

RESOLUTION 820e**REVIEWS BY THE TRAVEL AGENCY COMMISSIONER**

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RESOLVED that, as established under Resolution 820d, the Travel Agency Commissioner ('the Commissioner') shall conduct reviews and act with respect to decisions and/or actions affecting Agents and applicants under the Agency Programme (it being understood that the definitions in Resolution 866 apply to this Resolution and that for further clarity, titles of sections or paragraphs herein shall be for guidance purposes and not interpretative purposes), within the Commissioner's jurisdiction, in accordance with this Resolution 820e:

Section 1—Jurisdiction of the Commissioner

1.1 Disputes arising out of or in connection with matters enumerated in the present Section shall be finally settled, subject to review by arbitration pursuant to Section 4 herein, by the Commissioner, in accordance with this Resolution.

1.2 In making each decision, the Commissioner shall be bound by the provisions of the applicable Resolutions, and may only make findings of fact and conclusions in accordance with those Resolutions.

1.3 Should the Commissioner receive a request for review that is outside of their jurisdiction as enumerated in the present Section, the Commissioner shall, in the case of a request initiated by an Agent or applicant, promptly refer the request to the Agency Administrator for review and resolution as may be appropriate; and in the case of a request for review initiated by the Agency Administrator, the Commissioner shall promptly return the request to the Agency Administrator. In each case, the Commissioner shall advise the Agent, applicant, or Agency Administrator, as the case may be, of the lack of jurisdiction under this Resolution.

1.4 REVIEW INITIATED BY AGENT OR APPLICANT

Subject to paragraph 1.8, the Commissioner shall review and rule on cases initiated by:

1.4.1 an applicant whose application to become an Accredited Agent has been disapproved by the Agency Administrator, or has been disapproved upon reconsideration;

1.4.2 an Agent whose application for approval of an additional location has been rejected by the Agency Administrator, either on first consideration, or upon reconsideration;

1.4.3 an applicant who has acquired ownership or is seeking to acquire ownership of an Agent or Location and

whose application for change of ownership has been disapproved by the Agency Administrator, either on first consideration, or upon reconsideration;

△ **1.4.4** an Agent, or applicant seeking review of the finding that a person who is a director, or who holds a financial interest or a position of management in the Agent or applicant, is disqualified under the applicable Passenger Sales Agency Rules because of that person's connection with an Accredited Agent who was removed from the Agency List for failure to fulfil its fiduciary obligations. Any individual who believe they are, or may be, a person whose conduct would cause application of the exclusion provisions referred to above shall also be entitled to seek review by the Commissioner, to determine whether any disqualification whether actual or proposed should stand or be disregarded, in light of the individual circumstances;

1.4.5 an Agent who has received formal notice from the Agency Administrator of impending removal of the Agent or a Location of the Agent from the Agency List, or of any action or impending action by the Agency Administrator with regard to the Agent, that unreasonably diminishes the Agent's ability to conduct business in a normal manner;

1.4.6 an Agent whose application for change of location and/or name has been disapproved by the Agency Administrator;

1.4.7 an Agent from whom stocks of Standard Traffic Documents have been withdrawn by IATA pursuant to the applicable Passengers Sales Agency Rules; provided that any review initiated under this subparagraph shall be to decide on any interim relief pending a redetermination of the eligibility of the Agent or the Location to be retained on the Agency List under Paragraph 1.6 of this Resolution;

1.4.8 an Agent who considers that its commercial survival is threatened by a Member's individual decision preventing it from acting as Agent for, or from issuing Standard Traffic Documents on behalf of, such Member;

1.4.9 an Agent who is aggrieved by an impending amendment to its Passenger Sales Agency Agreement;

1.4.10 an Agent who considers that the Agency Administrator has not followed correct procedure as delegated by the Passenger Agency Conference, to that Agent's direct and serious detriment in order to determine whether the decision under review was made in accordance with applicable Resolutions and based on credible fact;

1.4.11 an Agent who invokes a request for review by the Commissioner as expressly permitted by the applicable Passenger Sales Agency Rules.

