



בית דין צדק חושן משפט מעלבורן

BEIS DIN CHOSHEN MISHPAT MELBOURNE

BDCMM STANDARD PROCEDURAL RULES

(Clause 1ffii of the Arbitration Agreement)

The overarching purpose of these Procedural Rules is to encourage time and cost-efficient arbitration.

Any application by a Party to the Beis Din to vary these Procedural Rules should address why the variation is desirable in light of the overarching purpose.

The explanation under some of the Rules does not form part of the Rules but it is an explanation of the purpose of the Rule.

It is expected in most complex Arbitrations, the Beis Din will call a pre-hearing conference to determine whether or not the Beis Din will adopt these Procedural Rules in whole or in part.

1. RULE 1: HEADINGS OF DOCUMENTS AND COMMUNICATIONS TO BEIS DIN

- a. All documents filed in the Arbitration should be headed (if necessary, by cover sheet only), with any necessary modifications, as follows:

“In the matter of an arbitration before [Name of Arbitrator(s)], Arbitrator(s)

BETWEEN

[Name of Claimant(s)], Claimant(s)

AND

[Name of Respondent(s)], Respondent(s)

AND BETWEEN

[Name of Cross-Claimant(s)], Cross-Claimant(s)

AND

[Name of Cross-Respondent(s)], Cross-Respondent(s)

[Type of document]

[Identity, capacity and contact details of person filing the document]

[Substance of document]

- b. Documents may use informal language.
- c. Unless otherwise directed by the Beis Din, no communications shall be made directly to the Beis Din. Instead, all communications intended for the attention of the Beis Din should be sent to BDCMM with the identifying details set out in Rule 1a and unless made ex-parte, are to be copied to the other party (or their representative if they have appointed a representative).

BDCMM

Dispute resolution according to Halacha

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2. RULE 2: FORM AND MANNER OF APPLICATIONS

- a. Applications are to be made using a document compliant with Rule 1a, with the Type of document to be described as “Application”.
- b. An application should state the nature of the application, and a brief statement of the reasons for it.
- c. An application should be accompanied by any supporting material.

3. RULE 3: JOINDER

Explanation: An arbitration can only take place by the consent of all Parties (including the party to be joined) and the Beis Din.

- a. Applications for joinder of a party may only be made with the consent of the existing parties and the consent of the party to be joined.
- b. All applications for joinder should be made promptly, and in any event, no later than 14 days after the delivery of pleadings.

4. RULE 4: MORE FULSOME STATEMENT OF DISPUTE

Explanation: The Beis Din can only determine each claim in the Dispute.

- a. Within 7 days of the commencement of the Arbitration, the Claimant/Cross-Respondent and the Respondent/Cross-Claimant shall confer and deliver to the Beis Din a more fulsome statement of Dispute, identifying each claim which comprises the Dispute.
- b. Within 7 days of the close of the pleadings, the Claimant/Cross-Respondent and the Respondent/Cross-Claimant shall again confer and deliver to the Beis Din a final statement of Dispute, identifying each claim which comprises the Dispute.
- c. The Parties, by consent application, may apply to amend the statement of Dispute at any time after the delivery of a final statement of Dispute in accordance with Rule 4b and before the delivery of an Award. The Beis Din has full discretion whether or not to permit the amendment.

5. RULE 5: STATEMENT OF CLAIM

- a. Within 7 days of the delivery of a more fulsome statement of Dispute in accordance with Rule 4a, the Claimant shall deliver a statement of claim setting out each allegation made by the Claimant in relation to each claim brought by the Claimant as part of the Dispute.
- b. A statement of claim shall be fully particularised.

6. RULE 6: DEFENCE AND STATEMENT OF CROSS-CLAIM

- a. Within 7 days of the delivery of a statement of claim in accordance with Rule 5, the Respondent shall deliver a defence addressing each allegation in the statement of claim, and a statement of cross-claim that complies with Rule 5.
- b. A defence shall be fully particularised.

7. RULE 7: REPLY AND DEFENCE TO CROSS-CLAIM

- a. Within 7 days of the delivery of a defence and/or statement of cross-claim in accordance with Rule 6, the Claimant shall deliver a reply and defence to cross-claim addressing each allegation in the defence and a statement of cross-claim that complies with Rule 6.
- b. A reply shall be fully particularised.

8. RULE 8: REPLY TO DEFENCE TO CROSS-CLAIM

- a. Within 7 days of the delivery of a defence to cross-claim in accordance with Rule 7, the Respondent shall deliver a reply to defence to cross-claim addressing each allegation in the defence to cross-claim that complies with Rule 7.

9. RULE 9: SECURITY FOR COSTS

Explanation: Generally, a Beis Din will not make a Direction that a Party provide security for costs except in exceptional circumstances.

- a. The Beis Din may Direct that a Party provide security for costs.

- b. If a party intends to seek security for costs, it shall first put the other party on notice within 7 days of the close of pleadings, setting out the basis upon which security is sought, a calculation of the quantum sought, and attaching any supporting material. Evidence of a costs consultant is not required.
- c. The other party shall respond within 7 days to each contention, including as to quantum, and attaching any supporting material. Evidence of a costs consultant is not required.
- d. Any application for security for costs shall be made within 7 days thereafter, forwarding a copy of the documents exchanged in accordance with Rules 9b and Rule 9c. Save with leave of the Beis Din, no other documents may be relied upon either in support of, or in opposition to, an application for security for costs.

10. RULE 10: DISCOVERY AND INSPECTION

Explanation: General discovery will not generally be Directed. Specific discovery will not generally be Directed unless the Beis Din is satisfied that a Party has not complied with their obligations under this Rule.

