

**For discussion
on 28 February 2011**

Legislative Council Panel on Economic Development

Review of the Operation and Regulatory Framework of the Tourism Sector in Hong Kong

Purpose

This paper outlines the Government's preliminary thinking for reviewing the operation and regulatory framework of Hong Kong tourism sector, and sets out the direction, scope and work plan of the review for Members' comments.

Background

2. The Chief Executive announced in the Policy Address last October that the Government would review the operation and regulatory framework of Hong Kong's tourism sector, including the role, powers, responsibilities and operation of the Travel Industry Council of Hong Kong (TIC), as well as its working relationship with the Travel Agents Registry (TAR). On the other hand, in response to several incidents in mid-2010 involving malpractices in Mainland inbound tour operations, the TIC commenced implementation of ten measures on 1 February 2011 to strengthen the regulation of the receiving arrangements for Mainland inbound tours. The public is concerned whether these measures would be effective in improving the operation of Mainland inbound tours.

Regulation of Tourism Sector

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 TAR was also set up in 1985 to administer the TAO, in particular the licensing 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. From 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 at the time, 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, which is issued by the TAR.

5. Under this 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 the tourism sector. The TAR, who is responsible for administering the TAO, is a part of the TC.

7. To better protect the interests of inbound visitors, the TAO was further amended in 2002 to bring all inbound travel agents under the regulatory regime.

8. Moreover, to improve travel agents' service, the TIC introduced accreditation systems for tour escorts in 1999 and tourist guides in 2004. Applicants for the Tourist Guide Passes must hold certificates recognised by the TIC (such as certificates of the Pre-service Tourist Guide Training Course or tourist guides training courses under the Skills Upgrading Scheme for the Travel Industry) and pass the relevant examinations before they are issued the passes. The Continuing Professional Development programme was also introduced in 2007 to encourage on-going service improvements. The present composition and organisational structure of the TIC is at Annex.

9. The TIC has accumulated years of experience in regulating outbound tourism and, as a trade body, has profound knowledge in the operations of the industry. When handling emergency matters, the TIC is able to leverage on its strengths to provide assistance to visitors and advice to the Government in dealing with the incidents. On inbound tourism, the number of Mainland visitors has grown rapidly in recent years with over 60 000 Mainland inbound tours annually. This has exerted heavy pressure on the TIC's regulatory work. In view of the changing environment, the TIC introduced various measures to strengthen the regulation of Mainland inbound tourism in the past few years, including the 180-day refund protection scheme for registered shops and the Tourist Guide Accreditation System.

10. In mid-2010, a spate of untoward incidents concerning the receiving arrangements for Mainland inbound tours and suspected coerced shopping have tarnished the reputation of the tourism industry in Hong Kong. They have also aroused public concern about the effectiveness of the TIC regulatory regime in ensuring proper conduct within the trade. The public also questioned the fairness or the possible conflict of interest for the TIC to regulate tourist guides. We attach great importance to protecting the reputations and sustaining the long-term healthy developments of our tourism sector, which is one of the four pillar industries in Hong Kong. In this regard, the Chief Executive

announced in the Policy Address last year that the Government decided to conduct a review on the operation and regulatory framework of the entire tourism sector.

11. The background information above showed that the TIC's role as the regulator of the tourism industry had developed and evolved in tandem with the development of the tourism industry over the years, and in its own historical context. The TIC's effort in regulating outbound tourism and handling emergency situations has been well-recognised by the public and the trade. The discussion in recent months concerning the problems of Mainland inbound tours reflected that there are doubts on whether the TIC's existing regulatory mode could adequately address these problems. We see the need to conduct a comprehensive review on the effectiveness of the whole regulatory framework and map out the way forward. Since the announcement of the Policy Address last year, we have been paving the ground for the review, and have developed some preliminary ideas on the direction, scope and timeframe of the review. We will embark on the review and consult various parties concerned, after discussion at this Panel.

