TRAVEL INDUSTRY ACT, 2002 AND ONTARIO REGULATION 26/05

COMPREHENSIVE REVIEW: RECOMMENDATIONS FOR MODERNIZATION

TRAVEL INDUSTRY COUNCIL OF ONTARIO

APRIL 13, 2017





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BACKGROUND

In June 2016, the Ministry of Government and Consumer Services ("Ministry") launched a comprehensive review of the *Travel Industry Act, 2002* ("Act") and Ontario Regulation 26/05 ("Regulation") with the following three objectives:

- 1. Improve consumer protection;
- 2. Reduce regulatory burden;
- 3. Improve regulatory efficiency.

The Ministry developed and began implementation of a multi-phase stakeholder review process requesting feedback, options and recommendations from all stakeholders, including consumers, registrants, industry and from the Travel Industry Council of Ontario (TICO). A Phase 1 report was released by the Ministry in February 2017 reflecting the views of all stakeholders on underlying risks facing travellers, and the overall effectiveness of the underlying travel legislation in providing consumer protection. During Phase 2, each stakeholder was invited to provide a more detailed submission to the Ministry outlining specific challenges and recommendations for consideration for future amendments to the Act and Regulation. TICO conducted independent research using the IPSOS organization by way of a detailed consumer survey. An over-arching finding of this survey was that "... more than nine in ten (94%) consumers believe TICO plays an important role in the travel industry". Important for the travel industry is that "Three quarters (75%) of consumers are more likely to book through a TICO registered travel agency knowing they will be covered by the Travel Compensation Fund".

In addition to IPSOS, the TICO Board of Directors contracted Deloitte LLP (Deloitte) to conduct actuarial and consulting services to assist management in its analysis. A copy of Deloitte's Actuary Report will be provided to the Ministry.

This (Phase 2) document represents TICO's recommendations towards the modernization of the Act and Regulation. It has been developed through extensive consultations and analysis, and has been thoroughly reviewed and supported by TICO's Board of Directors. We wish to thank the Ministry for the opportunity to share, as Ontario's Regulator, our recommendations for changes to the legislation to ensure that Ontario's consumer protection laws remain strong while embracing the need for a vibrant marketplace where businesses can thrive.

EXECUTIVE SUMMARY

The Act and Regulation were created in the nineteen-seventies and later adopted by TICO at inception in 1997. The last significant update to the legislation was 2002, although several specific updates have followed over the years. For example, in 2010, enhancements to trip completion claims by consumers stranded in destination simplifying and streamlining consumer claims were implemented. The most recent amendment introducing "all-in" pricing effective January 1, 2017 has been received by consumers and industry as a significant improvement.

The travel industry, however, is truly global and changes to consumer preferences, underlying business models, distribution, e-commerce and the growth in fraud have all resulted in dramatic transformation of the travel industry, both in Ontario and abroad. More specifically, the *Travel Industry Act, 2002* is reflective



of an industry in the final decades of the twentieth century when traditional "bricks and mortar" distribution channels (e.g. agencies) and "cash/cheque" payments prevailed. Since this time, the internet has completely transformed this industry to the point where the vast majority of travel now starts with an online booking. Similarly, transformation in payment methodologies now reflects a market where credit cards are the current payment method of choice. There has, however, been a recent explosion of new alternative payment forms including mobile, online, prepaid and debit options. Apple-pay, Google Wallet and Pay-Pal are just a few of the emerging payment networks that are revolutionizing the marketplace. These new payment methodologies will affect the use of credit cards, and associated benefits in the years to come. The dominance of credit cards (as the preferred payment methodology) and ancillary protection benefits, through chargebacks, has created a potential misconception that these protections are an entitlement. In fact, the major card networks have stated that the chargeback process is a commercial decision, mostly controlled from headquarters outside of Ontario/Canada. Further, a review of cardholder agreements and legal liability disclaimers suggests that these chargeback mechanisms are not as finite as consumers may believe. More information regarding the review of cardholder agreements is available in the Actuary Report. In TICO's view, there is a general lack of consumer awareness and understanding with respect to the credit card chargeback process, and the continued availability of these protections in the future.

While the Ontario market has enjoyed a relative period of prosperity over the past two decades (with the exception of the Great Recession in 2008-2009), there have been failures of Ontario registrants and endsuppliers. The Compensation Fund has paid close to \$14 million in consumer claims over this period, assisting more than 25,000 customers. Globally, there are many jurisdictions that maintain similar government sponsored consumer protection and compensation schemes. While a truly catastrophic travel failure has not impacted Ontario, there are many examples world-wide where consumers have lost their travel investment, been stranded and/or had their travel plans destroyed. For example, the March 2017 failure of a Japanese travel business (TellmeClub) resulted in approximately CAD \$120 million owed to 36,000 customers, according to the agency's lawyer (*the Japan Times News, March 30, 2017*). The current structure of TICO's Compensation Fund simply does not provide the consumer protection required in the event of a large failure, leaving both TICO and the Ontario government exposed.

This paper aims to recommend a number of enhancements to Ontario's travel legislation that will provide consumers comprehensive protection, at a reasonable cost, while enabling both TICO and the Ontario government to demonstrate the implementation of a consumer protection model that is fiscally responsible to consumers and businesses across this province.

As Ontario's travel regulator, TICO has been delegated the administration and enforcement of the Act and Regulation by the government. The above transformations have resulted in challenges to effectively and efficiently administer the legislation on behalf of Ontarians. TICO's Vision and Mission statements, recently enhanced, read as follows:

VISION

To be a progressive regulator advancing consumer protection, ethical business practices and a trusted marketplace where consumers are confident purchasing travel from registered professionals.



MISSION

To regulate consumer protection by promoting awareness, education and compliance as part of the efficient and effective regulation of Ontario's travel industry.

Through the process described below, TICO has listened to all stakeholders to identify root problems, to consider all options and to make practical recommendations to effectively modernize the underlying legislation. While there are many recommendations that follow, the following tables "highlight" some of the more impactful recommendations that, if implemented, will assist in the achievement of the Ministry's goals as stated above.

CONSUMER PROTECTION – HIGHLIGHTS

Area Where Change Is Recommended	Submission Page Reference	Description of Desired State:	
• Compensation Fund and funding model	42 - 45	Consumers' travel investment will no longer be subject to maximum, and instead will be covered for the full value of the purchase. For this additional coverage, a nominal Custom Protection Fee of approximately \$1.00 for every thousand dolla of travel sales will be assessed on each invoice. New limits on the growth of the Compensation Fund will be implemented to ensu- the Compensation Fund balances are maintained at target level supported by third party studies. When target levels for the Compensation Fund are reached, both the registrant and the customer contributions will be reassessed by the Administration Authority in accordance with a Fee Setting Process to ensure the the Compensation Fund does not grow to excessive levels.	
 Individuals selling travel / continuous education 	49	Consumers will be assured that individual sellers of travel in Ontario will be registered with TICO and adhere to consumer protection laws. Individuals will be subject to a mandatory Code of Conduct, and enhanced education requirements.	
 Regulate advertising of out of province sellers of travel targeting Ontarians 	35	Consumers will be able to trust advertising of travel services and other disclosures from out-of-province sellers and those selling travel services in the province will operate on a level playing field	
Consumer Awareness	28 & 31	Consumers will be advised of protections under the legislation at the time of booking and through an expanded consumer awareness and education program administered by TICO.	
Schedule Changes	24	Consumers will have protection for flight changes within 12 hours of departure (previously 24 hours), if within the control of the registrant, thereby ensuring a day's travel is not lost.	
Administrative Penalties	21	Consumers can take comfort that infractions by registrants will continue to be subject to strict monitoring, and that the Regulator can issue fines for non-compliance.	



Area Where Change Is Recommended	Submission Page Reference	Description of Desired State:
• Enhanced Security Requirements	38	Consumer monies will be protected by enhanced registrant security requirements. Registrants will be required to provide TICO with a security amount calculated based on a percentage of Gross Ontario Sales. Additionally, security will be held for the lifetime of the registration ensuring availability of the funds to compensate consumers. Security is viewed as a stronger consumer protection mechanism as the funds will be there in the event of a failure. The current trust accounting provisions are not always effective in that funds may no longer be in the trust account when a failure occurs.

REDUCE REGULATORY BURDEN – HIGHLIGHTS

Area Where Change is Recommended:	Submission Page Reference	Description of Desired State:	
• Eliminate Trust Account(s) and Trust Accounting	36	Registrants will no longer be required to adhere to complex trust and trust accounting rules, which are often ineffective at protecting consumers when non-provision of travel services occurs.	
 Financial Statement Review Engagements and Audits 	37	Small registrants will not be required to incur the cost of a licensed Chartered Professional Accountant to complete a Review Engagement and audit thresholds will be increased from historic levels.	
• Working Capital	38	Registrants must maintain positive working capital at all times, but also be subject to working capital requirements consistent with other authorities. New and smaller registrants will not be subject to arbitrary minimum working capital of \$5,000.	
• Invoicing Disclosures	27 & 29	Flexibility enhanced for registrants to provide required disclosures to customers either on the invoice or accompanying documentation and/or websites.	
• Eliminate Requirement for Place of Business	17	Registration will no longer require a permanent place of business in Ontario (O.Reg. s. 10).	



REGULATORY EFFICIENCY – HIGHLIGHTS

(Note: Many of the above recommendations enable the Regulator to apply more risk-based processes and focused decision making driving enhanced efficiency and effectiveness. A few more specific measures follow).

Area Where Change is Recommended:	Submission Page Reference	Description of Desired State:	
• Definitions (various) and Exemptions	9 - 16	Clarity of certain key definitions and simplification of exemptions enable better understanding by stakeholders and enhanced regulator focus.	
• Production Orders	21	A complementary tool to legal search warrants to allow improvements in turnaround time for critical documents (mostly from financial institutions) where search and entry is not required.	
• E-Commerce	26	A complete overlay to the current legislation to recognize the pervasiveness and use of e-documents and delivery using online processes and delivery.	
• TICO Logo and Registration Number	28	All registrants must prominently display the TICO logo and registration number on websites assisting in compliance.	
• Flexibility to adapt to changes in the marketplace to ensure consumer protection	52	Where appropriate, the Act and Regulation will be modified to enable the Regulator to set guidelines or policies over certain fixed attributes consistent with the principles set in the legislation.	

PROCESS

As Ontario's Regulator, it is imperative that TICO's business practices remain open, transparent and fair in the eyes of all stakeholders, particularly consumers, government and registrants. On an ongoing basis, TICO has, as a core business objective, various consumer and registrant outreach initiatives. Since the launch of this review, additional outreach has been conducted to engage stakeholders to provide their insights into this review including:

- TICO Open Forums where registrants were invited to attend sessions and to share and provide their feedback and views with respect to challenges and solutions regarding the Act and Regulation;
- TICO Talk, a quarterly e-publication to all registrants, reminded all registrants of the comprehensive review underway and provided updates and useful information;
- TICO participated at consumer and industry tradeshows promoting the opportunity to contribute to the comprehensive review underway;
- TICO speaking engagements included raising awareness of the comprehensive review and encouraged feedback;
- Jurisdictional outreach, with other provincial regulators, and in other countries to explore "best practices".



