



GUIDELINES ON TOUR OPERATORS AND TRAVEL AGENTS LICENCES

**TRANSPORT (TOUR OPERATORS AND TRAVEL AGENTS) ACT, 1982 AS
AMENDED BY THE PACKAGE HOLIDAY AND TRAVEL TRADE ACT, 1995**

**These Guidelines are intended to be of practical assistance to licence
applicants and members of the industry and do not purport to be a
legal interpretation of the relevant legislation.**

**Any further information required in connection with the Act or
related Regulations may be obtained from:**

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1. INTRODUCTION

Under the Transport (Tour Operators and Travel Agents) Act, 1982, (the "Act), Tour Operators and Travel Agents are required to be licensed and bonded in respect of the sale and offering for sale, of travel originating within the State to destinations outside the State.

The legislation comprises the Transport (Tour Operators and Travel Agents) Act, 1982, as amended by the Package Holidays and Travel Trade Act, 1995, and Regulations made in accordance with those Acts. (For a list of current relevant legislation see Appendix 1).

The Act and related Regulations provide for measures to regulate the Irish travel industry and to protect the interests of its customers. It does this primarily by requiring Travel Agents and Tour Operators selling, or offering for sale, travel out of Ireland to have a licence and also a bond in place from which travellers may be refunded or reimbursed in the event of a Travel Agent or Tour Operator going out of business or becoming insolvent. The bond is an amount of money that will become available to the Commission for Aviation Regulation to cover disbursements to customers of a Travel Agent or Tour Operator who has not been able to fulfil their financial or contractual obligations in respect of that customer. It takes the form of either a cash sum or a bank or insurance company guarantee.

The Act is only concerned with travel to destinations outside the State. In relation to domestic travel, the Package Holidays and Travel Trade Act, 1995 requires package organisers to have a bond in place to protect consumers against going out of business or insolvency. The administration of the 1995 Act is primarily a matter for the Director of Consumer Affairs who may be contacted by telephone at (01) 4025555.

These Guidelines are designed to assist applicants and professional Accountants or Auditors in advising applicants when:

- preparing comprehensive audited financial statements, which would enable the Commission to obtain the information necessary to discharge its regulatory responsibilities;
- applying for a Tour Operator's or a Travel Agent's licence for the first time or for a licence renewal.

The legislation provides that the Commission shall refuse a licence if it is not satisfied, amongst other things, that –

- (a) the financial, business and organisational resources of such person and any financial arrangements made or to be made by him are adequate for discharging his actual and potential obligations in respect of the activities (if any) in which he is engaged or in which he proposes to engage if the licence is granted, or
- (b) having regard to the past activities of such persons or any person employed by him, or if such person is a body corporate, having regard to the past activities of any director, secretary, shareholder, officer or servant of the body corporate such person is a fit and proper person to carry on business as a tour operator or travel agent, as the case may be.

For example, persons who are currently disqualified from acting as a director of a company in Ireland will not be considered for a licence. Similarly, persons who are un-discharged bankrupts will not be considered for a licence. In addition, applicants who cannot show sufficient capital investment in their undertaking will not be considered for a licence. As a guideline, the Commission will look for Travel Agents to have a minimum capital investment of the greater of either €25,000 or 5% of their annual licensable turnover in their business. In a similar vein, the Commission will look for Tour Operators

to have a minimum capital investment of the greater of either €38,000 or more than 5% of their annual licensable turnover in their business.

Prior to the granting of a licence, a Tour Operator is required to furnish a bond equivalent to 10% of his projected annual licensable turnover and a Travel Agent is required to furnish a bond equivalent to 4% of projected annual licensable turnover.

The Commission's primary objectives when assessing a licence application from a financial viewpoint are:

- to satisfy itself as to the ability of the applicant to meet his present and future financial obligations during the period of the licence;
- to ensure that the applicant is adequately bonded.

Applicants proposing to engage in both Travel Agency and Tour Operator business require two separate licences and bonds.

Applicants should note that advertising or providing Travel Agent or Tour Operator services in the absence of a licence is illegal. The fact that an application has been made to the Commission for the appropriate licence is no bar to prosecution.

Travel Agents and Tour Operators from other countries require the appropriate Irish licence if they wish to sell or offer for sale travel from Ireland to destinations outside the State. This requirement is separate and additional to any requirement they have in their home country to hold an equivalent licence.

2. DEFINITIONS OF TOUR OPERATOR AND TRAVEL AGENT

The 1982 Act defines a tour operator as:

"a person other than a carrier who arranges for the purpose of selling or offering for sale to any person accommodation for travel by air, sea or land transport commencing in the State to destinations outside the State or Northern Ireland or who holds himself out by advertising or otherwise as one who may make available such accommodation, either solely or in association with other accommodation, facilities or other services."

The Act defines a travel agent as:

"a person other than a carrier who as agent sells or offers to sell to, or purchases or offers to purchase on behalf of, any person, accommodation on air, sea or land transport commencing in the State to destinations outside the State or Northern Ireland or who holds himself out by advertising or otherwise as one who may make available such accommodation, either solely or in association with other accommodation, facilities or services."

One should note that it is only arranging, selling or buying of travel commencing within the State to destinations outside the State that requires a licence.

3. TOUR OPERATORS LICENCE

A tour operator's licence is required by any person who arranges for the purposes of selling or offering for sale to the public **overseas travel by land, sea or air commencing within the State** to destinations outside the State or Northern Ireland involving, for example: -

- (a) travel or charter services with accommodation and other arrangements etc. (e.g. inclusive tour charters);
- (b) travel only charters (e.g. Advance Booking Charters by air);
- (c) part-charter arrangements on scheduled services, where the transport capacity is acquired on a wholesale basis;
- (d) procurement of capacity from any person (other than a carrier) who has already chartered such capacity in whole or in part.

Note: The above are cited as examples only.

