

TRAVEL AGENCY COMMISSIONERS'
RULES OF PRACTICE AND PROCEDURE
EFFECTIVE AS OF JUNE 2018

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TRAVEL AGENCY COMMISSIONERS - RULES OF PRACTICE AND PROCEDURE -

Introduction

The following Rules of Practice and Procedure ("the Rules") are published by the Travel Agency Commissioners for Areas 1, 2 and 3 ("the Commissioner" or "TAC") in accordance with the provisions stated in the Passenger Agency Conference Resolutions (referred to herein after as "the Resolutions"), in particular Resolution 820e, Section 2.

The Commissioner seeks to keep proceedings as simple, informal, non-technical and as expeditious as the requirements of the Resolutions, General Principles of Law and a proper consideration of matters permit.

The Commissioner's powers and functions change with developments in the relevant Resolutions. The following rules reflect the state of Resolutions as of 1st June 2017.

The Commissioner reserves the right to modify these Rules for cause at any time, by notice to the Parties, to accommodate the particular circumstances of any case.

Rule 1 – Grounds for Requests for Review

Matters come before the Commissioner for consideration as a result of a Request for Review by any of the following:

A - From an Applicant:

- (i) an Applicant whose application to become an Accredited Agent has been disapproved (for the first time or upon reconsideration) by the Agency Administrator (Resolution 820e § 1.1.1);
- (ii) an Applicant who has acquired ownership of an Agent or Location, or is seeking to do so and whose application for approval of a change in ownership has been disapproved by the Agency Administrator, either for the first time or upon reconsideration (Resolution 820e § 1.1.3);
- (iii) an Applicant refused approval on grounds that a director or person holding a financial interest or a position of management is disqualified by virtue of this person's connections with an Accredited Agent that had in the past failed to meet its fiduciary obligations (per Resolution 820e § 1.1.4, first half);
- (iv) an individual who believes he is or may be the person described in Rule 1-A (iii) and who wishes to have his position reviewed in the light of individual circumstances (per Resolution 820e § 1.1.4, second half);

B - From an Accredited Agent:

- (i) an Agent whose application for approval of a branch office location has been disapproved by the Agency Administrator, either for the first time or upon reconsideration (Resolution 820e § 1.1.2);

- (ii) an Agent refused approval on grounds that a director or person holding a financial interest or a position of management is disqualified by virtue of this person's connections with an Accredited Agent that had in the past failed to meet its fiduciary obligations (per Resolution 820e § 1.1.4, first half);
- (iii) an Agent who has been served formal notice or impending removal from the Agency List by the Agency Administrator (Resolution 820e § 1.1.5, first half);
- (iv) an Agent who has received formal notice from the Agency Administrator of any action or impending action with regard to the Agent that unreasonably diminishes its ability to conduct business in a normal manner (Resolution 820e § 1.1.5, second half);
- (v) an Agent whose application for change of location and/or name has been disapproved by the Agency Administrator (Resolution 820e § 1.1.6);
- (vi) an Agent who considers himself aggrieved by an act or omission of a BSP Member Airline (Resolution 818g § 4.1.5);
- (vii) an Agent from whom stocks of Standard Traffic Documents have been withdrawn by ISS Management pursuant to Resolution 818g or 832, as applicable and who requests an immediate review (Resolution 820e § 1.1.7);
- (viii) an Agent who considers that its commercial survival is threatened by an IATA Member Airline's decision preventing it from acting as Agent for, or from issuing Traffic Documents on behalf of that Member (Resolution 820e § 1.1.8);
- (ix) an Agent aggrieved by the impending incorporation into its Passenger Sales Agency Agreement of an amendment (Resolution 820e § 1.1.9/Resolution 818g § 4.1.6);
- (x) an Agent who considers that the Agency Administrator has not followed prescribed procedures as prescribed by the PAConf., to the Agent's serious and direct detriment (Resolution 820e § 1.1.10.).

C- From the Agency Administrator, a Member Airline, a Group of Member Airlines, or the Agency Services Manager:

The Commissioner shall receive a Request for Review from the Agency Administrator, a Member Airline, a group of Members or the Agency Services Manager to determine whether the Agent or Location has breached its Passenger Sales Agency Agreement, including Resolutions incorporated into it, in particular in respect to any of the twelve grounds set out in Resolution 820e § 1.3.

Rule 2 - Time for Submitting Requests for Review

A.- In principle, an Agent's, an Applicant's, a Member Airline's or the Agency Administrator's Request for Review described in Rules 1-A through 1-C shall be submitted in writing within thirty (30) calendar days of the Agency Administrator's/Member's notice of the decision under review, with the following exceptions:

1. Applications for Review as described in Rule 1-B (vii) must be submitted within ten (10) calendar days of the withdrawal of the Standard Traffic Documents (Resolution

820e § 1.2.2.2.). These are cases involving the Accounting Irregularity Safeguards provisions.