• TICO reached out to various stakeholders, industry and consumer associations such as the Better Business Bureau of Central Ontario to assist with disseminating information to increase awareness.

Last year, the TICO Board of Directors created a new Legislative and Regulatory Modernization Committee specifically charged with the oversight and review process for evaluating management's recommendations for legislative change. Management has also engaged a third-party actuary to examine the Compensation Fund ("Fund") and address specific challenges with the future construct of the Compensation Fund. Similarly, a third party has also been engaged to conduct a detailed consumer survey to gain an in-depth understanding of consumer's views toward travel protection.

In addition to the above, management has participated in all the Ministry's public consultations held throughout the province, including a consumer-only session, to gain perspective of the challenges and opportunities with consumer protection of the travel industry legislation and possible solutions from a cross section of all Ontarians.

The above process has been open, insightful and inclusive. It has provided management and the Board of Directors invaluable input into its recommendations for reform.

PRIMARY RECOMMENDATIONS

Consumer protection is at the core of TICO's Vision and Mission. To be most effective and efficient at this mandate, consumer protection measures must address underlying risks associated with the *consumers'* travel purchase and ongoing services. Any new measures implemented must be clear, simple for consumers to understand, and delivered in a cost-effective manner that mitigates underlying risks.

Today's travel marketplace is complex, reflecting a world where travellers have far more reach and access than earlier generations. Today, consumers can purchase and book travel from a variety of sources, including agency storefronts, online, home-based agencies and independent contractors. Social media has introduced yet another medium for consumers to consider for their travel needs. The non-provision of travel services – either leisure or business – is much greater today than with past generations. Recognizing that advance payment for much of travel is the norm in the industry, consumers are at risk with their travel investment if services are not provided. This risk is both emotional and financial, and can be amplified if the consumer and their family are stranded in destination.

As Ontario's Regulator, TICO understands these risks and the possible adverse impacts to all travelling Ontarians across this province. To mitigate these risks, TICO is recommending three over-arching recommendations:



1. The consumer coverage provided by the Compensation Fund is recommended to be expanded to eliminate known gaps and to include all end-supplier non-provision of travel services due to failure, effectively covering the cost of the travel purchase. By doing so, the Compensation Fund will be more effective in addressing the core purpose of consumer protection and simplify the offering to consumers. To fund this expansion in coverage, a nominal Customer Protection Fee of approximately \$1 per \$1,000 of travel sales is recommended to be added to the invoice provided to the customer. This Customer Protection Fee is in addition to the contribution made by the registrant.

An independent consumer survey conducted by IPSOS in 2017, reflecting an update to a similar survey conducted in 2011, confirmed that the majority of consumers expected full compensation for the non-provision of travel services and were willing to pay a nominal fee for this protection. Further detail will follow on these findings later in this report.

Some of the risks this recommendation is intended to address include:

- The current legislation includes a financial assessment (known as the Form-1 assessment fee) funded entirely by registrants for the benefit of the Compensation Fund. The Compensation Fund provides certain protections to consumers who book through an Ontario registrant where a non-provision of travel services occurs due to the failure of a registrant or the insolvency (bankruptcy) of an airline or cruise line. This protection also provides a means for consumers to return home if they are stranded in destination so long as they have booked with an Ontario registrant. There are, however, significant limitations and gaps with the current legislation, due primarily to the transformation of the industry, including the emergence of new risks (e.g. Fraud) over the past two decades. The current fee also contributes to an unfair marketplace where registrants fund the entire risk but may not be able to recover these costs through the price offered to consumers. Consumers enjoy the protection provided, while end-suppliers are completely outside the regulatory framework.
- The vast majority of travel purchases by consumers are made today by way of credit card. Since the Compensation Fund is, and will remain, a payor of last resort, the credit card refund/chargeback process remains the most common form of compensation for consumers when a non-provision of travel service occurs. However, a credit card refund/chargeback is not an entitlement, nor a guarantee; these rules are largely determined by global card organizations (e.g. Visa, MasterCard and Amex) and are outside the legislative powers of local government. As credit card fees become more significant, there may be shifts by consumers to new methods of payment. As such, caution must be exercised when it comes to reliance on this mechanism to "protect" consumers. In addition, there are certain segments of society that do not use credit for payment, and it is important that consumer protections are provided to these communities, particularly the more vulnerable communities. It is also important to note that credit card chargebacks only cover the non-provision of services and not trip completion or repatriation costs.



- 2. A new registration category is recommended for individuals selling travel services. This registration will continue to require individuals to have a documented employment relationship or written contractual relationship with a travel seller.
 - The Act and Regulation were enacted in a time when storefront travel agencies and tour operators (e.g. wholesalers) represented the dominant distribution channel. In more recent years, consumers can also choose to purchase travel in a multitude of ways including direct with the end-supplier, online (through a registrant or with the end-supplier), with independent contractors, or outside the province with another agency. It is estimated that 73% of consumer travel purchases involve an online transaction. There is also a growing and significant risk that consumers are subject to fraud/scams, often through unregistered individuals selling travel. These individuals intentionally portray themselves as agents for the sole purpose of scamming consumers.
- **3.** Out of province sellers of travel who sell travel services to Ontarians will be required to meet disclosure and representation requirements consistent other Ontario registrants.

Some of the risks this recommendation is intended to address include:

• A third risk that creates vulnerability for consumers is associated with sellers of travel from outside Ontario. It is generally recognized that travel is a global industry and that the internet has redefined business models. Sellers of travel can originate from Ontario, but more often, they represent entities from abroad (including other provinces, but mostly international). Sellers can be end-suppliers, other agencies, aggregators or pure online intermediaries (e.g. sharing economy). The Act and Regulation only apply to registrants, creating risks to consumers primarily from misrepresentations but also a very unlevel playing field for registrants who are obligated to follow Ontario laws.

These recommendations are integral to TICO's overall consumer protection mandate. While there are other recommendations that follow in this submission, the above form the foundation of those that follow below.



OTHER RECOMMENDATIONS

The following tables summarize TICO management's recommendations to the Ministry for enhancements to the underlying Act and Regulation:

(A) Various definitions within the Act and/or Regulation are either missing and/or need clarification in their use and application throughout the legislation. Absence of these definitions has caused challenges for consumers and registrants to understand administration and enforcement of TICO's mandate. In addition, various Tribunals and Courts have identified lack of clarity with respect to key aspects of the legislation.

Problem Statement	Implications	Recommendation	Rationale
DEFINITIONS			
(i) Consumer definition does not exist	 Lack of clarity for stakeholders Challenges in administration and enforcement 	 Defined as the individual who uses the travel service; the traveller. 	 The current legislation has not defined consumer and the lack of a definition has resulted in problems in interpretation and enforcement of the provisions. The consumer may be the same as the customer or different depending on the transaction. Clearly defining consumer will eliminate any ambiguity in the Act and Regulation that has been pointed out in recent court decisions.
(ii) Customer definition does not exist	 Lack of clarity for stakeholders Challenges in administration and enforcement 	 Defined as the person who pays for the travel service. 	 The lack of a definition in the current Act and Regulation has resulted in problems in interpretation and enforcement of the provisions. The legal definition of person includes any being who the law regards as capable of rights and duties. It is intended that the definition would include human beings as well as corporations and government entities. This definition is designed to capture the individual or entity that deals with the travel seller to arrange the purchase of travel services, who enters the contract, is invoiced and pays for the travel services. The rationale for including both corporate and leisure travel is that (i) in practice it is difficult to distinguish corporate versus leisure (ii) consumer survey indicates that many corporate travellers expect similar protection to leisure travel and (iii) it is impractical in a failure scenario (helping one stranded traveller and not the other). Intent is to clarify the legislation, not to reduce protection.



Problem Statement DEFINITIONS	Implications	Recommendation	Rationale
(iii) Travel Seller – intended to replace the Retailer / Wholesaler category which is no longer representative of the industry	 Simplified administration for all existing registrants Eliminates confusion due to "blurred lines" 	• Travel Seller is defined as a person who sells, to consumers or other travel sellers, travel services provided by another person.	 Replaces the definitions of travel agent and travel wholesaler, which do not meaningfully reflect the nature of the business today. Travel agents are often involved in packaging travel services today and wholesale packaging of services does not always involve "acquiring the rights" or risk contracts as in the past. Most wholesale entities also have a retail component of their business. The need to obtain and maintain multiple licenses can cause confusion and is a burden for business. Maintaining the current definitions and adding a combined travel agent/travel wholesaler category was considered but rejected because it does not make sense to retain dated terminology and does not attain the goal of simplifying the legislation. Eliminates the dual burden for approximately 500 (25%) of registrants who submit dual renewals annually.
(iv) Travel Agent – confusion exists with consumers and registrants	 Confusion between agency (business) and agent (person) eliminated 	• Travel agent means an individual that has a documented employment relationship or written contractual relationship with a travel seller, who sells, to consumers or other travel sellers, travel services provided by another person.	 This is a new definition intended to operationalize the new individual registration category. The terminology reflects common usage and will likely be clearly understood by the consumer. Approximately 60,000 educational exams have been administered by TICO since 2009 for individuals that may be selling travel (some of these individuals may no longer be employed, or live in the province).



Problem Statement	Implications	Recommendation	Rationale
DEFINITIONS			
(v) Resident definition does not exist	 Consumer Protection currently extends beyond Ontarians to any consumer who books with an Ontario registrant Some Ontario registrants question the value of extending consumer protection beyond Ontario. They feel that the regulatory requirements in Ontario put them at a competitive disadvantage in other markets. Further, many consumers outside of Ontario are often not even aware of the protection in Ontario. Consumers are often motivated by the bottom line so paying more to have consumer protection may not be appreciated outside the jurisdiction. Registration linked to residency is beneficial as focus is on Ontarians 	 Defined as an individual who lives in Ontario or a business or other entity that is located in Ontario. 	 Intended to be a simple definition of resident that does not require tracking of days spent in the province or any other complicated formula to determine residency.



Problem Statement	Implications	Recommendation	Rationale
DEFINITIONS			
(vi) Package definition does not exist	 Certain risks associated with sellers who package travel services need additional consumer protection and therefore create additional burden on some travel sellers 	 A travel seller will be considered to have packaged travel services for resale if they are putting together at least two of the following components and selling them at an all-inclusive price: Transportation Accommodation Other services combined with that transportation or accommodation This applies both to predefined packages that are assembled, advertised and sold as a package as well as dynamic packages where the customer has some choice with respect to the timeframe and components being bundled but is choosing from the inventory of the travel seller and the services are being bundled and sold at an all-inclusive price. This will not apply where the registrant bundled components at the request of the customer but the components are itemized and priced separately on the invoice and each component is subject to its own terms and conditions. 	 This definition of package is intended to assist in understanding the obligations under s. 46 of Ontario Regulation 26/05 – the duty of registrant who resells travel services. The proposed changes to s. 46 will remove the wording "acquire the rights", which has been poorly understood and no longer has the relevance that it once did. Travel sellers are currently and will continue to be held responsible in s. 46 where they control/manage the product inventory and bundle those items into a package with an all-inclusive price. By defining package there will be a clear understanding for registrants of their responsibility to customers when they bundle components. This is seen to be an important provision as those packaging travel services need to be responsible regarding who they are dealing with. The replacement of components when something goes awry on a tour is a very important function of the travel seller in the overall consumer protection scheme. TICO is exploring whether insurance can be obtained that registrants could purchase to cover this risk so that in the event of an end supplier failure, registrants are not forced out of business. Currently, the registrant who put together the package would need to fail before the consumer can seek reimbursement from the Compensation Fund.



