IN-DEPTH

Banking Litigation

ISRAEL

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Banking Litigation

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In-Depth: Banking Litigation (formerly The Banking Litigation Law Review) provides a practical overview of the litigation landscape and framework for banking disputes in major jurisdictions worldwide. Focusing on recent developments and trends, it examines a wide range of issues – including significant recent cases and legislative changes; procedural considerations; legal privilege; conflicts of law; available remedies; exclusion of liability; and much more.

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Israel

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Summary

Introduction

The Israeli banking system plays a central role in the national economy and everyday life and is, therefore, a constant focus of civil litigation. This article considers the nature of the legal sources and norms that have shaped Israeli banking litigation in recent years. As shall be explained below, Israeli banking law relies on a combination of general legislation, dedicated banking legislation, intensive administrative regulation and developing case law that continues to fill the gaps and demarcate the boundaries of accountability. We will then discuss the principal duties that banks owe their customers and sometimes also third parties, and the main points of friction that have generated the bulk of the banking litigation in recent years.

Sources of Israeli banking law

Israeli banking law is a multi-layered domain, in which both the organisation and supervision of the banking system, as well as transactions entered into between a bank and its customers and third parties, are fully regulated. Substantively, the field of banking law incorporates contractual and tort law, corporate law and promissory notes, alongside administrative and criminal components (among other things, in the context of anti-money laundering (AML) and countering the financing of terrorism (CFT)). In practice, the law evolves and develops significantly through case law and regulation, in the latter case, particularly enacted by the Bank of Israel and the Banking Supervision Department, which sets operational and behavioural standards for banking corporations, and may also influence the determination of the standard of civil liability.

The sources of legislation are divided into general: laws that apply to all business players in the economy and serve as a basis for banking litigation;[1] and dedicated banking legislation: laws that are unique to banking law. This legislation specifically regulates the activities of banking corporations on whom unique duties, restrictions and rules of conduct are imposed.[2]

The Banking (Service to Customer) Law is the core piece of dedicated legislation in the sector. In case law it is perceived as having quasi-consumer characteristics and serves as a key tool for addressing the power and information gaps inherent in bank-customer relations. The Law thus provides tools for enhancing transparency, oversight and fairness in commercial relations, and in the words of the Tel Aviv District Court in one case:

> The banking law is intended, among other things, to protect customers who come into contact with the banking corporation. The purpose of the law is to bridge the power gaps between the bank and customer, to restrain and limit the bank's power. This speaks of a quasi-consumer law. The law establishes a series of duties that apply to the bank and also authorises professional bodies to delineate rules of conduct on certain issues. A breach of the duties imposed on the bank can even generate liability on both the civil and criminal levels.[3]

Regulation in the banking sector constitutes an additional source of norms overseeing the activity of banks. This is an administrative-regulatory framework that does not always 'directly' create civil causes of action, but in practice, can significantly influence the content of the obligations to which banks are subject. The Israeli banking supervision system is based on a number of regulatory bodies, that serve as a substantive source of norms and help shape litigation practice.

The Bank of Israel is the central bank and is responsible for the stability of the financial system. It operates under the Bank of Israel Law and is responsible for monetary policy, management of national foreign exchange reserves and oversight of the financial system. The Law expressly directs that the Bank of Israel must "maintain the supervision and regulation of the banking system".[4] The Governor of the Bank of Israel, who heads the Bank of Israel, is the central authority responsible for banking policy and oversight.

The Banking Supervision Department (or the Supervisor of Banks) is a division of the Bank of Israel responsible for maintaining the stability of the banking system and overseeing key aspects of consumer protection. In practice, the Supervisor of Banks has supervision,[5] enforcement[6] and regulatory powers, and issues regulatory guidance the Proper Conduct of Banking Business Directives, and rules that bind banking corporations.

The directives issued by the Banking Supervision Department regulate various aspects of banking activity, including risk management, capital adequacy, sound banking conduct, AML and CFT, customer identification, and consumer protection. Although they establish regulatory-administrative norms, in practice, they may influence the contractual and tort relationship between the bank and its customers, since the courts often rely on them when defining the standard of conduct expected of the bank.[7] In this way, these directives sometimes serve as a judicial 'compass' for examining reasonableness, good faith and professional expertise (and in some contexts also assist in interpreting contractual obligations).

The Supervisor of Banks often participates in class action proceedings that are instituted against banks, usually by submitting a professional position on the issue in dispute, when requested by the court. In practice, these positions may significantly impact the framing of the dispute and the manner in which the court interprets the legal and regulatory duties that apply to banks,[8] as depicted in a recent case in which the Supreme Court clarified the status of the Supervisor's position: "The power gaps between the banks and their customers, and the significant role of the Supervisor in the banking market, also impact the weight that should be attributed to his position".[9]

Additional regulators that influence banking litigation include the Israel Securities Authority, which supervises the capital market and issues binding guidelines and directives to financial bodies (and in relation to banks, mainly in the context of investments and securities trading); as well as the Commissioner of Capital Markets, Insurance and Savings at the Ministry of Finance, who supervises certain financial aspects related to pension savings and insurance.

Alongside legislation and regulation, court rulings and particularly case law rendered by the Supreme Court, as the Highest Court whose rulings constitute binding precedents in Israel, play a central role in shaping the law. Case law defines the scope of duties imposed on banks, interprets legislative provisions and regulatory norms and balances competing interests. Often, it is concrete controversies surrounding fees, refusals to provide banking services, disclosure duties and 'classic' tort grounds that facilitate the establishment of tangible, binding legal rules.

Bank-customer relations: principal duties

Case law views the bank-customer relationship as a special one, given the necessity of banking services, the status of the bank as a central factor in the market, the power and information gaps, the traits of ongoing relations and the public's reliance on the bank as a professional body with quasi-public characteristics.[10] This principle is also expressed in court rulings governing many civil disputes, and is highly relevant for assessing the scope of increased duties which banks owe their customers and sometimes also third parties. In many instances, understanding these duties and their scope is key to understanding banking litigation.

In fact, due to the unique nature of the bank-customer relationship, the bank owes many increased duties that are intended to provide a customer with adequate protection. Thus, included in case law are duties of trust and fiduciary duties, disclosure duties, the prohibition of deception, the duty of care and the prohibition of undue influence, etc.[11] For our purposes, and at a high level of abstraction, a majority of the duties can be organised into, and revolve around, three main framework duties: the fiduciary duty, the duty of care and the duty of good faith[12]. The boundaries of these duties are often established in case law based on definitive circumstances.

In recent years, case law has continued to demarcate the boundaries of the aforesaid duties through the adjudication and establishment of concrete cases. We briefly review these three duties below, highlighting practical insight gleaned from our experience in banking litigation, both for the purpose of legal risk management as well as for overseeing the actual proceeding.

The fiduciary duty compels the bank to act to promote the purpose of the banking engagement with heightened consideration of the customer's best interest, without extraneous considerations and without a conflict of interest, in fulfilment of the purpose for which the customer transacted with it[13]. Nonetheless, case law consistently emphasises that the duty is not absolute: it does not relieve the customer of their minimal duty to take care of their affairs, nor does it obligate the bank to abandon its business interests altogether. And in the words of the Nazareth District Court, in one recent case:

> The fiduciary duty is not unlimited, and cannot be interpreted as if the bank must always prioritize the customer's interest in any situation and at any price, since banks operate for purposes of reaping a profit, and there are areas in which the full scope of the fiduciary duty cannot be applied to banks, as this may lead to a paralysis of their activity, in the absence of an ability to reap a profit from the customer. In this context, two rules were established whose purpose is to qualify and limit the broad application of the fiduciary duty: the first is that the fiduciary duty cannot be interpreted as relieving the customer from taking responsibility for his own actions, or blindly relying on the bank, so that the customer has a minimal duty to take care of his affairs; and the second is that the bank is not required to act with complete abandonment of its personal interest. Under the latter qualifying rule, the

> matter of providing credit to a customer is included, an area which places the bank itself at risk, and thus its right to protect its personal interest without the fiduciary duty preventing it from doing so.[14]

Notwithstanding the foregoing, it should be clarified that the fiduciary duty imposed on the bank is still broad, and applies to all activities, services and transactions engaged in or carried out by the bank. It thus also dominates the pre-contractual stage.[15] Tangible expression of the fiduciary duty and standard of conduct deriving from it varies from case to case, based on the type of service, nature of the relations, extent of the bank's involvement, type of customer and level of their reliance.[16]

The duty of care (the duty also underlying the tort of negligence) is the duty to refrain from causing damage to customers and sometimes also to third parties. This duty increasingly applies to banks.[17] At the litigation level, this is one of the most prevalent causes of action raised against banks, because it provides a flexible framework (a basket ground) for raising claims concerning the bank's harmful conduct.[18] It should be emphasised that case law recognises that the bank may owe a duty of care even towards someone who is not a customer of the bank, and even towards someone with whom the bank has no contractual relationship,[19] where the bank is the most effective "preventer of the damage".[20] On the other hand, the customer also owes a duty of care towards the bank, sourced primarily from the contract between them, but whose roots are anchored in general tort law.[21]

