

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

Consultation Paper



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Chapter 1

Introduction

1.1 This document sets out the direction that the Government adopts in the review of the operation and regulatory framework of Hong Kong's tourism sector, and introduces the various options for consulting the trade and the public.

1.2 Tourism is an important pillar of Hong Kong's economy, accounting for 3.3% of the Gross Domestic Product in Hong Kong. It offers 190 000 direct employment opportunities and provides impetus to the growth of other sectors including transport, hotel, retail and catering. Taking 2010 as an example, the performance of the tourism sector was strong, with both the number of arrivals and spending reaching historical heights. Total arrivals for the year reached 36.03 million, while total tourism expenditure associated with inbound tourism amounted to \$209.98 billion, representing an increase of 21.8% and 32.7% respectively when compared with the figures in 2009. Moreover, the total annual turnover for outbound group and package tours reached \$12.73 billion, an increase of 30.7% when compared with that of 2009. The healthy development of the tourism sector in the long-run is imperative to sustaining its contribution to Hong Kong's economy.

1.3 The Chief Executive announced in the Policy Address in October 2010 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). The main objective of the review is to set the direction for a sustainable and healthy development of the sector. Several incidents involving malpractices in Mainland inbound tour operation happened in mid-2010, and the public is generally concerned with whether the existing regulatory framework of the tourism sector could meet the needs of a fast developing industry. In this connection, we will first focus on devising an effective regulatory regime for the tourism sector that can evolve with changing circumstances. We have listed out the major options for reform and raised a series of key questions, and wish to consult the trade and the public with a view to identifying the most suitable option.

1.4 Apart from reforming the regulatory framework, some members of the public have also suggested that the Government should set up a dedicated policy bureau for tourism, and to place the responsibilities for tourism policy, planning and promotion under one roof. We also welcome views from the trade and the public in this regard.

Chapter 2

Background

Evolution of the Regulatory Framework of the Tourism Sector

2.1 The existing regulatory regime of the tourism sector in Hong Kong had developed and evolved over the years. The TIC was established in 1978 as a trade association for travel agents. In 1985, the Travel Agents Ordinance (TAO) (Cap. 218) which required all outbound travel agents to be licensed was enacted in response to the default of a number of these agents. The TAR was set up in the same year to implement the provisions of 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.

2.2. 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 stakeholders and with the support of the Legislative Council (LegCo) at the time, amended the TAO to bring in trade self-regulation through the setting up of a two-tier regulatory regime for outbound travel agents, and required all outbound travel agents in Hong Kong to be members of the TIC before they were eligible for applying for a travel agent's licence issued by the TAR.

2.3 Under the two-tier regime, the TIC is responsible for trade self-regulation, including the promulgation of codes of conduct and directives, as well as maintaining a disciplinary mechanism to handle breaches of the codes and directives by member agents. The TAR, as the licensing authority, is responsible for issuing licences to travel agents and the related work, including monitoring the financial position of travel agents under the TAO. In 1988, the TARF was replaced by the Travel Industry Council Reserve Fund (TICRF) to compensate travellers 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 replaced by the statutory Travel Industry Compensation Fund (TICF) in 1993 to enhance the protection for travellers. The opportunity was taken to introduce a Council levy under the TAO to ensure that the TIC would have a stream of stable and recurrent income to finance its regulatory functions.

2.4 The Tourism Commission (TC) was established in May 1999 and is now under the Commerce and Economic Development Bureau (CEDB). It is headed by the Commissioner for Tourism who is tasked with mapping out the tourism development strategy, providing a focal point for liaison with the trade and enhancing co-ordination in developing the sector. The TAR, which is responsible for administering the TAO, is part of the TC.

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

2.6 Moreover, to improve travel agents' service, the TIC introduced the Outbound Tour Escort Accreditation System in 1999. Applicants for the Tour Escort Pass must attend the "Certificate Course for Outbound Tour Escort" organised by the TIC, pass the examination and hold the relevant certificate. The TIC introduced the Tourist Guides Accreditation System in 2004. Applicants for the Tourist Guide Pass 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 could obtain the passes. The Continuing Professional Development Programme was also introduced in 2007 to encourage on-going service improvements. The present composition and organisation structure of the TIC is at **Annex 1**.

2.7 The TIC has accumulated years of experience in regulating outbound tourism and, as a trade organisation, is familiar with the operation of the trade. When handling emergency incidents, the TIC is able to leverage on its strengths to provide assistance to travellers and advice to the Government in dealing with such incidents. On inbound tourism, the number of Mainland visitors has grown rapidly in recent years, with nearly 80 000 Mainland tours arriving Hong Kong 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 six-month refund protection scheme for registered shops and the Tourist Guide Accreditation System.

2.8 In mid-2010, a spate of untoward incidents concerning the receiving arrangements for Mainland inbound tours and suspected coerced shopping not only tarnished the reputation of Hong Kong's tourism sector, but also aroused public concern over the effectiveness of the TIC's 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 reputation and sustaining the long-term healthy development of our tourism sector, which is an important pillar of our economy. In this regard, the Chief Executive announced in the Policy Address in 2010 that the Government decided to conduct a review on the operation and regulatory framework of the entire tourism sector.

Current Situation

2.9 The Government has all along attached importance to the development of the tourism sector, and established the TC, now under the CEDB, in May 1999. The TC is tasked with formulating the strategy for tourism development, allocating resources to implement various tourism initiatives and co-ordinating with various parties in promoting tourism development, including the planning of tourist attractions and liaison with the relevant Mainland authorities on issues involving the Mainland and Hong Kong, etc. This is in line with the international practice of government taking the lead in tourism policies and planning of tourist attractions.

2.10 Under the current two-tier regulatory regime, the TAR, as the licensing authority, is responsible for issuing travel agent's licences and the related work, including monitoring the financial position of travel agents under the TAO. The TIC is responsible for trade self-regulation, including promulgating codes of conduct and directives, as well as establishing a disciplinary mechanism to handle breaches of the codes and directives by member agents.

2.11 The TAR, with 16 civil servants, is responsible for processing application and renewal application for travel agent's licences, and inspecting the financial statements of more than 1 500 licensed agents. It maintains close liaison with the travel agents in its daily work. In the event of an emergency incident, the TAR will co-ordinate with the TIC and the trade, and assist the TIC in liaising 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 TICF, and processing applications for ex gratia payment from outbound travellers.

2.12 As regards the TIC, according to its Memorandum and Articles of Association (MAA), the TIC Board of Directors (TIC Board) comprises a chairman and 28 directors. The Chairman is from the trade. Among the directors, 12 are independent non-trade directors appointed by the Secretary

for Commerce and Economic Development (SCED). They come from different sectors, including practitioners from the legal and accountancy professions, and individuals with consumer protection experience. Eight directors are elected by TIC member agents at its annual general meetings (AGMs), while the remaining eight directors are representatives of the TIC's Association Members¹. The trade directors come from travel agents of different sizes (including small to medium size agents) and with different business foci (inbound tourism, outbound tourism or ticketing).

2.13 The TIC has an Executive Office with 56 staff, which is responsible for regulating around 150 000 outbound tours and 130 000 inbound tours each year, as well as 19 500 tour escorts and 6 200 tourist guides. Its work includes assisting the TIC Board in drawing up codes of conduct for the tourism sector, enforcing various requirements under the codes, operating the accreditation schemes for tour escorts and tourist guides, and handling complaints and non-compliance cases.

2.14 The TIC has been performing an essential role in reforming the travel trade and promoting the sustainable development of the sector, furthering manpower training and enhancing tourism service standards; and liaising with the industry to promote trade interests and better relations among practitioners. The TIC implements measures from time to time to enhance its governance and internal control. Details of these measures are set out in **Annex 2**.

1. The eight Association Members of the TIC are the Hong Kong Japanese Tour Operators Association, the Hong Kong Taiwan Tourist Operators Association, the Society of IATA Passenger Agents, the Hong Kong Association of China Travel Organisers, the Hong Kong Outbound Tour Operators' Association, the International Chinese Tourist Association, the Federation of Hong Kong Chinese Travel Agents and the Hong Kong Association of Travel Agents.

