GETTING THE DEAL THROUGH

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in 55 jurisdictions worldwide

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Israel

Eric S Sherby and Sami Sabzerou

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Laws and institutions

1 Multilateral conventions

Is your country a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Since when has the Convention been in force? Were any declarations or notifications made under articles I, X and XI of the Convention? What other multilateral conventions relating to international commercial and investment arbitration is your country a party to?

Israel is a signatory to the New York Convention. The Convention entered into force as to Israel on 7 June 1959. In 1978, Israel enacted regulations to implement the Convention.

Israel is also a party to the following multilateral agreements:

- the Geneva Protocol regarding arbitration clauses, 1923 (which entered into force in Israel on 13 January 1952);
- the Convention on the Execution of Foreign Arbitral Awards, 1927 (which entered into force in Israel on 27 May 1952); and
- the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, 1965 (which entered into force in Israel on 22 July 1983).

2 Bilateral treaties

Do bilateral investment treaties exist with other countries?

Israel is a party to several bilateral investment treaties. Some of those treaties call for resolution through the International Centre for the Settlement of Investment Disputes. Bilateral investment treaties have been signed with: Azerbaijan; Albania; Argentina; Armenia; Belarus; China; Croatia; Cyprus; the Czech Republic; El Salvador; Estonia; Ethiopia; Georgia; Germany; Guatemala; Hungary; India; Kazakhstan; Latvia Lithuania; Moldova; Mongolia; Poland; Romania; Serbia & Montenegro; the Slovak Republic; Slovenia; South Africa; South Korea; Thailand; Turkey; Turkmenistan; Ukraine; and Uruguay. A new treaty between Israel and Ukraine was signed but has not yet been ratified.

3 Domestic arbitration law

What are the primary domestic sources of law relating to domestic and foreign arbitral proceedings, and recognition and enforcement of awards?

The primary sources of law are:

- Israel's Arbitration Law, 1968 (amended in 2008, the IAL);
- the Rules of Arbitration Procedure, 1968; and
- the Rules to Implement the New York Convention (Foreign Arbitration), 1978.

The IAL defines a 'foreign arbitral award' as one that was given outside of Israel. See also questions 19 and 41.

4 Domestic arbitration and UNCITRAL

Is your domestic arbitration law based on the UNCITRAL Model Law? What are the major differences between your domestic arbitration law and the UNCITRAL Model Law?

The IAL is not based on the UNCITRAL Model Law. Since the adoption of the UNCITRAL Model Law, the few amendments that have been made to the IAL have not been influenced by the UNCITRAL Model Law.

The most salient difference between the UNCITRAL Model Law and the IAL is the default number of arbitrators; under the UNCITRAL Model Law, the default number is three, whereas under Israeli law (including under the International Rules of the IICA), the default number is one. Another significant difference is that under the UNCITRAL Model Law the arbitral tribunal generally has the authority to rule as to its own jurisdiction. See also question 20.

5 Mandatory provisions

What are the mandatory domestic arbitration law provisions on procedure from which parties may not deviate?

Parties may not waive their right to impartiality (equal treatment) on the part of the arbitrators.

6 Substantive law

Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

Parties to an arbitration agreement may, subject to the provisions of the Standard Contracts Law (1982), agree that the substantive law of a country other than Israel will apply to their disputes, and Israeli courts will generally respect such designation.

An arbitrator is not required to apply substantive law unless the arbitration agreement provides otherwise (the Default Rule). The result of the Default Rule is that the failure by an arbitrator to apply substantive law is generally not a ground for having a court vacate his or her award. (If the arbitration agreement does provide that the arbitrator is required to apply substantive law, his or her failure to do so usually will be a grounds for vacating the award.)

A related issue is whether an agreement that contains both a choice of law (governing law) clause and an arbitration clause – but does not expressly state that the arbitrator is required to apply substantive law – trumps the Default Rule; in other words, is such an agreement considered one that requires the arbitrator to apply substantive law? Israeli case law does not provide a clear answer to this question.

Rule 8.2 of the International Rules of the Israel Institute of Commercial Arbitration (described below) resolves the issue as follows:

Except when the context clearly indicates a contrary intention, (a) the inclusion in the Arbitration Agreement of a choice-of-law (governing law) clause shall constitute the parties' agreement that the arbitrator(s) will be bound by the substantive law so chosen.

In matters concerning ownership of real estate, an arbitrator is required to apply substantive Israeli law.

7 Arbitral institutions

What are the most prominent arbitral institutions situated in your country?

