recognised it. Although there are instances where a court's rhetoric suggests recognition of this principle, a close analysis of the case law reveals that in fact Israeli courts have failed to follow a uniform discourse on the issue.

3.4 Validity

The Arbitration Law does not include a provision on the separability of the arbitration agreement. However, it is usually accepted that an arbitration agreement is separate from the main contract. When the arbitration agreement itself is tainted by the same defects as the main agreement, such as an agreement signed by someone who had no authority to do so, or someone who lacks juridical capacity, the arbitration agreement will be considered to be null and void.

4. The Arbitral Tribunal

4.1 Limits on Selection

The parties are free to appoint any person they wish to the tribunal. They may agree on the method of selection of the tribunal. They may agree that the tribunal will be composed of a sole arbitrator, of two arbitrators, of three arbitrators or more. Thus, the parties may agree that the number of arbitrators will be uneven or even. The parties may entrust the role of appointing the tribunal to a third party or to the court.

4.2 Default Procedures

When the parties do not agree on the method of appointment of the tribunal, or when their method fails, they may apply to the court and request that it appoint an arbitrator. When the parties agreed to appoint an arbitrator each and one of the parties fails to do so, the other party may file a motion to the court for the appointment of that arbitrator.

4.3 Court Intervention

Unless requested by a party to appoint an arbitrator, the court cannot intervene in the appointment procedure. However, the court may designate a replacement arbitrator following an arbitrator's resignation, removal or death.

4.4 Challenge and Removal of Arbitrators

Section 11 of the Arbitration Law provides that an arbitrator may be removed on the following grounds:

- it is discovered that the arbitrator is unworthy of the confidence of the parties; or
- the arbitrator's conduct in the course of the arbitration causes a delay of justice; or
- the arbitrator is unable to carry out her or his functions.

4.5 Arbitrator Requirements

The Arbitration Law requires that the arbitrators act loyally towards the parties. Accordingly, they have to disclose any circumstances that may affect their impartiality or independence. The Arbitration Law does not impose on the arbitrators any obligation to disclose existing or potential conflicts of interests, but they are expected to do so. An award rendered by an arbitrator who lacks impartiality or independence may be set aside by the court.

5. Jurisdiction

5.1 Matters Excluded from Arbitration

Subject matters that cannot be subject to an agreement may not be referred to arbitration (see **3.2 Arbitrability**).

5.2 Challenges to Jurisdiction

The Arbitration Law does not address the issue of 'competence-competence'. The case law on the matter is that if the parties expressly empower the tribunal to rule on its jurisdiction, it may do so. However, if the parties did not empower the tribunal to do so, it would be up to the court to rule on the matter.

5.3 Circumstances for Court Intervention

When the parties did not empower the arbitrators to rule on their jurisdiction, the court may intervene and rule on the matter at the request of a party. Additionally, the arbitrator

may request that the court rule on any jurisdictional issue by way of a case-stated procedure.

5.4 Timing of Challenge

A party may challenge the arbitrator once the circumstances giving rise to the challenge arise. It may do so during the arbitration, but also after the award is rendered by way of a motion to set aside the award. However, if the party chooses to wait until after the award is rendered, it must raise an objection to the jurisdiction during the arbitration, so as not to lose the right to object.

5.5 Standard of Judicial Review for Jurisdiction/ Admissibility

The court will address any jurisdictional objection without taking into account any prior decision rendered by the tribunal on the matter, unless the parties empowered the tribunal to rule on its jurisdiction by way of an award. In such a case, the court will review the award in a setting-aside procedure.

5.6 Breach of Arbitration Agreement

Israeli courts enforce arbitration agreements by way of staying the proceedings commenced before them in breach of an arbitration agreement (see **3.3 National Courts' Approach**).

5.7 Third Parties

Israeli courts have recognised that an arbitration agreement may extend to third parties in the case that the interpretation of the arbitration agreement leads to the conclusion that these parties expressly or implicitly agreed to be bound by the agreement. Third parties may be bound by an arbitration agreement by way of assignment, or when the circumstances are such that the objection by the third party is formal and artificial.

