

Member Advisory

ACTA's Phase 3 Submission in Response to the Phase 2 Report by the Ontario Government on the Ontario Travel Industry Act (TIA) Review – *Your Feedback is Important. Please respond to ACTA by July 21, 2017!*

ACTA and its members have been an active participant in the Ontario Travel Industry Act (TIA) Review. The Ontario government separated the Review into three phases:

Phase 1

The goal of Phase 1 by the Ontario government was to identify issues through various avenues including stakeholder consultations. ACTA provided member feedback in a letter to the Ontario government in November 2016 (and posted on the ACTA website at <http://www.acta.ca/position-papers>).

Phase 2

The goal of Phase 2 by the Ontario government was to hold in-person consultations across the province to examine the issues raised during Phase 1 and discuss how to update the TIA to address these issues. ACTA conducted extensive research and provided members with many opportunities to offer feedback. ACTA's Phase 2 submission was sent to the government on April 14, 2017 (and posted on the ACTA website at <http://www.acta.ca/position-papers>). In it, ACTA highlighted the key concerns raised by ACTA members throughout the various consultative opportunities and our recommendations to the issues identified.

Phase 3

The goal of Phase 3 by the Ontario government is to seek feedback from members of the public and travel industry stakeholders about the proposals for possible changes to TIA outlined in the Phase 2 report by July 24, 2017. The proposals may change depending on the feedback received by the Ontario government as part of this phase of the review, and are subject to the government and legislative decision-making processes. Additional research and consultations with consumers may also be required to determine the specifics regarding some of the proposals outlined in the report.

As the TIA Review comes to a close, we remind you that **these changes are legislative changes with regulatory changes still to be proposed**. Several of the proposed changes cite the need for additional research and consultations, which will form the development of new regulations. ACTA will continue to be an active participant beyond Phase 3 and will provide input on the development of any new regulations.

The following is a summary of the key concerns raised by ACTA members and listed in our Phase 2 submission, along with the comments on how these concerns were addressed by the Ontario government.

Key Concerns (as noted in ACTA's Phase 2 Submission)

1. COMPENSATION FUND – Is it Necessary, Who Should Fund it and How Should it be Based

ACTA's Phase 2 submission stated that the vast majority of ACTA members strongly support a consumer-funded Ontario Travel Compensation Fund. With more participants contributing to the fund, this spreads the burden over many than only a few, namely Ontario registrants. ACTA members strongly support a fund that is based on the risk profile of the travel booking.

PROPOSED CHANGE by the ON government:

Proposal 6.1 – Maintain the Travel Industry Compensation Fund

Proposal 6.2 – Enable the development of an expanded fund with the potential for contribution directly from consumers. Undertake additional research and consultations with Ontario travel consumer prior to determining whether to implement the expanded model.

ACTA Response: Based on member feedback, ACTA considers this a “*win*” that the government is opening the door for a consumer-pay model. ACTA members were also open to expanding fund coverage if it were a user-pay model. Coverage of the fund is currently capped at \$5 million per major event. This is not nearly enough to cover the insolvency of a major tour operator or airline, as an example, and consumers would not be compensated for all or any of their dollars spent. The only way to provide sufficient coverage of the fund in its current structure is to increase industry contributions, which is unsustainable and will force registrants out of the market, ultimately diminishing fund contributions. Should the Ontario Travel Industry Compensation Fund remain as an industry-funded model, then registrants should not have to pay for, nor be liable for, end suppliers. In this case, coverage should only be for the bankruptcy or insolvency of a registrant.

The one item not addressed in the Ontario government report, but is of concern to some ACTA members, is the need to narrow the scope of the coverage of the Compensation Fund to Ontario consumers only. Currently, contributions to the Compensation Fund are based on “Sales in Ontario”, which includes: **all travel sales to a consumer** including taxes (except for GST/HST), that are invoiced to a consumer that include trips, accommodations and transportation, billed individually or in a package. While both leisure and corporate travel agencies raised the concern, corporate travel agencies with call centers in Ontario, in particular, expressed concern that a significant number of their clients are out-of-province and yet, contributions are being assessed on these sales. If the mandate of the Ontario government is to protect **Ontario** consumers, then the government should consider narrowing the scope to provide coverage to **only** Ontario consumers and not coverage to travellers all around the world simply because their travel was booked through an Ontario registrant.

