

Travel Agency Commissioner – Area 2

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Clarification, Decision Gulliver Tourism Ltd (Israel) vs. IATA - Israel

Greetings to all,

Dear Mr Ostrin and all concerned Parties.

Your request, in accordance with Res 820e, § 2.10, for an interpretation and correction of the decision Gulliver Tourism Ltd (3721100) vs. IATA – Israel, rendered 25 July, 2016 is hereby accepted.

The statements from Ms Dovgan, representing IATA, as response to your request have also been considered.

For you to understand my reasoning I have to stress that the PSAA (Passenger Sales Agency Agreement), signed by Gulliver, where the LFC (Local Financial Criteria) of Israel is an integral part, is NOT based on "logic, fairness or justice".

It is a contract based on agreements by two Parties representing two different interests. IATA represents Member Airlines and the "Travel Agents / Tour Operators community is represented by UFTAA, ECTAA and WTAA.

These are the Stakeholders. Decisions and amendments of the "agreements" are done by PAConf.

The wording of the LFC is always a result of discussions "locally" (APJC / FAG) and proposed to PAConf. Locally discussed with Airlines and Agents´ representatives at each side of the table with the purpose to consider the local situation (financial situation, banking bureaucracy etc..) in each country or region.

Resolution 800f Attachment "A" § 5.3 covers CoO in general. It also states: "*consideration will be given by the local APJC as to whether a Financial Security is required*".

This is the reason why the wording in each LFC is "unique" and should not be compared to wordings in other LFCs.

I state this so you understand that neither IATA nor this Office is at liberty to act purely because of "logic, fairness or justice" and neither IATA nor this Office is empowered to "amend" or "broadly interpret" the LFC.

Having said the above, this Office recognises that the PSAA is an agreement between IATA and individual Agents, **and individual Agents are in no position to alter or have opinions when they sign the PSAA.**

Not all Agents are Members of UFTAA / ECTAA / WTAAA so when the "contract" has unclear wording or §§ are contradicting. This Office will interpret those §§ applying the "contra proferentem" rule and thus, when justified, in favour of Gulliver Tourism Ltd.

I fully agree with Mr Ostrin's remark about Resolutions "can't deal with all possible scenarios " and I frequently invoke this in decisions when IATA and this Office have different views, but I cannot agree full heartedly to this "general doctrine" when it comes to the Israeli LFC.

The LFC is the most detailed and most discussed provision in the PSAA. It is annually revised and it is the single most important agreement between the Parties. There are not so many "scenarios" when there is a change in ownership, and the LFC for Israel is clear: "*...Major changes of ownership of Accredited IATA Agents (i.e.: movement of 30% or more of ownership and /or controlling rights within a period of less than 3 years) shall be processed as new applicants...*"

In this case, as much as the whole situation speaks against "logic", I cannot see any unclear or any contradicting wordings in the LFC in regards of CoO.

CoO within the trade is not an odd phenomenon, so I assume this is a situation where the Stakeholders intentionally have agreed to include this "common situation" in the LFC.

I can only suggest Gulliver/ Issta to bring this issue to the Stakeholders, and if all parties agree, "a change" can be done reasonably expeditious at the upcoming PAConf or through mail vote.

Should the APJC agree, in line with what at least I consider "logic", the request for a BG should immediately be revoked.

Mr Ostrin, in response to your request to get a copy of the "The Spanish case", which I referred to in one of my emails to IATA, I am not at liberty to send you a copy of that decision. All decisions rendered by this Office are treated as "arbitrated decisions" and can only be publicly disclosed by the Parties themselves. A copy is posted on a secured part of the Commissioners website, unless specifically requested by one of the Parties involved not to post it.

The Spanish ruling was about "incomplete and unclear wording" and about how to calculate "sales at risk" for New Agents. As stated in my email to IATA, and after thorough considerations I find that reasoning and conclusions adequate in this case.

Conclusions

Having carefully considered the new statements done by both Parties I have come to the following conclusions;

- a) The CoO is above 30% and in accordance with the LFC Gulliver Tourism Ltd has to be “*processed as new applicant*” and a BG of “*minimum USD 250.00 valid for three years*”, should apply.
- b) Gulliver Tourism Ltd has a financial score which normally should exempt them from providing financial security.
- c) Consequently, the “minimum” BG should not be calculated as if it would have been sales at risk.
- d) The Israeli LFC only deals with sales increase in special circumstances such as “*swift significant increase in volume of sales*”.
- e) Equating Gulliver Tourism Ltd after CoO with the request for BG for “New Applicants” does not constitute the requirements for circumstances required to increase a BG in “special circumstances”

Decision

- The request for Financial Security should be limited to USD 250.000 and be valid for three years.
- It should not be recalculated as long as Gulliver Tourism Ltd scores above the level for requesting Financial Security according to the LFC.

Andreas Körösi

Travel Agency Commissioner – IATA Area 2

P.S.

Both parties are encouraged to initiate an APJC meeting and to clarify

- A) from the Agents point of view if the “new Applicant” provision in cases like this should apply.
- B) From IATA’s point of view to clearly state in the LFC (as e.g. in the Finnish LFC) how a “sales increase” for New Agents should be calculated.