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## [CONSULTATION RESPONSE FORM](#)

Please provide your answers and comments on the Consultation Response Form, and return it by **May 28, 2008** to:

Ministry of Public Safety and Solicitor General  
Corporate Policy and Planning Office  
PO Box 9283, Stn Prov Govt  
Victoria, BC V8W 9J7  
Fax: 250 387-2631  
E-mail: [PSSG-CPPO@gov.bc.ca](mailto:PSSG-CPPO@gov.bc.ca)

This consultation paper and questionnaire can also be viewed and printed from the following websites:

- Ministry of Public Safety and Solicitor General – [www.pssg.gov.bc.ca/legislation/](http://www.pssg.gov.bc.ca/legislation/)
- Business Practices and Consumer Protection Authority – [www.bpcpa.ca/](http://www.bpcpa.ca/)

## Introduction

The Ministry of Public Safety and Solicitor General is responsible for consumer protection legislation, including the *Business Practices and Consumer Protection Act*. All travel agents and wholesalers located in British Columbia must be licensed under the Act and comply with the Travel Industry Regulation. The Business Practices and Consumer Protection Authority (BPCPA) is a not-for-profit corporation mandated to deliver consumer protection services in British Columbia, administers the Act.

## Purpose of This Consultation

The Ministry is seeking written comments on modernizing the Travel Industry Regulation to maximize fairness, equity and consumer protection. This second consultation phase seeks the input of parties who may be impacted by the Travel Industry Regulation and any future updating of it.

On January 25, 2008, the Ministry issued a discussion paper as phase one of the consultation. That paper focused on the regulatory requirements for traditional agents and travel wholesalers. This phase two discussion paper focuses on new business models that provide travel services, including:

- inbound tour operators providing travel services supplied by another person,
- destination marketing organizations,
- strata owned hotels and vacation accommodations, and
- vacation accommodation agents.

You have an opportunity to provide feedback on how government can consider and develop proposals to address these new industry sectors. Your comments are important and will help government to consider and develop proposals to update the Travel Industry Regulation.

## Background

Since 1977, the Province has introduced and amended legislation to protect consumers who purchase travel services before their vacations. Under this legislation, travel agents and wholesalers are licensed and contribute to a Travel Assurance Fund, which compensates consumers who do not receive travel services they have purchased.

Over the past three decades, new business models have emerged that provide travel services to consumers but are not traditional travel agencies. The existing Travel Industry Regulation does not address these changes. For example, some inbound tour operators and adventure tour guides now arrange overnight accommodation and transportation services. Municipalities and regional districts are establishing Destination Marketing Organizations that accept accommodation reservations for travellers and sell local tourist packages to visitors. Many hotels and vacation accommodations are now strata-owned and managed by third parties. There are also vacation accommodation agents who provide travel services to visitors.

## Supporting Information

To assist you in completing the questionnaire, definitions and regulatory requirements are explained below.

### Definitions – Business Practices and Consumer Protection Act

To assist you in completing the questionnaire, the definitions of “travel agent,” “travel wholesalers,” and “travel services” are found under section 142 of the *Business Practices and Consumer Protection Act* and read as follows:

**“travel agent”** means a person who, in the course of business, sells or otherwise provides to the public travel services supplied by another person.

**“travel service”** means transportation, accommodation or other service for the use or benefit of a traveller, tourist or sightseer.

**“travel wholesaler”** means a person who, in the course of business,

- (a) supplies the person's own travel transportation to the public on an irregular basis at nonfixed times,
- (b) purchases or acquires from another person rights to travel services for the purpose of resale, or
- (c) deals with travel agents or other travel wholesalers for the sale of travel services supplied by another person.

### Additional Definitions

In this discussion paper:

“Act” means the *Business Practices and Consumer Protection Act* .

“BPCPA” means the Business Practices and Consumer Protection Authority.

“BPCPA director” means the director appointed under the Act.

“Licensee” means a travel agent or travel wholesaler licensed under the Act.

“Ministry” means the Ministry of Public Safety and Solicitor General.

“Regulation” means the “Travel Industry Regulation” under the Act.

### Regulatory Requirements

Under the Regulation, licensees are required to fulfill several requirements to protect consumers when purchasing travel services. These regulatory requirements include:

- Maintaining levels of net worth (\$15,000 if the licensee is a corporation or approval from the BPCPA director that net worth is sufficient if the licensee is not a corporation.)
- Demonstrating experience and knowledge of travel services.

