GUARANTEEING THE TOURIST AGAINST THE INSOLVENCY OF THE ORGANIZING TRAVEL AGENCY; QUO VADIS?

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Abstract

One of the aspects concerning tourist services at the level of the European Union is the system of providing tourists with cover against the risk of default of the amounts paid by them to the organizing tourism agency or risk of their non-repatriation, if the travel agency goes into insolvency and the contracted services are not provided. Regulated at European level by Directive (EU) 2.302/2015, after a sinuous road this aspect was regulated also at national level. Initially it was amended and completed G.O. no. 107/1990, by G.O. no. 26/2017, approved by Law no. 277/2017, and later G.O. no. 107/1990 was repealed by G.O. no. 2/2018 which transposes the provisions of the Directive (EU) 2.302/2015.

Guaranteeing the tourists against the insolvency of the organizing tourism agency has experienced a first regulation curtailed in G.O. no. 26/2017, regulation which was not applicable and is currently abrogated, but which for the first time at national level created a system for guaranteeing the tourist against the insolvency of the organizing tourism agency. The guarantee was ensured only through the system of guarantee fund administered by the National Credit Guarantee Fund for Small and Medium Enterprises. The system thus created attracted criticisms from the National Association of Tourism Agencies and was abandoned and the ordinance regulating it was abrogated with the entry into force of G.O. no. 2/2018 transposing Directive (EU) 2.302/2015.

Basically, the organizing travel agencies established in Romania have the obligation to provide guarantees for the repayment of all payments made by or on behalf of the passengers, insofar as the relevant services are not provided as a result of the insolvency of the organizing tourism agency. These guarantees may be: bank guarantee letters, insurance policies, travel insurance guarantee fund or other legally established guarantee instruments and may operate in a distinct or associated manner, so the guaranteeing options are not limited.

Keywords: tourist services, travel agency, insolvency.

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1. *Sedes materiae at national and community level*

The contract for the marketing of tourist services packages was regulated by special norms under Government Ordinance no. 107/1999 on the marketing of package travels,\(^1\) amended and supplemented by the Government Ordinance no. 26/2017, approved by Law no. 277/2017\(^2\), in force only from January 7\(^{th}\), 2018 to September 1\(^{st}\), 2018, being repealed by Ordinance no. 2/2018 on package travels and associated travel services, as well as for the amendment of some normative acts.\(^3\) The special normative framework was completed the provisions of the Order no. 1387/2015 for the approval of the framework contract for the marketing of package travels, (Miff, 2012, p. 132-141) adopted by the minister, in effect from 17.02.2016, act with normative power which repealed Order no. 516/2005.\(^4\)

The purpose of the new regulation is to harmonize the legislation with that of the Member States of the European Union\(^5\) regarding packages of tourist services sold or offered for sale on the territory of Romania, regardless of their place of performance, and transposes the provisions of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holiday and package tours.\(^6\)

Initially, the European Commission opened the EU Pilot Document 7052/14/JUST and notified Romania to remedy the problems related to the tourists' insurance system as soon as possible, namely to eliminate the risk of default of the amounts paid by the tourist to the organizing agency and the risk


\(^2\) G.O. no. 26/2017 was published in the Off. Gazette of Romania Part I, no. 706/31.08.2017 and was approved through Law no. 277/2017 published in the Off. Gazette of Romania Part I, no. 8/4.01.2018, hereinafter called *G.O no. 26/2017*.

\(^3\) Published in the Off. Gazette of Romania Part I, no. 728 of 23.08.2018, in force since 16 September 2018 hereinafter called G.O. no. 2/2018.


of non-repatriation, in the event in which travel agencies are in financial difficulty, to the extent that contracted services were not provided. It was considered that the regulation contained in the directives was breached in the event of insolvency or bankruptcy of the organizing tourism agency.

As acknowledged in the explanatory memorandum of the Government Ordinance on the amendment and supplementation of the Government Ordinance no. 58/1998 regarding the organization and operation of tourism activity in Romania\(^7\) art. 7 of Directive 90/314/EEC contained a provision on insolvency insurance namely “the organizer and/or distributor, party to the contract must provide sufficient evidence of a guarantee for the refund of the payments and for the repatriation of clients in the event of insolvency.” (turism.gov.ro)

This obligation is contained also in Directive (EU) 2302/2015, art. 17, as following “Member States shall ensure that organisers established in their territory provide security for the refund of all payments made by or on behalf of travellers insofar as the relevant services are not performed as a consequence of the organiser's insolvency”.

