



## **Explanatory Paper**

### **The *Travel Industry Act, 2002* and Ontario Regulation 26/05: What the New Rules Mean to You**

This document will attempt to explain in detail the requirements of the *Travel Industry Act, 2002* (Act) and Ontario Regulation 26/05 (Regulation). Any questions with respect to information contained in this paper should be directed to the Travel Industry Council of Ontario (TICO).

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## **EXECUTIVE SUMMARY**

This summary highlights the main changes to the Act and Regulation, which may be of interest to stakeholders. More details with respect to these changes can be found in the body of the paper.

**Exemptions** – Additional exemptions have been included in the new Regulation. New exemptions will allow accommodation providers and local tourism operators to package other local services with their own services and market them to consumers. The Regulation also expands exemptions to include unincorporated associations, religious groups and amateur sports teams. There are some conditions that must be met in order to qualify for the exemptions.

**Registration Fees** – Registration fees have been removed from the Regulation. The fees will now be set by the Administrative Authority and published in a fee schedule. TICO has no intention to change the current registration fee of \$2,375 or the current renewal fee of \$375 at this time.

**Further Applications** – The new Act requires that a person whose registration is refused, revoked or refused renewal must wait a period of time before they can reapply for registration. Registrants should be aware that if they lose their registration, they will be out of business for at least 30 days. Registrations will not be reinstated.

**Operating from a Dwelling** – The new Regulation permits registrants to operate from a dwelling provided certain conditions are met, for example, appropriate local zoning. The change is intended to avoid any unnecessary barriers to new business models enabled by e-commerce.

**Minimum Educational Requirements** – New educational requirements for travel counsellors and supervisor/managers will come into effect on July 1, 2008. The minimum educational standards will be focused on knowledge of the *Travel Industry Act, 2002* and Ontario Regulation 26/05. All individuals selling travel services directly to the public, including supervisor/managers, will be required to take an exam to receive a certification that they have met the travel counsellor standard. All supervisor/managers currently in the industry will be grandfathered and will not be required to take the supervisor/manager exam in order to remain in their current positions. The registrant will be responsible for ensuring their employees have met the standard and for keeping records to verify this. CITC is assisting TICO in developing the curriculum and will conduct the testing and administer the accreditation process for TICO.

**Financial Statements** – Registrants with wholesale sales over \$10 million will now be required to submit unaudited financial statements quarterly rather than semi-annually.

**Working Capital** – The working capital requirements will increase effective January 1, 2006.

**Security** – The new Regulation allows the Registrar to keep security until the registrant has filed at least two consecutive financial statements. Security can be held even longer if the Registrar has concerns regarding the registrant's compliance.

**Trust Accounting** – The new Regulation requires that all registrants be on trust accounting. Registrants do have the alternative of filing security with TICO in lieu of trust accounting. The registrant must have been in business continuously for at least one fiscal year to exercise this option. The security provided must be equal or greater than one-sixth of the registrant's sales in Ontario for the 12-month period ending on the last day accounted for in the most recent annual, semi-annual or quarterly financial statements. The onus is on the registrant to ensure that if security is filed, the amount of the security is adequate.

**Business Records** – There is a new requirement to keep records when customers are offered the option of a refund or alternate travel services as required in the Regulation.

**Representations** – The new Regulation regulates the truthfulness and contents of all representations relating to the provision of travel services, including but not limited to brochures.

**Statements Regarding Price** – All representations that refer to a price must clearly state the amount that the customer will be required to pay for their travel services. The amount can be expressed as: a total price; or a base price plus total taxes, fees and additional charges; or a base price with a detailed break down of all taxes, fees and additional charges. The representation does not need to deal with PST or GST. The representation must state any conditions that affect or limit the availability of the travel services at that price. The required information must be set out in a clear, comprehensible and prominent manner. A representation shall not refer to a price unless the travel services are actually available at that price during the time to which the representation applies. A representation shall not refer to previous prices.

**False Advertising Orders** – The Registrar has increased powers to deal with false advertising, including the ability to require that a registrant submit all statements in any advertisement, circular, pamphlet or material to be published by any means to the Registrar for approval before publication.

**Pre and Post Sale Disclosure** - Key mandatory disclosures are required to be made prior to a sale to a customer and documented in invoices. It is now a requirement to advise the customer about the availability of out-of-province health insurance in addition to trip cancellation insurance.

**Discipline Proceedings** – The new Act enables the TICO Board to establish a discipline process. TICO does intend to do this in the future and will consult with the industry on the details of the process prior to its introduction.

**Offences** – The offence provisions in the new Act have been greatly increased from the prior Act. Individuals convicted of an offence are liable to a fine of not more than \$50,000 or to imprisonment for a term of not more than two years less a day, or both. A corporation that is convicted of an offence is liable to a fine of not more than \$250,000. As well, the Act provides more tools for dealing with those who do not pay fines imposed such as reporting those in default to a

consumer reporting agency and placing liens on real and personal property of the person liable to pay the fine.

**Compensation Fund Claims** – A change has been made with respect to the filing deadline for claims. The requirement was that a claim be made within six months after “the event that gave rise to the claim”. The new Regulation requires that claims be made within six months after the relevant registrant or end supplier becomes bankrupt, insolvent or ceases to carry on business. The Fund will not reimburse a customer for a travel counselling fee. Some travel businesses charge a fee to customers for their counselling or booking service. Since this is a fee for services that have been provided, as opposed to the travel services that have not been provided, the Fund will not reimburse this amount to customers. The Compensation Fund will reimburse customers for taxes on travel services they did not receive.

**Wholesaler Claims** – Under the new Regulation, a travel wholesaler would not have a claim on the Fund where they have acquired the rights to resell travel services and the end supplier that they dealt with fails to deliver. It is the wholesaler’s risk that their suppliers fail to honour obligations to them.

**Trip Completion** – This section is a modification of the repatriation section of the Regulation. It is a discretionary provision designed to assist people stranded in destination. The new Regulation permits the Fund to be used to return a customer to the customer’s end-point travel destination even if that end point is not in Ontario. Previously, the Fund was required to return the customer to Ontario.

**Liability for Deposits** – Section 25 of the new Act continues to make registrants liable for any deposits received from customers. However, the new Act removes the liability from registrants if the registrant has properly passed the money received, acted in good faith and at arms length with any person with whom he or she would be jointly and severally liable and the person with whom the travel agent would be jointly and severally liable is not in breach of a requirement to be registered under the Act.

**Minister’s and Delegated Regulations** – The new Act permits specified regulations to be made by the Minister, rather than the Lieutenant Governor in Council, if the power to make them is so delegated. Regulations may be further delegated from the Minister to TICO. It is not anticipated that any regulations will be delegated until the new legislation has been in place for a period of time.

## **INTERPRETATION**

When reviewing the new Act and Regulation, keep in mind that there are some definitions located in the first section of each document, which will help you in interpreting the rules. When you come across these terms, it may be useful to go back and review their definitions.

### **Definitions:**

**Section 1 of the Act** contains definitions of the following terms:

- administrative authority;
- equity share;
- Fund;
- Minister;
- officer;
- prescribed;
- registrant;
- regulations;
- travel agent;

- travel services;
- travel wholesaler;
- Tribunal; and
- associated persons.

**Section 1 of the Regulation** contains definitions of:

- accommodation;
- board of directors;
- major event; and
- sales in Ontario.

### **STATUTORY DIRECTOR AND REGISTRAR**

**Section 2 of the Act** provides for the appointment of a Director and deputy directors.

**Section 3 of the Act** provides for the appointment of a Registrar and deputy registrars.

- The TICO Board of Directors is responsible for appointing the Director and Registrar, as well as any deputy directors or deputy registrars.
- If there was no administrative authority in place, the Minister would be responsible for making director appointments and the deputy minister would be responsible for making registrar appointments.
- It should be noted that the person appointed as Registrar or Deputy Registrar can not be appointed as the Director or a Deputy Director and vice versa.
- The Registrar exercises his duties under the supervision of the Director; therefore, it is important that they are not the same person.
- A maximum of two deputy directors and two deputy registrars may be appointed.
- If more than one deputy director is appointed, only one may act as the director at any one time.
- Likewise, if more than deputy registrar is appointed, only one may act as the registrar at any one time.
- A deputy director performs duties that are assigned by the Director and acts as director in his or her absence.
- A deputy registrar performs duties that are assigned by the Registrar and acts as registrar in his or her absence.

### **PROHIBITION – ACTING WITHOUT REGISTRATION**

## **Prohibition against acting as a travel agent or travel wholesaler unless registered:**

**Section 4 of the Act** prohibits persons from acting as travel agents or travel wholesalers unless they are registered under the Act. There are some groups of persons that are exempted from having to register under the Act. The exemptions are set out in the Regulation. A person who falls within the exemptions may act as a travel agent or travel wholesaler or carry out such activities of a travel agent or a travel wholesaler as are prescribed by the Regulation.

### **EXEMPTIONS**

**Section 2 of the Regulation** identifies a number of groups that are exempt from the requirements of the Act and Regulation. These groups, who do not require registration and are not covered by the TICO Compensation Fund, include:

#### **1. End suppliers of accommodation who also provide local travel services purchased from another person.**

Example: This would allow a hotel, which provides its own services, to also package local theatre tickets and transportation to the theatre - services that are provided by another person, to its guests without requiring registration.

- The additional services sold must be **local** services.
- TICO interprets "local" to be within 25 km of the accommodation. If the distance is greater than 25 km, TICO would have to review the matter on a case by case basis.

#### **2. End suppliers of travel services (excluding airlines, cruise lines or bus lines) who also provide local travel services purchased from another person providing they do not accept payment of more than 25% of the cost of the travel services sold to a customer more than 30 days before the travel services are to be provided.**

Example: A white water rafting company that provides their own services could also package accommodation and meals provided by someone else

together with their service without requiring registration, provided they do not accept payment too far in advance.

- This exemption was added by the government to assist local tourism businesses.
- As such, it does not apply to airlines, cruise lines or bus lines.
- Since these entities do not require registration, their consumers are **not** protected by TICO's Compensation Fund.
- The limit on the amount of funds that such businesses may collect in advance is an attempt to reduce the risk to consumers in the event such a business failed to deliver the services.
- The additional services sold must be **local** services.
- TICO interprets local to be within 25 km of the main service being offered by the end supplier. If the distance is greater than 25 km, TICO would have to look at the matter on a case by case basis.

**3. Public carriers who sell scheduled transportation.**

**4. Agents, appointed by public carriers holding operating licences under the *Public Vehicles Act*, who sell bus travel services.**

**5. Public carriers who sell one day tours.**

**6. Persons selling guide or sightseeing services in Ontario.**

**7. Educational Institutions**

Example: School trip to the AGO.

There are limits to this exemption as follows:

- The person arranging the trip must be employed to teach in an elementary or secondary school, university or college of applied arts and technology.
- Exemption applies to one-day tours for students of the school as part of the curriculum or other travel services made through a registered travel agent as part of the curriculum.
- Travel services must be approved by the appropriate board, principal, governing body or official.
- The person employed by the educational institution must receive no direct or indirect gain or profit from arranging for the travel services other than participating in the travel services.

## **8. Religious Organizations, Amateur Sports Teams or Unincorporated Associations.**

Example: Church group bus trip to Martyr's Shrine.

