

**Travel Agents (Amendment) Bill
Submission made by the Consumer Council to
the Bills Committee of Legco**

The Consumer Council would like to submit the following views in respect of the Amendment Bill for the consideration of the Bills Committee. Some comments which concern the Travel Industry Council are requisite to the successful implementation of the objective of the Bill.

GENERAL

1. We support the proposal of introducing a licensing scheme to regulate inbound travel agents to be administered by the existing Registrar of Travel Agents. We are of the view that such a scheme is necessary for promoting tourism in Hong Kong.
2. We support that the regulation of inbound travel agents should be complemented by industry self-regulation and agree that the Travel Industry Council of Hong Kong (TIC) should also be responsible for the self-regulation of inbound travel agents as well as outbound travel agents.

TRAINING & REGISTRATION

3. We support the proposal of requiring registered travel agents to employ only certified tour escorts for tour-escorting duties. We agree that the proposed certification scheme will be able to enhance the standard of services of the tour escorts.
4. In addition to the proposed certification scheme, we consider that there is a need to introduce a registration scheme for tour escorts (outbound) as well as tour co-ordinators (inbound). The registration scheme will enable the travel industry to eliminate, by de-registration, those tour co-ordinators who have been indulging in malpractice detrimental to the interests of tourists.
5. We are of the view that travel agents should be responsible for the conduct of the tour co-ordinators and tour escorts. We are aware of complaints from tour - co-ordinators and tour escorts that they were acting under the instruction of the travel agents. An appeal mechanism should be set up to enshrine the principle of natural justice, this is similar to the practice within the insurance industry.

FUNDING OF SELF-REGULATION

6. We strongly support that the Travel Industry Compensation Fund (TICF) collected through the levy charges on outbound packages tours for the benefit of outbound travelers should **not** be used for the protection of inbound travelers. A separate compensation fund should be set up, if necessary, to protect the interest of the inbound travelers.
7. We understand part of the levy charges on outbound package tours collected by TICF is being utilised by TIC to implement the self-regulation scheme of the outbound travel scheme. TIC should keep separate accounts for the operation of self-regulation of outbound and inbound travel agents respectively. Where

circumstances warrant extra funds to be found to support inbound activities, it should not be expected that TICF will cross subsidize.

PUBLIC ACCOUNTABILITY OF TIC

8. It is understood that almost all travel agents are members of TIC. Enactment of the proposed amendment means that all travel agents must become TIC members and be regulated by the TIC's codes of conduct. We are therefore of the view that the TIC should be obliged to be highly accountable to the public in the administration of its self-regulatory scheme, to safeguard public interest, rather than performing the function of a general trade association.
9. The TIC has assumed the function of self-regulation for over 10 years, and it has made significant contributions to the operation of the industry. However, this is an opportune time to examine certain important issues with the self-regulatory structure particularly as it is now called upon to assume greater responsibility. Moreover, such reviews should be conducted, with adequate transparency, at a regular interval and with input from outside the travel industry. For example, the insurance industry has recently reviewed its self-regulatory structure as well.

TIC Structure

10. At the outset we would like to make two comments on the structure of the TIC Board:
 - (a) the small percentage of non industry members on the board; and
 - (b) the manner in which nominations of directors are made to the board.
11. With regard to the percentage of non industry members, we understand that amendments to important provisions in the TIC's Memorandum and Articles of Association require the approval of the Financial Secretary. We also understand that 4 of the 21 members of the Board of Directors of the TIC are non-industry members appointed by the Financial Secretary. Whilst 2 of them are directly appointed by the government, the other 2 are nominated by the TIC board. We consider such arrangements to be inadequate to protect the public interest.
12. We should like to reiterate that the ultimate objective of industry self-regulation is to protect public interest, and not to pursue industry interest. Therefore, we suggest that the number of non industry members in the TIC's Board of Directors should be increased, not only in number, but with a reasonable ratio to the number of industry representatives, with a view to increasing transparency in the decision-making process. Non-industry members should be expected to provide input independent of industry viewpoint. More independent members would not only ensure public interest is taken into account but would also protect those industry members who may be facing formidable pressure to put industry's interest ahead of the public's interest.

