

DECISION 2014 – 09 - 15

TRAVEL AGENCY COMMISSIONER – AREA 3

Jo Foged
685 Remuera Road
Remuera, Auckland 1050
New Zealand

Applicant:

Agency Administrator, Geneva
International Air Transport Association, IATA
Represented by Ms. Nadya Widjaja, Manager Agency Management Asia/Pacific,
IATA, Singapore.

Respondent:

Moon Travels (Private) Ltd.
Shop No 7, Mehran VIP Apartments
Dr. Daud Pota Road
Cannt Station, Karachi
Pakistan
Represented by Mr. Naveed Ahsan, Director

The Case and Decision

On 13 August 2014 IATA sought a review of the Agent under the Prejudiced Collection of Funds provisions of Attch "A" to Resolution 818g. The grounds for that request was that IATA had received written information from an Airline that Moon Aviation, which had 2 Directors who were also Directors of Moon Travels, owed significant moneys to an Airline and "was using delaying tactics for payment". This situation caused concern that the Agent may not be able to meet its fiduciary commitments to the BSP.

On being requested to provide a convincing argument that would clearly demonstrate that Moon Aviation's circumstances had no impact on Moon Travel's financial standing and ability to meet its BSP billings, the Agent responded as follows:-

"1. Moon Travels (Private) Limited was accredited by IATA in 1993. Since then we have a clean record of payment to IATA/BSP to date. The last payment to BSP had been routinely made on 29 Aug. 2014. There is nil liability of BSP or any other airline.

2. The 3 directors/shareholders common with Moon Aviation have the combined share total of 30% in Moon Travels (Pvt) Ltd.

3. The Chief Executive, Mr. Ahsanuddin had been terminally ill with malignant cancer. He was in and out of hospital for the last 6 months. He died on 23 July 2014. We have been busy in the various religious rituals that are completed by the 40th day of the death, and other legal formalities.

4. Prior to his demise the family had decided to exclude the 3 directors from Moon Travels (Pvt) Ltd. Now we have to exclude the deceased, Chief Executive, from the Company as well. The Order of Succession has been filed in the Court of Law. The formal Notice of Change of Ownership will be submitted to IATA shortly that would include all four directors.

5. The Financial Guarantee of Moon Travels (Pvt) of PKR 12.50 million, valid till 30 August 2015 has been in place with BSP/IATA.

6. To further demonstrate that Moon Travels (Pvt) Ltd., has been financially sound, the Bank Statement from 01 June 2014 to 15 August 2014 are attached. For information, Moon Aviation is the PSA of Airline X. No other airline has been involved. The matter is being taken up by Airline X in the Court of Law.

7. While the Guarantee being in place, the abrupt stoppage of capping facility breaks the cycle of business/receivables. It seriously hurts the business. The alternative action, by BSP/IATA, may have been the enhancement of the Financial Guarantee. It would provide additional security to BSP/airlines and would not have disrupted our business."

Supplied with the information regarding the intended Change of Ownership action the writer sought advice from IATA as to whether or not the Agent's current financial security of PKR12.5m would be adequate should re-instatement be authorised prior to the Change of Ownership process being completed.

IATA SIN responded as follows:-

"We can reinstate the agent while the Change of Ownership (CHO) process is being completed.

However, we would need the following requirements to be fulfilled in order to have the Change of Ownership process initiated before reinstatement:

(1) Agent is currently covered under an insurance scheme. We would then need a written confirmation from existing financial security provider: Continental Insurance Company that they acknowledged the CHO by the Agent and that the insurance bond is still valid with this change of ownership. No top up is required as the current FS is sufficient to cover the annual sales at risk.

(2) Submission of the documents as listed below.

(3) Upon full completed submission of these required documents and the payment of the Change fees of USD. 1,319, we will reinstate the Agent.

Instructions and special requirements in order to notify IATA of a Change of Ownership:

<p>☐ Notice of Change Form signed by authorized personnel of the Agency, completed with company stamped</p> <p>☐ Application Form signed by authorized personnel of the Agency, completed with company stamp</p>	<p>Original Copy Original Copy</p>
LEGAL	
<p>☐ Valid Travel Agent License issued by Department of Tourist Services</p> <p>☐ National Tax Number (NTN) Certificate</p> <p>☐ Official Certificate of Company Registration (in case of Private Limited)</p> <p style="padding-left: 20px;">a) Memorandum of Association / Articles of Incorporation</p> <p style="padding-left: 20px;">b) Form A – Annual return of company’s having share capital</p> <p style="padding-left: 20px;">c) Form 29 – Particulars of directors and officers, including the chief executive, managing agent, secretary, chief accountant, auditors etc.</p> <p>☐ Registered Deed of Partnership with Registrar of Firm (in case of Partnership)</p> <p>☐ Details of shareholders, owner(s), managers and staff (with Photo & NIC Copy)</p> <p>☐ The following should be submitted in the event that stockholders in the application form are different from those listed in the Articles of Incorporation:</p> <p style="padding-left: 20px;">a) Deed of sale/transfer of shares</p> <p style="padding-left: 20px;">b) Form 3, Form 7, Form 21, Form 26, Form 27 (if any) _____</p>	<p>1 Copy</p> <p>1 Copy</p> <p>1 Copy 1 Copy 1 Copy 1 Copy</p> <p>1 Copy</p> <p>1 Copy</p> <p>1 Copy</p>
STAFF QUALIFICATIONS	
<p>☐ Provide proof of employment of competent and qualified additional employee(s) with the ability to sell international air transportation and issuing of electronic travel documents and report these to the BSP. (Include a photo</p>	<p>1 Copy</p>

and a copy of National Identification Card)	
FINANCIAL	
<input type="checkbox"/> Latest Certified and Audited Balance Sheet and Profit & Loss Account (not more than Ten (10) months old at the time of submission)	1 Copy
PREMISES	
<input type="checkbox"/> Valid lease / rental / ownership agreement of premises	1 Copy
<input type="checkbox"/> Photographs of premises: exterior with clear signboard / interior of the Travel Agency location	1 Set
OTHERS	
<input type="checkbox"/> Sample of company letterhead	1 Copy

As required by sub paragraph 2.3 of Resolution 820e both Parties have been placed on notice that in the writer's judgement an oral hearing is not necessary and that a decision will be based solely on the written information submitted.

In considering this matter it is clear that the action being taken by the Agent and the consequent position taken by IATA is a reasonable solution to the issue originally causing IATA's seeking for a TAC review.

Consequently it is hereby decided as follows:-

1. The Agent is to be re-instated subject to meeting the conditions detailed in (1), (2) and (3) of IATA's offer detailed above.

Decided this 15th day of September 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 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.