Problem Statement	Implications	Recommendation	Rationale
DEFINITIONS			
(vii) Travel Services	 Clarify definition of travel services, specifically with regard to gift certificates, gift cards and purchased points 	• Defined as transportation or sleeping accommodation for the use of a traveller, tourist or sightseer or other services combined with that transportation or sleeping accommodation; or travel specific gift certificates, gift cards, points or similar vehicles that the customer purchased from a registrant, which may be redeemed for those services.	 Intention is to provide clarity to the current definition. Currently, gift cards are not contemplated in the legislation. TICO has been covering claims to the Compensation Fund in situations where the customer could provide proof of purchase of the gift certificate. Gift cards, certificates, etc. are becoming more prevalent and future payment methods need to be considered by the legislation. Gift certificates, gift cards, etc. for travel would be considered a travel service. The intention is to capture gift cards that specifically contemplate the purchase of travel services as opposed to a prepaid VISA card that could be redeemed for anything. TICO is not looking to register all entities that sell gift cards that may be redeemed for travel services (e.g. Shoppers Drug Mart, Walmart, Loblaws, etc.). It does want to capture the gift cards redeemed by registrants from their registered premises and the value of gift cards redeemed by registrants. More information is provided in the Compensation Fund section.
(viii) Registrant	 Avoid confusion of exactly who the term refers to 	 Means a person who is registered as a travel seller or an individual who is registered as a travel agent. 	• The definition has been revised to reflect the new registration categories.
(ix) Transportation definition does not exist	 Often confusion exists around exactly what is included as transportation. 	• Means a means of conveyance or travel from one place to another.	 Transportation is not defined in the current legislation and adding a definition will help identify what is a mode of transportation. TICO staff receive queries with respect to whether various modes of transportation are captured. Examples of transportation types: public transportation, school buses, "special purpose" buses, limo services and car rentals.
(x) Accommodation	 Update definition for clarity and to reflect other new definitions. 	 Means any abode that is used for lodging by the consumer, and includes any other facilities and services related to the abode that are for the use of the consumer, but does not include meals. 	 Revised the current definition to reflect the proposed definition of consumer. The proposal to change "room" to "abode" was intended to broaden the definition to capture any accommodation that could be used for lodging by the consumer (e.g. yurt, tent, etc.).



Problem Statement	Implications	Recommendation	Rationale
DEFINITIONS			
(xi) Sales in Ontario	 Needs to be updated to reflect the proposed changes with respect to registration categories. 	 When used in reference to a period of time means, the amount paid or to be paid to or through the travel seller for all travel services sold in Ontario during the relevant period. 	 It is recommended that the definition be amended to contemplate the elimination of the current travel agent and travel wholesaler classes and the addition of the new travel seller category.
(xii) Selling	 Intricately linked to Travel Agent and Travel Services definitions In the absence of a clear definition, the distinction between selling and other customer interactions is uncertain (e.g. fulfillment services, customer service, etc.) May lead to unintended consequences of registering individuals not performing true sales role, and increase regulatory burden unnecessarily May drive individuals away from the market and/or the province (to avoid registration) 	 To attempt to cause, influence or induce a customer or another travel seller to purchase travel services. To arrange travel services for a customer or another travel seller in exchange for payment. For greater clarity, those fulfilling the following roles would not be "selling" and would not require individual registration unless they are also dealing directly with customers or other travel sellers to attempt to cause, influence or induce the transaction: Office functions, including but not limited to, issuing, checking and sending tickets but excluding selling. Accounting functions, including processing of payments and settlement with suppliers. Product development. IT support. Marketing support activities, including but not limited to, writers, 	 "Payment" is meant to indicate an exchange of currency and not meant to be an exchange of "services in kind". There is currently no definition of "selling" in the Act or the Regulation. A definition is required to clarify who needs to be registered. The goal is to capture everyone who in the regular course of business has the potential to make a sale on behalf of the travel seller.



Problem Statement	Implications	Recommendation	Rationale
DEFINITIONS			
		 photographers, graphic designers, etc. involved in the creation and distribution of promotional material but who are not interacting with customers or other travel sellers. Customer complaint handling post- travel. Individuals dealing with customer complaints pre-travel or in transit would need to be registered and meet the educational requirements as modifications to bookings may be required that involve cancellation or change penalties, refunds, additional payments, etc. Any individual taking payment on behalf of a registered travel seller, including credit card flow throughs, would be "selling" and need to be individually registered. Add a provision that the registrant is responsible to ensure that any representations made on its behalf meet the requirements of the Act and Regulation. Add a provision that registrants are responsible and accountable for all employees and third-parties selling travel services on their behalf. 	



- April 13, 2017
 - (B) The current Regulation provides for certain exemptions to the legislation. Ideally, exemptions should be minimized to avoid creating "loopholes" for businesses and/or individuals to avoid registration under the legislation. Where required, an exemption must be clear, easily recognized and fair with respect to other businesses that may otherwise be considered by the legislation. While the primary intent is not to add more burden to the travel industry, a balance is paramount to ensure fairness is achieved between all businesses engaged in the selling of travel services.

Problem Statement	Implications	Recommendation	Rationale
EXEMPTIONS			
(i) section 2 (2) – needs clarity	 Clarify any confusion over who is included in this provision. Address consistency issue with section 2 (1). 	 Change "end supplier of travel services" to "end supplier of transportation". 	• To provide clarity as to what type of end supplier sec 2(2) applies to as section 2(1) clearly applies to an "end supplier of accommodation ." Section 2(2) has historically created difficulty with interpretation and application as it does not clearly indicate (as does the previous section does) "an end supplier of transportation ."
(ii) section 2 (3) – needs clarity	• Address consistency issue with section 2 (4).	• Add the words "under the <i>Public Vehicles Act".</i>	• Public Carrier is defined in the <i>Public Vehicles Act</i> .
(iii) Inconsistent approach to not-for- profits, associations and clubs	 Current full exemptions result in no consumer protection being provided to the consumer. Creates an unlevel playing field for existing registrants. 	 Remove exemption for religious organizations, unincorporated associations and not-for-profit corporations without share capital listed in section 2 (8) and 2 (9). Maintain exemption in section 2 (8) asis for amateur sports teams. 	 The organizations being removed from the exemption are eligible for inclusion under the one-day tour exemption. Trips of longer than one day should not be treated any different than for non-exempt groups. To provide consistency and a level playing field these groups should either be registered or be booking extended trips through a registrant. Amateur sports teams travelling less than 2000 km have historically posed little to no risk. It is recognized that the sports teams may have problems with a one day exemption as the travel may be to tournaments that are longer than one day. The exemption for schools under s. 2 (7) has not been eliminated as the provision already restricts the arranging of travel services to one day without the involvement of a registered travel seller.



(C) The Regulation currently requires registrants to have a permanent place of business. In light of technological advances, questions have been raised about whether this poses a burden on business that is no longer necessary.

Problem Statement	Implications	Recommendation	Rationale
PLACE OF BUSIN	ESS		
	 With the increase in electronic commerce, questions have been raised regarding whether a permanent place of business is required. Even where an entity has a permanent place of business in the province, concerns may be raised by consumers about the difficulty finding and contacting registrants. When a place of business is located in a dwelling, there can be enforcement challenges. 	 Remove the require in s. 10 of the Regulation to carry on business only from a permanent place of business in Ontario. Add a requirement that a travel seller that is registered in Ontario and does not have a permanent place of business in the province must have the following: An address for service in Ontario Contact information for the Regulator and consumers in the event of an issue A clearly outlined complaint handling process Provisions in place for the regulator to access required information such as books and records Add a requirement that a travel seller that has a place of business in the province that is open to the public must have the following: Signage Posted Hours of Operation Add a requirement that those with a place of business in a dwelling be required to indicate where in the dwelling the business is located and if the business is open to the public. 	 Some stakeholders argue that the overheads to maintain a business premises are viewed as a significant burden on business. Increasingly, more businesses are moving to home based models to reduce such costs. TICO is attempting to address these concerns and recognize the changes to business models resulting from technological advances. The Regulator is recommending some alternate requirements in an attempt to ensure that consumer protection can still be maintained. Where a business has a permanent place of business in the province, some enhancements to the requirements are recommended to ensure that stakeholders can locate and contact the registrant. Some additional information is being requested from those operating from a dwelling to ensure that the Regulator can better enforce the legislation while respecting that it is a person's home.



(D) The current legislation recognizes two categories of travel sellers – Retailers and Wholesalers. These two categories often capture the activities of many travel sellers requiring duplicate registrations (and fees). The current categories also only address the entity selling travel services, not the individual – this is clearly inconsistent with other professions where individuals must be licensed/registered and abide by strict professional ethics. Finally, the current registration categories do not take into account different risk profiles associated with certain sellers.

Problem Statement	Implications	Recommendation	Rationale
(i) Travel Seller	 Simplifies the registration process Reduces burden on registrants and the Regulator who previously held both registrations 	 Replace the definitions of travel agent and travel wholesaler with a category of travel seller defined as follows: A person who sells, to consumers or other travel sellers, travel services provided by another person. Intended to include: all travel sellers located in Ontario and/or has a place of business in the province that sell travel services provided by another person or provides support services that could potentially result in a sales transaction in relation to bookings for travel services provided by another person. Where the travel seller is not located in Ontario but has employees and/or contractors domiciled in Ontario and is selling travel services provided by another servi	 Approx. 25% of all registrants hold both a retail and wholesale license; registrants advised TICO through various roundtable meetings that the administration of requiring two licenses is a burden. Understanding differences between retail and wholesale obligations for registrants is becoming increasingly complex, and generally not well understood. Research was completed on registration categories in other jurisdictions and also with the other Ontario DAAs to get a broad understanding of how registration is handled in those sectors. The intent of registration categories is to have a simple model where applicants clearly fall into only one of the categories. The Travel Seller category would include travel agencies and travel wholesalers who sell travel services in the province.



