

**Travel Agency Commissioner
Area 3**

1/61 Kangaroo Street Manly NSW 2095 Australia
Telephone: (61-2) 9976 3092 Facsimile: (61-2) 9976 3976
Email ; stevelon@bigpond.com

22 November 2002

Mr. Kiran Yadav,
Regional Manager – South Asia,
IDFS India,
Apeejay Chambers,
3rd Floor, Wallace Street,
Fort. Mumbai – 400 001.

Dear Mr. Yadav,

Sub : Actions to be taken by LATA in consequence of : a) Arbitration decision in the matter of the LATA Agents' Association et al v/s Agency Programme Joint Council et al ("Arbitration") & b) The Travel Agency Commissioner Review on 21 November 2002 of 52 LATA Approved Agents under notice of termination from LATA ("TAC Review")

As you know the result of the Arbitration was that the financial criteria established by the Agency Programme Joint Council, India ("APJC") were determined to be ultra vires the APJC and therefore they are of no effect. In consequence, it was not necessary to progress the TAC Review. However, there are a number of matters which need to be attended to by LATA as a matter of urgency;

- 1) The notices of termination sent to the 52 LATA Agents subject of the TAC Review should be formally withdrawn as soon as possible.
- 2) All ticket stock uplifted from LATA Agents in consequence of failure to satisfy the impugned financial criteria should be replaced with the relevant Agents as soon as practicable.
- 3) Those LATA Agents who have lodged additional Bank Guarantees ("BGs") to give effect to the impugned financial criteria should be invited to elect to maintain or withdraw those BGs.
- 4) Any Agents who are known to have relinquished LATA Accreditation in consequence of the impugned financial criteria should be invited to be re-listed in the LATA List of Agents without penalty/ cost.

Cont...2/-

(2)

As you will be aware, the Arbitration decision is final (subject only to any application for setting aside under section 34 of the Arbitration and Conciliation Act 1996, India) but the Travel Agency Commissioner does have jurisdiction in the matter of the 52 Agents and would expect to have jurisdiction in the event of other Agents complaining as to any failure of IATA to take action required pursuant to points 2, 3 and 4 above. I believe that the action of IATA in providing a forum for the 52 Agents by placing them under review reflects most favourably on IATA and the Agent community will be expecting a similar high standard of conduct in relation to these matters.

Please let me know if you will require any clarification of any aspect of this letter.

Yours sincerely,



Stephen J. Lonergan
Travel Agency Commissioner, Area 3

ARBITRAL AWARD - Contd.
below



STEPHEN J LONERGAN
SOLICITOR

ARBITRAL AWARD

The IATA Agents Association of India, Gulf Tours & Travels, Euro Tours & Travels
and Coraz Travels & Trade Links (P) Ltd ("the Agents") v The Agency
Programme Joint Council, Mr. S Talwar and International Air Transport
Association, India ("the APJC")

In May 2002, the Agents commenced proceedings against the APJC in the Sub Court, Ernakulam, Kochi, India (OS No 308 of 2002) claiming that the APJC had no power to make a decision (taken at its 7th meeting held on 10 October 2001 and approved by its meeting held on 8 November 2001) imposing certain Bank guarantee requirements on IATA Agents in India. The APJC purported to impose these requirements pursuant to IATA Resolution 810i, paragraph 2.1.2(a) which provides as follows;

2.1.2.2(a) the Council shall determine, in conformity with the guidelines set forth by the Conference in Section 3 of this Resolution, the local objective criteria for accreditation and retention of Agents in respect of the following qualifications:

- 2.1.2.2(a)(i) financial standing,
- 2.1.2.2(a)(ii) staff competence and experience,
- 2.1.2.2(b) such local criteria shall be published in the Travel Agents Handbook,

By a Decision of the Court on 8 August 2002, it was held that the parties be referred to arbitration under Section 8 of the Arbitration and Conciliation Act 1996 of India and that the Court had no jurisdiction for intervention.

On ²¹22 November 2002, following a request by the International Air Transport Association ("IATA") that I act as arbitrator pursuant to the Arbitration and Conciliation Act 1996, a hearing was convened at the Abad Hotel, MG Road, Ernakulam. At that hearing the Agents were represented by Mr. K J Kannanthanam and the APJC was represented by Mr. R Nambiar. Also present were, inter alia, Mr. S Talwar, Mr. H Doser, Ms K Lam and Mr. S Kanuga who (as members of the APJC) had approved the disputed criteria. In addition, senior executives of IATA including Mr. K Yadev, IATA Regional

ABN 95 833 237 898
1/61 Kangaroo Street, Manly, NSW 2095, Australia
Tel (61-2) 9976 3092 Fax (61-2) 9976 3976 Mob 0418 648 190
Email stevelon@bigpond.com

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Manager, India and Ms S K Chua, Senior Manager, Agency Accreditation Services-Asia/Pacific were in attendance.

