



Explanatory Paper

Ontario Regulation 101/20 made under the Travel Industry Act, 2002

What the New Rules Mean to You

This document will explain in detail the changes to Ontario Regulation 26/05 (Regulation), which came into force on March 30, 2020.

Any questions with respect to the information contained in this document should be directed to the Travel Industry Council of Ontario (TICO). We can be reached by email at tico@tico.ca or via telephone at (905) 624-6241 or toll-free at 1-888-451-8426.

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EXECUTIVE SUMMARY

In response to the COVID-19 pandemic, Ontario Regulation 26/05 (Regulation) under the *Travel Industry Act, 2002* (Act) was amended to reduce burden on travel agents and wholesalers (registrants) and to help certain travellers impacted by the COVID-19 outbreak.

The changes can be summarized in four main areas, as follows:

Reductions to Financial Reporting Requirements

- Eliminating review engagement reports for small registrants with annual sales less than \$2 million and requiring a verification statement instead.
- Eliminating audit reports for large registrants with annual sales of \$10 million or more and requiring a review engagement report instead.

Reductions to Working Capital Requirements

- Removing prescriptive working capital thresholds for all registrants and requiring them to maintain positive working capital instead.

Changes to Obligations under Section 46 of the Regulation

- Clarifying under section 46 in the regulation what a registrant, who has acquired rights to travel services for resale, must provide to a customer when a supplier fails to provide the travel services paid for by the customer, which includes:
 - a refund or comparable alternate travel services acceptable to the customer, or
 - a voucher or similar document for future redemption towards travel services.
- Providing a time-limited exemption under section 46, which would allow registrants to elect to only provide a voucher or similar document for future redemption towards travel services where a supplier fails to provide the travel services after these changes come into effect and that failure is related to the COVID-19 outbreak. If the exemption is applicable, the voucher or similar document issued must meet specified requirements.

Expanding Compensation Fund Coverage

- Expanding the coverage under the Travel Industry Compensation Fund for consumer claims involving vouchers or similar documents that may be eligible for reimbursement. This will help ensure that any voucher or similar document that a customer redeems for travel services (e.g., flight, cruise, or hotel) but for which travel services are not provided may be eligible for a reimbursement claim.

- Temporarily expanding coverage under the Travel Industry Compensation Fund so that consumers with unredeemed vouchers or similar documents issued by a registrant that cannot be redeemed due to the failure of a registrant associated with COVID-19 may be eligible for a claim for reimbursement.

FINANCIAL DOCUMENTS

Section 22 of the Regulation sets out the new financial reporting requirements.

What financial documents am I required to file?

- A registrant with less than \$2 million in sales in Ontario during the previous fiscal year is required to file either a verification statement or annual financial statements.
- A registrant with sales in Ontario of \$2 million to less than \$10 million is required to file annual financial statements.
- A registrant with sales in Ontario of \$10 million to less than \$20 million is required to file annual financial statements and the following financial documents, as appropriate:
 - For travel agents, semi-annual financial statements
 - For travel wholesalers, quarterly financial statements
 - For registrants who are both travel agents and travel wholesalers, quarterly financial statements
- A registrant with sales in Ontario of \$20 million or more is required to file annual financial statements and quarterly financial statements.

When do I have to file the required documents?

- A verification statement or annual financial statements must be filed within three months after the end of the registrant's fiscal years.
- Semi-annual financial statements must be filed within 45 days after the end of the registrant's fiscal half-years.
- Quarterly financial statements must be filed within 45 days after the end of each of the registrant's fiscal quarters.
- The Regulation was amended to give the Registrar the ability to grant an extension to the specified timelines. This power is discretionary meaning that the Registrar can decide whether to grant an extension. It is not guaranteed.

What is a verification statement?

- TICO has created a form that a registrant with less than \$2 million in sales in Ontario during the last fiscal year can choose to complete instead of filing annual financial statements. The form is called a verification statement.
- The following information must be set out on the verification statement:
 - the registrant's total assets and liabilities at the end of its fiscal year
 - the registrant's total revenue during its fiscal year
 - the registrant's total expenses during its fiscal year
 - any other information required by the Registrar
- The form must be attested to by,
 - the registrant, if the registrant is an individual
 - a director or officer of the registrant, if the registrant is a corporation
 - a partner of the registrant, if the registrant is a partnership
- The person attesting to and signing the form is declaring or certifying in his/her official capacity that the information is correct.
- The Verification Statement form is available on TICO's website at: <https://www.tico.ca/files/VerificationStatementfillableFINAL.pdf>

What must be included in financial statements?