Views on the Operation and Regulatory Framework of the Tourism Sector

12. We reviewed the operation of the TIC in 2010, and reported the outcome to Members at the meeting on 24 May 2010. We pointed out that the TIC had operated under the two-tier regulatory regime for over 20 years, and had developed strong ties with local and overseas travel-related trade bodies throughout the years.

13. Since mid-2010, this Panel, the trade and the public have discussed extensively the regulation of the tourism industry. We have been following the discussions closely. The views concerning the operation and regulation of tourism sector may be summarised broadly into the following categories –

- (1) the TIC can represent the trade and has in-depth knowledge in the operation of travel industry. It should be well-positioned to handle trade development and regulation. However, the

TIC lacks sufficient power, such as statutory investigative power and sanctions, to regulate the trade and hence the efficiency in its regulatory work was undermined. Furthermore, outbound and inbound travel agents are subject to the same licensing and regulatory framework, which may not be able to cater fully for the different operation environments and needs of the outbound and inbound tourism sectors. This casts doubts on the effectiveness of the regime;

- (2) notwithstanding the appointment of an increasing number of non-trade directors in recent years and their active participation in the Board, the TIC, as a self-regulatory trade body, still gives the public a perception that it is riddled with conflict of interest. Although non-compliance cases and tourists complaints are handled by committees and Appeal Board, of which the Chairmen and the majority of members are not trade practitioners, there are still criticisms that this arrangement lacks independence, and frequent queries on the case-handling procedures and sanctions handed down. As a result, the TIC feels somewhat handicapped when handling non-compliance cases;
- (3) most of the TIC's trade representatives are proprietors or managers of travel agents and there could be conflict of roles for the TIC to regulate frontline staff including tour escorts and tourist guides. In this respect, the Government has appointed a trade union representative to serve on the TIC Board, so that the views of frontline staff could be better reflected. However, some tourist guide organisations maintain that the absence of tourist guide representative on the TIC Board is undesirable. There is also no formal channel for tourist guides to express their views to the TIC. This has hampered the communication between tourist guides and the TIC. Some believed that the latter has failed to take into account the practical and operational needs of the trade when formulating codes and directives;

- (4) the existing regulatory regime cannot cope with the needs of the tourism industry, which has evolved and expanded over the past two decades. The respective roles, responsibilities and division of works between the TAR and the TIC are unclear and the Government should consider combining their functions and streamlining the regulatory procedures by having the Government or an independent body taking over the regulatory role; and
- (5) the formulation of tourism policies, the promotion of Hong Kong as a tourism destination and trade regulation now fall under the purview of three different agencies. This arrangement is regarded as overly fragmented by some. A single organisation should be established to take up all these responsibilities.

Scope of the Review

14. The objectives of reviewing the operation and regulatory framework of the tourism sector are to ensure that our regulatory regime keeps pace with the latest development, safeguards consumer rights and is conducive to the healthy development of the tourism industry in the long run. In this connection, we will first focus on developing a more effective regulatory framework for the tourism industry.

15. The existing regulatory framework includes the TAR, with 14 civil servants, which is responsible for issuing travel agent's licences and financial surveillance of travel agents. Each year, the TAR inspects the financial statements of more than 1 500 licensed travel agents, and maintains close daily liaison with the agents. In the event of emergency tourism incidents, the TAR will co-ordinate with the TIC and the trade, and assist the TIC to liaise with other Government departments. The TAR also provides administrative support to the Travel Industry Compensation Fund Management Board, including managing the daily operation of the fund, and processing the application for ex gratia payment from outbound travellers.

16. On the other hand, the TIC has a secretariat with 56 staff, and is responsible for regulating around 150 000 outbound tours and 130 000 inbound tours each year, as well as 19 200 tour escorts and 6 200 tourist guides. The Secretariat assists the Board to formulate the codes of conduct on tourism industry, enforces the codes and directives, run accreditation schemes for tour escorts and tourist guides, provides training as well as handles complaints and non-compliance cases.