2. If a Party is able to show that it has not been able to Request a Review within the stipulated timeframe due to:
 - (i) circumstances beyond its control, as for example severe illness, not having been properly notified of any previous Notice of Irregularity and as such being unaware of its existence, or, any other impeding factor; or,
 - (ii) when a Party has engaged in discussions with IATA and/or a Member Airline aimed at finding a solution to the problem or has requested a reconsideration to IATA and/or a Member Airline and such a response is pending or was detrimental to the Agent,

a Request for Review may be accepted also after the said timeframe. However, the Commissioner will not grant Review if it no longer serves any practical purpose.

B.- When the Agency Administrator or any of the persons mentioned in Rule 1-C, submits a Request for Review after the 30 days of having detected the alleged violation from an Agent/Applicant, the Agency Administrator must justify to the Commissioner the reasons for such a delay, ensuring to copy the Agent/Applicant in its pleading. The Commissioner shall consider such reasons and shall decide whether or not a credible case has been made, and, if so, a review will be opened.

Rule 3 – Submitting a Request for Review

Each Request for Review shall contain:

- a) the name, physical address, telephone number, IATA Agency Numeric Code of the concerned Agent and an e-mail address for service of notice to the person lodging the Request for Review,
- b) a copy of the Request for Review should be sent simultaneously to the opposite Party,
- c) a copy of the decision which Review is been requested (when applicable), or a short description of the said decision or action, as well as the grounds of the alleged violation and the supporting documents of the allegation,
- d) a Request for Review filed by the Agency Administrator or a Member Airline shall contain full particulars of the alleged violation or the basis for the Review sought, in sufficient detail to enable the Agent concerned to prepare a complete response or material in rebuttal,
- e) evidence to show that the Request for Review is being filed within the time limit prescribed in Rule 2,
- f) where a Request for Review includes an application for interlocutory relief to stay action by the Agency Administrator, the Commissioner may in granting relief/stay require a financial guarantee of the petitioner, and/or set alternative requirements, as a condition for granting relief, as foreseen in Resolution 820e § 1.2.2.4,

- g) in light of the evidence presented at the initial stages of the Request for Review, the Commissioner decides whether or not a credible case exists in order for the TAC to allow the Review and afford the Parties the opportunity to present their side of the case (Resolution 820e § 1.2.3 and 2.1.3),
- h) having regard to the probative evidence presented in the course of the proceeding, the Commissioner shall decide whether there are grounds or not for awarding the requested relief.

Rule 4 - Dismissal

A Request for Review may be dismissed by the Commissioner, without a hearing, if the TAC finds that the written Request for Review does not establish, at that early and preliminary stage, a credible case of the failure or of the breach(es) alleged (Resolution 820e § 1.2.3). A dismissal made under this Rule shall be in writing and contain the findings and conclusions on which it is based.

Rule 5 - Costs

No charge shall be levied by the Commissioner in respect of the submission or determination of a Request for Review. The Commissioner has no power to make any order directing any Party to pay costs in respect of any Request for Review. Only if the Applicant withdraws its Request for Review after a hearing, the Commissioner may make an appropriate award to cover reasonable costs incurred by the Respondent and the Commissioner (Resolution 820e § 2.4).

Rule 6 - Withdrawal of Request for Review

A Request for Review may be withdrawn by the Party that made the Request, by notice to the Commissioner in writing, provided it is submitted before the Commissioner's decision is issued.

Rule 7 - Time for Accepting Requests for Review

Except where good cause is shown, to the Commissioner's satisfaction, by a Party bringing a Request for Review or by a Party affected by that Request for Review, the Commissioner will schedule each Review proceeding not later than forty five (45) days after receipt of such Request (Resolution 820e § 2.6).

Rule 8 – Commissioner's Communication and Parties' Responses

Upon receipt of a Request for Review, the Commissioner shall acknowledge it in writing, provide any necessary advice concerning further procedures and instruct the Respondent Party to file with the Commissioner and serve on all other Parties, an answer to the Request for Review.

Every answer to a Request for Review shall specifically admit, deny or, where appropriate, disclaim knowledge of each and every allegation and set forth any defence to the charges which will be relied upon by the Respondent. The Agency Administrator's or IATA Member

Airline's answer to a Request for Review described in Rules 1-A through 1-B shall state the Respondent's position with respect to the Request. Where applicable, such answer shall include copies of the record relied upon by the Agency Administrator in disapproving the application or removing the Agent from the Agency List.

The answers to a Request for Review described in Rule 1-B (vii) and (viii) shall state the position of the IATA Member Airline concerned.

