

Decision 43/2018

Travel Agency Commissioner - Area 2

Andreas Körösi
P.O. Box 5245
S-102 45 Stockholm, Sweden

Applicant: *Al Salhiah World Travel*
IATA Code # 42-2 1031
Kuwait

Respondent: International Air Transport Association (IATA)
Torre Europa
Paseo de la Castellana, número 95
28046 Madrid, Spain

NOTE:

This summarized decision is being posted as the Parties have received it. Occasional requests for clarification are not posted. However, should any Stakeholder requests it, a copy of such clarification will be sent to her/him.

Background

The issue to be decided in this request for review is about how to calculate Financial Security for Agents in Kuwait.

In short:

Both Parties agree that the formula to establish sales at risk: "*should be based on the formula stated in the Local Financial Criteria ("LFC") for Kuwait (28 days of average sales based on the last 12 month)*".

IATA claims that the limitations in the LFC: "*maximum of KWD 200,000.00 per location*", in conjunction with: "... *the financial security (BG) should cover the entire agency network*" has to be read that the TOTAL sales of Agents in Kuwait should be counted. Based on which IATA's calculation is that KWD 415,000.00 should be the correct BG provided.

Al Salhiah World Travel claims that the LFC has to be read literally and "200,000.00 per location" is a maximum, disregarding total sales. Based on that formula, the correct BG should land at KWD 351,000.00.

Considerations and Decision

According to my judgement, as allowed in Resolution 820e § 2.3, I do not see the need for an Oral Hearing. Should any of the Parties be of another opinion, then, please feel free to object and submit the statements to support it within the time frame allowed in Resolution 820e § 2.10 (Right to ask for interpretation).

To start with, this Office fully supports Mr. Cedrola's statement regarding LFC in "established markets" as being the prevailing text over the generic text in Resolution 800f.

For the records, IATA's following statement is noted: *"... IATA objective is to make sure that sales of the agency are fully covered, and that in moments of such divergence between the objective of the Resolution and the wording of the LFCs, like in this KW case, IATA has the duty to enforce Resolution 818g, section 2.2.1.2 where we will go beyond LFC to ensure sales are adequately covered. As stated before, considering an agent's sales based on sales per Branch level stems from a past reality..."*.

As much as this Office fully agrees with that: *"IATA objective (and let me even add obligation), is to make sure that sales of the agency are fully covered..."* by using the same logic as stated *supra* that LFC prevails over Reso 800f, I cannot agree with the "conclusion" that Resolution 818g § 2.2.1.2 prevails over the LFC.

From this Office's perspective, the Kuwaiti LFC is "out-dated". **Amongst others**, it does not consider an Agent's "total sales", it does not consider that "location" can mean physical locations or IATA numeric codes counted as "location", and it does not discuss alteration in calculation of financial security when an Agent remits monthly, bi-weekly or weekly.

Having stated the above, it should be clearly said that these types of considerations are NOT part of the TAC's purview; the TAC's mission is simply to apply what is stated in the prevailing LFC.

Considering that IATA is the "initiating" Party when LFCs are discussed at APJCs, considering that the Kuwaiti Market is "well established", and, considering that there is an existing Financial Security of KWD 426,000, valid at least until July 2020, it is hereby decided as follows:

- IATA has until 28 February 2019 to initiate a meeting with the APJC of Kuwait to "clarify" the LFC;
- This "potentially amended" LFC should be presented to the PAPGJC/PACConf meeting held in the Spring of 2019;
- The suggested "potentially clarified new wording" should prevail and

- **implemented towards *Al- Salhiah World Travel*;**
- Consequently, should the LFC not be suggested to PAConf to be amended, the strict interpretation of today's LFC shall prevail, and,
- the difference between the existing BG and KWD 351,000.00 has to be released not later than 15th March 2019.

NOTE:

Not affecting the decision, the review has also brought to light that *Al- Salhiah World Travel* has a branch with an IATA numeric code assigned, without actual sales in the past 12 months. This is not supported by Resolutions and both Parties should "consider " the situation.

This Decision is effective as of today.

Decided in Madrid, on November 7th, 2018

Andreas Körösi
Travel Agency Commissioner
IATA-Area 2

In accordance with Resolution 820e § 2.10 any Party may ask for an interpretation or correction of any error in computation, any clerical or typographical error, or any error or omission of a similar nature which the Party may find relevant to this decision. The time frame for these types of requests will be maximum 15 calendar days after receipt of this decision. Meaning as soon as possible and **not later than 23 November 2018**.

Please also be advised that, unless I receive written notice from either one of you **before** the above mentioned date this decision will be published in the Travel Agency Commissioner's secure web site, provided no requests for clarification, interpretation or corrections have been granted by this Commissioner, in which case the final decision will be posted right after that.

Please note that if after having asked for and obtained clarification or correction any Party still considers aggrieved by this decision, as per Resolution 820e §4, the Party has the right to seek review by Arbitration in accordance with the provisions of Resolution 824 §14.

Please let me know if any of the Parties requires a signed hard copy of this decision and I will send one once the time for "interpretation or correction" has elapsed.