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## Class actions in Israel

Class actions have become very common in Israel in the past decade. This phenomenon is mainly due to the enactment of the Class Action law of 2006 (the 'Law'), which governs the filing and adjudication of class actions in Israel.

Indeed, the number of class actions filed each year has increased dramatically since the Law was enacted. While some 150 class actions were filed in 2007, about 1,500 were filed in 2016 and 1,441 in 2017. On average, approximately 5.8 class actions are filed every day.

The vast majority (over 60 per cent) of class actions are in the fields of product liability and consumer rights; six per cent are in the field of insurance; 3.5 per cent are in securities; and 3.5 per cent are in banking.

The following may submit a class action on behalf of the class:

- a person having a personal cause of action that raises material questions of fact or law that are shared by all members of the class;
- a public authority with respect to a claim within the scope of one of its public goals, that raises material questions of fact or law that are shared by all members of the class; and
- an organisation (typically a non-governmental organisation) with respect to a claim within the scope of one of its public goals, that raises material questions of fact or law that are shared by all members of the class, and, in the case of an organisation other than the Israeli Consumer Council, provided that under the circumstances there would be difficulty in filing the action by a plaintiff with a cause of action.

The Law does not require a minimum threshold/number of class members.

However, case law provides that the court may exercise its discretion to refuse approval of a class action in the event that the number of class members is too small.

In the event that there are several class actions on the same matter, the Law gives priority to the first plaintiff, although the court has discretion to decide otherwise.

The filing of a class action is subject to the court's approval and discretion, and requires that several conditions be met:

- the action must raise material questions of fact and law that are shared by the members of the class;

- there must be a reasonable possibility that those legal or factual questions will be decided in favour of the class;
- a class action will be the efficient and fair way of resolving the dispute under the circumstances of the case; and
- there must be a reasonable basis to assume that the interest of all members of the class will be represented and managed properly and in good faith.

These requirements are examined by the court at the preliminary stage of the motion to approve the claim as a class action (a 'Motion for Class Action Approval').

The Law provides that no class action will be filed other than in a claim set forth in the Second Schedule (see below), or in a matter set forth in an explicit provision of law permitting a class action to be filed.

The Second Schedule of the Law sets forth a closed list of issues and subjects with respect to which a class action may be filed. These include, inter alia:

- a claim against a 'deal' (as defined in the Consumer Protection Law 1982: a person selling products or providing services as a profession, including a manufacturer) with regard to a matter between the dealer and a client;
- a claim against an insurer, an insurance agent or a provident fund management company, regarding a matter between them and a client;
- a claim against a banking corporation, regarding a matter between it and a client;
- a claim based on a cause of action pursuant to the Antitrust Law 1988;
- a claim based on a cause of action deriving from the ownership, possession, purchase or sale of share capital or investment units;
- a claim regarding an environmental hazard (as defined in the Prevention of Environmental Hazard Law 1992);
- a claim based on a cause of action under the Prohibition of Discrimination in Products, Service and Entrance to Entertainment and Public Places Law 2000;
- a claim with respect to various labour law issues;
- a claim against a public authority for restitution of payment unlawfully collected as a tax, toll or other mandatory; and



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- a claim against an 'advertiser', as defined in Section 30A of the Communications Law (Telecommunications and Broadcast) 1982, which is the Israeli anti-spam legislation. The Law provides, as a default, an 'opt-out' mechanism, according to which class members must take affirmative action to remove themselves from the class. However, the court is allowed, under special circumstances, to apply an 'opt-in' mechanism.

One of the requirements for class certification is that the action raises material questions of fact or law that are shared by all members of the class and there is a reasonable possibility that these will be decided in favour of the class.

The court may award any appropriate remedy applicable, pursuant to the law governing the cause of action on which the class action is based, including monetary compensation (individual or class compensation), declaratory relief and injunctive relief, with the exception of punitive or statutory damages, which may only be awarded in class actions concerning the Equal Right to the Disabled Act 1998 and the Television Broadcast (Subtitles and Sign Language) Law 2005.

The Israeli legal system is based on professional judges. No juries are used in Israel. All questions of fact and law, including with respect to class actions, are determined by professional judges.

There are no document discovery or disclosure obligations prior to the filing of a class action, but parties (especially the plaintiff) are allowed to submit to the court a petition for discovery of specific relevant documents by the other party.

As part of hearing the Motion for Class Action Approval, the court is allowed to permit document discovery in the event that: (1) the documents requested to be disclosed are relevant to the requirements for class certification; and (2) the plaintiff provided prima facie evidence with respect to such requirements. In the event that the motion is accepted, pre-trial procedures are conducted in adjudicating the class action in a manner similar to any civil action, including document discovery.

In Israel, the 'loser pays' rule applies. However, the amount of the costs awarded is subject to the court's discretion and there is a distinction between a case in which the plaintiff loses (that is, the Motion for Class Action Approval is denied/dismissed) and a case in which the defendant loses (that is, the Motion for Class Action Approval is accepted).

In the former case (the plaintiff losing), the costs awarded to the defendant are almost always substantially lower than the actual costs incurred in defending the case (and in some cases the court may not award such costs at all).

In 2018, the Law was amended so that each filing of a class action would require payment of court fees. Under Israeli procedure, filing civil actions is subject to payment of court fees in the amount of NIS8,000 in the Magistrates Court and NIS16,000 in the District Court (approximately US\$2,200 and US\$4,300, respectively), to be paid in two instalments, the first payment at the time of filing and the second before testimonies.

The purpose of this amendment is to lower the number of class actions filed and to deter the filing of groundless class actions.