



September 28, 2017

Sent via e-mail

Canadian Transportation Agency
Government of Canada
consultations@otc-cta.gc.ca

To Whom It May Concern:

RE: Response to CTA Consultation on Charter Activities and Advance Payment Protection

Background

In December 2016, the Canadian Transportation Agency (CTA) launched the Air Transportation portion of its Regulatory Modernization Initiative. Additional discussion papers specifically relating to charters and advance payment protection, air liability insurance provisions, and code-share and wet-leasing provisions are included in the consultation documents.

The Travel Industry Council of Ontario (TICO) has been delegated, by the Ontario Ministry of Government and Consumer Services, the responsibility of administering the *Travel Industry Act, 2002*.¹ The *Travel Industry Act* governs Ontario travel retailers and wholesalers (registrants) and provides for the operation of a travel industry Compensation Fund.

The Ontario Travel Industry Compensation Fund (the Fund) requires that every registered travel business in Ontario participate in the Fund². The Fund is totally financed by Ontario registrants. The Fund is administered and managed by the TICO Board of Directors. The Fund reimburses customers of registered travel agents for eligible claims arising from the bankruptcy or insolvency of an Ontario registrant or arising from the failure of an end supplier airline or cruise line.

Discussion

The following is TICO's submission on the *Discussion Paper on Charter Activities and Advance Payment* as part of the Regulatory Modernization for Air Transportation consultations.

¹ *Travel Industry Act, 2002*, S.O. 2002, c. 30, Sched. D

² Ontario Regulation 26/05, General, s. 50

The purpose of the Advance Payment Protection regime (APP) as required by the Air Transportation Regulation, is to ensure that the charterer is refunded if the air carrier fails to provide service. It is our understanding that the funds are protected by a financial guarantee such as a letter of credit. The refunding of advance payments would enable the charterer to obtain replacement air services or provide refunds to passengers. We understand that the industry has drastically changed and that the number of passengers travelling on APP protected flights is decreasing significantly; however, by eliminating the requirement for airlines to protect advance payments the consumer is at risk of losing their money if the charterer cannot or does not find replacement air services.

Based on a review of the regulations, documentation and the proposed changes, it is our opinion that the elimination of the APP potentially exposes the Ontario Travel Industry Compensation Fund to an increase in claims from consumers. The *Discussion Paper on Charter Activities and Advance Payments* directly addresses the transfer of risk from the APP regime to the Fund by noting "... extra protections for passengers are now in place that were not available when the APP regime was established. These include the proliferation of credit card bookings with imbedded protections and travel compensation funds in certain provinces". This risk transfer does not address the underlying risk and may lead to increased Fund exposure with no offsetting relief. Ultimately, the consumer bears this burden.

It is important to note that the \$2.1 million quoted in the discussion paper, is not the total value of protected money for a year, but the highest amount of advance payment protected at any given time in 2016-2017. The amount of protected money may be reducing year over year, but \$2.1 million at any given time is still a significant amount and represents an amount that would have serious consequences to travelling consumers if it were lost.

Although the consumer protection value of the APP regime has decreased in recent years, there is still value in ensuring that consumers that purchase travel on charter services receive either the services they purchased or a refund. As new business models in the travel industry continue to emerge, it is critical that regulatory bodies across jurisdictions work together to ensure that consumers receive the highest level of protection. We recommend that the CTA carefully consider the consequences to consumer protection prior to eliminating the APP requirement for air carriers to demonstrate the adequacy of arrangements that they have put in place to protect advance payments they receive from charterers. Additionally, TICO believes a form of joint co-operation across federal/provincial jurisdictions to enhance consumer protection, possibly through an expansion of Fund mechanisms, may benefit consumers who have made and lost a significant outlay through no fault of their own.

Conclusion

TICO has been meeting with the CTA to address broader regulations and a plan to promote consumer protection in the travel industry. We recognize that the CTA will be holding separate consultations on consumer protection for air travellers that may address our concerns regarding the transfer of risk from the airline and charterer relationship to provincial regulatory agencies and therefore request that any changes to the APP be made after careful consideration is given to protecting the best interest of the consumer. We look forward to participating in the future consultations addressing consumer protection issues.

If you would like to further discuss our submission, please do not hesitate to contact me.

Sincerely,
Travel Industry Council of Ontario

A handwritten signature in black ink, appearing to read "Richard Smart", is placed over a light gray dotted rectangular background.

Richard Smart
Registrar
Travel Industry Act, 2002

cc: Glen Padassery