



Explanatory Paper

Ontario Regulation 675/20 made under the Travel Industry Act, 2002

What the New Rules Mean to You

This document will explain in detail the changes to Ontario Regulation 26/05 (Regulation), which came into force on December 1, 2020.

Any questions with respect to the information contained in this document should be directed to the Travel Industry Council of Ontario (TICO). We can be reached by email at tico@tico.ca or via telephone at (905) 624-6241 or toll-free at 1-888-451-8426.

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EXECUTIVE SUMMARY

In response to the COVID-19 pandemic, Ontario Regulation 26/05 (Regulation) under the *Travel Industry Act, 2002* (Act) was amended to further reduce burden on travel agents and wholesalers (registrants). This Explanatory Paper also outlines an additional consumer benefit associated with regulatory amendments implemented on March 30, 2020.

The changes can be summarized in five main areas, as follows:

1. New Exemptions from the Act and Regulation

- Exemptions have been added for real estate brokerages, brokers, and salespersons from having to register under the Act if they are trading in short-term accommodation rental properties through the brokerage and are registered under the *Real Estate and Business Brokers Act, 2002*.

2. Temporary Reductions to Financial Reporting Requirements

- A two-year exemption from the requirement to file an annual financial statement accompanied by a review engagement report or audit opinion has been provided for medium and large registrants, subject to a limited exception.
- This exemption covers registrants with fiscal year-end dates between December 1, 2020 to November 30, 2022. As a result, registrants benefit twice.
- Registrants who are exempt will be required to file a verification statement instead of the annual financial statement accompanied by a review engagement report or audit opinion.
- If, during the period, a registrant is otherwise required to prepare an annual financial statement with a review engagement report or audit opinion for any purpose, the registrant shall provide this report to TICO.

3. Changes to Obligations under Section 46 of the Regulation

- The time-limited exemption under section 46 implemented on March 30, 2020 is extended for an additional year. This would allow registrants who acquire the rights to travel services for resale to continue to provide a voucher or similar document for future redemption towards travel services until March 31, 2022. The voucher or similar document provided would be in lieu of a refund or comparable alternate travel services acceptable to the customer if a supplier (e.g., airline or cruise line) fails to provide the travel services on or after March 30, 2020 and that failure is related to COVID-19.

- The voucher, certificate, coupon, or similar document must meet the following two conditions:
 - It must be of at least equal value to the travel services not provided.
 - It must be redeemable for a period of at least one year after the day it was issued, but not limited to acquiring travel services that take place during that period.

4. Expanding Compensation Fund Coverage

- The temporary provision implemented on March 30, 2020 expanding coverage under the Travel Industry Compensation Fund for unredeemed vouchers is extended for an additional two years. Customers with unredeemed vouchers or similar documents issued by a registrant that cannot be redeemed due to the failure of a registrant associated with COVID-19 may be eligible for a claim for reimbursement until March 31, 2024.

5. Commission Recalls

- The requirement for a registrant to repay commissions and other remuneration received to the Travel Industry Council of Ontario (TICO), for the purposes of depositing into the Travel Industry Compensation Fund, where a customer has not received the travel services paid for is eliminated. The customer would still receive a full reimbursement for these amounts.

EXEMPTIONS

Section 2 of the Regulation identifies persons that are exempt from the requirements of the Act and Regulation. These persons do not require registration and are not covered by the Compensation Fund.

What new exemptions have been added?

- Two new exemptions have been added to the Regulation. The following persons do not require registration and are exempt from the requirements of the Act and Regulation:
 - A brokerage registered under the *Real Estate and Business Brokers Act, 2002* that trades in short-term accommodation rental properties.
 - A broker or salesperson registered under the *Real Estate and Business Brokers Act, 2002* who trades in short-term accommodation rental

properties on behalf of the brokerage that employs the broker or salesperson.

- The exemptions only apply to trades in short-term accommodation rental properties that are made through the registered brokerage.
 - If a registered broker or salesperson trades in short-term accommodation rentals as a side business that is not accounted for and/or otherwise captured by the registered brokerage, he/she would not qualify for the exemption and would need to register under the *Travel Industry Act, 2002*.
- The exemptions only apply if the persons do not otherwise act as travel agents or wholesalers.
 - If a registered broker or salesperson who trades in short-term accommodation rental properties also sells transportation to the consumer to get to the rental property and/or tickets to local attractions near the property, he/she would not qualify for the exemption and would need to register under the *Travel Industry Act, 2002*.

In the exemption section, what do the terms “broker”, “brokerage”, “salesperson” and “trade” mean?

- “Broker”, “brokerage”, “salesperson” and “trade” have the same meaning as in subsection 1(1) of the *Real Estate and Business Brokers Act, 2002*.