Case law emphasises that the bank owes a general duty of care towards its customers, but its scope emanates from the circumstances and varies from case to case. Thus, for example, in the context of loans, the bank must examine the borrower's ability to repay, and in extreme cases where there is concern of compliance with the credit terms, it may even refuse to make the loan available. Nevertheless, this duty does not replace the borrower's responsibility to weigh his risks and repay the loan, and in the words of the Jerusalem Magistrates' Court, in one very recent case:

> The degree of reasonableness of the bank's conduct should be assessed, by taking into account in a customary manner circumstances similar to those under discussion—both in terms of the conduct of other banks, and of the bank. The type of service and the associated risks, the nature of the customer-bank relations, and additional circumstances.[22]

A practical example of how the duty of care is exercised can be found in an additional ruling rendered by the Magistrates' Court, in which the bank's response to a customer's request regarding money exempt from foreclosure was examined. In cases of this nature, the court expects the bank to apply basic operational skills and legal expertise: to permit a withdrawal where required by law or, at least, to conduct a quick and orderly internal investigation (including with a relevant legal body) as soon as the issue is raised by the plaintiff.[23]

The duty of good faith, the third main duty owed by banks under Israeli law, also stems from the bank's inordinate power and excess knowledge.[24] Although the duty of good faith applies to both contractual parties under Israeli law (when negotiating the contract and fulfilling its terms),[25] from a banking context, case law tends to apply it with increased intensity, due to the unique traits of the bank and the power imbalance between the bank and the customer. Nevertheless, the courts generally refrain from fully subjecting banks to public law norms and from fully applying the administrative duty of fairness. In practice, an intermediate approach has developed. See, for example, a ruling in one case where the bank's refusal to provide services was discussed:

> Thus, the bank's duty to provide essential services—as enshrined in banking law and generally—can be established by means of the duty to act in good faith; the doctrine of dual-nature bodies; and the doctrine of essential service-providers. […]
>
> In my opinion, the intermediate approach, which imposes duties on banks by virtue of them being providers of essential public services, is the one that deserves to be adopted. The laws of good faith are general by nature. They do not reflect the special status of banks nor the enormous power they yield in our commercial world. On the other hand, it is appropriate to exercise extreme caution before getting to classify a body as being of dual-nature. This is because such classification is likely to carry with it a broad subjugation to public law. This caution is appropriate generally, and certainly for Israeli society, where twice as much caution must be exercised before public norms are applied in private law.
>
> Hence, entities, which can be classified as essential service providers, can potentially be subjugated to judicial duties of intermediate intensity. Their degree is more stringent than the general civil duty of good faith, which applies to all those who enter into contracts or who negotiate prior to engaging contractually; however, it is less stringent than dual-nature entities, on whom there are directly imposed duties from the realm of public law on a fairly large scale. It is limited to the necessity of the service, and the need to provide it adequately. In fact, the intermediate approach, which has its origins in common law, lies at the basis of the concept of 'unreasonable refusal', as found in banking law. It reflects the primordial roots of our legislation. It is therefore clearly appropriate to apply to banks.'[26] (Emphasis added, the undersigned)

Additional operational duties may arise from the duty of good faith, such as, for example, the duty of disclosure towards the customer, which we will expand upon later in this article.[27]

Year in review

Recent cases

In this part of the article, we will review several issues that have arisen in case law in recent years within the ambit of civil litigation involving banks. We will discuss the main lessons that can be drawn from the case law and its effects, from a forward-looking perspective, on the development of banking litigation in Israel.

Class actions as a procedural tool

One key influential tool on the practical development of Israeli banking law is the class action suit. The Class Actions Law allows, among other things, the filing of a class action suit against a banking corporation 'in connection with a matter between it and the customer, regardless if they entered into a transaction with it or not'.[28] This speaks of a mechanism that enables overcoming the spread of damage and lack of incentive for individual customers to litigate, and therefore constitutes a persistent platform for litigating issues involving disputes on fees, tariffs and various service practices provided by banks.

Case law in recent years has resulted in several interesting procedural developments. We review below some of the most salient rulings in this regard.

The dismissal of motions seeking class action certification out of hand remains the exception, but recent cases demonstrate that a lack of good faith on the part of applicants, or abuse of the legal proceeding, may prove costly in a dismissal out of hand suit.

As a rule, a motion seeking class action certification is a preliminary proceeding, and the courts tend to be cautious of dismissal out of hand, except when it is clear, on the face of things, that the proceeding is futile (whether due to lack of a cause of action or owing to abuse of the legal process).[29] At the same time, recent case law has shown a certain willingness to dismiss out of hand, in cases of extreme bad faith, abuse of the proceeding, a recycling of claims and absence of a personal ground, particularly where the basic factual picture points to manipulation or concealment on the part of the applicant. From our perspective and experience in frequently representing banks in class action proceedings, this is a procedural tool that can be viewed as particularly effective in the defence strategy.

Thus, in case law discussing the collection of fees in the context of foreign trade, a motion seeking class action certification was dismissed out of hand due to the applicant's extreme lack of good faith. This, among other things, is owing to a misleading and artificial representation that was made regarding the nature of the activities carried out by the applicant (as a private person) when in fact they did so as a commercial importer, in an account intended for their import activity. The court emphasised that there was nothing wrong with the applicant carrying out various actions in order to establish the cause of action, but rather in concealing the nature of their actions from the court.[30]

In another case dealing with the reimbursement of third party expenses in foreign securities, a motion seeking class action certification was dismissed out of hand because it repeated (according to the court) arguments that had been rejected in a previous proceeding, and also because, in practice, the applicant's arguments in the motion seeking class action certification establish a linkage to those raised by the applicant in the previous proceeding, in a way amounting to "estoppel".[31] In these circumstances, the submission of an additional motion seeking class action certification was recognised as an abuse of the legal process; in any event, *res judicata* was found to exist, thereby constituting justifiable grounds for dismissal out of hand.

In an additional case, a motion seeking class action certification was dismissed out of hand when it became clear that the applicant, a non-profit association (*amuta*), did not point to a representative plaintiff having a real personal cause of action, and it appears that the proceeding was instituted for the purpose of promoting foreign goals (such as raising money for the association), while reiterating claims that had been denied in the past.[32]

The court cannot compel a settlement in a class action suit

Many class action proceedings in Israel end in a settlement, whether by way of a settlement agreement constituting *res judicata* with respect to the grounds raised in the certification motion or by a withdrawal arrangement of some kind. In one Supreme Court case, the parties negotiated a settlement agreement. These negotiations ultimately led to a motion to approve the settlement agreement that was filed with the court. However, due to repeated objections by the Attorney General of Israel, in both the initial version and the amended version that was thereafter submitted by the parties, the parties were unable to agree on wording that would satisfy the requirements of the Attorney General of Israel, and at a subsequent stage, the handling of the class action suit against the bank was approved. In the motion seeking leave to appeal that the bank filed with the Supreme Court, it was argued that the form of settlement agreement should be enforced on the applicants since, according to the bank, they had acted “unilaterally and in bad faith” and ultimately withdrew from the negotiations. The Supreme Court harshly criticised this argument and clarified that a settlement agreement that is not approved by the trial court cannot be enforced on the parties thereto.[33] It was further clarified that the applicants’ refusal to agree to further amendments does not, in and of itself, constitute a lack of good faith in managing the affairs of the class.[34]

The proceeding demonstrates the risk involved in negotiating a settlement in class action proceedings, a risk that is not unique to the banking sector. Even when the parties reach an agreed outcome, it still requires judicial approval and is subject to objections from various factors, including regulators, the Attorney General of Israel and members of the class. Failure in the negotiations could lead to approval of the motion seeking class action certification, and generally, this would not be an obstacle for the applicants, even if they objected to continuation of the negotiations.

Indirect damages and expansion of the circle of plaintiffs

A recent Supreme Court ruling dealt with a motion seeking class action certification that was submitted against a number of foreign banks due to their role in the worldwide scandal involving prohibited collusion, which became known as the “LIBOR manipulation” scandal. The foreign banks made various adjustments that allegedly led to deviations in the LIBOR rate and notably impacted the value of financial assets. In the ruling, it was determined for the first time, that savers, indirect victims who invested their money through institutional investors and who allegedly suffered a financial shortcoming because the institutional investors passed onto them some of the damage resulting from the prohibited collusion, are entitled to file a class action suit for the damages caused to them as a result of the restrictive arrangement.[35]

It was nonetheless established that those savers, whose damage stemmed from that caused to the institutional investors with whom they had deposited their money, have a possible cause of action only in “exceptional and special” cases, and after having approached the direct injured party, the institutional investor, to exhaust its cause of action. It was further clarified that priority should be given to the fact that the motion seeking class action certification should be filed by the direct injured party, the institutional investor. This rule remains in place after the request for a further hearing was denied by the President of the Supreme Court.[36]

The regulator's approach, that led to amendment of the unlawful collection of fees by the bank, could result in dismissal of the motion seeking class action certification that is thereafter filed.