2. REGULATORY BURDEN – Review Engagements, Audits

ACTA's Phase 2 submission stated that ACTA members strongly support an alternative to the costly review engagement and audited financial statements. In addition, if the Ontario

government legislated the continuation of the current financial reporting requirements, ACTA members strongly supported increasing the threshold or level of annual sales to a minimum of \$20 million where audited financial statements would need to be submitted. ACTA pointed out that the level to which audited financial statements need to be submitted to TICO should be adjusted to take into consideration changes in the consumer price index over the last few decades.

PROPOSED CHANGE by the ON government:

Proposal 4.1: Amend the financial reporting to:

- Require small registrants to submit an internally prepared financial statement with an attestation form signed by a principal, director or designated officer of the business certifying that the information contained is true and correct; and
- Adjust the financial thresholds for larger registrants to reflect inflation and market growth of the travel industry since these thresholds were established.

ACTA Response: Based on member feedback, ACTA considers this a “*win*” that the government is eliminating the requirement of filing review engagements for registrants with sales under \$2M. According to TICO, this represents 90% of the registrants. ACTA applauds the government for increasing the current audit level of \$10M to \$20M and considering our argument that adjustments needed to be made due to inflation over the last few decades.

3. REGISTRATION – Registering Of Individuals

ACTA’s Phase 2 submission stated that the majority of ACTA members do not support the registration of individuals. The mixed response showed a clear divide between corporate ACTA members and small to medium leisure-based agencies. Corporate ACTA members stated that there is no benefit to the consumer in knowing the agent working in a corporate agency. In a corporate environment, often it is the client that is making their own booking using the corporate agency tools. The client may also work with a team of agents that are fulfilling the travel arrangements and not “selling” travel. Many of the larger companies noted that having to register or list individuals (in some cases based all over the world for global corporate agencies) would present a significant administrative burden. ACTA members that supported the idea of registering individuals associated with a travel agency, mostly small to medium leisure-based agencies, suggested that listing travel agents on the TICO website would help reduce fraudulent activities by rogue travel agents. ACTA members were clear to point out however, that there should not be any significant financial burden to the agency.

PROPOSED CHANGE by the ON government:

Proposal 2.3: Amend the existing classes of registrants to create two new classes of registrants with differing requirements: travel seller (combining the two categories of travel agent and travel wholesaler) and travel counsellor (as the individual who is employed by the travel seller).

ACTA Response: Based on member feedback, the ACTA response remains mixed. Large corporate agency who often transact in a closed corporate environment question the benefit to their client. ACTA understands, however, that this is one change the Ontario government is

focused on moving forward. To that end, ACTA will work with the policy makers to see if there is any middle ground within the regulations.

The following is the Ontario government's Appendix: Summary of Proposals for Potential Changes included at the conclusion of their Phase 2 Report. The full report can be found on the Ontario government's website at

<http://www.ontariocanada.com/registry/view.do?postingId=24385&language=en>.

ACTA encourages you to take the time to review the proposed changes. This is our *last* opportunity to submit feedback within the legislative process. **Please forward your comments to Heather Craig-Peddie at hcraig-peddie@acta.ca by 5:00 PM EST Friday, July 21, 2017.** We appreciate your attention to this important industry matter.

Summary of Proposals for Potential Changes by the Ontario Government as cited in the Appendix at the conclusion of the Phase 2 Report

1. Maintaining Travel Industry-Specific Regulation, With Changes

- **Proposal 1.1:** Maintain the Travel Industry Act with amendments to address some of the specific issues identified during the review.

