

# Arbitration Law, 1968

## **Chapter One: Definitions**

### **1. For purposes of this law -**

“Arbitration agreement” – A written agreement to refer to arbitration a dispute which has arisen between the parties to the agreement or which may arise between them in the future, whether an arbitrator is named in the agreement or not;

“Arbitrator” – An arbitrator appointed by or under an arbitration agreement, including an umpire and a substitute arbitrator;

“Arbitration award” – An award made by an arbitrator, including an interim award;

“Foreign arbitration award” – An arbitration award made outside of Israel;

“Court” – A District Court, except in connection with sections 5 and 6.

## **Chapter Two: Arbitration Agreement**

### **Implied Provisions**

2. Unless a contrary intention appears therein, an arbitration agreement will be deemed to include the provisions set out in the 1st addendum, as far as they are relevant.

### **Restriction to the Agreement**

3. An arbitration agreement in a matter which cannot be the subject of an agreement between the parties is invalid.

### **Change of Parties and of Arbitrator**

4. An arbitration agreement and the authority of an arbitrator thereunder will have effect also in respect of the successors of the parties to the agreement, and the authority of an arbitrator under an agreement is also vested in a substitute arbitrator, all unless a contrary intention appears from the agreement.

### **Stay of Court Proceedings**

5. (a) When an action is brought before the Court in a dispute in which it had been agreed to refer to arbitration, and if a party who is a party to the arbitration agreement applies for a stay of proceedings in the action, the Court will stay the proceedings between the parties to the agreement, provided that the applicant has been and still is prepared to do everything required for the institution and continuation of the arbitration.

(b) An application for a stay of proceedings may be submitted in the statement of defense or otherwise, but not later than on the day on which the applicant first pleads to the substance of the action.

(c) The Court may refrain from staying proceedings, if it sees a special reason why the dispute should not be dealt with by arbitration.

### **Stay of proceedings under international convention**

6. When an action is brought before Court in a dispute which it had been agreed to refer to arbitration, and if an international convention to which Israel is a party applies to the arbitration and that convention lays down provisions for a stay of proceedings, then the Court will exercise its power under section 5 in accordance with and subject to those provisions.

### **Relief against lapse of rights**

7. (a) When an agreement between the parties provides that the commencement or termination of arbitration proceedings within a specific period will be a precondition to the realization of a right between them, and if a dispute arises between the parties, then the Court may – if it considers it just – extend the period, even if it already has expired, on such conditions as it may see fit.

(b) When the Court decides, whether under section 5, 6 or 12(b), that a dispute will not be dealt with by arbitration, then any stipulation in the agreement between the parties, which makes the commencement or termination of arbitration a precondition of the realization of a right between them, will be void.

## **Chapter Three: Appointment and Removal of Arbitrator**

### **Appointment of arbitrator by Court**

8. (a) When a dispute arises in a matter in which it has been agreed to refer to arbitration, and if an arbitrator has not been appointed under the agreement, the Court may – on application by a party – appoint an arbitrator. The Court may do so whether the arbitrator was to have been appointed by the parties or by one of them, or whether he was to have been appointed by the arbitrators appointed by the parties, or by a third party.

(b) The Court will not appoint an arbitrator under subsection (a), unless the applicant has given his opponent written notice as provided hereunder and has met with no response within seven days from the day on which the notice was delivered.

- i. When the arbitration agreement provides that each party will appoint an arbitrator, the applicant will, in the notice, name the arbitrator appointed by him and will call on his opponent to appoint an arbitrator;
- ii. in every other case, the applicant will, in the notice, propose an arbitrator and will call on his opponent to agree to his appointment;

(c) When an arbitration agreement provides that each party will appoint an arbitrator, the Court may – on the application of a party which has appointed an arbitrator, appoint that arbitrator or another person as sole arbitrator.

### **Appointment of sole arbitrator by Court**

9. When an additional arbitrator or an umpire has been appointed, whether under the arbitration agreement or by the Court, the Court may – on the application of a party and notwithstanding anything contained in the arbitration agreement – appoint that arbitrator as sole arbitrator, if it sees a special reason for doing so in the interests of instituting or completing the arbitration.

