The Legal 500 & The In-House Lawyer
Comparative Legal Guide
Israel: Arbitration

This country-specific Q&A provides an overview of the legal framework and key issues surrounding arbitration law in **Israel** including arbitration agreements, tribunals, proceedings as well as costs, awards and the hot topics concerning this country at present.

This Q&A is part of the global guide to Arbitration.

For a full list of jurisdictional Q&As visit **http://www.inhouselawyer.co.uk/index.php/practice-areas/arbitration/**

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1. **What legislation applies to arbitration? Are there any mandatory laws?**

   The Arbitration Law, 5728-1968 ('the Arbitration Law') is the law that regulates arbitration issues in Israel. The Arbitration Law includes mandatory conditions as well as optional ones. Under its addendum, the law provides for a set of rules applicable to the arbitral proceeding insofar that the parties have not agreed otherwise (the rules concern the manner of conducting the proceeding, the number of arbitrators, the required majority for rendering decisions, legal procedures, and a further set of rules on various issues concerning the manner of conducting the proceeding).

   The last amendment to the Arbitration Law was made in 2008 and it deals with the addition of two routes of agreement under which an appeal on the arbitral award is possible (an appeal before an arbitrator and a request for appeal before the court). An

additional material innovation provided for under this amendment concerns the duty of providing reasons for the arbitral award. It was determined that if the parties agreed that the arbitral award would be appealable before an arbitrator, the arbitrator is required to provide reasons for the arbitral award, and that one of the conditions to a request for appeal before a court is that the arbitral award should be reasoned.

By virtue of the Arbitration Law, the Regulations of Legal Procedures of Arbitration Issues, 5728-1968 ('the Arbitration Regulations') have been enacted and they deal with the legal procedures of arbitration which relate to proceedings at court (e.g., legal procedures in a motion to stay of proceedings due to an arbitration clause).

2. **Is the country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?**

Israel has ratified the New York Convention on January 5, 1959 and the convention entered into force in Israel on June 7, 1959 without any reservations. It is noted that the New York Convention was adopted in Israel in two stages. At first, Israel adopted the provisions relating to the enforcement of an arbitration agreement or to stay of proceedings, and subsequently the provisions of the convention with respect of the enforcement of foreign arbitral awards were also adopted. In 1978 regulations were enacted in Israel for the performance of the New York Convention and with this the State of Israel accepted the provisions of the convention into its internal legislation.

3. **What other arbitration-related treaties and conventions is the country a party to?**

Israel is a party to the Geneva Protocol (Protocol on Arbitration Clauses, 1923). This protocol entered into force with regard of Israel on January 13, 1952. In addition, Israel is a party to the Geneva Convention (Convention on the Execution of Foreign Arbitral Awards, 1927). This convention entered into force with regard to Israel on January 13, 1952. Israel is also a party to the Washington Convention (Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, 1965). This convention entered into force with regard to Israel on July 22, 1983.

4. **Is the law governing international arbitration based on the UNCITRAL Model Law? Are there significant differences between the two?**

   Both local arbitrations and international arbitrations in Israel are regulated by the Arbitration Law, except if otherwise agreed by the parties. Israel has not yet adopted the UNCITRAL Model Law on International Commercial Arbitration, and there are substantial differences between the Arbitration Law and the UNCITRAL Model Law, including with respect to the arbitrator's power to determine as to its own jurisdiction, the arbitrator's power to render temporary reliefs, the arbitrator's duty to provide a disclosure of any potential conflict of interest and more (some of these duties have been complemented by legal precedents that were rendered by the Israeli courts over the years).

5. **Are there any impending plans to reform the arbitration laws?**

   No. Since 2008, when the last amendment was made to the Arbitration Law, and as of to-date, there are no impending plans to make any reform in the Israeli Arbitration Law. However, there is an initiative to include in the legislation a duty to conduct an arbitral proceeding in compensation lawsuits resulting from both damages to properties due to construction defects and due to property damages resulting from accidents (a proposal for a law regarding this issue was approved in a preliminary reading).

