

For information
on 22 November 2004

**Legislative Council
Panel on Economic Services**

Protection of outbound travellers

Purpose

This paper briefs Members on the Administration's policy and efforts in the protection of outbound travellers.

Present regulatory framework

2. The present regulation of travel agents is a two-tier system, whereby the licensing of travel agents is administered by the Travel Agents Registry (TAR) of the HKSAR Government, and the regulation of the day-to-day operation of travel agents is conducted through self-regulation by the Travel Industry Council of Hong Kong (TIC), i.e. the approved organization under the Travel Agents Ordinance (TAO).

3. Membership of the TIC is one of the licensing conditions for travel agents as provided for in the TAO. The TIC membership carries conditions such as minimum requirements for capital, number and experience of staff and office premises. The TIC sets and enforces directives and codes of conduct to regulate business operation of travel agents. Violation of such directives and codes of conduct by a travel agent will result in penalties including suspension and revocation of its TIC membership which may lead to revocation of its licence by TAR. The present mode of regulation has been operating smoothly and satisfactorily since 1988.

4. To enhance the service quality of outbound tour escorts and safety of outbound travellers, the Tour Escorts Certification Scheme was introduced in 1999. It requires TIC members to employ only certified tour escorts for tour-escorting duties. These certified tour escorts are required to attend prescribed training courses which cover, amongst others, subjects on ensuring travellers' safety such as handling crisis situations, duties and responsibilities of tour escorts and knowledge on first aid.

Coverage of professional indemnity insurance for travel agents

5. There have been calls for the Government to require travel agents to take out professional indemnity insurance on a mandatory basis so as to strengthen protection of outbound travellers. However, it may not be the best way to achieve this purpose. Professional indemnity insurance provides cover to professional business, in this case, travel agents, for certain types of claims made against them by third parties under civil law. Where there is wrongful or negligent acts done or acts omitted by a travel agent, he can be sued for negligence or breach of contract. Such insurance provides financial protection to the travel agent to meet the costs of legal action and any damages that may become payable by it.

6. Taking out professional indemnity insurance is one of the ways for travel agents to manage their operational risks. In case of an accident, the outbound travellers concerned could only get compensation if they could prove that the accident was caused by the negligence of the travel agent. Usually, the legal proceedings involved could be long and costly.

7. Like all commercial operations, travel agents should be responsible for adopting effective risk management measures, including whether to take out professional indemnity insurance, to protect themselves from the possibility of liability claims. At present, the Government has no intention to require the travel agents to take out professional indemnity insurance on a mandatory basis. We will continue to remind them to procure such insurance in accordance with their operational risk and needs. The TIC is drawing up measures to reduce operational risks, such as best practices for travel agents in organising outbound tours and guidelines for tour escorts, and conducting discussion with the insurance industry on the issue of professional indemnity insurance. We believe that these are more effective ways for individual travel agents to come up with risk management policies that meet their different needs. The paper submitted by the TIC (at Annex) deals with the progress in these respects in more detail.

Means to protect outbound travellers

8. There are other measures in place that offer direct protection for outbound travellers in terms of financial relief.

(A) Travel Industry Compensation Fund (TICF)

9. For those who join package tours in Hong Kong and with their payment receipts franked with levy, they are protected by the “Package Tour Accident Contingency Fund Scheme” (the Scheme) under the TICF^{Note1}. This Scheme provides ex-gratia payment to them in the event of travel accidents. The payment covers medical treatment expenses at place of accident (up to \$100,000), funeral expenses at place of accident or transportation cost for returning the remains of the deceased (up to \$40,000) and compassionate visit expenditure (up to two relatives, each with \$20,000 as the ceiling).

10. In case of an accident involving travellers with a package tour in a foreign destination, the responsible travel agent will provide immediate first-line assistance to the injured, including reporting the accident to the TIC, the insurance company and the TAR, transferring the injured travellers to nearby medical facilities, and informing family members of the injured travellers. Expenses incurred for medical treatments, compassionate visits of family members, repatriating the remains of a deceased person to Hong Kong and funeral service will normally be borne by the travel agent first which will then seek reimbursement from the Scheme on behalf of the travellers. Such arrangement ensures expeditious financial assistance to tour group members involved in an accident.