This exemption only covers provision of **overland** travel services if all of the following conditions are satisfied:

- Travel services are provided only to members of the organization, team or association.
- The group exists primarily for educational, cultural, religious or athletic purposes and the travel services are provided for those purposes.
- Any funds received for the travel services must be deposited into a trust account and only disbursed to pay suppliers of the travel services or a travel agent.
- The organization, team or association, its members and employees receive no direct or indirect gain or profit from the provision of the travel services other than participating in the travel services.
- The travel services do not include a destination located more than 2,000 kilometres from the departure point.
- The vehicle that is used for transportation must remain at the destination to ensure that return transportation is available.

TICO interprets **overland** travel services to mean travel by, on or across land. It does not include travel by air or by sea.

## **9. Not-for-profit corporations without share capital operating as clubs.**

This exemption applies only to **overland** travel services provided the following conditions are satisfied:

- The travel services are provided only to members of the club.
- The corporation exists primarily for educational, cultural, religious or athletic purposes and the travel services are provided for those purposes.
- Any funds received for the travel services must be deposited into a trust account and only disbursed to pay suppliers of the travel services or a travel agent.
- The corporation, its members, officers, directors and employees receive no direct or indirect gain or profit from the provision of the travel services other than participating in the travel services.

- The travel services do not include a destination located more than 2,000 kilometres from the departure point.
- The vehicle that is used for transportation must remain at the destination to ensure that return transportation is available.

TICO interprets **overland** travel services to mean travel by, on or across land. It does not include travel by air or by sea.

## **ACTIONS**

### **Registration a requirement to bring action:**

**Section 7 of the Act** prohibits a person who is not properly registered as a travel agent or travel wholesaler or who is not exempt from registration from bringing actions against consumers of travel services for commissions or other remuneration in relation to the provision of travel services. In other words, a person who is contravening the law can not use the law to try to get a remedy from a person they should not have been selling travel services to.

## **REGISTRATION**

### **Transition Provision:**

**Section 40 of the Act** makes it clear that those registered as a travel agent or travel wholesaler under the *Travel Industry Act* shall be deemed to be registered under the new Act until the person is required to renew their registration. That means that when the *Travel Industry Act* is repealed, current registrants will not be required to reapply for registration under the new Act.

### **Application & Renewal Fees:**

**Section 3(1) of the Regulation** deals with registration and renewal fees.

- These fees are no longer set out in the Regulation.
- The fees will be set by the Administrative Authority and published in a Fee Schedule.

- The authority for TICO to set fees is found in clause 12(1)(b) of the *Safety and Consumer Statutes Administration Act, 1996*.
- **TICO has no intention to change registration or renewal fees at this time.**
- The registration fee is \$2,375.
- The renewal fee is \$375.
- Prior to changing fees, TICO would consult with stakeholders on proposed fee increases or decreases.
- The TICO Board of Directors would have to approve any fee changes.
- Notice would be given to stakeholders in advance of any changes.
- If there was no administrative authority in place, the Minister could by order establish the fees payable under the Act pursuant to s. 37 of the Act.

### **Incomplete Application Forms:**

**Section 3(2) of the Regulation** deals with incomplete application forms.

- All application and renewal applications must:
  - be made in a form approved by the Registrar;
  - contain all the required information; and
  - be accompanied by the relevant fee.
- If the application form does not meet the above requirements, it is incomplete and will not be processed by TICO.

### **Expiry of Registration:**

**Section 4 of the Regulation** provides that a registration expires on the date shown on the Registration Certificate.

## **Prescribed Requirements**

### **Registration Prohibited Where Prescribed Requirements Not Met:**

**Section 7.1 of the Act** provides that if an application for registration or renewal does not meet the prescribed requirements, the Registrar must refuse to grant or renew the registration. The Registrar must provide the applicant with written notice of the refusal and explain the reasons for the refusal; however, the applicant is not entitled to a hearing by the Tribunal if the refusal is based on failure to meet the prescribed requirements.

## **Prescribed Requirements for Registration or Renewal:**

**Section 5 of the Regulation** sets out the following requirements, which must be met in order for applicants to qualify for registration or renewal:

- Individual applicants must be at least 18 years of age and resident in Canada.
- Applicants must not owe outstanding Compensation Fund contributions unless acceptable arrangements to pay them have been made with the Registrar.
- Applicants must not owe outstanding judgments unless they have made arrangements acceptable to the Registrar to satisfy the judgment.
- Applicants must not have been the cause of claims against the Compensation Fund, for which the Compensation Fund has not been repaid or for which arrangements acceptable to the Registrar have not been made to repay. This includes not just the amount of the claims paid but also the costs incurred as a result of those claims.
- Applicants must have provided any required security.
- Interested persons who are affiliated with the registrant must also meet the requirements with respect to Compensation Fund contributions, outstanding judgments, outstanding claims and security.
- Subsection 8(4) of the Act explains what is meant by “interested person”. A person shall be deemed to be an interested person in respect of another person if the person is associated with the other person, or if, in the opinion of the Registrar,
  - the person has or may have a beneficial interest in the other person’s business;
  - the person exercises or may exercise control either directly or indirectly over the other person; or
  - the person has provided or may have provided financing either directly or indirectly to the other person’s business.

**Section 8 of the Regulation** reiterates the requirement that a registrant who is an individual must be a resident of Canada.

## **Prescribed Requirements for Continuation Pending Renewal:**

**Section 6 of the Regulation** sets out the following conditions that must be met in order for a registration to continue pending renewal:

- An individual registrant must be resident of Canada.

- Registrant must not owe outstanding Compensation Fund contributions unless acceptable arrangements to pay them have been made with the Registrar.
- Registrant must not owe outstanding judgments unless they have made arrangements acceptable to the Registrar to satisfy the judgment.
- Registrant must not have been the cause of claims against the Compensation Fund, for which the Compensation Fund has not been repaid or for which arrangements acceptable to the Registrar have not been made to repay. This includes not just the amount of the claims paid but also the costs incurred as a result of those claims.
- Registrant must have provided any required security.

### **Entitlement to Registration and Barriers to Registration:**

**Subsection 8(1) of the Act** entitles applicants who meet the prescribed requirements to registration or renewal **unless** the Registrar has any of the following concerns:

#### Sole Proprietors or Partnerships:

- The applicant cannot reasonably be expected to be financially responsible in the conduct of business having regard to the applicant's financial position or the financial position of an interested person in respect of the applicant.
- The applicant will not carry on business in accordance with law and with honesty and integrity based on the past conduct of the applicant or an interested person.
- The applicant or an employee or agent of the applicant makes or provides a false statement in an application

#### Corporations:

- Is incorporated without share capital.
- The applicant cannot reasonably be expected to be financially responsible in the conduct of its business having regard to:
  - its financial position; or
  - the financial position of an interested person in respect of the corporation; or
  - the financial position of its officers or directors; or
  - the financial position of an interested person in respect of its officers or directors.
- There are reasonable grounds for belief that the business will not be carried on in accordance with law and with honesty and integrity based on the past conduct or the officers, directors or interested persons.

- An officer or director of the corporation makes or provides a false statement in an application.

Additional Concerns:

- The applicant is carrying on activities in contravention of the Act or Regulation.
- The applicant is in breach of a condition of the registration.
- The applicant fails to comply with a request for information from the Registrar.

**Request for Information:**

**Subsection 8(1.1) of the Act** allows the Registrar to request any information that is relevant to registration or renewal in the form and within the time specified. The Registrar can also require that the information be verified by affidavit.

**Conditions:**

**Subsection 8(2) of the Act** provides that a registration may be subject to conditions:

- consented to by the applicant;
- applied by the Registrar;
- ordered by the Tribunal; or
- as are prescribed.

**Registration not transferable:**

**Subsection 8(3) of the Act** makes clear that a registration is **not** transferable.

**Interested person:**

**Subsection 8(4) of the Act** defines what is meant by “interested person”.

A person shall be deemed to be an interested person in respect of another person if the person is associated with the other person, or if, in the opinion of the Registrar,

- (a) the person has or may have a beneficial interest in the other person's business;
- (b) the person exercises or may exercise control either directly or indirectly over the other person; or
- (c) the person has provided or may have provided financing either directly or indirectly to the other person's business.

### **Registration of corporations – ownership and control:**

**Section 9 of the Act** contains the obligation for corporations to disclose to the Registrar when applying or renewing a registration the identity of each person that beneficially owns 10% or more of the equity shares and any persons associated with each other that together beneficially own or control 10% or more of the equity shares.

- The total number of shares shall be calculated as the total number of all shares beneficially owned or controlled, but each share that carries the right to more than one vote shall be calculated as the number of shares equalling the total number of votes carried.

### **Refusal to register or renew, suspension:**

**Section 10 of the Act** provides that, if the Registrar determines that the applicant is not entitled to registration under section 8 of the Act or that the registrant is in breach of a condition of the registration, the Registrar has the power to:

- refuse to register an applicant,
- suspend a registration,
- revoke a registration, or
- refuse to renew a registration.

Further, the Registrar has the power to:

- approve a registration or renewal on conditions, or
- at any time apply conditions to a registration.

The decisions made by the Registrar under this section may be appealed by the applicant or registrant.

**Notice regarding refusal or suspension:**

**Section 11 of the Act** requires the Registrar to notify an applicant or registrant in writing if he or she proposes to:

- refuse to grant or renew a registration under subsection 10(1) of the Act;
  - suspend or revoke a registration;
  - apply conditions to a registration or renewal to which the applicant or registrant has not consented; or
  - refuse to name a branch office in a registration.
- 
- The notice of proposal shall set out the reasons for the proposed action and shall advise the applicant or registrant that they have the right to appeal the decision.
  - If the applicant or registrant wishes to appeal, he or she must mail or deliver a written request for a hearing to the Registrar and to the Tribunal within 15 days.
  - According to s. 13 of the Act, a request for a hearing is sufficiently served if delivered personally or sent by registered mail to the Registrar and to the Tribunal.
  - If no hearing is requested, the Registrar may carry out the proposal.
  - If a hearing is requested, the Tribunal will hold a hearing.
- 
- The Tribunal has the authority to:
    - direct the Registrar to carry out the proposal; or
    - substitute its opinion for that of the Registrar.
  - The Tribunal may attach conditions to its orders or to a registration.
  - The Registrar, the applicant or registrant and other persons specified by the Tribunal are parties to the proceeding.
  - The Registrar may cancel a registration upon the written request of the registrant without notice being required.
  - If a registrant has applied for renewal, met the prescribed conditions and paid the required fee, the registration will be deemed to continue until the renewal is granted, until written notice of refusal to grant the renewal has been received where there is no right of appeal, until the time to request a hearing has expired or until the Tribunal makes an order respecting a proposal to refuse to renew.
  - Orders take effect immediately unless the Tribunal grants a stay until an appeal can be heard.

## **Service:**

**Section 36 of the Act** outlines the service requirements applicable to the Act and Regulation.

- Any notice, order or request is sufficiently given if it is delivered personally, sent by registered mail or sent by another manner if the sender can prove receipt.
- If service is made by registered mail, it is deemed to be made on the third day after the day of mailing unless the person on whom service is being made can demonstrate that they acted in good faith and due to circumstances beyond the person's control did not receive the notice or order until a later date.
- The Tribunal may order any other method of service it considers reasonable in the circumstances.

