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Terms and
Conditions of
websites as standard
form contracts

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Exclusive jurisdiction
and applicable law
provisions as
depriving provisions

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Applicably of the
Israeli Privacy laws
on multinational
corporations who
offer online services
to Israeli residents

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Dear Clients and Colleagues,

In a recent District Court decision in Israel, as part of a class action litigation regarding an alleged privacy infringement, the Court ruled that the terms and conditions of a website are deemed a standard form contract under Israeli law, and that the exclusive jurisdiction and applicable law provisions therein are depriving conditions and are, therefore, void. In addition, with regard to the alleged privacy infringement, the Court decided that the applicable law would be the law of the State of Israel. This decision has significant importance for multinational corporations who offer their online services to Israeli residents in general and in particular where such services involve collection and use of personal information.

Background

A motion to certify a class action was recently filed against Facebook in the Central District Court in Israel (*Class Action (Central District) 46065-09-14 Ben-Hamo v. Facebook Inc. (10.6.2016)*). The main claim in the motion is that Facebook monitors private messages sent by its users without their proper consent and without registering a database as required under the Israeli Privacy Protection Act. Facebook filed a preliminary motion to dismiss the case on the basis that its Statement of Rights and Responsibilities (the "**Statement**"), which every user is required to confirm in the registration process, contains an exclusive jurisdiction and applicable law condition which prevents the plaintiff from filing a claim in Israel and obliges the court to examine the case under the law of the State of California. The plaintiff argued that the Statement is a standard form contract under the Standard Contracts Law, 1982 (meaning, a general contract between a business and its indeterminate potential consumers which the consumers have no actual influence on its terms), and that these specific provisions are depriving and, therefore, void.

The Decision

The Court rejected Facebook's motion to dismiss. It decided that the Statement is deemed a standard form contract under the Standard Contracts Law and that the question whether or not the provisions in the Statement are depriving should be examined under Israeli law. The Court further ruled that the provisions regarding the exclusive jurisdiction and applicable law are, indeed, depriving conditions and are, therefore, void. The Court applied general conflict of law doctrine in order to decide what the applicable law in privacy issues is, and concluded that the applicable law is Israeli law, because the transfer of information was between Israelis and the alleged privacy infringement is in connection with Israeli subjects.

Implications

This decision has several important implications. *First*, it means that the Terms & Conditions set by multinational corporations who offer their services to Israelis will be considered as standard form contracts under Israeli law and some of their provisions could be considered depriving, regardless of whether there is exclusive applicable law provision referring to the laws of a different jurisdiction. *Second*, it is likely that exclusive jurisdiction and applicable law provisions will be considered depriving and void if the service is provided to Israeli consumers online, especially when the consumers agree to the Terms & Conditions from their devices in Israel. *Third*, it means that when privacy issues are raised, the applicable law would likely be Israeli law when the service is offered to Israelis, and especially in the context of social networks in which the communication and the transfer of information is between Israelis. *Fourth*, this decision now clears the path towards a substantive discussion on the privacy issues and may result in a decision that the Privacy Policy itself is a standard form contract and may include depriving conditions which will be considered void by the court.

Sincerely,

Fischer Behar Chen Well Orion & Co.

For further information please feel free to contact:

Adv. Amit Dat

adat@fbclawyers.com

+972.3.6941320

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