



January 2020

Aviation Update

Dear clients,

We would like to draw your attention to an important update in the field of aviation.

1. **European airlines' liability for continuation flights purchased on a unified booking**

On July 11, 2019, the European Court of Justice (ECJ) discussed Regulation EC261/2004 (hereinafter: "**Regulation 261**") entitling passengers to fixed compensation of up to EUR 600 for cancellation and/or delay of flight under certain conditions and held that a broad interpretation of this regulation should be given. The Court ruled that segments purchased under a unified reservation under the Code-share agreement constitute one flight for the purpose of Regulation 261. EU airlines operating within Code Share with non-European airlines may be liable under Regulation 261 of the European Regulation for cancellation or delay of flight of another airline, when the European airline sells non-European airline tickets and operates one of the flight segments (**C 502/18 CS and Others V Ceske aerolinie a.s.**). (See update August 2019).

2. **Stricter punishment against passengers rioting on flights**

A new treaty called the "Montreal Protocol 2014" ("Montreal Protocol 2014") sets a stricter standard when it comes to the issue of passenger rioting during flights, such as violence against crew members, harassment of other passengers, smoking in the aircraft and failure to comply with safety instructions. In contrast to the existing treaty today, the Tokyo Charter of 1963 which states that the rioting passenger will be governed by the laws of the country to which the aircraft belongs, under the new convention, the rioting passenger will be subject to the laws of the country where the aircraft landed. Thus, and unlike the Tokyo Charter which made it difficult to exercise judicial authority over the rioting passenger, the new charter allows for the rioter to be arrested relatively easily at the moment of landing. It is important to note that while the Tokyo Convention has 186 states signed, at present only 22 states have signed the new treaty.

3. **Update of compensation amounts under Israeli Aviation Services Law**

In accordance with the provisions of section 13 of the Aviation Services Law (Compensation and Assistance for Cancellation of a Flight or a Change in its Terms), 5712-2012 (hereinafter: "**Aviation Services Law**"), every year on January 1, the different rate of compensation under the law will be updated according to the rate of increase of the Consumer Price Index. Hereunder is the summary of updates which have been made in connection with the various amounts of compensation under the Aviation Services Law:

- **Compensation for Example (Section 11 (a) of the Law): NIS 10,430.**

- Financial compensation under the first addition to the law: Flight distance up to 2,000 km:

NIS 1,300; Flight distance up to 4,500 km: NIS 2,090; Flight distance above 4,500: NIS 3,130

- Return of consideration for a passenger who has been issued a plane ticket as part of a tour package (as specified in the third schedule to the law):

	Up to 2,000 kms.	Up to 4,500 kms.	Over 4,500 kms.
Charter flight/tourist department	NIS 780	NIS 1,560	NIS 2,610
Business Department	NIS 2,090	NIS 3,650	NIS 6,520
First Class	NIS 4,170	NIS 7,300	NIS 13,040

4. **Lightning damage does not exempt airlines from paying compensation in case of delay**

In January 2016, the UK court ruled in favor of passengers for a five-hour flight delay caused by lightning strikes in the aircraft. The court ruled that a lightning strike affecting the aircraft is not an unusual circumstance which exempts the airline from paying compensation for a flight delay, this decision constitutes a guiding judgment in the event of lightning damage. Regulation EC261/2004 provides that, in the event of a flight delay, passengers may be entitled to compensation, as long as the delay is not caused by exceptional circumstances, but the regulation does not establish a list of exceptional circumstances. The case law states that only an incident which is not ingrained in the normal operation of the airline may turn into an extraordinary circumstance, the plaintiffs' main claim was that most lightning-struck aircraft reach their destination without any delay, however, the safety checks required by airlines after lightning strike cause delays on the next flights intended to carry damaged aircraft. The court ruled that the lightning strikes did not amount to an unusual circumstance which exempts the airline from paying compensation:

"I find in the sphere of aviation, a lightning strike is not out of the ordinary. The fact that aircraft manufacturers design their aircraft to minimize the risks arising from them and provide air carriers with inspection and repair protocols to deal with lightning strikes gives support to this finding, and to the finding that such strikes are inherent in the normal exercise of a carrier's activity "(Monarch Airlines Ltd v Evans and Lee).

Yours sincerely,

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