If the carriage of passengers is included in the package travel contract, organisers shall also provide security for the travellers' repatriation. An organiser's insolvency protection shall benefit travellers regardless of their place of residence, the place of departure or where the package is sold and irrespective of the Member State where the entity in charge of the insolvency protection is located.

When the performance of the package is affected by the organiser's insolvency, the security shall be available free of charge to ensure repatriations and, if necessary, the financing of accommodation prior to the repatriation. For travel services that have not been performed, refunds shall be provided without undue delay after the traveller's request.”

In the same line of ensuring the protection of tourists at EU level, Article 18 of Directive (EU) No. 2302/2015 provides for “Mutual recognition of insolvency protection and administrative cooperation” as follows: “Member States shall recognise as meeting the requirements of their national measures transposing Article 17 any insolvency protection an organiser provides under such measures of the Member State of his establishment. Member States shall designate central contact points to facilitate the administrative cooperation and supervision of organisers operating in different Member States.

They shall notify the contact details of those contact points to all other Member States and the Commission. The central contact points shall make

available to each other all necessary information on their national insolvency protection requirements and the identity of the entity or entities in charge of the insolvency protection for specific organisers established in their territory.

Those contact points shall grant each other access to any available inventory listing organisers which are in compliance with their insolvency protection obligations. Any such inventory shall be publicly accessible, including online. If a Member State has doubts about an organiser's insolvency protection, it shall seek clarification from the organiser's Member State of establishment.

Member States shall respond to requests from other Member States as quickly as possible taking into account the urgency and complexity of the matter. In any event a first response shall be issued at the latest within 15 working days from receiving the request.”

The substantiation note is the one in which the text refers to a number of CJEU decisions concerning the insolvency guarantees of a travel agency, namely: Case VKI vs Österreichische Kreditversicherung C364/9635; Case Rechberger C 140/97; Case Ambry C410/96.

Hence, in order to harmonize the national legislation with the European one, it was initially amended and completed with G.O. no.107/1990, by G.O. no. 26/2017, approved by the Law no. 277/2017, and subsequently by G.O. no. 107/1990, was repealed by G.O. no. 2/2018 which transposes the provisions of Directive (EU) no. 2.302/2015.

In the following we will analyze the journey made up to the current legislation as well as the regulation it contains.

2. Protection of tourists in the event of insolvency of the organizing tourism agency

2.1. Guaranteeing packages of tourist services through the Guarantee Fund set up against the insolvency of the organizing tourism agency, established by the provisions of Government Ordinance no. 26/2017

Guaranteeing the tourists against the insolvency of the organizing tourism agency has experienced a first attempt of regulation under G.O. no. 26/2017, which was not applicable and currently abrogated.

2.1.1. Defining the Guarantee Fund

The guarantee fund against insolvency is, for the purposes of the legal definition contained in art. 2, paragraph 6 of Government Ordinance no. 26/2017, "the guarantee scheme in the field of tourism, which aims at protecting consumers who have purchased packages of tourist services from the consequences of insolvency of the organizing tourism agency".

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8 Hereinafter IGF.
IGF is constituted as a guarantee scheme in the field of tourism, without legal personality, being managed by the National Credit Guarantee Fund for Small and Medium Enterprises, on behalf of the Romanian state, through the Ministry of Tourism. The financial resources of the IGF are recorded and tracked separately in the NCGFSME accounting records, aiming at protecting consumers purchasing packages of tourist services from the consequences of insolvency of a Fund participant.

2.1.2. Establishment of IGF through the contribution of organizing tourism agencies

For organizing tourism agencies operating on national territory and selling packages of tourist services to consumers, an obligation to report the guaranteed amount and to pay the related contribution to the IGF was established. The organizing tourism agency also had the obligation to regularly inform the intermediary tourism agency and consumers purchasing tourist packages on the individual guarantee level held at the IGF.

Moreover, obtaining a tourism license valid for the organizing activity was conditioned by the participation of the organizing tourism agency in the IGF, obligation stipulated in art. 24 of G.O. no. 26/2017. Moreover, every participant is required to provide a guarantee of participation in the IGF. The participation guarantee shall be refunded upon termination of the activity by the organizing touring agency with the loss of the status of a participant in the IGF, unless the holder of the organizational license has not complied with the conditions for granting the organizational license and/or the obligations undertaken as a participant in the IGF.

