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**Paper for the House Committee meeting
on 22 March 2002**

**Report of the Bills Committee on
Travel Agents (Amendment) Bill 2001**

Purpose

This paper reports on the deliberations of the Bills Committee on the Travel Agents (Amendment) Bill 2001.

Background

2. At present, the Travel Agents Ordinance (Cap. 218) (the Ordinance) only provides for the control and regulation of outbound travel agents and does not regulate services provided by inbound travel agents. The Ordinance requires all outbound travel agents to apply for a licence from the Registrar of Travel Agents.

3. The statutory framework is supported by a self-regulatory regime. The Travel Industry Council of Hong Kong (TIC) sets and enforces codes of conduct and rules to regulate business operations in areas such as advertising and business practices. Membership of the TIC is one of the licensing conditions for outbound travel agents. Violation of the code of conduct and directives may result in penalties including warning, fine, suspension and revocation of TIC membership.

4. The TIC estimates that there are about 500 travel agents involved in the provision of inbound travel service. Most of them are licensed travel agents and members of the TIC while around 200 of them only deal with inbound tourists and are not members of the TIC. Although there is general consumer protection legislation in place to protect consumers including tourists, there is a lack of an appropriate and direct channel for dealing with malpractice in the treatment of inbound tourists.

The Bill

5. The Bill seeks to make the regulatory provisions of the Ordinance applicable to persons who carry on business as inbound travel agents in Hong Kong.

The Bills Committee

6. At the House Committee meeting on 5 October 2001, Members agreed to form a Bills Committee to study the Bill. Under the chairmanship of Hon SIN Chung-kai, the Bills Committee has held five meetings with the Administration. The membership list of the Bills Committee is in **Appendix I**.

7. The Bills Committee has met with representatives of the industry, the TIC, the Consumer Council and the Hong Kong Tourism Board. It has also received written submissions from two other organisations. A list of the organisations concerned is in **Appendix II**.

Deliberations of the Bills Committee

Definition of inbound travel agents

(Clauses 3 and 5)

8. Clause 3 adds new definitions of "inbound travel agent", "inbound travel service", "outbound travel agent" and "outbound travel service" while clause 5 adds a new section 4A describing what constitutes carrying on business as an inbound travel agent. Under the original draft, a person will be regarded as carrying on the business of an inbound travel agent if, in Hong Kong, he holds himself out as carrying on the business of, and carries on the business of, obtaining for another person carriage, accommodation and/or other prescribed services as set out in new section 4A.

Drafting of proposed section 4A

9. Some members have expressed concern about the drafting of the proposed section 4A. They have pointed out that the section could be interpreted in such a way that a person would not be regarded as an inbound travel agent if he carries on the business of obtaining for another person the services prescribed in section 4A(1) without holding himself out as carrying on such business. In particular, Hon Ambrose LAU Hon-chuen has asked the Administration to clarify the policy intent of the section and to consider using "or" instead of "and" to make it more precise and unequivocal.

10. The Administration has clarified that its policy intent is to require a

person to obtain a travel agent licence if he carries on the business of a travel agent. On review, the Administration has accepted Mr LAU's suggestion and will move amendments to both section 4 of the Ordinance and new section 4A of the Bill by deleting "holds himself out as carrying on the business of, and". The effect of such is 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.

Types of activities requiring a licence under the Bill

11. Members have pointed out that some community organisations, political parties or labour unions organise local tours for their members from time to time. In addition, local universities and professional associations also make travel arrangements for their visitors and guests occasionally. Members have expressed concern whether the Bill, as it now stands, might catch the above organisations and others, such as corporate event organisers, who need to arrange accommodation, book tickets and/or arrange the "prescribed services" stipulated in the Bill.

12. The Administration's view is that any organisation that "carries on" inbound travel activities/services as a business and on a regular and commercial basis with an objective of acquisition of pecuniary gain will require a licence. The definition of the business of an inbound travel agent should therefore be interpreted in a manner consistent with this policy intent. Businesses that will require licences include travel agencies and companies/organisations the core business of which is to provide the range of services set out in the legislation.

13. Members note that in line with the above principles, it is not the legislative intent to catch organisations the core businesses or primary objectives of which are not to provide travel-related services to visitors, or those which only make travel-related arrangements for visitors occasionally. However, if organisations provide such services regularly as part of their normal business and obtain a pecuniary gain from them, a licence will be necessary. Alternatively, the organisations may wish to subcontract the services to a licensed travel agent.

