

CAYMAN ISLANDS



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**A BILL FOR A LAW TO FACILITATE THE PROVISION OF ADVANCE
PASSENGER INFORMATION RELATING TO PASSENGERS AND
CREW MEMBERS OF AN AIRCRAFT OR VESSEL; TO SHARE THE
INFORMATION WITH OTHER STATES WITH A VIEW TO
IDENTIFYING PERSONS WHO MAY POSE RISKS TO SECURITY;
AND FOR INCIDENTAL AND CONNECTED PURPOSES**

THE ADVANCE PASSENGER INFORMATION BILL, 2018

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to facilitate the provision of advance passenger information relating to passengers and crew members of an aircraft or vessel and makes provision for the sharing of that information with other States and for incidental and connected purposes.

Clause 1 provides the short title.

Clause 2 provides the definitions for terms used in the legislation.

Clause 3 places an obligation on the local agent of a vessel and crew members and passengers to provide information requested by the competent authority and IMPACS. The clause also provides penalties for contravention of the obligations imposed by the clause.

Clause 4 makes provision for the timelines that apply in relation to the information to be submitted to the competent authority.

Clause 5 makes provision for the competent authority to verify API data.

Clause 6 creates exceptions with regard to the obligations created under the Bill for vessels and aircraft forced to land under particular circumstances.

Clause 7 details the powers and duties of the competent authority.

Clause 8 makes provision for the sharing of information obtained under the Bill between agencies.

Clause 9 provides for the retention of data.

Clause 10 makes provision for Regulations to be made under the Bill.

Clause 11 makes provision for the Schedules to be amended and provides that any amendment thereto shall be subject to negative resolution.

THE ADVANCE PASSENGER INFORMATION BILL, 2018

ARRANGEMENT OF CLAUSES

1. Short title and commencement
2. Interpretation
3. Duty to provide advance passenger information
4. Timeframe
5. Powers of competent authority to verify
6. Vessel or aircraft arriving for non-traffic purposes or making a technical stop
7. Powers and duties of the competent authority
8. Use and sharing of API with regional and international security agencies
9. Retention of API
10. Regulations
11. Amendment of the Schedules

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ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the Advance Passenger Information Law, 2018. Short title and commencement

(2) This Law shall come into force on such date as may be appointed by Order made by the Cabinet and different dates may be appointed for different provisions of this Law and in relation to different matters.

2. In this Law - Interpretation

“advanced passenger information” means the information or data concerning a crew member, passenger or any other person travelling in an aircraft or vessel as set out in Schedule 1; Schedule 1

“advanced passenger information system or APIS” means the automated electronic data interchange of API; and the screening of API by the competent authority, IMPACS and JRCC against a Watch List for any API hit;

“aircraft” includes an aeroplane or a helicopter or other means of airborne navigation by means of which persons can travel across international borders;

“API” means advanced passenger information;

“API hit” means a name present in the Watch List Systems;

“APIS” means advanced passenger information system;

“captain” means the pilot of an aircraft designated by the operator, or in the case of general aviation, the owner or pilot designated by the owner, as being in command and charged with the safe conduct of the flight;

“commercial aircraft” means an aircraft which engages in transporting passengers or goods for monetary gain;

(2015 Revision) “competent authority” means the Chief Immigration Officer pursuant to section 3 of the Immigration Law (2015 Revision) or the Chief Immigration Officer’s designate who shall not be below the rank of Assistant Chief Immigration Officer under that Law;

“CONSLE” means the Council for National Security and Law Enforcement in CARICOM;

“crew member” means -

- (a) in relation to aircraft, an individual charged with performing duties essential to the operation of an aircraft during flight; and
- (b) in relation to a vessel, any individual charged with performing duties essential to the operation of the vessel and the safety and well-being of its passengers or cargo;

“ground stop” means the instruction given by air traffic control to slow or halt the flow of aircraft departing from or inbound to an airport;

“holding pattern” means the flight path maintained by an aircraft awaiting permission to land;

“IATA” means the International Air Transport Association founded in Havana, Cuba, on 19th April 1945;

“ICAO” means the International Civil Aviation Organisation which was formed as a result of the Convention on International Civil Aviation also known as the “Chicago Convention” signed on 7th December, 1944;

“IMPACS” means the Implementing Agency for Crime and Security established under the 2006 Agreement establishing the CARICOM Implementing Agency for Crime and Security;

“IMO” means the International Maritime Organisation which was formerly the Inter-Governmental Maritime Consultative Organization established by a convention adopted in Geneva in 1948 for the purpose of effectively promoting maritime safety;

“INTERPOL” means the International Crime Police Organisation;

“JRCC” means the Joint Regional Communication Centre which is a sub-agency of IMPACS;

