Executive Order on registration, provisioning of guarantee, etc. in the Travel Guarantee Fund

Pursuant to section 8, subsection (3) and section 23, subsection (1) of the Act on a travel guarantee fund, cf. Consolidated Act no. 1101 of September 3, 2015, as amended by Act no. 1678 of 26 December 2017, with the authority under section 1 of Consolidated Act no. 743 of 19 July 2005, regarding the transfer of certain powers under the Act on a travel guarantee fund to the National Consumer Agency, the following is laid down:

Chapter 1

Notification and registration

1.-(1) The Executive Order shall apply to travel providers, retailers for organisers and providers of air transport as defined in section 3 of the Act on a travel guarantee fund. By travel provider, either an organiser or a trader who facilitates linked travel arrangements is meant, cf. section 3, subsection (4) of the Act on a travel guarantee fund.

2.-(1) Danish-established travel providers and retailers for foreign organisers can only offer and sell or facilitate packages and linked travel arrangements if they are registered with the Travel Guarantee Fund, cf. section 8, subsection (2) of the Act on a travel guarantee fund. Retailers for Danish-established travel operators are not obliged to register.

(2) The registration requirement under subsection (1) also includes providers of air transport that facilitate linked travel arrangements, but do not contribute to the air travel fund account, cf. section 20, subsection (1), 2nd clause, conversely in the Act on a travel guarantee fund, as well as travel providers established outside the EU/EEA area which aim their activities at travellers in this country, cf. section 20, subsection (2) of the Act on a travel guarantee fund.

3.-(1) A trader is regarded as a retailer for a Danish-established organiser if the trader resells the organiser's travel service and the tender documents, invoices etc. show that the trader is a retailer for the organiser. The parties must submit an authority agreement to the Travel Guarantee Fund clearly stating that the organiser is liable to the Travel Guarantee Fund for the retailer's potential bankruptcy, as the retailer for the organiser acts only as a retailer for the organiser, and therefore qualifies for exemption from registration with the fund.

4.-(1) For the purpose of the request for registration, the travel provider or retailer for a foreign organiser must use a form prepared by the Travel Guarantee Fund.

(2) After the registration, the Travel Guarantee Fund will determine what guarantee must be provided under section 15. Exemption can be requested in accordance with section 14 of the Act on a travel guarantee fund, or evidence can be submitted that a guarantee need not be provided, cf. section 8, subsection (5), section 8, subsection (6), or section 22 of the Act on a travel guarantee fund. A request for exemption must contain a reason and supporting documents relating to the conditions for exemption being met.

(3) With the application, an overview containing all relevant information about the travel services which the travel provider or retailer for a foreign organiser offers or facilitates must be submitted.

5.-(1) When the Travel Guarantee Fund has received an application for registration, the Travel Guarantee Fund will determine whether registration can take place as soon as possible.

(2) In connection with a request for registration, the Travel Guarantee Fund may require the submission of information about the trader's capital, budgets, pricing policy, etc. in order for the Travel Guarantee Fund to assess the trader's economic foundation in relation to the planned operation. As regards information about the trader's capital base, the Travel Guarantee Fund may impose the same requirements on travel providers established outside the EU/EEA area as are imposed on travel providers established within the EU/EEA. It is a prerequisite for registration that the travel provider submits all necessary information to the Travel Guarantee Fund.

(3) If the Travel Guarantee Fund cannot complete registration within 14 days after notification is received, the Travel Guarantee Fund shall inform the applicant of the reason for this and when registration can be expected. Once registration is made, the Travel Guarantee Fund will inform the registrant and publish the trader's name on the Travel Guarantee Fund's electronic list of travel providers and retailers that meet the obligations under the Act.

(4) The Travel Guarantee Fund may register a travel provider or retailer for a foreign organiser temporarily while the Travel Guarantee Fund processes the request. When temporary registration is made, the Travel Guarantee Fund will simultaneously inform the registrant of this. If the Travel Guarantee Fund finds that the applicant must provide a guarantee and if this guarantee has not been provided within a period of time determined by the Travel Guarantee Fund, the Travel Guarantee Fund shall delete the entity in question from the register. The Travel Guarantee Fund shall inform the entity in question of the deletion and the consequences thereof.

