

# TRAVEL AGENTS AND TOUR OPERATORS: FREEDOM TO SUPPLY CROSS BORDER SERVICES INTO IRLAND

SEPTEMBER 2014

A TOUR OPERATOR OR TRAVEL AGENT ESTABLISHED IN ANOTHER MEMBER STATE AND NOT ESTABLISHED IN IRELAND CAN NOW SELL PACKAGE HOLIDAYS INTO IRELAND PROVIDED THAT IT IS THE HOLDER OF AN APPROPRIATE LICENCE FROM THE COMMISSION FOR AVIATION REGULATION

## INTRODUCTION

Prior to the enactment of the Transport (Tour Operators and Travel Agents) Act 1982 (the TOTA Act), there was no statutory regime to protect a holidaymaker who purchased package holiday from a travel agent or tour operator whose business failed before the holiday had been completed.

### Example 1

In May 1980, Deirdre paid Edam Holidays for a sun holiday in the Bahamas. She paid the full price for the holiday prior to travelling, but before the date of the outbound flight Edam Holidays went into liquidation. Deirdre did not receive the holiday.

### Example 2

In October 1981, Kerstin and 10 other members of her mountaineering club bought a rock climbing holiday in the Andes. On the morning of their return flight from Peru, she discovered that the tour operator had gone into liquidation and the air carrier was refusing to provide the return flight without being paid the full fare.

## THE TOTA ACT

The TOTA Act protects a member of the public holidaymakers who books package holidays from situations such as those illustrated in the above examples.

Under the TOTA Act, as originally enacted, all tour operators and travel agents offering package holidays commencing in Ireland must be established in the State and must comply with a licensing and bonding system overseen by the Commission for Aviation Regulation (CAR). It is illegal for a travel agent or tour operator to supply a package holiday without being licenced for that purpose.

For an Irish established operator, the annual licence fee to cover a bond is as follows:

- Tour Operator: 10% of projected licensable turnover.

- Travel Agent: 4% of projected licensable turnover.

The bond is intended to provide a sufficient sum of money to cover the losses or costs incurred by a holidaymaker whose travel contract cannot be fulfilled by the tour operator or travel agent from whom he purchased it.

### COUNCIL DIRECTIVE 90/314/EEC OF 13 JUNE 1990 ON PACKAGE TRAVEL, PACKAGE HOLIDAYS AND PACKAGE TOURS (THE DIRECTIVE)

The Directive has been enacted in all member states. Article 7 of the Directive declares that the organizer and/or retailer party to the contract shall provide sufficient evidence of security for the refund of money paid over and for the repatriation of the consumer in the event of insolvency.

Article 7 does not set out any explicit requirement for the actual method of insolvency protection to be supplied by the operator. Member States employ a variety of methods, for example, insurance policies, bank guarantees or state bonding. As a result, without going into all the reasons, the Directive is widely seen as not providing the full protection which travellers expect.

### DIRECTIVE 2006/123/EC OF 12 DECEMBER 2006 (THE SERVICES DIRECTIVE)

The aim of the Services Directive is to release the growth potential of services markets in Europe by removing legal and administrative barriers to trade in the services sector. The Directive strengthens the rights of recipients of services, which can be both consumers and businesses. It prohibits discriminatory conditions based on the nationality or residence of the service recipient. No exception is made in the Services Directive for the supply of package holidays.

The Services Directive, was transposed into Irish law in November 2010 by Statutory Instrument number SI 533/2010.

## THE TOTA ACT AND THE SERVICES DIRECTIVE

Despite the Services Directive, in order to protect Irish package holiday customers, initially Ireland did not permit tour operators and travel agents not established and licenced by CAR to sell package holidays commencing in Ireland. This brought Ireland into dispute with the EU Commission. In 2013, Ireland was given a deadline to bring its legislation on the supply of package holidays into conformity with EU requirements.

## AMENDMENT TO THE TOTA ACT OF 27 JULY 2014

On the 27<sup>th</sup> July 2014, the State Airports (Shannon Group) Act 2014 amended the relevant provisions in the TOTA Act to provide that a tour operator or travel agent established in another Member state and not established in Ireland can sell package holidays into Ireland provided that tour operator is the holder of an appropriate licence from CAR.

To obtain such a licence, a travel agent or tour operator based in another EU member state must apply to CAR for a licence to sell holidays in Ireland. As a condition of licence the travel agent or tour operator must:

- a) have “*sufficient evidence of security*” in place for the holidays that it sells; and
- b) notify CAR in writing of its intention to sell such holiday tours.

However, there is no definition of “*sufficient evidence of security*” in any legislation. The amount of this security must be negotiated with CAR and the level of bonding in the home member state may be taken into consideration when arriving at the amount in question.

## IN CONCLUSION

Other EU member states face problems similar to those faced by Ireland in relation to the protection of travellers who buy cross border holiday packages. The EU is working on a proposal to harmonise the protections EU wide.

**CONTACT INFORMATION**

For further information please do not hesitate to contact us.



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The above is intended as a general guide to law only. It is not intended as a full statement of the law on any point. Before taking action in relation to any matter, full professional advice should be obtained.