Chapter 3

Views on the Regulatory Framework of the Tourism Sector and Regional and Overseas Experience

3.1 Since mid-2010, the LegCo Panel on Economic Development, the trade and members of the public have had a series of discussions on the regulation of the tourism sector. We have listened to their views carefully, and have summarised those concerning the operation and regulation of the tourism sector as follows -

- (1) The TIC is representative of the trade and possesses in-depth trade knowledge. Over the years, it has developed close ties with local and overseas tourism-related trade organisations. It should be well-positioned to promote development and regulation of the tourism sector. However, the TIC lacks sufficient power, such as statutory investigative power and sanctions, in regulating the trade and hence the efficiency of its regulatory work is undermined. Furthermore, under the existing regime which has evolved over the years, outbound and inbound travel agents are subject to the same licensing and regulatory framework. The licensing requirements and regulatory arrangements may not be able to reflect fully the different business environment and cater to the needs of the outbound and inbound sectors. As a result, the codes and directives may not be able to address the core issues or may be viewed as biased, thereby casting 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 TIC Board, the TIC, as a self-regulatory trade body, is inevitably perceived by the public as riddled with conflict of interest. Although non-compliance cases and travellers' complaints are handled by specific committees and the 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 there are frequent queries on whether there is favouritism in the case-handling procedures and the 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 such as tour escorts and tourist guides. In this respect, the Government has appointed a trade union representative to 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 representatives on the TIC Board is undesirable. There is allegedly no formal channel for tourist guides to express their views to the TIC, which has hampered the communication between tourist guides and the TIC. Some believe that the latter has failed to take into account the practical and operational needs of the trade when drawing up codes and directives;
- (4) the existing regulatory regime cannot cope with the needs of an expanding tourism sector, whose mode of operation has also evolved over the past two decades. The respective roles, responsibilities and division of work between the TAR and the TIC are unclear. The Government should consider combining their functions and streamlining the regulatory procedures with the Government, or having an independent statutory body, taking over the regulatory role; and
- (5) formulation of tourism policies, promotion and trade regulation now fall under the purview of three different agencies. This arrangement is regarded as fragmented. A single organisation should be established to take up all these responsibilities.

3.2 In the light of these comments, we have studied the approach adopted by other economies in regulating the tourism sector. We found that in some places (such as the Mainland and Singapore) a central authority oversees tourism policies and trade regulation. Others (like the United Kingdom and South Korea) have various organisations undertaking different roles. For example, the government will be responsible for licensing while the trade organisation will take up regulatory functions and handle complaints. Our findings are summarised as follows.

A Central Authority to Implement Tourism Policies and Regulate the Trade - the Mainland, Taiwan, Macao and Singapore

3.3 In the Mainland, Taiwan, Macao and Singapore, a central authority implements tourism policies, promotes tourism and regulates the trade. These functions are either undertaken by a government department as in the

case of the Mainland, Taiwan and Macao, or by a statutory body in Singapore. The major responsibilities of these central authorities cover formulating tourism development strategies, promoting tourism, monitoring service quality, protecting travellers' rights, stipulating professional qualifications and providing training for travel trade practitioners etc. These four countries/regions also set minimum capital requirement for travel agents and requirements for their business premises. The Mainland, Taiwan and Macao also require travel agents to put down a specified service guarantee deposit. If a travel agent breaches the rules, infringes the rights of travellers or fails to provide service, the regulator can forfeit the deposit or use the deposit to compensate the travellers. Moreover, in the Mainland, a travel agent who wishes to apply for carrying on outbound business must have no non-compliance record in the initial two years after obtaining the relevant operation permit. In Taiwan and Singapore, the relevant legislation on travel agents prohibits a person who has been convicted of serious or integrity-related offence from serving as a proprietor or shareholder of a travel agent.

3.4 The above authorities also operate licensing systems and draw up codes and regulations for the regulation of travel agents and tourist guides, and impose penalties for non-compliance.

3.5 There is a licensing or accreditation system for the regulation of tour escorts in the Mainland and Taiwan, but not in Macao and Singapore. In the Mainland, travel agents are responsible for vetting the qualifications of applicants for tour escort passes, and providing on-the-job training before applying for the tour escort passes from local tourism authorities. Local tourism authorities can take disciplinary action against tour escorts who breach the rules. In Taiwan, a government department is responsible for administering examinations for tour escorts, vetting their qualifications, licensing arrangements, regulation and disciplinary matters.

Different Organisations to Implement Tourism Policies and Regulate the Trade – the United Kingdom, Australia², the United States³ and South Korea

3.6 Our research shows that it is quite common for different organisations to be responsible for tourism policies, promotion and trade regulation in other economies, such as the United Kingdom, Australia, the United States and South Korea.

2. Research only covers New South Wales in Australia.

3. Research only covers California in the United States.

3.7 In these countries, government departments are in charge of tourism policies and planning, and public organisations are tasked with promotion. With the exception of South Korea, these countries have not set up any licensing regime for tourist guides or tour escorts. Instead, some adopt the codes of conduct drawn up by trade organisations, while others do not impose any regulation at all. The practices in these countries vary as regards the regulation of travel agents, monitoring of service quality and stipulation of qualification requirements for tourism practitioners. **Annex 3** sets out the regulatory framework of the tourism sector in these four countries.

3.8 From the above findings, we note that each country/region has developed a regulatory regime that best meets the circumstances of its tourism sector, having regard to the historical context, industry situation and trade development requirements. There is no single set of best practices in tourism regulation that is adopted worldwide.

Chapter 4

Reform Options

4.1 Having considered the different views and the international regulatory experience as set out in Chapter 3, we have set out below four reform options -

- (1) amend the TAO to stipulate clearly the role of the TIC as a public association in the regulatory framework and revamp the composition of the TIC Board and committees;
- (2) review the functions, powers and responsibilities of the TIC, and transfer certain regulatory functions from the TIC to a Government department;
- (3) establish an independent statutory body to take up the TIC's trade regulatory functions; and
- (4) a government department to take over from the TIC and be responsible for the overall regulation of the tourism sector.

4.2 We will focus on examining the merits, drawbacks, implications and cost-effectiveness of these options. The key factors to be considered include -

- (1) whether the co-ordination amongst the different organisations would be effective;
- (2) the degree of participation by members of the trade in the regulatory body and how to strike a balance between sufficient trade participation and independence;
- (3) the resource implications of the various options and how to meet the corresponding additional expenditure;
- (4) the timeframe for implementation of the reform; and
- (5) the implications of the reform on the current regime; for instance, whether the changes will undermine the TIC's ability to respond promptly to and handle tourism-related emergency incidents, its efforts in promoting manpower training for the sector, and its close co-operation with local and overseas tourism organisations.

Option 1: Retain the Two-tier Regulatory Regime, Reform the TIC and Specify its Role as a Public Association

4.3 Option 1 addresses specifically the criticism that the TIC is dominated by representatives of travel agents, and is therefore unable to fully protect travellers or represent the interest of frontline staff. It also gives recognition to the TIC's ongoing efforts to improve in its operation over the years and the TIC's strength as a trade body which can handle tourism-related emergency incidents in a flexible and timely manner. This option proposes to revamp the composition of the TIC Board, 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 can be appointed by the Government.

4.4 At present, there are 17 committees under the TIC and a committee's composition is determined by its functions. Among the committees, nine have non-trade members making up a majority and eight have independent non-trade directors as convenors. The composition of these committees is set out at **Annex 4**. To enhance independence, the composition of the TIC committees, in particular the TIC Appeal Board and those responsible for disciplinary and sanction matters (including the Compliance Committee, the Consumer Relations Committee and the Committee on Shopping-related Practices), can be adjusted so that all committee members, instead of just the majority, are non-trade members. To ensure that the committees have a good grasp of the operation of the trade, trade representatives may be invited to attend committee meetings to provide information on how the trade operates and assist the committees in understanding the trade practices. These trade representatives should however refrain from participating directly in the decision making process in order to uphold the independence and credibility of the committees.

4.5 Under this option, the Government will amend the TAO to set out clearly the role of the TIC as a public association in the regulatory framework, so as to eliminate any public doubt on the role of the TIC under the legislation.

Merits and Drawbacks

4.6 This option is relatively simple and straightforward. To a certain extent, it can address criticisms on the composition and independence of the TIC and its effectiveness in regulating inbound tourism. By adjusting the composition of the TIC Board and committees, we can ensure participation of

the trade (including frontline staff) in the decision-making process while enhancing the independence of the TIC.

4.7 This option retains the current two-tier regulatory regime. As the trade, including the TIC's overseas counterparts, is familiar with its operation, the implementation timeframe and the adjustment period could be shortened. Under this option, travel agents and trade practitioners will continue to be regulated by the codes of conduct and directives promulgated by the TIC, which allows the regulatory body to respond promptly to the ever-changing trade practices.

4.8 However, the public and even some within the sector may consider that travel agents still have a dominant voice amongst the trade representatives on the TIC Board and, as such, the option fails to fully remove doubts on its credibility and independence. Some trade representatives may also have strong views on revamping the composition of the TIC Board. Hence, it may take time to reach a consensus with the trade before implementation.

