

ISRAEL

LEGAL BASIS

1. **Has your State signed and/or ratified the *European Convention on State Immunity* (1972) and/or the *United Nations Convention on Jurisdictional Immunities of States and Their Property* (2004)? Do the authorities of your State consider the provisions on these treaties on service of process as a codification of customary international law? Does your State apply any other international legal instrument (apart from bilateral agreements)?**

Israel is not a party to the *European Convention on State Immunity of 1972*, nor is it a party to the *United Nations Convention on Jurisdictional Immunities of States and Their Property of 2004*.

2. **Please provide information on:**

- a. **National legislation (in particular its title, source and content; if available, please provide official translations and/or references to Internet sources).**

In 2008, Israel enacted the Foreign State Immunity Law, 5769-2008 (hereinafter: "Israeli Immunity Law") (attached herein as Appendix A). This law is based, in principle, on international law and common practice, and embodies many of the principles of the abovementioned convention. The law stipulates the immunity of a foreign state from the jurisdiction of the courts in Israel (excluding jurisdiction in criminal matters). The law also provides, in detail, rules regarding the exceptions to immunity, the waiver of immunity, procedure (including service of documents) and immunity from execution proceedings.

- b. **Case-law and practice, specifying whether your national courts and tribunals review the lawfulness of the service of process by operation of law.**

n/a

PROCEDURE

3. **Please describe the procedure(s) applicable to service of process on a foreign State, specifying the hierarchy between the different methods for serving process. In particular, please provide information on when the service is deemed to be effected, time-limits, the grounds to refuse service of process and the consequences of the unlawfulness of the service.**

Chapter 2, part 4 of the Israeli Immunity Law reviews the special aspects of civil procedure that concern foreign states and relates to the procedure of service of documents to foreign states.

Specifically, Article 13 to the Israeli Immunity Law addresses the service of documents to a foreign state:

Article 13

- (a) An action brought against a foreign state with the object of commencing legal proceedings against it or a judgment given against it in default of defense shall be served, **through the Ministry of Foreign Affairs, on the Foreign Office of the foreign state.**
- (b) Court documents in a proceeding to which the foreign state is a party, not enumerated in sub-section (a), shall be served on that state through its attorney for that proceeding,

but if this is not possible, they shall be served in the manner specified in sub-section (a).

- (c) The response of the foreign state to the action brought against it or to a judgment in default of defence given against it shall be filed within 60 days from the day they were served on it; the court may however extend that period.
- (d) This section shall not apply to service of documents on a separate entity.

The general practice in Israel in such cases is that the Directorate of Courts transmits such legal documents from the relevant Judicial Authority to the Israeli Ministry of Foreign Affairs, which in turn, sends them to the Embassy of the relevant foreign state in Israel, attached to a Diplomatic Note from the Ministry.

In cases where diplomatic relations between Israel and the relevant foreign state exist, but the foreign State does not hold a resident mission in Israel, or in other exceptional cases, the documents may be served by alternative "diplomatic channels" as deemed appropriate by the Ministry of Foreign Affairs, taking into account the specific circumstances. These alternative diplomatic channels may be from Israel's Ministry of Foreign Affairs or from one of Israel's diplomatic missions around the world, to the Ministry of Foreign Affairs of the relevant foreign state, to its diplomatic mission accredited to Israel or, in rare cases, to another diplomatic mission of the foreign state.

In case no diplomatic channels exist, for reasons of lack of bilateral relations with a particular state, the State of Israel will not carry out any service of process procedures (on this issue, see Appendix B: Summary of Israel Supreme Court Case No. 1104/09 *The Attorney General v. Alan Steen and others*).

- a. How are the terms “diplomatic channels” (Article 16 § 2 of the European Convention and Article 22 § 1 c) i) of the United Nations Convention) interpreted by your national authorities? Please indicate whether these terms include a notification to the embassy of the State concerned in the State of forum.**

Accordingly, the term "diplomatic channels" as mentioned in Article 22 of the UN Convention, as generally practiced by the State of Israel, refers to the transmission of documents, attached to a Diplomatic Note, usually via Israel's Ministry of Foreign Affairs to the relevant Embassy in Israel.

