

# The International Comparative Legal Guide to: **Class and Group Actions 2009**

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



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# Israel

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## 1 Class/Group Actions

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

Until 1988 it was only possible to file class action suits in Israel under Rule 29 of the Rules of Civil Procedure, 5744-1984 (hereinafter, the “Rules of Civil Procedure”). In practice, however, Israeli Courts historically were highly ambivalent on the fundamental question of whether Rule 29 of the Rules of Civil Procedure constituted a legal basis upon which class action suits could be pursued at all. Over the years, the options expanded as the Israeli Parliament (the Knesset), legislated specific laws which provide for the filing of class action suits in various matters, such as the Securities Law, 5728-1968 (hereinafter, the “Securities Law”), the Law for the Prevention of Environmental Hazards (Civil Claims), 5752-1992 (hereinafter, the “Law for the Prevention of Environmental Hazards”), the Consumer Protection Law, 5754-1994 (hereinafter, the “Consumer Protection Law”), the Law of Equal Salary for Male and Female Employees, 5756-1996 (hereinafter, the “Law of Equal Salary for Male and Female Employees”), the Companies Law, 5759-1999 (hereinafter, the “Companies Law”) and the Restrictive Trade Practices Law, 5748-1988 (hereinafter, the “Restrictive Trade Practices Law”).

In March 2006, the Class Action Law, 5766-2006 (hereinafter, the “Class Action Law” or the “Law”) was legislated. The new Law encompasses all matters in which class action suits may be filed in Israel and establishes the principles and requirements in respect thereof.

It should be noted that the following review is based primarily on the new Class Action Law and is thus inconclusive with respect to other aspects of Israeli law. Furthermore, this review is a summary and should not be considered a legal opinion or final and complete legal advice on the matter reviewed.

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

According to Section 3(a) of the Class Action Law, no class action is to be filed unless it is a claim as specified in the Law or explicitly allowed for in another law.

According to the Second Addition of the Class Action Law, a Motion to Certify a Claim as a Class Action Suit (hereinafter, a “Motion to Certify”) can be filed in the following circumstances:

- 1) a consumer suit against a supplier, whether for a cause of action under the Consumer Protection Law or other applicable legislation, with respect to both pre-contractual and contractual relations;
- 2) claims against an insurer, an insurance agent or asset management companies by a client, with respect to both pre-contractual and contractual relations;
- 3) claims against banking corporations with respect to its client relationships, in both pre-contractual and contractual relations;
- 4) a claim under any cause of action under the Restrictive Trade Practices Law;
- 5) a claim under any cause of action arising from the ownership, holding, purchase or sale of a security or unit under the Companies Law or the Securities Law, 5728-1968;
- 6) a claim regarding an environmental hazard against the party who caused the hazard under the Law for the Prevention of Environmental Hazards;
- 7) a claim under the Law Prohibiting Discrimination in Products, Services, Access to Places of Entertainment and Public Buildings, 5760-2000;
- 8) a claim on grounds of labour discrimination, under the Equal Employment Opportunities Law, 5748-1988;
- 9) a claim under the Equal Salary for Male and Female Employees Law, 5756-1996;
- 10) a claim under the Equal Rights for Persons with Disabilities Law, 5758-1998 (hereinafter, the “the Equal Rights for Persons with Disabilities Law”) and pursuant to the provisions relating to accessibility for persons with disabilities in the Planning and Construction Law, 5725-1965 (hereinafter, the “Planning and Construction Law”);
- 11) a claim under the Television Broadcasting (Subtitles and Sign Language) Law, 5765-2005 (hereinafter, the “Television Broadcasting Law”);
- 12) a claim under the Court Of Labour Law, 5729-1969;
- 13) a claim for causes of action in employer-employee relations under the Minimum Wage Law, 5747-1987, or under the Employment of Workers by Human Resources Contractors Law, 5756-1996;
- 14) a claim against state agencies for the return of unlawfully collected moneys, including taxes, fees, or other mandatory payments; and
- 15) a claim against spam distributors under the Communication Law (Bezeq and Broadcasting), 5744-1984 (hereinafter, the “Communication Law (Bezeq and Broadcasting)”).