(B) Travel insurance taken out by individual outbound travellers

11. In addition to the protection under the Scheme described above, travellers in package tours, as well as individual travellers, are encouraged to take out their own travel insurance to meet their needs. We believe that it is more appropriate for each traveller to assess his or her own needs and the risk of each trip in deciding whether he or she should take out travel insurance policies.

Note1

The TICF will provide the first line of financial assistance to the traveller concerned. In accordance with section 5D of the Travel Industry Compensation Fund (Amount of ex gratia payment and financial penalty) Rules, if a traveller has successfully claimed, after the TICF ex gratia payment, for compensation or damages in respect of the relevant expenses incurred in relation to the travel accident (e.g. from his insurance cover), he is required to refund the amount of the ex gratia payment or the amount of the damages or compensation so paid, whichever is the less.

12. We have, through the TIC, encouraged the taking out of travel insurance by individual outbound travellers. The Consumer Council, through its publications, educates travellers about the importance of purchasing travel insurance and gives advice on travel insurance products. According to the Hong Kong Federation of Insurers, it is estimated that about 40 to 50% of people travelling outside Hong Kong takes out travel insurance policies for their own protection. We will continue with our efforts in educating the public the importance of taking out their own travel insurance according to individual needs.

Economic Development and Labour Bureau
15 November 2004

Legislative Council Economic Services Panel

Protection of Outbound Travellers

Submission by the Travel Industry Council of Hong Kong (TIC)

I. Summary of the Jiufen accident

1. Actions taken by the TIC

At about 2.30 pm on 18 October 2004, two Taiwan package tours (with a total of 37 tour participants) organised by Kwan Kin Travel Services (Kwan Kin) ran into an accident in Jiufen. At about 3 pm, on receiving a telephone call from Kwan Kin, the TIC told it to immediately report the accident to the HKSAR Government's Security Bureau, Immigration Department and Travel Agents Registry in order to seek help from them, and to inform family members of the tour participants about the accident as quickly as possible. That evening, Kwan Kin held a press conference at its Hung Hom head office, during which TIC Executive Director Mr Joseph Tung explained the financial assistance available from the Package Tour Accident Contingency Fund Scheme.

2. Assistance from the HKSAR Government

After receiving news about the accident, the HKSAR Government held an emergency meeting and decided to dispatch four officials, including a Chief Immigration Officer and a Consultant Doctor, to Taiwan to provide assistance.

3. Kwan Kin meeting relevant people to discuss compensation and making consolation payments

In the morning of 21 October, the Assistant General Manager of Kwan Kin, Mr Fong Cheuk Yuen, met the tour participants and family members of the victims at the TIC Executive Office, during

which he announced that Taiwan's Spring China Travel Service would make consolation payments of NT\$5,000 to each of the injured and NT\$100,000 to the family of each of the deceased. On 26 October, Kwan Kin decided to make consolation payments of HK\$5,000 to each of the injured and HK\$20,000 to the family of each of the deceased, and refunded the tour fares to the tour participants.

4. Application to the Package Tour Accident Contingency Fund Scheme

Kwan Kin has advanced expenses for the victims of the accident and family members of the deceased, which include medical expenses and expenses relating to visits to Taiwan by family members of the tour participants; and is now preparing necessary documents to help them to apply for financial assistance from the Package Tour Accident Contingency Fund Scheme.

5. Kwan Kin helping contact the insurance company

Among those 37 tour participants, 20 of them had purchased travel insurance through Kwan Kin. On the day of the accident, Kwan Kin contacted the insurance company, American International Underwriters Limited (AIU), for emergency assistance. On 21 October, AIU explained to the tour participants and family members of the victims who had purchased travel insurance through Kwan Kin the coverage of their insurance policies, arrangements of the company, the upper limits of claims in relation to medical expenses, the claiming procedures and other related matters.

