

**DECISION 2009-06-10**

**Travel Agency Commissioner Area 3**

Jo Foged  
685 Remuera Rd  
Remuera, Auckland  
New Zealand

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**The Case:**

Request for Review of Decision by the Agency Administrator of 15 April 2009 which terminated the Agent's accreditation due to failure by the Agent to submit the required financial guarantee within the time frame given.

**Applicant:**

Hawk Travels Limited  
20 ½ Regent Flats,  
Parsons Road  
Colombo 2  
Sri Lanka

Represented by Mr Rohan Abeywickrama , Managing Director

**Respondent:**

Agency Administrator, Geneva  
International Air Transport Association, IATA  
Represented by Ms Siew Cheng Lim, Assistant Director, Accreditation -Asia Pacific

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**Background, formalities etc:**

By letter of 15 April 2009 IATA terminated the Agent's accreditation due to it being unable to provide the proscribed financial guarantee within the time frame given.

On 9 December 2008 the local IATA Agency Services office advised all Agents in Sri Lanka that the current Bank Guarantee criteria would be extended until 30<sup>th</sup> June 2009 and for Agents to make arrangements to comply with that extension. This information followed on from earlier advices on the subject dated 22 September 2008 and 25 November 2008 respectively.

Both parties have agreed to waive their rights for a formal hearing and have allowed the Travel Agency Commissioner (TAC) to base his decision on the documentation rendered.

The undersigned finds that the arguments of both sides are clear and an oral hearing can be dispensed with without jeopardising the process.

### **Authority for Review:**

The terms of Resolution 820e – Reviews by the Travel Agency Commissioner – provides for an Accredited Agent to seek review by the TAC in circumstances described therein. In this case the most pertinent paragraph as seen from the Applicant’s perspective is 1.1.5 which states:-

“an Agent who has received notice from the Agency Administrator of impending removal of the Agent or an Approved Location of the Agent from the Agency List, or of any action or impending action by the Agency Administrator, with regard to the Agent, that unreasonably diminishes the Agent’s ability to conduct business in a normal manner. “

Having received the appeal for Review by the Applicant the undersigned has decided to allow the Review as the application was made within the 30 day time limit.

### **Schedule of Events:**

1. IATA advised the Agent on 22 September 2008 that it would need to provide Bank Guarantee cover for the period 1 January 2009 to 31 December 2009 as its existing Bank Guarantee expired on 31 December 2008. The level of cover was advised as being LKR8m being the Agent’s average sales for 32 days based on the period January 2008 to August 2008.
2. Prior to that date, on 16 December 2008, the Agent failed to meet payment for 16-30 November 2008 due to a dishonored cheque. Two counts of irregularity were issued.
3. Negotiations were taking place within the Executive Council-Sri Lanka on revised financial criteria the immediate outcome of which was that on 9 December 2008 Agents were advised by IATA that their current Bank Guarantee amount or LKR5m, whichever was higher, should be extended to 30 June 2009.
4. In the case of the petitioning Agent the amount of guarantee required was LKR7m. This Council conclusion was needed in order that short term cover could be acquired while negotiations continued into the New Year. Orient Assembly endorsement would be needed for any revision to the existing criteria..
5. On 9 January 2009 the Assistant Director-Accreditation Asia Pacific (the Agency Administrator) issued the Agent with 2 instances of irregularity due to the Agent’s failure to provide its financial guarantee by the given deadline. The Agent was advised that its Passenger Sales Agency Agreement would be terminated on 28 February 2009 however this action would not eventuate if the Agent provided the proscribed Bank Guarantee prior to that date.
6. The local IATA office on 19 January 2009 issued a further 2 instances of irregularity due to the remittance for the sales period 16-31 December 2008 being dishonored by the drawee bank and demanded immediate settlement plus payment of the administrative charges.
7. On 21 January 2009 the Assistant Director-Accreditation Asia/Pacific (the Agency Administrator) advised the Agent that as a result of 4 instances of irregularity having been incurred within a 12 calendar month period the Agent’s