- Annual financial statements, semi-annual financial statements and quarterly financial statements shall include the following:
 - a statement of sales in Ontario made during the period to which the financial statements refer
 - a balance sheet
 - an income statement
 - a cash flow statement
 - a reconciliation of the trust accounts maintained
- Annual financial statements must be accompanied by either a review engagement report or an audit opinion, as the registrant prefers.
- The review engagement report or audit opinion accompanying the annual financial statements must be prepared by a public accountant licensed under the *Public Accounting Act, 2004*.
- Semi-annual financial statements and quarterly financial statements are not required to be accompanied by a review engagement report or audit opinion.

Can the Registrar require other financial documents?

- If additional information is necessary to provide an accurate and complete review of the registrant's financial position, the Registrar may require that the registrant file within a specified time financial documents that consolidate the registrant's financial documents with,
 - the financial documents of another registrant, or
 - if the registrant is a corporation, with the financial documents of another person who is a shareholder associated with the registrant.
- If the Registrar has reason to believe that a registrant is in financial difficulty, the Registrar may require that the registrant provide to the Registrar within a specified time,
 - a written statement of the registrant's current net working capital, if the registrant is not exempt from the working capital requirement, or
 - a written statement that the registrant is exempt from the working capital requirement.
- The Registrar may require that the financial documents referred to in this question be verified by affidavit.

What if I have already started preparing my financial documents and now the requirements have changed?

- The registrant always has the option to provide a higher form of financial report than is required. A registrant who needs to file a Verification Statement can file annual financial statements so long as they meet the financial statement requirements. A registrant who is required to file financial statements has the option to file a Review Engagement Report or an Audit Report.
- Depending on where you are in having your financial documents completed, you may want to speak with your Licensed Public Accountant (LPA) to see if the work, and your costs, can be reduced.
- While we appreciate the frustration that can be experienced when changes occur and you are caught in a transitional period, TICO will not accept requests for refunds of fees that have been expended.

POSITIVE WORKING CAPITAL

Section 24 of the Regulation sets out the working capital requirements.

How much working capital am I required to have?

- The section has been amended to require a registrant to maintain positive working capital.
- Previously, registrants were required to maintain minimum working capital between \$5,000 and \$100,000 depending on their sales in Ontario during the previous fiscal year.
- The change will free up capital for registrants.

How is working capital calculated?

- A registrant must always maintain current assets greater than current liabilities.
- Current assets and current liabilities shall be calculated in accordance with generally accepted accounting principles and shall not include,
 - the value of any security provided by a new applicant, or
 - capital belonging to any person who is an interested person (e.g. any intercompany receivable or payable to a related party such as a shareholder).
- Pursuant to the Act, 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.

I am currently exempt from the working capital requirement. Am I still exempt?

- The exemption from the working capital requirement for lower risk businesses that are closely tied to government was maintained in the changes to the Regulation.
- A registrant is exempt from the working capital requirement if all the following conditions are met:
 - The registrant is a not-for-profit corporation without share capital.
 - The registrant has entered into a transfer payment agreement or other funding agreement with the Crown in right of Ontario or a municipality.

- The term of the agreement is set out in the agreement, is for a period of not less than one year and has not expired.
- The agreement requires the registrant to promote tourism in any geographic area of Ontario.
- A copy of the agreement with the province or municipality is provided to the registrar within the time and within the manner that the registrar specifies.
- Any additional information that is required by the registrar about facts affecting matters dealt with in the agreement is provided within the time and in the manner that the registrar specifies.
- The registrant provides written notice to the registrar of any amendments to the agreement within a reasonable time following an amendment.

DUTY OF REGISTRANT WHO RESELLS TRAVEL SERVICES

Section 46 of the Regulation sets out requirements for registrants who resell travel services where the supplier fails to provide the travel services paid for by a customer.

Who does the section apply to?

- The section applies if a registrant acquires rights to travel services for resale to other registrants or to consumers.
- A registrant is considered to have acquired rights to travel services for resale where,
 - it entered a risk contract for travel services that it will resell, or
 - in circumstances where it has packaged travel services and marketed and sold those services for an all-inclusive price.
- Where a registrant has only sold another registrant's package and has not acquired any rights to the travel services for resale, this provision would not apply.

What is my obligation if the supplier fails to provide the travel services paid for by the customer?

- The registrant who acquired the rights for resale must:
 - reimburse the customer,
 - provide comparable alternate travel services that are acceptable to the customer, or
 - provide the customer with a voucher, certificate, coupon, or similar document that is acceptable to the customer, for future redemption towards travel services.

- This change clarifies the treatment of a voucher, certificate, coupon, or similar document under this provision going forward in the normal course of business. Prior to the Regulation change, the section made no reference to such documents.