4. TRAVEL AGENTS LICENCE

A travel agent's licence is required to enable a person to: -

- (a) offer for sale to the public as a travel agent on a commission basis:
 - (i) **overseas travel by land, sea or air commencing within the State** to destinations outside the State or Northern Ireland on behalf of a transport carrier or a tour operator, or
 - (ii) travel or touring arrangements commencing within the State based on the scheduled services of a transport carrier e.g. Group Inclusive Tours (GIT's), Industry Inclusive Tours (IIT's), Weekend Inclusive Tours, etc.
- (b) accept money as a travel agent from a member of the public in respect of travel commencing within the State to destinations outside the State or Northern Ireland.

Note: The above are cited as examples only.

5. APPLYING FOR A LICENCE

One applies for a licence by completing an application form and sending it to Travel Trade Licensing, Commission for Aviation Regulation, 3rd Floor, Alexandra House, Earlsfort Terrace, Dublin 2. Application forms can be obtained from the Commission or on-line at www.aviationreg.ie in the Travel Trade Licensing zone. Completed application forms must be accompanied by a number of documents e.g. audited accounts and/or financial projections, copies of drafts of brochures and booking conditions, etc. **A bond does not have to be lodged at the time of application for the licence.** However, a licence will not issue in the absence of a bond. Section 12 of the application form requires applicants to specify the type of bond they propose to lodge with the Commission if their application is approved in principle. The bond is a statutory document the wording of which is set out in the Tour Operator and Travel Agents (Bonding) Regulations, 1983, S.I. No. 102 of 1983. Applicants wishing to secure a bond from banks or insurance companies are urged, in their own interest, to put in train the necessary enquiries with those institutions before making the licence application. It is the primary responsibility of the applicant to ensure that the Commission receives the bond in time. Applicants for licences should make sure a bond is in place to cover the licence at either:

- (a) the date of commencement of that first licence or
- (b) the day after the date of expiry of their last licence in the case of a renewal.

When the Commission has assessed an application and has made a decision in principle to grant a licence, it will write to the applicant advising them of this fact and furnishing them with an original bond document to be completed.

6. DURATION OF LICENCES

Licences are normally valid for a period of 12 months. It is not the general practice of the Commission to entertain applications for a licence for a lesser period. Licences may be for any duration less than a year at the discretion of the Commission. The Commission usually reminds licensees who wish to renew their licences to make the necessary application. However, it is the responsibility of the licensee to ensure that a fully completed application for a new licence is submitted in good time in order to allow sufficient time for Commission staff to evaluate it and issue a valid licence in time for the commencement or re-commencement of trading. Late applications are also subject to a statutory late fee.

It is the administrative practice of the Commission to issue licences to subscribers to the Irish Travel Agent's Association (ITAA) bonding scheme for the period commencing 1 May to 30 April. Accordingly, non-members of this scheme should seek a licence from 1 November to 31 October and make their projections etc. based on these dates.

It is important that applicants note this division and plan accordingly.

7. LICENCE FEES

<u>TRAVEL AGENTS</u>	
	<u>Fee</u>
New Applicants	€600
Renewal of Travel Agent's Licence	€300

<u>TOUR OPERATORS</u>	
<i>The fees will be determined on the basis of "licensable turnover" according to the following scale: -</i>	
<u>Licensable Turnover</u>	<u>Fee</u>
€635,000 or less	€300
€635,001 but not exceeding €1,270,000	€600
€1,270,001 but not exceeding €3,810,000	€1,550
€3,810,001 but not exceeding €6,350,000	€2,150
€6,350,001 but not exceeding €12,670,000	€3,100
€12,700,001 but not exceeding €25,400,000	€7,800
For every €1,270,000 or part thereof in excess of € 25,400,000	€300
Additional Fee for new applicant	€300

*** NOTE: UNDERTAKINGS HOLDING TWO LICENCES ARE LIABLE TO BOTH SETS OF FEES.**

*** NOTE: FEES PAYABLE ARE NON - REFUNDABLE.**

TOUR OPERATORS

A. Application Fee for First Time Applicants

In the case of first time applicants and applicants who have not held a licence under the Act during the two year period immediately prior to the date of application, the fee payable shall depend on the projected licensable turnover according to the scale set out on the preceding page, plus an additional fee of €300.

If a person is changing from a partnership to a sole trader or a sole trader to a limited company any such change will be regarded as a new entity and thus they will be required to pay the additional fee of €300.

B. Levies

Applications must be submitted **at least** two months prior to the date on which the licence is required to commence.

Where an application is received by the Commission less than two months but more than one month prior to the date of which the licence is required to commence, a levy of **€1,943*** is payable.

Where an application is received by the Commission less than one month prior to the date on which the licence is required to commence, a levy of **€3,885*** is payable.

C. *Late Submission of Audited Financial Statements*

A levy of €3,885* applies to any Tour Operator who fails to furnish audited financial statements by the relevant deadline date set by the Commissioner. Audited financial statements in this case means audited accounts that are the originals, signed by the required personages, fully complete and containing the correct breakdowns in respect of licensable turnover.

Audited accounts that do not conform to these requirements will be returned to the applicant for correction. If they are resubmitted outside the original deadline, the levy shall be imposed.

D. *Licence Amendment Fee*

Application for amendment of a licence is subject of a fee of €150 in each case.

* Aviation Regulation Act 2001 (Levy No.10) Regulations 2009,
S.I. No.535 of 2009

TRAVEL AGENTS

Application and other fees for Travel Agents Licences

A. *Standard Application Fee*

The standard application fee is €300.

B. *Application Fee for First Time Applicants*

In the case of first time applicants and applicants who have not held a licence under the Act in the two year period immediately prior to the date of application the fee payable is €600.

If a person is changing from a partnership to a sole trader or a sole trader to a limited company any such change will be regarded as a new entity and thus they will be required to pay the additional fee of €300.

C. *Levies*

Applications must be submitted ***at least*** two months prior to the date on which the licence is required to commence.

Where an application is received by the Commission less than two months but more than one month prior to the date on which the licence is required to commence a levy of **€1,943*** is payable.