II. Preliminary investigation results of the Jiufen accident

1. On 18 October, two package tours consisting of a total of 37 tour participants travelled to Jiufen on a tour coach.

2. At 12.05 noon, the tour escort and the tourist guide arranged for the tour participants to have activities on their own in Jioufen. The tour coach driver went to lunch after parking the tour coach.
3. At 2.15 pm, the tourist guide called the tour coach driver to pick up the tour participants after all of them had assembled at the meeting place.
4. The tour coach driver arrived and started the engine. The tour coach collided with a signboard when it was being reversed by the driver. The signboard got stuck with and broke a rear window on the right side of the tour coach, leaving pieces of broken glass on the back rows of seats of the tour coach. After several attempts, the tour coach was finally backed to a position where the tour participants could board it. In reply to the tour escort's enquiry, the tourist guide said that the pieces of broken glass on the back rows of seats posed no threat to the passengers. The tour participants therefore boarded the tour coach and continued their journey.
5. With thick fog and heavy rain at that time, the tour participants boarded the tour coach quickly. When the tour coach made the first turn, it suddenly came to a brief halt, at which time the tour escort immediately told the tour participants to hold tight. When it made the second turn, it lost its balance and plunged down the slope of a mountain.
6. Since the location of the accident was adjacent to a police station, the tour escort immediately went there and asked for help. At about 2.30 pm, the tour escort reported the accident to Kwan Kin.
7. Kwan Kin arranged for family members of the tour participants to go to Taiwan in four groups on 18 and 19 October respectively.

8. All tour participants and their family members returned to Hong Kong on 26 October.
9. Kwan Kin has appointed counsel to follow up the matter.
10. Spring China Travel Service, the land operator in Taiwan responsible for receiving the tour groups, has submitted to Kwan Kin copies of the following documents: travel agent licences issued respectively by the Taipei Government and the Ministry of Transportation and Communications, and membership certificates issued respectively by the Taipei Association of Travel Agents and the Travel Quality Assurance Association R.O.C.

III. Perspectives to review the accident

The Jiufen accident can be reviewed from the following three perspectives:

1. Drink-driving

According to media reports, the tour coach driver was preliminarily found to have a blood-alcohol level in excess of the legal limit, which was believed to be the major cause of the accident. However, details of the accident are subject to the investigation conducted by the Taiwan authorities.

2. Monitoring functions performed by tour escorts

According to the TIC's Service Guidelines for Outbound Tour Escorts, tour escorts should monitor the service quality of the local land operators and should always put safety first when escorting tours. The TIC will regularly update the Service Guidelines and remind members again to urge their tour escorts and the local tourist guides to pay close attention to tour coach drivers and tour coaches.

3. Outsourcing of travel services by local land operators

At present, the general practice of Hong Kong outbound tour operators is to request the local land operators to provide all local travel services. Since few local land operators can provide all travel services, they have to outsource the provision of various travel services to other service providers, such as hotels, restaurants, tour coach companies, entertainment and tourism facilities, and the like. It is inevitable that local land operators outsource the provision of travel services. Outsourcing, however, will not necessarily affect the quality of travel services. The TIC will remind its members to actively monitor the quality of travel services provided by local service providers.

IV. Measures adopted to enhance protection for outbound travellers

Since mid-2004, the TIC has begun to look into ways to help its members to reduce operational risks and enhance protection for outbound travellers. In mid-November, it drafted the following two documents which address the safety of outbound travellers, and which are to be sent to all member agents -

1. Outbound tour operators' requirements of partners outside Hong Kong

The document stipulates that member agents should request the local land operators and travel service providers outside Hong Kong to meet a series of basic requirements about safety (see Appendix 1 for details).

2. Safety checklist for package tours

The document requires the local land operators and tourist guides, and Hong Kong's tour escorts to take a series of monitoring steps,

both before and during the journey, to ensure the safety of travellers (see Appendix 2 for details).

The TIC has always included in its Certificate Course for Outbound Tour Escorts elements about crisis handling and traveller safety.

V. Existing mechanism for regulation of travel agents

Regulation of travel agents has been enforced by the TIC through the issue of directives and codes of conduct. Member agents found to have violated such directives and codes of conduct will be penalised. Penalties include imposition of a fine, and suspension and revocation of membership subject to the seriousness of the violation. If the membership of a travel agent has been revoked, its licence will also have to be revoked by the Travel Agents Registry.

