

The Danish Parliament has adopted a relief package for the travel industry

The travel industry is under extreme pressure due to the travel restrictions implemented because of COVID-19. Therefore, the Danish Parliament has adopted a relief package to help the travel industry through the crisis.



On 26 March 2020, the Danish Parliament adopted a relief package to strengthen the Travel Guarantee Fund. The relief package ensures that all package tour customers can receive reimbursement from the Travel Guarantee Fund if the package tour could not be completed because the Ministry of Foreign Affairs of Denmark advises against all unnecessary travel worldwide due to COVID-19.

Normally, the Travel Guarantee Fund only covers cases where a travel provider has gone bankrupt. With the relief package, the Danish Parliament has passed an amendment to the Travel Guarantee Fund Act, which extends the purpose of the Travel Guarantee Fund in extraordinary situations where significant parts of the travel industry are affected.

Now, in extraordinary situations, the Travel Guarantee Fund can reimburse the price of the package tour, even if the travel provider has not gone bankrupt. The Travel Guarantee Fund is obligated to reimburse the price of the package tour when a traveller has agreed on a package tour with a travel provider who was registered with the Fund at the time of the agreement. If the travel provider was not registered with the Fund at the time of the agreement, the traveller will not be entitled to reimbursement from the Travel Guarantee Fund.

Reimbursement of the price of the package tour

The definition of a 'package tour' is a journey consisting of at least two travel services, including transport, accommodation, tourist services, or car rental. A package tour lasting less than 24 hours is only covered by the Travel Guarantee Fund if it includes accommodation – no matter what the price is. A cruise will be considered a package tour in itself.

The amending act only covers package tours cancelled by the travel provider or the traveller. Thus, if the traveller has only purchased 'flight-only' travel from the travel provider, the traveller is not entitled to get the payment reimbursed by the Travel Guarantee Fund. The Travel Guarantee Fund only covers 'flight-only' travel in the event of an airline's bankruptcy.

Once the traveller has paid for the package tour, the Package Travel Act obliges the travel provider to refund the package price if the tour is cancelled due to exceptional situations such as COVID-19.

With the amendment of the Travel Guarantee Fund Act, travel providers have the opportunity to request the Travel Guarantee Fund to reimburse the price of the package tours which could not be completed due to the Ministry of Foreign Affairs' travel restrictions due to COVID-19. As the travel restrictions do not apply to travels in Denmark, it is not possible to apply for reimbursement from the Travel Guarantee Fund for package tours that take place exclusively in Denmark. If transit through another country occurs, for example, through Sweden to go to Bornholm, the Travel Guarantee Fund will reimburse the package tour.

At this time, it is only possible to apply for reimbursement for departures between 13 March 2020 and 13 April 2020, which have been cancelled, because on 13 March 2020 the Ministry of Foreign Affairs advised against all non-essential travel worldwide. If the traveller cancelled the package tour before the Ministry of Foreign Affairs changed its travel restrictions on 13 March 2020, the Travel Guarantee Fund will not reimburse the payment.

The Travel Guarantee Fund will cover cancelled package tours with departure dates before 13 March 2020 if the Ministry of Foreign Affairs already advised against unnecessary travel to the specific destination before this date.

As the Ministry of Foreign Affairs has extended the period when unnecessary travel is not advised because of COVID-19, it is expected that the Travel Guarantee Fund at a later date will make it possible to apply for reimbursement for cancelled package tours with departures after 13 April 2020.

The Travel Guarantee Fund reimburses the amount paid by the traveller to the travel provider if the package tour is cancelled by the travel provider or the traveller due to the Ministry of Foreign Affairs' travel restrictions.

