

Travel Agency Commissioner – Area 2

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“Correction” Decision 07 May, 2016 regarding interpretation of LFC- EAF

Applicants: Travel Affairs LTD, Travelshoppe Company Ltd and Uniglobe Fleet Travel Ltd vs.
Respondent: IATA – Kenya

A decision regarding the LFC for Kenya, (part of “LFC-EAF” - East Africa – Kenya, Uganda and Tanzania) was rendered by this Office on 07 May, 2016.

The Respondent, represented by Ms Dania Al Abbadi, Manager IATA Agency Management for Africa and Middle East, on 08 May, 2016 exercised its right in accordance with Resolution 820e, §2.10 for a “correction” of the Decision. This request was timely done and accepted by This Office.

Mr Shazmin Manji (CEO – KATA) representing the 3 Applicants affected by the above decision, and presumably 4 more IATA Accredited Agents in Kenya, approached this Office on 14 July 2016 asking this Office to enforce the above Decision.

Before responding to the 2 requests above I would like to apologize for the time it has taken to make this final ruling due to unexpected heavy workload and also due to extra “background” material requested to be able to reach this conclusion.

The core of the dispute in brief:

In October 2014, The 37th Passenger Agency Conference (“PACConf”) adopted a resolution about the change in remittance frequency in Kenya from Monthly to Bi-Monthly with effect from January 2016. Best of this Commissioner’s understanding the deadline has been put forward to 01 September 2016.

According to KATA the 37th PACConf Decision was “lacking due process” mainly because it did not consider all elements which were still under discussion by the APJC and FAG in Kenya.

The issue disputed is if Agents, having traded for over 15 years without default or irregularities and meet all the requirements for Guarantee Reduction (“GR”) specified in § 5 of the LFC-EAF, should be entitled to 80% discount on the amount of BG that they are asked to provide.

IATA Risk Management is demanding a BG which is calculated without allowing the 80% discount since the discount would not apply in a situation where agents pay Bi-Monthly.

Obviously this topic has been discussed by KATA and IATA at least since October 2014 and should have been clarified by the Parties themselves.

The Decision rendered on 07 May, 2016 was “solely” based on the wordings in the current LFC-EAF giving the Applicants preference when interpreting “unclear or contradicting” §§ in the LFC-EAF.

The Passenger Sales Agency Agreement (PSAA) is **signed by independent Agents** where the LFC-EAF is an integral part of that agreement. It **has to be clear to each Agent** since not all Agents are members of KATA or any other Associations. Consequently, **the onus lies solely on the Respondent to have clear wordings in the LFC-EAF.**

LFC-EAF §4 (b) states: “Options for all agents will be frequent remittance for a reduction of 40% of the guarantee”.

What does “frequent remittance” mean? Does it mean if an Agent moves from Monthly to Bi-Monthly or from Bi-Monthly to weekly? Or from Weekly to even more frequent remittance?

Understandably and as “interpreted” by IATA this would mean that an **additional** 40% reduction would be allowed “**each time**” an Agent moves to more frequent (from the previous they had) remittance.

It can also be understood that in this lies an element of “voluntary” movement to more frequent remittance, which is NOT the case when there is a change in the LFC.

Main “contradicting / lack of clarity” being the chart in §5 (g): “**Reduction of Guarantee**” clearly allowing Agents with 15 or more years in business the 80% reduction.

This is “contradicted” by that very same chart where **in parentheses**, “illustrating” the chart, it is mentioned that this applies for “Monthly Remittance”.

As stated in the Decision rendered 07 May, 2016:

*“THE ONLY reference is “monthly statement” in the current LFC chart. **This absents of clarity does**, according to This Commissioner, **NOT nullify all other wordings** in §4 and §5 of the LFC.*

*LFC §5 (a) – (h) does clarify the possibility of reduction and **there is no mentioning this should only apply for Monthly Remittance.***

Considerations have also been made to a statement by the Applicants that this very “chart” has been used when allowing reduction in Tanzania **even after implementation of Bi-Weekly Remittance**. This has not been refuted by the Respondent.

I have tried to find some “clarity” in the Minutes of the APJC and FAG meetings held 2015 and 2016. The latest FAG meeting 20 May, 2016 **i.e. 2 weeks after** the formal Decision including the “TAC’s suggestion” to bring this issue to the next possible APJC or FAG meeting, **did NOT address this issue.**

To find clarity on this issue is as much the responsibility of KATA as of IATA, and unfortunately a “clarification” of the possibility of reductions of BG is not reflected in the minutes of “Item 4” of the FAG meeting held on 20 May, 2016.

Considerations leading to conclusion/ decision.

The move from Monthly to Bi-Monthly Remittance has been accepted by the Parties and adopted by PAConf.

As can be understood from the underlying documents, a vast majority of Agents covered by LFC-EAF have benefitted from this change.

I do acknowledge the “logic” behind The Respondent’s interpretation but it is obvious that the LFC-EAF needs to be clarified **to protect individual Agents’ rights for clarity.**

This dissent has been ongoing almost for 2 years so no Party can claim “ignorance” of the issue and thus (best of my understanding) the 6-8 Agents who suffer from this change have been duly “alerted”.

The change is effective as of 01 September,2016 and due to lack of clarity in the current LFC-EAF I deem, unless IATA sees risk for prejudiced collection of funds, **that an additional 6 months is allowed for these 6-8 Agents to provide the enhanced level of BG.** (Deadline 01 March, 2017)

The coming 7 months will allow both KATA and The Respondent to finally bring this issue to PAConf or to a clarifying mail vote and make the necessary changes in the LFC-EAF.

Decided in Stockholm on 28 July, 2016

Andreas Körösi
Travel Agency Commissioner