The Securities Litigation Review

Second Edition

Editor
William Savitt

Law Business Research

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CONTENTS

EDITOR'S PREFACE

This second edition of *The Securities Litigation Review* is a guided introduction to the international varieties of enforcing rights related to the issuance and exchange of publicly traded securities.

Unlike most of its sister international surveys, this review focuses on litigation – how rights are created and vindicated against the backdrop of courtroom proceedings. Accordingly, this volume amounts to a cross-cultural review of the disputing process. While the subject matter is limited to securities litigation, which may well be the world's most economically significant form of litigation, any survey of litigation is in great part a survey of procedure as much as substance.

As the chapters that follow make clear, there is great international variety in private litigation procedure as a tool for securities enforcement. At one extreme is the United States, with its broad access to courts, relatively permissive pleading requirements, expansive pretrial discovery rules, readily available class-action principles and generous fee incentives for plaintiffs' lawyers. At the other extreme lie jurisdictions like China, where private securities litigation is complex, expensive, seldom remunerative and accordingly quite rare. As the survey reveals, there are many intermediate points in this continuum, as each jurisdiction has evolved a private enforcement regime reflecting its underlying civil litigation system, as well as the imperatives of its securities markets.

This review reveals an equally broad variety of public enforcement regimes. Canada's highly decentralised system of provincial regulation contrasts with Brazil's Securities Commission, a powerful centralised regulator that is primarily responsible for creating and enforcing Brazil's securities rules. Every country has its own idiosyncratic mixture of securities lawmaking institutions; each provides a role for self-regulating bodies and stock exchanges but no two systems are alike. And while the European regulatory schemes work to harmonise national rules with Europe-wide directives, few countries outside Europe have significant institutionalised cross-border enforcement mechanisms, public or private.

We should not, however, let the more obvious dissimilarities of the world's securities disputing systems obscure the very significant convergence in the objectives and design of international securities litigation. Nearly every jurisdiction in our survey features a national securities regulatory commission, empowered both to make rules and to enforce them. Nearly

every jurisdiction focuses securities regulation on the proper disclosure of investment-related information to allow investors to make informed choices, rather than prescribing investment rules. Nearly every jurisdiction provides both civil penalties that allow wronged investors to recover their losses and criminal penalties designed to punish wrongdoers in the more extreme cases.

Equally notable is the fragmented character of securities regulation in nearly every important jurisdiction. Alongside the powerful national regulators are subsidiary bodies – stock exchanges, quasi-governmental organisations, trade and professional associations – with special authority to issue rules governing the fair trade of securities and to enforce those rules in court or through regulatory proceedings. Just as the world is a patchwork of securities regulators, so too is virtually each individual jurisdiction.

The ambition of this volume is to provide readers with a point of entry to these wide varieties of regulations, regulatory authorities and enforcement mechanisms. The country-by-country treatments that follow are selective rather than comprehensive, designed to facilitate a sophisticated first look at securities regulation in comparative international perspectives, and to provide a high-level road map for lawyers and their clients confronted with a need to prosecute or defend securities litigation in a jurisdiction far from home.

A further ambition of this review is to observe and report important regulatory and litigation trends, both within and among countries. This perspective reveals several significant patterns that cut across jurisdictions. Since the financial crisis of 2008, nearly every jurisdiction has reported an across-the-board uptick in securities litigation activity. Many of the countries featured in this volume have seen increased public enforcement, notably including more frequent criminal prosecutions for alleged market manipulation and insider trading, often featuring prosecutors seeking heavy fines and even long prison terms.

Civil securities litigation has also been a growth industry in the wake of the 2008 crisis. While class actions are a predominant feature of US securities litigation, there are signs that aggregated damages claims are making significant inroads elsewhere. Class claims are now well established as part of the regulatory landscape in Australia and Canada, and there appears to be accelerating interest around the world in securities class actions and other forms of economically significant private securities litigation. Whether and where this trend takes hold will be one of the important securities law developments to watch in coming years.

This suggests the final ambition for *The Securities Law Review*: to annually reflect where this important area of law has been, and where it is headed. Each chapter contains both a section summarising the year in review – a look back at important recent developments – and an outlook section, looking towards the year ahead. The narrative here, as with the book as a whole, is of both divergence and convergence, continuity and change.

