

**Travel Industry Compensation Fund Management Board
Submission on Travel Industry Bill**

The Travel Industry Compensation Fund Management Board (the Board) supports the proposed establishment of the Travel Industry Authority (the TIA) and formulation of a comprehensive piece of legislation for the long-term development of Hong Kong's travel industry.

2. The Board is delighted to see that the Government has taken on board in the Travel Industry Bill (the Bill) its various initiatives put forward on various occasions over the years. The grounds for proposing these initiatives are set out in the ensuing paragraphs.

Scope of Protection by Travel Industry Compensation Fund

3. The Board regularly reviews the sufficiency of the scope of protection offered by the Travel Industry Compensation Fund (the TICF). At this moment, having regard to various factors including the size and sustainability of the TICF, the Board considers the level of protection to be sufficient. The Board supports that the existing protection scope of the TICF should be maintained in the Bill.

Establishment of Travel Industry Development Fund

4. The Bill seeks to empower the TIA to set aside a certain percentage of the TICF as specified by the Secretary for Commerce and Economic Development for setting up a new Travel Industry Development Fund.

5. The TICF comprises contributions made by travel agents. Subject to keeping an adequate balance for meeting ex gratia payments, the Board fully supports the initiative of contributing part of the TICF to support the travel industry. The Board believes that the TIA will utilise the new fund having regard to the needs and views of the industry.

Advance Authorization

6. Under the existing Travel Agents Ordinance (Chapter 218), an outbound traveller or his/her authorized representative can make an application for an ex gratia payment in relation to a loss suffered in respect of an accident that results in the death of, or personal injury sustained by, the outbound traveller whilst travelling outside Hong Kong. If the traveller intends to authorize a person to apply for and receive an ex gratia payment, such authorisation can be made only after the accident. The Bill contains new provisions to enable an outbound traveller to give authorization to his/her representative before departure for an outbound tour. Under the proposed advance authorization arrangement, the authorization will survive the traveller's subsequent death or mental incapacity.

7. The Board received overwhelming support from stakeholders after putting forward the proposed advance authorization arrangement for consultation in 2009. The arrangement will provide added protection for an outbound traveller by ensuring that he/she and/or his/her representative(s) will be able to obtain the relevant ex gratia payment when such a need arises. If a travel agent is authorized by the outbound traveller in advance, it can first make an advance payment for the expenses incurred in handling the accident for the traveller (e.g. arranging his family members to visit the destination for follow-up) and subsequently apply for and receive an ex gratia payment. Nevertheless, the Board holds the view that the arrangement should be administered on a voluntary basis.

Rights of Subrogation

8. The Bill seeks to protect the interest of the TICF by subrogating to the TIA, to the extent of the amount of ex gratia payment made, all the rights and remedies of the outbound traveller by reason of the loss suffered by the outbound traveller. This has the effect of entitling the TIA to recover the ex gratia payment from the travel agent that causes the loss of outbound fare in a bankruptcy or winding up or by legal proceedings against the travel agent concerned. Such subrogation as provided for in the Bill will help to deter unscrupulous travel agents from deliberate closure after collecting fares from outbound travellers with a view to shoving the burden of redress to the TICF.

Electronic System for Levies

9. At present, the collection, payment and recording of levies are handled by franking machines. The stamp physically imprinted on the outbound traveller's original receipt serves to prove the payment of levy by a travel agent. The provision of a stamped original receipt is one of the criteria governing a traveller's eligibility for ex gratia payments from the TICF under the existing Travel Agents Ordinance (Chapter 218).

10. With a view to facilitating travel agents' conduct of online business and payment of levies, the Board has earlier on undertaken a feasibility study and thereafter embarked on developing an E-levy System. For travel agents, the E-levy System is intended to be a choice in addition to franking machines and will bring about improvement in efficiency and effectiveness. For travellers, the E-levy System will provide the convenience of viewing the up-to-date levy status online.

11. The basic development of the E-levy System has now been completed. Pending the empowerment to use an electronic system for the payment of levies and the recording and proof of payment as proposed under Clause 149 of the Bill, it is anticipated that the E-levy System can be put into operation upon the full commencement of the new regulatory regime for the travel industry.

Sanctions against Malpractices

12. Under Clause 145 of the Bill, a claimant applying for an ex gratia payment commits an offence if he/she makes a false or misleading statement, provides false or misleading information or document; and he/she knows that, or is reckless as to whether, the statement, information or document is false or misleading. This helps to safeguard the TICF through sanctioning dishonest claimants, if any.

13. Clause 150(2) of the Bill empowers the TIA to prescribe offences for travel agents' malpractices relating to levy payments, which can cover non-payment, late payment and under-payment. Malpractices associated with levy payments not only affect the TICF, but also directly put the travellers' interests at risk by impacting their eligibility for ex gratia payments. The

Board sees a need to step up sanctions by criminalizing such malpractices in lieu of imposition of financial penalties administratively under the current regulatory regime.

Closing

14. The Board looks forward to the early passage of the Bill at the Legislative Council with a view to taking forward the various initiatives above in a timely manner under the new regulatory regime for the travel industry.

Travel Industry Compensation Fund Management Board
April 2017