

DECISION 2016-01-13
TRAVEL AGENCY COMMISSIONER – AREA 3

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

Applicant:

Bao Shinn Express Co Ltd,
Hong Kong SAR
Represented by Mr Alan Lau, Chief Executive.

Respondent:

Agency Administrator, International Air Transport Association, IATA,
Geneva, Switzerland.
Represented by Ms Michelle Xu, Manager Agency Management Northern Asia,
IATA, Beijing, PR China.

The Case and Decision

As a consequence of the annual financial review the Agent was required to submit a bank guarantee (BG) of HKD 5,170,000 to IATA by 12 January 2016. On receipt of that requirement the Agent requested its Auditor to review the financial statements submitted and the Auditor detected an error. A revised balance sheet together with a written explanation by the Auditor, which removed the need for the BG, was submitted to IATA.

After a number of message exchanges IATA declined to accept the revised document on the grounds that the original submission, certified by the Auditor, should be an accurate and true reflection of the state of the Company's affairs. The data for 2013 in the two reports showed different amounts. It placed the accuracy of earlier submissions in doubt and the requirement for the HKD 5.17m BG submission by 12 January 2016 remained. During the course of these message exchanges it was established that the Agent had submitted a BG for HKD 60,000, which was deducted from the BG requirement leaving an amount of HKD 5.11m to be found. With that response the Agent contacted this office on 5 January 2016 " to request Beijing IATA extend the BG deadline first due to huge loss in our company when stop our license at 12th January 2016".

During the course of gathering information the Agent revealed the fact that it had bilateral BGs with various Airlines amounting to HKD 5m. Combined with IATA's requirement for the HKD 5.11m BG there would be a total amount of HKD 10.11m, which effectively meant that each sale was covered twice. The Hong Kong local practice of deducting such bilateral arrangements from the BG amount calculated by

IATA had ceased effective from 1 April 2015 hence the Agent's bilateral BG commitments had been ignored when IATA determined the " sales at risk " amount for all Airlines.

This "double " financial protection situation should be a concern to Hong Kong Agents and local IATA Management as there are provisions in Resolution 818g under " Finances " sub paragraphs 2.1.4.2 and 2.1.4.3 which have the broad purpose of removing Airlines' requirement for individual bilateral bank guarantee arrangements.

In considering this matter the writer is satisfied that IATA's position with respect to disallowing acceptance of the revised financial statements is fair and in keeping with the following standard detailed in the Local Financial Criteria for Hong Kong (SAR) which read in part as follows:-

" Accredited Agents must submit to IATA annually a **certified** complete set of audited financial statements which must not be older than 9 months at the time of submission and in the auditor's opinion the financial statements give **an unqualified true and fair view of the state of the company's affairs.** "

At the time of submission the Agent's Auditor had performed an audit to the standard described above and had certified the accuracy of same. The learning from this situation is that there are no second chances.

In connection with the "double " bank guarantee for the same sale the Agent should seek termination of the bilateral bank guarantee arrangements that it has with particular Airlines as those sales are covered under the IATA " umbrella " arrangement. That process should be supported by IATA Management in light of sub paragraph 2.1.4.3 of Resolution 818g which reads as follows:-

" The only other permissible separate airline bank guarantee is when it is for specific commercial interests. In such circumstances the airline must notify IATA of the precise circumstances and IATA will review such arrangements on a quarterly basis to determine whether the individual bank guarantee should continue."

The other factor to note is that if Airlines consider that the local financial criteria for HKG need strengthening then it is their duty to pursue same with the Agency Administrator as detailed in sub paragraph 2.1.4.2 of the same Resolution.

In seeking this review the Agent has complied with sub paragraph 1.2.2.1 of Resolution 820e and has lodged its request for a review within the 30 day time frame allowed and both parties were alerted, as required by sub paragraph 2.3 of the same Resolution, that in the writer's judgement an oral hearing is not necessary and that the decision would be based on the written information submitted.

Based on the foregoing the Agent must submit the required bank guarantee to IATA however in light of the time consumed in reaching this point it is hereby decided as follows:-

1. the Agent is granted interlocutory relief beyond 12 January 2016 for 30 calendar days from the date of this decision for the purpose of submitting a bank guarantee of HKD5,110,000 to IATA.

Decided this 13th day of January 2016 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.