It has been determined in a ruling that when a bank ceased to make unlawful collections and began to credit customers from whom overpayments were collected not due to class action proceedings but following a former approach of the regulator, this could lead to the certification motion being struck out, without awarding the representative applicant and attorneys' fees to representing counsel.[37] In that same case, it was held that the cause of action was indeed exhausted, and that there was a benefit for the members of the class, but not due to initiation of the class action proceedings. From the perspective of banks, this ruling emphasises the importance of the direct connection in regard to the supervising array, and even more so the importance of identifying legal risk and preliminary signs, even prior to it materialising in class action proceedings. These statements are doubly true when the regulator is the one reaching out in connection with the bank's unlawful activities, an approach that, if not dealt with expeditiously, may actually enhance the legal risks that apply to the bank.

Examining these examples, it is clear that exposure to the risks associated with class action suits, exposure that increasingly applies to banks by virtue of their status and role in the economy, serves as a key tool for developing the law. As may be discerned, these proceedings are not just "banking-related cases": they continue to shape class action law itself, including the procedural framework characterising it, and by so doing have led to new developments in areas such as dismissal out of hand, good faith, *res judicata*, remuneration and attorneys' fees.

Interpretation of bankers' contracts

A banking contract is a contract for all intents and purposes, and therefore its interpretation is done in accordance with the general laws of interpretation, primarily unearthing the 'intention of the parties, as may be implied from the contract and the circumstances of the matter, but even if the intention of the parties is expressly implied from the language of the contract, the contract will still be interpreted according to its language.[38] However, case law has recognised that the uniqueness of banking contracts, which are complex and uniform, and often formulated in situations of power and information gaps, sometimes justifies the use of more 'stringent' interpretative tools.[39] In Israel there is no real separate doctrine of banking contract laws that is detached from the general law of contracts, where the interpretation of banking contracts is done using tools provided by the general law of contracts. Nonetheless, every now and then, an interpretation is done with special sensitivity to asymmetry between the parties, depending on the circumstances of each case.

In a Supreme Court ruling that dealt with the relationship between personal agreements and the general banking tariff, it was held that the default is that a personal agreement between the bank and the customer does not necessarily constitute "a closed package", ruling out additional benefits to which the customer is entitled by virtue of the bank's general tariff.[40] The significance of this ruling for our purposes is also the interpretative path taken by the Supreme Court. The ruling emphasises two significant interpretative tools in banking contracts: interpretation according to the objective purpose of the contract (a purpose largely involving reasonableness, economic logic and fairness); and the rule of interpretation against the drafter (the *contra proferentem* rule).[41] These entail two rules, which by their nature may make it more challenging for banks to establish their interpretative position in diverse proceedings.

Nonetheless, the courts have clarified that this does not speak of an "automatic interpretation" favouring the customer: the rules are applied when the language is not unambiguous and the circumstances justify it, and the allocation of risk implied in the contract must still be examined. It was thus held that the work of interpretation obliges balancing between the language of the contract, the circumstances and rules of interpretation that are unique to banking contracts:

> However, interpretation in favour of the customer should not be preferred blindly and detached from the context of the matter; the foregoing, where the language of the contract and the circumstances support the bank's interpretation, and thus also the allocation of risks undertaken by the parties, as emerges from the language of the contract. At the end of the day, the work of interpreting the banking contract necessitates a delicate balance between the usual rules of interpretation, the unique rules of interpretation and everything in between.[42]

In a general ruling (not necessarily banking-related) the Supreme Court reiterated this position, in a panel of three justices, and emphasised that the *contra proferentem* rule is applied only where there is genuine interpretative doubt.[43]

In a series of decisions, it is possible to identify the tendency of the courts to adopt a relatively critical approach when interpreting the norms that apply in bank-customer relations, out of recognition of the power gaps between the parties to the banking contract.[44] From our extensive experience as litigants, the classic contractual analysis, and particularly the language of the individual agreement, still has considerable weight. Nevertheless, linguistic ambiguity may increase the risk that the bank's interpretative arguments will be denied, among other things, due to the application of the rules of interpretation that operate, in appropriate cases, "against the drafter".

Practical insights for banking litigation (contract interpretation) include the risk of ambiguity: where contractual language reasonably supports more than one interpretation, banks face an increased likelihood of adverse interpretation, including through *contra proferentem*. When the 'objective purpose' analysis is not theoretical, and reasonableness, economic logic and fairness are often treated as operational interpretive tools. To help prevent future litigation, banks should conduct a document-mapping exercise: identify the hierarchy between individual agreements, standard terms, tariffs/price lists and subsequent customer communications; eliminate inconsistencies and gaps across the set.

Price list distinctions and classifying fees as supervised fees

One prominent issue discussed in case law in recent years concerns the fees charged for engaging in foreign currency activities, foreign trade and services involving interbank communication (eg, SWIFT). Case law in the area has reinforced the importance of distinguishing between two principal types of price lists on the strength of which the bank charges its fees: the Full Price List and the Short Price List. We will discuss these in brief.

Amendment No. 12 to the Banking (Service to Customer) (Fees)] Rules, [5768-2008] created a new framework for the supervision of fees, with the foremost component being "the Full Price List" as specified in the Banking (Service to Customer (Fees) (Amendment) Rules, [5784-2024] The Full Price List applies to individuals and small businesses but does not apply to large businesses. Regarding the former, there exists, by virtue of the Full Price List, a closed list of supervised services and fees, while regarding the latter, the pricing space is broader (but nonetheless still subject to contract laws, the duty of good faith and specific provisions of law).

This distinction between the two types of price lists, can also be ascertained from that stated in *Branovate*, in paragraph 2:

> Usually, the rate of the banking fee that is charged for foreign currency transfer activities is regulated in the bank's list of fees, in accordance with the provisions of section 5A of the Banking (Service to Customer), Law, 5741-1981 (hereinafter: the Banking Law). The provisions of the Law distinguish between 'small customers'—being individual customers and small businesses, and large businesses with an annual turnover of more than five million shekels. With regard to small businesses, chapter B2 of the Banking Law and the Banking Rules enacted thereunder, specify a condensed and closed list of services for which a bank fee is collected. This list is known as 'the Full Price List', and the bank is obligated not to charge its small customers fees not included therein or fees in amounts that exceed those presented in the Full Price List and schedule of benefits attached thereto. On the other hand, large business customers are not subject to the regulation specified in Chapter B2 of the Banking Law and the 'Full Price List of Fees for Large Businesses' applies to them, within the ambit of which the bank has discretion in determining the list of fees, their amount and rate, the benefits given with respect thereto and the like…As a result of this distinction, all banks in Israel have two types of price lists: the first, the Full Price List that applies to small customers; and the second, the bank's price list for large businesses that applies to large business customers.[45]

The question of classifying the legal dispute based on the price list at issue is a critical and preliminary one from our perspective as litigators. It can define the boundaries of the dispute, the normative framework in which it is conducted and the legal rules to which the parties are subject.

At the same time, case law distinguishes between two levels: the first level examines whether the Full Price List (which is limited to individuals and small businesses) applies, and includes a list of services for which the bank is entitled to charge fees. The second level examines whether a certain fee has been declared by the Governor of the Bank of

Israel as a "supervised fee". This declaration may also apply beyond the group of small customers, all according to the content of the regulation.[46]

Thus, for example, in one case in which the bank's price list for a large business (a Short Price List) was discussed, it was held that the transfer of foreign currency funds from the customer's account to an account maintained by the customer with another bank, is subject to supervision, but under the circumstances of this case, the banks had complied with the maximum fee as determined by the Supervision Department. Nevertheless, with respect to the receipt of foreign currency funds in the customer's account, it was clarified that this concerns a fee that is not supervised at all.[47] This demonstrates the huge importance of adapting the banks' price lists to accord with the evolving regulation that applies to them, while bearing in mind the type of price list and, particularly, the limitations imposed on the Full Price List, as well as the question as to whether the fee is supervised or not.

The bank's right to charge a fee

The bank may, of course, charge a fee. Pursuant to section 9J of the Banking (Service to Customer) Law, this charge is done, in the case of individuals or small businesses, based on rates or according to amounts as specified in the Full Price List:[48]

> A banking corporation shall not charge its customers a fee except for the service included in the Full Price List and in accordance with its provisions, or for a service that has been approved pursuant to the provisions of section 9I(e), and with regard to types of customers determined in accordance with section 9I(c)—for a service included in the Short Price List applicable to the types of customers as aforesaid and in accordance with its provisions.

When a banking corporation wishes to add services to the Full Price List or change them, it must act in terms of a statutory mechanism and submit a reasoned request to the Governor of the Bank of Israel in accordance with the terms prescribed in law.[49] The situation differs when it comes to customers to whom the Full Price List does not apply (especially large businesses, for whom a designated price list usually applies). In such situations, the bank has wider discretion in determining the fee rates and benefits.[50]

Even in the realm of pricing discretion, the courts point to business-economic logic as a basis for distinguishing between fees: allocation of resources, operating expenses, business risk and regulatory policies (eg, reducing the use of cash), may justify different pricing for different services. For example, the determination made by the Nazareth District Court in one case:

> Different costs, different allocation of resources, different business risk and the like are considerations that justify a distinction between the scope of fees charged for services provided by the bank—a distinction which the bank allegedly insisted upon in good faith and for clear reasons. Does the applicant indeed believe that only she has the right to choose which fee to pay, regardless of the operating expenses caused to the banking corporation for the provision of services in respect of every transaction, whatever its

> value?! It is clear that this is not what the banking rules and price lists (full and short) intended, and this is also inconsistent with underlying economic and business logic, and even contradicts regulatory policies in the context of reducing the use of cash.[51]

A series of decisions on motions seeking class action certification, filed by one applicant with three different district courts, enlightens us about the nature of the bank's right.

