IRISH
BANKING
FEDERATION

REVIEW OF TRAVEL TRADE LEGISLATION IN IRELAND

RESPONSE FROM IRISH BANKING FEDERATION

Introduction

Irish Banking Federation (IBF) is the leading representative body for the banking and financial services sector in Ireland, representing over 60 member institutions, including licensed domestic and foreign banks and institutions operating in the financial marketplace here. Our members are active in the merchant acquiring business, providing credit and debit card transaction processing, clearing and settlement to businesses including travel agents and tour operators.

IBF welcomes the opportunity to contribute to the Review of Travel Trade Legislation in Ireland. Our responses to the various options discussed in the review are detailed below.

Options to Reform Who the Scheme Protects

Option 1: Extend coverage to cover all trips out of the State

IBF has no strong opinion on this issue, but supports the views outlined in paragraphs 5.7, 5.8 and 5.9 of the review in that such a move would significantly increase costs, administration and impact the TPF.

In addition, requiring airlines to become licensed and provide bonding (or levy, should that be the outcome of the review), could deter some of them from flying from Ireland, resulting in reduced competition. Any move such as this would need to be pan European for reasons of practicality and consistency

Option 2: Reduce coverage and rely on credit payment protection

IBF does not support this option for a number of reasons:

- It creates additional consumer confusion, where clarity is required
- It is unacceptable for credit card sales to be used in calculating bond levels (or to take a levy from passengers paying by credit card when such levy provides no protection to them), due to the double bonding issue highlighted in paragraph 5.12
- The cost to the travel agent or tour operator may not be improved under this scenario, as the merchant acquirer will inevitably require its own security to cover the risk, which risk is today covered, under the current legislation, by the Travel Agent’s or Tour Operator’s Bond provided to CAR.
- More difficult for travel companies to provide an accurate account of licensable turnover for bonding purposes as it adds a new variable (and in the event that bonding is scrapped in favour of a levy, tracking whether a levy should fall due on a particular transaction based on payment method could cause additional administrative burden and/or incorrect returns)
- Further confusion would be encountered in situations where a consumer pays a deposit on credit card and the final balance by other means (or vice-versa)
- As alluded to in paragraph 5.13, there would be difficulties for consumers stranded abroad in the event of a failure, who had paid by credit card. They would be required to make their own arrangements to get home (booking new flights, accommodation etc), the cost of which may be more than the original cost of the holiday. The only refund available from the card issuer to the consumer upon their return is a pro-rata refund on the original

cost of the trip. Further difficulties and stress may be encountered by consumers stranded abroad who do not have sufficient funds to pay for their own repatriation.

- A credit card chargeback is a contractual matter between a consumer and their card issuer, whereas consumer protection provided by CAR is a matter of primary Irish legislation and EU law. It is IBF's view that the legislation should take preference in this situation. By specifically excluding credit cards from any future legislation runs a risk of requiring a further change in the event that rules relating to chargebacks should change.

Option 3: End scheme and rely on market to provide protection

IBF supports the views highlighted in paragraph 5.17 (compliance with the Package Travel Directive 90/314/EEC) and as such does not consider this to be a viable option. The scheme to date has been a success and CAR provides a good service in protecting the interests of holidaymakers. The market itself does not provide any additional protection and as such consumers would suffer under this option.

Other thoughts and conclusions

IBF strongly contends that any scheme should treat all consumers equally, irrespective of method of payment. This reduces the potential for confusion and provides easier administration of the scheme. In addition, merchant acquirers would be more willing to provide card acceptance facilities (essential from a competitive standpoint in today's environment) to travel businesses, without the need to take security in respect of turnover emanating from licensable transactions, thus creating a more level playing field.

Excluding credit card claims could therefore result in denying the consumer the choice to pay by credit card, which is a today popular means of funding a holiday purchase.

In any event, IBF recommends that all consumers stranded abroad are repatriated by a centrally CAR managed scheme, as existing market cover on credit cards does not cater for that eventuality (other than a pro-rata reimbursement of the original cost of the trip once the consumer has returned to Ireland).

The most important aspect to consider here is clarity to the consumer. Whatever the outcome of the review it is critical that the consumer is aware of whether or not their travel facilities are protected by the regulated scheme. The legislation should therefore make it incumbent on the seller to explicitly state whether such protection exists or not before the consumer commits to purchase.

Options to Change the Licensing Requirements

Option 4: Remove need to satisfy business credentials

The total cost of repatriation and refunds in the event of a travel business failure is substantial and as such to provide licences to trade without examining business credentials is a very high risk strategy. IBF is of the opinion that without appropriate due diligence, failure rates will increase and the resulting costs will be higher than any cost savings (per paragraph 5.22). IBF also recognises the risks of increased rogue trader activity (per paragraph 5.23) in a more relaxed regime, which could also prove very costly.

