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3 July 2017

Ms Shirley Chan
Clerk to Bills Committee on Travel Industry Bill
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Ms Chan,

Bills Committee on Travel Industry Bill
Hon Wu Chi-wai's Letter dated 29 May 2017

I refer to your letter dated 31 May 2017, enclosed with Hon Wu Chi-wai's letter dated 29 May 2017 to the Chairperson of the Bills Committee on Travel Industry Bill.

Our response to the issues raised in Hon Wu's letter is set out in Annex.

For any enquiries, please feel free to contact us.

Yours sincerely,

(Eddie Lee)
for Commissioner for Tourism

**Government's Response to Issues raised in
Hon Wu Chi-wai's letter dated 29 May 2017**

Enforcement of Travel Agents Ordinance (Cap. 218) at present
(in response to items 4 and 5 in the letter)

Under section 9 of the Travel Agents Ordinance (Cap. 218), no person shall carry on outbound or inbound travel agent business without a travel agent licence. Offenders upon conviction will face a maximum fine of \$100,000 and up to two years' imprisonment. Over the past five years (i.e. from 2013 to May 2017), the numbers of suspected cases involving the carrying on of travel agent business without a licence referred by the Travel Agents Registry to the Police are in Table 1.

Meaning of Carrying on Travel Agent Business
(in response to items 6 and 7 in the letter)

2. Hon Wu enquired whether clause 4 of the Travel Industry Bill (the Bill) covers more types of travel business activities than the Travel Agents Ordinance (Cap. 218) at present. In fact, the proposed coverage of the types of travel business activities under the Bill follows that under the Travel Agents Ordinance (Cap. 218) at present –

- (a) outbound travel business activities: to obtain for another person carriage on an outbound journey and accommodation at a place outside Hong Kong (as set out in section 4 of the Travel Agents Ordinance (Cap. 218) at present); and
- (b) inbound travel business activities: to obtain for a visitor to Hong Kong carriage on an inbound journey, accommodation in Hong Kong, and services providing sightseeing or visits to local places of interest, meals, shopping trips and relevant local transport (as set out in section 4A of the Travel Agents Ordinance (Cap. 218) and regulation 18 of the Travel Agents Regulations (Cap. 218 sub. leg. A) at present).

3. Clauses 4(2) and (3) of the Bill seek to increase the clarity of the target subject to our regulation all along. We understand that some organisations whose principal business is not carrying on travel business

may need to obtain travel services for others occasionally as an activity or arrangement ancillary to their principal business (e.g. a university in Hong Kong obtains for overseas scholars joining seminars in Hong Kong inbound carriage and accommodation in Hong Kong; a private company in Hong Kong obtains for its staff outbound carriage and accommodation at a place outside Hong Kong).

4. In determining whether a person fulfils the meaning of “carrying on travel agent business” under the Bill, the Travel Industry Authority (TIA) must examine and consider the totality of facts. Clauses 4(2) and (3) of the Bill seek to set out the relevant in-principle considerations. If a person’s principal business is not the carrying on of the business activities described in clause 4(1)(a) or (b), and the relevant business activity carried on by the person is ancillary to the person’s principal business, the person does not belong to “carrying on travel agent business”. In determining whether a business activity is ancillary to a person’s principal business, the TIA must have regard to all relevant matters, including the nature of the activity, the frequency of the activity, and the financial contribution of the activity towards the person. Each case needs to be determined based on the totality of its facts.

Regulation of On-line Travel Agents based outside Hong Kong *(in response to items 8 to 11 in the letter)*

5. As many outbound travellers of Hong Kong buy outbound travel products through on-line travel agents nowadays, we consider it necessary to strengthen the protection for these travellers. Moreover, from the past discussion and consultation conducted with the local travel trade, we understand the keen request from many trade members for regulating those who carry on travel agent business outside Hong Kong through on-line platforms. Therefore, the Bill proposes regulating these operators in addition to those carrying on outbound travel business in Hong Kong. We wish to point out that the Bill does not seek to regulate all operators outside Hong Kong, but only those who carry on outbound travel business activities (i.e. obtaining for another person carriage on an outbound journey and/or accommodation at a place outside Hong Kong) and actively market, whether in Hong Kong or from a place outside Hong Kong, such business activities to the public of Hong Kong.