One of the recurring issues in banking litigation in Israel in recent years is the fees that are charged for foreign currency activities, engaging in foreign trade and providing services associated with interbank communication (such as SWIFT). Three proceedings seeking class action certification, filed by that same applicant, clarify the basis for the fees charged by the bank.

Thus, for example, *Cyberlogic 1* dealt with the allegation that banks collected fees from large businesses, contrary to law and in addition to those specified in the price lists, when those businesses transferred foreign currency from their account at one bank to their account at another bank. It was also asserted, among other things, that, contrary to law, the banks charged the SWIFT fee, a fee that was cancelled by the Banking Supervision Department already back in 2008, in addition to the foreign exchange transfer fee.[52] The court partially accepted the applicant's allegations and held that, as distinct from the Full Price List, it is not forbidden to charge the SWIFT fee in relation to large businesses. However, in the court's view, this entails an expense and not a fee that is charged for an additional service that is provided in the form of the SWIFT system, and therefore, its alleged charge, separately and in addition to the foreign exchange transfer fee, is contrary to law.[53]

In *Cyberlogic 3*, the applicant raised slightly different allegations. The main ones were that it was charged a foreign exchange transfer fee based on that part of the price list dealing with foreign trade, at a higher rate than would have been charged if it had been done based on that part of the price list dealing with foreign currency; and that the charge for the SWIFT fee was unlawful. Regarding the first allegation, it was held that the fee the customer will be charged should be determined according to the nature of the service and not according to the nature of the activity.[54] Since, in that case, it was determined that the fee was charged due to the import of goods, as the applicant herself had informed the bank that she intended to engage in foreign trade, this allegation was also rejected. As an aside, the court discussed the rationale behind this decision:

> The applicant desires that we examine the services provided by the bank within the ambit of the actions performed and services provided by it. […] This allegation is not a threat. The bank charges fees for actions. In our case there are two similar actions: the first, a 'regular' transfer of foreign currency that is unrelated to importation. The second, the transfer of foreign currency for importing goods into Israel, within the framework of a non-complex payment known as 'an open account payment.
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> Even if within the ambit of the open account payment, the bank need not 'make more of an effort' or provide many more services beyond the 'regular' transfer of foreign currency, there is no impediment to the bank charging a different fee for each of the two actions. This is its right.

> If this is not spoken for, then it would open the floodgates to arguing that the service provided by the bank for every action reflected in the price lists should be examined, in order to compare it with other actions referred to therein, and to then argue that the obligatory fee for one of the actions is too high, since the service provided for it is not comparable to the service provided for another action, whose fee is cheaper.
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> There is no end to this, of course, and it is clear that this was not the purpose of the price list.
>
> Charging a fee based on the nature of the activity performed by the client is 'clean', clear and correlates with the provisions of the price list, which stipulates the activities carried out by the customers and the fees charged therefor. The price list does not refer to the nature of the service that is provided by the bank, its scope, cost, etc, and there is certainly no room to examine each and every fee, nor the investment, time and money, invested by the bank in performing the action, and based on this outcome to determine whether the amount of the fee is appropriate or inappropriate. This kind of way of thinking will lead to absolute uncertainty with regard to fees which the customer will be charged, and may create chaos.' (Emphasis added—the undersigned)

Regarding the second issue, related to the lawfulness of collecting the SWIFT fee, the court held, similarly to *Cyberlogic 1*, that the bank is entitled to collect the SWIFT fee from a customer that is a large business. Nonetheless, and as distinct from *Cyberlogic 1*, it was held that the bank laid down an evidentiary basis, that was not concealed, demonstrating that the SWIFT fee was charged due to a separate and distinct service, involving many costs and resources, and that the banks are entitled to include, within the ambit of this fee, also the expenses paid by them to a third party, if indeed negligible (and are indeed negligible). An appeal of the ruling in *Cyberlogic 3* is currently pending before the Supreme Court.[55]

In *Cyberlogic 2*,[56] which was brought before the Haifa District Court, a similar allegation was discussed, whereby the bank may not charge, whether in the form of a fee or by a reimbursement of expenses, beyond the actual expense incurred for SWIFT. The court held, contrary to the decision in *Cyberlogic 3*, that the bank was unable to demonstrate, neither by the presentment of evidence nor by an affidavit submitted by it, that the despatch of SWIFT messages constitutes a separate and distinct service that the bank provides to the customer, and thus entails a service ancillary to the transfer of funds. In these circumstances, it was held that the bank may indeed charge a payment for SWIFT, but it must fall within the scope of the expense actually incurred when sending the SWIFT message, and there is no impediment to these expenses being included as expenses ancillary to despatch of the message, such as the cost of the bank's systems needed for transmitting the messages, the cost of manpower engaged in the transmission of messages, etc. In this case, it was clear that the charge was collected without calculating the bank's actual expenses, and for that reason, the court approved the claim as a class action.

In a previous case adjudicated in the Central District Court,[57] it was held that when the bank charges its customer third-party expenses (and in the same case, broker and clearing (custodian) expenses), it must do so in an amount that does not exceed the actual expense incurred by the bank. To the extent that the bank receives benefits from a third party, it must "roll them over" to the customer and not leave them in its hands, so that the charge does not then reflect the bank's "actual expenses" in a way that contradicts the provisions of the Full Price List.[58]

A review of the case law reveals that much importance is placed on the evidentiary basis which the bank presents before the court in relation to the fees charged by it. The bank must fully elucidate in terms of which section in the price list the fee has been charged, what its rate reflects and whether it reflects a "separate service" or an expense incurred while providing another service. Engaging in a banking litigation case obliges us, as lawyers, to accurately partake in a "normative mapping" of arguments and of the law, already from the outset. In Israel, this mapping entails, among other things, making an initial distinction between the Full Price List and other price lists; classifying the fee as supervised or not; and ascribing the charge to the specific section in the price list that allegedly represents the provision of a distinct service.

Practical insights for banking litigation (regarding fees and price lists) include: (1) start with classification: the first defensive move is a normative mapping of the fee, which price list applies (Full Price List versus other price lists), whether the fee is supervised and how the charge is anchored to a specific tariff item; and (2) evidence frequently drives outcome: banks should be prepared to explain what the fee reflects (a distinct service versus an expense ancillary to another service) and to support this with affidavits, internal processes and documentation.

Disclosure duty owed to the customer

The disclosure duty applicable to Israeli banks is based on two fundamental principles: (1) the increased duty of good faith in bank–customer contractual relations, in light of the information and power gaps; and (2) the fiduciary duty deriving from the nature of the bank–customer relations and the customer's reliance on the bank's expertise.[59] The scope of the duty depends on the context and is determined based on the circumstances of the case. As emerges from recent case law in the realm of banking litigation, the deliberations do not only address the question of whether the information was provided but also how it was provided, in other words, whether the disclosure was effective and satisfied the notification requirement.

In this context, reference is made to a recent decision of the Tel Aviv District Court, which approved a settlement in a motion seeking class action certification that addressed the claim of a breach of the disclosure duty on the part of credit card companies: it was asserted that customers were not sufficiently updated about the termination of a benefit (exemption from credit card fees) and when the collection of credit card fees begins. In practice, the notice was "embedded" in the margins of the billing statement, without being separated from the current information. While approving the settlement, the court clarified that furnishing the information in an obscured way does not satisfy the disclosure duty, and emphasised that even though this does not involve a change in the transaction price (since it does not concern an increase in the rate of the fee), "it still speaks of important information with regard to termination of the fee-exemption benefit and the beginning of it being charged, in a way necessitating that clear notice of this be given". The settlement was approved after the companies undertook to provide notice about the anticipated end of the benefit and the beginning of charge of the fee on a separate and clear page, a fact illustrating the fundamental yardstick that the ruling purports to highlight: disclosure must be planned so that the customer notices it in practice, and does not merely "discover it" in a document.[60]

Another arena in which the question of the scope and manner of disclosure has sharpened in recent years is the collection of third-party expenses in foreign security transactions, and particularly broker and clearing (custodian) expenses. These entail expenses that vary according to third parties. In one case, the District Court held that it was appropriate to improve the title included in the price list of one of the banks (third party securities expenses) so that it would more poignantly reflect that it concerns, for example, custodian clearing expenses, and there was even raised the possibility of specifying an expense ceiling in the price list (and not being satisfied with information at the "due diligence" stage). Nevertheless, it was held that in the circumstances of the case, this does not, in and of itself, justify conducting a class action suit against the bank, among other things, because the charge was done as part of the securities deposit management fee and also because due to the nature of such expense, it is not always possible to specify an exact amount in advance. In any event, it was emphasised that although expenses collected by virtue of the price list must be "real" pursuant to law, there are types of expenses (including third-party expenses) that sometimes do not allow for pricing in advance, and this has repercussions on the scope of the duty to provide details as required in the price list.[61]

In *Samucha*, the claim was discussed that the banks charge their clients broker and clearing (custodian) expenses in breach of the disclosure duty, since, as asserted by the applicant, they should have published in the price list the actual expense and its rate, and at least its maximum rate. In practice, the banks' price list included a reference to these expenses under the chapters titled "Third Party Expenses", in various forms. The court held that in the circumstances of the case, the presentation of such expenses in the price list was sufficiently clear and added (as in *Gutman*) that it is unreasonable to demand that the banks specify in the price list the amounts of expenses where the bank cannot know, in advance, the amount of the third-party expense that will actually be charged in a specific transaction. Alongside this, weight is given to the overall framework of disclosure in that case: the banks specify in the account-opening documents that it is possible that third parties will be used to carry out a transaction in securities and that the customer will bear the associated expenses; and that, before carrying out an action in securities the customer is referred to concrete information in relation to third party expenses in the relevant transaction. Thus the courts examine fulfilment of the disclosure duty broadly, when looking at all the stages of the transaction, and not necessarily based on a single document.