Timeframe for Implementation

4.9 This option involves amending the TIC's MAA regarding the composition of the TIC Board and the TIC Appeal Board, and amending the TAO to specify the TIC's role as a public association. The former amendment must be approved by not less than three quarters of the members present at the TIC's General Meeting. We estimate that the amendment process will take six to nine months after the trade has reached a consensus on revamping the composition of the TIC Board and committees. The newly constituted TIC Board can then discuss and pass a resolution on the re-organisation of committees. As regards legislative amendments, we estimate that we can introduce a bill into LegCo in about a year. The amendments to the TIC's MAA and the TAO may be pursued concurrently.

Financial Implications

4.10 The TIC's current annual expenditure is about \$24 million. Its main sources of revenue include the Council levy (63% of the TIC's total income), fees from training courses (16% of total income) and membership fees from member agents⁴ (8% of total income)⁵, with the rest made up by

4. Since the introduction of the 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.

5. The above percentages are derived from figures in the TIC's Financial Year 2009-10.

Mainland inbound tour registration fees, shop registration fees, registration fees for Tourist Guide Passes and Tour Escort Passes, etc.. The TAR's current annual expenditure is about \$9 million, which is covered by licence fees based on a "user-pay and cost-recovery" principle. We believe that the TIC can implement the reforms under Option 1 with existing resources. The financial implications of the option are therefore insignificant.

4.11 Currently, 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 TIC members and independent non-trade directors are invited to attend. A copy of the TIC annual report, which includes the audited accounts, is issued to each member. In addition, the TIC is required under the TAO to submit to SCED each year the estimates of its income and expenditure in respect of the next financial year. The TIC's MAA also stipulate that adjustment of important fees which have an impact on members shall be approved by SCED. If Option 1 is adopted, we propose maintaining this financial monitoring mechanism.

Option 2: Transfer Certain Regulatory Functions from the TIC to a Government Department

4.12 Rapid development of the tourism sector and a continuous increase in the number of Mainland inbound tours have brought an ever-increasing regulatory workload for the TIC. Consideration may be given to transferring certain regulatory functions from the TIC to a government department, and to rationalise the division of work of the two regulatory bodies under the two-tier regime. At present, a trade member who is dissatisfied with the TIC's regulatory decisions may appeal to the TIC Appeal Board. But the TIC does not provide an appeal channel for travellers aggrieved by its decision, and the latter can only take their case to the Consumer Council or resort to legal action. Some consider that the appeal mechanism needs improvement.

4.13 Option 2 further addresses the criticism expressed by some that, so long as the TIC remains a self-regulatory body, the issue of "insiders regulating insiders" could not be dismissed. Apart from adopting the proposal in Option 1 to revamp the composition of the TIC Board and committees, Option 2 reviews the functions, powers and responsibilities of the TIC. The reformed TIC will preserve its edge in terms of its trade knowledge and understanding of the operation of the trade, and we therefore propose that the TIC should continue to draw up codes of conduct and directives. In order to address the perception of favouritism to the trade, such codes and directives must be approved by SCED before implementation.

Furthermore, the reformed Compliance Committee and Consumer Relations Committee under the TIC should continue to deal with disciplinary hearings for non-compliance cases and adjudicate disputes between travellers and travel agents respectively. To further strengthen the appeal mechanism and afford better protection for travellers, we propose to set up independent committee(s) outside the TIC to take over the TIC's function in handling appeals against the TIC committees' decisions lodged by trade members and travellers. The TAR will enlarge its staff establishment to support the operation of the independent appeal committee(s). The TIC will remain responsible for issuing Tourist Guide Passes and Tour Escort Passes and their regulation, as well as inspection of inbound tours.

4.14 To implement the above proposal, we need to take forward the following tasks -

- (1) amend the TAO to -
 - (I) require that any codes of conduct and directives drawn up by the TIC be submitted for the approval of SCED who has policy responsibility for tourism. Additions, deletions or amendments to the codes and directives also require SCED's consent. Where necessary, SCED may direct the TIC to promulgate or amend the codes and directives;
 - (II) set up independent appeal committee(s) to handle appeals on non-compliance by travel agents, tourist guides and tour escorts, and disputes between travellers and travel agents. The TAO should stipulate that the decisions of the independent appeal committee(s) are binding on the TIC and travel agents. To enhance the independence of these committees, we propose that the independent appeal committee(s) should only comprise of non-trade members appointed by SCED, and the TAR should provide administrative support to the committee(s);
- (2) in view of its new responsibilities, expand the establishment of the TAR to provide support to the independent appeal committee(s); and
- (3) amend the TIC's MAA to -
 - (I) require submission of the TIC's codes of conduct and directives to SCED for approval;

- (II) transfer the responsibilities of handling appeals to the independent appeal committee(s); and
- (III) stipulate that the TIC must enforce the decisions of the independent appeal committee(s).

The above changes will not affect the TIC's other existing functions, such as accreditation and training of tourist guides and tour escorts, the registered shop system and the registration of tour groups. As the TIC is conversant with the operation of the tourism sector, it will continue to maintain liaison with local and overseas tourism organisations and play on its strength in handling emergency incidents swiftly.

Merits and Drawbacks

4.15 The establishment of independent appeal committee(s) to take over from the TIC the handling of appeals from travel agents, tourist guides, and tour escorts will enhance the independence of the appeal mechanism; the new appeal channel for travellers will also respond to their demands and offer better protection. This option would help address the concerns on “insiders regulating insiders” and would allow the TIC, which possesses profound trade knowledge, to draw up appropriate codes and directives for the sector, thereby keeping one of the strengths of the current arrangements. Recognising that some may still query whether the TIC would favour the trade when drawing up the codes of conduct, we have added a safeguard by subjecting the codes and directives to the approval of SCED. The setting up of an independent appeal mechanism also provides check and balance to ensure that the TIC acts in a just and fair manner when enforcing the codes.

4.16 This option keeps the TIC's regulatory role and status as a trade organisation. It facilitates the TIC in continuing with its work in co-ordinating with the trade and furthering the long-term development of the tourism sector. In general, this option preserves the merits of the TIC mechanism, whilst enhancing the independence and credibility of the regulatory regime. Since Option 2 involves the transfer of regulatory functions, the overall cost of regulation would increase slightly.

4.17 We have considered incorporating the codes of conduct drawn up by the TIC into the relevant legislation so as to provide a statutory basis for the TIC's enforcement work to minimise disputes. However, as the process of legislative amendments is complex and time-consuming, statutory codes may not be able to cope with the ever-changing market needs in a timely manner. Option 2 therefore recommends preserving the existing

arrangement which allows the TIC to draw up codes of conduct tailored to meet the demands of market development.

Timeframe for Implementation

4.18 We estimate that the amendments to the TIC's MAA will require around six to nine months after the trade has reached a consensus on the direction of reform. The legislative amendments under Option 2 are more complex than those under Option 1, and we expect an amendment bill could be introduced into LegCo in about two years. On the expansion of the TAR's establishment, we need to apply funding and create new posts in accordance with the Government's established procedures, which will take around one year.

Financial Implications

4.19 This option involves a small expansion of the establishment and functions of the TAR to provide administrative support to the independent appeal committee(s). Our preliminary estimate is that the TAR needs to increase the number of staff from the current 16 to around 23. After expansion, the TAR's annual expenditure is estimated to go up by \$9 million, about half of which is for staff remuneration and the other half for departmental expenditure. The total annual expenditure of the expanded TAR is roughly estimated to reach \$18 million. The TAR is currently operating on a "user-pay and cost-recovery" principle. The expanded TAR should continue to operate on the same principle.

Option 3: Establish an Independent Statutory Body to Regulate the Tourism Sector

4.20 The option of establishing an independent statutory body has been widely discussed in recent months. 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 sector and tackle, with resolve, the various problems in the sector especially those related to regulation of Mainland inbound tours, and, at the same time, address the concern on the TIC's credibility. Under this option, the Government would establish an independent statutory body to regulate travel agents, tourist guides and tour escorts. The functions of the independent statutory body require careful consideration, but would mainly include -

- (1) monitoring the financial position of travel agents;
- (2) carrying out the regulation of travel agents, tourist guides and tour escorts (including the promulgation of codes of conduct and directives, the regulation of the sale of tourism services (such as tour packages and tour groups) and the receiving and shopping arrangements of inbound tour groups, etc.);
- (3) carrying out accreditation for tourist guides and tour escorts;
- (4) inspecting the operation of inbound tours and the service standard of tourist guides;
- (5) putting in place a disciplinary mechanism to handle breaches of the codes and directives by travel agents, tourist guides and tour escorts; and
- (6) handling complaint and dispute cases from travellers which involve travel agents, tourist guides and tour escorts.

In line with the established practice, the Government would be responsible for monitoring the operation of the independent statutory body. For instance, the body would be required to submit its annual work plan and report, statement of accounts and auditor's report to the CEDB. We would also consider setting up independent appeal committee(s) to handle appeals from travel agents, tourist guides, tour escorts and travellers. As for licensing work, it could either be entrusted to the independent statutory body, or be carried out by the Government as the ultimate licensing authority.

