

RIGHTS OF TOURISTS AND TRAVEL AGENCIES DURING THE STATE OF EMERGENCY

I. Information for customers - consumers of tourist services:

1. Problems for consumers who have contracted with a Tour Operator to provide tourist services

1.1. With regard to the possibility of exercising the right to terminate the contract due to unavoidable and extraordinary circumstances in connection with the spread of COVID-19 (coronavirus), the following should be considered:

The advice of the Consumer Commission and the Ministry of Tourism is not to rush and cancel contracts with Tour Operators. If it is not possible to travel on the originally chosen date, it is recommended that the Tour Operators offer their clients with either a rescheduling of excursions or a refund of the amount paid in the form of a voucher for future services. These variants of action are appropriate, equally protecting the interest of both consumers and Tour Operators. This is because, on the one hand, extraordinary measures are temporary and on the other hand, choosing an alternative of reimbursement is a good compromise that will help to reduce the risk of bankruptcy of Travel Agencies. It is also advisable to perform cancellations immediately before the date of the planned trip due to the dynamic development of the situation.

Apart from the above, according to Directive (EU) 2015/2302 of the European Parliament on package travel and related travel services and particularly art. 89, para. 5 and 6 of the Tourism Act, the right to terminate the contract is granted to the consumer for a package travel before its execution without paying any termination fee. This right can be executed in case of compelling and extraordinary circumstances, occurring or happening at the place of destination or in the immediate vicinity, which significantly affect the implementation of the package or the carriage of passengers to the destination. This may include significant risks to human health, such as the outbreak of serious illness at the place of travel, etc., which make it impossible to travel safely to the destination.

Upon termination of the package contract, the consumer-traveller is entitled to a full refund of all payments made for the package, but is not entitled to additional compensation. According to item 68e, §1 of the Supplementary Provisions of the Tourism Act, "Insurmountable and Extraordinary Circumstances" are circumstances beyond the control of the country invoking them and the consequences of which cannot not be avoided, even if all reasonable steps have been taken to prevent that.

Pursuant to art. 306, para. 2 of the Commercial Law "Force majeure is an unforeseen or unforeseeable event of an extraordinary nature occurring after the conclusion of the contract".

In this sense, the worldwide coronavirus epidemic constitutes as force majeure / force majeure and contingency in respect of contracts concluded prior to its announcement. 20th of January 2020 may be considered the starting date of the outbreak as officially declared by China. Nevertheless, depending on the travel destination, the start date may vary, depending on the date of the outbreak of the epidemic there, or the date of introduction of restrictive measures preventing travel.

In the case of a contract for an upcoming trip to a destination in which no cases of coronavirus have been detected or no restrictions have yet been introduced and an epidemic has been declared, the Tour Operator may refuse to accept termination of the contract on this basis. However, in view of the situation in Bulgaria and the risk of contamination, in the event of already undertaken trip, we believe that such a refusal would be unfounded in some hypotheses. This is especially the case where the destination is reached by plane and this justifies the need to cross airports as long as the latter are places with a higher risk of contamination. Moreover, if you are at age that poses Coronavirus risk, any trip during the pandemic would certainly be a health hazard.

To date, each country has taken various measures to limit the spread of Coronavirus. There are countries that stop all international flights to and from the country, and others that stop flights from specific destinations. There are countries which, although they have not prohibited entry into their borders, have imposed extraordinary measures that do not allow the provision of tourist services. There are still countries in which the virus has not been identified and, accordingly, some have not taken any measures. Therefore, we should pay special attention to the possibility that there may be situations in which the general terms and conditions still apply in regards to the termination of the contract. In this regard, we are ready to look into your case and give you a specific opinion.

1.2. Necessary actions to be taken to terminate the contract

Consumers-travellers should contact the Tour Operator, stating their desire to terminate the contract. In turn, the Tour Operator will notify them of the possible actions and the response options that are available in the particular case. The Bulgarian Tour Operators (in line with the provisions of the Tourism Act, which are in line with the general implementation of European Parliament Directive (EU) 2015/2302 on package travel and related tourist services throughout the European Union) should propose adequate actions which would be reasonable for both parties in order to meet the expectations of travellers and to resolve the situation as early as the negotiation process starts. As of now, the options offered by most Tour Operators are reimbursement, re-service, or reimbursement in the form of a follow-up voucher provided by the Tour Operator.

In case you choose to terminate the contract in accordance with Art. 4, para. 1 of the Law on Measures and Actions during the State of Emergency, announced by a decision of the National Assembly of March 13, 2020, the deadline for reimbursement by the Tour Operator shall be one month after the repeal of the state of emergency, and not the one provided for in the Law on Emergency tourism, which is 14 days.

1.3. Information on specific destinations and upcoming trips



TZVETKOVA & PARTNERS **LAW FIRM**

You may be informed of potential security risks at a specific geographical point by the website of Ministry of Foreign Affairs.

<https://www.mfa.bg/bg/customnews/main/24736>

To date, the Minister of Tourism has issued an Order on 17.03.2020, which ceases all activities in the field of tourism until 13.04.2020. In such a situation, every consumer has the right to decide on his/her journeys after that date. If no agreement is reached with the Tour Operator, the settlement of a possible dispute may be referred to the court as a competent authority.

Legislative changes are also forthcoming to reduce the negative effects on the tourism industry, which may limit some of the rights envisaged so far for both parties.