“local agent” means -

- (a) the owner of an aircraft or a vessel, if the owner is in the Islands;
- (b) any corporate body owning or operating, whether under charter or otherwise, the aircraft or vessel for the time being, where such corporate body maintains an office in the Islands; or
- (c) the agent in the Islands for the person or corporate body for the time being owning or operating the aircraft or vessel;

“master” includes every person having command or charge of a vessel other than a pilot;

“passenger” means any person not being a bona fide crew member, travelling or seeking to travel on an aircraft or vessel;

“PNR” or “passenger name record” means the record created by air carriers or their authorised agents for each journey booked by or on behalf of any passenger and containers in the air carrier’s reservation system, departure control system or equivalent system;

“private aircraft” means any aircraft which is not -

- (a) a commercial aircraft; or
- (b) an aircraft owned or leased by the Government;

“recreational sports fishing vessel” means a sports fishing boat based in the Cayman Islands and registered in accordance with prescribed procedure referred to in the Immigration Law (2015 Revision);

(2015 Revision)

“technical stop” or “stop for non-traffic purposes” means an aircraft or vessel arriving for purposes of refuelling, repairs, emergency or a similar purpose other than taking on or discharging passengers, baggage, cargo or mail;

“vessel” means any ship, boat, yacht, or other floating or submersible transportation by means of which persons and goods can travel across

international borders and for the avoidance of doubt includes a cruise line, a cargo ship and a tug boat;

“Watch List” means a list that is used to watch or track the current activity or movements of criminals; including terrorists and persons who have been found guilty of any offence involving stolen and lost travel documents, criminal deportees and other persons of interest to the intelligence community; and

“wheels up” means the expected further clearance time, release time or point in time when the crew of an aircraft expects to be released from a holding pattern or exempted from a ground stop.

Duty to provide advance passenger information

3. (1) This section applies to an aircraft or vessel which -

- (a) is expected to arrive in the Islands; or
- (b) is expected to depart from the Islands,

but does not apply to a recreational sports fishing vessel.

(2) The local agent of every aircraft or vessel to which this section applies shall provide to the competent authority and IMPACS, the relevant API and data relating to the flight or voyage as set out in Schedule 1.

Schedule 1

(3) A local agent who -

- (a) fails to provide the API in accordance with subsection (2); or
- (b) intentionally or recklessly -
 - (i) provides an erroneous, faulty, misleading, incomplete or false API; or
 - (ii) transmits the API in an incorrect format;

commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of one year or to both.

(4) Where the API provided is inaccurate and the local agent of the aircraft or vessel satisfies the competent authority that the error was not made knowingly or recklessly, then notwithstanding any other provision of this Law, the local agent may not be charged for an offence pursuant to subsection (3).

(5) In addition to any information provided pursuant to subsection (2) the competent authority may -

- (a) question any captain or master, crew member or passenger in relation to the aircraft or vessel; or
- (b) request any person within the category of persons mentioned in paragraph (a) to forthwith produce any document within that

person's possession or control in relation to the questions put to the person.

- (6) Any captain or master, member of crew or passenger who -
- (a) refuses to answer or knowingly gives a false answer to any question put to him by the competent authority; or
 - (b) fails to comply with a request under subsection 5(b),

commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for six months or to both.

(7) An Assistant Chief Immigration Officer or an immigration officer in a position senior to an Assistant Chief Immigration Officer may waive the requirements of subsection (2) where the aircraft or vessel is -

- (a) a military or law enforcement aircraft or vessel;
- (b) on official Government business; or
- (c) on the business of a humanitarian organisation.

4. (1) API data shall be submitted to the competent authority in accordance with the timelines set out in Schedule 2. Timeframe

(2) Notwithstanding subsection (1) the competent authority may waive the requirement for the submission of API data in the case of an emergency.

5. (1) The API provided under section 3(2) shall be verified by the competent authority during physical processing of any crew member or passenger at any port of entry or exit by comparing the API information to the information contained in the travel document presented by the crew member or the passenger. Powers of the competent authority to verify

(2) The competent authority shall, if any discrepancy is found in the API, correct the data at the port of entry or departure and update the information in APIS after verifying the information from the travel document or other relevant documents of the crew member or passenger.

6. (1) Nothing in section 3 applies to an aircraft or vessel which makes a technical stop or lands, berths, anchors, or otherwise arrives or stops at any port for non-traffic purposes if the arrival is - Vessel or aircraft arriving for non-traffic purposes or making a technical stop

- (a) required by any statutory or other requirement relating to navigation;
- (b) compelled by any emergency, accident, unfavourable weather conditions, or other necessity; or
- (c) authorised by the competent authority.

(2) Where an aircraft or vessel arrives or stops for any of the reasons outlined in subsection (1) the captain or master shall -

- (a) forthwith report to the competent authority;
- (b) not without the consent of the competent authority, permit any crew members or passenger to disembark from the aircraft or vessel; and
- (c) comply with any directions given by the competent authority in respect of any crew member, or passenger carried on the aircraft or vessel.