6. Preliminary and Interim Relief

6.1 Types of Relief

The Arbitration Law does not refer to the arbitrator's power to issue interim measures. The question as to whether the arbitrator may have that authority or not is not settled in Israeli case law. The common perception is that an arbitrator is not authorised to issue any such measures and that the power is entrusted only with the court. However, the parties may agree to empower the tribunal to do so. It should be mentioned that, even in the event that the parties empower the tribunal to grant such measures, its decisions will bind the parties only, not third parties.

6.2 Role of Courts

The Arbitration Law empowers the court to grant preliminary and interim relief in support of arbitration. The court will grant such relief following the same criteria it applies in public litigation. Article 16 of the law provides that the court shall have the same powers in arbitration as it has in an action brought before it to order interim measures, such as interim attachment of a property, interim injunctions and the prevention of a party to depart Israel. Thus, the competent court has the authority to order any kind of interim measure that is available to the court in general.

In foreign-seated arbitrations, the court has jurisdiction to order interim relief. The most common relief is the attachment of property or the protection of properties.

The legislation does not address the issue of emergency arbitrator. An arbitrator must be appointed in accordance with the parties' agreement or in accordance with the rules applicable to the agreement. If the parties did not agree on the method of appointment of the arbitrator, the court will have to appoint one, upon the request of a party. Hence, the process of appointing an arbitrator may take time. Consequently, when there is a need to issue interim measures, parties commonly opt to apply to the court for relief.

6.3 Security for Costs

Unless otherwise agreed by the parties, the tribunal may order security for costs.

7. Procedure

7.1 Governing Rules

The parties are free to agree on the rules governing the arbitral procedure. Failing any agreement, the First Schedule of the Arbitration Law applies. The First Schedule provides the Tribunal with power to rule on procedural matters. The First Schedule of the Arbitration Law provides for the following default rules:

- The arbitration shall be before a sole arbitrator unless a greater number of arbitrators has been stipulated.
- In an arbitration before an even number of arbitrators, the arbitrators shall, on the demand of one of them, appoint an additional arbitrator. Where an additional arbitrator has been appointed, he or she shall be the chairman of the tribunal.
- In an arbitration before an uneven number of arbitrators, the arbitrators shall elect a chairman from among themselves.
- The arbitration chairman may fix the place and time of the arbitration sessions and decide anything concerning the procedures thereof.
- The decisions of the arbitrators, and the award, shall be made by a majority of votes. In the absence of a majority for the final award, the opinion of the chairman shall prevail. An arbitrator left in minority may record his or her dissenting opinion in the award.
- Where an umpire has been appointed in an arbitration, he or she shall assume his or her functions after the other arbitrators, or one of them, have or has given him or her

and the parties written notice that there is no majority vote for the final award. Upon assuming his or her functions, the umpire shall take the place of the other arbitrators.

