

For information
on 7 March 2002

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LEGISLATIVE COUNCIL
Fifth Bills Committee Meeting
on Travel Agents (Amendment) Bill 2001

Purpose

At the fourth Bills Committee Meeting on 5 February 2002, Members raised questions on the drafting of the Bill, the policy intent and other issues relating to the proposed regulatory framework. Our responses are set out in the following paragraphs.

(A) Proposed Section 4A

Information on overseas legislation concerning travel agents

2. We have looked at the definition of travel agents in corresponding legislation of a number of countries and places. While the laws vary in content and wording, they do share a common approach to the definition of a travel agent – a travel agent means a person who “carries on the business of” offering the services as stipulated in the respective legislation. In a few countries/places, it is also explicitly stated that a person shall not be taken to carry on business as a travel agent if the person only holds out or advertises that he is prepared to carry out the activities mentioned in the legislation. In essence, the key to define a travel agent is whether one “carries on the business” of the services stipulated.

Whether the drafting of the provisions for the regulation of inbound travel agents should necessarily follow that of outbound travel agents taking into account the differences in their modes of operation

3. We have sought legal advice on the need to ensure consistency in the legislation. As a matter of principle, it is necessary to maintain the consistency of the wording used in the legislation, which must reflect the policy intention. Different wordings shall only be used to define inbound and outbound travel agents if there are strong reasons to justify the difference.

4. Bearing in mind our policy intention in drawing up the legislation, we have re-examined the relevant clause in the light of the above. In both the inbound and outbound travel businesses, it is our intention to require those who actually “carry on the business of” of a travel agent to obtain a license. On balance, therefore, we consider that both the definitions for inbound and outbound travel agent should be consistent to reflect this intention.

Current Proposal

5. We now propose to move Committee Stage Amendments (CSA) to amend both Section 4 of the existing Travel Agents Ordinance (Cap. 218) and Section 4A of the Bill by deleting “holds himself out as carrying on the business of, and” such that a person is an outbound/inbound travel agent if he “carries on the business of” obtaining for another person the services stipulated in the legislation. This is addressed in the separate note on all proposed CSAs.

(B) Local companies which offer travel-related services, such as hotels booking or ticket booking, via portals on the Internet

6. Hong Kong-based companies whose primary and core business is to provide the type of services defined as the business of an inbound travel agent under the Bill (i.e. book tickets, arrange accommodation and/or other prescribed services) either in part or exclusively over the internet and accept payment from customers directly, are no different from an inbound travel agent who conducts business via other means of communication (e.g. counter-sale, through telephone or facsimile). Businesses based in Hong Kong operating via the internet on a commercial basis should apply for a licence. However, if the portal can establish that it does not carry on the relevant business within the Hong Kong jurisdiction (i.e. it operates absolutely outside Hong Kong), then it will not be subject to the licensing requirement.

7. The second type of operation available over the internet serves as a platform providing information regarding travel-related service such as the booking of hotels. This type of on-line service, generally requires those accessing the information to enrol as a member first by filling the required particulars and then selecting a user ID/name and password for the search. Members will be linked to the homepage of the hotel and other service provider to book hotels and other services but do not pay the portal

operator, rather they pay at the hotel reception counter on the date of arrival. For activities/service of this nature where no travel agent business is carried out, and the main function of the business is only to provide information and communication links, it is our view that the portal does not need to apply for a travel agent's licence.

(C) Hong Kong offices of membership-based international companies which offer travel-related services to its members

8. Hong Kong offices of membership-based international companies which offer travel-related services to members worldwide, will be required to obtain a licence if they provide the types of services defined as the business of an inbound travel agent as stipulated in the Bill (i.e. carriage, accommodation and/or other prescribed services) on a regular and commercial basis. Indeed, there is already a company which provides outbound travel services to members operating under a travel agent licence. We see no reason to exempt such companies operating inbound travel services from the provisions of this Bill.

(D) Travel companies which organize only local tours for local residents

9. It is not our intention to extend the requirement for licences to travel companies which only provide local tours to local residents. We will monitor the activities of such companies to ensure that they do only provide services to local residents. However, we see no reason why local families with overseas visitors should not arrange to join such tours. The point being that the local residents should be able to decide which travel agent to use and if there are any problems, they have recourse to the normal complaint channels.

(E) Whether the additional four independent directors to be appointed to the Board of the Travel Industry Council of Hong Kong (TIC) would be nominated by the Government instead of by TIC

10. The TIC has been consulted on Members' concerns. They maintain their earlier view that for the four additional independent directors to be appointed by the Government, two will be nominated by the TIC. The Administration considers this arrangement acceptable, noting that the appointment authority rests with the Government.