

**Government's Response to the Matters raised
at the Meeting of the Bills Committee on Travel Industry Bill
held on 10 April 2017**

Purpose

This paper sets out the Government's response to the matters raised by Members at the meeting of the Bills Committee on Travel Industry Bill (the Bill) held on 10 April 2017.

Liability of Travel Agents and Front-line Practitioners in respect of Criminal Offences

2. The Bill empowers the Travel Industry Authority (TIA) to prescribe conditions on the licences of travel agents, tourist guides and tour escorts. A licence holder that breaches any licence condition commits an offence and will be held liable. As the Government points out in the Legislative Council Brief on the Bill (File Ref.: TC CR T1 22/2/26/3), the licence conditions will mainly tackle the unscrupulous act of coerced shopping and be prescribed by subsidiary legislation. The proposed framework of the relevant provisions of the subsidiary legislation is as follows –

- (a) a travel agent must not force any member of an inbound tour group (inbound tour group member) to enter or stay in any shop or coerce any inbound tour group member into shopping, or commit any such act through any others;
- (b) a travel agent must take all reasonable steps to prevent the travel agent's employees, agents and service providers from engaging or otherwise getting involved in any act of coercing any inbound tour group member into shopping; and
- (c) a tourist guide must not force any inbound tour group member to enter or stay in any shop, or engage or otherwise get involved in any act coercing any inbound tour group member into shopping when he or she is working.

3. In a case where an inbound tour group member was coerced by a tourist guide into shopping, whether the travel agent concerned and/or its tourist guide will be held liable for the unscrupulous act depends on the circumstances of the case and cannot be generalised. If the travel agent

concerned had taken all reasonable steps (including but not limited to: providing clear guidelines and proper training, and conducting regular reviews and making adjustments as necessary; prior to employing or otherwise engaging a tourist guide for receiving an inbound tour group, checking whether he or she has committed any coerced shopping act before, etc.) to prevent its tourist guide from committing the act of coerced shopping, but the tourist guide still coerced the inbound tour group member into shopping, then the tourist guide may be held liable for his or her unscrupulous act as a result of breaching the relevant licence condition. If the travel agent concerned had not taken all reasonable steps to prevent its tourist guide from committing the act of coerced shopping, then it may also be held liable as a result of breaching the relevant licence condition.

4. Furthermore, where the travel agent concerned provides service for another travel agent in Hong Kong (through outsourcing arrangements), both of the travel agents must comply with the relevant licence conditions. If that other travel agent has not taken all reasonable steps to prevent its employees, agents and service providers from engaging or otherwise getting involved in any act of coercing any inbound tour group member into shopping (see paragraph 2 above), it may also be held liable as a result of breaching the relevant licence condition.

5. At the meeting, some Members enquired, in a case where a tourist guide works for a travel agent to receive an inbound tour group upon the referral by an intermediary, whether the intermediary will be held liable for the tourist guide's unscrupulous act of coercing an inbound tour group member into shopping. If the intermediary merely refers the tourist guide to the travel agent without carrying on travel agent business¹, it will not be held liable under the Bill. The party(ies) to be held liable depends on the circumstances of the case, including whether the travel agent and tourist guide concerned have breached any relevant licence condition (see paragraph 2 above).

Regulation of On-line Travel Agents

6. Clause 4 of the Bill states the meaning of carrying on travel agent business. Its subclause (1)(b) serves to bring under regulation on-line travel agents that carry on outbound travel business activities targeted at Hong Kong citizens –

¹ See clause 4 of the Bill for the definition of carrying on travel agent business.

“(1) A person carries on travel agent business if –

.....

(b) the person –

- (i) carries on any of the business activities described in paragraph (a)(i) and (ii)² at a place outside Hong Kong; and
- (ii) actively markets, whether in Hong Kong or from a place outside Hong Kong, to the public of Hong Kong any of those business activities.”

7. In other words, any persons that carry on any outbound travel business activities (i.e. obtaining carriage for departure from Hong Kong and/or accommodation outside Hong Kong) at a place outside Hong Kong and actively market, whether in Hong Kong or from a place outside Hong Kong, to the public of Hong Kong any of such business activities will be subject to the regulation of the Bill. They will be required to obtain travel agent licences issued by the TIA in order to carry on such business activities.

8. Generally speaking, the provisions applicable to persons carrying on outbound travel business activities in Hong Kong in the Bill (in aspects including licensing, regulation, levies collection, etc.) are applicable to the persons mentioned in paragraph 7 above. In addition, the provisions on inspection and investigation (see Part 6), disciplinary procedures (see Part 7) and appeal mechanism (see Part 8) in the Bill are likewise applicable.

9. The proposal above aims to bring on-line travel agents, which have become increasingly popular in Hong Kong’s outbound tourism market, under regulation so as to afford greater protection to the outbound travellers of Hong Kong, including regulation on the activities of the travel agents and protection from the Travel Industry Compensation Fund for eligible travel services³. It also addresses the request from some existing travel agents for creating a more level playing field for on-line

² Paragraph (a)(i) reads, “obtaining for another person carriage, by any means of transport, on a journey that is to commence in Hong Kong and then take place mainly outside Hong Kong”; and paragraph (a)(ii) reads, “obtaining for another person accommodation at a place outside Hong Kong”.

³ See clause 139 of the Bill.

travel agents and traditional travel agents with physical presence.

10. Although the business or physical location of some on-line travel agents is outside Hong Kong, the TIA will strive to follow up offence cases involving them. Upon knowing their business or physical location, the TIA will attempt to contact the tourism regulatory authorities of the jurisdictions concerned to take appropriate action. The TIA will also publish up-to-date lists of licensed travel agents from time to time and assist local consumers in identifying and choosing licensed travel agents through public education, publicity activities, etc.

11. Furthermore, at the meeting, some Members enquired whether a person who personally engages on-line with visitors to Hong Kong by obtaining inbound travel service for as well as providing guiding service to them will be required to obtain a travel agent licence. Under the Bill, as that person obtains travel service for visitors to Hong Kong⁴, he or she will be required to obtain a travel agent licence issued by the TIA. As business operators of this kind directly engage with visitors to Hong Kong, it is necessary to subject them to certain regulation. The first layer of regulation is the licensing regime for tourist guides, which seeks to ensure that the persons who directly provide guiding service to visitors are equipped with the professional knowledge and standard. Another layer of regulation is the licensing regime for travel agents, which seeks to ensure that the persons who obtain travel service for visitors to Hong Kong are committed to carrying on business (particularly on the financial front). The failure of travel agents to carry on business properly or subpar professionalism of tourist guides will affect not only the interests and safety of the tourists concerned, but also the overall image and reputation of Hong Kong's travel industry.

Tourism Commission
Commerce and Economic Development Bureau
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⁴ This refers to obtaining for visitors to Hong Kong: (a) carriage on a journey that is to commence outside Hong Kong and either terminate in Hong Kong or involve the visitor passing through the immigration controls before leaving Hong Kong; (b) accommodation in Hong Kong; and/or (c) any of the specified services (i.e. sightseeing or visits to local places of interest, meals, shopping trips, and/or local transport in connection with any of such services).