2. Possible problems for customers who organized their trip themselves

2.1. Each airline publishes on its site the possible actions that can be taken by its customers in the event of cancelled flights by the company or cancellation of the trip by the client due to a pandemic.

2.2. The booking platforms "Air BNB" and "Booking" published on their sites the possibility of cancelling reservations based on the pandemic.

2.3. Hotel bookings can be cancelled upon invocation of force majeure and the counterparty should refund you the amount paid.

2.4. Land journeys can also be cancelled if force majeure is invoked, with the counterparty reimbursing you or offering you an alternative route to a particular destination if possible.

II. Customer information - providing tourist services

1. General information

Although our primary concern is citizens' health, the European Commission is also actively monitoring the economic implications of the coronavirus for EU and non-EU countries. In this sense, measures are being taken to support the economy and in particular the tourism industry, both at European and national level.

On the Ministry of Tourism's website, you can find recommendations regarding the spread of the virus.

<http://www.tourism.government.bg/bg/kategorii/novini/preporuki-na-ministerstvoto-na-turizma-vuv-vruzka-s-razprostranienieto-na>

By order of the Minister of Tourism of 17.03.2020. the organized trips of Bulgarian citizens abroad, the organized trips of foreign nationals in Bulgaria, as well as all organized tourist visits within the framework of domestic tourism are temporarily suspended. Organized visits representing additional tourist services within the meaning of the Tourism Act shall

also be suspended. The period for the suspension of organized travel is until 13 April 2020 inclusive.

Pursuant to art. 306, para. 2 of the Commercial Code "Force majeure is an unforeseen or unforeseeable event of an extraordinary nature occurring after the conclusion of the contract". In this sense, the worldwide coronavirus epidemic is an insurmountable force with regard to contracts concluded prior to its announcement. 20th of January 2020 may be considered the starting date of the outbreak as officially declared by China. Nevertheless, depending on the travel destination, the start date may vary, depending on the date of the outbreak of the epidemic there, or the date of introduction of restrictive measures preventing travel.

2. Possible solutions:

2.1. For many of you, there will be an obligation to refund already requested travel services that have to be cancelled. In this regard, it is advisable to consider several options for your customers - delaying the execution of the service, withholding the amount paid for using services in the future (issuing a voucher for services of a certain value), deferred or deferred refunds.

It is important to know that in the case of a contract concluded in a state of emergency, the client cannot claim termination of the contract, invoking force majeure, since he was aware of its existence at the time of signing the contract.

2.2 For those of you who have contracts with other tourism retailers, it's important to know the following:

The Commercial Code regulates the hypotheses of force majeure and economic intolerance in art. 306 and art. 307, depending on the nature of the contract, the rights of the parties vary.

In the event that you owe performance under a contract, you may rely on force majeure / force majeure for the coronavirus epidemic, and you will not be liable for failure if it is due to epidemic-related circumstances. In addition, you must notify the counterparty immediately of any force majeure and your inability to fulfil your contractual obligation. In this case, you do not owe the anticipated penalties, interest, compensation for lost profits and damages due to the existence of force majeure. However, you owe the principal performance of the contract, if possible, or the return of the contract received.

However, if you are already in default before the force majeure, you cannot rely on the latter. In addition, failure to provide a valid notice to the counterparty would lead to full liability for the damage suffered by the default.

In accordance with the provision of art. 306 para. 4 of the Commercial Code - while the force majeure lasts, the fulfilment of the obligations and the related mutual obligations is suspended, which means that all the terms of the contract between the parties do not expire, until the circumstances, based on the force majeure, end.



TZVETKOVA & PARTNERS
LAW FIRM

Art. 306 para. 5 of the Commercial Code provides that if the force majeure lasts so long that the creditor is no longer interested in the performance, he is entitled to terminate the contract. The debtor also has this right. The contract shall be terminated on the basis of a notice to the other party made in the legal form in which the contract itself was concluded.

Pursuant to art. 307 of the Commercial Code, the court may, at the request of one of the parties, modify or terminate the contract regarding the whole contract or some parts of it. In its decision, the court shall consider when such unforeseen circumstances have occurred, and whether the preservation of the contract is in contradiction to fairness and integrity. This provision calls for economic intolerance, in this case, in the context of a developing pandemic.

Relations between the parties may be rearranged, based on concessions from both parties, through an additional agreement.

2.3. The adoption of the Law on Measures and Actions during the State of Emergency, announced by a decision of the National Assembly on 13 March 2020, provided for the possibility of granting state aid to certain categories of employers engaged in a certain type of economic activity. Among these economic activities are tourist and other short-term accommodation, travel agency and operator activity; other travel and booking activities, hotels, etc.

Upon termination of contracts for tourist services, you have a longer period to recover the paid amounts. According to Art. 4, para. 1 of the Law on Measures and Actions during the State of Emergency, announced by a decision of the National Assembly of March 13, 2020, the deadline for reimbursement by the tour operator is one month after the repeal of the state of emergency, and not the one provided in the Law on Emergency tourism, which is 14 days.

According to Art. 6 of the same law, until the cancellation of the state of emergency, the consequences of late payment for obligations of private entities, including interest and penalties for late payment, as well as non-monetary consequences such as early payment, termination of contract and seizure of property, shall not apply. This provision should apply to all bilateral contracts concluded by you.

More information on the issue of State aid can be found here.

For more information, please contact attorney-at-law Atanaya Boradzhieva by the following email a.boradzhieva@tzip.bg.