Why are these groups being exempted?

- The goal is to avoid regulatory duplication.
- These brokerages, brokers, and salespersons are already registered under the *Real Estate and Business Brokers Act, 2002*. The trading in short-term accommodation rentals is being conducted through the registered brokerage and there is consumer protection in place. Therefore, it is not necessary to also register under the *Travel Industry Act, 2002* and place additional burden on the business/individual.
- Consumers who have issues with a trade made through a brokerage can contact the Real Estate Council of Ontario at <https://www.reco.on.ca>.

Are there any additional resources available regarding the new exemptions?

- The following additional resources are available:
 - Guidelines for Short-term Accommodation Rental Properties
<https://tico.ca/files/GuidelinesShortTermAccommodation-FinalDec012020.pdf>
 - Exemption Guidelines
<https://tico.ca/files/ExemptionGuidelines-December012020-FINAL.pdf>

FINANCIAL DOCUMENTS

Section 22 of the Regulation sets out the financial reporting requirements.

What additional changes have been made to the financial reporting requirements?

- A time-limited exemption from the annual requirement to file financial statements under a review engagement report or audit opinion has been added for registrants with \$2 million or more in sales in Ontario during the previous fiscal year unless the registrant is required to provide financial statements under a review engagement or audit opinion for another purpose.
- A registrant who is not required to file an annual financial statement shall instead file a verification statement.
- The exemption would apply for year ends from December 1, 2020 until November 30, 2022. The goal is to allow registrants to benefit from the exemption for two years.
- The exemption would not apply if the registrant is otherwise required to prepare for any purpose an annual financial statement for a fiscal year that ends during that period and the annual financial statement is accompanied by either a review engagement report or an audit opinion prepared by a public accountant licensed under the *Public Accounting Act, 2004*. In that case, the financial statements and review engagement report or audit opinion shall be provided to TICO and a verification statement would not be acceptable.
- Internally prepared semi-annual or quarterly statements would continue to be required for travel agents and travel wholesalers in accordance with Section 22 of the Regulation.

When do I have to file the verification statement or annual financial statements?

- A verification statement or annual financial statements must be filed within three months after the end of the registrant's fiscal years.

What is a verification statement?

- TICO has created a form that registrants must complete if they are not filing annual financial statements. The form is called a verification statement.
- The following information must be set out on the verification statement:
 - the registrant's total assets and liabilities at the end of its fiscal year
 - the registrant's total revenue during its fiscal year
 - the registrant's total expenses during its fiscal year
 - any other information required by the Registrar
- The form must be attested to by,
 - the registrant, if the registrant is an individual
 - a director or officer of the registrant, if the registrant is a corporation
 - a partner of the registrant, if the registrant is a partnership
- The person attesting to and signing the form is declaring or certifying in his/her official capacity that the information is correct.
- The Verification Statement form is available on TICO's website at: <https://www.tico.ca/files/VerificationStatementfillableFINAL.pdf>

What must be included in financial statements?

- Annual financial statements (if required), semi-annual financial statements, and quarterly financial statements shall include the following:
 - a statement of sales in Ontario made during the period to which the financial statements refer
 - a balance sheet
 - an income statement
 - a cash flow statement
 - a reconciliation of the trust accounts maintained
- Annual financial statements (if required) must be accompanied by either a review engagement report or an audit opinion, as the registrant prefers.

- The review engagement report or audit opinion accompanying the annual financial statements must be prepared by a public accountant licensed under the *Public Accounting Act, 2004*.
- Semi-annual financial statements and quarterly financial statements are not required to be accompanied by a review engagement report or audit opinion.

What if I have already started preparing my financial documents and the requirements have now changed?

- The registrant always has the option to provide a higher form of financial report than is required. A registrant who needs to file a Verification Statement can file annual financial statements so long as they meet the financial statement requirements. A registrant who is required to file financial statements has the option to file a Review Engagement Report or an Audit Report.
- Depending on how far along you are in completing your financial documents, you may want to speak with your Licensed Public Accountant (LPA) to see if the work, and your costs, can be reduced.
- While we appreciate the frustration that can be experienced when changes occur and you are caught in a transitional period, TICO will not accept requests for refunds of fees that have been expended.
- This allows for an equitable approach in that each registrant who qualifies for the two-year exemption would benefit twice.

I had sales greater than \$2 million and my year-end is prior to December 1, 2020, can I file a verification statement instead of financial statements?

- No, you are still required to file your financial statements with a review engagement report or audit opinion.
- The exemption only applies for year ends from December 1, 2020 until November 30, 2022.
- So long as you are not required to prepare financial statements accompanied by a review engagement or audit opinion for some other purpose, you will receive the benefit twice during the exemption period.
- This allows for an equitable approach in that each registrant who qualifies for the two-year exemption would benefit twice.