The calculation of the contribution to the IGF was governed by the following: the organizing tourism agency which first requests the granting of the operating license as an organizing tourism agency is obliged to pay an initial contribution for participation in the IGF; the quarterly contributions due to the fund by the participants are calculated on the basis of the guaranteed value resulting from their bookkeeping, applying the percentage quota established according to the provisions of art. 2, paragraph 10 of Government Ordinance no. 26/2017 on the amounts of direct commitments undertaken by the organizing tourism agencies in connection with the marketing of tourist packages on the territory of Romania, either directly or through intermediary tourism agencies.

The contribution to the IGF by the participants to it shall be made, according to the provisions of art. 24 from Government Ordinance no. 26/2017 on a quarterly basis in the fund's account, in the national currency, before the last working day of the month following the reporting quarter.

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9 Hereinafter NCGFSME.
Contributions due and transferred to the IGF account by the participants will not be refunded. Fund participants have the obligation to prepare and send, quarterly, by the last working day of the following month, reports on the collateral amount, the manner of setting up and paying the contribution due.

Upon transmission of the reports, the participants to the Fund shall attach a declaration on their own responsibility, under the signature of their legal representative, under the sanctions provided by Law no. 286/2009 on the Criminal Code, as subsequently amended and supplemented, for the offenses of fraud and/or false statements, showing that the data and/or information submitted are real, correct and complete.

The document drawn up by the IGF, which establishes and individualises the obligation to pay of a participant to the fund, constitutes a debt, according to the provisions of art. 24 and includes the total outstanding amount owed as a contribution to the fund by the organizing tourism agency and the maximum term of 10 days, running from the date of the communication of the document identifying the payment obligation, in which the participant can pay the obligation willingly.

If, at the time of maturity, the outstanding debt provided in the debt claim was not paid by the travel agency, it becomes an enforceable title, under which the IGF will begin the enforcement of claims, in accordance with the provisions of Law no. 134/2010 on the Civil Procedure Code, republished, as subsequently amended. Amounts transferred to the IGF as a contribution can only be enforced for the fulfillment of the obligations for which they were established. For late payment of the amounts due, interest and late payment penalties apply, calculated in accordance with the applicable regulations for the collection of tax receivables.

2.1.3. Compensation of creditor consumers and the right of regression of the fund against the organizing tourism agency

In order to strengthen the means of protection of tourists, the normative act invoked was also complemented by provisions that establish as a measure for the protection of the tourists the constitution of the guarantee to the IGF by the organizing tourism agency.

The tourist, as a consumer of tourist services, is entitled to a compensation paid from the resources of this fund for the services not performed as a result of the insolvency of the organizing tourism agency after the purchase of the tourist package(s).

For the purpose of art. 2, paragraph 13 of Government Ordinance no. 26/2017, the compensation to which the tourist who purchased a package of

\[10\] Published in the Official Gazette no. 247 of 10.04.2015, amended and supplemented, hereinafter referred to as Law no. 134/2010.
tourist services has the right means "the amount paid from the resources of the fund to each consumer who purchased packages of tourist services from an organizing or intermediary travel agency representing the equivalent of the sums paid for the services not performed as a result of the insolvency of the organizing tourism agency after the purchase of the package(s), unless it has been reimbursed from another source of guarantee."

NCGFSME compensates the Fund's creditor consumers and, after payment of the indemnity, subrogates to their rights by acquiring a right of recourse against the organizing tourism agency responsible for repairing the damage, in respect of the compensation paid, the expenses related to the processing and liquidation of the claims, and for other related costs.

The Fund guarantees according to the provisions of art. 24, par. 2, payment of compensation equivalent to payments made by the tourists, within the limit of a maximum compensation level, in the case of non-delivery by the participants to the Fund of the services provided in the contracts for the purchase of the tourist services packages as a result of the insolvency of the organizing tourism agency, within the limits of available financial resources at the time of payment.

If the Fund's availability is insufficient to cover the amounts due to consumers, additional amounts may be drawn to feed the Fund, the legislator not defining the source and the manner of attracting these amounts.

2.1.4. Resources and availability of the fund

The financial resources of the IGF were supposed to be used to pay compensation to consumers; payment of the necessary returns to tourists (in their home countries); payment of the management fee due to NCGFSME; payment of interest and commission due for sums attracted to feed the fund; payment of any other sums due, according to the law.

The financial resources of the fund came, according to the provisions of art. 24 of Government Ordinance no. 26/2017, from the following sources: contributions from organizing tourism agencies; interest and late payment penalties from the late payment of contributions by the participants to the Fund, calculated at the level foreseen for non-payment of the budgetary obligations; sums from capitalizing on available funds; amounts from the recovery of the fund's claims; loans from credit institutions or obligatory loans, through the issuance of securities; amounts from other sources, established by law.