4.21 To implement this option, we need to complete the following tasks -

- (1) amend the TAO to
 - (I) establish an independent statutory body which will take up the regulatory functions of the TIC and the TAR, and specify the statutory functions and areas of responsibility of the body, as well as other details such as the composition of its board of directors, its financial arrangements, licensing conditions and penalties;
 - (II) put in place a disciplinary mechanism for travel agents, tourist guides and tour escorts, an adjudication mechanism for disputes between travel agents and travellers, and an appeal mechanism; and

- (III) to remove the requirement for travel agents to become TIC members before they are eligible for applying for travel agent's licences.
- (2) amend the TIC's MAA so that the TIC would retain only its trade organisation status.

4.22 We recommend that the chairman, vice-chairman and all members of the board of directors of the independent statutory body should be appointed by the Government. Appointees may include trade members, non-trade members and Government representatives. To ensure the credibility of this body, its chairman and vice-chairman should be non-trade members. Non-trade members should also form the majority of the board of directors.

4.23 We propose that independent appeal committee(s) which would handle appeals should also be constituted by non-trade members, all of whom should be appointed by SCED. To ensure independence, CEDB could provide administrative support to the independent appeal committee(s).

4.24 The TIC would retain its trade organisation status and the role to promote industry development, such as providing manpower training, enhancing the service standard of trade practitioners, and co-ordinating the trade in dealing with emergency incidents. The TIC would also represent the trade in offering advice to the new independent statutory body.

Merits and Drawbacks

4.25 Establishing a new independent statutory body can enhance the independence and credibility of the regulatory framework of the tourism sector. This option should more effectively address any doubt on "insiders regulating insiders" and respond to the various demands from the community. The Government can appoint members from different sectors (including tourism frontline staff) to the board of directors of the independent statutory body to assist in the regulation of the tourism sector. However, since trade members would only constitute a minority in the board of the independent statutory body, the trade might criticise that the independent statutory body lacks practical knowledge of the operation of the tourism sector and this would hinder the development of the trade.

4.26 As a trade organisation, the TIC would continue to co-ordinate the trade in dealing with emergency incidents. However, since the TIC would no longer be responsible for regulatory functions, the TIC could be more

inclined to accord priority to the business interests of the trade, and its effectiveness in working with the trade in protecting the public interest may therefore be affected. In view of this, serious consideration should be given to appointing TIC's representative(s) to sit on the board of the independent statutory body, so as to enhance communication amongst the Government, the independent statutory body and the TIC. Given the dynamics mentioned above, finding the proper balance for the composition of the board will be a challenge. The Government will consider the issue carefully and welcome more views on this.

4.27 In formulating this option, we have also considered whether the regulatory framework would retain sufficient flexibility in order to respond quickly to the changes in the operation of the market. Drawing reference from the practice of other regulatory bodies, we consider that the independent statutory body could prescribe the normal responsibilities of, and conduct rules for, travel agents, tourist guides and tour escorts in the subsidiary legislation. At the same time, the body could also promulgate codes of conduct and trade guidelines which are not subsidiary legislation to regulate the business and operational aspects of the tourism sector (in the same manner as the current TIC codes and directives). The statutory body could impose different sanctions on travel agents, tourist guides or tour escorts that breach the subsidiary legislation or codes and directives according to the circumstances.

4.28 Under this regime, the independent statutory body will have a solid legal basis to carry out regulatory work, hence avoiding disputes. The independent statutory body could also promulgate directives for effective regulation of travel agents, tourist guides and tour escorts. Although the independent statutory body may not be able to follow the development of the trade as closely as the TIC does, it should still be able to make timely regulatory decisions in the light of market development.

Timeframe for Implementation

4.29 Implementation of Option 3 requires amendments to legislation and the TIC's MAA. We expect that an amendment bill could be introduced into LegCo in about two and a half years, while the amendments to the TIC's MAA would take six to nine months, and the two amendments may be pursued concurrently. In addition, the appointment of board members, recruitment of office staff and preparation of office accommodation will take around six months to one year.

Financial Implications

4.30 In line with the practice of other independent statutory bodies, we expect the new body to set the organisation structure of its executive arm and its personnel policies (including staff remuneration and benefits). As such, we can only provide a preliminary and rough estimate of the financial requirements under this option.

4.31 Currently, there is an imbalance between the income from and expenditure for the regulation of outbound and inbound tourism. Section 32I of the TAO provides that a travel agent shall be liable to pay a levy (Council levy) to the TIC in respect of every outbound fare received, so as to ensure that the TIC has sufficient resources in discharging its regulatory duties and carrying out co-ordination work among travel agents. However, when inbound travel agents were brought under the licensing and regulatory regime in 2002, the Council levy arrangement was not extended accordingly to cover inbound tours. The rationale at that time was that more than 50% of inbound travel agents in Hong Kong were already TIC members, and the TIC had all along been responsible for regulating the conduct of its members. Hence, it was believed that such arrangement would not result in a substantial increase in the TIC's expenditure.

4.32 With the continuous and rapid increase in the number of Mainland inbound tours, the TIC's regulatory work has nonetheless become increasingly heavy and complex. Since 2007, the TIC has required travel agents to register the relevant tour and pay a registration fee⁶ when receiving Mainland inbound tours. Currently, the income derived from outbound and inbound tourism account for about 63% and 8% of the TIC's total income respectively. Meanwhile, the TIC's expenditure incurred in the regulation of outbound and inbound tourism account for about 41% and 32% of its total expenditure respectively.

4.33 Under this option, all regulatory work undertaken by the TAR and the TIC would be transferred to the independent statutory body, while the TIC would retain its role as a trade organisation only. In view of this significant change, it is necessary to review and rationalise the resource arrangements for the regulation of the tourism sector. Assuming that the financial arrangements for the regulatory framework would be based on a "user-pay and cost-recovery" principle, the following proposals may be considered -

6. The registration fee is \$20 for tour groups comprising not more than 40 members; and \$20 for every 40 members or part thereof for tour groups comprising more than 40 members.

- (1) raising the licence fee of travel agents, and the registration fees for Tourist Guide Passes and Tour Escort Passes to reflect the regulatory cost;
- (2) extending the Council levy to cover inbound tours; and
- (3) providing a one-off grant or loan to the new body upon its establishment for meeting its initial operating expenses.

We wish to listen to the views of the public and the trade on the “cost recovery” principle and the related financial arrangements. This will facilitate our consideration of the question of resources after we have decided on the substantive reform proposals.

4.34 Making reference to the precedents of independent statutory bodies with similar regulatory functions, and using the estimated expenses for a government department to undertake the regulatory responsibilities (see paragraphs 4.44 - 4.48 for details) as a basis, we roughly estimated the annual expenditure of the independent statutory body to be between \$50 million and \$55 million, exceeding the current total annual expenditure of the TAR and the TIC by \$17 million to \$22 million.

4.35 The current resources for the regulatory work come mainly from the Council levy, licence fees, TIC membership fees, Mainland inbound tour registration fees and registration fees for Tourist Guide Passes and Tour Escort Passes. These revenues add up to an annual amount of about \$30 million, which falls short of the required resources for implementing this option by about \$20 million to \$25 million. In this connection, it is necessary to explore reasonable means to generate additional income.

Option 4: A Government Department to Take Over the Regulation from the TIC

4.36 This option is similar to Option 3, and differs only in the nature of the regulatory body. Replacing the TIC with a government department as the regulator of the tourism sector should fully address the community’s concern about the regulatory body’s lack of credibility. It would also demonstrate the Government’s resolve in strengthening the overall regulation of the tourism sector. There are also suggestions that, in taking up the responsibilities for formulating tourism policies and trade regulation, the Government could keep abreast of industry development, which would facilitate the planning and execution of tourism policies. This option recommends that the TAR, under the auspices of the TC, be responsible for the overall regulation of the tourism sector, while the TIC retains its trade

organisation status to promote industry development, liaise with the travel trade overseas, and represent the trade in offering advice to the regulator.

4.37 To implement this option, it is necessary to expand the current establishment of the TAR significantly, so that it could take up the additional workload in regulating travel agents, tourist guides and tour escorts. The duties of the new TAR would be similar to those of the independent statutory body under Option 3, which include -

- (1) processing the licences of travel agents, tourist guides and tour escorts;
- (2) monitoring the financial position of travel agents;
- (3) carrying out the regulation of travel agents, tourist guides and tour escorts (including supporting the making of regulations, the regulation of the sale of tourism services (such as tour packages and tour groups) and the receiving and shopping arrangements of inbound tour groups, etc.);
- (4) inspecting the operation of inbound tours and the service standard of tourist guides;
- (5) putting in place a disciplinary mechanism to handle breaches of regulations by travel agents, tourist guides and tour escorts; and
- (6) handling complaint and dispute cases from travellers which involve travel agents, tourist guides and tour escorts.