- Maintaining a business location that is not a residence unless approval is received from the BPCPA director.
- Submitting annual financial statements to the Authority.
- Establishing and maintaining trust accounts.
- Providing security to the Authority (\$15,000 for “travel agents” and between \$15,000 and \$150,000 for “travel wholesalers” based on the volume of total sales during a calendar year.)
- Contributing to the Travel Assurance Fund. Money from the Travel Assurance Fund is used to compensate consumers in the event that they do not receive the travel service they have purchased. Under some circumstances licensed travel agents and wholesalers are eligible for compensation. In 2006, the BPCPA approved over 200 claims against the fund worth approximately \$300,000.

## Discussion Paper

The following provides some background information for this consultation. Questions are listed on the Consultation Response Form. Please use that form to provide your answers and comments.

### 1. INBOUND TOUR OPERATORS

Inbound tour operators are businesses in British Columbia that provide tours within the province. These can include scenic and sightseeing bus tours, adventure tours, and may be combined with other destinations in North America.

Currently inbound tour operators are not required to be licensed as a “travel agent” if:

- They provide a sightseeing tour that does not last for more than one day and they do not provide any other travel service.
- They provide a tour guide service or sightseeing attraction with no other travel services.

Over the years, inbound tour operators have expanded their services to provide consumers with enhanced experiences. These expanded travel services may include chartered bus trips, overnight accommodation and packages like ski-lift tickets or green fees for golfing. By using or arranging travel services provided by another person, the inbound tour operator falls under the definition of “travel agent” and/or “travel wholesaler.”

Some inbound tour operators may support a licensing scheme to protect consumers from poorly managed or shady inbound tour operators. However, these supporters may find the current licensing requirements under the Regulation as barriers to becoming licensed, especially if they are small owner/operator businesses.

#### 1.1 CLARITY ON THE SCOPE OF LICENSING – INBOUND TOUR OPERATORS

When an inbound tour operator provides travel services supplied by another person, the consumer is potentially at risk of not receiving the travel services purchased. For example, the consumer may not receive the overnight accommodation as advertised or the return trip to their place of departure may not be available.

The current definitions under the Regulation are unclear about when an inbound tour operator is required to be licensed. This observation is supported by the BPCPA continuing to identify unlicensed inbound tour operators who are providing travel services by another person. It is proposed that confusion over licensing may be reduced if a new licensing category for inbound tour operators was developed.

See Question 1.1 on Consultation Response Form.

## **1.2 LOCATION OF BUSINESS ACTIVITIES – INBOUND TOUR OPERATORS**

The Regulation prohibits licensees from selling travel services from a location that is not a permanent place of business or a private dwelling unless they receive authorization from the BPCPA director. In addition, the business is required to be open to the public during normal business hours.

Inbound tour operators operating from their homes are sometimes small businesses which are unable to meet the financial costs associated with maintaining a commercial location. Also, some inbound tour operators may not require a commercial location because of the nature of their business.

The Ministry is considering a proposal that will allow inbound tour operators to operate from their homes without requiring approval from the BPCPA director.

There are questions on this section in the Consultation Response Form. Please use that form to provide your answers and comments.

See Question 1.2 on Consultation Response Form.

## **1.3 ASSESSMENT OF FINANCES – INBOUND TOUR OPERATORS**

Under the Regulation licence applicants who are corporations are required to maintain a net worth of at least \$15,000 and working capital that in the BPCPA director's opinion is reasonably expected to be sufficient to operate a travel service business.

If the licence applicant is not a corporation, the applicant must have sufficient net worth and working capital that in the BPCPA director's opinion is reasonably expected to be sufficient to operate a travel service business.

Following the applicant's initial application for a licence, the BPCPA director is required to assess a licensee's net worth and working capital on an annual basis to ensure they continue to meet the appropriate financial thresholds.

An operator's ability to maintain a specific amount of net worth and working capital was seen as a predictor of a business' future sustainability. However, the BPCPA invests considerable staff resources to conduct these assessments. The question arises: is it appropriate for the BPCPA director to determine the financial viability of a business?

Despite these ongoing assessments, businesses continue to become insolvent. Often, the remaining assets are insufficient to reimburse consumers for their loss. Instead, eligible consumers are usually reimbursed by the Travel Assurance Fund, which may subsequently recoup its loss from the licensee's security.

See Question 1.3 on Consultation Response Form.

