

**DECISION 2013 – 01 - 11**  
**TRAVEL AGENCY COMMISSIONER – AREA 3**

Jo Foged  
685 Remuera Road,  
Remuera, Auckland 1050,  
New Zealand

---

**Applicant:**

Orient Travel Centre Pty Ltd,  
120 Haldon St,  
Lakemba NSW 2195,  
Australia  
Represented by Mr Bassam Elsadik, Director.

**Respondent:**

Agency Administrator, Geneva  
International Air Transport Association, IATA,  
Represented by Mr Matteo Zanarini, Passenger Services Manager Australia and SWPI,  
Sydney, Australia.

**The Case and Decision:**

The Agent was advised by IATA that it had failed Test 1 - Minimum Share Capital and Reserves - during the course of the Annual Financial Review and a consequence was the need to increase the amount of financial guarantee from AUD1,000,000 to AUD1,538,000 by 11 January 2013 failing which the issuance of 2 Instances of Irregularity and suspension from the BSP would follow.

Having consulted its accountants the Agent on 17 December 2012 queried aspects of the IATA requirement as it related to Test 1. Three days later IATA advised that it was failure to meet Test 2 - operation of a Client Travel Account - that was the issue. The same day, the Agent in an e-mail message, sought to speak with someone at IATA to which a reply on 28 December 2012 advised that the delay in responding was regretted however the level of increased financial guarantee would remain along with the deadline date of 11 January 2013.

The Agent spoke with an IATA staff member on 3 January 2013 to query the reason for the change in the nature of the Tests failed and was told that the requirements as advised would remain. From that date the Agent has been pursuing the arranging of an increased bank guarantee with its bankers however as the properties being used to back the guarantee have to be valued by an independent valuer the 11 January 2013 deadline date cannot be met and interlocutory relief is being sought to 25 January 2013, a date by which the bank's manager states the process can be concluded.

The Agent comments that the reason for the delay in meeting IATA's requirement was

the protracted time it took to clarify the reason for the change in the nature of the Tests failed but the need to meet the requirement is being fast tracked.

Both parties have agreed to waive their right to an oral hearing and have allowed the writer to reach a decision based on the written information submitted. IATA was asked to advise whether the existing level of financial guarantee was acceptable for the 15 day interlocutory relief period and responded "we are not satisfied with the current level of financial guarantee held as we have requested an increased amount." This response does not address the issue faced by the Agent, a large degree of which, in the opinion of the writer, was caused by IATA in the form of changes to the failed Test specified and the delay in responding to questions raised by the Agent.

In the writer's experience of this week this is the second case where the initial failed Test specified was subsequently changed.

In considering the Agent's request for interlocutory relief it is noted that the Agent is well established, has a faultless BSP remitting record, (a statement not challenged by IATA) and has sufficient unencumbered assets to cover the required bank guarantee as evidenced by Certificates of Title.

The authority vested in my office related to the granting of interlocutory relief is described in sub paragraph 1.2.2.4 of Resolution 820e and in my judgment based on the documents provided, and having afforded IATA the opportunity to respond, the granting of same does not materially affect any airline credit risk.

Consequently it is hereby decided as follows:-

1. The Agent is granted interlocutory relief until Friday 25 January 2013 by which time the required increased financial guarantee must be in place.
2. The Agent's current level of bank guarantee is acceptable up to that date.

Decided this 11<sup>th</sup> day of January 2013 in Auckland

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

**Notes:**

1. As per Resolution 820e, Section 4, any Party has the right, if it considers itself aggrieved by this Decision, to seek review by Arbitration in accordance with the provisions of Resolution 824, Section 14.

2. The Parties are advised that effective from 1 June 2012, according to Subparagraph 2.10 of Resolution 820e, any of them may request an interpretation of this Decision, or for a correction of any error in computation, any clerical or typographical error, or any omission in this Decision. Such request must be made within 15 days of receipt of the electronic version of this Decision.