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

The Class Action Law establishes a two-stage process for the management of proceedings; an initial first stage in which the Court is required to determine whether a class action is the appropriate procedural instrument with which to manage the claim, and a second, substantive stage, in which, if certified as a class action, the claim is managed, settled or decided in accordance with the specialised procedures provided by the Class Action Law.

According to Section 24 of the Class Action Law, a judicial determination generally binds all members of the class (*Res Judicata*).

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

The standard method of inclusion in a class is one of “opt-out”, where a member of the class who wishes to exclude himself from the binding decision of the court must do so actively (see Section 11(a) of the Class Action Law). More specifically, in the event the court has approved a class action, all those who have been listed as part of the class defined by the court in its decision will be considered as having agreed to the filing of a class action in their name, unless they have notified the court of their desire to be excluded from the class, within 45 days of the court’s decision to approve the class action or by a later date as determined by the court.

Nevertheless, according to Section 12 of the Class Action Law, notwithstanding the provisions of Section 11(a), the court certifying a class action may, under special circumstances and as part of the certification, provide that the group in whose name the class action is to be managed will include only those who have notified the Court, in writing, of their desire to join the suit, on condition that a reasonable possibility exists of identifying and locating the members of the group in whose name the Motion to Certify was submitted, and of notifying them that the class action has been certified, all at a reasonable cost. Section 12 does not apply to class actions brought under the Restrictive Trade Practices Law and class actions relating to a security or unit under the Companies Law or the Securities Law.

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

There is no established minimum threshold of claims for filing a Motion to Certify. Nonetheless, Section 8(a) of the Class Action Law requires that the class action be the efficient and appropriate means of resolving the dispute. However, it is generally accepted for there to be at least several dozen class members for the purpose of filing a Motion to Certify.

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

According to Section 8(a)(1) of the Class Action Law, the court may approve a class action, if, among other conditions, the suit raises substantial questions of fact or law common to the class and there is a reasonable possibility that such questions will be decided in favour of the class.

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

According to Section 4(a) of the Class Action Law, the following are entitled to file a Motion to Certify a Claim as a Class Action Suit: (1) an individual who has a claim which raises substantial questions of fact or law which are common to the entire class, in the name of that class; (2) a public agency with respect to one of the areas of its public operations, for certification of a representative claim which raises substantial questions of fact or law which are common to the entire class, in the name of that class; and (3) an organisation with respect to one of the areas of public operations in which the Organisation is engaged, in a suit that raises substantial questions of fact or law which are common to the entire class, in the name of that class. For further information, see question 2.2 below.

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

Section 25 of the Class Action Law, entitled “*Publication of Notices to Class Members*,” contains a number of instructions pertaining to notification. Section 25(a) provides a list of specific outcomes of the proceedings the occurrence of each of which must be accompanied by published notification to the members of the class in a representative action. These are: (1) a decision to certify a class action; (2) a decision to approve the withdrawal of all representative plaintiffs or all class counsel or a decision determining the incapacity of the representative plaintiffs, or their counsel, to continue in their respective positions, or a decision to dismiss a class action; (3) The filing of a motion to approve a settlement or compromise; (4) a court decision to approve a settlement; and (5) a court determination in the representative action, including orders and decisions.

Apart from these specific provisions, Section 25(b) of the Law provides additional general powers whereby a court may order the publication of any notification it deems necessary for the management of proceedings and the fair and efficient representation of the class.

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

The new Class Action Law had immediate effect on the number of Motions to Certify. After the new law came into effect, and due to the fact that created a greater variety of causes for which a class action may be filed, motions are now filed with the court almost daily. Hundreds of motions were filed in the last year alone.

In most cases, the claims are consumer-oriented and based upon allegations of consumer fraud; product liability; insurance or banking fraud; unlawful collection of municipal taxes and parking fines; and antitrust and competition law violations.

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

Court rulings generally award monetary damages to the class. Nonetheless, the Courts have a broad mandate with respect to

remedies. Section 20(a) of the Class Action Law provides that where the court decides in favour of the class or sub-class, either fully or partially, it may order the “allocation of monetary compensation or other remedy.” The Law sets forth detailed provisions governing the award of monetary compensation. According to Section 20(b) of the Class Action Law, in addition to these specific provisions, the court may order how to prove the entitlement to monetary compensation.

