Promulgation of the Travel Guarantee Fund Act

The Act on a travel guarantee fund, cf. Consolidation Act No. 1192 of 8 December 2009 as amended by Act No. 531 of 29 April 2015, is hereby promulgated.

Part 1
Scope of the Act and definitions

The Fund

Section 1 – (1) The Travel Guarantee Fund is a private, independent institution that is intended to assist customers. The Fund provides assistance under sections 5, 5a and 6 when a customer has entered into an agreement concerning a travel service with a travel provider or a retailer for a foreign travel provider who is under duty to register, cf. however section 21, and when a customer has entered into an agreement concerning a travel service with a provider of air transport services.

(2) The Fund finances and provides secretariat services to a Travel Industry Complaints Board founded and approved under the Consumer Complaints Act (lov om forbrugerklager). The Travel Industry Complaints Board hears complaints brought by consumers in respect of travel services. The Board is run and financed pursuant to the Consumer Complaints Act.

Travel service

Section 2 – (1) A ‘travel service’ means:
1) A package consisting of a combination of not fewer than two of the following components when sold or offered for sale at an inclusive price or offered in advance and sold at an inclusive price, and when the combined service covers a period 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.
2) A service that includes transport and accommodation, that has been agreed with the same travel provider or retailer, but that is not included in point 1.
3) Transport and other tourist services that do not cover a period of more than 24 hours but are sold at an inclusive price of more than DKK 1,000.
4) Air transport.

(2) The separate billing of the components referred to in subsection (1) shall not mean that the combination of these components does not fall within the purview of the Act.
(4) The Fund may also pay the customer a reasonable reimbursement for loss due to a travel provider’s financial circumstances.

(5) The Fund may pay a reimbursement to a retailer who has satisfied the customer’s claim as a result of a travel provider’s financial circumstances, cf. section 28(1) of the Package Travel Act (lov om pakker ejer).

(6) The Fund may assist in the completion of travel services if the Fund takes the view that it will achieve a substantial financial saving in this way.

Section 5a – (1) When a customer has entered into an agreement concerning a travel service for air transport only, cf. section 2(1), point 4, the customer is covered under subsections (2) and (3), provided that the travel service has been embarked on and the customer has valid travel documentation for repatriation to a Danish airport. Domestic flights and travel services comprised by section 2(1), points 1-3, are not comprised by this provision. The Travel Guarantee Fund shall reimburse the travel providers for airline liquidation contributions charged to providers of air transport services for domestic flights, and for airline liquidation contributions charged for air transport services that have subsequently been used as an element of the travel services referred to in section 2(1), points 1-3.

(2) If the financial circumstances of a provider of air transport services mean that the customer is not guaranteed suitable repatriation, the Fund shall organise this within a reasonable time.

(3) The Fund may also reimburse the customer for prepaid transport services from a Danish airport to a foreign destination that have not been embarked on, provided that there are sufficient funds in the air transport sub-fund after the expenses referred to in subsection (2) have been paid. If there are not sufficient funds in the air transport sub-fund to fully cover prepaid travel services not embarked on, pro-rata financial coverage of the customer’s losses shall be provided. DKK 1,000 shall be deducted from the reimbursement for each travel service.

Time limit for presentation of claims

Section 6 – (1) A request from the customer for reimbursement under section 5 shall be presented to the Fund within a reasonable time, but not later than one year after the travel service was concluded or it became obvious that the travel service would not take place.

(2) A request from the customer for reimbursement under section 5a shall be presented to the Travel Guarantee Fund within a reasonable time, but not later than 6 months after the travel service was concluded or it became obvious that the travel service would not take place.

Recourse claims etc.

Section 7 – (1) The Fund shall be subrogated to the customer’s claims to the extent that it has satisfied such claims. The Fund shall be entitled to reimbursement for the expenses it has defrayed in connection with repatriation and other assistance, cf. section 5(2)-(5) and section 5a.

(2) However, the Fund shall be subrogated to the customer’s claims against a retailer only if the retailer has contracted liability to the customer on grounds other than section 28(1) of the Package Travel Act.

(3) If the payment for a travel service is covered wholly or partly by loans granted to the customer by a third party on the basis of an agreement between this party and the travel provider or retailer for a foreign travel provider, the Fund shall be subrogated to the customer’s claims under the Credit Agreements Act (kreditaftaleloven) to the extent that the Fund has satisfied such claims.
million for every DKK 100 million by which the turnover exceeds DKK 250 million.