14. Members have asked the Administration whether a local company providing travel-related services such as booking tickets and arranging accommodation via the Internet needs to be licensed under the Bill. The Administration is of the view that such companies, which operate either in part or exclusively via the Internet on a commercial basis and accept payment from customers directly, are no different from an inbound travel agent who conducts business via other means of communication, such as counter-sale or through the telephone or facsimile, and therefore will require a licence. However, if the company can establish that it does not carry on the business within the Hong Kong jurisdiction, then it will not be subject to the licensing requirement.

15. In order to make clear the legislative intent, members have asked the Administration to provide the Bills Committee with a list to indicate in broad terms the types of activities/organisations the Administration does not expect to license. The list provided by the Administration is in **Appendix III**.

16. The Administration has further explained that the totality of facts would be examined and taken into consideration to determine whether the activities fall within the definition. The pertinent factors that would be considered include (but are not limited to) the mode/scale of the operation, the frequency of the activities, whether the operation is conducted on a commercial basis and with a pecuniary gain as the motive, the core business of the organiser, etc. It is the Administration's view that activities such as the occasional arrangements made by educational institutes for overseas scholars do not equate to "carrying on the business of a travel agent". Nonetheless, each case would be determined on its own merits. Organisations should seek advice from the Travel Agents Registry or independent legal advice if they have specific questions on whether their activities/businesses require a licence.

Regulatory mechanism of the TIC

17. In response to the Bills Committee's request, the Administration has provided additional information on the regulatory mechanism of the TIC for members' reference. The main features of the regulatory mechanism are as follows -

Pledge of service quality

Upon admission, a TIC member is required to pay \$2,000 as a contribution to a Bonding Fund as pledge of their service quality. The Bonding Fund is used to pay restitution to inbound and outbound travellers if a travel agent is found to have provided poor levels of service to its clients. It will then recover the amount from the travel agents. In 2001, \$22,233 has been paid out. The Fund now stands at \$9.3 million.

Obligations of a TIC member

Once admitted into the TIC, a member is obliged to comply with the TIC's Articles of Association and other rules and regulations, including the following codes of conduct/practice -

- (a) General Code of Conduct for TIC Members;
- (b) Code of Practice on Outbound Package Tours;
- (c) Code of Advertising Practice for TIC Members; and
- (d) Code of Business Practice on Inbound Package Tours.

Apart from the above codes, the TIC will also issue directives from time

to time. These directives are binding upon all TIC members and serve the same purposes as the codes.

Discipline and penalties

TIC members are subject to discipline and penalties if they do not comply with the requirements under the Articles of Association, the codes or directives. The TIC may warn or fine a member and in serious cases, suspend or even revoke membership of the TIC. This in turn will affect the business licence.

Mechanism of handling complaints

The TIC receives and handles complaints against travel agents. On receipt of a complaint from a traveller/visitor that involves claims for compensation, its Executive Office will examine the case and where applicable, liaise with the travel agent concerned to agree on a settlement acceptable to both parties. From experience, most of the cases of complaint lodged by inbound travellers can be settled at this stage. Where a settlement cannot be reached or is not acceptable to either party, the case will be brought to the Consumer Relations Committee (CRC) of the TIC.

The CRC is charged with the responsibility of handling disputes between consumers and travel agents. It comprises a director of the TIC as convenor and 14 other members, seven of whom are members of the trade while the other seven are non-trade community leaders, professionals of good standing or distinguished personalities.

Malpractice relating to shopping arrangement

18. As many complaints against travel agents are related to shopping arrangements made by them for visitors, members share the view that such malpractice should be condemned and disallowed, and visitors should also be able to seek redress from such malpractice in a timely and effective manner.

19. The Administration has pointed out that the TIC has already issued a directive to members requiring them to take visitors only to those shops that agree to provide a 100% refund on unused items within 14 days of purchase. Cases of malpractice will be considered by the Compliance Committee, which may penalise those travel agencies found guilty of a breach of the directive. In addition, for general consumers' complaints against malpractice, 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.