## 2 Actions by Representative Bodies

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

Further to the response to question 1.7 above, according to Section 4(a) of the Class Action Law, a public agency and an organisation may file Motions to Certify, even where these parties do not possess an individual cause of action. Refer to question 2.2 below for further information.

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

The following parties may bring claims to court:

**A public agency**, is defined in the First Addition of the Class Action Law as: (1) The Commission for the Equal Rights of Disabled Persons; (2) The Society for the Protection of Nature and the National Parks; (3) The Equal Opportunities in Work Commission; and the (4) The Israel Consumer Council.

**An organisation** is defined in Section 2 of the Class Action Law as a corporation - other than a statutory corporation - or charitable trust which exists and operates continuously for a period of at least one year, for the purpose of promoting one or more public goals, and whose assets and income are applied exclusively to promote these public goals. In addition, the organisation’s activities must not be on behalf of or affiliated with a political party or other political body.

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

According to Section 4(a)(2) of the Class Action Law, a public agency may file a claim with respect to one of the areas of its public operations, in a suit that raises substantial questions of fact or law common to the entire class, in the name of that class.

According to Section 4(a)(3) of the Class Action Law, an organisation may file a claim with respect to one of the areas of its public operations, in a suit that raises substantial questions of fact or law common to the entire class, in the name of that class. However, Section 4(A)(3) of the Class Action Law includes an additional barrier to representation by an organisation, providing that an organisation may only serve as representative body where the court is convinced, under the circumstances of the matter, that a difficulty exists in having the request filed by an individual litigant under Section 4(A)(1).

Furthermore, under Section 15 of the Class Action Law, the court may permit a member of the class, or a public Agency or organisation which is not the representative plaintiff, to participate in case deliberations where it finds that such involvement is necessary for the fair and efficient management of the representative claim.

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

According to Section 20(a) of the Class Action Law, where the court finds in favour of the class or sub-class, either fully or partially, it may order the “allocation of monetary compensation or other remedy” - whether the action was filed by representative bodies or by an individual- as discussed at length in question 1.10 above.

## 3 Court Procedures

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

Israel’s civil litigation system is based on English common law; Israeli courts do not use the jury system. All questions of fact and law are determined by the judge or the judges of the court concerned.

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

The Israeli court system is composed of a general court system and a small number of specialised courts (the Labour Courts; the Military Courts; the Religious Courts; and the Court for Administrative Affairs). A class action proceeding is normally conducted within the general court system, which is comprised of three organs: the Magistrates Courts, the District Courts, and the Supreme Court. Jurisdiction to hear the Motion to Certify is determined under Section 5(b) of the Class Action Law, and depends on the remedy sought. Ordinarily, a Motion to Certify is to be filed with the court which has the local and substantive jurisdiction to hear the claim. Substantive jurisdiction is determined on the basis of the total sum claimed on behalf of all class members (usually the district court). Where the Motion to Certify pertains to a prospective suit against a decision of a state authority, and the remedy requested includes restoration of amounts collected by a state authority, then the Court of Administrative Affairs will have substantive jurisdiction. Similarly, suits pertaining to labour law issues fall within the jurisdiction of the Labour Court system.

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

According to Section 10 of the Class Action Law, where a court grants a certification order, it must define the class in whose name the action is to be pursued, and may also define sub-classes within the general class where it finds that there are questions of law or fact that are common to some of the class members. The court enjoys broad discretion to define the class as it deems appropriate, subject only to the limitation that an individual whose cause of action was created after the Motion to Certify had been approved may not be included within such class. The court may further permit any plaintiff not included in the originally defined class to join the class within a specified period of time determined by the court.

