

**For information
on 24 May 2010**

**Legislative Council Panel on Economic Development
Review of the Operation of the Travel Industry Council of Hong Kong**

Purpose

Further to the Panel on Economic Development (ED Panel)'s meeting on 16 July 2009, we have conducted a review of the operation of the Travel Industry Council of Hong Kong (TIC). This paper briefs Members on the outcome of the review.

Background

2. We have examined various aspects of the TIC including its role in the current regulatory regime of the travel agents in Hong Kong. During the process, we have made reference to the views of the TIC, the Advisory Committee on Travel Agents, the TIC's Association Members and members of the trade. We consider that while there is room for the TIC to improve its operation, it has established an effective role in the regulatory regime which should be recognised. Our findings are set out below in detail.

Regulatory Framework for the Travel Industry

3. The TIC was established in 1978 as a trade association for travel agents. In 1985, the Travel Agents Ordinance (TAO) (Cap. 218) was enacted requiring all outbound travel agents to be licensed in response to the default of a number of these agents. The Travel Agents Registry (TAR) was also set up in 1985 to administer the TAO in particular the licensing regime and regulation of travel agents. The Travel Agents Reserve Fund (TARF) was established in the same year to provide compensation to travellers who suffered loss in the default of outbound travel agents.

4. In 1986 to 1987, following the default of a number of outbound travel agents and the depletion of the TARF, the Government, after extensive consultation with the stakeholders and with the support of the Legislative Council, amended the TAO to bring in trade self-regulation to form the two-tier regulatory regime for outbound agents, and required that all outbound travel agents in Hong Kong must be members of the TIC before applying for a travel agent's licence.

5. Under the above regime, the TIC is responsible for trade self-regulation, including the promulgation of codes of conduct and directives, as well as putting in place a disciplinary mechanism to handle violation of the codes and directives by member agents. On the other hand, the TAR, as the licensing authority, is responsible for issuing travel agent's licences and the related work, including conducting financial surveillance on travel agents under the TAO. In 1988, the TARF was replaced by the Travel Industry Council Reserve Fund (TICRF) for compensating consumers against outbound travel agents' default. The TICRF was managed by a limited company under the same name set up by the TIC. The TICRF was subsequently replaced by the statutory Travel Industry Compensation Fund in 1993 to enhance the protection of consumers. The opportunity was taken to introduce the Council levy under the TAO to ensure that the TIC has stable and recurrent income to finance its trade regulatory functions.

6. The Tourism Commission (TC) was established in May 1999 and is now under the Commerce and Economic Development Bureau. It is headed by the Commissioner for Tourism who is tasked with mapping out the Government's tourism development strategy, providing a focal point for liaison with the tourism industry and enhancing co-ordination in developing tourism.

7. To better protect the interests of inbound visitors, the TAO was further amended in 2002 to bring all inbound travel agents under the above regulatory regime. To improve travel agents' service, the TIC introduced accreditation systems for tour escorts in 1999 and tourist guides in 2004 respectively. For the latter, a Continuing Professional Development programme was introduced in 2007 to encourage on-going service improvements.

The TIC – Current Arrangements

Composition of the TIC Board

8. The composition of the TIC Board is specified in its Memorandum and Articles of Association (MAA), which now provides that the Board comprises a chairman from the trade and 28 directors. The present membership of the TIC Board is at **Annex A**. Among the directors, 12 are independent non-trade directors appointed by the Secretary for Commerce and Economic Development (SCED). The independent non-trade directors come from different sectors including professionals from the legal and accountancy fields and those with consumer protection

experience. Eight other directors are elected by member travel agents at annual general meetings (AGMs) and the remaining eight are representatives of the TIC Association Members. Contrary to the perception that the TIC Board comprises only representatives of large travel agents, the directors from the trade come from a variety of background including small to medium travel agents with different business focus (inbound, outbound or ticketing, etc). The composition of the TIC Board helps ensure its representativeness and a right balance of consumer and trade interests.

Independence and Impartiality

9. The present organisational structure of the TIC is at **Annex B**. To bring in more experience and knowledge from other sectors and to enhance impartiality of the TIC's three disciplinary committees (namely Compliance Committee, Committee on Shopping-related Practices, and Consumer Relations Committee), independent non-trade directors have been serving as the convenors of all three committees since 2008. Non-trade members also take up the majority of the seats in those Committees. In fact, the TIC has been increasing the number of independent directors regularly as it takes on more regulatory functions, from two upon establishment of the current licensing and regulatory framework in 1988 to four in 1994, to eight in 2004 and to 12 since 2008.

