



## LITIGATION

# Sophisticated service

The Israeli legal market has become more modern and 'international' in recent years, and litigation is no exception



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As more multinational conglomerates have entered the Israeli market and established a business presence (nearly 300 multinational companies currently operate R&D activity in Israel), and as Israeli society and the country's economy have become more sophisticated, the practice of Israeli litigation has had to evolve to correspond to international as well as local trends. This is true in terms of sophisticated procedures as well as with respect to causes of action, international litigation and consumer rights.

Israel has a general court system and a number of specialised courts. The general court system is comprised of three instances: magistrates' courts, the district courts, and the Supreme Court. The Supreme Court is the highest court of appeal (and also sits as a high court of justice, having the original jurisdiction to adjudicate administrative matters as well as challenges to government action that are not under the jurisdiction of any other court or tribunal).

District courts adjudicate certain civil, criminal and administrative cases as first instance, and also serve as courts of appeal over the magistrates' courts.

Special courts such as the labour courts and family courts have jurisdiction in relevant limited areas.

## The Israeli Basic Law – the Judiciary

This Basic Law (which is part of Israel's informal Constitution), provides for important principles of civil procedure such as: the appealability, as of right, of a judgment of a court of first instance (other than a judgment of the Supreme Court); the public nature of the trial (unless otherwise provided by law or unless the court otherwise directs under law); and the prohibition of the establishment of ad hoc courts.

Our court system is adversarial, not inquisitorial. The judge's role is to determine the facts and apply the relevant law, not to investigate. Juries are not used in the Israeli legal system. All questions of fact and law are determined by professional judges (including claims that are heard by juries in England and Wales).

The adjudication process is governed by the principles of due process and guarantees the basic right of any individual to be heard in court. The Rules of Civil Procedure 1984 govern the conduct of litigation proceedings in the Israeli court system. They provide a number of pre-trial discovery devices that enable disclosure of information among the parties to a law suit. These include interrogatories, and disclosure and inspection of documents. Unlike the US system, however, there is no provision for

conducting pre-trial depositions. Israeli procedure does not provide for a similar procedure to a US- or English-style Summary Judgment, so if a claim survives a motion to dismiss, it will proceed to trial (unless settled).

Like in England and Wales, most testimonies are filed in written form and the witnesses and experts of the parties are then subject to live cross-examination before the court at the scheduled evidentiary hearings, as well as redirect examination.

The trial is usually not confined to one concentrated period of time or consecutive days and may consist of a series of sessions taking place over a period of weeks or even months (the absence of a jury makes this possible). Similar to England and Wales, in general, the Israeli courts do not award punitive, exemplary, or other non-compensatory damages (although some case law provides that they are authorised to do so in limited cases), and damages awarded are virtually always calculated on a compensatory basis.

Legal aid is available through several procedures and organisations, inter alia state legal aid and a pro bono programme of the Israeli Bar Association.

## New forms

The Israeli legal market has evolved to respond to the needs of a modern consumer society by, among other things, adapting and encouraging modern and sophisticated forms of class and group actions, similar to US-style class actions (different in nature to the Group Litigation Order available in England and Wales).

In response to international litigation extending in to Israel, Israeli litigation now features unique aspects of dispute resolution both in substance and in procedure, such as with respect to issues of the international jurisdiction of Israeli courts, conflict of law rules, enforcement of foreign judgments in Israel, international arbitration and legal co-operation between states in civil and commercial matters, to name but a few.

In cases where a multinational conglomerate is litigating in Israel it expects to receive a level of legal service and attorney attention that does not fall short of other jurisdictions, particularly the US or EU. Consequently, the Israeli legal market in general, and our firm in particular, has adapted to this high standard.

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