

The Legislative Council

Bills Committee on Travel Agents (Amendment) Bill

Administration's Responses to Written Submissions and Deputations

We would like to thank all the organizations and individuals who have responded to the invitation to submit their views on the Bill. After studying the written submissions and listening to the views expressed by the deputations at the second meeting of the Bills Committee on 7 January 2002, we would like to take this opportunity to respond to the issues raised pertaining to the Bill.

Intention of the Bill

2. We are pleased that there is such overwhelming support from all sectors for the objectives of the Bill. It is clearly appropriate now to put in place a licensing scheme for inbound travel agents. There is a consensus that inbound travel agents should be regulated to provide adequate protection to our visitors and to strengthen the standards of service provided by those in the industry.

3. We are also happy to see that the trade generally supports the adoption of self-regulation to complement the statutory licensing scheme.

Scope of the Bill

Comments:

4. There was only one comment specifically on the Bill itself. This concerned the proposed definition of inbound travel agents. The suggestion made was that the scope of this definition should be narrowed to ensure that those operating as corporate event organizers are not covered by the licensing requirements.

Responses:

5. We believe that the definition as it stands is appropriate but we will consider carefully whether further clarification is necessary to ensure that there is no doubt over the scope of the legislation. Meanwhile, corporate event organizers are advised to hire licensed travel agents to arrange carriage, accommodation and other services for their overseas customers if they do not wish to obtain a license for providing those services themselves.

Self regulation of the trade

Membership and Board of TIC

Comments:

6. In view of the self-regulatory role played by the Travel Industry Council of Hong Kong (TIC), a number of commentators saw a need for the TIC to be more open and transparent in respect of both the structure of their membership and the composition of the Board of Directors. In particular, some propose that nominations to TIC's Board should be open to direct nomination by the general membership and not only via the Association's governing bodies.

Responses:

7. The current arrangements resulted from the history that TIC was originally an informal federation of several trade associations formed in 1987. The nomination through TIC's member associations guaranteed that candidates who intend to run for directorship had sufficient support among trade members and had sufficient experience in association/council work to be able to contribute positively to the Board.

Comments:

8. A number of parties also suggest there should be more non-trade involvement in the TIC's Board/other committees. Proposals for how this might be achieved include increasing the number of independent directors

in the Board/other committees and appointing representatives from the Government/other related bodies into the TIC.

Responses:

9. In view of its role to regulate the industry and protect consumers' interest, the TIC has already agreed to increase the number of independent directors from 4 to 8 (a 100% increase). The ratio of independent directors in the TIC Board will then increase from 19% (4/21) to 32% (8/25). We wish to point out that it is more important to look at the complaint handling and appealing mechanism of TIC. The current structures of its Consumer Relations Committee and its Appeal Board have already a high percentage of independent directors or outsiders (Please also refer to paras 13 below). TIC is prepared to further strengthen the structures and is receptive to suggestions to amend its Code of Conduct.

Comments:

10. Some commentators suggest that the TIC should set up an inbound division and have sufficient representation of inbound experts on its Board/other committees.

Responses:

11. The TIC already has at present an Inbound Committee to handle issues relating to their inbound travel agent members. TIC will build on its established system to regulate additional inbound members arising from the proposed legislation.

Mechanism to handle complaints and discipline non-compliance

Comments:

12. Concerns have been expressed over the independence and transparency of the TIC's complaints handling and disciplinary mechanism. Some suggest that the TIC's Code of Conduct should be drafted with participation from non-industry representatives and subject to vetting by the public and/or Registrar of Travel Agents.

Responses:

13. Currently, the TIC deals with complaints and disciplinary matters mainly through two committees specifically set up to undertake this function: the Consumer Relations Committee and the Compliance Committee. To ensure the mechanism is fair and offers sufficient protection to consumers, the Consumer Relations Committee comprises a high proportion of independent members (excluding the Convenor, half of the committee members are non-trade members). The TIC has agreed to increase the number of independent members on its Compliance Committee to the same level as its Consumer Relations Committee (i.e. 50%).

14. Under the current system, the TIC may penalize those members who violate their Codes of Conduct. The penalty may take the form of a warning, fine, suspension or revocation of membership. The TIC welcomes suggestions and ideas to improve the Code of Conduct. Indeed, some of the provisions in the Code of Conduct have been revised in response to complaints and public views.

Conflict of interest in TIC

Comments:

15. Some commentators expressed concern that there may be a conflict of interest among the directors and committee members of the TIC because many of them are travel agent themselves and yet performing the regulatory role of the trade.