10. There is also an independent appeal channel if the travel trade members are aggrieved by the TIC's disciplinary decisions. The TIC's MAA provides for an Appeal Board to handle appeals on disciplinary matters from agents and industry members. The Appeal Board consists of three independent non-trade members and two trade members¹, with the Chairman to be elected from the former. All members of the Appeal Board must have no interest in or connection to the case under appeal.

11. Furthermore, the TIC has been specified as a "public body" under the Prevention of Bribery Ordinance (Cap. 201) since 1990 and all its Directors are therefore "public servants" subject to the regulation of the Ordinance. With the assistance of the Independent Commission Against Corruption (ICAC), the TIC issued the General Code of Conduct for the TIC Board of Directors to ensure that its Directors discharge their duties in an impartial and honest manner with the objective of protecting the interest of both the consumers and the travel industry.

¹ All these members must be present to meet the quorum of the Appeal Board.

Financial Control

12. The TIC's main sources of income include the Council levy, income from training courses and membership fees. These three sources of income represent 61%, 17% and 9% of the TIC's total income² respectively, with the rest made up by inbound tour registration fees, shop registration fees, tour escorts and tourist guide passes registration fees, etc.

13. Since the introduction of the Council levy under the TAO in 1993, it has been maintained at a rate of 0.15% of every outbound fare received, and is payable by travel agents. The TIC membership fee is \$1,000 for Ordinary Members (limited companies) and \$600 for Affiliate Members (sole proprietorships and partnerships). The membership fees have not been adjusted since July 1993 to ensure that they remain affordable to members.

14. The TIC Board oversees the TIC's operation and expenditure. The TIC's annual account is audited by a professional auditor and submitted for approval by the TIC Board followed by an AGM where all members of the TIC and the independent non-trade directors are invited to attend. A copy of the TIC annual report, which includes the audited accounts, is issued to every member. This monitoring mechanism has functioned well.

15. The Government has also been monitoring the TIC's finances. The TIC is required under the TAO to submit to the SCED each year the estimates of its income and expenditure in respect of the next financial year. The TIC's MAA also provides that approval from the SCED is required for adjusting important fee items affecting member agents.

Further Improvement Measures Implemented Since July 2009

16. Notwithstanding the institutional arrangements mentioned above, the TIC has made further improvements taking into account the views of the ED Panel.

Rationalised Committee Structure

17. The TIC established a Governance Committee in September 2009 to review and make recommendations on the operation of the TIC, particularly on the composition of the TIC committees, conduct of business at meetings and measures to increase transparency. Arising from the work

² Figures are for the period from 1 July 2008 to 30 June 2009 which matches the TIC's financial year 2008-09.

of the Governance Committee, the TIC has since laid down clear guidelines on the maximum terms of office for members of Committees to ensure the injection of new members to the Committees from time to time. The composition of relevant Committees was also refined to allow at least 20% of the membership be reserved for trade members who put themselves forward through a nomination procedure. The Governance Committee also laid down objective criteria in selecting representatives of front-line staff from the tour escort and tourist guide associations to sit on the TIC Committees.

18. In order to further improve the financial control system, the TIC elected for the first time in December 2009 an independent director as the convenor of its Staff and Finance Committee, a position which traditionally was taken up by the TIC Chairman (from the trade).

Employee's Interest

19. In response to the views that front-line employees' interests should be better reflected in the TIC Board, the Government appointed a trade union representative as an independent director of the TIC Board in November 2009. This independent director also serves as the Convenor of the Tourist Guide and Tour Escort Deliberation Committee.

Transparency

20. To further enhance transparency of the TIC's deliberations and decisions, the TIC has, since January 2010, implemented a new policy whereby the annotated agenda of its Board and Committee meetings will be uploaded to its website before the meetings. Similarly, the minutes of meetings held, save for certain sensitive items, will be published on the website for members' information. This is on top of providing disciplinary information³ on its website for inspection by its members and the public since 2004 and important decisions of the Board's monthly meetings also on the website for inspection by its members since December 2008.

Enhanced Monitoring

21. Besides the enhancement in transparency measures which facilitate the TIC members' and public scrutiny, the TC maintains close contact with the TIC to provide advice and assistance on matters relating to

³ This include providing information on revoked or suspended Tourist Guide Passes (in 2004) and Tour Escort Passes (in 2007), travel agents' non-compliance cases (in 2006), records of demerit points of registered shops, and names of suspended or revoked registered shops (in 2007).

the tourism market, development of the industry, the operating environment of travel agents, tourist protection, as well as the financial position of the TIC, so as to facilitate the TIC's regulatory work and its effective use of resources. Furthermore, a TC representative has been sitting on the TIC Board as an observer since January 2005. Starting from January 2010, the TC has strengthened its representation on the TIC Committees. Representatives of the TC now sit on seven TIC Committees⁴ as a member, and the Staff and Finance Committee as an observer. The new arrangement allows the TC to better perform the role of closely monitoring the TIC's operation and tendering timely advice.

