Legal Update: Aviation Law **August 2019**

Dear Clients,

We are pleased to provide you with important recent Aviation Law legal updates.

The High Court of Justice held that travel agents are not permitted to sell insurance products for outside of Israel in accordance with the decision of the Ministry of Finance's Commissioner of Capital Markets, Insurance and Savings

In July 2019, the High Court of Justice rendered its decision in the matter 2969/19 **The Israel Association of Travel Agencies and Consultants v. The Commissioner of the Capital Markets, Insurance and Savings Authority.**

The Petition to the Court concerned a circular on marketing and sales which the Commissioner of Capital Markets, Insurance and Savings published and which established a prohibition for any person in Israel to engage in "insurance brokering", without holding the appropriate license.

In 2014, the Israel Association of Travel Agencies and Consultants (the "Association") filed a petition opposing the circular in which it claimed that the circular significantly restricts the activities of travel agents who over the years sold to their customers travel insurance policies for places outside of Israel. In May 2017, judgement was rendered on the petition which established that the petitioners would withdraw their petition and the date of entry into force of the circular would be postponed in order to give the travel agencies the opportunity to license their employees as insurance agents.

After the Association's unsuccessful attempt to achieve a regulatory change, the Court denied the petition and ruled that the circular should come into force - resulting in the prohibition for the travel agents to engage in the sale of insurance without holding the appropriate license.

Update on the ruling of the Court of Justice of the European Union (CURIA) following the precedent-setting judgement of a Czech court on Regulation (EC) No. 261/2004 concerning the delay of a connecting flight

In July 2019 the Court of Justice of the European Union interpreted sections 15(1)(c), 7(1) and 3(5) of Regulation (EC) 261/2004 and established that a flight with two segments, where the first flight segment originates in an EU member country is subject

to the regulation. This means that passengers on the connecting flight will be entitled to receive compensation when they experience a delay that is above 3 hours long. On the question of who is responsible to pay the compensation, the Court of Justice ruled that clearly, the responsibility belongs to the "operating air carrier" – with the operator defined as the entity who carries out the flight pursuant to an air transport contract with the passengers. Therefore, also when the operating air carriers for the two different flight segments are different, under a code-share flight, if the air transport contract was entered into with the air carrier originating in an EU member country and it operates the first flight segment in practice, then the regulation will apply to it in relation to all of the flight segments, including those segments for which it is not the operating air carrier in practice.

District Court approves Settlement Agreement in Class Action brought against El Al

In June 2019, the District Court in Jerusalem rendered a judgement in which it approved the settlement agreement reached in the matter 21074-04-14 Class Action **Yonatan Brand v. El Al Israel Airlines Ltd.** (hereinafter: **El Al**).

In the motion to certify the claim as a class action, it was argued that El Al misrepresents information to its customers on the flight ticket cancellation and change terms on the El Al website. It was also claimed in the motion to certify that El Al also does not send the details of the cancellation and change terms to its customers following the purchase of the flight ticket.

The Court approved the settlement agreement which the parties proposed, and held: the representations which are presented during the flight ticket purchase process on the website with respect to the flight ticket cancellation and change terms will be more transparent and will be explicitly presented to the purchasers at a number of stages of the purchase process. In addition, monetary compensation will be paid to the group members who were located and to the group members who have yet to be located, and discounts and benefits will be provided to all El Al customers – for a total of NIS 6 million.

The District Court in Haifa rejected a motion to certify a claim as a class action which alleged misrepresentation on the calculation of flight award points

In May 2019, the District Court in Haifa rejected a motion to certify a claim as a class action which was brought against El Al and Diners Club Israel Ltd., in the framework of the matter 18542-10-17 Class Action **Huberman v. El Al Israel Airlines Ltd., et al.**

The motion to certify concerned a change made to the provisions of the by-laws for the "Diners Fly Card", pursuant to which the accumulation of points from the use of the card at state institutions would be limited to NIS 30,000. It was alleged that the change was carried out unilaterally without providing suitable notice to every relevant cardholder and without publishing a notice on the change in the media as is required.

