

Travel Industry Compensation Fund (Procedure for Ex Gratia Payments) Regulation

(Cap. 634 sub. leg. E)

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Travel Industry Compensation Fund (Procedure for Ex Gratia Payments) Regulation

(Cap. 634, section 149(3))

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

[1 September 2022]

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

2. Interpretation

In this Regulation—

accident (意外) means an accident described in section 7 of the Amount Regulation;

Amount Regulation (《款額規例》) means the Travel Industry Compensation Fund (Amount of Ex Gratia Payments) Regulation (Cap. 634 sub. leg. D); *(E.R. 5 of 2022)*

application (申請、申請書) means an application for an ex gratia payment;

E-levy System (電子印花徵費系統) means the E-levy System mentioned in section 3 of the Travel Industry (Collection, Payment and Recording of Levies) Regulation (Cap. 634 sub. leg. C); *(E.R. 5 of 2022)*

Fund levy (賠償基金徵費) means the Fund levy payable under section 147(1) of the Ordinance;

judgment (判決、判決書) means a judgment of a court in Hong Kong for the payment of a sum of money and includes an

award made under the Small Claims Tribunal Ordinance (Cap. 338);

levy stamp (徵費印花) means a mark or indication denoting the payment of the Fund levy;

loss (損失) means a loss described in section 3 or 7 of the Amount Regulation;

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

proof of debt (債權證明表) means a proof of debt delivered or sent to—

- (a) in relation to the winding up of a licensed travel agent that is a company under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), a liquidator; or
- (b) in relation to the bankruptcy of a licensed travel agent that is a partnership or an individual, the Official Receiver or a trustee under the Proof of Debts Rules (Cap. 6 sub. leg. E);

relevant expenses (有關開支) means the expenses described in section 9 of the Amount Regulation;

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;

specified amount (指明款額) means the amount specified in section 5(2) of the Amount Regulation.

3. Application for payment

- (1) An application under this section in respect of a loss may be

made by—

- (a) the outbound traveller who has suffered the loss;
 - (b) the traveller's personal representative;
 - (c) any person authorized by the traveller in writing; or
 - (d) (if the traveller is a minor) the parent or guardian of the traveller.
- (2) Subject to section 4, an application must be accompanied by—
- (a) sufficient evidence showing payment of the Fund levy in respect of the relevant outbound fare; and
 - (b) either of the following—
 - (i) in the case where the loss suffered is in respect of an outbound fare, a sealed copy of a judgment in respect of the loss concerned or documents showing that a proof of debt has been lodged or is to be lodged;
 - (ii) in the case where the loss suffered is in respect of an accident—
 - (A) the original document, if any, showing that the accident has been reported to the relevant authority of the relevant place;
 - (B) the original receipts for the relevant expenses; and
 - (C) the original receipts for any damages or compensation received, if any, in respect of the relevant expenses.
- (3) For the purposes of subsection (2)(a), either of the following is taken as sufficient evidence showing payment of the Fund levy—

- (a) the original receipt for the relevant outbound fare bearing a levy stamp, which is issued by the E-levy System;
- (b) a copy of the receipt for the relevant outbound fare that is—
 - (i) certified to be a true copy to the satisfaction of the Authority; or
 - (ii) verified in such manner as the Authority may require.

4. Application in accordance with simplified procedure

- (1) An application for an ex gratia payment not exceeding the specified amount may be made in accordance with the simplified procedure provided under this section.
- (2) An application under this section in respect of a loss may be made by—
 - (a) the outbound traveller who has suffered the loss;
 - (b) the traveller's personal representative;
 - (c) any person authorized by the traveller in writing; or
 - (d) (if the traveller is a minor) the parent or guardian of the traveller.
- (3) Subject to subsections (4) and (5), an application under this section must be accompanied by—
 - (a) a statutory declaration stating that payment of the outbound fare has been made;
 - (b) the original or copy (which is certified to be a true copy to the satisfaction of the Authority) of the receipt for the relevant outbound fare bearing a levy stamp, which is issued by the E-levy System; and

