

# 立法會

## *Legislative Council*

LC Paper No. CB(4)792/16-17(02)

Ref: CB4/BC/5/16

### **Bills Committee on Travel Industry Bill**

#### **Background brief**

#### **Purpose**

This paper provides background information on the Travel Industry Bill ("the Bill"). It also summarizes the major views and concerns expressed by members of the Panel on Economic Development ("the Panel") during previous discussions on the subject.

#### **Background**

2. In the light of incidents involving unscrupulous practices of the tourism trade relating to Mainland tour groups in 2010, the Chief Executive stated in his 2010-2011 Policy Address that the Government would review the operation and regulatory framework of the entire tourism sector, including the role, powers, responsibilities and operation of the Travel Industry Council of Hong Kong ("TIC")<sup>1</sup>, as well as its working relationship with the Travel Agents Registry ("TAR")<sup>2</sup>.

3. In April 2011, the Government launched a public consultation exercise on the review of the regulatory framework of the tourism sector, and announced at end of the same year that an independent statutory body, to be called the Travel Industry Authority ("TIA"), would be set up as the overall regulatory body of the tourism sector so as to enhance the independence, credibility and transparency of the regulatory framework.

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<sup>1</sup> TIC is responsible for trade self-regulation, including the promulgation of codes of conduct and directives, as well as putting in place a disciplinary mechanism to handle cases of non-compliance by its member travel agents.

<sup>2</sup> TAR, which is set up under the Tourism Commission, is responsible for issuing travel agents' licences and related work, including monitoring the financial position of travel agents under the Travel Agents Ordinance (Cap. 218).

## **The Bill**

4. The Bill, which contains 11 Parts and 11 Schedules, seeks to establish a TIA; to provide for the licensing of travel agents, tourist guides and tour escorts; to regulate the activities of the licensees; to provide for administration of the Travel Industry Compensation Fund, and for the imposition of levies on travel agents; and to provide for related matters.

## **Previous discussions**

5. The Administration briefed the Panel on matters relating to the regulatory framework of the tourism sector at its meetings on 27 February 2012 and 22 July 2013. The Administration briefed the Panel on the key legislative proposals of the Bill on 23 January 2017. Members were generally supportive of the proposals and expressed concerns on a wide range of matters concerning the proposed regulatory regime and the resultant impact on travel trade members. The major views and concerns expressed by Panel members are summarized in the ensuing paragraphs.

### Impact on travel trade members

6. While welcoming the introduction of the new regulatory regime to combat the unscrupulous business practices of some travel trade members, some members opined that excessive regulation might affect the livelihood of tourist guides, in particular freelance tourist guides who enjoyed greater flexibility and earned more income during peak seasons. The Administration should strike a balance between regulation of the trade and livelihood of frontline practitioners.

7. The Panel noted the concern of the travel trade that tourist guides and tour escorts, as frontline trade practitioners, might inadvertently be caught by the new legislation, particularly when the scope of coerced shopping was not clearly defined. As front-line trade practitioners mainly followed travel agents' instructions whilst working, concern was raised on whether the Bill would include a defence provision for those frontline trade practitioners who had followed the instructions of the travel agents concerned in the face of criminal prosecutions.

8. The Administration explained that under the new regulatory regime, TIA would require by administrative means that a travel agent must formulate for distribution to its tourist guide/tour escort a job sheet for each tour group received to clearly state the specific tasks and duties of the tourist guide/tour escort. In addition, the codes of conduct and/or guidelines of TIA would require tourist guides to inform the relevant enforcement agencies and TIA upon noticing any tourist being coerced into making purchases so that such malpractices of the trade could be combatted.

9. Members urged the Administration to explain to the trade details of the requirements of the new regulatory regime, and the new codes of conduct and guidelines once they were formulated by TIA. Members considered that frontline practitioners should be well informed of their responsibilities under the new regulatory regime before the enactment of the Bill. On the composition of the TIA Board, some members suggested increasing the number of representatives of frontline trade practitioners to serve as members.

10. Members called on the Administration to continue to listen to the views of the trade and make suitable adjustments to the regulatory regime where necessary. A member also requested the Administration to consider expanding the scope of the Bill to address the nuisance caused by inbound tourism activities on local residents.

#### Disciplinary and appeal mechanism

11. Members noted that under the Bill, TIA would have the powers to conduct inspections and investigations for the purposes of ensuring compliance with new regulatory regime. TIA would establish a disciplinary committee for handling cases of complaint or suspected misconduct against the licensees further to the investigation. Inquiry committees might be set up to conduct inquiries into such cases and decide whether to make a disciplinary order. Persons who are aggrieved by TIA's decisions or the inquiry committee's disciplinary orders may appeal to an independent appeal panel.

12. Regarding members' concern about the appeal mechanism of the new regulatory regime, the Administration advised that under the Bill an independent appeal panel would be set up to handle appeals against disciplinary orders and TIA's decisions through hearings. To ensure the independence and impartiality of the appeal panel, public officers, or members of TIA or the disciplinary committee, would not be eligible to serve as panel members.

