

MEMORANDUM
on the right of booking websites to request
travel service providers to refund
cancelled non-refundable bookings.
(15 March 2020)

Recently, there have been cases where booking websites that trade with Icelandic service providers offering accommodation have pressed the service providers to refund customers that have cancelled a booked accommodation even though the booking was made on the terms that it is non-refundable. In some cases the booking websites have unilaterally announced a cancellation of accommodation that was booked as non-refundable, refunded the customer themselves and asked the service provider to refund the booking website.

The terms and conditions of booking websites differ in regards to rights and obligations of service providers regarding cancellations. In most cases, the service provider is able to choose which terms and conditions of cancellations shall apply to its accommodation and many have chosen the option that an accommodation cannot be cancelled without payment from the customer. The terms that apply between the service provider and most booking websites stipulate that this choice is solely in the hands of the service provider and the choice is of no concern for the booking website.

The terms of the booking website **AirBNB**, however, contains a clause affording customers the right to cancel a booking without penalty due to emergency or unavoidable circumstances (valid compensation). The terms cite, for example, epidemics and travel restrictions imposed by the government in an area where the property in question is located or in an area where travelled from. After the World Health Organization declared the COVID-19 a pandemic, the booking site decided to classify the virus under such instances, which means that customers may cancel a booking free of charge regardless of cancellation policy, if the booking was made before March 14, 2020 and check-in date is before April 14, 2020, regardless of length of stay.

There are no comparable provisions in the terms and conditions of the large booking websites, but the idea is, as stated earlier, to leave the decision of reimbursement in individual cases to the relevant service provider, when non-refundable cancellation terms apply.

However, on March 7, the booking website **Booking.com**, unilaterally declared a force majeure condition because of the COVID-19, which applies to certain areas of the world and accommodation within a specified timeframe. On the special website of the booking page¹ it is stated that the booking website expects service providers to refund any prepayment and waive any cancellation costs in cases where guests/travellers requested cancellations because of the force majeure conditions. The website contains information which is updated daily about the areas covered by the emergency definition. Currently, Iceland is not on this list. However, additional terms appear on the website which the booking page considers to be applicable in this sense as well, such as if a travel ban is in force in a certain area or a customer has to be quarantined upon arrival in the country travelled to or upon return. However, these terms and conditions of the booking site are unilateral, but it cannot be seen that the booking site considers services providers to be obliged to reimburse customers who cancel a non-refundable booking for these reasons, rather that they are expected to do so.

¹ <https://partner.booking.com/en-gb/help/legal-security/important-information-regarding-coronavirus>

The **Expedia** booking website advises its customers not to make non-refundable bookings because of COVID-19 and offers to assist customers who have made a non-refundable booking if they wish to seek reimbursement. It cannot be seen that this booking website considers service providers obligated to reimburse non-refundable bookings in case of cancellation. The booking website, however, advises customers to check their travel insurance policy.

It must be considered, with reference to the above, that booking websites cannot unilaterally decide to demand reimbursement from service providers for non-refundable bookings that have been cancelled. That is a breach of the terms of the contract between the parties, which stipulates that an assessment of whether a booking is refunded is the responsibility of the service provider in question. As Iceland has not been defined as a risk area by **Booking.com**, the terms of the emergency definition of **Booking.com** do not apply to accommodation that has been booked within this country. Then there are no travel restrictions in force regarding travel to Iceland. The booking page should therefore not require Icelandic service providers for reimbursement in such cases. In cases where such reimbursement has been made, the tour operator has full right to refuse reimbursement.

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