

VENEZUELA: AIRLINES REQUIRED TO SELL TRAVEL INSURANCE



On 5 February 2014, Regulation 008 from the Venezuelan Ministry of Popular Power for Tourism (MPPT) was published in the Venezuelan Official Gazette. It obliges airlines (and other transportation companies) to “request and offer” all passengers travelling to and from Venezuela a compulsory insurance plan covering medical expenses, loss, theft and robbery of baggage.

The mandatory nature of the travel insurance plans had already been established by the MPPT in December 2013. However, lack of clarity and confusion led the MPPT to amend and ultimately replace the original rules.

Back in December 2013, when the system was established, Andres Irraza, head of the MPPT, explained that this requirement was prompted by repeated incidents involving Venezuelan tourists abroad who, due to the currency control regulations which limit the amount of foreign currency Venezuelans are allowed to take abroad,

did not have sufficient means to cover the costs of unexpected events in a foreign country. This, according to the MPPT, became a burden to the government, as these tourists turned to the Venezuelan embassies for help.

There is no formal explanation for applying the regulation to foreign tourists travelling to Venezuela, but the regulation is allegedly inspired by the Schengen scheme, which requires compulsory health insurance for foreign tourists travelling to the Schengen area in Europe.

The insurance plans

Further to the regulation, airlines (and other transportation companies) are required to “request and offer” all passengers travelling to and from Venezuela an insurance plan covering medical expenses, loss, theft and robbery of baggage. The mandatory nature of the insurance plan has to be notified to the passengers when their travel tickets are brought.



The plans must comply with the following standards:

- The coverage period should be for the actual duration of the journey, up to maximum of 45 days, counted from the moment when the passenger starts the journey to or from Venezuela.
- For tourists travelling from Venezuela, the plan must cover “medical expenses arising from accidents or acquired diseases occurring in any country outside [Venezuela], without any exclusion”.
- For tourists travelling to Venezuela, the plan only needs to afford medical cover within the Venezuelan territory.
- The plan must identify the services and the amount of cover available.
- It must provide a minimum cover of SDR 26,500 for medical expenses.
- It must provide a minimum cover of SDR 600 for loss or theft of baggage.

The regulation applies from 30 March 2014 in relation to passengers travelling from Venezuela, and from 1 May 2014 in relation to passengers travelling to Venezuela.

Passengers travelling from abroad are allowed to purchase insurance from any insurance provider, as long as the minimum requirements established by the MPPT are complied with. For passengers travelling from Venezuela, insurance plans can only be offered by insurance companies expressly authorised by the MPPT. Passengers have the choice of purchasing the insurance plans either through insurance providers or through the airlines, which must offer the plans on behalf of an authorised insurer. Travel agents are expressly banned from acting as intermediaries and selling the

plans. Airlines are exposed to penalties for carrying passengers without the necessary insurance plans, including fines, suspension or revocation of licences, amongst others.

Obligations for airlines

To “offer” the insurance plans to passengers travelling from Venezuela, airlines must enter into a contract with one of the 14 insurance companies currently authorised by the MPPT. The regulation provides that airlines should have submitted a copy of their contract by 15 February 2014, but the MPPT has informally indicated that there is flexibility in relation to this deadline.

The selection of the insurance provider is subject to a close tender process, where airlines are mandated to select the insurance provider offering passengers “the most beneficial conditions for the lowest cost”. Elements such as service quality, reputation and reliability are not taken into account in the regulation. The result of the tender process has to be notified to the MPPT, which will keep records of the contracts.

When selling the tickets, airlines must include the price of the insurance plans as an additional charge differentiated from other charges. Airlines are also obliged to provide information to the passengers about (i) the insurance provider, (ii) the terms and conditions of the policy, (iii) the extent of the coverage, (iv) the reporting methods, and (v) the contact details to guarantee that the passenger receives the necessary support in case it is needed. This information must also be available on the insurance providers’ websites. Passengers for their part, must provide all necessary information to access the plan. In practice, airlines will likely need to gather more information from passengers at the booking stage.