4.38 To implement this proposal, we need to complete the following tasks -

- (1) amend the TAO to
 - (I) make regulations concerning the operations of travel agents, and the conduct of tourist guides and tour escorts (i.e. subsidiary legislation);
 - (II) amend the functions of the TAR and confer on the TAR the power to regulate travel agents, tourist guides and tour escorts, including licensing, adjudication of disputes between travellers and travel agents, and sanctions against breaches of regulations;

- (III) set up independent appeal committee(s)⁷ to handle appeals against the TAR's decisions from travel agents, tourist guides, tour escorts and travellers; and
 - (IV) remove the requirement for travel agents to become TIC members before they are eligible for applying for travel agent's licences.
- (2) amend the TIC's MAA so that the TIC would retain only its trade organisation status.

Merits and Drawbacks

4.39 Having the Government to take over the overall regulation of the tourism sector could enhance the credibility of the regulatory framework, and also alleviate the problems of co-ordination amongst travel agents, tourist guides and tour escorts. By bringing tourism policies, planning and regulation all under its purview, the Government could better understand the development of the market and achieve synergy in implementing policies. A Government-led regulatory framework would also be conducive to establishing closer ties with the regulatory authorities in the Mainland and other countries.

4.40 However, given that a government department is subject to more procedural and financial restrictions, this option provides the least operational flexibility among all options, and might not be able to provide a prompt response against malpractices. For example, in order to provide sufficient legal basis for Government officers to carry out the regulatory duties (such as investigations and sanctions), the Government needs to enact subsidiary legislation for regulating travel agents, tourist guides and tour escorts. The processes of enacting subsidiary legislation and legislative amendments are complex and time-consuming, and this regulatory mode might lack the flexibility required for timely regulation of trade practices.

4.41 Moreover, Government officers might not have a full grasp of the operation of the trade. Even if the trade members could offer advice in the Advisory Committee on Travel Agents, the issue of "outsiders regulating the trade" or possible over-regulation may arise. This could undermine the trade's ability in responding flexibly to the changes in the market environment, or the regulator may fail to address the key regulatory issues due to insufficient market experience. The Government needs to identify

7. We propose the independent appeal committee(s) should be constituted by non-trade members, all of whom shall be appointed by SCED.

ways to strengthen the advisory framework and to engage the trade more fully when drawing up regulations. This option might also undermine the effectiveness of the TIC in co-ordinating the trade in handling emergency incidents. As a result, the trade and travellers might rely more heavily on the Government in handling emergency incidents.

Timeframe for Implementation

4.42 This option involves legislative amendments and a change in the role and functions of the TIC. We expect that the amendments to the TIC's MAA could be completed in about six to nine months after the trade reaches a consensus on the reform direction. We estimate that an amendment bill could be introduced into LegCo in about two and a half years.

4.43 With regard to expanding the TAR's establishment, we would need to apply for funding and create new posts in accordance with the established procedures, and deal with other administrative matters (such as identifying suitable office accommodation for the department), which would take about one year.

Financial Implications

4.44 This option involves upgrading the TAR to discharge the functions outlined above. Making reference to the general establishment of other government departments, we propose that the new department should be supervised by two directorate rank officers.

4.45 On regulation and complaint matters, the new department would need to handle complaint and dispute cases involving travellers and travel agents, inspect travel agents and tourist guides to ensure compliance with the codes of conduct in their business operations and practices, and handle alleged non-compliance cases by travel agents, tourist guides and tour escorts. We estimate that it would take about 20 officers to carry out the relevant duties.

4.46 On licensing and policy support, apart from retaining the existing manpower in the TAR to handle and process new and renewal applications for travel agent's licences, the department would need additional manpower for the discharge of the new duties, including licensing of tourist guides and tour escorts, accrediting pre-service training courses, and supporting the making of regulations. To ensure that the regulations meet the operational needs of the market, the new department would also need to conduct research in the development of the trade and their operations. In addition, the new department would need staff to undertake internal administrative work,

public relations and to provide administrative support for the independent appeal committee(s). We estimate that it would take about 34 officers to carry out these duties.

4.47 On financial surveillance and management of the TICF, the new department would continue to monitor the financial position of travel agents in accordance with the TAO, and provide administrative support to the Travel Industry Compensation Fund Management Board (including managing the daily operation of the fund and processing the applications for ex gratia payment from outbound travellers). On the basis of the existing establishment of the TAR, about 11 officers would be needed to carry out these duties.

4.48 Our rough estimate is that, the manpower requirement of the new department would increase from the current establishment of 16 in the TAR to about 67. The estimated annual expenditure of the department would increase from \$9 million to about \$45 million, some \$12 million more than the current total expenditure of the TAR and the TIC. Staff remuneration expenses would account for about 70% of the expenditure of the new TAR, while departmental expenses would include expenses in office accommodation, internal management and IT support. Currently, the TAR operates on a “user-pay and cost-recovery” principle. The new department should also observe the same principle.

Chapter 5

Introduce a Tourist Guide Licensing System

5.1 Apart from assessing different regulatory options, we will also consider whether a licensing system for tourist guides should be introduced.

Regulation of Tourist Guides

5.2 The TIC introduced the Tourist Guide Accreditation System in July 2004 to enhance the knowledge, skills and professional conduct of tourist guides. Under the system, travel agents could only assign tourist guides with valid Tourist Guide Passes issued by the TIC to receive inbound travellers. Applicants for Tourist Guide Passes must meet the TIC's requirements, including meeting specified educational qualifications, holding certificates recognised by the TIC and passing the relevant examinations, being physically fit, possessing good conduct, and being fit and proper to perform the duties of a tourist guide, etc.

5.3 To ensure that tourist guides will possess a proper service mindset and good professional conduct, the TIC has promulgated the Code of Conduct for Tourist Guides (the Code) which requires tourist guides to provide dedicated services in accordance with the contract and the tour itinerary, abide by the law and comply with professional ethics. The Code also sets out the rules for various arrangements (such as self-pay activities, shopping activities and handling confidential information) during the tour and encourages continuing education. The TIC will handle breaches of the Code by Tourist Guide Pass holders. Sanctions include warning letters, non-renewal or suspension of Tourist Guide Pass, and the heaviest penalty will be the cancellation of Tourist Guide Pass.

5.4 In July 2007, the TIC launched the Continuing Professional Development Scheme for Tourist Guides. The Scheme covers the following three areas: consolidation and updating of knowledge (including information on tourist spots, Hong Kong basic facts and relevant statistics); professional conduct (including professional ethics, Honest Tourism, legal liability issues in relation to the work of a tourist guide) and elective courses. The requirements of the Scheme include examinations, workshops, seminars and classes. A tourist guide must fulfil the requirements of the Scheme to meet the basic criteria for Tourist Guide Pass renewal. If the applicant for a Tourist Guide Pass or its renewal has acted as a tourist guide without accreditation, contravened TIC regulations, involved in serious misconduct,

had his Tourist Guide Pass suspended or cancelled, or committed a criminal offence, the application will be referred to the TIC's Tourist Guide and Tour Escort Deliberation Committee for special consideration.

5.5 The TIC's accreditation system for tourist guides sets the parameters for tourist guide regulation, and enhances service quality and the image of tourist guides. A licensing system for tourist guides is not a pre-requisite for enhancing the regulation of tourist guides. Under the current system, the TIC can combat non-compliance practices of tourist guides by strengthening the Code and inspection. However, some tourist guide organisations have doubts on whether it is appropriate for the TIC to regulate tourist guides, as the trade representatives of the TIC are mostly proprietors or managers of travel agents. Some also consider that since tourist guides are not members of the TIC, the latter can only regulate tourist guides indirectly through regulating travel agents, which undermines the regulatory work. For example, when a travel agent is suspected to have breached the TIC code, the TIC can demand a report from the agent, but it does not have similar authority over tourist guides.

5.6 We believe that regulating tourist guides through a statutory licensing system will help clarify the roles of and relationship between the regulator and the parties being regulated. The legislation may also confer more extensive investigation and disciplinary powers on the regulator, thus enhancing the deterrent effect against non-compliance. However, as the legislative process and any future legislative amendments are time-consuming, having regard to the dynamic nature of the tourism sector, we are concerned as to whether a regulatory framework based on legislation could keep pace with the market. Our initial view is that a licensing system for tourist guides should be introduced if we decide to set up an independent statutory body or a Government department were to take over the regulation of the tourism sector on a statutory basis.