Board of Directors of the TIC

20. The Board of Directors of the TIC currently comprises 21 members, four of whom are independent directors appointed by the Government. The TIC has proposed to increase the number of independent directors to eight. Of the four new additional independent directors to be appointed by the Government, two will be nominated by the TIC and two will be nominated by the Government, similar to the arrangement for the existing independent directors. Although the Administration considers the proposed arrangement acceptable, Hon Fred LI Wah-ming is of the view that all four of them should be nominated by the Government to enhance the transparency and credibility of the Board of Directors. The Chairman and the majority of members of the Bills Committee support Mr LI's view. The Administration has undertaken to take up the issue formally with the TIC again. Mr LI has indicated that he might vote against the Bill if the issue is not satisfactorily resolved.

Training and upgrading of inbound tour guides

21. 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.

22. To ensure that inbound tour guides have the necessary knowledge and skills, the Administration is working with the TIC and the industry as a whole on a training and certification programme for inbound tour guides which is modelled on the certification programme for outbound tour escorts.

23. Members note that all serving tour guides will be required to take the course and pass the examination in order to get a certificate. Those having passed the examination of the Hong Kong Association of Registered Tour Coordinators (HARTCO) will be exempted from the course and part of the examination. The Administration has also pointed out that the Skills Upgrading Scheme will provide a 70% subsidy to those who attend the training course. There will be a sufficiently long period for serving tour guides to go through the training and pass the examination before the industry requires that only those with certificates may serve as inbound tour guides.

24. As regards whether there should be a statutory licensing scheme for tour guides in place of or in addition to the certificate scheme administered by the trade, the Administration believes that 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 the conduct of their tour guides. Therefore, the proposed regulatory mechanism is intended to regulate inbound travel agents instead of inbound tour guides and therefore the complaint handling

mechanism is targetted at the travel agents.

Additional resources for inbound regulatory mechanism

25. Some representatives of the trade have proposed that additional resources be given to the TIC for taking on the responsibility of regulating inbound travel agents. The Administration has pointed out that in the process of drawing up the proposed legislation, it has considered carefully the resource implication of the new licensing scheme for both the Government and the TIC. The Administration has concluded that the Travel Agents Registry will absorb the additional workload generated from the licensing of inbound travel agents. The TIC has indicated that it does not expect any resources from the Government for taking up the additional responsibility for inbound travel agents as the majority of the inbound travel agents in Hong Kong are already members of the TIC.

Committee Stage amendments (CSAs)

26. The CSAs to be moved by the Administration are in **Appendix IV**. They include the amendments referred to in paragraph 10 above and technical amendments to maintain consistency with the proposed section 4A(1) and to improve the clarity of the various provisions. The Bills Committee supports these CSAs.

Follow-up action by the Administration

27. The Administration has undertaken to take up the issue of nomination of the four new additional independent directors of the Board of Directors of the TIC formally with the TIC again (paragraph 20 refers).

Recommendation

28. The Bills Committee supports the Bill and recommends that the Second Reading debate on the Bill be resumed at the Council meeting on 24 April 2002.

Advice sought

29. The Bills Committee invites the House Committee to note its recommendation in paragraph 28 above.

Council Business Division 2
Legislative Council Secretariat
20 March 2002

Bills Committee on Travel Agents (Amendment) Bill 2001

Membership List

Chairman	Hon SIN Chung-kai
Members	Hon Cyd HO Sau-lan
	Hon Fred LI Wah-ming, JP
	Hon Mrs Selina CHOW LIANG Shuk-ye, JP
	Hon CHAN Kam-lam
	Hon Howard YOUNG, JP
	Hon Ambrose LAU Hon-chuen, GBS, JP
	Hon CHOY So-yuk
	Hon LI Fung-ying, JP
	Hon Tommy CHEUNG Yu-yan, JP
	Hon LEUNG Fu-wah, MH, JP
	Hon Audrey EU Yuet-mee, SC, JP

(Total : 12 Members)

Clerk	Ms Doris CHAN
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Legal Adviser	Miss Anita HO
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Date	6 December 2001
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Appendix II

Bills Committee on Travel Agents (Amendment) Bill 2001

List of deputations

- Consumer Council
- Hong Kong Association of Registered Tour Co-ordinators Ltd (HARTCO)
- Hong Kong Inbound Travel Association Ltd
- Hong Kong Inbound Tour Operators Association Ltd
- Hongkong Japanese Tour Operators Association
- Hong Kong Outbound Tour Operators' Association Ltd
- Hong Kong Travel Agent Owners Association Ltd
- Hong Kong Tourism Board
- Hong Kong Tourist Industry Employees' General Union
- Hong Kong Taiwan Tourist Operators Association Ltd
- Pacific Asia Travel Association (Hong Kong Chapter)
- Society of Incentive Travel Executives (SITE) Hong Kong Chapter
- The Federation of Hong Kong Hotel Owners
- Travel Industry Council of Hong Kong
- Tiglion Travel Services Company Limited