An important example is the matter of cross-border securities litigation, treated by each of our contributors. As economies and commerce in shares become more global, every jurisdiction is confronted with the need to consider cross-border securities litigation. The chapters of this volume show jurisdictions grappling with the problem of adapting national litigation systems to a problem of increasingly international dimensions. How the competing demands of multiple jurisdictions will be satisfied, and how jurisdictions will learn to work with one another in the field of securities regulation will be a story to watch over the coming years. We look forward to documenting this development and other emerging trends in securities litigation around the world in subsequent editions.

Many thanks to all the superb lawyers who contributed to this second edition. For the editor, reviewing these chapters has been a fascinating tour of the securities litigation world, and we hope it will prove to be the same for our readers. Contact information for our contributors is included in Appendix 2. We welcome comments, suggestions and questions, both to create a community of interested practitioners and to ensure that each edition improves on the last.

William Savitt
Wachtell, Lipton, Rosen & Katz
New York
May 2016

Chapter 10

ISRAEL

Yechiel Kasher, Ittai Paldor and Amir Scharf[1]

I OVERVIEW

i Sources of law

The main source of law governing conduct in the securities market is the Securities Act of 1968. Additionally, the Companies Act, 1999 also applies to conduct relating to securities and a violation of the Securities Act may also violate the Companies Act. Of specific note in this context are Articles 191–193 of the Companies Act, which deal with cases in which a corporation is managed in a manner that is oppressive to all or some of its shareholders. The remedies available in such cases are of great breadth and depth. Essentially, a court may hand down any order it finds helpful to remedy the harm.[2] The court may even compel a controlling shareholder to purchase minority shares. Additional pieces of legislation available to plaintiffs will be further discussed below.

ii Regulatory authorities

The Israel Securities Authority (ISA) is the agency responsible for oversight and regulation in the field of securities, including the field of investments, trust funds and public companies. The ISA is the agency responsible for conducting and initiating criminal and administrative proceedings against violators of securities laws. In both types of actions it is the ISA that decides to launch an investigation and the one responsible for conducting such an investigation. In administrative proceedings, it is also responsible for initiating the proceeding itself and conducting it against the violator, before an administrative enforcement committee that includes ISA representatives. In criminal proceedings, upon conclusion of the investigation, the ISA conveys to the taxation and economy department of the competent district attorney's

1 Yechiel Kasher, Ittai Paldor and Amir Scharf are partners at Tadmor & Co Yuval Levy & Co.

2 See also Civil Appeal 699/99 *Bachar Nissim v. TMM*, Supreme Court Cases 50(1).

office (DA-TaxEc) its recommendation to initiate a criminal proceeding against the suspect, and the district attorney's office decides whether to press charges and conduct the proceeding in court.

Court cases are generally tried before a special division of the District Court of Tel Aviv, known as the Economic Division, which is comprised of designated judges with specific expertise in economic matters.

Criminal cases are brought before magistrates' courts and district courts, in accordance with the general rules of jurisdiction.

iii Common securities claims

In recent years class actions in general, and class actions alleging securities misconduct, have become more and more common. Administrative proceedings initiated by the ISA are also noteworthy. Additional forms of lawsuits are further discussed below.

I PRIVATE ENFORCEMENT

i Forms of action

The Securities Act of 1968 contains specific provisions stipulating that actions or omissions in breach of the Act give rise to civil liability. Examples of such provisions are the stipulation that an issuer of securities is liable in relation to a holder of the securities, for damage that arises out of the issuer's breach of the Act[3] (liability is extended to board members, the chief executive officer, and a controlling shareholder of the issuer);[4] and the provision stipulating that any person who has signed a prospectus is liable for any misleading detail contained therein in relation to a seller or purchaser of the securities.[5]

Article 32 of the Act is noteworthy in this context. It is a specific provision, aimed at 'second circle' tortfeasors, such as advisers, accountants and legal counsel. The provision stipulates that any person who has given an opinion, report, overview, or approval, is liable for any damage arising from a misleading detail contained therein, if the report, overview, opinion or approval were included in a prospectus by way of reference.

In addition to the specific provisions dealing with liability, according to case law, a lawsuit may also be brought under the 'classic' torts, such as negligence and negligent misrepresentation. It may also be brought as an unjust-enrichment claim.[6] The specific liability provisions and the 'classic' (civil) liability clauses may also be combined in a lawsuit.[7]

Therefore, in theory, a private investor who has suffered damage as a consequence of a violation of the Securities Act may file a 'regular' private lawsuit against the relevant tortfeasor.