The best-known arbitral institution in Israel is the Israeli Institute of Commercial Arbitration, which is operated by the Israeli Chamber of Commerce. The web site of the IICA is www.borerut.com.

From the perspective of a non-Israeli disputant, the most noticeable aspect of the International Rules of the IICA is the general rule that if the arbitration agreement is in English, the language of the arbitration will be English.

In 2009, the Israeli Bar Association established its own Arbitration Institute (website in Hebrew: www.israelbar.org.il/article_inner.asp?pgid=85319&catid=3312).

Arbitration agreement

8 Arbitrability

Are there any types of disputes that are not arbitrable?

The IAL provides the general rule that there is no effect to an arbitration agreement in connection with a matter that cannot be the subject of an agreement. In light of such provision, a number of challenges have been made to arbitration clauses in cases in which the plaintiff asserted that the underlying contract violated antitrust (anti-competition) law, thereby rendering the entire contract – including the arbitration clause – unenforceable. As a general rule, the mere contention that a contract violates antitrust law will not be a sufficient grounds for a court to refuse to enforce an arbitration clause in that contract.

More generally, the approach of the case law is that the more a contract appears on its face to be illegal, the less likely a court is to enforce an arbitration clause in such contract. Similarly, the less a contract appears on its face to be illegal, the more likely a court is to allow the arbitrator to adjudicate the issue of illegality of that contract.

Certain causes of action arising out of the employer-employee relationship may not be arbitrated.

A dispute concerning ownership of real property or a patent is arbitrable only insofar as the arbitrator's award determines the rights between the parties to the arbitration agreement (and not those of any third party).

Disputes between shareholders are generally arbitrable, as are disputes between shareholders and the corporation. Older cases (including some that predated the major amendments to Israel's Companies Law (2000)) held that a claim against a corporate fiduciary for breach of duties is not arbitrable; in light of, inter alia, a 2005 amendment to the Companies Law concerning indemnification of office holders, it is questionable whether such rule still applies.

In April 2010, the Supreme Court held that, when a condition precedent in an international agreement is not fulfilled, an arbitration clause in that agreement is still enforceable. The April 2010 case involved an arbitration clause that was drafted about as broadly as possible (authorising the arbitrator to decide issues relating to the agreement's 'existence, validity, or termination'). It remains to be seen whether, when construing an arbitration clause that is less broad in connection with a contract as to which a condition precedent has not been fulfilled, other Israeli courts will enforce the arbitration clause.

9 Requirements

What formal and other requirements exist for an arbitration agreement?

The IAL expressly provides that it only applies to arbitration agreements in writing. A party that seeks to enforce an oral arbitration agreement may sue for breach of contract, but that party will not be able to seek a stay of proceedings or other court assistance, such as compelling witnesses to testify.

The attorney general's office has taken the position that in order for the state to be bound by an arbitration agreement, the consent of the attorney general is required. However, the IAL expressly provides that the state's status under the law is no different from that of anyone else. Therefore, it is questionable whether the view of the attorney general (as described above) would be sustained by a court.

An arbitration agreement may be included in 'general terms and conditions. However, under the Standard Contracts Law (1982), several types of provisions in 'standard contracts' are presumed to be 'unduly disadvantageous' and, therefore, subject to annulment or amendment. Those types of provisions include:

- a clause that denies or limits a customer's right to make certain pleas before judicial authorities or to take any other legal proceedings, except as part of a 'customary' arbitration agreement; and
- a clause that requires arbitration when the party that drafted the agreement has greater influence than the other party on the designation of the arbitrators or the place of arbitration.

A court may disregard or modify an arbitration agreement if it finds that one or more of the above conditions applies.

10 Enforceability

In what circumstances is an arbitration agreement no longer enforceable?

An arbitration agreement may be rescinded based upon the same grounds that exist for rescission of any contract (legal incapacity, duress or extortion).

A number of cases have held that because a claim of fraud involves damage to the reputation of the defendant, he or she has the right, to clear his or her name, to have such a claim heard in court – notwithstanding the apparent applicability of an arbitration agreement. In light of the case law described in question 19, it is doubtful that such case law has any applicability to international contexts.

A party to a valid arbitration agreement may be deemed to have waived the right to arbitrate if it commenced a legal action (or participated in one) concerning the subject matter of that agreement.

11 Third parties – bound by arbitration agreement

In which instances can third parties or non-signatories be bound by an arbitration agreement?

Consistent with the doctrine under which arbitration is a creation of contract, an arbitration agreement that is incorporated by reference into another legal instrument will generally be enforceable, an assignee of an agreement that contains an arbitration clause will be bound by that clause (as will the other contracting party), and the surviving corporation of a corporate merger will be bound by the arbitration agreements that one or more of the constituent corporations signed.