Future Improvements

Value for Money Audit

22. In view of the rising expectations of its members and the public on its operation, the TIC decided in April 2010 to engage a professional audit firm to conduct a value-for-money audit with a view to further improving its efficiency and use of resources. Besides checking the compliance of the management on internal procedures, the scope of the audit also includes recommendation of measures to improve the existing systems and procedures with a view to achieving higher efficiency and effectiveness to help the TIC meet changing market needs. The TIC is expected to invite tender for the audit in the third quarter of 2010.

Guidelines on Election

23. The TIC is also working on formulating, in consultation with the ICAC, clearer guidelines on TIC elections including that for trade directors and office bearers of the TIC Board.

Maintaining the Current Regulatory Regime

24. The roles and functions of the TAR and the TIC in the regulatory regime of the travel agents in Hong Kong have evolved in tandem with the development of the travel industry. The licensing and regulatory framework has been operating smoothly overall in the past 22 years. During this time, the TIC has established itself as an effective self-regulatory body capable of initiating improvements to its governance structure and internal control. It has also built solid rapport with the travel-related

⁴ The seven committees are Governance Committee, Planning and Development Committee, Inbound Committee, Outbound Committee, Mainland China Inbound Tour Affairs Committee, Committee on Shopping-related Practices and Training Committee.

industries both in and outside Hong Kong. We consider that the current regulatory regime, with the TAR licensing the travel agents and the TIC responsible for trade self-regulation, should continue.

25. The TIC's membership covers all licensed travel agents, which gives recognition to the TIC as the representative trade body for travel agents. The TIC has also established an extensive network in travel-related sectors in Hong Kong and overseas. With this network and its expertise, the TIC is able to follow changes in the industry, detect early signs of malpractices in the trade and formulate effective responses and regulatory measures. For example, the TIC took quick action in 2007 to implement a series of measures to combat unscrupulous practices of some inbound agents and shops targeting Mainland group tours, including the introduction of a 6-month full refund protection scheme in June 2007 applicable to purchases from TIC-registered shops. Shopping-related complaints dropped by some 90% in the 12 months immediately after the implementation of the scheme.

26. The TIC's co-ordinating role and capability is particularly prominent in the handling of emergencies involving Hong Kong outbound and inbound tour groups. For example, in early 2008, when some provinces of Mainland China were affected by snow storm and deemed unsuitable for leisure travel, the TIC swiftly liaised with the travel trade and forged a consensus to cancel all outbound tours to the affected areas. The TIC also standardised the refund arrangement to affected travellers. Its timely efforts enabled travel agents to respond to the crises in a co-ordinated manner, minimising confusion and inconvenience to the travelling public. The same was done in respect of group tours to Bangkok in recent months. Most recently, the TIC also liaised with travel agents to minimise the loss to travellers affected by the cessation of Viva Airlines flight services.

27. Tourism is a rapidly developing industry with new products coming on stream regularly, such as MICE, cruise and educational travel. The nature of and the skills required for the new products can be very different from traditional sight-seeing tour services. To ensure sound regulation, the TIC not only needs to revise its regulations to keep up with the developments, it also has to provide skill upgrading opportunities for the trade to acquire skills to attain a satisfactory service level. The TIC in its present form (i.e. a trade body with regulatory functions) is best placed to foster trade development on the one hand and regulate the ever-changing trade practices on the other, as it can combine trade knowledge with swiftness in formulating code of practices and directives.

28. Its self-regulatory nature has also allowed the TIC to make extensive use of mediation to resolve conflicts between consumers and member travel agents. In 2009, over 60% of the complaint cases received by the TIC were resolved by mediation by TIC staff where solutions acceptable to both parties were found. As such, the interests of the travelling public in Hong Kong and our tourists are protected.

29. After examining the current structure and operation of the TIC as set out above, and taking into account the further improvements implemented or being planned, we consider that there are already adequate safeguards, including those in the TIC's MAA, the TAO and the participation of the TC in the TIC's Board and Committee meetings, for Government to maintain adequate check and balance on the TIC. The TIC's MAA together with the TAO provides a governance framework for the establishment and operation of the TIC, similar to a legislative framework for a statutory body. We therefore do not consider it is necessary to convert the TIC into a statutory body or establish a new statutory body to take over the functions of the TIC, noting that the TIC has firmly established itself as the self-regulatory body for the travel industry of Hong Kong and the possible financial implications of the change.

30. We have also considered the option for the Government to take over the regulatory role of the TIC but do not recommend this as it would entail fundamental changes to the degree of trade involvement and the self-regulation element, which we believe are essential ingredients for the effective regulation of the travel agents trade for the protection of public interests. We also do not recommend merging the TAR with the TIC as they perform different functions under the regulatory regime.

