



The Legal 500 Country Comparative Guides

Israel

CLASS ACTIONS

Contributor

Naschitz, Brandes, Amir & Co.



Adv. Yaron Rossman

Partner | yrossman@nblaw.com

Adv. Ram Pardes

Partner | rpardes@nblaw.com

Adv. Assaf Ratzon

Partner | aratzon@nblaw.com

This country-specific Q&A provides an overview of class actions laws and regulations applicable in Israel.

For a full list of jurisdictional Q&As visit legal500.com/guides

ISRAEL

CLASS ACTIONS



1. Do you have a class action or collective redress mechanism? If so, please describe the mechanism.

Yes. In Israel, the primary mechanism for pursuing collective claims is through filing a class action. The current mechanism was established in 2006 with the enactment of the Class Actions Law, 5766-2006 (hereafter: “**the Law**”). The Law regulates various aspects of the class action procedure, including the criteria for certification of a class action and the procedural framework for the adjudication of such.

To initiate a class action, the applicant seeking to represent a group, files a Motion for the Certification of a Class Action (“**Motion for Certification**” or “**Motion**”) alongside a Statement of Claim. Subsequently, the Respondent(s) will file a Reply to the Motion. At this stage, the court will consider whether the Motion meets the threshold criteria for Certification, inter alia by conducting a preliminary evidentiary hearing.

Only if the Motion for Certification is certified is the Class Action adjudicated on the merits.

2. Who may bring class action or collective redress proceeding? (e.g. qualified entities, consumers etc)

The Law¹ provides that a class action may be filed by (i) an individual with a valid cause of action regarding factual or legal issues common and pertinent to all members of the group; (ii) a public authority acting in the public goals of a sector related to the matter at issue; (iii) an organization provided no individual can be found to file the claim, after a concerted effort is shown to have been made.²

Footnotes

1. Section 4 of the Law 2. One notable exception to the above is the Israel Consumers Council, which may file a Motion for Certification even if there is no difficulty in

finding an individual plaintiff.

3. Which courts deal with class actions or collective redress proceedings?

There is no specific court in Israel designated for handling class actions. However, the Law provides,³ that the Motion must be filed with the court that would have both the jurisdiction and substantive authority to hear the class action if confirmed. Moreover, in cases where the request is filed against a decision made by a governmental authority and the requested remedy is compensation or restitution, the Law requires that the request be submitted to an Administrative Court.

Footnotes

3. Section 5 of the Law

4. What types of conduct and causes of action can be relied upon as the basis for a class action or collective redress mechanism?

The Second Addendum to the Law enumerates various causes of action for the basis of Motions for Certification, as well as a number of statutes which may serve as a basis for such claims. These include, inter alia: (i) claims against a Dealer⁴ (as defined in the Consumer Protection Law 5741-1981) in a matter between a Dealer and a customer, (ii) claims against a banking corporation, in a matter between the banking corporation and its customer, (iii) claims against an insurer, insurance agent, or management company, in a matter between them and their client; (iv) claims against a financial services provider, as defined in the Law on the Supervision of Financial Services (Regulated Financial Services) 5766-2006, in the matter between a supplier and a customer, and many others.

5. Are there any limitations of types of

claims that may be brought on a collective basis?

Yes. The Law limits class actions to the causes of action listed in the Second Addendum to the Law (see answer to Question 4). Furthermore, the relief that may be granted to the plaintiffs in class actions filed against public authorities concerning restitution are limited to the amounts collected within the 24 months prior to the date of submission of the Motion for Certification.

6. How frequently are class actions brought?

According to several studies that have been conducted,⁵ the State of Israel has the highest number of class action lawsuits per capita, with approximately 18-times more Motions for Certification filed per capita than in the United States;⁶ and an average of 5 Motions for Certification filed per business day (as of 2018).⁷

Footnotes

5. שיא לפעילות הפרקליטות האזרחית ב-2020: כ-240 תביעות. Calcalist (1.11.2021) www.calcalist.co.il/local_news/article/r16vlf2it. 6. Moshe Goraly "ישראל היא שיאנית התביעות הייצוגיות" Calcalist (20.11.2017) www.calcalist.co.il/local/articles/0. 7. Assaf Fink 2018 Summary Research Class Actions (2019) https://www.knowit.org.il/Professional_Material.asp.

