



**Dear Clients and Colleagues,**

We are pleased to provide you with an important update from the transport and tourism sector.

**Class Action (District Court Lod) 54491-01-15 Bashan v. easyJet plc.**

Our firm represented the British airline easyJet in a class action brought against it in Israel.

The main claim in the class action was that easyJet violated the Israeli Consumer Protection Law when it did not refund the consideration paid by its customers for transaction cancellations in accordance with Sections 14C(c) and 14(e) of the Consumer Protection Law. The potential damages claimed by the Applicant amounted to several Million USD.

The class action raised the **precedential question** on the applicability of the Consumer Protection Law to a foreign company **which operates in Israel but does not have representation in Israel.**

In the proceeding we argued on easyJet's behalf that the **Consumer Protection Law can apply only to individuals or properties in Israel; however, a foreign company without representation in Israel is not subject to the Consumer Protection Law including its provisions regarding cancellation of remote sales and refunds.**

In support of our arguments, we referred to similar conclusions reached by various bodies including an Israeli inter-ministerial government committee, the Israeli Consumer Protection Authority, and the Israel Consumers Council. In addition, we demonstrated that easyJet's conditions of carriage include a choice of law clause which expressly applies the laws of England and of the EU. On this point we argued that, contrary to the plaintiff's position, the choice of law clause is not an oppressive condition, but rather is valid and therefore apply to Israeli consumers.

The case was conducted for a period of over 5 years and included cross examinations of all the witnesses and submissions of written summaries by the parties.

On June 8, 2020, the Central District Court (Hon. Judge Keinar) rendered its judgment, rejecting the plaintiff's personal claim and denying the plaintiff's motion to certify a class action.

**In its reasoned and precedent judgment, the court held, *inter alia*, that there was no possibility that the questions raised in the class action would be decided in the class favor.**

In its judgment, the court accepted all of easyJet's primary arguments and made a series of substantive and important findings, which are expected to have a **significant impact on the entire aviation and tourism sector in Israel – a sector in which many foreign companies operate without representation in Israel.**

Below is a summary of the key elements of the court's opinion:

- The representative appointed on behalf of an airline in Israel, pursuant to the Aviation Licensing Services Law, has only limited authority with respect to specific matters and that is not sufficient to cause the Israeli consumer protections laws to apply to the airline. If the legislator wanted to subject the foreign airlines to all Israeli laws, it presumably would have done so explicitly.
- Flight services to and from Israel naturally include services provided partially in Israel. However, these services which are provided partially in Israel **do not** make the Israeli law the applicable law. easyJet's activities in Israel – activities which are inherent to its operations as a foreign airline without representation in Israel – are not sufficient in order to apply the provisions of the Consumer Protection Law to easyJet.
- The provision of ground services to easyJet by an external contractor in Israel (QAS) does not subject easyJet to the provisions of the Consumer Protection Law. The ground handling service company's operation of check-in counters on behalf of easyJet, negligible sales of ancillary services for easyJet and the fact that its employees wear easyJet uniforms, do not change this conclusion.
- **The Consumer Protection Law and the Aviation Licensing Services Law do not expressly apply their provisions to foreign airlines.** This supports the conclusion that a foreign airline without representation in Israel will not be subject to these laws.
- The Open Skies Treaty (the "Treaty") signed between Israel and the EU and its member states does not explicitly establish the applicability of the Israeli consumer protection laws. These circumstances, in view of the objective of the Treaty, further supports the conclusion that the Consumer Protection Law does not apply to a foreign airline operating in Israel without representation in Israel.

- The conclusions of an Israeli inter-ministerial committee report provide that it is not possible to enforce the Consumer Protection Law on a foreign airline operating in Israel without representation in Israel. Professional and legal representatives from various government offices served on this public committee, and weight should be given to its conclusion that the Consumer Protection Law does not apply.
- The positions of the Consumer Protection Authority and the Israel Consumer Council included with easyJet's response support the conclusion that the Consumer Protection Law does not apply in our matter.
- easyJet's Conditions of Carriage include a choice of law provision which expressly refers to the laws of England. This provision is not an oppressive condition in a standard contract and therefore English law should apply. Since it was established that the choice of law provision is not oppressive and is binding, there is no need to rule on the choice of law rules developed in Israeli case law.

Please note that the judgment is subject to an appeal to the Israeli Supreme Court. We would keep you updated for any further developments.

**Sincerely,**

**Fischer Behar Chen Well Orion & Co**

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