

**LEGAL OPINION**

Date: 24.01.2020

**QUERIST**

Indian Association of Tour Operators

**QUERY**

1. Whether any Active Member who ceases to have recognition by Ministry of Tourism and further fails to get it renewed despite reminders and assistance by IATO be relegated to any other category as per the Memorandum of Association?
2. Whether the Executive Committee of IATO is empowered to take such action within the scope of Memorandum of Association?

**OPINION**

I have gone through your queries, the Memorandum of Association and the Articles of Association and my opinion is as follows:

Article 4(a) of the Memorandum of Association prescribes the qualification for a member to become an Active Member:

Active Member: To be an Active Member, a firm or a company has to be recognized by the Ministry of Tourism (MoT) as a Tour Operator/Travel Agency for a minimum period of two years

and

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The firm or company's major substantial part of activity of promotion of tourism and foreign exchange earnings in a year must be a minimum of Rs.20,00,000/-.

In view of the above said terms, two conditions have been prescribed by IATO which qualify for the membership as an Active Member.

In situations where any Active Member fails to get the renewal of recognition by the Ministry of Tourism as required, such member loses one of the conditions on the basis of which the membership was granted. However, there is a built-in system to provide assistance by the Querist which is as follows:

- 75 to 90 days before the expiry of the recognition by Ministry of Tourism, a reminder is sent by IATO to all such concerned members.
- IATO provides assistance to any member who faces any difficulty in filing for their renewal with the Ministry of Tourism, subject to fulfillment of criteria.
- IATO's EC members, Mr. Zia Siddiqui has been deputed to help any such member who faces difficulty in renewing their MoT recognition subject to their fulfilling the criteria.
- As per the MoT rules, renewal application must be received by the Ministry minimum 60 days prior to expiry of recognition, else their recognition is cancelled.
- IATO gives such members a 6 month lean period (two months before the date of expiry and four months after the date of expiry to submit the renewal letter to enable them continue as active member.)
- IATO has also made it clear that in case such members subsequently renew their MoT Recognition, their status would be changed to Active Category immediately, subject to fulfillment of criteria.

It appears that there are several members who have failed to seek continuation of the recognition for which the Querist has been sending reminders and offers of assistance so that the status of their Active membership continues. I am informed that letters have been sent regularly as reminders to such members. The privilege of an Active Member entails many other issues such as voting, contesting elections and many other activities.

In view of the above, the Querist finally also sent notices to the Members that in case renewal of recognition by MoT is not obtained, the Querist would be left with no other option but to discontinue the Active Membership and in absence of the eligibility of the Members, there is no other option but to bring them in the category of Allied Members.

The Active Members have full knowledge that they have failed to seek continuation of recognition yet have taken no steps, hence, they cannot be recognized as Active Members in terms of the Memorandum of Association. The Querist has as per the records, provided prior information and assistance to seek renewal for recognition with the MoT for continuation as an Active Member.

Hence, in my opinion, in terms of the first query, discontinuation as an Active Member is proper in terms of the Memorandum of Association. It is pertinent to mention that the membership has neither been suspended nor discontinued, only Category has been revised.

In relation to the second query, the powers of Executive Committee of IATO under Article 13(h) has been provided below:

*"(h) To decide upon the membership of the member who may have violated the Rules and Regulations of this Association and/or directive of the Executive Committee of the Association."*

This clause makes it clear that no member would violate the Rules and Regulations and/or directive of the Executive Committee of the Querist. The Rule for being an active member is to have recognition and earning of foreign exchange upto Rs.20,00,000/-. However, an intentional delay in seeking renewal by such Member as well as ignoring the directive by the Executive Committee for seeking the same amounts to violation. Hence, in view of this, the Executive Committee is empowered to decide upon the membership of such Active Members and take the decision accordingly.

The Legal position is that a person who can appoint such members also has the right to suspend or terminate membership in a similar way. If the Executive Committee has accepted the Active Membership for having qualified the eligibility for an Active Member, the EC is similarly empowered to take steps and a decision on the status of membership. In my opinion, for query no.2, the Executive Committee is empowered to decide upon the membership in terms of the Memorandum of Association. Hence, Query no. 1 & 2 are answered accordingly.

Copy of the same has been retained in my office.

Regards,

  
(Anjana Gosain)

ADVOCATE