7. What are the top three emerging business risks that are the focus of class action or collective redress litigation?

The top three emerging business risks that are the focus of class actions are:

1. **Consumer Protection:** Emerging risks in this area could include issues such as false advertising, misleading product claims and privacy breaches affecting a large number of consumers.
2. **Securities and Financial Fraud:** Misrepresentation or fraud in securities offerings, corporate disclosures or postponement in publishing a profit warning can lead to class action litigation. Emerging risks may involve allegations of insider trading, market manipulation, accounting irregularities, or inadequate risk disclosures by companies.
3. **Environmental and Health Hazards:** With growing public awareness and concern for

environmental and health matters, companies in Israel are increasingly facing litigation related to environmental and health risks. This includes issues like pollution, toxic exposure, product liability claims, or failures to comply with environmental regulations.

8. Is your jurisdiction an "opt in" or "opt out" jurisdiction?

In the field of class actions in Israel, the court recognizes the possibility of both an opt-in and an opt-out mechanism. However, the default is an opt-out mechanism unless the court explicitly determines that an opt-in mechanism should apply.

The Law also permits an opt-out mechanism after a class action is certified for any person who is part of the group (as defined by the court).⁸ This is to allow those plaintiffs to file an independent lawsuit in the future if they so choose, and to prevent their claims from being estopped or precluded ("*res judicata*").

Footnotes

8. S. 11 of the law.

9. What is required (i.e. procedural formalities) in order to start a class action or collective redress claim?

The law establishes several formal and procedural conditions that must be met in order to apply for certification of a class action. The law determines who may submit a certification application for a class action and in whose name and how the application can be submitted (see Answers 1-2, above). *Inter alia*, the Law requires that the Motion for Certification be submitted in writing and that the Statement of Claim be attached to it.⁹ Additionally, the Law requires the applicant send a notice to the Courts Administration to register their claim, with both the Motion for Certification and the wording of the claim, attached.

Footnotes

9. S. 5(a)(1) of the law.

10. What remedies are available to claimants in class action or collective redress proceedings?

There are a number of available remedies in class actions, including declaratory relief, and various forms of

monetary compensation.

11. Are punitive or exemplary damages available for class actions or collective redress proceedings?

No, punitive and exemplary damages are not permitted under Section 20(e) of the Law.

12. Are class actions or collective redress proceedings subject to juries? If so, what is the role of juries?

No, the legal process in Israel does not involve a jury.

13. What is the measure of damages for class actions or collective redress proceedings?

Damages are generally assessed on the basis of real ('actual') damages, however, the Law provides for General or Estimated Damages to be applied where specific damage is inherently difficult to quantify;¹⁰ and nominal damages can be ordered in some instances related to violation of accessibility laws. To be sure, this does not preclude the ability to claim compensation for actual intangible harm. The court may also assess damage to the public and order that such be paid to specified institutions.

Footnotes

10. CC 1372/95 Estate of Toupic Rabi OBM v Tnuva Central Cooperative for the Marketing of Agricultural Produce in Israel Ltd (Published on Nevo, 07 October 2008), 83

14. Are there any jurisdictional obstacles to class actions or collective redress proceedings?

On the topic of jurisdiction and applicable law, Israel applies the same tests to class action cases as it does in regular claims – as long as the class action fall into one of the categories of the Second Addendum of the law. Similarly to regular claims, the court will consider questions of proper service and Forum non conveniens. Israel may be deemed the appropriate forum, even if the proceedings are governed by the laws of a foreign country. For example, in the case of Ben Hamo v. Facebook,¹¹ the court ruled that a choice-of-law stipulation applying California law is not considered

unconscionable ('coercive'), and maintained it should be followed even in the context of a class action. This principle was later applied in a similar lawsuit against Google.¹²

Footnotes

11. RA 5860/16 **Inc Facebook v. Ben Hamo** (Nevo, May 31, 2018) (Hereinafter: "**Ben Hamo Matter**"). 12. TY (T.A districts) 56348-03-17 **Tedsa et al. v. Google LLC** (Google Inc.) (Nevo 07.09.2020).

