



Legal Update: Litigation

December 2018

Important development concerning international jurisdiction over foreign defendants and service of process outside Israel

(amendment to Regulation 500(7) of the Civil Procedure Regulations 1984)

In September 2019, an amendment effecting an overall reform of the Civil Procedure Regulations 1984 ("**Regulations**") is expected to come into force.

Recently, however, the Ministry of Justice published the Draft Civil Procedure Regulations (Amendment No. 3) 2018 ("**Proposed Amendment**"), which sets out the Ministry's intention for some of the proposed amendments to be implemented **in the near future**, sooner than next September. One such amendment concerns Regulation 500(7), which provides the courts' authority to grant leave for service of pleadings outside Israel, an act which grants Israeli courts jurisdiction over a foreign defendant.

In its current form, Regulation 500(7) allows Israeli courts to grant leave for service of pleadings on a foreign defendant only when "the claim is based on an act or omission that took place within the jurisdiction". After the implementation of the Proposed Amendment, Regulation 500(7) will provide that in order for service to be permitted outside of the jurisdiction, it will be sufficient for a plaintiff to demonstrate that its **damage** was sustained in Israel, subject to two conditions: (1) that the defendant could foresee that the damage could occur in Israel; and (2) that the defendant, or a person affiliated with it, engages in international trade or provides international services of significant scope.

This represents a notable departure from current doctrine, and supersedes the leading Supreme Court precedent of **Mizrahi v. Nobel Explosives Co. Inc.**, PD (32)115 (1978), which provides that it is necessary for a plaintiff to demonstrate that the relevant **act or omission** occurred in Israel, and not only that the damage was caused in Israel, in order to receive leave for service outside of the jurisdiction under Regulation 500(7).

The explanatory memorandum relating to the Proposed Amendment cites Leave for Civil Appeal 925/17 **Hatzlacha - The Consumers' Movement for the Promotion of a Fair Society and Economy v. AU Optronics Corporation** (published in Nevo, July 31, 2017) in which the court rejected a motion to grant leave to serve pleadings on foreign companies outside of the jurisdiction pursuant to Regulation 500(7). In that case, the Supreme Court Chief Justice, the

Honorable Esther Hayut, raised concerns that Regulation 500(7) in its present form precluded the ability to grant leave to serve outside Israel in a claim against foreign companies that were allegedly involved in an international cartel.

The explanatory memorandum clarified that foreign suppliers can be assumed to foresee the possibility of causing damage in Israel and therefore can prepare themselves for the possibility of being sued in Israel. Furthermore, the Proposed Amendment is meant to allow for service outside Israel not only when the foreign defendant is, itself, engaged in international trade or the provision of international services in a significant amount, but also when the defendant, if a company, carries out these activities through an "affiliated person" (such as a controlling shareholder or controlled subsidiary). If, for example, the defendant itself does not engage in international trade, but its subsidiary markets its products internationally, the corporate separation between the entities will be disregarded.

The Proposed Amendment does not clarify whether it will also apply to proceedings that are already pending before the courts, or whether it will apply only to proceedings that are filed after it comes into force. In general, under Israeli law, in the absence of a provision to the contrary, changes to a procedural law will also apply to pending proceedings; however, since the Proposed Amendment involves matters of international jurisdiction, the change cannot be said unequivocally to involve only procedural law and this question will need to be determined by the courts.

Sincerely,
Fischer Behar Chen Well Orion & Co

For further information, please contact:

Adv. Dr. Gil Orion	gorion@fbclawyers.com	+972-3-6944142
Adv. Michal Sela	msela@fbclawyers.com	+972-3-6944142

.....
The information provided herein is solely for informational purposes and shall not be construed as a legal opinion or legal advice of any sort. All rights reserved to Fischer Behar Chen Well Orion & Co. In order to subscribe to or be removed from the distribution list please e-mail: news@fbclawyers.com