

Travel Industry Act, 2002 - Improving Consumer Protection and Reducing Regulatory Burden

Introduction

The Ministry of Consumer Services is proposing several amendments to the regulation under the *Travel Industry Act, 2002*.

The ministry is seeking public comment on the following issues:

- Notice of Intention to Close Business
- Compensation Fund Coverage of Trip Completion/Repatriation Expenses
- Clarification of Exemptions from Educational Requirements
- Bulk List Publication
- Simplification of Invoicing Requirements
- Reduction of Required Security Amounts
- Financial Reporting

The ministry's objectives are to enhance public protection in the travel sector and reduce burden on business.

Although it is not necessary to review the legislation to provide comments, the Act and Regulation are available online:

- *Travel Industry Act*: http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_02t30_e.htm
- Regulation: http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_050026_e.htm

The ministry welcomes feedback on the proposed amendments discussed in detail below. Please see the last page of this paper for details regarding how comments can be submitted.

Background

The *Travel Industry Act, 2002* (the Act) came into force July 1, 2005. The Act protects the public in the purchase of travel services from travel agents and travel wholesalers. The Travel Industry Council of Ontario (TICO) administers the Act.

On July 24, 2009, the government announced its response to the *Assessment of Consumer Protection Against Financial Instability in the Travel Industry* (the Assessment) which was carried out following the closure of Conquest Vacations. Most of the operational recommendations from the Assessment have already been implemented by TICO. The Assessment also made two specific recommendations that require changes to regulation. The ministry proposes to address these two regulatory items in conjunction with the specific burden reduction and consumer protection proposals discussed in more detail below.

Recommendation #1: Notice of Intention to Close the Business

The Assessment found it was likely that had TICO received timely notice of Conquest Vacations' intention to close, the closure could have been managed in a more orderly manner, resulting in less disruption to the travelling public.

At the time, notice of intention to close the business was not required in Ontario, although it was a requirement of the travel industry in Australia and in other Ontario regulatory regimes such as the real estate industry. Since the release of the Assessment and consistent with its recommendations, TICO has made notice of intention to close a condition of registration.

It is proposed that registrants also be required by regulation to provide the Registrar with notice of their intention to close the business as soon as practicable. The notice would include a summary of outstanding obligations and what arrangements the registrant had made to satisfy those obligations.

Do you agree or disagree with the proposed amendment? Please explain why.

Recommendation #2: Compensation Fund Coverage of Trip Completion/Repatriation Expenses

The rules governing Compensation Fund claims are set out in the *Travel Industry Act, 2002*'s regulation. Consumers are currently able to make claims for reimbursement on the Compensation Fund if they paid through a registrant for travel services they have not received.

For consumers stranded mid-trip, the regulation gives the Director the authority to provide the direct payment of funds to repatriate travellers. The regulation also gives the Director the authority to direct payments on behalf of stranded

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travellers for the additional cost of accommodation and meals they have incurred as a result of an unexpected closure. Payments under the authority of the Director have been used in many past events – including the closure of Conquest Vacations.

The Director's authority to make payments is necessary in situations where travellers are stranded "in-destination" and arrangements are being made on very short notice. However, post-trip reimbursement for once-stranded travellers who paid their own costs to return home (i.e., consumers who organize personal repatriation) could be improved by making the relevant rules more transparent. Once travellers have returned home, reliance on the Director's discretion is no longer necessary and their reimbursement could be processed as if it is a regular claim on the Compensation Fund.

It is proposed that the regulation be amended to create a new right of claim for reimbursement which would govern consumer expenses incurred in personal repatriation when a registrant closes or otherwise fails to complete arrangements.

Consumers would continue to have the right to claim for the amount paid to the registrant and would have the new right to claim for reasonable repatriation expenses. As is the case currently, the amount of any claim would be calculated by subtracting from the claim amount the value of travel services that were received and the amount of compensation already received from other sources (e.g., a credit card chargeback).

It is proposed that amendments to the regulation would include the following costs as claimable:

- Costs of airfares, car hire or other transportation required in order to be repatriated
- Costs of accommodations and meals, for whatever reasonable amount of time a consumer had to remain in destination prior to their departure
- Costs related to obtaining access to funds or financing arrangements necessary for the customer to make payments for the above expenses (e.g., overdraft charges making additional payments, costs of wire transfers, costs of phone calls and faxes to arrange for funds to be sent)

The above costs would be subject to a requirement of no unreasonable upgrading and subject to the requirement that the consumer arrange their return at the earliest reasonable opportunity.

Any personal repatriation claims would be subject to the normal procedures and rights that govern other claims including:

- Claims to be made within a specific time period, which is proposed as three months for this type of claim (as the shorter claim period would allow TICO to reimburse consumers sooner).

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- Consumers would be obligated to seek reimbursement from other sources first (e.g. credit card repayment), before any claim on the Fund can be made.

Currently, reimbursement is a matter of the Director's discretion, and so there is no right to a hearing regarding a refusal. By making personal repatriation a regular type of claim, a consumer would also gain the right to a hearing before the Licence Appeal Tribunal concerning a refusal to be reimbursed if the consumer believed he/she had a right to payment.

Even with the establishment of the new type of claim, it is expected that most consumers would still be assisted by the repatriation arrangements that the Director makes directly with travel services suppliers as a matter of first course. This is easier for consumers and also more economical.

In light of this, it is proposed that repatriation arrangements made by the Director under the Act take precedence over personal repatriation arrangements. If the Director has made repatriation arrangements available to travellers and given travellers sufficient notice, travellers would not then have valid claims for their personally-arranged repatriation expenses.