15. Are there any limits on the nationality or domicile of claimants in class actions or collective redress proceedings?

The representative plaintiff, who files the class action, must have a valid cause of action and be able to adequately represent the interests of the class members. While there is no explicit limitation based on nationality or domicile, the court will consider factors such as the representative's ability to manage the case effectively and ensure the fair representation of the class.

16. Do any international laws (e.g. EU Representative Actions Directive) impact the conduct of class actions or collective redress proceedings? If so, how?

Courts commonly look to comparative law in their adjudication when exploring matters which are yet to be explored under Israeli law; however, only Israeli law is binding.

17. Is there any mechanism for the collective settlement of class actions or collective redress proceedings?

If the parties reach a settlement agreement, they will draft a settlement proposal outlining the terms and conditions of the proposed settlement. The settlement proposal typically includes details such as the compensation or remedies to be provided to the class members, any changes in business practices or policies, the distribution mechanism for the settlement funds, and the release of claims against the defendants.

The settlement proposal is then submitted to the court for review and approval. The court will examine the terms of the proposed settlement to ensure that it is fair, reasonable, and adequately protects the interests of the class members. The court will consider various factors,

such as the nature of the claims, the strength of the evidence, the potential risks and benefits of continued litigation, and the overall fairness of the settlement terms.

If the court considers approving the settlement, a notice is typically issued to the class members and the Attorney General to inform them of the proposed settlement and their rights. The notice provides information about the terms of the settlement, the opt-out procedure (if applicable), and the deadline for class members to object or opt-out of the settlement. Class members who do not opt-out within the specified period are generally bound by the terms of the settlement.

After the opt-out period expires and any objections or concerns raised by class members or the Attorney General are addressed, the court may give its final approval to the settlement. If the settlement is approved, it becomes binding on all class members, and the implementation process begins. This may involve the distribution of compensation or remedies to the class members and the fulfillment of any other obligations or changes agreed upon in the settlement.

18. Is there any judicial oversight for settlements of class actions or collective redress mechanisms?

Yes, as mentioned above, the court plays an important role in reviewing and approving settlements.

In many cases, the court can also take an active role in the realization or implementation of the compromise agreement to ensure that the terms of the settlement are properly carried out and that the interests of the class members are protected.

In some cases, the court may appoint administrators or special masters to oversee the implementation of the settlement. These administrators may be responsible for tasks such as distributing compensation or remedies to the class members, monitoring compliance with the settlement terms, and handling any disputes or claims related to the settlement.

If disputes or disagreements arise during the realization of the compromise agreement, the court can intervene to resolve those disputes. The court may hold hearings, consider arguments from the parties involved, and issue rulings or decisions to address the disputes and ensure the proper implementation of the settlement.

It's important to note that the specific extent of the court's involvement can vary depending on the circumstances of each case and the court's discretion.

19. How do class actions or collective redress proceedings typically interact with regulatory enforcement findings? e.g. competition or financial regulators?

Class Actions are often used to enforce regulatory compliance, and findings of regulatory bodies. It is very common that Certification Applications are filed shortly after regulatory findings are published, and those findings are used as evidence. Regulatory findings can carry significant weight in the court's assessment of the case.