### **Status of arbitrator appointed by Court**

10. An arbitrator or sole arbitrator appointed by the Court will have the status of an arbitrator appointed by the parties to an arbitration agreement.

### **Removal of arbitrator**

11. The Court may remove an arbitrator, if:

- (a) it is discovered that he is unworthy of the parties' confidence; or
- (b) his conduct in the course of the arbitration causes a delay of justice; or
- (c) he is unable to perform his function.

### **Appointment of substitute arbitrator**

12. (a) When the place of an arbitrator has fallen vacant, whether in consequence of his resignation or death or removal, the provisions of sections 8 to 10 will apply to the appointment of a substitute arbitrator, unless a contrary intention appears in the arbitration agreement.

(b) When an arbitrator has been removed, the Court may, if it sees a special reason for doing so and instead of appointing a substitute arbitrator, decide that the dispute which is the subject of the arbitration will not be dealt with by arbitration.

## **Chapter Four: Arbitration Proceedings**

### **Summoning witnesses**

13. (a) In an arbitration, an arbitrator will have the same power of summoning witnesses to give evidence or produce documents, as a Court has in an action brought before it, and he may award them remuneration and expenses.

(b) A witness who testifies in arbitration will have the duties and immunities of a witness who testifies in Court.

(c) When a witness has been summoned by an arbitrator, the Court may, on application by the witness, cancel the summons if it finds that an abuse of arbitration proceedings is involved.

### **Ways of taking evidence**

14. The evidence of a witness, including the evidence of a party, will be taken on oath or affirmation, unless the arbitrator and the parties have agreed that it will be taken without oath or affirmation, but that a witness will not be required to testify on oath where the Court would not have required him to do so.

### **Hearing in the absence of a party**

15. (a) When a party has been duly summoned to a session and has not appeared, the arbitrator may, at that session, hear the dispute in his absence. When a party has been called upon to state his case at a prescribed time and has not done so, the arbitrator may determine the dispute in his absence.

(b) When an arbitration award has been made after a hearing at which a party was absent or did not state his case, the arbitrator may, at the request of a party made to him within 30 days from the day on which a copy of the arbitration award was delivered to that party, set aside the arbitration award and reopen the hearing, if he is satisfied that the party was absent or did not state his case for justifiable cause.

#### **Auxiliary Powers of Court**

16. (a) In the following matters the Court has, in respect of arbitration, the same powers to grant relief, as it has in respect of an action brought before it:

- i. the summoning of witnesses and the determination of their remuneration and expenses;
- ii. the adoption of coercive and punitive measures against a witness who has not answered an arbitrator's or the Court's summons, or who has refused to testify;
- iii. the taking of evidence forthwith or out of the jurisdiction;
- iv. substituted service of notices or documents on the litigants;
- v. the attachment of property, the prevention of departure from Israel, security for the production of property, the appointment of a receiver, a mandatory injunction and a prohibitive injunction.

(b) An application for relief under this section may be filed by a party or by the arbitrator. If an arbitrator has not yet been appointed, a party may file the application after giving the other litigant notice as provided in Section 8(b).

(c) For purposes of Subsection (a), the appointment of an arbitrator or giving notice as aforesaid will have the effect of bringing an action in Court.

(d) The provisions of this section will not derogate from the powers of the arbitrator under the arbitration agreement or under this law.

#### **Extension of Period of Temporary Relief**

17. (a) Relief granted under Section 16(a)(5) will be effective, unless canceled by the Court, until the arbitration award is awarded, and the arbitrator may, by the arbitration award, make all or part of it final.

(b) A decision of the arbitrator under Subsection (a) will, except as regards appeal, have the effect of a decision by the Court.

#### **Application to Court Does Not Stay Proceedings**

18. The filing of an application with the Court in connection with an arbitration, whether by a party or by the arbitrator, will not stay the arbitration proceedings, unless the Court or the arbitrator so directs.

