

For consideration
on 19 December 2000

Legislative Council Panel on Economic Services
Meeting on 19 December 2000
Travel Agents (Amendment) Bill 2001

Introduction

This paper sets out for Members' consideration the proposals of the Travel Agents (Amendment) Bill 2001.

Background

Travel Agents Ordinance

2. At present, the Travel Agents Ordinance (TAO) (Cap. 218) only regulates travel agents providing outbound travel services. It does not cover activities of inbound travel agents arranging or providing travel service inward into Hong Kong for visiting tourists.

3. The TAO requires that a travel agent has to apply for a licence if his business activities involve either arranging accommodation outside Hong Kong or carriage by any means on a journey leaving Hong Kong. Operation of an outbound travel agent without a licence is unlawful. The Registrar of Travel Agents (RTA) is responsible for the licensing of outbound travel agents. He conducts financial surveillance on licensed travel agents, and imposes licensing conditions. In addition to his licensing function, the Registrar can initiate investigation if he suspects that a particular travel agent is operating against the public interest including defaults and serious mal-practices. He can suspend or revoke a licence, subject to a proper hearing, if he considers that the agent is operating against the public interest.

Travel Industry Council of Hong Kong

4. Membership of an approved organisation is one of the licence conditions for outbound travel agents. The Travel Industry Council of Hong Kong (TIC) is at present the only approved organisation. The TIC is a self-regulatory body of the travel industry. Its membership carries conditions such as minimum requirements for capital, number and experience of staff and office

premises. Four of the 21 members of the board of directors of the TIC are non-industry members appointed by the Financial Secretary. Amendments to important provisions in the TIC's Memorandum and Articles of Association also require the approval of the Financial Secretary.

5. The TIC sets and enforces codes of conduct and rules to regulate business operations in areas such as advertising and business practices. Violation of codes of conduct will result in penalties including warning, fine, suspension and revocation of TIC membership. To enhance the service quality of outbound tour escorts, the TIC and the Vocational Training Council jointly organise a certificate course for outbound tour escorts. The TIC requires its members to employ only certified tour escorts for tour-escorting duties.

6. The TIC has set up a Complaints Committee to hear and resolve disputes between travellers and travel agents. Where a complaint against travel agent malpractice is substantiated, the TIC may impose penalties on the travel agent. In cases of complaints about service quality, the TIC may arbitrate or, if not successful, decide on settlement. The decision of the TIC is binding on the travel agent but not on the complainant, who may seek other forms of redress if dissatisfied with the decision.

7. The RTA and the TIC has maintained close liaison and cooperation in respect of the surveillance of travel agents and case investigations. The Registrar also hears appeals against the refusal of TIC membership. Any persons aggrieved by the Registrar's decision of refusing to grant, suspending or revoking a licence may appeal to the Administrative Appeals Board.

Inbound Regulation

8. In recent years, there have been increasing complaints by tourists on inbound travel agents relating to their unsatisfactory service and unprofessional practice. Notably, these include taking visitors to shops which charge exorbitant prices or sell poor quality products and leaving tourists unattended in Hong Kong when the agents have financial disputes with their overseas counterparts.

9. Although there are general consumer protection legislation in place to protect consumers including tourists, there is a lack of an appropriate and direct channel for dealing with these kinds of activities and behaviour. This has negative impact on Hong Kong's status and reputation as a popular tourist destination.

Number of Inbound Travel Agents

10. The TIC estimates that there are about 500 travel agents involved in the provision of inbound travel service. Of these, about 300 are licensed travel agents and members of the TIC. The rest, around 200, only deal with inbound tourists and are not members of the TIC. Hence they are not subject to the regulation of the Travel Agents Ordinance and the TIC's codes of conduct drawn up for compliance by its members.

Proposed Regulatory Framework

11. The Administration is well aware of public concern and has been working closely with the trade to uphold the standard of inbound travel agents and protect Hong Kong's reputation as a tourist-friendly city. After careful consideration of the views and recommendations made by the trade and related bodies, the Administration proposes to introduce a bill in the first quarter of 2001 to amend the Travel Agents Ordinance to put in place the licensing scheme to regulate inbound travel agents. This will be complemented by industry self-regulation through the TIC. In addition, the TIC is liaising with the relevant parties on the introduction of a certification scheme for tour co-ordinators modelling after that for outbound tour escorts.