1.5 PROCESSING REVIEW REQUESTS FROM AN AGENT OR APPLICANT

The Commissioner shall apply the following rules to a request for review from an Agent/applicant:

1.5.1 for a review initiated under any of the sub provisions of Paragraph 1.4 of this Section, the person

authorized to make the request shall do so, in writing addressed to the Commissioner, with copy to the Agency Administrator;

1.5.1.1 for review of a decision or action of the Agency Administrator, except when initiated pursuant to the provisions of Subparagraph 1.4.7 of this Section, the request must be submitted within 30 calendar days of the date of the Agency Administrator's notice of the decision in question;

1.5.1.2 for review pursuant to the provisions of Subparagraph 1.4.7 of this Section, the request must be submitted within 10 calendar days of the withdrawal of the Standard Traffic Documents;

△ **1.5.1.3** for review made pursuant to the provisions of Subparagraphs 1.4.8 and 1.4.9 of this Section, the request must be submitted within 30 calendar days of the date the Agent first became aware of the decision/action of which they are aggrieved;

1.5.1.4 where a request for review is accompanied by an application for interlocutory relief to stay action by the Agency Administrator, the Commissioner may grant the interlocutory relief, if:

- (a) acceptance of the request for review is within the Commissioner's jurisdiction; and
- (b) the Agent/applicant makes an appropriate showing in support of its application for appropriate interlocutory relief; and
- (c) the Commissioner decides, after affording the Agency Administrator, Member or other respondent the opportunity to respond, that interlocutory relief is appropriate and can be granted without materially affecting any airline funds at risk;
- (d) if airline funds are considered to be at risk, the Commissioner shall require, as a condition for granting any such request by an Agent/applicant for interlocutory relief, that the Agent/applicant provide a bank or any other form of financial guarantee. The bank or other guarantee shall cover the amount in dispute or any higher amount deemed appropriate by the Commissioner in light, in particular, of the financial risk associated with the dispute.

The Commissioner may also require if appropriate an immediate accounting and settlement of all monies due at the time the interlocutory order takes effect. If there is no financial risk associated with the dispute, the interlocutory relief may be granted upon the Commissioner's decision without requiring any form of financial guarantee. If interlocutory relief is granted, as soon as the Agent/applicant has complied with all conditions to which interlocutory relief is subject, the Commissioner or Agency Administrator shall notify all BSP Airlines accordingly that any previously notified action has been stayed and the status quo restored pending the final determination of the Commissioner's review.

△ **1.5.2** the Commissioner shall initially decide whether (i) they are has jurisdiction to determine the matter and (ii) if so whether a credible case for review has been made. If the request for review is accepted, then the Commissioner shall seek to ascertain to their own satisfaction all the facts relevant to the matter in dispute, affording the

parties the opportunity to present their side of the case pursuant to Section 2 hereof;

1.5.3 acting on the basis of all probative evidence presented during the proceeding, the Commissioner shall decide whether the Agent/applicant has demonstrated, by a preponderance of the evidence, that it is entitled to relief hereunder and if so, whether an award of relief, in accordance with Section 3 of this Resolution, is to be made;

1.5.4 as promptly as reasonably possible after a case has been initiated by an Agent or applicant, the Commissioner must provide to the Agency Administrator a copy of the request for review, together with all related material and evidence provided in support of the request.

1.6 REVIEW INITIATED BY AGENCY ADMINISTRATOR

The Agency Administrator, on their own initiative or at the request of any Member, or group of Members, shall initiate a review to determine whether the Agent or Location has breached its Passenger Sales Agency Agreement, including IATA Resolutions incorporated into it, when the Agency Administrator has determined that a credible case has been made, in particular, in respect of any of the following:

1.6.1 the Agent or Location no longer fulfils the qualifying requirements for accreditation under the Passenger Sales Agency Rules;

1.6.2 the Agent has not complied with the applicable Resolutions and consents given by BSP Airlines as to payment methods;

1.6.3 the Agent has failed to comply, to the satisfaction of the Agency Administrator, with financial requirements or any other measure or condition prescribed by the Commissioner as a prerequisite for the retention of the Agent on the Agency List following a review;

1.6.4 the Agent has issued Standard Traffic Documents or caused Standard Traffic Documents to be issued at other than a Location or other authorized place of issue of that Agent;

1.6.5 the Agent has failed to notify IATA and the Member concerned immediately of the removal of Standard Traffic Documents, in the event of robbery, theft, burglary, fraud or other unlawful means, or of Standard Traffic Documents having been destroyed;

1.6.6 the Agent refuses to permit a Member or IATA to audit or secure an audit of Standard Traffic Documents in the Agent custody;

1.6.7 an audit or other investigation has revealed irregularities in the Agent's accounting standards or practices;

1.6.8 the Agent has allegedly failed to fulfil its contractual obligations on the custody and/or issuance of Standard Traffic Documents or has allegedly falsified or altered Standard Traffic Documents;

1.6.9 the Agent has persistently failed to settle amounts owing against Agency Debit Memos (ADMs) whether or not such ADMs have been subject to dispute;

1.6.10 pursuant to the provisions of Resolution 812, paragraph 6.7, and of Resolution 832, paragraph 1.8, the Agency Administrator receives written information which leads them to the belief that Members' or Airlines' ability to collect monies from the Agent for Standard Traffic Documents may be prejudiced;

1.6.11 the Agent has allegedly made material misrepresentations in an application for reduced fare transportation.

