

**2010 REPORT OF THE TRAVEL AGENCY COMMISSIONERS**  
Submitted by the Travel Agency Commissioners

**1. Introduction**

The three Commissioners were selected and contracted for a 3 year period, renewable, from 1 January 2009. Their first report was submitted during 2009. This is their second report to the PAPGJC meeting, that will be included in the PAPGJC report to the Passenger Agency Conference.

The three commissioners are;

- Mrs. Verónica Pacheco-Sanfuentes TAC – 1
- Mrs. Helene Cedertorn TAC – 2
- Mr. Jo Foged TAC - 3

In conjunction with the PAPGJC meeting in London in March 2010 the TACs held a separate meeting to discuss matters and topics relating to cases and interpretations of the Resolutions. The Commissioners were also invited to meet the members of the PAPGJC in an informal lunch meeting.

**2. Work Handled**

Sections “A “ through “ F “ to this report briefly describes the cases dealt with by the individual Commissioners, whether the matter proceeded to a Review and Decision, or whether they were handled without reaching that point.

Formal hearings were held as described in the Attachments but cost containment was achieved where sufficient written evidence was available and where both parties agreed that a Decision could be rendered without the need for oral hearings.

The Commissioners have kept their website [www.travel-agency-commissioner.aero](http://www.travel-agency-commissioner.aero) updated and included new sections to simplify and clarify what is needed when requesting a Travel Agency Commissioner Review. The Area 1 Commissioner has also translated certain sections into Spanish. This work will continue. The members of PAPGJC have all received an e-mail with personal log-in to enhance security on the secured area of the site (where decisions in full are to be found).

The TAC Programme is being further improved with the facility whereby any of the 3 TAC’s who feel compromised by the parties involved in a given case or who may be ill, can pass the matter to one of the other TACs for action. This deputy TAC arrangement is currently being formalised.

**3. Follow up 2009 TAC Recommendations**

The TACs brought forward certain recommendations for PAPGJC consideration in the last year’s report. Here is a follow up on known developments with regards to the separate items;

<b>Recommendation from last year:</b>	<b>Outcome/Comments:</b>
<p>1. The inclusion of a non-liability clause in Res 820d was proposed to PConf/32, in order to remove the threat of litigation by disaffected parties and thus allow continued impartial and fair treatment of cases brought before the TACs.</p>	<p>The clause was voted for favourably at the PConf/32, and thereby included in Resolution 820d. The TACs regard this as an important improvement to ensure the integrity and independence of the TAC Office.</p>
<p>2. The TACs had some comments related to Resolution 820e and the text (likely only textual errors):</p> <ul style="list-style-type: none"> <li>(a) With regard to Section 1.2.2.1 and 1.2.2.2 of Resolution 820e, it might be a mistake because it doesn’t make sense the citation of Subparagraph 1.1.6 there. In both cases it should be mentioned, instead Subparagraph <b>1.1.7</b>, since this is the rule that refers to the Standard Traffic Documents’ withdrawal.</li> <li>(b) With regard to the citation of Subparagraph 1.1.10 in the commented Section 1.2.2.1, it also needs to be reviewed, since there is no reference, as it should be, afterwards of the due time frame for requesting a TAC review in such cases (“have followed correct procedure”). Clarification on which timeframe applies to 1.1.10 is sought.</li> </ul>	<p>There has been no change of the text or other explanation provided. It would be appreciated by the TACs if the text could be clarified.</p>

<p>3. The TACs suggested that it would be convenient to review the title that IATA has for the report that the auditor makes after concluding an Agent’s audit. The current title is “Deficiency Note” and this is perceived by some Agents as already incriminating them in some sort of irregularity or breach of contract. The TACs respectfully suggested the adoption of a neutral title, such as “<i>Audit Report</i>”, without any adjective involved.</p>	<p>The TACs note that PAPGJC seemed positive to this change. Outcome is however not known by the TACs.</p>
<p>4. In connection with Resolution 820e, Paragraph 1.1.8, the TACs raised the point that it had proven to be a difficult provision and the TACs seek clarification on the mandate that exists with regard to adherence to a TAC Decision by a Member where the Member’s actions are found to be improper.</p>	<p>The TACs note that the clause has been discussed within the PAPGJC, and the potential difficulties enforcing the clause are brought to the attention of relevant stakeholders. This is of most importance to the TACs; to ensure there is awareness of the limitations the TACs sometimes experience with regards to their mandate in relation to individual decisions by airlines. To avoid any misunderstandings, it may be worth noting that the TACs have no view on whether the clause should be deleted or not (this is not for the TACs to have a view on) and that the TACs work under the Resolutions to the best of their interpretation, as the Resolutions stand in each time. There are also some positive experiences with regards to this clause where the parties have been able to agree under the guidance of the TAC, and where an airline at least has withdrawn a decision with procedural errors before issuing a new formally correct decision, with notice period and clear reasons.</p>
<p>5. The TACs raised the fact that ADM questions from Agents are frequent and as well-known ADMs are normally not within scope of the TAC mandate. However the TAC found it of importance that the Members of the PAPGJC were aware of this constant source of tension between the airlines and the agents, often a result also of poor communication and lack of proportion between the failure/error and the amount of the ADM.</p>	<p>The situation has not changed. Especially in Area 2 there are many ADM issues brought to the TAC. Many times the problem is that the Agents feel that they are not able to get in contact with the airline for a dialogue. – The standard of communication however seems to vary a lot between the airlines.</p> <p>One practice the TACs find worth mentioning is that if an Agent disputes an ADM some airlines seem to reject the dispute without actually having reached an agreement with the Agent, or without having responded to the Agent’s arguments. Sometimes this has the</p>

	consequence, if the Agent is not observant enough and informs IATA of the dispute, that an ADM is processed via BSP without actually being agreed upon, or even properly discussed.
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**4. Sections A-F : Individual TAC's cases**

Section A:

**TRAVEL AGENCY COMMISSIONER AREA 1  
REVIEW DECISIONS - 2010**

<u>Time &amp; Place</u>	<u>Summary</u>	<u>Decision</u>
<p>22 April 2010 San Salvador, El Salvador</p> <p>(Review conducted based upon documentary evidence only)</p> <p>A1-2010-#1</p>	<p>Eight Agents sought TAC review with regard to an IATA Notice, indicating them how to proceed when doing the weekly BSP's remittances with cheques, other than from Citibank's (BSP Bank). The Agents' main argument was that the said payment process implied a decrease in the credit days that they had.</p>	<ul style="list-style-type: none"> <li>- BSP matters do fall under the scope of the TAC's competence, since they are part of the Agency Programme ("A.P.") (first disposition of Res.820e and Res. 866's definition of A.P.);</li> <li>- Case was dismissed <i>-in limine litis-</i> due to its lack of legal grounds. Chapter 14, Paragraph 14.7.2 of the BSP Manual for Agents-Local Procedures El Salvador, clearly indicates the path to be followed by Agents whenever they deposit their remittances (the funds need to be available for IATA by the end of the convened date, regardless the way of payment used by Agent);</li> <li>- IATA's Notice upheld.</li> </ul>