3 Article 52-11 of the Securities Act.

4 Article 1 of the Securities Act.

5 Article 31(a)(1) of the Securities Act.

6 Writ of certiorari 8268/96 *Reichart v. Shemesh*, 55(5) Supreme Court Cases Report 276 [2001]; and Class action (District Court of Tel Aviv) 2484-09-12 *Hatslaha v. Cohen* [24 April 2014, available on Nevo].

7 Class action (District Court of Tel Aviv) 1268/07 *Kedmy v. Coor Industries* 6 June 2013.

However, in practice, lawsuits are commonly filed in one of three forms: as a class action, as a derivative action and as an appraisal claim following a going-private tender offer that entailed compulsory acquisition.

ii Procedure

Class actions

As in other jurisdictions, a class action is a procedural way to aggregate claims of dispersed (potential) claimants. A member of the class attempts to represent all class members, and is – if successful – awarded for the effort in filing the lawsuit. Naturally, representing parties who have not explicitly empowered the representative is an unusual phenomenon. Strict standards are thus set for certification of class actions.

A class member who wishes to be appointed as a representative must file a motion to certify the action as a class action. Respondents are then required to file a response, after which the petitioner may file a response to the response.[8] In 2015 the Israeli Supreme Court ruled that serving a third-party notice in a class action suit requires the court's permission,[9] which – according to the ruling – is to be granted if the third-party notice is adequately established. The court also ruled that the motion to grant permission to serve a third-party notice must be submitted simultaneously with the defendant's response to the motion to certify the class action.

A petitioner must generally demonstrate that the claim raises joint questions of fact or law that are common to class members; that a class action is, under the circumstances the fair and efficient way to rule on the matter; and that there is a reasonable foundation for assuming that the members' interests will be handled fairly and *bona fide*.[10]

As a general observation, courts tend to be more concerned with the substance of the claim than with procedural issues. Courts will tend to certify class actions where wrongdoing has been demonstrated *prima facie*. A host of solutions are at the courts' disposal for resolving procedural issues (e.g., replacing the class representative).

Of specific interest in the context of securities is Article 55C of the Securities Act, 1968, which allows the Israeli Securities Authority to fund a class action, if so requested by the petitioner. The Israeli Securities Authority may do so if it has found that the public has an interest in the class action, and that there is a reasonable likelihood that the court will certify it as a class action.[11]

Derivative actions

As in other jurisdictions, a derivative action allows a plaintiff (a shareholder, a debtor or a board member[12]) – subject to the approval of the court – to file a lawsuit on behalf of the company.

The court must be persuaded, *prima facie*, that the lawsuit, and the handling thereof, are to the benefit of the company and that the plaintiff is not acting in bad faith.[13]

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8 Class Action Regulations, 2010.

9 Writ of certiorari 5635/13 *Coral Tel Ltd v. Aviu Raz et al.* (1 April 2015, available on Nevo).

10 Class Action Act, 2006, Article 8.

11 Companies Act, 1999, Article 55C(b).

12 Companies Act, 1999, Articles 1 and 194(a).

13 Companies Act, 1999, Article 198(a).

Case law[14] has recognised the possibility of establishing a Special Litigation Committee (SLC) – a subcommittee of the board of directors, consisting solely of disinterested directors, tasked with determining whether prosecuting a derivative action suit is to the benefit of the company. When properly formed and operated, an SLC can serve as a significant factor in the court's decision whether to uphold a company's decision not to initiate a suit. Generally, a company seeking to form an SLC must do so prior to the submission of a derivative action suit. A company seeking to form an SLC after the suit has been filed will need to obtain the court's permission for the SLC to have any effect regarding the legal process. Such permission will be granted only under extraordinary circumstances.[15]

Case law has recognised the possibility of filing a 'double-derivative action', namely the filing of a derivative action by a shareholder of a parent company of the company on behalf of which the claim is being filed. A double-derivative action may be filed if the parent company controls the company on behalf of which the claim is being filed (provided the ordinary requirements for filing are met).[16]

The Supreme Court has further broadened the possibility of filing a derivative action. On 14 August 2014, the Supreme Court handed down a ruling recognising the possibility of a 'multiple-derivative action', meaning that a shareholder of a company may file a derivative action on behalf of multiple corporations ultimately controlled by the company in which he or she holds shares. To illustrate, a shareholder in company A may file a derivative action on behalf of company B if B is controlled by A; and on behalf of company C, if it in turn is controlled by company B (provided the ordinary requirements for filing are met).[17]

