

立法會

Legislative Council

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Panel on Economic Development Meeting on 24 May 2010

At the meeting of the Panel on Economic Development held on 16 July 2009, the Legal Service Division (LSD) was requested to advise on the basis for the Travel Industry Council of Hong Kong (TIC) to play an industry self-regulatory role in monitoring travel agents and to collect levy from them. This paper sets out the views of LSD.

2. The control and regulation of travel agents is provided in the Travel Agents Ordinance (Cap. 218) (the Ordinance). Under the Ordinance, no person shall carry on business as a travel agent without a licence. An application for a travel agent's licence shall be made to the Registrar of Travel Agents (the Registrar). Under section 11(1A) of the Ordinance, any licence granted by the Registrar shall be subject to the condition that the applicant shall be and remain a member of an approved organization specified in Part I of Schedule 1 to the Ordinance during the period that the licence is in force. TIC is specified as an approved organization in that Schedule. The effect is that a licensed travel agent must be a member of TIC.

3. Under section 32I(1) of the Ordinance, a travel agent shall be liable to pay a levy (the Council levy) to TIC in respect of every outbound fare received by such travel agent. According to section 1 of the Travel Agents Ordinance (Specification of Council Levy) Notice (Cap. 218 sub. leg. C), the current rate of the Council levy is 0.15% of every outbound fare received by the travel agent. Section 32I(4) of the Ordinance further provides that TIC shall expend money received by it on account of the Council levy only on operational expenses incurred by it in pursuing or achieving its objects. Thus, section 32I of the Ordinance provides the legal basis for TIC to collect the Council levy from travel agents as its operational expenses in pursuing or achieving its objects.

4. TIC is a limited company registered under the Companies Ordinance (Cap. 32) and is granted a licence under section 21(1) of Cap. 32¹ to be registered with limited liability without the addition of the word "Limited" and the expression "有限公司" to its name in view of its objects as set out in the Memorandum of Association. The objects of TIC, as provided in its Memorandum of Association, include the establishment of an organization for and fully representative of Member travel agents

¹ Under section 21(1) of Cap. 32, where it is proved to the satisfaction of the Registrar of Companies that an association about to be formed as a limited company is to be formed for promoting commerce, art, science, religion, charity or any other useful object, and intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Registrar may by licence direct that the association may be registered as a company with limited liability, without the addition of the word "Limited" in English to its name and the expression in Chinese "有限公司" to its name.

and tour operators in Hong Kong and the establishment and maintenance of Codes of Conduct between Members themselves, between Members and TIC and between Members and the general public, with the object that Membership of TIC shall be recognized as an indication of integrity, competence and a high standard of service. The Articles of Association of TIC provide for the general principles that govern the operation of TIC, including its membership, fees, accounts rules, codes of conduct, termination of membership and other penalties, and meetings, etc. Section 23(1) of Cap. 32 provides that the memorandum and articles of association of a company shall, when registered, have effect as a contract under seal between the company and each member, and between a member and each other member, and shall be deemed to contain covenants on the part of the company and of each member to observe all the provisions of the memorandum and articles.

5. Under Article 10 of the Articles of Association of TIC, members of TIC are bound by the Codes of Conduct promulgated by the Board of Directors of TIC for regulating the conduct and business or other practices of travel agents and other matter from time to time determined by the Board relevant to the membership of TIC. According to the website of TIC, the Codes of Conduct being implemented are: (i) General Code of Conduct for TIC Members, (ii) Code of Business Practice on Outbound Package Tours, (iii) Code of Advertising Practice for TIC Members, (iv) Code of Business Practice on Inbound Travel Service, and (v) Code of Business Practice on Study Tours. According to paragraph 5(5) of the General Code of Conduct for TIC Members, a member who has infringed the General Code of Conduct for TIC Members or other Codes may be penalized in accordance with Articles 11(3)(a) and 11(3)(b) of the Articles of Association (i.e. termination of membership, and if termination is considered an excessive penalty, then a fine of up to HK\$50,000 on the first occasion, HK\$100,000 on the second occasion and HK\$200,000 on any subsequent occasion, and/or suspension of membership for a period not exceeding two years, and/or a reprimand).

6. Based on paragraphs 4 and 5 above, it appears that the Memorandum and Articles of Association of TIC, and the Codes of Conduct promulgated by the Board of Directors of TIC provide the basis for TIC to play an industry self-regulatory role in monitoring travel agents.

Prepared by

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