<p>5 August 2010 Concepción, Chile</p> <p>(Review conducted based upon documentary evidence only)</p> <p>A1-2010-#2</p>	<p>Agent requested overturn of IATA's bank guarantee, imposed due to a change of ownership (more than 30% of the capital shares), that wasn't timely notified by Agent.</p>	<p>- TAC has no jurisdiction to revoke an IATA's decision requesting bank guarantee provided a proven breach of contract by Agent. That is a discretionary power only available to the rule-maker (<i>id est</i>, to IATA).</p> <p>- Request for review dismissed; IATA's decision upheld.</p>
<p>14 August 2010 Santiago de Chile, Chile</p> <p>(Review conducted based upon documentary evidence only)</p> <p>A1-2010-#3</p>	<p>Agent sought TAC review requesting: (i) overturn of IATA's bank guarantee, imposed due to unsatisfactory Financial Statements; and, (ii) a later date to present new Financial Statements for 2009 (the audited ones were presented on May 31, 2010).</p>	<p>IATA's decision is upheld: (i) the bank guarantee was legally requested; and (ii) Financial Statements cannot have more than 6 months of been issued, therefore the Agent's petition is contrary to the Travel Agent's Handbook (page 117).</p>

Section B:

**TRAVEL AGENCY COMMISSIONER AREA 1  
MATTERS THAT DID NOT GIVE RISE TO A REVIEW - 2009 / 2010**

<u>Time &amp; Place</u>	<u>Incident</u>	<u>Outcome</u>
September 2009 México City, México	An ADM dispute between Agent and Aeroméxico.	Since TAC never received consent from the Member Airline to enable her to conduct a review, as indicated by her to Agent, the process was never opened.
October 2009 Viña del Mar, Chile	Agent sought TAC's intervention for an "administrative matter" with IATA-Chile (the due request to provide updated Financial Statements). IATA-Chile wasn't requesting any bank guarantee, regardless the fact that Agent didn't formally notify the change of ownership (it was less than 30% of the capital shares).	TAC contacted IATA-Chile Country-Manager in order to have both sides of the story. Once verified the real situation, TAC got back to Agent and encouraged it to comply with IATA Resolutions, instead of embarking in a proceeding that was going to be dismissed for lacking of legal grounds. Agent provided the requested updated Financial Statements.
October 2009 San Salvador, El Salvador	Agent sought TAC review after been declared in default (Oct. 9); IATA had executed the bank guarantee (Oct. 16); and the next three remittances (Oct. 14, 21 and 28) were still owed. His main argument was that one of the partners had suffered a robbery (unreported to the police) when depositing cash the first October's remittance.	After reviewing all the evidence in file and after sustaining a conference call with IATA-El Salvador Country-Manager and with Agent, TAC concluded that Agent had simply to comply with applicable Resolutions, honour the owed BSP's amounts and present a credible payment schedule to IATA in order to get things right. TAC communicated her decision to Agent, saving him a proceeding that wasn't going to be of any good for his interest.

<p>May 2010 Port-au-Prince, Haïti</p>	<p>Agent sought TAC review due to a Member Airline’s unilateral decision to revoke its ticketing authority.</p>	<p>Whereas the lack of power that TACs have in these situations (Res. 820e, 1.1.8), in order to save Agent’s time and keep his hopes low, TAC: (i) prevented the Agent about the extremely limited powers that TACs have in this regard; and (ii) in an effort of helping the Agent (considering the terrible situation that they were facing due to the huge earthquake), TAC contacted the Agency Administrator for Area 1, who got in touch (first through email and then even in person in Haiti) with Agent and provided a little bit of relief, in terms of explaining him the situation and his options, since up to then nobody from the Member Airline’s side had had the kindness to, at least, talk to the Agent and explain him the situation.</p> <p>TAC considered that after been an IATA Accredited Agent for more than 51 years, the very least that the Agent could expect was a reasonable explanation of the facts and its consequences.</p> <p>Agent made his own calculations and didn’t continue the TAC proceeding.</p>
<p>May 2010 Rio de Janeiro, Brazil</p>	<p>Agent attempted to seek TAC review in order to be relieved of presenting a bank guarantee, imposed due to a change of ownership. The request was poorly drafted and didn’t comply with Res. 820e requirements. TAC translated for agent the applicable part of Res. 820e as</p>	<p>After TAC’s explanation, Agent decided not to continue with the review, because: (i) a change of ownership did happen in his company, therefore according to Res. 818g he had to present a bank guarantee, as requested by IATA. IATA had given him extra time, though, to fulfill his duty; and (ii) he realized that he had left the time</p>

	<p>well as the TAC web site FAQ's section. TAC had a conference call with Agent, in Portuguese, explaining him his situation.</p>	<p>pass and the timeframe to seek TAC review had expired.</p>
<p>August 2010 Santiago de Chile, Chile</p>	<p>Due to an error, committed by the Agent's accountant (considering an item as a debt when it should have been considered as an asset), the Agent's financial statements for 2009 were declared unsatisfactory by IATA and, therefore a bank guarantee was demanded.</p> <p>Agent sought TAC review requesting to be allowed to present the amended version of the Financial Statements, in order to demonstrate the soundness of the company, as well as the no need of any guarantee.</p>	<p>Once examined the entire evidence provided by Agent and confirming the mistake committed in its accounts, following the spirit of Rule # 7, of the Rules of Practice and Procedures for Area 1, TAC sustained a conference call with IATA Agency Administrator for Area 1 and IATA Chile Country-Manager aiming to reach an agreement. The goal was achieved and IATA accepted to evaluate the amended version of Agent's Financial Statements. As a result of that re-evaluation, the Statements were considered satisfactory and therefore no bank guarantee was requested. The case was solved, consequently, Agent decided to desist the review proceeding.</p>
<p><b><u>PENDING</u></b> September 2010 Viña del Mar, Chile</p>	<p>Agent was imposed with 2 instances of irregularities and a bank guarantee was requested.</p> <p>Agent sought TAC review arguing that the cheque used to pay the remittance's deposit was mistakenly held by the Bank.</p>	<p>TAC conducted the review and, following Rule # 7 of the Rules of Practice and Procedure for Area 1, conducted a conference call with the parties in order to reach an agreement. A preliminary agreement was reached:</p> <p>(i) Agent will have to provide IATA with the necessary bank evidence, demonstrative of the alleged error incurred by the bank;</p> <p>(ii) IATA-Agency Administrator for Area 1 conferred Agent with an extension of time to present the said documentation without having to present the bank guarantee until</p>

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**Sundry**

- A. Agency Administrator informed TAC about an Agent in Panamá City, Panamá, been broke in to by the Police Department, as a result of a Court Order, issued in the course of a criminal investigation for alleged illegal trafficking of Chinese citizens. The case is still pending. TAC has not been contacted by Agent or its lawyers yet.