- (c) any of the following—
 - (i) the original receipt for the relevant outbound fare showing the payment of the outbound fare;
 - (ii) verification of the payment of the outbound fare by an auditor appointed by the Authority;
 - (iii) such other documentary evidence of payment of the outbound fare as the Authority considers acceptable.
- (4) If an application is made in respect of an outbound traveller who is a minor at the time of making the application, subsection (3)(a) does not apply.
- (5) Despite that any requirement in subsection (3) is not complied with, the Authority may make an ex gratia payment on an application under this section if it is satisfied that the Fund levy has been paid in respect of the outbound fare in relation to which the application is made.
- (6) Where the amount of the ex gratia payment payable under section 5(1) of the Amount Regulation exceeds the specified amount, an application may only be made under this section if the claim for the ex gratia payment under the application is limited to the specified amount.
- (7) To avoid doubt, the Authority may, despite section 5(1) of the Amount Regulation, make an ex gratia payment of a lesser sum equivalent to the amount so limited.
- (8) Subject to subsection (9), if an application has been made under this section in relation to a loss, no application under section 3 may subsequently be made in relation to the same loss and, accordingly, any application made under section 3 in contravention of this subsection is of no effect.

- (9) Despite anything in this Regulation or the Amount Regulation, if an application is made under this section for the payment of an ex gratia payment not exceeding the specified amount, the Authority may, in its absolute discretion, determine that the application should be made in accordance with section 3 and not in accordance with this section.

5. Procedure for application

- (1) An application under this Regulation must—
- (a) subject to subsection (2), be made not later than 24 months beginning on the date on which the loss concerned occurred;
 - (b) be addressed to and lodged with the Authority;
 - (c) be in the specified form; and
 - (d) be accompanied by the originals or copies of such records as the Authority may reasonably require for the purpose of assisting the Authority in the exercise of the rights of subrogation under section 143 of the Ordinance.
- (2) The Authority may, in any case where it considers it appropriate to do so, extend the period specified in subsection (1)(a).

6. Procedure for application on behalf of another

- (1) An application under section 3(1)(c) or 4(2)(c) must be accompanied by—
- (a) the authorization referred to in section 3(1)(c) or 4(2)(c); and
 - (b) a statutory declaration to the effect that the application is made on behalf of the outbound traveller who has suffered the relevant loss and that the traveller

- has agreed to the application being so made on the traveller's behalf.
- (2) An application under section 3(1)(d) or 4(2)(d) must be accompanied by—
- (a) a copy of—
 - (i) the identity card (within the meaning of the Registration of Persons Ordinance (Cap. 177)) of the parent or guardian; or
 - (ii) a travel document (within the meaning of the Immigration Ordinance (Cap. 115)) of the parent or guardian;
 - (b) a copy of the birth certificate of the minor or any other documentary evidence proving to the satisfaction of the Authority the relationship between the minor and the applicant; and
 - (c) a statutory declaration to the effect that the application is made on behalf of the outbound traveller who has suffered the relevant loss.
- (3) For the purposes of subsection (1)(a), the authorization—
- (a) may be made by an outbound traveller in advance;
 - (b) will survive the traveller's subsequent death or mental incapacity within the meaning of section 2(1) of the Mental Health Ordinance (Cap. 136); and
 - (c) may be varied or cancelled by the traveller in writing.
- (4) If—
- (a) an application for an ex gratia payment in the case of a loss suffered in respect of an accident is made in respect of an outbound traveller pursuant to an authorization; and

- (b) the application is accepted,
the ex gratia payment may be made to any person who has incurred relevant expenses in respect of the traveller, even though the traveller has died or is mentally incapacitated within the meaning of section 2(1) of the Mental Health Ordinance (Cap. 136).

7. Period for making payment

If the Authority decides to make an ex gratia payment, it—

- (a) must take all practicable steps to make the payment within 90 days after the relevant application is lodged with the Authority; and
- (b) may, where it considers it appropriate, make such payment in instalments.