
COVID-19: Provisional Measure no. 948/2020 and the impact on the tourism sector

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After the promulgation of various provisional measures by the Federal Government towards regulation and bringing some sort of relief to sectors extremely impacted by the COVID-19 pandemic – example of which is Provisional Measure (MP) 925/2020 providing emergency measures for the Brazilian civil aviation sector – on April 08, 2020 MP 948/2020 was published, calling for the cancelling of services, reservations and events in the tourism and culture sectors due to the state of public calamity declared by Legislative Decree No. 06 of March 20, 2020.

Without a doubt, tourism is one of the economic sectors most affected by the current health crisis, impacting not only hotels, tourist agencies and ocean cruise ship operators but the whole range of activities relating to not only vacation destinations but also cultural festivals and business holidays, the total loss being estimated in billions of US dollars.

Within this scenario, MP 948 is applicable to all tourism companies and service renderers as are established in Law No. 11.771/2008 – such as accommodation facilities, tourism agencies, tourism transportation agencies, event organizers, theme parks, tourism camps, as well as cinemas, theaters and digital platforms for the sale of tickets over the Internet.

With respect to all of these sectors, the provisional measure establishes that in the case of cancellation of services, reservations and events, including shows

and spectacles, the service renderer shall not be obligated to reimburse the amounts already paid by the consumer so long its assures: the rescheduling of the cancelled services, reservations or events; availability via the respective companies of credit for use or for discount in the purchase of other services, reservations and events; other possible arrangement with the consumer.

It is worth noting that in the case of rescheduling of the cancelled services, reservations or events or availability of credit for use or for discount in the purchase of other services, reservations or events these should be extended to the consumer for a time period of up to 12 (twelve) months counting from the date the state of public calamity is considered no longer in effect.

All of these measures, commendably prioritizing fomenting the continuity of tourism activity following the pandemic, as opposed to immediate and absolute cancelations, shall be implemented without additional cost, charge or fine to the consumer as long as the request for the same is made within the time period of 90 (ninety) days counting from the date the Provisional Measure takes effect.

With respect to this time period of 90 (ninety) days, it is important to point out that thousands of cancellations and/or renegotiations between service providers and consumers have taken place before the publication of the Provisional Measure, examples being the empty hotels and

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cancelled and quarantined cruise ships for weeks beforehand.

It is easy to affirm without margin of doubt that as concerns a good number of these transactions – be they cancellations and/or rescheduling due to the coronavirus pandemic and resulting health calamity – their terms and conditions were less advantageous to consumers than those presently regulated.

Via the fact that the Provisional Measure is inserted into a context in which juridical relations are umbilically tied to rules and principles protective of the Consumer Defense Code, a wave of actions can be stimulated in the Judiciary exactly questioning the creation of guarantee of differentiated treatment of a determined group of consumers in a likewise situation. The state of public calamity was recognized a considerable amount of time before the publication of the Provisional Measure, at least since Legislative Decree No. 06 of March 20, 2020.

Lastly, special mention is worthwhile of the fact that the Provisional Measure expressly declares that the consumer relations now regulated characterize situations of unforeseen circumstance or force majeure that do not call for the application of non-punitive damages, fine or other penalties under Article 56 of the Consumer Defense Code.

The provisional measure will certainly provide an important line of defense to service providers in future judicial battles with their consumers and provide guidance against decisions that are abusive or contrary to the true spirit of its present application, which is to assure the survival of tourism, one of the Country's most important economic sectors.

The Provisional Measure has generated immediate effects and will provide a more clear and even directioning in service renderer and consumer relations but must be approved by the National Congress within the due time period to be definitively converted into law and it is envisioned that until then interested entities and representatives of the various tourism sectors shall be able to contribute to the refinement of its text.

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