## **Immediate Suspensions:**

**Section 12 of the Act** permits the Registrar to by order temporarily suspend a registration where he or she considers it in the public interest to do so.

- Temporary suspension orders take effect immediately.
- The registrant has the right to appeal the temporary suspension.
- A temporary suspension order expires 15 days after the written request for a hearing is received by the Tribunal.
- If a hearing is commenced within the 15 day period, the Tribunal may extend the time of the suspension until the hearing is concluded.
- The Tribunal has the power to extend the time of expiration of a temporary suspension order until the hearing commences or until the hearing is concluded if the Tribunal is satisfied that the conduct of the registrant has delayed commencement of the hearing.

## **Further Applications:**

**Section 14 of the Act** provides that a person whose registration is refused, revoked or refused renewal must wait a period of time before they can reapply for registration. Further, the person can only reapply if there is new or other evidence available or it is clear that material circumstances have changed.

**Section 7 of the Regulation** provides that a person must wait 30 days before they can reapply if their registration is refused, revoked or refused renewal.

- Registrants should be aware that if they lose their registration, they will be out of business for at least 30 days. **Registrations will not be reinstated.**

## **OBLIGATIONS OF REGISTRANTS**

### **Business Name:**

**Section 9 of the Regulation** addresses issues with respect to business names of the registrant.

- Registrants shall not carry on business under names other than the names appearing on the registration or names registered under the *Business Names Act*.
- Registrants must notify the Registrar of the names under which business will be conducted.
- Registrants shall not carry on business under those names until they have received acknowledgment of the notice from the Registrar.
- The registrant shall not carry on business under a name that indicates a sponsorship, approval, status or affiliation that the registrant does not have.

### **Offices**

There are a number of provisions in the Act and Regulation that relate to the offices of registrants.

### **Offices of travel agents:**

**Section 6 of the Act** requires that travel agents only conduct business from a place named as an office in the travel agent's registration. If more than one office is named in the registration, one must be designated as a main office and the other offices as branch offices. Any place of business may be named in the registration except branch offices that are in contravention of the regulations.

### **Place of Business – Operating from a Dwelling:**

**Section 10 of the Regulation** deals with a registrant's place of business. Registrants must operate from a permanent place of business in Ontario. Registrants are permitted to operate from a dwelling provided that the following conditions are met:

- The registrant provides proof that carrying on business from the dwelling is permitted by the municipality responsible for enforcing local zoning requirements.
- The registrant has a business telephone number listed under the registrant's business name that is different from any residential telephone number.
- The registrant has made arrangements satisfactory to the Registrar to provide access to the registrant's business records.

### **Branch Offices:**

**Section 11 of the Regulation** provides that all branch offices must be authorized by the registration.

### **Certificate of Registration:**

**Section 13 of the Regulation** contains requirements with respect to registration certificates.

- The registration certificate must be kept at the office or branch office for which it is issued.
- If any person asks to see the registration certificate, the registrant must produce it for inspection.
- The registrant must promptly return the certificate to the Registrar by registered mail or personal delivery if they voluntarily cease business or if the registration is revoked, suspended or cancelled.

### **Sale of Travel Services by Travel Agent:**

**Section 12 of the Regulation** sets out the following conditions that travel agents must meet to sell or offer to sell travel services:

- The travel services must be sold or offered directly by the registrant or by an employee of the registrant or an individual who has a written contract with the registrant.

- The name under which the registrant carries on business and the registrant's address and business telephone number must be disclosed to the customer.
- Any connection between registrants relevant to the travel services sold or offered is disclosed to the customer.
- After July 1, 2008, the individuals employed or under contract with the registrant must have met the minimum educational requirements.

### **Minimum Educational Requirements**

**Sections 12, 14, 15 and 16 of the Regulation** contains information with respect to minimum educational requirements. The new educational requirements will not come into effect until **July 1, 2008**.

- Minimum educational requirements are being introduced on a two-tier basis for travel counsellors and supervisor/managers.
- These standards will apply to anyone selling travel services directly to the public including individuals working in call centres.
- The minimum educational standards will be focused on knowledge of the *Travel Industry Act, 2002* and the Regulation.

### **Purpose of Standards:**

- The goal is to ensure that all registrants know and understand the requirements in the Act and Regulation so that they can better serve their clients.
- TICO knows that most registrants do their best to comply with the law as a matter of good business practice. The difficulty is that many individuals selling travel to the public in Ontario do not know and understand the rules governing their conduct and, therefore, find compliance with the law difficult.
- TICO sees this lack of knowledge regarding the legislative and regulatory requirements on a daily basis. It is not uncommon for TICO staff to call a registrant's office and for the registrant not to know who TICO is. TICO staff frequently hears registrants say, for example, that it is not their responsibility to advise consumers about travel documentation requirements or construction at a resort property.
- Minimum educational standards will help to ensure that those selling travel services to the public are aware of and understand the rules governing their conduct so that they are better equipped to fulfill their obligations. This will benefit TICO, the travel industry generally, as well as individual registrants and consumers because it increases confidence in the travel industry.

### **Content:**

- The travel counsellor curriculum will focus on the provisions of the Act and Regulation that pertain to obligations of a travel agent when dealing with customers.
- The supervisor/manager curriculum will be more comprehensive and will also focus on the financial and business reporting requirements.
- **Registrants are not required to get their CTC or CTM designations.**
- CITC, with its expertise in the area of education, is assisting TICO in the development of its minimum educational standards program. The standard, however, is being set by TICO.

### **Timing:**

- The minimum educational requirements will not come into effect until July 1, 2008.
- The reason for the delay is that TICO needs to develop the curricula based on the new Act and Regulation.
- It is TICO's intention that the curriculum will be accessible to everyone in the province of Ontario either through courses at a community college or travel school, by correspondence or over the internet.
- The later implementation date for the minimum educational standards will ensure that there is time to provide the materials to the schools and colleges so it can be included in their curriculums and to ensure that registrants have time to learn the information and take the required exam to obtain the necessary certification before the effective date.

### **Role of CITC:**

- CITC is assisting TICO with the development of the Minimum Educational Standards program.
- CITC is the body that will conduct the testing and administer the accreditation process for TICO.

### **Travel Counsellor Certification:**

- All travel counsellors who deal directly with the public will be required to take and pass an examination to demonstrate that they have met the standard. Individuals who pass the exam will be granted a TICO certification. This certification must be obtained by July 1, 2008.
- After July 1, 2008, all new travel counsellors entering the industry must meet the standard in order to sell travel to the public.

### **Supervisor/Manager Certification:**

- All supervisor/managers currently in the industry will be grandfathered and will not be required to take the supervisor/manager exam in order to remain in their current positions.
- The supervisor/manager standard will apply to those entering the industry after the effective date and may apply to those moving around within the industry. If a supervisor/manager takes a new position, which has additional responsibilities beyond what the original approval of the Registrar contemplated, the person may be required to obtain the certification. For example, the supervisor/manager of a specialty operation may be required to certify if they are moving to a full service operation.

### **Record Keeping:**

- Registrants will be required to maintain accurate and up-to-date records about persons selling travel services to the public on their behalf.
- After July 1, 2008, those records must include copies of the relevant certificates issued by CITC.
- Applications for registration or renewal after July 1, 2008 must be accompanied by a list of the names and addresses of the individuals selling travel services to the public. These individuals should all meet the minimum educational requirements.

### **Responsibility of Registrant:**

- TICO is not registering individuals. It is the travel agent's responsibility to ensure that those selling travel services on behalf of the agency meet the requirements.
- Travel agents are responsible to ensure that each office operated is properly managed and supervised during its hours of operation.
- After July 1, 2008, at least one person who has obtained the travel counsellor certification must be available at each office operated by a travel agent throughout its hours of operation.
- Failure to comply with the minimum educational requirements could result in administrative or disciplinary action being taken against the registrant.

### **The Course and Exam:**

- These educational standards should not create a barrier to pursuing a career in travel. The goal is not to exclude anyone from the industry. The goal is to ensure that all individuals have a certain level of knowledge.
- The course will consist of a study manual and one opportunity to take the exam.
- The exam will consist of a series of multiple choice questions.
- The exam will be available in an on-line format to ensure that all Ontario registrants are able to write it, wherever they work and at a time of their choosing.
- The exam is closed book and will test the candidate's understanding of the material.
- The exam will be written in a proctored (supervised) environment.
- The study material and exam will be available in French and English.
- More information regarding course materials and the exam will be provided as the curriculum is finalized.
- A mark of 70% or higher will be required to pass the exam.
- There is no limit to the number of times someone can take the exam.
- However, there will be a fee to re-write the exam.

**Cost:**

- TICO is aware of registrants concerns regarding costs and will make every effort to ensure that this is not an economic burden for registrants.
- We are estimating at the present time that the study manual and the exam as a package will cost approximately \$36.00.
- It is estimated that the re-write fee will be approximately \$24.00.

**Ongoing Educational Requirements:**

- TICO has no plans with respect to ongoing educational requirements at this time. TICO will implement and evaluate the effectiveness of the minimum educational requirements being introduced. In the event that additional educational requirements are considered in the future, registrants would be consulted on any proposed changes.

**DUTY TO ADVISE REGISTRAR OF CHANGES**

There are a number of changes that travel agents and travel wholesalers must advise TICO about. Some changes even require approval by the Registrar.

## **CORPORATIONS:**

### **Change in officers or directors:**

**Subsection 5(1) of the Act** provides that a change in the officers or directors of a corporation registered as a travel agent or travel wholesaler may only be made with the consent of the Registrar.

### **Notice of transfer of shares:**

**Section 15 of the Act** provides that the Registrar must be notified in writing within 30 days after the issue or transfer of any equity shares of the corporation, if the issue or transfer results in,

- (a) any person, or any persons that are associated with each other, acquiring or accumulating beneficial ownership or control of 10% or more of the total number of all issued and outstanding equity shares of the corporation; or
  - (b) an increase in the percentage of issued and outstanding equity shares of the corporation beneficially owned or controlled by any person, or any persons who are associated with each other, where the person or the associated persons already beneficially owned or controlled 10% or more of the total number of all issued and outstanding equity shares of the corporation before the issue or transfer.
- If the registrant corporation does not become aware of the transfer until after the transfer takes place, it shall notify the Registrar in writing within 30 days after knowledge of the transfer comes to the attention of its officers or directors.
  - The total number of shares shall be calculated as the total of all the shares beneficially owned or controlled, but each share that carries the right to more than one vote shall be calculated as the number of shares equalling the total number of votes it carries.

## **PARTNERSHIPS:**

### **Change of partner:**

**Subsection 5(2) of the Act** provides that a change in the membership of a partnership shall be deemed to create a new partnership for the purpose of registration.

## **ALL REGISTRANTS:**

### **Notice of Changes to Registrar:**

**Subsection 24(1) of the Act** requires registrants to notify the Registrar in writing within five days after the event of:

- any change in address for service; or
- any change in the officers or directors of a corporation or partnership.

**Subsection 24(2) of the Act** provides that the Registrar will be deemed to have been notified on the day on which he or she is actually notified, or where the notification is by mail, on the day of mailing.