6. **What arbitral institutions (if any) exist? Have there been any amendments to their rules or are there any being considered?**

   In Israel there are several arbitral institutions, including the Center for Arbitration and Dispute Resolution (CADR), the Arbitration Federation Institute, and the Israeli Institute of Commercial Arbitration (IICA). These institutes do not belong to the State institutes but are rather independent bodies.

7. **What are the validity requirements for an arbitration agreement?**

   Under the Israeli law, for an arbitration agreement to be valid and enforceable, it must meet, inter alia, the following requirements:

(a) The agreement should be in writing (this requirement may also be reflected in an exchange of letters or electronic mail).

(b) The agreement to submit the issue to arbitration may be made in an arbitration agreement with respect to a specific matter that relates to the dispute between the parties, or as a clause in a general agreement with respect to it was agreed that in case of a dispute between the parties in connection with the agreement, the dispute will be deliberated in arbitration.

(c) The parties to the arbitration agreement are required to have been qualified to enter into the agreement, otherwise no agreement will be deemed to have been made.

(d) Full consent between the parties to submit the dispute for deliberation in arbitration is required.

(e) The subject matter of the arbitration must be legal, since under the Israeli law, an arbitration agreement in a matter that cannot be a subject for an agreement between the parties, such as an illegal matter, is invalid.

8. **Are arbitration clauses considered separable from the main contract?**

Yes. An arbitration clause that is included in a general agreement is considered as having 'independent life'. Meaning, under the adjudication in Israel, an arbitration clause can be valid even when the general agreement into which it was incorporated has expired or should be cancelled. An arbitration clause is designed to regulate the legal relations between the parties to the agreement, and therefore, by nature, continues to apply after the cancellation thereof and separately from the issue of the validity of the agreement.

9. **Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?**

The Israeli law does not distinguish a two-party arbitration agreement from a multi-party arbitration agreement, and the laws applicable to both types of agreements are the

same laws.

10. How is the law applicable to the substance determined?

In general, the parties to the arbitration agreement are free to determine as they wish as to the applicable law to the arbitration agreement. Thus, the parties may determine whether the substantive law or any other law would apply to the arbitration or even exempt the arbitrator from the applicability of a certain law. According to the Israeli laws, when the arbitration agreement contains a lacuna with respect of the applicable law, then, according to the addendum to the Arbitration Law, the arbitrator will be authorized to act in the way he deems fit and just and is not obligated to act in accordance with the substantive law or evidence laws.

11. Are any types of dispute considered non-arbitrable? Has there been any evolution in this regard in recent years?

In accordance with the Israeli laws, an arbitration agreement in a matter that cannot be a subject for an agreement between the parties is not valid. The matters that cannot be a subject for an agreement between the parties include an illegal matter (meaning an illegal arbitration agreement as opposed to a partly illegal agreement), matters relating to the rights conferred by the law (e.g., social rights and employees' rights under labor laws, personal status issues concerning the determination of one's legal status), company liquidation issues, matters concerning administrative discretion, issues with constitutional nature, lawsuits against office holders in corporations, matters relating to in rem rights.

12. Are there any restrictions in the appointment of arbitrators?

The Arbitration Law does not require a person who is appointed to the office of an arbitrator to have any qualifications. Therefore, any person may be appointed as an arbitrator even if he lacks any legal education or indeed formal education (provided that there is agreement as to his appointment). Notwithstanding the foregoing, the Israeli case law determined that a serving judge is unable to serve as an arbitrator and also that a person who has interest in the results of the arbitration or is in conflict of interest due to any connection with one of the parties to the arbitration or otherwise is not suitable to serve as an arbitrator, since by doing so he violates the requirement of objectivity imposed on him in his office as arbitrator.

13. Are there any default requirements as to the selection of a tribunal?

The parties are free to choose the arbitrator and to set the number of arbitrators – a sole arbitrator or several arbitrators. Normally a sole arbitrator is appointed. If an even number of arbitrators is appointed, then, in accordance with the addendum to the Arbitration Law, under the request of either of the arbitrators, an additional arbitrator will be appointed and join the tribunal or will be appointed as the deciding arbitrator instead of the tribunal.