Respective advocates for the Agents and the APJC confirmed the agreement of all parties that I was duly appointed by all parties as sole arbitrator under the Arbitration and Conciliation Act 1996, that the procedure to be followed would be that affidavits filed in the Court proceedings would be deemed to be submissions of the parties but that the advocate for the Agents would briefly make his case, advocate for the APJC would make his case and the former would make a brief reply. It was agreed that the place of arbitration would be Ennakulam with the language being English. All parties confirmed that I had capacity to hear and determine the dispute between them.

Before considering the arguments put by the parties, I note that the particular criteria adopted by the APJC in respect of financial standing qualifications were essentially requirements for Bank Guarantees for all Agents without exception, being in various amounts to be determined primarily by reference to the location of the Agent and, otherwise, with respect to the number of years trading and the incorporated or non incorporated status of the Agent.

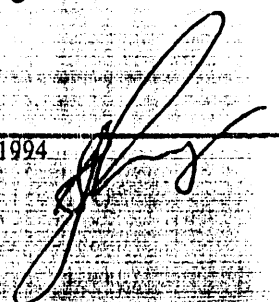
The argument was put by the Agents that paragraph 2.1.2.2(b) required that any criteria shall be published in the Travel Agents Handbook and the disputed criteria had not been so published and were therefore ineffective. The APJC argued that nowhere was it specified that such publication was a prerequisite to effectiveness. Further, that the IATA Passenger Sales Agency Agreement (Clause 2.1(b)) contemplated that resolution changes and local criteria bound the Agent prior to Handbook publication and therefore the Agents were bound by the criteria without any publication. On this point I decide that ~~publication in the Handbook is necessary for effectiveness because the matter is~~ addressed specifically in the defining the APJC's powers. A paragraph in the following Section 3.4 of Resolution 810i (see paragraph 3.4.1(a)) refers to publication of methodology and standards to be published in the Handbook. The only way to give particular meaning to paragraph 2.1.2.2(a) in the light of the latter provision is to relate it to its context and construe it as a prerequisite for a proper exercise of power. The argument with respect to Clause 2.1(b) of the Passenger Sales Agency Agreement fails in that it relates to what is incorporated and a provision adopted outside power is of no effect and therefore cannot be incorporated. This construction does not amount to rewriting the Resolution but is the only interpretation that gives some effect to each of the various references to publication in the Handbook.

The Agents put the argument that the APJC's determination was required to be "... in accordance with the guidelines set forth by the Conference in Section 3 of this Resolution..." and that, as no distinct guidelines were provided, then the APJC could not act. Advocate for the APJC submitted that if there were no guidelines the APJC could still act. On this point, I decide that although there is no particular provision of Section 3 labelled as a guideline, the only reasonable way to give effect to these words is to regard

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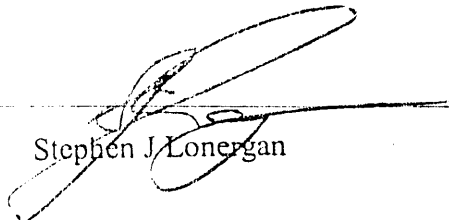
the guidelines as being set out throughout Section 3. On this basis I consider that one of the relevant guidelines is in the last sentence of paragraph 3.4.1(a) "...To obtain a satisfactory evaluation, the applicant may be required to provide additional financial support in the form of...a bank...guarantee.." Therefore bank guarantees only "may" be required but the rules adopted by the APJC require in all cases that bank guarantees shall be provided. For this additional reason, the criteria purportedly adopted by the APJC are outside its power and therefore are of no effect.

Various other arguments were put by the parties but it is unnecessary to consider them any further as, for each of the reasons set out above, I am of the view that the criteria adopted by the APJC are outside its power and therefore of no effect.

As required by the Arbitration and Conciliation Act 1996, I determine that the costs of this arbitration in the amount of \$ 5,000 (Five thousand Australian dollars) shall be paid by IATA and each party shall otherwise pay its own costs in connection with the arbitration. This is the final arbitral award in this matter.

By way of observations which do not form part of this award, I am of the view that the conduct of the APJC in formulating the disputed criteria was at all times performed in good faith. I would urge that development of proper financial criteria should be proceeded by improvement in the mechanisms or processes to gather the representative views of IATA Approved Agents in India.

Dated at Sydney, Australia, this 2nd day of December 2002



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