Case law illustrates that when examining compliance with the disclosure duty, weight can also be given to the normative source establishing that duty. Thus, for example, the Tel Aviv District Court rejected two motions seeking class action certification that addressed the claim that the banks should have disclosed to their customers that, based on a directive issued by the Israel Tax Authority, a credit will not be given for all foreign taxes deducted from income sourced from foreign dividends. The applicants based their motion largely on the general duty that banks owe their customers (and particularly the duty not to mislead them), but the court instead focused the discussion on the relevant regulation in the Income Tax Regulations and held that it does not impose an additional disclosure duty beyond issuance of the certificate and sending same to the customer, nor does it require particularisation beyond that stated in the certificate. It was accordingly held that

> the banks need not proactively disclose all available information possible, but only information they are obliged to disclose based on the guidelines of the various regulatory bodies or, alternatively, information whose failure to disclose may mislead the customer.

In addition, the court distinguished between the duty to disclose in regard to ordinary customers, in relation to current account activities and managing a basic account (where the banks must make a considerable effort to make information accessible to the customer) and investment activities in foreign securities, which are more characteristic of sophisticated customers and may affect the scope of disclosure required of the bank.[62]

Practical insights for banking litigation (and recommendations for ensuring appropriate legal risk management) include: (1) focus of the risk is not only placed on the very existence of disclosure, but also on its effectiveness, "sophisticated" disclosure in a routine document or in an area that does not draw attention may be considered a failure, even if information is formally provided; (2) in claims relating to fees and third party capital market expenses, the courts tend to examine the "chain of disclosure" cumulatively: price list, framework agreements and specific disclosure before action. Banks and credit card companies that can demonstrate consistency between the three levels (with particular emphasis on this before the actual charge) are expected to be in a better position in class action proceedings; (3) where a specific legal framework exists (such as in tax law), the courts will be reluctant to broaden the disclosure duty on the strength of general principles only, unless the non-disclosure of information creates operative deception or underrepresentation as to the bank's role or the cost of the service; and (4) distinguishing between types of customers is not only a "background" argument, but sometimes a decisive component when analysing the duty: to the extent the product is more complex and the customer more sophisticated, the weight of the specific disclosure before taking action at the expense of "general explanations" in the price list will be greater.

Unreasonable refusal and essential services

Israeli law imposes a duty on a banking corporation not to unreasonably refuse the provision of specific banking services that are deemed essential (for example, opening and managing a current account and receiving a deposit). This duty is enshrined in section 2 of the Banking (Service to Customer) Law and reflects the perception of the bank as a provider of essential services to the public. The statutory starting point is pro-consumer, but the duty is not unqualified.

The starting point is that the bank is required to provide essential services to a customer wishing to obtain them, unless there is a practical reason justifying its refusal. The onus for proving that the refusal is reasonable is on the bank.[63] Refusal may be deemed reasonable, among other things, where there is real concern of inappropriate conduct, negligence or action creating a significant risk (such as money laundering, engaging in terrorism and speculative activities), or an action representing inappropriate behaviour (such as violence or concern of violent behaviour towards an employee of the bank). Setting unreasonable conditions for providing the services may be deemed an unreasonable refusal.

It appears that cases dealing with the refusal to provide banking services focus not only on the question of the existence of a reasonable ground for the refusal, but also how the concern was "translated" into a procedure and actions on the part of the bank: was an orderly clarification process conducted; whether the customer was aware in a way that allowed them to respond; were less damaging alternatives considered; was sufficient documentation retained that would allow the court to examine the reasonableness of the decision retroactively, etc.

A vast portion of the litigation surrounding the refusal to provide essential services stems from structural tension between the duty to provide the service and the duty imposed on the bank in the realm of combatting money laundering and the financing of terrorism (AML/CTF). In several rulings, the Supreme Court has held that where there is a reasonable basis to assume that the requested service may serve as a cover for carrying out prohibited activities related to money laundering, the bank's refusal might be reasonable. The same applies when it comes to combatting the financing of terrorism, and particularly in wartime.[64]

In one case that recently reached the Supreme Court's doorstop, the court maintained that a number of typical "red flags" that justified reinforcing the bank's stance or its refusal to provide services: missing or defective "know your client" forms (the KYC questionnaire), absence of necessary documents, lack of economic rationale in account transactions, unusual activities in the account and the transfer of inauthentic documents or those that were completed retroactively.[65]

Questions of refusal to provide banking services due to suspicion of money laundering or the financing of terrorism are of particular importance during wartime. Thus, for example, in recent case law, a motion for interim relief challenging the blocking of bank accounts of non-profit associations (*amutot*) was denied, where an evidentiary basis was presented showing ties with bodies operating in enemy countries or for transferring funds abroad without being able to effectively supervise and monitor the use of such funds.-[66] In another case, a motion seeking temporary relief ordering the bank to allow the applicant, a non-profit association affiliated with the Hamas movement, to continue to operate its bank account was denied. This was after the bank had presented an alleged basis pertaining to the non-profit organisation's ties with bodies affiliated with the Hamas terrorist organisation as well as regarding the collection and transfer of funds outside Israel for suspicious purposes.[67] Decisions of this nature clarify that the courts bestow considerable weight on the bank's duties within the context of combatting the financing of terrorism and money laundering, and sometimes prefer to avoid interfering in banking discretion. During this period, these principles have been further reinforced due to the ongoing war.

On the other hand, in another decision the focus of which also concerned a non-profit association, it was clarified that the bank is not the "long arm" of the state when enforcing any criminal law, and that the non-profit association's positions or publications on the social networks are not necessarily a relevant consideration for blocking a bank account; this being distinct from concrete findings related to money laundering or the financing of terrorism.[68] Cases of this nature teach the appropriateness of distinguishing between moral discomfort from the actions of a specific customer and indications of prohibited activity that justify the exercise of the bank's supervisory duties under law.

The line of ruling, thus, illustrates a delicate balance: on the one hand, access to essential banking services is a condition for economic and social functioning; on the other hand, banks have supervisory duties and the legal system recognises that in cases of real concern, the bank must have leeway to prevent abuse of the financial system. In times of crisis, the court must manage this complexity with extreme sensitivity while maintaining the balance between the essentiality of the banking services and risk management needs.

Global developments are increasingly influencing banking legislation in Israel. In recent case law, refusals to provide banking services or restrictions on activities against the backdrop of international sanctions imposed on customers have been discussed, and recognition was given to the possibility of those sanctions constituting a practical and reasonable ground for refusal, among other things, due to the banks' dependence on the international financial system and correspondent banks.[69]

In one case that dealt with international sanctions as a consideration for refusing to provide banking services, the Tel Aviv District Court rejected a lawsuit filed by an Israeli and Russian citizen, directed against the bank's decision to restrict activities in his account as a consequence of his inclusion in the UK and Canadian sanctions lists, against the backdrop of the Russia-Ukraine war.[70] In another case, which was adjudicated in the Supreme Court, an appeal on a similar decision was denied, which left the bank's decision not to allow a person's donation to one of the Israeli search and rescue organisations intact, because he was included in the UK EU sanctions lists. The Supreme Court held that compliance with international sanctions may justify the refusal to transfer funds and accepted the bank's position that it acted "within the realm of the management of international financial activities, in general and proper business relations with correspondent banks, in particular and in light of the expected oversight in the matter", which was supported by the regulator's directives and position of the Attorney General of Israel in the proceeding cited below.[71]

Prior to concluding our discussion on the refusal to provide banking services, it should be clarified that not every refusal is anchored in the bank's AML or CTF-related supervisory duties. Violent or threatening behaviour on the part of a customer, the furnishing of fraudulent information or particularly unusual financial conduct may also justify the refusal to provide banking services. A Supreme Court ruling clarifies that the basis for such refusal does not require a criminal decision or satisfying the burden of persuasion that a criminal offence has been committed. The bank must show that the concern of the customer's aggressive and threatening conduct satisfies both the subjective and objective tests. According to the subjective test, the bank must demonstrate that there is concrete and real concern amongst the bank's employees, and according to the objective test, the bank must present a credible factual basis for the concern (for example, incidents that actually happened or information received from the bank's security officer). This is an important ruling from the perspective of banks: it emphasises the importance of documenting unusual incidents in order to protect the bank and its employees but also clarifies that the refusal to provide banking services cannot be based on rumours or prejudice.[72]

