

DELAYED OR CANCELLED FLIGHTS IN CHINA – A NEW REGULATION TO AFFECT ALL CARRIERS



Air travel disruption in China due to flight delays or cancellations – and the need for better consumer protection – has attracted increasing attention. In 2015, the average delay time of passenger flights in China was 21 minutes, up by 2 minutes on a year-on-year basis¹. In response to this, the “Provisions on the Management of Flight Regularity” (Regulation), was issued by the Ministry of Transport of the People’s Republic of China and will come into operation on 1 January 2017.

Definition of ‘delayed’ and ‘cancelled’

The Regulation considers a flight to be “delayed” at the departing airport when its actual departure time is more than 15 minutes later than its scheduled departure time. “Cancellation” is defined as meaning non-operation of a flight which was previously planned due to a delay or an anticipated delay.

Who will the Regulation apply to?

The Regulation applies to both local and foreign carriers operating flights originating from China or with an agreed stopping place in China. The Regulation also has provisions dealing with the roles and obligations of other stakeholders including airports and other aviation service providers.

Your obligations as a carrier for flight cancellations and delays at departing airports

The new Regulation provides that carriers shall, in accordance with the applicable general conditions of carriage, provide assistance to the passengers in cases of flight delay or cancellation. Depending on the applicable terms and nature of the delay or cancellation, this may include reimbursement or alternative transport arrangements.

¹ Statistical Bulletin of Civil Aviation Industry Development in 2015 published by the Civil Aviation Administration of China



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Generally, carriers are required to provide passengers with meals and/or accommodation if the delay or cancellation is caused by events attributable to the carriers. However, carriers will only be obliged to assist the affected passengers in making arrangements for meals and/or accommodation, but the relevant costs shall be borne by the passengers, if the delay or cancellation is caused by events beyond the control of the carriers (e.g. weather conditions, unexpected events, security issues etc.).

Additional obligations for domestic flights in China

Below are additional requirements that are applicable to domestic flights within China:

- In the event of a delay or cancellation at an agreed stopping place, carriers shall provide passengers with meals and/or accommodation irrespective of the cause of delay or cancellation as the case may be.

- In the event of an emergency landing, carriers shall provide passengers with meals and/or accommodation irrespective of the cause of emergency situation.

Complying with the Regulation

The Regulation also requires carriers to, among other things:

- Disclose/publicise their general conditions of carriage, which shall specify the relevant service levels/assistance to passengers in the event of cancellation or delay of flights, to the passenger during the ticket purchasing process. In addition, local carriers are required to specify in their general condition of carriage whether compensation will be payable in the event of flight delays and if so, the relevant details (e.g. conditions, standard etc.) must also be specified.
- Notify and inform passengers about any change in the status of a flight within 30 minutes after the carrier becomes aware of such change.

- Give priority to providing the required care to persons with reduced mobility and unaccompanied children as soon as possible.
- Maintain operable lavatories subject to safety and security reasons in the event of tarmac delay. Food and drinking water should be provided for passengers after two hours of the aircraft being delayed on the tarmac. The Regulation prohibits carriers from permitting an aircraft to remain on the tarmac for more than three hours without deplaning passengers if the departure time remains unconfirmed with exceptions allowed only for safety and security reasons.
- Make available their contact numbers within China and email addresses with which a passenger may lodge a complaint pertaining to its services. The foregoing particulars should be published in China in an appropriate manner. Foreign carriers must have capabilities to handle complaints in Mandarin. Carriers shall provide an update on the status of the complaint within seven days and shall send a substantive response to the complainant within 10 days (applicable to local carriers) or 20 days (applicable to foreign carriers) from the date of receipt of the complaint. All the records in relation to any complaint shall be reduced to writing and retained by carriers for two years.
- Submit their general conditions of carriage and contingency plans for tarmac delays to the authorities.



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Are there any penalties?

Any carriers that violate the Regulation may be given a warning and/or face a fine up to RMB100,000.

HFW's perspective on this Regulation

The requirements outlined above do not appear to be out of line with common airline voluntary practice – at least for international carriers. Unlike typical comprehensive passenger protection rules in other jurisdictions, the Regulation does not provide a unified standard for passenger compensation or unified compensation regime. It remains to be seen whether the exact scope of some provisions of the Regulation will be clarified in the future, in particular who should determine whether an event that causes a delay or cancellation is attributable to the carrier and what constitutes a “domestic flight/carriage” within the definition of the Regulation.



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