

DECISION 2014 – 03 - 03
TRAVEL AGENCY COMMISSIONER – AREA 3

Jo Foged
685 Remuera Road
Remuera, Auckland 1050
New Zealand

Applicant:

Myer Travels Pty Ltd.
c/- Level 7, 800 Collins Street
Docklands, VIC 3008
Australia
Represented by Ms. Shashi Gazadhur, Financial Reporting Manager

Respondent:

Agency Administrator, Geneva
International Air Transport Association, IATA
Represented by Mr. Nawaz Shaikh, Manager Agency Risk Management,
IATA, Singapore.

The Case and Decision:

Following the assessment conducted during the course of the Annual Financial Review the Agent was advised to provide a financial security of AUD 185,000 by 26 February 2014. This requirement was brought about by the Agent being a subsidiary of Myer Holdings Ltd and the parent company failing Tests 1 and 3 of the Criteria.

Clause 1.10 of the Financial Criteria for Australia states:-

" A company that is a subsidiary of another company or more than one company, will be required to submit a copy of the most recent annual accounts of these controlling companies. Such parent company accounts will be considered in the determination of the financial standing of an applicant or agent. If the entity holding the accreditation passes all tests independently, but the holding company or group financial status have an adverse impact on the subsidiary, Financial Security will be required for the "Sales at Risk" of the subsidiary up to the maximum Financial Security required. "

On 24 February 2014 the Agent contacted this office seeking a review of the requirement to provide a financial security on the grounds that this was the first occasion since its accreditation in 2009 that a security was sought and hence what changes had come about which had initiated this requirement. Its main client was Myer Pty Ltd, another 100% owned subsidiary in the Group with the same Directors and it was therefore unclear what a financial security would achieve in that situation.

In its explanation for its actions IATA stated that in Test 1 there was a negative AUD35.1m in total share capital and reserves and in Test 3 there was a negative 0.46 ratio of working capital in dollars to average monthly overheads. Myer Holdings Ltd. should have achieved more than 1 for this ratio.

In answer to those findings the Agent advised that the main Group entity, Myer Pty Ltd, was a retail company and the reason for the negative working capital situation was that mid-year was a slow trading season, its inventories were being kept at a minimum and excess cash was being used to pay down borrowings. The Agent failed to see how, with its own financial statements having passed all Tests that its parent company's accounts should bring about the need for a financial security.

As required by sub paragraph 2.3 of Resolution 820e 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. The Agent has complied with the within 30 day time frame to lodge a request for a review as detailed in sub paragraph 1.2.2.1 of the same Resolution.

In considering this matter it is thought important to answer the Agent's query on how a financial security would serve any purpose should the parent entity collapse. In short, by acquiring the estimated average amount of airline moneys at risk between BSP settlement dates in advance, IATA can access said amount without constraint and can substantially reimburse airlines for any losses.

It is not my function to surmise why the outcome of this year's assessment has produced a different finding to those of previous years but I can accept that, based on the particular set of financial statements covering the specific period where the negative features described above were evident, IATA has acted in accordance with the Criteria. In its final message the Agent has indicated that it will take approximately 2 weeks to arrange a bank guarantee.

Consequently it is hereby decided as follows:-

1. Interlocutory relief is granted until Wednesday 19 March 2014 for the Agent to submit the required financial security.

Decided this 3rd day of March 2014 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.