

Act amending the Act on a Travel Guarantee Fund¹

(Linked travel arrangements and changes to the financing and board structure)

WE MARGRETHE THE SECOND, by the Grace of God Queen of Denmark,
hereby proclaim that: the Danish Parliament has adopted and We have granted
Our Royal Assent to the following Act:

Section 1

The Act on a Travel Guarantee Fund, as set out in Consolidation Act No 1101 of 3 September 2015, is amended as follows:

1. *The footnote* to the title of the Act is worded as follows:

‘1) The Act contains provisions implementing parts of 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 (OJ L 326, 11.12.2015, p. 1).’

2. Throughout the Act, ‘foreign travel provider’ is replaced by ‘foreign organiser’, ‘foreign travel providers’ is replaced by ‘foreign organisers’ and ‘the foreign travel provider’ is replaced by ‘the foreign organiser’.

3. Throughout the Act, ‘customer’ is replaced by ‘traveller’, ‘customers’ is replaced by ‘travellers’, ‘the customer’ is replaced by ‘the traveller’, ‘the customers’ is replaced by ‘the travellers’ and ‘the customer’s’ is replaced by ‘the traveller’s’.

4. *The second sentence of Section 1(1)*, is worded as follows:

‘The Fund shall provide assistance in accordance with Sections 5 and 6 when a traveller has concluded a contract for a package or a linked travel arrangement with a travel provider or a retailer for a foreign organiser, as referred to in Section 20, who, at the time of the conclusion of the contract, was registered with the Fund.’

5. In *Section 1* the following new subsection is inserted after subsection (1):

‘(2) The Fund shall provide assistance in accordance with Sections 5a and 6 when a traveller has concluded a contract for a travel service consisting solely of a flight or flights with an air transport provider.’

Subsection (2) is renumbered subsection (3).

6. In *the first and third sentences of Section 1(2)*, which become the first and third sentences of subsection (3), ‘the Act on Consumer Complaints’ is replaced by: ‘the Consumer Complaints Act’.

7. *The heading* before Section 2 reads as follows:

‘Package travel, linked travel arrangements, travel services, etc.’

8. *Section 2* is deleted and replaced by:

‘**Section 2.** (1) The Act shall apply to packages offered or sold to travellers by traders, to

linked travel arrangements facilitated by traders, and to contracts for travel services consisting solely of a flight or flights.

(2) The Act shall not apply to packages and linked travel arrangements which:

- 1) cover a period of less than 24 hours, unless they include overnight accommodation;
- 2) are offered or facilitated occasionally and on a non-profit basis to a limited group of travellers, or
- 3) are purchased on the basis of a general agreement between traders for the purchase of business travel.

Section 2a. (1) For the purposes of this Act, a package means a combination of at least two different types of travel services, as referred to in Section 2c(1), for the purpose of the same trip, if

- 1) those services are combined by one trader, before a single contract on all services is concluded, or
- 2) irrespective of whether separate contracts are concluded with individual travel service providers, those services are:
 - a) purchased from a single point of sale and selected before the traveller agrees to pay,
 - b) offered, sold or charged at a total price,
 - c) advertised or sold under the term 'package' or under a similar term,
 - d) combined after the conclusion of a contract by which a trader entitles the traveller to choose among a selection of different types of travel services, or
 - e) 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 other traders, and a contract with the latter traders is concluded at the latest 24 hours after the confirmation of the booking of the first travel service.

(2) A combination of travel services as referred to in subsection (1), which consists of one type of travel service as referred to in Section 2c(1) points a) to c), and one or more tourist services as referred to in Section 2c(1), point d), shall constitute a package only if the tourist services account for a significant proportion of the value of the combination or are advertised as, or otherwise represent, an essential feature of the combination and are selected and purchased before the performance of the travel service has started.

Section 2b. (1) For the purposes of this Act, a linked travel arrangement means two or more different types of travel services as referred to in Section 2c(1) that will form part of the same trip and that do not constitute a package and for which separate contracts are concluded with each provider, if a trader facilitates:

- 1) on the occasion of a single contact with his point of sale, the separate selection of and separate payment for each travel service by the traveller; or
- 2) in a targeted manner, the procurement of at least one additional travel service from another trader where the contract with the other trader is concluded at the latest 24 hours after the confirmation of the booking of the first travel service.