Section C

**Area 2 Travel Agency Commissioner Decisions**

**Case No 2009:17-18 and No 2010:1-7**

Time & Place

Summary

Decision

<p><b>2009-11-05, UK A2-2009-17</b></p> <p>(Review conducted on the written evidence alone.)</p>	<p>IATA initially required a bond of 430,000.00 GBP to be submitted on the basis that the stand alone Parent Company Accounts showed lack of liquidity. The Applicant then submitted consolidated accounts that passed the financial evaluation. However IATA now found that the credit rating of the Parent Company had dropped. Therefore IATA maintained the requirement for a bond with the new argument that there was a change of ownership during 2008 and at the time of the change of ownership the bond requirement was waived due to the good credit rating of the Parent Company, and now the rating had dropped. The Agent argued that the parent company was a non-trading company with a small liquidity shortfall of 25,600.00 GBP but consolidated (Agent + Parent) the liquidity surplus was 455,562.00 GBP, meaning that the financial criteria were fulfilled. The change of ownership that took place during 2008 was approved unconditionally by IATA. The reason for the down rating of the Parent was that it had stopped trading and therefore the credit agency could not rate it. IATA argued that if a bond had been required due to the change of ownership it would have had to be in place for three years. This means that further to a change of ownership the Agent must meet the criteria (good credit</p>	<p>The TAC granted interlocutory relief in this case. After reviewing the exemption rule for the otherwise required bond at change of ownership included in the local financial criteria the TAC found that the exemption rule only referred to the credit rating of the Agent. As the term "Agent" was clearly distinguished from the term "Parent Company" in the local criteria for the UK, and also defined in the Res 866, the text should be read as it was the rating of the Agent itself that should be evaluated. The Agent showed a credit rating from August 2009 of 100 of 100 and there were no indications that the Agent had failed to meet the required rating "good credit worthiness" at the time of the change of ownership. Consequently the decision to require a bond was revoked. However the TAC found that IATA was able to monitor this for three years after the change of ownership, and should the rating of the Agent drop during this period of time a bond could potentially be required.</p>
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	rating) that waived the request for a bond the same period as a bond would be required, consequently for three years.	
<p><b>2009-12-04, France A2-2009-18</b></p> <p>(The Request for TAC Review was eventually dismissed.)</p>	<p>The Agent was declared in default already in a letter dated 23 Feb 2009, and notified that its Sales Agency Agreement was terminated with effect the 31 March 2009, subject to certain conditions. In a letter dated the 9 Oct 2009 the Agent was informed that it was terminated with immediate effect as it had not settled amounts due as required in the letter of 23 of Feb. The Agent requested TAC Review in an e-mail the 15<sup>th</sup> of Oct. The Agent argued that the initial default decision was incorrect as the late payment was the result of a change of bank that IATA had been informed of but IATA still tried to withdraw the money from the old bank account. When the IATA number was suppressed in Oct 2009 it caused that the railway sales was stopped. Furthermore the Agent argued that it did not get proper information on how to contact the TAC Office at the time of the default. IATA argued that the default decision was correct. The Agent was also informed of that it could apply for another number (TIDS) instead of the suppressed IATA code to enable railway sales, though IATA has no contractual obligation to provide codes for the railway sales system.</p>	<p>The main issue in this case was to determine if the request for review was submitted within the timeframes as stipulated in the Resolutions. The TAC found that the request for review of the default decision/notification could not be granted, as the request was outside the stipulated timeframes, and there were no extraordinary circumstances found that would allow for a review despite the late request. As the default decision was no longer possible to challenge, and the requested guarantee as a consequence of this default decision was not provided by the Agent, the TAC found that there were no potential possibility for the Agent to be successful in a TAC Review of the last decision/notification dated the 9<sup>th</sup> of Oct 2009. (This despite that the notification of Oct 2009 had a factual error stating that amounts were still due when in fact these were already paid.) The Request for TAC Review was therefore dismissed.</p>
<p><b>2010-01-29, Denmark A2-2010-01</b></p> <p>(The request for TAC Review was</p>	<p>The Agent was requested to provide a guarantee of DKK 11 218 000.00 on the basis that the Agent was “non-rated” and therefore did not meet the local financial criteria. Initially the deadline for providing the guarantee</p>	<p>The Danish local financial criteria include two general areas; key figures and credit rating. With regards to the credit rating it is clear that the text stipulates that an Agent must at all-time have a credit rating that exceeds the Dun &amp; Bradstreet “B” rating (or the equivalent rating from another</p>

<p>eventually dismissed)</p>	<p>was the 26<sup>th</sup> of Jan, but IATA extended the deadline, as requested by the Agent until the 15<sup>th</sup> of Feb. The Agent requested review under Res 820e section 1-1.1.10 and a interlocutory relief order. The Agent claimed that the agency was “non-rated” due to the less than satisfactory results of the mother company in 2008. The Agency would be A-rated, but the due to the mother company it was non-rated. The mother company (and the group) was however sold and the new owners injected capital. The rating was therefore no longer relevant and IATA should evaluate the current figures instead of old data.</p>	<p>supplier), if not the Agent has to submit a guarantee. There are no alternative solutions to the guarantee under the local financial criteria. In addition the amount of the guarantee was found to be calculated as laid out in the local criteria. The TAC therefore found that there were no possibilities for the Agent to be successful in a TAC Review based on the arguments presented. The request for review (and thereby also the request for interlocutory relief) was consequently dismissed. The TAC commented in the decision that it would be for the local APJC to discuss if the local financial criteria should be changed, to enable new circumstances to be considered during a financial year (as for example capital injections) as normally credit rating bureaus do not change any rating during financial years.</p>
<p><b>France, 2010-03-25 A2-2010-02</b></p> <p>Hearing was held in Paris the 11<sup>th</sup> of Feb 2010.</p>	<p>The Agent requested review of PAConf decision (R25 at PAConf 32) relating to local financial criteria for France. The decision had two “elements”; one changing the terms of payment from the 17<sup>th</sup> to the 15<sup>th</sup> and the other element related to the financial criteria of Agents in France. The decision was based on an airline proposal to the PAConf.</p> <ul style="list-style-type: none"> <li>- The Agent claimed in essence that the PAConf decision was invalid as the local APJC had not recommended the suggested changes, as stipulated under the Resolution 818 section 2.1.4.</li> <li>- IATA claimed as main argument that the PAConf decision was valid as the text of Res 818 section 2.1.4. only was to be read as the APJC <u>could</u> recommend changes to the financial criteria, but did</li> </ul>	<p>The TAC initially found the she was found empowered, by Res 818 § 4.1.6, to review PAConf decisions at the request of an Agent (subject to certain conditions) and to take corrective action to put matters right, as long as the decision by the TAC considers relevant IATA Resolutions and ensures that appropriate airline prudential requirements are maintained. A TAC decision would formally only apply to the agent requesting TAC Review, and not to the agency community as a whole. However the TAC found that she could only review the matter from the perspective that there was a contract between the Airlines and the Agent that needed to be interpreted in the particular situation; it would consequently be for the parties acting on the basis of the Resolutions to interpret such a decision by the TAC, in light of the IATA framework.</p> <p>After investigating the text, and reflecting on the background of the text, the TAC found that the text of Res 818 2.1.4. did indeed stipulate a mandated procedure whereby the local APJC should recommend to PAConf</p>

