

立法會
Legislative Council

LC Paper No. CB(1)1111/11-12(06)

Ref: CB1/PL/EDEV

Panel on Economic Development
Meeting on 27 February 2012

**Background brief on the review of the operation and
regulatory framework of the tourism sector in Hong Kong**

Purpose

This paper provides background information and summarizes Members' views on the operation and the regulatory framework of the tourism sector and the review proposals.

Establishment of the Travel Industry Council of Hong Kong and its operation

Background

2. The Travel Industry Council of Hong Kong ("TIC") was established in 1978 as a trade association for travel agents, and incorporated under the Companies Ordinance (Cap 32) in 1988. It carries out its work in accordance with its Memorandum and Articles of Association ("MAA").

3. The Government enacted the Travel Agents Ordinance (Cap 218) ("TAO") in 1985 to make it mandatory for all outbound travel agents to be licensed. The Travel Agents Registry ("TAR")¹ was set up in the same year to implement the TAO provisions, in particular the licensing and regulation of travel agents. Following amendments to TAO in 1988 to bring in trade self-regulation to form the two-tier regulatory regime, any person carrying on business as an outbound travel agent was required to be a member of TIC² before they were eligible for

¹ Under the provisions of TAO, TAR issues licence to inbound and outbound travel agents and carries out relevant surveillance work, including monitoring the operation and financial position of the licensed travel agents.

² Prior to joining TIC as an ordinary or affiliate member, a travel agent should join one of the eight Association Members each of which has its unique characteristics catering for specific needs of different markets. Ordinary member agents may conduct any travel and tourism business while the business of affiliate members is restricted to booking of hotel rooms and air tickets, retail sale of package tours and other travel-related dealings.

applying for a travel agent's licence from TAR. With the Travel Agents (Amendment) Ordinance 2002 taking effect in November 2002, the statutory requirement of TIC membership for obtaining travel agents' licence was extended to cover inbound travel agents.

4. The mission of TIC is to maintain a high standard of professionalism within the industry and to protect the interests of both the trade and travellers. TIC is responsible for trade self-regulation, including the promulgation of codes of conduct³ and directives, as well as putting in place a disciplinary mechanism to handle violation of the codes and directives by member agents. To improve travel agents' service, TIC introduced accreditation systems for tour escorts in 1999 and tourist guides in 2004 respectively. For the latter, a Continuing Professional Development programme was introduced in 2007 to encourage on-going service improvements.

5. The Tourism Commission ("TC") was established in May 1999 for mapping out the Government's tourism development strategy, providing a focal point for liaison with the tourism industry and enhancing co-ordination in developing tourism. Apart from attending meetings of the TIC Board and its various committees as observer, TC also maintains close communication with TIC on various issues affecting the trade. TAR is part of TC.

Organizational structure of TIC

6. The composition of TIC Board is specified in its MAA, which now provides that the Board comprises 29 members, including a Chairman from the trade, eight member-elected directors, eight Association Member representatives and 12 Government-appointed independent non-trade directors⁴ coming from different sectors such as the legal and accountancy fields and those with consumer protection experience. The trade directors come from travel agents of different sizes (including small to medium size agents) and with different business focuses (inbound tourism, outbound tourism or ticketing). TIC issues the General Code of Conduct for the Board to ensure that its directors, being "public servants" subject to the regulation of the Prevention of Bribery Ordinance (Cap 201), discharge their duties in an impartial and honest manner. Important decisions, minutes of the Board's monthly meetings and disciplinary information⁵ are uploaded onto TIC's website for member agents' reference.

³ TIC implemented the following codes of conduct: (a) General Code of Conduct for TIC Members; (b) Code of Business Practice on Outbound Package Tours; (c) Code of Advertising Practice for TIC Members; (d) Code of Business Practice on Inbound Travel Service; and (e) Code of Business Practice on Study Tours.

⁴ TIC increased the number of non-trade independent directors from two upon incorporation in 1988 to four in 1994, to eight in 2004 and to 12 with effect from January 2008 with a view to bringing in more experience and knowledge from other sectors.

⁵ Including travel agents' non-compliance cases, revoked or suspended Tourist Guide Passes and Tour Escort Passes, records of demerit points of travel agents and registered shops, and names of suspended or revoked registered shops.

7. There are 17 committees under the Board and an Appeal Board to handle appeals from travel agents and trade practitioners on disciplinary matters. The convenors of committees responsible for disciplinary matters related to travel agents, tourist guides, tour escorts and registered shops are non-trade independent directors while the majority of these committee members are from non-trade background. The Appeal Board consists of three independent non-trade members, including the Chairman, and two trade members⁶ who must have no interest in or connection to the case under appeal to ensure impartiality.