### **Advance Notice to Registrar Regarding Changes:**

**Section 17 of the Regulation** requires that registrants advise the Registrar *five days in advance* of the following changes:

- change of address for office or branch office
- change of supervisor/manager
- change in the name or number of an account or in the financial institution in which the account is maintained
- after July 1, 2008, change of travel counsellors

### **Notice to Registrar of Other Changes:**

**Section 18 of the Regulation** requires that registrants must notify the Registrar *within five days after the change takes place* of any other changes to the required information included in a registrant's application for registration or renewal.

### **Notice of Ceasing to Trade with a Registrant:**

**Section 21 of the Regulation** requires registrants to promptly advise the Registrar in writing if they cease to trade with another registrant because of the other registrant's apparent lack of financial responsibility.

### **Information in Approved Form:**

**Section 19 of the Regulation** requires that all information that the registrant is required to provide shall be provided in a form approved by the Registrar.

## **Unregistered Travel Agents or Travel Wholesalers:**

**Section 20 of the Regulation** prohibits registrants from carrying on business with persons who should be registered under the Act but are not registered.

## **Financial Requirements**

### **Financial Statements:**

**Section 22 of the Regulation** details the financial reporting requirements that registrants must complete each year.

- Financial reports completed for TICO must be accompanied by a review engagement report or an audit opinion by a licensed public accountant (LPA).
- Reporting requirements vary depending on type of registrant and sales volume.
- Registrants with wholesale sales over \$10 million are required to submit unaudited financial statements quarterly rather than semi-annually.
- Financial statements shall include:
  - a statement of sales in Ontario made during the period to which the financial statements refer;
  - a balance sheet;
  - an income statement; and
  - a reconciliation of the trust account with customer deposits.
- The Registrar has the authority to require that a registrant file audited financial statements that consolidate or combine the registrant's with the financial statements of another registrant or with the financial statements of another person who is a shareholder associated with the registrant if such additional information is necessary to provide an accurate and complete review of the registrant's financial position.
- The Registrar has the authority to require that a registrant provide a written statement of the registrant's current net working capital within a specified time if there are concerns a registrant is in financial difficulty.
- The Registrar may require that additional statements requested be verified by affidavit.

**Section 1 of the Regulation** contains the definition of "sales in Ontario".

- "Sales in Ontario", when used in reference to a period of time, means,

- (a) in the case of a registered travel agent, the amount paid or to be paid to or through the travel agent for all travel services sold in Ontario during the relevant period, or
- (b) in the case of a registered travel wholesaler, the amount paid or to be paid to or through the travel wholesaler for all travel services sold in Ontario during the relevant period.

**Financial Statement Requirements:**

<b><u>Type of Registrant</u></b>	<b><u>Sales Volume in Previous Fiscal Year</u></b>	<b><u>Reporting Requirements</u></b>
Retail or Wholesaler	Less than \$10 million	<ul style="list-style-type: none"> <li>• Annual financial statements with review engagement report by a LPA or annual financial statements with an auditor’s report from an LPA if the registrant is required to obtain such statements under the <i>Business Corporations Act</i> within 3 months of the end of the fiscal year</li> </ul>
Travel Agent	\$10 million to \$20 million	<ul style="list-style-type: none"> <li>• Annual financial statements with an audit opinion from an LPA within 3 months of the end of the fiscal year; and</li> <li>• Unaudited financial statements within 45 days after the end of each fiscal half-year</li> </ul>
Travel Agent	\$20 million +	<ul style="list-style-type: none"> <li>• Annual financial statements with an audit opinion from an LPA within 3 months after the end of the fiscal year; and</li> <li>• Unaudited quarterly financial statements within 45 days after the end of each quarter during the fiscal year</li> </ul>

<u>Type of Registrant</u>	<u>Sales Volume in Previous Fiscal Year</u>	<u>Reporting Requirements</u>
Travel wholesaler	\$10 million +	<ul style="list-style-type: none"> <li>Annual financial statements with an audit opinion from an LPA within 3 months after the end of the fiscal year; and</li> <li>Unaudited quarterly financial statements within 45 days after the end of each quarter during the fiscal year</li> </ul>

**Section 24(3) of the Act** allows the Registrar with the approval of the Director to request additional financial statements from a registrant if they have concerns about particular matters. Registrants are required to file these statements and to ensure that they are properly signed and certified by a person licensed under the *Public Accountancy Act*. The information contained in the financial statement is confidential.

**Working Capital:**

**Section 23 and 24 of the Regulation** set out the working capital requirements.

- The current working capital requirements outlined in Section 23 of the Regulation will continue to apply until December 31, 2005. These requirements are:

<b>SALES VOLUME</b>	<b>MINIMUM WORKING CAPITAL</b>
\$0 to \$1,500,000	\$5,000
\$1,500,000 to \$10,000,000	\$25,000
\$10,000,000 to \$20,000,000	\$50,000
\$20,000,000 +	\$100,000

- This transition provision has been included in the Regulation in order to give registrants some additional time to prepare to meet the new working capital requirements.
- The working capital requirements will increase effective January 1, 2006. The new requirements, outlined below, are detailed in Section 24 of the Regulation:

<b>SALES VOLUME</b>	<b>MINIMUM WORKING CAPITAL</b>
\$0 - \$500,000	\$5,000
\$500,000 - \$750,000	\$10,000
\$750,000 - \$1,000,000	\$15,000
\$1,000,000 - \$2,000,000	\$20,000
\$2,000,000 - \$5,000,000	\$25,000
\$5,000,000 - \$10,000,000	\$35,000
\$10,000,000 - \$20,000,000	\$50,000
\$20,000,000+	\$100,000

- The value of security provided or capital belonging to an interested person shall not be included when calculating working capital.
- If the end of the reporting period (i.e. year end) occurs on or before December 31, 2005, the financial statements pertaining to that period must meet the current working capital requirement found in section 23 of the Regulation.
- If the end of the reporting period (i.e. year end) occurs on or after January 1, 2006, the financial statements must meet the new working capital requirements set out in section 24 of the Regulation.

### **Security – New Applicants:**

**Section 25 of the Regulation** sets out the security requirements.

- A person applying for registration, who has not been registered during the previous 12 months, must provide \$10,000 in security to the administrative authority.
- The security will be returned to the registrant after the registrant has filed two consecutive annual financial statements provided that the Registrar has no concerns about the registrant's compliance with the Act or Regulation.
- If the Registrar has concerns regarding the registrant's compliance, the security can be held by the administrative authority until those concerns are resolved.
- When the security is returned to the registrant, an amount will be 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.
- Once the new Regulation comes into force, registrants who provided security to the Registrar under the previous Regulation will not be eligible to have their security returned until the registrant has filed two consecutive annual financial statements provided that the Registrar has no concerns about the registrant's compliance with the Act or Regulation.

### **Bank Accounts:**

**Section 26 of the Regulation** relates to bank accounts.

- All accounts must be maintained in an acceptable financial institution in Ontario.
- The account must be in a name under which the registrant is permitted to carry on business.
- All funds received by the registrant as payment for travel services shall be promptly deposited into such an account.

### **Trust Accounting:**

**Section 27 of the Regulation** requires that **all** registrants be on trust accounting.

- The trust account must be properly designated as a *Travel Industry Act, 2002* trust account.
- All funds received from customers for travel services must be deposited into the trust account within two banking days.
- Money held in the trust account may not be disbursed or withdrawn except:
  - to pay the supplier of the travel service for which the money was received;
  - to refund the customer; or
  - to pay the registrant's commission provided the supplier of the travel services has been paid in full.
- Trust accounting helps to ensure that consumer funds are protected and it allows TICO staff members to more closely monitor the financial situation of registrants.

### **Security Instead of Trust Accounting:**

**Section 28 of the Regulation** provides registrants with the alternative of filing security with TICO in lieu of trust accounting.

- In order to exercise this option, the registrant must have been in business continuously for at least one fiscal year.
- The security provided must be equal or greater than one-sixth of the registrant's sales in Ontario for the 12-month period ending on the last

- day accounted for in the most recent annual, semi-annual or quarterly financial statements.
- It is the registrant's responsibility to ensure that the security posted is sufficient within thirty days after the day the registrant is required to file any financial statements.
  - Registrants must continue to maintain a trust account until they have received an acknowledgement letter from the Registrar confirming that the security has been received.

### **Business Records:**

**Section 29 of the Regulation** sets out the requirements with respect to business records.

- All business records must be maintained at the registrant's principal place of business or at another location, which has been approved by the Registrar in writing.
- The following types of business records must be maintained by each registrant:
  - Accounting records that set out in detail the registrant's income and expenses. These records should include supporting documentary evidence, including copies of statements, invoices and receipts provided to consumers that have unique identifiers or serial numbers.
  - Banking records that identify and may be used to verify all transactions made in connection with the registrant's business.
  - Written record of all payments to or from the registrant in relation to the purchase or sale of travel services. The records must be in a format that allows the Registrar to easily identify the transaction to which the payments relate, based on unique identifiers or serial numbers.
  - Records kept regarding option of refund or alternate travel services.
- All required records must be kept for a period of at least six years after the date of the relevant transaction.

### **Representations**

#### **Requirements relating to representations:**

**Section 31 of the Regulation** sets out some general requirements with respect to representations.

- Registrants are responsible to ensure that all representations made on their behalf comply with the requirements of the Act and Regulation.
- All written representations shall include the registrant's business name, address and registration number, unless the representation is on a billboard or bus board or made through any other medium with time or space limitations.
- Residential telephone numbers may not be included in written representations, although it may be provided orally to clients.
- For the purposes of this section, TICO does not consider a newspaper advertisement to be a limited medium.

**False, misleading and deceptive representations:**

**Section 32 of the Regulation** provides that no registrant shall make a representation that is false, misleading or deceptive.

**Statements regarding price:**

**Section 33 of the Regulation** sets out the following requirements, which must be met for all representations that refer to a price:

- The representation must clearly state the amount the customer will be required to pay for their travel services.
- This amount can be expressed either as:
  - a total price; or
  - a base price plus total taxes, fees and additional charges; or
  - a base price with a detailed break down of all taxes, fees and additional charges.
- The representation does not need to deal with PST or GST.

**Conditions Affecting or Limiting Price:**

- The representation must state any conditions that affect or limit the availability of the travel services at that price.
- TICO recognizes that sometimes the conditions may be very detailed. The representation must state the conditions that affect or limit the availability of the price; however, if the medium has time or space limitations, it is acceptable to advise the customer in the representation where they can find more details about those conditions. For example, if the price varies

depending on the class of room chosen on a cruise ship, the representation may state that the price refers to a standard room and will vary if another class of room is selected. If the representation is a newspaper advertisement where space is limited, it would be acceptable to state that more information regarding the class of rooms available and the additional costs are available on a website, in a brochure or from a travel agent.

Other information to be included:

- The representation must contain a brief description of the travel services, including the names of air carriers, hotels and travel wholesalers where applicable.
- The representation must contain a statement that further information is available from a travel agent.

Clear, Comprehensible and Prominent:

- The required information must be set out in a *clear, comprehensible and prominent manner*.
- TICO interprets the section to mean that if the base price plus tax option is used in a representation, the taxes must be printed adjacent to or proximate to the base price. The tax amount can not be relegated to the fine print. If the tax amount is placed in the fine print of the representation, it will not meet the requirement.