Problem Statement	Implications	Recommendation	Rationale
REGISTRATION			
(ii) Travel Agent	 Addresses issues related to individuals selling travel (e.g. fraud) Individuals misrepresenting themselves/consumers cannot confirm individual registration status Regulator will have the authority to monitor and control individual activity. 	 Individual travel agents will need to register and be affiliated with a registered travel seller. Includes any individual that has a documented employment relationship or written contractual relationship with a travel seller, who sells, to consumers or other travel sellers, travel services provided by another person. 	 By requiring individual travel agents to register TICO will be able to ensure individual agents are complying with the law. There has been an increase in fraudulent activity by individual travel agents against consumers. In some cases, the individual was under the employ of a registrant when the activity occurred and in other situations, the individual was operating as a travel agent without registration. In 2015/2016, the most frequent consumer complaint received at TICO was in relation to suspected fraudulent activity by a travel agent. In 2016-2017, TICO has received 19 convictions against individuals selling travel services without registration. All stakeholders will be able to conduct an online search from TICO's database to confirm whether an individual is registered, has met the Education Standard and is TICO Certified to sell travel on behalf of a registrant. Individual registration will allow TICO to enforce compliance for agents that are breaching a Code of Conduct.



Problem Statement	Implications	Recommendation	Rationale
REGISTRATION			
(iii) Restricted Travel Seller	 Consumer protection will be maintained in a meaningful way for segments of the industry where full registration under the current rules are excessive or cost prohibitive. Ensure that requirements and fees are geared to the specific type of business and their inherent risks. 	 Create category that would allow for specifying limits to the business that a travel seller can engage in and then requirements can vary based on the restricted business. <u>RTO and DMOs</u> register follow disclosure, advertising and invoicing requirements follow education requirements Maintain exemptions from the financial requirements as captured in the last regulatory update Exempt from the Compensation Fund provided an acceptable form of guarantee can be received from government 	 The restricted travel seller category is intended to recognize the modified requirements for entities associated with government that were introduced in Ontario Regulation 170/16. Ontario's 13 Regional Tourism Offices (RTOs) are subject to a provincial funding agreement, and other controls (e.g. audited financial statements); recognizing they may compete with other registrants, but whose risk profile is very different, registration is still required but other provisions are subject to some simplification (see Compensation Fund). Including other business models was contemplated and discussed but eventually discarded in an effort to maintain fairness, simplicity and clarity and most importantly to ensure consumers are properly protected.



(E) Currently, TICO has very limited enforcement tools between issuing warnings and proposing to revoke or suspend a registration. TICO is looking for ways to effectively deal with varying degrees of compliance issues.

Problem Statement	Implications	Recommendation	Rationale
ENFORCEMENT (i) Lack of administrative penalties (AMPS) causes regulator inefficiency	 Regulator has minimal tools available to enforce legislation Repeat (low risk) compliance issues continue from year to year Notice of Proposal to Revoke is often the only tool available to effect behavior change 	 Implement AMPS framework Leave penalty definition and amounts for Board of Directors to approve Ensure a fair and transparent appeals process is provided to registrants 	 Significant repeat of non-compliances year after year with same registrants for the same infractions driving significant regulator and tribunal inefficiencies The absence of monetary penalties leaves TICO without an effective and suitable enforcement tool to deter registrants from habitually contravening requirements. Enforcement of routine infractions (e.g. late or non-filing of financial filings, invoicing and disclosure deficiencies, etc.) impose an administrative burden and hardship on manpower that could otherwise be focused on mitigating priority risks to increase consumer protection. Issuing a Notice of Proposal to Revoke can be harsh and unreasonable punishment for some infractions, having the ability to levy a fine for minor contraventions of the Act and Regulation would improve compliance and ensure a level playing field for registrants.
(ii) Search warrants are administratively burdensome to regulator for certain routine investigative tasks	 Administratively inefficient for TICO investigators to file the on-going paperwork required for search warrants. TICO currently obtains search warrants to get banking information. Financial institutions do not want the photocopied documents returned. 	 Add a provision to request production orders in place of search warrants for routine investigative tasks. A production order would require the custodian of documents to deliver or make available documents within a specified period. A production order could be issued in circumstances similar to those under which a search warrant is issued but would be less intrusive because TICO is not entering and searching. 	• Having the option of requesting documents through a production order would increase regulatory efficiency and would be less intrusive to the company/individual being served.



Problem Statement	Implications	Recommendation	Rationale
ENFORCEMENT			
(iii) Inability to access the premises or compel production of information of non-registrants	TICO staff is unable to access files and records of former or non-registrants that are required to assist customers.	 TICO be given more inspection and enforcement powers with respect to non-registrants and former registrants to assist with investigation, enforcement, compliance and repatriation efforts. 	 If a business is found operating without registration or was once a registrant but is no longer registered with TICO (e.g. voluntarily terminated or revoked), TICO does not have the ability to enter the premises and compel production of information. The objective is to explore ways to compel former registrants and non-registrants to assist TICO as it works to help consumers. Examples: When a registrant fails with consumers at risk, it is crucial that TICO gair access to files and records in a timely, efficient manner. (e.g. TICO was notified at 9 a.m. on the day Conquest Vacations failed and was not able to enter the premises of the former registrant until the end of that day. In other closures, TICO has had to wait up to a few days to enter premises). Allow the Registrar to issue a Notice of Proposal to impose a Compliance Order to any person (not just a registrant) who is acting in breach of the Act. The Compliance Order will have the effect of an orde to cease and desist and will have immediate effect. The order can be stayed by the Licence Appeal Tribunal upon application. The TICO Statutory Director currently has a similar power, under section 30 of the Act, however, such order must be issued by the Superior Court of Justice and is cumbersome, expensive and time consuming. By the time the Superior Court issues the order, the non-registrant has been operating for a significant period of time and has possibly subjected a number of consumers to risk. Registrar's Compliance Orders are described in detail in Section 35 of the <i>Mortgage Brokerages, Lenders and Administrators Act</i>. Allow the Registrar to request additional information or documentation that is relevant to the fitness of registration or continuous registration at <u>any time</u>. Currently, s. 8 (1.1) of the Act and s. 19 of the Regulation



Problem Statement	Implications	Recommendation	Rationale
ENFORCEMENT			
			only allow the Registrar to require the registrant to provide information or assistance to an inspector carrying on an inspection or to provide information to the Registrar at time of application or renewal.
(iv) Removal of posted notices for revoked or suspended registrants	 Consumers are at risk of continuing business dealings with an unregistered travel seller 	 Add a provision requiring notices to be left posted for up to 30 days. 	• Currently, TICO does not have the authority to ensure that posted notices are left in place to advise customers that a registrant's licence has been suspended. There is possible risk that the customer will book travel with an unregistered travel seller.



(F) Disclosure, invoicing and advertising compliance are significant requirements of TICO's mandate. The current Act and Regulation do not address many of the common issues encountered in today's travel industry. It is also important that disclosures be reasonable and fair to registrants and not create undue burden in complying with the requirements.

Problem Statement	Implications	Recommendation	Rationale
GENERAL COMPLIANC	E		
DISCLOSURE	-		
(i) Pre-travel changes to scheduled air departure	 Schedule changes cause problems to travellers and often result in loss of vacation time and increased consumer complaints. 	• Amend s. 40 (1) to reduce the timeframe to 12 hours when the changes are within the control of the registrant.	 TICO receives a significant number of consumer complaints, especially in the travel shoulder seasons when flights are consolidated due to lack of sales between low and high seasons. Flights are consolidated, which can result in the advance or delay of the originally scheduled departure time by several hours. (e.g. consumer booked early morning flight to arrive by noon, only to be departing the same day in the early evening to arrive at night resulting in consumer dissatisfaction as they missed a day in destination). Reducing the departure time that a flight may be delayed or advanced from 24 hours to 12 hours should assist in reducing extended rescheduling of flights (e.g. non-arm's length relationship between tour operator and airline). Provision will result in a reduction of consumer complaints and increase confidence in travel purchases.
(ii) In-destination changes to accommodations and other key components	 Full and immediate refunds are not always warranted, nor reasonable 	 Amend s. 39 (2) and 40 (1) to distinguish the refund requirement based on when the change occurred: Prior to trip commencement – The provision would remain the same with the requirement to offer the customer the choice of a full and immediate refund or comparable alternate travel services acceptable to the customer. After trip commencement / in destination – Remove the words "full and immediate" and 	 Adds clarity to scenarios that often lead to debate between the traveller and the registrant. Consumer is still protected if they don't receive what they are promised but provides options in situations where a full refund is not warranted. The post-commencement option recognizes that a refund might still need to be given for the services that were not provided but not necessarily equal to the entire value of the trip. The provision is not meant to capture situations where the registrant is notified immediately prior to departure and there is not reasonably sufficient time to advise the traveller.



Problem Statement	Implications	Recommendation	Rationale
GENERAL COMPLIAN	ICE		
DISCLOSURE			
		 require the registrant to offer a "refund or comparable alternate services acceptable to the customer". A refund may still be required for the services not provided but it will not necessarily be a full refund. Where the registrant is aware of the change within a reasonable time prior to trip commencement and fails to provide notice to the traveller until the consumer is in destination, TICO can levy an administrative monetary penalty and the registrant may be required to provide a full refund to the traveller. This would ensure that registrants do not purposely wait to provide notice to the traveller until they reach destination. 	



Problem Statement	Implications	Recommendation	Rationale
GENERAL COMPLIANC	E		
DISCLOSURE			
(iii) e-commerce overlay missing for key documentation	• The Act and Regulation were not written with the internet or other current technology in mind.	• Amend s. 43 to require that the travel seller be held responsible where it has issued or made available documents, or e-documents, or otherwise facilitated the consumer's ability to travel.	 About a quarter (25%) of consumers report using an online travel agency, and 44% booked directly with the airline/accommodation provider, when booking travel services. [IPSOS] Virtually all consumers report using their credit card (93%) when paying for travel services. [IPSOS]. The Act/Regulation only contemplates the wholesaler providing paper tickets or other paper documents to a travel agent for distribution to a customer. With electronic ticketing, travel wholesalers and end suppliers may not be providing anything to the travel agent for distribution. For example, Porter Airlines uses "ticketless" travel where reservations are not given a ticket number but a virtual boarding pass can be issued based on the booking reference. In TICO's view, if the supplier has made available the required data/documents for travel, it is the same as releasing a paper ticket.
(iv) Price increases beyond the control of the registrant	 Registrants are left to shoulder the burden on additional costs that they cannot control (e.g. government imposed taxes and fees). 	 Allow registrants to pass the cost of the government imposed taxes and fees, that are beyond the control of the registrant, to the customer. 	 Intended to allow registrants to collect fees from the customer that they have no control over and could not have anticipated when setting prices. Fuel surcharges and currency exchange would not be included. Would include fees like the United Kingdom Air Passenger Duty. These charges do not occur frequently but when they do it is a significant burden to registrants.



Problem Statement	Implications	Recommendation	Rationale
GENERAL COMPLIANC	E		
DISCLOSURE			
(v) Requirement to advise the customer of the travel documents needed for each traveller	 Registrants find it difficult and impractical to speak with every traveller and must rely on the information provided by the customer completing the booking Providing all the individual details for each passenger on the invoice is inefficient and cost prohibitive. 	 Changes are not recommended. The requirement is to advise the customer of the travel documents needed for each person travelling. The definition of customer/consumer resolves some of the difficulties encountered when travel agents are handling group bookings. The travel seller must advise of the required travel documentation for all travellers but it is acceptable to provide the written confirmation by way of a link to a website for specific details or by a written document attached to the invoice. The obligation to provide proper disclosure regarding travel documentation and written details of the travel documentation required for each person travelling remains the responsibility of the travel seller dealing directly with the customer. 	 This is a critical consumer protection provision but it is not practical to require registrants to have all individual details on the invoice. The format of the information may differ as long as the customer/consumer receives the information both verbally and in writing.



