

## Annual Report of the Travel Agency Commissioners

### PART ONE

#### I. Introduction

The Travel Agency Commissioners (“TACs”) are:

- Mrs. Verónica Pacheco-Sanfuentes TAC 1
- Mr. Andreas Körösi TAC 2
- Mr. Jo Foged TAC 3

This year the Commissioners held their annual meeting in May in Newport Beach, Los Angeles, California.

Using the same structure as in previous years, the following pages detail TACs’ observations and the cases that have been dealt with since the last Annual Report. This time is covering from September 2015 until July 2016.

The TACs were served with a notice by IATA shortening up the second transmittal time frame by one month; this is why this year our Report will not cover the month of August 2016, as has been the norm for the last 8 years.

In light of the number of cases reviewed during this period, and in order to ensure an accurate method of recording the result of our work, this Report has been divided into two parts:

**Part ONE** covers an overview of the matters dealt with, as well as some observations derived from them; and,

**Part TWO** covers the summary of cases reviewed by the Commissioners, whether they led to formal Decisions or not, and, whether or not a full review was necessary in order to resolve the matter at hand.

#### II. Work Handled

The total number of cases (including posted formal decisions and reviews finalised without formal decisions) dealt with during this period were:

- Area 1 – **47** (not including the cases handled as Deputy TAC 2)
- Area 2 – **362 (including 14 cases handled by TAC 1 as Deputy)**
- Area 3 – **109 (including 1 case handled by TAC 2 as Deputy)**

This number is categorised in each Commissioner's Report.

During this reporting period only one oral hearing was held in New Delhi, India. In the remaining cases, when sufficient written evidence was available, sometimes including scheduled conference calls with the Parties, and when both Parties had agreed that a Decision could be rendered without the need for oral hearings, or it was decided so by the Commissioner, no oral hearings were held.

The Commissioners' website has been updated with a change of domain being considered more cost effective. The new web address is [www.tacommissioner.com](http://www.tacommissioner.com). This change had no consequences for users during its implementation; it remained accessible at all times.

As always, formal decisions are, once posted in the secured part of the website, available only to PAPGJC Members. Decisions are posted in both English and Spanish, in addition to some decisions in French when that has been the language used during those procedures.

### **III. Observations**

Before bringing any matter to the Conference's attention, the Commissioners recognize the laudable efforts made in transforming and updating the Agency Programme with the NewGen ISS Resolution. We look forward to see its completion and implementation, as well as having an opportunity to be educated about the novelties of the Programme.

#### **1. - Issues pertaining to *bona fide* Bank error letters:**

The proposed version of the NewGen Resolution has basically the same elements as currently in place in Resolution 818g, hence, we invite the Stakeholders to consider the following experienced situations, which are fairly common in requests for TAC review. Cases show that not all banks worldwide are either willing to issue the letters as per the Resolution requirement, nor are they willing to recognise and state in writing (potentially even incriminating themselves) that a mistake has occurred within their organization (cases involving DB and HSBC are proof of this behaviour)

- a. When the letter is NOT provided by the Bank as requested by the Agent, we propose that if the Agent submits evidence showing that:
  - i. It had enough funds available on Remittance Date in its bank account; and,
  - ii. It had authorised a payment order sent to the Bank on time, allowing the bank enough notice to execute the payment by the due date;

The Agent's evidence will be accepted as proof of *bona fide* Bank Error.

- b. When the letter is provided past the 10 working days, the maximum time allowed in Resolution 818g "A" 1.7.4.3(i): **This provision should not be read as an impediment to granting the exemption** when:
  - i. Actually the bank has provided the letter past the 10 days required "due to internal work load", or,
  - ii. The Agent has provided evidence as described in a.) but **only after** not having received the "exonerating" *bona fide* Bank error letter by the bank within the 10-day span allowed.

Based on this line of thoughts, accepting the opposite would run afoul of the *General Principles for Review*, stated in Resolution 818g; therefore, the TACs do accept that the Agent has done what is in its powers to prove a "*bona fide* Bank Error".

## 2. - Resolution 824 – **Notices:**

The TACs acknowledge the lack of enough diligence shown by some Agents when it comes to monitor messages, other than billings, done through *BSPlink*.

Lack of awareness of "administrative issues' notifications" (**at no point affecting the Agents' ability to pay or its credit worthiness**) is still the most common reason for noncompliance. We would like to see a pragmatic solution to this issue; since reality has shown the deleterious effects that these unnoticed communications have on Agents.

NO Agent would risk its business for these types of "non-compliances" (e.g. annual fee, incomplete Financial Statements not affecting the actual financial standings of an Agent, etc.).

It is necessary for IATA to comply with Resolution 824 s. 16 with regard to "proof of dispatch or receipt addressed" to the Agent. Conclusive "**acknowledged receipt**" is the ultimate proof of dispatch – and the only one acceptable in EU law and in some countries in Latin America.