It should be noted, that in past cases, a number of States have requested that the transmission of such legal documents be done only from the Israeli mission in the foreign state concerned to that state's Ministry of Foreign Affairs, and not to the foreign state's Embassy in Israel. Even though this request deviates from the abovementioned practice, and while it creates certain obstacles to the efficiency of the process, Israel has generally agreed to entertain such requests.

- b. How are the terms “if necessary” (Article 16 § 2 of the European Convention and Article 22 § 3 of the United Nations Convention) interpreted by your national authorities?**

The second action required was to define the meaning given to the term "if necessary" from article 22(3) of the United Nation Convention.

Article 22 to the UN Convention

Service of process

...

3. These documents shall be accompanied, if necessary, by a translation into the official language, or one of the official languages, of the State concerned.

...

The abovementioned chapter 4 of the Israeli Immunity Law does not refer in any way to the issue of translation of legal documents into the official language, or one of the official languages, of the State concerned.

It is the position of the State of Israel that there should exist no obligation to translate documents transmitted through service of process procedures, to the official language of the state concerned. This is due to the fact that in Israel's view, such an obligation would impose significant financial burdens on the plaintiff and could potentially prolong the legal process unnecessarily.

Therefore, the State of Israel considers, in most cases, a request for translation by a foreign state, as an unnecessary procedural hurdle.

Accordingly, Israel generally accepts service of process through diplomatic channels in the State of Forum, and in general, does not require these documents to be translated.

4. Where your State is the defendant in the proceedings, what is accepted as an adequate service of process? Please specify whether your State accepts the service to its embassy in the State of forum.

When the State of Israel is the defendant in proceedings initiated in a foreign state, the State of Israel generally accepts service of documents through diplomatic channels to its embassy in the State of Forum or to its Ministry of Foreign Affairs. In rare cases, other appropriate diplomatic channels may be accepted.

APPENDICES TO THE REPLY OF ISRAEL

APPENDIX A

FOREIGN STATES IMMUNITY LAW 5769-2008

Chapter One: Definitions

- Definitions 1. In this Law –
- “central bank” includes any agency constituting the central monetary authority of a foreign state;
- “separate entity” means a governmental authority of a foreign state having separate legal personality from that of the government of that state.
- “foreign state” includes a political unit within a federal state, governmental agencies of a foreign state, official functionaries representing such a state in performing their function, and a separate entity.
- “commercial asset” means any asset, excluding a diplomatic or consular asset, a military asset or an asset of a central bank which is held in Israel by a foreign state for a commercial purpose; in this matter, an asset held in Israel by a foreign state and not intended for a particular purpose shall be regarded as being held by that state for a commercial purpose, unless it is proved otherwise;
- “military asset” means an asset used or intended for use in connection with military activity and which is of a military nature or is controlled by the military authorities;
- “commercial transaction” means any transaction or activity within the sphere of private law which is of a commercial nature, including an agreement for the sale of goods or services, a loan or other transaction for finance, guarantee or indemnity, and which by its nature does not involve the exercise of governmental power.

Chapter Two: Immunity from Jurisdiction

Part One: Immunity of the Foreign State

- Immunity of a foreign state from the jurisdiction 2. A foreign state shall have immunity from the jurisdiction of the courts in Israel, excluding jurisdiction in criminal matters (hereafter referred to as immunity from jurisdiction), subject to the provisions of this statute.

Part Two: Exceptions to Immunity

- Commercial transactions 3. A foreign state shall not have immunity from jurisdiction where the cause of action is a commercial transaction
- Contract of Employment 4. (a) A foreign state shall not have immunity from jurisdiction in an action by an employee or by an applicant for employment, where all the following conditions are fulfilled:

(1) the cause of action is within the exclusive jurisdiction of a Regional Labour Court, under any legal provision;

(2) the subject matter of the action is labour, all or a part of which has been performed, or is to be performed, in Israel

(3) when the cause of action arose, the employee or applicant for employment was an Israeli citizen or was habitually resident in Israel or in a region; in this context the term "region" shall be as defined in the Emergency Regulations (Extension of Validity) (Judea and Samaria – Adjudication of Offences and Legal Assistance) Law, 5728-1967.

