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# Civil Procedure Regulation Reform – Regulation 500

## The Reform in Civil Procedure Regulations

The Israeli Civil Procedure Regulations, 5744-1984 are the administrative legislation that governs the entire process of hearing and conducting civil trials, from the initial filing of a civil claim to the final verdict, as well as the appeal process.

The Israeli Ministry of Justice set out to conduct a substantive reform in the rules of Israeli Civil procedure, in order to adapt them to the modern era and to expedite the adjudication of civil cases.
As part of said reform, the Ministry of Justice issued, in 2014, a draft administrative bill of new Civil Procedure Regulations, intended to replace the current Regulations. The publishing of the draft was hailed by the Ministry of Justice as a move to create a new arrangement that would serve to return the Regulations to their former status as the first and foremost work tool for the conduct of civil proceedings, in order to streamline, simplify and abbreviate proceedings while, at the same time, safeguarding the fairness and adequacy of the civil trial.

After receiving comments from the public, and several amendments to the proposed bill, the new Regulations were passed into law in September 2018, with the date of entry into force of the Regulations being September 5, 2019.

Most recently, the Israeli Ministry of Justice enacted an amendment to the existing Regulations, that enters into force certain portions of the restated Regulations immediately. One specific portion that is applied with immediate effect is the reform of Regulation 500 of the Civil Procedure Regulations, which governs extraterritorial service of process.

## General overview of Regulation 500 and the rules governing extraterritorial service of process

Regulation 500 establishes that a litigant seeking to initiate proceedings against a defendant located outside the territorial jurisdiction of the State of Israel, must request leave for extraterritorial service of process from the court. By power of the service of process under such leave, the Israeli court can acquire jurisdiction over a foreign defendant, thus expanding the scope of its jurisdiction.

In essence, the granting of leave of extraterritorial service of process involves the imposition of the authority of the Israeli court over a defendant that is not located in Israel.

In order for the Israeli court to acquire international jurisdiction over the claim, the party that files the motion for leave of service must meet several cumulative conditions:

1. The movant must demonstrate an adequate cause of action. I.e., that the subject material involves a serious matter that is worthy of adjudication. This condition does not carry a substantial weight – a claim is considered to demonstrate an adequate cause of action, for the purpose of granting leave of service, if it is not devoid of merit on the face of it.
2. The movant must show that the Israeli forum is *Forum convenience* – i.e., the most appropriate forum – for the adjudication of the dispute. If the court finds that a different forum is more appropriate for the adjudication of the claim, the court might decline a motion for leave of service outside the jurisdiction, and direct the plaintiff to the more appropriate forum.
3. The movant must demonstrate that their case falls under one of the grounds for service of process listed in Regulation 500. The Regulation comprises a comprehensive list of causes, and the power to obtain international jurisdiction is contingent on the case in question complying with one (at least) of the criteria found in the Regulation. In general, it can be said that the common denominator of the list of causes in Regulation 500 is that they base some sort of connection or affinity between the claim and the state of Israel, thus justifying the court assuming jurisdiction over the claim.

It should be pointed out, that even if the court does grant a motion for leave of service outside the jurisdiction, the defendant may move to quash the leave granted, arguing that any of the above conditions were not met. Such a motion is not a typical motion to quash a previous decision by the court, as it triggers a *de novo* review of the merit of the motion for leave of service.

**The Pending Reform in Regulation 500**

The reform of the Rules of Civil procedure entails some changes to the causes included in Regulation 500. These changes reflect contemporary trends of globalization and technological development, allowing leave to be granted for extraterritorial service of process of a claim for damages in cases where the damage occurred and could have been expected to occur, in Israel, despite the act or omission that caused such damage occurring abroad.

Chief among those, is the change to Regulation 500(7) of the regulation – which is one of the changes that were intended entered into force with immediate effect.

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Under the existing Regulation 500(7), in order to allow the service of process outside the borders of the State of Israel in a claim for damages, the movant has been required to prove that **the act or omission that caused the damage occurred within the jurisdiction of Israel**.

The Regulation, in its current formulation, reads as follows:

> **"500. The court, or a registrar who is a judge, may grant leave of service of court documents outside the territory of the State in any of the following circumstances:**
> **[…]**
> **(7) The complaint is based on an act or omission that occurred within the territory of the State;"**

In the New Civil Procedure Regulations, the Ministry of Justice expanded the scope of the above provision. The Ministry now seeks to usher into force this change concerning leave of service outside the jurisdiction, immediately (rather than wait for the entry into force of the new Regulations).