If the Agent, the Agency Administrator or the Member Airline wishes to waive oral hearing, this shall be stated in the response.

Answers shall be filed not later than a date to be specified by the Commissioner. Failure to answer shall authorise the Commissioner to dispose of the proceeding in accordance with Rule 15 provided, however, that before entering the decision on the basis of either Party's failure to answer, the Commissioner shall notify, in writing, that Party of the TAC's intention to do so, and to allow appropriate time for that Party to respond.

Unless the Commissioner believes that additional information is necessary upon the filing of the Respondent's answer to a Request for Review, the Commissioner might proceed to set a date, time and place for an oral hearing or shall decide on the basis of the written record, if both Parties have so consented or if the Commissioner considers it appropriate under the circumstances (Resolution 820e § 2.3).

Rule 9 - Adjournments, Postponements and Extensions of Time

The Commissioner may grant applications for adjournment, postponement and extension of time upon a showing of good cause by any of the Parties.

To avoid loss of time, whenever possible, the Applicant shall notify the other Party(ies) of its application and ascertain their positions with respect thereto, before transmitting it to the Commissioner.

Rule 10 - Preliminary Conference Option

If the Commissioner considers it appropriate, after pondering the material lodged by the Parties, and if the Parties agree, the Commissioner may direct the holding of a conference with the Parties or their representatives, to be presided over by the Commissioner, as indicated in Resolution 820e § 2.6.

The Commissioner shall conduct the conference in such a manner as the Commissioner sees fit. In all cases, the Commissioner shall be guided by the principles of fairness and impartiality and by the wishes of the Parties; and if

- a) at or after such conference, agreement is reached between the Parties,
- b) the terms of that agreement will be put in writing:
 - either by the Parties themselves, in which case it will be signed by them and furnished to the Commissioner;
 - or by the Commissioner directly and submitted to the Parties, as the Commissioner might judge convenient;

or,

- c) if the Commissioner deems it appropriate, he/she may render a decision in accordance with the terms of that agreement and serve it to the Parties.

Rule 11 - Hearings

Promptly after receipt of the information provided for in Rule 7, the Commissioner shall fix the time and place of a hearing and notify the Parties (provided an oral hearing hasn't been waived in accordance with Rule 16 below). Within seven (7) days after receipt of a notice of hearing, unless instructed differently by the Commissioner, each Party shall serve on the other file with the Commissioner either:

- a) a list of names, e-mail contacts of all witnesses which the Party anticipates will testify or execute affidavits for introduction at the hearing, as well as the capacity in which they will be acting upon, or
- b) a statement that the Party submitting the document does not anticipate calling witnesses or submitting affidavits;

In addition, each Party must provide to the Commissioner and to the other Party a list of the attendees at the hearing (whether it will be its legal representatives or observers or any other person) identifying each person by providing the name and contact information as well as the capacity on which they will be acting upon at the hearing.

If testimony in the form of oral or affidavit evidence is to be offered, the general nature and purpose thereof shall be briefly set forth. All documentary evidence to be submitted at the hearing shall be exchanged by the Parties and filed with the Commissioner, no later than seven (7) days before the scheduled hearing date or as instructed by the Commissioner.

Parties are free to be represented or assisted during the TAC's proceedings as they see fit. However, due to the informality of the proceedings legal representation is not mandatory.

Rule 12 - Venue of Hearings

Hearings are to be held in the vicinity of the principal place of business of the Agent. A hearing may be convened at another venue, if the Commissioner deems the circumstances so warrant.

Rule 13 – Attendance at Hearings

Parties, their representatives and their witnesses shall be entitled to attend hearings. Attendance by other persons shall not be permitted without the express approval of the Commissioner.

At the request of a Party, or if the Commissioner finds it appropriate, the Commissioner may require retirement of any witness during the testimony of any other witness.

Rule 14 – Proceedings at Hearings

Proceedings before the Commissioner shall be informal and the Parties shall not be required to observe strict rules of evidence. The Commissioner shall be entitled to inform her/himself on any matter, in such manner as deemed appropriate by the Commissioner.

Unless otherwise determined by the Commissioner, a hearing shall be opened by the recording of the place, time and date of the hearing, the presence of the Commissioner and the Parties and their representatives, if any; and, by receipt of any answers, submissions or documents from the Parties to the Commissioner. Thereupon, the hearing shall proceed in the following manner:

- a) the Commissioner shall solve all outstanding preliminary matters;
- b) the Party who submitted the Request for Review shall then present its case and supporting evidence. Any witnesses shall be subject to pertinent cross-examination by the opposing Party, and/or its representative;
- c) thereafter, the responding Party shall present its case and evidence accordingly. Any witnesses shall be subject to pertinent cross-examination by the opposing Party;
- d) the Commissioner may, at any time if deemed appropriate, ask for statements clarifying the issues involved;
- e) the decision of the Commissioner will be made in writing and served on each Party.