As such IBF recommends that all applicants and renewals continue to be subjected to fit and proper testing under future legislation.

Option 5: Audited accounts only required from large companies

This is certainly more palatable than option 4, but attracts its own risks as highlighted in paragraph 5.27. IBF recommends that accountant produced figures are required in all cases, but an audit is not necessary unless required under other legislation. The CAR should retain the right to demand an audit if deemed necessary.

Option 6: Single licence for all travel-trade companies

IBF has no strong opinion on this aspect, but can see that small savings would be achieved by implementing this, without any serious drawbacks.

Option 7: Licences granted indefinitely

IBF contends that an indefinite grant of licence represents a high risk strategy, particularly given the likely erosion in relative terms of bond value vs. funds at risk over time (although this could be overcome by dispensing with bonds in favour of a levy) and lack of ongoing fit and proper testing (per paragraphs 5.33 and 5.34).

Whether all licensees should require annual renewal, as discussed in paragraph 5.35, is worthy of consideration. Perhaps a tiered system, based on age of business and level of bond/licensable turnover could be considered. For example, all new business requires annual renewal for the first 3 years, whereas an established business requires renewal every 1, 2 or 3 years based on level of risk. CAR could perhaps even consider some credit scoring methodology based on balance sheet, profitability and cashflow as another determining factor in renewal frequency.

IBF would not recommend renewal periods in excess of 3 years.

Option 8: Accept licences from other jurisdictions

IBF has no strong views on this aspect, although would caution against such a move. The review has highlighted the major drawbacks of continually monitoring and evaluating the licensing regime of other jurisdictions and ensuring that individual firms continue to hold such licences (paragraph 5.38). Indeed, whether the licence from any jurisdiction currently covers travel emanating from outside that jurisdiction is questionable.

There is potentially a small benefit here to only a minority of Irish licence holders and as such unlikely to be a viable option.

Other thoughts and conclusions

The risks of any changes in licensing requirements need to be very carefully considered before implementation, as even one medium/large failure can radically change the landscape, perhaps depleting the TPF entirely.

Fit and proper checks should not be diluted for new licence applicants and whilst ongoing reviews could be made less frequent, any changes should be carefully measured to ensure risk monitoring remains adequate.

A robust monitoring programme by CAR supports the travel business in obtaining facilities for credit card acceptance.

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Options affecting Financial Protection & Bonding Arrangements

Option 9: End bonds and rely on TPF funded by fee per trip

IBF recognises the administrative savings that could be achieved by ending the bonding regime in favour of a levy based scheme and considers this worthy of consideration.

Key issues to address are:

- Implementing a system to collect the levy
- Ensuring accuracy of returns from travel businesses
- Determining optimum level of TPF and desired timescale to reach that level
- Considering alternate forms of cover for large loss events, e.g. insurance and/or commercial overdraft facilities (per paragraph 5.44)

IBF stresses that under such a change, there would be an expectation that if a consumer has paid for a licensable trip on credit card and has been required to pay the levy, then that consumer will be covered by the scheme and not excluded on any grounds, including a possible right to reimbursement from their card issuer.

The arguments set forth in paragraph 5.45 are noted, although with a robust licensing regime the CAR should be in a position to stop firms in a precarious financial position from obtaining a licence. As for the "fairness" of the scheme that does not distinguish between firms exceedingly unlikely to give risk to claims and those that are more likely to do so, this can to an extent be addressed under Option 10 below.

Option 10: Only require entrants to have bonds, rely on TPF otherwise

This option is marginally more palatable from a "fairness" perspective, although does add an administrative cost. IBF does not have a strong preference between Option 9 and Option 10 should a levy scheme be implemented.

Option 11: Require escrow accounts instead of bonds

Whilst no strong opinion is held, IBF does not consider this to be a viable option. The administration of an escrow account for anything other than a very small operator would likely be too cumbersome and legally restrictive to be managed.

The review mentions the difficulties for repatriation (paragraph 5.54). It is unlikely that the escrow account could be used for such purpose, as the funds in place must surely be specifically earmarked for individual consumers – the funds for people already abroad will most likely have been released, and as such only sufficient to refund consumers yet to travel.

As such, the TPF would need to be the primary source of funding for repatriation. Also it is assumed that CAR would manage the repatriation process, and as such it would make sense for the TPF to be used in these circumstances.

Option 12: Have bonds depend on past year's licensable turnover

IBF can recognise that there will be an administrative saving for the travel businesses under this option, although it may be quite limited. At any rate, projected turnover may be required by other parties, such as their bankers.

