

TRAVEL INDUSTRY ACT, 2002 REVIEW

PHASE 2 REPORT

Table of Contents

- I. Summary2
- II. Background7
 - Travel Industry Act7
 - The Review Process7
- III. Considerations for a Regulatory Framework..... 10
 - Financial and Disclosure Risks Faced by Ontario Travel Consumers..... 13
- IV. Summary of Phase 2 Findings and Proposals for Possible Changes to TIA 15
 - 1. Maintaining Travel Industry-Specific Regulation..... 15
 - 2. Definitions and Registration Requirements..... 18
 - 3. Consumer Protection Issues27
 - 4. Regulatory Burden on Industry 35
 - 5. Compliance & Enforcement 46
 - 6. Travel Industry Compensation Fund..... 50
 - 7. Other 58
- V. Next Steps.....59
- VI. Appendix: Summary of Proposals for Potential Changes60
- References.....63

I. Summary

The Ministry of Government and Consumer Services is undertaking a detailed review of Ontario's [Travel Industry Act, 2002](#)¹ (TIA) and O. Reg. 26/05 ("the regulation") to consider how the marketplace has evolved since TIA was last reviewed and whether reforms are needed to better protect consumers who purchase travel services in Ontario. In the first phase of the review, consumers and stakeholders raised a number of issues, such as concerns that:

- Gaps in consumer protection because today's marketplace is now dominated by online shopping;
- The majority (93%) of registered travel agents and wholesalers* (also called "registrants") are small (considered to be those with less than \$10 million in annual sales)² and find the financial requirements under TIA burdensome;
- The Travel Industry Council of Ontario (TICO) does not have the enforcement tools that it needs to operate as a modern risk-based regulator; and
- The scope of Ontario's Travel Industry Compensation Fund† ("the fund") can be confusing for consumers (e.g., it does not cover everything that is on the customer's invoice) and may be inadequate to compensate consumers in the event of a large failure.

For a detailed summary of the issues identified in the first phase, please refer to the [Phase 1 Summary Report](#).

This Phase 2 Report marks the completion of the second phase of our comprehensive review of TIA. The overall goal of this phase was to have an open discussion with

* TIA defines a travel agent as "a person who sells, to consumers, travel services provided by another person." A travel wholesaler is defined as "a person who acquires rights to a travel service for the purpose of resale to a travel agent or who carries on the business of dealing with travel agents or travel wholesalers for the sale of travel services provided by another person."

† The fund provides reimbursement to customers in situations where, for example, the customer paid for certain travel services which were not provided and the payment was made to or through an Ontario registered travel agent and the customer has not been reimbursed by the travel agent or wholesaler due to the bankruptcy or insolvency of the travel agent or wholesaler, and has otherwise not been reimbursed by any other person who received the customer's money or is legally obliged to reimburse or compensate the customer. This example includes the situation where an end supplier airline or cruise line is insolvent or bankrupt.

members of the public and travel industry[‡] stakeholders about potential changes to TIA in order to address the issues which were identified during the first phase. This report is informed by province-wide consultations with stakeholders and the public, an analysis of the available data, research into the regulation of travel agents and wholesalers in other jurisdictions and research into other sectors. It includes proposals for possible changes to TIA and/or the regulation with the aim of achieving three important goals:

- Strengthen consumer protection;
- Reduce the regulatory burden on registrants; and
- Improve regulatory efficiency.

We are now seeking feedback from Ontario travel consumers and travel industry stakeholders on the proposals which are included in this report, including:

1. **Maintaining Travel Industry-Specific Regulation, With Changes:** While Ontario's travel marketplace has changed since TIA was last reviewed, there remains a strong consumer protection rationale for maintaining travel-industry specific regulatory requirements. We are proposing to maintain TIA and continue its focus on protecting consumers from the financial and access to information risks associated with purchasing travel. At the same time, we are proposing possible changes to TIA in order to address some of the specific issues that were identified during the review.
2. **Definitions and Registration Requirements:** We are proposing possible changes to update the definitions under TIA in order to clarify the scope of TIA and bring the act up to date with changes in the marketplace. We are also proposing changes to the classes of registrants in order to create a class for travel sellers (currently travel agent and wholesaler) and a new class for individual travel counsellors.
3. **Consumer Protection Issues:** We are proposing possible changes to introduce a number of measures to strengthen consumer protection, such as:
 - **Strengthening requirements for advertisements and other representations (e.g., a brochure) for travel agents and wholesalers who are based outside of the province,** but are targeting their advertising of

[‡] Throughout this document, the term travel industry refers to registrants, TICO, airlines, tour operators, travel industry partners, such as the travel insurance industry, and other stakeholders.

travel services to Ontarians, by requiring them to follow the province's rules regarding representation (advertising) regardless of where they are located. This requirement is intended to help reduce confusion and prevent surprises for Ontario travel consumers, while also helping to provide a more level playing field for Ontario registrants.

- **Introducing new disclosure requirements for registrants**, including displaying the TICO logo in a prominent manner on all advertisements, including websites and social media, for travel services prior to purchase, and requiring that registrants disclose additional information to consumers, such as information about coverage under the fund. This is intended to help consumers have greater clarity around whether, and how, they are protected when purchasing travel services in Ontario.
- **Requiring registered travel counsellors to meet continuing education requirements** to be established in consultation with registrants. These requirements are intended to help ensure that registered travel professionals follow a code of ethics, and have a minimum level of knowledge about the requirements under TIA necessary to protect Ontario travel consumers.

4. **Regulatory Burden on Industry:** We are proposing possible changes to the requirements for registrants to help lessen the regulatory burden, including:

- **Amending the financial reporting requirements** so that the smallest registrants who have under \$2M in annual sales are required to provide TICO with internally prepared financial statements instead of a Review Engagement report[§] prepared by a licensed accountant. The thresholds for financial reporting requirements for larger registrants could also be amended to reflect inflationary increases and the growth in the travel industry that has occurred since TIA was last reviewed.
- **Remove the trust accounting requirements** and give the registrar the authority to impose trust accounting requirements for registrants who are deemed a financial risk.

[§] A Review Engagement is conducted by a licensed accountant to provide limited assurance that there are no material modifications that should be made to the financial statements for them to be prepared in accordance with generally accepted accounting principles and free of material misstatements due to error or fraud.

- **Amending the security deposit requirements** to differentiate the requirements based on the annual sales of the registrant, increase the length of time that the registrar** holds the security deposit, and provide additional options to registrants around how this security may be provided. This requirement is intended to help strengthen security requirements and bring Ontario in line with requirements in other jurisdictions which have travel industry-specific regulations.
 - **Amending the working capital requirements** to require registrants to maintain positive working capital at all times relative to their total annual sales in Ontario, as opposed to on a fixed basis (develop working capital tables based on ratios).
 - **Introduce alternative regulatory requirements** around access to and storage of financial records for registrants who have sales staff physically located in Ontario, but not a physical place of business in the province to reflect the growth in flexible work arrangements and e-commerce in Ontario's travel marketplace.
5. **Compliance and Enforcement:** Granting TICO the authority to issue administrative monetary penalties, and expanding TICO's inspection powers with respect to non-registrants. We are proposing to include an appeals mechanism to help ensure that individuals and companies have recourse in the event that they disagree with the application of an administrative monetary penalty. We are also proposing to require that the proceeds from any new financial penalties for non-compliance with TIA go into the fund, while maintaining TICO's ability to incur reasonable expenses from the fund to promote public awareness and education. This change is intended to allow TICO to better tailor their enforcement activities so that they are proportionate to the risk for consumers, while also helping to support increased consumer awareness.
6. **Travel Industry Compensation Fund:** We are proposing to enable the potential development of an expanded fund with contributions directly from consumers, while undertaking additional research and consultations with consumers to determine whether to implement the expanded model. We heard a number of compelling

** Throughout this report registrar is used as another term for TICO.

arguments about the potential consumer protection benefits of expanding coverage under the compensation fund to include all services that are listed on a consumer's invoice (such as additional end suppliers and out of province tour operators) as well as cover fraudulent activities by a registrant or a non-registrant who is claiming to be a registrant. However, there is currently not enough available evidence to determine whether the expansion of the fund is warranted and whether consumers would see value in such a change.

A more detailed summary of these proposals are outlined later in this report. We [welcome feedback](#) on the proposals by July 24, 2017.

II. Background

Travel Industry Act

In Ontario, TIA regulates travel agents and wholesalers, who must be registered if they operate in Ontario. TIA is administered and enforced by the [Travel Industry Council of Ontario](#) (TICO).^{††} TICO is responsible for a number of activities including overseeing the regulation and monitoring of registrants, investigating consumer complaints, and administering the compensation fund.

When legislation regulating Ontario's travel industry was first introduced in 1974, the industry was very different from the one that exists today. Since TIA was last reviewed in 2002, the use of credit cards by consumers has increased significantly with as many of 93% of travel purchases in Ontario now involving a credit card.³ Similarly, estimates suggest up to 79% of travel purchases in Ontario are now being conducted online.⁴ A recent survey of Ontario consumers revealed that of those surveyed, 44% booked directly through the airline(s) or the accommodation provider, 27% booked using an online travel agency, and 14% booked using a store front travel agency.⁵ As well, the size and business models of travel agencies and wholesalers operating in the province have evolved. As a result, the industry has consolidated into a relatively small number of large registrants that represent the majority of the travel services' market share while the majority of registrants are small businesses.⁶ While some regulatory changes have occurred over the last decade in response to specific issues, we heard that TIA does not reflect changes to Ontario's travel marketplace that have occurred over the past decade.

The Review Process

The review is taking place in three phases:

- **Phase 1 (summer 2016/winter 2017)**

^{††} TICO is a designated administrative authority, an independent not-for-profit corporation that is overseen by the Ministry of Government and Consumer Services.

- Identified issues through stakeholder consultations, a public survey, research and direct feedback from stakeholder meetings. The findings of this phase are summarized in the [Phase 1 Summary Report](#).
- **Phase 2 (winter 2017)**
 - Held in-person consultations across the province to examine the issues raised during the first phase; discussed potential changes to TIA and its regulation to address these issues. Participants were also invited to submit feedback to us via email. This report represents a summary of the findings of this phase.
- **Phase 3 (spring 2017)**
 - Seek feedback from members of the public and travel industry stakeholders about the proposals for possible changes to TIA outlined in this report by July 24, 2017. These proposals may change depending on the feedback we receive as part of this phase of the review, and are subject to the government and legislative decision making processes. Additional research and consultations with consumers may also be required to determine the specifics regarding some of the proposals outlined in this report.

Over 173 individuals and organizations participated in phase 2 of the review. This includes 149 individuals who attended in-person consultations in seven major cities across Ontario, including Toronto, London, Thunder Bay, Ottawa, Sudbury, Mississauga and Markham. Of these participants, approximately 7% were consumers, and 93% were travel industry stakeholders. We also received 24 submissions via email, of which 30% were from consumers or non-travel industry stakeholders, and 70% identified themselves as representatives from the travel industry.