Since 1994, the TIC has issued the following directives and circulars regarding the protection of travellers' safety -

1. Directive:
 - a. Members who operate package tours are required to deal only with licensed or legally registered overseas service providers. (30-4-2002)

2. Circulars:
 - a. "Insurance coverage of package tour" (19-12-1994)
 - b. "(Travel agents should) remind travellers to buy travel insurance" (24-7-1995)
 - c. "The Board recommends that member agencies print a reminder on their tour brochures and official receipts to encourage their clients to take out travel insurance" (23-1-1996)
 - d. "Overseas land operators" (1-12-1997)
 - e. "The liability of travel agents in tour accidents" (9-12-1998)
 - f. "Travel insurance paper stand" (13-6-2001)

- g. “Recommendations regarding travellers taking out travel insurance” (29-5-2002)
- h. “Fire safety guidelines (Outbound tours)” (22-7-2002)
- i. “Travel safety for bus tours” (31-12-2002)
- j. “Lunch meeting on liability of travel agents” (16-4-2002)
- k. “Travel agents’ liabilities” (19-4-2004)

To raise members’ awareness of the importance of travellers’ safety, the TIC has also explained to members through its magazine issues relating to better protection for travellers and liability insurance for travel agents -

- a. “TIC recommends Contingency Fund for the protection of travellers”, *The Voice of TIC*, 1995, Vol. 2
- b. “Contingency Fund offers protection for travellers against travel accident”, *The Voice of TIC*, 1995, Vol. 3
- c. “Legal obligation of travel agents in case of travel accidents”, *The Voice of TIC*, 1996, Vol. 1
- d. “Green light for Contingency Fund proposal”, *The Voice of TIC*, 1996, Vol. 1
- e. “Package Tour Accident Contingency Fund Scheme”, *The Voice of TIC*, 1996, Vol. 2
- f. “Readers’ Feedback” (On professional liability insurance for travel agents), *The Voice of TIC*, 1998, Vol. 4
- g. “The next one getting sued can be you!”, *The Voice of TIC*, 2000, Vol. 1
- h. “Liability insurance concerns all”, *The Voice of TIC*, 2004, No. 1
- i. “Liability of travel agents”, *The Voice of TIC*, 2004, No. 2

VI. Professional liability insurance for travel agents

The TIC has already discussed such matters as the premium and coverage of professional liability insurance, and the feasibility of taking out collective professional liability insurance for travel agents with the Hong Kong Confederation of Insurance Brokers, the

Professional Insurance Brokers Association and the Hong Kong Federation of Insurers, as well as a number of insurance companies several times. The TIC will continue to discuss the issue of professional liability insurance for travel agents with the insurance industry.

VII. Mandatory travel insurance for outbound travellers

The TIC has always requested its member agents to encourage travellers to take out travel insurance themselves, and cooperated with the Government and the Consumer Council to promote the importance of travel insurance. The TIC will continue educating the public in this respect.

Travel Industry Council of Hong Kong
November 2004

Outbound tour operators' requests for partners outside Hong Kong

Hong Kong's tour operators should request their partners outside Hong Kong to:

1. provide written information on their operation licence;
2. provide written information on their licensed area of operation;
3. provide written information on their duration of operation;
4. provide written information on the name and contact methods of their contact person / person-in-charge in case of emergency;
5. engage service providers which meet local legal requirements to provide services relating to means of transport, hotels, dining places, tourism and entertainment facilities, etc;
6. employ tourist guides who meet local legal requirements;
7. provide:
 - a. written information on the name of the tour coach companies;
 - b. written information on the average length of service of tour coaches; and
 - c. written confirmation that the specifications of the tour coaches to be used, and the credentials of the drivers and their schedule of work and rest, all conform to local legal requirements; and
8. ensure:
 - a. that written confirmation is provided by the land operators and service providers that they have purchased insurance policies to cover travellers in accordance with local legal requirements, and that written information on the coverage of the insurance policies and the amount insured is provided; and
 - b. that written confirmation is provided by the land operators to show that all service providers arranged by them, the services of which include meals, accommodation, tourism and entertainment facilities, charter vessels and other means of transport, etc, have taken out insurance in accordance with local legal requirements.

Safety checklist for package tours

Tour code: _____ Destination: _____ Date of departure: _____

Land operator: _____ Name of tourist guide: _____ Name of tour escort: _____

A. TRANSPORT ARRANGEMENTS

(I) Tour coach (The following items should be checked by the tourist guide before the tour group shows up; after the group has reached its destination, the tour escort should check again. If another tour coach is used during the trip, all the items should be checked again.)