- Passenger Sales Agency Agreement would be terminated on 28 February 2009 (dishonored payments for sales periods 16-30 November 2008 and 16-31 December 2008). Termination would not take place however if the full outstanding amount was settled prior to that date or at least 50% of the outstanding amount had been settled and a firm schedule of repayments of the balance over a 6 month period was entered into with BSP management. Additional charges of prime rate bank interest plus 1% on the outstanding amount would also need to be paid.
8. On 27 January 2009 the Agent wrote to IATA acknowledging the veracity of the facts and undertaking to make good outstanding BSP payments prior to 28 February 2009.
  9. This undertaking did not eventuate and on 4 March 2009 IATA claimed against the Agent's Bank Guarantee (BG). While the BG expired on 31 December 2008 a 3 month claim period up to 31 March 2009 was extant hence IATA's ability to recover the losses.
  10. On 15 April 2009 the Assistant Director-Accreditation Asia Pacific (the Agency Administrator) advised the Agent that as a result of non-submission of a financial guarantee the Agent's Passenger Sales Agency Agreement would be terminated with immediate effect.

#### **The Applicant's Arguments in Summary:**

1. The Agent has been an IATA Accredited Passenger Sales Agent since 15 August 2002 and has been in the travel industry since 1978.
2. The Agency was chosen to participate in the BSP-Sri Lanka Pilot Scheme.
3. The Agent acknowledges its inability to acquire the required Bank Guarantee but has found that commercial banks are less willing to accommodate its request due to the current stringent credit squeeze.
4. As at 7 May 2009 the Agent advised its assurance of making arrangements to acquire a Bank Guarantee within a short period of time but no later than 3 months from the date of their appeal.

#### **The Respondent's Arguments in Summary:**

1. The Agent accumulated 4 instances of irregularity due to dishonored BSP payments for 16-30 November 2008 and 16-31 December 2008.
2. The Agent failed to meet the extension of its current Bank Guarantee level of LKR7m for the period 1 January 2009 to 30 June 2009 despite being given several reminders to do so.
3. The accumulation of instances of irregularity for dishonored payments for two sales periods plus the Agent's inability to provide the required financial guarantee led to its termination.

### **Considerations Leading to Conclusions:**

Two issues were running concurrently during the period under examination. One related to the Agent's default on the payments for the BSP remittances of 16-30 November 2008 and 16-31 December 2008. The other was the need for the Agent to provide a financial guarantee for the period beyond 31 December 2008.

On the first matter the facts are that the Agent was not able to make good the payments for the subject sales periods during the course of December 2008 to February 2009 and recovery came about by IATA claiming against the Agent's Bank Guarantee in early March 2009. This situation would also ultimately have led to a Notice of Termination.

On the second issue there are somewhat more complex elements at play. The Agent's individual Bank Guarantee of LKR7m was due to expire on 31 December 2008. During the time of being reminded of this situation by the local IATA office negotiations were underway within the Executive Council- Sri Lanka (EC) which involved significant issues such as a move to weekly remitting.

While the Agent was advised to provide a Bank Guarantee of LKR8m on 22 September 2008 further advices from IATA on impending further EC negotiations on the matter created an air of uncertainty. Furthermore time pressures caused by an EC meeting on 5 December 2008, the outcome of which was not advised to Agents until 9 December 2008, left only 16 business days for agents who had yet to make arrangements to do so. This situation no doubt influenced the EC to decide to extend the existing financial criteria to 30 June 2009.

Meantime the willingness of banks to provide protection of the type required had reduced dramatically as a result of the global economic downturn and this situation became critical for some agencies and certainly that was the case of the appellant Agent. The EC deliberations on the introduction of weekly remitting, and should this eventuate, it will reduce the amount needed by agents to cover exposure.

The flurried activity in December 2008 described above was seemingly recognized by the IATA office as the Notice of Termination was not issued until 25 April 2009.

While I have some sympathy for the situation which the Agent faced it was far from unique and was one faced by many enterprises, both big and small, in many parts of the world.

**Decision:**

The Notice of Termination issued by IATA in connection with the Agent's inability to meet the required financial criteria is upheld.

Decided this 10<sup>th</sup> June 2009 in Auckland:

**Jorgen Foged**  
**Travel Agency Commissioner Area 3**

**Note:**

**The Agent may, if considered aggrieved by this decision, seek review by arbitration in accordance with the provisions of Resolution 820e Section 4 Paragraph 1 and as detailed in Resolution 810 Section 13.**