When combined with the feedback from the first phase of the review (outlined in the Phase 1 Summary Report), we have received feedback from over 1,740 individuals and organizations^{‡‡} in support of the review. These results were supplemented by a survey

^{‡‡} The actual number of participants may be lower because some individuals participated in multiple phases of the review. ^{§§} On May 16, 2017, the federal Minister of Transport, Minister Garneau, tabled Bill C- 49, entitled *The Transportation Modernization Act* which, if passed, will introduce measures to enhance air passenger rights, among other measures.

of 752 Ontario residents undertaken by Ipsos Public Affairs and funded by TICO which ran from February 28th to March 8th, 2017.⁷

III. Considerations for a Regulatory Framework

The feedback that we received from members of the public and the travel industry on potential changes to TIA should be reviewed in the context of a number of important considerations, such as:

- **Travel-Specific Framework:** There are risks associated with the travel sector that support a sector-specific approach to regulation in order to protect consumers, such as:
 - **Advance Payment:** Most purchases are made in advance of the actual trip. While data is not available on the timelines and frequency of advanced booking, anecdotally we heard that some types of trips, such as specialty cruises, can be paid in full as far as one year in advance. This often requires the registrant to hold the consumers' funds prior to transferring them to the travel provider. When and how much of the payment is forwarded to the end supplier can vary depending on terms and conditions of the agreements that are in place (e.g., in some cases a deposit is required, full payment is required up front, or funds are transferred only after completion of the trip). Advance payment makes it more difficult for the consumer to withdraw their payment if the travel services were not provided as outlined in the purchase agreement. Further, consumers may not have recourse should they wish to cancel their purchase within a reasonable timeframe following their purchase.
 - **Distance From Home:** Travel consumers face the risk of being stranded in a destination if there is a failure of a registrant. The greater the distance the consumer travels from home, the greater the potential cost and effort it may take to get them safely home in the event of such a failure.
 - **Incomplete Information Prior to Purchase:** Travel consumers make purchase decisions based on incomplete information because they are unable to view and experience the complete details of the trip prior to purchase (e.g., consumers can view photos of a resort online but cannot fully understand the quality of the amenities until they arrive). In the absence of specific disclosure requirements, there could continue to be a risk that

consumers may not be provided with complete information to make an informed purchase decision.

- **Travel Agent is an Intermediary:** The registrant who is handling a consumer's money (including holding deposits) is not the direct end supplier that the consumer interacts with to fulfill their purchase. This indirect relationship between the consumer and the end supplier can pose a higher risk of financial harm (e.g., if the consumer's money is not provided to the end supplier), thereby impacting the consumer's travelling experience.
- **Consistency:** Across Canada, there currently exists a patchwork system of consumer protection measures for travel consumers. Different provinces and sectors have taken different approaches to regulating the industry. Any potential changes to TIA should consider consumer protections that already exist federally, in other provinces, and in other sectors in order to reduce potential consumer protection gaps, and avoid unnecessary burden on registrants. For example, in addition to TIA, Ontario travel consumers may receive protection, either directly or indirectly, from other sources, such as:
 - Federal airline regulations established by Transport Canada, and enforced through the Canadian Transportation Agency (CTA);^{§§}
 - Financial requirements associated with the International Air Transportation Association's (IATA)^{***} optional accreditation program, which travel agents can apply for in order to receive benefits such as access to IATA's Billing and Settlement Plan, an interface for invoice and payment between the agent, airlines and transport providers;⁸
 - Financial protections available through credit card chargebacks;^{†††}

^{§§} On May 16, 2017, the federal Minister of Transport, Minister Garneau, tabled Bill C- 49, entitled *The Transportation Modernization Act* which, if passed, will introduce measures to enhance air passenger rights, among other measures.

^{***} The International Air Transport Association (IATA) supports aviation with global standards for airline safety, security, efficiency and sustainability. According to IATA there are 788 IATA accredited travel agents in Ontario. Based on TICO's analysis, approximately 45% of registrants also have IATA accreditation.

^{†††} A chargeback from a credit card issuer gives the customer a refund when they have been wronged in a transaction and the retailer won't give their money back. For example, consumers who purchase travel through a credit card may be eligible to receive a chargeback in the event that their travel services are not provided due to failure of a supplier.

- Varying regulations for travel agencies and wholesalers across the different provinces and territories; and,
 - Optional insurance coverage (including travel insurance,^{##} and errors and omissions insurance purchased by registrants^{\$\$\$}).
- **Scope of TIA:** Among other things, TIA provides that anyone who purchases travel from an Ontario registrant (under specific circumstances):
 - Is financially protected when purchasing travel services;
 - Is dealing with a registered business subject to TICO oversight;
 - Has access to the information that they need to make informed purchasing decisions;
 - Has access to a complaints process if something goes wrong with their travel purchase; and
 - Has access to assistance in order to get home safely if they are stranded abroad.

In undertaking this review, we are proposing that TIA should retain its focus on these important consumer protection measures. Some risks to Ontario travellers are currently outside the scope of TIA, such as health and safety concerns (e.g., if hotels meet municipal fire codes), disruption of travel due to war or poor weather, and quality of service issues. In contemplating potential regulatory changes, we are not proposing that the scope of TIA be modified to address these types of risks.

- **International Issues:** Consumers can purchase travel services from abroad through the internet or over the phone, therefore a consistent application of the regulatory requirements rests on our ability to affect the behaviour of foreign sellers. The enforcement challenges associated with cross-jurisdictional issues may make it difficult for TICO to apply these requirements consistently across all businesses that sell or market travel to Ontario consumers.

^{##} Travel insurance is an optional financial product that is designed to pay for uncertain expected costs that may arise when travelling. These can include emergency hospital/medical costs, trip cancellation, lost baggage and accidental insurance. The coverage options and costs of insurance policies vary. Not all plans cover all of these components.

^{\$\$\$} Errors and omissions (E&O) coverage is professional liability insurance that protects businesses and individuals against claims made for inadequate work or negligent actions.

Financial and Disclosure Risks Faced by Ontario Travel Consumers

Most participants in the review agreed that the financial and disclosure risks associated with travel purchases are of greatest risk to consumers. We heard that there should be rules in place in TIA to protect Ontario travel consumers from the following risks:

- Misappropriation of consumer funds by a travel agent or wholesaler;
- No information or incorrect information (e.g., airline rules not being communicated to the customer);
- End supplier failure (i.e., not just airlines and cruise lines); and
- Fraud by a travel agent or wholesaler, including identify theft, credit card theft, etc.

For the purposes of TIA, we will continue to focus on ensuring that consumers are financially protected when they purchase travel, and have the information that they need in order to make an informed travel purchase. However, we heard that wherever possible these rules should be proportionate to the potential risk to consumers. We heard that not all types of travel transactions may present the same financial risks to consumers (e.g., stakeholders suggested that large travel wholesalers may be less risky than small retail agencies, corporate travel may be less risky than leisure travel, and travel within Ontario may be less risky than international travel). These considerations are discussed in more detail below.

The following regulatory framework (Figure 1.0) serves as a model to guide a risk-based approach to regulating travel agents and wholesalers in the province. It sets out the vision, goals and desired outcomes which we would like to achieve through this review. This framework is not exhaustive; we welcome stakeholder feedback and suggestions about the concepts outlined in Figure 1.0.

Figure 1.0: Proposed Framework for Regulation of Ontario’s Travel Agents and Wholesalers

Vision	Ontario consumers are financially protected when purchasing travel services, and have access to the information they need to make informed purchasing decisions		
Goals	Improved consumer protection	Reduced regulatory burden	Improved regulatory efficiency
Desired Outcomes	<p>Ontario travel consumers:</p> <ul style="list-style-type: none"> • Are protected from most financial risks when purchasing travel services through a registrant (e.g., fraud, misrepresentation, being stranded or unexpected costs for a financial failure of a travel provider), regardless of their method of payment, through measures such as the Travel Industry Compensation Fund. • Understand the protections that are available to them by purchasing travel from a registrant. • Have access to the necessary information in order to make an informed travel purchase decision. 	<ul style="list-style-type: none"> • Registrants understand the regulatory requirements that apply to them and their obligations under TIA. • The cost of compliance is no more than necessary to address the risk; travel agents or wholesalers are able to operate as a viable business in Ontario. 	<ul style="list-style-type: none"> • TICO has the necessary tools and powers to protect Ontario travelers, to regulate the sector, and respond to complaints from the public. • TICO applies their enforcement powers in a way that is proportionate to the potential financial risk to consumers (e.g., working with businesses to achieve compliance as a first line of defense). • TICO’s administration is cost effective and sustainable. • TICO has a strong consumer and registrant awareness mandate, and has the ability to meet this mandate.

IV. Summary of Phase 2 Findings and Proposals for Possible Changes to TIA

1. Maintaining Travel Industry-Specific Regulation

Proposal 1.1: Maintain the Travel Industry Act with amendments to address some of the specific issues identified during the review.

As a result of the feedback we heard during the review, we asked whether the need for travel-specific regulation continues to exist. We heard varying perspectives on the need for a travel industry specific regulatory regime in Ontario.

Overall, the majority of consumers, registrants and other travel industry stakeholders who participated in phase 2 of the review expressed support for maintaining TIA, with amendments to address certain issues. Some registrants and non-registrant tour operators felt that a travel-specific regulation is no longer necessary because of general protections in the [Consumer Protection Act, 2002](#) (CPA),**** and the increased use of credit cards with financial protections, such as chargebacks. However, we heard compelling arguments that TIA should be maintained. For example, many registrants and consumers felt that travel purchases are inherently risky for consumers because they involve advance payment, incomplete information prior to purchase, and the potential to be stranded far away from home, which are absent or less common in other sectors. Many registrants also felt that the regulatory protections available to consumers give travel agents and wholesalers greater credibility, and represent a competitive advantage for their businesses. We also heard from several consumer advocates that the protections available under TIA are working well to protect consumers, and in some cases should be strengthened.

Across Canada, two other provinces, British Columbia (BC) and Quebec, have specific regulatory requirements for travel agents and wholesalers similar to Ontario. California

**** In Ontario, many consumers' rights are set out by the CPA, in addition to other laws such as TIA. The CPA provides broad marketplace protections to consumers and applies to a wide range of consumer transactions. The CPA sets out the protections, rights and remedies available to consumers in certain circumstances such as a requirement that suppliers clearly, prominently and comprehensibly disclose information related to certain types of contracts and a prohibition on unfair practices such as misleading representations. Currently, transactions covered by TIA are exempt from certain provisions of the CPA.

also has travel industry-specific requirements. In 2014, the Australian government repealed the country's travel-specific regulations, the Travel Agents Act. As a result, travel agents in Australia are no longer required to hold a licence, and the Travel Compensation Fund^{†††} is no longer operational. Australian travel businesses are now subject to the general consumer protection provisions under Australian Consumer Law, the national law for fair trading and consumer protection.⁹ In response to deregulation, the Australian Federation of Travel Agents (AFTA) created a voluntary accreditation program called the AFTA Travel Accreditation Scheme (ATAS).¹⁰

Overall, there are a number of important considerations to bear in mind in determining whether to maintain TIA, including:

- A recent survey of Ontario pleasure travel consumers revealed that:¹¹
 - Almost six in ten (57%) of consumers surveyed would expect to be reimbursed for the full cost of their trip if the travel agent were to go out of business, while 26% expect to get some of the cost back;
 - 32% of consumers surveyed would expect the travel agency to reimburse them if the travel agent were to go out of business, followed by insurance companies (16%), credit card companies (11%), or TICO (11%);
 - After being given a description of TICO, 94% of consumers surveyed expressed the belief that TICO plays an important role in the travel industry, of which 51% think it is a very important role; and
 - Of these pleasure travellers, many also travelled for business; 80% believed the same principles apply to corporate travel.
- TIA establishes a number of consumer protection measures which would no longer be available if TIA is repealed, such as the licensing of travel agents and wholesalers, the complaint assistance services provided by TICO, and coverage under the fund. For example, over the past two decades since the fund was created, it has paid close to \$14 million in consumer claims, assisting more than 25,000 consumers.¹² In the 2015/16 fiscal year, TICO paid 31 claims under the fund to 94

^{†††} The Travel Compensation Fund was Australia's primary means of providing compensation to eligible travellers who suffer loss as a result of the financial collapse of a participating travel agency business. This fund did not provide coverage for losses resulting from the failure of end suppliers, such as airlines or cruise lines.

consumers at a total value of \$100,327.¹³ In years where there has been a major financial failure, such as when Conquest Vacations voluntarily terminated its registration to operate as a travel wholesaler (the 2009/10 fiscal year), TICO paid claims of over \$3 million.¹⁴ When it comes to complaint assistance, TICO resolved 240 written consumer complaints against registrants in the 2015/16 fiscal year, successfully assisting consumers in obtaining \$126,475 in restitution. Consumers would not have access to these protections if TIA were to be repealed.