14. Can the local courts intervene in the selection of arbitrators? If so, how?

Yes. In the event that the parties fail to decide on the appointment of an arbitrator or in the event that they appointed an arbitrator and a problem arose in connection with his appointment following the occurrence of the dispute, either party may file an application with the court for the appointment of an arbitrator. Pursuant to Section 8 of the Arbitration Law, the court may, at the request of that party, appoint the arbitrator, whether the arbitrator was to have been appointed by the parties or by one of them, or whether he was to have been appointed by the arbitrators appointed or by a third party.

15. Can the appointment of an arbitrator be challenged? What is the procedure for such challenge? Has there been an increase in number of challenges in your jurisdiction?

Yes. Pursuant to Section 11 of the Arbitration Law, the parties may appeal to the court requesting to remove an arbitrator from his office in one of the following cases: (a) it was discovered that the arbitrator was unworthy of the parties' trust; (b) the arbitrator's conduct in the course of the arbitration causes a delay of justice; (c) the arbitrator is unable to perform his function.

An application for the removal of an arbitrator from his office may be filed as long as the arbitral award has not been given. The application may be filed by either of or both parties to the arbitration.

16. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

When arbitration is held before several arbitrators, insofar that the parties did not agree otherwise, the arbitration must be held before all arbitrators. Therefore, if, for instance, sessions were held with partial presence of the arbitrators and an arbitral award was given, it is void, even if the arbitrator who was not present in the sessions was invited to them.

With regard to a truncated tribunal, a differentiation must be made between several cases. If the parties agreed in advance that the arbitrators may also deliberate if one of them is absent without a reasonable cause, the partial tribunal has the power to continue with the proceedings. However, if the absence is caused as a result of the resignation of one of the arbitrators appointed and the other arbitrators continue with the sessions on their own, this is a truncated tribunal, and therefore the truncated tribunal cannot continue with the proceeding, as this is not a case of agreement to deliberation upon the absence of an arbitrator. Similarly, a sole arbitrator who was appointed by other arbitrators and resigns would lead to a situation of a truncated tribunal that makes it impossible to continue with the proceeding.

17. Are arbitrators immune from liability?

No. Pursuant to Section 30 of the Arbitration Law, an arbitrator who agreed to his appointment must act with loyalty towards the parties. If the arbitrator breaches such duty, the affected party in addition to any remedy under the Arbitration Law, is also entitled to compensation payable for breach of contract. However, the arbitrator enjoys immunity against a civil or criminal lawsuit for defamation with respect of what was said or published during the arbitral proceeding (Section 13(5) of the Prohibition of Defamation Law 5725-1965) as well as immunity against a claim in torts due to negligence (Section 8 of the Tort Ordinance [New Version]).

18. Is the principle of competence-competence recognised? What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

According to the Israeli case law, an arbitrator is not competent to decide as to the

scope of his own jurisdiction (unless he was explicitly authorized accordingly in the arbitration agreement or by law or in case his decision in this matter was made incidentally). Hence, the decision on this matter will be given by the court.

In general, the courts in Israel enforce arbitration clauses in view of the principle that the will of the parties should be respected. Therefore, as a rule, arbitration agreements are respected. Given that, in the event that a legal proceeding was filed in court although the agreement was to refer the dispute to arbitration, the party that is a party to the arbitration agreement may apply for a stay of proceedings (Section 5 of the Arbitration Law), and the court will stay the proceedings, provided that this party has been and still is prepared to do everything required for the institution and continuation of the arbitration. Notwithstanding, the court has the power not to stay the proceeding where it sees a special reason for the dispute not to be held under arbitration.

With regard to a legal proceeding that was commenced despite of a foreign arbitration clause which is subject to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 ('the New York Convention'), the court would be obligated to stay the proceeding (Section 6 of the Arbitration Law), unless the exclusions provided for under the New York Convention are met.

19. How are arbitral proceedings commenced? Are there any key provisions under the arbitration laws relating to limitation periods or time bars of which the parties should be aware?