#### **Extension of Periods for Acts of Arbitrator**

19. (a) When an arbitration agreement or this law prescribes a period for awarding the arbitration award or for some other act of the arbitrator, the Court may, on application by a party or by the arbitrator, extend the period from time to time to such a period as it will prescribe, even if the preceding period already has expired.

(b) In calculating a period said in subsection (a), the time for which the arbitration proceedings are stayed under section 18 or 33 will not be taken into account.

## **Chapter Five: Arbitration Award**

### **Form of Arbitration Award**

20 .The arbitration award will be in writing and will be signed by the arbitrator, indicating the date of the signature. In the case of arbitration before several arbitrators, the signatures of a majority of them will be sufficient, if the award indicates that the other arbitrators are unable or unwilling to sign it.

### **Legal effect of Arbitration Award**

21. Subject to Sections 24 to 28 and unless a contrary intention appears from the arbitration agreement, the arbitration award binds the parties and their successors as res judicata.

### **Rectification of Arbitration Award**

22 .(a) The arbitrator may, on the application of a party and after the other parties have been given a suitable opportunity to state their cases, rectify or complete the arbitration award if it is defective in one of the following ways:

- i. It contains a clerical error, a slip of pen, an omission, an error in the description of any person or property or in any date, number, calculation or the like;
- ii. It is defective on a matter not relevant to the substance of the dispute;
- iii. It contains no provision on the payment of interest;
- iv. It contains no provision on the expenses of the parties, including advocates' fees.

(b) The arbitrator will not entertain an application made to him under subsection (a)(i) or (4), if the award was made in the presence of the applicant, after 30 days have elapsed from the day on which the award was made, and, if the award was made in the absence of the applicant, after 30 days have elapsed from the day on which a copy of the award was delivered to the applicant.

(c) The arbitrator will decide upon an application under this section within 30 days from the day on which notice thereof is given to the other parties.

(d) The Court may rectify flaws referred to in subsection (a)(i) or (ii) in the course of the hearing of an application to confirm or set aside the award, even when no application has been made to the arbitrator, or when an application has been made to him, but he has not decided upon it.

### **Confirmation of Arbitration Award**

3 .(a) The Court may, on the application of a party, confirm an arbitration award. When the award has been confirmed, it will, in all regards except as regards appeal, be treated as a judgment of the Court.

(b) The Court will not entertain opposition to the confirmation of an arbitration award, save by way of an application to set it aside or as part of an appeal to the arbitration award as stated in section 29b.

#### **Setting Aside Arbitration Award**

24. The Court may, on the application of a party (hereafter in this law: “application to set aside”) set aside an arbitration award, in whole or in part, or supplement or amend it, or remit it to the arbitrator, for one of the following reasons:

- (a) The arbitration agreement was not valid;
- (b) The award was made by an arbitrator not properly appointed;
- (c) The arbitrator acted without authority or exceeded the authority vested in him by the arbitration agreement;
- (d) A party was not given a suitable opportunity to state his case or to produce his evidence.
- (e) The arbitrator did not determine one of the matters referred to him for determination;
- (f) The arbitrator did not assign reasons for the award, although the arbitration agreement required him to do so;
- (g) The arbitrator did not determine the award in accordance with law, although the arbitration agreement required him to do so;
- (h) The award was determined after the period for determination had expired;
- (i) The contents of the award are contrary to public policy;
- (j) A ground exists on which a Court would have set aside a final, non-appealable judgment.

#### **Remittal of Award to Arbitrator**

25. If the Court decides to remit the award to the arbitrator, the arbitrator will determine his award within a period of three months from the date of the decision, unless the Court directs otherwise.

#### **Restrictions on Setting Award Aside**

26. (a) The Court may dismiss an application to set aside, notwithstanding the existence of one of the grounds set out in section 24, if it is of the opinion that no miscarriage of justice has been caused.

(b) The Court will not set aside all of the award, if it can be set aside in part, supplemented, amended or remitted to the arbitrator.

(c) The plea of a party that the award was made out of time will not be heard, unless he reserved, by written notice to the arbitrator before the award was made, the right to make that plea.

