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Act No. 315 of May 14, 1997

Act on a Travel Guarantee Fund

WE, MARGRETHE THE SECOND, by the grace of God Queen of Denmark, do hereby proclaim: Parliament has passed and We have through Our consent affirmed the following Act:

Part I

Scope and definitions of the Act

The Fund

1. The Travel Guarantee Fund is a private independent institution which shall provide assistance to customers. The Fund shall provide assistance in pursuance of sections 5 and 6 when a customer has entered into an agreement concerning a travel arrangement with an organiser or an intermediary of a foreign organiser who is obliged to be registered, cf. also section 21.

Travel arrangement and air package travel

2. - (1) A travel arrangement means:

(i) Package travel which consists of a combination of not fewer than two of the following elements when they are offered for sale by the organiser as a whole or have been offered for sale in advance and are sold as a whole and when the overall service is of a duration of more than 24 hours or includes overnight accommodation:

(a) Transport.

(b) Accommodation.

(c) Other tourist services not ancillary to transport or accommodation, but accounting for a significant proportion of the package.

(ii) A service that includes transport and accommodation and which has been agreed upon with the same organiser or intermediary but which does not come under paragraph (i) above.

(iii) Transport and other tourist services which are not of a duration of more than 24 hours but the total price of which exceeds DKK 1,000.

(2) Separate invoicing of the elements mentioned in subsection (1) above does not have the effect that the combination of these elements is outside the scope of the Act.

(3) Air package travel means a travel arrangement where transport takes place by plane and which is offered for sale in accordance with a pre-arranged programme with at least 30 bookings per departure.

Organiser and intermediary

3. – (1) Anyone who in his/her own name offers for sale or sells travel arrangements to customers directly or through an intermediary shall be regarded as an organiser, unless the business is carried on only occasionally.

(2) Anyone who offers for sale or sells a travel arrangement in the name of the organiser shall be regarded as an intermediary.

Customer

4. Anyone who purchases a travel arrangement or in whose name a travel arrangement is purchased shall be regarded as a customer. Where the customer transfers the travel arrangement, anyone to whom the travel arrangement is transferred shall also be regarded as a customer, always provided that anyone who purchases a travel arrangement with a view to commercial resale shall not be regarded as a customer.

Part II

The assistance provided by the Fund to customers and the recourse claim of the Fund

Scope of cover

5. – (1) When a customer has entered into an agreement for a travel arrangement, the customer can have the amount which has been paid for an arrangement reimbursed by the Fund if the financial position of the organiser has had the effect that the travel arrangement cannot be commenced. If for the same reason the travel arrangement is interrupted, the customer can claim reimbursement from the Fund for the part of the payment which corresponds to the services which have not been performed in relation to the customer.

(2) Where the financial situation of an organiser has the effect that the customer has not been secured suitable repatriation, the Fund shall within a reasonable period of time arrange for this.

(3) Where the financial situation of an organiser has the effect that the customer has not been secured suitable overnight accommodation as well as other essential necessities, the Fund shall arrange for this or reasonably reimburse the customer.

(4) The Fund shall, furthermore, reasonably reimburse the customer for any loss which is due to the financial situation of the organiser.

(5) The Fund may reimburse an intermediary who has as a result of the financial situation of an organiser met the customer's claims, cf. Section 28(1) of the Act on Package Travel.

(6) The Fund may contribute to the carrying out of travel arrangements where the Fund deems that it can thereby make a considerable financial saving.

Time-limit for making claims

6. A request from the customer for reimbursement in pursuance of section 5 shall be made to the Fund within a reasonable period of time always provided that such a claim cannot be made later than 1 year after the tour ended or it is obvious that the tour will not be carried out.

Recourse claim, etc.

7. - (1) The Fund shall be subrogated to the claims of the customer in so far as the Fund has satisfied these claims. The Fund shall have the right to have the expenses which the Fund has defrayed in connection with repatriation and other assistance, reimbursed, cf. Subsections (2) to (5) of section 5.

(2) The Fund shall be subrogated to the claims of the customer against an intermediary only where the intermediary has incurred liability in relation to the customer on a basis other than that mentioned in section 28(1) of the Act on Package Travel.