8. The policies and codes of conduct laid down by the TIC Board are carried out and enforced by the TIC Executive Office which has an establishment of 55 staff (as at 1 February 2012) under the Executive Director.

Income and financial control

9. When the Travel Industry Council Reserve Fund ("TICRF")⁷ was replaced by the statutory Travel Industry Compensation Fund ("TICF")⁸ in 1993, opportunity was taken to introduce the Council levy under the TAO to ensure that TIC has stable and recurrent income to finance its trade regulatory functions. Council levy⁹, income from training courses and membership fee¹⁰ represent 60%, 15% and 7% of TIC's total income in 2010-2011 respectively. TIC also derives income from other sources, such as Mainland inbound tour registration fees, shop registration fees, registration fees for Tour Escort Passes and Tourist Guide Passes, etc.

10. TIC's annual account is audited by a practicing certified public accountant and submitted for approval by the TIC Board followed by an annual general meeting where all members of TIC and independent non-trade directors are invited to attend. A copy of the TIC annual report, which encloses the audited accounts, is issued to every member. TIC is also required under TAO to submit to the Secretary for Commerce and Economic Development each year the estimates of its income and expenditure in respect of the next financial year. As TIC does not receive Government subvention, it is not subject to the Audit Commission's scrutiny.

⁶ All these members must be present to meet the quorum of the Appeal Board.

⁷ The Travel Agents Reserve Fund was established in 1985 and was replaced by TICRF in 1988.

⁸ TICF is held, managed and applied by the TICF Management Board set up under Section 32D of TAO. TICF derives its income from the levy contributed by travel agents in accordance with section 32H of TAO. The Travel Agents Ordinance (Specification of Fund Levy) Amendment Notice 2009 was made in June 2009 to reduce the TICF levy rate from 0.15% to 0% with effect from 3 July 2009.

⁹ At a rate of 0.15% of every outbound fare received since 1993.

¹⁰ \$1,000 for Ordinary Members (limited companies) and \$600 for Affiliate Members (sole proprietorships and partnerships) since 1993.

Review of the operation of the Travel Industry Council of Hong Kong in 2009-2010

Discussions prior to the review

11. All along, the role and functions of TIC had been a subject of public contentions. Members raised a number of questions at Council meetings on issues related to TIC, including regulation of travel industry, complaint handling mechanism, illegal provision of tourist guide services, training courses for the travel trade, measures to assist the tourism industry, assistance to tour groups visiting Hong Kong, collection of Council levy and monitor the operation of TIC.

12. At the Council meeting on 30 May 2007, a motion debate on "Fostering the development of the tourism industry" took place. During the debate, there was a suggestion to turn TIC into a statutory body so as to provide a legal basis for its regulatory work. Some Members also suggested the Administration to review the composition of the TIC Board.

13. At the meetings held by the former Panel on Economic Services¹¹ on 27 November 2006 and 23 April 2007, some Panel members expressed concern that the problems related to "zero/negative-fare"¹² tours and shopping scams had reflected the ineffectiveness of the self-regulatory regime of the travel industry. The Panel urged the Administration to undertake a comprehensive review and consider setting up an independent statutory body to regulate the industry.

14. The Panel on Economic Development (the Panel) invited the travel industry and the Consumer Council ("CC") to give views on the operation of TIC at the meeting on 16 July 2009. Some travel agents expressed grave concerns about the statutory requirement of TIC membership for obtaining a licence, the collection of Council levy, the heavy penalty imposed on them for violation of TIC codes of conduct, and the lack of employee representatives in the TIC Board and the Disciplinary Committees. Some other deputations commended the work of TIC for serving as a middle person balancing the interests of the trade and tourists and for its capability in catering for the changing needs of the travel industry. Some Panel members queried the legal basis for TIC, an incorporated body, to play an industry self-regulatory role in

¹¹ The Panel on Economic Services was renamed as the Panel on Economic Development from the 2007-2008 session.

¹² The "zero/negative-fare" tours refer to the provision of reception services for inbound tours by local licensed travel agents, i.e. reception agents ("RAs") in Hong Kong without receiving any payment from designated agents in other places. In those circumstances, RAs normally choose to offset their reception costs and make profit through commission. To earn more commission, RAs normally take "zero/negative-fare" tour groups to designated shops for shopping, and tourist guides are often required to persuade visitors to make purchase. According to past practices, some RAs running "zero/negative-fare" tours ask their tourist guides to pay for the cost arising from reception services. Those tourist guides who choose to accept such an arrangement will normally have to press visitors to make more purchases so that they can earn more commission as compensation.

monitoring the travel agents¹³, collecting Council levy¹⁴ from them and regulating the conduct of tourist guides and escorts. At the meeting, the Panel passed a motion urging the Government to conduct a thorough review of the structure, functions, fees and relevant arrangements of TIC, including whether it should become a statutory organization and be subject to value-for-money audits, and to provide legal advice on whether the present licensing arrangements for travel agencies were in breach of the Basic Law.

