

**TRAVEL AGENCY COMMISSIONER**  
**AREA 1 – DEPUTY TAC 2**  
*VERÓNICA PACHECO-SANFUENTES*  
110 – 3083 West 4<sup>th</sup> Avenue  
Vancouver, British Columbia V6K 1R5  
CANADA

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**DECISION – 27 June 2016**

(Clarification to follow)

**In the matter of:**

**Afric Voyages**

IATA Code 39-2 0254

Avenue Chardy

Galérie marchande Nour Al Hayat

Abidjan 01, République du Côte d’Ivoire

Represented by its Director, Madame Marie-Reine Koné

**The Applicant**

*vs.*

**International Air Transport Association (“IATA”)**

King Abdallah II Street, Al Shaab roundabout

Business Park, Building GH8

P.O. Box 940587

Amman 11194, Jordan

Represented by the Assistant Manager & Deputy Manager

Agency Management Africa & Middle East, Ms. Christine

Hazboun

**The Respondent**

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**I. The Case**

This case was about the need for the Applicant to submit a bank guarantee (“BG”) in order to comply with the mandatory requirement for all Agents in Côte d’Ivoire, allowing them to operate in the BSP. This BG is to be submitted as a result of every Agent’s annual financial evaluation.

The Applicant requested this Office’s intervention in order to get explanations from the Respondent concerning some aspects of the BG calculation. The Applicant was also contesting the time frame required from her to submit the referred instrument.

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### III. Facts and Background

The Parties had substantially different views concerning the BG submission. The relevant facts are as follow:

- In light of the provisions set out in Resolution 818g, Section 2, particularly §§ 2.2 and 2.2.1.1, the Respondent is mandated to undertake, at least annually, Agents' financial evaluations worldwide which, depending on the results of the assessments, can lead to requests for financial securities, in the case of Côte d'Ivoire is a BG;
- The Applicant has duly submitted its financial statements (even before the expiration of the due date) in order for the Respondent to undertake the above mentioned evaluation and be able to determine, based on specific grounds -meaning the parameters established in the Local Financial Criteria applicable to Western African countries ("LFC")- the exact amount to be guaranteed;
- In the mean time, while that evaluation is taken place by IATA's assessors for this year's financial security's request, the Respondent has demanded the Applicant to submit a BG based on calculations made last year, which were the basis for determining last year's BG, which the Respondent has currently in its hands and that will expire on August 23, 2016.

### III. Considerations

This procedure does not seem to be in accordance with the referred provisions of Resolution 818g, since this type of BG request **must** be based on the results that the financial evaluation of a given Agent generates each particular calendar year. Nowhere in the Resolutions is the Respondent authorized to demand from Agents a BG nor any financial security as a result of a financial evaluation based on calculations made in previous years that were used to determine prior years' BG.

The Respondent should implement the necessary steps to get from its financial assessors the results of the Agent's assessment in due time, meaning before the expiration of the current BG, since the Applicant has duly and timely complied with its obligation to submit the financial statements in order for that evaluation to be timely done. It is now the Respondent's responsibility to assess those finances and determine the exact amount to be guaranteed rather than doing a "guess-estimating analysis", imposing on the Applicant the burden of bearing the costs that it will imply for her to change the BG and adapt it to this year's assessment once IATA's assessor would have completed their task.

This is beyond the Agent's obligations stated in the contract signed by both Parties (the Passenger Sales Agency Agreement "PSAA").

It is a notorious fact that Banks worldwide charge substantial fees when not only issuing BG but also when modifying or altering the conditions of an existing one, in addition to the cost itself of getting a BG in the first place. It is certainly outside the scope of an Agent's obligations, according to the PSAA, having to bear these additional costs when the cause of them derives from IATA's assessors' timing to assess the Applicant's financial soundness.

#### **IV. Decision**

I hereby note the Respondent's position concerning the Applicant's operation without having a valid BG, situation that might occur in this case should IATA's assessors do not provide the results of the Applicant's financial examination prior the expiration of the current BG.