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

Israeli courts do not have the discretion to select cases; rather they must adjudicate the motions which are brought before them. As stated above (in question 1.3), the Class Action Law establishes a two-stage process for the management of proceeding, an initial first stage in which the Court must determine whether a class action is the appropriate procedural instrument with which to manage the claim, and a second, substantive stage, in which, if certified as a class action, the claim is managed, settled or decided in accordance with the specialised procedures provided by the Class Action Law. Section 8(a) provides that a court may only certify a claim as a class action suit if it finds that all the following conditions are met: (1) the suit raises substantial questions of fact or law which are common to the class, and a reasonable possibility exists that such questions would be decided in favour of the class; (2) a class action is the efficient and appropriate means of resolving the dispute under the circumstances of the case; (3) a reasonable basis exists to assume that the interests of all the members of the group will be properly represented and managed; and (4) a reasonable basis exists to assume that the interests of all the members of the group will be represented and managed in good faith. The foregoing conditions are cumulative, and in the absence of one of the above, the court is instructed to reject a Motion to Certify.

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

To date, no other special case management procedures exist under the Law transcending the procedures detailed in question 3.6 below.

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

Under Rule 130 of the Rules of Civil Procedure, the court enjoys broad discretion to appoint experts on its behalf. However, it is uncommon to do so during the stage of a Motion to Certify the Claim as a Class Action Suit. In addition, Rules 127-129 of the Rules of Civil Procedure provide that the parties may present expert evidence or expert opinions to the court. The foregoing is commonly practiced in complex class action suits relating to antitrust, insurance and banking matters.

In addition, under Section 19(b)(1) of the Class Action Law, the court is ordinarily barred from approving a settlement agreement prior to receiving a written opinion from a “settlement examiner”. The examiner must be a person who possesses expertise in the field pertaining to the class action in question. Section 19(b)(2) of the Class Action Law provides that an individual is not to be appointed as examiner if he was recommended by one of the parties or if he filed an objection to the settlement, or in the event he provided advice or an opinion to one of the parties.

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

Under Section 5(a)(1) of the Class Action Law, a party intending to

file a Motion to Certify a Claim as a Class Action (hereinafter, the “Petitioner”), is to submit a written motion to the court, and must attach such motion to the filed suit. Under Rule 241(a) of the Rules of Civil Procedure, the Petitioner must also include in the motion all of its pleadings and references (e.g. expert reports, witness statements etc.), in addition to an affidavit to support the factual claims in the motion.

Under Rule 241(c) of the Rules of Civil Procedure, the respondent must include in its response to the motion all his pleadings and references (e.g. expert reports, witness statements etc.), in addition to affidavit to support the factual claims in the response.

In light of the foregoing requirement, witnesses and experts are required to present affidavits and expert opinions at the stage of a Motion to Certify the Claim as a Class Action Suit.

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

Israeli courts have sought to address the dilemma of document disclosure in the pre-certification stage by permitting the minimum degree of document disclosure necessary to satisfy the preliminary stage of the motion. In the Supreme Court’s leading case on the subject of document disclosure in class actions (*Yifat v. Delek Motors*), the Supreme Court held that for the purpose of determining whether or not to issue an order for disclosure of documents, a Motion to Certify ought not be equated with ordinary preliminary or interim measure requests, since denial of a Motion to Certify effectively puts an end to the claim. Accordingly, disclosure at the certification stage of the proceedings would be permitted in order to allow the court to make an informed determination regarding certification, subject to three conditions: (1) disclosure is limited to those sources necessary to make a determination on certification issues, rather than on the substance of the claim; (2) in order to prevent baseless and frivolous requests intended to burden and intimidate the defendant, the court must ascertain that the Petitioner has established an “initial evidentiary basis” for his claims, and that the Petitioner has demonstrated that he possesses a personal cause of action in the claim; and (3) the order for disclosure contains the restrictions needed to ensure confidentiality of the defendants’ information, particularly with respect to trade secrets.

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

As mentioned above, under the Class Action Law, Israeli class actions suits consist of two separate stages: an initial first stage in which the court is required to determine whether a class action is the appropriate procedural instrument with which to manage the claim; and a second, substantive stage, in which, if certified as a class action, the claim is managed, settled or decided in accordance with the specialised procedures provided by the Class Action Law (see question 1.3 above). In view of the fact that decisions relating to Motions to Certify are subject to appeal (See question 3.10 below), as a general rule, it may take several years for the Motion to Certify to be approved.