Problem Statement	Implications	Recommendation	Rationale
GENERAL COMPLIANC)E		
DISCLOSURE			
(vi) Consumers unaware of Ontario's consumer protection legislation which protects travel purchases	 Lack of consumer education, awareness and transparency of the consumer protection available when purchasing travel services cultivates an unintentional potential risk to consumers. 	 Add a provision to require Ontario travel sellers to disclose the Customer Protection Fee to customers at the time of booking. 	 "Half of consumers (51%) have either heard of TICO or seen the logo, unchanged from 2011. However, only two in ten claim to know what the organization does at least somewhat well and only one quarter (25%) are aware of the Travel Compensation Fund." [IPSOS] "Almost 2/3rds (63%) of consumers did not purchase any type of travel insurance on their most recent pleasure trip (63%)." [IPSOS] TICO conducts a yearly Omnibus survey to measure consumer awareness, the percentage of Ontario consumers that are aware of TICO has remained at approximately 33% and without further funding it will be a challenge to reach all Ontarians. Consumers are unaware that their credit card and travel insurance will not cover trip completion or repatriation costs in the event of a supplier failure.
(vii) Location of TICO logo and registration number on websites	• The logo and registration number are difficult to locate on websites making it difficult for consumers to be confident they are dealing with a registrant when booking travel.	 Add a provision that the TICO logo and the registration number must be prominently displayed on the either the home page or the contact page of all websites. 	 Consumers generally do not know if they booked their travel with a TICO registered travel agent (62%). [IPSOS]. "Consumers don't know (54%) if the online agency they used was registered with TICO" [IPSOS] Provision to enhance and promote awareness by consumers of the consumer protection received when they book with a TICO registrant. TICO receives a number of queries from consumers wishing to be assured that the online travel company they wish to book with is TICO registered. Registrants conceal their TICO registration number in obscure sections of their website which does not allow consumers to readily identify whether or not their travel purchase will be protected.



Problem Statement	Implications	Recommendation	Rationale
GENERAL COMPLIANC	E		
DISCLOSURE			
(viii) 3 rd Party Card Processors – Disclosure and financial covenants generally not known	• Existence and details of restrictive covenants of card processors is not known creating unknown risks to future viability of registrant.	 Registrant recommended to provide full disclosure of card processor(s) and all restrictive covenants; Regulator may impose additional financial requirements for any excess risks undertaken by registrant. 	 This recommendation supports enforcement and a risk-based approach. Security in form of holdbacks, deposits, letters of credit, etc., or other restrictive financial covenants may strain a registrant's short-term liquidity, and increase risk of failure Some card processors/acquirers are offshore and will have customer funds "in-transit" prior to settling with the registrant; there is no recourse over funds held outside of Ontario prior to deposit to a registrant's account The disclosure of the terms and conditions of the Processor Agreement would assist the Registrar in the determination of risk.

Problem Statement	Implications	Recommendation	Rationale
GENERAL COMPLIANCE	E		
INVOICING			
i) Lack of flexibility for invoice disclosures	 Requirement to include all disclosures on the invoice creates an administrative and cost burden for registrants 	 Amend s. 38 (1) to allow the required information to be provided on the statement, invoice or receipt or <u>on an accompanying written</u> <u>document</u>. 	 The format of the information may differ as long as the customer receives the information both verbally and in writing. This option provides the registrant with some additional flexibility while ensuring the information is provided in writing to the customer. Defining customer and consumer should assist registrants when doing group bookings as the requirement is that information needs to be provided to the customer vs the consumer.
(ii) Invoice addresses	 Customers do not want their address displayed on invoices 	• TICO recommends that the customer address continue to be required on the invoice.	 TICO is recommending that claims eligibility be based on where the customer resides; therefore, the customer address is required.



Problem Statement	Implications	Recommendation	Rationale
GENERAL COMPLIANC	E		
INVOICING			
(iii) Form of Payment	 TICO encounters difficulty in enforcement and claims processing if the form of payment is not indicated on the invoice. 	 Require form of payment be added to the invoice under section 38 (1) (c). Where the form of payment is not disclosed on the invoice, the registrant must provide a receipt or accompanying document that indicates the form of payment for all payments received. 	 Many registrants do not currently specify the method of payment. Further, some customers may make multiple payments or use various forms of payment when purchasing travel services (e.g. cash deposit and final payment by credit card). Including the form of payment on invoices will assist TICO's enforcement efforts as well as assist with processing claims against the Compensation Fund to ensure the proper supporting documentation is acquired to support an eligible claim. Including the form of payment on invoices can eliminate potential fraudulent claims and/or double dipping. (e.g. Invoice has no form of payment information. When asked, claimant advises TICO all payments were made in cash. Services actually paid via credit card. The card holder may have been refunded in full unbeknownst to TICO. Claim presented as potentially eligible for Board's consideration as claim appears to be for cash paid for non-provision of travel services).
(iv) Detailed breakdown of all fees, taxes, levies and charges	 Creates a burden for registrants as it is not always possible to breakdown individual charges. 	 Amend section 38 (1) (d) to require a reasonable breakdown of fees, levies, charges and taxes If the customer requests specific information the registrant would still be required to provide it. 	 The Regulation could be interpreted to require that every charge is itemized. This poses difficulty for agents as the supplier may not provide a detailed breakdown of fees. The agent would have to do a considerable amount of additional work and research to break out every additional fee if the supplier does not provide the information. TICO does not currently interpret the provision to require every change to be itemized. It is sufficient if a reasonable breakdown is provided and any non-refundable amounts identified.



Problem Statement	Implications	Recommendation	Rationale
GENERAL COMPLIANC	E		
INVOICING			
(v) Identification of refundability of each item on invoice	 Verifying refundability of taxes and fees can be complex and time consuming. 	 Remove the requirement in s.38 (1)(d)of the Regulation to indicate whether everytax and feeis refundable or non-refundable. Add a requirement that the travel seller indicate if fees within their control are refundable (e.g. counselling and service fees). Add a requirement to indicate that the Customer Protection Fee is not refundable. Add a requirement that the invoice detail the information disclosed to the customer at the time of booking regarding the range of penalties or other costs associated with transfer or cancellation, and any non-refundable payments to be made by the customer. 	 Whether certain taxes and fees are refundable can be complex. Many factors, such as whether the taxes were even remitted, may need to be considered. The agent many not even know that information. The administrative work to recoup the tax or fee may be time consuming and laborious and not worthwhile for an agent when they have only earned a small amount on the ticket. Therefore, in order to comply, registrants may deem everything non-refundable. It is problematic for TICO as consumers expect TICO staff to be experts on what is refundable and where to get this information in order to resolve complaints or disputes and refundability issues. Travel sellers would still be required to advise whether their counselling fees are refundable as this information is clearly within the registrant's control. Further, it is recommended that the invoice codify the information regarding cancellation penalties and refundability of any payments to be made by the customer as this is an area of concern for consumers.
 (vi) Consumers unaware of Ontario's consumer protection available when purchasing travel services. 	 Consumers purchase travel from non-registrants and don't realize there is no protection. 	 Add a provision to require travel sellers to include the Customer Protection Fee as a separate line item on the invoice. Registrants must indicate on the invoice that the Customer Protection Fee is non-refundable. 	 Lack of disclosing the Customer Protection Fee on an invoice for travel purchases diminishes transparency and potential to educate and increase consumer awareness of the consumer protection available to them. The Customer Protection Fee should be non-refundable because like insurance, the customer benefits from the coverage from the date of purchase. This is consistent with the treatment of such fees in other jurisdictions.



Problem Statement	Implications	Recommendation	Rationale
GENERAL COMPLIANC	E		
INVOICING			
(vii) Fair and accurate description of travel services purchased	The current provision is very broadly worded.	 Amend section 38 (1) (g) to require a fair and accurate description of the key components of the travel services purchased, including destination and departure date. 	 Requiring the "names of the persons who will provide the travel services" is so broadly worded that it could be interpreted to capture absolutely everyone involved where the main suppliers would be sufficient. Examples of key components: airline name flight number dates and times of departure name of airport of departure and arrival hotel name and address car rental company name name of company providing tours
(viii) Point of Departure to be indicated	• To support the recommendations with respect to residency, it will be necessary to indicate the commencement of paid travel services on the invoice or itinerary provided to the customer with the invoice.	 Add a requirement that the departure point must be indicated on the invoice or the itinerary must form part of the invoice. 	• Eligible claims are linked to residency and gateway, and therefore the departure point of the consumer is important for future claims administration and processing.



Problem Statement	Implications	Recommendation	Rationale
GENERAL COMPLIANC	E		
INVOICING			
(ix) Government imposed taxes/fees after customer has paid in full	 When governments impose mandatory taxes and fees after a customer has paid in full it is a burden to the registrant to have to cover all the extra costs. (e.g. UK Air Passenger Duty) 	 Allow these charges to be passed on to the customer. This does not include fees that should have been considered such as fuel surcharges or currency fluctuations [section 38 (1) (j)] 	 Travel sellers have no control over government imposed taxes and fees. Preventing registrants from passing the cost of government imposed taxes and fees on to their customers could result in financial hardship for the registrant. Even if TICO prevents the registrant from passing on the government imposed tax or fee, it has no jurisdiction to prevent a government from requiring the consumer to pay the tax or fee at the airport or in destination. If the consumer is going to have to pay additional charges, it is important that he or she be given notice of this. The consumer could suffer severe consequences if they are unable to pay or refuse to pay the government imposed tax or fee, including an inability to travel.
(x) Identification of the travel agent	 Registrants have concerns with having the name of an individual agent printed on an invoice. Online bookings do not have an actual agent associated with the booking. 	• Amend section 38 (1) (I) to require a unique identifier indicating who made the booking and accepted the first payment or whether it was an online booking. The travel seller would be required to provide TICO with additional information on the identification of the individual agent upon request.	 This amendment is designed to recognize concerns about the name of the travel agent being included on the invoice and to recognize that an individual agent may not have been involved in the transaction in the case of an online booking. The unique identifier would ensure a tracking method to identify if there is a problem with a particular travel agent.
(xi) Unique identifier for all invoices and receipts	 When invoices are not consecutively numbered, it is difficult to ensure completeness of records during reviews/audits. 	 Amend section 38 (3) to require that a statement, invoice or receipt, whether prepared manually or automated, have a unique identifier and the registrant must demonstrate that their records are complete and reflect the total invoices for the relevant period. 	• Where invoices are not consecutively numbered, it can be difficult for TICO staff to ensure completeness of records. TICO recognizes that registrants all have their own systems and we do not want to impose the specific type of identifier that a business uses, but we need to be able to verify that everything is reflected in the registrant's records.