The Companies Act allows the ISA, upon request of a petitioner, to participate in funding a derivative action if it finds that the public has an interest in the lawsuit and that there is a reasonable likelihood that it will be certified as a derivative action.[18]

Disclosure procedures may also be undertaken, both after the filing of a motion to certify a derivative action and before it has been filed.[19] To be granted disclosure, the petitioner must first present *prima facie* evidence that the lawsuit is to the benefit of the company, and that the petitioner is acting *bona fide* with respect to the motion.[20]

iii Settlements

Class actions

A settlement agreement requires the approval of the court hearing the action, which will be granted if the court finds the proposed settlement to be fair, just and reasonable given the interests of the class members.[21] As a rule, the court must appoint an expert to provide

14 Class Actions (Tel Aviv) 815-09-13 *Barry Lenoel v. Galia Maor et al.* (11 March 2015, available on Nevo).

15 See *supra* note 13.

16 Class Actions 21785-02-11 *Ben Ami v. Menorah Mivtahim Holdings Ltd* (7 September 2011, available on Nevo).

17 Writ of certiorari 2903/13 *Intercolony investments Ltd v. Shkedy* (27 August 2014, available on Nevo).

18 Companies Act, 1999, Article 205A.

19 Companies Act, 1999, Article 198A.

20 Writ of certiorari 4121/14 *Tal v. Co-Op Israel* (5 February 2015, available on Nevo).

21 Class Action Act, 2006, Article 19.

an opinion on the advantages and disadvantages of the proposed settlement from the class members' standpoint, unless the court has found reason not to appoint such an expert.[22] Parties' counsel are also required to file affidavits enumerating all details that are material to the settlement.[23]

If the court finds the settlement to be, *prima facie*, one that may be sanctioned, it will normally order its details to be made public so that interested parties may weigh in. The court will also generally notify the Attorney General and the ISA, to allow them to comment on the proposed settlement as well.

Before certification, the petitioner may also withdraw the motion to certify, but this procedure too requires an affidavit enumerating the details that are material to the withdrawal.[24]

In today's global world, an important issue is the question of what effect, if any, a judgment regarding a settlement in a class-action suit outside Israel should have on a class-action suit filed in Israel concerning the same factual and legal questions. In a landmark decision,[25] the Israeli Supreme Court recognised the possibility that a court-approved settlement in a foreign jurisdiction may have a binding effect on the plaintiff in a class-action suit in Israel, if certain conditions are met (such as the foreign court having substantial connections to the issues discussed in the Israeli class-action suit). If the Israeli class-action suit has not yet been certified by court, the binding effect will concern only the plaintiff, and not the entire class.

Derivative actions

A petitioner may not withdraw a motion to file a derivative action or settle with the defendant without the approval of the court. A petitioner must elaborate the details of the proposed settlement and any remuneration granted to the petitioner.[26]

The court then instructs on the manner in which the details of the settlement are to be made public. A shareholder or board member of the company may file an objection, within the time frame set by the court. When the lawsuit pertains to matters dealt with in Section 204 of the Act (mainly prohibited distribution), a creditor of the company may also file an objection (within the same time frame).

iv Damages and remedies

Damages and remedies are generally those available in any civil case. Generally, a party may seek monetary compensation for damages suffered as a result of a violation of the Securities Act. Alternatively, cease-and-desist orders may be issued, as well as operative orders ordering the defendant to act in a specific manner. A party may also seek to collect profits accrued to the violator under the Unjust Enrichment Act, 1979.

22 Class Action Act, 2006, Article 19(b)(1) and (b)(4).

23 Class Action Act, 2006, Article 18(b); See also Civil appeal 9585/11 *Ya'ari v. Migdal Insurance Company* (1 October 2013, available on Nevo).

