SUBSIDIARY LEGISLATION 409.18

PACKAGE TRAVEL INSOLVENCY FUND REGULATIONS

4th October, 2016

LEGAL NOTICE 315 of 2016.

Citation.

1. The title of these regulations is the Package Travel Insolvency Fund Regulations.

Scope.

2. The purpose of these regulations is to set-up an Insolvency Fund to provide security for the refund of all payments made by or on behalf of travellers insofar as the relevant services are not performed as a consequence of the organiser's insolvency, including repatriation where applicable. The fund shall be managed and administered by a Managing Board as set-up by virtue of these regulations, and also to partially transpose the provisions of the 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.

Interpretation.

3. (1) In these regulations, unless the context otherwise requires:

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"Act" means the Malta Travel and Tourism Services Act;

"Authority" means the Malta Tourism Authority;

"the Board" means the Insolvency Fund Managing Board established under regulation 4;

"certificate" means the certificate issued to consumers in terms of regulation 9(3);

"consumer" shall have the same meaning given to "consumer" under the Package Travel Regulations;

"contributor" means a package travel organiser which according to the Managing Board should contribute to the Fund;

"Directive" means 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;

"FATTA" means the Federated Association of Travel & Tourism Agents of Malta;

"the Fund" means the Insolvency Fund referred to under regulation 8;

"Member State" means a member of the European Union;

"Minister" means the Minister responsible for tourism;

"Ministry" means the Ministry responsible for tourism;

"package" shall have the same meaning given to "package" under the Package Travel Regulations;

"package travel organiser" means persons and, or entities who fall within the definition "organiser" and, or "retailer" as given under the Package Travel Regulations and, or fall within the definition "travel agent", as defined under the Act and is duly licensed by the Authority;

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"Package Travel Regulations" means the Package Travel, Package Holidays and Package Tours Regulations.

(2) Words and expressions used in these regulations and which are also used in the Act, shall have, unless the context otherwise requires, the same meaning as in the Act.

Appointment of the Insolvency Fund Managing Board.

4. (1) The Minister shall appoint a Board, to be known as the Insolvency Fund Managing Board, which shall consist of five-voting members.

(2) The five voting members of the Board shall be:

(*a*) two persons to be nominated by the Authority;

(*b*) two persons to be nominated by the FATTA; and

(*c*) one person to be nominated by the Minister.

(3) A person shall not be qualified to be appointed as, or to remain, a member of the Board if he is a member of the House of Representatives.

(4) The Chairman, who shall preside the said Board, shall be appointed by the Minister in consultation with FATTA.

(5) The members of the Board shall hold office for a period of three (3) years, and shall be eligible for re-appointment.

(6) Any member of the Board may, before the expiration of his term of office, resign by a letter addressed to the Minister.

Provided that any member may be removed from the Board prior to the expiration of his term of office on any of the following grounds:

(*a*) the member has been guilty of misconduct;

(*b*) the member is unable and, or incompetent to perform the duties of his office;

(*c*) the member has acted in gross negligence;

(*d*) any other acts or omissions unbecoming on a member of the Board.

Functions of the Board.

5. The Board shall have the following functions and any ancillary functions thereto:

(*a*) to set-up the Fund;

(*b*) to administer and manage the day-to-day affairs of the Fund;

(*c*) to decide and examine the current travel package

market and decide who shall be deemed as a contributor to the Fund;

(*d*) to monitor and control that contributors are contributing to the Fund;

(*e*) to report regularly to the Authority on any matter affecting and, or relating to the Fund and the Fund's contributors;

(*f*) to refund and, or repatriate consumers having valid claims in accordance with these regulations;

(*g*) to undertake any appropriate action in connection with the performance of its functions through the licensing and enforcement directorates of the Authority;

(*h*) to assist and cooperate with other member states in accordance with the Directive;

(*i*) to annually publish the contributions made by all contributors and such other information as provided for under article 31(3) of the Act and any other applicable law;

(*j*) to recommend to the Authority as to whether a licence shall be issued or not for new applications of travel agents, after it undertakes to carry out an assessment in accordance with its approved terms of reference;

(*k*) to recommend to the Authority the renewal or otherwise, or the suspension or revocation of travel agents' licences and other action, as it may deem appropriate, in accordance with its approved terms of reference;

(*l*) to submit an annual report to the Authority.

Costs of the Board.

6. (1) The Board shall ensure that the administrative costs in relation to carrying-out of its functions are kept to a minimum. In addition, the Authority will provide administrative support through its offices. The Board shall authorise the reimbursement of relative administrative costs borne by the Authority.

