



Legal Update

November 2017

Aviation Law Update - November 2017

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We wish to update you on proposed legal amendments and case law which may have important consequences for the field of aviation law.

Proposed amendment to the Consumer Protection Law
(Amendment - A dealer who is not a Supplier) 5777-2016

In November 2017, the Economic Affairs Committee of the Knesset passed in a first reading (of three) an amendment to the Consumer Protection Law dealing with transactions for the purchase of hospitality services, travel, holiday or entertainment services that are executed entirely outside of Israel.

The amendment proposes that Section 14C of the Consumer Protection Law will not apply, in the event that the abovementioned services, which are executed entirely outside of Israel, are purchased through distance sale transactions, in which an Israeli dealer supplies the consumer with the service through a service provider outside of Israel (hereinafter: the "**Excluded Transactions**"). Section 14C provides that a consumer may cancel a transaction with written notice within 14 days of the execution of the reservation or the date of receiving confirmation of the transaction, but no less than seven business days, before the date of the provision of the service. Under the law the dealer can deduct a cancellation fee that is the lower of 5% of the value of the transaction, or NIS 100.

For the Excluded Transactions, the cancellation terms that will apply will be determined by the service provider outside of Israel, but only if the Israeli dealer disclosed such cancellation terms to the consumer before the execution of the transaction.

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"Israeli dealer" is defined in the proposed amendment as a dealer whose main business or activities are in Israel.

From the transcript of the meeting of the Economic Affairs Committee on the proposed amendment, it arises that the purpose of the amendment is to prevent harm to Israeli sales agents, who on the one hand suffer damages because they are forced to pay cancellation fees in accordance with the fees that the service provider outside of Israel sets, and on the other hand they are forced to deduct the cancellation fees pursuant to the Consumer Protection Law, which is usually lower than the amounts set by the service provider, and bear the difference.

Class Action 15698-04-15 Ofer Manirav v. El Al Israel Airlines Ltd.

In November 2017, the District Court in Tel Aviv (the Honorable Justice S. Almagor) approved a motion to certify a class action against El Al Israel Airlines Ltd. The motion to certify focused on El Al's frequent flyer program in which program members accumulate points in a number of different ways and they are eligible to receive various benefits and promotions. In this framework, the members of El Al's frequent flyer program can use the accumulated points for the purchase of flight tickets (whether using the points alone or using the points with added cash). In the motion to certify, it was argued, among other things, that in 2015 El Al **unilaterally and in bad faith changed the terms and conditions of the frequent flyer program** in a manner that resulted in an increase in the number of points required to purchase a flight ticket. The District Court certified the motion, and it approved the claim to be heard as a class action. In its decision the Court held that:

In general, El Al has exclusive discretion with regard to determining the terms of the accumulation and redemption of points in the frequent flyer program. El Al's regulations provide that the company may inform the members in the program of changes to the terms by delivering 30 days prior notice. However, the Court held that a prior notice of 30 days, or even three months in advance, would not be sufficient in relation to the changes that El Al implemented to the frequent flyer

program, because these would not be reasonable periods of time for the program members to realize their benefits accumulated by them before El Al made the changes to the program;

The terms in the regulations permitting El Al to change the number of points that a passenger needs in order to purchase a ticket with points or with points in addition to cash, constitute oppressive conditions in a standard contract. The Court added that there is a reasonable possibility that these terms would be amended or annulled under the Standard Contracts Law.

Referring to the fact that the points have economic value, the Court rejected El Al's argument that the contract was one that conferred a "gift".

Proposed Amendment to the Consumer Protection Law (Amendment No. 53) (Change or Termination of Consumer Benefit Plan), 5777-2017

Further to the case summary above, we note that in July 2017, the Knesset passed in a third reading and approved the Proposed Amendment to the Consumer Protection Law (Amendment No. 53) (Change or Termination of Consumer Benefit Plan), 5777-2017, (the "Amendment"). The Amendment will come into force on December 7, 2017, and it will also apply to a benefit plan that a dealer operated prior to this date, provided that the dealer did not notify the consumer of the change to or the termination of the consumer benefit plan prior to the Amendment's starting date.

The Amendment applies to customer club type benefit plans which satisfy the following conditions: The plan is ongoing either for a defined period or for an undefined period of time; the consumer receives benefits or accumulates rights from the dealer who operates the plan or from a different dealer; for the purpose of joining the plan, the consumer is required to provide the dealer with identifying details, whether joining involves payment or not.

Under the Amendment, a dealer that operates a benefit plan for an undefined period **shall not make a change to the plan and shall not terminate it**, except if it sent a notice to the consumer on the details of the change or on the date of termination of the

plan, **three to four months before** the entering into force of the change or the date of termination of the plan.

If the dealer wishes to make a change to a benefit plan with an undefined period that includes the accumulation of rights

(meaning, the reduction of benefits of rights granted to the consumer in the framework of the plan, their value, or their exercise options, or the period of time in which they can be exercised, or the termination of the plan) then the dealer must:

1. Send to the consumer a notice on the details of the change or on the date of termination of the plan eight to nine months before the entering into force of the change or the date of termination of the plan. In this notice the dealer must also state the consumer's right to exercise the rights that it accumulated in accordance with paragraph 2 below;
2. Allow the consumer to exercise the benefits or the rights in accordance with the terms of the plan which were established on the date it entered the agreement with the consumer, starting from the date when the notice referred to in paragraph 1 above is sent and at least until the date of when the change or termination of the plan comes into force, as the case may be.

