

NEWSLETTER

July 2016

Insolvent travel agency

Holidays in full, but even in this period it is worth remembering about the legislation, in particular those relating to the operations of travel agencies and liability associated with services provided by the agency.

Bearing in mind that travel agencies are increasingly declared bankrupt due to insolvency, be aware of the rights available to clients of these agencies, particularly in situations where a tourist trip was canceled.

It should be noted that in respect of the powers granted to clients of insolvent tour agencies, **the Supreme Court issued a resolution, which deals with the possibility of accession by such client to court in order to obtain reimbursement of payments made to pay for a tourist event** (the Supreme Court bench of 3 judges from May 19, 2016, file no. III CZP 18/16).

First, it should be noted that, in accordance with the Act on Tourist services of January 28, 2016 (hereinafter referred to as 'Act'), entrepreneur running business activity in scope of organizing tourist events and mediating on behalf of clients in concluding contracts for the provision of travel services is required *inter alia* to provide clients in the event of insolvency the following:

- 1) cover the costs of returning clients from the tourist event to the place of departure or planned return from the tourist event in case the tour agency or travel agent contrary to the obligation don't provide this return, and
- 2) reimbursement of payments made as payment for the tourist event, in the event that for reasons of a tour agency or travel agent and people who act on their behalf tourist event will not be realized, and
- 3) reimbursement of payments made to pay for a tourist event, the corresponding to a part of the tourist event, which will not be realized for reasons of a tour agency or travel agent and people who act on their behalf.

The aim of these obligations tourist agency should:

- 1) conclude a bank or insurance guarantee, or
- 2) enter into an insurance contract to clients, or
- 3) accept clients' payments solely to the trust account when it carries out tourist services only within the country and makes the voivodship marshal statement about accepting cash payments to an escrow account.

According to the cited Act, the voivodship marshal is entitled to act on behalf of clients in the payment of funds under this bank guarantee contract, insurance guarantee contract or contract of insurance under the terms of the content of these contracts.

In above-mentioned resolution of **the Supreme Court stated that regardless of the above-mentioned possibility of acting on behalf of clients by defaulting travel agent by the voivodship marshal, the clients themselves are also entitled to demand from the travel agency reimbursement payments made as payment for tourist event.**

In conclusion, it is worth remembering about the rights granted to clients of insolvent travel agencies, and before booking a trip to consider getting information about the amount of the guarantee of a travel agency.