2. Definitions and Registration Requirements

- **Proposal 2.1:** Change the existing definitions under the Travel Industry Act to provide additional clarity and better reflect Ontario's travel marketplace (e.g., to define "travel seller", "travel counsellor", and "selling").
- **Proposal 2.2:** Conduct additional research and consultations about potential changes to the exemptions under the Travel Industry Act.
- **Proposal 2.3:** Amend the existing classes of registrants to create two new classes of registrants with differing requirements: travel seller (combining the two categories of travel agent and travel wholesaler) and travel counsellor (as the individual who is employed by the travel seller).

3. Consumer Protection Issues

- **Proposal 3.1:**

- o Require registrants to display the TICO logo (in addition to the TICO registration number) prominently prior to the purchase (online or paper); and

- o Require registrants to disclose additional information to consumers (e.g., coverage under the fund); and

- o Require proceeds from any new financial penalties for non-compliance with TIA to go into the fund, while maintaining the registrar's ability to incur reasonable expenses from the fund to promote public awareness (see Compliance and Enforcement, below).

- **Proposal 3.2:**

- o Require all travel agents and wholesalers targeting their advertising of travel services to Ontarians to follow the province's rules regarding representation (advertising) regardless of where they are located; and

- o Grant the registrar the ability to issue administrative penalties to those who contravene these requirements (see Compliance and Enforcement section, below).

- **Proposal 3.3:**

- o Introduce new requirements related to the correction of pricing errors; and

- o Explore opportunities to amend disclosure and invoicing requirements in order to improve regulatory efficiency.

- **Proposal 3.4:** Maintain the existing requirements in TIA related to disclosure of insurance.

- **Proposal 3.5:** Enable the development of continuing education requirements for individual travel counsellors.

4. Regulatory Burden on Industry

- **Proposal 4.1:** Amend the financial reporting requirements to:

- o Require small registrants to submit an internally prepared financial statement with an attestation form signed by a principal, director or designated officer of the business certifying that the information contained is true and correct; and

- o Adjust the financial thresholds for larger registrants to reflect inflation and market growth of the travel industry since these thresholds were established.

- **Proposal 4.2:** Require registrants to maintain positive working capital at all times relative to their total annual sales in Ontario, as opposed to on a fixed basis (develop working capital tables based on ratios).

- **Proposal 4.3:** Remove the trust accounting requirements and give the registrar the authority to impose trust accounting requirements for registrants who are deemed a financial risk.

- **Proposal 4.4:**

- o Differentiate the security deposit requirements based on the annual sales of the registrant; and/or

- o Increase the length of time that the registrar holds the security deposit; and/or

- o Allow registrants to provide security in other forms in addition to those that are currently allowed under the Travel Industry Act, such as a performance bond; and

- o Introduce requirements around how the security deposit funds are invested by the registrar, including how the interest is to be used.

- **Proposal 4.5:** Introduce alternative regulatory requirements around access to and storage of financial records for registrants who have sales staff physically located in Ontario, but not a physical place of business.

5. Compliance and Enforcement

- **Proposal 5.1:**

- o Grant the registrar the ability to levy administrative monetary penalties for enforcement purposes (also see Proposal 3.1: Require proceeds from any new financial penalties for non-compliance with the Travel Industry Act to go into the fund); and

- o Grant registrants and non-registrants the ability to appeal the registrar's decision to issue administrative monetary penalties (e.g., to the Ontario License Appeal Tribunal [LAT] or another body).

- **Proposal 5.2:** Grant the registrar additional powers with respect to inspecting and investigating non-registrants.

6. Travel Industry Compensation Fund

- **Proposal 6.1:** Maintain the Travel Industry Compensation Fund.

- **Proposal 6.2:** Enable the development of an expanded fund with the potential for contributions directly from consumers. Undertake additional research and consultations with Ontario travel consumers prior to determining whether to implement the expanded model.

7. Other

- **Proposal 7.1:** Retain the existing roles and responsibilities of the government and regulator with respect to regulation making authority and administration of TIA.