



NEWSLETTER 4/2018

New legislation regarding the provision of services in the area of tourism industry

NEW LEGISLATION REGARDING THE PROVISION OF TRAVEL AND RELATED SERVICES

- **As of 1st July 2018 the Amendment of the Act No. 159/1999 Coll.**, on certain business conditions and performance of certain activities in the area of tourism industry, and related laws¹, **became effective.**
- **The purpose** of the Amendment is the local transposition of **the Directive (EU) 2015/2302** of the European Parliament and of the Council of 25 November 2015 **on package travel and linked travel arrangements**².
- **One of the main reasons** behind the new Directive was the need for modernisation of the relevant legal area of tourism industry. Over the recent years, the travel market had undergone considerable changes – in addition to the traditional distribution chains, the Internet has become an increasingly important medium through which travel services are offered or sold.
- **The main aim** of the new legislation is not only to regulate the new ways how the travel services are offered, sold and arranged (**implementation of so-called linked travel arrangements**), but also to reach and ensure high level of **consumer protection.**

¹ The Amendment also changes **the Czech Civil Code** (the Act No. 89/2012 Coll.) in provisions regarding the travel contract (Sec. 2521 of CC) and **the Trade License Act** (the Act No. 455/1991 Coll.) in the part relating to the trade license for operating a travel office.

² **Directive** (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC.

I. NEW DEFINITIONS

- “**Travel service**” is a new key term important for distinguishing whether in particular case a package or a linked travel arrangement is offered or sold. A travel service newly means:
 - a) carriage of passengers,
 - b) accommodation which is not intrinsically part of carriage of passengers, and is not for residential purposes,
 - c) rental of cars and other motor vehicles, or
 - d) any other travel service, e.g. sale of tickets for cultural or sports events, trip’s organisation, sale of ski passes or rental of sports equipment.

- New definition of a term “**package**” is, compared to the previous one, much more elaborated. The package means a combination of at least two different types of travel services for the purpose of the same trip or holiday, if
 - a) those services are combined and offered by one trader, or are combined at the request of or in accordance with the selection of the traveller prior to a conclusion of a single contract for all services, or
 - b) irrespective of whether separate contracts are concluded with individual travel service providers, provided that those services are
 - ✓ purchased from a single point of sale,
 - ✓ offered, sold or charged at an inclusive or total price,
 - ✓ advertised or sold under the term „package“ or under a similar term, or
 - ✓ purchased from separate traders through linked online booking processes where the traveller’s

name, payment details and e-mail address are transmitted from the trader with whom the first contract is concluded to another trader or traders and a contract with the latter trader or traders is concluded at the latest 24 hours after the confirmation of the booking of the first travel service.

- Contrarily, a combination of travel services where not more than one type of travel service (carriage of passengers, accommodation, rental of cars) is combined with one or more travel services as referred to in point (d), **is not a package** if the latter service or services:
 - a) do not account for a significant proportion of the value of the combination, i.e. do not reach at the latest 25% of the total price for the combination, are not advertised as and do not otherwise represent an essential feature of the combination (e.g. in case of ski holiday - the price for ski passes is usually lower than 25% of the total price, but it represents the essential feature of the combination), or
 - b) are selected and purchased only after the performance of a travel service has started (e.g. rental of a bike after the commencement of accommodation).

- Completely new term is **"linked travel arrangement"** which means at least two different types of travel services purchased for the purpose of the same trip or holiday, but not constituting a package, resulting in the conclusion of separate contracts with the individual travel service providers, if a trader facilitates:
 - a) on the occasion of a single visit or contact with his point of sale, the separate selection and separate payment of each travel service by travellers, or
 - b) in a targeted manner, the procurement of at least one additional travel service from another trader where a contract with such other trader is concluded at the latest 24 hours after the confirmation of the booking of the first travel service.

- New legislation, alike the existing one, **does not apply to:** (i) packages (and linked travel arrangements) covering a period of less than 24 hours, unless overnight accommodation is included, and (ii) packages (and linked travel arrangements) provided occasionally and on a not-for-profit basis. Contrary to the existing legal regulation, the new legislation explicitly does not apply to packages and linked travel arrangements purchased on the basis of a general agreement on arrangement of business travel (business trips), because in case of such a type of travel the same level of protection as with consumers is not required.

II. CONSUMER PROTECTION

To ensure the sufficiently high level of consumer protection a number of new or existing, but reinforced, law instruments has been embodied. Among the most important belong especially the following:

- **Higher level of traveller's protection against the insolvency of the travel agency.** According to the new legislation all travel agencies are obliged to conclude an insolvency insurance or newly obtain an insolvency bank guarantee, where the travel agency must ensure to the clients: (i) the repatriation (i.e. the return to the place of departure or to another place the contracting party agree upon) and (ii) the refund of all payments (i.e. the refund of the prepayment or the price of the package provided that the relevant services were not performed, or the refund of the relevant part of payments if travel services were performed only partially). At the client's request the travel agency must provide a valid insurance certificate. In the event of the insolvency the insurance company (or the bank) shall provide the insurance payments

up to the agreed amount, and if it will be exceeded, also the payment from the means transferred to the insurance company (or the bank) from the newly established Guarantee Fund.