What if the supplier's failure to provide the travel services is related to coronavirus?

- The Regulation was amended to create a time limited exemption to the obligations under Section 46 where the supplier's failure to provide the travel services is related to the coronavirus (COVID-19) outbreak.
- Where the supplier's failure to provide the travel services is related to COVID-19, the registrant who acquired the rights to travel services for resale may elect to provide the customer with a voucher, certificate, coupon, or similar document, for future redemption towards travel services.
- This exemption is time limited and applies with respect to a supplier's failure to provide travel services that occurs from March 30, 2020 until March 31, 2021.
- During that time, the voucher, certificate, coupon, or similar document does not have to be acceptable to the customer; however, it must meet the following two conditions:
 - It must be of at least equal value to the travel services not provided.
 - It must be redeemable for a period of at least one year after the day it was issued, but not limited to acquiring travel services that take place during that period. In other words, it must be redeemable for at least one year but the travel does not have to occur within one year.

What if the supplier's failure to provide the services due to COVID-19 occurred before March 30, 2020?

- Section 46 of the Regulation, as it read prior the regulation change, would apply:

If a registrant acquires rights to travel services for resale to other registrants or to customers and the supplier fails to provide the travel services paid for by a customer, the registrant who acquired the rights for resale shall reimburse the customer or provide comparable alternate travel services acceptable to the customer.
- Generally, where refunds are not possible, TICO's position is that credit vouchers for future travel equivalent to the value of the travel services purchased are an acceptable form of reimbursement. We believe this position is representative of a fair and reasonable regulator as we navigate through this difficult time. It is

important to strike a balance between consumers being out-of-pocket for previously booked travel and the need to sustain the economic viability of the travel industry.

- However, there are different fact situations. Consumers who are not happy with the reimbursement being offered, after trying to resolve the matter with their travel agent, may file a complaint with TICO. Complaints will be reviewed on a case-by-case basis.

Compensation Fund Claims

Sections 56 - 71 of the Regulation deal with claims against the Compensation Fund.

How has the coverage under the Compensation Fund been changed?

- There have been two main changes to coverage under the Compensation Fund.
- The first change relates to customer claims involving redeemed vouchers, certificates, coupons, or other documents. This change will apply moving forward on an ongoing basis. While it has application to COVID-19, it is not specific to the pandemic.
- The second change relates to customer claims involving unredeemed vouchers, certificates, coupons, or other documents. This change will only apply for a temporary period and relates specifically to COVID-19.

Redeemed Vouchers or Similar Documents

- The Regulation was amended to remove the provision that stated that a customer is not entitled to be reimbursed for travel services that the customer obtained with a voucher, certificate, coupon or similar document that the customer did not pay for.
- Clarifications were made to state that a customer is not entitled to be reimbursed for:
 - Travel services that were to be received as a prize, award or goodwill gesture, including travel services that were to be received because of the redemption of a voucher, certificate, coupon, or similar document that was itself received as a prize, award or goodwill gesture.
 - Travel services that the customer did not pay for with cash or by cheque, credit card or other similar payment method, except that this paragraph does

not apply to travel services obtained by redeeming a voucher, certificate, coupon or similar document.

- Going forward, the person who redeems a voucher, certificate, coupon, or similar document for travel services is considered to be the person who pays for the travel services.
- A gift card would be an example of a similar document that could be redeemed for travel services.
- The value of the travel services for which the voucher, certificate, coupon, or similar document was redeemed is considered to be the amount paid.
- Any voucher or similar document that a customer redeems for travel services (e.g., flight, cruise, or hotel) but for which travel services are not provided may be eligible for a reimbursement claim unless the travel services were to be received as a prize, award or goodwill gesture.
- A voucher, certificate, coupon, or similar document that was issued under s. 46 of the Regulation is not a goodwill gesture.

Unredeemed Vouchers or Similar Documents

- For a temporary period from March 30, 2020 until March 31, 2022, the holder of a voucher, certificate, coupon, or similar document issued by a registrant that has not been redeemed, may have an eligible claim against the Fund.
- The unredeemed voucher, certificate, coupon, or similar document will be treated as if it has been redeemed, if,
 - it is impossible to redeem the voucher, certificate, coupon, or similar document because a registered travel agent or registered travel wholesaler became bankrupt or insolvent or ceased to carry on business, and
 - the bankruptcy, insolvency or ceasing to carry on business is related to coronavirus (COVID-19).
- Please note that, for this provision to apply, the unredeemed voucher or similar document must have been issued by a registrant, not an airline, cruise line or other end supplier.
- Further, for this provision to apply, the inability to redeem the voucher or similar document must be due to the failure of a registrant as a result of COVID-19.