

Will the Aviation Industry have a successful takeoff amidst Covid-19? written by Vartika | April 1, 2020



The Aviation Industry Amidst COVID-19 And Its After-effect

The Aviation industry has seen a spiral of technological advancements in the last few decades. It has responded to the new wave of technology keeping pace with the demands and expectations of the modern world. But is it prepared to tackle the current global crisis of coronavirus COVID-19? Well, there is no fixed answer. Currently, the Aviation Industry in the country is in the throes of a crisis. Alexandre de Juniac, CEO of IATA in his recent press release addressed the impacts of the spread of coronavirus on the aviation industry.^[1] The spread of COVID-19 has forced many countries to impose travel restrictions which have brought the aviation sector to a halt.

A wise and

quick action of restricting many flights from the most affected areas like Singapore and China has somewhat helped the Indian industry to keep its head just above the water. This action was even before the COVID-19 was declared a pandemic by the World Health

Organisation ("WHO"). Countries like Australia and New Zealand have also reported the dropping revenues and footfalls in the aviation sector. This is not a happy go scenario for the employees working in the aviation sector. Airlines are not responsible for the outbreak but they definitely are facing the force and probably will have to pay a hefty price in order to restore their business.

Aviation Industry: Cry for Help

With the

cancellation of almost 600 international flights and 93 Indian international flights, the Indian aviation sector is in dire need of help. Revenues are in free fall because of the travel restrictions and people are being scared off to

spend hours in solitary confinements. A proposition to increase the parking charges,

landing charges and airport charges has been sent to the Finance Minister.

The

industry has also demanded a reduction in aviation turbine fuel charges.

Recently,

in order to tackle such financial stress, Indigo decided to cut the salary of all employees due to the outbreak of COVID-19. According to CAPA (Centre for Asia Pacific Aviation India) "*The new advisories and restrictions that are being announced every day, along with the Indian government urging people to avoid all non-essential travel, demand is*

expected

to weaken substantially, with a drop of 40-50 per cent or quite possibly even higher being possible in the near-term, as is being seen in other markets."

Also, WHO has advised against the application of travel or trade restriction to any such affected areas or countries which can be affected by such travel during the outbreak. Cancellation and Refund

Whether an

airline can reject claims arising due to cancellation of flights amidst the pandemic

depends entirely on the precautionary measures it has taken to contain the spread and its ability to demonstrate it. Further, It was directed by the Central Government vide order dated March 23,

2020, bearing Ref No.- AV/11011/1/2020-US(AG)Office-MOCA[2], under Section 8B(1) of the Aircraft Act, 1934 (XXII of 1934), that the operation of all scheduled domestic flights except all cargo-flights, by any aircraft operator shall cease operation from March 24, 2020.

Furthermore, the Senior DGCA official has asked the airlines to consider the cancelling option and refund of the consideration paid during bookings of flights without charging any cancellation charges for the same. Following which, many domestic carriers have announced various such measures for cancellation and rescheduling of flights in lieu of the travel restrictions imposed

by the government.

In Europe,

EU261[3]

provides that an airline is exempted from paying a refund of any cancellation if the same is caused by "*extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.*" Therefore, it is

an important step to consider travel ban to the affected areas or denial of passengers coming from affected areas as a preventive step to control the spread and also, the airlines are advised to consider this extraordinary situation

and should avoid charging any cancellation fees from the passengers.

Can Insurance save the day?

Reasonable

restrictions during this time of need by the airline authorities regarding travel restrictions, flight cancellations, lock downs, and quarantine zones imply the fact that aviation may be one of the most affected sectors due to this pandemic. Although the current policies in India don't cover the current crisis, CAIT has requested the Finance Minister to advise IRDA to mandate insurers

in India to introduce insurance coverage for disruptions in business due to coronavirus. None of the current policies in India compensates losses which arise due to disruptions in the operation of businesses due to coronavirus. However, passengers

who have taken travel insurance which protects them against unexpected events will get covered due to the sudden outbreak, and according to the insurance policy mostly it will cover the travel refunds and not the hotel bookings in general.

Liability of the Airline Industry

The potential for a contagious disease to get spread in an aircraft while travelling is high. Airlines are expected to conform to domestic and international health legislation^[4] as well as the laws of their countries of operation. If passengers who look ill are ignored, they can be subject to penalties. The impact of this outbreak over the people will be such that they will feel the pressure to survive this imposition of restriction over their right to travel. Does this impute any liability on part of the airlines? The contract of carriage is concluded once the passenger has purchased the ticket to travel and has been accepted onboard for the travel. Under Article 17 of Warsaw convention 1929, and Article 17 of Montreal Convention, 1999, a carrier is liable where a passenger dies, is wounded or suffers bodily injury on board the aircraft. Bodily injury in both these conventions means physical injury, sickness and, disease. Therefore, the airlines must care for the passengers travelling under the contract of carriage. But this duty of care is only restricted to infections that may cause to the passengers due to improper cleaning or disinfecting of aircraft or airline authorities being negligent towards performing their duties. This does not impose any liabilities on the airlines for infections that are spread directly from other passengers unless it's proved that there were indications of the passenger being sick and it was foreseeable by the airline staff and despite that, they granted him/her the permission to travel that lead to spreading of the disease.

The outbreak of COVID 19 would likely constitute unusual circumstances, as it is a very grave global public health emergency which has resulted in drastic public measures that are completely outside the control of the airline authorities in order to foresee or avoid any kind of contraction or spreading. However, whether an airline will be in a position to reject claims arising due to the spreading of this contagious disease depends upon the ability of the airline to indicate that it has taken all reasonable precautions to avoid the contraction.

Conclusion

Airlines are putting extra efforts to ensure proper sanitization and fumigation of airport terminals as well as the disinfection of planes. However, despite taking such precautionary measures it is still difficult to deal with the fear instilled in the minds of passengers traveling which in return is affecting the overall business of the aviation industry. On top of that, in order to control the spread of this deadliest disease government restricted all international flights to land in India. This will result in loss of revenue and financial stress. We recommend everyone to tighten their seatbelts and get ready for a very turbulent ride ahead.

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- [1] <https://www.iata.org/en/pressroom/speeches/2020-03-17-01/>
 - [2] <https://www.civilaviation.gov.in/sites/default/files/Revised-%20COVID-19%20-%20Order%20under%20Section%208B.pdf>
 - [3] https://europa.eu/youreurope/citizens/travel/passenger-rights/air/index_en.htm

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