- Where an arbitrator assumes his or her office as an additional arbitrator, umpire or substitute arbitrator, the arbitration shall continue from the stage which it has then reached unless the arbitrator otherwise requests.
- The arbitrator may direct the parties to answer interrogatories, to disclose and produce documents and to do any other thing connected with the conduct of the arbitration, as a court might do in an action brought before it.
- Where the arbitrator orders a party to do anything connected with the conduct of the arbitration, and without any justifiable cause that party does not comply with the order, then, after warning that party, the arbitrator may dismiss the claim, if the order was made against the plaintiff, or strike out the defence and decide the dispute as if the defendant had not submitted a defence, if the order was made against the defendant.
- The arbitrator shall not hold a session in the absence of a party unless he or she has warned him or her, in writing or orally, that he or she will proceed at that session in his or her absence if he or she does not attend.
- Before taking evidence, the arbitrator shall warn the witness that he or she must testify truthfully, otherwise he or she will be liable for the penalties prescribed by Law.
- Where the determination of the dispute involves a matter requiring expert knowledge, the arbitrator may, at any stage of the proceedings and after giving the parties a suitable opportunity to state their cases, direct that the matter be referred to the opinion of an expert appointed by him or her. A copy of the opinion shall be delivered to the parties, who may oppose it and demand an examination of the expert as if he or she were a witness on behalf of the arbitrator. The arbitrator may refrain from hearing the evidence of other experts on a matter he or she has referred to an expert, if he or she has notified the parties on that in advance and they have not objected.
- The arbitrator shall place the arbitration file at the disposal of the parties, at any reasonable time, for inspection and copying.
- The arbitrator shall act in such manner as appears to him or her most conducive to reaching a just and speedy determination of the dispute, and he or she shall decide to the best of their judgment according to the material before them. The arbitrator shall not be bound by substantive law, by the rules of evidence or the rules of procedure applicable in the courts.
- The arbitrator shall state his or her reasons for the award.
- The arbitrator shall make the award within three months from the day on which he or she started to deal with the dispute, or on which he or she was called upon to deal with it by a party by a written notice, whichever is the earlier date. Nonetheless, the arbitrator may extend that period by up to three additional months.
- The arbitrator may submit to the court's opinion a legal question arising in the course of the arbitration, or the whole or part of the award, by way of case stated.
- The arbitrator may grant a declaratory award, a mandatory or prohibitive injunction, an order for specific performance and any other relief which the court is competent to grant, and he or she may also make an interim award which determines the subject-matter of the arbitration in parts.
- The arbitrator may issue directions as to the whole or part of the parties' expenses, including the attorney's fee, and his or her fees and expenses, and he or she may direct to deposit these sums or to provide security for their payment. Unless the arbitrator otherwise directs, the parties shall pay him or her his or her fees and expenses in equal shares.
- The arbitrator shall retain the arbitration file for seven years after the completion of the arbitration.
- A document concerning the arbitration sent to the arbitrator, or to a party by registered mail with a certificate of delivery, shall be deemed to have been delivered to the addressee on the date indicated in the certificate of delivery or in the certificate of refusal to receive the document.

7.2 Procedural Steps

There are no particular procedural steps to be taken during the arbitration, provided that the arbitrators treat the parties equally and impartially.

7.3 Powers and Duties of Arbitrators

Unless otherwise agreed by the parties, the tribunal is empowered to order any procedural steps to be taken in the arbitration. The tribunal enjoys wide discretionary power in defining the conduct of the arbitration proceedings. They can issue procedural orders regarding the proceedings, as well as regarding steps to be taken by each of the parties. In conducting the proceedings, the tribunal is expected to act fairly to all the parties and grant them the right to be heard. The tribunal may grant orders during the proceedings, and render an award. Unless otherwise agreed by the parties, the tribunal is not bound by substantive law, the rules of procedure or the rules of evidence, and it has to give reasons for the award.

7.4 Legal Representatives

The Israeli Bar Association Law, 1961, provides that representation before courts, tribunals or arbitrators or any person or body having judicial or quasi-judicial authority has to be made by a qualified attorney in Israel. This requirement does not apply in arbitration proceedings in which one of the parties is non-Israeli or is a company registered outside of Israel. In such cases, the foreign party may be represented by a qualified attorney in his or her country of residence.

8. Evidence

8.1 Collection and Submission of Evidence

Under the First Schedule of the Arbitration Law, unless otherwise agreed by the parties, the arbitrators are not bound by the rules of evidence. However, it is common that arbitrations conducted in Israel follow, at least generally, the procedure followed by the court's litigation. Therefore, it is quite common that after the parties' submissions there are then discovery proceedings, which are followed by the submission of witness statements. At the hearing stage, there may be a short direct examination, which will be followed by cross-examination and then by limited re-direct examination. While the tribunal is not bound by the rules of evidence, it is required to give each party a fair opportunity to present its case. It should be noted that the tribunal has the same power as the court to summon witnesses to give evidence or to produce documents.