17. The Government works closely with the TIC, and recognises the on-going efforts of the TIC to discharge its regulatory functions effectively. Our view is that the regulation of tourism sector needs to evolve with the changing circumstances. As there are significant changes in Mainland inbound tourism market in the past few years, the regulatory system must be reformed in order to tackle the problems in the industry more effectively and to enhance the quality of service to tourists. On the direction of reform, we have worked out preliminarily four possible directions below –

- (1) To amend the TAO to set out clearly the role of the TIC as a public association in the regulatory framework, and revamp the composition of the TIC Board of Directors, including raising the number of non-trade directors to form the majority of the Board and appointing representative(s) of tour escorts and tourist guides to the Board to make it more representative. The TIC Chairman may be elected by and among all directors on the Board, or a non-trade Chairman could be appointed by the Government. We may also consider adjusting the composition of the TIC committees, especially those responsible for disciplinary and sanction matters, so that all committee members, instead of the current majority, are non-trade members. This could enhance the independence of the TIC and address the criticism of “insiders regulating insiders”. Furthermore, we may consider introducing different licencing regimes for outbound and inbound travel business.

This option is relatively simple and easy to understand. To a certain extent, it could address criticisms on the composition,

independence and effectiveness of the TIC in regulating inbound tourism. However, the public and even some within the trade may opine that travel agents still have the dominant voice amongst the trade representatives on the Board and, as such, the option fails to fully remove the doubts on lack of credibility and independence;

- (2) To review the functions, powers and responsibilities of the TIC, and transfer certain disciplinary functions (e.g. inspection, handling non-compliance and appeal cases, regulation of tourist guides and tour escorts) from the TIC to Government departments (e.g. the TAR). By divesting the TIC of its disciplinary functions, this option would address not only the issue of “insider regulating insider”, but also preserve the strength of the current arrangement in allowing the TIC, which has profound trade knowledge, to formulate codes and directives to regulate the sector. However, some may still query whether the TIC would favour the trade when drawing up the codes;
- (3) To establish an independent statutory body to take up the TIC’s tourism industry regulatory functions. The TIC will retain its trade organisation status for promoting industry development (such as manpower training, enhancement of tourism products and service standard of frontline staff, and handling emergencies concerning outbound tours). The TIC will also continue to liaise with their overseas counterparts and represent the trade to give advice to the regulatory body.

The option of establishing an independent statutory body has been widely discussed recently. While there are different views on the detailed operation of the independent statutory body (e.g. on the powers and responsibilities of its regulatory and licensing functions), supporters of this option consider that the establishment of an independent statutory body would completely overhaul the operation and regulation of the tourism industry and tackle, with resolve, the various problems in the tourism industry especially those related to

Mainland inbound tours, and address the TIC's credibility problem at the same time.

However, implementation of this option will involve complex legislative and administrative work, and will take considerable time and additional resources. Moreover, one should not expect that these structural changes could solve instantly the entrenched problems in the trade; and

- (4) A Government department to take over from the TIC and be responsible for the overall regulation of the tourism industry. The TIC will retain its trade organisation status. This option can address fully the credibility concern of the regulatory body, and also demonstrate the Government's resolve in strengthening the regulation of the overall tourism industry. However, similar to option (3), this option takes considerable time and resources to implement as it involves establishing a new department or upgrading an existing department and require legislation. Furthermore, without trade participation, the Government may not get hold of firsthand information concerning the latest trade practices, thereby creating a handicap in the regulatory work.

18. These four options address the problems stated in paragraph 13 above to varying extent. Yet each has its own merits and shortcomings. We will conduct consultation on the four options, and listen to the views of Legislative Council Members, the trade and other stakeholders, as well as the public.