Chapter 6

Introduce Different Licences for Regulating Outbound and Inbound Tourism

6.1 As at 1 April 2011, there are 1 569 travel agents in Hong Kong. Of these, 1 114 are involved in both outbound and inbound travel businesses; 301 mainly in outbound travel and 154 in inbound travel (of which 102 are receiving agents for Mainland inbound tours). In accordance with the power conferred by the TAO, the Registrar of Travel Agents will, when approving an application for travel agent's licence, consider whether the person applying for the travel agent's licence is fit for carrying on business as a travel agent, and whether the premises to which the application relates or the location thereof are suitable for the operation of the business of a travel agent. Travel agents are also required to meet the TIC's requirements on paid-up capital and employment of professional staff⁸.

6.2 Currently, travel agent's licences are not categorised by the nature of business, and a licensed travel agent can carry on outbound and inbound travel businesses at the same time. However, the actual market situation of and operational requirements for outbound and inbound tourism differ considerably. The market of Mainland inbound tours, despite its rapid growth in recent years, is as yet quite immature, and incidents involving business malpractices do occur from time to time. In contrast, the outbound tourism market has matured over the years. Therefore, a single set of regulations might not meet the needs of two different markets. Different licences and regulatory requirements (such as the registered capital of a company, employment of relevant professional staff, frequency of submission of financial reports, penalties for non-compliance) should be introduced for the two markets to enhance the effectiveness of the regulatory regime.

6.3 In exploring the introduction of different licences for the regulation of travel agents, the following should be considered -

8. The TIC stipulates that a travel agent operating as a limited company should have a paid-up capital of not less than \$500,000 and the paid-up capital for each branch office is \$250,000. For a travel agent operating as sole proprietorship or partnership, there is no requirement on paid-up capital but a sum of \$150,000 should be paid to the TIC as a security deposit. A travel agent should employ at each office at least a manager of two years' relevant practical experience and another full-time staff in the operation of such business.

- (1) Should a separate licence be introduced for the reception of Mainland inbound tours having regard to the problems arising from these tours?
- (2) What should be the additional requirements for this licence? If these requirements are more stringent than those of the existing licence, would it be unfair to travel agents that receive Mainland inbound tours?
- (3) Should a separate tourist guide pass or licence⁹ be introduced to further standardise the required qualifications for tourist guides who receive Mainland inbound tours? What should be the additional requirements for tourist guides who apply for this pass or licence?

6.4 As a travel agent could carry on both outbound and inbound travel businesses, we consider that, irrespective of the mode of regulation, all travel agents should be regulated by one single body. This would help reduce regulatory cost, rationalise different regulatory requirements and avoid confusion. For the same reason, we consider that all tourist guides should be regulated by the same body even if different tourist guide passes or licences are introduced.

9. For details on licensing system for tourist guides, please refer to Chapter 5 of this consultation paper.

Chapter 7

Conclusion

7.1 The following table compares the merits and drawbacks of the four options, as set out in the paragraphs 4.3 to 4.48 above:

Industry	Option 1	Option 2	Option 3	Option 4
Regulatory regime	Retain the two-tier regulatory regime	Retain the two-tier regulatory regime but with the TAR taking up more regulatory functions	An independent statutory body as the regulatory authority	A Government department as the regulatory authority
Regulation on Other Functions and Responsibilities				
Regulatory work	<p>TAR: licensing and financial surveillance of travel agents in accordance with the TAO</p> <p>TIC: responsible for trade self-regulation, including regulation of travel agents and administration of the Tourist Guide Accreditation System and Outbound Tour Escort Accreditation System; promulgate codes of conduct and directives; inspect Mainland inbound tours; handle complaints and disputes; handle non-compliance cases involving travel agents, tourist guides and</p>	<p>TAR: licensing and financial surveillance of travel agents in accordance with the TAO; providing support to independent appeal committee(s)</p> <p>TIC: responsible for trade self-regulation, including regulation of travel agents and administration of the Tourist Guide Accreditation System and Outbound Tour Escort Accreditation System; promulgate codes of conduct and directives; inspect Mainland inbound tours; handle complaints and disputes; and</p>	<p>Independent statutory body: regulation of travel agents, tourist guides and tour escorts, including financial surveillance of travel agents; promulgate codes of conduct and directives; inspections; handle complaints and disputes; and handle non-compliance cases involving travel agents, tourist guides and tour escorts, etc.</p> <p>The licensing of travel agents, tourist guides and tour escorts may be undertaken by the government or the independent statutory body</p>	<p>A Government department: licensing and regulation of travel agents, tourist guides and tour escorts, including licensing and financial surveillance of travel agents; support the making of regulations; inspections; handle complaints and disputes; and handle non-compliance cases involving travel agents, tourist guides and tour escorts, etc.</p>

Industry	Option 1	Option 2	Option 3	Option 4
	tour escorts; and handle appeals against TIC's decision on complaints and non-compliance cases.	handle non-compliance cases involving travel agents, tourist guides and tour escorts		
Regulatory instrument	TAR: Travel Agents Ordinance TIC: Codes of conduct and directives	TAR: Travel Agents Ordinance TIC: Codes of conduct and directives (which are subject to the approval of SCED)	Prescribe normal responsibilities of and conduct rules for the travel trade in subsidiary legislation Independent statutory body to formulate codes of conduct and trade directives (not subsidiary legislation)	Regulate the operation of travel agents and conduct of tourist guides and tour escorts by subsidiary legislation
Appeal mechanism	Retain the current TIC Appeal Board but its composition will be changed to comprise only non-trade members to handle appeals against TIC's decisions related to travel agents, tourist guides and tour escorts	Establish appeal committee(s) that are independent of TIC (comprising non-trade members only) to handle appeals against TIC's decisions related to travel agents, tourist guides, tour escorts and travellers	Establish independent appeal committee(s) (comprising non-trade members only) to handle appeals against the independent statutory body's decisions related to travel agents, tourist guides, tour escorts and travellers	Establish independent appeal committee(s) (comprising non-trade members only) to handle appeals against the TAR's decisions related to travel agents, tourist guides, tour escorts and travellers
Promoting industry development (e.g. raising the image of the trade and helping the trade to respond to challenges and opportunities)	TIC: continue to promote the development of the tourism sector	TIC: continue to promote the development of the tourism sector	TIC: as a trade organisation, promote the development of the tourism sector	TIC: as a trade organisation, promote the development of the tourism sector

Industry	Option 1	Option 2	Option 3	Option 4
Qualification and training for tourism practitioners	TIC: continue the current arrangement including prescribing the criteria for application and renewal of Tourist Guide Passes and Tour Escort Passes, provide or recognise qualification training courses and organise training courses, seminars and workshops to upgrade the standard of practitioners to promote the development of the industry	TIC: continue the current arrangement including prescribing the criteria for application and renewal of Tourist Guide Passes and Tour Escort Passes, provide or recognise qualification training courses and organise training courses, seminars and workshops to upgrade the standard of practitioners to promote the development of the industry	TIC: as a trade organisation, organise training courses, seminars and workshops to upgrade the standard of practitioners to promote the development of the industry Independent statutory body: prescribe the criteria for application and renewal of tourist guide and tour escort licences, and to recognise qualification training courses	TIC: as a trade organisation, organise training courses, seminars and workshops to upgrade the standard of practitioners to promote the development of the industry Government department: prescribe the criteria for application and renewal of tourist guide and tour escort licences, and to recognise qualification training courses
Co-ordinating the trade to handle emergency incidents	TIC: continue to co-ordinate with trade members to provide support to travellers and advise the Government on the handling of emergency incidents	TIC: continue to co-ordinate with trade members to provide support to travellers and advise the Government on the handling of emergency incidents	TIC: continue to co-ordinate with trade members to provide support to travellers and advise the Government on the handling of emergency incidents	TIC: continue to co-ordinate with trade members to provide support to travellers and advise the Government on the handling of emergency incidents
Implications of the options				
Co-ordination among different organisations	Retain the current framework. As the trade and their partners are conversant with the existing operation, it would be easier to ensure smooth co-ordination	Retain the current framework. It would be easier to ensure smooth co-ordination but liaison between TIC and TAR on appeal procedures is required	A central regulatory authority could minimise co-ordination problems. Communication between the Government and TIC will become indirect. It is	A central regulatory authority could minimise co-ordination problems. Synergy may be achieved by having the Government taking responsibility for

Industry	Option 1	Option 2	Option 3	Option 4
			proposed that TIC representative(s) should be appointed to the board of the independent statutory body	tourism policy, tourist attraction planning and regulation Communication between the Government and TIC will become indirect
Regulatory flexibility	High	High	High	Low
Independence and Credibility	Lower than Options 3 and 4	Lower than Options 3 and 4 but higher than Option 1	Higher	Higher
Degree of trade participation in the regulatory process	Full participation in the process of formulating codes and directives	Full participation in the process of formulating codes and directives	Less participation	The trade retains an advisory role; less participation in the process
Impact on the current framework	Not much impact on the current framework	In retaining TIC's regulatory role and trade organisation status, this option allows TIC to co-ordinate with trade members to promote the public interest and handle emergency incidents	TIC no longer has a regulatory role. It is believed that TIC would focus on promoting the business interests of the trade, which might affect the effectiveness of its work in co-ordinating the trade to promote the public interest and handle emergency incidents	TIC no longer has a regulatory role. It is believed that TIC would focus on promoting the business interests of the trade, which might affect the effectiveness of its work in co-ordinating the trade to promote the public interest and handle emergency incidents
Resources required	Similar resource requirements as at present. The financial implication is insignificant	Additional expenditure of about \$9 million will be needed	Additional expenditure of about \$17 million to \$22 million will be needed	Additional expenditure of about \$12 million will be needed

7.2 We welcome the views of the trade, stakeholders and the public. We set out below a series of questions to facilitate the expression of views.