Problem Statement	Implications	Recommendation	Rationale
GENERAL COMPLIANC	E		
INVOICING			
 (xi) Customers are sometimes not given invoices/receipts of all payments 	 Problematic for consumers and TICO specifically when a consumer wishes to file and substantiate a claim against the Compensation Fund or when they have a complaint against a registrant. 	 Add a provision requiring registrants to issue and promptly provide to a customer a statement, invoice or receipt for all payments received for travel services. For subsequent payments, the registrant can issue a new receipt or update the original receipt to note the additional payment(s) and the date of the payment. 	• Currently, some registrants do not provide receipts for all payments received from a customer. Some only provide an invoice/receipt for the first and/or the final payment. This is problematic for the customer should they ever need to make a claim on the Compensation Fund or have a complaint issue.
(xii) Documentation in foreign languages	 Some registrants provide documentation in a language other than French or English – causing difficulty in investigation, compliance and claims processing. 	 Add a provision that any required documentation must be provided in one of the official languages or that a registrant be required to reimburse the Regulator for any translation costs that the Regulator must incur to ensure compliance where the documentation is not in one of the official languages. 	 It is difficult for the Regulator to ensure compliance when registrant documentation is not in English or French. It is recognized that this may be viewed as an additional burden where English or French is not one of the languages used by the registrant. While the Regulator is not looking to increase the burden on the business if the customer is content with receiving information in another language, it does need to ensure compliance and it may be more costly for the Regulator to do so when the business is not doing business in an official language.
(xiii) Gift Cards	• The current provisions do not contemplate the treatment of gift cards.	 When a gift card for travel services is sold by a registrant, the gift card number should be included on the invoice provided to the customer. When a gift card for travel services is redeemed by a registrant, the gift card number and the corresponding dollar amount redeemed should be included on the receipt provided to the customer. 	 This will assist TICO in being able to track the sale of gift cards and to ensure that there is no double dipping when a claim is made on the Compensation Fund. Information can also be of assistance to the consumer, the registrant and/or TICO when handling a complaint issue.



Problem Statement	Implications	Recommendation	Rationale
GENERAL COMPLIANC	E		
ADVERTISING			
(i) Representations, including advertising, by out-of-province travel sellers not captured	 Out-of-province travel sellers do not have to follow the regulations for disclosure and pricing causing higher risks for consumers and creating an unlevel playing field for Ontario registered businesses. 	 Add a provision that requires any out-of-province travel seller that advertises in media based in Ontario or <i>primarily</i> directed at Ontario customers to comply with the representation requirements. 	 Currently, any person or business located outside the province can target their advertising efforts to Ontario consumers for the purpose of selling travel without being registered or complying with the province's representation requirements. This creates significant consumer protection exposure to false and/or misleading advertising and a significant unlevel playing-field for registrants. Consideration was given to registering out of province travel sellers but due to issues of jurisdiction and enforcement it was decided that full registration of ALL out of province sellers would be too onerous for the Regulator. Requiring compliance with representations is more reasonable.
(ii) Errors in pricing on websites.	 Consumers are misled causing frustration and confusion. 	• Add a provision requiring online pricing errors within the control of the registrant to correct, be rectified within 24 hours. When the registrant does not have control of the systems the absolute maximum allowable time for correction will be two (2) days.	 Pricing errors on websites are not consistently addressed by registrants in a timely manner and to the consumer's satisfaction. Online pricing errors give consumers a false impression that bait & switch practices are acceptable when, as a Regulator, there is no provision requiring timely compliance to be achieved. Consumers expect TICO to initiate enforcement action however, the Regulation is currently silent on this issue.



(G) Existing financial requirements by registrants are often considered high-burden, particularly for smaller registrants. Further, the effectiveness of financial statements and current security provisions associated with consumer protection is misaligned with the underlying costs borne by registrants to comply (e.g. cost/benefit relationship is lacking). In addition, many potential new entrants consider current financial requirements a high barrier to entry.

Problem Statement	Implications	Recommendation	Rationale
FINANCIAL			
(i) Trust Accounts ineffective for consumer protection and high burden for registrants	 Trusts effectively not true trusts, and are frequently "tainted" with non-trust funds Trust monies are often non- existent at time of failure Perceived loss of key protection measure amongst some stakeholders Registrants often lack financial accounting expertise, systems and controls to administer trust accounting resulting in non- compliances 	 Eliminate requirements to maintain Trust Accounts and complex trust accounting procedures Consider other financial measures to provide enhanced protection of customer funds Provide enhanced education to consumers and registrants on appropriate use of customer monies Ensure that registrants are still held accountable for misuse of customer monies. 	 Travel Industry Trust Accounts are established and maintained by each registrant, generally with same signing officers of other bank accounts; these Trust Accounts lack the general independent oversight and controls of a third party, and therefore may legally be unenforceable as "true" trusts. When failures do occur, registrant's Trust Accounts are either void of funds, or grossly under-funded to cover consumer losses. TICO's analysis of last 3 fiscal years' claims against the Compensation Fund, due to registrant failures, confirm that Trust Accounts were generally depleted, misused or otherwise ineffective at protecting consumers' travel purchases.



Problem Statement	Implications	Recommendation	Rationale
FINANCIAL			
(ii) Financial Statement accreditation represents significant burden on industry	 Cost of a Review Engagements is significant and likely to grow. Quality issues and timing of submission lessens the usefulness to the Regulator. Audit thresholds have not been adjusted since TICO's inception. 	 Eliminate Review Engagement requirements for registrants with Ontario Gross Sales (OGS) < \$2 million. Registrants with OGS < \$2 million to provide internally prepared Financial Statements with an Attestation Form signed by a principle, director or designated officer of the business certifying that the information contained is true and correct. Advancement of due date from 90 days to 60 days. Registrants that provide a Review Engagement or Audit to another regulatory body or association will be required to submit same to TICO. Registrants should be required to provide the highest level of assurance report produced/available. Increase audit threshold from \$10 to \$20 million (OGS). The thresholds should be subject to inflationary increases to ensure that they remain relevant over time. All registrants will be required to submit bank confirmations for all active bank accounts to ensure TICO is aware of all accounts. 	 Average cost for a Review Engagement for registrants with Ontario Gross Sales less than \$2 million is approx. \$3,000 [Industry Analysis; Registrant Input]. The relative cost of regulatory compliance associated with Review Engagements for registrants with sales under \$2 million is more than double the cost compared to the next category of registrant. Financial Statements of smaller registrants, subject to Review Engagements, follow Accounting Standards for Private Enterprises (ASPE), which are historical based, and do not generally, provide an effective indicator over the future sustainability of a registrant as a going concern. Quality issues have been identified with Review Engagements completed for smaller registrants prior to failure, giving rise to concerns over the usefulness for financial statement users [TICO]. Review Engagement costs anticipated to increase with new/enhanced auditing standards effective December 2017 [CPA/CSRE 2700]. Stats Canada CPI adjustment from 1997 to 2017 is 1.4395% implying a minimum threshold for audits of \$14.4 million; given consolidation, new business models and growth of industry since 1997, a new audit threshold of \$20 million is justified.



Problem Statement	Implications	Recommendation	Rationale
FINANCIAL			
(iii) Working Capital requirements are sub-optimal and not fair across all registrants	 Working Capital thresholds are absolute dollar amounts which are not effective for all registrants. Smaller registrants are effectively held to higher standard vs larger registrants. 	 Develop working capital tables based on ratios (similar to approach and tables used by other authorities). Maintain positive working capital at all times (note: this is a burden relief to all registrants who currently are required to maintain minimum \$5,000). Introduce Debt/Tangible Net Worth Ratio for all registrants to measure excess debt levels. Introduce a Profitability Ratio for all registrants to measure contribution to equity through profitable operations. 	 Current TICO's Working Capital thresholds are based on fixed amounts between \$5 to \$100 thousand. Working Capital ratios are recognized as an accepted practice and provide more flexibility. Other Regulators, Authorities and Associations use Working Capital ratios, which effectively normalize registrants of different size and complexity.
(iv) Security set at too low a level to effectively mitigate future registrant failures	 Security is generally returned to registrants after 2 years and not available to compensate consumers in the event of failure. Security is significantly lower than most jurisdictions reviewed. Creates an un-level playing field across all registrants. 	 Maintain initial security at current \$10 thousand. Extend term of security from 2 to 5 fiscal years. After 5 years, security will be calculated as a percentage of Ontario Gross Sales (OGS) up to a maximum of \$100 thousand. Security will be held for the life of the license. Security can be in form of cash, letter of credit or performance bond. Additional discretions provided to the Registrar where increases or decreases to security are warranted on a risk basis. 	 At time of failure, security has usually been returned leaving no recourse to TICO to facilitate customer claims (other than the Compensation Fund). Quebec and B.C.'s consumer protection agencies require much larger security deposits and hold security for the duration of the license.



(H) The Compensation Fund benefits both consumers and registrants. Recognizing these benefits and underlying risks associated with the non-provision of travel services due to a failure, there is clearly a sharing of risk in the travel purchase. The Compensation Fund is however considered overly complex and misunderstood by most consumers and registrants. In addition, key coverage provisions are missing and funding of the above risk is misaligned. As the cornerstone of TICO's mandate, this key consumer protection tool can be simplified and made more effective as a tool for consumer protection. In addition, the Compensation Fund is at risk of being under-funded in the event of a large registrant, airline or cruise line failure. Should a large failure occur beyond the balance in the Compensation Fund, the consumer's recovery would be at risk. Although many consumers believe they will be covered by their credit card or by travel insurance and do not realize that these products do not cover the cost of trip completion or repatriation in the event of a registrant failure.

Problem Statement	Implications	Recommendation	Rationale
COMPENSATION FUNE)		
(i) Protection from the Compensation Fund (the Fund) is complex and has significant gaps and limitations in providing adequate consumer protection.	 Compensation Fund protection is not well understood by stakeholders as criteria for eligibility is complex. Current legislation does not contemplate existing business models, internet, e- commerce or new payment methods. Claims against the Compensation Fund have increased in complexity and have expanded to involve fraudulent activity. Gaps and limitations exist in overall Compensation Fund protection. 	 TICO recommends expanding Fund coverage to better protect consumers by allowing coverage to include reimbursement for any travel services paid for and not provided due to the cessation of any travel supplier and/or <u>out-of-province</u> tour operator when purchased from a TICO registered travel seller. (e.g. hotel, car rental company, etc.) Enhance Compensation Fund coverage for trip completion claims when <u>any</u> travel supplier fails and the consumer is stranded in destination and incurs reasonable expenses (accommodation, transportation and meals) to complete a trip where the travel services are not provided due to the failure. Extend the claim filing deadline for all claims to one year after the date that the relevant registrant or travel supplier ceases to carry on business. Add a provision to allow coverage for gift cards strictly redeemable for travel services when the 	 "Almost 2/3rds of consumers did not purchase any type of travel insurance on their most recent pleasure trip." [IPSOS] "The vast majority of consumers would expect some type of reimbursement if their travel agency or airline or cruise line or tour operator were to go out of business and nearly six in ten (57%) would expect the full cost of their trip to be paid back." [IPSOS] "After being educated about what the Compensation Fund is and what it covers, the vast majority of consumers feel it provides value (90%), gives them peace of mind (88%) and are more likely to book through a TICO registered travel agency as a result (75%)." [IPSOS] Gift cards are more prevalent in the marketplace and are being sold by: o Registrants.
		non-provision is due to a failure:	○ End Suppliers.