	Items for checking		Appropriate action should be taken if the following are spotted:
1	Conformity to legal requirements	<input type="checkbox"/> Yes	<input type="checkbox"/> No; another tour coach should be requested
2	With vehicle licence	<input type="checkbox"/> Yes (valid until _____)	<input type="checkbox"/> No; another tour coach should be requested
3	Physical appearance	<input type="checkbox"/> Acceptable	<input type="checkbox"/> Unacceptable (too shabby); another tour coach should be requested
4	No. of seats (as stated in relevant documents, such as the vehicle licence; seats for the driver and the tourist guide as well as jump seats not included)		
5	No. of people on board		
6	Windows of the tour coach	<input type="checkbox"/> Undamaged	<input type="checkbox"/> Damaged; another tour coach should be requested
7	Ask the driver if safety checks on, e.g., the tread and air pressure of tyres, have been made in advance	<input type="checkbox"/> Yes	<input type="checkbox"/> No; the driver should be reminded to do safety checks
8	Other matters that affect safety		

(II) Tour coach driver and the way s/he drives (Carefully monitored by the tour escort)

	Items for checking		Either the driver should be asked to make improvement or appropriate action should be taken if the following are spotted:
1	The driver drinks alcohol during the trip	<input type="checkbox"/> No	<input type="checkbox"/> Yes; the driver should be stopped immediately
2	The driver seems to be under the influence of alcohol or medicine	<input type="checkbox"/> No	<input type="checkbox"/> Yes; another driver should be requested
3	The driver drives safely and obeys traffic rules	<input type="checkbox"/> Yes	<input type="checkbox"/> No; the driver should be asked to make improvement, and if there is no improvement, another driver should be requested
4	The driver parks the coach in a safe place or uses a hand-free apparatus when using communications equipment	<input type="checkbox"/> Yes	<input type="checkbox"/> No; the driver should be asked to make improvement, and if there is no improvement, another driver should be requested
5	Other matters that affect safety		

(III) Charter vessel or other means of transport (please specify if other means of transport is used: _____) (Carefully checked by the tour escort)

	Items for checking		Appropriate action should be taken if the following are spotted:
1	Capacity (no. of people: _____)	<input type="checkbox"/> Enough	<input type="checkbox"/> Overload; the tour group should not board the vessel
2a	No. of life jackets: _____	<input type="checkbox"/> Enough	<input type="checkbox"/> Not enough; more life jackets should be requested; otherwise, the tour group should not board the vessel
2b	Life jackets in positions easy to take	<input type="checkbox"/> Yes	<input type="checkbox"/> No; warn the tour group
3	Other matters that affect safety		

B. MEALS (Carefully checked by the tour escort every day)

	Items for checking		Appropriate action should be taken if the following are spotted:
1	Hygiene	<input type="checkbox"/> Good	<input type="checkbox"/> Bad; another dining place should be requested
2	Dining place has emergency signs and fire escape routes	<input type="checkbox"/> Yes	<input type="checkbox"/> No; report to the travel agent
3	Other matters that affect hygiene and safety		

C. HOTEL ACCOMMODATION (The tour escort should carefully check the following items and remind the tour group to take note of instructions on emergency procedures. Whenever the tour group stays at another hotel, all the items should be checked again.)

	Items for checking		Appropriate action should be taken if the following are spotted:
1a	Maps showing fire escape routes / emergency exits, or emergency procedures posted	<input type="checkbox"/> Yes	<input type="checkbox"/> No; the hotel should be asked to provide such information for the tour group
1b	Positions of such maps or procedures	<input type="checkbox"/> Prominent	<input type="checkbox"/> Not prominent; remind the tour group

D. OPTIONAL ACTIVITIES (Bungee jumping, ballooning, water sports, etc) (Carefully checked by the tour escort)

	Item for checking		Appropriate action should be taken if the following is spotted:
1	Approved and arranged by Hong Kong's travel agent	<input type="checkbox"/> Yes	<input type="checkbox"/> No; the activities should not be provided

The tour escort should consult the tourist guide or seek help from the land operator before taking any action. If necessary, the tour escort may report the situation to the tour operator in Hong Kong to seek instructions.

Signed by tourist guide: _____

Date: _____

Signed by tour escort: _____

Date: _____