

## Terms of reference and proceedings of the Managing Board of the Package Travel Insolvency Protection Fund for Travellers

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'Standards, Criteria and guidance notes shall be soon published with the enactment of the new law, travel agents are subject to the existing license conditions stipulated in S.L.409.09. Provisions with respect to the terms of reference and proceedings of the Managing Board of the Fund travellers as stated in standard 7.3 of the standards, criteria and guidance document E and the regulations'.<sup>1</sup>

### Definitions:

"Accredited Agents":	means agents given an accreditation by IATA;
"Authority":	means the Malta Tourism Authority;
"FATTA":	means the Federated Association of Travel and Tourism Agents Malta;
"Fund":	means the Package Travel Insolvency Protection Fund established by the Regulations;
"IATA":	means the International Air Transport Travel Association;
"IATA's Bank Settlement Plan":	means the settlement plan by which IATA Accredited Agents remit payment to IATA member airlines for tickets issued under provisions of the IATA Passenger Sales Agreement
"Managing Board":	means the Insolvency Fund Managing Board established under regulation 4 of the Regulations;
"Regulations":	means the Package Travel Insolvency Fund Regulations, Legal Notice 409.18 of 2016;
"Terms of Reference":	means the terms of reference established by this document by the Management Board;

- 1) Subject to the provisions of the Regulations), the Terms of Reference are legally binding on the Managing Board, the Authority, the Contributors, and any potential beneficiary.
- 2) Subject to the provisions of the Law, including these Terms of Reference, the Managing Board shall regulate its own procedure.

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<sup>1</sup> The first sentence of this paragraph, ie: '*Standards, Criteria and guidance notes shall be soon published with the enactment of the new law, travel agents are subject to the existing license conditions stipulated in S.L.409.09.*' was approved by the MTA Board on 20<sup>th</sup> March 2018.

- 3) The quorum at a Managing Board meeting shall consist of three members, including at least one member appointed by the Authority and another appointed by FATTA. The Managing Board shall also appoint a Deputy Chairman from the appointed members.
- 4) The Managing Board shall, through the enforcement division of the Authority, investigate any report or indication of suspicious trading in an expedient manner.
- 5) The retainer payable to each Managing Board member (including the chairman) shall be limited to EUR 200.00 per Managing Board meeting attended and this shall be deemed to be inclusive of all expenses related to attending the meeting. The retainer will not be payable in respect of any meetings where the Managing Board member was absent, other than when a member is excused for legitimate reasons. Any changes to this fee shall be approved by the Authority.
- 6) Every licensed travel agent shall deposit a cash bond of EUR 10,000.00 into the fund. This bond will remain protected by the fund itself but shall remain in the fund until such time as the agent voluntarily relinquishes the licence and provided there was no claim on the Fund resulting from the agent's insolvency. In the event of any claim, the bond (including any top ups to the bond) will be returned net of the amount of such claim(s) and subject to the provisions of point # 15 below. In the case of new applicants, this bond must be submitted together with the licence application, as a prerequisite for the application to be considered. In the event that the application is rejected, the bond will be reimbursed immediately at the end of the application process.
- 7) The Managing Board shall evaluate every licence application. In order for such evaluation, a full set of audited accounts must be presented for the most recent financial year in the case of a limited liability company, which accounts must not be more than 10 months old at the time of submission for the purposes of the evaluation against the financial tests in Article 14 below. Companies with less than one year's trading record must submit a copy of a certified opening Balance Sheet. Where an applicant is the subsidiary of a larger parent organization, then a copy of the certified accounts for the parent organization must also be submitted. In the case of a sole trader, a financial statement shall be submitted in a form issued by the Management Board for this purpose which shall be filled in by the applicant and duly certified by a warranted accountant or auditor.
- 8) The Managing Board, through the licensing division of the Authority, shall carry out a review of every licensed agent prior to the annual renewal of the licence within the prescribed period established in LN (Licensing regulations). For this purpose licensed travel agents are obliged to submit a balance sheet and profit and loss account (duly certified by an external auditor) within 10 months of the end of their most recent financial year. All financial statements should be prepared in accordance with the requirements of the EU International Accounting Standards. In the case of a sole trader, an updated and certified financial statement as referred to in the preceding clause shall be submitted with the Authority. In any case the financial statements must be supported by the Auditor's or warranted Accountant's certified declaration of the gross value of sales of organised packages.

- 9) The criteria for the certification of audited accounts shall be the following:  
Turnover shall, for the purposes of evaluation, be defined as the total cash turnover related to the sale of organised travel packages.

A trader is required to show profit before tax and depreciation at the end of the trading period. The profit criteria relates to the core business.

An agent is required to show that current assets exceed current liabilities at the end of a trading period. In the event that current liabilities exceed current assets the level and quality of an agent's fixed assets may be taken into consideration, using a rate of solidity test as follows: *Rate of solidity: Equity capital / Total Assets = min 10%*. In the event that audited accounts are not readily available at the requested time, certified accounts by an external auditor are to be submitted together with a copy of the previous year audited accounts.

- 10) Should a new applicant not meet any one of the criteria in point # 9 above, an additional minimum bank guarantee of either Euro 20,000 or the equivalent of 12% of the forecast cash turnover related to sales of organised packages, whichever is the highest, will be required, subject to point # 12 below. Alternatively, a new applicant shall deposit prepayments received on sold travel packages into an Escrow account until such time the value reaches €20,000.

Applicants meeting all the above criteria (indicated in point # 9) need not provide a bank guarantee.

Applicants submitting an insolvent Balance Sheet will be disapproved.