The available sums of the IGF, thus set up, were supposed to be placed in interest-bearing instruments, with credit institutions, money market instruments, in government securities or government securities, as well as in placements established by the legislation in force. Information on investments made by the fund is made public on the basis of a half-yearly report published on its website.
and the fund ensures and guarantees free access to this information for all interested parties. In case of liquidation of the fund, the participation guarantees and contributions submitted shall be returned to the organizing tourism agency participating in the fund.

The investment strategy of the fund's resources was aimed at their safe placement, aiming to minimize the risks, ensuring efficiency and liquidity in the line of risk and prudence policies approved by the appointed administrator of NCGFSME, according to the legal provisions.

Therefore, the Fund's financial resources were supposed to be used, according to the provisions of Article 24, for the payment of damages resulting from contracts for the marketing of tourist packages, concluded with the organizing tourism agencies, on which, following the conclusion of these contracts, the insolvency proceedings took place.

The resources are also used to help tourists return to their home countries, if they are unable to return to their home country due to non-observance by the organizing tourism agency of its contractual obligations.

If the contract for the marketing of the package of travel services includes the transport of passengers and the tourists are unable to return to the country due to the non-observance by the organizing tourism agency of the contractual obligations assumed in relation to the consumers, the expenses for repatriation of tourists are incurred in an emergency procedure from the fund's resources. Repatriation costs may include the ground services that have not been paid by the organizing travel agency.

The guarantee provided by the fund is effective and covers reasonably foreseeable costs, including estimated repatriation costs.

The guarantee refers to the amounts of payments made by or on behalf of tourists in connection with packages of travel services, taking into account the period elapsed between the advances paid and the final payments and the completion of the packages of travel services.

When the execution of the package is affected by the insolvency of the organizing travel agency or when the travelers are unable to return to the country due to the organizing tourism agency failing to comply with the contractual obligations undertaken with them and the contract for the sale of the packages of travel services includes transport of passengers, the guarantee is available free of charge to ensure repatriation and, if necessary, payment of accommodation before repatriation.

Traders facilitating associated travel services also provide guarantees for the repayment of all payments they receive from passengers in so far as a travel service which is part of an associated travel service is not carried out as a result of their insolvency. Where such traders are the party responsible for the transport of passengers, the guarantee also covers the repatriation of the
traveler. Repatriation is defined as the return of the passenger to the place of departure or to another place agreed by the Contracting Parties.

This obligation to provide a guarantee for the repayment of all payments made by the traveller in the event of establishment and for organizing travel agencies not established in a Member State and selling or offering for sale packages in Romania or which, by any means, direct their activities to Romania.

An organizing travel agency established in another Member State that sells or offers for sale packages in Romania or which, by any means, directs its activities to Romania, fulfills the conditions of art. 18, Government Ordinance no. 2/2018 on protection in the event of insolvency if it complies with national measures in the Member State in which it is established. So according to the provisions of art. 21, paragraph 1 of Government Ordinance no. 2/2018, as shown above, for these travel agencies the obligation to set up a guarantee instrument against insolvency is valid.

In order for the fulfillment of this obligation to become possible and the organizing tourism agency established in another Member State to be aware of the requirements established at national level, the Ministry of Tourism shall be designated as a central contact point to facilitate the administrative cooperation and supervision of the organizing tourism agencies established on the territory of Romania which carry out activities in several Member States.

It shall notify all other Member States and the European Commission of its contact details and make available to all central contact points all necessary information on national insolvency protection requirements and the identity of the entity responsible for insolvency protection for established travel agents on Romania's territory. The Ministry of Tourism shall provide access for all other central contact points to all available lists of organizing touring agencies which comply with the obligations of protection in the event of insolvency. Any such list is accessible to the public, including online.

Government Ordinance no. 26/2017 provided that the method of calculating the contributions due to the IGF, and the mechanism for guaranteeing and reporting, paying and recovering the compensation paid from the Fund is established by methodological norms of application, however such rules have no longer been adopted.

The criticism of National Association of Tourist Agencies\(^\text{11}\) regulation of the fund was retained as follows: “We have written addresses from NATA, which challenges the Guarantee Fund managed by NCGFSME, and clearly state that they did not agree with it, and that we have to allow for other

\(^{11}\) Hereinafter called NATA.
possibilities, such as bank guarantee letters, insurance policies, mutual funds, but also other forms of guarantee, which we have done.