13. As to the manner in which board nominations are made, the TIC board consists of:
- (a) Chairman (1)
 - (b) the immediate past Chairman (1)
 - (c) Chairmen of each Association Member (8)
 - (d) elected directors nominated from the governing body of each Association member (8)
 - (e) non-industry directors appointed by the Financial Secretary (4)
(2 of whom nominated by TIC Board)

Obviously, the governing bodies of the Association Members have virtual control of the directors' seats. The Council does not consider this to be compatible with the need for openness, or reflect a democratic process. The Council suggests therefore that consideration should be given to opening this up to direct nomination by the general membership and not via the Associations' governing bodies.

CODES OF PRACTICE

14. The Council believes that the TIC's codes of practice for self-regulation should be drafted with participation from non-industry representatives, and subject to public vetting as well as the vetting and approval of the RTA.
15. The Code should set a bench mark for best practice, addressing competition and consumer concerns, and also providing guidelines for members of the board to follow in the course of conducting themselves in various offices. This will provide a high level of transparency and public confidence in TIC's overall operations.

Competition implications of competitor agreements

16. While supporting the proposal of extending the self-regulatory function of the TIC, we are concerned that certain agreements amongst travel agents could distort the process of competition in relevant markets to the detriment of economic efficiency and consumer welfare.
17. In line with its statutory function, and the Government's policy, the Council has been encouraging industry associations to include within their codes of practice provisions aimed at ensuring that members do not engage in practices that will distort the efficient operation of markets. To this end the Council has developed a set of competition rules, that could be inserted in codes, in addition to a suggested competition complaint handling mechanism, that would allow allegations of anti-competitive conduct to be properly assessed.
18. The opportunity to have allegations assessed by industry associations rather than by a government (competition) agency is also in line with a recommendation proposed by the Hong Kong General Chamber of Commerce in a 'Chamber Statement on Competition' issued in August 2001. The Statement encouraged, amongst other things, industries to develop codes that include a competition complaint handling procedure.

19. In this regard, taking into account the Government's sector specific approach, and its encouragement of self regulatory measures to promote competition, we suggest the TIC include within its codes of conduct provisions aimed at
 - (a) ensuring that members do not engage in practices that distort the efficient operation of markets; and
 - (b) having allegations of anti-competitive conduct examined to ascertain whether conduct complained of is having a detrimental effect on competition, and is otherwise against the wider interests of Hong Kong.

Compliance and Complaints Handling

20. We understand that the TIC's Consumer Relations Committee examines complaints by consumers, while the Compliance Committee is responsible for disciplinary actions against its members. In these circumstances it would appear that there is a structural basis under which a competition complaint handling mechanism could be created. Alternatively, there may be a case for combining all three functions into one committee.
21. We would also stress that it is extremely important for these complaint/disciplinary mechanisms to be impartial and seen to be so, comprising members outside the trade (preferably over 50%) and to have an independent chairman. This is in line with the practice of the insurance and estate agents industry as well as the legal and medical professions.

Avoiding conflict of Interest

22. Ensuring that the structure of committees within the TIC and that of the TIC itself have adequate representation from the wider community will go some way to providing a degree of transparency. However, providing guidelines for members of the TIC's board and committees to follow in conducting TIC business, and in elections, will also go a long way to safeguarding members from allegations of conflict of interest, and will undoubtedly engender greater public confidence in the TIC. Guidelines that set out procedures for persons to follow in order to avoid conflicts of interest from arising, and to maintain the integrity of decision making, are a common feature of rules of governance for many public bodies.
23. The Consumer Council is willing to provide further guidance in this respect and in relation to developing appropriate guidelines, codes of practice, rules and procedures.

Consumer Council
31 December 2001