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Litigation and dispute resolution in Israel

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Israeli courts continue to operate under heavy workload, resulting in significant increase in local and international arbitration proceedings

During most of the Covid-19 pandemic period, Israeli courts and legal practitioners continued to work at full force. In fact, some empirical data show that ever since the eruption of the global pandemic, more litigation proceedings were initiated in Israeli courts than ever before. That could be attributed to the financial difficulties of businesses resulting from the pandemic and to the disputes regarding its consequences.

Under these circumstances (in addition to other causes), we continue to witness an exponential increase in the number of arbitration proceedings initiated in Israel, whether local or international. In our own practice, the number of arbitration proceedings we conduct increases by the day.

Israel also intends to adjust its legislation to better accommodate international arbitration proceedings, by adopting the UNCITRAL Model Law of International Commercial Arbitration. The bill adopting the model law (International Commercial Arbitration Bill, 5781-2021) is currently in the midst of a legislation process, delayed due to the dissolution of the Israeli parliament (Knesset) this year.

Israeli courts and litigation practitioners are becoming accustomed to the new civil procedure regulations

While some minor adjustments were indeed made to adjust to the new reality brought by the Covid-19 pandemic (such as signature on affidavits via videoconference), the past years in Israeli civil litigation are marked, not by the pandemic, but rather by the gradual adaptation of courts and practitioners to the new Israeli civil procedure.

In the beginning of 2021, new regulations came into force, reforming the way Israeli civil proceedings are conducted. Although the new regulations were aimed at enhancing efficiency, simplifying proceedings, and eventually creating more certainty, the past two years could be described as a transition period, in which parties, litigation practitioners and the courts learned and adjusted to the new 'game rules'.

While the old regulations had decades of case law, known best practices and interpretations, the new regulations were issued 'fresh out of the oven', and in the past two years the courts have only started to create clearer case law to guide us through the new procedural regime.

Here are some of the main changes introduced by the new rules in the Israeli civil procedure:

Shorter pleadings and less written motions

The new regulations limit the length of pleadings, resulting in significantly shorter documents submitted to courts.

For instance, while prior to the new regulations, statements of claim and statements of defense (the main pleadings initiating litigation) used to spread over dozens of pages, each of them is now restricted to 11 pages in Magistrates Court's cases and 30 pages in District Court's cases. Also, most of the written motions are generally restricted to a total of five pages.

These limitations had a significant effect on the way practitioners write their pleadings. In the past two years practitioners had to adjust themselves to shorter rhetoric methods to plead their case and the prior practice of including all details in all pleadings rapidly vanished. Now, lawyers must be more precise and understand the strength of each argument. The weaker arguments need to be left out of the pleading.

The new regulations also significantly reduce the ability of the parties to file endless motions throughout the proceeding. The parties must now file prior to the first pretrial hearing a list containing all the motions they intend to submit. During the first pretrial hearing the judge decides which motion is to be heard orally and which is to be decided solely on the merits of a written submission. This forces practitioners to think in advance about the entire case strategy and reduces the parties' ability to improvise.

A mandated preliminary deliberation meeting between the parties

Research shows that many disputes are resolved as soon as the parties meet in court for the first time. The new regulations therefore mandate a formal (on record) meeting between the parties within 30 days of the last pleading submission and before the parties appear in court. As part of that meeting, the parties must examine the possibility of resolving the dispute through an alternative dispute resolution mechanism; they must try to limit or reduce their disputes; and agree on the steps that should be taken to facilitate the legal proceeding.

The pretrial hearing became a pivotal event in the course of the case management

The litigation proceeding has several key events, that have significant effect on its outcome. The pretrial hearing has always been an important event (as it is usually the parties' first encounter with the judge). However, with the new regulations it received an even sturdier importance.

Because of the mandatory requirements that precede the pretrial hearing, such as the submission of a list of motions and a list of witnesses by both parties, as well as the mandatory preliminary deliberation meeting between the parties, the parties arrive to the pretrial hearing after significant millage was done in the case. Unlike the proceedings under the previous rules, with the new regulations the case arrives to the pretrial hearing when it is ripe for making substantial decisions.

Indeed, courts now use the pretrial hearing to provide meaningful decisions. They provide instructions on the case's management; they issue decisions on outstanding motions as filed by the parties in their list of motions; and they also signal to the parties how the dispute might be resolved without going through a full-blown trial.

To summarise: the name of the game is being prepared and thinking on case strategy in advance

In sum, while the previous rules allowed room for luck and improvisation, the new rules of procedure in civil litigation force the parties to prepare in advance. They provide a significant advantage to organise practitioners, that plan their strategy, draft strong and concise pleadings, and to those who made the necessary adjustments to conduct effective litigation under the new rules.

An additional advantage emerges to practitioners who have expertise in conducting local and international arbitration proceedings, as such proceeding become more popular as time goes by. ■

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