#### **Time for Application to Set Aside**

27. (a) The Court will not entertain an application to set aside, which is filed, if the award was made in the applicant's presence, after 45 days elapsed from the day on which it was made, and if the award was made in the applicant's absence, after 45 days elapsed from the

day on which a copy of the award was delivered to the applicant by the arbitrator or by a party. The Court may extend the period, even if it already has expired, for special reasons which will be recorded, and in every case in which an application has been filed for the confirmation of a foreign arbitration award.

(b) When an application has been made to the arbitrator under section 22, the period of 45 days will begin on the day on which the arbitrator decides or ought to decide upon the application. In the case of an application to set aside, on the grounds specified in section 24(10), the said period will begin on the day on which the facts on which the application is based were discovered.

(c) The Court will not entertain an application to set aside filed after the award has been confirmed.

(d) The times set out in subsection (a) will not apply to an application to set aside, on the grounds specified in section 24(a), and the provisions of subsection (c) will not apply to an application to set aside on the grounds specified in section 24 (j).

### **Application to Set Aside and Confirmation of Award**

28 .When an application to set aside has been filed and is dismissed, or an appeal to the arbitration award as stated in section 29b has been dismissed, the Court will confirm the award even if no application for its confirmation has been filed. When the Court dismisses the application to set aside in part, or supplements or amends the award in consequence of hearing the application, it will confirm the award insofar as it has not been set aside, or as supplemented or amended.

### **Attachment Order, etc.**

29. (a) When an application to confirm an award or to set it aside has been made, the Court may order the attachment of the party against whom the award was made, the prevention of his departure from Israel or the provision of security for the award's implementation. The application may be made orally and the Court may exempt the applicant from giving security.

(b) The provisions of every enactment on provisional attachment, prevention of departure from Israel or the provision of security will apply, *mutatis mutandis*, to relief under this section.

### **Foreign Arbitration Award**

29A. An application for the confirmation or setting aside of a foreign arbitration award to which applies an international convention to which Israel is a party and which lays down provisions on the matter in question will be filed and dealt with in accordance with and subject to those provisions.

### **The right to appeal to court on arbitration award**

29B (a) Parties to an arbitration agreement which stipulated that the arbitrator should rule according to the law, may agree that the arbitration award could be appealed, with the Court agreement if a fundamental error had occurred that has the potential of a miscarriage of justice; The appeal will be heard by one judge and all regulations of the court appeal will be applied.

(b) The parties of the arbitration agreement agreed that the award may be appealed to Court as stated in subsection (a), the arbitration meetings will be recorded and the arbitrator will explain his judgment.

(c) An appeal to the arbitration award was submitted to the Court, the Court will not entertain a request to set aside and the parties will be allowed to claim further claims regarding setting aside the arbitration award by one of the provisions in section 24 to the law.

## **Chapter Six: Obligation and Remuneration of Arbitrator**

### **Obligation of Arbitrator**

30 .An arbitrator who agreed to serve as an arbitrator must act with loyalty towards the parties. If the arbitrator betrays the confidence placed in him, the injured party will, in addition to any remedy under this law, be entitled to compensation payable for breach of contract.

### **Remuneration of Arbitrator**

31 .(a) Unless a contrary intention appears from the arbitration agreement, the parties will pay the arbitrator his remuneration and expenses (hereinafter: "remuneration") in such amounts and at such times as the arbitrator has fixed.

(b) A party may pay the arbitrator, on account of his remuneration, any amount with which another party is in arrears, and upon doing so, he will at any time be entitled to resort to the other party and be reimbursed by him for what he has paid.

### **Reduction of Arbitrator's Remuneration**

32 .(a) Unless a contrary intention appears from an arbitration agreement, the Court may, on the application of a party, reduce any remuneration fixed by the arbitrator otherwise than with the parties' sanction, if it considers the remuneration excessive, and it may accordingly order the return of amounts paid to the arbitrator on account of the remuneration.

(b) The Court will not entertain an application to reduce a remuneration, filed before the award has been made or after the said period in section 27(a).

### **Right to Delay**

33 .(a) When an arbitrator has not been paid all or part of his remuneration in time, he may delay the progress of the hearings or the decision on or the delivery of the award until the outstanding amount has been paid.