Availability:

- A representation shall not refer to a price unless the travel services are actually available at that price during the time to which the representation applies.

Previous Price:

- A representation shall not refer to previous prices.

Currency:

- The price of travel services shall be in Canadian currency unless the representation indicates in a clear, prominent and comprehensible manner that a different currency is used.

Interpretation Guideline:

- Some registrants have asked TICO about how to deal with representations for travel services where the costs vary depending on the date of travel, if the registrant does not want to only advertise one specific flight or cruise. The goal of this section of the Regulation is to let consumers know what the costs will be. In TICO's interpretation, it is not acceptable to use "from" advertising as this may be misleading to the customer. In effect, the customer has no idea what the cost will be. The amount is open ended. In TICO's interpretation, a registrant could advertise a price range (i.e. from \$x to \$x) provided that the representation lists the conditions that will cause the price to vary within that range and provided that the prices at both ends of the range are available. In that way, the customer has a good idea of what the potential cost will be.

**Information to be included in certain representations:**

**Section 34 of the Regulation** provides that all written representations relating to a specific travel service shall include the following information:

- Deposit requirements
- Final payment requirements
- Total price of the travel services
- Cancellation terms and cancellation charges
- Availability and cost of trip-cancellation insurance
- Availability and cost of out-of-province health insurance, if applicable
- Refund policy, including any penalty provisions
- *A fair and accurate description* of the travel services, including:
  - details of transportation, including name or the principal carrier, the class of service and all departure and arrival points, and
  - details of any accommodation
- Date or anticipated date of commencement and anticipated duration of any construction or renovation that is likely to interfere with the use and enjoyment of any accommodation
- Period to which the representation applies

**Fair and Accurate:**

- The Regulation requires registrants to include a "fair and accurate" description of the travel services. This is a higher standard than the previous Regulation and is aimed at the truthfulness and content of representations.

### Medium with time or space limitations:

- Representations that are made through a medium with time or space limitations, such as a billboard or bus board, do not need to include this information.
- For the purpose of this section, TICO considers newspaper advertising to be a medium with time or space limitations. As such, not all of the detailed information listed above needs to be in a newspaper advertisement. Newspaper ads must include the following information:
  - registrant's business name, address and TICO registration number as required in s. 31 of the Regulation; and
  - if the representation refers to a price, all the information required in s. 33 of the Regulation.
- Where the medium does not allow for full disclosure, registrants are encouraged to advise the customer where they can obtain more detailed information.

### **Photographs and other pictures:**

**Section 35 of the Regulation** sets out requirements concerning the use of photographs or pictures in representations.

- Photographs and pictures should accurately depict what is being represented.
- Representations shall indicate in a *clear, prominent and comprehensible manner* whether it is a photograph or picture and what the photograph or picture refers to.

## **False Advertising**

### **False Advertising Prohibited:**

**Section 28 of the Act** provides that no registrant shall make false, misleading or deceptive statements in any advertisement, circular, pamphlet or material published by any means relating to the provision of travel services.

### **False Advertising Orders:**

**Section 29 of the Act** gives the Registrar certain powers to deal with false advertising.

- If the Registrar believes on reasonable grounds that a registrant is making false, misleading or deceptive statements in any advertisement, circular, pamphlet or other published material, the Registrar may:
  - order the cessation of use of the material;
  - order the registrant to retract the statement or publish a correction of equal prominence to the original publication; or
  - order both the cessation and a retraction or correction.
- The registrant is entitled to a hearing by the Tribunal in respect of the order.
- A false advertising order takes effect immediately.
- The Tribunal may grant a stay until the Registrar's order becomes final.
- If the registrant does not appeal the order or the order or a variation is upheld by the Tribunal, the Registrar can also require that a registrant submit all statements in any advertisement, circular, pamphlet or material to be published by any means to the Registrar for approval before publication for a specified period of time. The specified period of time can not be longer than the period of time prescribed by Regulation.

**False advertising order, prescribed period for pre-approval:**

**Section 49 of the Regulation** provides that the prescribed period for pre-approval of advertising is 90 days.

**Pre and Post Sale Disclosure**

**Duty of travel agent, disclosure and advise:**

**Section 36 of the Regulation** sets out the following information, which a travel agent must disclose before entering into an agreement with a customer for travel services and before taking payment or credit card information from the customer:

- bring to the customer's attention any conditions related to the purchase of travel services that the travel agent has reason to believe may affect the customer's decision to purchase;
- disclose the total price of the travel services, the travel dates and a *fair and accurate* description of the travel services to be provided;
- explain to the customer any requirements or limitation relating to transfer or cancellation of the travel services, including
  - the range of penalties or other costs associated with transfer or cancellation, and
  - any non-refundable payments;

- advise the customer about the availability of,
  - trip cancellation insurance, and
  - out-of-province health insurance, if applicable;
- in the case of proposed travel outside Canada, advise the customer,
  - about typical information and travel documents, such as passports, visas and affidavits, that will be needed for each person for whom travel services are being purchased,
  - that entry to another country may be refused even if the required information and travel documents are complete, and
  - that living standards and practices at the destination and the standards and conditions there with respect to the provision of utilities, services and accommodation may differ from those found in Canada;
- refer to other conditions, if any, that relate to the transaction and to the travel services, and advise the customer where those conditions may be reviewed; and
- advise the customer that the travel agent is required to answer any questions the customer may have arising from the information provided or from a representation.

Please note that the requirement to advise the customer about documents needed for travel does not have to be in writing prior to booking. However, the travel agent must follow up with respect to what information was provided in writing on the invoice.

### **Advising customer of changes:**

**Section 37 of the Regulation** provides that if, after a customer has purchased travel services, the *registrant* becomes aware of a change to any matter that is referred to in a representation and that, if known, might have affected the customer's decision to purchase, the *registrant* shall promptly advise the customer of the change.

- Please note that this section applies to both travel agents and travel wholesalers.

### **Statements, invoices and receipts:**

**Section 38(1) of the Regulation** provides that a **travel agent** must promptly provide a statement, invoice or receipt to a customer after selling travel services. That statement, invoice or receipt must set out the following information:

- the name and address of the customer who purchased the travel services;

- the name and address, if known, of each person on whose behalf the payment is made;
- the date of the booking;
- the date of the first payment;
- the amount of the payment, indicating whether it is full or partial payment;
- the amount of any balance owing, if known, and the date when it is to be paid;
- any fees, levies, service charges, surcharges, taxes or other charges, and whether these amounts are refundable or non-refundable;
- the total price of the travel services;
- the name under which the travel agent carries on business;
- the travel agent's telephone number;
- the travel agent's registration number;
- the travel agent's business address;
- information respecting other ways, if any, the customer may contact the travel agent, such as the travel agent's fax number and e-mail address;
- a fair and accurate description of the travel services contracted for, including the destination, the departure date and the names of the persons who will provide the travel services;
- whether or not the person has purchased trip cancellation insurance;
- whether or not the person has purchased out-of-province health insurance, if applicable;
- whether the contract permits price increases;
- if the contract permits price increases,
  - a statement that no price increases are permitted after the customer has paid in full; and
  - a statement that if the total price of the travel services is increased and the cumulative increase, except any increase resulting from an increase in retail sales tax or federal goods and services tax, is more than 7%, the customer has the right to cancel the contract and obtain a full refund;
- the advice given to the customer regarding the typical information and travel documents needed for each person for whom travel services are being purchased; and
- the names of all the travel counsellors who provided information to the customer on the travel agent's behalf.

Some registrants have expressed concern with respect to setting out fees, levies, service charges etc. on the invoice. This requirement is not new. The only part of the section that is new is the requirement to indicate whether amounts are refundable or not. TICO does not expect registrants to break out every individual fee if they do not have this information. It is acceptable to lump

together some of the charges on the invoice; however, registrants must identify on the invoice any amounts that are not refundable.

**Section 38(2) of the Regulation** provides that a **travel wholesaler** must promptly provide a statement, invoice or receipt to each travel agent through whom the travel wholesaler sells a travel service. The document must set out the following information:

- the name and address of the travel agent through whom the travel wholesaler is selling the travel service;
- the terms of payment and amount paid;
- the name of each customer and, if known, each other person for whom the travel service is being purchased; and
- the destination of each customer and other person and, if relevant, the date of departure.

**Section 38(3) of the Regulation** provides that a statement, invoice or receipt must be consecutively numbered if it is prepared manually or be assigned a unique identifier if it is prepared by computer.

**Verifying condition of accommodation:**

**Section 1 of the Regulation** contains the definition of accommodation:

- Accommodation means any room that is to be used for lodging by the customer or other person for whom the travel services were purchased, and includes other facilities and services related to the room that are for the use of the customer or other person, but does not include meals.

**Section 39 of the Regulation** has provisions with respect to the condition of accommodation.

- Registrants are required to take reasonable measures to ensure that the accommodation is, at the time when the customer uses the travel services, in the same condition as was described by the registrant at the time of sale.
- If the accommodation is not in the same condition, the registrant shall notify the customer or the customer's travel agent of that fact and offer the customer the choice of full and immediate refund or comparable alternate travel services acceptable to the customer.
- If the customer purchased the accommodation as part of a package, the refund or alternate services would apply to the whole package.

- If the customer did not purchase the accommodation as part of a package, the refund or alternate services would apply only to the accommodation.
- Registrants are required to document situations where customers are offered the choice of a refund or alternate services. The registrant must keep a written record of the following information:
  - what information was communicated to the customer;
  - the date on which the information was communicated;
  - what method of communication was used; and
  - what choice the customer made.

### **Events requiring notice and offer of refund or replacement:**

**Section 40 of the Regulation** requires that registrants promptly notify the travel agent or customer and offer the customer the choice of a full and immediate refund or comparable alternate travel services acceptable to the customer when any of the following events occurs:

- The scheduled departure of any transportation that forms part of the travel services is delayed or advanced by 24 hours or more, *unless* the reason for the delay or advancing is the result of: mechanical problems with a vehicle, ship or aircraft; safety considerations; weather conditions; a strike or lock-out; or a force majeure.
  - A different cruise ship is substituted.
  - The accommodation is changed or the standard of the accommodation is changed.
  - The contract permits price increases, the total price of the travel services is increased and the cumulative increase, except any increase resulting from an increase in retail sales tax or federal goods and services tax, is more than 7%.
  - The contract does not permit price increases but the total price of the travel services is increased, whatever the amount of the increase or the reason for it.
  - The documents needed for the trip are changed because the transportation routing is changed, and there is not enough time for the person to obtain the documents before the departure.
- 
- A force majeure is an event or effect that can be neither anticipated nor controlled. It includes both acts of nature (e.g., floods and hurricanes) and acts of people (e.g., riots, strikes and wars).
  - Registrants are required to document situations where customers are offered the choice of a refund or alternate services. The registrant must keep a written record of the following information:

- what information was communicated to the customer;
- the date on which the information was communicated;
- what method of communication was used; and
- what choice the customer made.

### **Travel wholesaler to forward documents to travel agent:**

**Section 41 of the Regulation** provides that if a travel agent sells travel services and pays the travel wholesaler 21 days or more before the date of departure, the travel wholesaler must forward the tickets, vouchers, itinerary and other documents that relate to the travel services to the travel agent at least 14 days before the date of departure, unless the agent or customer directs otherwise.