24 See Class Action Regulations, 2010, Regulation 11.

25 Writ of certiorari 3973/10 *David Stern v. Verifone Holdings, Inc.* (2 April 2015, available on Nevo).

26 Companies Act, 1999, Article 202(a).

In the specific context of class actions it has been ruled that the preference will generally be for individual compensation for class members, as these are normally easily identifiable. It has also been ruled that shareholders will normally be compensated for their 'out-of-pocket loss' rather than for profit that they might have gained had the defendant acted differently.[27]

Appraisal

One last issue of importance relates to the quantifying of monetary compensation in a forced acquisition. According to the Companies Act, an entity that wishes to increase its holdings in a publicly traded company to more than 90 per cent of the shares (or more than 90 per cent of a specific kind of shares), must make a uniform going-private tender offer to all shareholders. In essence, the purchaser must offer to purchase all shares (under the same terms). If a certain percentage of the shareholders accept the offer, all shareholders must sell their shares at the agreed price, and the company ultimately becomes a private company.[28] An offer must be made to all shareholders, even if the purchasing entity holds more than 90 per cent of the shares before the offer.

Article 338 of the Companies Act stipulates that anyone who received an offer within the framework of a going-private tender offer may plead the court to rule that the consideration received for his or her shares was lower than their fair value. A petition of this sort may also be filed as a class action.

In the landmark *Atzmon* case,[29] the Supreme Court has addressed the issue of the appropriate way to assess the fair value of shares and ruled that the fair value is generally to be assessed according to three governing principles.

First, the 'internal value' principle, according to which the value of the company is to be ascertained based on sources of income stemming directly from the company, which the shareholders would have enjoyed had the company remained public, and not on 'external' value such as the value of the company's securities.

The second principle is the principle of valuation according to the company's value as an ongoing business. This principle stands in opposition to the possibility of aggregating the value of the company's assets. Under regular circumstances, the company as an ongoing business can be expected to yield greater value than the sum of its assets' values.

Third, the value of the company is to be assessed at the time of the going-private tender offer. It is not to include the benefits accruing to the purchaser as a result of the forced acquisition itself.

Based on these principles, the Supreme Court ruled that the value of the company in cases of an appraisal claim following a forced acquisition in a going-private tender offer is to be assessed in accordance with the discounted cash-flow method, rather than on the market value of the company's securities. These principles were later applied in subsequent cases.[30]

27 Civil appeal 345/03 *Reichart v. Shemesh* (7 June 2007, available on Nevo).

28 Articles 336–337 of the Companies Act, 1999.

29 Civil appeal 10406/06 *Atzmon v. Bank Hapoalim Ltd* (28 December 2009, available on Nevo).

30 Leave to appeal 779/06 *Kital Holdings and International Development Ltd v. Maman* (28 August 2012, available on Nevo); and Class action (Tel Aviv District Court) 44884-03-13 *Malachi v. Elad High Plateau Acquisitions Inc* (2 April 2015, available on Nevo).

III PUBLIC ENFORCEMENT

i Forms of action

Both criminal proceedings and administrative actions are available to public authorities. The criminal proceeding is adjudicated, in most cases, by the Economic Division of the Tel Aviv District Court, which has the authority to adjudicate all criminal charges in the field of securities within the jurisdiction of the Tel Aviv District Court (unless a decision was made to press charges in the magistrates' court). The Division was founded in 2012 and is composed of a team of judges that possess expertise in the economic field, with the aim of providing a swift, efficient and professional service in cases of this kind.

The ISA decides whether to direct the treatment of a violation to the criminal route or to the administrative route, based on considerations listed by the legislator: the severity of the act or omission and the circumstances thereof, an estimation of the nature and quality of the evidence, and the ISA's enforcement policy. The choice between a criminal and administrative proceeding is made according to detailed standards predetermined and published in advance by the ISA. The administrative proceeding is intended mainly to address less severe violations of the law, specifically violations in which the *mens rea* is of negligence rather than deliberate misconduct.

In addition to the two previously discussed options of conducting a public proceeding against violators, the ISA also has the authority to impose a pecuniary penalty on violators without conducting a proceeding, with respect to a list of violations of a lesser severity, which usually do not require the establishment of *mens rea*.

In recent years we have observed a growing number of cases being pursued by the ISA through administrative proceedings, with penalties in administrative proceedings becoming more severe. We have also observed the imposition of personal liability and sanctions on office holders as well as on the corporation.

There has also been an increasing severity in the penalties issued in criminal proceedings. In particular, unlike past practices, the courts have recently started imposing actual (not suspended) incarceration sentences for insider-trading cases (whereas in the past, incarceration sentences were only imposed in fraud cases).

ii Procedure

Criminal proceedings

Criminal proceedings begin with an investigation conducted by the ISA. The ISA may seize property, search offices and private residences and also arrest the suspected individual or individuals under certain circumstances. After the case file is examined by the DA-TaxEc, and before a decision to file an indictment, the suspect is entitled to a hearing before DA-TaxEc and has the right to review all investigation materials.