Recent legislative developments

In recent years, a number of legislative moves have been identified that reflect two parallel trends: reinforcing the supervision and duties that apply to banks, and particularly, disclosure duties; and adapting the legal framework to align with the structural reforms and entry of new financing players. Some notable examples of recent legislative changes include:

- The Banking (Service to Customer) Law (Amendment No. 39), 5785-2025, which imposes a duty on banks to notify a customer (an individual) whose account has a credit balance exceeding 15,000 shekels for at least a quarter and provide them with information on alternative investment possibilities that could yield a higher return.
- The Banking (Service to Customer) Law (Amendment No. 38), 5785-2025, which provides that the largest banks in the economy must allow customers of all banks to open a deposit with them in Israeli shekels, without needing to open a current account at the bank.
- The Banking (Service to Customer) Law (Amendment No. 37), 5784-2024, which enshrines the duty of banks (as well as credit card companies) to proactively inform customers of the termination of banking benefits that are given to customers or of changes in the benefits period, where such changes were agreed in advance.
- The Banking (Licensing) Law (Amendment No. 32), 5784-2024, which authorises the Supervisor of Banks or an employee of the Bank of Israel authorised by the Supervisor of Banks, to approve the request of a banking corporation to close a permanent bank branch or to object to its closure. It also provides that, in addition to the duty to notify about the closure of the branch in writing and by other available means, the banking corporation must publish a notice about the closure of the branch on its website.
- The Banking (Licensing) Law (Amendment No. 31), 5784-2024, which expands the prohibition that applies to banks to control a credit card company, such that it will also apply to a medium-sized bank, aiming to foster competition in the credit market.

Outlook and conclusions

In recent years, the Israeli banking system has undergone significant changes stemming from technology,[73] regulatory reforms, and national and international crises. These are not only background changes: they actively shape the normative framework and day-to-day expectations from banking corporations and, in turn, fuel new disputes and hone old ones, ranging from the charging of fees and the determination of price lists, through the interpretation of banking contracts, and extending to refusal to provide banking services in the shadow of AML/CFT obligations, international sanctions and heightened risk sensitivity. These developments underscore the increasingly multi-layered character of Israeli banking litigation: outcomes are often determined not only by general contract or tort doctrines, but also by the interplay between dedicated banking legislation, intensive administrative regulation (including Proper Conduct of Banking Business Directives) and evolving case law, which continues to fill gaps and define the boundaries of accountability.

Although our review does not address all recent case law updates, it nonetheless includes notable decisions and rulings which, in our view, collectively reflect current trends in Israeli banking litigation and the legal-regulatory environment in which it evolves.

First, the case law reflects an ongoing effort to clarify and, in many settings, enhance the duties owed by banks towards their customers (and, in certain circumstances, third parties) – principally through the fiduciary duty, the duty of care and the duty of good faith – while maintaining a degree of flexibility that allows the scope of those duties to adjust to the concrete circumstances, including the type of service, the type and sophistication of the customer, and the customer's degree of reliance on the bank.

Second, much of the litigation in recent years suggests that banking disputes may be becoming increasingly "operational" in nature: courts often scrutinise not only the legal rule in the abstract, but also the process by which the bank reached its decision and implemented it.

Third, recent decisions in fee-related disputes highlight the centrality of a preliminary "mapping" exercise: identifying which price list applies (Full Price List versus other price lists), whether the fee is supervised, whether the charge reflects a distinct service or an expense related to another service, and how each charge derived from to a specific tariff item.

Fourth, the evolving jurisprudence on informing (disclosure) demonstrates a shift from "formal" disclosure to "effective" disclosure: the analysis often turns not only on whether information was provided, but whether it was designed to be noticed and understood, assessed across the chain of disclosure (price lists, framework agreements and transaction-specific communications).

Fifth, the duty to provide essential services continues to be a source of friction, particularly where it intersects with AML/CFT obligations, wartime realities and international sanctions. The emerging guiding principle is that refusals (or restrictions) are assessed not only by reference to the existence of "red flags", but also by reference to the proportionality and procedural integrity of the bank's clarification process, such as consideration of less harmful alternatives, and documentation.

A further key driver shaping the practical development of Israeli banking law is the class action proceeding, which remains a central mechanism for testing banking practices at scale and for clarifying and further developing procedural doctrines (including good faith, res judicata, dismissal out of hand, and the approach to remuneration and attorneys' fees).

Looking ahead, courts will continue to be a key player in shaping banking law, in constant dialogue with regulation and supervisory positions in concrete disputes. Practically speaking, banks seeking to reduce legal risk exposure and improve litigation posture should invest in (1) coherent contractual wording and clear hierarchy between the different contracts; (2) disclosure mechanisms; and (3) disciplined documentation and evidence creation.

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Endnotes

1 The Companies Law, 5759-1999; the Banknotes Ordinance [New Version]; the Contracts Law (General Part), 5733-1933 (the Contracts Law); the Agency Law, 5725-1965; the Guarantee Law, 5727-1967; the Pledges Law, 5727-1967; and the Class Actions Law, 5766-2006 (the Class Actions Law). ^ Back to section

2 The Banking Ordinance, 1941; the Banking (Licensing) Law, 5741-1981; the Banking (Service to Customer) Law, 5741-1981 (the 'Banking (Service to Customer) Law'); the Payment Services Law, 5779-2019; and the Fair Credit Law, 5753-1993. For this division in case law, *see* LCivA 9617/16 *Israel Discount Bank Ltd v Lapiner*, Judgment 17 (28.10.2018) (*Lapiner*). ^ Back to section

3 Cl.A (TA DC) 22486-04-20 *Cyberlogic Ltd v Bank Leumi le-Israel BM*, Judgment 132 (7 September 2023) (*Cyberlogic 1*). *See* also *Lapiner*, paragraph 18. ^ Back to section

4 Section 4(7) of the Bank of Israel Law, 5770-2010. ^ Back to section

5 These powers include ongoing monitoring, performance and risk assessment, and locating and rectifying shortcomings, as well as the authority to decide on consumer complaints and address systemic shortcomings. ^ Back to section

6 These powers relate to the rectification of shortcomings that may, in the Supervisor's opinion, endanger the stability of the supervised corporations or impair the proper management of their business (as detailed on the Banking Supervision Department's website, these powers are quite extensive: 'The range of tools fluctuates between sending a demand to rectify shortcomings, including preventing harm to customers, by issuing an order to refrain from activity, up to dismissal of the management of the supervised corporation, while appointing an authorised manager on behalf of the Bank of Israel in its place'), as well as the authority to impose a monetary sanction on a supervised corporation. ^ Back to section

7 *See*, for example, the Banking (Service to Customer) (Due Disclosure and Provision of Documents) Rules, 5752-1992; the Banking (Service to Customer) (Advertisement Aimed at Minors) Rules, 5755-1995; the Banking (Service to Customer) (Transfer of Financial Activity of a Customer among Banks) Rules, 5770-2019; the Banking Ordinance (Service to Customer) (Supervision of Basic Service Track), 5774-2014; Proper Conduct of Banking Business Directive No. 400 issued on behalf of the Bank of Israel on the Closure of Bank Branches and Downsizing of Teller Services; Proper Conduct of Banking Business Directive No. 350 issued on behalf of the Bank of Israel on Operational Risk Management; Proper Conduct of Banking Business Directive No. 411 issued on behalf of the Bank of Israel on Anti-Money Laundering and Countering Financing of Terrorism Risks and Customer Identification; Proper Conduct of Banking Business Directive No. 417 issued on behalf of the Bank of Israel on the Activity of a Banking Corporation in a Closed System, etc) ^ Back to section

8 *See*, for example, Cl.A (Cent. DC) 58831-01-18 *Ronen v Bank Hapoalim BM*; Cl.A [(TA DC)] 42822-09-18 *Gutman v Mizrahi Tefahot Bank Ltd* (6 June 2023); *Cyberlogic 1*. ^ Back to section

9 LCivA 8022/22 *Bank Leumi le-Israel BM v the Estate of Ayala Malka Mimon of Blessed Memory,* paragraph 30 (10 January 2024) (*Mimon of Blessed Memory*). ^ Back to section

10 CivA 4880/19 *The First International Bank of Israel Ltd v Gesundheit*, paragraph 81 (18 July 2022) (*Gesundheit*). *See* also the Tel Aviv District Court ruling: CivC (TA DC) 2398-06 *Alum Gold Ltd v Yitzhak* (9 August 2015). ^ Back to section

11 LCivA 6810/21 *Bank Leumi le-Israel BM v Branovate Ltd*, paragraph 15 (20 October 2022) (*Branovate*); *Lapiner*, paragraph 17. *See* also CivA 8098/09 *Cohen v Union Bank of Israel Ltd - Hadera Branch* (3 January 2012) (*Cohen*). ^ Back to section

12 *Gesundheit*; LCivA 2119/18 *Erez Wood Industries Ltd (in Liquidation) v Mercantile Discount Bank Ltd Hadera Branch*, paragraphs 24-25 (14 May 2018) (*Erez Wood Industries*); *Cyberlogic 1*. ^ Back to section