The conditions to be eligible to receive reimbursement from the Travel Guarantee Fund are:

- The travel provider was registered with the Travel Guarantee Fund when the agreement on the travel was concluded
- The travel must be a package tour (containing more than one travel services)
- The traveller must have prepaid some of the package tour
- The package tour was cancelled due to the Ministry of Foreign Affairs' travel restrictions because of COVID-19
- The package tour includes travelling to or through another country than Denmark
- The traveller was to depart between 13 March and 13 April 2020 (this period is expected to be extended)
- The package tour was cancelled after the Ministry of Foreign Affairs changed its travel restrictions on 13 March 2020. The Fund will not cover package tours cancelled by the traveller before this date
- The cancellations may not be covered by the travel provider's travel insurance. If this is the case, the insurance company will have to cover

Any prepaid amount related to cancelled package tours during the period when the Ministry of Foreign Affairs has advised against unnecessary travel may be reimbursed by the Travel Guarantee Fund to the traveller if the traveller has not yet had the amount refunded by the travel provider. In cases where the travel provider has already refunded the prepaid amount to the traveller, the Fund may reimburse the travel provider the amount. If the travel provider has issued a voucher or gift card, the Fund may reimburse the prepaid amount to the traveller in return for a cancellation of the voucher or gift card. However, the Travel Guarantee Fund does not cover package tours where the departure date has been postponed to a later date.

With the amendment to the act, the Danish Parliament has passed a state guarantee of DKK 1.5 billion to the Travel Guarantee Fund to cover the reimbursement of cancelled package tours due to COVID-19. This loan is to be repaid to the Danish state by the Fund. This will be accomplished by the Fund's registered members paying a wealth-building contribution. The contribution is determined by the board of the Travel Guarantee Fund as a percentage of the revenue of each travel provider. It is, thus, only a loan to the travel service providers, which, in the long term, has to repay the loan to the Danish state.

In order to have the Travel Guarantee Fund reimburse the price of the package tour, the travel providers must send the relevant information to the Fund. The Travel Guarantee Fund must have the information by 30 April 2020.

No reimbursement for single travel services

So far, the Danish Parliament has not adopted a relief package for travel providers or airlines that have sold a hotel stay or a flight-only ticket. In these situations, it is not a 'package tour' covered by the Package Travel Act. The Travel Guarantee Fund, therefore, does not cover reimbursement of such cancelled tours.

With the interpretative guidelines on Regulation 261/2004 on aircraft cancellation of 18 March 2020, the European Commission found that cancellations due to travel restrictions by authorities due to COVID-19 are an extraordinary circumstance, relieving the airline of its obligation to pay compensation in connection with the cancellation. However, the European Commission has not exempted airlines from fulfilling their obligations concerning the rest of the regulation, including offering reimbursement of the price of the ticket price or re-routing.

If the travel provider has purchased a flight-only with an airline as part of a package tour, the travel provider may still be entitled to have the ticket reimbursed from the airline, as the travel provider still has to repay the price of the package tour to the Travel Guarantee Fund by paying the wealth-building contribution. Neither the Package Tours Act, the Travel Guarantee Fund nor the amending act suspends the trading conditions that apply between the airline and the travel provider. Therefore, if it is stated in the airline's trading conditions that the air carrier may claim the price of the airfare reimbursed upon the airline's cancellation, this still applies. However, if the airline has not cancelled the flight, the travel provider probably will not be able to claim a refund. This depends on the specifics of the agreement between the airline and the travel provider.

May the travel provider offer a voucher or gift card?

Many travel providers and airlines choose to offer travellers a voucher or gift card for later use. The Danish Competition and Consumer Authority accepts that travel providers and airlines issue vouchers or gift cards to travellers. However, travellers must be able to choose for themselves if they want to accept this solution.

It is, therefore, not prohibited under Danish legislation to offer vouchers or gift cards for later use. However, travel providers and airlines must be aware that the period of the voucher or gift card must be reasonable. As a rule, the voucher or gift card must be valid for at least three years. A voucher or gift card only valid for a shorter period may be offered, if the traveller receives the full amount paid for the original travel if the voucher or gift card is not used within the period.

NJORD is a specialist in maritime and transport law, including package tours and flight delays. Feel free to contact our attorneys if you want to know more about aviation law or other transportation law.

You can stay up to date by following us on LinkedIn, as well as signing up for our newsletter.



ULLA FABRICIUS
ATTORNEY AT LAW,
PARTNER

(+45) 40 40 93 59
UF@NJORDLAW.COM



ANDERS WORSØE
ATTORNEY AT LAW,
PARTNER

(+45) 77 40 11 45
AWO@NJORDLAW.COM