With respect to the conduct of the Applicant and his lawyer, the Court found that the Applicant acted in bad faith and the Court found that doubt existed regarding the Applicant and his lawyer's ability to represent the interests of the alleged group. Under these circumstances, the Court dismissed the motion to certify in a manner that would not prevent the represented group members from submitting a new claim in the future.

Small Claims Court judgement recognizes an exceptional technical malfunction as a special circumstance exempting the airline from providing compensation under the Aviation Services Law in the case of a delay above 8 hours

In July 2019, a Small Claims Court in Israel rendered a judgement which established that a malfunction in the lavatory of an aircraft which was discovered close to the time of departure constitutes "special circumstances" under the Aviation Services Law.

The airline demonstrated that the malfunction was not under its control and it also proved that it did everything that it could to correct the malfunction and find an alternative flight for its passengers.

The judge denied the claim and ordered the plaintiffs to pay the defendant legal costs of NIS 500.

The Supreme Court adjudicated a maritime law matter concerning the statute of limitations in accordance with the Hague-Visby rules – The Court held that the running of the statute of limitations could not be suspended

In May 2019, the Supreme Court adjudicated the matter of Leave for Civil Appeal 7195/18 Feyha Maritime Ltd. v. Miloubar Central Feedmill Ltd.

The Appeal centred on two legal questions relating to maritime law and the statute of limitations in accordance with the laws established in the binding Hague Visby Rules adopted in Israel in the Carriage of Goods by Sea Ordinance. The first legal question raised in the matter was whether the filing of a claim against a marine shipping company by an entity who has no standing to file the claim stops the running of the statute of limitations period. The second question is whether the filing of a claim by a cargo insurer against a shipping company stops the running of the statute of limitations period in relation to the claim of the owner of the insured cargo against the shipping company. In both of the foregoing questions, a relevant litigant who filed its claim after the expiry of the one-year statute of limitations period is arguing that it can file its claim "on the back of" another claim that was filed before the statute of limitations year expired.

The Applicant filed a motion to dismiss arguing that according to the bills of lading which were issued the recipient in the matter is another company, Miloubar Agricultural Cooperative Society Ltd; and in any event even if Miloubar was to amend its name in the

claim, no cause of action exists against the Applicant for the damage caused to the cargo because it is subject to a substantive limitations pursuant to section 6(III) of the Hague Visby Rules. Section 6(III) of the Hague Visby Rules establishes a substantive statute of limitations period and not just a procedural statute of limitations so that after one year has passed from the time when the goods were delivered or the date when the Goods should have been delivered, the shipping company and the cargo ship will be discharged from liability in relation to them.

The question is whether the claims brought against the Applicant suspend the running of the statute of limitations period which applies to claims relating to the shipment of goods by sea pursuant to section 6(III). The claims were filed before one year passed from when the cargo should have been delivered however not in the same name of the Company appearing on the bill of lading. Furthermore, according to regulation 26(b) of the Israeli Civil Procedure Regulations, with respect to the statute of limitations, in the event of the addition or the replacement of a litigant on the statement of claim the date of the amendment will be deemed to be the date of the initiation of the claim.

The Supreme Court in its judgement held that the claim which Miloubar Central Feedmill Ltd. filed did not contain a cause of action because the plaintiff had no standing to sue the defendant. Accordingly, the amendment of the statement of the claim is what in practice establishes the cause of action because it formulates the "identity of the parties" which is an integral part of the cause of action. Thus, the amendment to the statement of claim amounts to a substantive amendment and not merely a technical amendment. The actual meaning of the question of whether a claim was filed is really whether a valid claim between two proper parties was filed – because only such a claim can suspend the running of the statute of limitations period (the same result was established in relation to the third party notice which was filed against the cargo ship).

In summary, the Court granted the appeal and dismissed the claim against the cargo ship and accepted the statute of limitations argument pursuant to the Hague Visby Rules.

Sincerely,

Fischer Behar Chen Well Orion & Co

* Updated written by: Chen Shalem & Michal Geist

For further information, please contact:

Adv. Shirly Kazir **skazir@fbclawyers.com** **+972-3-6941348**

.....