

## THE RIGHT OF REIMBURSEMENT FOR THE CANCELLATION OF TRAVEL DUE TO THE COVID-19

In recent weeks, many passengers have been forced to miss their planned trip due to COVID-19. In view of this situation, one of the questions that those affected are asking themselves most is: am I entitled to a refund of my flight and/or hotel reservation?

The first thing that the user must do, according to the Consumers and Users Organization (OCU), is to review the cancellation policy of the ticket or reservation of accommodation. In the case of flexible fares, the company must offer a refund or change of date, but if it is a non-refundable fare, as a general rule, the specific situation must be taken into account:

Firstly, it may be the airline that has cancelled the flight. In this regard, the European Regulation No 261/2004 on Passengers' Rights, states that the passenger has the right to a refund of the ticket price; but, as these are extraordinary circumstances, there will not be a right to compensation (which is claimable when the company cancels the flight due to other circumstances), since the service provider cannot be held responsible for any breach of contract.

Secondly, it is possible that the transport or accommodation company has not cancelled the service, but it is the traveller who is forced to cancel it when it is not "strictly necessary" (due to the imperative of the state of alert). In these cases, the consumer would be entitled to exercise their right to a refund on the basis of a substantial and unanticipated change in circumstances (doctrine *rebus sic stantibus*) since a great economic imbalance has been generated between the parties, as it has become extremely disproportionate, or even impossible, for one of them to fulfil its obligation – in this case, to pay the price without any viable consideration.

Another option would be to resort to the figure of "force majeure", provided for in article 1105 of the Spanish Civil Code, as it is an unforeseeable and unavoidable circumstance, thus suspending the obligation to pay.

The case of booking package tours (accommodation, transport or other tourist services) should also be highlighted. For them, the Spanish Royal Decree–Law 23/2018, of 21 December, establishes that "when unavoidable and extraordinary circumstances occur in the place of destination, or in the vicinity, that significantly affect the execution of the combined trip or the transport of passengers to the place of destination, the traveller will have the right to terminate the contract before the start of the trip without paying any penalty. In this case the passenger shall be entitled to a full refund of any payment made, but not to additional compensation."

On the other hand, many travellers take out cancellation insurance for their trip and wonder whether this insurance will cover reimbursement when the airlines and/or accommodation companies refuse to do so. In this regard, it should be noted that travel or cancellation insurance, as a rule, does not cover "extraordinary" situations, and that the vast majority expressly exclude epidemic situations in their policies. However, the conditions of the policy should be reviewed, although the above-mentioned options for contractual resolution present *a priori* advantages in the event of a claim against the operators.

In any case, the most advisable thing to do is to contact the company immediately, if possible, in writing, which can be signed by a lawyer for the record, and request the cancellation of the service and reimbursement of the price alleging the causes referred to, as appropriate. If the company refuses to do so, it will be necessary to undertake judicial proceedings, which must interpret the legal system in favour of the consumer (*pro consumatore* principle), who in any case will have the right to submit the corresponding litigation to the courts of their own domicile and not to that of the tour operator.

At Lozano Schindhelm we are at your disposal to enforce your rights in the area of travel cancellation.



**Unai Mieza**

**Attorney at Law**

Bilbao

T +34 944 25 66 98

[u.mieza@schindhelm.com](mailto:u.mieza@schindhelm.com)