Responses:

16. To address this issue, TIC has developed a General Code of Conduct (copy attached) for its Board of Directors. This code of conduct sets out the fundamental principles that must be followed in setting the professional standard of their service and in serving the TIC, which is a public body for the purpose of the Prevention of Bribery Ordinance.

Outbound travel agents cross-subsidizing inbound travel agents

Comments:

17. There were comments that the outbound travel agents may be subsidizing the inbound travel agents under the proposed regulatory framework and that the TIC should keep separate accounts for their activities in respect of outbound and inbound travel agents respectively.

Responses:

18. The TIC is already regulating inbound travel agents who are at present their members. The cost arising from additional travel agents joining TIC in order to be eligible for a license under the new legislation is not expected to be substantial. The TIC has been consulted and agreed to take up the additional workload with its existing resources. A number of travel agents offer both inbound and outbound travel services. Keeping separate accounts will generate additional administrative cost to the TIC and is not desirable.

Malpractice relating to shopping arrangement

Comments:

19. Some commentators have pointed out that many complaints against travel agents relate to shopping arrangement made by them for visitors. It is suggested that such malpractice should be condemned, disallowed and penalized either in the legislation or through the TIC's Code of Conduct. Visitors should also be able to seek redress from malpractices in a timely and effective manner.

Responses:

20. The TIC has already issued a directive to members to require them to take visitors only to shops that agree to guarantee to provide a 100% refund on unused items within 14 days of purchase. Cases of malpractice by travel agents will be considered by the Compliance Committee, which

may penalize those Travel Agencies found guilty of a breach of the directive. In addition to this, for general consumers' complaints against malpractices, the Small Claims Tribunal provides a fast track mechanism to handle visitors' claims. The Administration is working closely with the TIC, the Consumer Council, the Hong Kong Tourism Board and other parties concerned to develop further measures to protect tourists from consumer transaction malpractice.

Training and upgrading skills of inbound tour guides

Comments:

21. Many agree that the service standards of inbound tour guides need to be strengthened as they are the frontline staff that have the most direct contact with our visitors.

Responses:

22. To ensure they have the professional knowledge and skills, we are working with the TIC and the industry as a whole on a training and certification scheme for inbound tour guides which is modelled on the certification programme for outbound tour escorts.

23. The qualification level for the course is set at completion of Form 5 or equivalent. Serving tour guides with at least one year of experience will be exempted from this requirement. The Skills Upgrading Scheme will provide a 70% subsidy to those who attend the training course. Professional training institutions will be invited to bid to operate the training courses and the selection process will ensure that suitably qualified institutions will run the programme.

Comments:

24. Some expressed concern that some tour guides may lose their jobs as a result of the training and certification programme. They call for the complete exemption of examination for all serving tour guides

Responses:

25. Those who have previously passed the examinations administered by the Hongkong Association of Registered Tour Co-ordinators (HARTCO) will be exempted from the training programme and most of the examination but will be required to be tested on the “Hong Kong Updates” part of the exams. While it is necessary to require all tour guides to pass the examination to ensure they are up to standard, we believe, based on past experience with the outbound tour escorts, that the majority of inbound tour guides will be able to pass the examination.

26. There will also be a sufficiently long period for serving tour guides to go through the training and pass the examination before we require that only those with certificates may serve as inbound tour guides. A training programme for new entrants, built on the one for serving tour guides, will be considered by the TIC when the training programme for serving tour guides have been implemented.

Monitoring the standard of tour guides

Comments:

27. Some commentators have proposed that there should be a statutory licensing scheme for tour guides in place of or in addition to the certificate scheme administered by the trade.

Responses:

28. We believe that the inbound travel agents must be held responsible for the quality of the services they deliver. In line with this, travel agents should be held responsible for conduct of their tour guides. Therefore, the proposed regulatory mechanism is intended to regulate inbound travel agents instead of inbound tour guides and the complaint handling mechanism is targetted at the travel agents. We should also note that the TIC is already the administrator of the outbound tour escort certification scheme, which has been highly effective in regulating the outbound escorts.

Comments:

29. There were suggestions that rules and conditions should be drawn up for renewal of the certificate in order to monitor the standard of service of inbound tour guides.

Responses:

30. We shall convey this suggestion to the TIC for their consideration as they develop a suitable renewal mechanism.

Miscellaneous

Additional resources for inbound regulatory mechanism

Comments:

31. Some trade members request for additional resources to be given to the TIC to help them take on the responsibility for regulating inbound travel agents.