31. The TIC has also been performing an essential role in reforming the trade, furthering the manpower development for sustainable development of the industry and liaising within the industry to promote trade interests and better relations. These functions are best carried out by a trade body instead of a statutory body or the Government.

32. The Government will keep in view the outcome of the audit commissioned by the TIC and the TIC's implementation of the improvement measures with a view to helping the TIC to continue achieving its objective of enhancing the professional standards of Hong Kong's travel industry, driving the overall development of the trade as well as protecting the consumer rights of both inbound and outbound travellers.

Legal Issues

33. Under the current regulatory regime, any person who wishes to obtain a travel agent's licence must first join TIC as a member. Some have concerns that such a requirement is inconsistent with the right to freedom of association guaranteed under Article 27 of the Basic Law.

34. The current licensing and regulatory framework was put in place in 1988 after extensive discussion and consultation and was given statutory effect by means of legislation. It was re-affirmed in 2002 when the TAO was further amended to expand its scope to cover the regulation of inbound travel. At the time, the Legislative Council, travel industry and other relevant stakeholders were consulted. As mentioned above, the regulatory framework has been operating smoothly by and large and is recognised as generally effective. It has responded to the call by the public and the travel trade for striking a balance between the protection of consumer rights and the overall development of the travel industry.

35. In view of the concerns mentioned above and at the request of the ED Panel, we have sought legal advice on the issue. We have been advised that the relevant Ordinance is part of Hong Kong laws and the Government has been carrying out the regulatory work through the TAR and the TIC in accordance with the Ordinance. As mentioned above, the TIC has been performing an essential role in this regime, and in order to eliminate concerns on the status of the TIC as mentioned in paragraph 33 above, we have been advised that legislative amendments should be considered to set out clearly the role of the TIC as a public association in the regulatory framework.

36. Having consulted legal advice, we have decided to amend the TAO to make clear the TIC's position under the regulatory regime by specifying the TIC's role more clearly in the Ordinance. We will take into account views of the travel trade in the process.

37. Members are invited to note the information set out above.

Tourism Commission
Commerce and Economic Development Bureau
May 2010

Membership of the TIC Board of Directors

I. Trade Directors

Mr Michael WU (Chairman)	Managing Director, Gray Line Tours of Hong Kong Ltd
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Elected Directors

Mr Michael FUNG	Director/General Manager, Wing Hang Travel Co Ltd
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Mr Lester HUI	General Manager, United China Travel Ltd
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Mr Andrew LEUNG	Managing Director, Swire Travel Ltd
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Mr Tommy TAM (Honorary Treasurer)	Managing Director, Arrow Travel Agency Ltd
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Mr Warren TONG	Managing Director, Mount Travel Ltd
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Mr Jason WONG	Director, Hong Thai Travel Services Ltd
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Mr Freddy YIP	Managing Director, Goldjoy Travel Ltd
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Mr YIU Si-wing (Deputy Chairman)	Director, China Travel (HK & Macau Tour) Management Hong Kong Ltd
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Representatives of Association Members

Mr KAI Chuen-kam	Hong Kong Taiwan Tourist Operators Association
Mr Joseph KAO	Society of IATA Passenger Agents
Mr Ginger KEUNG	Hong Kong Association of China Travel Organisers
Mr Peter KONG	Hong Kong Outbound Tour Operators' Association
Mr Paul LEUNG	Hong Kong Association of Travel Agents
Mr LING Kam-man	International Chinese Tourist Association
Mr Ricky TSE	The Federation of Hong Kong Chinese Travel Agents
Mrs Gianna HSU (Deputy Chairman)	Hong Kong Japanese Tour Operators Association

II. Independent Directors

Mrs Pamela CHAN	Patron, Consumers International
Ms Dilys CHAU	Partner, Ernst & Young
Dr KAM Pok-man	Chief Executive Officer, The Financial Reporting Council
Prof LEE Kam-hon	Director, School of Hotel and Tourism Management, The Chinese University of Hong Kong
Mr LEUNG Fu-wah	Vice-President, The Hong Kong Federation of Trade Unions
Mr Johnny LEUNG	Solicitor, Johnny K.K. Leung & Co
Mr LI Kwok-ying	Senior Partner, Kevin Li & Co., Solicitors
Mr Martin LIAO	Barrister, Martin Liao Barrister
Mr MA Fung-kwok	Chairman, Hong Kong Arts Development Council
Mr MA Ho-fai (Honorary Secretary)	Senior Partner, Woo Kwan Lee & Lo
Mr Raymond SIT	-
Mr TANG Kwai-nang	Chairman Emeritus (Asia Pacific), The Nielsen Company

(names are listed in alphabetical order)

Organisational Structure of the TIC

