

Two striking developments in June 2024

Another blow to the FIAU – Appeals Court rejects reference to the European Court

Business Society Corporate Times

4 July 2024 | David Fabri | 

4 min read

Maltese law on package travel follows closely the EU Directives on the subject and accordingly sets up an insolvency fund. Photo: Shutterstock

In a striking decision taken on June 3, 2024 (Rikors no. 51/2022/2 AD), the Constitutional Court presided by Chief Justice Dr M Chetcuti dealt another blow to the FIAU, the central anti-money-laundering agency in Malta, adding further misery to its seemingly endless judicial misadventures. Recent court cases have struck down their penalties or seriously reduced them.

The FIAU appealed the recent Phoenix Payments Ltd (now apparently renamed Lazarus Long Ltd) judgment (already reported upon in this column). On 16 October 2023, the FIAU applied to the Court of Appeal for permission to make a reference to the Court of Justice of the EU. In very brief terms, the reference, consisting of four questions, sought comfort that the FIAU had acted correctly in its penalty awards.

The agency claimed that its procedures are in line with EU law on money laundering as transposed into local law.

It was now seeking to obtain an interpretation from the European Court in its favour. It asked whether decisions taken at EU level relating to competition law were also applicable to measures taken by the FIAU; and requested the European Court's advice regarding the applicability or otherwise of article 39 of the Maltese Constitution.

In its very short decision (five pages), the Constitutional Court made short shrift of these submissions and rejected them outright. The Court of Appeal stated that it did not need any reference to help it interpret the relevant laws and treaties mentioned in the FIAU's application before it.

Furthermore, EU law allowed, indeed, directed Member States to implement the relevant Directives in terms of their national law and according to their respective national administrative structures and procedures.

It explained that national law determined the fine-making powers as well as the setting up of the implementing agency, the FIAU, which implemented a specific requirement of the Directives. For these reasons, the FIAU's attempt to seek some refuge from the European Court failed.

Too big to fail? FTI Touristik collapses

On June 3, 2024, the third-largest tour operator in Europe, FTI Touristik GmbH, filed for insolvency in the Munich regional court. The failure was due to a decline in bookings and millions of debts owed to suppliers which it could not repay.

Founded in 1983, the Group had its headquarters in Munich and employed over 11,000 people across 90 subsidiaries worldwide. Thousands of its employees risk ending up without a job.

The company has opened a dedicated hotline and support website in English to keep customers and suppliers informed. The failure of a big German tour operator such as FTI and related companies meant that the travel plans of thousands of consumers suffered a severe setback.

Worst hit are the consumers who would have pre-paid in full for their holidays with FTI. It is not excluded that other insolvency filings by Group subsidiaries and related firms will follow.

Trips starting on June 4, 2024 were immediately cancelled. Up to 65,000 holidaymakers were travelling at the date of filing. At the date of the insolvency filing, about 7,500 visitors who booked their holiday through FTI were in Greece, 4,000 of whom were in Crete. Customers who had taken out a travel insurance policy should find themselves in a better position.

Many consumers will now have recourse to the German Travel Security Fund (DRSF) if they have booked a package tour. A similar position would apply under Maltese law which transposed the same mandatory EU Directive.

Maltese law on package travel follows closely the EU Directives on the subject and accordingly sets up an insolvency fund. This fund provides security to consumers in the event of the insolvency of a travel package organiser for a refund of any money paid in advance for services booked and for their repatriation. The package travel regulations are in Malta administered by the Malta Tourism Authority.

The Times of Malta reported that the FTI Group carry out operations in Malta including the running of the Labranda Hotel and subsidiary offices which employ some 100 staff at their SmartCity offices. It is not yet known how these operations shall be affected. (Times of Malta, June 5, 2024, Major Europe tour operator FTI goes bust, threatening Malta subsidiaries).

The FTI collapse recalls a similar situation when Thomas Cook Group, the large and venerable UK tour operating company, failed in 2019, an event covered in my recent book on Company law. This new development should be of great interest to students of insolvency law, as well as of consumer and tourism law.

David Fabri LL.D., Ph.D. has lectured and written on company and consumer law since 1994. He has recently authored two books on the regulation of financial services and companies (Midsea Publications).

This article was first published in The Corporate Times