The Israeli law does not include any reference to the question of how arbitral proceedings should be commenced nor does it provide for any time bars that the parties should meet in order to commence an arbitral proceeding.

As a matter of principle, arbitral proceedings normally commence by means of a notice served by one of the parties to the arbitration agreement to the other party informing it that it has commenced arbitral proceedings in accordance with the agreement between the parties. It is noted that where, for instance, there is hindrance to the appointment of the agreed upon arbitrator or where the parties fail to reach an agreement as to the identity of the arbitrator when this was not agreed in advance, the arbitral proceedings will commence upon the appointment of the arbitrator by the court or by another entity of which the parties agreed for the appointment of the arbitrator.

According the addendum to the Arbitration Law and unless otherwise provided for in the arbitration agreement or between the parties in a later stage, the Arbitrator should render the arbitration award within three months from the day on which the dispute has begun to be debated or from the day on which the arbitrator was requested to deliberate, the sooner to occur. However, the arbitrator may extend the period up to an additional three months, and in addition the court has the power to extend the arbitration period, on the request of a party or the arbitrator.

20. What happens when a respondent fails to participate in the arbitration? Can the local courts compel parties to arbitrate? Can they order third parties to participate in arbitration proceedings?

Under the Israeli law, a party to an arbitration agreement may approach the court with a motion to appoint an arbitrator in a dispute agreed to be referred to arbitration in the event the parties fail to reach an agreement as to the issue of arbitrator's appointment.

A party which is interested in denying the arbitrator's jurisdiction and the arbitral proceeding may refrain from appearing in the sessions and the arbitrator has nothing to do about it. However, under Section 15 of the Arbitration Law, the arbitrator has an option to hold a session in the absence of a non-appearing party, provided that this party was warned in advance that the arbitrator intends to do so. Similarly, in the event of a party that has not alleged its arguments on the scheduled date, the arbitrator may rule in the dispute in its absence.

21. In what circumstances is it possible for a state or state entity to invoke state immunity in connection with the commencement of arbitration proceedings?

The Israeli Arbitration Law does not include any reference to the issue of raising a state immunity in connection with the commencement of arbitration proceedings. In general, with regard to the State of Israel, when the state is a party to a valid arbitration agreement, it is bound by it and is unable to claim immunity. Therefore, also at the stage of enforcing the arbitral award, there is great doubt that it may raise a claim of immunity.

As for foreign states, the Foreign States Immunity Law, 5769-2008 provides that in the event that a foreign state agreed in writing to refer to arbitration a dispute that has emerged or may emerge in the future, it will have no immunity against jurisdiction, with respect of court proceedings relating to the arbitration, unless otherwise provided for in the arbitration agreement. However, the provisions of this section will not apply to an arbitration agreement between states which are subject to the provisions of the public international law, except for such agreement that one of the parties to which is a separate entity which is not a central bank.

22. In what instances can third parties or non-signatories be bound by an arbitration agreement or award?

The parties to the arbitration agreement are the parties the name of which is indicated in the arbitration agreement as parties to the arbitration agreement. As a rule, it should be concluded that parties that are not parties to the arbitration agreement are not included in it. Therefore, third parties and non-signatories are not a party to the arbitration agreement and are not bound by it.

However, a person may be considered a party to an arbitration agreement by virtue of implied agreement even if he has not officially signed the arbitration agreement (e.g., if he took active part in the arbitration and offered to serve as guarantor to one of the parties to the arbitration as part of an arrangement offered under the arbitration that was validated as an arbitral award). In addition, a party may be included in an arbitral proceeding when the parties to the arbitration agreement and the party the inclusion of which to the arbitration agreement is sought all agree on its inclusion in the arbitration. An arbitration agreement can also bind the successor of the original party to an arbitration agreement (Section 4 of the Arbitration Agreement). Also, in order to prevent parties from evading the participation in an arbitral proceeding to which they essentially agreed by using formalistic claims, the arbitration can also include a person who does not meet the aforesaid conditions, provided that he has a strong connection with one of the parties which is a signatory. For instance, when the inclusion is sought of parties having a strong connection with one of the signatories but the principle of separate legal entity separates them. Thus, for example, when a party to the arbitration applies for the inclusion of the controlling shareholder in the company with which it signed an arbitration agreement, or when a party seeks to include in the preceding the company which is wholly controlled by the other party.

23. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

The issue of the arbitrator's authority to provide an interim relief in an arbitral proceeding held before him has not received a clear answer under the Israel judicial system so far. The common opinion is that as a rule, the arbitrator is not authorized to provide temporary reliefs under an arbitral proceeding held before it. However, Section 16 of the Arbitration Law confers upon the court powers to grant a temporary reliefs with respect to an action brought before it as well as with respect to an arbitral proceeding in the following matters:

1. The summoning of witnesses and the determination of their remuneration and expenses.
2. The adoption of coercive and punitive measures against a witness who has not answered an arbitrator's or the court's summons, or who refused to testify.
3. The taking of evidence forthwith or out of the jurisdiction.
4. Substituted service of notices or documents on the litigants.
5. The attachment of property, the prevention of departure from Israel, security for the production of property, the appointment of a receiver, a mandatory injunction and a restraining injunction.

The court may exercise these powers not only in connection with local arbitration in Israel but also for the purpose of assisting foreign arbitral proceedings, whether these are ongoing foreign arbitral proceedings or such that have yet to be commenced (Section 39A of the Arbitration Law).

24. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence?

Under the Israeli law, there are no specific laws applicable to evidentiary matters in arbitral proceedings. Under the arbitration agreement the parties may agree on the legal procedures that would apply to the arbitration agreement, including, for instance, the applicability of the substantive law and evidence laws that apply at the court also to the arbitral proceedings. In the absence of agreement on such issues, the Israeli law

provides that the arbitrator will not be bound by the substantive law, evidence laws and legal procedures prevailing at court.

With respect of the court's jurisdiction to assist with evidentiary matters, see answer to question 23 above.

25. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings?

Insofar that the parties to the arbitration agreement have not agreed otherwise, the Arbitration Law does not provide for standards or specific requirements that an arbitrator must meet by virtue of his office as an arbitrator. Notwithstanding the foregoing, in accordance with Section 30 of the Arbitration Law, an arbitrator who agreed to his appointment must act with loyalty towards the parties. In addition, the Supreme Court in Israel determined that while the Arbitration Law provides the parties with autonomy to shape the proceeding as they see fit, in any event, an arbitrator is subject to certain criteria such as keeping the rules of natural justice.

Moreover, as a rule, arbitrators who are members of arbitration institutes in Israel must meet various prerequisites in order to be accepted to these institutes as arbitrators and also undertake to comply with the ethical code applied by these entities.

With regard to attorneys, Israeli attorneys are subject to various duties and rules of ethics that apply to them (by virtue of the Bar Association Act, 5721-1961 and the Bar Association Rules (Professional Ethics), 5746-1986), by virtue of their office as attorneys, whether under court proceedings or arbitral proceedings.

26. How are the costs of arbitration proceedings estimated and allocated?

Pursuant to Section 31(A) of the Arbitration Law, an arbitrator may rule the arbitral expenses amount, including attorney's fee and the arbitrator's remuneration and expenses, and determine who will bear them, if no contrary intention appears from the arbitration agreement. Paragraph R of the first addendum to the Arbitration Law provides that in the absence of a different decision by the arbitrator, the arbitration

expenses would be divided equally between the parties. The parties may stipulate this provision and provide for other arrangements.

There are several options to charge arbitrators' remuneration: charging the entire amount as a lump-sum at the end of the arbitration; charging it in installments in the course of conducting the arbitration, or setting an amount for each and every session.

As a rule, in the final arbitral award, the arbitrator fixes the general amount of expenses and orders to pay it, whether by way of equal distribution of the expenses or by way of reimbursement by the losing party to the winning party, in full or in part, everything at his discretion.