Part 2

Administration of the fund account for packages and linked travel arrangements and the air travel fund, including rules on contributions, guarantees and financial information, etc.

6.-(1) Travel providers and retailers for foreign organisers who are obliged to register by January 1 must pay an annual administrative contribution consisting of a basic contribution which is equal to all and a revenue-dependent contribution cf. section 9, subsection (1) of the Act on a travel guarantee fund. The administration contribution shall be determined by the Travel Guarantee Fund's board ~~on July 1~~ each year and is due for payment ~~on 1 September~~. *)

(2) Travel providers and retailers for foreign organisers that cease the service which requires them to register over the course of the year must pay the full administration contribution for the year.

(3) Travel providers covered by section 22, subsection (3) of the Act on a travel guarantee fund shall not be required to pay administration contributions.

7.-(1) Upon registration, a registration contribution is paid, cf. section 9, subsection (2) of the Act on a travel guarantee fund, which is also paid when a travel provider or retailer for a foreign organiser is deleted from the fund's register and subsequently applies to be registered again. The contribution shall be set by the Travel Guarantee Fund's board on 1 January each year.

(2) Travel providers covered by section 22, subsection (3) of the Act on a travel guarantee fund are not required to pay the registration contribution.

8.-(1) If the development in the fund account for packages and linked travel arrangements requires it, the Travel Guarantee Fund's Board of Directors may introduce a capital-building contribution, cf. section 9, subsection (3) of the Act on a travel guarantee fund, paid by registered travel providers and retailers for foreign organisers.

(2) In order to ensure that everyone has contributed to the capital, the Travel Guarantee Fund's board may choose to introduce a capital-building contribution to be paid only by travel providers that facilitate linked travel arrangements and which have not previously contributed to the fund account for packages and linked travel arrangements.

*) The due date has been changed to "3 months after the deadline for submission of annual reports for companies with the calendar year as their financial year", see last page (in Danish).

(3) The contribution obligation under subsections (1) and (2) ceases when the board assesses that the fund account for packages and linked travel arrangements has reached an adequate size.

(4) Capital-building contributions are payable at the end of a quarter. No later than one month and 10 days from the end of the quarter, the contribution shall be paid to the Travel Guarantee Fund.

9.-(1) When collecting contributions from air transport used as part of a package or a linked travel arrangement, cf. section 5a, subsection (1) of the Act on a travel guarantee fund, the Travel Guarantee Fund shall return the charged air bankruptcy contribution, cf. section 11, subsection (1), to the travel provider, provided that the travel service in question includes a foreign flight. Travel services which include both a domestic and a foreign flight shall only have the part of the contribution which concerns the foreign flight reimbursed, cf. section 11, subsection (3). Flights to and from Greenland and the Faroe Islands are considered foreign flights. The contribution is refunded once a year in connection with the presentation of the annual report, but this is, however, with respect to section 18, subsection (2), according to which the Travel Guarantee Fund's Board of Directors may establish other rules for how frequently the contribution can be refunded. Reimbursement may only take place for contributions actually charged.

(2) The option of a refund does not apply to providers of air transport which contribute to the air travel fund account and facilitate linked travel arrangements.

10.-(1) The Travel Guarantee Fund's Board of Directors shall ensure that, overall, administration contributions and registration contributions reflect the cost of operating the fund. At the same time, the Travel Guarantee Fund's Board of Directors shall ensure that the system does not accumulate assets over a number of years. The scheme is subject to a balance requirement which is initially set to four years.

11.-(1) The Danish Transport, Construction and Housing Authority collects air bankruptcy contributions in accordance with section 9 b of the Act on a travel guarantee fund. The contribution shall be charged to providers of air transport for all departing passengers, cf. the charging base for the safety contribution provided in section 148 of the Act on Aviation, and includes both domestic and international flights. However, contributions are not charged for transfer passengers. The charge is made in connection with the Danish Transport, Construction and Housing Authority's collection of the safety contribution.

