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New International Commercial Arbitration Law Adopted

Client Updates

On 12 February 2024 the Israeli Parliament formally enacted the International Commercial Arbitration Law (the "New Law"), adopting almost entirely the 2006 UNCITRAL Model Law.

The New Law will revolutionize the legal framework international commercial arbitration is regulated and scrutinized by in Israel and will bring Israel's arbitration law up to speed with international standards.

The arbitration law, 1968 (the "Old Law") will still continue to apply to domestic arbitrations and to international arbitrations which are not subject to the New Law, but for most international arbitrations, which are commercial in nature, this marks a significant and substantial change from the current position.

This New Law will come into force as soon as it is published in the official gazette and **will apply to every arbitration proceedings initiated after the New Law comes into force**, regardless of the date the arbitration agreement was entered into.

The Main Changes Introduced by the New Law **Applicability, Interpretation and General Principles**

The New Law is intended to apply as a form of *lex specialis*, to any and all international commercial arbitrations seated in Israel, as well as, to a certain extent, to international commercial arbitrations seated outside of Israel, and it is settled in the New Law that the Old Law would not apply to arbitrations which meet the definition of International Commercial Arbitration.

In this framework, one of the key features introduced by the New Law is the introduction of a formal definition of International Arbitration. While under the Old Law any arbitration seated in Israel was considered as "domestic" for the purposes of court scrutiny, Article 3(c) of the New Law includes a new, robust and comprehensive definition of the term international arbitration, which is dependent on the Place of Business of the Parties, the Seat of the Arbitration, the place of the execution of the Agreement and the Parties' express consent.

In addition to the regulation of the definition of the term international commercial arbitration, the New Law also includes provisions (mainly Article 2(e)) relating to the interpretation of the New Law, explicitly referring to the international origins of the New Law and its goal to harmonize the international regulation and scrutiny of international arbitration.

Default Number of Arbitrators

Under the Old Law, and mainly Addendum A of the Old Law, the default number of arbitrators when the Parties have not determined this number in the arbitration agreement was one (1). However, under Article 11 of the New Law, the default number is now three (3), giving the Parties more control over the appointment process as well.

Competence-Competence

Under the Old Law, it was questionable whether arbitral tribunals possess the power to make decision on their own jurisdiction, raising concerns about the procedure, the authority of the arbitral tribunal, and the validity of such decisions.

Article 17 of the New Law explicitly empowers the arbitral tribunal to decide on its own jurisdiction and details the options of the Parties to challenge this decision either during the proceeding itself or after a final award is issued by the arbitral tribunal.

Provisional Measures

One of the most important features of the New Law, is the explicit authority of the arbitral tribunal to issue provisional measures at the request of one of the Parties. Article 18 of the New Law authorizes the arbitral tribunal (unless explicitly excluded by the Parties), to issue provisional measures, and Article 24 of the New Law stipulates that such provisional measure, as a general rule, and regardless of its form, will be recognized and enforced by Israeli courts.

The New Law does not authorize the arbitral tribunal to issue *ex-parte* emergency measures, and requires that such measures will be issued, only after consulting all the relevant Parties, giving them the opportunity to comment on the application for provisional measures, before a decision is made.

Regardless of this position, the New Law also stipulates that any competent court may be seized with an application for provisional measures, in aid of arbitration, explicitly confirming the parallel jurisdiction of the arbitral tribunal and the courts to issue provisional measures in aid of the arbitration proceeding.

Standard for Impartiality and Independence of Arbitrators

Although the standard for challenging the independence and impartiality of arbitrators was not explicitly referenced in the Old Law, the legal precedents over the years, determined that the standard for challenging arbitrators is similar to that of judges, namely a "real concern" to the arbitrator's independence and impartiality.

The New Law sets out in Article 13 a lower standard for challenging an arbitrator, setting “justifiable doubts” as the new standard for challenging and removal of an arbitrator. Although it is yet to be determined, how, if any, Article 13 of the New Law will affect challenges in courts, the conceptual change in the standard may have some effect on the outcome of such challenges compared to the current situation.

The Partners of our International Arbitration Practice will be happy to assist you further and provide further insight into International Arbitration in Israel generally and the New Law in particular.

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