Where an application is received by the Commission less than one month prior to the date on which the licence is required to commence a levy of **€3,885*** is payable.

D. *Late Submission of Audited Financial Statements*

A levy of €1,943* applies to any Travel Agent who fails to furnish audited financial statements by the deadline date set by the Commissioner. Audited financial statements in this case means audited accounts that are the originals, signed by the required personages, fully complete and containing the correct breakdowns in respect of licensable turnover.

Audited accounts that do not conform to these requirements will be returned to the applicant for correction. If they are resubmitted outside the original deadline, the levy shall be imposed.

E. Licence Amendment Fee

Application for amendment of a licence is subject to a fee of €30.

* Aviation Regulation Act 2001 (Levy No.10) Regulations 2009,
S.I. No.535 of 2009

8. OCCASIONAL CHARTER BASED TOURS OR PACKAGES

Where a travel agent proposes to organise an occasional tour based on a wholesale charter arrangement for the transport element, he assumes the role of ***principal*** in that circumstance (i.e. he is liable to the carrier for the entire block of capacity irrespective of the number of seats he actually sells) and he must, therefore, apply for a tour operator's licence. It is illegal to advertise or take bookings unless the Commission has granted a licence. In such cases the Commissioner will consider issuing tour operator's licence for a short duration, to cover the organising of the occasional tour proposed. Alternatively, persons involved in the organising of occasional charter-based tours or packages may find it preferable from the viewpoint of bond costs to seek an annual tour operator's licence with associated bond to cover such tours or packages.

There are instances whereby persons will be regarded as occasional organisers and will not require a licence. (Statutory Instrument No. 271 of 1995 refers)¹. However, in circumstances where overseas travel commencing within the State is an element of any package, a licence under the 1982 Act will be required.

9. DOMESTIC TRAVEL

The Package Holidays and Travel Trade Act, 1995 requires package organisers to protect the consumer against the insolvency of the organiser. The administration of this Act is primarily a matter for the Office of the Director of Consumer Affairs who may be contacted at telephone (01) 4025555. Certain functions in relation to "approved bodies" are bestowed on the Commission for Aviation Regulation under this Act. The Transport (Tour Operators and Travel Agents) Act, 1982 does ***not*** apply to domestic travel – it applies only to over seas travel contracts by land, sea or air.

¹ Package Holidays and Travel Trade Act, 1995 (Occasional Organisers) Regulations, 1995.

10. NEW ENTRANTS TO THE TRADE

10.1 New Applications by Limited Companies – Travel Agent

Share Capital

For new Travel Agent applications the Commission considers that a reasonable threshold for most start up situations would be fully paid up Share Capital which would represent **at least 5% of total projected licensable turnover**, subject to a **minimum of €25,000**. This approach is based on known experience of first-time licensees who tend to incur losses in the first year of trading and perhaps in the subsequent year. However, the Commission would emphasise that these thresholds are guideline levels of capital investment and that the Commission could well require higher levels of investment if not satisfied that sufficient funds would be available for working capital purposes. In any case, the capital base approved by the Commission as a condition for grant of a licence must be adequate to cover possible losses relating to start up, working capital and fixed asset requirements.

Applicants should note that, having reviewed the application and/or the results of the first year of trading, the Commission reserves the right to request an increase in the minimum amount of paid up share capital.

10.2 New Applications by Limited Companies– Tour Operator

Share Capital

The Commission considers that a reasonable threshold for most start up situations involving new applicants for Tour Operator licences (and whose principal business is that of a Tour Operator) would be fully paid up Share Capital which would represent **more than 5% of total projected licensable turnover** subject to a **minimum of €38,000**. While suggesting that €38,000 paid up share capital would be a minimum requirement, it is

likely that the level of business would demand a much higher level of investment. In any case, the capital base approved by the Commission as a condition for grant of a licence must be adequate to cover possible losses relating to start up, working capital and fixed assets requirements.

Applicants should note that, having reviewed the application and/or the results of the first year of trading, the Commission reserves the right to request an increase in the minimum amount of paid up share capital.

10.3 New application by Sole Traders/ Partnerships

Assets

In the case of a sole trader or a partnership Applicants should note that Regulations made under the 1982 Act² require Audited Financial Statements to be submitted. Therefore, if Sole Traders/Partnerships require a first-time licence or a licence renewal, the Commission will require them to request an Auditor to audit a Statement of Affairs or Balance Sheet, for all assets and liabilities, not just the travel business. Sole Traders and Partnerships will be required to display the same level of investment in their undertaking as limited companies.

In addition, a Cash Flow Statement must also be prepared in respect of all activities of the Sole Trader/Partnership not just the travel business.

² The Travel Agents (Licensing) Regulations, 1993 (S.I. No. 183 of 1993) as amended by the Travel Agents (Licensing)(Amendment) Regulations, 1995 (S.I. No. 213 of 1995) and The Tour Operators (Licensing) Regulations, 1993 (S.I. No. 182 of 1993), as amended by the Tour Operators (Licensing)(Amendment) Regulations, 1995 (No. 212 of 1995).

11 NEW ENTRANTS FINANCIAL DATA

New Entrants to the travel trade, whether travel agents or tour operators, who would not have audited accounts available (i.e. accounts covering a 12-month period ending on a date not earlier than 12 months before the date of application) will be required to furnish:

- (a) an audited Opening Balance Sheet;
- (b) projected monthly Cash Flow Statement, Trading, Profit and Loss Account for the first year of trading (i.e. the licence period year not the accounting year);
- (c) projected Balance Sheet for the end of the first year of trading, and
- (d) in the case of an applicant for a Travel Agent's licence, breakdown of projected turnover under the following headings and the rate of commission expected under each heading: -
 - (i) I.A.T.A. scheduled airline tickets,
 - (ii) other scheduled airline tickets,
 - (iii) packaged holidays,
 - (iv) boat and rail tickets,
 - (v) other (specify);
- (e) the applicant's Auditor should confirm that he is satisfied that the projections and calculations made in (b), (c) and (d) above, so far as the accounting policies and calculations are concerned, are properly compiled on foot of the accompanying assumptions made by the Applicant and are presented on a basis consistent with general accounting standards;
- (f) bank statements;

- (g) evidence of Share Capital e.g. Company Office Documentation (Form B.5);
- (h) all new applicants should provide details of the market research carried out in arriving at the projections referred to above.