13 *Gesundheit*. ^ Back to section

14 CivC (Nz. DC) 56351-12-20 *Bnei Adel Jabali Earthworks and Development Company - Nazareth Ltd v Bank Leumi le-Israel BM*, paragraph 42 (10 March 2024). ^ Back to section

15 Cl.A (Cent. DC) 11516-11-17 *Nahor v Mizrahi Tefahot Bank Ltd* (30 August 2020). ^ Back to section

16 CivA 5893/91 *Tefahot Israel Mortgage Bank Ltd v Tzabach* (11 April 1994). ^ Back to section

17 *See* one recent case CivC (TA MC) 11588-09-16 *Rananit Investments Ltd v Mizrahi Tefahot Bank Ltd*, paragraph 11 (27 October 2024). ^ Back to section

18 *See*, for example, recent cases: CivA (TA DC) 33958-03-23 *Panker v Bank Leumi le-Israel B.M.* (29 July 2024) (*Panker*); CivC (TA MC) 14317-01-18 *The First International Bank of Israel Ltd v Daniela et al* (15 February 2023). ^ Back to section

19 *See* CivA 168/86 *Union Bank of Israel Ltd v La Codiere Ltd*, Judgments 42(3) 77 (1988); CivFH 10512/04 *Agudat Israel Workers Bank Ltd (Pagi) v Executor of the Estate of the Late Chaya Opalger of Blessed Memory*, paragraph 11 (19 January 2005); and of recent: *Panker*. Where the court considers the customer's obligations within the ambit of the 'contributory fault (negligence) doctrine', *see* CivC (Cent DC) 30399-02-10 *Wai Kwan Investments Limited v Bank Hapoalim BM* (6 October 2013). ^ Back to section

20 CivA 8068/01 *Ayalon Insurance Company Ltd v Executor of the Estate of the Late Chaya Opalger of Blessed Memory*, Judgments 59(2) 349, 370-371 (2004). ^ Back to section

21 *See* CivFH 1740/91 *Barclays-Discount Bank Limited v Frost Kustman*, Judgments 7(5) 31, 64 (1993); CivC (Cent DC) 10629-02-10 *Sanwa (1984) Ltd v Bank Hapoalim BM*, paragraph 16 (29 November 2012). ^ Back to section

22 Objection to Request to Enforce Claim (Jer. MC) 76117-05-25 *Bank of Jerusalem Ltd v Vaknin*, paragraphs 8-9 (24 November 2025). ^ Back to section

23 CivC (Ram. MC) 8315-04-20 *Zohar Weiss v Misrahi Tefahot Bank Ltd* (3 September 2025). ^ Back to section

24 *Erez Wood Industries*, paragraph 29. ^ Back to section

25 *See* sections 12 and 39 of the Contracts Law. ^ Back to section

26 CivC (TA DC) 8487-05-22 *Davidowitz v Bank Hapoalim BM*, paragraph 43 (3 September 2025) (*Davidowitz*). ^ Back to section

27 *See* CivC (TA DC) 47277-05 *Levi v Euro-Trade Bank Ltd* (4 December 2016). ^ Back to section

28 *Ibid,* in section 3 of the Second Addendum. It should be noted in this context that the wording is broadly drafted. The wording that preceded it facilitated the filing of a class action suit only on grounds enumerated in the Banking (Service to Customer) Law or in rules established by virtue thereof. This too expanded, in recent years, the scope of banking litigation involving banks. *See* in greater detail: Ruth Plato-Shinar Banking Law: the Bank's Fiduciary Duty, 501-508 (2010). ^ Back to section

29 Cl.A (TA DC) 15799-11-23 *Cyberlogic Ltd v Mizrahi Tefahot Bank Ltd* (1 November 2024). In another case, the Supreme Court held that even where the applicant's conduct 'evokes discomfort', this will not be sufficient to justify dismissal the motion seeking class action certification out of hand. According to the court, 'it should be remembered that there is nothing wrong with an initiative whose purpose is to file a class action proceeding for economic reasons, as long as it does not involve unfair ploy *in regard to* the defendants'. *See* LCivA 7934/23 *Israel Discount Bank Ltd v Samucha* (30 May 2024). ^ Back to section

30 The bank's request seeking dismissal of the motion for class action certification out of hand was accepted, among other things, after a basis was presented showing that the bank used a designated system when carrying out the foreign trade activities, and therefore collection of the fee with respect to 'foreign trade' (instead of the 'regular' foreign currency fee) may be justified according to classification of the activity and the provisions of the price list. *See* Cl.A (Cent. DC) 22126-09-21 *Maor v Israel Discount Bank Ltd* (13 March 2025) (*Maor*). With reference to the creation of an artificial cause of action, *see* also CivA 7503/22 *Stark v The First International Bank of Israel Ltd* (28 June 2023). ^ Back to section

31 Cl.A (Cent DC) 25646-09-24 *Ron v Bank Hapoalim BM* (9 May 2025). ^ Back to section

32 Cl.A 42608-02-24 *Representatives of Society and the Environment (Registered Non-Profit Association (Amuta)) v Bank Leumi le-Israel BM* (31 October 2024). ^ Back to section

33 *Mimon of Blessed Memory*. ^ Back to section

34 This, within the ambit of one of the conditions for certifying a claim as a class action, as set forth in section 8(a)(4) of the Class Actions Law. ^ Back to section

35 CivA 7125/20 *Hatzlacha - The Movement for the Promotion of a Fair Society v UBS AG* (2 January 2025). ^ Back to section

36 CivFH46246-01-25 *Hatzlacha - The Movement for the Promotion of a Fair Society v UBS AG* (5 March 2025). ^ Back to section

37 Cl.A (Cent DC) 58368-01-23 *Baron v Bank Leumi le-Israel BM* (31 July 2024). In that case, the Supervisor of Banks approached the bank after having received a complaint from one of the bank's customers on the subject. ^ Back to section

38 Section 25(a) of the Contracts Law. In case law, *see Branovate*, paragraph 12; *Cyberlogic [1]* case, paragraphs 137-138; and not within the ambit of the adjudication of class action suits: *Cohen*, paragraph 15. ^ Back to section

39 CivA 3352/07 *Bank Hapoalim BM v Horesh*, Judgments 63(3) 248, 269 (2009). ^ Back to section

40 *Branovate*. ^ Back to section

41 According to the objective purpose interpretative rule, a banking contract should be regarded as a standard contract that should be interpreted based on principles such as reasonableness, efficiency, fairness and economic logic. According to the *contra proferentem* rule, that is anchored in section 25(1b) of the Contracts Law, 'a contract that is given to different interpretations and one of the parties to the contract had priority in shaping its terms, an interpretation against him is preferable to an interpretation in his favour'. As explained there, in paragraph 14, this rule is intended to incentivise the drafter (and in this case, the bank) to draft the contract in a clear, simple and understandable fashion, as opposed to bearing responsibility for cumbersome and unclear drafting. For recent use of the *contra proferentem* rule, *see*, for example: Cl.A (Hi. DC) 67244-03-22 *Cyberlogic Ltd v The First International Bank of Israel Ltd* (5 June 2024) (*Cyberlogic 2*). For a citing of *Branovate* in a recent ruling rendered by the trial courts, *see:* Cl.A (Cent DC) 53541-06-20 *Emanuel v Bank Leumi le-Israel BM*(6 September 2024); Cl.A (TA MC) 22118-02-24 *Yamin v Bank Leumi le-Israel BM* (26 October 2025). ^ Back to section

42 *Branovate*, paragraph 15. ^ Back to section

43 CivA 7087/22 *Gorodish v The American Israeli Gas Corporation* (25 January 2024). ^ Back to section

44 *Mimon of Blessed Memory*, paragraph 29. Regarding the power gaps between the parties, the Supreme Court referred to a previous ruling: CivA 3955/04 *Reizel v Bank Leumi le-Israel BM*, paragraph e (4 July 2005). ^ Back to section

45 *See* also *Cyberlogic 2*, paragraph 11; Cl.A (Hi DC) 34276-12-22 *Amira v Israel Discount Bank Ltd*, paragraphs 18-27 (23 April 2025) (*Amira*). ^ Back to section

46 *See* HCJ 2030/12 *Adv Hadar v Commissioner of Capital Markets, Insurance and Savings at the Ministry of Finance*, paragraph 17 (26 February 2013). ^ Back to section

47 *Cyberlogic 1*. ^ Back to section

48 With reference to the 'Full Price List', *see Lapiner*, paragraph 5; LCivA 4838/21 *Bank Hapoalim BM v Lapiner*, paragraph9 (22.11.2022); LCivA 969/23 *Bank Hapoalim BM v Samucha*, paragraph 3 (3 July 2023). ^ Back to section

49 Section 9i(e) of the Banking (Service to Customer) Law. ^ Back to section

50 *Branovate*, paragraph 2; Cl.A (Cent DC) 50304-01-20 *Cyberlogic Ltd v Israel Discount Bank Ltd*, paragraphs 100, 126 (29 March 2024) (*Cyberlogic 3*'); Cl.A (Cent DC) 63162-02-15 *Lapiner v Bank Hapoalim BM*, paragraph 3 (30 January 2018); *Amira*, paragraph 27. ^ Back to section