(3) Where the payment for a travel arrangement is covered fully or in part through loans granted to the customer by a third party on the basis of an agreement in this respect between the third party and the organiser or the intermediary of a foreign organiser, the Fund shall be subrogated to the claims of the customer in pursuance of the Credit Agreements Act in so far as the Fund has satisfied these loans.

(4) The Fund can, in so far as it has reimbursed customers, repatriated customers or provided other assistance, enforce the guarantee which has been provided by the intermediary of a foreign organiser, cf. section 8(3). Where the intermediary has not provided a guarantee, the intermediary shall be liable for an amount corresponding to the amount that should have been provided by way of a guarantee.

(5) Those providing travel arrangements as intermediaries of an organiser who is obliged to be registered and who has contrary to the provision of section 8(3) not provided a guarantee shall be liable for the amount which should have been provided by way of a guarantee.

(6) Those who have sold a travel arrangement to an organiser with a view to resale, shall be liable to the Fund for the carrying out of the travel arrangement where the party in question realised or should have realised that there might be a risk that the organiser could not carry out the arrangement.

Part III

Application for registration and registration with the Fund of organisers and intermediaries, guarantee and payment of contributions.

Application for registration, registration and guarantee

8. - (1) Organisers and intermediaries of foreign organisers shall apply for registration with the Travel Guarantee Fund which shall enter the organisers and intermediaries of foreign organisers in question in the register and notify them of the entry in the register.

(2) Organisers and intermediaries of foreign organisers are permitted to offer for sale and sell travel arrangements only provided that they are registered with the Travel Guarantee Fund.

(3) A condition for registration is that the organiser or the intermediary of the foreign organiser provides a guarantee to the Fund the size of which depends on the turnover of the organiser or intermediary of the foreign organiser in accordance with the provisions of subsections (4) to (6) below. The guarantee shall be provided through a bank, through an insurance company, through cash deposit or through the deposit of other corresponding assets. The Minister for Business and Industry shall lay down specific rules as regards what other corresponding assets apart from cash amounts may be deposited. The Fund shall have the right to demand payment of the guarantee in settlement of claims that the Fund has against the organiser or the intermediary of a foreign organiser.

(4) Turnover in the first sentence of subsection (3) above means the turnover invoiced to customers during the past four quarters in connection with sale of the travel arrangements which come under the Act.

(5) The size of the guarantee shall be in accordance with the following, cf. also subsection (6) below and section 23(2) below:

- (i) In the case of a turnover not exceeding DKK 15 million, the guarantee shall be DKK 300,000.
- (ii) In the case of a turnover of more than DKK 15 million, but not exceeding DKK 50 million, the guarantee shall be DKK 1.0 million.
- (iii) In the case of a turnover of more than DKK 50 million, but not exceeding DKK 100 million, the guarantee shall be 1.5 million.
- (iv) In the case of a turnover of more than DKK 100 million, but not exceeding DKK 250 million, the guarantee shall be DKK 2.0 million.
- (v) In the case of a turnover of more than DKK 250 million, the guarantee shall be DKK 2.5 million.

(6) Where the turnover by way of air package travel constitutes 50 per cent or more, the size of the guarantee shall be in accordance with the following, cf. also section 23(2) below:

- (i) In the case of a turnover not exceeding DKK 10 million, the guarantee shall be DKK 300,000.
- (ii) In the case of a turnover of more than DKK 10 million, but not exceeding DKK 25 million, the guarantee shall be DKK 1.0 million.
- (iii) In the case of a turnover of more than DKK 25 million, but not exceeding DKK 50 million, the guarantee shall be DKK 1.5 million.
- (iv) In the case of a turnover of more than 50 million, but not exceeding DKK 100 million, the guarantee shall be DKK 2.5 million.
- (v) In the case of a turnover of more than 100 million, but not exceeding DKK 150 million, the guarantee shall be DKK 5 million.