(2) A combination of travel services as referred to in subsection (1), which consists of one type of travel service as referred to in Section 2c(1) points a) to c) and one or more tourist services as referred to in Section 2c(1), point d), shall constitute a linked travel arrangement only if the tourist services account for a significant proportion of the value of the combination or are advertised as or otherwise represent an essential feature of the combination.

Section 2c.(1) For the purposes of this Act, the following definitions shall apply:

1) Travel service:

- a) carriage of passengers,
- b) accommodation,
- c) rental of cars, large motorcycles or other motor vehicles,
- d) any other tourist service not intrinsically part of a travel service within the meaning of points a) to c), or
- e) individual flights that are not part of a package or a linked travel arrangement.

2) Package travel contract: a contract on the package as a whole or, if the package is provided under separate contracts, all contracts covering travel services included in the package.

3) Start of the package: the beginning of the performance of travel services included in the package.

4) Trader: any natural person or legal person who is acting for purposes relating to his trade, business, craft or profession in relation to contracts covered by this Act.

5) Point of sale: any retail premises, whether movable or immovable, or a retail website or similar online sales facility, telephone services, including where retail websites or similar online sales facilities and telephone services are presented to travellers as a single facility.

6) Turnover: invoiced sales of the travel services covered by the Act in the last four quarters.’

9. *The heading before Section 3 reads as follows:*

‘Organisers, traders facilitating linked travel arrangements, retailers, travel providers and air transport providers’.

10. *Section 3(1) to (3) are deleted and replaced by:*

(1) ‘Organiser’ means a trader who combines and sells packages, or offers them for sale, or a trader who transmits the traveller's data to another trader in accordance with Section 2a(1)2) point e).

(2) ‘Retailer’ means a trader other than the organiser who sells or offers for sale packages combined by a domestic organiser.

(3) ‘Retailer for a foreign organiser’ means a trader other than the organiser who sells or offers for sale packages combined by a foreign organiser.

(4) ‘Travel provider’ means, first, an organiser as referred to in subsection (1) and, second, a trader who facilitates linked travel arrangements, as referred to in Section 2b.’

Subsection (4) is renumbered subsection (5).

11. *The heading* before Section 4 reads as follows:

‘Travellers’

12. *Section 4* reads as follows:

‘Section 4. (1) ‘Traveller’ means any person who is seeking to conclude a contract or is entitled to travel on the basis of a contract concluded within the scope of this Act. A person who buys a package or linked travel arrangement with a view to re-selling it commercially shall not be regarded as a traveller under this Act.’

13. *Section 5(1)* is deleted and replaced by:

‘(1) Travellers who have concluded a contract for a package may be reimbursed from the Travel Guarantee Fund for the amount they paid for the package if the organiser’s financial situation prevented the package from starting. If the package is interrupted, travellers may apply for a reimbursement from the Fund for the share of the payment that corresponds to the services that were not performed, if the interruption was due to the financial situation of the organiser.

(2) Travellers who have concluded a contract for a linked travel arrangement may be reimbursed from the Fund for the amount they paid to a travel provider if the travel provider’s financial situation prevented one or more travel services from being delivered. If one or more travel services is or are interrupted, travellers may apply for a reimbursement from the Fund for the share of the payment that corresponds to the part of the services that were not delivered, if the interruption was due to the financial situation of the travel provider.’

Subsections (2) to (6) are renumbered (3) to (7).

14. *Section 5(5)*, which becomes subsection (6), reads as follows:

‘(6) Travellers who have concluded a contract for a linked travel arrangement with an air transport provider shall be similarly covered in accordance with the rules in subsections (2) to (5). Travellers shall be reimbursed from the air transport sub-fund, as referred to in Section 9.’

15. In *the first sentence of Section 5a(1)*, the words ‘Section 2(1), point 4’ are replaced by: ‘Section 2c, point 1e’.

16. In *the second and third sentences of Section 5a(1)*, the words ‘Section 2(1), points 1 to 3’ are replaced by: ‘Sections 2a or 2b’.

17. *The heading* before Section 6 reads as follows:

‘Procedure and deadline for submitting claims’

18. In *Section 6(1)*, a *second sentence* is inserted as follows:

‘The Travel Guarantee Fund shall handle applications for reimbursement without undue delay.’

19. *Section 7(2)* is deleted.

Subsections (3) to (6) are renumbered (2) to (5).

20. In *Section 8(1)*, the following words are inserted after ‘foreign travel provider’: ‘, as referred to in Section 20,’.

