

# **Travel Industry Compensation Fund (Amount of Ex Gratia Payments) Regulation**

## **(Cap. 634 sub. leg. D)**

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# Travel Industry Compensation Fund (Amount of Ex Gratia Payments) Regulation

(Cap. 634, section 149(1))

*(Enacting provision omitted—E.R. 5 of 2022)*

[1 September 2022]

## Part 1

### Preliminary

1. *(Omitted as spent—E.R. 5 of 2022)*

2. **Interpretation**

In this Regulation—

***accident*** (意外) means an accident described in section 7;

***application*** (申請、申請書) has the meaning given by section 2 of the Procedure Regulation;

***judgment*** (判決、判決書) has the meaning given by section 2 of the Procedure Regulation;

***outbound fare*** (外遊費) has the meaning given by section 138(1) of the Ordinance;

***outbound travel service*** (外遊旅行服務) has the meaning given by section 138(1) of the Ordinance;

***outbound traveller*** (外遊旅客) has the meaning given by section 138(2) of the Ordinance;

***Procedure Regulation*** (《程序規例》) means the Travel Industry Compensation Fund (Procedure for Ex Gratia Payments) Regulation (Cap. 634 sub. leg. E); (*E.R. 5 of 2022*)

***proof of debt*** (債權證明表) has the meaning given by section 2 of the Procedure Regulation;

***relative*** (親屬), in relation to an outbound traveller, means—

- (a) a spouse;
- (b) a parent, step-parent or guardian;
- (c) a spouse's parent, step-parent or guardian;
- (d) a grandparent or great-grandparent;
- (e) a child or a ward of court under the care and control of the outbound traveller;
- (f) a stepchild or a ward of court under the care and control of the outbound traveller's spouse;
- (g) a grandchild;
- (h) a son-in-law or daughter-in-law;
- (i) a brother or sister;
- (j) a spouse's brother or sister;
- (k) a brother's or sister's spouse;
- (l) a half-brother or half-sister;
- (m) a step-brother or step-sister;
- (n) a brother's or sister's child;
- (o) a parent's brother or sister;
- (p) a parent's brother's spouse or parent's sister's spouse; or
- (q) a parent's brother's child or parent's sister's child;

***relevant expenses*** (有關開支) means the expenses described in section 9;

***relevant place*** (有關地方), in relation to an accident, means the place outside Hong Kong or the country where the accident occurred;

***simplified procedure*** (簡化程序) means the procedure for making an application for an ex gratia payment described in section 4 of the Procedure Regulation;

***specified amount*** (指明款額) means the amount specified in section 5(2);

***spouse*** (配偶), in relation to a person, includes—

- (a) a concubine of the person; and
  - (b) a person with whom the person is cohabiting as husband or wife.
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## **Part 2**

### **Ex Gratia Payments in respect of Loss of Outbound Fare**

#### **3. Application of Part 2**

This Part applies to an ex gratia payment for the purposes of section 142 of the Ordinance in relation to a loss suffered in respect of an outbound fare.

#### **4. By whom application may be made**

An application under this Part may be made by an outbound traveller or on the traveller's behalf for the purposes of section 142 of the Ordinance in relation to a loss suffered in respect of an outbound fare.

#### **5. Amount of ex gratia payment**

- (1) Any ex gratia payment under this Part is 90% of the loss of outbound fare in respect of which the application for the payment is made.
- (2) Without affecting subsection (1), the maximum amount in respect of which an application under this Part may be made in accordance with the simplified procedure is \$15,000.

#### **6. Circumstances of payment**

- (1) Subject to subsection (2), an ex gratia payment under this Part may be made to or in respect of an outbound traveller if—
  - (a) in the case where an application is submitted with a judgment, such judgment is unsatisfied and it appears to the Authority that reasonable efforts have been made to enforce it; or

- (b) in the case where an application is submitted with a proof of debt—
  - (i) any right to a dividend under the proof of debt has been assigned in writing to the Authority; and
  - (ii) the Authority is indemnified—
    - (A) in the event of the proof of debt being rejected, to the extent of the amount of the ex gratia payment; or
    - (B) in the event of the amount of the proof of debt admitted being less than the ex gratia payment, to the extent of the difference between the ex gratia payment and 90% of the amount of the proof of debt admitted.
- (2) Where an application under this Part is made in accordance with the simplified procedure, an ex gratia payment of an amount not exceeding the specified amount may be made to or in respect of an outbound traveller if—
  - (a) in the case where section 4(6) of the Procedure Regulation applies to the application, the applicant gives an undertaking that no claim or application will be made for any amount in excess of the specified amount;
  - (b) any right to a dividend under the proof of debt has been assigned in writing to the Authority; and
  - (c) the Authority is indemnified—
    - (i) in the event of the proof of debt being rejected, to the extent of the amount of the ex gratia payment; or
    - (ii) in the event of the amount of the proof of debt admitted being less than the ex gratia payment, to the extent of the difference between the ex gratia

payment and 90% of the amount of the proof of debt admitted.