In November 2010, the Supreme Court issued a ruling rejecting an attempt by a party to an arbitration agreement to bring into the case the partner of the other contracting party. Relying upon a provision of the Agency Law (1965), which requires that an agent receive expressed authorisation to bind his or her principal to legal

proceedings – including arbitration – the Supreme Court held that such authorisation is not to be presumed merely because one of the contacting parties has a partner. The court took particular note of the fact that the contracting party that wished to bring into the case the partner of the other signatory knew of the existence of the partnership but did not make an effort (or failed in its effort) to have the partner included as a signatory to the agreement. It is likely that a different result would have been reached had the agreement been entered into expressly on behalf of the partnership.

When liquidation (or related) proceedings have been initiated with respect to a corporate entity that entered (before liquidation) into an arbitration agreement, the other contracting party will usually be required to forego any rights under the arbitration agreement. See also question 13.

12 Third parties – participation

Does your domestic arbitration law make any provisions with respect to third-party participation in arbitration, such as joinder or third-party notice?

A defendant may not serve a third-party notice upon an entity that was not a party to an arbitration agreement.

Even in a case in which the defendant is a party to an arbitration agreement with the potential third party, if the two agreements provide different mechanisms for appointment of arbitrators it is unlikely that a court would require the third party to participate in the arbitration with the plaintiff.

13 Groups of companies

Do courts and arbitral tribunals in your jurisdiction extend an arbitration agreement to non-signatory parent or subsidiary companies of a signatory company, provided that the non-signatory was somehow involved in the conclusion, performance or termination of the contract in dispute, under the 'group of companies' doctrine?

There is no published Israeli case applying the 'group of companies' doctrine to an arbitration agreement. Moreover, although a number of cases have discussed the doctrine as though it is a part of Israeli law, none of those cases have found that the facts justify applying the doctrine.

In 2010, a district court ordered a parent corporation to participate in an arbitration in which its subsidiary was involved, even though the parent corporation was not a party to any written agreement to arbitrate. The district court so ruled based on the fact that both corporations had acted closely in concert in business dealings with a third party. On appeal, the Supreme Court declined to intervene in such ruling.

14 Multiparty arbitration agreements

What are the requirements for a valid multiparty arbitration agreement?

The IAL does not expressly address multiparty arbitration agreements. Yet there is nothing in the IAL suggesting that there would be any impediment to an arbitration involving three or more parties, and the author has been involved in such a case.

If three or more parties enter into an agreement that contains an arbitration clause yet are unable to agree upon the identity of the arbitrators, one or more parties would be free to file a motion with a district court for the appointment of the arbitrators. See also question 16.

Constitution of arbitral tribunal

15 Appointment of arbitrators

Are there any restrictions as to who may act as an arbitrator?

The only statutory impediment to the appointment of any person as an arbitrator is that a sitting judge may not act as an arbitrator.

Under the IAL, there is no list of authorised or recommended arbitrators. As a practical matter, courts frequently appoint retired judges as arbitrators. In commercial matters, it is not uncommon for courts to refer a dispute to the IICA for its president to appoint the arbitrator.

There is no rule that requires a court to appoint an arbitrator with experience in the international field as the arbitrator in an international dispute.

The International Rules of the IICA require the IICA to maintain a list of arbitrators who have international experience and that such an arbitrator be appointed in any case under those rules.

16 Appointment of arbitrators

Failing prior agreement of the parties, what is the default mechanism for the appointment of arbitrators?

The general rule is that, if the arbitration agreement is silent as to the mechanism for the appointment of the arbitrator, or if the method is not a self-executing one (such as appointment by a third party), either party may file a motion with a district court to have an arbitrator appointed. However, the court may not appoint an arbitrator unless the party requesting the appointment has sent a written request to its adversary, requesting that it consent to the appointment of a specific (named) arbitrator. The court is required to give the party receiving such notice seven days to respond. (This period is routinely extended.)

Under the International Rules of the IICA, if the parties do not promptly agree upon the appointment of the arbitrator, the president of the IICA is to make the appointment.

Under the IAL, and under the International Rules of the IICA, the presumption (which can be varied by agreement) is that a sole arbitrator will adjudicate the dispute.

17 Challenge and replacement of arbitrators

On what grounds and how can an arbitrator be challenged and replaced? Please discuss in particular the grounds for challenge and replacement and the procedure, including challenge in court.