6. To determine whether a person “actively markets” an outbound travel business activity, all relevant factors must be taken into account. In determining whether a person actively markets an outbound travel business

activity, the TIA will consider all relevant matters, including (but not limited to): whether there is a detailed marketing plan; whether the activity is extensively advertised via marketing means such as direct mailing, advertisements in local newspapers, broadcasting or other “push” technology over the Internet; whether the marketing is conducted in a concerted manner and executed according to a plan or schedule which indicates a continuing activity rather than an one-off exercise; whether the publicity material about an outbound travel product is targeted at the public of Hong Kong, e.g. written in Chinese and denominated in Hong Kong dollars. Indeed, the term “actively markets” is also used in section 115 of the Securities and Futures Ordinance (Cap. 571) at present.

7. According to our understanding, it is still at an early stage worldwide for a country/place to regulate persons based outside the country/place concerned that carry on travel agent business¹. However, in view of the growing popularity of selling travel products on-line, we consider it necessary to take a step forward by bringing under the regulation of the Bill those on-line travel agents that carry on outbound travel business activities targeted at the public of Hong Kong. We understand that the business or physical location of some on-line travel agents is outside Hong Kong. Notwithstanding this, the Bill at least provides a solid legal basis for the TIA to follow up suspected offence cases involving those travel agents through complaints received or based on reasonable suspicion, and exercise the powers of investigation provided for in the Bill as far as reasonably practicable in Hong Kong in order to investigate whether the persons involved have committed any relevant offence under the Bill. The TIA will also strive to follow up with the relevant regulatory body and law enforcement agency of the country/place concerned.

8. More importantly, the TIA will 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. to ensure that tourists’ interests can be appropriately safeguarded by the Bill in aspects including regulation on the activities of the travel agents and protection from the Travel Industry Compensation

¹ To our knowledge, under §17550.20 of the Seller of Travel Law for regulating sellers of travel in the State of California from the United States of America, in addition to those sellers of traveller located in the state, any sellers of travel who solicit prospective purchasers located in the state are also brought under regulation. It is understood that the relevant law also applies to sellers of travel on-line.

Fund for eligible travel services².

Impact on Travel Agents Adopting New Mode of Operation
(in response to items 1 to 3 and 12 in the letter)

9. In the course of formulating the Bill, the Government has maintained liaison with different stakeholders, including licensed travel agents that carry on business with physical presence and those on-line. Under the Travel Agents Ordinance (Cap. 218) at present, all persons who carry on travel agent business in Hong Kong, whether by traditional means with physical presence or on-line, must hold a travel agent licence.

10. We do not have any statistics specifically on “start-ups/new entrepreneurs providing travel services on-line”. Nonetheless, based on the information of the Travel Agents Registry, there are on-line operators amongst newly established licensed travel agents. For instance, over the past year (i.e. June 2016 to May 2017), there were 83 newly established travel agents, of which over 40% indicated when making licence applications that they had a webpage. Insofar as the nature of business is concerned, out of these 83 newly established travel agents, 17 indicated that they carried on inbound travel business, 43 outbound travel business, and the remaining 23 both inbound and outbound travel business. Upon the full commencement of the Bill, all travel agents carrying on business in Hong Kong with valid licences, including those recently established ones mentioned above with valid licences, will smoothly migrate to the new regulatory regime by then and will be required to hold travel agent licences for continuing to carry on business.

11. Under the new regulatory regime, whether a person needs to obtain a travel agent licence, whether carrying on business by traditional means with physical presence or on-line, will be determined in accordance with the meaning in clause 4 of the Bill. Our preliminary analysis on the different types of services mentioned in Hon Wu’s letter is at **Table 2**.

12. We need to emphasise that, as in the case of other industries, upon the advancement of information technology, new modes of operation will be introduced in the travel industry. Nevertheless, as operation of travel business involves the interests of visitors/travellers and the overall reputation of Hong Kong’s travel industry, it is necessary to subject all the operators, regardless of their mode of operation (traditional one with

² See clause 139 of the Bill.

physical presence or on-line), to appropriate regulation. Moreover, we need to maintain a fair business environment for those carrying on business with physical presence and those on-line. We consider that the interests of visitors/travellers, overall reputation of the travel industry and fair business environment for the industry should not be adversely affected as a result of information technology development.