13. In response to members' concern about the division of responsibilities between the court and the disciplinary committee, the Administration advised that if a case/complaint involved a person suspected to have committed a criminal offence under the new ordinance, after TIA's investigation, it would be passed to the Department of Justice for considering whether to initiate criminal prosecution in accordance with the established practice for trial in the court. TIA would also impose disciplinary orders upon licensees who committed offences through disciplinary proceedings. On the other hand, if a case/complaint involved a licensee suspected to have breached any directives, codes of conduct or guidelines, it would be followed up by TIA through disciplinary proceedings only.

14. A member worried that some individuals might take advantage of tourist guides/tour escorts/travel agents by making false allegations against the latter parties under the new regulatory regime and suggested that TIA should formulate clear guidelines regarding the handling of complaints.

#### Regulation of on-line travel agents

15. Some members raised concern about the effectiveness and practicality under the new regulatory regime in regulating on-line travel agents since some of them were operating outside Hong Kong.

16. The Administration advised that the proposed regulation was intended to protect the rights of Hong Kong consumers. TIA would consider various factors, such as whether the publicity was targeted at Hong Kong citizens, and whether the advertisements were made through Hong Kong media, in determining if the on-line travel agents actively marketed travel services to the public of Hong Kong and accordingly should come under the regulatory regime of Hong Kong. For those on-line travel agents operating overseas, efforts would be made to try to contact the relevant tourism authorities. To strengthen consumer education, TIA would also publish up-to-date lists of licensed travel agents (no matter operating on-line or with physical presence) from time to time to assist local consumers in ascertaining and choosing licensed travel agents.

#### Establishment of the Travel Industry Authority

17. Some members expressed concern about the source of funding for establishing TIA and the basis for the decision to maintain the charging levels of its major sources of revenue, including the levies charged on outbound tours and licence fees of travel agents, tourist guides and tour escorts, for five years upon the full implementation of the new ordinance. The Administration explained that an one-off seed money would be provided for the establishment of TIA. Moreover, the Administration also proposed increasing the registration fees for inbound tours from the Mainland with different rates prescribed based on the numbers of members in a tour. The exact rates would be drawn up by TIA.

18. Noting that TIC would still be the major regulatory body of the travel trade before the establishment of TIA, members called on the Administration to devise proper measures to ensure a smooth transition from the existing regulatory regime to the new one, in particular the transition of staff members of TIC and measures to facilitate the work of TIC in combating the "non-co-operation movement" during the transitional period.

## Motion

19. In view of the presence of "false self-employment" among tourist guides/tour escorts in the travel industry, the Panel passed a motion urging the Administration to regulate the employment relationships between travel agents and tourist guides/tour escorts so as to protect the legitimate rights of different parties. The wording of the motion is set out in **Appendix I**.

## **Latest development**

20. The Bill was tabled at the Council meeting on 22 March 2017. The House Committee decided on 24 March 2017 to set up a Bills Committee to scrutinize the Bill.

## **Relevant papers**

21. A list of the relevant papers available on the LegCo Website (<http://www.legco.gov.hk>) is at **Appendix II**.

Council Business Division 4  
Legislative Council Secretariat  
7 April 2017

經濟發展事務委員會

在 2017 年 1 月 23 日的會議上  
就議程項目 IV"《旅遊業條例草案》"通過的議案

鑑於旅遊業內導遊及領隊「假自僱」的情況嚴重，從業員長期以來無法享有僱員合理權益，並擔心《旅遊業條例》日後會令他們有責無權，有實無名；本委員會敦請政府當局向立法會提交《旅遊業條例草案》時，明確規管旅行社和導遊及領隊之間的僱傭關係，以確保僱主及僱員合理權益，包括勞工保險的保障。

原議案動議人：陸頌雄議員

原議案和議人：黃定光議員, SBS, JP

修正案動議人：姚思榮議員, BBS

(Translation)

**Panel on Economic Development**

**Motion passed under agenda item IV on "Travel Industry Bill"  
at the meeting on 23 January 2017**

That, given the seriousness of the "false self-employment" problem among tourist guides and tour escorts in the travel industry, practitioners have long been unable to enjoy their legitimate rights as employees, and they are worried that they will be entrusted with responsibility but not given due protection under the Travel Industry Ordinance in future and they have to act without the proper status, this Panel urges the Administration, upon introduction of the Travel Industry Bill into the Legislative Council, to clearly regulate the employment relationships between travel agents and tourist guides, and between travel agents and tour escorts, so as to ensure that employers and employees are entitled to their legitimate rights, including labour insurance coverage.

Original motion moved by : Hon LUK Chung-hung

Original motion seconded by : Hon WONG Ting-kwong, SBS, JP

Amendment moved by : Hon YIU Si-wing, BBS

**List of relevant papers**

<b>Issued by</b>	<b>Meeting date/ Issue date</b>	<b>Paper</b>
Panel on Economic Development	27 February 2012	<a href="#">Administration's paper</a> <a href="#">Minutes</a>
	22 July 2013	<a href="#">Administration's paper</a> <a href="#">Minutes</a>
	23 January 2017	<a href="#">Administration's paper</a> <a href="#">Minutes</a>