Problem Statement	Implications	Recommendation	Rationale
COMPENSATION	I FUND		
		 If the failure is prior to redemption, the gift card purchaser may claim the value of the gift card as they would have paid the Customer Protection Fee at time of purchase. If the failure occurs after the gift card is redeemed for travel services, the person who redeemed the gift card may claim for the cost of the travel services purchased. The Customer Protection Fee would have been paid on the full value of the travel services. 	 Third parties (Costco, Shoppers Drug Mart) on behalf of registrants and end suppliers. Emerging business model where the business sells a multitude of gift cards that include gift cards specifically for travel services/travel packages. Emerging business model where the business aligns itself with numerous accommodation providers (hotels and B&B's) to form a type of "associated group of hotels." The properties are listed on the business' website where consumers can purchase gift cards good to be redeemed at the accommodations aligned with the business. Customer monies collected by registrants and end suppliers for gift cards must be available for an indefinite period of time as gift cards have no expiry date. Customers purchasing gift cards from registrants or redeeming gift cards through registrants should have peace of mind knowing that they have protection if the travel seller fails before the gift card is redeemed or, once the card is redeemed, if the travel services are not provided.
		 Clarify the coverage for travel services purchased using Loyalty and Reward Points: The customer who redeemed the points would only have a claim for any travel services they actually paid for in conjunction with using any points. The reward points company that paid for the travel services based on the points redeemed may claim for the cost of the travel services not provided. 	 Currently, the Regulation would preclude a customer redeeming reward points from having a claim for reimbursement from the Compensation Fund as they did not actually pay for the travel services. Allowing the reward points company to claim for the amount they paid to book the trip (that represents the customer's redeemed points) is consistent with the proposed definition of "customer". The person who paid has the claim and TICO would "follow the money" the same as it does today. The customer that redeemed would not have a claim on the Compensation Fund for points they did not actually pay for. If the customer paid for part of the services using cash, credit card or other payment method, he/she would have a claim for that amount.



Problem	Implications	Recommendation	Rationale
Statement			
COMPENSATION	N FUND		
			 Each claimant would be reimbursed for the amount that they paid and would be required to pay the Customer Protection Fee on their portion of the payment. Allowing point providers to claim would be consistent with the decision in CIBC. By clearly stating in the Regulation that subrogated claims will not be accepted, TICO can ensure that the change is not used to advocate for further expansion of the Compensation Fund. Credit card companies, insurance companies and other entities affected by a failure should be prevented from making claims to recover their losses where they have reimbursed customers. "Following the money" would ensure that (1) the Compensation Fund is not paying twice for a trip (2) that the customer is not double dipping and getting both a refund from the Compensation Fund and their points returned from the points provider. Require the Customer Protection Fee to be paid on the entire value of the trip so the consumer will be eligible for repatriation if failure of a supplier occurs.



Problem Statement	Implications	Recommendation	Rationale
COMPENSATION FUNE)		
 (ii) Current legislated per person claim maximum of \$5,000 provides inadequate consumer protection for larger travel purchases. 	• Customers are unable to receive full per person reimbursement on larger travel purchases (e.g. adventure travel, luxury cruise and Hajj/Umrah pilgrimage).	• Eliminate the current per person claim maximum to allow customers to be reimbursed for the total cost of travel services paid for to a TICO registered travel seller and not provided due to a failure of a registrant or any end supplier.	 Claims involving the non-provision of travel services purchased exceeding the current \$5,000 per person maximum have historically resulted from the failure of a cruise line or specialty travel purchase such as Hajj and Umrah pilgrimages (e.g. Hajj minimum \$8,500 per person). "Nearly half (48%) [of consumers] expect the limit to increase to whatever the cost of services lost by the consumer is" [IPSOS] while "about a third (32%) would like to see the limit increased and capped at \$10,000 per passenger". The Compensation Fund should remain the payor of "last resort". TICO should be responsible in administering the Compensation Fund and ensure that there is not "double-dipping", by ensuring that customers seek recourse from others that may be obligated to reimburse them including credit cards, insurance, etc. if a reimbursement is available.
(iii) Current legislated maximum payments of \$5 million per event and \$2 million for trip completion may provide inadequate coverage for a large registrant or end supplier failure.	• The per event maximum could result in consumers not receiving a full reimbursement or assistance with repatriation in the event of a large registrant or end supplier failure.	 Eliminate the current legislated per event maximum payment allowed from the Compensation Fund to allow customers to be reimbursed for the total cost of their travel services or repatriated in the event of a failure of a large registrant or travel supplier. Consider other risk mitigation tools beyond the Compensation Fund, including third party risk transfer mechanisms (e.g. Insurance/Re-Insurance). 	• To compliment the proposed expanded coverage model, the current legislated event maximums are not expected to provide sufficient funding to reimburse the full cost of travel services to affected consumers. An Actuary Study is currently underway to determine the potential exposure to the Compensation Fund from large and catastrophic failures as well as a recommendation as to what the Compensation Fund balance should be.



Problem Statement	Implications	Recommendation	Rationale
COMPENSATION FUN	D		
(iv) The current funding model is inefficient and inequitable and does not provide adequate proceeds to provide the necessary consumer protection in the event of a large registrant or end supplier failure.	 A large registrant or end supplier failure may deplete the Compensation Fund, leaving consumers without a means of receiving a full reimbursement and/or assistance of being repatriated. Lack of an efficient funding model creates a risk of inadequate consumer protection in Ontario. End suppliers enjoy the benefit of Ontario's industry-financed Compensation Fund with zero financial contribution or risk. Consumers enjoy the benefit of an industry-financed Compensation Fund however Ontario registrants carry 100% of the financial burden and risk. Consumers often believe fees are "hidden" or buried in other charges. 	 Introduce a co-pay funding model for Ontario's Compensation Fund. Ontario registrants continue to pay into the Compensation Fund at assessments rates set by the Administrative Authority. Consideration will be given to having different assessment rates depending on the risk profile of the registrant for B2B and government affiliated registrants. Introduce a customer contribution to the Compensation Fund (Customer Protection Fee) of approximately \$1 per \$1,000 of travel services to assist in funding expanded coverage. It is recommended that the amount of the Customer Protection Fee be determined by the Administrative Authority in accordance with a Fee Setting Process. 	 Consumers are generally unaware of the limitation to coverage, particularly the event limits provided in the legislation. "Consumers remain skeptical about how the Travel Compensation Fund is covered and particulars of coverage." [IPSOS] "Most [consumers] admit that they don't really understand what is and isn't covered (69%)" and "wouldn't be surprised if it was funded by consumers through hidden fees (83%)." [IPSOS] "Eight in ten consumers would be definitely or probably willing to pay \$1 per \$1000 in travel costs for the expanded coverage." [IPSOS] When individuals consider current caps on coverage, "Majority of consumers definitely willing to pay an extra fee up to \$1/1000 of travel costs (69%) and there is some appetite to pay as much as \$2/1000 of travel cost (60%)". [IPSOS] A co-pay funding model is recommended to share and equitably distribute the contribution between customers and registrants for consumer protection. Shifting the contribution to one or the other stakeholders would present a burden.



Problem Statement	Implications	Recommendation	Rationale
COMPENSATION FUNI			
(v) Collection and remittance of the Customer Protection Fee by registrants adds administrative costs.	 Disclosure of the Customer Protection Fee and applicable coverage to customers will add to registrant's average booking time. Collection and remittance of the fee to TICO may impose additional administrative burden. Tracking and remittance of the Customer Protection Fee may require registrants to incur cost for IT / systems changes. 	 Add a provision that allows registrants to deduct a collection fee from their Customer Protection Fee remittance for collecting and remitting the Customer Protection Fee to TICO. It is recommended that the amount of collection fee be determined by the Administrative Authority in accordance with a Fee Setting Process. 	 To mitigate burden on industry, a simple cost recovery mechanism will assist all registrants collect the Customer Protection Fee. It is expected that registrants will incur time and cost for the implementation of the collection and remittance of the Customer Protection Fee (e.g. IT systems and website programming, alignment with back office accounting systems, policy and procedure development and training regarding disclosure). The registrant collection fee is viewed as a fair means to incent cooperation from registrants.



Problem Statement	Implications	Recommendation	Rationale
COMPENSATION FUNI	D		
(vi) Ensuring that any potential gaps in the collection and remittance of the Customer Protection Fee by registrants are eliminated to ensure the integrity of the funding model.	 Without checks and balances in place, TICO may not be able to detect deficiencies in remittances by its registrants. Ensuring collection and remittance of the Customer Protection Fee is straightforward and will support the integrity of the funding model. Aligning the Customer Protection Fee to a registrant's gross annual sales will allow for accurate reconciliation of remittances. 	 Add a provision to state that the Customer Protection Fee is non-refundable. (Note: Similar to an insurance premium, the customer receives the benefit of the protection available once the Customer Protection Fee is paid to a TICO registrant. Cancellation by the consumer and/or non-provision of travel services due to a failure should not include the reimbursement of the Customer Protection Fee.) 	 The vast majority of travel services are purchased and paid in full by the customer well in advance of the services being received. From the time the customer pays the Customer Protection Fee, they would receive benefit of the Compensation Fund, before and during their travels. A non-refundable Customer Protection Fee will reduce administrative burden associated with the collection, remittance and reconciliation of fees.
(vii) The Compensation Fund balance may grow excessive if failures remain minimal.	 Introduction of new funding model has potential to grow the Compensation Fund beyond the actuarial recommended ceiling limit. Could create a negative perception of consumer protection model. 	 Introduce a provision to ensure the proceeds paid into the Fund are managed to avoid a disproportionate Fund balance compared to the potential risk to consumers. 	 Excessive Fund balances tie up capital needlessly. Periodic actuarial studies will provide 3rd party justification for required Fund balance, providing credibility for stakeholders. If Fund target is reached, an appropriate mechanism to prevent further growth will be implemented, subject to Board of Director approval (e.g. fee reduction).