Therefore, the Ministry of Justice enacted the following amendment to Regulation 500(7):

> ***"The amendment to Regulation 500:***
> ***1. In Regulation 500 of the Main Regulations, the following shall replace Para. (7):***
> ***"(7) The Complaint is based on an act or omission that occurred within the territory of the State, or damage incurred by the plaintiff in Israel from a product, service or conduct of the defendant, provided that the defendant could have anticipated that the damage would be caused in Israel, and that the defendant, or a person affiliated with it, is engaged in international commerce or the provision of international services of a significant scope;***
> ***In this regard, an "affiliated person" shall mean each of the following, when the defendant is a corporation:***
> ***(a) A person that controls the corporation;***
> ***(b) A corporation controlled by a person as stated in Para. (a);***
> ***(c) A corporation controlled by any of the entities stated in Para. (a) or (b)."***

According to the explanatory notes to the amendment provided by the Ministry of Justice, under the new amendment, Regulation 500 would allow for leave of service of process outside the borders of the State of Israel, provided two conditions are met:

(1) That the perpetrator of the act or omission that caused the damage alleged in the claim anticipated, or should have anticipated, that said act or omission could cause damages to be incurred in Israel in the context of its commercial operations, and that, consequentially, there is a possibility that it will face claims on account thereof in Israel. This is based on the assumption that foreign suppliers can anticipate the occurrence of damages in Israel and prepare themselves for the possibility of facing claims in Israel.

*Our analysis of the new amendment and the explanatory notes is that the test for ascertaining whether a foreign entity should have anticipated that damage might be caused, would be a normative-objective one. In similar instances in Israeli legislation and case law, such wording was construed to mean that an entity's ability would not necessarily be tested on the basis of the capabilities of the specific corporation in question – but rather, on what would be expected from a "reasonable" corporation given the circumstances of each matter, and the generally-accepted principles of the Israeli legal system.*
*Generally, it is difficult to envisage, prior to the existence of sufficient case-law, how the court will interpret the standard set forth as part of this condition, and in what circumstances would an entity be viewed as one that should have anticipated the possibility of damage being caused in Israel.*

*However, there is a plausible reason to assume that, in any event, one who provides a service knowingly directed at Israel (e.g., through a Hebrew language website) should be deemed to expect that their acts or omissions may cause damages in Israel.*
*There is also a more remote possibility that the provision would be interpreted as viewing any entity that sells its products or services globally, as one that should have anticipated damage in every country it sells to, including Israel.*

(2) The defendant, or a person affiliated with it, is engaged in international commerce or the provision of international services of a significant scope.

The condition that the commerce be of "a significant scope" is intended to allow the application of the new rule on large corporations that can reasonably expect to be sued locally as part of their operations, but exclude suppliers that sell products on a very limited scope from facing claims in Israel. The wording is based on the wording of the legislation used by the State of New York, where a special test was applied that is based, *inter alia*, on granting extraterritorial service of process in respect of significant international operations, as opposed to negligible operations, on the part of the defendant.

*It should be emphasized that service of process can be allowed even in cases where it is not the defendant*

*itself that meets the second condition, but also when an "affiliated person" does. As defined in the proposed amendment, an "affiliated person" can be the person controlling the corporation, or a corporation that it controls.*

*Therefore, for example, if the defendant itself does not engage in international commerce, but its subsidiary markets its products globally, the second condition is fulfilled de facto, and Israeli law would view the distinction between the two entities as artificial, for the purpose of the second condition. The proposed definition of an affiliated person refers, thus, to the entire group of holders that maintains ties of control causing them to act as a single group, for the purposes of the Regulation. This definition is commonly accepted in Israeli legislation and appears in several other acts of legislation that address corporations.*

**Potential Implications of the Reform in Regulation 500(7)**

In Israel, the interpretation of the existing wording of Regulation 500(7) Prior to the recent amendment), and the distinction between an act or omission occurred in Israel (as opposed to the damage itself), has come up in two primary contexts:

- **The first, concerned antitrust cases, where the alleged uncompetitive behavior was conducted between two foreign entities, and allegedly causing harm to the Israeli consumers.**

The main case concerning such circumstances involved a motion to certify a class action, wherein the plaintiff alleged that a restrictive arrangement took place between foreign companies, that fixed prices for LCD panels, which are used for flat-screen computer monitors, television screens and more – thus leading to increased prices of such screens, and allegedly causing damages to be incurred by the Israeli public.