(6) Non-profit associations etc. that offer travel services as part of their activities need not provide security. However, this applies only if travel operations constitute a minor proportion of the association’s non-profit activities.

(7) The retailer for a foreign travel provider need not provide security or pay contributions if the security for the travel services sold by the retailer satisfies the conditions of a scheme approved in another EU or EEA country.

(8) A travel provider or retailer for a foreign travel provider who has been convicted of or paid a fine for infringement of subsection (2) cannot be registered with the Fund until the Fund’s claims pursuant to section 7 have been paid.

Contributions to the Travel Guarantee Fund

Section 9 – (1) The Travel Guarantee Fund is a single legal entity, the assets of which are for accounting purposes divided into two sub-funds, a package travel sub-fund for the travel services described in section 2(1), points 1-3, and an air transport sub-fund for the travel service described in section 2(1), point 4. The capital of the two sub-funds is calculated separately, but in certain circumstances loans may be granted between the sub-funds, cf. section 9c.

Section 9a – (1) Travel providers and retailers for foreign providers of travel services comprised by section 2(1), points 1-3, shall pay an administration contribution to the package travel sub-fund to finance the operating costs of the package travel sub-fund and the Complaints Board. The amount of the contribution shall be determined by the Travel Guarantee Fund’s board and approved by the Minister for Business and Growth.

(2) The board of the Travel Guarantee Fund may stipulate that travel providers and retailers for a foreign travel provider of the travel services described in section 2(1), points 1-3, shall pay a contribution to the package travel sub-fund for each participant in a travel service covered by the package travel sub-fund, cf. section 5. The amount of the contribution shall be determined by the Travel Guarantee Fund’s board and approved by the Minister for Business and Growth.

(3) The package travel sub-fund’s capital shall be determined by the Fund’s board and approved by the Minister for Business and Growth.

Section 9b – (1) Providers of air transport services, cf. section 3(4), shall be charged a contribution of DKK 2 for each passenger travelling from a Danish airport to a foreign destination. The contributions received shall be paid into the air transport sub-fund under the Travel Guarantee Fund to cover services comprised by subsection (5) and by section 5a.

(2) The air transport sub-fund shall be fully built up when it has reached a size of DKK 100 million. After that, contributions to the fund shall be suspended, cf. subsections (3) and (4), however.

(3) If the size of the air transport sub-fund, after having reached DKK 100 million, following the liquidation of providers of air transport services falls below DKK 75 million, contributions, cf. subsection (1), shall be reactivated until the sub-fund again reaches a size of DKK 100 million. After that, contributions shall be suspended.

(4) If the size of the air transport sub-fund following the liquidation of providers of air transport services falls below DKK 25 million, contributions, cf. subsection (1), shall be increased to DKK 4 until the sub-fund reaches a size of DKK 100 million. After that, contributions shall be suspended.

(5) Costs for administration of the scheme to cover airline liquidations shall be covered by the air transport sub-fund only.

Section 9c – (1) Loans may be granted between the two sub-funds if the sub-fund sustaining losses has insufficient capital to meet its obligations. In special cases, a demand may be made for immediate redemption of loans between the sub-funds. Loans raised by the air transport sub-fund cannot be used to cover prepayments, cf. section 5a(3). Loans between the sub-funds must be approved by the Minister for Business and Growth.

Part 4

The Fund’s board, articles and powers

Composition

Section 10 – (1) The Fund’s board shall consist of one chairman and six members, appointed by the Minister for Business and Growth. Of the six members, two shall represent the travel providers and retailers for foreign travel providers registered with the Fund, one shall represent providers of air transport services, and three shall represent the customers. The board and a deputy chairman shall be appointed for a term of three years.

Financial reporting

Section 11 – (1) Within six months of the expiry of a calendar year, the board shall render financial statements for the previous year, audited by the National Audit Office of Denmark (Rigsrevisionen), and a report on the Fund’s activities to the Minister for Business and Growth.

Articles and rules of procedure etc.

Section 12 – (1) The Fund’s articles and the board’s rules of procedure shall be laid down by the board and shall be approved by the Minister for Business and Growth. The articles shall contain provisions governing placement of the assets of the Fund.