In the case of a sole trader or a partnership Applicants should note that Regulations made under the 1982 Act³ require Audited Financial Statements to be submitted. Therefore, if Sole Traders/Partnerships require a first-time licence or a licence renewal, the Commission will require them to request an Auditor to audit a Statement of Affairs or Balance Sheet, for all assets and liabilities, not just the travel business. Sole Traders and Partnerships will be required to display the same level of investment in their undertaking as limited companies.

In addition, a Cash Flow Statement must also be prepared in respect of all activities of the Sole Trader/Partnership not just the travel business.

Evidence of Experience and Competence

Before granting a licence, the Commission will need to be satisfied that an applicant will have persons engaged by or available to it, with the requisite level of managerial experience and competence as well as persons who are experienced and competent in the normal procedures of the travel trade. Competence includes the legal entitlement to work in Ireland. Applicants should note that non-EU nationals do not generally have the right to work in Ireland.

³ The Travel Agents (Licensing) Regulations, 1993 (S.I. No. 183 of 1993) as amended by the Travel Agents (Licensing)(Amendment) Regulations, 1995 (S.I. No. 213 of 1995) and The Tour Operators (Licensing) Regulations, 1993 (S.I. No. 182 of 1993), as amended by the Tour Operators (Licensing)(Amendment) Regulations, 1995 (No. 212 of 1995).

New applicants should furnish a full curriculum vitae in respect of each of the directors and staff, accompanied, in the case of a person with travel trade experience, by a reference or report from that person's present or most recent employer in the travel trade.

First time applicants should apply for their licences at least two months before the date on which they propose to commence business.

N.B. Material required to be audited must be supplied by persons qualified to conduct audits⁴. Information supplied by persons not so qualified shall be disregarded. Applicants are reminded that all licence application fees are non-refundable. In addition failing to provide audited accounts when required to do so carries a levy of either €2,080 or €4,160 depending on whether the application is for a Travel Agent or Tour Operator Licence.

⁴ Please see section 2.7 of Decision Notice D/2002/1 of the Office of the Director of Corporate Enforcement on Auditors for details of those persons qualified to act as auditors.

12. CHECKING OF INFORMATION SUPPLIED BY APPLICANTS

Applicants are required to give consent for the Commissioner or any officer authorised by him to contact the applicant's solicitor, banker or accountant to check or clarify particulars supplied in the application. The applicant himself may also be required to furnish such additional information, as the Commissioner may consider appropriate. Applicants should note that furnishing false information for the purposes of securing a licence is an offence.

13. COMPLETION OF APPLICATION FORM

In their own interest, applicants should complete all sections of the application form, clearly and **in typed form**. Where a particular section of the application does not apply, the applicant should insert "not applicable". Incomplete applications will be returned to the applicants for completion before they can be considered. **Applicants should note that incomplete applications lead to lengthy delays and may incur late penalty fees if the required documentation is not returned by the required deadline.**

14. ACCOUNTING PERIODS

1. Applicant's latest set of audited accounts.

The figures for this period display (i) total turnover and (ii) total licensable turnover. Applicants should note point 6 of the checklist to the licence application form refers.

2. Period for which licence is being sought.

The figures for this period display

- (i) projected total turnover and
- (ii) projected licensable turnover. Applicants should note that section 8 of the licence application form refers.

3. Audited statements of actual licensable turnover.

These statements are requested in order to assess the adequacy of the level of a licensee's bond during the period of their licence. The period for which these statements are requested can vary and applicants should check the special conditions of their licence in order to prepare such a statement in a timely manner.

Applicants should note that at present the Commission for Aviation Regulation renews licences twice a year. The first group of licences commences on May 1st and is issued to subscribers to the ITAA bonding scheme. The second group of licences commences on November 1st and is issued to all other applicants.

Accordingly, applicants are advised to bear these dates in mind when considering the timing of their accounting year, as successful applicants will be allocated to one group or the other for administrative purposes. This has

an impact on the relevant accounting period, as the Commission will issue a licence to coincide with one date or the other. Applicants should note the provisions of section 8 of the licence application form, which calls for projections based on the period for which the licence is sought. Projections will either end at 30th April or 31st October depending on the bond to be used by the applicant.

For example, an applicant proposing an independent bond will be considered for a licence that will end on the 31st October following the date of application. Therefore, if that applicant is approved in July, they will only be considered for a licence that will run until the following 31st October i.e. four months later. Therefore, the projections for that applicant would be for only four months business. Thereafter, they may apply to renew the licence for a period ending 31st October the following year.

In addition, generally, a licence holder is required to submit his audited financial statements within four months of the end of the licensee's accounting period. In exceptional circumstances, the Commission may require audited financial statements to be submitted in a shorter period than the four months deadline.

15. INFORMATION REQUIRED FOR ANNUAL REVIEW

Travel Agents Annual Review

Particular emphasis is placed on the Capital Employed situation and Liquidity position of applicants while attempting to assess their ability to meet present and future obligations.

While assessing liquidity, the Commission would, of course, take a favourable view of a licensee with a significant unsecured fixed asset base. However, the purpose of the Commission's evaluation is to ascertain solvency and liquidity. In this regard fixed assets, by their nature, are not an immediate source of cash and would only be deemed to be of significance as a means of obtaining additional overdraft facilities or loan capital. Also, the Commission would normally disregard furniture and fittings, computer equipment, any assets currently used as security for existing borrowings and all intangible assets such as goodwill or capitalised development costs.

An applicant should be aware that a total positive Capital Employed situation would not of itself mean that the Commission would be satisfied that an applicant would be in a position to meet his obligations.