	<p>not limit PConf’s possibilities to take decision on airline proposals with regards to financial criteria.</p> <p>The argumentation by the parties were extensive and contained legal arguments as well as arguments relating to the factual circumstances behind the original implementation of the text of Res 818 section 2.1.4.</p>	<p>local criteria in order for them to be applicable at the evaluation of Agents. The effects of this were investigated and the TAC tried to find guidance in the resolutions on how to handle the conflict between the procedural rule and the decision under review. The outcome was that the PConf decision did infringe the rights of the Agent, and did cause grievance in the meaning of Res 818 section 4.1.6. The PConf will potentially have to change the procedural rule before implementing new financial criteria that are not recommended by the APJC. However the decision was seen by the TAC as two separate items; one regarding the payment terms and the other regarding the local criteria. Primarily as the PConf could decide on payment terms without this being recommended by the APJC, the TAC found that this part of the decision should still stand, only the part regarding the financial criteria was declared as not applicable with regards to the Agent.</p>
<p><b>Spain, Portugal, 2010-04-11 A2-2010-03</b></p> <p>(The request for review was eventually dismissed.)</p>	<p>A Group of Companies (“the Group”), four operating in Spain and one in Portugal, were all required to provide guarantees of a total of 20 275 928.00 Euro. The guarantees were requested by IATA as a result of the periodical reviews of the annual accounts (financial year ending 28 Feb 2009). The Group requested review and interlocutory relief, claiming that the companies’ annual accounts fulfilled the ratios of the local financial criteria, thus guarantees should not be required. The Group also submitted a report from PWC dated 10<sup>th</sup> of March 2010. IATA stated that the financial assessment of the annual accounts considered comments from the Group’s own auditors included in the audit reports, whereby the ratios stated in the accounts</p>	<p>The TAC found that the Portuguese company failed to meet the financial criteria of Portugal on two elements, based on its own figures as shown in the annual accounts. The TAC found no need to investigate further as failure to meet only one element would result in as requirement to provide a guarantee.</p> <p>With regards to the Spanish companies the companies own figures of the annual accounts would comply with the criteria. However one of the companies (“the mother company”) was the shareholder (in one case indirectly) of the others. With regards to the “mother company” the auditors had waivers concerning the evaluation of the value of its assets, relating to transactions and guarantees within the group of companies. There were also some doubts from the auditors that the company had included all relevant information in the annual accounts, and this together with the waivers relating to the value of assets, made the auditors unable to express an opinion on the audited accounts. All</p>

	<p>were adjusted.</p>	<p>the other three companies had notes/waivers from its auditors included in the annual statements, with a reference to the waivers of the “mother company” statements. This as all three companies had significant transactions with the “mother company”.</p> <p>The TAC found that though the local criteria did not specifically mention how to handle situations with waivers included in the annual accounts, it did provide for IATA to ask for additional information if the furnished documents were not deemed sufficient. It would also, in the opinion of the TAC, be without logic if IATA would not be able to act on waivers included in the financial statements of an Agent. Based on the information at hand the TAC therefore found that IATA had good cause to assess the financials of the companies without considering the outstanding balances within the group as assets. The Group had not brought forward any evidence of substance that gave reason to question this assessment. (Note that the PWC report dated 10<sup>th</sup> of March submitted by the Group did not provide for any alternative opinion with regards to the previous waivers of the auditors.) The requests for review were therefore dismissed (and the requests for interlocutory relief were consequently also dismissed).</p>
<p><b>Italy, 2010-04-26 A2-2010-04</b></p> <p>(The request for review was eventually dismissed.)</p>	<p>The Agent was provided notice of default and following the financial review the Agent was requested to submit a guarantee of 680 000.00 Euro, based on the average of twelve months of net cash sales previous to default action.</p> <p>The Agent requested review claiming that the required amount of the guarantee was too high considering the actual sales of the agency. A</p>	<p>The TAC found that the Italian local criteria did not contain any rules on the calculation of guarantees, as is the case in most other countries in Europe. However it was not disputed that the rule as described by IATA was based on a decision by the local APJC and the rule was also clearly and regularly communicated to the Agents. As the method could not be seen as unreasonable for the Agent (comparing also with methods in other countries) the TAC found that the method should be applied. In the particular case there were certain periods with no sales, and</p>

	<p>guarantee already provided at the amount of 510 000.00 Euro should suffice. The sales volume had lowered due to different circumstances and the 680 000.00 Euro guarantee was calculated on outdated statistics.</p> <p>IATA claimed that the amount of the guarantee was in accordance with local criteria (approved by APJC prior to changing to Res 818). The method to calculate the guarantee is communicated monthly via the BSP Bulletin, distributed via BSPlink. The established rule is thereby that the financial coverage requirement is 45 days of the actual average previous 12 months of BSP net cash sales. The remittance period is monthly, thus tickets sold in March are to be paid on 15<sup>th</sup> of April.</p>	<p>the TAC found that the twelve month period would have to be calculated based on months with actual sales, consequently a period of time extending twelve months. This however was considered by the TAC as a logical consequence of the rule as projected future risk could not be assessed based on sales volumes a month with no sales. As the Agent had no potential possibility for success in a TAC Review the request for review was consequently dismissed.</p> <p>The TAC however noted that the rule as described should be applied monthly, meaning that the claimed down trading would soon have an effect on the required bond of the Agency in question.</p>
<p><b>South Africa, 2009-06-22 A-2010-05</b></p> <p>(The request for review was eventually dismissed.)</p>	<p>An Airline withdrew the authority of an Agent to issue tickets on its behalf with immediate effect. The Agent requested review of the decision. After communication with the TAC the Airline withdrew the initial decision and made a new decision to terminate the agent, referring to relevant Resolutions stating the reasons for the termination and with effect after more than 30 days. The Agent thereafter requested review of the second notice of termination.</p> <p>The communication in the matter has been extensive, due to vacations the Airline asked for extended response time, which was granted as the Airline agreed to extend the deadline for the Agents termination.</p>	<p>The TAC found, as the burden of proof rests with the Agent, that it had not provided enough substantial evidence of the financial impact of the action by the Airline to fulfill the requisite that its commercial survival was threatened. TAC Review was therefore not granted.</p>

	<p>The Agent claimed that its commercial survival was threatened primarily based on its sales figures at 30-35 percent at the Airline in question. The Airline disputed that the commercial survival of the Agent was threatened, claiming that it could issue tickets from another legal entity within the group but also by challenging the calculations of the Agent in general.</p>	
<p><b>Bulgaria, 2010-07-05 A2-2010-06</b></p> <p>(The request for review was eventually dismissed.)</p>	<p>The Agent initially had general complaints on its bank, which was the same as the IATA BSP clearing bank. After communication it was clarified that the Agent requested review of a notice of irregularity dated the 4<sup>th</sup> of May on the grounds that its bank had not given sufficient service; payments from the Agent's clients had not been processed in time and in addition the Agent could not get proper information from the bank.</p> <p>IATA responded that there was no dispute as to the fact that the amount due was received by IATA <b>too</b> late. The documentation provided by the Agent indicated that the bank might be considered as having provided bad service, but this as commercial bank for the Agent and not in its capacity as BSP Clearing Bank.</p>	<p>The TAC found that the general principle, as reflected in the IATA Resolutions and in the opinion of the TAC, must be that the risk of transfers from clients not appearing on an operating account in time for a remittance normally rests with the Agent. The Agent is the only party able to control its cash flow and lack of such control (even if caused by a third party contracted by the Agent) could not in general terms be at the risk of IATA.</p> <p>The rules for Bona Fide Bank Error limits the effects of certain circumstances related to failures by the bank utilized by the Agent. The rules however require that there is evidence presented that a) sufficient funds either should have been available by some sort of credit arrangement between the bank and the Agent (dated and executed prior to the reporting period involved), b) or that sufficient funds were actually in the Agent's account when payment was initiated by the Agent. – In this matter the TAC could not find that evidence was presented showing that sufficient funds should have been available due to any such arrangement as mentioned in a), or that sufficient funds were actually available at the accounts of the Agent at the date of the remittance as required under b). Potentially other situations may be seen as excusable, on general contractual grounds, such as for example if the effects of a failure are totally unreasonable in proportion to the failure by one party to perform,</p>