Given these considerations, there is a strong rationale for continuing to provide the travel specific protections for consumers under TIA.

2. Definitions and Registration Requirements

2.1 Definitions:

Proposal 2.1: Change the existing definitions under the Travel Industry Act to provide additional clarity and better reflect Ontario’s travel marketplace (e.g., to define “travel seller”, “travel counsellor”, and “selling”).

TIA currently prohibits anyone from acting as a travel agent or wholesaler unless registered under the Act. However, we received feedback from stakeholders that some of the definitions are unclear or no longer relevant given changes in the travel marketplace. We are proposing changes to the definitions under TIA in order to provide additional clarity around who should be captured under TIA, including:

- **Travel Seller vs. Travel Agent/Wholesaler:** Many registrants felt that these two categories of travel agent and travel wholesaler may no longer be relevant given the changes to travel industry business models. Approximately 25% of all registrants hold both a retail and wholesale registration, and we heard that requiring two registrations is an administrative burden on registrants.¹⁵ There is no clear need to distinguish between the two types of registration. We are proposing to create one category of “travel sellers” to encompass both types of registrations.
- **Travel Counsellor:** We also heard that the current definitions in TIA are confusing because they do not differentiate between the agency (as the business) and the agent (as the individual travel counsellor). We are proposing to create a new definition of “travel counsellor” to capture the individual who has a documented employment relationship with the travel seller.
- **Selling:** TIA does not currently define what it means for a registrant to “sell” travel services. We heard that this creates confusion in knowing when someone needs to be registered. We are proposing to create a new definition of “selling” which is intended to capture any person or entity who:
 - Arranges travel services for a customer in exchange for payment; and

- Either completes the financial transaction or attempts to influence or induce a customer to purchase travel services (e.g., a call centre that is providing consumers with advice related to a travel booking that could potentially result in a sales transaction would be captured); and
- If completing the financial transaction, either takes payment and processes it, or takes the customer's credit card information and provides it to an end supplier, such as an accommodation provider or airline (e.g., a travel seller with a web portal that facilitates travel purchases by taking consumers' credit card information and flowing it through to the end supplier would be captured); and
- Either has:
 - A place of business in Ontario (i.e., a storefront), or
 - Staff who are "selling" travel services and are physically located in Ontario (e.g., a company that has a call centre or independent sales representatives who are located in the province and are selling travel online or over the phone but do not have a public facing bricks and mortar office, but to exclude other staff such those working on IT, finance or marketing).

There is a strong rationale for requiring travel sellers who are involved in these types of transactions to possess a minimum level of knowledge on the requirements under the act, meet consistent disclosure requirements, and meet minimum financial requirements in order to ensure that consumers are protected. In introducing these changes, we are proposing to clearly specify that individuals who collect money from their friends or family in order to book a trip and do not advertise to the public would not be captured under TIA, where they receive no payment for these services. Such informal activities constitute a lower risk to consumers and should therefore not be the focus of TIA.

In phase 2 of the review, we heard from some registrants who felt that TIA should include specific requirements related to the sharing economy. However, most of these comments focused on issues related to the hosts, as the accommodation providers who

list their properties on home-sharing sites (e.g., health and safety concerns, taxation), which, like other accommodation providers such as hotels, may be outside the scope of TIA. The main concern of registrants was ensuring that the home sharing businesses operate within a level playing field, following the same requirements as registrants. While some home-sharing platforms may be captured under TIA as a result of these proposed definitional changes, in the interest of consistency, we are not proposing any specific requirements for the sharing economy at this time.

2.2 Exemptions

Proposal 2.2: Conduct additional research and consultations about potential changes to the exemptions under the Travel Industry Act.

The regulation currently sets out a number of exemptions from the Act and its regulation. Exemptions may be warranted in cases where certain activities:

- Do not pose a significant risk to consumers; and/or,
- Would otherwise pose an undue burden on the business relative to the risk to consumers if they were to be captured under TIA.

There is a strong consumer protection rationale for minimizing exemptions in order to avoid creating loopholes which could allow some businesses to avoid registration under TIA. However, in adopting a fairly broad definition of “selling”, consideration should be given to whether changes should be made to the existing exemptions under TIA to ensure that TIA does not unintentionally capture activities which meet these two conditions. The most frequent suggestions for potential new exemptions from TIA included:

- **Gift Cards:** Exempt companies who sell gift cards that can be redeemed for travel services, where those companies would not otherwise fall under the definition of a travel seller or travel counsellor (i.e., those that do not sell other travel services). A post office or a drug store that sells gift cards that could be redeemed for a stay in a hotel in addition to other services like meals or a massage would not have to be registered under TIA. We heard that such transactions do not pose the same level of

financial risks to consumers, or necessitate the same disclosure requirements as other types of travel purchases. We also heard that it would be impractical to require such organizations to be registered and follow all of the requirements under the act in light of this minimal risk.

- **School Boards:** TIA currently exempts a person who is employed to teach in an elementary or secondary school, university or college from the requirements under the act when arranging one day tours, when certain conditions are met. We heard from a number of school board representatives who felt that:
 - School boards are public institutions governed by provincial legislation and have strict financial requirements around procurement and risk management which they are required to meet (e.g., for trips outside of Ontario, school boards often have a procurement arrangement with travel agents and wholesalers which requires them to demonstrate that they are registered under TIA);
 - The potential risk to consumers may be lower because all school boards maintain insurance coverage to cover a claim for the theft of travel funds;
 - Certain types of travel bookings constitute a relatively low risk to consumers (e.g., for short overnight camps, school boards often use a school board approved transportation company, book the facility and collect the funds from students).

However, the case may be made that students and parents would still expect to be compensated from the fund in the event of a failure of a travel provider in these circumstances.

- **Domestic Travel/Tours:** We heard from some small tour operators who were supportive of the recent changes to TIA which exempt one-day tour operators, but felt that these exemptions should be further expanded. They felt that TIA should not apply to Ontario-based tourism companies operating exclusively in Canada with no air or cruise component, on the basis that hotels in the province are already

regulated at the municipal level, and the cost of returning travellers to their homes in the event of a failure would be relatively small within province.

- **Small Businesses who Operate Travel Services as a Small Portion of Their Business:** We heard from owners of small businesses, such as photography shops and yoga studios who book travel, who argued that they should be exempted from TIA because arranging travel is a relatively small part of their business. They also noted that TIA's financial requirements prevent them from expanding their businesses. However, there is a compelling case to be made that these types of businesses actually pose a greater financial risk to consumers as they have less knowledge and expertise on the travel industry and the regulatory requirements.
- **Cottage Rental Agencies:** We heard from some registrants who felt that these companies should be exempted from TIA on the basis that they only arrange accommodation and not transportation. However, as these companies are taking consumers' money in advance of the completion of the trip, there is still a strong rationale for ensuring that they meet minimum financial requirements when doing so.

Based on these considerations, it is unclear whether there is a strong rationale for changing the current exemptions in TIA. We are proposing to conduct additional research and discussions with stakeholders to determine whether there may be opportunities to expand the exemptions in cases where there is a relatively low risk to consumers.

2.3 Classes of Registrants:

Proposal 2.3: Amend the existing classes of registrants to create two new classes of registrants with differing requirements: travel seller (combining the two categories of travel agent and travel wholesaler) and travel counsellor (as the individual who is employed by the travel seller).

In phase 2, we heard mixed feedback from travel industry stakeholders about whether we should introduce different classes of registration in TIA with differing regulatory requirements based on risk. We also heard mixed support from travel industry

stakeholders for introducing new registration requirements for individual travel counsellors in order to reflect the changing marketplace (e.g., increase in prevalence of outside sales representatives) and provide TICO with additional tools to combat fraud. We heard that currently TICO has a limited ability to track or to prevent travel counsellors employed by registrants from operating if they are suspected of committing fraud.

Research revealed that while BC has similar licensing categories to Ontario, the province requires travel wholesalers and agents to meet different financial requirements (e.g., travel wholesalers are required to hold consumer funds in a trust account, while travel agents are not).¹⁶ In BC, individual sellers of travel do not require a license. However, if employees or other “agents” (independent contractors, outside sales agents) of a travel agency work from a location other than the location licensed by Consumer Protection BC, a separate “branch office” licence may be required.¹⁷ In practice, this means that if any employees/agents of a licenced travel agency work from home or are “home based” and do not attend the licensee’s location to conduct business, the licenced travel agent is required to obtain a branch licence for the location where the employees/agents conduct business.

In Quebec, there are two separate classes of licensees: general and restricted.¹⁸ The restricted license, available to certain classes of travel businesses,¹⁹ has lower financial requirements, such as 50% lower licensing renewal fees (called duties), and lower security deposit requirements. Quebec operates a certification regime in which both individual travel agents/counsellors and travel agencies are required to be certified.²⁰ Travel counsellors must hold a certificate issued by the Office de la protection du consommateur in order to engage in travel-related activities in the province of Quebec.²¹

Internationally, California requires individual sellers of travel/travel agents to be licensed, with the exception of where they are affiliated with an agency that already has its own license and are operating on its behalf.²¹

In Ontario, several other sectors require sales people to be registered, such as real estate agents, mortgage brokers, motor vehicle dealers, and funeral directors. These sectors typically meet a number of characteristics, including:

- Employees or staff are directly dealing with the public;
- Employees or staff have a high level of independence from their employers, conclude transactions, and/or are motivated by commissions;
- Require some standardization in terms of the types of knowledge or professional standards in order to do the job; and/or
- Individual qualifications are important or essential to conduct the job.

It may be argued that individual travel counsellors meet some or all of these requirements, depending on the business model of the agency under which they operate.