Do you agree or disagree with the proposed amendments? Please explain why.

Recommendation #3: Clarify Exemptions from Educational Requirements

As of July 1, 2009, Supervisors/Managers must complete both the Travel Counsellor exam and the Supervisor/Manager exam.

Those individuals who were Supervisors/Managers of record on June 30, 2009, have been grandfathered from the Supervisor/Manager exam and do not need to complete this requirement. However, all Supervisors/Managers must take the Travel Counsellor exam regardless of whether they were Supervisors/Managers of record on June 30. The Travel Counsellor exam is required of all those on whom the public rely.

It is proposed that the regulation be clarified so that the industry understands the current education requirements.

It is also proposed that a grace period be provided for in the regulation in the event of staff changes where the Supervisor or Manager of record leaves the company. This grace period would allow a Supervisor/Manager to be hired who has not yet passed the Supervisor/Manager exam, as long as the individual has passed the Travel Counsellor exam, is approved by the Registrar and completes the Supervisor/Manager exam within six months of accepting the position.

Do you agree or disagree with the proposed amendments? Please explain why.

Recommendation #4: Bulk List Publications

TICO publishes a monthly list of new agents and wholesalers to assist the industry in updating its own lists used to meet the requirement to only work with other registered agents and wholesalers. Due to privacy concerns, the regulation currently prohibits the publication of information in bulk in order to protect against unnecessarily wide distribution of business information.

It is proposed that the regulation be amended to provide TICO with the ability to continue to publish bulk lists specifically for the purposes of updating the industry with information to be used for the purpose of its compliance with the Act.

Do you agree or disagree with the proposed amendment? Please explain why.

Recommendation #5: Simplification of Invoicing Requirements

Some travel industry members have suggested that the current invoicing requirements call for more information than is useful to consumers. Currently, the name and address of the customer who purchased the travel services and the name and address, if known, of each person on whose behalf the payment is being made is required on the invoice. It is proposed that the requirement to have the addresses of all who are traveling listed on the invoice be removed. Instead, the invoice would only require the purchaser's name and address and the names of additional travelers.

Invoicing could also be clarified regarding insurance. Currently, the travel agent must indicate whether or not the customer has purchased trip cancellation insurance and out-of-province health insurance on the invoice. However, some agents do not sell insurance. It is proposed that the regulation be amended to make it clear that if the travel agent sells insurance, the invoice must indicate whether or not the customer has purchased trip cancellation insurance and out-of-province health insurance, if applicable. Where the travel agent does not sell insurance, the invoice must indicate whether the customer was advised of the availability of such insurance, if applicable.

Do you agree or disagree with the proposed amendments? Please explain why.

Recommendation #6: Reduction of Required Security Amounts

Registrants can choose to post security in lieu of maintaining a trust account. However, the amount currently required to be posted is based on total gross sales and has been identified as too onerous by some industry members, resulting in very few taking advantage of this alternative arrangement.

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On examination, it appears that cash sales, not gross sales are the better measure of the risk the security is to offset, because funds from non-cash sales (e.g., payments made by credit card) are not held by the business and therefore not at risk.

It is proposed that the amount of security to be posted should be reduced from the current requirement of 1/6 of the registrant's annual gross sales to 1/6 of the registrant's annual cash sales.

Do you agree or disagree with the proposed amendment? Please explain why.

Recommendation #7: Financial Reporting

Wholesalers and agents must comply with requirements for completing and submitting financial statements. These statements are critical to TICO's risk-management of inspection resources. Costs on smaller businesses are minimized by tying the level of required financial review to sales volume. However, firms acting as both a wholesaler and an agent are separating these transactions to report two smaller sales volumes rather than a single total for the firm overall. This results in the registrant meeting a lower threshold for reporting financial information despite having more consumer funds in their hands, and does not provide TICO with an accurate picture of the company's financial health.

It is proposed that where a registrant is both a wholesaler and an agent, the business activities be considered as one for financial reporting and that the registrant be required to comply with the financial reporting requirements pertaining to a wholesaler.

Do you agree or disagree with the proposed amendment? Please explain why.

Request for Comments

We would appreciate your views on these issues by December 16, 2009.

Please submit any comments to:
Travel Industry Act Consultation
Policy Branch, Ministry of Consumer Services
777 Bay Street, 5th Floor
Toronto, ON M7A 2J3

Or by facsimile:
416-326-8885

Or by e-mail to:
TIAconsultation@ontario.ca
Subject line: Travel Industry Act Consultation

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Please note that unless requested and agreed otherwise by the Ministry of Consumer Services all material or comments received from organizations in response to this consultation will be considered public information and may be used and disclosed by the Ministry to assist the Ministry in evaluating and revising the proposed regulatory amendments.

This may involve disclosing materials or comments, or summaries of them, to other interested parties during and after the request for public comment process. An individual who provides materials or comments and who indicates an affiliation with an organization will be considered to have submitted those comments or materials on behalf of the organization so identified.

Materials or comments received from individuals who do not indicate an affiliation with an organization will not be considered public information unless expressly stated otherwise by the individual. Personal information of those who do not specify an organizational affiliation, such as an individual's name and contact details, will not be disclosed by the Ministry without the individual's consent unless required by law. However, materials or comments by individuals may be used and disclosed by the Ministry to assist in evaluating and revising the proposed regulatory amendments.

If you have any questions about how personal information is protected by the ministry you can contact:

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