- (vi) In the case of a turnover of more than 150 million, but not exceeding DKK 200 million, the guarantee shall be DKK 7.5 million.
- (vii) In the case of a turnover of more than DKK 200 million, but not exceeding DKK 300 million, the guarantee shall be DKK 10 million.
- (viii) In the case of a turnover of more than DKK 300 million, but not exceeding DKK 500 million, the guarantee shall be DKK 15 million.
- (ix) In the case of a turnover of more than DKK 500 million, but not exceeding DKK 700 million, the guarantee shall be DKK 25 million.
- (x) In the case of a turnover of more than DKK 700 million, the guarantee shall be DKK 30 million.

(7) Non-profit associations, etc which offer travel arrangements as part of their activities shall not provide a guarantee. This shall apply only where the travel activities constitute a minor part of the non-profit making activities of the association.

(8) The intermediary of a foreign organiser shall not provide guarantee or pay contributions where the guarantee for the travel arrangements sold by the intermediary comply with the conditions of a scheme approved by another country within the EU or the EEA.

(9) An organiser or an intermediary of a foreign organiser who has been convicted of or has accepted a fine for violation of subsection (2) above, cannot be registered with the Fund, until the claims of the Fund in pursuance of section 7 and section 9(2) have been paid.

Contributions to the Travel Guarantee Fund

9. – (1) Organisers and intermediaries of foreign organisers shall pay a contribution to the Fund of DKK 5 per participant in a travel arrangement which is included under the coverage afforded by the Fund.

(2) Where an organiser or an intermediary of a foreign organiser has, without being registered in pursuance of section 8, sold travel arrangements, the Fund may demand that the organiser or the intermediary pay the contributions together with accrued interest, etc. which should have been paid in pursuance of subsection (1) above.

Part IV

Board of Trustees, Trust Instrument, and Powers of the Fund

Composition

10. The Board of Trustees of the Fund consists of a chairman and 4 members who shall be appointed by the Minister for Business and Industry. Of the 4 members, 2 members represent those registered with the Fund, and 2 members represent the customers. The Board of Trustees and a deputy chairman shall be appointed for 3 years.

Accounts

11. The Board of Trustees shall within 6 months after the expiry of a calendar year present accounts audited by the Office of the Auditor General of Denmark for the year that has passed with a report on the activities of the Fund to the Minister for Business and Industry.

Trust Instrument and Procedures, etc.

12. – (1) The Trust Instrument of the Fund and the procedures of the Board of Trustees shall be determined by the Board of Trustees and shall be approved by the Minister for Business and Industry. The Trust Instrument shall contain provisions as regards investment of the resources of the Fund.

(2) The costs of administration of the Fund shall be defrayed by the Fund.

Information

13. The Fund can demand from any party all the information which is deemed necessary to ensure observance of the Act, including information to determine whether a matter comes under the provisions of the Act or to avoid that the Fund suffers a loss. The Fund may demand documentation for information which is submitted in pursuance of the first sentence of this section.

Reduced guarantee and contributions

14. – (1) The Fund may lay down provisions to the effect that the guarantee or the contribution be reduced or be removed for an organiser or an intermediary of a foreign organiser,

- (i) when turnover is below the minimum guarantee, cf. paragraph (i) of section 8(5) and paragraph (i) of section 8(6),
- (ii) for travel arrangements which do not include transport, cf. subparagraph (a) of section 2(1), or
- (iii) for other special types of travel arrangements.

(2) The Fund can decide that guarantee and contributions shall in special instances be reduced or removed.

Part V

Cancellation of registration and demands for increased guarantee

Enforcement of the guarantee

15. Where the Fund has enforced the guarantee provided by an organiser or an intermediary of a foreign organiser, the registration with the Fund of the organiser or intermediary shall be cancelled unless the guarantee provided is sufficient to cover the claims of the Fund and the guarantee is within a time-limit fixed by the Fund increased to the size mentioned in subsections (5) and (6) of section 8, cf. also section 19.

Notice of termination of guarantee and discontinuation of business

16. Where notice of termination of a guarantee provided is given or where an organiser or an intermediary of a foreign organiser ceases carrying on business, the registration shall be cancelled and the guarantee provided shall be released when it may be regarded as being excluded that claims will be made by customers.

Non-provision of guarantee or non-payment of contributions, etc.

