

In light of Transport Canada's decision to ground all Boeing 737 Max 8 and 9 aircraft, registrants may have questions regarding their responsibilities under the *Travel Industry Act, 2002* ("Act") and Ontario Regulation 26/05 ("Regulation"). The following information may be of assistance to you. Please note that this information is intended as an explanation of the legislation and does not constitute legal advice.

Registrants should be aware of the consumer protection available to customers as they consider any new arrangements arising from today's safety notice. The information below is intended to assist you with your understanding of the travel legislation. Should you have any questions, please feel free to contact TICO at tico@tico.ca or 1-888-451-8426 (TICO).

Delay or Advance of Departure

Generally speaking, section 40(1) of the Regulation requires registrants offer the customer a full, immediate refund or comparable alternate travel services acceptable to the customer where the registrant becomes aware that "the scheduled departure of any transportation that forms part of the travel services is delayed or advanced by twenty-four hours or more, unless the reason for the delay is one described in subsection (2)".

Subsection (2) states that the above **does not apply** "if the delay results from mechanical problems that relate to the mode of transportation, safety considerations, the weather, a strike or a force majeure". Force majeure refers to unanticipated, uncontrollable events such as acts of nature (i.e. hurricanes or floods) or acts of people (i.e. riots or wars).

TICO's Position

Based on today's Transport Canada ruling, the grounding of Boeing 737 Max 8 and 9 aircraft would be considered the result of a safety consideration. Therefore, subsection 40 (2) of the Regulation would apply and registrants would have the right to "delay" the scheduled departure of transportation by 24 hours or more without offering a refund or alternate travel services. While a registrant may not be responsible to provide a refund or comparable alternate travel services acceptable to the consumer pursuant to the Regulation, the registrant may have certain obligations under the common law and the specific terms and conditions of the booking. Registrants should carefully review the terms and conditions of their contracts and what their obligations are in regard to those agreements.

Cancellation of travel services

It should be noted that Section 40 of the Regulation does not address cancellation of travel services. Registrants who acquire rights to travel services for resale should also be aware of their obligations under s. 46 of the Regulation, which reads as follows:

If a registrant acquires rights to travel services for resale to other registrants or to customers and the supplier fails to provide the travel services paid for by a customer, the registrant who acquired the rights for resale shall reimburse the customer or provide comparable alternate travel services acceptable to the customer.

Further, if the registrant cancels the travel service, common law may find that there had been a complete failure of consideration in the contract. In such circumstances, the customer may be entitled to a refund unless there are contrary requirements in the contract between the registrant and the customer.

Terms & Conditions

As well, travel agents may be contractually bound by the terms and conditions of their agreements with their customers and with suppliers. Travel agents should carefully review those terms and conditions to determine the extent of their obligations.

Routing Change / Travel Documentation

Regarding refunds and/or comparable alternate travel services being offered, it should also be noted that section 40(1)(6) **does apply** when the documents needed for the trip are changed because the transportation routing is changed, and there is not enough time for the person to obtain the documents before the departure.

Disclosure Requirements

Travel agents are further advised that under sections 36 and 37, there is a general requirement before and after entering the sale of travel services that a customer be advised of any condition or change related to the travel service that may affect, or would otherwise have affected, the customer's decision to purchase the travel service.

In cases where consumers have lost confidence and no longer wish to travel, it is the individual consumer who must make that decision taking into consideration the terms and conditions of the contract with the supplier. If the consumer chooses not to travel, the consumer may or may not receive a refund depending on the cancellation

requirements stated in the terms and conditions.

The contents of this Registrar Bulletin is to assist registrants in complying with the requirements and prohibitions found in the Travel Industry Act, 2002 (the "Act") and Ontario Regulation 26/05 (the "Regulation"). The document contains information regarding TICO's interpretation of the legislative and regulatory provisions and suggested best practices. The Bulletin is not exhaustive and cannot hope to address the complexities of every travel business in the province. Further, registrants are subject to other federal, provincial and municipal laws that impact their businesses. We urge you to consult with your own legal advisor regarding the specifics of your business and compliance with the Act and Regulation. You should not rely on information in this document as an alternative to legal advice.

If you have any questions regarding the information in this document, you should contact TICO, Tel: 1-888-451-TICO (8426) or tico@tico.ca