

LEGISLATIVE COUNCIL BRIEF

Travel Industry Compensation Fund (Amount of Ex gratia Payments and Financial Penalty) (Amendment) Rules 1998

INTRODUCTION

Annex A The Travel Industry Compensation Fund (TICF) Management Board (the Board) has made the Travel Industry Compensation Fund (Amount of Ex Gratia Payments and Financial Penalty) (Amendment) Rules 1998 at Annex A to specify the circumstances in which an overseas relative or a former spouse of an outbound traveller injured or killed in accidents whilst touring abroad may be granted an ex gratia payment.

BACKGROUND AND ARGUMENT

Annex B 2. Under section 32G(2) of the Travel Agents Ordinance (the TAO), the Board may, after consulting the Financial Secretary, make rules specifying the circumstances in which an outbound traveller may apply for or be paid an ex gratia payment. The current TICF (Amount of Ex Gratia Payments and Financial Penalty) Rules (the Rules) (at Annex B) specify, inter alia, the grant of ex gratia payment to an outbound traveller who suffers personal injury or death while touring abroad.

3. After reviewing the Manila Bay accident which occurred in August 1997 and which resulted in the death of seven tour members from Hong Kong, the Advisory Committee on Travel Agents (ACTA) and the Board have found that two cases should merit ex gratia assistance under the TICF but do not qualify under the existing rules. In these cases, the relatives (a former husband in one case and a brother in the other) of two deceased victims had to come to Hong Kong from Japan and Singapore respectively to arrange for the funerals, and in one case, also to look after an orphaned child. They were either the sole or the closest relatives of the deceased. However, a former spouse is not defined as a “relative” under the Rules. In addition, the Rules only provide for assistance for visits by relatives to the places of accident outside Hong Kong.

AMENDMENT RULES

4. Having consulted the Financial Secretary, the Board has made the Amendment Rules at Annex A to address the problems set out in paragraph 3.

5. The Amendment Rules specify the circumstances in which an overseas relative or a former spouse of an outbound traveller injured or killed in accidents whilst touring abroad may be granted an ex gratia payment. Specifically, they include three additional items of “relevant expenses” to section 5C, viz:

- (i) if a deceased or injured outbound traveller does not have any relatives, expenses reasonably incurred by a former spouse of the traveller in visiting the relevant country for a purpose connected with the traveller’s death or injury;
- (ii) expenses reasonably incurred by not more than two relatives 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; and
- (iii) if a deceased outbound traveller does not have any relatives, expenses reasonably incurred by a former spouse of the traveller in visiting Hong Kong for a purpose connected with the traveller’s death.

6. The opportunity is also taken to define more clearly the term “relative”.

7. Consequent to the above amendments, the relevant application forms for use in claiming the ex gratia payments as shown in the Schedule to the TICF (Procedure for Ex gratia Payments) Rules are amended accordingly.

PUBLIC CONSULTATION

8. The ACTA, on which the Travel Industry Council of Hong Kong and the Consumer Council, among others, are represented has been consulted and is supportive of the proposal.

BASIC LAW IMPLICATIONS

9. The Department of Justice advises that the Amendment Rules are consistent with the Basic Law.

HUMAN RIGHTS IMPLICATIONS

10. The Department of Justice advises that the Amendment Rules have no human rights implications.

BINDING EFFECT

11. The provisions which are amended by the Amendment Rules do not bind the State by express provision.

FINANCIAL AND STAFFING IMPLICATIONS

12. The amendments will have no financial or staffing implications for Government as the TICF is self-financing and derives its income mainly from levy imposed on outbound package tour fares.

ECONOMIC IMPLICATIONS

13. There will be no economic implications.

LEGISLATIVE TIMETABLE

14. The legislative timetable will be as follows -
- | | |
|------------------------------------|------------------|
| Publication in Gazette | 24 December 1998 |
| Tabling in the Legislative Council | 6 January 1999 |

PUBLICITY

15. A press release will be issued on 23 December 1998 to explain to the public the various amendments to the Rules.

ENQUIRIES

16. Enquiries on this brief may be directed to Mr HUI Sin-chun, Registrar of Travel Agents, at telephone number 2918 7569.

