# THE NEW PROCEDURE REGULATIONS

**Faster, Stronger, Costlier ?**

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1 January 2021: The new controversial Civil Procedure Regulations came into force.

Why Controversial?

During the last year, the Israeli Bar Association and other consumer groups objected to the rigid spirit of these regulations and to the hardships they may impose on the litigants in Court. However, this proved to be to no avail. The Ministry of Justice initiated this reform, declaring that its intended objective is to make the judicial process more efficient and transparent. By changing the rules of the game, the Ministry hopes to secure efficient justice and safeguard public interests.

First of all, the new regulations are approximately a third of the number of the previous regulations. This reduction was achieved by abolishing various proceedings which were less frequently applied (such as interpleader, opening motions etc.) and by setting a uniform structure and length for Court pleadings, (i.e., Statements of Claim and Defence between 7-10 pages). Additionally, a limit was placed on the questionnaire (25 in the Magistrates Court and 50 in the District). Furthermore, the regulations cancel the right of response of the applicant in written requests and authorize judges to dismiss a request or an appeal without response and without detailing their reasoning.

The New regulations empower the Court to impose costs in favor of the other party or in favor of the State, when regulations are not kept. The sanctions may be stricter, such as striking out the Statements of Claim or Defence .

Any document submitted to the court will be first checked by a "Judicial Secretary" and only if approved as complying with the requirements it will be accepted.

The declared objective of this reform is to facilitate a more efficient Court process and avoid improper delays of proceedings. Hence, requests for postponement or change of the initial dates of hearings will be granted only in a limited manner, where no feasible alternative is found in order to keep the dates as scheduled.

One of the main changes of this reform, is shifting the burden of the preparatory stage over to the parties, as opposed to the prior method that involved the Court. After exchanging the Statement of Claim and Defence, third-party notices and responses, the parties must meet and disclose documents for the review of the counter party. They are also required to make a list of agreed points and disputed issues and submit a detailed written report to the Court, prior to the first pre-hearing.

At this stage the parties are required also to present a list of requests to the Court, list of the witnesses and the gist of their testimonies, all prior to the pretrial.

This imposes on the lawyers and their clients most of the costs which previously would have been spread out over a longer time period, during which the parties could have considered a settlement to save extra costs and expenses. By imposing these duties the regulations in fact impose a financial burden during the first stages of the trial.

The claims departments of the insurance companies need to study and understand these new procedures, which may cause increased uncertainty during the first years of implementation. This may further lead to different interpretations of the regulations until precedential judgements are given by the Supreme Court, which would then bind all lower instances. This process may take up to two or three years.

In the meantime, Plaintiffs (including insurers in subrogation claims or claims for contribution) are required to prepare their claims more thoroughly with all supporting documents and opinions. On the other hand, insurers as defendants must respond to court claims in an efficient and timely manner, in order to not be considered as delaying the process contrary to the spirit of the regulations.

In addition, in the past, lawyers were able to offer their clients fees based on break-down into stages, where the first stage of the pretrial could require less investment of work and expenses. This could be also an incentive for early settlement before heavy costs of disclosure in complicated cases were borne. It seems now that the center of gravity has been shifted to the first stage prior to the preliminary hearing by the Court.

What can we expect in the near future?

Besides the fact that litigation will be costlier, as described above, the stringent attitude of the Courts (which can already be observed these days in awarding heavy costs for requests for extensions etc.) may lead parties to mediate and settle claims prior to filing the claims in Court. Mediation of insurance claims has proved as being effective when carried out by experienced lawyers or retired judges rather than handling expensive processes which may end in unexpected "all or nothing" resolutions.