- 11) Prior to any renewal should a trader, following a financial review, not meet any one of the criteria itemized above, then an additional bank guarantee to a level of 12%, of his latest twelve months organised package tour cash turnover, will be required. If the existing additional bank guarantee deviates from the actual 12% or Euro 20,000, the amount of the bank guarantee is to be adjusted based on last 12 months organised package tour turnover. If a bank guarantee cannot be met as prescribed, then the trader shall deposit prepayments received on sold travel packages into an Escrow account until such time the amount reaches the value determined by the Managing Board.
- 12) If the agent is IATA Accredited, the value of airline tickets issued through IATA's Bank Settlement Plan that directly relate to the organised package tours turnover will be deducted from the value of the turnover for the purpose of calculating the bank guarantee since this portion of the turnover is already protected under the terms of the IATA passenger sales agency agreement.
- 13) The Board shall have the power to monitor the activity of any agent and may, in the case of abnormal trading activity, request additional security based on established criteria to cover any additional exposure arising out of such activity. The activity of an agent can be determined from the data collected through the certification scheme.
- 14) The Managing Board shall advise to the Licensing directorate of the Authority of its recommendation on the approval, refusal, renewal, withdrawal or revocation of travel agents licences following the process established in these terms of reference.

- 15) In the event that an agent relinquishes his licence, the cash bond (including any top ups) will be returned to that trader within 30 days from when the Managing Board is satisfied that there is no further exposure to potential claims on the fund related to that agent, subject that there are sufficient funds available at the time. If there are not sufficient funds available, any balance due will be paid at a time when the fund is sufficiently funded. The level of exposure can be determined from the data collected through the certification scheme. In the event that a licence is revoked, the bond will be retained by the fund until it is confirmed that there is no exposure to potential claims on the fund. In any case, this will happen no later than 60 days from the completion of the last certified organised package.
- 16) The Managing Board will commission an electronic certification system through an online central database, and will make it mandatory for traders to issue certificates to travellers confirming their protection under the Regulations. Traders will be legally obliged to issue certificates and update them to reflect any and all payments collected in advance in respect of organised packages. The certificates and their updates should ideally be issued and provided to travellers at the time that payments are made, but in any case not more than 24 hours after the respective payment has been received by the trader. Expenses incurred for the commissioning of the system shall be covered by the fund and recovered by a pre-determined portion of the certification fees collected from travel agents.
- 17) The certificates will include the date of issue (or update, as the case may be), the name of the licensed trader, the relevant booking reference, the name of the lead traveller, the amount(s) received in respect of the package, the nature of the services, the start and end date of the packaged services, and any other additional data that the Board may, from time to time determine to collate and maintain appropriate statistics.
- 18) The fee payable for the certification will also include a nominal fee to cover the administrative costs of the maintenance and management of the certification system and the administrative costs related to the Managing Board plus a contribution to top up and maintain the general fund. The Managing Board will have the discretion to determine the fee payable but will keep this to a minimal value whilst ensuring that the fund maintains a sufficient level of liquidity. The Managing Board shall collect certification fees on a monthly basis by means of a direct debit mandate, which shall be credited directly into the Fund's account.
- 19) Any claim on the Fund must be provided on the prescribed template which will be an annex to these terms of reference.
- 20) In the event of the insolvency of a contributor, the Managing Board will immediately make a public announcement in at least two national newspapers and a press release circulated to all newsrooms and to the Consumer Protection Authority declaring such insolvency and giving consumers 30 running days from such announcement to give notice to the Managing Board of any funds that have been paid to the contributor for services that have not yet been provided. Any potential claim must be supported by the relevant certificate(s). The Managing Board will appoint an administration committee to study the claims and whether the funds can be recovered from the trader or, if they were already paid out to potential suppliers, to establish whether the services can still be provided to the consumer. The

Managing Board will have the sole discretion of establishing whether the services will still be provided without any impact on the traveller or otherwise refund the traveller for any services not provided. If the package services cannot be provided in totality, the traveller will have the option to choose between a refund of the cost the services not provided or otherwise cancel the package completely and get a full refund. If a traveller has already started utilising some of the services at the time of declaration of insolvency, the Managing Board will ensure that the rest of the package services (including repatriation, where necessary) are provided, and when this is not possible, the Managing Board will arrange for a refund of the cost of those services which were not provided. The Managing Board is obliged to finalise a decision on any claim within 60 days from receipt of that claim. The traveller will have the right to appeal within 7 days from delivery of the decision.

- 21) The Managing Board shall present an annual report and financial statements to the MTA Board by not later than 21st March of the following year.
- 22) The Managing Board shall ensure that the Fund is self-financing and that funds are not used for any purpose other than self-financing or to meet claims. As such the funds should be held in call accounts which do not require more than 30 days' notice.
- 23) Until the initial €500,000 fund is reimbursed to the original contributors, the Managing Board shall authorise payments for administrative costs borne by the Authority, which shall not exceed 10% of the contributions collected. From there after, the Managing Board may increase capping of these costs to 20%.
- 24) Managing Board members are bound by confidentiality and the Managing Board shall have full access to the Authority's files for any contributor.
- 25) The Managing Board may appoint an administrative officer to manage the certification system or may otherwise outsource this to an appropriate entity, or any other specialized professional it deems necessary to advice on matters concerning the managing of the fund.
- 26) The Managing Board should be appointed in a staggered manner to ensure continuation. Therefore, the four members (other than the Chairman) should be appointed for two years each, but initially, two of the members (one from FATTA and one from the Authority) will be appointed for a three year term (so that after the first term, half of the board is reappointed or replaced each year).

**5<sup>th</sup> July 2016**