Trade and Industry Bureau
21 December 1998

**TRAVEL INDUSTRY COMPENSATION FUND (AMOUNT OF EX GRATIA
PAYMENTS AND FINANCIAL PENALTY)
(AMENDMENT) RULES 1998**

(Made by the Travel Industry Compensation Fund Management Board
after consulting the Financial Secretary under
section 32G(2) of the Travel Agents
Ordinance (Cap. 218))

1. Interpretation

Section 2 of the Travel Industry Compensation Fund (Amount of Ex gratia Payments and Financial Penalty) Rules (Cap. 218 sub. leg.) is amended -

(a) by repealing the definition of “relative” and substituting -

““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;”;

(b) by adding -

““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;”.

2. Amount of ex gratia payment

Section ??? is amended in the Table by adding -

- | | |
|---|------------------------------|
| “(d) if a deceased or injured outbound traveller does not have any relatives, expenses reasonably incurred by a former spouse of the traveller in visiting the relevant country for a purpose connected with the traveller’s death or injury | \$ 20,000 |
| (e) expenses reasonably incurred by not more than 2 relatives 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 | \$ 20,000
per
relative |
| (f) if a deceased outbound traveller does not have any relatives, expenses reasonably incurred by a former spouse of the traveller in visiting Hong Kong for a purpose connected with the traveller’s death | \$ 20,000”. |

Consequential Amendments

Travel Industry Compensation Fund (Procedure for Ex gratia Payments) Rules

3. Schedule amended

The Schedule to the Travel Industry Compensation Fund (Procedure for Ex gratia Payments) Rules (Cap. 218 sub. leg.) is amended -

- (a) in Form C, in paragraph 3(b)(ii) -

- (i) (A) by repealing “relative(s)” and substituting
“*relative(s)/former spouse”;
 - (B) by repealing “relative” and substituting “*relative/former spouse”;
 - (ii) by adding “(in the case of a relative)” after “Relationship with me”;
- (b) in Form D, in the Annex, in paragraph 3(b) -
- (i) (A) by repealing “relative(s)” and substituting “*relative(s) /former spouse”;
 - (B) by repealing “relative” and substituting “*relative/former spouse”;
- (ii) by adding “(in the case of a relative)” after “Relationship with me”;
- (c) in Form E, in paragraph 4(b)(iii) -
- (i) (A) by repealing “relative(s)” and substituting
“*relative(s)/former spouse”;
 - (B) by repealing “relative” and substituting “*relative/former spouse”;
- (ii) by adding “(in the case of a relative)” after “Relationship with the *infant/deceased”.

Chairman,
Travel Industry Compensation
Fund Management Board

15 December 1998

Explanatory Note

Section 1 modifies the presentation of the definition of “relative”.

2. Section 2 extends the coverage of “relevant expenses” so that a former spouse of an outbound traveller or a relative of the traveller residing outside Hong Kong may be granted an ex gratia payment in respect of the traveller.
3. Section 3 makes consequential amendments to relevant application forms.

[Subsidiary]

TRAVEL INDUSTRY COMPENSATION FUND (AMOUNT
OF EX GRATIA PAYMENTS AND FINANCIAL
PENALTY) RULES

(Cap. 218, section 32G(2))

[21 January 1994] L.N. 77 of 1994

1. (Omitted as spent)

2. Interpretation

In these Rules, unless the context otherwise requires—

"accident" (意外) means an accident described in section 5A; (L.N. 104 of 1996).