(b) When the arbitrator has done as specified in Subsection (a) in respect of remuneration which a party contends is excessive, the Court may, on a party's application, direct the arbitrator to continue the hearings or to make or to deliver the award, as the case may be, on condition that all or part of the remuneration is deposited with the Court or that the applicant has given security for its payment.

### **Remuneration of Arbitrator Who has been Removed**



34 .When an arbitrator has been removed, the Court may, on a party's application, determine whether or not he is entitled to all or part of the remuneration, and it may accordingly order the return of amounts paid to the arbitrator on account of his remuneration.

#### **Status of Arbitrator and Litigants**

35. In relation to an application filed by one of the litigants under section 32, 33 (b) or 34, the arbitrator will be the respondent and the other parties will be given a suitable opportunity to state their cases.

### **Chapter Seven: Miscellaneous Provisions**

#### **Status of the State**

36 .For the purposes of this Law, the State will have the same status as any other person, provided that the Civil Procedure Amendments (The State as Party Law) 1958 will apply to an arbitration to which the State is a party.

#### **Powers of Registrar**

37 .The powers vested in the Court by this law are also vested in the Registrar of the Court in the following matters:

- (a) Powers which he would have been competent to exercise, if the claim under arbitration were an action brought in Court;
- (b) The appointment of an arbitrator;
- (c) The extension of times under this law;
- (d) The confirmation of an arbitration award, and the making of an order under section 29, when there is no application to set aside the award.

#### **Appeal**

38. A decision of the Court under this law is appealable by leave, under section 19(b) of the Courts Law 1957. A decision of the Registrar under this law is appealable under section 8(b) and (d) of the Registrars Ordinance 1936.

#### **Saving of Rights and Obligations**

39 .The provisions of this law will not prevent bringing an action in Court on the strength of rights and obligations set by an award under this law or by a determination made on the basis of an oral agreement.

#### **Saving of Laws**

39A. The provisions of this law will not prevent a stay of Court proceedings, the confirmation or setting aside of an arbitration award or any other proceeding under this law, when the arbitration is governed by foreign law, or when the arbitration award is a foreign arbitration award, and no convention referred to in section 6 or 29A applies to that arbitration or award, or the convention which applies to lit does not lay down provisions for the matter in question.

## **Repeal**

40 .The Arbitration Ordinance is hereby repealed.

## **Commencement and Transitional Provisions**

41 .This law will come into effect on January 1, 1969, provided that an arbitration begun before this law came into effect, whether by notice from one party to the other calling him to appoint or consent to the appointment of an arbitrator or by notice to the arbitrator calling upon him to begin hearing the dispute, will continue to be governed by the previous law.

## **Implementation and Regulations**

42. The Minister of Justice is charged with the implementation of this law and he may make procedural regulations to the extent required for the implementation of a convention referred to in section 6 or 29A.

## **Addendum**

### **(Section 2)**

1. The arbitration will be before a single arbitrator, unless a greater number of arbitrators has been fixed.
2. In an arbitration before an even number of arbitrators, the arbitrators will, on the demand of one of them, appoint an additional arbitrator. When an additional arbitrator has been appointed, he will be the arbitration chairman.
3. In an arbitration before an uneven number of arbitrators, the arbitrators will select a chairman from among themselves.
4. The arbitration chairman may fix the place and times of arbitration sessions, and he may decide everything connected with its procedure.
5. The decisions of the arbitrators and the award will be adopted by a majority vote. In the absence of a majority for the final award, the chairman will have the casting vote. An arbitrator who is left in the minority may record his dissenting vote in the award.
6. In an arbitration in which an umpire has been appointed, the umpire will assume his functions after the other arbitrators, or one of them, have given him and the parties written notice that there is no majority for the final award; and upon assuming his functions, he will take the place of the other arbitrators.
7. When an arbitrator assumes his functions as an additional arbitrator, umpire or substitute arbitrator, the arbitration will continue from the stage which it has reached, unless the arbitrator requests otherwise.
8. The arbitrator may direct the parties to answer interrogatories, to disclose and produce documents and to do any other thing connected with the conduct of the arbitration, as a Court might do in an action brought before it.