(2) Coverage under section 5 of the Act on a travel guarantee fund, wherein the fund must ensure repatriation due to a provider of air transport's economic conditions, requires that the travel course is coherent and includes a flight out of a Danish airport. One-way tickets that are part of a coherent travel course to a Danish airport are also covered. A customer with a valid travel document to a Danish airport in Greenland or the Faroe Islands shall also be repatriated.

(3) The Travel Guarantee Fund must repay contributions paid for domestic flights, including packages or linked travel arrangements containing domestic flights, to the providers of air transport once a year, in continuation of the fund receiving the travel provider auditor's statement, cf. however, section 18, subsection (2), according to which the Travel Guarantee Fund's Board of Directors may establish other rules for how frequently the contribution may be refunded. Reimbursement may only take place for contributions actually charged.

(4) Under the rules pursuant to section 9, subsections (2)-(4) of the Act on a travel guarantee fund, the collection of contributions can be suspended and subsequently reactivated.

(5) Annulment of receivables follow the general limitation rules applicable under Danish law.

12.-(1) If administration contributions, registration contributions or capital-building contributions are not paid to the fund account for packages and linked travel arrangements in due time, the Travel Guarantee Fund will issue a claim which states that failure to pay can have the consequences listed in subsections (2)-(4).

(2) If the Travel Guarantee Fund fails to receive the amount due within 14 days of issuing the claim, the Travel Guarantee Fund may seek compensation from the guarantee. If the Travel Guarantee Fund is compensated using the provided guarantee, the Travel Guarantee Fund shall simultaneously provide the

travel provider or retailer for a foreign organiser with written notification of this, and issue them with a 14-day deadline for restoring the guarantee. If the guarantee has not been re-established within this time limit, the Travel Guarantee Fund may delete the travel provider or retailer for a foreign organiser from being registered with the fund. If a travel provider or retailer for a foreign travel provider is deleted, the Travel Guarantee Fund shall simultaneously inform them of this and the consequences. At the same time, the trader's name shall be deleted from the Travel Guarantee Fund's electronic list of travel providers and retailers for foreign organisers who meet the obligations under the Act on a travel guarantee fund.

(3) If administration contributions and contributions to the package tour fund account are not paid in due time, interest shall accrue in accordance with section 5 of the Interest Act.

(4) The Travel Guarantee Fund may charge a service fee of DKK 100 per message which the Travel Guarantee Fund issues under subsection (1) and (2).

13.-(1) If providers of air transport do not pay their contribution of DKK 2 per departing passenger from a Danish airport in due time, the Danish Transport, Construction and Housing Authority shall issue a claim. Interest accrues in accordance with section 5 of the Interest Act. *(2)* A service fee of DKK 100 per message issued under subsection (1) may be issued.

14.-(1) Travel providers and retailers for foreign organisers subject to the duty to register shall provide a guarantee to the Travel Guarantee Fund in accordance with section 8, subsection (4) of the Act on a travel guarantee fund.

(2) The size of the guarantee is calculated by invoiced sales of the travel services covered by the Act for the past four quarters, cf. section 8, subsection (4), in conjunction with section 2 c, no. 6 of the Act on a travel guarantee fund. If travel providers or retailers for foreign organisers receive payment from customers without issuing an actual invoice, such payments must be counted as invoiced sales for the quarter.

(3) Subsections (1) and (2) notwithstanding, the Travel Guarantee Fund may determine that the guarantee must be of a different size in accordance with sections 14 and 19 of the Act on a travel guarantee fund.

(4) If section 8, subsection (4) of the Act on a travel guarantee fund means that an increase of the guarantee shall take place, the registrant must increase the guarantee of their own accord. Such an increase must have taken place within one month and 10 days after the end of the quarter that triggers the increased guarantee.

