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# Israel Supreme Court clarifies conditions for lawful service of process to foreign party by delivery to Israeli "representative"

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### Introduction

In the recent judgment in *Taro Pharmaceutical Industries Ltd v Hayet et al*,<sup>(1)</sup> the Israeli Supreme Court interpreted, for the first time, a provision in the new Israeli civil procedure regulations that sets the conditions for a lawful service of a claim to a foreign party, thus applying the court's jurisdiction on the foreign defendant by delivery to its Israeli "representative".

While it did not overturn existing case law made in relation to a similar provision in the previous regulations, the Supreme Court clarified and refined the requirements for acknowledging a lawful service of process in this manner.

### Facts

The appellant, Taro Pharmaceutical Industries Ltd (Taro IL), is an Israeli company, and the parent company of the US-based company Taro Pharmaceuticals USA Inc (Taro US). Taro US and its officers were facing civil claims and criminal charges in the US courts for violating US antitrust laws. The respondents – shareholders of Taro IL – filed motions for discovery of evidence against Taro IL and Taro US in preparation for filing a derivative action against officers in both companies, in accordance with Israeli corporate law.

The respondents served the court documents to Taro IL in Israel and motioned the District Court to validate this as a lawful service of process to Taro US, claiming that Taro IL was the "representative" of Taro US in Israel, in accordance with the provisions of regulation 163(c) of the Israeli Civil Procedure Regulations, 5779-2018. The District Court granted the motion upon determining that the relationship between Taro IL and Taro US was intensive enough to assume that the former would notify the latter of the proceedings filed against it in Israel.

Taro IL asked the Supreme Court for leave to appeal this decision, and Supreme Court took up the case and provided an interpretation of regulation 163(c) – the first by this court since the new civil procedure regulations were enacted.

### Background

Regulation 163(c) states that a foreign defendant may be served a claim through its representative in Israel who regularly represents the defendant with respect to the defendant's matters in Israel if the claim relates to these matters. Regulation 163(c) replaced the expired regulation 482(a) of the previous Israeli Civil Procedure Regulations, 5744-1984, which stated that a defendant residing outside the court's jurisdiction, may be served a claim relating to a business or work, through a manager or an authorised person who, at the same time, manages the same business or works in the jurisdiction, on the defendant's behalf.

In implementing regulation 482(a), the Israeli courts used two cumulative tests. The main one, known as the "intensive relationship test" examines whether the relationship between the foreign defendant and the Israeli manager or authorised person is "intensive enough" that it is likely that the latter would inform the former of the proceedings filed against it in Israel. The secondary test, given a lesser importance, examines whether the claim relates to the work or business with which the Israeli entity receiving the service was involved in on behalf of the defendant. In implementing regulation 163(c), the courts continued applying the intensive relationship test as the main test for acknowledging a lawful service of process by delivery to a representative in Israel.

### Decision

In the *Taro* judgment, the Supreme Court, led by Judge Groskopf, clarified that when serving a party with a claim, the purpose of a lawful service of process is twofold: not only is the service meant to notify the defendant of the legal action taken against it in Israel, but a lawful service is also required for applying the court's jurisdiction on the foreign defendant, which is possible due to the foreign defendant's "constructive presence" in Israel (ie, a business activity of the defendant conducted through its representative in Israel).

Thus, it is not enough for a claimant to show an "intensive relationship" between the foreign defendant and the Israeli representative, and the court must be convinced that the focused conditions prescribed in regulation 163(c) are met in order to ensure that the purpose of applying Israeli jurisdiction on the foreign defendant by virtue of its "constructive presence" in Israel is fulfilled.

Judge Groskopf pointed out three elements in regulation 163(c) that set a stricter test for application than the old regulation 482(a) did:

- A claim may be served to a foreign defendant through its "representative" in Israel (and not merely through a "manager" or an "authorised person" as previously allowed).
- The representative must be representing the defendant with respect to the latter's business in Israel (as opposed to simply anyone who may be managing the business).
- The representative must have an ongoing relationship with the defendant (as opposed to a relationship that exists temporarily at the time of service).

In the case of *Taro*, the Court found that although the relationship between the two companies was intensive enough to assume that Taro IL would notify its US subsidiary of the claim, the former was not the latter's representative with regard to its matters in Israel, since Taro US had no matters of its own in Israel. The Court clarified that the Israeli recipient of the claim may not be, at the same time, both the foreign defendant's "matter" in Israel and its "representative" with respect to the same matter. Therefore, the Supreme Court overruled the District Court and returned the case to the lower instance to determine whether the respondents should be allowed to serve the court documents to Taro US outside of Israel.

It should be noted that while Judge Mintz joined Judge Groskopf's opinion, the third judge in the panel, Judge Amit, delivered a concurring opinion in which he argued that regulation 163(c) did not set a stricter test than the previous regulation. On the contrary, Judge Amit opined that the current term "representative" is wider than the previous term "manager or authorised person" and that the term "matter" is wider than the previous term "business or work".

Another point on which Judge Groskopf and Judge Amit differed was whether regulation 163(c) would necessarily render the opposite outcome if the Israeli party being served was the subsidiary of the foreign defendant (rather than its parent). Judge Groskopf stated that due to the principle of "separate legal entities", the mere fact that a foreign defendant was the shareholder of the Israeli recipient could not, in and of itself, satisfy the test set in regulation 163(c). Judge Amit, on the other hand, briefly stated that if the situation were the other way around, with the Israeli recipient being the subsidiary of the foreign defendant rather than its parent, the Israeli recipient would then indeed be considered the defendant's representative for the purposes of regulation 163(c).

#### **Comment**

While the *Taro* judgment did not overturn existing case law or set a new precedent, it clarified that an "intensive relationship" alone is no longer enough and outlined the more focused conditions which must be met for serving documents to a foreign party through its Israeli representative in accordance with regulation 163(c). In a world where companies conduct global, cross-border activities daily and may contract with different local entities for different purposes, and where everyone can contact anyone by different means, foreign defendants facing service attempts by Israeli claimants clinging to the existence of an "intensive relationship" alone may find grounds in the *Taro* judgment to challenge and hold off such service attempts.

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#### **Endnotes**

(1) PCA 3774/22.