CDR Commercial Dispute Resolution

Israel updates arbitration law

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Limiting court interference, clarification of 'international' proceedings and efficiency improvements feature in Israel's new International Commercial Arbitration law which took effect in February this year and which will make the country more attractive as a seat, while the old law dating back to 1968 will still apply for domestic purposes.

The parliament of Israel – or 'Knesset' – passed law 5784-2024, also known as the International Commercial Arbitration Law 2024 (ICA law) on 12 February this year, with the law's enactment taking place two days later. The result of a years-long process, it brings Israel's arbitration provisions into line with international standards and increases the country's allure as a neutral seat for arbitration.

The ICA Law is based closely on the United Nations Commission on International Trade Law (UNCITRAL)'s Model Law on International Commercial Arbitration (Model Law) which dates back to 1985 and which was subsequently updated in 2006. It will apply to international commercial arbitration and updates, but does not repeal law 5728-1968, otherwise known as the Arbitration Law 1968, which will still apply in certain circumstances.

Herzog Fox & Neeman head of international dispute resolution **Roy Schondorf**, who is admitted to practice in Israel and New York and previously served as Israel's deputy attorney general for international law until June 2022, tells *CDR*: "I was always a bit embarrassed that Israel [still] had an arbitration law from 1968, that was drafted at a time when the Israeli economy was not a global economy."

Schondorf, who had a key role in rallying support for and initiating the bill that would become the ICA law, continues: "I said: 'We are a small country, we don't need to invent anything, but adopt a model that is commonly used and try to stick to it as much as possible, and it will be easier on our trade partners – and if it is good enough for the US, EU and leading Asia economies, it will at least be good enough for the small country of Israel'."

Gidon Even-Or, head of international arbitration at prominent Israel firm **AYR – Amar Reiter Jeanne Shochatovitch & Co** says the Arbitration Law 1968 was "really hard for international players to understand", while the ICA law is "a step in the right direction in creating more modern legislation that is aligned with the UNCITRAL Model Law and allows international companies to feel comfortable in choosing Israel as a seat for arbitration."

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KEY CHANGES

Given its substantial similarity to the UNCITRAL Model Law on which it is based, many of the new law's provisions will come as little surprise, including the key principle of party autonomy. The ICA law narrows the scope of national courts to encroach upon what is often a supra-national alternative dispute resolution (ADR) process, along with clarification of interim measures and remedies, and introduction of efficiency measures. Meanwhile the ICA law also derogates from the Model Law in a few areas, but not significantly so.

The new law clarifies that it applies to international arbitration only, and defines 'international' in paragraph 3c as either when the parties' place of business are in different jurisdictions, when parties' place of business is different from the arbitral seat or from where the contract is materially performed, or where the parties agree that the contract is international in nature.

"This last section was added partly because of comments received from local international arbitration practitioners to make it clear that parties could choose to have the new law apply," says Even-Or, which is important since the Arbitration Law 1968 is still in force for purely domestic arbitrations.

"In matters to which this law applies, the court shall not exercise its powers except according to this law," states paragraph 6, confirming the supremacy of arbitral process and restricting courts' ability to intervene except in very limited circumstances. Paragraph 11c stipulates that in the absence of agreement to the contrary, a three-member panel shall be appointed by default, while paragraph 12b provides that the parties should select one arbitrator each, and the resulting two chosen arbitrators are to select the third arbitrator, with a court having discretion to appoint an arbitrator in the event of default.

Arbitrators are empowered to grant temporary measures via paragraph 18a where it is necessary to preserve a situation, protect against dissipation of assets, take action to prevent harm occurring or preserve key evidence.

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MIND THE GAP

There have been debates about filling perceived gaps in the new law and further clarifying the interplay between courts and arbitration, but perhaps the most significant barrier to Israel's wider adoption as a seat of arbitration is the ability to conduct proceedings entirely in English, including court litigation in support of arbitration which currently necessitates translation into Hebrew.

"If we could have [such] court hearings in English, that might make Israel even more attractive to English-speaking parties as they can sit in court and understand the lawyers, and minimise translation costs," says Schondorf, who suggests that a specialised chamber akin to those in other jurisdictions could be a positive step for the future.

Yet his takeaway is that the ICA law sets the right tone and has been well received across the board of stakeholders. He reflects fondly on his time in public service: "It's rare as a deputy attorney general that you push for new legislation and everyone agrees – there was almost total consensus on both sides of the aisle and across civil society, and commercial and international entities, and I am really pleased we were able to get there."

Schondorf advises that stakeholders bear in mind that the new law expands the ambit of enforcement of foreign-seated arbitrations against assets located in Israel, but in the medium term they should consider the country and Tel Aviv in particular as an increasingly attractive seat for future proceedings on account of its now "modern legal framework" for arbitration, and its sophisticated legal services market which offers good value for money when compared with top-level international law firms.

Even-Or echoes the positive tone: "I am not familiar with anybody opposing the law, which was enacted by consensus. It took time to enact because ironically if there is a consensus, then no politician really pushes it; but as far as the legal profession is concerned it's considered very positive legislation."

He recommends potential parties familiarise themselves with the new law immediately and take proactive steps to benefit from its protections, not least because the old law is still in force: "Be aware of which set of rules you would want to apply to the contract, and adjust the wording of the contract accordingly so that you will not be surprised at the procedure adopted."

Other jurisdictions bringing their arbitration framework more in line with the UNCITRAL Model Law include Greece in February last year and Japan in April last year.