

AIRLINE BANKRUPTCY AND PASSENGER PROTECTION

There are protections and voluntary agreements in place today that adequately cover the repatriation of passengers when airlines become insolvent. There are also existing instruments that address the financial claims of passengers in these situations.

Further regulation, such as the creation of a fund, risks unintended consequences, including making travel more expensive and distorting competition in the marketplace. Instead, a review of existing bankruptcy laws to permit the continued operations of airlines in insolvency and to reconsider the priority of passengers' claims is recommended.

The Issue

Some governments are considering new rules to address airline bankruptcy, such as the creation of a fund that would be used to repatriate or refund passengers who are affected by airlines that cease to operate.

IATA's Position

Specific rules targeting airlines are not justified as no other economic sector of activity is under an obligation to protect its customers in case of a bankruptcy. Before considering any additional steps, it is important to first consider the scope of the problem, as well as the protections that are already in place.

Scope of Bankruptcy Impact on Passengers

According to the European Commission¹, between 2011 and 2020 some 0.07% of flight-only (as opposed to package travel) passengers would be affected by air carrier insolvency. And only 12% of the 0.07% initially impacted (or 0.0084% of the total number) would be stranded abroad and be in need of repatriation.

Repatriation (0.0084% of Passengers)

One specificity of aviation is that passengers can be stranded away from home. However, there are a sufficient number of instruments today that ensure passengers are looked after and returned home in the rare occurrence that an airline ceases operations.

For example, IATA member airlines in Europe have a [voluntary agreement](#) in place to offer affected passengers access to discounted transport to return home, subject to available capacity. The 'rescue fares' of a nominal amount will be available for purchase up to a maximum of two weeks after the event to anyone flying to and from or within Europe who does not already possess insurance covering this eventuality. Following the bankruptcies of both Monarch Airlines and Niki, some of our member airlines volunteered and offered rescue

¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013DC0129&from=EN>

fares to repatriate stranded passengers, which, along with other instruments in place, helped to mitigate the impact.

Refund Claims (0.07% of Passengers)

Consumers have various ways to seek reimbursement should airlines fail:

- Credit card companies allow card holders to file claims for services not rendered. Therefore, consumers paying for their airline tickets by credit card can file for refunds despite the bankruptcy filing.
- There are a number of travel insurance products on the market that passengers can purchase which cover trip cancellation or trip interruption if the airline concerned enters financial default or bankruptcy.
- The IATA settlement service between airlines and travel agents (known as the BSP, or Billing and Settlement Plan), may allow IATA to reimburse travel agents for monies submitted to the airline, depending on the national bankruptcy legislation and the specifics of the airline's participation with IATA.

Unintended consequences of additional regulation

Given both the rarity of airline bankruptcies and the extremely low number of affected passengers, a fund would be regulatory overreach. It would create unjustified burdens on the industry and passengers for benefits that would go to an exceedingly small portion of passengers. Moreover, such a fund would draw its resources from a levy on *all* tickets sold. Financially prudent airlines would therefore be subsidizing riskier airlines, distorting competition and incentivizing financial risk-taking by carriers. In addition, estimates of the bureaucracy needed to run a fund suggest that up to 85% of the money would be eaten up in administration.

In addition, it is unclear when the fund would be activated. For example, if a foreign-owned carrier were to cease operations that affected a large number of citizens, would a national or regional fund be activated? The implementation of such instruments therefore requires careful consultation with industry before any decision is taken.

Areas for further consideration

Monitoring the financial situation of airlines, and the revocation or suspension of licenses, falls under the responsibility of licensing authorities. In the EU for example, Regulation 1008/2008 obliges member states to monitor the financial health of their licensed airlines and act accordingly.

However, differences in bankruptcy laws around the world mean that in some cases airlines fail dramatically overnight, leading to potentially large numbers of stranded and stressed passengers trying to get back home; in other jurisdictions, airlines are able to wind down operations over a period of several weeks, while in still others airlines can declare bankruptcy and customers see little impact while the firm is being restructured.

IATA supports the review of existing national or regional bankruptcy laws with a view to minimizing stranded passengers. There should be a reasonable timeframe within which an airline can continue operating after entering into bankruptcy, which would allow more



passengers to complete their travel itineraries. For example, in certain countries “debtor-in possession” proceedings take place, where airlines may continue to operate and be in a position to repatriate stranded passengers. Airlines and their passengers should not be forced to pay for the abrupt way in which licenses may be withdrawn.

With respect to refund claims, a policy decision must be taken as to the priority of these claims within the bankruptcy estate. The assets of an insolvent carrier are often insufficient to pay the claims of all creditors, and – just like passengers – other creditors financially impacted by the bankruptcy will also be seeking reimbursement. The most effective place to address the priority of payment of these creditors is within existing insolvency legislation, not through the creation of funds or other imbalanced solutions bringing more burden than benefit.² While noting that there are other types of priority claims which must also be considered (such as employee benefit claims, government or administrative expenses, and secured claims), IATA supports the review of existing national or regional bankruptcy laws to consider an increased priority for passenger refund claims.

² For example, priority is given in the United States Bankruptcy Code to claims of consumers participating in “layaway” programs, up to a stated maximum amount: 11 U.S.C. § 507(a)(7). These claims must be paid in full before any amounts are paid to general unsecured creditors. A similar priority for passengers prepaying for airline tickets could be considered.