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By email

Re: Directive (EU) 2015/2302 on Package Travel and Linked Travel Arrangements

Dear Gavin,

I refer to CAR's Consultation Paper on Directive (EU) 2015/2302 on Package Travel and Linked Travel Arrangements ("**the PTD**" or "**the Directive**"). Please see our responses to CAR's questions below.

Questions for Consultation

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?***

There is a clear distinction between packages and LTAs under the PTD and the scope of insolvency protection required for each is fundamentally different. Therefore, the regime for each should be distinct and should reflect the discrete levels of protection.

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?***

It would be inappropriate to extend the licensing and bonding regime in this manner. We urge CAR to implement a flexible insolvency protection regime which gives traders the choice of taking out any insolvency protection which satisfies the broad requirements specifically set down in the PTD.

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?***

The criteria set down in the PTD are exhaustive and provide that insolvency protection is adequate if it (i) covers the refund of all payments, (ii) includes repatriation if necessary and (iii) is effective and covers reasonably foreseeable costs. Any insolvency protection regime must reflect the flexibility of these criteria and CAR should not exclude any form of insolvency protection which meets the PTD requirements.

Accordingly, traders should be given the option of implementing any market-based solution which complies with these requirements. We note in this regard that Indecon – in its report on the PTD commissioned by CAR – confirmed that traders should be entitled to use market-based insolvency protection, including insurance, trust accounts or any other mechanism that adheres to the provisions of the PTD.

For these reasons, we urge CAR to implement an insolvency protection regime which allows traders to choose any manner of protection which complies with the specific requirements of the PTD.

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?***

As explained in our answer to question 3 above, DTTaS must ensure that the options available to traders are not unduly restricted and that traders are entitled to take out any form of insolvency protection that satisfies the provisions of the PTD.

Option F is a viable approach but it must not be imposed as a mandatory obligation; traders should be given the freedom under the reformed regime to choose it from amongst other options.

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?***

On the basis that traders are given freedom to choose this form of protection amongst other options, this proposal is sensible.

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?***

On the basis that traders are given freedom to choose this form of protection amongst other options, this proposal is sensible.

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?***

On the basis that traders are given freedom to choose this form of protection amongst other options, this proposal is sensible but the corollary should also be implemented; CAR should also be able to decrease bonding levels for financially stable traders to reflect the lower risk of insolvency.

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?***

We consider that a shorter period for replenishing the TPF would leave passengers less exposed to trader insolvency in the short term.

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?***

CAR should ensure that all forms of insolvency protection reflect the risk of insolvency of the trader and its financial stability. For the avoidance of any doubt, if any scheme proposed by CAR requires traders to provide information about their financial position, then this information should obviously be treated by CAR as confidential and commercially sensitive of those firms and should not be published.

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?

We agree with this assessment. Further, Option I penalises financially stable traders by requiring them to subsidise the high risk presented by weaker companies.

Kind regards,

David Casey
Legal Counsel