(3) Subject to any authorisation granted by the competent authority, neither a crew member nor a passenger on an aircraft or vessel shall without the consent of that authority disembark from the aircraft or vessel, and any such person shall comply with any direction given by the competent authority.

(4) A captain or master who fails to comply with or contravenes this section commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of one year or to both.

(5) Notwithstanding subsection (4), the disembarkation of a crew member or a passenger from an aircraft or vessel shall not constitute an offence, if the disembarkation is necessary for reasons of health, safety or the preservation of life.

(6) In the circumstances set out at subsection (5) or in similar emergency circumstances the competent authority shall take into consideration the circumstances of the emergency and that the captain or master may not have been in a position to transmit the API and in such circumstances the competent authority shall not consider the non-compliance of the captain or master to be a contravention of this section.

Powers and duties of the competent authority

7. (1) The competent authority shall -

- (a) co-ordinate with IMPACS on all matters relating to the APIS;
- (b) if requested, allow a crew member or a passenger from an aircraft or vessel access to the crew member's or the passenger's personal identifiable information maintained in the APIS to ensure its correctness; but no crew member or passenger shall have access to any information provided by IMPACS or JRCC through the screening of API by IMPACS and JRCC against a Watch List for any API hit;
- (c) determine, after consultation with IMPACS, the admissibility or otherwise of any crew member or passenger into the Islands;

- (d) withhold clearance for the departure of an aircraft whose captain has not provided the API required pursuant to section 3, pending submission of the API; and
- (e) assess the sufficiency of API information provided for each journey of an aircraft or vessel and review API transmissions to assess error rates.

(2) Notwithstanding section 7(a) and (c), any decision with respect to the admissibility or inadmissibility of a crew member or a passenger from an aircraft or vessel into the Islands shall be made solely by the competent authority.

(3) A captain or master in control of an aircraft or a vessel or a local agent, respectively may, at the discretion of the authority, be required to provide a manifest and any other passenger or crew data which may be requested by the competent authority and if such a request is made, the captain, master or local agent shall satisfy the request.

8. (1) IMPACS shall use the APIS to conduct screening against Watch Lists of crew members and passengers on aircraft and vessels that enter into, depart from and travel within the regional space in order to provide information to assist participating countries.

Use and sharing of API with regional and international security agencies

(2) IMPACS may share the information contained within APIS with INTERPOL and any other national, regional or international intelligence, law enforcement or security agencies or centres approved by CONSLE to further national, regional or international security.

(3) API shall only be used for the purposes mentioned in this Law.

9. (1) The API collected under this Law for entry screening purposes shall be retained for a period not exceeding three years from the date of travel of the crew member or the passenger.

Retention of API

(2) Nothing contained in subsection (1) applies to the data copied from the APIS into any other security database system to which a different data retention schedule applies.

10. The Cabinet may make regulations -

Regulations

- (a) to provide for procedures for the gathering of information and for the collaboration and sharing of information with the agencies mentioned in this Law; and
- (b) for carrying into effect the purposes and provisions of this Law.

11. (1) The Cabinet may by Order published in the Gazette amend Schedule 1 or 2 in consultation with CONSLE with respect to API.

(2) An Order made under subsection (1) is subject to negative resolution.

SCHEDULE 1

(Section 3(2))

ADVANCED PASSENGER INFORMATION

- (a) Data relating to the flight or voyage (Header Data) -
- (i) Flight Identification
(IATA or ICAO Airline code and flight number, Registration Number)
 - (ii) Vessel Identification
(IMO or Registration number)
 - (iii) Country of Registration
(Country where vessel is registered)
 - (iv) Agent or Owner (where applicable)
(Name of Agent for the vessel or where no Agent, Name of Owner)
 - (v) Call Sign (If applicable)
 - (vi) Scheduled Departure Date
(Date of Scheduled departure of vessel based on local time of departure location)
 - (vii) Scheduled Departure Time
(Time of schedule departure of vessel based on local time of arrival location)
 - (viii) Scheduled Arrival Date
(Date of scheduled arrival of vessel based on local time of arrival location)
 - (ix) Scheduled Arrival Time
(Time of scheduled arrival of vessel based on local time of arrival location)
 - (x) Last Place or Port of Call of Vessel or Aircraft
(Vessel departed from this last foreign place or port of call to go to “place or port of vessel initial arrival”)
 - (xi) Place or Port of Vessel or Aircraft Initial Arrival

(Place or port in the country of destination where the vessel arrives from the “last place or port of call of vessel or aircraft)