The arbitrator fixes his own remuneration, at his discretion. In an event that the parties believe that an excessive amount was prescribed, the law regulates this matter by way of conferring power to the court to reduce the excessive amount from the requested remuneration. This request may only be filed after the arbitral award was given. The court's estimate of the arbitrator's remuneration is according to the weight of dispute, its great financial value, and the burden of responsibility involved in the decision. As a rule, the court will not intervene with an arbitrator's remuneration, especially if it was agreed upon at the beginning of arbitration.

Pursuant to Section 31(B) of the Arbitration Law, a party may pay the arbitrator any amount with which the other party is in arrears and it will be entitled to recover this amount from the other party.

27. Can pre- and post-award interest be included on the principal claim and costs incurred?

According to the Interest and Linkage ruling Law, 5721-1961 ('the Interest Law'), a judicial authority may rule interest on the determined amount and on the legal costs and attorney's professional fee. As, pursuant to Section 1 of the Interest Law, the definition of 'judicial authority' also includes an 'arbitrator', an arbitrator may in fact also rule interest, not only until the award date but also thereafter – until the actual day of payment. Moreover, Israeli case law regarding ruling of interest by the court are also relevant to an arbitrator, namely, ruling of linkage differentials and interest is a matter of

the court's discretion, but the reality is that only in unusual cases will the court refrain from exercising such discretion.

If the arbitrator did not rule interest, the parties or one of them may approach him asking to amend the arbitral award in this matter. If the arbitrator was not approached – the court may rule interest with respect of the period starting on the date of filing the application to ratify the award, but not with respect of the preceding period, since the absence of ruling of interest in the arbitral award is not one of the flaws that may be amended by the court while deliberating the application to ratify the award or set it aside. It is also noted that the head of the execution office is authorized to rule interest as of the date of payment stated in the award or as of the award date if no payment date was indicated therein, and not as of the date on which the award was approved by the court.

It is clarified that where there is agreement between the parties on the payment of interest, linkage differentials or other compensation resulting from a delay of payment, or where the law provides for payment of interest or other remedy as compensation for delay of payment, the arbitrator will not rule interest or linkage differentials in excess thereof.

28. What legal requirements are there for the recognition of an award?

Under the Israeli law, a written arbitral award which is signed by the arbitrator indicating the date of signature is a valid arbitral award, and in the absence of one of these components, the arbitral award is void. The arbitral award binds the parties and their substitutes as res judicata, if no other intention is implied from the arbitration agreement.

As a rule, when an arbitral award is given – the parties must perform it to the letter. The very fact that they agreed to confer the jurisdiction to resolve the dispute between them by virtue of arbitration also includes, in fact, agreement to comply with his decision. Therefore, there is no need for any further approval for performing the award. Notwithstanding the foregoing, the court may, at the request of a party, approve the arbitral award, and once this approval is rendered, the award is deemed a judgment given by the court (except for appeal) and it may be enforced by the execution

institutions. Under the Israeli law, no time bar is scheduled for filing an application to approve an arbitral award since it is valid also without a court's approval.

With regard to recognition of foreign arbitral awards, Israel is a party to several conventions relating to the recognition and enforcement of foreign arbitral awards, the most famous of which is the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958. Under the New York Convention, in order to enforce foreign arbitral awards in Israel, an application to enforce the foreign arbitral award must be filed in Israel accompanied by the original award or a certified copy thereof as well as the original arbitration agreement or a certified copy thereof (if these documents are not in Hebrew, Arabic, French or English, they should be filed also with a verified translation into one of these languages). Upon receiving the application to enforce a foreign arbitral award, the foreign award is accepted into the Israeli judicial system and is deemed as a judgment rendered by an Israeli court (except for appeal). Another way to enforce a foreign arbitral award in Israel is by way of filing a regular action which is based on the ground of the arbitral award in which the claimed relief is enforcement of the operative decision subject of the arbitral award.

29. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts?