51 Cl.A (Nz DC) 12548-05-18 *Adv Shteinberg v Bank Hapoalim BM*, pages 12-13 (13 July 2022). ^ Back to section

52 With regard to this fee, *see* the introductory explanation, given by the banks, in *Cyberlogic 3*, *ditto comment above* at paragraph 151: 'As explained by the respondents, the operation of transferring foreign currency requires coordination and communication between the various banks, and for this purpose they need to use an international communication system, which was established by the Society for Worldwide Interbank Financial Telecommunication, known as SWIFT. The SWIFT system provides a secure transfer of information about money transfers, and also provides software and services to financial institutions. A significant part of the global interbank communication is today carried out using the services provided by the SWIFT system, which processes millions of financial operations daily, with most international payments being made through it. The SWIFT system does not actually transfer funds, but only information about the money transfers. An action involving the transfer of foreign currency is also subject to the despatch of a SWIFT message, and when it comes to large business, the banks charge a fee for sending the SWIFT message.' ^ Back to section

53 This decision was based on the position of the Banking Supervision Department, which was submitted in the proceeding, and determined that the question as to whether an additional fee can be charged touches on the question as to whether an additional service is being provided. The Banking Supervision Department's position refers to the provision of section 9I(d) of the Banking (Service to Customer) Law, which provides that ‘in determining the rules pursuant to this section, the Governor shall act to provide a fair and understandable presentation of the fees, with the aim of ensuring the ability of customers to compare the cost of managing an account and means of payment, and shall act, to the extent possible, bearing in mind the need to prevent the various fees being charged for the same service, unless he believes that there are circumstances justifying the aforesaid charge’. ^ Back to section

54 The District Court repeated this holding in a later ruling. *See Maor*, paragraph 26. ^ Back to section

55 CivA 4587/24 *Cyberlogic Ltd v Israel Discount Bank Ltd*, *et al* (21 December 2025). ^ Back to section

56 *Cyberlogic 2*. ^ Back to section

57 Cl.A (Cent. DC) 3285-09-18 *Samucha v Israel Discount Bank Ltd* (27 June 2023) (*Samucha*). ^ Back to section

58 When it comes to third party expenses, part 11 of the Full Price List expressly teaches that the charge be done ‘in accordance with the actual expenses’. ^ Back to section

59 Cl.A (TA DC) 50533-07-18 *Kashtan v Israel Credit Cards Ltd* (21 August 2022). ^ Back to section

60 Cl.A (TA DC) 70610-01-19 *Reshef v Isracard Ltd* (17 June 2024). This holding of the District Court relies, among other things, on a previous decision on a similar issue which, in turn, relied on studies in the realm of behavioural economics, pursuant to which ‘consumers tend not to read long texts such as standard contracts or information notices on the monthly billing statements’. *See* Cl.A 69315-09-16 *Levi v Israel Credit Cards Ltd* (20 May 2021). ^ Back to section

61 Cl.A (Cent DC) 16969-04-20 *Gutman v Israel Discount Bank Ltd* (13 March 2022) (*Gutman*). ^ Back to section

62 Cl.A (TA DC) 37120-09-21 *Chostachki v Bank Leumi le-Israel BM.*(12 March 2024). ^ Back to section

63 *See* HCJ 8886/15 *Republicans Overseas Israel (NGO) v the Government of Israel*, paragraph 59 (2 January 2018); and from recent case law: CivC (Hi DC) 49052-06-23 *SI Top Investments Ltd v Mercantile Discount Bank Ltd* (10 December 2023) (*SI Top Investments*); CivC (TA DC) 41710-09-22 *Welbel Sternfeld v Mizrahi Tefahot Bank Ltd*, paragraph 34 (2 September 2025) (*Sternfeld*). ^ Back to section

64 *See* LCivA 6582/15 *Eamaar Association for Economic Development v the Postal Bank, Israel Postal Company Ltd*, paragraph 14 (1 November 2015); LCivA 6685/17 *Mountain of Good Luck and Success Ltd v Bank Hapoalim BM* (10 September 2017). ^ Back to section

65 *See* LCivA 9065/23 *SI Top Investments Ltd v Mercantile Discount Bank Ltd* (3 January 2024). In that case, the Supreme Court reiterated the normative framework associated with the refusal to provide banking services due to suspicions related to money laundering or the financing of terrorism. As explained there, banks are subject to oversight and monitoring duties by virtue of the Prohibition on Money Laundering Law, 5760-2000, and by virtue of the Prohibition on Money Laundering (Identification Duties, Reporting and Management of Records of Banking Corporations for Combatting Money Laundering and the Financing of Terrorism) Order, 5761-2001 (the AML Order). Sections 2 and 2A of the AML Order oblige the bank to conduct registration, identification and 'Know Your Client' procedures with the customer, and to also clarify the source of the funds that are expected to enter into the customer's account and the planned activities in his account. The AML Order also refers to rules established by the Supervisor of Banks in Proper Conduct of Banking Business Directive No. 411, that was amended in March 2017, and whose title was changed to 'Directive 411 of the Supervisor of Banks: Proper Banking Conduct (Management of Anti-Money Laundering and Countering the Financing of Terrorism Risks', a directive dealing with management of the risk that a customer will use his account for money laundering and financing of terrorism purposes. *See* also the District Court decision with which the motion seeking leave to appeal the lower court's decision in *SI Top Investments* was filed. ^ Back to section

66 Thus, for example, in CivC (Nz DC) 50759-09-24 *Humanitarian Actions Association v Bank Leumi le-Israel BM* (10 October 2024), it was held that an injunction will not be granted for the bank's decision to block the applicant's bank account, a non-profit association (*amuta*) which operates in collaboration with non-profit associations operating in enemy countries, and which transfers funds abroad, among other things, to non-profit associations whose actions with these funds cannot be supervised, and contrary to its stated purposes. ^ Back to section

67 CivC (TA DC) 62654-11-23 *the Islamic Association for Orphans and the Needy (A'R) v Bank Leumi le-Israel BM* (9 April 2024). In fact, the parties in that case agreed that the non-profit association had transferred funds to a non-profit association affiliated with the Hamas movement and was in contact with bodies affiliated with Hamas, and also raised funds, among other things, for refugee camps in Syria, Yemen, the Palestinian Authority and Gaza. ^ Back to section

68 In CivC (TA DC) 62322-11-23 *Gisha - Legal Centre for Freedom of Movement v Bank Leumi le-Israel B.M.* (11 December 2023), a lawsuit filed by a non-profit association, whose stated purpose is to protect the freedom of movement of Palestinians, seeking the unblocking of its bank account, which was blocked shortly after the outbreak of the 'Iron Swords' war, was accepted. It was held that it did not suffice that posts by the non-profit association on the social networks were 'anti-Israeli' and that according to the bank, amounted to criminal offences. It was clarified that the regulator's directives stipulate that a customer's posts have no connection to the management of the bank's business, and that the bank does not constitute the long arm of the legal authorities on matters of defamation or other offences, this, as distinct from the requirements imposed on it with regard to money laundering and the financing of terrorism. A motion filed within the ambit of an appeal on the District Court's ruling, to delay its execution, was rejected by the Supreme Court. *See* LCivA 59/24 *Bank Leumi le-Israel B.M. v Gisha - Legal Centre for Freedom of Movement* (5 February 2024). ^ Back to section

69 *Sternfeld*; *see* also LCivA (TA DC) 10849-09-25 *Mashbetz v Mizrahi Tefahot Bank Ltd* (18 December 2025). ^ Back to section

70 *Davidowitz*. ^ Back to section

71 LCivA 1052-24 *Mizrahi Tefahot Bank Ltd v Zaka – Search Rescue & Recovery* (2 April 2024). *See* also a later case in which it was held that a delay of funds by the bank, a month after the outbreak of the Russia-Ukraine war, was reasonable in the circumstances of the case, bearing in mind the regulator's policies and the existence of international sanctions: CivA (TA DC) 59677-02-25 *Konstantin v Mizrahi Tefahot Bank Ltd* (29 September 2025). Nonetheless, in that case, it was held that the plaintiff is entitled to compensation for the mental anguish caused to him due to the bank's conduct following the delay of funds. ^ Back to section

72 CivA 4432/21 *Mercantile Discount Bank Ltd, Kfar Yasif Branch v Suliman* (7 April 2022). ^ Back to section

73 *See*, for example, how the development of financial technology (Fintech) and the spread of the use of digital coins pose new challenges for the banking system and regulation: In HCJ 7364/22 *Bits of Gold v the Governor of the Bank of Israel* (10 October 2023), the Supreme Court held that Israeli banks are authorised to engage in the provision of services involving the trade in digital currencies (virtual), by virtue of the general authorisation they have to offer banking services under the Banking (Licensing) Law. This ruling reflects the development of Fintech and the need to adapt the legal framework to accommodate changes in business reality. Nonetheless, it should be noted that the ruling does not oblige banks to provide services of this nature, but only clarifies that it is not prohibited in principle for banks to engage in such activities. The question as to when a bank's refusal to provide services to a customer engaging in digital currencies, or a bank's refusal to engage in this realm itself, will be deemed reasonable or unreasonable, remains open and will require determination in future case law. ^ Back to section

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