21. *Section 8(4) to (6)* are deleted and replaced by:

‘(4) The amount of the security shall be determined as follows, subject to Section 23(2):

- 1) Where turnover is less than DKK 1 million, no security shall be provided.
- 2) Where turnover is more than DKK 1 million but less than DKK 5 million, the security shall be DKK 150 000.
- 3) Where turnover is more than DKK 5 million but less than DKK 10 million, the security shall be DKK 300 000.
- 4) Where turnover is more than DKK 10 million but less than DKK 15 million, the security shall be DKK 600 000.
- 5) Where turnover is more than DKK 15 million but less than DKK 50 million, the security shall be DKK 900 000.
- 6) Where turnover is more than DKK 50 million but less than DKK 100 million, the security shall be DKK 1.35 million.
- 7) Where turnover is more than DKK 100 million but less than DKK 250 million, the security shall be DKK 1.8 million.
- 8) Where turnover is more than DKK 250 million, the security shall be DKK 2.25 million, with an additional DKK 1 million for every additional DKK 100 million by which the turnover exceeds DKK 250 million.

(5) A trader who facilitates linked travel arrangements but is not paid until after the linked travel arrangement has been delivered is not required to provide a security.’

Subsections (7) and (8) are renumbered (6) and (7).

22. In *Section 8(7)*, which becomes subsection (6), *a second sentence* is inserted as follows:

‘A retailer for a foreign organiser established outside the EU/EEA shall provide a security unless the retailer can prove that the organiser has provided the necessary security in accordance with Section 20(2).’

23. In *the first sentence of Section 9(1)* the words ‘a package travel sub-fund for the travel services described in Section 2(1), points 1-3,’ are replaced by: ‘a sub-fund for packages and linked travel arrangements in accordance with Sections 2a and 2b’ and the words ‘Section 2(1), point 4’ are replaced by: ‘Section 2c, point 1e’.

24. *Section 9a(1) and (2)* are deleted and replaced by:

‘(1) Travel providers and retailers for foreign organisers, as referred to in Section 20, shall pay an administrative fee to the sub-fund for packages and linked travel arrangements to pay for the operating costs of the sub-fund and the Travel Industry Complaints Board. The administrative fee shall consist of a basic flat-rate amount plus a contribution related to turnover. The level of the fee shall be set by the Travel Guarantee Fund’s Board and approved by the Minister for Industry.

(2) A registration fee shall be charged for registering with the Fund. The level of the fee shall be set by the Fund’s Board and approved by the Minister for Industry.

(3) The Fund’s Board may determine that travel providers and retailers for foreign organisers must pay a capital accumulation fee. The amount of the fee shall be determined by the Fund’s Board in proportion to the turnover of the travel provider or retailer for a foreign

organiser. The level of the fee shall be approved by the Minister for Industry.’

Subsection (3) is renumbered (4).

25. In *the first sentence of Section 9b(1)*, the words ‘Section 3(4)’ are replaced by: ‘Section 3(5)’ and the following words are inserted after ‘foreign’: ‘or domestic’.

26. *Section 10* reads as follows:

‘Section 10. (1) The Board of the Travel Guarantee Fund shall consist of one chairman and seven members.

(2) The Board shall be appointed by the Minister for Industry for a three-year term, with the possibility of re-appointment. The Chairman shall be independent of specific business or organisational interests. One of the Board members shall be independent of specific business or organisational interests and shall also have a background in economics and a knowledge of accounting. Two of the six other members shall be appointed on the recommendation of the travel providers and retailers for foreign organisers registered in the Fund, one member shall be appointed on the recommendation of the air transport providers and three on the recommendation of travellers.

(3) In the event of a tied vote, the Chairman shall have the casting vote.’

27. After Section 11 the following is inserted before the heading to Section 12:

‘Balanced supervision

Section 11a. (1) The Board of the Travel Guarantee Fund shall ensure that supervision of the Fund strikes the right balance between the amount of capital, the level of fees, the amount of the ordinary securities and the demands for an increased security, so that the financial and administrative expenses are minimised for the travel industry as a whole, while the protection of travellers is maintained. Every four years the Board shall bring in independent, external expertise to verify that it has struck the right balance.’

28. *The heading* before Section 12a and *Section 12a* itself are deleted.