### **Travel agent to verify documents:**

**Section 42 of the Regulation** requires that when the travel agent receives documents from a travel wholesaler or other person, he or she ensures that all the information contained on a ticket, voucher, itinerary or other document that relates to travel services is correct before providing it to the customer.

### **Travel wholesaler required to provide travel services in certain circumstances:**

**Section 43 of the Regulation** provides that a travel wholesaler shall not refuse to provide the travel services purchased by a customer if the customer has paid the travel agent for the travel services and the wholesaler has provided tickets or other documents to the travel agent for distribution to the customer. This applies even if the travel agent has failed to pay the travel wholesaler for the travel services.

### **Disclosure of counselling fee or service charge:**

**Section 44 of the Regulation** requires that travel agents advise customers of the existence of any counselling fees or service charges prior to counselling or selling travel services to the customer. The travel agent must also advise whether the counselling fee or service charge is refundable or not.

## **Resale of Travel Services**

### **Restrictions, resale of travel services:**

**Section 45 of the Regulation** provides that travel wholesalers and travel agents who have acquired rights to travel services for resale can only sell travel services if they have an agreement in writing with the supplier of the travel services.

### **Duty of registrant who resells travel services:**

**Section 46 of the Regulation** requires that registrants who acquire rights to travel services for resale must reimburse the customer or provide alternate travel services acceptable to the customer in the event the supplier fails to provide the services paid for by the customer.

### **Restriction regarding air transportation:**

**Section 47 of the Regulation** provides that a registrant shall not sell or offer for sale travel services, which include air transportation unless the air carrier is properly licensed by the appropriate authorities, has the necessary approvals to provide the services and has complied with regulatory requirements in all relevant jurisdictions.

## **COMPLAINTS, INSPECTION AND DISCIPLINE**

### **Complaints:**

**Section 16 of the Act** empowers the Registrar to deal with complaints.

- The Registrar can request information about a complaint from any registrant.
- A request for information will indicate the nature of the complaint.
- Registrants are required to provide the information requested in a timely manner.
- The Registrar has the following options with respect to how to handle a complaint:
  - Attempt to mediate or resolve the complaint.
  - A written warning to the registrant.
  - Refer the matter for discipline proceedings.
  - Propose to revoke the registrant's registration.
  - Other administrative action in accordance with the Act.

## **Inspections:**

**Section 17 of the Act** empowers the Registrar to conduct inspections.

- The Registrar or a person designated as an inspector by the Registrar may conduct inspections.
- An inspector may enter and inspect the business premises of a registrant at any reasonable time.
- Inspections may be conducted to:
  - ensure compliance with the Act and Regulation;
  - deal with a complaint; or
  - ensure the registrant remains entitled to registration.
- An inspector is entitled to free access to money, valuables, documents and records of the person being inspected that are relevant to the inspection.
- An inspector may use any data storage, processing or retrieval device or system used in carrying on business in order to produce information in any form.
- An inspector may remove for examination and may copy anything relevant to the inspection. A receipt must be provided for any items removed and the items must be promptly returned to the person being inspected.
- Inspectors must produce proof that they are an inspector upon request.
- An inspector may require persons to assist the inspector to produce records or retrieve information during the inspection.
- No person shall obstruct an inspector in conducting an inspection, withhold information, alter or conceal records or items relevant to an inspection.
- Inspectors are not authorized to use force to enter and inspect premises.
- Copies of documents that are certified by inspectors as true copies of the original are admissible in evidence and have the same evidentiary value as the originals.

## **Discipline Proceedings:**

**Section 18 of the Act** enables the TICO Board to establish a discipline process.

- TICO does intend to set up a discipline process in the future.
- The new Act provides the statutory framework for this process.
- TICO will consult with the industry on the details of this process prior to its introduction.
- The process will involve the creation of a mandatory Code of Ethics.

- A Discipline Committee will be formed to hear issues and determine whether registrants have failed to comply with the Code of Ethics.
- If the Discipline Committee determines that a registrant has failed to comply with the Code of Ethics, it may order any of the following:
  - Require the registrant to arrange and fund educational courses for their employees.
  - Impose a fine to be paid to TICO. The maximum fine would be \$25,000.
  - Suspend or postpone the arranging or funding of educational courses or payment of a fine for such period and on such terms as the Committee designates.
  - Fix and impose costs to be paid by the registrant to TICO.
- Orders of the Discipline Committee may be appealed to the Appeals Committee.
- The Appeals Committee has the power to overturn, affirm or modify the order of the Discipline Committee.
- Decisions of the Discipline and Appeals Committee will be made available to the public.

### **Investigations:**

The new Act does not provide for Director's Investigation Orders. Investigators will now proceed under search warrants obtained from a justice of the peace.

**Section 19 of the Act** provides for the appointment of investigators.

- TICO investigators are appointed by the Director.
- Investigators will be given a certificate of appointment as an investigator, which they must produce upon request.

**Section 20 of the Act** contains the provisions with respect to search warrants.

- Search warrants are obtained from a justice of the peace.
- To obtain a search warrant, an investigator must establish that there is reasonable ground for believing that a person has contravened or is contravening the Act or Regulation or has committed an offence under the law and that there is information or evidence related to the contravention or the person's fitness for registration in a building, receptacle or place that may be obtained through the use of an investigative technique.
- A search warrant authorizes an investigator to:
  - enter or access a location specified in a warrant and examine or seize anything described in the warrant;

- to use any data storage, process or retrieval device or system used in carrying on business to produce information or evidence described in the warrant in any form;
- to use any investigative techniques or procedures specified in the warrant
- Specific authority must be obtained in order to enter a dwelling.
- The justice of the peace may include conditions in a search warrant.
- A warrant may authorize persons with special, expert or professional knowledge to accompany and assist the investigator in executing the warrant.
- Entry or access under a warrant shall be between 6 a.m. and 9 p.m. unless the warrant specifies otherwise.
- A warrant expires 30 days after it is issued unless the justice of the peace extends the date of expiry.
- An investigator may call upon the assistance of police officers in executing a warrant and may use whatever force is reasonably necessary to execute the warrant.
- No person shall obstruct an investigator in executing a warrant or withhold, alter, conceal or destroy anything relevant to the investigation.
- An investigator may require a person to assist in producing or retrieving information described in the warrant.
- Any items seized by an investigator must be returned within a reasonable time.
- A copy of a document or record certified by an investigator as being a true copy is admissible in evidence and has the same evidentiary value as the original.

**Section 20.1 of the Act** authorizes a properly appointed investigator lawfully present in a place pursuant to a warrant or otherwise in the execution of his duties to seize items without a warrant that the investigator believes on reasonable grounds will afford evidence relating to a contravention of the Act or Regulation.

**Section 21 of the Act** authorizes an investigator to exercise search powers without a warrant where exigent circumstances make it impracticable to obtain a warrant though conditions for obtaining a warrant exist. This section does not apply to searches of buildings or parts of buildings used as a dwelling. The investigator may call on police and use whatever force is reasonably necessary to conduct the search.

**Appointment of receiver and manager:**

**Section 22 of the Act** provides that the Director may apply to the Superior Court of Justice for the appointment of a receiver and manager to take possession and control of the business of a registrant.

- One of the following conditions must exist for the Director to make such an application:
  - an investigation of the registrant has been undertaken;
  - the Director has issued or is about to issue a freeze order in respect of the registrant;
  - the Director has reasonable grounds to believe that the registrant has failed or is about to fail to provide contracted and paid for travel services to a customer;
  - the Director has been advised that the Registrar has proposed to suspend or revoke the registrant's registration or has temporarily suspended the registrant; or
  - the Director has been advised that an investigation under the *Ministry of Consumer and Business Services Act* has been ordered.
- The court must be satisfied that it would be in the public interest to have a receiver and manager take control of the business of the registrant.
- The term of the appointment of the receiver and manager shall not be longer than 60 days.
- The court has the ability to extend the term of the receiver and manager.
- Further terms shall be no more than 60 days each.
- Duties of the receiver and manager include:
  - taking possession and control of the assets of the registrant's business;
  - conducting the registrant's business; and
  - taking steps that are necessary for rehabilitation of the business.
- The receiver and manager has all the powers of the Board of a corporation, or of a sole proprietor or partners if the registrant is not a corporation.
- The receiver and manager has the power to exclude persons from the premises and property of the business.

### **Freeze Orders:**

**Section 23 of the Act** empowers the Director to issue freeze orders.

- The following conditions must be met for a Director to make a freeze order:
  - the Director must believe that it is advisable for the protection of consumers; and
  - a search warrant has been issued under the Act; or

- criminal proceedings or proceedings in relation to contravention of an Act have been or are about to be initiated in connection with the business.
- The Director has the power to order in writing that:
  - any person having on deposit or controlling any assets of a registrant or former registrant hold those funds;
  - a registrant or former registrant refrain from withdrawing any asset or trust fund; or
  - a registrant or former registrant hold any asset or trust fund of a customer or other person in trust for the person entitled to it.
- The order will only apply to the offices and branches of a bank, credit union, loan or trust corporation named in the order.
- The Director may consent to the release of a particular asset or trust fund from the order or may wholly revoke the order.
- The registrant or former registrant may file security in an amount acceptable to the Director to avoid being subject to a freeze order.
- An application may be made to the Superior Court of Justice by a person in receipt of a freeze order or by a person who claims to have an interest in the frozen assets for a determination in respect to the disposition of any asset or trust fund.
- If the order affects land, the Director may register a notice that an order has been issued in appropriate land registry offices. This notice has the same effect as the registration of a certificate of pending litigation. The Director may in writing revoke or modify the notice.
- A registrant or former registrant or a person having interest in land in respect of which a notice has been registered may apply to the Tribunal for cancellation of the order or discharge of the registration.
- The Tribunal will have a hearing on any application made. The Tribunal has the power to cancel the order or discharge the registration, in whole or in part, if the Tribunal finds that the order or registration is not required for the protection of customers of the applicant or other persons having an interest in the land or that the interests of other persons are unduly prejudiced by the order or registration.
- The Director may apply to the Superior Court of Justice for directions or an order as to the disposition of assets, trust funds or land affected by the order or notice.

**Section 23.1 of the Act** provides that the Director can issue a freeze order in respect of a non-registrant where a person is alleged to have conducted business for which registration is required under this Act at a time when the person was not registered.

- The Director must have an affidavit setting out the facts supporting the allegations about the person who is not registered under the Act.
- Based on that affidavit, the Director must find reasonable grounds to believe that the person has received money or assets from customers that require protection.

## **CONDUCT AND OFFENCES**

### **Falsifying Information:**

**Section 26 of the Act** provides that no registrant shall falsify, assist in falsifying or induce or counsel another person or assist in falsifying any information or document relating to the provision of travel services.

### **Furnishing False Information:**

**Section 27 of the Act** provides that no registrant shall provide false information or induce another person to provide false or deceptive information or documents related to the provision of travel services.

### **Restraining Orders:**

**Section 30 of the Act** provides that the Director may apply to the Superior Court of Justice for an order directing a person to comply with the Act, the Regulation or an order made under the Act. An appeal of such an order can be made to the Divisional Court.

### **Offences:**

**Section 31 of the Act** sets out the offences and penalties under the Act.

- A person is guilty of an offence who:
  - furnishes false information in any application, statement or return made under the Act;
  - fails to comply with an order, direction or requirement under the Act; or
  - contravenes a provision of the Act or Regulation.