Responses:

32. In the process of drawing up the proposed legislation, the Administration has considered carefully the resource implication of the new licensing scheme for both the Government and the TIC. After reviewing the manpower and resources available to the Registrar of Travel Agents, the Administration has concluded that it will absorb the additional workload generated from the licensing of inbound travel agents. The TIC has also been consulted. While expressing concern over possible increase in demand on their staffing resources, they indicated that they expected no resources from the Government for taking up the additional regulatory responsibility for inbound travel agents. In fact, more than half of the inbound travel agents in Hong Kong are already members of the TIC and the Council has been regulating both the inbound and outbound activities of its members.

Compensation for inbound visitors

Comments:

33. It has been suggested that there is a need to set up a separate compensation fund to protect inbound travellers.

Responses:

34. We believe that inbound travellers should seek compensation for any failing of their travel arrangement from the travel agents with which they arrange their trip in their home countries. This is the same arrangement in place for our outbound travellers who will seek compensation from our Travel Industry Compensation Fund if they suffer from a loss in respect of an outbound journey.

Competition among travel agents

Comments:

35. Some commentators suggest that competition in the travel industry should be maintained to ensure efficient market operation.

Responses:

36. The Hong Kong SAR Government prides itself on its commitment to fair and open competition in all sectors. There is no evidence to suggest that the proposed legislation will adversely affect competition in this industry.

Appointment of Travel Trade members to HKTB and TSG

Comments:

37. There is a suggestion that more travel trade members should be appointed to the Hong Kong Tourism Board and Tourism Strategy Group.

Responses:

38. We fully agree that it is necessary to have representatives from the travel trade on tourism related bodies. We also feel that it is important that there should be representation from other sectors in order to achieve a balance of views. The Hong Kong Tourism Board Ordinance (Cap. 302) specifically provides for the appointment of one licensed travel agent and one tour operator into the Board, in addition to six other representatives from related trades, including passenger carrier (2), hotel operator (2), retailer and restaurant operator. The Tourism Strategy Group chaired by the Commissioner for Tourism at present comprises 16 non-official members, including members drawn from travel agents, hotel operators/owners, passenger carriers, catering and entertainment sector, retailers and other related industries and professions. The Chairman of the TIC is a serving member. We continuously review the performance of the members of the advisory boards and committees to ensure that members contribute effectively to the work of these important bodies.

Economic Services Bureau
15 January 2002

(ADOPTED AT THE BOARD OF DIRECTORS MEETING HELD ON 14TH MARCH 1995)

Annex to LC Paper No. CB(2)915/01-02(01)

TRAVEL INDUSTRY COUNCIL OF HONG KONG

GENERAL CODE OF CONDUCT FOR TIC BOARD OF DIRECTORS

Introduction

1. The Terms of Reference, Composition and Liabilities of the Board of Directors are governed by the Memorandum and Articles of Association of TIC.
2. The Memorandum and Articles of Association of TIC make reference to this General Code of Conduct, the object of the Code being to promote a high professional standard of ethical practice.
3. The TIC is included in the schedule to the Prevention of Bribery Ordinance as a "Public Body". All members of the Board are therefore "public servants" for the purpose of the Ordinance and are subject to its provisions which principally deal with the acceptance of advantages in connection with their Board membership.
4. This General Code of Conduct represents the minimum standards which TIC Board members are required to follow in all transactions and practices relating to their conduct as Board members. The conduct of a Board member in this capacity as an ordinary member of TIC will be governed by the other Codes of Conduct and Codes of Business Practice of TIC.
5. TIC Board members shall be answerable to the TIC Board of Directors concerning their conduct in accordance with this Code. If the conduct of a Board member is found to be in contravention of this Code or otherwise inconsistent with the objectives of TIC, action will be taken as prescribed in the Memorandum and Articles of Association of TIC by the Board. Should non-industry members of the Board be found in breach of the Codes of Conduct/Memorandum and Articles of Association, disciplinary action may be taken against them at the discretion of the Board. In cases where there may be a breach of the Prevention of Bribery Ordinance, a report may be made to the ICAC.
6. A Board member shall not advocate any political views in the name of TIC unless otherwise specifically approved by the Board of Directors.

Order of Meetings

7. All business of Board meetings shall be conducted according to the "Robert's Rules of Order".

8. All mobile phones shall be switched off when a Board meeting is in progress.
9. A Board member shall endeavour to be punctual at any Board meeting and to stay until the meeting adjourns.