- (xii) Subsequent Place or Port of Call within the country or regional space
 - (xiii) Number of Persons on board
(total number of passengers on Board)
- (b) Data relating to each individual on board -
- (i) Official Travel Document Number
(Passport or other Government approved travel documents)
 - (ii) Issuing State or Organization of the Official Travel Document
(Name State or Organisation responsible for the issuance of the official document)
 - (iii) Official Travel Document Type
(Indicator to identify type of official travel document)
 - (iv) Expiration Date of Official Travel Document
(Expiration date of the official travel document)
 - (v) Surname or Given Name(s)
(Family name and given name(s) of the holder as it appears on the travel document)
 - (vi) Nationality
(Nationality of the holder of the travel document)
 - (vii) Date of Birth
(Date of birth of the holder)
 - (viii) Gender
(Gender of the holder)
 - (ix) Place of Birth
(Please give city and country of birth)
 - (x) Traveller’s Status
(passenger, crew, in-transit)
 - (xi) Place or Port of Original Embarkation
(Place or port on that journey where traveller first boarded for foreign travel)
 - (xii) Port or Place of Clearance
(Place or port where the traveller is cleared by the border control agencies)
 - (xiii) Place or Port of Onward Foreign Destination

(Foreign place or port where the traveller is transiting)

- (xiv) Passenger Name Record or PNR Data
(As available in the traveller's Passenger Name Record in the carrier's Reservation System including all historical changes to the PNR listed) which shall include -
- (1) PNR record locator
 - (2) Date of reservation or date of issue of ticket
 - (3) Date(s) of intended travel
 - (4) Name(s)
 - (5) Address and contact information (telephone number, e-mail address)
 - (6) All forms of payment information, including billing address
 - (7) Complete travel itinerary for specific PNR
 - (8) Frequent flyer information
 - (9) Travel agency or travel agent
 - (10) Travel status of passenger, including confirmations, check-in status, no show or go show information
 - (11) Split or divided PNR information
 - (12) General remarks (including all available information on unaccompanied children less than eighteen years of age, such as name and gender of the minor, language(s) spoken, name and contact details of the guardian on departure and relationship to the minor, name and contact details of guardian on arrival and relationship to the minor, departure and arrival agent)
 - (13) Ticketing field information, including ticket number, date of ticket issuance and one way tickets, automated ticket fare quote fields
 - (14) Seat number and other seat information
 - (15) code share information
 - (16) All baggage information
 - (17) Number and other names of travellers on PNR
 - (18) Any API data collected
 - (19) All historical changes to the PNR listed in numbers 1 to 18
- (c) Additional data elements -
- (i) Visa Number (if applicable)
 - (ii) Issue Date of Visa
(Place where Visa is issued)
 - (iii) Place of Issuance of the Visa
(Place where Visa was issued)
 - (iv) Other Document Number used for Travel (if applicable)

(The other document number used for travel when the official travel document is not required)

- (v) Type of Other Document used for Travel (supporting travel document)
(Indicator to identify type of other document used for travel)
- (vi) Primary Residence -
 - (aa) Country of Primary Residence
(Country where passenger resides most of the year)
 - (bb) Address
(location identification such as - street name and number)
 - (cc) City
 - (dd) State or Province or County
 - (ee) Postal Code
- (v) Destination Address -
 - (aa) Address where passenger will be staying in territory of disembarkation
 - (bb) City
 - (cc) State or Province or County
 - (dd) Postal Code
- (d) Data relating to the Reporting Party -
 - (i) Reporting Party Name
 - (ii) Reporting Party Telephone Number
 - (iii) Reporting Party Facsimile Number
 - (iv) Reporting Party Electronic Mail Address

SCHEDULE 2

(Section 4)

TIMEFRAME

- (1) In the case of commercial aircraft -

- (a) arriving to the Islands, no later than sixty minutes prior to departure from the last port of call; and
 - (b) departing from the Islands, in three intervals of -
 - (i) seventy minutes prior to departure;
 - (ii) fifty-five minutes prior to departure; and
 - (iii) no later than fifteen minutes after wheels up.
- (2) In the case of a privately owned aircraft -
- (a) arriving to the Islands, no later than sixty minutes prior to departure from the last port of call; and
 - (b) departing from the Islands, no later than sixty minutes prior to departure.
- (3) In the case of a vessel arriving, no later than forty minutes prior to the departure from the last port of call.
- (4) In the case of a vessel arriving from a destination outside the regional space, no later than twenty-four hours prior to the arrival.
- (5) In the case of a vessel arriving from a destination within the regional space, no later than one hour prior to the arrival of the vessel from the last port of call.
- (6) In the event of any changes to the flight or vessel header data or data relating to an individual on board, an updated API file is required prior to departure of the aircraft or vessel.

Passed by the Legislative Assembly the day of , 2018.

Speaker.

Clerk of the Legislative Assembly.