- Code of ethics violations are not an offence and will be dealt with under TICO's discipline process.
- Officers and directors of a corporation may be guilty of an offence if they fail to take reasonable care to prevent the corporation from committing an offence.
- Individuals convicted of an offence are liable to a fine of not more than \$50,000 or to imprisonment for a term of not more than two years less a day, or both.
- A corporation that is convicted of an offence is liable to a fine of not more than \$250,000.
- No proceedings may be commenced more than two years after the facts on which the proceeding is based first came to the knowledge of the Director.

### **Orders for compensation and restitution:**

**Section 32 of the Act** permits the court to order compensation or restitution in addition to other penalties imposed. If an insurer or the Fund has already compensated the individual harmed, the court can order that the compensation or restitution be paid to the insurer or the Fund.

### **Default in payment of fines:**

**Section 33 of the Act** permits the Director to disclose the name of the defaulter, the amount of the fine and the date the fine went into default to a consumer reporting agency if a fine payable for an offence under the Act is in default for at least 60 days. The Director must advise the consumer reporting agency within 10 days of receiving notice that the fine has been paid in full. This section applies to fines payable as a result of a conviction under the *Travel Industry Act*.

### **Liens and charges:**

**Section 34 of the Act** permits the Director to place a lien on real or personal property of the person liable to pay the fine if the fine is in default for at least 60 days. The Director shall not initiate sale proceedings in respect of any real property against which he or she has registered a lien. If a lien is perfected by registration or the related real or personal property is sold, the funds received as

a result of the sale must be used to pay the fine. Within 10 days after the director has knowledge of the payment in full of the fine, the Director shall discharge the registration of any financing statement and register a discharge of a charge created on registration of a lien.

## **OTHER MATTERS**

### **Disclosure of information on registrants:**

**Section 39 of the Act** requires that the Registrar make available to the public the names of registrants and other information in the form and manner prescribed by the Regulation.

**Section 48 of the Regulation** governs what information the Registrar should disclose with respect to registrants.

- The Registrar is required to make available to the public the following information about registrants:
  - names of persons registered as travel agents and travel wholesalers;
  - status of registrations, including conditions on registrations applied by the Registrar or ordered by the Tribunal;
  - business address, business telephone number or other business contact information of registrants;
  - names of persons whose registrations have been revoked within the previous two years;
  - names of any registrants charged with offences by the administrative authority; and
  - names of registrants against whom the Registrar has issued false advertising orders and the contents of the orders.
  
- The Registrar is also required to disclose information regarding registrants or persons who are carrying on activities that require registration to the public, using whatever means are reasonable, where the Registrar is of the opinion that such information could assist in protecting the public.
- The Registrar is required to make notice of any action taken by the Tribunal against an applicant for registration or a registrant available to the public.
- The Registrar will not make available the names of individuals unless the individual is an applicant for registration, a registrant, a person who is required to be registered, or if the name of the individual is otherwise available to the public.

- The Registrar is not permitted to disclose information in bulk to any person except as required by law or to a law enforcement authority.

### **Confidentiality:**

**Section 35 of the Act** requires that all information that TICO obtains in the course of administration of the Act and Regulation is confidential and can not be communicated to other persons except:

- as may be required in connection with a proceeding under this Act or in connection with the administration of the Act or Regulation;
- to a ministry, department or agency of a government engaged in the administration of legislation similar to this Act or legislation that protects consumers or to any other entity to which the administration of legislation similar to this Act or legislation that protects consumer has been assigned;
- to a prescribed entity or organization, if the purpose of the communication is consumer protection;
- to a law enforcement agency;
- to his, her or its legal counsel; or
- with the consent of the person to whom the information relates.

Further, no person involved in the administration of this Act or Regulation can be required to give testimony in a civil proceeding with regard to information they have obtained while exercising their power or duties in respect of the Act or Regulation.

### **Certificate as Evidence:**

**Section 38 of the Act** provides that a statement certified by the Director is admissible in evidence as proof in the absence of evidence to the contrary, of the facts stated in it in relation to the registration or non-registration of any person; the filing or non-filing of any material; the time when the facts upon which the proceedings are based first came to the attention of the Director or any other matter pertaining to registration or non-registration of persons or to filing or non-filing of information. Such documents or certified copies are permitted into evidence as proof, in the absence of evidence to the contrary, that the document is signed by the Director without proof of the office or signature of the Director.

## **REGULATIONS**

There are two types of regulations, which are allowed under the Act: Lieutenant Governor in Council regulations and Minister's regulations.

### **Lieutenant Governor in Council regulations:**

**Section 43 of the Act** permits the Lieutenant Governor in Council to make regulations regarding certain subject matter. The regulations contained in Ontario Regulation 26/05 are Lieutenant Governor in Council regulations.

### **Minister's regulations:**

**Section 42 of the Act** allows the Minister to make regulations:

- establishing a code of ethics for the discipline process;
  - governing the jurisdiction and procedures of any committee established under the Act; or
  - respecting any matter that is delegated by the Lieutenant Governor in Council to the Minister.
- 
- The Minister may, by regulation, delegate the power to make some of these regulations to the TICO Board of Directors, subject to the approval of the Minister.
  - It is not anticipated that the Minister will delegate the power to make any regulations to the TICO Board until the new Regulation has been in place for a period of time.

## **COMPENSATION FUND**

### **General Provisions**

#### **Continuation of the Fund:**

**Section 41 of the Act** provides for the continuation of the Compensation Fund established under the *Travel Industry Act* and requires that the Fund be administered and managed in compliance with the Regulation.

#### **Participation mandatory:**

**Section 50 of the Regulation** requires that every registrant participate in the Fund.

#### **Role of board:**

**Section 51 of the Regulation** provides that the Board of Directors shall administer and manage the affairs of the Fund.

### **Composition and Purpose of Fund:**

**Section 52 of the Regulation** articulates the composition and purpose of the Fund.

- The Fund is composed of:
  - Compensation Fund contributions made by registrants;
  - any money borrowed under this or a predecessor Regulation;
  - recoveries of money paid from the Fund; and
  - income earned on the money in the Fund.
- Fund money is held in trust for the benefit of claimants whose claims for compensation are approved by the Board of Directors in accordance with the Regulation.

### **Payments by travel agents and travel wholesalers:**

**Section 53 of the Regulation** sets out the required Compensation Fund contributions registrants must make.

- Registrants are required to make payments to the Fund twice a year.
- Payments are required within 45 days of the fiscal half-year.
- Travel agents must pay \$0.25 for every \$1,000 or part of \$1,000 of sales in Ontario during the preceding half year plus applicable taxes or \$25 plus applicable taxes, whichever is greater.
- Travel wholesalers must pay \$0.50 for every \$1,000 or part of \$1,000 of sales in Ontario during the preceding half year plus applicable taxes or \$25 plus applicable taxes, whichever is greater.
- Payments must be accompanied by a completed Form 1 return indicating the registrant's sales in Ontario for the preceding fiscal half-year and the amount of payments owing to the administrative authority.
- The registrant or an authorized officer or partner of the registrant must certify that the information provided on the Form 1 return is accurate.

### **Payments deposited into Fund:**

**Section 54 of the Regulation** requires that the administrative authority deposit all Compensation Fund contributions and commissions or other remuneration repaid by the registrant into the Compensation Fund.

**Board to notify Registrar of default:**

**Section 55 of the Regulation** requires that the Board of Directors notify the Registrar as soon as possible if they become aware, in the course of their administration, of any default of a registrant, any claim made in respect of a registrant or any failure by a registrant to perform any obligation or condition under the Act or Regulation.

**Compensation Fund Claims**

**Board to deal with claims:**

**Section 56 of the Regulation** makes it clear that the Board of Directors is responsible for determining whether a claim, or a part of one, is eligible for reimbursement and the eligible amount of the claim.

**Reimbursement of customer:**

**Section 57 of the Regulation** contains the provisions for a customer to claim on the Compensation Fund.

- In order to be eligible for compensation from the Compensation Fund, the customer must have booked through a registered Ontario travel agent and paid money to or through the travel agent.
- Customers can only claim for the cost of the travel services paid for but not provided.
- Customers will not be reimbursed for the cost of any alternate travel booked.
- In the event of a registrant failure, customers must make a demand for payment from the registered travel agent and wholesaler, from any other person who received the customer's money or from any other person who may be legally obligated to reimburse or compensate the customer, including an insurance company.
- If the customer is claiming as a result of an end supplier airline or cruise line failure, the customer does not have to make a demand from the travel agent or wholesaler prior to coming to the Fund. The customer still has to make a demand of other persons who received the customer's

money or who may be legally obligated to reimburse or compensate the customer.

- In order to be eligible for compensation from the Compensation Fund, the customer must not have been reimbursed by any other party.
- TICO may require claimants to provide proof that they have not been reimbursed by other parties prior to allowing the claim.
- There are certain items that the Compensation Fund will not cover. A customer is not entitled to be reimbursed for:
  - Travel services that were not provided because an end supplier, other than an airline or cruise line, became bankrupt or insolvent or ceased to carry on business.
  - Travel services or alternate travel services that were provided.
  - For travel services that were available, but were not received because of an act or failure to act on the part of the customer or of another person for whom the travel services were purchased.
  - Counselling fees paid to a travel agent.
  - Travel services that were to be received as a prize, award or goodwill gesture.
  - Travel services that the customer obtained with a voucher, certificate, coupon or similar document that the customer did not pay for.
  - Travel services that the customer did not pay for with cash or by a cheque, credit card or other similar payment method.
  - Insurance premiums.
  - A claim that is based on the cost, value or quality of the travel services or alternate travel services.
  - A claim in connection with travel services provided to enable immediate departure or trip completion.
  - Consequential or indirect damages incurred as a result of the failure to provide the travel services.
- The Compensation Fund will now reimburse customers for taxes paid on their travel services.

### **Reimbursement of travel agent:**

**Section 58 of the Regulation** contains the provisions for a travel agent to make a claim on the Compensation Fund.

- A travel agent is only able to claim on the Fund if they have refunded a customer or provided alternate travel services for a customer because the original travel services purchased by the customer were not provided as a result of a registrant or an airline or cruise line end supplier failure. This

does not apply if the travel agent acquired the rights to the travel services for resale.

- If the travel agent acquired the rights to travel services for resale and, for example, put together a package for a customer, the travel agent is responsible to reimburse the customer or provide comparable alternate travel services acceptable to the customer in the event the supplier fails to provide the travel services paid for by the customer. In this scenario, where the travel agent has acquired the rights for resale, the travel agent would not have a claim on the Compensation Fund.
- The customer must have booked their travel services through a registered Ontario travel agency and made payment to or through the travel agency.
- The travel agent must have dealt with a travel wholesaler, airline or cruise line in good faith and at arm's length.
- The travel agent must have passed all or part of the customer's money to the travel wholesaler, airline or cruise line. If the travel agent is still holding any of the customer's money, the travel agency will be responsible for refunding that money.
- The travel agent is only entitled to be reimbursed if the customer would otherwise have had a claim against the Compensation Fund.
- The travel agent is not entitled to be reimbursed for any commission or other remuneration, including a service charge owing on account of the travel services purchased by the customer.

