



Dear Clients,

We are pleased to provide you with important recent updates from the international transport and tourism sector.

Leave for Appeal Small Claims Matter (District Court Tel Aviv) Ukraine International Airlines Ltd. v. Oren Meroz and two others (published in the Nevo law repository on December 18, 2018)

The District Court in Tel Aviv-Yafo (The Honorable Judge Avigail Cohen) rejected the request for leave for appeal brought by Ukraine International Airlines in the framework of the above referenced Small Claims Court matter.

The Leave for Appeal request was brought in connection with a number of claims which were jointly heard and which concerned the question of whether **extraordinary weather conditions can exempt an airline from the provision of compensation when a flight has been delayed for more than 8 hours**. In the framework of the court of first instance's judgements, the Court established that despite the fact that there were extraordinary weather conditions (stormy conditions), and despite the fact that the delay of the flight's departure was a result of the weather conditions which could not have been foreseen, the airline did not satisfy its burden of proof to demonstrate that it did "everything that it could do" in order to prevent the delayed departure.

On appeal, the District Court first established that the first two conditions in section 6(e)(1) of the Aviation Services Law (Compensation and Assistance for Flight Cancellation or Change of Conditions), 5772-2012 – were satisfied. These two conditions are that the flight was cancelled due to extraordinary circumstances and that these circumstances were not in the airline's control. However, despite the fact that such conditions were fulfilled, the appeal court found that the airline in this case did not sufficiently demonstrate that even if it did everything that it could do it still could not prevent the cancellation of the flight. The Court further established that the airline was required to show that an inquiry was carried out with respect to making changes to its flights schedule in order to prevent the delay. The Court established that such an inquiry was not carried out because of economic considerations – which may be legitimate but are factors which cannot support the finding that the airline did everything that it could to prevent the cancellation of the flight.

Amendment to the Consumer Protection Law (Amendment no. 58) (Cancellation of a distance sale transaction for the provision of tourism services outside of Israel), 5778-2017

Following the legal update which we sent to you in November 2018 we report herein that the Consumer Protection Law was amended so that when the new law comes into force a dealer will be permitted to offer a consumer a non-refundable transaction for tourism services fully provided outside of Israel, for two types of transactions, as follows:

1. A transaction for which the consumer has the right to cancel in accordance with the provisions under the Consumer Protection Law 5741-1981 relating to distance sales (i.e. 14 days after the date of execution of the order and no less than seven days before the provision of the service, not including days of rest) minus the lower of either the cancellation fees at the rate of 5% of the value of the transaction or NIS 100;
2. A transaction that is non-refundable, *i.e.* a transaction for the provision of a service pursuant to what is detailed herein above under item number 1, that has cancellation terms which are the same as the service provider's cancellation policy, including for a non-refundable transaction, and including the duty to disclose the applicable cancellation policy.

A dealer who offers a consumer to enter a distance sale transaction for the provision of tourism services outside of Israel, under which the two above mentioned alternatives are offered, will be required to send the consumer during the marketing stage of the transaction and prior to entering the transaction, information on the service provider's cancellation policy, including on whether there is a right to cancel as well details on such right if it exists.

Civil Claim 23416-03-18 The Phoenix Insurance Company Ltd. v. Infrassure Ltd.

This claim concerned the payment of insurance benefits between an insurer and a secondary insurer and leave for service outside of the jurisdiction. First the Court in this case established that the claim should be heard in Israel. The Court rejected the secondary insurer Infrassure Ltd.'s argument that a shortened statute of limitations period (three years) should be applied to The Phoenix's claim to receive insurance benefits in accordance with the Insurance Contract Law, 5741-1981.

The Court stated that the Insurance Contract Law in section 72 explicitly excluded insurer and secondary insurer relationships and therefore, the above mentioned shortened statute of limitations period does not apply.

Rejection of an attempt to serve pleadings on a law firm representing a foreign company

Our firm successfully represented a large foreign company from the tourism sector which is a company that does not have a representative office in Israel. Our firm succeeded to prevent an attempt to serve the pleadings on the foreign company in Israel. In the motion requesting leave to serve the documents, it was argued that our firm serves as the "fixed law firm" for the company, and in the alternative it was argued that our firm in an entity authorized to manage

the company's business in Israel. The District Court in Lod rejected the two arguments based on the limited power of attorney which was given to our office and in light of the fact that a law firm cannot serve as an entity authorized to manage a client's business.

Update of amounts under the Aviation Services Law (Compensation and Assistance for Flight Cancellation or Change of Conditions), 5772-2012

On January 10, 2019 the Director General of the Ministry of Transport, Infrastructure & Road Safety published a notice regarding the updating of the amounts in the Aviation Services Law. The notice stated that due to the increase of the consumer price index in November 2018, the amounts under the Aviation Services Law would be updated as follows:

- Amount in section 11(a) will be NIS 10,390
- The new amounts in the First Schedule:

Flight Distance (km)	Amount (NIS)
Up to 2,000	1,300
Up to 4,500	2,080
Over 4,500	3,120

- The new amounts in the Third Schedule:

Flight Type and Service Class	Flight distance one way (km)		
	Up to 2,000	Up to 4,500	Over 4,500
Charter flight or scheduled flight - tourist class	780 NIS	1,560 NIS	2,600 NIS
Scheduled flight – business class	2,080 NIS	3,640 NIS	6,490 NIS
Scheduled flight – first class	4,160 NIS	7,270 NIS	12,980 NIS

Sincerely,

Fischer Behar Chen Well Orion & Co

For further information, please contact:

Adv. Shirly Kazir

skazir@fbclawyers.com

+972-3-6941348