The review

15. The Government conducted a review of the operation of TIC in 2009-2010. The review concluded that while there was room for improvement, TIC had established an effective role in the regulatory regime which should be recognized and maintained. In particular, TIC had built good rapport and extensive network with local and overseas travel-related industries. It was able to follow changes in the industry, detect early signs of malpractices in the trade, formulate effective responses and regulatory measures, act promptly in handling tourism-related emergencies, and make timely efforts enabling travel agents to respond to crises in a coordinated manner. To make TIC's position and functions clearer under the regulatory regime, the Commerce and Economic Development Bureau would consult the Department of Justice to amend TAO to specify TIC's role more clearly.

Improvement measures

16. Since July 2009, TIC has made further measures to improve its operation taking into account the views of the Panel, including appointment of an independent director with trade union background to reflect frontline employees' interests, establishment of a Governance Committee to review and make recommendations on the operation of TIC, election of an independent director to serve as the convenor of its Staff and Finance Committee, publication of meeting agenda and sanitized minutes on TIC's website to increase transparency. TIC has engaged an independent auditor to conduct a value-for-money audit which commenced in December 2010 and will be completed by phases. TIC has also issued the "Rules for Election of Elected Directors" in July 2010.

Panel's views on the review outcome

17. The Administration briefed members on the outcome of the review at the Panel meeting on 24 May 2010. Panel members noted that the Administration

¹³ The control and regulation of travel agents is provided in TAO which stipulates that a licensed travel agent must be a TIC member. The MAA of TIC, and the Codes of Conduct promulgated by the TIC Board also appear to provide the basis for TIC to play an industry self-regulatory role in monitoring travel agents. Details are given in LC Paper No. LS53/09-10 provided for the Panel meeting on 24 May 2010.

¹⁴ According to the Panel's legal adviser, section 32I of TAO provides the legal basis for TIC to collect the Council levy from travel agents as its operational expenses in pursuing or achieving its objects.

intended to maintain the current regulatory regime for the travel agents, as TIC in its present form (i.e. a trade body with regulatory functions) was best placed to foster trade development and regulate the ever changing trade practices. Some members considered it important for TIC to enhance public recognition of its role as an agent which could foster trade development while protecting consumer interests. However, some other members queried how TIC could impartially strike this balance since it was basically a trade association and a company registered under the Companies Ordinance. These members were of the view that specifying TIC's role more clearly in TAO would only legalize and reinforce the existing unreasonable arrangement under which the Government was not statutorily empowered to monitor TIC's operation. A member further enquired about the possibility of turning TIC into a statutory body, with its composition, functions, powers and framework of checks and balances governed by a specific ordinance.

18. The travel industry and CC were invited to give views on the operation of TIC at the Panel meeting on 22 November 2010. Some travel agents expressed concern about the statutory requirement of TIC membership for obtaining a travel agent licence, and TIC's right in collecting Council levy and penalizing infringing members. Some Panel members considered that under the industry self-regulatory regime, TIC had not been able to monitor the travel industry effectively as evidenced by the recurrent problems arising from "zero/negative" reception fee for Mainland inbound tour groups despite TIC had issued a large number of directives regulating them. With the influx of Mainland inbound tour groups and the increasing number of outbreak of incidents, some deputations called for a further review of the role of TIC as it had been tasked with additional responsibilities yet without the mandate which had made it difficult for TIC to fulfill its expected roles among member agents and the public. Some members urged the Administration to consider setting up a statutory body to monitor the travel industry. TIC was also requested to report to the Panel the outcome of the value-for-money audit in due course.

Incidents leading to a further review

19. On 22 May 2010, a member of a tour group from Hunan to Hong Kong died of heart attack after quarrelling with an illegal tourist guide who refused to let the tour group leave a registered jewellery shop. When the Administration briefed the Panel on the follow-up measures at the Panel meeting on 28 June 2010, some members considered that the incident reflected again the problems of industry self-regulation regime and "zero/negative-fare" tours, since as many as 24 complaints had been lodged against the travel agent in question which had already violated TIC's codes and directives eight times.

20. In July 2010, a clip of the female guide berating a group of Mainland visitors as cheapskates went viral on the internet and television screens across the Mainland. TIC had subsequently decided to impose penalties on the two travel agents concerned, and suspend the Tourist Guide Pass of the female guide in question for six months, after which any violation of the relevant rules would lead to revocation of her Pass.