#### **1.4 SECURITIES – INBOUND TOUR OPERATORS**

Security deposited with the BPCPA director has been demonstrated as an effective method of consumer protection. Under the Regulation, travel agents are required to provide the BPCPA director with security in the amount of \$15,000 for a head office and \$5,000 for each branch office.

Travel wholesalers are required to provide \$15,000 to \$150,000 security based on their sales volume during the previous calendar year.

The BPCPA uses the security to repay the Travel Assurance Fund if the travel agent or wholesaler fails to reimburse the fund for claims paid to consumers.

Although security has proven an effective method for reimbursing consumers, the fixed amount of \$15,000 required by travel agents does not correlate to the potential risk a travel agent presents to consumers.

The requirement to maintain \$15,000 in security may also be viewed as an unfair financial barrier to smaller operators entering or remaining in the industry.

See Question 1.4 on Consultation Response Form.

#### **1.5 TRUST ACCOUNTS – INBOUND TOUR OPERATORS**

Under the Regulation, licensees must deposit all money that is received from selling travel services into a “travel trust account” and maintain account records for each consumer. The objective of the trust account is to protect the consumer’s money until the licensee has paid all expenditures on behalf of the consumer or the consumer has received the travel services.

The protection trust accounts offer consumers in today’s travel service industry is being evaluated. Many consumers now purchase their travel services by credit card. In some cases, the inbound tour operator simply forwards the consumer’s credit card number to the end supplier and bypasses the need to deposit money into a trust account. We are also evaluating the administration burden for licensees in maintaining trust accounts.

See Question 1.5 on Consultation Response Form.

#### **1.6 TRAVEL ASSURANCE FUND – INBOUND TOUR OPERATORS**

It is proposed that the Travel Assurance Fund is one of the best methods to protect consumers and this is particularly true when a licensee or travel service provider goes bankrupt.

Money from the Travel Assurance Fund is used to compensate consumers in the event that they do not receive the travel services they have purchased. Licensed travel agents who reimburse or make alternate arrangements for consumers who do

not receive the travel services they purchased may also make a claim against the fund.

Licensed travel wholesalers are also eligible for compensation. They may receive compensation for reimbursing a consumer when the supplier fails to provide the travel services or when a travel agent has failed to forward the consumer's money to the wholesaler.

In 2006, the BPCPA director approved over 200 claims against the Travel Assurance Fund worth approximately \$300,000.

Upon initial application for a licence, an applicant must contribute \$500 to the fund. Thereafter, the licensee makes semi-annual contributions equal to 0.05% of their gross sales. After three years of contributions, a licensee is no longer required to make contributions, provided the book value of the fund is at least \$1,000,000. Currently, the Travel Assurance Fund has a balance of \$4.8 million, so all licensees who have been in business for more than three years no longer contribute to the fund.

Advantages of the Travel Assurance Fund include its low administration costs for both the BPCPA and licensees, its equitable formula that bases contributions on the licensee's volume of gross sales, and the availability of cash if a licensee or travel service provider goes bankrupt.

See Question 1.6 on Consultation Response Form.

## **2. DESTINATION MARKETING ORGANIZATIONS**

Destination Marketing Organizations (DMOs) are non-profit organizations established by local governments to market their communities as tourist destinations. There are a variety of ways these organizations receive funding, including membership fees, fees to participate in a campaign, and taxes.

### **2.1 CLARITY ON THE SCOPE OF LICENSING – DESTINATION MARKETING ORGANIZATIONS**

Some DMOs operate centralized booking registries for accommodation provided by local businesses and other travel services, like ski-lift tickets or bus tours. Visitors may book travel services on a DMO's website or at the DMO's office. As these DMOs are arranging travel services provided by another person, they are acting as a "travel agent" under the Act.

See Question 2.1 on Consultation Response Form.

### **2.2 LOCATION OF BUSINESS ACTIVITIES – DESTINATION MARKETING ORGANIZATIONS**

The Regulation prohibits travel agents from selling travel services from a location that is not a permanent place of business or a private dwelling unless they receive

authorization from the BPCPA director. Other requirements include that the business be open to the public during normal business hours.

The BPCPA is unaware of any DMOs operating from a private dwelling. However, DMOs in smaller communities may operate seasonally from a trailer and technically, are failing to operate from a “permanent place of business.”

See Question 2.2 on Consultation Response Form.

### **2.3 ASSESSMENT OF FINANCES – DESTINATION MARKETING ORGANIZATIONS**

The Regulation specifies what levels of net worth and working capital a licence applicant is required to maintain. There is also the requirement for the BPCPA to annually assess a licensee’s financial situation. For details of these requirements, please see 1.3 Assessment of Finances – Inbound Tour Operators.