For a plan with a defined period of time, the Amendment establishes that a dealer who operates such a benefits plan shall not make a change to the plan or terminate it prior to the end of the defined period. The Amendment also establishes that such dealer must send to the consumer a notice three to four months prior to the end of the defined period with regard to the end of the period and the consumer's right to exercise the benefits or the rights by the end of the period in accordance with the benefits plan.

Notices sent under the Amendment shall be sent to the consumer in one of the ways specified below in accordance with the consumer's selection of how it wishes to receive such notice pursuant to the contact details that the consumer provide the dealer on the date of the transaction or at a later date: mail, email, SMS, or other online methods.

The Amendment establishes that its provisions shall be added to

the list of the Consumer Protection Law's provisions, for the breache of which the Supervisor may impose on the breaching dealer a monetary sanction in the amount of NIS 22,000 (for a dealer who is a corporation) or NIS 7,000 (for a dealer who is an individual).

Leave for Appeal Small Claims (Tel Aviv) 23465-07-17
Iberia, Líneas Aéreas de España v. Leora Fleisher Peled

Iberia, Líneas Aéreas de España filed a request for leave to appeal from a judgment of the Small Claims Court in Tel Aviv-Yafo (of the Honorable Senior Registrar Yael Marmur Domb) (Small Claims Action 14290-03-17), in which Iberia was ordered to pay NIS 12,000 for "**distress**" and "**emotional damage**" caused as a result of the delayed delivery of luggage.

The District Court granted Iberia's request for leave to appeal, stating that due to the absence of consistency on this matter under the law, the hearing would be transferred to an expanded panel of three judges. The hearing will deal with the following legal issue: can an action against an airline for the distress/emotional damage element caused by the delay in delivery of baggage be brought under the provisions of the Montreal Convention?

We will keep you updated due to the consequences of the outcome of this proceeding.

Civil Action 64298-03-15 Yaakobi v. El Al Israel Airlines Ltd.

In November 2017, the Magistrates Court granted a claim filed by 10 passengers against El Al in connection with the cancellation of a flight from Zurich to Tel Aviv. The claim was based on the provisions of the Aviation Services Law (Compensation and Assistance for Change of Flight or Change of Conditions) 5772-2012 (hereinafter: the "**Aviation Services Law**").

The Court accepted El Al's argument that the airline was exempt from the obligation to pay compensation for the flight cancellation because it succeeded to prove its argument that the

flight was cancelled due to special circumstances that were not under its control - extreme weather conditions. However, the Court granted the claim and ordered El Al to pay NIS 100,000 (in addition to NIS 20,000 in legal costs) in punitive damages as follows:

A. Food and Drink: The food and drinks that were given to the passengers during the wait time was only light, in a small quantity and was insufficient. It was found that the provision of fruit, coffee and a pastry does not constitute suitable and "appropriate preparedness.

B. Hotel and Transportation: Some of the passengers did not receive vouchers to a hotel and were forced to sleep on the airport terminal floor. El Al claimed that this was because there were no rooms available in the hotels in Zurich due to the weather conditions. El Al indeed provided mattresses to the passengers who stayed in the terminal but the inventory was limited so some of the passengers remained in the terminal without mattresses. The Court found that the airline was obligated to provide hotel accommodations to the passengers under the Aviation Services Law, and its failure to do so under circumstances in which the weather disruptions were foreseeable, justifies the awarding of punitive damages at a substantial rate.

C. Non-pecuniary damages cannot be awarded for distress: as it shall deviate from the provisions of the Aviation Services Law, which provide the court with discretion whether to award exemplary compensation. The court therefore ruled that awarding damages for distress would constitute "double compensation".

Small Claims Action (Haifa) 11733-02-17 Eisenberger v. El Al Israel Airlines Ltd.

In October 2017, the Small Claims Court, for the first time, ruled on the status of a "wildcat strike" by a flight crew that led to the cancellation of a flight. The case focused on the question of whether a wildcat or unofficial strike, pursuant to section 6(e)(1) of the Aviation Services Law constitutes "special circumstances" pursuant to section 6(e)(1) of the Aviation Services Law, *i.e.*

circumstances which are not under the airline's control and which it cannot prevent.

El Al argued that the "wildcat strike" by El Al pilots, which was carried out without the Labor Court's authorization in violation of Israeli law, was the reason for the cancellation of the flight (it is noted that this is not a "protected strike" that grants the airline an exemption under section 6(e)(2) of the Law).

The Court held that the pilots' strike did not constitute special circumstances that were not under the airline's control since El Al pilots systematically and regularly disrupted El Al flights. Therefore, the strike under review was not considered to be a surprising event that frustrated the airline's preparedness.

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

Sincerely,

**Aviation, Maritime & Tourism Department
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