Tour Operator's Annual Review

Particular emphasis is placed on the Capital Employed situation and Liquidity position of applicants while attempting to assess their ability to meet present and future obligations.

An applicant should be aware that a total positive Capital Employed situation would not of itself mean that the Commission would be satisfied that an applicant would be in a position to meet his obligations.

Given the greater degree of risk associated with the Tour Operating business, the Commission places greater emphasis on a Tour Operator's Liquidity position and any unsecured fixed assets which can support the raising of finance. Accordingly, in assessing the solvency position of an applicant, the Commission will disregard the following items, which could mask underlying problems in the business:

- (a) any expenditure in relation to stationery and publications etc.;
- (b) property used as security for borrowing and fixed assets such as furniture and fittings and computer equipment;
- (c) any amounts due from associated companies and/or connected persons as defined in the Companies Acts, which have not been demonstrated to the Commission's satisfaction as being capable of being repaid;
- (d) any security provided from a licensee's assets to obtain a bond;
- (e) the amount due to the licensee in respect of a cash bond;
- (f) goodwill, capitalised development costs and other intangible assets.

16. REVIEW OF AUDITED FINANCIAL STATEMENTS AND CASH FLOW STATEMENTS

16.1 General

A licensee is required to submit his audited financial statements within four months of the end of the licensee's accounting period. In exceptional circumstances, the Commission may require audited financial statements to be submitted in a shorter period than the four months deadline. In the case of an applicant involved in a "mixed" business (e.g. travel agency/grocery shop and bar) audited accounts covering the total enterprise will be required and such accounts should incorporate a breakdown of receipts in respect of each of the component parts, including the tour operating/travel agency element. (The attached Appendix 2 provides a simple example).

16.2 Sole Trader/Partnerships

Applicants should note that while there is no requirement generally for Sole Traders/Partnerships to have their accounts audited, Regulations made under the 1982 Act⁵ require Audited Financial Statements to be submitted. Therefore, if Sole Traders/Partnerships require a first-time licence or a licence renewal, the Commission will require them to request an Auditor to audit a Statement of Affairs or Balance Sheet, for all assets and liabilities, not just the travel business.

In addition, a Cash Flow Statement must also be prepared in respect of all activities of the Sole Trader/Partnership not just the travel business.

⁵ The Travel Agents (Licensing) Regulations, 1993 (S.I. No. 183 of 1993) as amended by the Travel Agents (Licensing)(Amendment) Regulations, 1995 (S.I. No. 213 of 1995) and The Tour Operators (Licensing) Regulations, 1993 (S.I. No. 182 of 1993), as amended by the Tour Operators (Licensing)(Amendment) Regulations, 1995 (No. 212 of 1995).

16.3 Current Assets and Current Liabilities

To assist its financial evaluation, the Commission would request that the audited financial statements provide as much detail as possible to the items in the Balance Sheet. The Commission requires a detailed breakdown of current assets and current liabilities in the notes to the financial statements. The following provides an indication of the type of data, which should at a minimum, be disclosed, where applicable, for Travel Agents and Tour Operators respectively:

Travel Agent Current Assets and Current Liabilities data:

Travel Agent Current Assets

- Bank Deposits
- Cash In Hand
- Trade Debtors
- Inter-Company Loans
- Deposits/Prepayments to Accommodation Suppliers and Handling Agents *
- Stationery and Brochures

Travel Agent Current Liabilities

- Bank Overdraft
- Trade Creditors - Accommodation Suppliers/Handling Agents *
- Other Trade Creditors
- Accruals
- PAYE/PRSI
- Customer Deposits
- Inter-Company Loans

* Such data would only apply to Travel Agents selling Packages based on scheduled services of a Carrier.

Tour Operator Current Assets and Current Liabilities data:

Tour Operator Current Assets

- Bank Deposits
- Cash in Hand
- Trade Debtors
- Inter-Company Loans
- Deposits/Prepayments paid - Carriers
- Deposits/Prepayments paid - Accommodation
- Deposits/Prepayments paid - Handling Agents
- Stationery and Brochures

Tour Operator Current Liabilities

- Bank Overdraft
- Trade Creditors - Carriers
 - Trade Creditors
 - Accommodation Suppliers/Handling Agents
 - Other Trade Creditors
- Accruals
- PAYE/PRSI
- Customer Deposits
- Inter-Company Loans

16.4 Borrowing/Overdraft Security

The audited financial statements should disclose, in a note to the Financial Statements, full details of borrowings or overdraft security, including personal guarantees offered by the licensee or its principals.

Applicants should note section 4 of the Application Form refers.

16.5 Bond Security/Cash Bonds

The Commission would also request the applicant to disclose in a note to the Audited financial statements, full details of bond security provided by the licensee. The following are the types of Bond security which would normally be required and which should be identified in the note:

- Amount of Fixed Cash Deposit
- Amount of charge over fixed assets
- Floating charge over fixed assets
- Personal guarantee to a certain amount

Where the licensee has supplied a Cash Bond to the Commission, the audited financial statements should disclose this separately.

16.6 Subordinated Loans

The Commissioner may, from time to time, require that Directors or Shareholders subordinated loans should not be withdrawn without his consent. The audited financial statements should note the subordination of the loans and the obligation to the Commission.

16.7 Cash Flow Statement

In all cases, a Cash Flow Statement (as defined in Financial Reporting Standard 1 - F.R.S.1)⁶ must be submitted with the audited financial statements. Accordingly, licensees may not invoke the exclusion granted under F.R.S.1 to smaller firms as regards the preparation of Cash Flow Statements when forwarding their audited financial statements to the Commission. The Cash Flow Statement should show the net cash flow from operating activities, supplemented by a note reconciling this to the licensee's operating profit for the period. This reconciliation should disclose separately the movements in stocks, debtors and creditors related to operating activities and other differences between cash flows and profits.

⁶ F.R.S. 1 will become International Accounting Standard 7 (I.A.S. 7) after the 1st January 2005.