8.2 Rules of Evidence

Unless otherwise agreed by the parties, the arbitrators are not bound by the rules of evidence. The legal rules of evidence under Israeli law share many common characteristics with the common-law tradition. The document production phase is not as extensive as discovery in the American legal system and resembles the English discovery phase more closely. In arbitrations, it is usually the case that the document production stage mirrors the one in public court litigation. It should be mentioned that, even if the arbitration is not subject to the rules of procedure and evidence, the tribunal may order document production from any party. It is commonly the case that parties submit witness statements as evidence in chief. Then, at the hearing each of the witnesses of the claimant is first cross-examined by the counsel of the counterparty, and then re-examined by the counsel of the party whose chief witness statement was submitted. In court proceedings, as well as in arbitration, the tribunal may put questions to any of the witnesses.

The rules of evidence in Israeli law provide for different types of privilege. Attorney-client privilege is applicable to any arbitration, whether it is subject to the rules of evidence or not.

8.3 Powers of Compulsion

An arbitrator may seek the court's assistance with regard to the taking of evidence, in the case that the evidence is not under the control of either party.

9. Confidentiality

9.1 Extent of Confidentiality

The Arbitration Law does not provide any provisions regarding the confidentiality of arbitration; however, since arbitration proceedings are not public, they are considered confidential by their nature.

In one case, the supreme court rendered a decision questioning whether documents that originated in arbitration proceedings are subject to privilege. The court held that, as one of the benefits of arbitration is its confidential character, when weighing the interests of confidentiality against the interest of discovery, the court will consider the legitimate expectations of the parties that their dispute will be heard in private.

10. The Award

10.1 Legal Requirements

The Arbitration Law provides that an arbitration award shall be in writing and signed by the arbitrator, indicating the date when the award was signed. When the arbitration tribunal is composed of more than one arbitrator, the signatures of the majority of the arbitrators are sufficient, if it is indicated in the award that the other arbitrators are unable or unwilling to sign it. Unless otherwise agreed by the parties, the award must be reasoned.

10.2 Types of Remedies

The tribunal may award a monetary relief and, unless otherwise agreed by the parties, it may grant a declaratory award, a prohibitive award, a specific performance award or any other relief that the court may grant in proceedings before it.

10.3 Recovering Interest and Legal Costs

Unless otherwise agreed by the parties, the tribunal is empowered to award costs, including legal fees, in addition to the tribunal's costs and fees. Generally, the tribunal will allocate legal costs to the prevailing party. While in public-court litigation the courts tend to award nominal costs, in arbitration tribunals, especially in complex arbitrations, real costs tend to be awarded.

As for awarding interest, if parties agree on the interest to be awarded, the tribunal will be bound by the agreement. If the parties do not agree on the interest, the tribunal has the authority to award interest in accordance with the Ordering of Interest and Linkage Law, 1981.

11. Review of an Award

11.1 Grounds for Appeal

According to Article 24 of the Arbitration Act, an arbitration award may be set aside for the following grounds:

- the arbitration agreement was not valid;
- the award was made by an arbitrator not properly appointed;

- the arbitrator acted without authority or exceeded the authority vested in him or her by the arbitration agreement;
- a party was not given a suitable opportunity to state his or her case or to produce his or her evidence;
- the arbitrator did not determine one of the matters referred to him or her for determination;
- the arbitrator did not assign reasons for the award although the arbitration agreement required him or her to do so;
- the arbitrator did not make the award in accordance with law although the arbitration agreement required him or her to do so;
- the award was made after the period for making it had expired;
- the contents of the award are contrary to public policy;
- a ground exists on which a court would have set aside a final, non-appealable judgment.

The Arbitration Law provides that the court may dismiss an application to set aside an award, notwithstanding the existence of one of the grounds specified above, if it is of the opinion that no miscarriage of justice has been caused.