General Features of the Proposed Regulatory Framework

(a) Definition of inbound travel agents

12. We propose to define a person as carrying on business as an inbound travel agent if he carries on the business of making arrangements for another person: (a) carriage, by any means of conveyance, on a journey the outbound portion of which is to commence outside Hong Kong and terminate in Hong Kong or, if there is an onward carriage from Hong Kong, the person will pass through immigration controls before departing from Hong Kong; or (b) accommodation in Hong Kong for which payment is, or is to be, made to that person by or on behalf of that other person of an amount on account of the cost of that accommodation.

(b) Licensing conditions

13. We propose to require all inbound travel agents to apply for a licence as in the case of outbound agents. Any person carrying on a business as an inbound travel agent without a licence commits a criminal offence. The

Registrar of Travel Agents will serve as the licensing authority of both inbound and outbound travel agents. We also propose to adopt the licensing requirements currently applicable to outbound travel agents for inbound agents, which include membership of TIC. It follows that inbound agents will be required to observe TIC's codes of conduct and be regulated by the industry itself.

14. The TIC has agreed to expand its Board of Directors to ensure a wider representation of different interests within the trade with the introduction of the regulatory regime for inbound travel agents. It also decided to invite the Administration to sit on its Board of Directors and its Inbound Committee which advises the TIC Board on matters relating to inbound tourism. Amendments will be made to the Memorandum and Articles of the Association of the TIC accordingly.

(c) Single licence scheme

15. To avoid creating unnecessary disturbance or incurring additional costs to existing licence holders, the Government intends to grant one single licence to eligible travel agents providing outbound and/or inbound travel service. This means that only those travel agents (around 200) currently providing inbound travel service alone will need to apply for a new licence.

(d) Power of the Registrar of Travel Agents

16. We propose to extend the licensing and regulatory powers currently exercised by the Registrar over outbound travel agents as set out in para. 3 to inbound travel agents.

(e) Advisory Committee on Travel Agents (ACTA)

17. ACTA is a statutory body established under the Travel Agents Ordinance to advise the Chief Executive on matters relating to outbound travel agents. We propose to expand the scope of the ACTA to advise the Chief Executive on matters relating to both inbound and outbound travel agents.

(f) Travel Industry Compensation Fund (TICF)

18. Under the Travel Agents Ordinance, outbound agents are required to contribute to the TICF through levy charged on outbound package tours. The levy provides the TICF with a steady source of income to protect travellers from Hong Kong in the event of defaults by outbound agents or travel accidents

outside Hong Kong through ex gratia payment. The Administration considers that aggrieved inbound travellers to Hong Kong should similarly pursue any loss with their local outbound agents when suffering from defaults by the latter. It will not be appropriate for us to provide ex gratia payment to inbound travellers. Inbound travel agents therefore will not be required to contribute to the Fund levy. Nonetheless, the TIC has agreed to handle complaints against inbound agents as well as disputes between travellers and travel agents under its Complaints Committee and undertakes to take care of visitors found unattended.

(g) Implementation

19. The Administration intends to provide a grace period for eligible inbound travel agents to apply and for the RTA to process and issue the licences. The Travel Agents (Amendment) Bill will come into effect on a date to be specified by the Secretary for Economic Services in the Gazette.

Feedback from the Trade

20. We have consulted the ACTA and some key industry bodies including the TIC, the Hong Kong Tourist Association, the Hong Kong Hotels Association, the Federation of Hong Kong Hotels Owners Ltd., the Hong Kong Association of Registered Tour Co-ordinators, the Consumer Council and the Hong Kong Inbound Tour Operator Association Ltd. on the proposed regulation of inbound travel agents. They generally welcomed the proposals.

Way Forward

21. Subject to Members' advice, the Administration plans to introduce the Travel Agents (Amendment) Bill 2001 into the Legislative Council in the first quarter of 2001.

Conclusion

22. Members are invited to comment on the proposed amendments as set out at paragraphs 12-19.

Tourism Commission
Economic Services Bureau

12 December 2000