(2) The Fund shall pay its own administration costs.

Supervision and information

Section 12a – (1) Travel providers and retailers for a foreign travel provider shall once a year report to the Fund on their contribution ratios, liquidity ratios and solvency ratios when completing their annual financial statements.

Information

Section 13 – (1) The Fund may demand of any person all information considered necessary to ensure compliance with the Act, including information needed to determine whether a circumstance falls within the purview of the Act’s provisions, or to prevent the Fund from suffering a loss. The Fund may require documentation in respect of information provided under the first sentence of this paragraph.

Section 13a – (1) Persons who in the course of the Fund’s work gain knowledge of information obtained pursuant to sections 12a and 13 are subject to a duty of confidentiality regarding such information.

Reduction of security provided and contributions

Section 14 – (1) The Fund may lay down provisions to the effect that the security provided or the contribution payable by a travel provider or a retailer for a foreign travel provider is reduced or waived.
3 September 2015.

Cancellation of registration and requirement for increased provision of security

Full payment from security provided

Section 15 – (1) If the Fund has sought full payment from the security provided by a travel provider or retailer for a foreign travel provider, the registration of the travel provider or retailer with the Fund shall be cancelled, unless the security provided is sufficient to cover the Fund’s claims and is brought up to the level specified in section 8(5) by a deadline stipulated by the Fund, cf. section 19, however.

Notice of termination and cessation

Section 16 – (1) If notice of termination is given in respect of security provided, or a registered travel provider or retailer for a foreign travel provider ceases trading, registration shall be cancelled, and the security provided shall be released when the possibility of claims raised by customers may be excluded.

Failure to provide security or to pay contributions etc.

Section 17 – (1) If a registered travel provider or retailer for a foreign travel provider fails to pay contributions to the Fund or to bring his security provision into conformity with section 8(5) or section 19, of if the Fund does not receive the information referred to in sections 12a, 13 and 22(3) on request, the Fund’s board may decide to cancel registration with the Fund unless the obligations are discharged by a specified deadline.

Re-registration

Section 18 – (1) A travel provider or retailer for a foreign travel provider whose registration has been cancelled under section 15 or 17(1) cannot be re-admitted to the register until the travel provider or retailer for a foreign travel provider has paid the monetary amounts owed to the Fund and provided the information requested by the Fund.

Increased provision of security

Section 19 – (1) The Fund may require increased provision of security by a travel provider or retailer for a foreign travel provider if, following specific analysis of his financial circumstances, it must be assumed that there is a particular risk that the Fund will suffer a loss. In this context the Fund shall observe the rules of the Public Administration Act (forvaltningsloven) regarding the consultation of parties and grounds.

(2) If the risk referred to in subsection (1) ceases to apply, the Fund shall reduce the security on request.

Part 6

International scope of the Act etc.

Duty to register

Section 20 – (1) The duty to register with the Fund shall apply to travel providers and retailers for foreign travel providers established in this country.

Coverage of the Fund

Section 21 – (1) The Fund shall not cover travel services marketed and sold abroad.

(2) A travel service shall be considered to have been marketed and sold abroad if

1) the travel provider or a retailer has received the customer’s order abroad, or
2) a special offer has been presented to the customer abroad, or advertising has taken place and the customer has subsequently taken the actions abroad that are necessary for entry into the agreement.

Requirement for sufficient security

Section 22 – (1) Any travel provider or retailer for a foreign travel provider established in this country who within the EU/EEA area offers package travel services, cf. section 2(1), point 1, not covered by the Fund, cf. section 21, shall provide sufficient security to ensure the refund of money paid over and repatriation of the customer in the event of insolvency or liquidation.

(2) Any person who markets package travel services in this country from abroad shall provide sufficient security to ensure the refund of money paid over and repatriation of the customer in the event of insolvency or liquidation. Security provided that meets the conditions of a scheme approved in another EU/EEA country is regarded as sufficient.

(3) If the Fund so requests, the party concerned shall document that the requirements of subsections (1) and (2) regarding security have been satisfied. Equivalent evidence shall on request be provided to a foreign authority that monitors compliance with regulations laid down to implement Council Directive 90/314/EEC on package travel, package holidays and package tours.