The grounds pursuant to which a candidate arbitrator or an arbitrator (as the case may be) may be removed are:

- the arbitrator has a conflict of interest, is demonstrated to be biased, or is otherwise not worthy of the trust of the parties;
- the arbitrator is de facto ignoring the case; or
- incapacity of the arbitrator.

In any of the above cases, the party seeking the removal of the arbitrator is required to file a motion with the district court. As a practical matter, there is a high burden of proof on the party seeking removal, and an arbitrator will be removed only under extreme circumstances.

If an arbitrator dies while a case is still pending, the court has the authority to appoint a substitute arbitrator unless otherwise agreed between the parties.

18 Relationship between parties and arbitrators

What is the relationship between parties and arbitrators? Please elaborate on the contractual relationship between parties and arbitrators, neutrality of party-appointed arbitrators, remuneration, and expenses and liability of arbitrators.

Each arbitrator owes a fiduciary duty to each litigant in the case. Among other things, that duty requires that the arbitrator remains impartial at all times and avoids ex parte communications.

There is a long-standing tradition in Israel of the use of zabla arbitration – the procedure under which the claimant appoints its arbitrator, the defendant appoints its arbitrator, and the two appointed arbitrators then choose a third arbitrator, who serves as the chairman of the arbitration panel. Even under a zabla situation, each arbitrator – including the two appointed by parties – owes a fiduciary duty to each litigant.

The IAL provides the arbitrator with substantial discretion to determine his or her own compensation, subject to review by the district court.

It is customary in Israel for the parties to pay the arbitrator's fees equally throughout the case and for the final award to include a determination that the prevailing party is entitled to reimbursement of some or all of what it paid to the arbitrator.

Jurisdiction

19 Court proceedings contrary to arbitration agreements

What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an existing arbitration agreement, and what time limits exist for jurisdictional objections?

The general rule is that, if a lawsuit is filed concerning a dispute to which there is a written arbitration agreement, and if a litigant (usually the defendant) that is a party to such agreement requests that the court stay the proceedings in the lawsuit, the court is required to issue such a stay. However, a stay will only be granted if the party requesting it is prepared to 'do all that is required' to conduct the arbitration. Usually it is sufficient for the party seeking a stay to merely assert, in a declaration, that it is prepared to do all that it is necessary to conduct the arbitration.

An Israeli court is nonetheless permitted to deny a motion for a stay if the court finds that a 'special reason' exists why the dispute should not be arbitrated.

Prior to 2005, there was no published case law discussing whether the open-ended authority of an Israeli court to ignore arbitration agreements on the grounds of a 'special reason' is limited to the domestic context. There had been lower court decisions that allowed multi-party cases to proceed in Israel even though two of the parties had signed an agreement calling for arbitration outside Israel. The reasoning of those decisions was that the presence of an Israeli litigant that was not bound to the international arbitration agreement was enough of a 'special reason' to refrain from forcing an Israeli party to arbitrate abroad.

However, in September 2005, the Israeli Supreme Court held that when an international convention to which Israel is a signatory applies to an arbitration agreement, and when such convention contains provisions relating to the stay of (judicial) proceedings, the court's authority to deny a stay on the grounds of a 'special reason' must, as a general rule, be exercised subject to the provisions of such international treaty.

The Supreme Court went on to observe that Israel is a signatory to the New York Convention, which provides, as a general rule, that when a court is seized of an action in a matter in respect of which the parties have made an agreement to arbitrate, the court shall, at the request of one of the parties, refer the parties to arbitration. The court further noted that the New York Convention does not contain any provision analogous to the 'special reason' provision of Israeli law; therefore, the Supreme Court held that an Israeli court may not refuse, on the grounds of a 'special reason', to stay an action relating to an arbitration within the ambit of the New York Convention.

In October 2009, the Israeli Supreme Court recognised (in a two-to-one decision) a narrow exception to its 2005 holding, in a case involving drug testing on humans. The Court reasoned that such an issue involved matters of public concern that justified recognising an exception to the New York Convention.

20 Jurisdiction of arbitral tribunal

What is the procedure for disputes over jurisdiction of the arbitral tribunal once arbitral proceedings have been initiated and what time limits exist for jurisdictional objections?

Case law has recognised more than one method for the determination of the scope of the jurisdiction of an arbitrator.

Some cases have held that a party who is of the view that the arbitrator has exceeded (or is exceeding) his or her jurisdiction should raise the issue with the arbitrator and that doing so preserves the issue for challenge at the (future) stage of seeking cancellation of the arbitral award. The reasoning in such cases is that there is a possibility that the party raising the objection will be satisfied with the eventual award, thereby rendering moot any assertion that the arbitrator exceeded his or her authority.