1.7 PROCESSING REVIEW REQUEST FROM AGENCY ADMINISTRATOR

△ Each request for review made by the Agency Administrator to the Commissioner shall be in writing with copy simultaneously sent to the Agent. The Commissioner shall conduct each such review in an adversarial proceeding and decide, on the basis of all probative evidence presented during the proceeding, whether or not the Agent has failed to comply with or is in breach of the Agency Programme provisions alleged by the Agency Administrator. If the decision is affirmative, the Commissioner shall also decide a penalty, in accordance with the provisions of this Resolution, as they deem appropriate under the circumstances

1.8 MATTERS OUTSIDE THE PURVIEW OF THE TRAVEL AGENCY COMMISSIONER

The Commissioner shall decline to act on any of the following:

1.8.1 claims arising under restraint of trade law/regulations of the state or international authority having jurisdiction;

1.8.2 any matter in relation to which the Commissioner does not have jurisdiction under this Resolution.

1.8.3 any decision on matters outside the jurisdiction of the Commissioner pursuant to Sections 1.4 and 1.6 shall be null and void.

Section 2—Rules of Practice and Procedure

The Travel Agency Commissioner's Office shall publish rules of practice and procedure designed to ensure prompt and impartial review of all matters properly submitted to them.

2.1 In a review conducted pursuant to this Resolution, the parties shall be the Agency Administrator or the Member concerned, the applicant or Agent concerned or the aggrieved Member, as the case may be.

2.1.1 The Commissioner's rules shall grant all parties ('the Parties') the following minimum rights:

2.1.1.1 right to submit in writing any relevant information which it deems appropriate and the right to respond to the other side's submissions;

2.1.1.2 right to move for dismissal, whether based on lack of jurisdiction or for any other reason;

2.1.1.3 right to move for summary judgement or other appropriate relief;

2.1.1.4 right to appear in person and/or be represented by counsel and present evidence and arguments in support of its position;

2.1.1.5 right to call witnesses;

2.1.1.6 right to hear the evidence and arguments of the other party and its witnesses;

2.1.1.7 right to cross examine the other party and its witnesses;

2.2 in proceedings before the Commissioner the Parties shall not be required to adhere to strict rules of evidence;

△ **2.3** the Commissioner shall be empowered, upon the agreement of both parties, to waive oral hearing and base their decision on written submissions of the Parties. They may also render a decision on written stipulations between the Parties. Where in the judgment of the Travel Agency Commissioner, such an oral hearing is not necessary, they may base the decision on the written information submitted having advised the Parties of their intention to do so.

2.4 the party who has initiated a request for review may withdraw all or part of it, in writing, at any time prior to the issuance of the Commissioner's decision, provided that if it is withdrawn by the party after the hearing, the Commissioner may make an appropriate award to cover reasonable costs incurred by the Respondent and the Commissioner;

2.5 except as the Commissioner may otherwise direct in writing, any person who is not a party, or a witness, who desires to make relevant information available to the Commissioner in connection with a pending review shall do so only through one of the Parties. The party concerned shall promptly forward such information in writing to the Commissioner, with a copy to the other party. Such person shall be subject to cross examination;

2.6 shortly after having received a request for review, the Commissioner shall offer the parties the opportunity to hold a scheduling conference by telephone call or other means, with a view to reach an agreement, or alternatively to issue an order, regarding the proper procedures to be followed for the hearing of the matter, and to set a timetable. Except for good cause stated in writing, the Commissioner shall schedule each review proceeding not later than 45 days after receipt of the request for review. The Commissioner shall normally render their decision within 30 days after the close of the record in the proceeding.

2.7 the decision shall be in writing and shall include all such findings and conclusions and with respect to reviews conducted under Section 1 of this Resolution any

conditions imposed by the Commissioner. With respect to review proceedings instituted pursuant to Paragraph 1.6 of this Resolution, the decision shall be in writing and shall include all such findings and conclusions and any penalty imposed pursuant to Section 3 of this Resolution.

2.8 a signed copy of the decision shall be served on each party. Subject to action taken under Paragraph 2.9 or 2.10 or Section 4 of this Resolution, in which case the decision shall be automatically stayed, the Commissioner's decision shall be final and binding on the Parties, including Members of IATA.

△ **2.9** within 15 days after the receipt of the decision, a party, with notice to the other parties, may request that the Commissioner gives an interpretation of the decision or correct in the decision any error in computation, any clerical or typographical error, or any error or omission of a similar nature. If the Commissioner considers that the request is justified, they shall make the interpretation or correction in writing within 15 days of receipt of the request. The interpretation or correction shall form part of the decision.