		<p>but the TAC could not find that there were evidence for any such circumstances presented in the matter.</p> <p>The request for TAC Review was consequently dismissed.</p>
<p><b>Bulgaria, 2010-08-01 A2-2010-07</b></p> <p>(The review was conducted on the written evidence alone.)</p>	<p>The Agent requested review of a Notice of Irregularity (recorded as two instances of irregularity) sent due to late payment. IATA also charged an administrative fee of 200 BGN.</p> <p>The Agent claimed that the late payment was due to an error by its bank. It also provided a translated document from its bank whereby the bank confirmed that the late payment was due to an error by the bank. The Agent also provided copies of two payment orders.</p> <p>IATA did not challenge the factual circumstances based on the documents provided by the Agent and left to the TAC to decide if the Bona Fide Bank Error rules were to be applied. IATA stated that the late payment did cause IATA certain costs with regards to the overdraft utilized to settle the payments to the airlines.</p>	<p>The TAC found that there were no dispute with regards to the fact that the payment due was not paid fully in time. It was possible to establish that the failure to pay in time was due to an error by the bank. There was furthermore no dispute that sufficient funds were available at the account of the Agent at the time when the payment order was made. Based on these facts a bona fide bank error as provided for in the resolutions was established, and the Notice of Irregularity dated the 1st of June 2010 should therefore be rescinded.</p> <p>The Administrative Fee was also challenged by the Applicant. The TAC was able to establish that the fee was duly incorporated in the BSP Manual for Bulgaria in accordance with the resolutions.</p> <p>The TAC found that the general principle, as reflected in the IATA Resolutions and in accordance with principles recognized in most jurisdictions, is that the risk of late payments rests with the payer (the Agent). The Agent is the party able to control its payments and failures to pay in time, even if caused by a third party contracted by the Agent, could not in general terms be at the risk of IATA. However the rules of bona fide bank error are there to limit the effects of late payments in certain situations related to failures by the bank utilized by the Agent. - The TAC noted that it is the interpretation of the TAC that these rules are implemented to avoid disproportionate effects when an Agent, despite the late payment, has acted with proper care and used what normally should be reliable methods for payment.</p> <p>The rule regarding the consequences of</p>

		<p>bona fide bank is however quite clear that it is the Notice of Irregularity that should be rescinded, and there is no mentioning of waiving fees or costs. An Administrative Fee is in general terms there to cover costs for administration in a specific situation. At late payment by an Agent there will no doubt be certain costs for administration as manual intervention will be required. The fee is as mentioned duly incorporated in the BSP Manual for Bulgaria and it cannot be seen as disproportionate in this particular case. The TAC therefore found that there were no grounds in the IATA Resolutions, or elsewhere, to waive the Administrative Fee in the case.</p> <p>The TAC however noted that IATA could not charge the Agent with additional costs after the TAC Review. Any additional costs incurred should have been communicated and charged to the Agent when known by IATA, or at the latest such costs should have been specified before the TAC in the review.</p> <p>In summary the Notice of Irregularity was revoked, but not the administrative fee.</p>
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Section D:

**Area 2 Travel Agency Commissioner**

**Matters brought to the Commissioner that did not give rise to a formal decision**

The period 15 Sept 2009 until 6 Sept 2010 (phone calls and simple e-mails are not part of this list.)

15 Sept - Agent asked for assistance in an ADM/ACM dispute. TAC explained the limitations of the TAC mandate with regards to individual ADM disputes; however the airline in question was sent the correspondence as the Agent had not been able to get a proper response. - IATA had already lifted the initial ADM out of the BSP Billing but the airline had issued a new second ADM for the same matter and this second ADM was not disputed in time. - The airline never responded.

15 Sept - Agent asked for assistance in a matter relating to the amount of an ADM, as the Agent found it excessive. TAC explained the limitations of the TAC mandate with

regards to individual ADM disputes. The Agent was recommended to discuss the matter with its agency association.

21 Sept – Agent requested review of notice of irregularity as the late payment was due to a banking error (evidence was presented). As it was unclear if IATA had actually seen the evidence from the bank the TAC recommended that IATA first should review the situation before any TAC Review was initiated. - IATA did review the new documentation and the notice of irregularity was withdrawn.

21 Sept – An Agent claiming more or less the same circumstances as in the matter above (same country) was recommended to contact IATA directly to have them review the situation. The Agent never reverted back to the TAC.

11 Oct – An Agent asked for assistance in an ADM dispute; the Agent claimed that it had agreed with local representatives of the airline that the ADM was wrong. However the airline rejected the Agency's dispute of the ADM, and still requested payment. - TAC explained the limitations of the TAC mandate with regards to individual ADM disputes.

13 Oct – An IATA representative kindly assisted an Agent and sent a matter with extensive documentation to the TAC. The matter however was a dispute with an individual airline concerning refunds. The TAC could only explain the limitations of the TAC mandate with regards to individual airline- agent disputes.

27 Oct – An Agent requested assistance in a dispute with an airline relating to refunds. The Agent was unable to get any response from the airline. The TAC could only explain the limitations of the TAC mandate with regards to individual airline- agent disputes. After some additional questions the TAC further explained how to avoid a disputed ADM being processed via BSP Billing.

5 Nov – An Agent requested TAC Review, and the request was supported by IATA, as the parties were trying to find a solution out of court. The TAC held a meeting and the parties reached an agreement at the table, after long hours of negotiations, subject however to approval from other stakeholders. Regretfully one of the parties involved was not able to get approval from the other stakeholders on the terms agreed, and proposed a new settlement by e-mail. No agreement could be reached on the suggested terms and the Agent decided to withdraw its request for TAC Review.

19 Nov – A General Sales Agent asked for assistance as its General Sales Agency Agreement was terminated by the airline. After investigating the resolutions the TAC found that it is not within the mandate of the TAC to review contractual disputes between an airline and a General Sales Agent. The Agent was informed of this and asked to revert back if any of the circumstances were not correctly understood by the TAC. The Agent did not revert back.

24 Nov – An Agent requested assistance in matter concerning ADMs, were the airline had rejected the Agent's dispute of the ADMs. The Agent had documentary evidence to support its position, but was unable to get a response from the airline. The TAC could only explain the limitations of the TAC mandate with regards to individual airline- agent disputes. The TAC further explained how to avoid a disputed ADM being processed via BSP Billing.

24 Nov – An Agent had been advised by IATA to contact the TAC in an ADM dispute. The TAC could only explain the limitations of the TAC mandate with regards to individual airline- agent disputes. The TAC further explained how to avoid a disputed

ADM being processed via BSP Billing.

1 Dec – An applicant for IATA accreditation asked for assistance. After some correspondence with IATA it was clarified that no decision was yet made by IATA. As there was no formal decision by IATA to dispute, the matter was closed and the Agent was informed of that he could request a TAC Review once the decision was made by IATA, if the decision was not to his satisfaction.

3 Dec – An agency association sent an e-mail with regards to the applicant in the above matter, as it had some serious concerns relating to the applicant. The TAC explained that it could not act on requests by agency association but recommended that any information or documents of interest in the matter should be sent directly to IATA. It would thereafter be for IATA to decide how to handle the information.

11 Dec – An Agent informed the TAC of a situation where ADMs had been lifted out of the BSP Billing but the airline still required payment and threatened to withdraw the ticketing authority of the airline. The TAC explained the limitations of the TAC mandate with regards to individual airline - agent disputes.

11 Dec - An Agent asked for assistance in an ADM matter as it was not able to get in contact with the airline in question. The TAC could only explain the limitations of the TAC mandate with regards to individual airline- agent disputes. The TAC further explained how to avoid a disputed ADM being processed via BSP Billing.