Travel agencies have a choice, but we are interested in knowing that when you sell a package of tourist services, the tourist is insured. We also have the official address from NCGFSME which shows that this fund did not meet the legal requirements to be appointed as a manager of a private guarantee scheme. (ultima-ora.ro)

NATA criticized this regulation, considering that the fund is an abnormity which is not applicable in the legal formula. (Realitateafinanciara.net) NATA argues that other possibilities, such as bank guarantee letters, insurance policies, mutual funds, but also other forms of guarantee must be regulated (ultima-ora.ro).

So, tourist services are intended to be 100% guaranteed, and so we move from a 50,000 USD guarantee threshold to a 100% guarantee. (1asig.ro)

3. Guaranteeing tourist services against the insolvency of the organizing tourism agency through various instruments regulated by Government Ordinance no. 2/2018

3.1. The requirement for setting up a guarantee instrument by organizing travel agencies and a system of mutual recognition of protection in the event of insolvency and administrative cooperation between the Member States

Considering the criticism of the touristic services guarantee against the insolvency of the organizing tourism agency through the guarantee fund system, a system that was abandoned, the ordinance regulating it was abrogated with the entry into force of Government Ordinance no. 2/2018 (anpc.gov.ro).

As I indicated in the first part of this article, the provisions of art. 18, paragraph 1 of Government Ordinance no. 2/2018 establish an obligation for organizing travel agencies established in Romania to provide guarantees for the reimbursement of all payments made by or on behalf of travelers to the extent that the relevant services are not provided as a result of the insolvency of the organizing tourism agency.

These guarantees may be: bank guarantee letters, insurance policies, travel package guarantee fund or other legally established guarantee instruments and may operate in a separate or associated manner (ultima-ora.ro).

Government Ordinance no. 2/2018 maintains the guarantee by means of the fund and defines the travel package guarantee fund as the private travel guarantee scheme aimed to protect travelers who have purchased travel packages or travel services associated with the insolvency effects of the organizing tourism agency or traders.

The licensing of organizing tourism agencies, respectively obtaining a valid tourism license for the organized organization activity, is conditioned, according to the provisions of art. 20 par. 1, from Government Ordinance
no. 2/2018, on the fulfillment of the obligation to prove the *constitution of a guarantee instrument under the conditions of* art. 18, para. 1 (ultima-ora.ro).

Moreover, according to the provisions of art. 20, paragraph 1 of Government Ordinance no. 2/2018, by way of derogation from the provisions of art. 11 par. 1 of the Companies Law no. 31/1990\(^\text{12}\), republished, with the subsequent modifications and completions, the registered capital of an economic operator organized as a limited liability company, a tourist license holder for the organizational activity, cannot be less than 25,000 lei. (observatorulph.ro & startupcafe.ro)

3.2. Requirements for passenger information concerning the guarantee of the organizing travel agency for insolvency

Before the traveler signs a contract for associated travel services or any appropriate offer, the trader who facilitated the associated travel services, including where the trader is not established in a Member State but, by any means, directs such activities to a Member State, stipulates in a clear, comprehensible and well-emphasized manner the following components of the information obligation developed in the doctrine (Apan, 2007, p. 89-93 and Popescu, 2018, p. 77-83):

(i) the traveler will not benefit from any of the rights that apply to the packages defined under G.O. no. 2/2018 and each service provider is solely responsible for the proper execution of the contract relating to his services;

(ii) the traveler will benefit from protection in the event of insolvency in accordance with paragraph 1 of art. 18, Government Ordinance no. 2/2018.

The trader facilitating an associated travel service shall provide the passenger with the relevant information using the relevant standard form set out in Annex. 2 to G.O. no. 2/2018 or, if the specific type of associated travel service is not covered by any form provided for in that Annex, it shall provide the information included therein.

Moreover, where an associated travel service is the result of a contract between a traveler and a trader not facilitating the associated travel service, that trader shall inform the trader facilitating the associated travel service of the conclusion of the relevant contract.

3.3. The incidence and effects of opening the insolvency proceedings for the organizing travel agency

If the insolvency procedure has been initiated against the organizing tourism agency, regulated by the Law no. 85/2014 on insolvency and

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\(^{12}\) Republished, amended and supplemented, consolidated version on 16.07.2015.
insolvency prevention procedures, the provisions of this regulation shall be applicable in accordance with point 8 of the G.O. no. 2/2018.

