



CORPORATE

NEW RULES FOR REGISTERING AND OPERATING TRAVEL AGENCIES

Decree-Law no. 17/2018 published on 8 March implements into Portuguese law Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015, on package travel and linked travel arrangements.

I. INTRODUCTION

Decree-Law no. 17/2018 published on 8 March implements into Portuguese law Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015, on package travel and linked travel arrangements ("Directive 2015/2302").

This new Decree-Law establishes the rules for registering and operating travel and tourism agencies. It repeals Decree-Law no. 61/2011 of 6 May (as amended) and is clearly intended to improve the functioning of the internal market and achieve a higher and more uniform level of consumer protection by seeking to standardise the legislative, regulatory and administrative provisions of the Member States.

The decree-law now published: (i) introduces new concepts and adds detail to others (including the concepts of "Traveller", "Linked Travel Arrangements" and "Package"); (ii) reinforces the right of travellers to pre-contractual information and increases the content of the package travel contract; and (iii) establishes new rules on the changes to the terms of the package travel contract, to breaches of it, to the responsibilities of the travel and tourism agencies ("agencies") and to the rights of travellers and agencies to terminate contracts.

II. MAIN CHANGES INTRODUCED BY DECREE-LAW NO. 17/2018

1. NEW CONCEPTS

Following the provisions of Directive 2015/2302, this new Decree-Law introduces a new concept of "Traveller". This now covers any person who seeks to enter into a contract for package travel or linked services, in their capacity as a consumer or as a professional, provided they do not make travel arrangements on the basis of a general agreement for organisation of business travel.

This new Decree-Law establishes the rules for registering and operating travel and tourism agencies. It repeals Decree-Law no. 61/2011 of 6 May.

The new decree-law also introduces the concept of “Linked Travel Arrangements”¹, and distinguishes it from the concept of “Package Travel”², which is now defined in greater detail and covers travel acquired from different agencies through linked online booking processes³.

In addition to the ones described above, some other concepts have also been introduced. They include the concepts of “Trader”, “Organiser”, “Repatriation”, and “Retailer”.

2. ADDITIONAL PRE-CONTRACTUAL INFORMATION TO BE PROVIDED BY AGENCIES AND THE CONTENT OF THE TRAVEL PACKAGE CONTRACT

This new decree-law broadens the list of pre-contractual information that now has to be given to the traveller by agencies before the package travel contract is signed.

The pre-contractual information must now include the standard information on the travel which must be provided using the forms for travel package that appear in parts A and B of Annex II to the Decree-Law. When applicable, the following information must also be provided:

- a) information on the main characteristics of the travel package;
- b) the corporate name and address of the agency, the RNAVT⁴ registration number, as well as their telephone number and, where applicable, email address;
- c) the total price of the package inclusive of taxes and, where applicable, of all additional fees, charges and other costs;
- d) the arrangements for payment, or financial guarantees to be paid or provided by the traveller;
- e) the minimum number of persons required for the package to take place and the time-limit for the possible termination of the contract if that number is not reached;
- f) general information on ID, passport and visa requirements, including approximate periods for obtaining visas and information on health formalities of the country of destination;
- g) the information that the traveller may terminate the contract at any time before the start of the package in return for payment of an appropriate and reasonable termination fee, or, where applicable, the standardised termination fees requested by the agency⁵; and
- h) information on optional or compulsory insurance to cover the cost of termination of the contract by the traveller or the cost of assistance, including repatriation, in the event of accident, illness or death.

⁴ National Register of Travel and Tourism Agencies.

⁵ These fees may not exceed the price of the package minus the cost savings and income from alternative deployment of the travel services.

The new decree-law broadens the list of pre-contractual information that has to be given to the traveller by agencies before the package travel contract is signed.

The content of the package travel contract has also been broadened and it must now include the pre-contractual information described above, and the following additional information (among others):

- a) special requirements of the traveller which the agency has accepted;
- b) information that the agency is responsible for the proper performance of all travel services included in the contract and is obliged to provide assistance if the traveller is in difficulty;
- c) the name of the entity in charge of the insolvency protection and its contact details, including its address, and, where applicable, the name of the competent authority for that purpose and its contact details;
- d) information on the local representative of the agency, and a point of contact for the traveller;
- e) information that the traveller is required to communicate any lack of conformity perceived during the performance of the package;
- f) in the case of minors, unaccompanied by a parent or another authorised person, and traveling on the basis of a package travel contract which includes accommodation, information that enables direct contact with said minor or the person responsible for the minor at the place of stay;
- g) information on available in-house complaint handling procedures and on alternative dispute resolution (‘ADR’) mechanisms and, if applicable, and, where applicable, on the ADR entity by which the agency is covered; and
- h) information on the traveller’s right to transfer the contract to another traveller, as well as on the applicable terms and conditions applicable for such purpose.

¹ Linked Travel Arrangements means, at least, two different types of travel services purchased for the purpose of the same trip or holiday, not constituting a package, resulting in the conclusion of separate contracts with the individual travel service providers.