The responsibility for collecting the premiums and paying the insurance providers rests on the airlines. The possibility of airlines charging commissions for acting as intermediaries in the sale of the insurance plans is not expressly addressed in the regulation. The MPPT has not been able to clarify this matter, but in principle, airlines would only be able to charge a commission to the insurance providers but not to the passengers.

To “enable implementation and coverage”, airlines must send the passengers’ manifest to the insurance providers 30 minutes after embarkation is completed. This can be interpreted as if the reception of the passengers’ manifest is the trigger for the policy to become operative. However, there is no provision addressing situations where the manifest is not sent “on time” by the airline or the consequences thereof.

In terms of liabilities, the regulation expressly provides that insurance providers and not the airlines shall be deemed liable for (i) their failure to respond to claims made by the passengers, (ii) the payment of the indemnities, and (iii) the expenses arising from incidents which occur abroad. Interestingly, the regulation does not refer to expenses arising from incidents occurring in Venezuela but, in principle, this is probably an oversight, although one cannot be certain whether it will be interpreted as such.

Repercussions

None of the sectors affected by the regulation is happy about the scheme. Consumer associations complain that the regulation limits consumer choice and increases costs for Venezuelans to travel, in circumstances where it is more and more difficult to travel in any event.



The insurance industry for its part criticised the scheme arguing that it limits competition and restricts choices for the passengers. Through the Venezuelan Chamber of Insurers (CAV), the industry called the government to enter dialogue in order to clarify what they say are many uncertain aspects of the regulation.

The Venezuelan Airline Association (ALAV) also expressed its discontent with the burdens the regulation imposes on them, as they are required to assume numerous obligations which are well beyond the scope of their businesses and which will certainly demand from them a significant amount of additional work (including no doubt extra IT burden) and cost. In addition, even though the regulation exempts airlines from any insurance related liability, it remains to be seen if this would be enough to prevent airlines from being exposed to claims arising from the sale of the insurance plans.

While all these sectors seek to address their concerns with the government, airlines will need to adjust and be prepared for implementing this new regime, which adds to the numerous burdens they face when operating in the increasingly difficult Venezuelan market. Inevitably, questions of detail relating to different broking arrangements and the consequent insurance obligations will arise. Failure to comply potentially attracts penalties, although what the attitude of the authorities will be to enforcement is yet to be seen.

For more information please contact [Jeremy Shebson](#), Partner, on +44 20 7264 8779 (London)/ +55 11 3179 2900 (São Paulo) or jeremy.shebson@hfw.com, or [Giselle Deiró](#), Associate, on +55 11 3179 1909 or giselle.deiro@hfw.com or your usual contact at HFW.

We would like to thank Desmond Dillon of Ayala Dillon Fernández Linares Chevero, Venezuela for his contribution in the compilation of this article.

For further information, please also contact:

Fernando Albino

Partner, São Paulo
T: +55 (11) 3179 2900
E: fernando.albino@hfw.com

Giles Kavanagh

Partner, London
T: +44 (0)20 7264 8778
E: giles.kavanagh@hfw.com

Pierre Frühling

Partner, Brussels/Paris
T: +32 (0) 2643 3406
E: pierre.fruhling@hfw.com

Richard Gimblett

Partner, Dubai
T: +971 4 423 0537
E: richard.gimblett@hfw.com

Peter Coles

Partner, Hong Kong
T: +852 3983 7711
E: peter.coles@hfw.com

Mert Hifzi

Partner, Singapore
T: +65 6411 5303
E: mert.hifzi@hfw.com

Lawyers for international commerce

HOLMAN FENWICK WILLAN LLP

Friary Court, 65 Crutched Friars

London EC3N 2AE

United Kingdom

T: +44 (0)20 7264 8000

F: +44 (0)20 7264 8888

hfw.com

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