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ISRAEL'S **LEADING** INTERNATIONAL LAW FIRM

CLIENT UPDATES

Spam Update: First amendment to Israeli Spam Law Goes Into Effect

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A new amendment to the Israeli Spam Law (the Communications Law (Bezek and Broadcasting) 1982, Amendment No. 40) went into effect recently. This amendment is the first amendment to the Spam Law since it went into effect in 2008.

The amendment makes two main changes: first, it expands the type of messages which are considered to be spam; and second, it permits certain messages to be sent without obtaining advance opt-in consent.

The Spam Law regulates the practice of sending commercial marketing materials to recipients without their consent by way of email, fax, automatic phone dialing systems, or short messaging technologies (SMS, MMS). The Spam Law establishes a general rule that an Israeli advertiser may not send commercial communications without obtaining the advance written permission of the recipient. Furthermore, the recipient may revoke that permission at any time.

The Spam Law's scope is quite broad. It covers "any commercial message intended to encourage the purchase of a product or service, or to encourage spending money in any other way." The Law includes both civil and criminal penalties for non-compliance, including personal liability for officers and those in charge of the marketing or advertising activities of a company. Furthermore, individuals may sue and collect up to 1,000 NIS in exemplary damages for every spam email they have received, even without proving any actual damages. The Supreme Court has ruled that the Spam Law should be interpreted very much in favor of recipients of

spam, and that the 1,000 NIS per spam message should be the starting point for any damage award. The defendant would need to prove mitigating factors to reduce it from this maximum starting point.

First Change: Expanding the Definition of "Spam Messages". The amendment broadens the current scope of the Spam Law to include both (1) requests for donations, as well as (2) Campaigning (as defined below). It does, however, explicitly exclude political messages and political campaigning. That is, it is still permissible to send messages about elections, or to request donations for elections.

The term "Campaigning" under the Amendment means "the distribution of ideas for the purpose of influencing opinions and/or behaviors, unless they entail a political message, including political campaigning". While the term "Donation" has not been defined explicitly, the amendment does provide that a "donation" does not include donations for the purpose of elections to the Knesset and certain other positions.

Second Change: Certain Organizations May Send Spam Emails without Advance Consent. Further, the amendment includes an exclusion from the general rule of obtaining a recipient's advanced written consent (so-called "Opt In"), allowing Non-Profit organizations and Public Benefit Companies to send emails for the purpose of receiving donations or Campaigning, without having obtained prior written consent. Recipients may still, however, inform the sender that he or she is not interested in receiving such messages (so-called "Opt Out"). Please note that this exclusion only applies to e-mails, and any other form of electronic messaging listed under the Spam Law mentioned above, such as SMS, remains subject to the Opt In option.

In addition, the amendment made a third, more minor, change. If the spam message is sent via an automatic phone dialing system, senders must now permit the recipient to Opt Out by means of pressing a single button on the keypad.

To the extent you have a question about this new amendment, or the Spam Law, feel free to contact us.

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