See Question 2.3 on Consultation Response Form.

### **2.4 SECURITIES – DESTINATION MARKETING ORGANIZATIONS**

Security deposited with the BPCPA director has been demonstrated as an effective method of consumer protection. Under the Regulation, travel agents must provide the BPCPA director with security in the amount of \$15,000 for a head office and \$5,000 for each branch office.

The BPCPA uses the security to repay the Travel Assurance Fund in the event that the travel agent fails to reimburse the fund for claims paid to consumers.

Although it has been demonstrated that security is an effective way to reimburse consumers, the fixed amount of \$15,000 required for travel agents may not reflect the potential risk.

See Question 2.4 on Consultation Response Form.

### **2.5 TRUST ACCOUNTS – DESTINATION MARKETING ORGANIZATIONS**

Under the Regulation, licensees must deposit all money received from selling travel services into a “travel trust account” and maintain account records for each consumer. For more information about the purpose of trust accounts, please refer to 1.5 Trust Accounts – Inbound Tour Operators.

We are evaluating the requirement for DMOs to maintain trust accounts. Many visitors to a community will purchase travel services by credit card and the DMO simply forwards the credit card number to the end supplier. This type of transaction bypasses the need for the DMO to deposit money into a trust account.

See Question 2.5 on Consultation Response Form.

## **2.6 TRAVEL ASSURANCE FUND – DESTINATION MARKETING ORGANIZATIONS**

It is proposed that the Travel Assurance Fund is one of the best methods to protect consumers and this is particularly true when a licensee or travel service provider goes bankrupt.

Money from the Travel Assurance Fund is used to compensate consumers in the event that they do not receive the travel services they have purchased. If the licensed travel agent reimburses or makes alternate arrangements for consumers who do not receive their travel services, the licensed travel agent is eligible to make a claim against the fund. In 2006, the BPCPA director approved over 200 claims against the Travel Assurance Fund worth approximately \$300,000.

Upon initial application for a licence, an applicant must contribute \$500 to the fund. Thereafter, the licensee makes semi-annual contributions equal to 0.05% of their gross sales. After three years of contributions, a licensee is no longer required to make contributions, provided the book value of the fund is at least \$1,000,000. Currently, the Travel Assurance Fund has a balance of \$4.8 million, so licensees who have been in business for more than three years no longer contribute to the fund.

Advantages of the Travel Assurance Fund include its low administration costs for both the Authority and licensees, its equitable formula that bases contributions on the licensee's volume of gross sales, and the availability of cash if a licensee or travel service provider goes bankrupt.

See Question 2.6 on Consultation Response Form.

### **3. STRATA-OWNED HOTELS AND VACATION ACCOMMODATIONS - Operated and Serviced by a Third Party**

Traditionally, hotels and vacation accommodations were owned and operated by the same person. As these operators directly owned the units being provided to visitors, they were not required to be licensed under the Act.

Over the years, strata-owned vacation accommodations have become very popular. These include hotels, condominiums, and individual houses or cabins on strata property. The strata-owned accommodations are professionally managed with the owner having no involvement in making arrangements for visitors. The managers have a high degree of control over the supply of units and services to the visitor.

Most hotels and vacation accommodations built today are strata owned due to financing advantages. Usually, a visitor will be unable to observe a distinction between a conventional and strata-owned hotel or vacation accommodation. Staff greet the visitors, arrange for the check-in/out, and are available to help the visitor plan holiday activities and resolve accommodation problems.

See Questions 3.1 and 3.2 on Consultation Response Form.

### **4. VACATION ACCOMMODATION AGENTS**

Owners of homes, cabins, condominiums and other vacation types of accommodation may individually hire an agent to promote and make reservations for their units. These vacation accommodation agents usually operate a website listing multiple accommodations; accept visitors' reservations, damage deposits and payments online; and arrange for visitors to gain access to the property. As these vacation agents are providing travel services (accommodation) supplied by another person, they are acting as "travel agents."

The question is, what level of risk do vacation accommodation agents present to visitors?

Vacation accommodation agents have minimal if any, control over the supply or quality of units, and may provide no services to the visitor other than the arrangement to pick up a key. The visitor may never meet the agent or owner and may have difficulties contacting the agent or owner if they do not receive the accommodation or services they expect.

See Questions 4.1 and 4.2 on Consultation Response Form.