

	<b>ETHIOPIAN AIRLINES</b>	
	<b>ISRAELI PASSENGER RIGHTS LEGISLATION</b>	

## **Notification of Rights under Israel Aviation Services Law 5772-2012**

### **New Israeli passenger rights legislation**

Israel has enacted a new passenger rights law due to enter into force on 16 August 2012. The Aviation Services Law (Compensation and Assistance for Flight Cancellation or Change of Conditions), 5772-2012 (**ASL**) will regulate all flights operated to and from Israel and, on the face of it, applies to Israeli and foreign air carriers alike.

### **Scope**

The ASL applies to international and domestic flights. It captures flights which “take off” within the boundaries of the State of Israel and flights “flying to Israel” regardless of the place of departure, including any applicable stopovers. It may, therefore, apply to events which occur outside Israel at a foreign departure point or intermediate foreign hub. The ASL appears, to that extent, to be extraterritorial in scope.

There are 5 key regulated events under the ASL:

1. Delay occurs when a flight has “taken off late” at least 2 hours after the time stipulated in the flight ticket.
2. Denied boarding, termed a “Refusal to Fly a Passenger on a Flight”, occurs when a carrier refuses to fly a passenger on a service for which a flight ticket has been issued. This provision includes, but is not limited to, instances of overbooking.
3. Cancellation, defined as a “A Cancelled Flight”, occurs when:
  - a. a flight does not occur;
  - b. a flight takes off after a delay of at least 8 hours from the time stipulated in the flight ticket; or
  - c. a flight takes off after a delay of a given period, as declared by the relevant Minister, from the time stipulated in the flight ticket.
4. Fare ‘downgrading’, termed a “Change to the Conditions of the Flight Ticket”, occurs when a carrier transfers a passenger to a class different from that stipulated in the flight ticket.
5. Flights which have been “brought forward” in their departure schedule by more than 5 hours.

Notably, the ASL applies not only to carriers (i.e. “flight operators”) but also to an “Organiser” or “Travel Agency Service Provider”. The latter, for instance, can be called upon to honour the passenger entitlements provided for by the ASL.

	<b>ETHIOPIAN AIRLINES</b>	
	<b>ISRAELI PASSENGER RIGHTS LEGISLATION</b>	

### **Passenger entitlements**

The ASL creates an extensive set of passenger benefits and entitlements.

For **Delays** of 2 hours or more, passengers are entitled to food, drink and communication services. In the case of delays of between 5 and 8 hours, passengers are entitled to reimbursement of the ticket price or a replacement ticket (i.e. rerouting). Where a replacement ticket has been accepted, a carrier must provide any necessary accommodation and/or incidental ground transport. Delay, however, is not 'directly compensable' as is the case under the Sturgeon interpretation of EU Regulation 261-2004. That said, the definition applied to cancellation means that, in practice, very long delays of 8 hours or more are compensated under the cancellation provisions.

In cases of both **Denied Boarding and Cancellation**, passengers are entitled to compensation and reimbursement (or a replacement ticket/rerouting) in addition to care and assistance. Compensation for both events can be reduced by up to 50% in cases where rerouting has the passenger arrive at his or her destination within 2 to 6 hours of the originally scheduled arrival time (although some relaxed, transitional provisions apply until 1 January 2015). In respect of cancellation, compensation is not payable where the carrier has provided adequate advance notice in terms identical to EU Regulation 261-2004. Where a passenger is 'downgraded' from a higher class to a lower class, he or she is entitled to compensation referenced to a percentage of the ticket price (see below).

Reimbursement, compensation and rerouting are available in cases where a carrier has brought forward a flight. These entitlements vary depending on the quality of advance notice given. The ASL imposes a duty of notification and disclosure upon carriers similar to that contained in EU Regulation 261/2004. Carriers must give certain information to passengers in the case of a regulated event and post material on their websites. Airport operators are obliged to erect a clear and legible sign detailing "Passenger Information" in a visible location.

### **Compensation**

Fixed compensation is prescribed in the First Schedule to the ASL. Compensation, akin to EU Regulation 261-2004, is calculated by reference to flight distance and ranges from ILS 1,250 (USD 310) for a flight distance less than 2,000km to ILS 3,000 (USD 755) for a flight distance greater than 4,500km.

In the case of downgrading, compensation is payable by reference to the price of the ticket under the Second Schedule. While the wording of the provision is ambiguous, it appears that a carrier will be liable to pay a percentage of the ticket price (ranging from 60% to 100%) to the passenger in compensation for

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the adverse travel class change. Alternative calculation provisions apply if the flight is part of a “tourist package”.

One concerning aspect is the express provision for exemplary damages. Section 11 provides that a court may award exemplary damages to a passenger, in a sum not exceeding ILS 10,000 (USD 2,500), for a “knowingly committed” failure to provide specified benefits to which a passenger is entitled. It is unclear, on the text of the ASL, whether actual or merely constructive knowledge is required for such an award. The ASL also sets out a number of factors which are to be considered by a court in determining whether such damages should be awarded. Thus, the ASL provides that “the court [...] will not consider the extent of the damage caused to the passenger due to the cancellation of the flight or the change of the take-off time [i.e. delay] or its conditions”.

**Defences**

The ASL sets out a number of carrier defences and other related provisions. Some of these are expressed generally and others apply only to specific regulated events.

Cancellation compensation, for instance, is not payable in “special circumstances” outside the carrier’s control where the carrier can show that, even if it had done whatever was under its control, it could have not prevented the event in question. There are also express defences applicable in cases where a strike or protected industrial action is taking place or where a flight has been cancelled to observe a religious holiday.

The ASL also sets out broader criteria which, if met, exclude passenger entitlements. Passengers must, for instance, check-in on time and – in the case of denied boarding – cooperate with all security checks and possess valid travel documents.

If a passenger has received a benefit under a “foreign law”, he or she is ineligible to receive benefits under the ASL. This provision appears intended to address any concern over the extraterritorial application of the ASL to regulated events occurring outside Israel to which another passenger rights regime may be applicable.

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This notification contains a summary of the rights to benefits available under the Law. In the event of inconsistency between the terms of this notification and the provisions of the said Law, the provisions of the Law will apply