- **Wider pre-contractual information obligation.** Prior to the final confirmation of any booking, the travel agency must provide the client with the pre-contractual information regarding the legal characteristic of the offered travel services (i.e. whether a package or a linked travel arrangement is offered and sold) and information about the legal protection of the client (consumer's legal protection in case of a package travel is higher than in case of a linked travel arrangement; and all travel agencies must point this out to the clients in a prescribed manner!) The information must be provided in a respective standard form issued by the Czech Ministry of Regional Development for particular types of packages or linked travel arrangements.
- **New and more detailed main requirements for the package travel contract (package confirmation).** The package confirmation shall newly include: main requirements (such as the travel destination(s), period(s) of stay, accommodation, agreed means of transport, the meal plan, visits, excursion(s) or other services included in the total price agreed for the package) and further requirements (e.g. the total price of the package inclusive of taxes and, where applicable, of all additional fees, charges and other costs).
- **New rules for modification of the travel package price.** Newly, once the package travel contract is concluded, the price may be increased only if (i) the contract expressly reserves that possibility and (ii) at the same time the contract states that the client is entitled to the price reduction and (iii) the formula for the price amendment is pre-specified in the contract.

- **Right to withdraw from the contract without any termination fee.** The client shall have the right to terminate the package travel contract prior to its commencement without paying any termination fee: (i) in case of increase of the price by 8% or (ii) in the event of unavoidable and extraordinary circumstances occurring at the place of destination or its immediate vicinity, which may significantly affect the performance of the services or the transport to the destination.

- **Obligation to provide emergency assistance.** In case of any emergency or unavoidable and extraordinary circumstances which prevent the return of the client in accordance with the services terms, the travel agency is obliged to provide a necessary assistance and cooperation. The travel agency is particularly obliged to:
 - a) provide appropriate information with respect to health services, local authorities and consular assistance,
 - b) assist the client with communication and
 - c) procure for alternative travel arrangements.The scope and the form of the assistance will depend on the particular situation. The organiser shall be entitled to charge a reasonable fee for such assistance, if emergency situation was caused intentionally by the client.

III. OPERATING A TRAVEL AGENCY

- With regard to one of the aims of the new law – setting fairer business rules in the area of tourism industry - it comes to **the legal regulation of new the manners by which the travel services are offered, sold and arranged** (i.e. the abovementioned implementation of so-called linked travel arrangements) and the new legislation also imposes new mandatory **obligations**, especially the obligation to obtain an insolvency insurance or a insolvency bank guarantee and the obligation to pay an annual contribution to the Guarantee Fund.
- **The obligation to arrange insolvency insurance or insolvency bank guarantee.** All travel agencies (offering both packages and linked travel arrangements) are obliged to obtain an insolvency insurance or alternatively an insolvency bank guarantee. The existing requirement that the limit of the insurance premium must be at least 30% of annual planned, or previous year (if expected lower), revenues remains unchanged.
- **New obligation to pay an annual contribution to the Guarantee Fund.** The new legislation establishes a Guarantee Fund and all travel agencies are newly obliged to pay an annual contribution to this Fund. The basis for the calculation of the contribution for the 2018 is the estimated revenue of the agency for the second half of the 2018. The amount of the contribution will be **0,1 %** from the basis and the contribution shall be paid **by 1st September 2018**. In case of breach of this obligation, the relevant authorities may impose a contractual penalty up to CZK 1,000,000.

- The implementation of the regulation of so-called linked travel arrangements is also reflected into the changes of the Trade Licence Act, where **the existing licensed trade "Operating a travel agency" is divided into two parts: (i) package organisation and (ii) arrangement of linked travel arrangements.**
 - (i) The entrepreneurs, who were so far entitled to operate under the trade licence "Operating a travel agency", will be as of 1st August 2018, entitled to conduct only the trade "Operating a travel agency – package organisation". The respective trade office will register this change automatically, by 1st September 2018 and there is no need for further actions from the traders.
 - (ii) Any other entrepreneurs with the licence "Operating a travel agency" who intend to arrange the linked travel arrangements after 1st July 2018, must apply with the relevant trade authority for the renewed licence "Operating a travel agency – arrangement of linked travel arrangements", by 1st August 2018.

We hope the above summary will ease your orientation in the new legislation. We are available for any of your additional requests or information or legal assistance in this area.

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