(5) If the Travel Guarantee Fund requires an increased guarantee pursuant to section 19 of the Act on a travel guarantee fund, there must be an increase of the guarantee within a deadline set by the Travel Guarantee Fund.

(6) If, due to a decline in revenue, a travel provider or retailer for a foreign organiser desires a complete or partial release of the guarantee, the request for this must be made in writing and addressed to the Travel Guarantee Fund. The Travel Guarantee Fund may require the submission of an auditor's statement, cf. section 17, subsection (1), relating to the four quarters and justifying the reduction of the guarantee. The provision in section 16 of the Act on a travel guarantee fund shall similarly apply.

(7) The guidelines established by the board of directors for when an increased guarantee may be required, cf. section 19 of the Act on a travel guarantee fund, shall be published on the Travel Guarantee Fund's website.

15.-(1) A travel provider or retailer for a foreign organiser, cf. section 8, subsection (3) of the Act on a travel guarantee fund, may provide a guarantee by the deposit of other similar assets. By similar assets, government bonds and bonds issued by a financial institution which is supervised by the Danish FSA or other regulatory authority are meant. This applies only if the assets are listed on a stock exchange and pledged to the Travel Guarantee Fund.

(2) For guarantees with assets under subsection (1), the assets' values are counted as 90 percent of their bond price. If the current bond price is higher than the asset's nominal value, 90 percent of the nominal value is counted.

(3) If the guarantee is provided through the deposit of assets, cf. subsection (1), the guarantee must be accompanied by a list of assets that are pledged as guarantee. Within 14 days from the end of each quarter, the Travel Guarantee Fund must also receive an account statement documenting the assets' value.

16.-(1) Registered travel providers and retailers for foreign organisers shall, within one month and 10 days after the end of each quarter, submit a statement to the Travel Guarantee Fund of the invoiced sales of travel services covered by the Act on a travel guarantee fund for said quarter. The Travel Guarantee Fund may decide that the reporting must specify the invoiced sales of respectively packages and linked travel arrangements.

(2) The Travel Guarantee Fund may wholly or partly provide exemption from subsection (1).

17.-(1) At the time of submitting their annual report, travel providers and retailers for foreign organisers shall arrange for a registered or certified public accountant to submit a statement to the Travel Guarantee Fund. This applies regardless of whether the travel provider or retailer for a foreign organiser can refrain from having the annual accounts audited, cf. section 135 of the Danish Financial Statements Act. The auditor's statement must state that the quarterly statements which the registrant has submitted to the Travel Guarantee Fund for the completed calendar year have been verified by the auditor, cf. section 16. The auditor's statement must indicate the number of collected bankruptcy contributions from international flights which was part of a package, if the travel provider wants reimbursement for this.

(2) The Travel Guarantee Fund may impose the same requirements for financial information and auditor's statement for travel providers established outside the EU/EEA area as are imposed on travel providers established within EU/EEA area.

(3) The auditor's statement shall be drawn up in accordance with a declaration published on Travel Guarantee Fund's website and may be submitted electronically via www.virk.dk.

(4) The Travel Guarantee Fund may wholly or partially grant exemptions from subsections (1) and (3). In special cases, the Travel Guarantee Fund may decide that information mentioned in subsection (1) is not required to be verified by a registered or certified public accountant.

18.-(1) At the time of submitting their annual report, travel providers or retailers covered by section 9 and section 11, subsection (1) must arrange for a registered or certified public accountant to submit a statement to the Travel Guarantee Fund. The auditor's statement must include information on the number of contribution-levied flights which the travel provider has held in the completed calendar year.

(2) The Travel Guarantee Fund's Board of Directors may lay down different rules for how frequently a refundable contribution under section 9 or section 11, subsection (1), may be refunded to the individual travel provider and which documentation requirements which must be in effect. However, subsection (1) remains applicable, which is why an annual auditor's statement must still be drawn up.