(3) If—

- (a) any right to a dividend has been assigned to the Authority under subsection (1)(b)(i) or (2)(b); and
- (b) the amount of a dividend received by the Authority is in excess of the amount of the ex gratia payment concerned,

the Authority must pay to the relevant applicant the amount of such excess.

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## **Part 3**

### **Ex Gratia Payments in respect of Accident**

#### **7. Application of Part 3**

- (1) This Part applies to an ex gratia payment for the purposes of section 142 of the Ordinance in relation to a loss suffered in respect of an accident which arises out of and in the course of an outbound travel service and which results in the death of, or personal injury sustained by, an outbound traveller.
- (2) For the purposes of subsection (1), an accident which arises out of and in the course of an activity which is not provided or organized by the licensed travel agent concerned is disregarded.

#### **8. By whom application may be made**

- (1) An application under this Part may be made by an outbound traveller or on the traveller's behalf for the purposes of section 142 of the Ordinance in relation to a loss described in section 7.
- (2) A loss in relation to which an application under subsection (1) may be made is limited to the relevant expenses actually incurred.

#### **9. Amount of ex gratia payment**

In respect of each type of relevant expenses set out in column 2 of the Table below, an ex gratia payment under this Part is subject to the maximum sum equivalent to the amount set out opposite to it in column 3 of the Table.



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Part 3

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Section 9

Cap. 634D

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**Table**

Column 1	Column 2	Column 3
Item	Relevant expenses	Maximum amount
1.	Medical expenses reasonably incurred in the relevant place in respect of an accident	\$100,000
2.	Expenses reasonably incurred in the relevant place in relation to the funeral of an outbound traveller or incurred in relation to the delivery back to Hong Kong of the dead body of the outbound traveller (including ashes resulting from cremation), in a case where the accident results in the death of the traveller	\$100,000
3.	Subject to item 7, expenses reasonably incurred by one or more than one relative of an outbound traveller in visiting the relevant place for a purpose connected with the traveller's death or injury	\$25,000 per relative

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Part 3

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Section 9

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Column 1	Column 2	Column 3
Item	Relevant expenses	Maximum amount
4.	Subject to item 7, if a deceased or injured outbound traveller does not have any relatives, expenses reasonably incurred by one or more than one former spouse of the traveller in visiting the relevant place for a purpose connected with the traveller's death or injury	\$25,000 per former spouse
5.	Subject to item 7, expenses reasonably incurred by one or more than one relative of a deceased outbound traveller in visiting Hong Kong for a purpose connected with the traveller's death, but only if there is no relative or former spouse of the traveller residing in Hong Kong	\$25,000 per relative
6.	Subject to item 7, if a deceased outbound traveller does not have any relatives, expenses reasonably incurred by one or more than one former spouse of the traveller in visiting Hong Kong for a purpose connected with the traveller's death	\$25,000 per former spouse
7.	The total amount of all ex gratia payments made under items 3 to 6	\$100,000

## 10. Circumstances of payment

An ex gratia payment under this Part may be made to or in respect of an outbound traveller only if the application is accompanied by—

- (a) a declaration in writing by the traveller or a person who makes the application on the traveller's behalf, as to—
  - (i) whether the traveller or any other person has received any damages or compensation in respect of the relevant expenses incurred in relation to the accident; and
  - (ii) whether the traveller or any other person has made any claim or instituted any legal proceedings in respect of those relevant expenses; and
- (b) an undertaking in writing by the traveller or a person who makes the application on the traveller's behalf to—
  - (i) notify the Authority, within such period as may be specified in the undertaking, of the making by the traveller or any other person of any claim or the institution of any legal proceedings by the traveller or any other person in respect of those relevant expenses;
  - (ii) in the event that damages or compensation in respect of those relevant expenses are or is paid to the traveller or any other person, pay to the Authority the amount of the ex gratia payment or the amount of the damages or compensation so paid, whichever is less; and
  - (iii) in the event that the amount of the ex gratia payment is in excess of the relevant expenses reasonably incurred, indemnify the Authority to the extent of the excess.