### **Reimbursement of travel wholesaler:**

**Section 59 of the Regulation** contains the provisions for a travel wholesaler to claim on the Compensation Fund.

- A travel wholesaler is only entitled to be reimbursed for money paid by the travel wholesaler to reimburse a customer for travel services paid for but not provided or to provide the customer with travel services for which the travel wholesaler has not been paid by the travel agent provided that:
  - the travel agent is a registrant;
  - the travel wholesaler dealt with the travel agent in good faith and at arm's length;
  - the travel agent failed to pass all or part of the customer's money to the travel wholesaler;
  - the travel wholesaler has had no previous dealings with the travel agent in which the travel agent failed to pass the customer's money to the travel wholesaler in respect of travel services or was otherwise in default; and
  - the travel wholesaler has taken reasonable measures to ensure that the travel agent is reliable and financially responsible.

- The travel wholesaler is entitled to be reimbursed only for the portion of the customer's money that the travel agent received but failed to pass on to the travel wholesaler.
- The travel wholesaler is entitled to be reimbursed only if the travel agent received the customer's money and the customer would otherwise have a claim on the Fund.
- The travel wholesaler is not entitled to be reimbursed for any amount owing from the travel agent that represents a commission or other remuneration, including a travel service charge.
- The travel wholesaler is not entitled to be reimbursed for a payment made by credit card if the registrant who processed the payment did not obtain approval for the payment from the customer and from the card issuer, in advance, in accordance with the agreement between the card holder and the registrant.
- The travel wholesaler is not entitled to be reimbursed for a payment made by cheque received from a travel agent unless: the cheque is received by the travel wholesaler seven days or fewer before the commencement of the travel services; the cheque is promptly deposited in a properly maintained account by the wholesaler; and the cheque is returned to the travel wholesaler by the financial institution for reasons of insufficient funds. The travel wholesaler is not entitled to be reimbursed for any portion of the claim that exceeds the travel wholesaler's volume of business with the travel agent for a normal week based on established trading patterns within the 12-month period that immediately preceded the customer's departure.

### **Time for claim:**

**Section 60 of the Regulation** requires that all claims be made to the Board of Directors within six months of the registrant or end supplier failure.

- The TICO Board of Directors has no discretion to approve claims received after the end of the six-month period.
- Consumers and registrants must ensure their claims are made in a timely way.
- TICO encourages claimants to get their claim forms in to TICO as soon as possible to ensure they meet the filing deadline. Additional information or documentation can be provided after the claim has been filed.

### **Documents and other information:**

**Section 61 of the Regulation** makes clear that the onus is on the claimant to prove the claim.

- The Board of Directors may request additional information or documentation in support of a claim.
- If a claimant does not provide the information or documentation within twelve months of receiving the request, the claim will be treated as abandoned.
- The Board of Directors may allow a claimant additional time to provide the information if they are satisfied that based on the circumstances it would be unfair to abandon the claim.

**Subrogation:**

**Section 62 of the Regulation** permits the Board of Directors to require claimants to sign any necessary documents to allow TICO to stand in the place of a claimant, to the extent of the amount paid out by the Compensation Fund, in a related claim against a third party. This means that if TICO pays out a claim or part of a claim, it could take action to recover what it has paid to the claimant from any third parties who may have some liability to the claimant for those funds.

**Credit arrangements, no reimbursement:**

**Section 63 of the Regulation** provides that travel agents and wholesalers are not eligible to claim on the Compensation Fund if they have extended credit to a customer and used their own funds to pay for the customer's travel services.

**Commissions and other remuneration repayable by registrant:**

**Section 64 of the Regulation** requires that registrants pay the amount of all commissions and other remuneration to the customer or TICO if the customer does not receive any of the travel services paid for. Registrants are not required to reimburse their counselling fees. Even if a customer does not receive their travel services, the customer does receive some benefit from the counselling services that were provided.

## **Major Event:**

**Section 1 of the Regulation** defines “major event” as one or more events designated as a major event by the Director under section 65.

**Section 65 of the Regulation** allows claims that are the result of a major event to be treated differently than other claims and sets the criteria to be considered in determining what a major event is.

- The Director must consider the following factors when deciding whether or not to designate one or more events as a major event:
  - the nature of events;
  - the number of claims arising or potentially arising from the event; and
  - the need to protect the Compensation Fund.
- When a major event occurs, the Board of Directors may defer the payment of claims until it is satisfied that it has received all claims likely to be made with respect to the event or may choose to reimburse the claims in installments or to only partially reimburse the claims.

## **Maximum amounts for payments from Fund:**

**Section 66 of the Regulation** limits the amount that the Compensation Fund is permitted to pay out with respect to claims.

- The maximum refund available is \$5,000 per person.
- The maximum amount available to satisfy claims for reimbursement or immediate departure arising from an event or major event is \$5 million plus any money TICO is able to recover by way of subrogated claim against a third party.
- In the event claims exceed \$5 million, TICO will prorate claims received.
- An additional \$2 million may be paid from the Compensation Fund for trip completion, to assist travelers who are stranded in a destination.
- If \$2 million dollars is not sufficient for trip completion, the Director may, with the approval of the Board of Directors, direct that additional funds be used for trip completion up to a maximum of \$5 million. Those additional funds will be deducted from the \$5 million available to reimburse consumers or pay for immediate departures with respect to the event.
- Payments for trip completion take precedence over other claims on the Compensation Fund.

### **Reimbursement for claims under sections 57, 58 and 59:**

**Section 67 of the Regulation** clarifies that all claims made by customers, travel agents and travel wholesalers are subject to the maximum payment amounts detailed in section 66.

### **Payments for immediate departure:**

**Section 68 of the Regulation** stipulates the conditions for payments for immediate departures.

- It is the Director who directs the administrative authority to make payments from the Fund to enable immediate departures.
- In deciding to make a direction, the Director may consider any relevant matters, including:
  - the welfare of the customer or other person;
  - the practicality of arranging for immediate departure; and
  - the need to protect the Fund.
- The following conditions must be met for an immediate departure to be considered:
  - the customer or other person was preparing for immediate departure and was prevented from departing through no fault of his or her own;
  - immediate payment from the Fund is necessary to alleviate suffering on the part of the customer or other person; and
  - it is likely that the customer would be eligible for reimbursement from the Fund.
- A maximum amount of \$5,000 per person may be paid to facilitate immediate departure.
- The maximum amount that may be paid from the Fund to reimburse consumers or to enable immediate departure for an event or major event is \$5 million.

### **Payments for trip completion:**

**Section 69 of the Regulation** provides more detail on payments from the Compensation Fund for trip completion.

- Trip completion is aimed at assisting customers or other persons experiencing hardship or inconvenience because they have begun a trip that cannot be completed because travel services have not been

provided and it is likely that the customer would be eligible for reimbursement from the Compensation Fund.

- In essence, this section is designed to assist people stranded in destination.
- The Director may direct the administrative authority to make payments from the Fund to pay or assist in paying the cost of trip completion and necessary accommodation and meals for the customer or other person before the trip can be completed.
- Trip completion is achieved by bringing the customer or other person to the final destination or by returning them home, if that is their preference and can be done for a cost that does not exceed the cost of bringing the customer or other person to the final destination.
- Trip completion is most commonly used when a wholesale registrant fails and groups of people are stranded in destination.
- In the event of an end supplier airline failure, it is not possible for the administrative authority to repatriate stranded consumers as individuals are stranded in countless locations. The administrative authority does not have manpower to assist everyone to find a way home. In those circumstances, individuals are required to make their own arrangements to get home and then to make a claim on the Compensation Fund for the portion of the original travel services that were not received.
- The maximum amount that may be paid for trip completion is \$5,000 per person.
- The maximum amount that may be paid for trip completion is \$2 million with respect to all claims arising out of an event or major event.
- If \$2 million dollars is not sufficient for trip completion, the Director may, with the approval of the Board of Directors, direct that additional funds be used for trip completion up to a maximum of \$5 million. Those additional funds will be deducted from the \$5 million available to reimburse consumers or pay for immediate departures with respect to the event.
- Payments for trip completion take precedence over other claims on the Compensation Fund.

### **Registrant liable to reimburse Fund for certain payments:**

**Section 70 of the Regulation** requires that registrants reimburse the Compensation Fund for any claims paid to the registrant's customers if the registrant is bankrupt or insolvent or has ceased to carry on business or if the registrant purchased travel services on the customer's behalf, extending credit to

the customer, and the customer paid the registrant for the travel services after the failure of the supplier of the travel services.

### **Hearing by Tribunal:**

**Section 1 of the Act** contains a definition of “Tribunal”. “Tribunal” means the Licence Appeal Tribunal established under the *Licence Appeal Tribunal Act, 1999* or such other Tribunal as may be prescribed.

**Section 71 of the Regulation** entitles claimants to a hearing by the Licence Appeal Tribunal if their claim or a part of their claim is denied by the Board of Directors.

- If the Board of Directors determines that a claim is not eligible for reimbursement, notice of that decision will be provided to the claimant and the claimant will be advised of their right to appeal the decision.
- If the claimant wishes to exercise their right to a hearing, they must mail or deliver a written request for a hearing to the Registrar **and** to the Tribunal within 15 days of being served with the notice.
- If a claimant does not request a hearing, the decision of the Board of Directors becomes final.
- If the claimant requests a hearing, the Tribunal will select a date and hold the hearing.
- The Tribunal has the power to allow the claim, in whole or in part, and direct the TICO to pay the amount allowed from the Fund or to refuse to allow the claim, in whole or in part.
- The claimant, TICO and any other person specified by the Tribunal are parties to the hearing.
- The claim provisions of the Regulation apply to any decision of the Tribunal.

### **LIABILITY FOR DEPOSITS:**

**Section 25 of the Act** continues to make registrants liable for any deposits received from customers. However, the new Act removes the liability from registrants if:

- the travel agent or travel wholesaler has properly disbursed the money received;
- the travel agent acted in good faith and at arm’s length with any person with whom he or she would be jointly and severally liable; and
- the person with whom the travel agent would be jointly and severally liable is not in breach of a requirement to be registered under the Act.

## **ADMINISTRATION OF THE FUND**

### **Borrowing and investment powers:**

**Section 72 of the Regulation** permits TICO to borrow money to supplement the Fund and allows TICO to invest any Fund money that is surplus to TICO's immediate requirements in property in which a trustee is authorized to invest in accordance with the *Trustee Act*.

### **Advisors:**

**Section 73 of the Regulation** authorizes the Board of Directors to employ advisors to administer and manage the Fund, to investigate claims and to maintain and protect the Fund. The Board is entitled to rely and act upon the advice of these advisors and remuneration for the advisors may be paid from the Compensation Fund.

### **Records available to Director:**

**Section 74 of the Regulation** requires the Board of Directors to make available any records with respect to the affairs of the Fund to the Director.

### **Audit:**

**Section 75 of the Regulation** provides that the Director can require the affairs of the Fund to be audited and that the Board of Directors shall assist the auditors and provide any information required for the audit.

## **REVOCATION AND COMMENCEMENT**

### **Revocation:**

**Section 76 of the Regulation** revokes all previous regulations.

### **Commencement:**

**Section 77 of the Regulation** states that Ontario Regulation 26/05 comes into force on **July 1, 2005**.