19.-(1) Collected administration contributions, capital-building contributions and guarantees can be subsequently adjusted if, upon the trader's submission of annual reports, it appears that the actual revenue differs markedly from the stated invoiced sales for the last four quarters. The Board shall determine the level at which the actual revenue differs so significantly that subsequent collections or refunds of contributions or guarantees must take place.

20.-(1) If the Travel Guarantee Fund does not receive the information specified in sections 17-18 etc. in due time, cf. the deadlines for the submission of annual reports to the authorities, the Travel Guarantee Fund shall issue a reminder to the travel provider or retailer for a foreign organiser. The reminder shall contain a statement that failure to submit the information, etc. may cause the travel provider or retailer for a foreign organiser to be deleted from registration with the fund. If the Travel Guarantee Fund has not received the information etc. within 14 days from sending the reminder, the Travel Guarantee Fund may delete the travel provider or retailer for a foreign organiser from being registered with the fund. The trader's name will simultaneously be erased from the Travel Guarantee Fund's electronic list of travel providers and retailers

for foreign organisers who meet their obligations under the Act on a travel guarantee fund. If a travel provider or retailer for a foreign organiser is deleted, the Travel Guarantee Fund must concurrently herewith inform them of the deletion and its consequences.

(2) The Travel Guarantee Fund may charge a service fee of DKK 100 per message sent by the Travel Guarantee Fund under subsection (1).

Part 3

Travel providers established outside the EU/EEA area

21.-(1) The Travel Guarantee Fund will assess whether a travel provider established outside the EU/EEA area can be considered to direct its activities towards travellers in this country, cf. section 2, subsection (2), 2nd clause. The assessment will be made in accordance with Regulation (EC) no. 593/2008 and Regulation (EU) no. 1215/2012. The fact that a website on the Internet can be accessed is not sufficient. In the assessment, particular emphasis may be placed on the following:

1) The company's international nature.
2) Whether the website is in Danish with the option of booking and confirming the reservation in Danish.
3) Whether prices are in Danish kroner and whether payment can be made in Danish kroner.
4) Whether telephone numbers are listed with international country codes.
5) Whether there have been expenses for online search and advertising services with the intention of granting users residing in other member states access to the trader's or retailer's website.
6) The use of another top-level domain name than the one used in the member state where the trader is established.

(2) Travel providers established outside the EU/EEA area that meet the criteria for registration may only market and sell travel in Denmark when they have been registered with the fund.

Part 4

Right of appeal

22.-(1) The Travel Guarantee Fund's decisions can be appealed to the Commercial Appeals Board to the extent that they follow from section 24 of the Act on a travel guarantee fund.

Part 5

Implementation and transitional rules

23.-(1) The Executive Order enters into force on 1 July 2018, with respect, however, to subsection (2). Section 6, *subsection (2)* shall apply from 1 January 2019.

(3) Until 1 January 2019, travel providers and retailers for foreign organisers shall pay administrative contributions in accordance with the previously existing rules.

(4) Executive Order no. 1421 of 3 December 2015 concerning registration, guarantees etc. in the Travel Guarantee Fund is repealed.

The Ministry of Industry, Business and Financial Affairs, June 7, 2018

Jakob Hald

/ Flemming Steen Nielsen

Lovtidende A

2020 **Udgivet den 7. juli 2020**

6. juli 2020. Nr. 1141.

Bekendtgørelse om ændring af bekendtgørelse om registrering, garantistillelse m.v. i Rejsegarantifonden

§ 1

I bekendtgørelse nr. 753 af 7. juni 2018 om registrering, garantistillelse m.v. i Rejsegarantifonden foretages følgende ændring:

1. I *§ 6, stk. 1, 2. pkt.,* udgår »den 1. juli« og »den 1. september« ændres til: »3 måneder efter fristen for aflæggelse af årsrapporter for selskaber med kalenderåret som regnskabsår«.

§ 2

Bekendtgørelsen træder i kraft den 8. juli 2020.

Konkurrence- og Forbrugerstyrelsen, den 6. juli 2020

JAKOB HALD

/ Flemming Steen