

## 5. QUESTIONS FOR CONSULTATION

### **Broadening the scope of insolvency protection following the introduction of EU PTD II**

5.1 Do you agree that providers of Linked Travel Arrangements are included in the same insolvency protection regime as organisers of package travel holidays? If not, what protection arrangements should be in place for customers of Linked Travel Arrangements?

5.1

Trailfinders believe that all providers of travel arrangements, be they offered as part of a package or identified as "linked travel arrangements" should benefit from the same protections. Hence their customers should be protected for both package and / or linked travel arrangements. We welcome the LTA loophole being closed as Consumers are exploited by some.

5.2 Should the licensing and bonding regime be extended to include all package travel and Linked Travel Arrangements within the scope of the new EU Directive? If not, what do you believe would be the most appropriate arrangement for these sales?

5.2

As above

### **Proposed options for reform**

5.3 Are there other reforms that you think should have been considered that would ensure appropriate levels of protection for consumers of package travel/Linked Travel Arrangements?

5.3

The current bonding suggestions (except H and I) all provide a bond covering a relatively small percentage of the travel providers' actual turnover. (4%-10% or 8% - 20%.)

This leaves a large percentage of turnover un-bonded and requires the existence of the TPF to protect customers in full if the bond is exceeded. As the TPF is underfunded and needs to be topped up by travel organisers, the majority of which are well run businesses, a further levy is being placed on these travel organisers to pay for poorly run businesses who fail.

A Trust Account model where client funds are placed in trust until supplier payments are made would provide 100% surety with no need for a bond to be in place or for the TPF. This option should be made available to Travel Organisers as it offers 100% protection to consumers. I will refer later to the mistaken assumptions that have been made about Trust Accounts. All of the options offered are poor for the consumer and poor for well run business and rewards the shabby and the risk takers.

5.4 Which reform options do you think the Department of Transport, Tourism and Sport should pursue? Do you agree with the proposal to pursue Option F? Why and if not why not? If you consider another option to be preferable, why?

5.4

See above.

Option F is flawed as are the other options as it does not fully bond consumers and requires all travel organisers to pay a levy to allow for poorly run businesses to operate. There has to be some account of risk. The reason the TPF is short is because under capitalised companies have been licensed to operate on a tiny bond.

5.5 Do you agree with the proposal in options D, E and F to base bonds on eligible turnover, which excludes immediate supplier payments bills paid in arrears, rather than projected licensable turnover? Do you agree that it is then appropriate to increase bonding to double the current proportion?

5.5

Regarding reverting to basing bonds on eligible turnover, removing immediate supplier payments. While this may reduce the amount of turnover requiring bonding it is flawed. Bonds are a poor solution as the bond is calculated at a point in time and is not dynamic to the current sales of the business. Importantly though – who polices the calculation of eligible turnover for each business?

A trust account would mean that 100% surety is in place and is wholly dynamic.

5.6 Do you agree that an insurance policy with a higher levy for the first ten years is the most appropriate way to avoid a gap in protection, as presented in Option F? If not, what alternative(s) would you suggest?

5.6

As above. A trust account model would not require further insurances to prop up the TPF. As CAR and CEPA have identified the industry have not yet been able to source an insurer to provide this cover. The premium could make the options on the table that rely on this insurance unworkable due to the cost of cover. ATOL spend over £10m every year buying insurance which wastes funds – the government should be the back-up.

5.7 Do you agree that the Commission should be able to increase bonding for firms they perceive to be at a higher risk of insolvency/ under-bonding? Why? Do you agree with the guidelines for bonding increases set out in Option F? Are there other guidelines that should be considered?

5.7

The Commission should monitor firms at risk of insolvency closely. The challenge is whether they have the skill and resources to do this and will they really ask anyone for a 100% bond, knowing the cost might push them over the edge? Will their licence really be pulled if they can't afford to put this in place?

## Impact of options on travel trade industry

5.8 The report has assessed that Option F has a lower impact on the travel industry than Options

C, D and E because the cost of replenishing the Travellers' Protection Fund is spread over several years, rather than concentrated into a short period. What impact does this have on your business? Would you prefer to pay a higher levy over a shorter period?

5.8

Trailfinders do not feel we should contribute to the Levy for the TPF. The TPF is unnecessary, if all agents protected consumer funds properly through trust accounts. The TPF only exists to cover for a deficient system. Low risk agents should not have to contribute. If the CAR decide to let risky operators operate without a trust account – then, they are the companies that should pay in to the TPF. It is not reasonable to make well run companies pay for the insurance of the poorly run and the cowboys.

In year one perhaps offer a choice of trust account, 100% bond, or a €10 euro pp fee to go in to the PTF, backed by the government.

5.9 Options D, E and F base bonding on eligible turnover. This requires firms to provide data on both projected and realised supplier payments and payments in arrears. Do you agree with the report's view that the additional burden of providing such information is limited?

5.9

There would be limited burden for Trailfinders to provide a breakdown of projected, realised supplier payments and payments in arrears. As mentioned this approach is flawed as the under capitalised are those most likely to under report. Who will police this?

5.10 Do you agree with the report's assessment that Option I is too administratively costly (for both industry and the Commission) given the current scope of consumer protection arrangements? Why and if not why not?

5.10

Option I and the idea of pooled insolvency protection could allow for trust accounts to be considered. Travel Organisers who hold a trust account pay a lower or zero per passenger fee as is the case with the ATOL scheme in the UK and other operators pay a scaled level of charges based on their risk profile. This would give an incentive for agents and operators to operate a trust account or incentivise them to prove that they are financially viable to reduce their per passenger costs.