Other cases have held that a party who is of the view that the arbitrator has exceeded (or is exceeding) his or her jurisdiction should promptly do one of the following:

(i) request of the arbitrator that he or she file a 'case stated' concerning his jurisdiction;
(ii) file a motion with the court to cancel the arbitrator's decision, on the grounds that any decision regarding his jurisdiction was an interim one (partial judgment), which may be cancelled by the court to the extent that it exceeds his or her jurisdiction; or
(iii) file a motion with the court to issue a declaratory judgment as to the scope of the arbitrator's jurisdiction.

In selecting options (ii) or (iii), the movant should also request that the court stay (at least in part) the arbitration.

A party who is completely silent regarding its objection as to the scope of the arbitrator's jurisdiction will be deemed to have waived any such objection.

Arbitral proceedings

21 Place and language of arbitration

Failing prior agreement of the parties, what is the default mechanism for the place of arbitration and the language of the arbitral proceedings?

Regarding the place of arbitration, as a general rule, a motion to appoint an arbitrator is to be filed with the district court where the defendant is domiciled (or where it has its place of business) or where the events giving rise to the claim occurred.

In the absence of an agreement of the parties, the arbitration proceeding will be conducted in Hebrew. Under the International Rules of the IICA, the general rule is that if the arbitration agreement is in English the language of the arbitration will be English.

22 Commencement of arbitration

How are arbitral proceedings initiated?

When a motion to appoint an arbitrator has to be filed (see question 16), the movant must submit a declaration setting out the facts showing that the movant is entitled to the requested relief. The declaration should annex a copy of the arbitration agreement.

Under the International Rules of the IICA, the initiation of a case is somewhat more detailed. In addition to filing a copy of the agreement that shows that the International Rules of the IICA apply, the claimant is expected to address the following issues:

- the nature of and the amounts in dispute;
- its view as to the substantive law applicable (if not Israeli law); and
- its views concerning any special requirements with respect to the fields of expertise of the arbitrator.

23 Hearing

Is a hearing required and what rules apply?

The appointment of the arbitrator may be (and often is) made without any court hearing.

There is no requirement under the IAL as to a minimum number of hearings that an arbitrator must hold. However, one of the grounds for cancelling (vacating) an arbitration award is that the arbitrator failed to afford one of the parties the opportunity to present its case.

As a practical matter, arbitrators routinely hold one or more non-evidentiary sessions with counsel before any witnesses are heard.

Under the International Rules of the IICA, the arbitrator is required to hold at least one preliminary session.

24 Evidence

By what rules is the arbitral tribunal bound in establishing the facts of the case? What types of evidence are admitted and how is the taking of evidence conducted?

The IAL provides that the arbitrator is to rule according to his or her best judgment, based on the material provided to him or her. Unless the parties agree otherwise in the arbitration agreement, the arbitrator is not bound by substantive law or by the rules of evidence or procedure that apply in court.

As a practical matter, with respect to document discovery, arbitration usually mirrors proceedings in court. Generally, an arbitrator will require each party to disclose, in an affidavit, those documents in its possession or control that are relevant to the dispute; production of copies of those documents is also the norm. Arbitrators are less likely than courts to order parties to respond to questionnaires (interrogatories) or to serve requests to admit facts.

Israeli procedure does not include US-style depositions. The International Bar Association's Rules on the Taking of Evidence in International Commercial Arbitration have not been accepted as part of Israeli arbitration practice.

Parties may, and routinely do, testify.

The IAL authorises district courts to summon witnesses and to render decisions concerning issues of law raised by the arbitrator or by one of the parties.

25 Court involvement

In what instances can the arbitral tribunal request assistance from a court and in what instances may courts intervene?

The arbitrator may request the assistance of a district court with respect to various matters, the primary ones being:

- taking evidence from witnesses and compelling them to appear;
- compensating witnesses;
- substituted service of papers; and
- orders of attachment.

If an arbitrator has not yet been appointed, a party may file a motion with a district court for such relief, provided that it has commenced the process of having an arbitrator appointed.

The arbitrator may also seek assistance from the court via a 'case stated' procedure, whereby the arbitrator presents a legal issue for determination by the court. See also question 27.

26 Confidentiality

Is confidentiality ensured?

There is no general requirement under the IAL for parties to maintain the confidentiality of all matters disclosed during an arbitration. In those cases in which the issue of confidential treatment by a party to the arbitration has arisen, courts have held that any obligation to maintain confidentiality is to be determined on a case-by-case basis.