Among those who were supportive of creating new classes of registration, there was some disagreement about the types of classes which should be created. The most frequent suggestions included:

- **Individual Travel Counsellors:** We heard compelling consumer protection arguments that requiring individual travel counsellors to be registered would provide TICO with a greater ability to combat fraud. It would also help provide consumers with greater trust that travel counsellors are knowledgeable, informed, professional and courteous. Over the period of 2010 to 2016 there were \$126,107 worth in claims against the fund as a result of a registrant having to voluntarily terminate its business due to the fraudulent activities of one of the travel counsellors under their employment. Travel sellers would still have responsibility for ensuring that they hire registered travel counsellors, and ensuring that they meet the regulatory requirements under TIA. Travel counsellors would be responsible for meeting and maintaining the new individual registration requirements, including following a code of conduct. These requirements would allow TICO to track and monitor individual travel counsellors and take action to suspend or revoke their registration if they are acting unethically.

We also heard from some registrants who cautioned that individual registration would be too complicated for TICO to administer and/or overly costly for individual travel counsellors. Some registrants and one-day tour operators in Northern Ontario

also felt that such a requirement could create an additional barrier for the growth of small businesses. Some registrants who operate globally also felt that requiring individual travel counsellors to meet Ontario's registration requirements would represent a significant administrative burden.

- **Destination Marketing Organizations (DMOs) or Regional Tourism**

Organizations (RTOs): Many of these organizations are affiliated with a level of government and therefore may carry less financial risk in cases where they have obtained some form of government guarantee, and should therefore be subject to lower financial requirements under TIA. DMOs and RTOs are already eligible for lower financial requirements in cases where they meet the conditions under TIA (e.g., registrants are exempt from security requirements where they have entered into a transfer payment agreement or other funding agreement with a municipality which has granted assurance in writing that they would be liable for the amount of security if the registrant fails and there is a claim against the fund). We are proposing to maintain these differences in financial requirements under TIA, to reflect the lower financial risk profile of government funded organizations.

Organizations like DMOs and RTOs that receive some government funding are also still subject to failure; consumers who purchase travel services through these organizations would still expect to receive compensation under the fund if such a failure were to occur. In light of these considerations, there is not a strong argument for creating a new class of registrants for DMOs and RTOs.

- **Corporate Travel:** We heard that the business model for travel agencies that specialize in arranging corporate travel may be lower risk for consumers because there is a contract between the corporate client and the agency, the majority of corporate bookings are conducted online through a credit card, and corporate bookings are typically arranged close to the departure date. Despite these factors, there is still a risk that corporate travel agencies could fail. A recent survey of consumers indicated that 80% of those corporate travellers surveyed expect similar protections to leisure travellers under the compensation fund.²² In light of these considerations, there is a strong consumer protection argument for requiring

corporate travel agencies to meet the same regulatory requirements as leisure travel agencies under TIA.

After considering the feedback that was provided during the review, we are proposing to create two new classes of registrants for travel sellers (combining the two categories of travel agent and travel wholesaler) and travel counsellors (as the individual who is employed by the travel seller). However, we do not believe that there is a compelling case for creating additional classes of registrants with different regulatory requirements based on risk.

3. Consumer Protection Issues

The majority of consumers and stakeholders who participated in the second phase of the review felt that the existing protection measures under TIA were necessary to protect Ontario travel consumers. However, many also felt that certain requirements are no longer protecting consumers as originally intended.

3.1 Consumer Awareness:

Proposal 3.1:

- Require registrants to display the TICO logo (in addition to the TICO registration number) prominently prior to the purchase (online or paper); and
- Require registrants to disclose additional information to consumers (e.g., coverage under the fund); and
- Require proceeds from any new financial penalties for non-compliance with TIA to go into the fund, while maintaining the registrar's ability to incur reasonable expenses from the fund to promote public awareness (see Compliance and Enforcement, below).

TIA sets out specific requirements for registrants with respect to disclosing information to consumers, and allows TICO to incur reasonable expenses for promoting public awareness of the fund and TIA. TIA also requires written representations (advertisements) made by registrants to include their registration number.²³ A recent survey of Ontario travel consumers revealed that 51% of those surveyed had heard of TICO or seen their logo, but the proportion who claim to know TICO very well (4%) or somewhat well (14%) was low.²⁴ Of those surveyed, 62% did not know whether the vendor they booked their most recent pleasure trip with was registered with TICO, and only 25% claimed to be aware of the fund.²⁵

In phase 2 of the review we heard that there are significant obstacles preventing TICO from raising consumer awareness about the financial risks associated with purchasing travel, and the protections available under TIA (e.g., the high cost of advertising).

Examples of how other jurisdictions are helping to raise consumer awareness about the financial risks associated with travel include:

- **Brand Awareness:** In 2012, the UK government undertook a campaign to promote awareness of the Air Travel Trust Fund (ATTF) amongst consumers. Licensees under the Air Travel Organizers Licensing (ATOL) program are required to show the ATOL symbol in print advertising, and there must be a voiceover that says “ATOL protected” on radio and television advertisements.²⁶ Licensees are also required to provide customers with a one page document called an ATOL certificate summarizing the coverage available at the time of purchase.²⁷ As a result, we heard from our discussions with government officials in the UK that UK consumers have a high level of awareness of the protections available under ATOL. In addition, some companies from outside the UK now prefer to be licensed with ATOL as they view the protections available to consumers as a competitive advantage. We are proposing to introduce similar disclosure requirements in Ontario to help improve consumer awareness in the province, such as requiring registrants to display the TICO logo prior to purchase.
- **Dedicated Funding:** Consumer Protection BC is required to deposit all money received from administrative penalties into a Consumer Advancement Fund.²⁸ The money in this fund must be spent towards activities, such as educating consumers and suppliers about matters relating to consumer protection. We are proposing to adopt a similar model in Ontario to support greater awareness amongst the province’s travel consumers. We are proposing that all proceeds from any new financial penalties for non-compliance with TIA to go into the Travel Industry Compensation Fund, as TIA already grants TICO the ability to incur reasonable expenses from the fund for promoting public awareness. In Ontario, the Retirement Homes Regulatory Authority is also required to pay all administrative penalties collected by the authority into the emergency fund for the benefit of residents of retirement homes.²⁹ In certain emergency situations, residents are able to make a

The UK’s Civil Aviation Authority (CAA) oversees the Air Travel Organisers’ Licensing (ATOL) program, which protects consumers against the insolvency of UK travel businesses who sell air travel for holiday travel through an Air Travel Trust Fund, among other measures. The Air Travel Trust Fund provides compensation for refund and repatriation costs when an ATOL holder fails, and is funded by a £2.50 sterling charge per trip on travel consumers.

claim for compensation under this fund (e.g., an event where the retirement home incurs loss or damage, and the home is unable to safely provide care or accommodation).

Many consumers and travel industry participants felt that increased branding by TICO or the tourism industry at the point of sale, may be an effective way to promote increased consumer awareness of the protections available under TIA. In light of these considerations, there is a strong consumer protection rationale for introducing new disclosure requirements for registrants, and to require proceeds from any new financial penalties for non-compliance go towards supporting consumer awareness efforts.

3.2 Online Sales from Out of Province:

Proposal 3.2:

- Require all travel agents and wholesalers targeting their advertising of travel services to Ontarians to follow the province's rules regarding representation (advertising) regardless of where they are located; and
- Grant the registrar the ability to issue administrative penalties to those who contravene these requirements (see Compliance and Enforcement section, below).

Many consumers and travel industry representatives felt that travel agents and wholesalers who are selling travel services to Ontarians online from outside of the province should be required to meet the same requirements as Ontario-based registrants. However, many participants acknowledged that Ontario has limited control over companies located outside of the province, and enforcement may be either impractical or too expensive.

Research indicated that this issue is a challenge in every jurisdiction as a result of the growth in the global economy and online sales. For example, in Quebec, online travel providers based outside of the province but selling to Quebecers must abide by the regulatory requirements for registered travel agents and wholesalers based in Quebec.³⁰ In Quebec, the government takes the stance that travel agents need to be a permit-holder if selling to consumers within the province. We heard from officials that

the province undertakes a large number of consumer education initiatives in order to encourage Quebec consumers to purchase travel through a permit-holder.

We heard from discussions with officials in the UK, that because of the European Union's (EU) single market legislation, travel agents and wholesalers can be based in another European state and still sell holidays to travel consumers in the UK as long as they meet some minimum financial requirements. In practice, not all EU states are working on a level playing field when it comes to consumer protections for travellers, creating the risk that UK consumers could purchase travel online from EU states with lower consumer protection requirements. The UK has attempted to address this issue through extensive promotion of the ATOL system via consumer awareness campaigns. As was noted earlier, we heard that as a result, some companies from outside the UK now prefer to be licensed with ATOL in order to stay competitive.

California's Department of Justice also registers sellers of travel that are based outside of the state. If a company does business with persons located in California, they are required under the law to register with them.³¹ The Department of Justice can suspend or terminate a seller of travel's registration if they do not comply with the statutory requirements. We heard in discussions with officials that the Department of Justice will send out-of-state sellers of travel a notice that they are required to register if they are marketing or advertising to consumers in California and frequently cooperate with other states on issues related to enforcement that are outside of their borders.

Some consultation participants felt that at a minimum, all advertising for travel services in Ontario should have to follow the same rules, regardless of where the company is located. Some registrants suggested that the all-in pricing requirement should apply to anyone acting as a travel agent or wholesaler making representations related to travel within the province. For example, Quebec requires that any form of advertising by a travel agent for a specific trip must indicate the total cost (which may or may not include taxes) prominently, with the total cost at least twice as large in size as any other cost.³² In discussions with officials from the Quebec government, we learned that they interpret this requirement to apply to all travel agents advertising in Quebec, regardless of where they are based.

We are proposing to require that all travel agents and wholesalers targeting their travel advertisements to Ontarians meet the same advertising requirements under TIA as a means to ensure that consumers receive consistent information and to promote a level playing field. We are proposing to grant TICO the ability to issue administrative penalties as an additional tool to promote increased compliance with these requirements.

3.3 Clarity in Pricing and Disclosure Requirements:

Proposal 3.3:

- Introduce new requirements related to the correction of pricing errors; and
- Explore opportunities to amend disclosure and invoicing requirements in order to improve regulatory efficiency.

As of January 1, 2017, registered travel agents and wholesalers are required to display the total price to consumers (all-in pricing) in any advertising that includes the price of travel services, including all taxes, fees, levies and other charges. The majority of consumers, registrants and other travel industry stakeholders who participated in phase 2 felt that the recent all-in pricing amendment was a positive change which helped increase clarity for consumers. Overall, we heard that the all-in pricing requirements are working well and should be maintained.

It was also suggested that pricing errors on websites are not consistently addressed by registrants in a timely manner and to the consumer's satisfaction. Some travel industry stakeholders suggested that TIA should contain a provision requiring that online pricing errors, within the control of the registrant, should be rectified within 24 hours, and longer for errors that are not within the control of the registrant. We are proposing to introduce new requirements related to the correction of pricing errors on the basis that these would help increase clarity for consumers.

We also heard a number of suggestions related to changes to TIA in order to bring the disclosure requirements up to date to reflect the growth in online sales and the increase in credit card purchases. Some travel industry stakeholders also suggested changes to

the disclosure requirements in order to make them easier for registrants to implement. For example, we heard suggestions about measures to clarify the appropriate method in which the registrant can notify the customer of the travel documents needed for each traveller, and potential changes to allow some information to be provided on an accompanying document as opposed to the invoice. We are proposing to consult further with consumers and travel industry stakeholders on some potential changes to the disclosure and invoicing requirements in order to identify opportunities to improve regulatory efficiency.