The criminal proceeding is conducted in court, in a full adversarial process. The court's ruling is subject to appeal to the higher instance (usually the Supreme Court).

Administrative proceedings

Administrative proceedings begin with an administrative inquiry, wherein the ISA has investigative powers very similar to those it has in criminal proceedings. The main difference is that in an administrative inquiry, the ISA is not authorised to search the suspect's private residence. During the inquiry the suspect is neither entitled to legal counsel nor to avoid self-incrimination. By law, the suspect is only entitled to peruse investigation materials that

the ISA deems relevant to the case, though in practice the ISA allows suspects to peruse all investigation materials gathered in the case file. The administrative proceeding is held before an administrative committee, which is not bound by evidentiary law and which may give instructions for the purpose of efficient deliberation of the proceeding. Witnesses are usually not heard in the administrative proceeding, unless the administrative committee has decided, under special circumstances, to summon them. Upon conclusion of the administrative proceeding the administrative committee determines the penalty to be imposed on the violator. In certain cases the committee's determination is subject to court approval.

iii Settlements

The DA-TaxEc and a defendant in a criminal proceeding may engage in a plea bargain, as in other criminal cases. A plea bargain is subject to court approval. In most cases, the court upholds plea bargains presented to it (even in cases where, in the court's opinion, it would have been appropriate to determine a different sentence).

In addition, the DA-TaxEc may also enter a settlement for a conditional cessation of proceedings with a suspect, before filing an indictment against him or her, wherein the DA-TaxEc undertakes to abstain from filing an indictment against the suspect in return for his or her consent to be subjected to an enforcement measure of those available in the administrative proceeding.

In administrative proceedings, the Director General of the ISA has the power to reach a settlement for abstention or cessation of proceedings with the violator, wherein the Director General undertakes to abstain from conducting proceedings or to cease the proceeding, in return for the suspects consent to be subjected to an enforcement measure of those available in the administrative proceeding. Such enforcement settlements require the approval of the ISA Administrative Enforcement Committee. The Committee has determined that to approve such a settlement, the violator must also recognise the acts attributed to him or her, and sometimes even to concede that he or she has committed the violations.

The majority of administrative enforcement proceedings are concluded by enforcement settlements.

iv Sentencing and liability

In criminal proceedings the court may sentence the defendant to incarceration and fines, according to the type of offence. When sentencing defendants, the court usually weighs a number of considerations. Among these are public considerations pertaining to the harm to the stability and fairness of the capital market and the public's faith in it, the damage expected to be caused by the offence, the premeditation of the offence, circumstances of the offence's severity and the defendant's relative role in committing the offence. The court will also consider individual factors (efforts to rectify the outcomes of the offence, level of cooperation with law enforcement agencies, etc.).

In the past year, the range of sentencing (including in proceedings concluded through approval of a plea bargain) was between several months and several years (up to six years) of actual incarceration. On occasion, alongside incarceration, a fine was also imposed, at amounts ranging from tens to hundreds of thousands of shekels, and 1 million shekels in one case.

In administrative proceedings, enforcement measures included fines of up to 1 million shekels for an individual and 5 million shekels for a corporation per violation; compensation to those injured by the violation; an undertaking to take actions to rectify the violation

and prevent its recurrence; and a prohibition on individuals serving as senior office holders in entities regulated by the ISA for up to one year (and, with the court's approval, up to five years).

The considerations guiding the Administrative Committee in determining a penalty are provided by law and include the facts constituting the violation; other factual circumstances of the violation, including the scope of the violation, the gains obtained or the loss averted by it and the damage caused by it; the existence or absence of previous violations; the actions taken by the violator upon discovery of the violation, including cessation of the violation of his or her own volition and reporting it to the ISA, actions taken to prevent recurrence of the violation and minimisation of the damage caused by it; personal circumstances of the violator that led to committing the violation or other exceptional personal circumstances; and the ISA's enforcement policy.