The plaintiffs submitted a motion to grant them leave to serve process, based on regulation 500(7), to several foreign manufacturers of LCD panels, who were allegedly involved in the restrictive arrangement. The District Court's registrar approved the motion, and the defendants subsequently moved to quash the leave granted.

In the registrar's decision in Class Action 53990-11-13 ***Success: The Consumers' Movement for the Promotion of a Fair Society and Economy v. AU Optronic Corporation*** (handed on 6 March, 2016), it found that for the purpose on cases brought based on antitrust laws, the rule governing the forum for adjudication would follow the location of the incurrence of the damages, i.e., in Israel, rather than the place where the restrictive arrangement was entered into.

The defendants appeal this decision before a judge of the District Court in the Central district , in Appeal of Registrar Ruling (Central District) 57451-03-16 ***Success: The Consumers' Movement for the Promotion of a Fair Society and Economy v AU Optronic Corporation*** (the "*AU Optronic Case*"). The appeal was successful, and the court overturned the registrar's ruling.
The court determined that based on the wording of Regulation 500(7), the location of the tort is the governing factor, rather than the location of the incurrence of the damages. Since the act was not performed in Israel, it was ruled that there was no place to permit extraterritorial service of process to the defendants.

A motion for leave of appeal against this ruling was filed with the Supreme Court (Leave of Civil Appeal 925/17)**.** In the verdict of Justice E. Hayut, who now presides as the Chief Justice of the Supreme Court, the appeal was dismissed on the following grounds:

> ***"… the conclusion I have reached may arouse a certain degree of discomfort. Indeed, a situation wherein the Israeli consumer is not able to seek recompense from entities that have, by all appearances, joined an international cartel that has been responsible for damages to the consumer is undesirable, and in this respect, it is doubtful if the Regulation, in its current formulation, is compatible with the current trends of globalization and technological development around the world* […] *Regulation 500(7), in its current wording, negates the possibility of granting leave of extraterritorial service of process with respect to acts or omissions not committed in Israel. Thus, the motion must be dismissed."***

It might appear that the discomfort voiced by the Supreme Court, was one of the driving factors behind the recent amendment to Regulation 500(7) as part of the reform in the Civil Procedure Regulations.
Under the proposed change, the plaintiffs in the AU optronic might have been able to argue that they clear the first condition set out in Regulation 500, as their argument was based on the notion that the damage to the customers was incurred in Israel. It remains to be seen how the court would interpret the first test set out in the revised Regulation 500(7) in said context.
In any event, the change to Regulation 500(7) might therefore entail a significant change in the possibility of bringing forward antitrust claims in Israel, for alleged violations of antitrust law that took place abroad – so long as this alleged violations have an adverse effect on the Israeli consumer, and also subject to the fulfillment of the other precondition set in the clause.

- **The second context in which the distinction might be relevant, is that of companies engaging in e-commerce.**

As far as e-commerce companies are concerned, the reform can be seen as reinforcing changes that had already taken hold (at least partially) in case-law, as courts have come to terms with the changing technological landscape. For example, the court's ruling in Class Action (Tel Aviv Distict) 8295-10-17 ***Booking Com B.V. v Shapira*** (the "*Booking Case*").

The *Booking Case* concerned a Dutch company operating an online platform for lodging providers around the world to advertise and sell their services. The movant filed a motion to certify a class action against the company, claiming that the respondent had failed to notify its users of a "foreign currency fee" that it collects until after they had placed their orders, in violation of the Consumer Protection Law. The court granted the motion for leave of extraterritorial process filed by the movant, in the circumstances of that matter. The court found that the publications on Booking's website are to be considered as an "act or omission that occurred within the territory of Israel", for the purpose of Regulation 500(7), in its current wording.

The court mentioned that international companies operating on a global scale – all the more so, companies that conduct their business on the internet and advertise globally, and, as Booking did - decided to market their services in Israel to citizens of Israel, using a Hebrew application that adjusts prices to the Israeli currency – should anticipate that they may face claims in the countries in which they operate.

While e-commerce companies have already faced some exposure to claims prior to the institution of the reform, by their nature, there are other players on the market for whom the reform to the Civil Procedure Regulations might constitute a much wider exposure to the risk of claims in Israel -such as in the case of LCD panel manufacturers like *AU Optronic Case*, assuming that the two conditions set forth in the amended Regulation 500(7) are met.

We should note that the full extent and ramifications of the changes to the Regulations will only become fully evident when the first rulings have been handed down in accordance therewith.

We are at your disposal for any inquiries, clarification or follow-up questions concerning the subject matter of the above memorandum and other aspects of the reform in Israel Civil Procedure laws.