**3.10 What appeal options are available?**

Under Paragraphs B and C of the Courts Law (Consolidated Version), 5744-1984, generally, a district or magistrate court ruling or resolution which concludes the review of the matter and which does not approve the Motion to Certify the Claim as a Class Action is subject to appeal to the appellate court. Any other district or magistrate court resolution is subject to appeal to a superior court as a matter of discretion.

## 4 Time Limits

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

According to the Statute of Limitations, 5718-1958 (hereinafter, the "Statute of Limitations"), the limitations are as follows:

- (1) with respect to a non-real estate lawsuit - seven years (Section 5(1)); and
- (2) with respect to a real estate lawsuit - fifteen years (and if the real estate was recorded in the books of the property after ownership rights were arranged pursuant to the law - twenty five years) (Section 5(2)).

The period of proscription commences on the date on which the cause of action was created (Section 6).

A party (the defendant) must bring the statute of limitations claim before the court at the earliest possible opportunity (Section 3).

Section 31 of the Insurance Contract Law, 5741-1981 provides that with respect to lawsuits for compensation under an insurance policy, the limitation is three years. The period of proscription commences on the date on which the cause of action was created.

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

According to Section 10 of the Statute of Limitations, the period of limitation would commence on the date on which the plaintiff became eighteen years old. According to Section 11 of the Statute of Limitations, the period of limitation will not commence in the event that plaintiff has been legally incapacitated due to permanent or temporary mental illness and has not been under the care of a legal guardian; or in the event that the guardian was unaware of the facts which constitute the cause of the lawsuit.

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

According to Section 7 of the Statute of Limitations, if the cause of action was fraud or embezzlement on the part of the defendant, then the period of proscription commences on the date on which the plaintiff became aware of the fraud or embezzlement.

Section 8 of the Statute of Limitations provides that in the event the plaintiff was unaware of the facts giving rise to the cause of actions for reasons which were not dependent on the plaintiff, and which it would not have been able to prevent after exercising reasonable care, the period of proscription would commence on the date on which the plaintiff became aware of such facts.

## 5 Remedies

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

All types of damages are recoverable under the Class Action Law. The court, however, will not award monetary damages without proof of harm with respect to all causes of action (also refer to question 5.3 below). Nevertheless, this does not preclude the court from awarding monetary compensation for non-monetary harm caused by the defendant.

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

According to Section 20(e) of the Class Action Law, the court will not award monetary damages without proof of harm for all causes of action, with the exception of the items set forth in question 5.3 below. This does not prevent the court from awarding monetary compensation for non-monetary harm caused by the defendant. Due to the fact that medical monitoring costs constitute damage without proof of harm, such damage cannot be recovered under the Class Actions Law. Nevertheless, as mentioned above, the Court enjoys broad discretion with respect to remedies and may award medical monitoring costs as damages if deemed applicable.

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

The Israeli courts do not routinely award punitive damages (with the exception of certain specific circumstances). As mentioned above, Section 20(e) of the Class Action Law provides that the court will not award monetary damages without proof of harm for all causes of action, with the sole exception of claims for any cause of action under the Equal Rights of Persons with Disabilities Law, the provisions relating to accessibility for persons with disabilities in the Planning and Construction Law, and under the Television Broadcasting (Subtitles and Sign Language) Law. Damages are calculated based on the damage caused. The foregoing does not, however, preclude the court from awarding monetary compensation for non-monetary harm caused by the defendant.

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

There is no maximum limit imposed by the Class Action Law, other than the general limitation under Section 20(d)(2) of the Law, pursuant to which, when deciding upon the scope of the compensation and the manner in which it is to be paid, the Court must also take into consideration the damage that may be caused to the defendant, the public requiring the defendant's services or the public in general as a result of the payment of the compensation, or the scope or manner of payment thereof, compared with the expected benefit to the class members or the public.

Also, under Israeli tort law, the wronged party cannot be awarded damages twice for the same tort. Tortfeasors who conspire together to commit a civil wrong are jointly and severally liable for the damages; the wronged party, however, is entitled to only one satisfaction for the damages.