16.8 Consolidated Financial Statements/Group Accounts

If the applicant is a company which is a subsidiary of another company or is the parent/holding company of another company, the Commission would normally require Consolidated Group Accounts prepared in accordance with the European Communities (Companies: Group Accounts) Regulations, 1992,⁷ in order to assess the financial viability of the Group.

16.9 Turnover

Section 8 of the Application Form refers to turnover.

Turnover should be separately disclosed in the audited Financial Statements. The audited financial statements should ensure that a statement of total turnover accompanies the financial statements - details of Gross Profit/Travel Agent's commission, is insufficient for the Commission's purposes.

16.10 Definitions of Turnover

Applicants are required to disclose details of "total turnover"; and "licensable turnover"; together with projections. These terms are defined in the 1993 Regulations but the following is offered as guidance:

"total turnover" means the sum total of all receipts by an applicant during the period covered by the applicant's latest audited accounts.

"licensable turnover" means the total of receipts by an applicant in respect of overseas travel contracts during the period covered by the applicant's audited accountants.

"Projected total turnover" means the sum total of all receipts estimated by an applicant during the period of time in the future for which a licence is sought.

⁷ S.I. No. 201 of 1992.

"Projected licensable turnover," means the total of receipts estimated by an applicant in respect of overseas travel contracts during the period of time in the future for which a licence is sought.

Given that one figure is actual and the other is prospective they are used in different ways.

The projected figure of licensable turnover is used in calculating the bond. The actual figure of licensable turnover is used when assessing the financial state of affairs of an applicant. The Commission takes the phrase "projected licensable turnover" to mean the total of monies expected to be paid over on foot of overseas travel contracts over the course of the licence period.

Note:

Applicants should bear in mind that accuracy is important in the computation of "licensable turnover" and "projected licensable turnover" as the amount of the licence fees and bonds will depend on it. Examples of such computations are given in the attached Appendix 2.

16.11 Credit Card Sales

It is not necessary for travel agents to include in their licensable turnover any overseas travel sales which are paid by the customer by way of credit card transactions made payable directly to the carrier or tour operator who provides the overseas travel facilities. Credit card transactions payable to a travel agent are regarded as licensable turnover. All payments whether by credit card or otherwise received by tour operators in respect of their charter programmes are licensable and must be included in their projections for bonding purposes. In some cases (e.g. a person who operates only as a tour operator or travel agent with no other source of income) "total turnover" and

"licensable turnover" will be the same, except for certain non-trading items. On the other hand, in a "mixed" enterprise involving for example grocery/bar/travel agency, "total turnover" would involve receipts for the whole enterprise, while "licensable turnover" would refer only to those receipts from members of the public for the travel agency operation.

16.12 Vouchers

Applicants should note that where money has been taken in respect of vouchers, trading stamps or similar tokens only money in respect of vouchers, trading stamps or similar tokens which are exchanged as payment or part payment for services provided or to be provided by the Tour Operator or Travel Agent is regarded as licensable turnover once it refers to travel commencing in the State to destinations outside the State or Northern Ireland.

Monies in respect of vouchers, trading stamps or similar tokens that are not exchanged as payment or part payment for services provided or to be provided by the tour operator or travel agent is regarded as non licensable turnover and therefore customers should be advised that they will not be covered by the bond until such time as the voucher is exchanged in circumstances as referred to above.

16.13 Certificates of Licensable Turnover

With the objective of policing bonding levels, the Commission requires licensees to submit audited certificates of licensable turnover during the period of a licence in the following circumstances:

- (a) Tour Operators are required to submit such certificates once a year;
- (b) New Travel Agents are required to submit such certificates once a year for the first two years of trading;

- (c) Other applicants may be asked to submit such certificates if they appear to be under-projecting their licensable turnover year on year.

16.14 Significant Once-Off Credits

Any unusual non-trading income (other than deposit or rental income) or gains including profits on fixed assets disposed of should be highlighted in the un-audited analysis of overheads, which must be attached to the audited financial statements. Extraordinary and/or exceptional credits should be included.

16.15 Bank Confirmations

As a result of the Commission's assessment of an entity's liquidity, it may be necessary for the applicant to submit confirmation from his bank of the

- (a) continuing availability of borrowing facilities, both overdraft and other,
- (b) amount of the total facilities,
- (c) security.

16.16 Qualifications in Audit Reports

Where the Auditor's latest Report has been qualified because of limitations in the scope of the audit work the Auditor should state the specific accounting areas in which difficulties were encountered. If the monetary amounts associated with the qualification are not quantifiable, an indication of the scale of impact on the audited financial statements should be furnished to the Commission separately.

The Commission's concern is that if the Licensable Turnover is the subject of a qualification in the Auditor's report, it is possible that a company may be under bonded.

If such a qualification does relate to Licensable Turnover, then the applicant must demonstrate to the satisfaction of the Commission, by alternative means, that the licensable turnover is consistent with the bonding in place.

16.17 Branch Offices

Where a licensee opens a Branch Office under his existing licence, he is obliged to notify the Commission of additional places of business. Because the opening of a Branch Office usually entails an outflow of funds relating to set up costs and additional working capital to sustain the new activities, the Commission would require full details of the financial impact on the business. This may require the production of Cash Flow Projections, Forecast Profit and Loss Account, Forecast Balance Sheet together with detailed assumptions from the Directors.

16.18 Annual Returns to the Companies Registration Office

Licensees applying for licence renewal are required to furnish confirmation from their Auditors that the statutory annual returns furnished to the Companies Registration Office are fully up to date. Auditors should take special care in reviewing a licensee's financial statements to ensure that the statutory returns are up to date. The required confirmation should be supplied to the Commission when applications are submitted to the Commission.

17. BOND REQUIREMENTS

Before a licence is granted to a tour operator or travel agent, the Commission will require evidence that the applicant has entered into a satisfactory arrangement (referred to as "the bond") for the protection of customers, who, during the period of validity of the licence, enter into contracts with him relating to overseas travel. The bond is essentially a sum of money that will become available to the Commission for Aviation Regulation in the event of a licence holder failing to meet his financial or contractual obligation to customers in relation to overseas travel contracts, for example, by becoming insolvent.

