



COVID-19 UNEXPECTED CONSEQUENCES FOR AIRLINES OFFERING REFUND VOUCHERS IN COLOMBIA

The Colombian Superintendence of Transportation has commenced 2021 by fining an airline over US\$50,000 for refunding passengers with vouchers when their scheduled flights were cancelled. This decision undermines an emergency law enacted to support the aviation industry in the wake of Covid-19.

“The airline that is lawfully offering refund vouchers in a concerted effort to manage potential losses, in doing so is now facing the risk of fines that can run considerably high.”

The decision

The issue under review was whether a refund voucher protected a passenger's consumer rights to a refund under the Colombian laws governing consumer protection rights. The decision reached was that it did not.

The Superintendence of Transportation decided that a voucher would only guarantee the right to a refund when it is used, and therefore, it cannot follow that the mere offering of a voucher satisfies the obligation to refund. Otherwise stated, the carrier only satisfies the refund obligation when it provides a service: A voucher, in-and-of-itself, is not a service. In finding that the carrier violated the passenger's consumer rights, the Superintendence issued a fine of COP\$175,560,600 (approximately USD 51,635, at current rates of exchange).

The emergency law

To understand why this decision is particularly remarkable, we need to go back to March 2020, when countries began to close their borders in response to the spreading virus Covid-19, halting all international and domestic flights, resulting in massive flight cancellations and the grounding of aircraft. Responding to this new reality within the context

of public transportation, on March 26th, 2020, the Colombian National Government, using its emergency powers, enacted Decree No. 482, providing much needed support to the aviation industry.

Specifically, Art. 17 of Decree 482 authorises the option of offering refund vouchers to ticketed passengers covering an array of circumstances such as, the cooling-off period, flight delays, denied boarding, and flight cancellations. The Colombian Constitutional Court upheld Decree 482's constitutionality, and the Colombian Superintendence of Industry and Trade, acting as a judicial authority, has ruled that issuing vouchers pursuant to Art. 17 of Decree 482 is an acceptable way for airlines to comply with their obligations to passengers. It is no surprise, therefore, that since Decree No. 482's enactment, airlines in Colombia have been granting vouchers to ticketed passengers as a means of satisfying the legal duty to refund the passenger.

The Superintendence of Transportation's decision against refund vouchers, in effect, defies this emergency law, and places the airlines in a precarious and particularly unfair situation. The airline that is lawfully offering refund vouchers in a concerted effort to

manage potential losses, in doing so is now facing the risk of fines that can run considerably high.

What does this mean for the Latin American Aviation industry?

The airline industry continues to face significant challenges in its effort to offer passengers a means of air transportation during the Covid-19 pandemic. Within the Latin American region, specifically, governments have offered little to nil financial support to their local carriers, despite the serious financial strains they are confronting, the necessary services they are providing, and the economic benefits they are securing, such as providing much needed employment opportunities covering a range of different skills and training. The continuing trend to expand consumer rights within the aviation industry, as seen in this decision, has displaced the interest in protecting the airlines, even during these unprecedented times. Moreover, as a passenger can easily commence a consumer complaint by telephone, by email and even through social means (i.e., WhatsApp, Twitter, etc.), there is a real risk that this decision opens the door to other passenger challenges against the refund voucher, whether concerning the different terms and conditions set-forth in the voucher or relating to its transferability.



Practical steps

Decree No. 482 is currently set to continue through February 2022, although if the state of emergency continues, the Colombian government has the authority to extend this to a later date. This means that unless the Superintendence of Transportation decides to reconsider its decision on vouchers before the relevant period has expired, airlines must continue to gauge whether to accept the risk of sanctions with each refund voucher issued. As the emergency law does not offer guidance on the terms of the refund voucher, it is up to the airlines to consider this carefully. Within the context of the Superintendent's decision, any offering should at least ensure that the passenger is authorised to use the voucher's full value, with the necessary flexibility to achieve this. This means, for example, allowing the passenger to book on any available scheduled flight, and having the freedom to use the voucher towards other purchases, such as seat options, food consumption and upgrades. If the airline wishes to limit the period upon which the passenger must use the voucher, it may also be prudent to ensure that the period is at all times aligned with the emergency law.

The refund voucher offers passengers the flexibility to decide how and when to use the services purchased, and grants the passenger a right of credit for services, whilst providing them with proof of the services owed to them. It is thus unclear why the Superintendence of Transportation was unwilling to recognise the legality of the refund voucher within the context of consumer rights. Looked at another way, if the airline offers an immediate, alternative flight service in response to a cancellation, for example, the airline may have met its refund obligation, even though the offering is far less generous to the passenger.

For more information, please contact the authors of this article:



AILEEN CAMACHO

Partner, HFW

T +44 (0)20 7264 8105

E aileen.camacho@hfw.com

In collaboration with;



HFW has over 600 lawyers working in offices across the Americas, Europe, the Middle East and Asia Pacific. For further information about our aerospace capabilities, please visit [hfw.com/Aerospace](https://www.hfw.com/Aerospace).

[hfw.com](https://www.hfw.com)

© 2021 Holman Fenwick Willan LLP. All rights reserved. Ref: 002770

Whilst every care has been taken to ensure the accuracy of this information at the time of publication, the information is intended as guidance only. It should not be considered as legal advice. Holman Fenwick Willan LLP is the Data Controller for any data that it holds about you. To correct your personal details or change your mailing preferences please email hfwenquiries@hfw.com

[Americas](#) | [Europe](#) | [Middle East](#) | [Asia Pacific](#)