3.4 Travel Insurance:

Proposal 3.4: Maintain the existing requirements in TIA related to disclosure of insurance.

TIA requires registrants to advise customers of the availability and cost of trip cancellation insurance, and out-of-province health insurance,^{§§§§} if applicable. If the registrant sells the insurance directly, they must clearly identify on an invoice whether the customer accepted or declined the insurance. A recent survey of Ontario travel consumers found that 63% of those surveyed did not purchase any type of insurance on their most recent pleasure trip.³³ Of those who did purchase insurance, 24% purchased out of province health insurance, followed by trip cancellation insurance (13%). The most common reason given by consumers who were surveyed for not purchasing health insurance was because they already had coverage through their employer (36%) or through their credit card (28%).

Overall, the majority of phase 2 participants felt that it is not necessary to introduce new disclosure or education requirements for registrants related to insurance. Some felt that registrants should direct consumers to licensed insurance brokers who possess the knowledge to provide informed insurance advice to consumers.

Insurance brokers and agents operating in Ontario are regulated under the Registered Insurance Brokers' Act, 1990. Registered travel agents and wholesalers are exempt

^{§§§§} This requirement to notify customers about the cost of insurance, applies to written representations with respect to a specific travel service.

from registering as an insurance broker under the Registered Insurance Brokers' Act when selling travel accident and out of province medical, baggage or trip cancellation insurance.³⁴ The purpose of this provision is to put the onus on registered insurance brokers, rather than registered travel agents and wholesalers, to understand the details about travel insurance and to provide consumers with the information they need to make an informed insurance purchase.

Alberta, Saskatchewan and Manitoba have a restricted licensing scheme for travel agents who want to sell and distribute travel insurance which requires them to meet specific requirements in order to become licensed to sell travel insurance.^{35, 36, 37} We heard from registrants that removing this exemption in the Registered Insurance Brokers' Act would be much more onerous for registrants, and could potentially push travel agents out of the travel insurance market, which we heard in many cases represents a significant portion of their income. In light of these considerations, we are proposing to maintain the existing requirements in TIA with respect to disclosure of insurance.

3.5 Industry Education:

Proposal 3.5: Enable the development of continuing education requirements for individual travel counsellors.

Every person in Ontario who is working for a travel agent and is selling travel services or who is providing travel advice to the public must meet the industry's Education Standards administered by TICO. Many consumers, registrants and travel industry stakeholders who participated in the phase 2 consultations felt that industry education standards for travel agents should be strengthened to include continuing education and/or recertification requirements.

By way of comparison, BC does not require travel agents or wholesalers to complete education in order to qualify for a license to operate in the province. Quebec requires licensed travel counsellors to pass an exam to receive a certificate in order to engage in travel-related activities, but the province has no ongoing education requirements.³⁸

In Ontario, other regulated sectors have educational requirements, including continuing education. For example, real estate agents, motor vehicle dealers and insurance brokers are required to meet specific education requirements in order to be licensed to operate in Ontario, while only real estate agents are required to complete continuing education requirements every two years.³⁹

While we heard overall support for strengthening registrant education requirements, some registrants expressed concerns about mandatory ongoing training requirements. Some registrants raised concerns that these educational requirements could be overly onerous and costly for the travel industry. It was suggested that TIA could require individual travel agents/counsellors to complete a defined number of hours of continuing education per year, with specific content requirements related to professionalism and ethics. This would allow travel agents/counsellors who already participate in continuing education to count these hours towards the continuing education requirement, and allow them to tailor the content to different business types.

As the responsibility for determining education requirements already rests with TICO, there is a strong rationale for expanding this responsibility to encompass ongoing education requirements as part of new registration requirements for individual travel counsellors. Such requirements would need to be developed by TICO in close consultation with registrants in order to ensure that they are not overly burdensome for individual travel counsellors, and to ensure that TICO has the ability to administer and track the requirements.

4. Regulatory Burden on Industry

Ontario consumers benefit from regulatory requirements for travel agents and wholesalers that balance the requirements with the risks to consumers. It was suggested during the review that the harder it is for companies to comply with the regulations, the more likely it is that they will try to skirt the rules and operate outside of the law. Alternatively, the easier it is for travel agents and wholesalers to comply, the greater the incentive for them to voluntarily comply. Ontario consumers may also benefit from increased choice and competitive prices as a result of a highly competitive travel industry.

We heard agreement amongst registrants that the current financial requirements under TIA are overly onerous for the majority of registrants who are small businesses. Given their technical nature, the majority of comments on the financial requirements under TIA were from registrants. In general, the consumer advocates who were consulted, who have the technical knowledge to comment on these requirements, felt that they are working well and if anything, should be strengthened.

4.1 Financial Reporting Requirements:

Proposal 4.1: Amend the financial reporting requirements to:

- Require small registrants to submit an internally prepared financial statement with an attestation form signed by a principal, director or designated officer of the business certifying that the information contained is true and correct; and
- Adjust the financial thresholds for larger registrants to reflect inflation and market growth of the travel industry since these thresholds were established.

In Ontario, registrants must file financial statements prepared by a licensed public accountant with TICO at least annually. TIA currently requires registrants with sales in Ontario of less than \$10 million to complete a Review Engagement report and those with sales in Ontario greater than \$10 million to have an Audit completed for TICO's review.

Overall, we heard strong support for indexing the existing thresholds to inflation in order to ensure that they remain relevant over time. The majority of registrants felt that the

Review Engagement report requirement should be removed or lessened for registrants that are small businesses because:

- These requirements are not protecting consumers as originally intended. For example, we heard that the financial statements are based on historical information, completed only at year-end and therefore do not generally provide an effective indicator of the financial sustainability of a registrant, and often do not flag if the registrant is at an increased risk of failure.
- The cost of producing Review Engagement reports is high relative to the potential consumer protection benefits. For example, TICO estimates that the average annual cost of completing a review engagement report is \$3,000 for registrants with sales under \$1M a year, and \$5,000 for those with annual sales between \$1M and \$10M.⁴⁰ The relative cost of regulatory compliance associated with Review Engagement reports with sales under \$2M is more than double the cost compared to a larger registrant.⁴¹

We heard a number of suggestions for changes to the financial reporting requirements such as:

- Adopting a financial reporting model similar to the UK or BC. In the UK, an ATOL holder with annual sales below £5 million is not required to prepare audited financial statements; unaudited financial statements in support of a renewal application are accepted.⁴² In BC, registrants are not required to submit an annual financial statement unless specifically requested by the Director at Consumer Protection BC.⁴³ Instead, we heard from officials that a form of attestation^{*****} around financial position, including working capital, is typically signed by a principal and submitted to Consumer Protection BC.
- Adopting amended thresholds for financial reporting:
 - Registrants with Ontario gross sales of under \$2M would be required to provide internally prepared financial statements with an attestation form

***** An attestation is a declaration by a witness that an instrument has been executed in his or her presence according to the formalities required by law.

- signed by a principal, director or designated officer of the business certifying that the information contained is true and correct.
- Registrants with Ontario gross sales of between \$2M to \$20M would be required to provide a review engagement report (or an audit report would be required if they already prepare one for another regulatory body, such as IATA). Several registrants commented that many larger registrants, with over \$10M in annual sales already complete review engagement reports in order to receive IATA accreditation.
 - Registrants with over \$20 million in Ontario gross sales would be required to submit an audited financial statement. TICO has argued that this increase from the current \$10 million threshold is justified based on increases in the Consumer Price Index (increasing the threshold to \$14.4M), and the growth to the industry that has occurred since the thresholds were set.⁴⁴

Based on the findings of the review, there is a strong rationale for reducing the burden on small registrants by amending the financial requirements, without adversely impacting consumer protection.

4.2 Working Capital

Proposal 4.2: Require registrants to maintain positive working capital at all times relative to their total annual sales in Ontario, as opposed to on a fixed basis (develop working capital tables based on ratios).

TIA requires registrants to maintain minimal working capital levels, based on the amount of annual sales in Ontario the previous year, with a minimum of \$5,000 for those with \$500,000 or less in annual sales in Ontario during the previous fiscal year, to a maximum of \$100,000. Working capital is defined as the ability to meet current obligations as they come due and is calculated by subtracting current liabilities from current assets.

Research revealed that, like Ontario, Quebec has a minimum working capital requirement of \$5,000, which increases based on the registrant's annual sales, up to a

maximum of \$150,000.⁴⁵ BC's regulation has no defined working capital requirements, but the director has the authority to decide if an agency has sufficient working capital to operate as a travel service business.⁴⁶ Consumer Protection BC has created Working Capital Requirement Guidelines with requirements that range from \$5,000 to \$20,000 (depending if the registrant is a travel agent, wholesaler or branch thereof).⁴⁷ IATA also requires IATA accredited travel agencies to have minimum working capital of \$25,000.⁴⁸

Internationally, California does not have defined working capital requirements. In the UK, incorporated Small Business ATOL holders must have a minimum of £30,000 ordinary share capital.⁴⁹

The topic of working capital requirements was rarely raised by participants of the review, and where it was, stakeholders were overall supportive of this requirement. One travel industry stakeholder argued that the current working capital thresholds are absolute dollar amounts, which results in smaller registrants effectively being held to a higher standard than larger registrants. It was suggested that working capital requirements should be based on ratios, similar to the approach used by banks and other authorities, such as IATA. This would ensure that capital requirements are relative to the company's annual sales and could potentially result in a small break to very small registrants who are currently required to maintain minimum capital of \$5,000. In light of these considerations, we are proposing to require registrants to maintain positive working capital at all times relative to their total annual sales, based on working capital ratios to be developed in consultation with registrants.

4.3 Trust Accounting:

Proposal 4.3: Remove the trust accounting requirements and give the registrar the authority to impose trust accounting requirements for registrants who are deemed a financial risk.

In Ontario, registrants are required to maintain a trust account under TIA that is properly designated. All consumer funds must be deposited into this account and all payments to suppliers for which those consumer funds have been collected must be paid out of this

account. If a registrant has been registered and operating continuously for at least one year, the registrant may also provide a letter of credit in lieu of maintaining a trust account. However, it is our understanding that this option is rarely used as many registrants find the cost of the letter of credit expensive.

Research indicated that Quebec also requires registrants to maintain consumer funds in a trust account, and BC only requires travel wholesalers to do so.^{50, 51} Similarly, in California licensees under its Seller of Travel Program can obtain an exemption from using a trust account for all monies received from customers if they purchase a bond to cover consumers' monies, or participate in a consumer protection deposit or escrow plan.⁵² In discussions with officials from California's Department of Justice, we learned that trust accounting is the option used by most licensees in California.