21. When the Administration briefed the Panel on the proposed ten measures recommended by TIC's Task Force on the Review of the Operation and Regulation of Mainland Inbound Group Tours at the meeting on 22 November 2010, some members questioned whether the new measures would be adequate to deal with the core problem arising from "zero/negative-fare" tours. Some members expressed concern about travel agents pocketing a portion of the tips received by tourist guides/tour escorts and requiring tourist guides/tour escorts to pre-pay travel agents in advance before receiving the tours. There was also concern about the endorsement and implementation of the proposed measures by TIC.

22. On 5 February 2011, a dispute erupted between a couple from Anhui in a Mainland inbound tour group and their tour guide over the itinerary and shopping arrangements, and they ended up being charged for fighting in a public place. The court subsequently ordered them to be bound over for a year for \$1,000. The dispute was widely reported by the Mainland media, amongst which the state broadcaster, China Central Television, commented that the case brought "shame on Hong Kong's image as a shoppers' paradise". The local media later reported that the couple was promised \$120,000 in compensation by the travel agent in question.

Review of the operation and regulatory framework of the tourism sector in Hong Kong

23. In his 2010-2011 Policy Address, the Chief Executive remarked that the few incidents concerning unscrupulous practices relating to Mainland tour groups had tarnished the reputation of tourism industry. The Government would review the operation and regulatory framework of the entire tourism sector, including the role, powers, responsibilities and operation of TIC, as well as its working relationship with TAR.

Preliminary reform proposals

24. At the Panel meeting on 28 February 2011, the Administration presented the following four preliminary options for reforming the present regulatory framework –

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

25. While a majority of members indicated support for the tourism sector to be regulated by an independent statutory body (Option 3) or a Government department (Option 4), some of them urged that Options 1 or 2 as well as measures regulating the "zero/negative-fare" tours should be implemented in the interim before the new regulatory regime was put in place. They also urged the Administration to expedite the reform process and enact the legislative amendments before mid 2012, as the Government of the next term might not share similar resolve in strengthening the regulation of the overall tourism industry.

Public consultation

26. The Government published a consultation paper on "Review of the Operation and Regulatory Framework of the Tourism Sector in Hong Kong" on 29 April 2011. In addition to setting out the four reform options, the consultation paper also examined the merits and drawbacks, timeframe for implementation and financial implications of each option, and sought public's views on the feasibility of introducing a tourist guide licensing system and introducing different licences regulating outbound and inbound tourism. The consultation ended on 15 July 2011.

Panel discussions on the consultation paper

27. On 23 May 2011, the Panel received views from the tourism industry and the CC on the reform proposals as set out in the consultation paper. TIC directors or owners of travel agents generally supported Options 1 or 2, whereas those representing tourist guides, tour escorts or consumers pledged for Option 3 or 4¹⁵. Panel members generally considered it necessary to revamp the present two-tier

¹⁵ The four reform options are set out in paragraph 24 of this paper.

regulatory regime for the tourism sector. Some members who preferred Option 3 expressed concern whether the independent statutory body to be established could work directly with the Mainland tourism authorities in respect of the operation of the Mainland inbound group tours in Hong Kong. These members urged the Administration to demonstrate its commitment to reforming the regulatory regime, to effectively tackle the malpractices of coerced shopping and to provide adequate protection for tourist guides and tour escorts. On the financial arrangements for the new regime, members were concerned that it would be unfair to outbound travel agents if it had to share the financial cost for the new regulatory framework which was devised to deal with malpractices arising from the Mainland inbound group tours. There was a suggestion that the cost of regulation of the tourism sector should be shouldered by the Government in the light of the economic benefits brought by tourism.

Latest development

28. The Administration released the consultation findings and announced the detailed reform proposal in December 2011. The following new regulatory framework for the tourism sector were proposed –

- (a) an independent statutory body be established as the overall regulatory body of the tourism sector as envisaged under Option 3;
- (b) the minimum capital requirement for Travel Agents Licences be raised;
- (c) a statutory licensing system for tourist guides and tour escorts be introduced;
- (d) an independent appeal mechanism be set up to handle appeals against the decisions of the regulatory body in (a) above; and
- (e) the independent statutory body, which would be mainly funded by the levy on outbound tours, licence fees from travel agents and Mainland inbound tour registration fees, should run on a self-financing basis in the long run. A one-off capital grant would be provided by the Government to support the operation of the independent body at its initial stage.

29. According to the Administration, the relevant draft new legislation is expected to be introduced into the Legislative Council in about two and a half years. As there may be a transition period of at least three years prior to the enactment of the new legislation, the current two-tier regulatory regime would continue to be adopted. The Administration would explore with TIC about TIC's involvement in the future regulatory regime with a view to tapping its expertise and strength.

30. The Administration will brief the Panel on the substantive reform proposal at the meeting on 27 February 2012.

References

31. A list of the relevant papers with their hyperlinks is in http://www.legco.gov.hk/database/english/data_es/es-tourism-sector.htm.

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21 February 2012