Tourism Commission
Commerce and Economic Development Bureau
July 2017

Table 1

**Numbers of Suspected Cases involving
Carrying on Travel Agent Business without a Licence
referred by Travel Agents Registry to the Police**

Number of Cases	2013	2014	2015	2016	2017 (as at May)
Suspected cases referred by the Travel Agents Registry to the Police	48 (26)	59 (35)	60 (37)	73 (57)	22 (11)
Cases of prosecution by the Police out of the suspected cases	2 (1)	4 (3)	2 (1)	3 (3)	-
Cases of conviction by the Court out of the cases of prosecution	2 (1)	4 (3)	2 (1)	2 (2)	-
Sentence by the Court in the respective cases of conviction as mentioned above	<ul style="list-style-type: none"> • One person was fined \$800 • One person was fined \$5,000 	<ul style="list-style-type: none"> • One person was fined \$800 • One person was fined \$1,000 • One person was fined \$2,000 	<ul style="list-style-type: none"> • One person was fined \$300 • Two persons were fined \$2,000 each 	<ul style="list-style-type: none"> • One person was fined \$2,000 • One person was fined \$3,000 and bound over to be of good behaviour for 	-

Number of Cases	2013	2014	2015	2016	2017 (as at May)
		<ul style="list-style-type: none"> One person was fined \$2,000, and two persons were sentenced to two months' imprisonment (suspended for 18 months) 		12 months	

Note:

The figures in the brackets in the table above show the numbers of cases involving business with a webpage or social media account. We do not have figures specific to “companies providing travel services on-line”.

Table 2

**Preliminary Analysis on the Need to
Obtain Travel Agent Licences for the Different Types of Services
mentioned in Hon Wu Chi-wai's Letter**

Type and Content of Service	Need to Obtain Travel Agent Licence?
1. On-line platform that provides information about different travel products for outbound travellers of Hong Kong	If a person merely sets up an on-line platform to provide information about different travel products (e.g. price comparison on air tickets and hotel rooms) for outbound travellers of Hong Kong and is not involved in any activity of carrying on travel agent business as set out in clause 4 of the Bill, the person will not be required to obtain a travel agent licence.
2. On-line platform that provides tourist guides-matching services for visitors to Hong Kong	If a "tourist guide" solicits business on an on-line platform by obtaining for visitors to Hong Kong any of the inbound travel services described in clause 4(1)(a)(iii) to (v) of the Bill and providing guiding services for the visitors, he/she will be required to obtain a travel agent licence and a tourist guide licence. Nonetheless, if a person merely sets up an on-line platform by providing for visitors to Hong Kong matching services in the form of referring them to licensed travel agents, and is not involved in any activity of carrying on travel agent business as set out in clause 4 of the Bill, the person will not be required to obtain a travel agent licence.
3. Mobile application or on-line platform that provides information to assist in or facilitate the itinerary planning of outbound travellers of	If a person merely sets up a mobile application or on-line platform to assist in or facilitate travellers/visitors' itinerary planning and is not involved in any activity of carrying on travel agent business as set out in clause 4 of the Bill, the person will

Type and Content of Service	Need to Obtain Travel Agent Licence?
Hong Kong/visitors to Hong Kong	not be required to obtain a travel agent licence.
4. On-line platform that provides the services of obtaining for outbound travellers of Hong Kong carriage on an outbound journey	<p>If a person sets up an on-line platform to obtain for outbound travellers of Hong Kong carriage on a journey commencing in Hong Kong and then taking place mainly outside Hong Kong (e.g. air tickets), and carries on such business activities <u>in</u> Hong Kong, he/she will be required to obtain a travel agent licence. If a person carries on the aforementioned business activities in a place <u>outside</u> Hong Kong <u>and</u> actively markets, in Hong Kong or from a place outside Hong Kong, such business activities to the public of Hong Kong, he/she will be required to obtain a travel agent licence.</p> <p>Nonetheless, if the person is the operator of the transport concerned, irrespective of whether the business activity is carried on in Hong Kong or a place outside Hong Kong, he/she will not be required to obtain a travel agent licence.</p> <p>As regards carriage involving <u>merely</u> a place outside Hong Kong (e.g. rental service of vehicles within the place concerned), any person who obtains the service concerned for outbound travellers of Hong Kong will not be required to obtain a travel agent licence.</p>
5. Airline that provides air tickets and hotel room booking service to outbound travellers of Hong Kong	Depending on the facts and circumstance of each case, if the principal business of an airline is air travel service, and provision of hotel room booking service is only ancillary to the principal business of the company, then the company may not belong to carrying on travel agent business under clause 4(2) and (3) of the Bill and

Type and Content of Service	Need to Obtain Travel Agent Licence?
	<p>accordingly will not be required to obtain a travel agent licence.</p> <p>On the other hand, if an airline establishes a company in Hong Kong, and the principal business of that company is provision of air tickets for an outbound journey commencing in Hong Kong and room booking service with regard to hotels outside Hong Kong, then that company will be required to obtain a travel agent licence.</p>

Note:

The above is a preliminary analysis only. For each case, all relevant matters have to be taken into account and the determination has to be based on the totality of facts.