² Package Travel means a combination of, at least, two different types of travel services for the purpose of the same trip or holiday (i) if those services are combined by one trader, including at the request of or in accordance with the selection of the traveller, before a single contract on all services is concluded; or (ii) irrespective of whether separate contracts are concluded with individual travel service providers, those services are: 1) purchased from a single point of sale and those services have been selected before the traveller agrees to pay, 2) offered, sold or charged at an inclusive or total price, 3) advertised or sold under the term ‘package’ or under a similar term, 4) combined after the conclusion of a contract by which a trader entitles the traveller to choose among a selection of different types of travel services, or 5) purchased from separate traders through linked online booking processes where the traveller’s name, payment details and e-mail address are transmitted from the trader with whom the first contract is concluded to another trader or traders and a contract with the latter trader or traders is concluded at the latest 24 hours after the confirmation of the booking of the first travel service.

³ The following are not considered to be package travel or linked travel arrangements (i) trips lasting less than 24 hours, unless overnight accommodation is included, (ii) trips when the agency only acts as a mere intermediary in sales or reservations of separate travel services requested by the client (iii) packages offered, and linked travel arrangements facilitated, occasionally and on a not-for-profit basis and only to a limited group of travellers, (iv) packages and linked travel arrangements purchased on the basis of a general agreement for the arrangement of business travel between a trader and another natural or legal person who is acting for purposes relating to his trade, business, craft or profession.

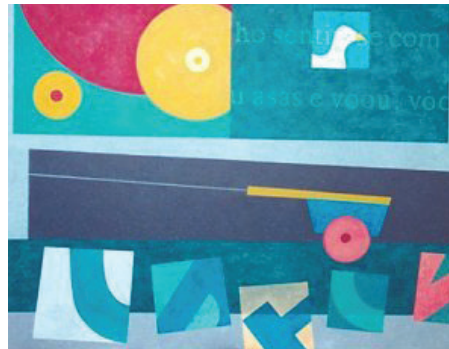
3. OTHER CHANGES RELATING TO PACKAGE HOLIDAYS

The new Decree-Law also introduces rules on changes to the terms of the package contract, including: (i) the possibility for the traveller to transfer the package to another traveller upon reasonable notice to the agency given at the latest seven days before the start of the package regardless of the type of travel); and (ii) the possibility for agencies to increase the price of the package which may still only occur at the latest 20 days before the start of the package, and provided that certain requirements are met. Notwithstanding this, the traveller may now accept the proposed change or terminate the contract without having to pay the termination fee, if the increase exceeds 8% of the total price of the package.

The conditions that allow the termination of the package travel contract have also been broadened. The contract may be terminated by: (i) the traveller at any time before the start of the package by payment of an appropriate and reasonable termination fee; (ii) the traveller before the start of the package without paying any termination fee in the event of unavoidable and extraordinary circumstances occurring at the place of destination or its immediate vicinity and significantly affecting the performance of the package, or which shall significantly affect the carriage of passengers; and by (iii) the agency, with notice that can vary between 48 hours and 20 days before the start of the package (the notice depends on its duration), if the number of persons enrolled for the package is smaller than the minimum number stated in the contract or if it is not possible to perform the contract due to unavoidable circumstances.

The new law also sets out in detail the rules on breach of the contract and on the responsibility for providing the travel services, which falls on the agency regardless of whether these services are provided by it or by other travel service providers.

If there is any lack of conformity in the performance of a travel service included in the package travel contract, the traveller must (i) inform the agency without undue delay and (ii) set a reasonable delay for said agency to remedy the lack of conformity. In turn, the agency is under an obligation to remedy the lack of conformity, except when (i) it is impossible; or (ii) it entails disproportionate costs, taking into account the extent of the lack of conformity and the value of the travel services affected. If the situation cannot be remedied, the traveller will have the right to (i) a reduction in the price of the contract and compensation for damages, or (ii) an alternative package (however, if the alternative is of lesser quality, the traveller will have a right to a price reduction).



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Dálias e Crisântemos, 2000 (detail)

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150 x 150 cm

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4. CHANGES TO THE RULES ON THE TRAVEL AND TOURISM GUARANTEE FUND

The new Decree-Law introduces changes to the rules applicable to the Travel and Tourism Guarantee Fund ("TTGF"), to face the new requirements for guarantees for travellers and for the services sold and covered by Directive 2015/2302. Under the Decree-Law, the new minimum amount of the TTGF is EUR 4,000,000.00.

Whenever the value of the TTGF falls below EUR 3,000,000.00 the agencies are required to make an additional contribution to bring the value of the fund up to its minimum of EUR 4,000,000.00.

New bands for the additional contributions (a total of seven) were also introduced and shall be applicable to each agency depending on the volume of services provided. This change guarantees a fairer distribution of the burden of contributions.

5. OTHER MATTERS ADDRESSED IN THE NEW DECREE-LAW

Finally, the new Decree-Law also sets out the rules on responsibility for errors in bookings, the rules applicable to linked travel arrangements, and the sanctions that apply in the event of a breach of its provisions.

In general terms, the new rules bring a significant increase in the responsibilities of agencies in their relations with clients, being its clear intention to protect those clients.

The broadening of the amount of pre-contractual information required and of the content itself of the package travel contract seems clearly excessive to us, and it will certainly imply additional costs to the agencies.

Decree-Law no. 17/2018 will come into force on 1 July 2018.

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Portuguese Law Firm of the Year
Who's Who Legal 2017 - 2015, 2011-2006
Chambers European Excellence Awards 2014, 2012, 2009

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Financial Times - Innovative Lawyers Awards, 2017-2011