However, I hereby respectfully disagree in the sense of considering that the mere fact of operating without a BG constitutes in itself such a material risk as to impede an Agent's normal operation through the BSP. Reality, Resolutions and LFC of several countries worldwide prove differently. In fact, in many countries BGs are simply not even required from Agents or, in some other circumstances and countries, BG are only required for the first years of operations, after which period Agents are exempt from submitting any (as an illustration, this Agent has been an accredited Agent for over 20 years). Therefore, in lack of any other evidence provided by the Respondent, pursuant the prerogative conferred to this Office by Resolution 820e, § 1.2.2.4, exercising the discretion allowed in the referred provision, I hereby order interim relief to the Applicant and, therefore, IATA's request of the referred BG should be temporarily suspended (and ultimately modified) until (once):

1. IATA's assessors would have provided the results of the Applicant's financial standing calculated in 2016 based on the Agent's 2015 financial statements;
2. A clear and undoubted amount of BG would have been provided by them to IATA;
3. The Respondent would have modified its current BG request by reflecting the proper amount of BG in accordance with this 2016 evaluation and it would have been properly communicated to the Agent; and,
4. Enough time to comply with this obligation would have been provided to the Agent (meaning no less that 30 days, according to § 2.2.1.3 of Resolution 818g as of the date when the "modified" request for BG would have been communicated to the Agent).

Decided in Vancouver, the 27<sup>th</sup> day of June 2016.

*Verónica Pacheco-Sanfuentes*  
Travel Agency Commissioner Area 1  
Acting as Deputy TAC2

**Right to ask for interpretation or correction**

In accordance with Res 820e § 2.10, any Party may ask for an interpretation or correction of any error, which the Party may find relevant to this decision. The timeframe for these types of requests will be 15 days after receipt of the electronic version of this document.

Both Parties are also hereby advised that, unless I receive written notice from either one of you **before** the above mentioned date this decision will be published in the Travel Agency Commissioner's secure web site, provided no requests for clarification, interpretation or corrections have been granted by this Commissioner, in which case the final decision will be posted right after that.

**Right to seek review by Arbitration**

As per Resolution 820e, Section 4 any Party has the right, if it considers aggrieved by this decision, to seek review by Arbitration, in accordance with the provisions of Resolution 824, Section 14, once the above-mentioned time frame would have elapsed.

Travel Agency Commissioner –  
Area 1 – Deputy TAC 2

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Correction TAC Decision dated 27 June 2016 – *Afric Voyages* (39-2 0254)

I understand IATA's concern, but I also understand the Applicant's argument.

My reading of Resolution 818g in light of the present case is as follows:

**i.** IATA's request for this Applicant to provide a BG in both occasions (meaning last and this year) is due to the same factor: the annual evaluation of the Agent's finances. It has not been triggered, and I want to stress this factor, by neither any default actions nor any non-compliance situation from the Applicant's side. The Applicant has not been accused (nor has it been alleged, let alone proved) of having committed any fault in regards to its obligations as Accredited Agent;

**ii.** The Applicant has and will actually remain having a BG that meets the LFC at the time when it was actually requested, which is the determining factor in this case, since the Applicant's sales are something completely unpredictable and constantly changing. An Agent's sales can increase or decrease in a day or even hours time, let alone if we consider in a month or months time, hence, as a matter of fact, IATA, if we apply too narrowly the rules, would be entitled to request from an Agent every single day practicably an increase or decrease of the Agent's financial security that will exactly and accurately reflect the current sales' level. The Agent would have to be daily requesting from its financial institution an "adaptation" of its financial security. This would clearly lead to an absurdity;

**iii.** The reality mandates common sense, which is why IATA is able to make financial assessments of Agents at different times, other than the standard annual financial evaluation, **for cause**, meaning, when IATA has reasonable grounds to believe that there is a special risk involved with an Agent's ability to comply with its BSP obligations which requires a new assessment other than the annual one made worldwide to all Agents;

**iv.** Considering that in this case we are not in that situation, since, again, the BG request was made by the Respondent as a result of the annual financial

evaluation of the Applicant, I see no grounds for demanding from the Applicant the submission of a new BG **before the expiration of the current one**, which was obtained as per IATA's own instructions to be valid for 1 year. That time period is not aleatory; it is in direct correlation with the annual financial evaluation that the Agent is subject to.

Every year the BG is prone to change (either an increase or a decrease) depending on that year's financial assessment of the Agent's soundness, provided no default actions nor any non-compliance situation would have occur in the interim, nor any other "**for cause**" situation would have arose requiring from IATA to undertake an additional financial evaluation of an Agent's financial standing.

The Respondent should respect the instructions given to the Applicant in the sense that it was to provide a BG, which it did, valid for 1 year, which would cover the period in which the following standard annual financial evaluation will take place, provided no other circumstances (as referred to above) occur.

The Applicant complied with its obligation to provide the BG last year and should be mandated to provide the new one once the current would have expired, based on the results of its financial evaluation. Other would have been the situation if there was any other reason to request the Applicant to provide a BG different from the regular annual financial evaluation.

I hope having expressed myself with clarity. My decision stands, unless proven differently.

*Verónica Pacheco-Sanfuentes*