Because an arbitrator owes a fiduciary duty to the parties, he or she could be sued for breaching that duty by disclosing confidential information that was disclosed to him or her in an arbitration.

Under the International Rules of the IICA, the general rule is that:

- arbitration sessions are to be held only in the presence of the parties and such other persons whose presence is necessary;
- those present (including lay and expert witnesses) are required to maintain the confidentiality of the arbitration sessions and all information communicated; and
- the arbitrator may require the parties and others to sign any document reasonably necessary to ensure confidentiality.

nterim measures

27 Interim measures by the courts

What interim measures may be ordered by courts before and after arbitration proceedings have been initiated?

A district court has the jurisdiction to issue affirmative orders and injunctions in aid of an arbitration. The IAL does not negate the jurisdiction of an arbitrator to issue such orders. However, as a practical matter, any such order issued by an arbitrator cannot be enforceable absent a court order. See also question 25.

28 Interim measures by the arbitral tribunal

What interim measures may the arbitral tribunal order after it is constituted? In which instances can security for costs be ordered by an arbitral tribunal?

Whenever a non-Israeli plaintiff sues, the arbitrator has the discretion to require it to deposit security to cover the anticipated costs of the defendant. Such discretion is routinely exercised when the foreign plaintiff is a corporation.

In this context, Rule 3.4 of the International Rules of the IICA provides:

> [...] in considering whether to grant [an order to deposit security] against a non-Israeli party, the arbitrator(s) shall not take into consideration that such party is based or domiciled outside of Israel or that such party does not have assets in Israel[.]

See also question 25.

Awards

29 Decisions by the arbitral tribunal

Failing party agreement, is it sufficient if decisions by the arbitral tribunal are made by a majority of all its members or is a unanimous vote required? What are the consequences for the award if an arbitrator dissents?

Unless otherwise agreed by the parties, the majority rules, and there is no need for unanimity.

30 Dissenting opinions

How does your domestic arbitration law deal with dissenting opinions?

When there is a dissenting opinion, the majority is required to include the text of the dissent within the award.

31 Form and content requirements

What form and content requirements exist for an award?

The arbitral award must be signed and dated by the arbitrator.

Under a 2008 amendment to the IAL, unless the arbitration agreement expressly provides otherwise, the arbitrator is required to set forth his or her reasoning in arriving at his award. However, the 2008 amendment did not change the rule under which a court may not cancel (vacate) an arbitral award merely because the arbitrator failed to explain his or her reasoning, unless the arbitration agreement expressly stated that the arbitrator is required to state his or her reasons.

32 Time limit for award

Does the award have to be rendered within a certain time limit under your domestic arbitration law?

Under the IAL, the arbitrator is required to render his award within six months of starting to hear the matter.

However, the six-month rule is more honoured in the breach. Arbitrators routinely take more than six months to decide cases, and in arbitrations involving foreign parties or foreign witnesses it is not uncommon for the case to take years.

Under the IAL, a party may challenge an arbitral award on the grounds that the arbitrator took too long to render his award – if, and only if, that party sent a written notice to the arbitrator, before the award is rendered, expressly objecting to the delay in rendering the award. However, case law has held that a party may not rely on such a written notice to 'hedge its bets'. In other words, if a party sends such a notice to the arbitrator, that party will likely be deemed to have waived its rights thereunder if it continues to participate in the arbitration.

Even when a party properly sends such a written notice to the arbitrator and retains its right to challenge the award (by not participating further), such a reservation of rights could turn out to be completely meaningless. When the case gets to the stage where the court has to determine whether to cancel (vacate) the award, the court has the discretion to send the case back to the arbitrator for him to conclude its adjudication – subject to whatever instructions the court gives. (See answer to question 41.) Therefore, there is no guaranty that sending such a notice to the arbitrator will result in a speedier adjudication of the case.

Under Rule 8.4 of the IICA's International Rules, if the adjudication of the case exceeds six months the arbitrator is required to provide, on a going forth basis, periodic reports to the president of the IICA as to the progress of the case.

33 Date of award

For what time limits is the date of the award decisive and for what time limits is the date of delivery of the award decisive?

A motion to cancel an arbitral award must be made within 45 days of receipt of a copy of the award. See, however, question 39.

34 Types of awards

What types of awards are possible and what types of relief may the arbitral tribunal grant?

The arbitrator may issue an interim award. In addition to rendering a monetary award, an arbitrator may render declaratory relief or any other type of relief that a court may award.

35 Termination of proceedings

By what other means than an award can proceedings be terminated?

