

# Sunwing Airline’s Feedback to the CTA’s Consultation Paper: Proposed changes to clarify, simplify and strengthen the Air Passenger Protection Regulations (APPR)

## Introduction

Sunwing Airlines is responding to the Agency’s proposed changes to the Air Passenger Protection Regulations (APPR). Our feedback will discuss the seven points that the Agency believes will clarify, simplify, and strengthen passenger protection. We believe that this document doesn’t adequately consider the actual operating dynamics of carriers in the Canadian aviation industry. The document is broad, vague, and it insufficiently outlines the expectations for carriers. In order to achieve the objectives of the legislation, we believe that the Agency needs to provide a clearer and more comprehensive framework for carriers.

## 1. Identifying the exceptional circumstances

Within the proposed changes, the Agency defines an exceptional circumstance as *“the event that caused the disruption must have been outside the airline’s control, and not inherent to the normal exercise of the activities of the airline and could not have been avoided even if the airline took all reasonable measures to do so”*. Our view on the proposed criteria is that it does not clearly define what is meant by *“inherent to the normal exercise of the activities of the airline”*. This statement can have a different definition for different carriers and would leave room for incorrect interpretation. While the Agency outlines proposed examples of exceptional circumstances, it potentially eliminates situations that we believe should be categorized as not inherent to the normal exercise of the airline. Our feedback is listed below:

| Proposed changes: Exceptional circumstances   | Feedback   |
|---|--|
| Security risks such as war, political instability, illegal acts, sabotage, and terrorism  | Are cyber attacks not considered exceptional, or are they considered a security risk? This is an important distinction that should be made   |
| Airport operational issues for which the airline is not responsible   | A clear definition and examples are requested. Some examples we believe should be included are baggage belt failures/ outages, disruptions with passenger security screening, system and/ or infrastructure failures/ outages        |
| Health risks or medical emergencies on route that require a flight diversion or discovered shortly before flight departure that make it impossible to safely operate the flight | Does this include crew? How would “shortly before flight departure” be defined? Are unruly passengers classified under this proposed exceptional circumstance? For example, if a flight diverts due to an unruly passenger on board. |
| Hidden manufacturing defects that come to light and affect flight safety  | Does this imply that there is a timeline for manufacturing defects, and what would be considered hidden?   |
| An official NOTAM   | Would this include decisions that might extend delays as an airline might anticipate a NOTAM being issued/ extended to minimize passenger disruption   |

We believe that there is a notable omission from the proposed exceptional circumstances. Disruptions caused by events that are reportable to various governing bodies such as the Transportation Safety Board of Canada (TSB), Transport Canada, etc., aren’t inherent, and therefore should be considered as exceptional circumstances. In addition, situations which are outside of the carrier’s control such as negligence committed by third parties and ground damage should also

be considered exceptional. Overall, we don't believe that the Agency lists enough proposed exceptional circumstances that properly encompass the reality of the air industry.

| <b>Proposed changes:<br/>Circumstances that would not be considered exceptional</b>                           | <b>Feedback</b>  |
|---|--|
| Flight crew or cabin crew unavailability  | This proposed circumstance is too broad. Are there any exceptions? We believe that this should be strictly limited to a carrier failing to plan a crew for a scheduled flight. A situation we believe to be exceptional is a disruption that would affect the positioning of crew members (due to weather for example). Another situation is if a crew member falls ill during their first leg and cannot operate the second leg out of a station where a carrier doesn't have a crew base. Furthermore, even if a carrier is able to replace the ill crew member, duty day limitations may force the carrier to replace the rest of the crew. All of this is to say that there are a lot of logistics and regulations involved with crew unavailability.  |
| Technical problems that are an inherent part of normal airline operations                                     | We request a clear definition of what the Agency considers an inherent part of normal airline operations as it relates to aircraft maintenance. The only proposed exceptional circumstance in relation to technical problems that the Agency outlines is hidden manufacturing defects. While we agree with the current regime that scheduled maintenance should not be considered as an exceptional circumstance, we believe that there are circumstances which should be listed as such. If maintenance has been fulfilled in accordance with the approved maintenance program, but a technical problem arises, it should be considered as exceptional. As an example, if a problem is related to the airworthiness of an aircraft but is not listed in the Minimum Equipment List (MEL), and requires for the problem to be solved before the flight can operate, it should be considered exceptional. Further to this, if a captain decides that it is not safe to operate an aircraft due to a concern that is not listed in the MEL, that should also be considered as an exceptional circumstance. And lastly, if a problem is discovered through the carrier's safety management system that would require immediate action to ensure safety of a flight, it should be considered as an exceptional circumstance. |
| Any situation the airline knew about, or should have known about, when it sold the ticket to the passenger    | This proposed circumstance is vague. How would "any situation" and the reference to time be defined?   |
| Any action, or failure to act, by the airline or others with which the airline has a contractual relationship | This proposed circumstance is vague. Does this include unforeseen failures or acts of negligence? Would third parties such as airport authorities and their obligations be considered?   |

## **2. Airlines' responsibilities regarding claims for compensation**

The Agency's proposed amendments state that airlines would be required to provide passengers a detailed explanation, including documentary evidence that the circumstances of a flight disruption were exceptional. If airlines are expected to provide detailed responses, the response time to claims would be significantly affected. This may force carriers to have a manual validation process for each claim as opposed to an automatic process. If a carrier currently categorizes a flight as being outside carrier control, passengers may receive an automatic response with that information if they file a claim. In saying that, if the expectation is changed to carriers having to provide documentary evidence, the turnaround time for closing claims would be exceptionally longer. This would result in a negative affect on passengers and have a significant impact on the industry. This wouldn't support the Agency's objective of simplifying passenger protection.