The Commissioner may adjourn any hearing, at the Commissioner's discretion.

Rule 15 - Absence of a Party

If a Party or its representative, after due notice, fails to be present at the hearing or fails to obtain an adjournment, the decision will be rendered on the basis of the written evidence previously tendered by the Parties.

Rule 16 - Waiver of Oral Hearing

The Parties may agree to waive oral hearing and, thereby, allow the Commissioner to base the decision on their written submissions, if the Commissioner so deems appropriate.

Likewise, the Commissioner might deem unnecessary to hold an oral hearing (Resolution 820e § 2.3), in which case he/she will notify the Parties of his/her decision, ensuring at all times that due process is not violated and that no Party will be aggrieved by this decision.

The Commissioner shall ensure that both Parties have access to all pleadings and other documents upon which the Commissioner is to base the decision, and are given appropriate time to complete their respective written submissions.

Rule 17 – Commissioner's Additional Powers

At the Commissioner's discretion or based upon any Party's request, the Commissioner might invite the Parties to solve their differences through mediation or through any other amicable dispute resolution mechanism that the Commissioner deems appropriate under the

circumstances. The Commissioner is empowered to serve as facilitator of such an amicable procedure (Resolution 820e § 3.4).

Rule 18 - Decisions

Each decision shall be in writing and should contain the findings and conclusions of the case. Decisions shall be served on the Parties and upon the Agency Administrator, if she/he is not a Party.

Normally, a formal decision will be served to the Parties in an email format. However, any Party may request a signed hardcopy of it, in which case such version will be sent to both Parties.

The Commissioner's decisions have immediate effect unless expressly indicated otherwise in the text of the decision. Pursuant Resolution 820e § 2.9 the Commissioner's decision is binding on the Parties.

Rule 19 – Clarification Right

Any Party has the right, according to Resolution 820e § 2.10, to request an interpretation of the decision; or to seek a correction of any error in computation, any clerical or typographical error, or any omission found in the decision.

The time frame for these types of requests will be within 15 days after receipt of the electronic version of the decision.

If the Commissioner considers that the request is justified, the Commissioner shall make the interpretation or correction in writing within 15 days of the receipt of the request.

Rule 20 - Arbitration

Each decision shall indicate the Parties' right to seek review by Arbitration and shall describe briefly the procedure involved.

Rule 21 - Confidentiality

The identity of persons involved in any Review proceeding and/or the material submitted by the Parties, shall not be publicly disclosed by the Commissioner. It is, however, within the discretion of a Party to cause a Commissioner decision to be published.

On some occasions, as in case of reinstatement of a suspended or cancelled Agent, as a matter of practicality, the decision will need to be communicated to all airlines.

In addition, the members of the PAPGJC will have access to the decisions through a secured webpage only accessible by PAPGJC members, unless one of the Parties involved in the Review would be opposed to this posting.

As mentioned in Rule 18 above decisions will also be sent to the Agency Administrator, if she/he is not a Party.

Rule 22 - Activity Reports to Passenger Agency Conference (PACConf) and Passenger Agency Programme Global Joint Council (PAPGJC)

The Travel Agency Commissioners are required (as per Resolution 820d § 10) to submit regular activity Reports to the attention of the PACConf and the PAPGJC. Such Reports normally identify only the country of the Agent but if the Commissioner deems it to be in the public interest to disclose the Agent's identity and the Agent agrees, such disclosure may be reflected in the Report.

Rule 23 – Procedural Guidance

The Commissioner is available at all times to provide general information concerning the operations of the Office, to receive comments and suggestions with respect thereto and to respond to questions concerning practice and procedure. All such inquiries are welcome.

However, the Commissioner will not provide any advice or guidance to any Party with respect to the merits of any matter involved in a pending proceeding.

Rule 24 - Communications

Requests for Review, answers and other communications permitted or required by these Rules shall be submitted to the Commissioner for the pertinent Area at the following addresses, with copy to all the Parties concerned in the Request for Review:

Travel Agency Commissioner Area 1

Ms. Verónica Pacheco-Sanfuentes
(The Americas and the Caribbean)
110 - 3083 West 4th Avenue
Vancouver, BC V6K 1R5
Canada

Phone: + 1 (604) 742 9854
e-mail: Area1@tacommissioner.com
website: www.tacommissioner.com

Travel Agency Commissioner Area 2

Mr. Andreas Körösi
(Europe, Africa & Middle East)
P.O. Box 5245
S-10245 Stockholm
Sweden

Phone: + (46) 70 767 6730
e-mail: Area2@tacommissioner.com
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Travel Agency Commissioner Area 3

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& Pacific Islands)
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