That said, IBF is unclear how CAR would approve a licence renewal for a travel business with a marginal/modest balance sheet and profitability in the absence of forward looking information.

The argument set forth in paragraph 5.60 of the review may or may not represent the true position over a full economic cycle. The biggest danger remains that even in an expansionary period, some travel businesses may fail and under this option may be substantially under-bonded at that time.

IBF would suggest that new entrants must provide forecasts to estimate initial bond requirement, rather than the suggestion in paragraph 5.61 that they would not need to post a bond.

Option 13: Alter percentage of licensable turnover to be bonded

This section exposes one of the dilemmas of a bonding regime. All bonds are “redundant” until such time as they are needed to be called upon, but at that time it is important to ensure the bond is sufficient to meet the claims that it was intended for.

Therefore the danger of reducing the percentage means that where an excess of claims to bond does occur, the claim on the TPF increases. As such, the TPF will become depleted faster than current run-rates and additional legislation / solutions will be needed to replenish that fund – although the same could be argued if the percentages remain unchanged, albeit with a slightly longer timeframe to address the issue.

An increase in the percentage as mooted in paragraph 5.63 is unlikely to be well received by the travel industry, and could lead to smaller businesses being forced out as being unable to raise a sufficient level of bond.

IBF has no strong opinion on any of the proposals under this option, save to say that if bonding is to remain the way forward following this review, consideration is still required on implementing a plan to replenish the TPF, as these resources will not last forever.

Option 14: Assess bonding requirements on a case-by-case basis

Given the seasonal nature of the travel industry, if this option were to be adopted, the CAR would need to consider whether the bond is set to cover expected peak claim levels, average claim levels or low season claim levels. To cover at peak will likely result in an increased bond requirement for the majority of businesses, whereas covering low season will likely lead to more calls on TPF in the event of a failure.

It is questionable whether a regulator such as the CAR should follow such a course. Arguably a regulators rules and associated legislation should be relatively simple to understand and implement – a set of rules to determine case-by-case assessment would be rather complex. Indeed the review highlights the significant increase in costs of administering the scheme (paragraph 5.69), a sentiment echoed by IBF.

Option 15: Redefine licensable turnover

IBF has no strong opinion on this matter, but offers the following thoughts on the various possible changes highlighted in paragraph 5.73 of the review:

a. This would appear a sensible change, providing that the travel agent and tour operator are the same legal entity, and that the turnover is allocated against the operator (at 10%) rather than the agent (at 4%).

b. This makes sense provided that the payment in arrears element can be validated. Thought also needs to be given for circumstances where a travel business changes its terms of trade from pay in arrears to pay in advance and how such change would be identified.

c. If this type of turnover can be separately identified, then again this is a sensible option.

d. Would caution against this option, as CAR has no control over where the travel agent or tour operator places the funds and would find it very difficult to supervise

e. It is unclear whether any foreign jurisdiction's bond would cover activity emanating from Ireland. The stringent monitoring required of foreign schemes and maintenance of licences by Irish operators will likely make this unviable.

Other thoughts and conclusions

From all the options suggested in this section of the review, it would appear that the best long-term savings can be achieved by abolishing the bonding regime, in favour of a levy based system. To apply a little more fairness across the industry, perhaps retaining bonds for new entrants may be more acceptable to the established players in the industry (Option 10).

A move in this direction will undoubtedly create some short-term additional costs in designing and implementing systems to track and collect the appropriate level of levy from the industry.

Should bonding remain the protection of choice following this review, consideration may need to be made for a short-term replenishment of the TPF to ensure it remains sufficient to meet future bond shortfalls.

Options to Change Enforcement Powers

Option 16: Increase penalties for unlicensed trading

IBF has no strong views on this option, save for commenting that anything that deters or reduces illegal trading in this sector has got to be good for the industry.

Option 17: Devolve enforcement to local authorities

IBF contends that to devolve the administration and enforcement of legislation over such a large number of bodies would inevitably lead to inconsistency of application and increased costs given the overall complexity of the legislation.

Option 18: Exclude schools, parishes, clubs from needing a licence

Whilst no strong view is held, it would seem sensible to exclude this type of entity from requiring a licence, providing that trips organised are infrequent and not-for-profit (or at least any small profit is recognised by the travellers as a donation to the school/parish/club).

Assuming that trips organised by such entities still need to be booked via a travel agent, perhaps (if indeed this is not already the case) the legislation can allow the group to enjoy the benefits of consumer protection. Thus the trip organiser receives a refund (or the group is repatriated if stranded abroad) in the same manner as any other consumer, and the legislation makes it incumbent on the trip organiser to provide refunds to the individual travellers. In the event that the trip is legally unlicensed, then the legislation should make it incumbent on the trip organiser to advise all travellers before the booking is made.