In order to address this issue, we propose the following procedure:

- i. That emails to Agents are flagged so that the sender can see if the message was opened;
- ii. Make it a requirement to have an acknowledgement of receipt on messages sent to Agents.

Bottom line: *BSPlink* messages only do not meet that standard.

3. - Default due to **suspension of BSP Participating Airline**: Resolution 850 s.16, Resolution 850 Attachment “F” and BSP Manual for Agents (Chapter 13):

Time is of the essence in these critical situations, where Agents have to deal with several issues involving stranded passengers (such as rebooking, repayment when the ticket is part of a package-tour, etc.), and, at the same time they also have to manually alter the BSP Report and pay according to the extraordinary instructions given by IATA, including not to deduct approved refunds, amongst others.

In these situations where an Agent does not comply with IATA’s instructions, **at no point affecting the Agent’s ability to pay or its credit worthiness**, the norm should not be to invoke default action against the Agent, but rather to allow it reasonable time to comply with this extraordinary method of settlement (often quite difficult for Agents to fully understand) by **allowing the Agent to amend the settlement in the next remittance period** instead of penalising it by suspending its ticketing authority.

The consequences of these -almost always- very small amounts of “administrative non-compliances” are today treated as credit incidents, which are seriously detrimental to Agents.

It is essential to keep in mind that this is, by definition, a **NO-risk-situation to Member Airlines**, since the Member Airline has been SUSPENDED already, so Agents should be treated more fairly instead of ending up bearing the consequences of a situation over which they had no control (*id est*, an Airline’s non-compliance with its BSP obligations).

NOTE: We acknowledge that IATA is sending an “*Exceptional Remittance Notice*” to each Agent with the exact amount to deduct or to add, which certainly helps to mitigate some of the uncertainty; but the issue is that Agents often have very little time to act, especially when close to Remittance Date or when remitting weekly or even in shorter periods.

4. - **Ticketing Authorities restored in full** after reinstatement:

We would like to pursue this issue once more, as it is a constant struggle for Agents, IATA staff at the hubs and TACs alike. Once ticketing authority is restored, even after it is proven that the default action was NOT caused by the Agent’s negligence, the Agent has to contact each Airline who had it under appointment for authority to issue that Airline’s tickets again. This is a protracted and frustrating process, which hinders sales for those Airlines.

Recommendation: IATA shall suspend as today but to **DELAY the communication to the “market”**: allow at least 24H-48H window before notifying BSP Airlines in order to avoid major damage to the Agent’s reputation once reinstated – especially

when it has been the result of an administrative issue or a mistake outside the control of the Agent.

As the cases have revealed, the <<*main damage is the immediate notification to Airlines and not the suspension from TA itself*>>.

Resolution 818g Attachment "A" s. 2.3.1(b) should be amended so that Airlines are only notified **after** IATA has had time to "investigate" the true cause of the noncompliance.

**5. - Method of dispatch:** Resolution 818g "A" s.1.7.4 (i) refers to the Agency Administrator's "acceptable method of dispatch" for *bona fide* Bank error letters, which is: "*fax or a scanned copy via email...*". This option should be available for the dispatch of any form of document to IATA (e.g. Change of Ownership, Financial Statements, Financial Securities, etc.).

Proposal: as a matter of practicality, we submit for your consideration that ALL documents required by IATA be accepted as *scanned copies* or fax **together** with details of air waybill number of the dispatched original document, while the originals are ultimately received by IATA.

**6. - Change of Ownership** where parties are already Accredited Agents.

The TACs observe that the issue where 2 Accredited Agents, both meeting all requirements set out in the Local Financial Criteria for not having to submit a bank guarantee (BG) and get involved in trading shares of 30% or more, are considered as "New Applicants" by IATA.

Since this situation is common, and, in one specific case the request amounted to 1.7 million USD in BG for 3 years, we suggest this issue to be clarified in Resolution 800f Appendix "A" or in Resolution 818g § 10.

**7. - IATA Accredited Agents only for Hajj and Umrah license purpose**

It is the TACs' understanding that this is a service to accommodate the Saudi's authorities as a mandatory requirement for licensing these Agents. Most of them, however, do not seem to use STDs nor are part of the BSP; hence, often times they become aware of noncompliance (mostly annual fees not paid on time) only when terminated.

The "life or death" plea from these Agents to be reinstated is understandable, but it entails time consuming work for IATA staff and TACs alike.

We suggest that, if IATA wants to keep the accreditations for Agents who do not sell tickets for political reasons, that these Agents would be under a "new category" of

Agents, where IATA staff can develop more adequate routines for debiting fees, financial evaluations, and, costs for other services, which can be included in the annual fee. This would take in to account the extra work for IATA staff involved when *BSPlink* is NOT the main source for communication.