14 Dec – An Agent asked for assistance in a matter that seemed to relate to ADMs. The TAC explained the limitations of the TAC mandate with regards to individual airline - agent disputes and asked the Agent to revert back if something was not clear. The Agent never responded.

15 Dec – An Agent asked the TAC to be referee in an ADM dispute with an airline. The TAC explained that the airline and the agent need to agree to appoint the TAC as referee (Res 850m section 4.10) and that the Agent could ask the airline to agree to this. The Agent never reverted back.

6 Jan - An airline asked for assistance in a dispute with an agent (ADM's were involved also) and wanted the TAC to act as arbitrator and solve the dispute in its favour. The TAC explained that the airline and the agent need to agree to appoint the TAC as referee (Res 850m section 4.10) and that the airline could ask the agent to agree to this. The TAC further explained the basic principles of such a procedure. The airline never reverted back.

15 Jan – An Agent had an issue with an ADM. The TAC explained the limitations of the TAC mandate with regards to individual airline with cc to the airline to try to ensure the matter was at least known. The airline responded and the matter was to be re-examined. - The Agent did not revert back on the same issue.

2 Feb – An Agent asked for assistance to get a refund from an airline. The TAC explained the limitations of the TAC mandate with regards to individual airline- agent disputes and asked the Agent to revert back if something was not clear. The Agent never responded.

4 Feb – An Agent requested review of an airline's decision to terminate its appointment. The material provided was quite extensive. After some correspondence with the Airline and the Agent it was clear that the airline was open to a solution, but had a valid request as it wanted the Agent to comply with certain requirements with

regards to information to the travellers. After some further discussions via the lawyer of the Agent a practical solution was found, that both parties found acceptable. The case was closed.

5 Feb - An Agent asked for assistance in an ADM matter. The TAC could only explain the limitations of the TAC mandate with regards to individual airline- agent disputes. The TAC further explained how to avoid a disputed ADM being processed via BSP Billing.

23 Feb –An Agent asked for assistance in a matter that was originally an ADM dispute, but the ADM was lifted out of the BSP as the ADM was issued to late. The airline however instead sent an invoice that the Agent felt it had to pay. The TAC could only explain the limitations of the TAC mandate with regards to individual airline- agent disputes.

25 Feb - An Agent asked for assistance in an ADM matter. The TAC could only explain the limitations of the TAC mandate with regards to individual airline- agent disputes. The TAC further explained how to avoid a disputed ADM being processed via BSP Billing.

9 March - An Agent asked the TAC to be referee in an ADM dispute with an airline. The TAC explained that the airline and the agent need to agree to appoint the TAC as referee (Res 850m section 4.10) and that the Agent could ask the airline to agree to this. The Agent never reverted back.

21 March – An Agent asked for assistance as it had been suspended as IATA Agent due to lack of payment of annual fees, though the Agent claimed it had actually paid. The Agent was recommended by the TAC to contact its bank and try to get some sort of evidence of the payment, and send copies directly to IATA. The Agent did so and the matter was sorted out directly with IATA.

26 March - An Agent asked for assistance in an ADM matter. The TAC could only explain the limitations of the TAC mandate with regards to individual airline- agent disputes. The TAC further explained how to avoid a disputed ADM being processed via BSP Billing.

26 March – An Agent requested assistance in matter claiming its Passenger Sales Agency Agreement was terminated. After correspondence with local IATA it became evident that this was not the case, though the Agent had not provided a guarantee as required. IATA and the Agent were to sort out the situation, and try to find a solution. The matter was closed for the time being, and the Agent did not come back to the TAC.

22 April – An Agent thought it was suspended due to lack of payment of a guarantee. The Agent claimed that it had never received the request to provide a guarantee. After some correspondence with IATA it was clarified that the Agent was never declared in default, but under review. IATA sent a communication to all airlines requesting ticketing authority to be reinstated due to an administrative error. The Agent was satisfied with this outcome.

29 April – An Agent requested TAC Review as it had been requested to submit a bond after the annual financial review (based on the local financial criteria for the UK). The Agent had submitted annual accounts for its agency and its parent (non-trading holding company), but the Agent had not presented the accounts consolidated, and seen as two separate companies the parent did not pass the criteria. The TAC asked the Agent to send to IATA its consolidated accounts whereby the matter was sorted out. (The UK financial criteria are clear that with regards to the parent company it is the

consolidated accounts that shall be evaluated.)

5 May - An Agent asked for assistance in an ADM matter. The TAC explained the limitations of the TAC mandate with regards to individual airline- agent disputes. The TAC further explained how to avoid a disputed ADM being processed via BSP Billing.

5 May - An Agent requested assistance as he had been requested to provide an increased guarantee and was unable to understand why as no explanation was provided in the letter requesting the guarantee. The Agent further claimed that he could not get in contact with the IATA Office by phone. The Country Manager of the area responded and the Agent was, after submitting his latest annual accounts, relieved of the obligation to increase the guarantee. The case was thereby closed.

14 June - An Agent asked for assistance in an ADM matter. The TAC explained the limitations of the TAC mandate with regards to individual airline- agent disputes. The TAC further explained how to avoid a disputed ADM being processed via BSP Billing.

16 June – An Agent requested review of a default decision. The Agent had short paid an amount due by 0.086 Euro (total amount approx. 400 000.00 Euro). The Agent was primarily concerned that the ticketing authority was not reactivated immediately after providing guarantees etc. After some correspondence with IATA the ticketing authority was reactivated as all requirements were fulfilled, and later also the notice of irregularity/default was revoked by the IATA Agency Administrator, on an exceptional basis. The Agent asked for direct debit to be implemented in his country to avoid situations like this, and IATA undertook to investigate this. The case was closed.

14 June - An Agent asked for assistance in a dispute with an airline regarding fare rules. The TAC explained the limitations of the TAC mandate with regards to individual airline- agent disputes.

1 July – An Agent asked for advice in a potential dispute with an airline relating to commission. The TAC explained the limitations of the TAC mandate with regards to individual airline- agent disputes.

7 July – An Agency Association asked for assistance for one of its members relating to an ADM. The TAC explained the limitations of the TAC mandate with regards to individual airline- agent disputes. The TAC further explained that the TAC may be a referee if both parties agree to this, and how to avoid a disputed ADM being processed via BSP Billing.

26 July – An Agent asked for assistance in a dispute regarding ADMs. The TAC explained the limitations of the TAC mandate with regards to individual airline- agent disputes. The TAC further explained that the TAC may be a referee if both parties agree to this, and how to avoid a disputed ADM being processed via BSP Billing.

2 Aug – An Agent asked for assistance to be reconnected to the BSP. By an attached copy of a bank document it seemed like the Agent's bank had erroneously (due to technical reasons) sent a payment too late. As it was unclear if the IATA Office had actually seen this document it was sent to IATA by the TAC. The Agent was reconnected and thereafter withdrew its complaint to the TAC. The matter was closed.

5 Aug – An Airline asked for assistance in a matter where an Agent had allegedly performed booking and ticketing malpractices resulting in several ADMs. The ticketing authority for the Agent to issue tickets on behalf of the Airline had also been withdrawn. The Airline wanted the TAC to act as mediator in the matter. The TAC

explained the limitations with regards to the TAC mandate 1) that an Airline may not directly request a review, it has to be initiated via the Agency Administrator 2) that the TAC may be appointed referee in ADM disputes only if the parties agree. The Airline was asked to revert back if it had additional questions, but it never did.