2.10 within 30 days after the receipt of the decision or an interpreted or clarified decision pursuant to paragraph 2.8 hereinabove, a party, with notice to the other parties may request that the decision be reviewed by a majority decision of a panel of all of the Commissioners. This proceeding shall be de novo, with either party able to submit new evidence or arguments to the panel. The panel shall conduct a new analysis accordingly and shall not be bound by or provide deference to the original decision.

Section 3—Powers of the Commissioner

The Commissioner's power to award relief shall be as set forth in this Resolution 820e as applied to the facts of each particular case. The following is an indicative summary of such possible courses.

3.1 DECISIONS ON REVIEWS INITIATED BY AGENT OR APPLICANT

Consequent on a review initiated by an Agent or an applicant, the Commissioner may decide:

3.1.1 a disapproved applicant/Agent be approved;

3.1.2 a removed Agent/Location be reinstated on the Agency List;

3.1.3 an Agent from whom Standard Traffic Documents, and ticketing authorities have been withdrawn may have them reinstated;

3.1.4 an Agent who has appealed against the actions of an individual Member that threaten the Agent's commercial survival be granted relief by order of the Commissioner;

3.1.5 an Agent aggrieved by impending amendment to its Passenger Sales Agency Agreement be granted such

relief as may be appropriate having regard to the need to maintain appropriate airline prudential requirements;

3.1.6 on finding against the applicant/Agent, the Commissioner shall uphold the Agency Administrator's/Member's decision which shall thereupon be implemented;

3.1.7 Any of the decisions outlined in Paragraph 3.1 above, or otherwise rendered by the Commissioner hereunder, shall in any case be consistent with and capable of reasonable application under the Passenger Sales Agency Agreement the applicable Passenger Sales Agency Rules and this Resolution 820e.

3.2 DECISIONS ON REVIEWS INITIATED BY THE AGENCY ADMINISTRATOR

Consequent on a review initiated by the Agency Administrator, the Commissioner may decide that one or more of the following actions be taken:

3.2.1 the Agent or Location be removed for a stated period of time from the Agency List;

3.2.2 an Agent or Location be required to meet specified requirements as a condition for retention on the Agency List;

3.2.3 order that Standard Traffic Documents, and ticketing authorities be removed from the Agent;

3.2.4 the Agent's access to reduced fare air passenger transportation be suspended for a specified period;

3.2.5 the Agent, at its own expense, be required to undergo an audit by an independent certified public accountant;

3.3 ICC MEDIATION AND OTHER DISPUTES

3.3.1 The parties may at any time, without prejudice to any other proceedings, refer any matters as described in Sections 1.4 and 1.6 of this Resolution to the International Chamber of Commerce ("ICC") in accordance with the International Chamber of Commerce Mediation Rules ("ICC Mediation Rules"). At any time during the course of the Commissioner's review, the Commissioner may recommend to the parties that they pursue mediation as a form of dispute resolution in accordance with the ICC Mediation Rules. Expenses related to these cases shall not be expended from the Commissioner Fund, but shall be funded by the parties involved in the dispute, in accordance with the ICC Mediation Rules.

3.3.2 the parties may at any time, request the Commissioner to perform an exceptional review of a matter outside of the parameters of jurisdiction set forth in Sections 1.4 and 1.6 of this Resolution; by way of example, such a review may include disputed ADMs. Such an exceptional review shall only be on the agreement of the parties involved and the consent of the Commissioner. Expenses that arise from such an exceptional review must be borne by the parties involved in the

dispute by each contributing USD 500 to the Travel Agency Commissioner Programme fund.

Section 4—Review by Arbitration

4.1 an Agent or applicant which considers itself aggrieved by a decision of the Commissioner taken under the provisions of this Resolution, shall have the right to have such decision reviewed by arbitration, in accordance with the procedures set out in the Passenger Sales Agency Rules;

4.2 a Member whose individual decision has been the object of an Agent's action before the Commissioner pursuant to the relevant provisions of the Passenger Sales Agency Rules may, if the Member contests the Commissioner's ruling, seek to have it reviewed by arbitration, in accordance with the procedures set out in the Passenger Sales Agency Rules.

4.3 where a decision of or an action by the Agency Administrator or IATA has been the object of an Agent's action before the Commissioner taken under the provisions of this Resolution and the Agency Administrator, or IATA, contest the Commissioner's decision, the Agency Administrator or IATA shall have the right to have such decision reviewed by arbitration, in accordance with the procedures set out in the Passenger Sales Agency Rules.