The parties to an arbitration agreement are free to determine in the agreement between them the remedies that the arbitrator may grant under the arbitration. In the absence of any reference to this issue in the arbitration agreement, under the Israeli law (Section Q to the first addendum of the Arbitration Law), the arbitrator has the authority to render a declarative award, mandatory injunction or restraining injunction, specific remedy and any other remedy that the court is authorized to grant. The arbitrator may also grant an intermediate award that decides on the arbitration in portions. It is noteworthy that the enforcement of temporary awards given by an arbitrator requires an application to the court.

30. Can arbitration proceedings and awards be appealed or challenged in local courts? What are the grounds and procedure?

Until 2008 an arbitral award could not be appealed and once it was given it was final,

and the only way to challenge it was by way of filing an application to set aside the arbitral award on one of the grounds enumerated in a closed list (provided under Section 24 of the Arbitration Law that included the following grounds): (1) The arbitration agreement was not valid; (2) The award was made by an arbitrator not properly appointed; (3) The arbitrator acted without authority or exceeded the authority granted to him by the arbitration agreement; (4) A party was not given a suitable opportunity to state his case or to produce its evidence; (5) The arbitrator did not determine one of the matters referred to him for determination; (6) The arbitrator did not assign reasons for the award, although the arbitration agreement required him to do so; (7) The arbitrator did not determine the award in accordance with law, although the arbitration agreement required him to do so; (8) The award was determined after the period for determination had expired; (9) The contents of the award are contrary to public policy; (10) A ground exists on which a court would have set aside a final, non-appealable judgment.

An application to set aside an arbitral award will be filed within 45 days of the date of rendering the arbitral award. However, if an application to approve the arbitral award was filed within these 45 days, the application to set aside will be filed within 15 days of filing the approval application, provided however that 45 days have not elapsed from the day the arbitral award was rendered.

In 2008 the Arbitration Law was amended to include two additional alternatives to appeal the arbitral award. The first alternative (Section 21A of the Arbitration Award) provides that an appeal on the arbitral award may be filed where the parties to arbitration have agreed in the arbitration agreement that the arbitral award may be appealed before an arbitrator. In this case the parties may file an application to set aside the arbitral award under narrow grounds only – if there is a ground that is contrary to public policy (Section 24(9) of the Arbitration Law) or if a ground exists on which a court would have set aside a final, non-appealable judgment (Section 24(10) of the Arbitration Law).

Unless the parties agreed otherwise as to the applicable dates of the appeal, the appeal to an arbitrator on a given arbitral award will be filed within 30 days of the date on which the arbitral award was served on the parties or of the date on which the arbitrator was appointed in the appeal, at the latest. The other party may file a reply within 30 days and the appellant may file a response to the reply within 15 additional days.

The second alternative to appeal the arbitral award is when the parties agreed in advance that the arbitral award would be appealed before the court subject to receipt of its permission (Section 29B(a) of the Arbitration Law). The Arbitration Law provides four accumulative conditions in this matter upon the fulfillment of which a request to appeal the arbitral award would be given: (1) The parties stipulated in the arbitration agreement that the arbitrator must decide in accordance with the law; (2) The parties agreed that the arbitral award may be appealed with permission of the court; (3) A fundamental mistake has occurred in the implementation of the law under the arbitral award; (4) The fundamental mistake in the implementation of the law could cause miscarriage of justice. In addition to these requirements, there are two cogent sub-requirements which also need to be fulfilled in order to file an appeal under this alternative – the first is that the arbitration sessions shall be documented in a protocol, and the second – that the arbitral award should be reasoned.

Filing an application to leave to appeal will be filed, as a rule, at the district court, within 30 days of the date of rendering the decision, and it will briefly specify the reasons for the appeal indicating the relevant case law. If a leave to appeal is granted, the appeal will be filed within 15 days thereafter.

31. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

Under the Israeli Arbitration Law, the rule is that there is no right of appeal on the arbitral award unless the parties decided in the arbitration agreement on one of the alternatives of appeal provided for under the law (see answer to question 30 above).

32. To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?

See answer to question 21 above.

33. To what extent might a third party challenge the recognition of

an award?

A third party that is not a party to an arbitration agreement but was affected by the proceeding has no status in the application to set aside the arbitral award or in the application to ratify it. However, it may take other legal steps to protect its rights. Thus, it may file a petition to the court for a declarative judgment, and the time bars as applicable in the Arbitration Law to an application to set aside an arbitral award will not apply to it.