16 Aug – An Agent asked for assistance as he urgently needed his accreditation letter and claimed that IATA had promised to deliver but not done so. After contacting the local IATA Office the matter was sorted out.

24 Aug – An Agent asked for assistance as his application for accreditation was denied and he claimed not to understand why. After some communication with IATA it was clarified that the denial of accreditation was due to certain documents not being presented in an electronic format possible to open by IATA, and after reminders the application file was simply closed. IATA stated that it would however potentially use the on-site inspection already performed, if a new application was sent quickly, with the full documentation attached. The Agent was satisfied with this solution and the matter was closed.

25 Aug – An Agent, via its law firm, contacted the TAC in order to get a response from an airline in a dispute relating to ADMs. The Agent also wanted a response to its proposal to appoint the TAC as referee, if the parties could not agree themselves. After several reminders (first e-mail sent 11<sup>th</sup> of June) the airline responded. The matter was consequently closed (only to be re-opened if requested by both parties to appoint the TAC as referee).

Section E:

**Area 3 Travel Agency Commissioner Review Decisions - 2009 / 2010**

<u>Time &amp; Place</u>	<u>Summary</u>	<u>Decision</u>
<p>25 November 2009</p> <p>Dera Ghazi Khan, Pakistan</p> <p>(Review conducted on the documentary evidence alone)</p> <p>2009-11-25</p>	<p>The Agent received 2 instances of irregularity (IRR) as a consequence of failing to provide audited financial accounts by 20 October 2009. IATA had requested same by an 11 August 2009 letter which the Agent claimed not to have received. A Review was sought under the “Agency Administrator has not followed correct procedure ... to that Agent’s direct and serious detriment” clause of Resolution 820e as the Agent felt that the imposition of the 2 IRR’s was unfair.</p> <p>In the subject letter IATA had given the recipients 3 months to comply and the facility of a time extension for a fee should that be needed and advice that failure to submit by deadline date would incur 2 IRR’s. The Agent noticed the requirement on 16 October 2009 via a BSP-Link reminder and commenced preparation of the accounts. However it claimed that other Agents in the same situation had not been penalised. Also IATA had not taken account of the five weeks from 23 August 2009 until 30 September 2009 which was the Muslim period for fasting which was followed by a week of holidays. IATA advised that an Agency staff member had signed for the registered letter on 19 August 2009 and evidence thereof was provided.</p>	<p>The Agent clearly received the IATA letter calling for accounts submission by 20 October 2009. Even if this had not reached the right people within the Agency, the BSP-Link reminder which ran for over two months should have alerted management to take action. If lack of preparation time was an issue a fee could have been paid to gain an extension.</p> <p>The Agent’s suggestion that the Muslim period of fasting should have been considered by IATA seems spurious as presumably businesses were still active during this period.</p> <p>The imposition of 2 IRR’s by IATA was upheld. The Agent had sufficient options at its disposal to have avoided that outcome but failed to act in time.</p>

	<p>The same information appeared on BSP-Link on 12 August 2009 for 2 months and was uploaded again. The other Agents cited as also being late and not penalised were in the case of 2 of them newly accredited and therefore not required to comply on this occasion, and the other Agent was going through a change of ownership and hence needed more time.</p>	
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<u>Time &amp; Place</u>	<u>Summary</u>	<u>Decision</u>
<p>23 December 2009</p> <p>Hyderabad, India</p> <p>(Review conducted on the documentary evidence alone).</p> <p>2009-12-23A</p>	<p>At the request of a Member the Agency Administrator sought a review of an Agent under paragraph 1.3.11 of Resolution 820e. The Agent had, over a protracted period, issued the carrier's tickets with a lower fuel surcharge amount (YQ) than that generated by the Member's auto ticketing system. On being ADM'ed by the carrier the Agent would use the Billing Dispute Report (BDR) facility unique to BSP-India to neutralise the ADM amount. The BDR facility was introduced to cover genuine billing discrepancies only. The total amount at stake via the ADM process was INR 20,725,398 (some USD \$445,000). The Agent objected to paying the ADM's as the Member had failed to supply it with the ticket facsimiles that made up the ADM's so that it could check the accuracy of the individual alleged short-collections. The Member had supplied a list of transactions which detailed the issue period, ticket number, the YQ amount shown on the ticket, the YQ amount generated by the carrier's auto ticketing system and the short collection incurred. The Agent claimed that it had not adjusted the YQ amounts and that it must have been a system fault.</p>	<p>The Agent was found to be in breach of paragraph 3.2 of Resolution 824 - Passenger Sales Agency Agreement viz not abiding by the carrier's tariff and was suspended in accordance with paragraphs 3.3.2 and 3.3.7 of Resolution 820e by having its ticketing authority withdrawn immediately.</p> <p>The ADM'ed amount, less any amount withheld by the Member in the course of the Agent's payment to the carrier for increased sales capping levels, to be repaid to the Member within 90 days from the date of the Review. Failure to do so causing termination of its Passenger Sales Agency Agreement.</p> <p>Any further abuse of the BDR facility would be justification for removal from the Agency List. The Agent could have side-lined the ADM's by using the "Disputed Agency Debit Memo" mechanism available in Resolution 832 but chose not to do so but opted to abuse the BDR facility instead.</p>

<p>13 January 2010</p> <p>Kolkata, India</p> <p>(Review conducted on the documentary evidence alone)</p> <p>2010-01-13</p>	<p>An Agent operating as a sole proprietor, in light of soft trading conditions, decided to change its legal status to that of a Private Limited Liability entity and a company in that form was registered in March 2009. The Agent advised the Agency Administrator of that change in December 2009 and as no Passenger Sales Agency Agreement existed with the new entity and no advance notification had been given to IATA, the Agent had to be removed from the Agency List with immediate effect.</p> <p>On receiving this advice, the Agent sought a Review under paragraph 1.1.5 of Resolution 820e. In its submission the Agent stated that it was still operating as a sole proprietorship, its bank account was unchanged, its cheques were in the former name as was its lease agreement with its landlord. The Agent regretted not being more specific in its advice to IATA when notifying of the change.</p> <p>The Agency Administrators only course of action was quite clear, i.e. no PSAA existed with the entity advised by the Agent, hence immediate removal of accreditation was required.</p>	<p>This situation had been brought about by the Agent's lack of detailed information in its December 2009 letter to IATA. The intention had been to seek advice on how to go about the change of its legal status.</p> <p>The Agent was covered by adequate bank guarantees up to 31 December 2010. The Agency Administrator must re-instate the Agent subject to being satisfied with:-</p> <ol style="list-style-type: none"> <li>1. A certified bank statement up to 22 December 2009.</li> <li>2. A current business licence in the name of the sole proprietorship.</li> <li>3. Audited statement of accounts for the period from 1 April 2009 to 30 November 2009.</li> <li>4. A notarised current valid lease agreement where the Agency is located.</li> </ol>
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Time & Place