Organisations which have provided written submissions only

- Association of Better Business & Tourism Services
- Hong Kong Hotels Association

Appendix III

Examples of activities/organizations which are not the intended targets of the proposed legislation

Example	Our views
A university arranges accommodation for an overseas scholar.	The core business of a university is not to provide travel agent services and therefore is not the target of the legislation.
A local organization/corporation arranges travel-related services for participants of an exchange programme/event.	The core business of that organization/corporation is not to provide travel agent services and therefore is not the target of the legislation.
A travel company which only conducts business in organizing local tours for local residents but happens to receive a few visitors.	If the travel company does not provide such services to visitors frequently and regularly, it should not be the target of the legislation. However, if that travel company regularly and frequently receives a considerable number of visitors in their business, it may fall under the legislation.
A corporate event organizer arranges carriage, accommodation and sightseeing for overseas participants of its conference.	If the services are provided occasionally, the organizer is not a target of the legislation. However, if these services are provided regularly and form part of its core business, the organizer may fall under the legislation.

(Please note that this list is not meant to be exhaustive or legally binding.)

TRAVEL AGENTS (AMENDMENT) BILL 2001

COMMITTEES STAGE

Amendments to be moved by the Secretary
For Economic Services

Clause	Amendment Proposed
4	<p>By deleting paragraph (a) and substituting-</p> <p>“(a) in subsection (1), by repealing “a travel agent if he holds himself out as carrying on the business of , and carries on the business of, “ and substituting “an outbound travel agent if, in Hong Kong, he carries on the business of”;</p>
5	<p>In the proposed section 4A(1) –</p> <p>(a)By deleting “holds himself out as carrying on the business of, and carries on the business of, obtaining for another person” and substituting” carries on the business of obtaining for a visitor to Hong Kong “;</p> <p>(b)in paragraph (a), by deleting “the outbound portion of”;</p> <p>(c) in paragraph (a)(ii), by deleting “that other person” and substituting “the visitor”;</p>

(d)in paragraph (b), by deleting “that other person” and substituting “the visitor”;

(e)by deleting paragraph (c) and substituting –

“(c) one or more prescribed services.”.

8 In the proposed section 50(1)(fa), by deleting “person who are”.

10 (a) In paragraph (a)-

(i) In the proposed question 2A, by deleting “another person” and substituting “a visitor to Hong Kong”;

(ii) in the proposed question 2A(a), by deleting “the outbound portion of”;

(iii) in the proposed question 2A(a)(ii), by deleting “that other person” and substituting “the visitor”;

(iv) in the proposed question 2A(b), by deleting “to that person by or on behalf of that other person” and substituting “by or on behalf of the visitor”;

(v)in the proposed question 2A(c), by deleting “who is a visitor” and substituting “one or more”.

(b) By adding –

“(aa) in Form 4, in the notes at the end, by adding –

“(iii) The services prescribed by regulations made under section 50(1)(fa) of the Travel Agents Ordinance are :

(a)Sightseeing or visits to local places of interest;

(b)restaurant meals or other catered meals;

(c)shopping trips;

(d)local transport in connection with an activity referred to in paragraph (a), (b) or (c).”;”.

(c) In paragraph (b) –

(i) in the proposed question 1A, by deleting “your business includes obtaining for another person” and substituting “ the business of the corporation includes obtaining for a visitor to Hong Kong”;

(ii) in the proposed question 1A(a), by deleting “the outbound portion of”;

(iii) in the proposed question 1A(a)(ii), by

deleting “that other person” and substituting “the visitor”;

(iv) in the proposed question 1A(b), by deleting “to that person by or on behalf of that other person” and substituting “by or on behalf of the visitor”;

(v) in the proposed question 1(A)(c), by deleting “who is a visitor” and substituting “one or more”.

(d) By adding –

“(c) in Form 5, in the notes at the end , by adding –

“(iii) The services prescribed by regulations made under section 50(1)(fa) of the Travel Agents Ordinance are :

(a) sightseeing or visits to local places of interest;

(b) restaurant meals or other catered meals

(c) shopping trips;

local transport in connection with an activity referred to in paragraph (a), (b) or (c).”.”.