An arbitrator may render a default award, but only after giving the parties adequate advance notice of the hearing. See also question 38.

When the parties settle after the arbitrator has been appointed, he or she has the jurisdiction to give such agreement the effect of an arbitral award.

36 Cost allocation and recovery

How are the costs of the arbitral proceedings allocated in awards? What costs are recoverable?

An arbitrator has substantial discretion in allocating costs. It is routine for an arbitrator to require the losing party to pay significant costs of the adverse party, including attorneys' fees and the fees of the arbitrator.

In this context, Rule 8.6 of the IICA's International Rules provides:

> The arbitral award may determine that each party shall bear its own costs or that one party shall bear the costs of another party, in whole or in part. If the arbitrator decides that a party is to bear certain additional expenses, (such as legal fees, expert's fees, etc) the arbitrator shall also specify the amount due.

That rule also provides that, if the arbitration agreement addresses the issue of costs, the arbitrator should, generally, be guided by such provision. See also question 28.

37 Interest

May interest be awarded for principal claims and for costs and at what rate?

Interest may be awarded as it would be had the claim been filed in court. The rate of interest fluctuates, and its calculation is based upon notices published (approximately) monthly by the Ministry of the Treasury.

Proceedings subsequent to issuance of award

38 Interpretation and correction of awards

Does the arbitral tribunal have the power to correct or interpret an award on its own or at the parties' initiative? What time limits apply?

There are a number of grounds upon which a party to an arbitration may ask the arbitrator to correct or supplement the award. These include:

- the award fails to expressly address the issue of expenses (including attorneys' fees);
- the award contains a clerical error;
- the award contains an erroneous reference to a person or asset; or
- the award fails to expressly address the issue of interest.

Some but not all of the above matters must be raised within 30 days of receipt of the (original) award. Before supplementing the award or making a correction, the arbitrator is required to afford the other parties an opportunity to be heard. The arbitrator has 30 days from the date on which the other parties receive the request to correct (or supplement) the award to decide on such request.

When a default award has been rendered, the arbitrator has the discretion to cancel it within 30 days of receipt by the defaulting party of the award.

Update and trends

Prior to late 2009, the official policy of the state of Israel was, as a general rule, not to agree to arbitration. In October 2009, the attorney general issued a nine-page guideline, setting forth those circumstances and procedures under which the state would agree to arbitration. Although the guideline is very general, its issuance is an indication that the state will be more willing than it previously was to refer commercial disputes to arbitration.

In January 2010, Israeli Metal-Tech Ltd reported that it had filed for arbitration against Uzbekistan in a dispute related to the country's allegedly unlawful treatment of Metal-Tech's 50 per cent investment in Uzmetal Technology, a joint venture. The request for arbitration was filed with the International Center for Settlement of Investment Disputes (ICSID), Washington, DC. The claimant asserted one or more breaches by Uzbekistan of the Israel-Uzbekistan Bilateral Investment Treaty. The above case was the first known BIT arbitration involving an Israeli party

39 Challenge of awards

How and on what grounds can awards be challenged and set aside?

The deadline for filing a motion to cancel (vacate) an arbitral award is 45 days. However, if a motion to confirm the award has been filed, and if the responding parties want to move to vacate, they are required to do so within 15 days of being served with a copy of the motion to confirm. See also question 41.

40 Levels of appeal

How many levels of appeal are there? How long does it generally take until a challenge is decided at each level? Approximately what costs are incurred at each level? How are costs apportioned among the parties?

In a typical case (in which the arbitration agreement is silent as to the issue of any appeal), the 'first appeal' is a motion to cancel (vacate) the award, which is filed with the district court. (When a district court denies a motion to cancel, it routinely awards costs to the respondent.) Appeals from judgments of the district court are heard by the Supreme Court. Therefore, in the typical case, the maximum number of levels of 'appeals' of an arbitral award is two.

In 2009 the IAL was amended to authorise parties to an arbitration agreement to provide for an appeal – not to be confused with a motion to vacate (which is filed with a district court) – before a second arbitrator.

Under the amendment, an appeal to an appellate arbitrator is permitted only if the parties have expressly agreed to it in the arbitration agreement. Any such appeal is heard by a sole arbitrator, unless the parties expressly agree otherwise. The appellate arbitrator is not authorised to hear evidence, unless agreed otherwise by the parties. If a party wishes to file a motion to cancel the appellate arbitrator's award, the grounds available for such a motion are limited to the content of the award being contrary to public policy or that there is a ground that would justify cancellation of a final court judgment. Also, if an appellate arbitration takes place, neither party will be allowed to appeal to the district court on the appellate arbitration.