29. In *Section 13a* the words ‘Section 12a and’ are deleted.

30. The following is inserted after Section 14 in *Part 4*:

‘Central contact point for cooperation in the EU/EEA

Section 14 a. (1) The Travel Guarantee Fund shall be the central contact point and shall help to promote administrative cooperation and supervision with organisers and traders who facilitate linked travel arrangements and who operate in the different Member States in the EU/EEA as regards the obligations arising from the law and the rules issued pursuant to the law.

(2) The Fund shall make available to other contact points all the necessary information about the requirements of this Act concerning the provision of securities. The Fund shall answer any such enquiries as quickly as possible.

(3) The Fund shall publish electronic lists of travel providers and retailers for foreign organisers who comply with their obligations under this Act.’

31. In *Section 15*, the words ‘Section 8(5)’ are replaced by: ‘Section 8(4)’.

32. In *Section 17(1)*, ‘Section 8(5)’ is replaced by: ‘Section 8(4)’, ‘Section 12a’ is deleted and ‘the Fund’s Board’ is replaced by: ‘the Fund’.

33. In *the first sentence of Section 19(1)*, the following words are deleted : ‘following specific analysis of its financial circumstances, it must be assumed that’ and a new *third sentence* is inserted to read as follows:

‘The Fund’s Board shall establish guidelines for when a particular risk exists.’

34. In *Section 20* the following is inserted as *the second sentence*:

‘The obligation to register shall not apply to air transport providers who facilitate linked travel arrangements, provided that these providers already contribute to the air transport sub-fund.’

35. In *Section 20*, the following is inserted as *subsection (2)*:

‘(2) Travel providers established outside the EU/EEA who offer or sell packages or linked travel arrangements in Denmark or who target their activities to travellers in Denmark are similarly subject to the registration requirement and must provide a security in accordance with the provisions of this Act. The Travel Guarantee Fund shall cover claims, pursuant to Section 5, arising from contracts concluded with travel providers subject to the registration requirement, provided that the travel provider has provided a security in accordance with this Act.’

36. *The heading* before Section 21 and *Section 21* itself are deleted.

37. *The heading* before Section 22 reads as follows:

‘Mutual recognition and documentation for provision of security’

38. *Section 22* reads as follows:

‘**Section 22.** (1) A security provided by a travel provider in accordance with the rules of the country in the EU/EEA in which the travel provider is established shall take the place of a security provided in accordance with the provisions of this Act.

(2) Travel providers established in another EU/EEA, who offer or sell packages or linked travel arrangements in Denmark, or who in any way target their activities to travellers in Denmark shall inform the Travel Guarantee Fund of the scale of these sales activities and specify the EU/EEA country in which the security is provided. On request, the travel provider must produce evidence that the necessary security has been provided.

(3) Subsection (2) shall apply *mutatis mutandis* to travel providers who, in addition to being established in Denmark, are established in one or more other EU/EEA countries or who have opted to use a compensation scheme other than the Travel Guarantee Fund.’

39. In *Section 23(1)*, the words ‘reporting of key figures,’ are deleted.

40. In *Section 23(2)*, the words ‘Section 8(3) to (5)’ are replaced by: ‘Section 8(3) and (4)’.

41. *Section 23(5)* is deleted.

Paragraph (6) is renumbered (5).

42. In *Section 24*, the words ‘Sections 19 to 21’ are replaced by: ‘Sections 19 and 20’ and the words ‘Section 22(1) and (2)’ are replaced by: ‘Section 22(2) and (3)’.

43. In *Section 25(1) point 2*, the words ‘Section 12a, Section 13, Section 22(3) and Section 23(4)’ are replaced by: ‘Section 13 and Section 23(4)’.

Section 2

(1) This Act shall enter into force on 1 July 2018, subject to subsection (2).

(2) Section 9a(1) of the Act on a Travel Guarantee Fund, as worded in Section 1(24) of the present Act, shall enter into force on 1 January 2019.

(3) Travel providers and retailers for foreign organisers shall pay administrative fees under the existing rules until 1 January 2019.

Section 3

(1) This Act shall not apply to the Faeroes or Greenland, subject to subsection (2).

(2) It may, by royal decree, be made applicable in part or in full to Greenland, with the amendments required by the situation there.

Issued at Marselisborg Castle, 26 December 2017

By Our Royal Hand and Seal

MARGRETHE R.

/ Brian Mikkelsen

¹ The Act contains provisions implementing parts of 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 (OJ L 326, 11.12.2015, p. 1).