Summary

Decision

<p>12 May 2010</p> <p>Chennai, India</p> <p>(Review conducted on the documentary evidence alone)</p>	<p>There is a great amount of detail associated with this case, however it can be distilled to the core issue of the Agent disputing the financial criteria formula applied by IATA which resulted in the Agent being required to provide a bank guarantee. The Agent's assertion was that by applying only the formula published in the Travel Agent's Handbook (TAH) no guarantee would have been needed. A Notice of Termination was issued by the Agency Administrator but was averted at the 11<sup>th</sup> hour by the Agent providing the required level of bank guarantee. Firm in its conviction however, the Agent made a request for Review under paragraph 1.1.10 of Resolution 820e. A key element in this dispute was the language in Resolution 800f which stated:-</p> <p>"It is resolved that the following Agent financial evaluation criteria be applied as the baseline for establishment and/or review of the local criteria in all markets, SUBJECT TO ANY LOCAL CONDITIONS THAT MAY APPLY."</p> <p>The APJC - India had been negotiating a new financial criteria for some considerable time and in the meantime PConf had determined that the criteria followed by AIP9 for the past several years should be the guiding principle. This formula simply stated:-</p> <p>"(a) Paid up Capital plus Reserves and Surplus less net Fixed Assets</p> <p>(b) Resulting figure is weighed against average four weeks sales productivity and any shortfall is recommended to be covered either by the</p>	<p>In investigating the elements involved in this case, a critical matter is that PConf-29 convened in 2006 which decided on the Resolution 800f transformation stated that "the criteria laid down in Resolution 800f be mandated for all countries THAT HAVE NOT YET DEVELOPED THEIR OWN CRITERIA." PConf had previously indicated that the AIP9 criteria should be applied and this situation must have been frustrating to some parties during the years consumed by the APJC-India in settling on a new set of financial criteria, as a consequence the non-transparent formula applied by the Financial Assessor had come about.</p> <p>Clearly this non-mandated formula was wrong and IATA was required to promptly conduct a financial evaluation applying only the formula in the Travel Agent's Handbook.</p>
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2010-15-12	<p>increase in paid up capital or by submission of a bank guarantee.”</p> <p>From 1 January 2007 Resolution 800f was transformed from being a permissive set of conditions to being a mandatory test for the establishment and/or review of the local financial criteria in all markets, subject to any local conditions that may apply. IATA had interpreted this transformation of Resolution 800f as being an overlay to the existing local criteria for India described above and allowed the Financial Assessor to use elements of both when evaluating the financial status of an Agent.</p>	
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Time & PlaceSummaryDecision

<p>26 August 2010</p> <p>Chennai, India</p> <p>(Review conducted on the documentary evidence alone)</p> <p>2010-08-26</p>	<p>This request for Review stems from the Agent being issued with a Notice of Termination (NOT) by the Agency Administrator for failing to pay an invoice related to the Agent's change of legal status application. The Agent had paid an amount early in the process and was unsure as to whether a second IATA invoice was a duplicate or an additional fee. Seeking to determine the nature of the subject invoice from IATA over a protracted period, the Agent was shocked to be advised by two carriers of their withdrawal of ticketing authority due to their being advised by IATA of the issuance of the NOT. At that stage the Agent had not received the airmailed NOT (it was received 6 days after its despatch) and contacted IATA for an explanation. IATA advised that it had answered the Agent's query in a 9 April 2010 email which confirmed that the invoice was for a separate charge. The Agent had not sighted this response and was waiting for an answer at the time the NOT was issued. Having belatedly received an answer the Agent arranged payment thus avoiding the termination action. However the Agent felt that the Agency Administrator had not acted in accordance with the applicable Resolutions and a Review under paragraph 1.1.10 of Resolution 820e was requested.</p>	<p>The nub of this issue is the critical 9 April 2010 email from IATA to the Agent which explained the charging regime associated with the application for a change of legal status. IATA had sent it and evidence thereof exists but the Agent was equally certain that it had not been sighted. Faced with these positions the decision was to agree that the NOT issuance was justified but there was a flaw in the system where airlines are aware of a NOT issuance before the affected agent is. That must be rectified. Also it would be customer friendly for an Agent to be advised of the charges associated with a change application as soon as practicable in the process.</p>
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Section F:

**Area 3 Travel Agency Commissioner - Matters that did not give rise to a Review - 2009 / 2010**

<u>Time &amp; Place</u>	<u>Incident</u>	<u>Outcome</u>
6 January 2010  Patiala, India	<p>The Agent accumulated 4 instances of irregularity within a 12 month period and was declared in default by the Agency Administrator on 30 June 2009. The Agent entered into a re-payment schedule agreement and paid 50 percent of the owed amount with remaining payments spread over 6 months.</p> <p>The Agent failed to make full payment of the October 2009 instalment and was consequently terminated. The Agent sought a Review under paragraph 1.1.10 of Resolution 820e.</p>	<p>On examination of the facts, it was determined that the Agency Administrator had acted in full compliance with the applicable Resolutions and the request for Review was dismissed.</p>
29 July 2010  India	<p>Twenty six India based agents individually sought a review, under paragraph 1.1.8 of Resolution 820e, of the decision taken by a Member airline to revoke their ticketing authority due to the level of sales generated by the Agent. An invitation was extended to the Agent that should there be a significant increase in sales of the Members' services they would be glad to review ticketing authority. All the agents used the same base document as their vehicle for seeking a review. The Agents advised that the Member airline had partnered with a few contracted Agents and claimed that this action affected healthy competition amongst agents. They also requested IATA to intervene in the matter. Sales on the Member ranged between 3.54% and 11.99%</p>	<p>The request for Review was dismissed. In the Principle/Agent relationship the Member has the right to determine the manner in which it distributes its product. The level of sales on this Member's services advised by the Agents was not considered sizeable enough to threaten their individual commercial survival. The Agents concerned are still able to acquire the Member's tickets and as no income is derived from the carrier the revenue stream from the customer remains.</p>

	of total sales over a 9 month period.	
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10 August 2010  Guwa Hati, India	<p>The Agent defaulted on 16 April 2010 and opted for a re-payment schedule agreement with IATA. Fifty percent of the outstanding amount was paid on 17 May 2010. On 4 June the signed re-payment agreement was received by IATA. The Agent failed to pay the first instalment due 25 June 2010 and was terminated 1 July 2010.</p> <p>On 14 July 2010 the Agent repaid the total outstanding amount. The Agent sought re-instatement in light of the settlement of its debt.</p>	<p>The suggestion was made that the Agency Administrator could review the Agent under paragraph 3.3 of Resolution 832. This was agreed and the Agent would be re-instated subject to a satisfactory financial review, a bank guarantee amount tendered and all relevant fees paid.</p>
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3 August 2010  Delhi, India	<p>On 30 July an Agent with 13 locations in India sought assistance in having IATA waive the need for a bank guarantee as they were a government owned entity. They had traded without such a guarantee since their inception. A PAConf endorsed revised financial criteria became effective from 1 June 2010 and required all Agents to have a bank guarantee or be in a default insurance programme.</p>	<p>Further explanatory exchanges with the Agent and a modest time extension to put the bank guarantee in place resolved the matter.</p>
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18 August 2010	<p>The Agent defaulted and was issued with a Notice of Termination with the option of entering into a re-payment schedule agreement to avoid dis-</p>	<p>In light of the Agent fulfilling its commitment save for a single day and the fact that a bank guarantee was held, but would be reviewed for adequacy, steps were taken to</p>
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Mumbai, India	accreditation. The Agent re-paid in excess of 50 percent requirement and forwarded a further cheque which was dishonoured. The Agent was given a deadline to settle the total outstandings failing which immediate termination would occur. The Agent paid the outstanding amount but missed the deadline by one day. The Agent sought reinstatement.	reinstate the Agent.
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**Sundry**

- A. Two requests for Review were dismissed as the applications were well outside the 30 day time limit.
  
- B. Two cases were declined as they involved commercial disputes with carriers.
  
- C. Request for further information from one Agent remained unanswered despite prompting and consequently no case eventuated.