

L/M (33) to TAR 2/2091/78 Pt. IV

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16 May 2002

Mr Andy LAU
Clerk to LegCo Panel on Economic Services
c/o Council Business Division 1
Legislative Council
3/F Citibank Tower
Central,
Hong Kong

Dear Mr LAU,

LegCo Panel on Economic Services
Outstanding item –
Review of the Travel Agents Ordinance (Cap. 218)

I refer to your e-mail to Mrs Karen FONG dated 26 March 2002. I understand that the Panel is concerned whether sports and recreational tours organised by private membership clubs are covered by the provisions under the Travel Agents Ordinance (TAO) and whether further legislative amendments, exemptions, or the issue of guidelines are warranted. We wish to clarify the definition of travel agents for Members' reference.

Applicability of the TAO to private membership clubs

The TAO regulates outbound travel agents, who carry on the business of obtaining for another person carriage outward of Hong Kong or accommodation outside Hong Kong. Businesses that do so require a licence. The regulatory framework applies typically to a travel agent whose core business is to provide the type of services in the manner stipulated in the TAO.

We understand that there are organisations whose core businesses differ from that of the travel agents but they may, occasionally, need to arrange carriage and accommodation outside Hong Kong as an ancillary service to their core business activities. I wish to clarify that it is not the intention of the TAO

to capture these organisations since they are not carrying on these services/activities regularly as a business. Applying this principle, private membership clubs whose core business is to provide club facilities and services for their members are, in general, not the targets of the legislation even though they may have to arrange carriage or accommodation service at times. However, if they provide such services regularly as part of their normal business and with the objective of pecuniary gain, then they will need to apply for a travel agents licence. Alternatively, they may arrange to have the services provided by a licensed travel agent. Against this background, Members may wish to note that the main issue here is not whether the outbound sport and recreational tours are organised by the private membership clubs, the most important consideration is whether these organisations are carrying on these activities regularly on a commercial basis as their business and with the objective of pecuniary gain.

At the 4th Meeting of the Bills Committee on the Travel Agents (Amendment) Bill 2001 on 5 February 2002, we presented an information paper on “Application of the definition of the business of an inbound travel agent” and outlined the legislative intent of the TAO. Members of the Bills Committee discussed the paper at length and were satisfied with our clarification. Although the focus of that paper was on inbound tours, the principle and rationale for regulating outbound and inbound travel agents are the same. I therefore would like to take this opportunity to attach a copy of that Annex A paper for Members’ reference (Annex A).

I hope the above information can help members understand the coverage and intention of the present TAO.

Yours sincerely,

(Eric Ho)
for Secretary for Economic Services

For information
on 5 February 2002

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

**Application of the definition of
the business of an inbound travel agent**

Purpose

This paper has been prepared in response to Members' enquiry on the types of activity or business which are not expected to require a license under the proposed legislation.

Background

2. Under the Travel Agents (Amendment) Bill 2001, 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 the legislation. At the third Bills Committee meeting held on 17 January 2002, Members expressed concern over whether the Bill, as it now stands, might catch some organisations who need to arrange accommodation, book tickets and/or arrange the "prescribed services" stipulated in the Bill as an ancillary service to their core business. We agreed to give members a list to indicate in broad terms the types of activity we do not expect to license.

Intention of the Travel Agents (Amendment) Bill 2001

3. The Travel Agents Ordinance (Cap. 218) provides for the regulation of persons who "hold themselves out as carrying on the business of, and carry on the business of, obtaining for another person – (a) carriage, by means of conveyance, on a journey which is to commence in Hong Kong and which thereafter is to take place mainly outside Hong Kong; or (b) accommodation at a place outside Hong Kong for which payment is, or 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". These provisions cover the businesses of outbound travel agents. The Travel Agents (Amendment) Bill 2001 is intended to expand the regulatory regime to cover

inbound travel agents as well. Any organisation that “holds out as carrying on” and “carries on” inbound travel activities/services as a business and on a 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/organizations whose core business is to provide the range of services set out in the legislation.

4. In line with the above principles, it is not the intention of the legislation to capture organizations whose core businesses/primary objectives are not to provide travel-related services to visitors, or those which only provide travel-related arrangements to visitors occasionally. A list of examples of the type of activity and business that should not require a licence under normal circumstances is attached at Appendix. Nevertheless, if organizations provide such services regularly as part of their normal business and obtain a pecuniary gain from them, then a licence will be necessary. Alternatively, the organisation may wish to sub-contract the services to a licensed travel agent.

Consideration of totality of facts

5. We wish to stress that it is difficult to set out definitive factors to determine what amounts to “holds out as carrying on business” and “carries on business”. 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 our view that activities such as occasional arrangements made by educational institutes for overseas scholars do not equate to “carrying out the business of a travel agent”. Nonetheless, each case would be determined on its own merits. Organisations are encouraged to seek advice from the Travel Agents Registry or independent legal advice if they have specific questions on whether their activities/businesses require a licence.

**Economic Services Bureau
February 2002**

**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 “hold out as carrying on the business” of providing such services to visitors and 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.)