"application" (申請、申請書) has the meaning assigned to it by section 2 of the Rules;

"judgment" (判決、判決書) has the meaning assigned to it by section 2 of the Rules;

"proof of debt" (債權證明表) has the meaning assigned to it by section 2 of the Rules;

"relative" (親屬) means—

- (a) spouse (including a concubine);
- (b) cohabitee, that is to say, a person who at the date of the injury to or death of (as the case may be) the outbound traveller was living with the outbound traveller as the wife or husband of the outbound traveller;
- (c) parent, step-parent, lawful guardian;
- (d) spouse's parent, spouse's step-parent, spouse's lawful guardian;
- (e) grandparent, great-grandparent;
- (f) child, ward of court;
- (g) spouse's child, spouse's ward of court;
- (h) grandchild;
- (i) child's spouse;
- (j) brother, sister;
- (k) spouse's brother, spouse's sister;
- (l) half-brother, half-sister;
- (m) step-brother, step-sister;
- (n) brother's spouse, sister's spouse;

[附屬法例]

旅遊業賠償基金 (特惠賠償額及罰款) 規則

(第 218 章第 32G(2) 條)

[1994 年 1 月 21 日] 1994 年第 77 號法律公告

1. (已失時效而略去)

2. 釋義

在本規則中，除文意另有所指外——

"未清償" (unsatisfied) 就債權證明表而言——

(a) 如屬清盤的情況，指清盤結束後，清盤人根據《公司(清盤)規則》(第 32 章，附屬法例) 接納的債權證明表所證明債權的款額仍未全數支付；

(b) 如屬破產的情況，指支付末期賬項後，破產管理署署長或破產案受託人根據《債權證明規則》(第 6 章，附屬法例) 接納的債權證明表所證明債權的款額仍未全數支付；

"申領程序規則" (the Rules) 指《旅遊業賠償基金 (特惠賠償申領程序) 規則》(第 218 章，附屬法例)；

"申請"、"申請書" (application) 具有申領程序規則第 2 條給予該詞的涵義；

"有關開支" (relevant expenses) 指第 5C 條所述的開支；(1996 年第 104 號法律公告)

"有關國家" (relevant country) 指意外發生的國家或香港以外地方；(1996 年第 104 號法律公告)

"判決"、"判決書" (judgment) 具有申領程序規則第 2 條給予該詞的涵義；

"旅行代理商" (travel agent) 具有本條例第 32A 條給予該詞的涵義；

"意外" (accident) 指第 5A 條所述的意外；(1996 年第 104 號法律公告)

"債權證明表" (proof of debt) 具有申領程序規則第 2 條給予該詞的涵義；

"親屬" (relative) 指——

- (a) 配偶 (包括妻侍)；
- (b) 同居者，即於外遊旅客受傷或死亡當日 (視屬何情況而定)，與該外遊旅客一同居住而儼然是其妻子或丈夫的人；
- (c) 父母、繼父母、合法監護人；
- (d) 配偶的父母、配偶的繼父母、配偶的合法監護人；

[Subsidiary]

- (o) brother's child, sister's child;
- (p) parent's brother, parent's sister;
- (q) parent's brother's spouse, parent's sister's spouse;
- (r) parent's brother's child, parent's sister's child; (L.N. 104 of 1996)

"relevant country" (有關國家) means the country or the place outside Hong Kong where the accident occurred; (L.N. 104 of 1996)

"relevant expenses" (有關開支) means the expenses described in section 5C; (L.N. 104 of 1996)

"the Rules" (申領程序規則) means the Travel Industry Compensation Fund (Procedure for Ex gratia Payments) Rules (Cap. 218 sub. leg.);

"travel agent" (旅行代理商) has the meaning assigned to it by section 32A of the Ordinance;

"unsatisfied" (未清償) in relation to a proof of debt means—

- (a) in the case of a winding up, that after the conclusion of the winding up, the full amount for which the proof of debt was admitted by the liquidator under the Companies (Winding-up) Rules (Cap. 32 sub. leg.) has not been paid;
- (b) in the case of a bankruptcy, that after the payment of a final dividend, the full amount for which the proof of debt was admitted by the Official Receiver or the trustee in bankruptcy under the Proof of Debts Rules (Cap. 6 sub. leg.), has not been paid.