It is the responsibility of the applicant to ensure that an appropriate bond is in place before a licence will issue or be renewed.

18. TYPES OF BOND

A bond may comprise all or any of the following:

- (a) a cash sum deposited with the Commissioner;
- (b) a sum of money deposited in a bank or financial institution in the State in the sole name of the Commissioner;
- (c) a guarantee secured with a bank or insurance company, in the form prescribed in the bonding regulations;
- (d) a guarantee of such other type as may be acceptable to the Commissioner;
- (e) any arrangement or scheme entered into on a collective basis by travel agents or any group of travel agents for the protection of their customers, provided that in the event of the inability or failure of an individual member of any such collective group to meet his obligations to his customers in relation to overseas travel, the amount of money payable to the Commissioner from the collective arrangement would be not less than the 4% bonding level specified for an individual travel agent. The acceptance of any collective arrangement will be subject to the conclusion of a binding contract between the group covered and the Commissioner.

19. LEVEL AND AMOUNT OF BOND

The required bond levels are: -

Tour Operator: 10% of ***projected licensable turnover*** in respect of tour operating activity.

Travel Agents: 4% of ***projected licensable turnover*** in respect of travel agency activity.

20. FURNISHING EVIDENCE OF A BOND

All applicants, (first time and renewals), will be required to furnish a bond to cover overseas travel contracts entered into during the period of validity of the licence. ***It is not necessary to lodge a bond with the licence application.*** The Commission will examine the application first and will advise the applicant when to proceed with arranging the bond. For persons securing bonds with banks or insurance companies the appropriate bonding documents will be forwarded upon the approval in principle of the licence application. Applicants are required to give details of their ***proposals*** for bonding arrangements to protect clients under the statutory bonding regime including type of bonding contemplated (e.g. cash deposit, bond with a bank or insurance company, etc.).

It is the primary responsibility of the applicant to ensure that the projections of licensable turnover upon which the bond amount is calculated are accurate. Applicants must also ensure that the bond is in place on the date the new licence commences. An applicant who does not have these arrangements in place will not be issued with a licence and may be liable to prosecution for illegal trading if they continue to trade.

An undertaking is not entitled to trade in the period between the termination of an old licence and the commencement of a new licence. The fact that an

undertaking enters into an arrangement with a financial institution to backdate the commencement date of the bond to cover the period during which they had no licence is no bar to prosecution for illegal trading.

21. PROTECTION GIVEN BY THE BOND

A bond must be maintained for the period of validity of the licence or if the licence is revoked on an earlier date, up to the end of such revocation. In addition, for a period of six months (or such shorter period as the Commissioner may decide) after the date on which it ceases to have effect, the bond may still be called to discharge outstanding obligations to customers of the tour operator or travel agent concerned under overseas travel contracts entered into during the period of validity of the licence, or an immediately preceding licence. However, where a new bond, which comes into effect before or from the date after which a current bond ceases to have effect, is provided or procured, liability under the old bond ceases from the date of commencement of the new bond. This is to ensure that at any time, only one bond will be in force and the liability of the person or institution providing the bond will be limited strictly to its face value.

It is important to note that the benefit of the bond is for the customer, i.e. the person travelling. It is not for the benefit of Travel Agents or Tour Operators. Section 2 of the 1982 Act defines a customer as a person that has made a payment either directly or indirectly, to the tour operator or travel agent, under or with the intention of entering into an overseas travel contract. This definition does not describe either Travel Agents or Tour Operators in their commercial dealings with each other.

In a situation whereby the Commission has made a demand for payment out of monies from the bond, the question of whether any customers/passengers may travel has to be assessed. Passengers who are already in possession of their tickets have the right to complete their holiday. It is not the case that all passengers are due a refund simply because a Travel Agent or Tour

Operator has ceased to trade. Each application under the Bond will be assessed in relation to the particular situation.

22. TRAVELLER'S PROTECTION FUND

The 1982 Act provided for the establishment of a fund known as the Travellers' Protection Fund to supplement the bond. Payments out from the fund arise in the event of the amount a bond being insufficient to cover the liabilities of either a failed Tour Operator or Travel Agent to its customers according to its obligations. Tour operators in respect of overseas travel sales paid contributions to the fund. The requirement to pay contributions to the fund was suspended in 1987.

23. PENALTIES FOR TRADING WITHOUT A LICENCE

It is a criminal offence to trade without a licence. It is also a criminal offence to furnish false or misleading information for the purpose of obtaining a licence. Furthermore, it is a criminal offence to obstruct an authorised officer of the Commission for Aviation Regulation in the exercise of their duties under the Acts.

The legislation provides for heavy penalties in respect of these offences. Persons convicted of trading without a licence on indictment (jury trial) are liable to a maximum of five years imprisonment or a fine of up to €126,973.81, or both.

Persons convicted of obstructing an authorised officer in the exercise of the powers conferred on him by the Act shall be liable on conviction on indictment to a fine not exceeding €63,486.90 or up to a maximum of two years imprisonment or both.

Persons convicted of furnishing misleading or false information for the purpose of obtaining a licence shall be liable on conviction on indictment to a fine not exceeding €6,348.69 or up to a maximum of two years imprisonment or both.

Persons convicted in the District Court (non-jury trial) for the same types of offences are liable to a maximum of twelve months imprisonment or a fine not exceeding €1,904.61.

24. REVOCATION AND VARYING OF TERMS AND CONDITIONS OF LICENCES

The Act **obliges the Commissioner to revoke forthwith a licence** where the licensee has failed or is unable to meet his financial or contractual obligations and where payment is, or falls to be, made pursuant to the bond or from the Travellers' Protection Fund to a customer. For example, where a Travel Agent fails to pay over a customer's money as required and the customer is thereby prevented from travelling, then the Commission must revoke the Travel Agent's licence.