An application to set aside the award must be filed to the court within 45 days of the date of receipt of the award. However, in the case that a party filed an application to confirm the award, the party who wishes to set aside the award must file the application to set aside within 15 days of the date of receipt of the application to confirm.

The parties may agree that the award will be subject to appeal before one or more arbitrators. In this case, the grounds for setting aside the award by the court are two: (i) the contents of the award are contrary to public policy; (ii) a ground exists on which a court would have set aside a final, non-appealable judgment.

The parties may also agree that the award shall be subject to appeal before the court. In such cases, the court may grant leave to appeal, and will grant the appeal if it considers that the award is based on a fundamental error in applying the law, which caused a miscarriage of justice.

11.2 Excluding/Expanding the Scope of Appeal

The parties cannot exclude the court's power to set aside the arbitration award. They may, however, limit the scope of review when they agree that the award will be subject to appeal before an arbitrator, or expand the scope when they agree that the award shall be subject to appeal before the court. This means that, if the parties opted for a possibility of appeal on the arbitration award before an arbitrator, the grounds for setting aside the award in the appeal (or the award at the first instance in the case that no appeal was filed), will be limited to two extreme grounds: public policy and the case of annulling a non-appealable judgment.

The limitation of the grounds of setting aside the award make the option of appeal before an arbitrator a risky option. Parties should be cautious in choosing this option, as there is no real benefit in it.

11.3 Standard of Judicial Review

When the parties agree that the award will be subject to appeal before the court and the court grants leave to appeal, it will review the award on the merits. It should be noted that the court does not grant leave to appeal easily, as its tendency is not to interfere in arbitration awards.

When the parties agree that the award will be subject to appeal before an arbitrator, the grounds for setting aside the award will be limited to two: (i) the contents of the award are contrary to public policy; and (ii) a ground on which a court would have set aside a final, non-appealable judgment.

12. Enforcement of an Award

12.1 New York Convention

Israel is a signatory to the New York Convention. It ratified the Convention in 1959, and in 1974 it incorporated the provisions of the Convention by way of an amendment to the Arbitration Law.

12.2 Enforcement Procedure

Enforcement of a foreign award is subject to the New York Convention. The court will examine whether the requirements of the Convention are fulfilled. A party objecting to the enforcement of the award must file an objection within 15 days of the date on which it was served with the application for enforcement.

12.3 Approach of the Courts

Generally, the Israeli courts are considered to take a pro-enforcement stand on foreign arbitration awards.

13. Miscellaneous

13.1 Class-action or Group Arbitration

The Arbitration Law does not make any reference to class-action arbitrations and these do not take place in Israel.

13.2 Ethical Codes

Israeli counsel are bound by the ethical rules of the Israel Bar Association. The courts have compared arbitrators to judges with regard to the ethical rules that should be applicable to them. Thus, the ethical rules applicable to judges apply also to arbitrators.

13.3 Third-party Funding
There are no rules or restrictions on third-party funders. There are a number of funders active in Israel that provide funding both to public court litigation and to arbitration.

13.4 Consolidation
Consolidation can occur only with the consent of all parties.

13.5 Third Parties
The courts have recognised three 'extension circles' to the arbitration agreement, which may each bind third parties to the arbitration agreement. The first circle includes parties which, by interpreting the arbitration agreement and the contractual relationship between the parties, it is understood that they have agreed to be part of the arbitration. The second extension circle includes successors of the parties to the arbitration agreement, pursuant to Section 4 of the Arbitration Law. The third extension circle relates to those cases where it does not appear from the arbitration agreement that a party agreed to join the arbitration, and where that party is not a successor of the party in the arbitration. This circle includes parties that try to avoid, on formalistic grounds, participating in arbitration proceedings to which they have substantially agreed.

Goldfarb Seligman & Co Law Offices

Ampa Tower
98 Yigal Alon Street
Tel Aviv 67891
ISRAEL

Tel: +972 3 608-9999
Fax: +972 3 608-9909
Email: info@goldfarb.com
Web: www.goldfarb.com