Major Consultation Questions

Regulatory arrangement of travel agents

- (1) Does the existing regulatory arrangement for travel agents require any changes? Please elaborate on the reasons.
- (2) If changes are required, apart from examining the merits, drawbacks, implications and cost-effectiveness of the reform options, are there factors other than those in paragraph 4.2 that should be considered? If yes, please elaborate.
- (3) Which of the four options set out in the consultation paper would best cater for Hong Kong's situation and needs? Please explain.
 - Option 1: Retain the two-tier regulatory regime, reform the TIC and specify its role as a public association (Para. 4.3 - 4.11)
 - Option 2: Adopt the proposal in Option 1 on reforming the TIC, and transfer certain regulatory functions from the TIC to a government department (Para. 4.12 - 4.19)
 - Option 3: Establish an independent statutory body to regulate the tourism sector (Para. 4.20 - 4.35)
 - Option 4: a Government department to take over the regulation from the TIC (Para. 4.36 - 4.48)
- (4) Do you have any comments regarding the substantive arrangements (such as functions, power, composition, governance and checks-and-balances) of the preferred option?

Regulation of Tourist Guides (Chapter 5)

- (5) Do you consider the current Tourist Guide Accreditation System set up by the TIC effective in regulating tourist guides?

Assuming the retention of the two-tier regulatory regime (i.e. Option 1 or 2), what are the areas for improvement in order to enhance the effectiveness of the regulation of tourist guides?

- (6) If the tourism sector is to be regulated by an independent statutory body or the Government (i.e. Option 3 or 4), should a statutory tourist guide licensing system be introduced?

If yes, should there be a transition period and how long should the period last?

- (7) Given the problems associated with Mainland inbound tours, should a separate Tourist Guide Pass or Licence be introduced to further regulate the qualification requirements for tourist guides receiving Mainland inbound tours? (Para. 6.3)

- (8) If a separate Tourist Guide Pass or Licence for tourist guides receiving Mainland inbound tours is introduced, what additional requirements should be prescribed for the Pass/Licence?

Would it be unfair to tourist guides receiving Mainland inbound tours if the requirements are more stringent than those for the existing passes?

Licensing System for Travel Agents (Chapter 6)

- (9) Do you think different licences (with different requirements) should be introduced to regulate outbound and inbound travel agents?

- (10) Do you think a separate licence for travel agents receiving Mainland inbound tours should be introduced in view of the problems associated with those tours?

- (11) If you think a separate licence should be introduced for travel agents receiving Mainland inbound tours, what additional requirements should be prescribed for this licence?

Would it be unfair to the travel agents receiving Mainland inbound tours if the requirements are more stringent than those for the existing licence?

Financial Arrangement

- (12) Regardless of your chosen option, do you agree that the financial arrangement should be based on a “user-pay and cost-recovery” principle? If yes, do you agree that reasonable means to generate additional income should be considered?

What means would you consider appropriate? (Para. 4.33)

- (13) If an independent statutory body is to be established, do you consider it reasonable for the Government to provide the body with a one-off grant or loan to support the expenditure at its initial stage of operation? If you consider it unreasonable, what other approach would you suggest? (Para. 4.33)

Chapter 8

The Next Step Forward

8.1 Members of the trade, stakeholders and the public are invited to provide their views on the proposals set out in this consultation paper on or before 15 July 2011. We will draw up substantive reform proposals taking into account the views received in the consultation.

8.2 The Tourism Commission, Commerce and Economic Development Bureau welcomes written comments through the post, fax or email:

Mail : Team 1
Tourism Commission
Commerce, Industry and Tourism Branch
Commerce and Economic Development Bureau
2nd Floor, East Wing, Central Government Offices
Lower Albert Road
Central, Hong Kong

Email : tourism_review@cedb.gov.hk

Fax : 2801 4458

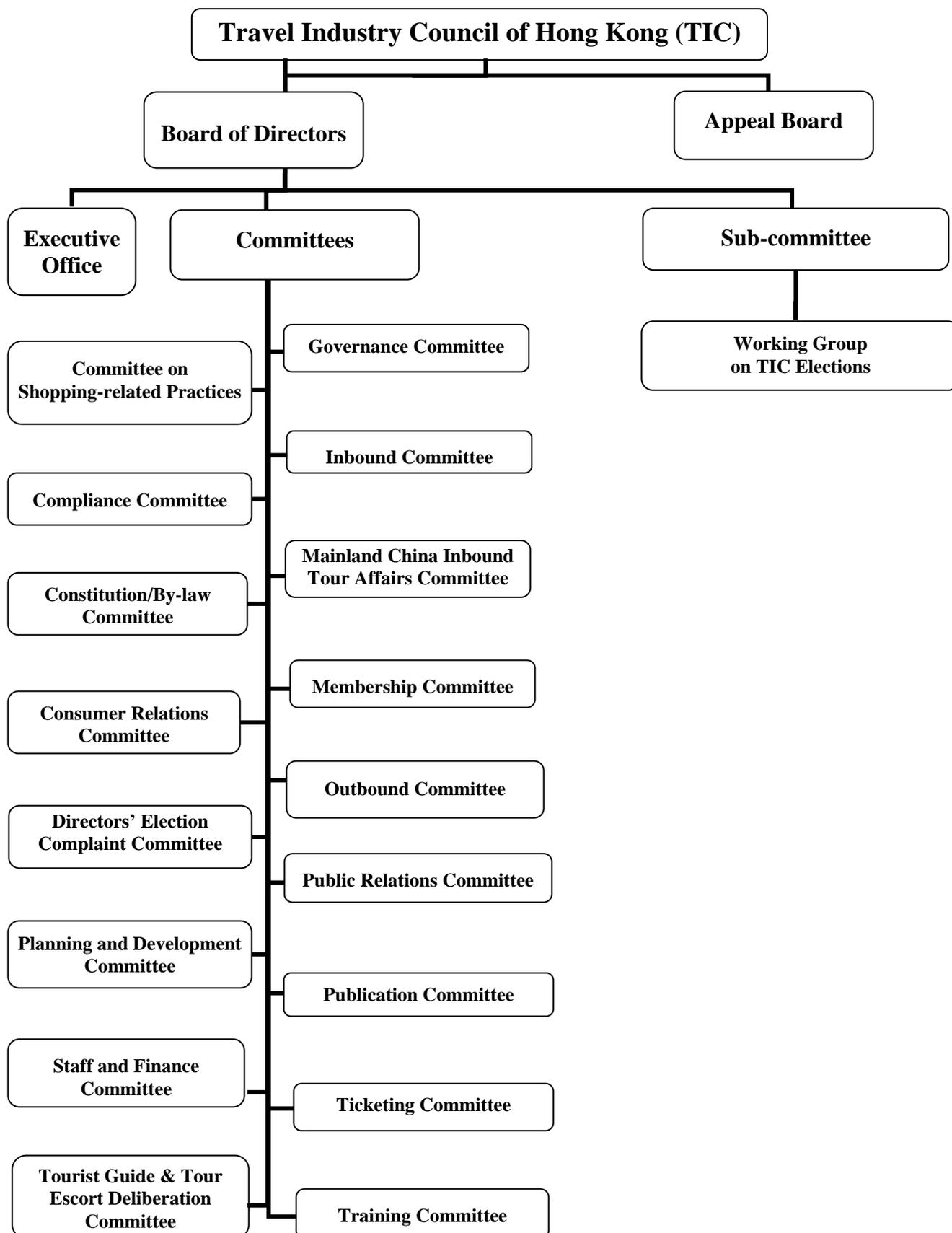
8.3 Members of the public can decide whether or not to supply their personal data when providing views on this consultation paper. Any personal data provided with a submission will only be used for the purpose of this public consultation exercise.

8.4 The submissions and personal data collected may be passed to relevant Government bureaux and departments for purposes directly related to this consultation exercise. The Government bureaux and departments receiving the data are bound by such purposes in their subsequent use of such data.