17. – (1) Where a registered organiser or intermediary of a foreign organiser omits paying contributions to the Fund or providing guarantee in accordance with subsections (5) and (6) of section 8 or where the Fund does not on demand receive the information mentioned in sections 13 and 22(3), the Board of Trustees of the Fund may decide that registration with the Fund be cancelled if the obligations are not fulfilled within a specified time-limit.

(2) Where registration of an organiser or an intermediary of a foreign organiser is cancelled in pursuance of subsection (1) above, the guarantee provided cannot be released until it may be regarded as being excluded that demands will be made from customers and only in so far as the guarantee has not been employed by the Fund to cover claims against the organiser or the intermediary of the foreign organiser for non-paid contributions together with accrued interest.

Re-entry in the register

18. An organiser or an intermediary of a foreign organiser whose registration has been cancelled in pursuance of section 15 or section 17(1) cannot be entered in the register again until the organiser or intermediary of the foreign organiser has paid amounts due to the Fund and has provided the Fund with the information demanded.

Increased guarantee

19. The Fund may demand increased guarantee to be provided by an organiser or an intermediary of a foreign organiser when an owner of the undertaking or the individual who in actual fact carries on the business and who is related to the owner in the same way as laid down in the second sentence of section 115(1) of the Danish Companies Act or a member of the board of directors or board of management of the undertaking has within the past 5 years been the owner of or a member of the board of directors or board of management of another undertaking which has within this period of time not punctually paid amounts due to the Fund in pursuance of section 7, section 9(2) and sections 15 and 17. Where the party obliged to be registered is a company etc., the individual owning such shares in the undertaking as are defined as shares of a principal shareholder in pursuance of subsections (2) to (4) of section 11 of the Capital Gains Tax Act, or a company, etc. which owns such shares in the undertaking as referred to in section 6 B(3) of the Gains on Securities and Foreign Currency Act, shall also be regarded as owner.

(2) An increase in the guarantee in pursuance of subsection (1) may be demanded only when it must be presumed that there is a special risk that the Fund will suffer a further loss.

(3) The Fund may demand increased guarantee to be provided by an organiser or an intermediary of a foreign organiser where the organiser or intermediary in question increases the Fund's risk by receiving advance payments which differ substantially from what is customary for travel arrangements of the type in question.

(4) Where the risk mentioned in subsections (2) and (3) above no longer exists, the Fund shall on demand reduce the guarantee.

Part VI

International scope of the Act, etc.

Obligation to be registered

20. The obligation to be registered applies to organisers and intermediaries of foreign organisers who have set up in business in Denmark.

Coverage provided by the Fund

21. The Fund does not cover travel arrangements which have been marketed and sold abroad, always provided that the sale of travel arrangements abroad by organisers and intermediaries who are obliged to be registered shall be covered where the travel arrangement involves cross-border transport and originates in Denmark.

(2) A travel arrangement shall be regarded as having been marketed and sold abroad, where

- (i) the organiser or an intermediary has received the customer's order abroad, or
- (ii) a special offer has been made to the customer or advertising has taken place abroad and the customer has thereafter abroad performed the acts which are necessary for the conclusion of the agreement

Sufficient guarantee requirement

22. – (1) All organisers or intermediaries of a foreign organiser set up in business in Denmark who offer package travel within the EU/EES area, cf. paragraph (i) of section 2(1), which is not covered by the Fund, cf. section 21, shall provide sufficient guarantee to secure repayment of payments made and repatriation of the customer in the event of insolvency or bankruptcy/compulsory liquidation.

(2) Those marketing package travel in Denmark from abroad shall provide sufficient guarantee to secure repayment of payments made and repatriation of the customer in the event of insolvency or bankruptcy/compulsory liquidation. The provision of guarantee

which complies with the terms and conditions of a scheme approved in another EU/EES country shall be regarded as sufficient.

(3) Where the Fund so requests, the organiser/intermediary in question shall document that the demands as regards security mentioned in subsections (1) and (2) above have been made. Corresponding documentation shall by request be given to a foreign authority supervising rules which have been laid down for implementation of Council Directive 90/314/EEC on package travel, including package holidays and package tours.

Part VII Powers of the Minister

23. - (1) The Minister for Business and Industry shall lay down specific rules for the implementation of the Act, including rules on payment of contributions, payment of interest and charges in connection with overdue payment, accountant's certification of guarantees and the scope of the obligation to make contributions, registration with the Fund, provision of guarantee and the assistance provided by the Fund to customers.