We also researched the financial requirements for some other regulated sectors in Ontario and found that motor vehicle dealers, mortgage brokers and agents, real estate agents, insurance brokers, condominium developers and lawyers also require some form of trust accounting. In some cases, such as that of condominium developers, the money is required to be held in trust by a third party trustee (usually a law firm). This requirement is typically more onerous for the registrant, and may not be practical for use with travel agencies and wholesalers given the typically large volume of financial transactions they process. In many of these sectors (e.g., real estate, mortgage, real estate) the amount that is required to be held in trust is likely more per transaction than the travel industry. A recent survey of Ontario travel consumers revealed that 54% spent under \$1,000 per person per trip (including taxes), of which three in ten (30%) spent under \$500 per person.⁵³

Ontario's Condominium Act, 1998 requires developers work with a third party trustee to set up a trust account at a bank in which to hold the customers' deposit.⁵⁴ We heard that this requirement can cost the developer upwards of \$4,800, including the initial cost of setting up the account, preparing a deposit trust agreement, and a cost of \$250 per dwelling unit for handling all deposit cheques. It is unlikely that a third party trust accounting requirement would be cost effective for application to the travel industry.

The majority of travel industry stakeholders felt that the trust accounting requirement should be eliminated from TIA on the basis that:

- It is questionable whether the trust accounting requirement is actually protecting consumers' money by preventing the bankruptcy of a registrant. TICO's analysis of the last three fiscal years' claims against the fund found that trust accounts were generally depleted or ineffective at protecting consumers' travel purchases.⁵⁵
- It is unclear whether trust accounts actually protect the consumer in the event of bankruptcy on the basis that:
 - While every registrant is required to file financial statements with TICO for each fiscal year, the regulator does not typically monitor every registrant's trust accounts over the course of the year;
 - As travel industry trust accounts are established and maintained by each registrant, generally with the same signing officers of other bank accounts, they lack the independent oversight and controls of a third party trust account;
 - The travel agency could use funds from the trust account in order to cover their overhead expenses, contrary to the current rules, in the event that the company is in financial distress; and
 - If a provincially regulated travel agency or wholesaler is insolvent or goes bankrupt, it is unclear whether the current requirements are adequate to prevent a company's creditors from accessing the funds that are in the trust account.
- A recent survey of Ontario consumers suggests that the majority of travel purchases (estimated at 93%) are conducted via credit card.⁵⁶ While there is no data available on the percentage of credit card payments that are held in the trust account, we have heard anecdotally that the consumers' funds often flow directly to the end supplier through credit card payment, bypassing the trust account.⁺⁺⁺⁺
- The requirement is burdensome for registrants because of the banking costs and staff administrative costs to maintain such an account. For example, TICO estimates that the average cost per registrant to maintain the trust accounting requirement is

⁺⁺⁺⁺ When consumers pay for travel services via credit card, the registrant is still required to place these funds into a trust account, except in cases where the credit card payment flows directly to the end supplier.

approximately \$900 for those that are very small (annual sales under \$1M), and \$1,080 for those that are small (annual sales of \$1M to \$10M).⁵⁷

- Regardless of the trust accounting requirement, some registrants noted that consumers who purchase travel services through a registrant would still receive financial protections under the fund in the event of the insolvency or bankruptcy of a registrant, at a cost to registrants who currently finance the fund.

We also heard from some registrants and consumer advocates that the trust accounting requirement helps build consumer confidence that consumer funds will be protected. Corporate travel agencies generally supported the ongoing need for trust accounting and felt that the rules around trust accounting could be more stringent.

Overall, there is a strong rationale for removing the trust accounting requirement on the basis that it is no longer protecting consumers as intended. We are proposing to combine changes to remove the trust accounting requirement with measures to strengthen the requirements for security deposits to ensure that consumers are adequately protected. These proposals are discussed in more detail below.

4.4 Security Deposit:

Proposal 4.4:

- Differentiate the security deposit requirements based on the annual sales of the registrant; and/or
- Increase the length of time that the registrar holds the security deposit; and/or
- Allow registrants to provide security in other forms in addition to those that are currently allowed under the Travel Industry Act, such as a performance bond; and
- Introduce requirements around how the security deposit funds are invested by the registrar, including how the interest is to be used.

TIA requires that most businesses that apply for registration must provide a security deposit in the amount of \$10,000 to TICO. The security deposit is returned to the applicant after the filing of two consecutive fiscal year-end financial statements provided

that TICO has no concerns about the registrant's compliance under TIA. When the security is returned to the registrant, an amount is deducted for any claims paid or anticipated to be paid to customers of the registrant from the fund because of the registrant's bankruptcy, insolvency or ceasing to carry on business.

Research revealed that BC and Quebec both require registrants to submit significantly higher amounts of security which is held for the life of the license, and scale the security based on the licensees' annual sales. For example, BC requires security amounts of \$15,000 to \$40,000 for travel agents, and amounts of \$15,000 to \$150,000 for travel wholesalers (based on their total annual sales). BC's Director can also require registrants to provide higher amounts of security.⁵⁸ In Quebec, general licensees are required to provide security for amounts of \$25,000 to \$225,000, while restricted licensees are required to provide security in the amounts of \$15,000 to \$50,000 (based on their total annual sales).⁵⁹ Licensees have a number of options to meet this requirement. In Quebec, the security must be provided by either: an individual surety bond; cash, cheque or money order; or by the deposit of a bearer-bond issued or guaranteed by the Government of Canada or one of its provinces. Similarly, Consumer Protection BC accepts four different methods to provide security: cash, letter of credit, safe keeping agreement, or security bond.⁶⁰

Internationally, as mentioned earlier, California also has similar security requirements, of which trust accounting is one option. In discussions with officials from the UK's Civil Aviation Authority (CAA), we learned that licensees that make over £20M in annual sales are required to provide security through one of several methods (e.g., bonding, insurance, security, third party trust accounting) in cases where the company does not meet the CAA's annual financial reporting requirements.

Many registrants were in favor of maintaining the current security requirement in TIA, or increasing it to reflect inflation, as it helps to ensure that travel agents and wholesalers have a minimum level of financial commitment in order to operate in Ontario. We heard from registrants that the security requirement helps to decrease the likelihood that a fly-by-night travel agent could set up shop in the province. In some cases, registrants also

suggested that the security requirements should be different for different classes of registrants, based on risk.

It was also suggested that the security requirement should be strengthened by extending the term of the security to five fiscal years, after which security will be calculated as a percentage of Ontario gross sales up to a maximum of \$100K, and held for the life of the license. This security could be held in the form of cash, letter of credit⁺⁺⁺⁺, or performance bond^{§§§§§}. Such a requirement would potentially bring Ontario in line with similar requirements in other jurisdictions.

Several smaller registrants and small non-registrant tour operators felt that the security requirement should be eliminated as it serves as a barrier to entry for small businesses. Some registrants also suggested that the security deposit should be waived for companies who have been in business for over 10 years but are only now becoming registered. Others felt that new security should not be required in cases where the registrant has been in business for a defined period of time and creates a new subsidiary (i.e., a new brand), based on the financial strength of the parent company.

Overall, there is a strong public policy rationale for strengthening the security requirements in order to strengthen consumer protection. We are proposing to differentiate the security deposit requirements based on the annual sales of the registrant. We are also proposing to increase the length of time that the registrar holds the security deposit, while allowing registrants to provide security in a variety of forms, in addition to those that are currently allowed under TIA. These security requirements are already in place and working well in other jurisdictions with a regulated travel industry.

++++ A letter of credit is a letter from a bank guaranteeing that a buyer's payment to a seller will be received on time and for the correct amount.

§§§§§ A performance bond is a bond issued by a bank or other financial institution, guaranteeing the fulfillment of a particular contract.

4.5 Place of Business:

Proposal 4.5: Introduce alternative regulatory requirements around access to and storage of financial records for registrants who have sales staff physically located in Ontario, but not a physical place of business.

Under TIA, a registrant must conduct business in Ontario only from a permanent place of business within the province. Registrants can carry on business from a dwelling if it is permitted by the municipality, they have a telephone number that is listed under the name of the registrant and is different from a residential phone number, and the registrant has made arrangements that are satisfactory to the registrar to provide access to the registrant's business records.

Research revealed a number of different approaches to the place of business requirement across those jurisdictions studied. BC requires a travel agent or wholesaler to have a license for each location from which they conduct business in the province.⁶¹ In practice, Consumer Protection BC regulates home-based agents by requiring individuals operating from a home to register as a branch, subject to all the regulations related to operating a branch.⁶² A licensee must maintain proper records in BC, and those whose head office is not in BC must provide copies of the financial records if requested by the director.⁶³ In Quebec, if a travel agency offers travel services to Quebecers, with operations as defined under the province's Travel Agents Act, they are required to be registered and hold a place of business within the province.⁶⁴

In California, if the seller of travel conducts business in the state from one or more locations in California but does not maintain its principal place of business in this state, the seller of travel must be an issuer or subsidiary of an issuer listed on a national stock exchange.⁶⁵ There are no requirements respecting the storage of records; the seller of travel is required to make their records available for inspection purposes.

Many other sectors in Ontario, including credit unions, real estate agents, insurance brokers and lawyers require registrants or licensees to hold a place of business within the province. One exception is mortgage brokers, who are required to be a resident of Canada, have a mailing address in Ontario that is not a post office box, and a valid email address.⁶⁶

The travel industry stakeholders who participated in the second phase of the review were divided on this requirement. Some registrants commented that the place of business requirement should be maintained in order to allow TICO to find and investigate disreputable companies. Others felt that these requirements constitute an additional financial burden for registrants given the increase in agencies that deal with consumers online, over the phone and in their homes.

As was mentioned earlier, we are proposing a number of changes to the definitions under TIA which would clarify that a travel seller would have to be registered if they either:

- Have a place of business in Ontario (e.g., a travel agency that has a public-facing bricks and mortar office that is located in Ontario); or
- Have staff who are “selling” travel services and are physically located in Ontario (e.g., sales staff who are selling to the public online or over the phone without an office that is open to the public, such as a call centre).

We are proposing to introduce alternative requirements for those registrants who fall into this latter category, and do not have a place of business in Ontario, such as providing:

- An address for service in Ontario that is not a post office box number;
- Contact information for TICO and consumers;
- A clearly outlined complaint handling process; and
- Means for TICO to access required information, such as books and records.

These new requirements would help reflect the growth in flexible work arrangements and a large increase in the number of consumers who purchase travel services online.

5 Compliance & Enforcement

TIA grants TICO certain powers to promote compliance in registrants, including powers to:

- Receive and inquire into complaints against registrants
- Conduct inspections in order to ensure compliance with TIA and the regulation.
- Conduct investigations of registrants when there may have been a breach of TIA or the regulation. These investigations can result in charges being laid under the statute. Individuals convicted of offences are subject to fines of up to \$50,000 and/or terms of imprisonment of up to two years less a day. Corporations are subject to fines of up to \$250,000.
- Freeze a registrant's assets or refuse to register an applicant, suspend or revoke a registration, or refuse to renew a registration. The registrant is entitled to appeal this determination to Ontario's License Appeal Tribunal.

In light of the changes that have occurred in the travel marketplace since TIA was last reviewed, we are considering whether other tools are now needed in order to promote compliance with the act. However, any such measures would need to specify clear circumstances and limitations around when they could be used by TICO in order to ensure that they are utilized in a measured and appropriate way. Consideration should also be given towards granting individuals the appropriate appeals mechanism so that they have recourse if they disagree with TICO's enforcement decisions or the application of enforcement measures.