(2) The Board's administrative costs shall be paid from the Fund itself, provided that such costs transpire from a budget approved by the Board.

Terms of reference of the Board.

7. (1) The Board shall draw its own terms of reference.

(2) The terms of reference, and any amendments thereto, shall be approved by the Authority and endorsed by the Minister prior to coming into effect.

(3) The terms of reference of the Board shall be published on the Authority's website.

The Fund.

8. (1) The Board shall set-up a fund, which fund shall be used to refund payments made by or on behalf of travellers insofar as the relevant services are not performed as a consequence of the organiser's insolvency, including repatriation where applicable.

(2) All package travel organisers which are duly licensed by the Authority and which the Board deems as contributors, shall contribute to the Fund.

(3) All contributors are to annually submit audited financial statements to the Board.

(4) The Board and, or the Authority may request any contributor to submit audited financial statements more frequently than indicated in the previous sub-regulation and the Board and, or the Authority may request any contributor to provide them with any other documentation they may deem necessary.

(5) (*a*) When a Contributor fails to contribute and sustain the Fund when so requested by the Board, the provisions of regulation 10 shall apply.

(*b*) The Authority shall not renew the contributor's licence for the following year on such failure of the contributor to contribute and sustain the Fund.

(*c*) The Authority may also take any such other action in accordance with the provisions of the Act and these regulations.

(6) The contributor shall pay the relative contribution, which shall be for such an amount and is to be paid in such a manner which the Board may decide from time to time.

(7) All contributors shall remain obliged to contribute to the Fund until they relinquish their licence with the Authority and settle all pending claims over the said Fund.

(8) The Fund shall at all times be kept at a minimum threshold of five hundred thousand euro (€500,000), or any other higher amount as shall be determined by the Ministry and the Authority from time to time.

(9) The Board shall be entitled to request any or all contributors to contribute further to the Fund, should the Fund be below the minimum threshold established in the previous sub-regulation or for any other reason whatsoever.

(10) Should the Board consider that accumulated funds are in excess of what it considers necessary to cover consumer exposure but not less than the minimum amount established under sub-regulation (8), any excess amounts may be distributed back to the contributors, subject that the approval of the Authority, on the advice of the Board, is obtained:

Provided that the funds shall be distributed in such a manner as the Board shall deem fit.

(11) In the event that one of the contributors becomes insolvent, any claims made by the consumers of the insolvent contributor shall be paid first from the insolvent contributor's share of the contributions made under the Fund:

Provided that should the insolvent contributor's share not suffice in order to cover all claims, then the balance shall be paid from the net funds collected through the certification scheme:

Provided further that the Board may request the other contributors to increase their bond to cover any shortfall of funds to settle the outstanding claims and ensure the minimum threshold is kept and this in accordance with the provisions of sub-regulation (8).

Establishment of online system and issuing of certificates.

9. (1) The Board, in collaboration with FATTA, shall set-up and manage a central online system.

(2) The system shall allow all contributors to issue certificates to consumers. A fee, as determined by the Board, shall be paid in to the Fund for every certificate issued.

(3) The certificate shall contain at least the following information:

(*a*) all prepaid amount(s) made by the consumer to the contributor;

(*b*) dates of travel; and

(*c*) any other details which are relevant to the package ordered and, or purchased by the client, such as information on the accommodation provider if applicable.

(4) All contributors are obliged to issue the certificate to their consumers.

(5) The certificate shall be used by consumers to make any necessary claims under the Fund should the contributor become insolvent.

(6) The Board shall have full access to the system, and to any information transpiring therefrom.

Claims under the Insolvency Fund.

10. (1) In the event that one of the contributors becomes insolvent, the consumer must file a claim with the Board and provide full details of payments received, and services which are not performed as a consequence of the organiser's insolvency, including repatriation of travellers as applicable.

(2) The consumer shall, when presenting a claim, also present the certificate, otherwise the Board shall not be obliged to provide a refund and, or repatriate the consumer.

(3) The Fund shall only be used for claims which relate to bookings made as from the date of the coming into force of these regulations.

Offences and penalties.

11. (1) Compliance with the provisions of these regulations by contributors shall be deemed to be a condition to which a licence to operate any tourism operation is subject, irrespective of whether reference to these regulations is made in the licence itself.

(2) Any contributor who fails to comply with any of the provisions of these regulations shall be guilty of an offence, and shall be liable to the fines and penalties as indicated in articles 43 and 45 of the Act.