Part 7

The Minister’s powers

Section 23 – (1) The Minister for Business and Growth shall lay down more detailed regulations to implement the Act, including the payment of contributions, payment of interest and fees in connection with late payment, reporting of key figures, accountant’s confirmation of security and extent of contribution duty, registration with the Fund, security provision and the Fund’s assistance to customers.

(2) The Minister for Business and Growth may, following the Fund’s recommendation, increase the security provision if the trend in prices or development of the Fund’s capital so dictates, cf. section 8(3)-(5).

(3) Subject to the approval of the Folketing’s Finance Committee, the Minister for Business and Growth may provide security for loans raised by the Fund in fulfilment of its obligations.

(4) The Minister for Business and Growth may obtain the information about turnover and prepayments from travel providers or retailers for foreign travel providers that is considered necessary to reach a decision under subsections (2) and (3).

(5) If the trend in prices so dictates, the Minister for Business and Growth may increase the amount referred to in section 2(1), point 3.

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

Appeals procedure

Section 24 – (1) The Fund’s decisions regarding duty to register and security provision under section 8, cf. sections 2-4, section 14(2), sections 19-21 and section 22(1)-(2) and decisions regarding duty to register and security provision taken under rules laid down pursuant to section 14(1) and section 23(1), may be appealed to the Danish Commerce and Companies Appeals Board (Erhvervsankenævnet). An appeal shall be submitted no later than
four weeks after the party concerned has been informed of the decision.

Part 8

Penalty and entry into force provisions etc.

Penalty

Section 25 – (1) Unless a higher penalty is prescribed under other legislation, a fine or a prison sentence of up to four months shall be imposed on any person who
1) infringes section 8(2),
2) fails to supply the information and documentation required by the Fund and the Minister for Business and Growth under section 12a, section 13, section 22(3) and section 23(4), or
3) supplies the Fund or the Minister for Business and Growth with incorrect or misleading information.
(2) Violation of the duty of confidentiality in section 13a shall be subject to a fine or a prison sentence of up to four months.
(3) Criminal liability may be imposed on companies etc. (legal persons) under the rules of Part 5 of the Danish Penal Code (straffeloven).

Entry into force and transitional provisions etc.

Section 26 – (1) This Act shall enter into force on 1 July 2015.
(2) At the same time, the Act on a travel guarantee fund (lov om en rejsegarantifond), cf. Consolidation Act No. 1192 of 8 December 2009, is repealed.
(3) The provisions laid down pursuant to the Act on a travel guarantee fund, cf. Consolidation Act No. 1192 of 8 December 2009, remain in force until they are superseded by provisions laid down under this Act.

Section 27 (Omitted)

The Faroe Islands and Greenland

Section 28 – (1) This Act shall not apply to the Faroe Islands and Greenland.
(2) The Act may be applied by Royal decree in these provinces, with the deviations justified by the special circumstances of the Faroe Islands and Greenland.

Act No. 207 of 29 March 2004 (Secretariat services and funding of a travel industry complaints board, amendments to the security scales, introduction of targeted supervision and restructuring of the rules on payment of contributions) contains the following entry into force provision:

Section 2

This Act shall enter into force on 1 April 2004. However, section 1, points 2, 3, 4 and 6, shall not enter into force until 1 October 2004.

Act No. 513 of 17 June 2008 (Operation and funding of a travel industry complaints board) contains the following entry into force provision:

Section 2

This Act shall enter into force on 1 August 2008.

Act No. 518 of 12 June 2009 (Expansion of the coverage of the travel guarantee scheme etc.) contains the following entry into force provision:

Section 3

This Act shall enter into force on 1 January 2010.

Act No. 531 of 29 April 2015 (Coverage of loss when purchasing air transport services in the event of the travel provider’s liquidation etc.) contains the following entry into force provisions:

Section 2

(1) – This Act shall enter into force on 1 July 2015.
(2) Customers who have entered into an agreement concerning a travel service for air transport only, cf. section 2(1), point 4, and who have valid travel documentation for repatriation to a Danish airport shall be entitled to repatriation after this Act’s entry into force. Customers who have purchased the Travel Guarantee Fund’s liquidation coverage as an extra service before the Act’s entry into force, but do not travel until after the Act’s entry into force, shall have the rights arising from the liquidation coverage purchased.

Ministry of Business and Growth, 3 September 2015

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