5.1 Administrative Monetary Penalties

Proposal 5.1:

- Grant the registrar the ability to levy administrative monetary penalties for enforcement purposes (also see Proposal 3.1: Require proceeds from any new financial penalties for non-compliance with the Travel Industry Act to go into the fund); and
- Grant registrants and non-registrants the ability to appeal the registrar's decision to issue administrative monetary penalties (e.g., to the Ontario License Appeal Tribunal [LAT] or another body).

We heard from many travel industry stakeholders who felt that TICO should be granted additional compliance tools to better target their enforcement activities. For example, it was felt that the ability to issue additional fines or penalties, such as administrative monetary penalties,^{*****} would allow TICO to have a more measured way to effectively encourage compliance in those cases where revoking registration is not warranted. We also heard that administrative monetary penalties may grant TICO the ability to address those registrants who exhibited repeated non-compliance year after year for the same infractions.

Research revealed that Consumer Protection BC has the ability to levy administrative monetary penalties for the travel industry in cases where the person contravenes a provision of the act or the regulations.⁶⁷ An individual may be subject to a maximum administrative penalty of \$5,000 and a corporation may be subject to a maximum administrative penalty of \$50,000. As mentioned earlier, Consumer Protection BC is required to deposit all money received from administrative penalties into a Consumer Advancement Fund to be used for consumer awareness activities.⁶⁸ Ontario is considering adopting similar requirements.

We also heard from a minority of participants who felt that TICO should not have the ability to levy financial penalties on the basis that they question TICO's ability to apply these penalties in a fair and balanced manner.

^{*****} Administrative monetary penalties are an additional enforcement measure which allows the regulator to issue fines for specific contraventions of an act or its regulation.

Overall, there is a strong rationale for granting TICO the ability to issue administrative monetary penalties on the basis that it would enable TICO to operate more effectively as a risk-based regulator and better protect consumers. Administrative penalties increase regulatory efficiency by allowing the regulator to assess a monetary penalty against a registrant as an alternative to prosecution and revocation of registration. For this reason, administrative penalties are increasingly being used by modern regulators in other jurisdictions. Consideration also needs to be given to creating the appropriate guidelines and/or appeals mechanisms to ensure that such penalties are applied in a fair and consistent manner.

5.2 Ability to Investigate Non-Registrants

Proposal 5.2: Grant the registrar additional powers with respect to inspecting and investigating non-registrants.

While TICO has the ability to investigate non-registrants, they are limited in their ability to investigate travel agencies located outside of the province or to enter and inspect the business premises of non-registrants unless granted permission by the owner. TICO is also unable to access files and records of non- or former registrants which are required to assist customers.

Some travel industry stakeholders suggested that TICO should be granted more inspection and enforcement powers with respect to non-registrants and former registrants to assist with enforcement and compliance efforts. For example, our jurisdictional research has revealed that in BC, inspectors have the ability to:⁶⁹

- Enter the business premises of a person, including residences where the business is conducted, at any reasonable time;
- Inspect, audit or examine any record, goods or other thing or the provision of services in the premises; or
- Remove and retain any record, good or other thing that may be required as evidence from the premises.

In Quebec, every inspector may require any travel agent or any person representing that they are a travel agent to produce any information relating to the administration of the province's Travel Agents Act.⁷⁰ It was suggested that TICO be granted similar powers under TIA.

Overall, there is a strong consumer protection rationale for granting TICO additional inspection powers with respect to non-registrants.

6 Travel Industry Compensation Fund

In Ontario, the Travel Industry Compensation Fund provides reimbursement to customers in certain situations. For example, the fund would provide reimbursement in cases where the customer paid for certain travel services, through a registered travel agent, which were not provided, and the customer has not been reimbursed by the travel agent or appropriate registered travel wholesaler due to the bankruptcy or insolvency of the travel agent or wholesaler, airline or cruise line. The fund pays compensation up to \$5,000 for each person, up to \$5 million for all claims arising out of an event or major event, and, subject to additional payments in particular cases, up to \$2 million for trip completion for all claims arising out of an event or major event. In order to receive reimbursement, the payment must have been made to or through an Ontario registered travel agent. The fund is the payor of last resort; a consumer must seek reimbursement directly from the registrant, any other person who received the consumer's money or any other person who is legally obliged to reimburse the consumer, for example through travel insurance or their credit card company. If a consumer cannot obtain reimbursement through these channels, a claim will be considered by TICO.

The fund is financed by registered travel agents and travel wholesalers in Ontario. It is administered by TICO, whose Board of Directors determines whether a claim or a part of one, meets the requirements under TIA. If the Board of Directors determines that a claim is not eligible for reimbursement, the claimant is entitled to appeal the determination to Ontario's License Appeal Tribunal (LAT) which may choose to allow the claim or refuse the claim in whole or in part.

6.1 Existence of the Fund:

Proposal 6.1: Maintain the Travel Industry Compensation Fund.

We heard from members of the travel industry who questioned the need to maintain the fund given that most consumers (approx. 93%) purchase travel through a credit card,⁷¹ and many may be eligible to receive a chargeback for non-delivery of travel services. Some registrants argued that travel is a luxury item, and that the government does not

offer similar protections for other non-essential items, such as furniture purchases. Many registrants also commented that the high cost of administering the fund does not justify the relatively small number of payouts to consumers, and it would be better if consumers could purchase private insurance to cover this risk.

We heard strong support from many consumer advocates and some travel industry stakeholders for maintaining the fund, on the basis that:

- **Consumers See Value in the Fund:** A recent survey of Ontario travel consumers found that when asked if they agree with the statement, 90% of those surveyed agreed that the fund provides value to Ontario, and 88% feel it gives them peace of mind.⁷² Three quarters of those surveyed (75%) also indicated that they are more likely to book travel through a TICO registered travel agency knowing that they will be covered by the fund.
- **Leisure-Based Travel Agencies See Value in the Fund:** Leisure-based travel agencies were largely supportive of the fund on the basis that having a fund assures their customers that their monies are protected, lending credibility to working with registered travel agencies.
- **Lack of Private Insurance:** Based on discussions with the travel insurance industry, there is currently no private insurance product in Ontario which provides coverage for the types of events currently covered by the fund. It is unclear whether such a product would be made available if the fund were to no longer exist.
- **Inconsistent or Unsustainable Chargeback Policies:** While many credit card companies currently offer coverage for travel services that are purchased through a credit card but are not provided, through their chargeback policies, these protections are not consistent across all credit card providers, and it is our understanding that the majority of credit card providers have an explicit exclusion for liability for travel suppliers. For example, if a travel service is not provided due to insolvency, MasterCard requires card issuers, such as a bank, to instruct the cardholder to seek compensation from a consumer protection scheme, such as the fund, in those jurisdictions where there is one in place.⁷³ Moreover, there are currently no federal or

provincial regulations governing credit card chargeback policies; credit card companies are free to change their policies at any time.

- **Need for Repatriation Coverage:** If the fund were to no longer exist, travel consumers, including those using a credit card, would no longer have access to coverage for trip completion (also called repatriation): the cost of returning home from their trip when there is a bankruptcy or insolvency of the travel agent or wholesaler where they purchased these services through an Ontario registrant. While the federal government typically intervenes to help Canadians stranded abroad as a result of severe weather events, terrorism or war, they are not likely to do so if these citizens are stranded as a result of bankruptcy or insolvency.
- **Protections for Consumers Not Using Credit Cards:** If the fund were abolished, the estimated 7% of Ontario consumers who purchase travel services using cash, e-transfer payment, or cheque⁷⁴ would no longer be compensated for the costs that they paid for their trip in the event of insolvency or bankruptcy of a registrant, cruise line or airline, where they purchased these services through an Ontario registrant. While there is no data available on the types of consumers who tend to purchase travel services using cash, we heard anecdotally from registrants that they are more likely to be seniors, and those who purchase specialty trips, such as eco-tours.

In light of these considerations, there is a strong consumer protection rationale for maintaining the fund.

6.2 Fund Scope and Payment Model:

Proposal 6.2: Enable the development of an expanded fund with the potential for contributions directly from consumers. Undertake additional research and consultations with Ontario travel consumers prior to determining whether to implement the expanded model.

Many travel industry stakeholders noted limitations to the current scope of coverage available under the fund. For example, failure to provide services due to the bankruptcy

or insolvency of many end suppliers is not covered (e.g., accommodation providers, out of province travel providers that organize tours, car rentals).

We also heard concerns that the amount that is currently in the fund would be inadequate in the event that there is a failure of a major registrant. In this scenario, consumers may receive only partial reimbursement for their original investment. Some registrants argued that the only way to provide sufficient coverage under the fund in its current structure is to increase industry contributions, which some registrants felt was unsustainable and could potentially force registrants out of the market, ultimately diminishing fund contributions. We also heard from some registrants who felt that the fund is unfair because it requires travel agents and wholesalers to contribute financially to the fund, despite the fact that it provides coverage for the failure of end suppliers, such as airlines who don't pay into the fund.

Research revealed that some of those jurisdictions studied have compensation funds that provide coverage for travel services that are not provided due to the insolvency or bankruptcy of a registrant, where the travel was booked through a registrant. However, the scope of the coverage varies. For example:

- **BC's Travel Assurance Fund (TAF):** Reimburses BC travel consumers for travel services that were not provided up to the cost of the original contracted services, including services not delivered due to the failure of an end supplier (such as hotels and out of province tour operators) as long as the consumer purchases through a BC licensed travel agent.⁷⁵ The TAF also has an option for repatriating stranded consumers, but does not cover the cost of any replacement bookings consumers make, such as booking at another hotel or flight,. The TAF is the payor of last resort.
- **Quebec's Compensation fund for customers of travel agents:** Reimburses travel consumers who purchase travel through a Quebec licensee for losses resulting from:⁷⁶
 - Travel agency closure;

- Transportation, accommodation or other travel service not provided (including end suppliers, such as hotels and out of province tour operators; and
- Immediate departure or necessary repatriation.

This fund differs from many of the other funds that were studied in that it is the payor of first resort.

- **UK's Air Travel Trust Fund (ATTF):** Provides coverage for refund and repatriation costs arising from the failure of an ATOL licensee.⁷⁷ The ATTF provides protection for leisure holiday bookings made with ATOL licensed travel agencies. The ATTF provides protection for holidays, not the sale of individual products; flights sold on their own, hotel on their own and car rentals are not protected under ATTF.⁷⁸ The ATTF is payor of last resort.
- **California's Travel Consumer Restitution Corporation:** Provides coverage to consumers located in California who suffer losses as a result of the bankruptcy, cessation of operations, insolvency, or material failure of a seller of travel to provide the transportation or travel services contracted for.⁷⁹ The fund does not cover the cessation of an air or sea carrier or a failure by another registered seller to which a licensed seller of travel has forwarded the consumers' funds.

Both Quebec and the UK finance their respective funds through a levy on travel consumers. In Quebec, consumers pay a contribution when they purchase travel services from a licensed travel agent operating in Québec. In discussions with officials, we learned that the amount of the consumer contribution is currently 0.1% of a purchase, which amounts to a fee of \$1 for a purchase of \$1,000 worth of travel services, and Quebec also allows registrants to hold back a 5% fee to cover the costs to collect this fee. In discussions with officials in the UK, ATOL licensed travel agents are required to pay an Air Passenger Contribution of £2.50 sterling per trip on a per passenger basis. It is our understanding that this fee is commonly passed on to customers.