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

Section 20(a) of the Class Action Law guides the courts on how to quantify damages and divide remedies among members of the class. First, the court may issue an order for payment of monetary compensation, or it may grant another remedy directly to each individual member of the class whose eligibility to such remedy has been proven, in the amount and manner decided by the court (Section 20(a)(1)). Second, the court may order that each member of the class prove his or her eligibility to monetary compensation or to another remedy (Section 20(a)(2)). Third, the court may order the defendants

to pay an inclusive sum of damages, from which members of the class would receive individual compensation on a pro rata basis. Under such provision, in the event a number of members of the class either relinquish their compensation, fail to prove their eligibility or cannot be located, the remaining sum is allocated among the other members of the class in proportion to the harm each has sustained (subject to the rule that a class member may not receive higher compensation than that which is due to him) and, where funds remain unallocated, they shall be reverted to the state treasury (Section 20(a)(3)).

Each of the three methods is subject to the important caveat that in granting such an order, the court should take precautions to avoid unnecessarily burdening the parties and members of the class.

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

According to Section 18 of the Class Action Law, proposed settlement agreements between the parties must be brought to the prior attention of the court, and are subject to the court's approval. Settlement agreements are divided into two stages: a motion to approve a settlement agreement (governed by Section 18) and a subsequent procedure for approval of a settlement agreement by the court (governed by Section 19). In the first stage, a motion to approve a settlement agreement is filed with the court, and if the court does not find grounds to reject such settlement, it will then order the publication of a notice concerning the filing of the motion under the provisions of Section 26 of the Class Action Law. The second stage relates to judicial approval of the settlement agreement, in which the court may not approve a settlement "unless it finds that the settlement is proper, fair and reasonable in view of the interests of the class members... and resolution of the dispute by means of a settlement constitutes the most efficient and fair means of resolving the matter under the circumstances of the matter."

## 6 Costs

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

Under the Rules of Civil Procedure, the court enjoys broad discretion and may determine that the losing party is to pay expenses, attorney fees and court fees (together with the applicable Value Added Tax) to the successful party. Moreover, the Class Action Law contains two separate provisions regarding the costs; one which pertains to the representative plaintiff (governed by Section 22) and the other, which pertains to the class counsel (governed by Section 23). Both sets of provisions render the award of compensation/attorney costs a matter for the court, alone, to decide, including in cases of settlement or where a motion for certification is denied following an announcement by a public authority that it intends to cease any unlawful collection of funds.

In the event that the court finds in favour of the class, the court customarily awards the claimant and class counsel approximately 15% to 20% of the total compensation awarded to the class. However, in the event that the Motion to Certify is rejected by the court, it will not usually award the defendant the total amount of his litigation costs; consequently, the defendant will not receive full reimbursement.

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

In the event the Motion to Certify is denied, or a class action is rejected by the court, then the court will usually order the claimant to pay expenses, attorney fees and court fees, in accordance with the court's broad discretion pursuant to the Rules of Civil Procedure. Nevertheless, if a Motion to Certify is denied following an announcement by a public authority that it ceases its unlawful collection of funds, the court will usually refrain from ordering the claimant to pay costs, and may decide to award special compensation to the claimant and class counsel (See Section 22 (c)(1)).

In the event of a settlement or compromise arrangement, the Court may award litigation costs to the claimant and class counsel, in addition to the total compensation awarded to the class as part of the settlement.

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

If a claimant discontinues his claim prior to the conclusion of the class action, the court may order the claimant to pay expenses, attorney fees and court fees, in accordance with the court's broad discretion under the Rules of Civil Procedure. As mentioned above (See question 6.1), the court will usually not award the defendant the total amount of his litigation costs.

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

Under Chapter 34 of the Rules of Civil Procedure, the court has broad discretion as to the imposition of litigation costs, the determining of such costs, and the allocation of such costs among the parties to the proceeding.

Under Rule 511 of the Rules of Civil Procedure, the court may make a determination with respect to the imposition of the litigation costs and attorney fees, pending the end of trial.

