

**Memorandum - Aviation Law****August 2021**

In light of the frequent changes and restrictions that apply to passengers arriving and departing from Israel, as well as numerous other countries around the world during the Covid-19 pandemic, both passengers and airlines are experiencing confusion regarding their respective responsibilities. While inquiries regarding reimbursement eligibility in the event of changing restrictions, responsibility to comply with restrictions and notification requirements by airlines are frequently raised, FISCHER's Aviation practice has drafted a brief guide to assist the public and provide clarity in this area.

The information we have received from our clients indicates that the frequency of passenger inquiries and claims relating to these matters is expected to increase along with the tightening of travel restrictions.

This issue was raised recently in a class action filed in Israel against Hulyo (an Israeli travel agency) and Aegean Airlines, in which passengers argued that while Hulyo and Aegean Airlines provide customers with the possibility of purchasing a ticket for a flight which departs on the date of the purchase, practically passengers are unable to depart on these flights since the Greek authorities require passengers to complete an entry form to Greece at least one day prior to the departure date. The passengers argued that Hulyo and Aegean Airlines misled their passengers and acted in bad faith by failing to provide this information and were unlawfully enriched as a result.

In view of the potential exposure of the airline and travel agency in these circumstances, we set out below a brief overview of the principal obligations applicable to the airline in this regard, together with our practical suggestions for reducing the airline's exposure to the extent possible.

According to the Israeli Aviation Services Law, as a general matter and unless stated otherwise in a flight ticket, if a passenger chooses not to fly in view of legal restrictions imposed on his travel, the airline is not obligated to refund the cost of the ticket. The Israeli legislature has not yet determined whether an airline has an obligation to provide a refund if the passenger does not meet the COVID-19 requirements of the origin or destination country or was not aware of them prior the purchase.

According to the Special Authorities Regulations for the Purpose of Coping with the Novel Coronavirus (Temporary Provision) (Restrictions on the Operation of Airports and Flights) 5780-2020, an airline has the following obligations to inform the passengers:

Prior the sale, the airline must inform that the passenger or any other person for whom he purchases the flight tickets will not be entitled to fly unless the following conditions are satisfied:

- the passenger is not sick, and has not come into close contact with a patient or suffered from any symptoms;
- the passenger presented a document confirming that in the 24 hours that preceded the takeoff time he filled out an online declaration form on the website of the Ministry of Health;
- an outgoing passenger who has stayed in Israel for more than 72 hours, and an incoming passenger who has stayed in another country for more than 72 hours, is required to present a negative finding for nCoV in a PCR test performed during the 72 hours prior to the scheduled take-off of the aircraft;
- all passengers over 16 years old departing from Israel who are Israeli citizens or residents must fill out an online declaration form (available on the Ministry of Health website) stating that the passenger is not traveling to one of the high COVID-19 risk countries listed in the appendix of the Special Authorities Regulations for the Purpose of Coping with the Novel Coronavirus (Temporary Provision) (Restriction of Departing from Israel), 2021 - unless the passenger meets one of the exceptions therein.

a) 24 hours prior to the expected time of arrival to the airport, the airline must inform the passengers again that they need to meet the foregoing requirements in order to be permitted to fly, and also regarding:

- The public health rules that apply at entry to Israel and exit therefrom, as provided by the air operator in Israel;
- The duration of the screening procedures expected at the airport of arrival and departure, and the rules of conduct in the passenger terminal;
- The rules of conduct in the aircraft;
- The penalties for the breach of these Regulations.

By contrast, an earlier version of the Regulations required the air operator also to inform the passengers about the public health rules that apply at the entry to **the country of destination** and exit therefrom.

In our view, the government's decision to limit the obligation to restrictions applicable in Israel reflects the position that the airline is not obliged to inform its passengers about specific high-risk countries or to advise them whether they are flying to a country with special restrictions or limitations. It is not clear whether the airline nonetheless may be obliged to do so under the generally applicable rules, such as the Israeli Consumer Protection Law.

A ruling by the Small Claims Court in Israel prior to the amendment, (Small Claims (Tel Aviv) 33958-10-20 Gidon Scheinholtz v. United Airlines Inc), offers an indication of the legal issues that airlines are expected to deal with in this regard; according to the judgment, if a passenger booked a flight via a prohibited country (in this case the passenger booked a flight to the United States via Germany, a country from which entry into the United States was prohibited), the contract of carriage is void, and therefore the Aviation Services Law does not apply; the court also held that the airline was negligent in allowing the passenger to make the reservation and to check in on the website, without informing him of the restrictions that apply to his entry, and therefore it was required to pay the passenger compensation covering most of his damages plus legal expenses.

This decision has not yet been considered in the light of the amended regulations, and it will be interesting to see whether courts will impose additional obligations on airlines beyond those stipulated by special regulations.

In view of the growing uncertainty and the inherent difficulty in updating the airline's reservation system in accordance with the frequent changes in the restrictions, in order to reduce the exposure on the part of the airlines, we would recommend that airlines include - *in addition to the information expressly required by special regulations* - a general notice on their website, in its reservation system and in e-mails sent to passengers prior to their flights along the following lines:

" Important notice

Dear passenger,

In view of the Covid-19 pandemic, varying restrictions are imposed on passengers by different authorities around the world; therefore, we encourage you to check carefully the restrictions that apply to you according to the regulations in the countries relevant to your flight, before making your reservation and prior to the time of your flight.

You can find the local Israeli instructions on the Ministry of Health

website, [with a link to the relevant page]. Please note that additional restrictions may apply to you at the entry to the country of destination and exit therefrom.

Please note that our airline is not fully updated with the specific restrictions applicable in each country. Therefore, it is the passenger's responsibility be informed about the restrictions that apply to him."

We also recommend setting clear conditions regarding eligibility for reimbursement in the event that restrictions apply at the time of the flight.

We are at your disposal should you have any questions.

Sincerely,

FISCHER (FBC & Co.)

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