



**Global Cartel - Follow-on Class Actions in Israel - Is This The End?**

Dear Clients and Friends,

We would like to update you with regard to the Israeli Supreme Court Ruling of July 31, 2017, which establishes that, for the purpose of service out of the jurisdiction based on Regulation 500(7) of the Israeli Civil Procedure Regulations, 5744-1984 ("**Civil Procedure Regulations**") - **it is not sufficient to indicate damage which allegedly occurred within Israel, but rather an act or omission in Israel must be shown.**

This ruling has a **significant impact, *inter alia*, on "follow-on" class actions filed in Israel against non-Israeli entities based on allegations of a global cartel.** Generally, in these cases, the act of entering the alleged global cartel occurs **outside** the State of Israel, and the only affiliation to Israel is through sales of the "cartelized" product by unrelated third parties, which allegedly cause damage in the Israeli market to indirect purchasers.

It should be noted, that the Supreme Court's ruling addresses service under Regulation 500(7) of the Civil Procedure Regulations and it does not refer to other methods of service (*e.g.*, service through other alternatives in Regulation 500 of the Regulations; service through Regulation 482 to a "business representative" in Israel; etc.).

**A. Background to The Supreme Court Ruling**

In November 2013, a Motion to Certify as a Class Action ("**Motion to Certify**") was filed against Chi Mei, Sharp, Samsung Electronics, AU Optronics, and LG Display ("**LCD Respondents**") alleging that the LCD Respondents participated in a cartel that coordinated the prices of LCD panels. The Motion to Certify was submitted following administrative, criminal and civil proceedings against the LCD Respondents worldwide. The Civil Procedure Regulations regulate the means of service of pleadings. Regulation 500 of the Civil Procedure Regulations establishes the circumstances under which the Israeli Courts may grant leave for service out of the jurisdiction, and accordingly, broaden the jurisdiction of the Israeli Courts. One of the circumstances - and the relevant one for the LCD case - is Regulation 500(7) to the Civil Procedure Regulations ("**Regulation 500(7)**"), which establishes that the Court may grant leave for service out of the jurisdiction if "**the suit is based upon an act or omission in Israel**".

Pursuant to the Central District Court Registrar's ("**Registrar**") decision to grant leave to serve the LCD Respondents out of the jurisdiction, the LCD Respondents submitted motions to cancel leave for service out

of the jurisdiction - which the Registrar rejected.<sup>1</sup> The Registrar determined, *inter alia*, that due to the "Effects Doctrine"<sup>2</sup> (which applies, in his view, to the Israeli antitrust law), the **act** of the restrictive arrangement, which allegedly influenced the competition in the Israeli market, was performed, in part, in Israel, for the purposes of Regulation 500(7). Following the Registrar's decision to allow service out of the jurisdiction, the LCD Respondents appealed to the District Court (Hon. Judge Amir) which **overturned the Registrar's decision and cancelled the leave for service out of the jurisdiction.**

The Hon. Judge Amir stated that for service purposes, the "act or omission" in Regulation 500(7) must be the Respondent's act or omission, or someone on its behalf, on the basis of this act or omission. Furthermore, the Hon. Judge Amir established that the LCD Respondents did not sell products in Israel, as none of the third parties that sold the LCD Respondents' end products in Israel were connected in any way to the LCD Respondents, whether as their representatives, agents or otherwise. **Accordingly, it was not possible to attribute to them any act or omission that took place within the State of Israel.**

Also, the Hon. Judge Amir adopted the position of the Director General of the Israeli Antitrust Authority, to the effect that a foreign company that does not have a legal presence in Israel is deemed to act in Israel only if a clear connection exists between the company's conduct outside Israel and its impact in the local market. Pursuant to Hon. Judge Amir's decision, the Applicants in the LCD case submitted a Motion to Appeal the Court's decision to the Supreme Court ("**Motion to Appeal**").

### **B. The Supreme Court Ruling - It Is Not Sufficient to Indicate Damage In Israel**

On July 31, 2017 the Israeli Supreme Court (the Hon. Judge Hayut) **rejected the Motion to Appeal.** The Supreme Court upheld Hon. Judge Amir's decision not to grant leave to serve the LCD Respondents out of the jurisdiction. The following is an overview of the Supreme Court's ruling:

1. The Supreme Court clarified that Regulation 500 of the Civil Procedure Regulations establishes the circumstances under which the Court may allow for service out of the jurisdiction, and accordingly, broaden the jurisdiction of the Israeli Courts. One of these circumstances is established in Regulation 500(7), according to which if "the suit is based upon an **act or omission** in Israel", then leave for service may be granted.
2. The Supreme Court stated that it has been established in case law - more than once - that for the purpose of Regulation 500(7), **the act or omission must occur in Israel**; and that it is not sufficient to indicate damage which allegedly occurred within Israel.
3. With regard to the merits of the case, the Supreme Court established that the LCD case is a clear case of damage due to an act or omission **outside** of Israel, which does not meet the requirements of Regulation 500(7): the Supreme Court stated that the alleged price fixing in the LCD case **did not occur in Israel**; and that the alleged "cartelized" products were sold in Israel **by third parties that are unrelated to the LCD Respondents** (and the Applicants do not claim otherwise). In fact, the only affiliation between the

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<sup>1</sup> The Registrar approved Chi Mei Corporation's Motion to Cancel Leave.

<sup>2</sup> The "Effects Doctrine" is a doctrine applied by the Israel Antitrust Authority with regard to the extraterritorial application of the restrictive arrangement control regime, in order to acquire extraterritorial jurisdiction over restrictive arrangements, including cartels, executed outside of Israel which harm competition in Israel. The Supreme Court did not determine in its decision whether this Doctrine is adopted under Israeli law.

alleged cartel and Israel is that the "cartelized" products were allegedly sold in Israel at a higher price, than they would have been sold "but-for" the alleged cartel.

4. The Supreme Court also accepted the District Court's position that the "Effect Doctrine" regards the question of applicable law, rather than the appropriate jurisdiction. Thus, the Supreme Court rejected the Applicants' claim that the alleged sale of "cartelized" products in Israel should be attributed to the LCD Respondents as an "act" by way of applying the "Effects Doctrine".
5. The Supreme Court noted that its ruling may raise certain discomfort due to its implications on service outside the jurisdiction based on Regulation 500(7), and that its ruling may not coincide with trends of globalization and worldwide technological developments. However, **the current language of Regulation 500(7) does not allow for leave for service to be granted if an act or omission did not occur in Israel.**

### **C. Possible implications of the Supreme Court Ruling**

We expect that following the Supreme Court's decision, it will be harder in cases with similar circumstances to serve pleadings outside of the jurisdiction on non-Israeli respondents in class actions based on restrictive arrangements (e.g., cartels) which were executed outside of Israel, when the **only** affiliation between the alleged cartel and the Israeli market, is the sale of "cartelized" products by third parties that are unrelated to alleged cartel members (and thus, other means of service cannot apply).

Also, as noted in the Supreme Court's decision, the local legislature has considered in 2004 an amendment to Regulation 500(7) of the Civil Procedure Regulations, which - if enacted - will allow service outside of Israel based also on damage occurring within Israel. Such amendment, if enacted, may allow follow-on class action in Israel with respect to corporations, which do not have direct or indirect local presence in Israel as well.

Time will tell if this ruling will put a stop to the "global cartel-chasing" phenomenon- in similar circumstances - which has been prevalent in Israel in recent years.

**We would be happy to answer any questions that you might have.**

**Sincerely,  
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