(b) The provisions of this section shall not apply if the employee or applicant for employment was, at the commencement of the proceeding, a citizen of the foreign state and was not resident in Israel.

(c) In an action by an employee or applicant for employment where the conditions specified in this section are not fulfilled, the foreign state shall not have immunity from jurisdiction, even where the cause of action is a commercial transaction as provided in section 3.

Actions in tort 5. A foreign state shall not have immunity from jurisdiction in an action in tort where personal injury or damage to tangible property has occurred, provided the tort was committed in Israel.

Property rights 6. A foreign state shall not have immunity from jurisdiction in an action or in proceedings as detailed below:

(1) an action concerning a right or other interest that the foreign state has in immovable property situated in Israel, an action concerning possession or use by a foreign state of immovable property situated in Israel or an action concerning the obligation of a foreign state deriving from such right, other interest or use;

(2) an action or proceedings concerning a right or other interest of the foreign state in assets situated in Israel to which it is entitled by way of succession, gift or as *bona vacantia*, or an action or proceedings concerning an obligation deriving from such right or other interest;

(3) proceedings concerning estates, property of persons under guardianship, proceedings for insolvency or administration of trusts;

Intellectual property 7. A foreign state shall not have immunity from jurisdiction in an action in matters of intellectual property as defined in section 40(4) of the Courts Law (Consolidated Version), 5744-1984, which concerns -

(1) the right of the foreign state in intellectual property;

(2) allegation of a breach, in Israel, by the foreign state of a right in intellectual property;

Action against a ship or cargo 8. (a) A foreign state shall not have immunity from jurisdiction in an action against a ship which at the commencement of the proceeding was owned or operated by that foreign state, or in an action against a cargo of a ship, which cargo was owned by that

foreign state at the commencement of the proceeding, provided that at the time the cause of action arose, the ship or the cargo, whichever is applicable, was being used for a commercial purpose.

(b) In this section, "ownership" of a ship or cargo includes possession, control or other proprietary connection of the foreign state to the ship or cargo.

Part Three: Waiver of Immunity

Waiver of immunity by agreement

9. (a) A foreign state shall not have immunity from jurisdiction where it has expressly waived such immunity in writing, or where it has waived it by written or oral notice to the court.

(b) A waiver under this section may be made generally or in respect of a particular matter, in advance or *ex post factum*, and may be limited by exceptions.

(c) The head of a diplomatic mission of a foreign state in Israel or any person acting in such capacity, is authorized to waive the immunity under this section, in the name of the foreign state, and in respect of immunity in a proceeding originating in a contract to which the foreign state is a party, any person who has contracted in the name of the foreign state shall also be so authorized; the provisions of this sub-section shall not derogate from an authority conferred on any other person to waive the immunity in the name of the foreign state.

Waiver of immunity by way of conduct

10. (a) A foreign state shall not have immunity from jurisdiction in a counterclaim or in third-party proceedings, where it was the foreign state that initiated the court proceeding or joined them, thereby becoming a party to the proceedings.

(b) The provisions of sub-section (a) shall not apply to a foreign state which joined the proceeding in one of the following circumstances:

- (1) the foreign state pleads immunity from the jurisdiction;
- (2) the object of the foreign state in adhering to the proceeding is to put before the court submissions regarding a right or other interest it has in assets involved in the proceeding or regarding any other right which may be affected by the proceeding.

(c) In this section, "counterclaim" means a counterclaim in a civil action having the same subject-matter, or where they both arise from the same circumstances or where the relief sought in the counterclaim is not different from and does not exceed the relief sought in the original action.