The Prevention of Bribery Ordinance

10. Members of the Board are advised to take particular note of the following sections of the Ordinance:-
 - (a) Section 2(1): Definition of "advantage" which includes gifts, loan, commission, employment contract or service.
 - (b) Section 2(1): Definitions of "Public Body" and "Public Servant":
 - (c) Section 4: Which prohibits both the offering to and the solicitation of an advantage by a public servant as an inducement to or reward for or otherwise on account of that public servant's official position;
 - (d) Section 5: Which prohibits the bribing of public servants in relation to contracts; and
 - (e) Section 8: Which prohibits the offering of a bribe by any person having dealings with a public body.

Excerpts of these sections are reproduced at the Appendix for reference.

11. The Ordinance prohibits only the solicitation and acceptance of advantages with corrupt motives in Board members official dealings i.e. when conducting the affairs of the TIC; there are no restrictions on the acceptance of gifts, commissions etc. by Board members in their private capacity.

Professional Principles

12. To maintain a high standard of professionalism, TIC Board members shall observe the following guidelines:
 - (a) A Board member, shall faithfully, honestly and diligently carry out the duties which he undertakes, which must be within the scope of TIC's objects, and shall have proper regard for the interests of the industry in general.

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- (b) A Board member shall endeavour to contribute through his work to the advancement of the industry, and not for any collateral purpose or personal motive. Where a board member is aware that he personally has or as a member/director of a company has a pecuniary or prejudicial interest in a matter under discussion by the Board, he shall declare his interest and shall abstain from voting on the issue unless otherwise permitted by the Board.
- (c) A Board member shall not knowingly undertake any commitment beyond his resources or beyond his ability.
- (d) A Board member shall not pass adverse comments on fellow Board members or TIC members unless such comments are justified and capable of being substantiated.
- (e) A Board member shall not disclose or permit to disclose information concerning deliberations of the Board to other TIC members or to the public without prior approval of the Board. Nor shall a Board member disclose or disseminate confidential information, or information which is false, or misleading, or cannot be substantiated.

Professional Ethics

- 13. TIC upholds the principle of fair competition in business and an honorable standard of professional ethics. The framework for a standard of business ethics is provided by the Travel Agents Code of Business Practice, the Tour Operator's Code of Business Practice in addition to the provisions of the Prevention of Bribery Ordinance, Chapter 201.

Extract of Prevention of Bribery Ordinance, 1971

Section 4:

1. Any person who whether in Hong Kong or elsewhere without lawful authority or reasonable excuse offers any advantage to a public servant as an inducement to or reward for or otherwise on account of that public servants -
- a performing or abstaining from performing or having performed or abstained from performing any act in his capacity as a public servant:
- b expediting, delaying, hindering or preventing or having expedited, delayed, hindered or prevented the performance of an act whether by that public servant or by any other public servant in his or that other public servant's capacity as a public servant: or
- c assisting favouring hindering or delaying or having assisted, favoured, hindered or delayed any person in the transaction or any business with a public body
- shall be guilty of an offence.
- 2 Any public servant who whether in Hong Kong or elsewhere without lawful authority or reasonable excuse solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his -
- a performing or abstaining from performing or having performed or abstained from performing any act in his capacity as a public servant.
- b expediting, delaying hindering or preventing or having expedited, delayed, hindered or prevented the performance of an act whether by himself or by any other public servant in his or that other public servant's capacity as a public servant or
- c assisting, favouring hindering or delaying or having assisted, favoured, hindered or delayed any person in the transaction of any business with a public body.
- shall be guilty of an offence.
- 3 A public servant other than a Crown servant solicits or accepts an advantage with the permission of the public body or which he is an employee being permission which complies with subsection 4 neither he nor the person who offered the advantage shall be guilty of an offence under this section.
- 4 For the purposes of subsection 3 permission shall be in writing and-

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- a be given before the advantage is offered, solicited or accepted; or
- b in any case where an advantage has been offered or accepted without prior permission, be applied for and given as soon as reasonably possible after such offer or acceptance.

and for such permission to be effective for the purposes of subsection 1 the public body shall, before giving such permission, have regard to the circumstances in which it is sought:

Section 2:
 "Public Body" means -

- a the Government;
- b the Executive Council;
- c the Legislative Council;
- d the Urban Council;
- e any board, commission, committee or other body, whether paid or unpaid, appointed by or on behalf of the Governor of the Governor in Council; and
- f any board, commission, committee or other body specified in the Schedule.

"Public Servant" means:

Any employee or member of a public body, whether temporary or permanent and whether paid or unpaid. But the holding of a share in a company which is a public body shall not of itself constitute the holder a public servant.