PART I

EX GRATIA PAYMENTS IN RESPECT OF
AN OUTBOUND FARE

(L.N. 104 of 1996)

2A. Application (Part I)

This Part shall apply to an ex gratia payment for the purposes of section 32E of the Ordinance in relation to a loss suffered in respect of an outbound fare.

(L.N. 104 of 1996)

3. When an application may be made

An application may be made by an outbound traveller or on his behalf for the purposes of section 32E of the Ordinance in relation to a loss suffered in respect of an outbound fare.

(L.N. 104 of 1996)

[附屬法例]

- (e) 祖父母、外祖父母、曾祖父母、外曾祖父母;
- (f) 子女、由法庭判令受監護者;
- (g) 配偶的子女、由法庭判令受配偶監護者;
- (h) 孫、孫女、外孫、外孫女;
- (i) 子女的配偶;
- (j) 兄弟、姊妹;
- (k) 配偶的兄弟、配偶的姊妹;
- (l) 異父或異母兄弟、異父或異母姊妹;
- (m) 繼父與其前妻或繼母與其前夫所生的子女;
- (n) 兄弟的配偶、姊妹的配偶;
- (o) 兄弟的子女、姊妹的子女;
- (p) 父母的兄弟、父母的姊妹;
- (q) 父母的兄弟的配偶、父母的姊妹的配偶;
- (r) 父母的兄弟的子女、父母的姊妹的子女。 (1996 年第 104 號法律公告)

第 1 部

就外遊費支付的特惠賠償

(1996 年第 104 號法律公告)

2A. 適用範圍 (第 1 部)

本部適用於因外遊費方面蒙受的損失而就本條例第 32E 條支付的特惠賠償。

(1996 年第 104 號法律公告)

3. 何時可提出申請

外遊旅客可因外遊費方面蒙受的損失而就本條例第 32E 條提出或由另一人代表提出申請。

(1996 年第 104 號法律公告)

[Subsidiary]

4. Amount of ex gratia payment

Any ex gratia payment under this Part shall be 80% of the outbound fare in respect of which the application for the payment is made.

(L.N. 104 of 1996)

5. Circumstances of payment

(1) An ex gratia payment under this Part may be made to or on behalf of an outbound traveller if, and only if— (L.N. 104 of 1996)

(a) in the case where an application is submitted with a judgment, such judgment is unsatisfied and it appears to the Board that reasonable efforts have been made to enforce it;

(b) in the case where an application is submitted with evidence of a proof of debt—

(i) any right to a dividend under the proof of debt has been assigned in writing to the Board; and

(ii) the Board is indemnified—

(A) to the extent of the amount of the ex gratia payment in the event of the proof of debt being rejected; or

(B) to the extent of the difference between the ex gratia payment and 80% of the amount of the proof of debt admitted in the event of the amount admitted being less than the ex gratia payment.

(2) Where, by reason of an assignment under subsection (1)(b)(i), the amount of a dividend received by the Board is in excess of the amount of the ex gratia payment concerned, the Board shall pay to the relevant applicant the amount of such excess.

PART II

EX GRATIA PAYMENTS IN RESPECT OF
AN ACCIDENT

5A. Application (Part II)

(1) This Part shall apply to an ex gratia payment for the purposes of section 32E 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) An accident which arises out of and in the course of an activity which is not provided or organized by the travel agent concerned shall be disregarded for the purposes of subsection (1).