Arbitration

11. (a) Where a foreign state has agreed in writing to submit to arbitration a dispute which has arisen or is likely to arise in the future, the foreign state shall not have immunity from jurisdiction, in respect of court proceedings connected with the arbitration, unless it has been otherwise determined in the arbitration agreement.

(b) The provisions of this section shall not apply to an arbitration agreement between states to which the provisions of public international law apply, except such an agreement one of the parties to which is a separate entity, not being a central bank.

- Time for raising plea of immunity 12. (a) A foreign state shall raise a plea of immunity from jurisdiction at the earliest opportunity, and no later than when it first submits its case regarding the substance of the action.
- (b) Where the foreign state has not raised a plea of immunity from jurisdiction by the time limit specified in sub-section (a), it shall be regarded as having waived its immunity.
- (c) Despite the provisions of sub-section (b), a foreign state shall not be regarded as having waived its immunity if it raised a plea of immunity immediately after the facts in respect of which it is entitled to immunity became known to it, and it did not know nor was it required to know those facts at the time specified in sub-section (a).

Part Four: Procedure

- Service of documents on a foreign state 13. (a) An action brought against a foreign state with the object of commencing legal proceedings against it or a judgment given against it in default of defence shall be served, through the Ministry of Foreign Affairs, on the Foreign Office of the foreign state.
- (b) Court documents in a proceeding to which the foreign state is a party, not enumerated in sub-section (a), shall be served on that state through its attorney for that proceeding, but if this is not possible, they shall be served in the manner specified in sub-section (a).
- (c) The response of the foreign state to the action brought against it or to a judgment in default of defence given against it shall be filed within 60 days from the day they were served on it; the court may however extend that period.
- (d) This section shall not apply to service of documents on a separate entity.

- Judgment in default of defence 14. Where an action has been brought against a foreign state, and that state has not submitted a defence in good time, the court shall only give judgment against it in default of defence if it is convinced that the foreign state does not have immunity from its jurisdiction under the provisions of this statute.

Chapter Three: Immunity from Execution Proceedings

- Immunity of a foreign state from execution proceedings 15. (a) The assets of a foreign state shall have immunity from proceedings for execution of a judgment or other decision of a court in Israel.
- (b) No fine or prison sentence shall be imposed on a foreign state or on a person acting in its name for non-compliance with a judgment or other decision of a court in Israel given against that state.
- (c) The provisions of this section shall not apply to a judgment or other decision of a court in Israel in criminal matters.
- Proviso to immunity 16. Notwithstanding the provisions of section 15(a), the assets of a foreign state detailed below shall not benefit from immunity under that section:

- (1) commercial assets;

(2) assets situated in Israel to which the foreign state is entitled by way of succession, gift or as *bona vacantia*;

(3) immovables situated in Israel.

Waiver of immunity 17. (a) Assets of a foreign state shall not benefit from immunity under section 15 if the foreign state has expressly waived such immunity in writing, or by written or oral notice to the court.

(b) A waiver under this section may be made generally or in respect of a specific matter, in advance or *ex post factum*, and may be limited by exceptions, provided that waiver in respect of a diplomatic or consular asset or an asset of a central bank shall be made expressly.

(c) A waiver by a foreign state of its immunity from the jurisdiction given under sections 9 or 10 shall not be considered a waiver under this section.

(d) Waiver under this section shall not apply to a military asset.

(e) The head of a diplomatic mission of a foreign state in Israel or any person acting in such capacity, shall be authorized to waive the immunity under this section, in the name of the foreign state; the provisions of this sub-section shall not derogate from the authority conferred on any other person to waive the immunity in the name of the foreign state.

Execution against assets of a separate entity 18. Notwithstanding the provisions of section 15(a), the assets of a separate entity, excluding a central bank, shall not have immunity from execution of a judgment or other decision rendered by a court in Israel, except where the jurisdiction of the court originates in waiver of the jurisdiction, given under sections 9 or 10.

Chapter Four: Miscellaneous Provisions

Notice to the Attorney General 19. (a) Where a foreign state raises a plea of immunity under this statute, it shall give notice thereof to the Attorney General.