34. Have there been any significant developments with regard to third party funding recently?

Israeli law does not prohibit third-party litigation funding. At the same time, the Israel Bar Association prohibits persons who are not attorneys from performing actions that may be exclusively dealt with by an attorney. Accordingly, when litigation is funded by 'private' parties, this gives rise to concern that the funding party is able, practically speaking, to 'buy' the prosecution, and therefore ethical concerns are liable to arise.

35. Is emergency arbitrator relief available? Is this frequently used?

The Israeli Arbitration Law includes no reference to the issue of emergency arbitrator relief. As clarified above (answer to question 23), the issue of the arbitrator's jurisdiction to grant temporary relief in an arbitral proceeding has not yet been answered under the Israeli law, and it is doubtful that an arbitrator has any power to provide any temporary relief under the Israeli law. However, the court has the jurisdiction to grant various temporary reliefs with respect of the arbitral proceeding.

36. Are there arbitral laws or arbitration institutional rules providing for simplified or expedited procedures for claims under a certain value? Are they often used?

No. With regard to arbitral proceedings, the Israeli law does not provide for simplified or expedited procedures for claims under a certain value. On the other hand, the Israeli law recognizes simplified or expedited procedures for claims under a certain value with regard of claims filed with the courts. In addition, various arbitration institutes in Israel offer an expedited procedure with respect of, for instance, claims under NIS 50,000.

37. Have measures been taken by arbitral institutions to promote transparency in arbitration?

As stated above (see answer to question 6), there are several private institutes in Israel that offer arbitration services. All such institutions provide for confidentiality of an arbitration award as well as the arbitration process itself. Nevertheless, these institutes also emphasize, inter alia, that the arbitration services they offer are also based, inter alia, on the principle of transparency towards the parties. To the best of our knowledge, no initiative as to the issue of transparency of arbitral proceedings is being promoted.

38. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted? If so, how?

As a rule, the majority of arbitration proceedings in Israel are conducted before a sole arbitrator. Hence, the issue of tribunal is somehow less relevant. When a tribunal includes several arbitrators, the issue of diversity of arbitrators does not, as a rule, constitute a factor in choosing the arbitrators, and currently and to the best of our knowledge, no initiative as to the issue of tribunal diversity is being promoted.

39. Have there been any developments regarding mediation?

In an attempt to improve the Israeli judicial system, expedite the handling of cases, and decrease the load on the courts, as of 2008, an information, acquaintance and coordination proceeding has been put in place under which the parties to a dispute filed with the court are referred to a pre-mediation proceeding trying to establish whether it is possible to avoid conducting the proceeding at court. This proceeding applies to civil claims under the sum of NIS 75,000 (except for unusual cases). This proceeding is mandatory and it includes a session with both parties in an attempt to resolve the dispute by way of consent, with the presence of an external party, that examines whether there is potential to refer the dispute to a mediation proceeding. If there is such potential, the parties are referred for further negotiations under a mediation proceeding.

In addition, as of 2016 and aiming to settle family disputes consensually and amicably and to decrease the need for legal litigation, considering all the aspects relating to the dispute and the children's bets interest, it was determined that a divorce proceeding may not be commenced by filing a claim with the competent court, but rather an

application for resolving the dispute should first be filed after which the parties are invited to the court's assistance unit, for a session with professionals, in order to examine whether there is potential to refer the dispute to a mediation proceeding. If the answer is positive, the parties are referred for further negotiations under a mediation proceeding.

40. Have there been any recent court decisions considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

To the best of our knowledge, no decisions have been recently made in Israel dealing with the issue of rejecting an application for the enforcement of a foreign arbitral award that had been enforced in another jurisdiction. If the arbitral award was enforced in another jurisdiction but the enforcement seeker has not received the full relief (e.g., because the enforcement failed), as a rule, such circumstances should not constitute a bar from seeking the enforcement of the same arbitral award in Israel as well.