Penalties in administrative proceedings have thus far included personal fines ranging from tens of thousands of shekels to 400,000 shekels for individuals, and fines ranging from hundreds of thousands of shekels to 7.5 million shekels for corporations. Beyond this, an undertaking to take measures to prevent recurrence of the violation may be imposed on corporations and restrictions on service as office holders imposed on individuals, for periods ranging from four months to two years.

IV CROSS-BORDER ISSUES

According to the position of the ISA and the rulings of Israeli courts, Israeli law applies to all corporations offering their securities to the Israeli public, regardless of their place of incorporation.

V OUTLOOK AND CONCLUSIONS

Over the next few years, class actions can be expected to constitute a significant part of securities litigation and their level of sophistication can be expected to increase as case law develops. This has been a continuous trend in recent years, and one can expect this trend to continue in the foreseeable future.

There is also likely to be a noticeable increase in the use of administrative procedures in the next few years, and the sums of administrative fines may increase. Caution on the part of publicly traded companies is thus advisable.

Appendix 1

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Advocate Yechiel Kasher heads the firm's litigation and dispute resolution practice group.

Advocate Kasher is recognised as one of Israel's leading litigators and has appeared in a wide variety of dispute resolution proceedings.

His practice areas range from commercial and corporate litigation, intra-stockholder litigation (for both domestic and foreign clients), antitrust, class actions, banking and bankruptcy litigation, as well as aspects of white-collar criminal litigation.

Representing some of the biggest names in Israel's business and legal community, Kasher has led the defence in some of the most significant class-action lawsuits in Israel, high-volume arbitrations, and precedential petitions before the Israeli Supreme Court.

Advocate Kasher's work has been recognised by numerous legal publications, including *Chambers Global*, *The Legal 500* and *Best Lawyers*, where he is listed as a Band 1 practitioner and described as 'an outstanding litigator. He has a keen eye for detail and is highly skilled in the courtroom.'

Advocate Kasher has taught negotiable instruments and corporate law at Tel Aviv University School of Law.

Kasher is a graduate of Tel Aviv University (LLB, *magna cum laude*).

ITTAI PALDOR

Tadmor & Co Yuval Levy & Co

Dr Ittai Paldor is a partner in the litigation and dispute resolution practice group at Tadmor & Co Yuval Levy & Co law offices.

Dr Paldor handles a variety of complex civil and commercial disputes, including a host of administrative proceedings.

Dr Paldor has also represented numerous defendants in class actions, the vast majority of which were not certified as class actions (without settlement). Dr Paldor has significant experience in litigating disputes arising out of private-public partnerships and build–operate–transfer agreements.

In criminal proceedings, Dr Paldor has specific expertise in white-collar criminal cases, leaning not only on his vast experience as a defence attorney, but also on his experience as a prosecutor (criminal section) at the Israel Antitrust Authority.

Dr Paldor was also involved in a landmark US Supreme Court case on behalf of the Consumer Federation of America.

Following completion of his SJD (University of Toronto), Dr Paldor was a post-doctoral fellow at the Law and Economics Forum at the Hebrew University of Jerusalem (2007–2008). Dr Paldor also holds an LLM (*summa cum laude*) and an LLB from the Hebrew University Law School.

AMIR SCHARF

Tadmor & Co Yuval Levy & Co

Amir Scharf heads the Tadmor & Co Yuval Levy & Co capital markets, securities and financial services regulation practice group.

Amir regularly advises leading Israeli and foreign corporations, publicly traded and private companies, investments houses, banks and other financial institutions in matters of securities and capital markets regulation; financial services regulation; corporate governance; administrative enforcement proceedings of the Israel Securities Authority (ISA); reporting requirements and filings with the Israel Securities Authority and Tel Aviv Stock Exchange; banking regulation; internal investigations; securities-related internal compliance programmes; and other related issues.

Amir also acts as a mediator in a wide variety of commercial disputes.

In the past, Amir served as the general counsel, corporate secretary and a member of the senior management team of El Al Israel Airlines (2003–2006). Before holding these positions, Amir served as deputy director of the legal department in the ISA.

Amir served as vice-chairman of the securities and capital markets committee of the Israel Bar Association (2007–2011); a member of the public committee for the establishment of an Israeli corporate governance code (the Goshen Committee) (2004–2006); a board member of the Israeli Association of Publicly Traded Companies (2005–2006); IATA legal committee member (2005–2006) and representative of the ISA on the Israel Accounting Standards Board (until 2003).

Amir has also served as a director and audit committee chairman in Israeli and foreign corporations.

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