(b) Where a question of immunity of a foreign state under this statute arises in court, and no notice thereof has been given under sub-section (a), the court shall give notice thereof to the Attorney General.

Application of immunity to a political entity which is not a foreign state 20. The Minister of Foreign Affairs, in consultation with the Attorney General and with the approval of the Government and of the Constitution and Law Committee of the Knesset, may prescribe by order that a political entity shall have immunity under Chapters Two or Three of this statute, even though its international legal status does not amount to that of a state; an order under this section may be general, for certain types of matters or for a specific matter, and may be restricted to a certain period.

Diplomatic and consular immunity 21. This statute shall not derogate from diplomatic or consular immunity or any other immunity applicable in Israel, under any law or usage.

Status of foreign military forces 22. Notwithstanding the provisions of this statute, legal actions based on any act or omission committed by foreign military forces whose rights and status in Israel were determined by agreement between

the State of Israel and the state to which the foreign military forces belong shall be governed by that agreement.

Implementation and regulations 23. The Minister of Justice shall be in charge of implementing this statute, and he may, in consultation with Minister of Foreign Affairs, make regulations on any matter concerning its implementation.

Application 24. This statute shall also apply to proceedings brought before it came into force, provided that the hearing on those proceedings has not yet commenced.

Ehud Olmert
Prime Minister

Daniel Friedmann
Minister of Justice

Shimon Peres
President of the State

Dalia Itzik
Speaker of the Knesset

APPENDIX B

SERVICE OF PROCESS TO A HOSTILE COUNTRY

SUMMARY OF ISRAEL SUPREME COURT CASE NO. 1104/09 *THE ATTORNEY GENERAL V. ALAN STEEN AND OTHERS*

In Case No. 1104/09 *Alan B. Steen vs. attorney General*, the Israeli Supreme Court was asked to determine whether actions against hostile countries may be processed without the intervention of the Israeli Ministry of Foreign Affairs. In its judgment issued in December 2011 (H.C.J 1104/09 *The Attorney General v. Alan Steen et. Al.*), the Israeli Supreme Court reaffirmed the Israeli practice of not carrying out service of process requests in scenarios where no diplomatic channels exist.

The respondents in the abovementioned case received three verdicts in their favor by three different courts in the United States, determining their right to monetary compensation due to terrorism acts committed by the Islamic Republic of Iran, the Iranian Revolutionary Guards and the Ministry of Public Security and Intelligence of Iran (hereinafter: "Iran").

This civil case was an appeal before the Supreme Court of Israel, regarding the enforcement of those three foreign verdicts.

The respondents argued that the Ministry of Foreign Affairs should transmit the legal documents in any available way.

The initial verdict given by the District Court, held that since the due process of documents to foreign states can only be done through the Ministry of Foreign Affairs, and since the state of Israel does not have diplomatic relations with the Islamic Republic of Iran, the Ministry of Foreign Affairs must serve the legal documents in one of the following ways:

- a. Mail delivery by the Ministry of Foreign Affairs to the authorities of Iran.
- b. By serving a UN representative of the foreign state (Iran) or an international tribunal to which both Israel and Iran are members.

In the appeal to the Supreme Court, the Attorney General noted that the service of process to a foreign state may be carried out only by the Ministry of Foreign Affairs, through diplomatic channels, thus service of process can be carried out only with states with which the State of Israel has diplomatic relations.

The Supreme Court held that since the State of Israel has no diplomatic relations with Iran, the Ministry of Foreign Affairs would not be able to perform the service of documents to the Islamic Republic of Iran.

In addition, the Supreme Court established that it is not possible to carry out service of legal documents from Israel to Iran due to the "procedural disconnection" which exists between the states due to the "diplomatic rupture" that exists between them.

The Court reasoned its decision on the basis of reciprocity. The Court noted that as Israel accepts service of process documents only through diplomatic channels, it should follow the same procedural route when it is the one dispensing the documents.