Some jurisdictions also purchase reinsurance, an insurance product in which the regulator pays a premium in exchange for coverage in cases where the financial loss

exceeds the amount in the fund. For example, in the UK, the Civil Aviation Authority (CAA) purchases reinsurance^{†††††} protection for the Air Travel Trust Fund (ATTF). TICO may wish to consider whether reinsurance is a viable option to protect the solvency of the fund, regardless of the payment model.

Travel industry stakeholders and consumers frequently suggested the following changes to Ontario's Travel Industry Compensation Fund:

- **Narrow the Scope:** Narrow the scope of the fund to only provide coverage for issues that are the most frequent claims (e.g., repatriation for international travel), and are generally not covered by other means such as credit card chargebacks. In particular, it was suggested that the fund should not include inbound travel, travel within the province, or commercial travel, on the basis that these were perceived to be less likely to result in a claim against the fund. We also heard a suggestion that a residency provision should be added to TIA to limit coverage under the fund only to Ontarians, and allow registrants the option to provide protection to out of province consumers.
- **Maintain the Scope:** Maintain the fund because it performs an important consumer protection function. A recent survey of travel consumers found that two thirds (66%) of those surveyed found the exclusions to the travel compensation fund reasonable.⁸⁰ Among those business travellers who were surveyed, 80% felt that it is just as important to receive consumer protection under the fund for business travel. Also, 82% of those consumers surveyed thought that the current maximum payout of up to \$5,000 per trip is reasonable. In light of this feedback, it appears that most consumers surveyed are happy with the current scope of the fund.
- **Expand the Scope and Levy a Modest Fee on Consumers:** The majority of registrants expressed support for expanding the fund to:

^{†††††} Reinsurance, also known as insurance for insurers or stop-loss insurance, is the practice of insurers transferring portions of risk portfolios to other parties by some form of agreement to reduce the likelihood of having to pay a large obligation resulting from an insurance claim.

- Include all travel that is on the consumer's receipt, including failure of additional end suppliers, such as accommodation providers, which are currently excluded;
- Eliminate or increase the current maximum limits for claims per person and/or event. Some consumers and travel industry stakeholders felt that this would create greater clarity amongst consumers about the coverage they receive when purchasing travel through a registrant;
- Cover financial losses resulting from registrant fraud, as the License Appeal Tribunal (LAT) has recently ruled in several cases that consumers should be compensated under the fund for money that was lost due to fraud by a registrant where the registrant has ceased operations.⁸¹ Such a change to the scope of the fund would effectively align the fund with the findings of the LAT.

These travel industry stakeholders argued that expanding the scope of the fund should be combined with changes to finance the fund through either a consumer pay model or a consumer/registrant co-pay model on the basis that this would:

- Ensure that the fund is adequately capitalized so that it will be available to help consumers in the event of a large registrant, airline or cruise line failure by spreading the financial burden over many payors;
- Help increase the fairness of the fund by ensuring that those who receive the benefit of the coverage (consumers) also contribute to the fund; and
- Help increase consumer awareness about the coverage available under TIA, because the fee would appear as an item on the invoice.

We also heard recommendations from some travel industry stakeholders that given the added burden on the industry to collect any new consumer fee and remit it to TICO, consideration should be given towards allowing registrants to deduct a collection fee.

A recent survey asked consumers about the types of coverage that they might want if the fund were to be expanded. Of those surveyed, 45% felt that the failure of a hotel is the most important area to cover, followed by 28% who mention the failure of

unregistered travel agencies as the most important.⁸² When given the choice between expanded coverage (such as for car rental companies or out of province travel wholesalers), and/or an increase in the maximum reimbursement per person available under the fund, 41% chose both, followed by 30% who would just prefer expanded coverage, and 19% who would prefer to leave the coverage unchanged.

When asked about a scenario in which the fund is expanded to cover the failure of a car rental company, hotel, transportation and/or unregistered travel wholesaler (tour operator), 81% of those surveyed would be definitely or probably willing to pay \$1 per \$1,000 in travel costs for expanded coverage under the fund, including 52% who would be definitely willing to pay.⁸³ However, the proportion of consumers who were surveyed who said that they are definitely willing to pay for expanded coverage under the fund drops below 50% if the fee were any greater than \$1 per \$1,000 in travel costs.

We also received suggestions from some consumers and travel industry stakeholders that airlines and cruise line operators should be required to pay into the fund. Further research is required in order to determine whether such an option is feasible.

Overall, these findings suggest that while there is a strong desire amongst registrants and willingness from some consumers to expand the scope of the compensation fund supported by a modest fee on Ontario travel consumers, it is unclear whether there is a strong consumer protection rationale, or strong public desire for such an expansion. There is currently not enough available evidence in order to determine whether the expansion of the fund is warranted and whether consumers would see value in such a change. We are proposing to enable the development of an expanded fund with the potential for contributions directly from consumers. We would undertake additional research and consultations with consumers to investigate this issue further prior to determining whether to implement the expanded model.

7 Other

In addition to the feedback noted above, we also received comments from consumers and travel industry stakeholders about a number of topics which do not fit under the previous headings.

7.1 Flexibility to Respond to a Changing Travel Marketplace:

Proposal 7.1: Retain the existing roles and responsibilities of the government and regulator with respect to regulation making authority and administration of TIA.

Throughout the review, registrants frequently commented that the products and services offered, the business models, and technology utilized by registered travel agencies and wholesalers evolves so quickly that the regulatory framework may quickly become out of date.

Some travel industry stakeholders who participated in the second phase of the review felt that the regulatory framework needs to be more flexible so that TIA does not need to be updated again in 10 years. We heard suggestions that, wherever possible, enabling provisions should be set up in TIA or its regulation to allow TICO to deal with issues or concerns through their policies and procedures. Several participants also suggested that research should be undertaken into future trends in the travel industry so that these can be taken into consideration as part of the review.

In Ontario, the government is responsible for the legislation and regulations that have been delegated to Administrative Authorities (AAs) to administer and enforce (in the majority of cases). In the case of Tarion Warranty Corporation, which currently has the authority to make by-laws that are deemed to be regulations under the Ontario New Home Warranties Plan Act⁸⁴, the government recently announced its proposed plan to give government responsibility in making rules and setting standards, consistent with other AAs.⁸⁵ In light of these considerations, there is a strong rationale for retaining the government's role with respect to regulation making authorities, in order to maintain consistency with other AAs.

V. Next Steps

This report concludes phase 2 of the Travel Industry Act review. All consumers and travel industry stakeholders are invited to provide input on the proposals included in this report via email to TravelIndustryAct@ontario.ca as part of phase 3 of the review by July 24, 2017. Please do not use shortened URLs (e.g., Bit.Ly, Ow.Ly, Tinyurl) or include attachments larger than 25 MB.

As a next step, we may consider proposing additional changes to TIA or its regulation, or may reconsider some of the proposals outlined in this report, depending on the feedback provided in phase 3 of the review.

We would like to thank the many individuals and organizations who generously gave their time in order participate in the TIA review, either attending in-person consultation sessions or submitting input via email. This review would not have been possible without the feedback and advice provided by these participants.

VI. Appendix: Summary of Proposals for Potential Changes

1. Maintaining Travel Industry-Specific Regulation, With Changes

- **Proposal 1.1:** Maintain the Travel Industry Act with amendments to address some of the specific issues identified during the review.

2. Definitions and Registration Requirements

- **Proposal 2.1:** Change the existing definitions under the Travel Industry Act to provide additional clarity and better reflect Ontario's travel marketplace (e.g., to define "travel seller", "travel counsellor", and "selling").
- **Proposal 2.2:** Conduct additional research and consultations about potential changes to the exemptions under the Travel Industry Act.
- **Proposal 2.3:** Amend the existing classes of registrants to create two new classes of registrants with differing requirements: travel seller (combining the two categories of travel agent and travel wholesaler) and travel counsellor (as the individual who is employed by the travel seller).

3. Consumer Protection Issues

- **Proposal 3.1:**
 - Require registrants to display the TICO logo (in addition to the TICO registration number) prominently prior to the purchase (online or paper); and
 - Require registrants to disclose additional information to consumers (e.g., coverage under the fund); and
 - Require proceeds from any new financial penalties for non-compliance with TIA to go into the fund, while maintaining the registrar's ability to incur reasonable expenses from the fund to promote public awareness (see Compliance and Enforcement, below).
- **Proposal 3.2:**
 - Require all travel agents and wholesalers targeting their advertising of travel services to Ontarians to follow the province's rules regarding representation (advertising) regardless of where they are located; and
 - Grant the registrar the ability to issue administrative penalties to those who contravene these requirements (see Compliance and Enforcement section, below).
- **Proposal 3.3:**
 - Introduce new requirements related to the correction of pricing errors; and
 - Explore opportunities to amend disclosure and invoicing requirements in order to improve regulatory efficiency.

- **Proposal 3.4:** Maintain the existing requirements in TIA related to disclosure of insurance.
- **Proposal 3.5:** Enable the development of continuing education requirements for individual travel counsellors.

4. Regulatory Burden on Industry

- **Proposal 4.1:** Amend the financial reporting requirements to:
 - Require small registrants to submit an internally prepared financial statement with an attestation form signed by a principal, director or designated officer of the business certifying that the information contained is true and correct; and
 - Adjust the financial thresholds for larger registrants to reflect inflation and market growth of the travel industry since these thresholds were established.
- **Proposal 4.2:** Require registrants to maintain positive working capital at all times relative to their total annual sales in Ontario, as opposed to on a fixed basis (develop working capital tables based on ratios).
- **Proposal 4.3:** Remove the trust accounting requirements and give the registrar the authority to impose trust accounting requirements for registrants who are deemed a financial risk.
- **Proposal 4.4:**
 - Differentiate the security deposit requirements based on the annual sales of the registrant; and/or
 - Increase the length of time that the registrar holds the security deposit; and/or
 - Allow registrants to provide security in other forms in addition to those that are currently allowed under the Travel Industry Act, such as a performance bond; and
 - Introduce requirements around how the security deposit funds are invested by the registrar, including how the interest is to be used.
- **Proposal 4.5:** Introduce alternative regulatory requirements around access to and storage of financial records for registrants who have sales staff physically located in Ontario, but not a physical place of business.

5. Compliance and Enforcement

- **Proposal 5.1:**
 - Grant the registrar the ability to levy administrative monetary penalties for enforcement purposes (also see Proposal 3.1: Require proceeds from any new financial penalties for non-compliance with the Travel Industry Act to go into the fund); and

- Grant registrants and non-registrants the ability to appeal the registrar's decision to issue administrative monetary penalties (e.g., to the Ontario License Appeal Tribunal [LAT] or another body).
- **Proposal 5.2:** Grant the registrar additional powers with respect to inspecting and investigating non-registrants.

6. Travel Industry Compensation Fund

- **Proposal 6.1:** Maintain the Travel Industry Compensation Fund.
- **Proposal 6.2:** Enable the development of an expanded fund with the potential for contributions directly from consumers. Undertake additional research and consultations with Ontario travel consumers prior to determining whether to implement the expanded model.

7. Other

- **Proposal 7.1:** Retain the existing roles and responsibilities of the government and regulator with respect to regulation making authority and administration of TIA.

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