(2) The Minister for Business and Industry can on the recommendation of the Fund if warranted by the development in prices or the development in the assets of the Fund increase the guarantee, cf. subsections (3) to (6) of section 8, or increase or reduce the contribution, cf. section 9(1).

(3) The Minister for Business and Industry can with the consent of the Finance Committee of the Danish Parliament provide guarantee for loans raised by the Fund for fulfilment of its obligations.

(4) The Minister for Business and Industry can obtain information from organisers or intermediaries of foreign organisers on turnover and advance payments which is deemed necessary for reaching a decision in pursuance of subsections (2) and (3) above.

(5) Where warranted by the development in prices, the Minister for Business and Industry may increase the limit mentioned in paragraph (iii) of section 2(1).

(6) The Minister for Business and Industry may transfer his powers under the Act to an agency under the Ministry of Business and Industry.

Right of appeal

24. The decisions of the Fund as regards the obligation to be registered and the provision of guarantee in pursuance of section 8, cf. sections 2 to 4, section 14(2), sections 19 to 21 and subsections (1) and (2) of section 22 and decisions as regards the obligation to be registered and the provision of guarantee made in pursuance of rules laid down under section 14(1) and section 23(1) may be brought before the Danish Commerce and Companies Appeal Board.

17.03.1997

Part VIII
Penalties and commencement, etc.

Penalties

25. – (1) In so far as no more severe penalty has been incurred under other legislation,

- (i) violation of section 8(2),
- (ii) failure to provide the Fund or the Minister for Business and Industry with the information and documentation demanded in pursuance of section 13, section 22(3) and section 23(4),
- (iii) misrepresentation or misleading information to the Fund or the Minister for Business and Industry

is punishable by a fine or detention on lenient terms.

(2) Companies, etc. (legal persons) may incur criminal liability in pursuance of the rules contained in Part V of the Danish Penal Code.

Commencement and interim provisions, etc.

26. – (1) The Act shall commence as at July 1, 1997.

(2) Concurrently with the commencement of the Act, the Act on a Travel Guarantee Fund, cf. Consolidated Act No. 104 of February 28, 1986, shall be repealed.

(3) The provisions laid down in pursuance of the Act on a Travel Guarantee Fund, cf. Consolidated Act No. 104 of February 28, 1986, shall remain in force until they are replaced by the provisions laid down in pursuance of this Act.

(4) Organisers and intermediaries of foreign organisers who were registered upon the commencement of the Act shall not later than January 1, 1998 provide an increased guarantee, cf. subsections (3) to (6) of section 8.

(5) Non-profit associations, etc. which have been granted an exemption in pursuance of section 7 a of the Act on a Travel Guarantee Fund, cf. Consolidated Act No. 104 of February 28, 1986 on the Act on a Travel Guarantee Fund as amended by Act No. 454 of June 30, 1993, shall, irrespective of the second sentence of section 8(7) not provide guarantee where there are no major changes to the activities.

27. – (1) In Act No. 858 of December 23, 1987 on the Danish Commerce and Companies Appeal Board of the Ministry of Business and Industry the following amendments shall be made:

1. The title of the Act shall be as follows:

"Act on the Danish Commerce and Companies Appeal Board".

2. In section 1(1) and section 4(1), "Danish Commerce and Companies Appeal Board of the Ministry of Business and Industry" shall be amended to: "Danish Commerce and Companies Appeal Board".

3. In section 1(1), a second sentence shall be inserted as follows:

"Furthermore, the Appeal Board shall be the appeals body for decisions reached by the Travel Guarantee Fund in so far as this is provided for in the Act on a Travel Guarantee Fund."

The Faroe Islands and Greenland

28. - (1) This Act shall not be applicable to the Faroe Islands and Greenland.

(2) The Act can by Royal decree become applicable to these parts of the country with the departures warranted by the special conditions prevailing on the Faroe Islands and in Greenland.

Given at Christiansborg, this 14th day of May, 1997

Under Our Royal Hand and Seal

MARGRETHE R

/ Henrik Dam Kristensen