In 2009 the IAL was amended to provide for an appeal, to a district court, of the arbitral award, subject to the existence of three conditions: the arbitration agreement expressly provides for such an appeal; the arbitration agreement provides that the arbitrator is to be bound by substantive law; and the court is of the view that, in applying the law, the arbitrator made a fundamental error that would cause a miscarriage of justice.

41 Recognition and enforcement

What requirements exist for recognition and enforcement of domestic and foreign awards, what grounds exist for refusing recognition and enforcement, and what is the procedure?

Israeli courts are generally pro-enforcement of arbitral awards, both domestic and foreign.

A motion to enforce an arbitral award is to be filed with a district court. A certified copy of the award (signed by the arbitrator) should be filed in one of the following languages: Hebrew, Arabic, English, or French (or translated into one of those languages). The application should also annex the original arbitration agreement (or a copy authenticated pursuant to Israeli law).

With respect to domestic arbitral awards, a court may set aside an award (in whole or in part), supplement it, amend it, or return it to the arbitrator, for one of 10 reasons. Those 10 reasons are set out in the table below, which compares such grounds to those under article V of the New York Convention for refusing to recognise a foreign arbitral award.

Ground under domestic Israeli law	Corresponding ground under article V of the New York Convention
The arbitration agreement was not valid	1(a) The arbitration agreement is not valid under the law of the contractual forum (or under the law of the country where the award was rendered)
The award was made by an arbitrator not properly appointed	1(d) The composition of the arbitral authority was not in accordance with the agreement (or was not in accordance with the law of the country where the arbitration took place)
The arbitrator acted without authority or exceeded the authority given to him by the arbitration agreement	1(c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration
A party was not given a suitable opportunity to state his case or to produce his evidence	1(b) The party against whom the award is invoked was not given proper notice or was unable to present his case
The arbitrator did not determine one of the matters referred to him for determination	N/A
The arbitrator did not assign reasons for the award even though the arbitration agreement required him to do so	1(d) The arbitral procedure was not in accordance with the agreement of the parties
The arbitrator did not make the award in accordance with law even though the arbitration agreement required him to do so	1(d) The arbitral procedure was not in accordance with the agreement of the parties
The award was made after the period for making it had expired	N/A
The content of the award is contrary to public policy	2(b) The recognition or enforcement would be contrary to the public policy of the country in which enforcement is sought
A ground exists on which a court would set aside a final, non-appealable judgment	N/A

As the table shows, the grounds for setting aside a domestic arbitral award are very similar to those for refusing recognition under the New York Convention.

The 'public policy' ground is generally construed narrowly.

Opposition to any application to confirm an arbitral award is to be made by filing an application to set the award aside. Any application to set aside must specify which one (or more) of the above

grounds is the basis of the application; such an application must also be accompanied by a factual declaration.

The court may dismiss an application to set aside notwithstanding the existence of one of the 10 grounds in the table if the court is of the view that no miscarriage of justice has been caused.

The general rule is that the district court may not consider an application to set aside an arbitral award that is filed more than 45 days from the day on which the award was made.

42 Enforcement of foreign awards

What is the attitude of domestic courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

When a motion has been filed in Israel to enforce a foreign arbitral award, the court may stay the adjudication of such motion if a motion to cancel (or to suspend) has been filed with a court in the country where the award was rendered (or in a court of the state under which the laws of which the award was rendered).

As a condition to granting such a stay, the Israeli court may require the party that opposes enforcement to deposit security.

43 Cost of enforcement

What costs are incurred in enforcing awards?

The filing fee for a motion to enforce an arbitral award is a few hundred dollars.

Other

44 Judicial system influence

What dominant features of your judicial system might exert an influence on an arbitrator from your country?

Israeli judges are known for vigorously encouraging parties to settle. That phenomenon is often experienced before Israeli arbitrators.

Written witness statements are common. As a rule, Israeli arbitrators are not likely to order US-style discovery (although the author has been involved in one arbitration before an Israeli arbitrator who acquiesced to discovery from the United States under 28 USC section 1782). The use of video-conferencing for taking testimony from non-Israeli witnesses has increased in recent years.

45 Regulation of activities

What particularities exist in your jurisdiction that a foreign practitioner should be aware of?

Lawyers from western countries who need to travel to Israel for arbitrations rarely report visa-related problems. As long as the situs of the arbitration is in Israel, Israeli lawyers (and, obviously, arbitrators) are required to charge value added tax to the legal fees.

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