- a. Within 14 days of the close of pleadings, each Party shall make a written request to the other Party that they make discovery of specific categories of documents which they contend are **critical** documents, stating the reasons why they make that contention.
- b. Within 28 days of the close of pleadings, each Party shall give discovery of critical documents. If a Party does not give discovery of documents which correspond to a request made in accordance with Rule 10a, it should notify the other Party of the reasons why it has not made that discovery.
- c. Any application by a Party for general or specific discovery shall be made within 14 days of a response made in accordance with Rule 10b, forwarding a copy of the request and response in accordance with Rules 10a and 10b. Save with leave of the Beis Din, no other documents may be relied upon either in support of, or in opposition to, an application for general or specific discovery.
- d. Any documents discovered must be made available to the other Party for inspection by email or sharelink. Unless otherwise directed by the Beis Din, hardcopies shall not be delivered.

11. RULE 11: INTERROGATORIES AND ANSWERS TO INTERROGATORIES

Explanation: Interrogatories will not generally be Directed unless the Beis Din is satisfied that exceptional circumstances apply.

- a. Within 14 days of the giving of discovery, a Party may deliver a set of proposed interrogatories to the other Party, and state the exceptional reasons why those interrogatories should be answered.
- b. The other Party shall either answer some or all of the interrogatories within 14 days, or state why there are no exceptional reasons why the interrogatories or the balance of the interrogatories should be answered.
- c. Any application by a Party for a direction that the Interrogatories be answered shall be made within 14 days of a response made in accordance with Rule 11b, forwarding a copy of the request and response in accordance with Rules 11a and 11b. Save with leave of the Beis Din, no other documents may be relied upon either in support of, or in opposition to, an application for answers to interrogatories.

12. RULE 12: DELIVERY OF LAY EVIDENCE AND MANNER OF GIVING LAY EVIDENCE

Explanation: Unless otherwise Directed by the Beis Din, all lay evidence in chief shall be in the form of a witness outline, to be adopted at the hearing in the manner the Beis Din then directs. At the hearing, after the adoption of a witness outline, cross-examination shall then proceed on that witness outline, followed by the giving of reply evidence.

It is intended that lay evidence in chief be exchanged (rather than given sequentially) and shall address all allegations raised in each Parties' pleadings.

- a. Within 28 days of the giving of discovery, each Party shall exchange lay witness statements. Each lay witness outline shall have attached to it all documents that it is proposed be proved through that witness.
- b. Unless by consent, leave is required to be sought from the Beis Din to rely on any document not delivered in accordance with Rule 12a.
- c. Reply lay evidence shall be exchanged 21 days after receipt of evidence in accordance with Rule 12a.
- d. Within 14 days of the exchange of reply witness outlines, a Party may propose in writing to the other Party that a part of the lay evidence in chief be struck out of any witness outline and that that evidence be delivered instead orally in person in front of the Beis Din, stating the reasons why.
- e. The other Party shall either answer the proposal within 14 days, stating the reason why it agrees or disagrees.

- f. The correspondence exchanged in accordance with Rules 12d and 12e shall be forwarded to the Beis Din. Save with leave of the Beis Din, no other documents may be relied upon either in support of, or in opposition to, an application that some evidence in chief be given orally in person in front of the Beis Din. Notwithstanding any consent position reached by the Parties, the Beis Din has full discretion whether or not to direct any or all of the evidence in a witness outline be struck out and that evidence in chief instead be given orally in front of it.

13. RULE 13: DELIVERY OF EXPERT EVIDENCE AND MANNER OF GIVING OF EXPERT EVIDENCE

Explanation: Generally, all expert evidence shall be in the form of a witness outline, to be adopted at the hearing in the manner the Beis Din then directs.

The Beis Din will generally require all experts to meet and give evidence in front of the Beis Din in a “hot tub” format.

- a. Expert evidence shall be delivered sequentially after the delivery of lay evidence, as follows:
 - i. Claimant’s expert evidence in respect of Claim – 21 days after the exchange of lay evidence;
 - ii. Respondent’s expert evidence in respect of Claim and Cross-Claim – 21 days after receipt of Claimant’s expert evidence;
 - iii. Claimant’s expert evidence in reply – 14 days after receipt of Respondent’s expert evidence. Is it possible to have the expert evidence delivered in writing from both sides, all before the hearing?
- b. An expert witness must set out the basis of their expertise to give the expert evidence and any relationship with the Parties.

14. RULE 14: STATEMENT OF FACTS AND ISSUES, COURT BOOK AND HEARING PLAN

- a. Within 14 days of the close of delivery of expert evidence, the Parties shall confer and deliver to the Beis Din:
 - i. a concise statement of facts and issues in relation to each claim raised in the Dispute;
 - ii. a Court Book containing:
 - 1. the final statement of Dispute;
 - 2. all pleadings;
 - 3. all evidence;
 - iii. a hearing plan containing the estimated time for each Party for opening statements, examinations in chief, cross-examination and reply evidence (per witness) and closing submissions.

15. RULE 15: OUTLINE OF SUBMISSIONS

- a. Outline of submissions shall be delivered sequentially after compliance with the delivery of a statement of facts and issues as follows:
 - i. Claimant’s outline of submissions – 7 days after compliance with Rule 14;
 - ii. Respondent’s outline of submissions – 7 days after compliance with Rule 15ai.
 - iii. Claimant’s reply to the Respondent’s outline of submissions – 7 days after compliance with Rule 15aii.

16. RULE 16: OTHER APPLICATIONS

- a. Other than compliance with Rule 2, there are no standard procedural rules for any other application. The Beis Din will give such Directions as it deems fit in relation to any other applications made.