9. When an arbitrator issues an order to a party on anything connected with the conduct of the arbitration, and the party without justifiable cause does not comply with the order, then, after warning the party, the arbitrator may, if the party is the plaintiff dismiss the claim, and if the party is the defendant, strike out the defense and decide the dispute as if the defendant had not presented a defense.

10. The arbitrator will not hold a session in the absence of a party, unless he has warned him, in writing or orally, that he will proceed at that session in his absence, if he does not attend.

11. Before taking evidence, the arbitrator will warn the witness that he must testify truthfully, since otherwise he will be liable to the penalty prescribed by law.

12. When the settlement of the dispute involves a matter that requires expert knowledge, the arbitrator may, at any stage of the proceedings and after he has given the parties a suitable opportunity to state their cases, direct that the matter be referred to the opinion of an expert appointed by him. A copy of the expert opinion will be delivered to the parties, who may oppose it and may demand to question the expert, as if he were a witness on the arbitrator's behalf. The arbitrator may refrain from hearing the evidence of other experts on a matter he has referred to an expert, if he has notified the parties in advance and they have not objected.

13. The arbitrator will place the arbitration file at the parties' disposal, at any reasonable time, for inspection and copying.

14. The arbitrator will act in such manner as appears to him most conducive to a just and speedy settlement of the dispute, and he will make the award to the best of his judgment in accordance with the material before him. The arbitrator will not be bound by the substantive law, the rules of evidence or the rules of procedure that is obtained in Courts.

15. The arbitrator will make the award within three months from the day on which he began to deal with the dispute, or on which he was called upon to deal with it by a party by written notice, whichever is the earlier date, provided that the arbitrator may extend the period by up to three additional months.

O1. The arbitrator will explain the arbitration award.

1. The arbitrator may bring a legal question, which arises in the course of the arbitration, or all or part of the award, by way of case stated before the Court for an opinion.

2. The arbitrator may grant a declaratory decision, a mandatory or a prohibitive injunction, an order for specific performance and any other relief which the Court is competent to grant, and he may also make an interim award which settles the subject matter of the arbitration in part.

3. The arbitrator may issue directions about all or part of the expenses of the parties, including advocates' fees, and the remuneration and expenses of the arbitrator, and he may direct the deposit of these amounts or the provision of security for their payment. Unless the arbitrator directs otherwise, the parties will pay him his remuneration and expenses in equal shares.

4. The arbitrator will retain the arbitration file for seven years after the completion of the arbitration.

5. A document in an arbitration sent to the arbitrator or a party by registered post, with a certificate of delivery, will be considered to have been sent to the addressee on the date indicated on the certificate of delivery or on the certificate of refusal to accept the document.

### **Addendum**

(Section 21a)

1. The arbitration meetings will be recorded in a protocol or by other method as agreed in the arbitration agreement; the protocol will reflect the process of the hearing and the parties' phrases.
2. The appeal will be served after no more than 30 days from the date on which the arbitration award was delivered to the parties or from the day on which an arbitrator was appointed to the appeal, the latter of them, and will be explained; The other parties may submit their explained response to the appeal no later than 30 days from the date the appeal was sent to them; The appellant may submit a response to the parties' response no later than 15 days from the date of the parties' response.
3. An appeal was submitted – the other parties may submit a counter-claim appeal within 30 days from the date they received the appeal; The other parties may submit an explained response to the counter-claim appeal within 15 days of receiving the counterclaim appeal.
4. The arbitrator in the appeal may hold meetings in the presence of the parties, hear arguments and ask for written summaries, but is not entitled to hear witnesses; The ruling of the appeal will be based on the material held by the first arbitrator, and based on the statements of claim and written summaries submitted in the appeal.
5. The arbitrator in the appeal must file his decision within two months from completing the appeal proceedings.
6. The arbitrator in the appeal will explain his decision.

Levi Eshkol- Prime Minister

Yaacov S. Shapiro- Minister of Justice

Shneur Zalman Shazar- President of the State of Israel