Law no. 85/2014 defines insolvency as the state of the debtor's patrimony, characterized by insufficient funds available for the payment of certain, liquid and due debts.

Thus, the state of the patrimony centered on the insufficiency of funds available for the payment of debts that are characteristic of being liquid, due more than 60 days from maturity, represents the state of insolvency, according to art. 5, point 29 of the Law no. 85/2014 (Bufan, Deli-Diaconescu, Moțiu, 2014, p. 229).

Law no. 85/2014 regulates the following types of insolvency procedures, also developed in the doctrine (Turcu, 2015, p. 115-119 and Cărpenaru, 2016, p. 724-734): the general insolvency procedure; simplified insolvency procedure; the judicial reorganization procedure; the bankruptcy procedure.

The general insolvency procedure is whereby a debtor - after the observation period - successively enters in the judicial reorganization procedure and in bankruptcy proceedings or, separately, only in judicial reorganization, or only in bankruptcy, a definition included in the provisions of art. 5, point 46 of the Law no. 85/2014.

Debtors subject to this type of procedure, namely general insolvency, do not meet the conditions provided by art. 38, par. 2, and so the simplified procedure does not apply to them.

The judicial reorganization procedure is the procedure applicable to the debtor in insolvency, provided that the professional is only part of legal personality typologies and is initiated in order to pay his debts, according to the payment schedule of receivables.

Reorganization involves drawing up, approving, confirming, implementing and complying with a plan, known as a reorganization plan, which may provide, unlimitedly, together or separately:

(i) the debtor’s operational and/or financial restructuring;
(ii) corporate restructuring by modifying the share capital structure;
(iii) restriction of the activity by partial or total liquidation of the asset from the debtor's property.

The bankruptcy procedure is the concurrent, collective and egalitarian insolvency procedure that applies to the debtor in order to liquidate his property for covering the liability, followed by the debtor's deletion from the register in which he is registered.

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13 Published in the Official Gazette no. 466 of 25.06.2014, amended and supplemented, consolidated version on 17.10 2018, hereinafter referred to as Law no. 85/2014.
G.O. no. 2/2018 stipulates the definition of a notion already defined by Law no. 85/2014, namely the guaranteed claim. In the regulation provided by G.O. no. 2/2018 this is the consumer's claim arising from the non-fulfillment of the obligations arising from the marketing contracts, as a result of the insolvency proceedings initiated against the organizing tourism agency, which represent the equivalent of the amounts actually paid by the travelers on the basis of these contracts.

In accordance with Law no. 85/2014 claims that benefit from a cause of preference are those claims which are accompanied by a privilege and / or a mortgage right and / or rights assimilated to the mortgage, according to art. 2.347 of the Civil Code, and / or a pledge on the debtor's assets, irrespective of whether the debtor is a principal debtor or a third party guarantor of the beneficiaries of the cause of preference.

If the debtor is a third-party guarantor, the preferential creditor will exercise the related rights only in respect of the asset or the right in question.

These have the meaning given to them by the Civil Code, unless otherwise provided by special law;

So, the tourist will be creditor in the insolvency procedure of the organizing tourism agency and will have a guaranteed claim on its patrimony.

The extent of the claim will be the amount actually paid by the tourist to the organizing tourism agency for the services to be supplied, however because of the insolvency occurrence, the execution of the contract has not taken place.

Due to the guaranteed debt regime the tourist's claim benefits from a good positioning in the order of priority.

With regard to the means of recovery by the tourist of the amounts of money, it is obvious that he will have to submit the application for admission of the claim, as explained in the doctrine (Apan, 2018, p. 167-180).

Conclusions

In conclusion, the protection of travelers who have concluded a contract for the provision of tourist services with the organizing tourist agency and have paid the tourist services, in the event of an insolvency procedure initiated against the organizing tourist agency, is regulated by the establishment of guarantee schemes consisting of: insurance policies, travel package guarantee funds or other legally constituted guarantees that can be used distinctly or associated with one another.

A recent analysis by KeysFin showed that a total of 408 travel agencies and tour operators closed their businesses in 2016 and 2017 (startupcafe.ro).

We ask what the situation of tourism agencies in will be 2019 given that they are obliged to apply the two regulations, on the guarantee of tourist services and on the increase of the social capital.
Therefore, 2019 will mean the year of a double challenge for travel agencies because, along with the establishment of the guarantee system, they are forced to increase their share capital.

To what extent will the guarantees regulated by Government Ordinance no.2/2018 become enforceable on the patrimony of agencies and ensure the protection of travelers we will know in the future.

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