[附屬法例]

4. 特惠賠償額

根據本部支付的特惠賠償，為特惠賠償申請所涉的外遊費的 80%。

(1996 年第 104 號法律公告)

5. 可付款的情況

(1) 如果是並僅如果是下述情況，方可根據本部向外遊旅客或其代表支付特惠賠償—— (1996 年第 104 號法律公告)

(a) 如申請由連同判決書一併呈交，核判決未獲履行，而委員會覺得該判決曾獲作出合理努力以予強制執行；

(b) 如申請由連同已遞交債權證明表的證據一併呈交——

(i) 根據該債權證明表收取攤還債款的權利，已以書面轉讓給委員會；及

(ii) 委員會獲得以下述數額為限的彌償——

(A) (如核債權證明表被拒絕接納) 特惠賠償額；或

(B) (如獲接納的款額少於特惠賠償) 特惠賠償與獲接納的債權證明表所證明債權的款額的 80% 之數兩者的差額。

(2) 凡委員會因第 (1)(b)(i) 款所指的轉讓而收到的攤還債款款額超過有關的特惠賠償額，委員會須將超過的數額付予有關的申請人。

第 II 部

就意外支付的特惠賠償

5A. 適用範圍 (第 II 部)

(1) 本部適用於因任何意外蒙受的損失而就本條例第 32E 條支付的特惠賠償，而該意外是外遊旅行服務所引起的並在外遊旅行服務期間發生，並導致外遊旅客死亡或身體受傷。

(2) 就第 (1) 款而言，對於不屬有關旅行代理而提供或舉辦的活動所引起的並在該活動過程中發生的任何意外，須不予理會。

[Subsidiary]

5B. When an application may be made

(1) An application may be made by an outbound traveller or on his behalf for the purposes of section 32E of the Ordinance in relation to a loss described in section 5A.

(2) A loss in relation to which an application under subsection (1) may be made shall be limited to the relevant expenses actually incurred.

5C. Amount of ex gratia payment

Any ex gratia payment under this Part shall be subject in respect of each type of relevant expenses to the maximum amount set out in column 2 of the Table as follows—

TABLE

Column 1	Column 2
(a) medical expenses reasonably incurred in the relevant country in respect of an accident	\$100,000
(b) expenses reasonably incurred in the relevant country 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 thereof), in a case where the accident results in the death of the outbound traveller	\$ 40,000
(c) expenses reasonably incurred by up to 2 relatives of an outbound traveller for paying visits to the relevant country for a purpose relating to or consequent upon the death of or personal injury sustained by the outbound traveller	\$20,000 per relative

5D. Circumstances of payment

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

- (a) a declaration in writing by the applicant or, as the case may be, the person on whose behalf the application is made, as to—
- whether he or any other person has received any damages or compensation in respect of the relevant expenses incurred in relation to the accident; and
 - whether he or any other person has made any claim or instituted any legal proceedings in respect of those relevant expenses; and

[附屬法例]

5B. 何時可提出申請

(1) 外遊旅客可因第 5A 條所述的損失而就本條例第 32E 條提出或由另一人代表提出申請。

(2) 如可因任何損失而根據第 (1) 款提出申請，則該損失須局限於實際招致的有關開支。

5C. 特惠賠償額

根據本部支付的特惠賠償，就每類有關開支而自須以下述列表第 2 欄所列的最高款額為限——

列表

第 1 欄	第 2 欄
(a) 就任何意外而在有關國家合理地招致的醫療開支	\$100,000
(b) 如意外導致任何外遊旅客死亡，則在有關國家就該外遊旅客的殯殮事宜所合理地招致或將該外遊旅客的遺體(包括遺體火葬後的骨灰)運返香港所合理地招致的開支	\$40,000
(c) 任何外遊旅客的最多 2 名親屬為了與該外遊旅客死亡或身體受傷有關的目的或因該外遊旅客死亡或身體受傷而前往有關國家所合理地招致的開支	每名親屬 \$20,000

5D. 可付款的情況

如果並僅如果申請書是附有以下文件，方可根據本部向外遊旅客或就外遊旅客支付特惠賠償——

- (a) 由申請人或有人代為提出申請的人(視屬何情況而定)作出的書面聲明，述明——
- 他或任何其他人士是否已就該意外所招致的有關開支收取任何損害賠償或任何補償；及
 - 他或任何其他人士是否已就該等有關開支提出任何申索或提起任何法律程序；及