DUTY OF REGISTRANT WHO RESELLS TRAVEL SERVICES

Section 46 of the Regulation sets out requirements for registrants who resell travel services where the supplier fails to provide the travel services paid for by a customer.

What change is being made on December 1, 2020?

- The temporary provision implemented on March 30, 2020 is extended by one year until March 31, 2022.
- This allows registrants who acquire the rights to travel services for resale to continue to choose to provide a voucher or similar document for future redemption towards travel services. The voucher or similar document provided would be in lieu of a refund or comparable alternate travel services acceptable to the customer if a supplier (e.g., airline or cruise line) fails to provide the travel services on or after March 30, 2020 and that failure is related to COVID-19.
- A detailed review of the provision and the relevant exemption, including minimum requirements for the voucher or similar document provided in lieu of a refund, are provided below.

Who does the section apply to?

- The section applies if a registrant acquires rights to travel services for resale to other registrants or to consumers.
- A registrant is considered to have acquired rights to travel services for resale where,
 - it entered a risk contract for travel services that it will resell, or
 - in circumstances where it has packaged travel services and marketed and sold those services for an all-inclusive price.
- Where a registrant has only sold another registrant's package and has not acquired any rights to the travel services for resale, this provision would not apply.

Normally, what is my obligation if the supplier fails to provide the travel services paid for by the customer?

- The registrant who acquired the rights for resale must:
 - reimburse the customer,
 - provide comparable alternate travel services that are acceptable to the customer, or

- provide the customer with a voucher, certificate, coupon, or similar document that is acceptable to the customer, for future redemption towards travel services.

What if the supplier's failure to provide the travel services is related to the COVID-19 outbreak?

- The Regulation was amended on March 30, 2020 to create a time limited exemption to the obligations under Section 46 where the supplier's failure to provide the travel services is related to the coronavirus (COVID-19) outbreak.
- Where the supplier's failure to provide the travel services is related to COVID-19, the registrant who acquired the rights to travel services for resale may elect to provide the customer with a voucher, certificate, coupon, or similar document, for future redemption towards travel services.
- This exemption is time limited and applies with respect to a supplier's failure to provide travel services that occurs from March 30, 2020 until March 31, 2022.
- During that time, the voucher, certificate, coupon, or similar document does not have to be acceptable to the customer; however, it must meet the following two conditions:
 - It must be of at least equal value to the travel services not provided.
 - It must be redeemable for a period of at least one year after the day it was issued, but not limited to acquiring travel services that take place during that period. In other words, it must be redeemable for at least one year but the travel does not have to occur within one year.

I received a voucher from my travel agent as a result of COVID-19 instead of a refund. Does the extension of the temporary provision allowing registrants to elect to provide vouchers also extend the expiry date of my voucher?

- No, the change to the Regulation does not extend the expiry date on existing vouchers. If the expiry date of the voucher that you received is approaching, you may wish to contact your travel agent to discuss your options. Some registrants have extended or removed expiry dates from vouchers.

COMPENSATION FUND CLAIMS

Sections 56 - 71 of the Regulation deal with claims against the Compensation Fund.

What changes are being made on December 1, 2020?

- The temporary provision implemented on March 30, 2020 related to claims for unredeemed vouchers related to COVID-19 is extended by two years, until March 31, 2024. Customers will be eligible to be reimbursed under the Travel Industry Compensation Fund for unredeemed vouchers or similar documents that were issued by a registrant but cannot be redeemed because of the registrant's failure (e.g., bankruptcy or insolvency) associated with COVID-19. More information can be found under Unredeemed Vouchers or Similar Documents below.
- The requirement for a registrant to repay commissions and other remuneration received to the Travel Industry Council of Ontario (TICO), for the purposes of depositing into the Travel Industry Compensation Fund, where a customer has not received any of the travel services paid for, has been eliminated. The customer would still receive a full reimbursement for these amounts. More information can be found in the section on Commissions and Other Remuneration Repayable by Registrant below.

Unredeemed Vouchers or Similar Documents

- For a temporary period, until March 31, 2024, the holder of a voucher, certificate, coupon, or similar document issued by a registrant that has not been redeemed, may have an eligible claim against the Fund.
- The unredeemed voucher, certificate, coupon, or similar document will be treated as if it has been redeemed, if,
 - it is impossible to redeem the voucher, certificate, coupon, or similar document because a registered travel agent or registered travel wholesaler became bankrupt or insolvent or ceased to carry on business, and
 - the bankruptcy, insolvency or ceasing to carry on business is related to coronavirus (COVID-19).
- Please note that, for this provision to apply, the unredeemed voucher or similar document must have been issued by a registrant, not an airline, cruise line or other end supplier.
- Further, for this provision to apply, the inability to redeem the voucher or similar document must be related to the failure of a registrant as a result of COVID-19.

