



The Report of the Inter-Agency Team for Examining the Class Action Law, 5776-2006

Dear Clients,

We would like to update you about the release of [the report of the Inter-Agency Team for examining the Class Action Law, 5776-2006](#), dated March 2023 (respectively: the “**Report**” and the “**Inter-Agency Team**” or the “**Team**”). The Inter-Agency Team was established in 2020, and was headed by Adv. Carmit Yulis, the Deputy Attorney General (Civil Matters), and included, among others, members from the offices of the Attorney General and the State Attorney, the Courts Administration, the Bank of Israel, the Israel Competition Authority, the Israel Securities Authority and the Capital Market, Insurance and Savings Authority, as well as other representatives from the ministries of Finance, the Interior and Environmental Protection. The Team was tasked to perform a comprehensive examination of the development of the class action mechanism in Israel and the benefits it brings to the economy, together with the challenges it poses. The goal of the Inter-Agency Team was to improve the regulation of the class action mechanism in Israel after examining its application over the last two decades. To do this, the Report analyzes data regarding the use of the class action mechanism in Israel.



This table shows that in the last five years, an average of around 1,500 class action lawsuits were filed annually. Other data in the Report show, however, that the percentage of frivolous class action claims (i.e., without meaningful factual or legal basis) is very high (for example, out of the certification motions that were resolved in 2020, only around 15% of the judicial decisions resulted in the

certification of the claim as a class action. In all the other cases the claim ended with a withdrawal, deletion, rejection of the claim or dismissal *in limine*).

Another interesting data point in the Report is that hearings in class action lawsuits are considered the most “burdensome” proceedings that require substantial judicial resources of both District and Labor courts (for this reason, class actions are among the most “expensive” proceedings in the Israeli court system).

The Inter-Agency Team sought to provide answers to the problems that currently exist with regard to class actions: frivolous lawsuits that serve no public interest, and the **principal-agent problem**, which arises because class members do not take an active part in the proceedings (and as a result class counsel are not properly incentivized to obtain optimal relief for the class).

We set out below the **main recommendations of the Report**:

1. Mandatory costs ruling: An award of costs to the successful party can help to lower the rate of frivolous claims. Therefore, the Team proposed that an **obligation to impose reasonable and fair costs** should arise when the class action is rejected (except in special circumstances) and the default result will be to charge the costs to the class counsel and not to the named plaintiff. This reflects the dominant role of attorneys in class actions, and the fact that in the event of a successful claim, the class counsel is expected to receive significant legal fees.

2. Regulating the amounts of award to the named plaintiff and legal fees to the attorneys: The Report proposes regulating the award and fees in class actions for the named plaintiff and the class attorney. In the opinion of the Team, the award to the named plaintiff and fees to the class attorney are not sufficiently regulated in legislation, since it allows the parties to influence the amounts that will be awarded and leaves an opening for attempts to increase the fees regardless of the public's benefit from the proceeding. The Team's recommendation is intended to **create a direct connection between the compensation awarded to the class and the amounts paid to the attorney and the named plaintiff**, to incentivize them to bring significant relief to the class.

The Team also recommended ending the practice of the parties submitting to the court an agreed recommendation for compensation and fees. In accordance with the principles developed in case law, the Team proposed to legislate that the class attorney's fee and named plaintiff's award should be derived from the **compensation for the class and the stage at which the proceeding ended**. The following table shows the Team's proposed rates:

Award and legal fees (in millions of NIS)	After a judgment	Settlement agreement after the certification stage	Settlement agreement before the certification stage
Up to 5	23%	18%	13%
5-10	18%	13%	8%

10-30	13%	8%	8%
30-60	12%	7%	7%
60-100	10%	5%	5%
Above 100	1%	1%	1%

Under the Team's proposal, the court will be able, to a limited extent, to deviate from the fixed rates, based on specified considerations. According to the Team's position, as a matter of principle, the court must determine the division between the award and the attorney fees according to the degree of involvement of the named plaintiff in the case.

3. Early resolution mechanism: The Team recommends establishing an early resolution mechanism in certain class action cases, to be defined in a new addendum to the Class Actions Law. In addition, the Team recommends creating a special route for claims for an injunction or declaratory relief, while also incorporating a mechanism for early resolution in these claims.

4. Cancelling the special exemption from court fees: The Team recommends cancelling the exemption from court fees for class actions that concern equal rights for people with disabilities, on the grounds that the exemption has been abused.

5. Limiting the possibility of non-monetary compensation: The Team seeks to reduce the phenomenon of giving vouchers, discounts, products, or other "gifts" as compensation in class actions and instead encourage monetary compensation. The Team's main recommendation in this context is that non-monetary compensation should be allowed only with the express consent of each class member.

6. Stopping the phenomenon of claims submitted with excessive amount of claimed damages: The Team addressed the filing of class action lawsuits for excessive amounts, sometimes reaching hundreds of millions of NIS, which often do not reflect the damages caused to the members of the class; the purpose of the large claims is to exert unfair pressure on the defendants to reach a quick settlement.

In order to deal with this phenomenon the Team's recommendation is to require the petitioner to choose one of two alternatives: (1) the named plaintiff will not indicate the amount of damages to the class members, but will indicate only the amount of his personal damage and whether the entire action is within the jurisdiction of the Magistrate's Court (below NIS 2.5 million) or the District Court (above NIS 2.5 million); or (2) The named plaintiff will not specify the amount of his claim for non-monetary damages.

7. Recurring plaintiffs: The Team suggests that named plaintiffs be required to specify the number of class actions they filed in the petition for certification.

8. Hasty lawsuits: The Report also addresses attempts by plaintiff's counsel to gain priority by being the "first to file" a class action lawsuit. The Team proposed to consider a mechanism in which a period of time will be set after the filing of a class action during which additional certification

motions in the same matter can be submitted; at the end of the set period, the court will have broad discretion to choose the motion to proceed and the leading class counsel.

9. Regulating mediation in class actions: The Team recommends that mediation be made subject to disclosure obligations in cases where the mediator conducted factual inquiries that served as the basis for a settlement reached in the mediation.

10. Mandatory online publication: The Team's recommendation is to require class action defendants to publish settlements or judgments on their websites or in other means of communication with their clients. The Team also recommended that notices to the class members be published on a dedicated website.

11. Regulating the restitution period in class actions against state authorities: The Team recommends limiting the restitution period in these types of class actions to 24 months. Additionally, the Team recommends imposing an early resolution requirement in class actions against state authorities.

12. Adding privacy violations as grounds for filing a class action: The Team recommends adding breach of privacy to the list of causes of action permitted to be brought under the Israeli Class Actions Law (currently privacy class actions must be filed under general causes of action, such as consumer-supplier relations).

13. Filing class actions by NGOs: The Team recommends foregoing the “personal cause” obligation in class actions filed by NGOs, as NGOs often file proper and well-founded class action lawsuits, and this should be encouraged.

The public is invited to send comments on the recommendations in the Report until May 16, 2023: these comments will be taken into account in a proposed amendment to the Report to be prepared on behalf of the Ministry of Justice.

FISCHER (FBC & Co.)

We are at your disposal for any question or clarification, and we will be happy to assist.

Dr. Gil Orion, Adv.

gorion@fbclawyers.com

Yael Riemer, Adv.

yriemer@fbclawyers.com

By phone +972-3-6941348

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