



## REGISTRAR BULLETIN March 12, 2010

### COMPENSATION FUND COVERAGE AND DISCLOSURE REQUIREMENTS BY ONTARIO TRAVEL RETAILERS RE: BOOKINGS WITH OUT-OF-PROVINCE TOUR OPERATORS OR END SUPPLIERS (OTHER THAN AIRLINES AND CRUISE LINES)

TICO would like to remind Ontario registered travel retailers that the Ontario Travel Industry Compensation Fund coverage does not extend to bookings made with **out-of-province** tour operators or end suppliers other than airlines and cruise lines.

Consumers who have purchased travel services from Ontario travel retailers are not covered by the Compensation Fund in the event that the travel services purchased from a registered Ontario travel retailer are not received because of the bankruptcy or insolvency of an **out-of-province** tour operator (wholesaler) or end supplier, other than an airline and/or cruise line. Alternatively, if the consumer does not receive their travel services because the Ontario registered travel agency fails, the consumer would be protected by the Fund. The Compensation Fund provides reimbursement of monies paid to an Ontario registered travel agent for travel services that are not provided due to the bankruptcy or insolvency of an Ontario registrant or an end supplier airline or cruise line, where a reimbursement has not otherwise been provided.

TICO would like registrants to be aware of their responsibilities under the *Travel Industry Act, 2002* in relation to these types of bookings. Section 25 of the Act makes travel agents jointly and severally liable for any deposits received from customers. However, this section would not apply and 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.

Section 36(a) of Ontario Regulation 26/05 requires that the travel agent disclose information to consumers which the travel agent has reason to believe may affect the customer's decision to purchase. In TICO's view, the fact that Compensation Fund coverage does not extend to bookings made with **out-of-province** tour operators or end suppliers other than airlines and cruise lines could affect the customer's decision to purchase. As such, travel agents should be disclosing to consumers, when applicable, that Travel Industry Compensation Fund coverage does not extend to bookings made with **out-of-province** tour operators or end suppliers other than airlines and cruise lines.

TICO would like to remind retail travel agents that if they are uncertain as to whether the travel company they are about to make a booking with is registered in Ontario, they can use the Search feature found on TICO's website at [www.tico.ca](http://www.tico.ca) or contact TICO at 1-888-451-8426 or email: [tico@tico.ca](mailto:tico@tico.ca) to verify that the company is a TICO registrant.

#### **Example of an out-of-province booking not eligible for reimbursement from the Compensation Fund:**

*Consumer purchases a tour package from an Ontario registered travel retailer, which is supplied by a tour operator in Australia. The consumer does not receive the travel services purchased due to the bankruptcy or insolvency of the tour operator in Australia. As there is no Ontario registrant or end supplier airline or cruise line failure, there is no claim on the Compensation Fund.*



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### Relevant Sections of Ontario Regulation 26/05:

#### Section 25 – Liability for Deposits

**25(1)** Where any person is entitled to the repayment of any money paid for or on account of a travel service, any travel agent and any travel wholesaler who received such money or any part thereof is liable jointly and severally with any other person liable therefore, for the repayment of such money to the extent of the amount received by him, her or it. 2002, c. 30, Sched. D, s. 25 (1).

#### Exception

(2) Subsection (1) does not apply if,

- (a) the travel agent or travel wholesaler has properly disbursed the money received;
- (b) the travel agent or travel wholesaler has acted in good faith and at arm's length with the person with whom he, she or it would be jointly and severally liable under subsection (1); and
- (c) the person with whom the travel agent or travel wholesaler would be jointly and severally liable under subsection (1) is not in breach of a requirement to be registered under this Act. 2004, c. 19, s. 23 (20).

#### Section 36(a) - Duty of travel agent, disclosure and advice

**36.** Before entering into an agreement with a customer for travel services, and before taking payment or credit card information from the customer, a travel agent shall,

- (a) 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;

Queries may be directed to TICO at Tel: (905) 624-6241 or 1-888-451-TICO. Or visit TICO's website at [www.tico.on.ca](http://www.tico.on.ca) or email: [tico@tico.on.ca](mailto:tico@tico.on.ca)

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*Travel Industry Act, 2002*