Commissions and Other Remuneration Repayable by Registrant

Section 64 of the Regulation requires that if the 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, to the customer.

- Registrants are not required to reimburse their counselling fees. Even if a customer does not receive their travel services, the customer does receive some benefit from the counselling services that were provided.
- The requirement for the registrant to reimburse the customer for commissions or other remuneration that the registrant received does not apply if a claim has been paid, in respect of the commission or other remuneration, to the customer from the Compensation Fund. This ensures that the customer is not reimbursed for these amounts by both the Compensation Fund and the registrant.
- Where the registrant has already reimbursed the customer for commissions and other remuneration because the customer has not received any of the travel services paid for, the customer would not be entitled to receive those amounts from the Compensation Fund. This ensures that the customer is not reimbursed for these amounts by both the Compensation Fund and the registrant.
- Where a customer did not receive the travel services paid for and the travel agent has reimbursed the customer or provided alternate travel services to the customer, the travel agent will now be eligible to be reimbursed from the Compensation Fund for the commission owing on account of the travel services purchased by the customer.
- Subsections 58(5) and 58.1(4) of the Regulation dealing with travel agent claims have been amended. A travel agent is now entitled to be reimbursed for any commission owing on account of the travel services purchased by the customer, but is not entitled to be reimbursed for counselling fees or other remuneration, including a service charge.
- To be eligible for reimbursement, the provisions for an eligible claim must be met. More information on the eligibility requirements can be found under the Reimbursement of Travel Agent and Reimbursement of Travel Agent for Trip Completion sections below.

Reimbursement of Travel Agent

Section 58 of the Regulation contains the provisions for a travel agent to make a claim on the Compensation Fund:

- A travel agent can claim on the Fund if they have refunded a customer or provided alternate travel services for a customer because the original travel services purchased by the customer were not provided as a result of a registrant, airline, or cruise line failure. This does not apply if the travel agent acquired the right to the travel services for resale.
- Where the travel agent has acquired the rights for resale, the travel agent would not have a claim on the Compensation Fund.
- The customer must have booked their travel services through a registered Ontario travel agency and made payment to or through the travel agency.
- The travel agent must have dealt with a travel wholesaler, airline, or cruise line in good faith and at arm's length.
- The travel agent must have passed all or part of the customer's money to the travel wholesaler, airline, or cruise line. If the travel agent is still holding any of the customer's money, the travel agency will be responsible for refunding that money.
- The travel agent is only entitled to be reimbursed if the customer would otherwise have a claim against the Compensation Fund.
- The travel agent is entitled to be reimbursed for any commission owing on account of the travel services purchased by the customer, but is not entitled to be reimbursed for counselling fees or other remuneration, including a service charge.

Reimbursement of Travel Agent for Trip Completion

Section 58.1 of the Regulation contains the provisions for a travel agent to make a trip completion claim on the Compensation Fund:

- A travel agent is entitled to be reimbursed for money paid by the travel agent to reimburse a customer for the trip completion expenses described in subsection 57.1(2) of the Regulation where the customer has begun a trip that cannot be completed because travel services have not been provided as a result of the failure of a registrant. This includes:
 - the cost of airfare, car hires or other transportation to bring the customer or other person to the final destination, or home, if required conditions are met
 - the cost of necessary accommodation and meals before the trip can be completed

- costs related to obtaining access to money or making financing arrangements to enable the customer to pay the above costs
- The travel agent is only entitled to claim to a maximum of the amount for which the customer would have been entitled to be reimbursed.
- The customer must have booked their travel services through a registered Ontario travel agency and made payment to or through the registered agency.
- The travel agent must have dealt with a travel wholesaler in good faith and at arm's length.
- The travel agent must have passed all or part of the customer's money to the travel wholesaler. If the travel agent is still holding any of the customer's money, the travel agent would be responsible for reimbursing that money.
- The travel agent would not be entitled to reimbursement if the travel agent had acquired the right to the travel services for resale.
- The travel agent is entitled to be reimbursed only if the customer would otherwise have a claim against the Fund.
- The travel agent is entitled to be reimbursed for any commission owing on account of the travel services purchased by the customer, but is not entitled to be reimbursed for counselling fees or other remuneration, including a service charge.

Does this change have any impact on the ability of other entities (e.g., end suppliers) to recall commissions?

- No, this change does not impact the contractual arrangements between registrants and end suppliers on how commissions are realized or how they may be recalled. Registrants are responsible to ensure they understand the terms and conditions of contracts with third parties, including end suppliers (e.g., airlines).