8.5 This Bureau may publish the submissions made in response to this consultation paper for public viewing after the conclusion of the public consultation exercise, and may publish your name or your affiliation (or both). If you do not wish to disclose your identity when we publish the public views received, please state so when making your submission.

8.6 Any sender providing personal data to this Bureau in the submission will have the rights of access and correction with respect to such personal data. Any requests for data access or correction of personal data should be made in writing.

**Present Composition and Organisation Structure of
the Travel Industry Council of Hong Kong**



Improvements to the Governance of the Travel Industry Council of Hong Kong and its Internal Control Measures

The TIC is a trade self-regulatory body. It has always strived to enhance the independence, impartiality and transparency of its trade regulatory work. It is committed to improving its governance and operation to meet changing market needs and rising public expectations. The various initiatives in this regard are summarised below -

Independence and Impartiality

Composition of the TIC Board

2. The TIC Board is responsible for the TIC's operation and use of resources. The Board currently comprises a chairman and 28 directors, which include both trade directors and independent directors. Independent directors must be non-trade members and are appointed by the Government. They come from different sectors including practitioners from the legal and accountancy professions and individuals with consumer protection experience. The TIC has been increasing the number of independent directors regularly as it takes on more regulatory functions, from only two independent directors upon the introduction of the current licensing and regulatory framework in 1988 to four in 1994, eight in 2004 and to 12 since 2008. In response to the views that frontline employees' interests should be better reflected in the TIC Board, the Government appointed a trade union representative as an independent director to the TIC Board in November 2009.

Committee Structure

3. A number of committees have been established under the TIC to assist the TIC Board in different areas of work. There are three disciplinary committees, namely the Compliance Committee, the Committee on Shopping-related Practices and the Consumer Relations Committee. To bring in experience and knowledge from other sectors and enhance the impartiality of these three Committees, independent non-trade directors have been serving as their convenors, and non-trade members have taken up the majority of the seats in these committees since 2008. There is also an independent appeal channel if trade practitioners feel aggrieved by the TIC's disciplinary decisions. The Appeal Board under the TIC handles appeals from travel agents and trade practitioners on disciplinary matters. The TIC

Appeal Board consists of three independent non-trade members and two trade members with the Chairman elected from the former; all members of the Appeal Board must have no interest in or connection to the case under appeal to ensure the impartiality of the Appeal Board.

4. 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 TIC committees, conduct of business at meetings and measures to increase transparency. On advice from 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 seven committees was also revised to require that at least 20% of the total number of trade members on the committee shall 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 frontline staff from the tour escort and tourist guide associations to sit on TIC committees.

5. 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, replacing the practice where the position was traditionally taken up by the TIC Chairman (a trade member).

Transparency

6. To enhance the transparency of the TIC's work and travellers' access to information, the TIC has been uploading information on revoked or suspended Tourist Guide Passes on its website since July 2004 for the reference of its members and the public. As the TIC steps up its regulatory work, it also provides more information on disciplinary matters on its website. For example, non-compliance cases involving travel agents have been uploaded since November 2006. Information regarding revoked or suspended registered shops, and revoked or suspended Tour Escort Passes have also been made available on its website since June and July 2007 respectively. From February 2011 onwards, the TIC has implemented the Demerit System for Mainland Tour Reception Services. Travel agents which have been given demerit points for non-compliance will have their names and relevant information posted on the TIC website for one month. If the breaches are considered serious, very serious or extremely serious, such information will be posted for one year. Moreover, the shareholders and directors of travel agents are required to declare to the TIC if they or their direct relatives partially or wholly owned any registered shop(s), or are

directors of any registered shop(s). The TIC will disseminate such information on its website.

7. Starting from August 2001 and January 2005 respectively, the TIC has uploaded on its website complaint forms for outbound and inbound travellers. To enhance the transparency of the handling of complaints, the TIC has, since early 2008, published its various disciplinary committees and the Appeal Board procedures on its website. Travellers may also submit their complaint forms online, or call the TIC hotline to enquire about the complaint procedures or seek assistance.

8. Since December 2008, the TIC has published on its website important decisions reached at the monthly meetings of the TIC Board for inspection by its members. Since January 2010, the TIC has uploaded on its website the annotated agenda of its Board and committee meetings before meetings, and the minutes of meetings, save for certain sensitive items, after the meetings, in order to further enhance transparency of its deliberations and decisions. Furthermore, the TIC's annual reports and its MAA are also available at its website for public perusal.

Value-for-Money Audit

9. 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 Executive Office 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 audit work is in progress.

Integrity and Law Abiding

10. Since 1990, the TIC has been specified as a "public body" under the Prevention of Bribery Ordinance (Cap. 201). All its Directors are therefore "public servants" and 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 they discharge their duties in an impartial and honest manner with the objective of protecting the interest of both travellers and the tourism sector.

11. The TIC holds director election at its AGM each year to elect directors to the TIC Board. To uphold the principle of conducting fair, honest and clean elections, the TIC Board, in consultation with ICAC, issued the Rules for Election of Elected Directors in July 2010.

Monitoring of the TIC by the Government

12. Although the TIC is not a statutory or subvented organisation, the Government has been monitoring its daily work and finances, which have implications for both outbound and inbound travellers. Government representatives participate in meetings of the TIC Board and its various committees as members or observers. The Government also maintains very close contact with the TIC to provide advice and assistance on matters related to the tourism market and development of the sector, the operating environment of travel agents, travellers' 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. To this end, a representative from the TC has been sitting on the TIC Board as an observer since December 2004. Starting from January 2010, the TC has expanded its participation in the TIC committees. Representatives from the TC now sit on seven TIC committees¹⁰ as a member, and the Staff and Finance Committee as an observer. The new arrangement allows the TC to closely monitor the TIC's operation and tender timely advice. Moreover, the TIC is required under the TAO to submit to 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 SCED is required for adjusting important fee items affecting member agents.

10. 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.

Overseas Experience - Different Organisations Involved in the Operation and Regulatory Framework of the Tourism Sector

	United Kingdom	United States (California)	South Korea	Australia (New South Wales)
Tourism Planning and Formulation of tourism policies	government department	government department	government department	government department
Tourism promotion	public organisation	public organisation	public organisation	public organisation
Monitoring of service quality, consumer protection and handling of complaints	government department and trade organisation	government department	government department	government department
Prescribe qualification and training requirements for tourism practitioners	trade organisation	no such system	government department and trade organisation	trade organisation
Licensing and regulation of travel agents	licensing by government department (for sales of air ticket-related products); regulation by government department and trade organisation	registration, regulation and complaints are handled by government department	registration and regulation by government department; complaints are handled by trade organisation	registration, regulation and complaints are handled by government department

	United Kingdom	United States (California)	South Korea	Australia (New South Wales)
Licensing and regulation of tourist guides	no licensing system; self-regulation by trade organisation	no licensing or regulatory regime	licensing by government department; complaints are handled by a trade organisation	no licensing system; trade and professional organisations are responsible for regulation and prescription of professional qualifications
Licensing and regulation of tour escorts	no licensing or regulatory regime	no licensing or regulatory regime	licensing by government department; complaints are handled by trade organisation	no licensing or regulatory regime

**Composition of the Committees under the
Travel Industry Council of Hong Kong**

	Name of Committee	Trade Members*	Non-trade members*	Percentage of non-trade members*	Involvement of Tourism Commission
Independent non-trade members as convenors					
1.	Directors' Election Complaint Committee	0	5	100%	-
2.	Compliance Committee [^]	4	15	79%	-
3.	Committee on Shopping-related Practices [^]	6	9	60%	Ex-officio member
4.	Constitution/By-law Committee	8	9	53%	-
5.	Tourist Guide and Tour Escort Deliberation Committee	10	11	52%	-
6.	Consumer Relations Committee ^{^#}	10	11	52%	-
7.	Staff and Finance Committee	4	4	50%	Observer
8.	Planning and Development Committee	9	9	50%	Ex-officio member
Trade members as convenors					
9.	Governance Committee	9	9	50%	Ex-officio member
10.	Membership Committee	9	8	47%	-
11.	Mainland China Inbound Tour Affairs Committee	12	7	37%	Ex-officio member
12.	Training Committee [#]	19	6	24%	Member
13.	Inbound Committee [#]	21	5	19%	Ex-officio member
14.	Outbound Committee [#]	25	1	4%	Ex-officio member
15.	Publication Committee [#]	18	1	5%	-
16.	Public Relations Committee [#]	24	0	0%	-
17.	Ticketing Committee [#]	25	0	0%	-

(as at 12 April 2011)

* Includes the convenor and representative from Tourism Commission (save for observer)

[^] These three Committees are responsible for disciplinary matters

[#] At least 20% of the trade members on these seven committees are reserved for trade members who put themselves forward through a nomination procedure