Under the Act, the Commissioner may revoke a licence or vary any term of a licence in cases where the licensee is in breach of, or fails, neglects or refuses to comply with any term or condition of the licence or if the Commissioner is no longer satisfied that the tour operator/travel agent has the financial, business or organisational resources to discharge the actual and potential obligations under the licence or, having regard to the manner in which the licensee is carrying on his business he is a fit and proper person to carry on that business. However, before such action can be taken, the Commissioner is required to notify the holder of the licence of his proposal and of the reasons for it and the Commissioner is obliged, if any representations are made in writing to the licensee within 7 days, to consider such representations.

25. APPEALS

Whenever the Commissioner refuses to grant a licence or decides, having considered any representations that may have been made by the licensee, to revoke the licence or to vary any term or condition of the licence, he must notify the applicant, or as the case may be, the licensee, of the refusal or decision and such applicant or such licensee may within seven days appeal to the High Court against such refusal or such decision.

Where the High Court allows the appeal, the Commissioner shall grant the licence or shall not revoke, or vary the terms and conditions of the licence as the case may be.

26. BOOKINGS WITH TOUR OPERATORS FOR HOLIDAYS DEPARTING FROM POINTS OUTSIDE THE STATE

Some bookings made with non-national tour operators through travel agents in this country are not covered by Irish statutory bonding arrangements in the event of the collapse of the non-national tour operator involved.

For example, an Irish tourist may seek to travel to the U.K. to depart from a point in the U.K. on a package organised by a U.K. Tour Operator. That package is not covered by the bond required from Irish licence holders.

The Commission strongly advises Irish travel agents that it would be in their own best interests before making a booking with a non-national Tour Operator on behalf of a client to make inquiries as to the protection available in the event of a collapse and to advise the client fully of the situation.

Travel Agents should note that the provisions of the Package Holidays and Travel Trade Act, 1995, might apply in this situation. This Act attributes liability to the local retailer of packages where the organiser is established in

another State. In the event of that organiser becoming insolvent, the local retailer may be liable to refund the customer. The administration of this Act is primarily the responsibility of the Director of Consumer Affairs.

27. THE INTERNET

Holidays advertised and sold over the Internet are part of licensable turnover if they involve overseas travel commencing in Ireland. Accordingly, undertakings advertising such services require the appropriate licence.

However, undertakings established outside the State offering holidays involving travel commencing outside the State, e.g. the U.K., do not need a licence to trade in Ireland. For example, it is possible that a customer may request a Travel Agent to book a holiday involving flights that commence outside the State and at the same time request that the Travel Agent book separate flights making the connections from Ireland. If the customer pays the Travel Agent directly then only the connecting flights are licensable turnover. If the passenger produces a credit card allowing payment to be made directly to the carrier or Tour Operator established outside the State then neither payment is licensable turnover. In this instance, any service charge paid to the Travel Agent is similarly not licensable turnover.

Many websites hosted by Air Carriers offering flights also advertise links to other sites offering, for example, hotel accommodation, car hire and other services. In general, these links are to separate undertakings and thus no element of providing a package arises. In effect, it is a referral system for the convenience of the customer. Accordingly, no element of Tour Operator or Travel Agency business arises.

APPENDIX 1

Transport (Tour Operators and Travel Agents) Act, 1982 and relevant Regulations made under the Act

Transport (Tour Operators and Travel Agents) Act, 1982
No. 3 of 1982.

Tour Operators and Travel Agents (Bonding) Regulations, 1983
S.I. No. 102 of 1983

Transport (Tour Operators and Travel Agents) Act, 1982
(Claims by Customers) Regulations, 1983
S.I. No. 104 of 1983

Travellers' Protection Fund Regulations, 1984
S.I. No. 139 of 1984

Travellers' Protection Fund (Amendment) Regulations, 1986
S.I. No. 434 of 1986

Tour Operators (Licensing) Regulations, 1993
S.I. No. 182 of 1993

Travel Agents (Licensing) Regulations, 1993
S.I. No. 183 of 1993.

Tour Operators (Licensing)(Amendment) Regulations, 1995
S.I. No. 212 of 1995

Travel Agents (Licensing)(Amendment) Regulations, 1995
S.I. No. 213 of 1995.

Tour Operators (Licensing) (Amendment) Regulation, 2006
S.I. No. 526 of 2006.

Travel Agents (Licensing) (Amendment) Regulation, 2006
S.I. No. 527 of 2006.

Other relevant legislation

Package Holidays and Travel Trade Act, 1995

Aviation Regulation Act, 2001

Aviation Regulation Act 2001 (Levy No.8) Regulations 2007
S.I. No. 840 of 2007

Aviation Regulation Act 2001 (Levy No.9) Regulations 2008,
S.I. No.570 of 2008

Aviation Regulation Act 2001 (Levy No.10) Regulations 2009,
S.I. No.535 of 2009

Copies of the above Regulations may be purchased from Government Publications Sale Office, Molesworth Street, Dublin 2.

APPENDIX 2

Company A

Breakdown of Turnover (receipts)

ACTIVITY	ACTUAL	PROJECTED	
	Year covered by applicant's latest audited accounts	Period for which a licence is sought	Bonds Required
Tour Operating activity: 320,000	2.9m *	3.2m	(i)
Travel Agency activity: 40,000	0.8m *	1.0m	(ii)
Travel or tours within 32 counties:	0.3m	0.5m	-
Miscellaneous, (bank interest etc)	0.1m	0.1m	-
TOTAL TURNOVER 360,000	4.1m	4.8	

Company B

Breakdown of Turnover (receipts)

ACTIVITY	ACTUAL	PROJECTED	
	Year covered by applicant's latest audited accounts	Period for which a licence is sought	Bonds Required
Grocery	0.35m	0.5m	-
Bar	0.4m	0.5m	-
Travel Agency	0.08m *	0.1m	4,000
TOTAL TURNOVER	0.83m	1.1m	4,000

* Licensable Turnover
Projected Licensable Turnover