Additionally, the Agency would need to clearly define, and provide examples of, what documents are considered acceptable as supporting evidence. Our concern is the potential damage and litigation that would result from the disclosure of documents. There would need to be a measure of privacy in place as there are elements which prohibit carriers from disclosing certain information.

Another proposed change is allowing one adult to make a claim "on behalf of the group". However, it is unclear if "the group" refers to one booking or any group of passengers that are traveling together on the same flight. Furthermore, would that adult be receiving the compensation on behalf of the entire group? If that is the case, this could create issues with the other group members later referring to the carrier claiming they didn't receive compensation.

## **3. Rebooking and refunds**

The Agency is proposing that if a passenger's flight is cancelled or they are denied boarding, they can request a refund immediately. Does this include exceptional circumstances? How are passengers expected to communicate this request with carriers? We would also request that the Agency clarifies what is meant by immediately. This ties into their next proposed change; reducing the period of time that an airline has to provide a refund.

With the potential overall increase of refund requests, we don't believe a reduced period of time would be achievable or meet the objectives of the legislation. We would like to know whether the Agency has considered the impact of large disruptions that span over several days on the achievability of this proposed amendment. A weather event that lasts several days may result in thousands of refund claims, and a reduced time frame would hinder carriers from being able to comply. This would in turn also result in an increase of claims that the CTA would receive.

Further to this, the Agency is proposing that as soon as airlines know they cannot offer a flight on their own or a partner airline within their relevant timeframe (9 hrs for large carriers, 24 hrs for small), airlines must rebook on any other airline. Is this at the passenger's request, or is this expected to be an automatic change? This proposed change may force carriers to cancel more flights if there is a lack of availability on partner or non-partner airlines. This may result in more stranded Canadians across the world. If there is less flexibility given to airlines for providing alternate arrangements, then the likelihood of cancelling more flights increases. This would create further overall disruptions on the industry.

## **4. Assistance**

Given that the categorization of disruptions is fluid, we agree that the standard of treatment for passengers should be consistent. However, the availability of facilities and services are not consistent across all airports. We believe that the Agency needs to better define what they consider to be feasible assistance and what their expectations would be for exceptional circumstances. The proposed change refers to providing assistance "for a certain period of time". How will that time be defined?

## 5. Communications

We understand that the proposed changes in this section are in favor of clarifying and strengthening passenger protection, and we do agree that all passengers should be well informed of their flight status and entitled provisions. However, it is not realistic for carriers to advise passengers via their preferred method of communication about the specific entitlements they have at that moment, and how to claim them. The impact on the industry would be significant if the expectation would be to send personally tailored communication to passengers via SMS or email. Since network providers have SMS character limitations, to provide the information that the Agency is requesting, this would force multiple text messages to be sent to passengers. As a result, we believe this would create further complications and cause confusion. Furthermore, a change of this magnitude would require significant time and resources from carriers' IT teams. In addition to this, increasing a reliance on SMS and email communication in destinations where the infrastructure may not support adequate cellular service would be difficult. A change of this size would take several months if not over a year to properly accomplish. This implementation would not be in favor of simplifying or clarifying passenger protection. We believe that it would be more effective to provide a hyperlink within the SMS or email communication to a page of the carrier's website that outlines what provisions passengers are entitled to during a flight disruption within their control and during exceptional circumstances. Finally, section two proposes that carriers would be required to explain their claims process on a prominent part of their website, which we believe is an effective method of advising passengers of their entitlements.

## 6. Chain reactions (knock-on effects)

In this section, the Agency is proposing that only two flights in a row can claim the same exceptional circumstances as the reason they have been delayed or cancelled. Our main question is what data was examined by the Agency to arrive at the conclusion that chain reactions should be restricted to two flights?

There are factors that we believe should be heavily considered before implementing this type of change. In terms of recovery planning, airport operational restrictions and allowable flight duty period limitations would need to be considered. Both of which are regulated and outside of carrier control. Primary examples would be airport curfews and limited crew duty days.

If the Agency believes that there is currently a lack of clarity regarding how long a prior disruption can be considered, then the regulations should outline those considerations. Instead of limiting the number of flights, the regulations should clarify that chain reactions are valid until the operation is recovered; Some knock-on effects are more difficult to recover than others.

Limiting an aircraft to two legs would significantly limit the use of that aircraft. If one full turn is disrupted, then another aircraft would have to be acquired for the original aircraft's next full turn. This would potentially disrupt the entire operation and cause further passenger inconvenience. The sheer logistics of aircraft scheduling renders this impractical and unrealistic. We would ask the Agency to explore further understanding of network planning before implementing this amendment.

## 7. Refunds for changes to Government Travel Advisories

The proposed changes within this section may force carriers to completely cancel programs to certain destinations with frequent travel advisories in order to avoid potential mass refund claims. The Agency should consider specifying this change to regions within countries as in some instances, it is only a particular region or city that is impacted rather than the entire country.

## Conclusion

To summarize, Sunwing Airlines believes that the Agency did not consider the realities of the air industry's operational environment before publishing some of their proposed changes. The Agency needs to better define the "exceptional circumstances" while clearly prioritizing safety above all other considerations. In order to effectively improve passenger protection, the Agency needs to propose amendments that are data driven, based on evidence, and equitable. The proposed changes would have numerous significant impacts on the air industry, and we therefore ask the Agency to have further consultations with key stakeholders before implementing any of the proposed changes.