19. In evaluating the above options, we will also consider whether to legislate for a statutory licensing system so that the Government or a statutory body could be responsible for the regulation of tourist guides. As stated in paragraph 8 above, the TIC has set up the Tourist Guide Accreditation System and the Continuing Professional Development programme for tourist guides. The TIC also requires that the travel agents assign only accredited tourist guides with valid passes to receive inbound tours. The TIC publishes the Code of Conduct for Tourist Guides, which sets the standard of service and conduct for tourist guides,

and takes disciplinary action against tourist guides who violate the Code. As mentioned above, some tourist guides organisations have doubts on whether it is appropriate for the TIC to regulate the tourist guides, as the trade representatives of the TIC are all proprietors or managers of travel agents. Some also opined that since the tourist guides are not members of the TIC, the TIC can only regulate tourist guides indirectly through regulating the travel agents. This arrangement undermines the regulatory work. For example, when a travel agent is suspected to have violated the TIC's code, the TIC may require the travel agent to submit a report, but the TIC does not have similar authority over tourist guides.

20. We believe that regulating tourist guides through a statutory licensing system will help clarify the roles of and relationship between the regulator and the regulatee. The legislation may also confer more extensive investigation and disciplinary powers on the regulator, thus enhancing deterrent effect. However, as the legislative process and future legislative amendments are time-consuming and the tourism industry is dynamic, we need to further study if a statutory regulatory framework is able to keep pace with the market. During the consultation, we will explore the proposal on introducing a statutory licensing system for the regulation tourist guides, and will listen carefully to stakeholders' views.

21. When conducting the review, our focus will be to examine the merits, drawbacks, implications and cost-effectiveness of each option. The factors to be considered include whether different organisations could co-ordinate effectively, the degree of trade participation in the regulatory body, whether the regulatory body can keep abreast of trade practices and regulate them effectively.

22. The resource implications of the various options are also a factor for consideration. At present, the TIC's annual expenditure is about \$20 million. Its main sources of income include the Council levy^{Note} (61% of total income) and membership fees from member agents (9% of total income). The annual expenditure will increase significantly

^{Note} Since the introduction of Council levy under the TAO in 1993, the levy rate has been set at 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) per year.

if a new independent statutory body or a Government department is tasked to regulate the tourism industry. We will also consider how to meet such expenditure (e.g. whether to raise the levy or licence fees, or open other sources of income) in the review.

23. Moreover, we need to take into account the implications of the reform on the current regime, for instance, whether the reform will undermine the TIC's ability to respond and take action promptly in tourism-related emergencies, its efforts in arranging or encouraging manpower training for the industry, and its close co-operation with local and overseas tourism organisations. We will also make reference to the regional and overseas experiences in regulating the tourism industry so as to identify the most suitable and effective option for the reform.

Legislative Amendments

24. We believe that irrespective of the option selected at the conclusion of the review, it is necessary to amend both the TAO and the TIC's Memorandum and Articles of Association. As it is essential to have a holistic view on the amendments and ensure consistency, we will handle all related legislative amendment work after completing the review. Until the new regulatory regime is put in place, we must ensure that the current regulatory regime continues to serve its function. The ten measures to regulate Mainland inbound tours that came into operation on 1 February 2011 must be implemented vigorously. We are of the view that the TIC should continue to step up inspection and combat non-compliance cases proactively. Apart from the ten measures, the Government and the TIC will consider new initiatives to further strengthen regulation. We will continue our communication with parties concerned to ensure that regulatory work could be carried out effectively.

Work Plan

25. After listening to the views of this Panel, we will prepare a consultation document. We plan to launch a two to three-month public and trade consultation in April. Taking into account the views collected in the consultation, we will formulate concrete reform proposals. We expect to announce the proposals in the fourth quarter of this year.

Thereafter, we will embark on the preparation of legislation and other follow-up actions.

26. Members are invited to comment on the paper.

**Tourism Commission
Commerce and Economic Development Bureau
February 2011**

The Present Composition and Organisational Structure of the TIC