Problem Statement	Implications	Recommendation	Rationale
COMPENSATION FUN	ID		
(viii) No specific provision excluding the ability for subrogated claims against the Compensation Fund.	 Possible risk of claims against the Compensation Fund to reimburse business risk (e.g. credit card and insurance companies). Potential for significant exposure to the Compensation Fund for circumstances other than the originally intended consumer protection. 	 Add a provision that disallows a subrogated claim against the Compensation Fund. Add a provision for greater clarity that no registrant or former registrant have a right to any money or property in the Compensation Fund. Note: Precedent in OMVIC's legislation: O.Reg.333/08, s.77 	 Preserves the integrity of the Compensation Fund for eligible customer claims only. Provides clarity that the Compensation Fund is consumer protection and not to support third party liability / business risk (e.g. credit card companies).
(ix) Industry has raised concerns over uniformly extending Ontario's consumer protection to non-Ontarians.	 Consumers outside Ontario don't understand TICO and the coverage provided. Registrants are at a competitive disadvantage with non-Ontario businesses. Focusing consumer protection for Ontarians demonstrates that the Province is a good place to do business and travel. Providing an option for registrants to elect to protect all customers and all travel sales is an added benefit. 	 Add a residency provision to allow protection from the Compensation Fund under the following circumstances: All residents of Ontario who purchase travel services from a registered travel seller. Consumers residing outside of Ontario who purchase travel services from registered Ontario travel sellers when the travel service's departure originates in Ontario. Allow Ontario travel sellers the "option" to include Compensation Fund protection to consumers residing outside of Ontario. (e.g. all travel sales). 	 <i>Travel Industry Act</i> is for the benefits of Ontarians and Ontario registrants. Value proposition of Ontario's consumer protection beyond the province varies among registrants. Residency provision focuses consumer protection primarily to Ontarians, which sends a positive consumer protection message. Option exists for registrants to be more transparent by including out-of province consumers in the protection scheme; this option provides fairness to those registrants who see value based on their own business model, while still preserving the consumer protection mandate for all Ontarians.



Problem Statement	Implications	Recommendation	Rationale
COMPENSATION FUN		• Add a provision to compliment and evened the	 Dravides electivity to TICO in managing electrons and national experiments
(x) Lack of provision to potentially mitigate risk to consumers and provide timely consumer protection in an effective manner as Ontario's Travel Regulator.	 Lack of legislated disclosure requirements by a registrant upon ceasing operations places consumers at risk and the Regulator at a disadvantage to provide timely and efficient protection from the Compensation Fund. Risk of reputational damage to TICO as well as the Ontario Government. 	 Add a provision to compliment and expand the requirement of O.Reg. 26/05, s. 18.1 (10 days advance notice when ceasing operations) to require in writing upon ceasing operations: Any liability or obligation that could result in claims against the Compensation Fund If bookings transferred to another registrant, an account of the bookings and alternate registrant information must be provided Remit and make payment for any outstanding contributions to the Compensation Fund. 	 Provides clarity to TICO in managing closures and potential exposure to consumers. Allows TICO to be timely and responsive to consumers potentially affected by a closure. As travel services are sometimes purchased far in advance of departure, the potential for consumers to attempt to contact the registrant to make changes or ask questions after they have ceased operations is probable. The provision would allow TICO to be informed and provide consumers with appropriate guidance and consumer protection when necessary. Collection of any outstanding Customer Protection Fees supports the registrant's obligation to remit customer monies to the Regulator for which it was collected.



Problem Statement	Implications	Recommendation	Rationale
COMPENSATION FUN	D		
(xi) Registrants that have provided their services to customers at the time of booking have their commissions recalled by TICO when the booking results in a consumer claim against the Compensation Fund.	 Registrants that have fulfilled their obligation to their customers have their commissions recalled when a claim is made against the Fund. Recalling commission is an inequity to industry and a question of fairness in light of carrying the burden of financing the Compensation Fund. Inequity of current provision which only allows registrant to keep commission (and not have it recalled by TICO) when travel services have been partially received. 	 TICO recommends eliminating s. 64 of O.Reg. 26/05 requiring TICO to recall commissions on claims where the consumer has not received any of the travel services purchased. 	 The current wording of O.Reg. 26/05 s. 64 – "if a customer has not received any of the travel services paid for, the registrant shall pay the amount of all commissions and other remuneration that the registrant received for the travel services, except for counselling fees, (a) to the customer or (b) to the administrative authority". The recall of commission only occurs if the customer has not received any of the services, if a customer receives part of the travel service then commission is not recalled. The original rationale for the provision was that a counselling fee and a commission for services that the customer did not receive and the Compensation Fund is not meant to cover business risk. The provision creates an inequity because it treats commission differently – if travel has started no recall is required. The registrant has commenced.



- April 13, 2017
 - (I) Enhancement to education standards are needed not only to ensure knowledge and compliance of the new requirements but to increase professionalism and confidence in the marketplace.

Problem Statement	Implications	Recommendation	Rationale
EDUCATION			
(i) Continuing Education – one time certification is not enough to ensure on-going knowledge of the legislation	 Knowledge of the requirements of the Act and Regulation are forgotten and many travel counsellors do not stay up- to-date on legislative changes. 	 In addition to the certification exam, individual travel agents will be required to complete a defined number of hours of continuing education per year, including a minimum of one hour related to the Act and Regulation and one hour must relate to professionalism and ethics. 	 A wide range of professions including other DAAs were reviewed with respect to continuing education options. The decision to require a defined number of hours per year was based on: (a) Most travel agents already participate in continuing education that could count toward the requirement so would not add a heavy burden in terms of time or cost. (b) Having individuals write and pass exams is stressful and costly – both in time and cost. (c) Requiring one hour of education related to the Act and Regulation and one hour related to professionalism and ethics is not onerous, and will ensure that travel agents are kept up-to-date on industry standards. (d) Requiring a reasonable number of hours over and above the regulatory and professionalism requirement will allow travel agents to focus their learning on areas that are useful for their jobs/clients. This will address the criticism that the core program is not specifically tailored to different business types. Reporting of hours would be through an online portal. While individuals could enter their hours as they complete them, the requirement would be to have all hours logged by the end of the calendar year, December 31st. TICO can remind all registrants of the obligation annually.



Problem Statement	Implications	Recommendation	Rationale
EDUCATION (ii) Not all personnel working with the sale of travel services are certified	 Increases the risk that the law is not being followed. 	 TICO recommends that the grandfathering that allows supervisors/managers to be exempt from writing the certification exam be discontinued. Add a requirement that individuals with signing officer authority for a registrant must be certified. 	 Grandfathering was considered a temporary measure. Personnel handling customer monies should be knowledgeable of the obligations.
 (iii) Lack of professional standards/ethics at the individual travel seller level results in unethical behavior 	 Increased incidents of fraud. 	 TICO's recommendation is to develop a mandatory Code of Conduct and enforce the Code through a Discipline Process. 	 Consistent with best practices of other professions requiring registration / licensing. Consistent with TICO's Vision / Mandate to see this sector demonstrate qualities commensurate with a profession.



(J) Certain governance provisions within the legislation drive unintended consequences, including driving suboptimal decision-making by the Board and TICO management. With today's demand for greater transparency, effectiveness and efficiency, these provisions should be amended accordingly.

Problem Statement GOVERNANCE	Implications	Recommendation	Rationale
(i) Current fiduciary framework results in sub-optimal reporting	 Sub-optimal and arbitrary allocations in financial reporting model may lead to inappropriate decision making. 	 TICO recommends eliminating the need to maintain the Compensation Fund and TICO Asset and move to reserve accounting supported by an independent review of the amount of the restricted reserve required to protect consumers. The change is recommended to improve regulatory and operational efficiency. 	 Consistent with Vision / Mandate for a singular organization with one Board of Directors and Senior Management Team. Current accounting framework drives allocations, which do not reflect underlying activities on a consistent basis. Current segregation of business drives inefficiencies (e.g. accounting costs, administrative processes, sub-optimal funding decisions, etc.).
(ii) Change of control provisions allow for new ownership without regulatory oversight	 Change of control of registrant can occur without notifying Registrar. 	 Add provisions to allow the Regulator to have more power to obtain information and approve changes in control when there are complex corporate structures and the changes may not be occurring at the level of the registered entity but that could impact the registered entity. 	 Current legislation allows for a change of control at a holding company level without TICO approval where a change in ownership results.
(iii) Responsibilities of Registrar and Statutory Director drive inefficiency	• Lack of clarity and potential inefficiencies associated with both roles in today's environment.	• TICO recommends combining the roles of the Registrar and Statutory Director or allow the roles to be performed by the same person to enhance operational efficiency and reduce costs.	 Value of perceived independence may not justify the additional direct and indirect costs of maintaining both roles. Value to consumers is considered low, as the Statutory Director role is largely separate from day-to-day business, and requires support of the Registrar/Management to effectively execute role.



(K) Other challenges within the legislation where enhancements can be made to improve consumer protection while not adding excessively to consumer burden include:

Problem Statement	Implications	Recommendation	Rationale
OTHER			
(i) Lack of flexibility to implement future changes	 Regulator has been unable to efficiently address issues that arise. 	 Wherever possible enabling provisions should be set up in the Act or Regulation that allow as much as possible to be dealt with in policy set by the Regulator. The goal is to ensure that there is flexibility to address emerging issues. 	 Where possible, added flexibility to respond to market changes in a timely manner to ensure consumer protection.
(ii) Registrants change the URL of websites without notifying TICO	 TICO is not able to ensure compliance. Consumers cannot verify that a travel seller is a valid registrant. 	 Add a provision to the Regulation requiring registrants to advise TICO of all touchpoints with consumers, for example, URL addresses selling travel services, social media, etc. The information would be recorded in TICO's database so consumers can search and verify whether they are dealing with a TICO registrant. 	 Websites and URLs change frequently; consumers need to be apprised of legitimate points of contact with a registrant.



Problem	Implications	Recommendation	Rationale
Statement			
OTHER			
(iii) Determination of the expiry date on a temporary suspension order	 Need to clarify the expiry date of a temporary suspension order where the registrant is suspended after a proposal is issued and appealed. 	 TICO recommends amending the Act so the expiry of the order would be 15 days after the written request for a hearing of the suspension is received by the Tribunal. 	 In order to temporarily suspend a registration, the Registrar must have issued a proposal to suspend or revoke a registration under s. 11 of the Act. The immediate suspension section in the legislation assumes that an order for temporary suspension is always issued with a proposal and the expiry of the order is tied to the written request for a hearing (appeal of the proposal). In practice, sometimes the Registrar has already issued a proposal to revoke a registration and then, the financial situation of the registrant further deteriorates or new information comes to light, which results in the Registrar considering it in the public interest to suspend the registration. In those circumstances, a Notice of Further and Other Particulars is issued related to the original proposal with an order to temporarily suspend the registration. Expiry of the order, however, is still tied to the written request for a hearing related to the proposal, which can be problematic. If the registrant has not already appealed the proposal, it is not a problem; however, if the registrant has appealed, it arguably impacts the expiry date of the temporary suspension order. Given the severity of the suspension power, it is important to have clear parameters regarding when a suspension order expires.
(iv) Deemed Service	 Section 36 of the Act permits service in several ways but there is only a deemed service provision for registered mail in s. 36 (2). 	 The deemed service provision should contemplate more than registered mail. Other delivery services, such as couriers, can also track deliveries. 	 Limits TICO's ability to source the most cost effective way to serve documents. There is no valid reason that other delivery services (such as FedEx or Purolator) should not be given the same consideration for deemed service.