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ISRAEL: An Introduction to Dispute Resolution

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Major changes in the rules of civil procedure, several years in the making, entered into force in January 2021, adding to the challenges of a court system vying to operate as normally as possible during the global pandemic.

New Civil Procedure Regulations significantly changed Israeli court proceedings

The 1984 Civil Procedure Regulations contained over 550 regulations that have been amended, adjusted and interpreted over the years. With robust supporting case law, they served as every Israeli litigator's 'Bible'. In January 2021 they were replaced altogether.

The new rules were in preparation for several years. Their aim is to enhance efficiency, simplify proceedings, save judicial time, shorten the duration of the litigation and, eventually, create more certainty. The new rules provide more authority to the court, allowing more discretion in deciding on how to make the proceedings more efficient.

However, certainty and efficiency are unlikely to materialise in the first few months or even years, while parties, litigation practitioners and the courts learn and adjust to the new regulations. New case law will take time to become established law and it is expected that courts will vary in the way they apply the new procedural rules in the interim transition period.

Here are some of the main changes introduced by the new rules:

A mandated preliminary deliberation conference between the parties

As research shows that many disputes are resolved as soon as the parties meet (for the first time) in court, the new regulations mandate a formal meeting between the parties within 30 days of filing the last pre-trial pleading. In that meeting, the parties must consider the possibility of alternative dispute resolution; they must try to limit or reduce the controversies and agree on the steps that should be taken to make the legal proceeding more efficient.

The end of the 'motion practice' and the need to plan ahead

The new regulations significantly reduce the ability of the parties to file endless motions throughout the proceeding. Rather, litigants must now file a list of all the motions they intend to file. During the first pre-trial hearing, the court will decide which will be heard orally and which must be submitted in writing.

Little room for mistakes:

As the overall efficiency of the court is now prioritised, the regulations leave little room for errors and omissions. The new regulations impose very specific formal and structural requirements, including new limitations on the scope of the pleadings (down to the number of pages) and the chapters they must include. Pleadings which do not comply will, ultimately, not be accepted. The rules also create a new function of a "legal secretary" to examine documents submitted to the court. The legal secretary is authorised to exclude any document that fails to meet the formal and structural requirements, even before they will reach a judge.

It is going to cost the losing party more

While Israeli courts already order the losing party to pay costs and expenses to the prevailing party under the previous regulations, the rule under the new regulations is that courts must immediately make an order as to costs for every motion separately – regardless of the overall result of the proceedings. This rule might deter parties from filing unnecessary motions and limit their arguments to those with real merit. Courts will consider, according to the new regulations, the misuse (or abuse) of legal proceedings.

Israeli courts continue to work (almost) regularly during the COVID-19 pandemic

The COVID-19 pandemic disrupted the Israeli economy, as it did globally. Initially, economic activity almost froze, including all non-urgent legal proceedings. Court hearings were held only in inherently urgent matters such as injunctions and certain other interim remedies.

However, within a relatively short period of time, courts (and in many ways large parts of the Israeli economy) made the necessary adjustments and adopted a more tolerant attitude towards life in the shadow of the COVID-19 virus. Now, courts in Israel work at almost full capacity – even when the rest of the country is under a mandatory lockdown. COVID-19 related regulations specifically excluded the work of courts, and consequently the work of the legal practitioners.

While the courts continue to function during the pandemic and although the court system is almost entirely computerised, relatively little use is made of video conferencing (as opposed to alternative dispute resolution proceedings, in which video conferencing became an important tool). This might change now that the new regulations specifically provide for the possibility to conduct pre-trial hearings – and even hear testimonies – by video conferencing.

Interestingly, some empirical data shows that since the eruption of the global pandemic more litigation emerged than ever before in Israeli courts and in dispute resolution departments of Israeli law firms. That could be attributable to the financial difficulties of businesses resulting from the health crisis and to the contractual disagreements regarding the consequences of the changed environment.

There is also some indication that litigation, including class litigation, concerning certain "hot topics" (such as privacy and data protection), as well as corporate and commercial disputes, is on the increase.

Israeli courts do not easily consider the COVID-19 pandemic as an event of force majeure

The same tolerant attitude that the Israeli courts find in continuing the legal activity can be found in decisions regarding the impact of the coronavirus on the enforceability of binding contractual agreements.

While each case has its own circumstances which can lead to a different result, courts do not easily consider the pandemic and its ensuing market conditions as in and of themselves a force majeure event that necessarily relieves parties from complying with their contractual commitments. For instance, the Tel Aviv District court recently denied a trustee's request for exemption from paying rent as part of a liquidation proceeding of a store even though it stood empty due to the coronavirus crisis.

That being said, as of the date of this overview, there is still no binding precedent or a general guidance of the higher instances in this respect; and since the legal result is being determined on a case-by-case basis, a binding rule may emerge in the future.