

DECISION 2015-01-09
TRAVEL AGENCY COMMISSIONER – AREA 3

Jo Foged
685 Remuera Road
Remuera, Auckland 1050
New Zealand

Applicant:

Orient Express Travel Group Pty Ltd.
353 Exhibition Street
Melbourne VIC 3000
Australia

Represented by Mr. Duncan Adams, Financial Controller

Respondent:

Agency Administrator, International Air Transport Association, IATA
Geneva, Switzerland

Represented by Mrs. Oi Hwa Tham, Manager Agency Management Asia/Pacific,
IATA, Singapore

The Case and Decision

The Agent was required to submit a financial security of AUD 10m to IATA by 15 January 2015 as a consequence of a change of ownership. On 22 December 2014 the Agent contacted this Office with a request for a review of IATA's requirement for the financial security.

The Agent's position was that the change of ownership involved the same beneficial shareholders as it had for the past 5 and 1/2 years with each family owning 50 percent of the Agency. The Directors of the Agency had not changed either for the same period of time.

To be clear, originally the Agency was owned by Dragon Hills Pty Ltd 50 percent and CTG Investments P/L 50 percent. After the change Express Travel Group P/L owned 100 percent of the Agency. The Applicant stated that "each of the shareholding families that are investors in our company have extensive travel industry experience, and have Australian IATA interests that in one case dates back 15 years, the other more than forty years!", therefore, the change should be regarded as NIL. As a minimum, the Agent sought interlocutory relief beyond 15 January 2015 to 30 January 2015 bearing in mind the holiday period in Australia.

In its justification for requiring the financial security and rejecting the Agent's opinion that it was a NIL change IATA advised the following:-

"We concluded that your Agency Change of Ownership from Dragon Hills Pty Ltd 50% & CTG

Investments P/L 50% to Express Travel Group P/L, despite of Express Travel Group P/L is owned by the same entities as per the previous shareholders, cannot be interpreted as nil change in ownership. As per the ASIC extract, Express Travel Group P/L is a different and separate legal entity. They are holding different ABN/ACN numbers.

As per the Local Financial Criteria for Australia (Resolution 818g), *If the **Agent** or parent company undergoes a significant change in ownership, defined as 50% or more, Financial Security must be provided for the amount of "Sales at Risk", unless the entity is publicly listed on the Australia Securities Exchange Limited (ASX) and following the change in ownership, remains a public company on the ASX or a wholly owned subsidiary of a public listed company on the ASX.*

As your Agency has undergone a significant change in ownership from 50%:50% to 100%, wholly owned Express Travel Group, your Agency is required to submit a financial security".

The writer wanted to establish that the position taken at the IATA Customer Service Team level was consistent with the application of the Resolutions as would be made by senior staff within the IATA Regional Office. On so doing the response from the IATA Regional Office Management was the same.

In considering this matter note must be taken of IATA's position that the change of ownership is "significant" as the yardstick of more than a 50% change is involved and, hence, the terms of the Financial Criteria for Australia, which was developed jointly by Agents and Airlines in Australia, must be followed. This calls for a financial security to be provided for the amount of sales at risk and this has been determined to be AUD10m. The Criteria do not allow considerations beyond those recorded therein even though that might not cover all situations. It is, for the sake of simplicity, a "one size fits all" approach.

While this position may not appear reasonable to the Applicant it is in total conformity with the terms and conditions forming the Local Financial Criteria for Australia developed by the Agency Programme Joint Council-Australia consisting of Agency and Airline representatives.

As required by sub paragraph 2.3 of Resolution 820e both Parties were placed on notice that in the writer's judgement an oral hearing was not considered necessary and that the decision would be based on the written information submitted.

IATA has not objected to the granting of interlocutory relief for the period sought by the Agent therefore bearing the foregoing in mind it is hereby decided as follows:-

1. In order to submit a financial security for AUD 10,000,000 the Agent is granted interlocutory relief until Friday 30 January 2015.

Decided this 9th day of January 2015 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.