For example, in LCA 4193/22 **Maedani Mania Trading Chains 2000 Ltd. v. Genkin** (Nevo 14.08.2022), a Motion for Certification was approved because when selling products by weight, the defendant also charged its customers for the weight of the packaging of those products in violation, *inter alia*, of the instructions of the Commissioner of the Consumer Protection and Fair Trade Authority, according to which the weight of the packaging must be deducted from the price of the product. Similarly, in Class Action (Jerusalem District) 52230-12-18 **Shalev v. Mash-Kar Ltd.** (Nevo 22.09.2021), the court upheld claims against the charge of an extra commission for credit card payments, applying the directive of the Consumer Protection and Fair Trade Authority regarding the "collection of commissions for purchases with debit cards".

20. Are class actions or collective redress proceedings being brought for 'ESG' matters? If so, how are those claims being framed?

Class actions are increasingly being brought for environmental, social, and governance (ESG) matters:

- **Environmental Claims:** Class actions may be filed against companies for environmental harm caused by pollution, contamination, or other environmental violations. These claims can allege negligence, breach of environmental regulations, failure to disclose environmental risks, or failure to implement adequate environmental management systems.
- **Social Claims:** Class actions may be brought for violations of labor rights, human rights, discrimination, or other social issues.
- **Governance Claims:** Class actions may be filed for breaches of fiduciary duty, mismanagement, or inadequate corporate governance practices.

To the best of our knowledge, at the time of drafting, there are no class action proceedings in Israel specifically relating to allegations of false or misleading statements made by companies regarding their ESG practices.¹³

Footnotes

13. Ali Bockashfen "Class actions, the purpose of society and the perception of stakeholders in the modern corporate era – the fund for financing class actions as a magnifying glass" **Law and Business V**. 111 (expected to be published in 2021).

21. Is litigation funding for class actions or collective redress proceedings permitted?

Yes. Additionally, two state-funded financing funds exist by statute: the General Fund of the Ministry of Justice¹⁴ and the Financing Fund of the Securities Authority,¹⁵ and an applicant must meet specific criteria before being eligible to apply for assistance through these.

Footnotes

14. S. 27 of the Law. 15. S. 55c of the Securities Law, 1968.

22. Are contingency fee arrangements permissible for the funding of class actions or collective redress proceedings?

Section 23 of the Law governs the issue of representative fees, and only the court is authorized to determine the fee arrangement. Accordingly, the representative's fees are part of the judgment rendered by the court.

23. Can a court make an 'adverse costs' order against the unsuccessful party in class actions or collective redress proceedings?

Yes. The court has the discretion to determine whether to make an adverse costs order and the extent of the

costs to be awarded. However, in practice, is it uncommon in class actions (at least in substantial extent), because of the desire to prevent a chilling effect on access to class actions.

24. Are there any proposals for the reform of class actions or collective redress proceedings? If so, what are those proposals?

Yes. Recently, an inter-ministerial team published a report recommending legislative amendments to the Law. The team proposed several changes, including:¹⁶

The establishment of a specialized para-judicial mechanism for early resolution of nonfinancial (declaratory, etc.) claims, with a fixed compensation rubric;

Eliminating the current exemption from paying a filing fee for Motions for Certification related to equality of accessibility claims, due to the abuse of this exemption;

A statutory requirement for courts to order court costs in class action proceedings, with the default being to impose the costs on the lawyer of the plaintiff of the class action;

Regulating compensation and court fee awards for the plaintiff and their lawyer in class action cases;

Limiting the possibility of offering non-monetary compensation in class action cases;

Regulation of the restitution period in against a governmental authority in relation to amounts collected in excess;

Expanding the possibility of filing class actions by organizations.

Footnotes

16. The report of the inter-ministerial team for examining the arrangements stipulated in the Class Actions Law, 2006" (2023) www.gov.il/he/Departments/publications/reports/class-action.

Contributors

Adv. Yaron Rossman
Partner

yrossman@nblaw.com



Adv. Ram Pardes
Partner

rpardes@nblaw.com



Adv. Assaf Ratzon
Partner

aratzon@nblaw.com