## 7 Funding

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

The Class Action Law established a public fund to help finance representative action (Section 27 of the Law). The fund is managed by a nine-member board, appointed by the Minister of Justice, from a closed list of constituencies who each have one representative on the board: (1) The chairman of the fund, who must not be a state employee; (2) a representative of the Consumer Protection Agency; (3) a representative of the Antitrust Authority; (4) a representative of the banks' oversight office; (5) a representative of the pension fund's oversight office; (6) a representative of the Ministry of the Environment; (7) a representative of the Commission for the Equal Rights of Disabled Persons; (8) a representative of the Attorney General; and (9) a representative of the general public who has knowledge and experience in the area of the fund's operations.

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

Section 27(A) of the Class Action Law provides that the fund is established to finance representative actions, and with the purpose of assisting representative plaintiffs in filing motions to certify a representative action where such motions are of public and societal importance. According to Section 27(e) of the Law, the Minister of Justice is to determine guidelines for implementing such Section 27 of the Law, including equivalency tests with respect to requests for aid in financing representative actions. At the time of writing, such tests have not yet been established.

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

Under Section 23(a) to the Class Action Law, in the event the court rules in favour of the group, it shall determine the scope of the fees to be paid to the plaintiff's counsel for their legal services. Such Section further provides that attorneys representing the plaintiff will not receive payment in excess of the fees determined by the court.

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

The current version of the Class Action Law does not refer to the matter of third party funding. If such funding is to be provided, it would be subject, *inter alia*, to the good faith requirement of Section 8(a)(4) of the Class Action Law (also refer to question 3.4 above).

## 8 Other Mechanisms

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

According to Section 4(a) of the Class Action Law, a public agency and an organisation may file Motions to Certify Claims as a Class Action, even where these parties do not possess an individual cause of action (also see question 2.2).

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

Under Section 4(a) of the Class Action Law, a plaintiff must show an individual claim. Therefore, consumers' claims cannot be brought by a professional commercial claimant who purchases the rights to individual claims. In addition, the Israel Supreme Court ruled in *Isracard v. Shlomowich* that a party who artificially creates an individual claim contravenes the good faith requirement of Section 8(a)(4) of the Class Action Law.

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

Under Section 42A of the Evidence Ordinance (New Version), 5731-1971 the findings and the conclusions of a conclusive decision in a criminal case which finds the defendant guilty of the alleged crime shall be admissible as prima facie evidence in civil cases, with respect to the correctness of such findings and

conclusions, provided that the same defendant is a party to the civil case.

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

To date, no alternative methods of dispute resolution exist under the Israeli Class Action Law.

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

The current version of the Class Action Law does not address the matter of statutory compensation schemes.

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

As mentioned in question 8.4 above, no alternative methods of dispute resolution currently exist under the Israeli Class Action Law.

## 9 Other Matters

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

The Israeli courts gain international jurisdiction upon the lawful service of process on a defendant in Israel. Once jurisdiction has been established in Israel, the defendant may raise an argument of *forum non conveniens* in order to prevent forum shopping. In order for a *forum non conveniens* argument to be successful, the defendant seeking to have the action stayed must raise the burden of showing that another forum exists in which it would be more appropriate for the action to be litigated. It is not sufficient to show that alternative forums exist. One or more alternative forums must shown *clearly and demonstrably* to be more appropriate than Israel.

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

Class Action Law has increasingly developed in recent years in light of the enactment of the new Class Action Law. Such law advances a pro-consumer viewpoint, aimed at resolving the market failures in this respect. In order to broaden its scope of application, the Class Action Law has been amended since its enactment in 2006.

Two recent amendments in law, designed to promote the class action filing are: (1) the enactment of the Israel Consumer Council Law, 5768-2008, which provides that for the purposes of the Class Action Law, the Israel Consumer Council shall constitute a public agency. According to Section 4(a)(2) of the Class Action Law, a public agency may file a Motion to Certify with respect to one of the areas of its public operations; and (2) the amendment to the Communication Law (Bezeq and Broadcasting), which enables the filing of a class action suit against spam distributors.

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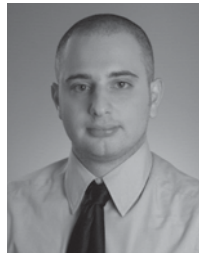
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