

**Government's Response to the Matters raised
at the Meeting of Bills Committee on Travel Industry Bill
held on 21 December 2017**

Purpose

This paper sets out the Government's response to the matters raised at the meeting of the Bills Committee on Travel Industry Bill (the Bill) held on 21 December 2017.

Matters on Carrying on Travel Agent Business

2. Clause 4 provides for the meaning of "carrying on travel agent business". Clause 4(1) sets out the business activities that belong to "carrying on travel agent business". Clause 4(2) and (3) sets out the relevant in-principle considerations. If the principal business of a company that provides services with tourism elements (e.g. overseas wedding service) to customers is not the business activity described in clause 4(1)(a) or (b), and the relevant business activity carried on by the company is ancillary to its principal business, then, under clause 4(2), the company is not considered "carrying on travel agent business" and will not be required to hold a travel agent licence.

3. If the company engages in co-operation with a travel agent in such a manner that its customer can, at the same time, buy from the travel agent the service(s) of the business activity(ies) mentioned in clause 4(1)(a)(i) and/or clause (4)(1)(a)(ii), and the travel agent gives the customer through the company the information related to the service(s) that it obtains for him/her, then the travel agent will be required to hold a travel agent licence and the company will not be required to hold a travel agent licence. In general, the travel agent processes the transaction at the premises specified in the licence and gives the customer through the company the information related to the service(s) that it obtains for him/her. The travel agent will not contravene clause 6(2)(a).

4. Nonetheless, as we pointed out in paragraph 35 of LC Paper No. CB(4)257/17-18(02), the Government understands that new modes of operation may be introduced in the travel industry, as in other industries, upon the advances of information technology. In this connection, the Government has re-examined the requirements related to the issue and renewal of travel agent licences in the Bill, with a view to ensuring that suitable protection can be accorded to tourists' interests whilst travel agents' different modes of operation can be reasonably catered for.

5. On one hand, the Bill, as it now stands, has made reference to the requirements under the existing regulatory regime, i.e. the factors for considering whether an applicant is suitable to hold a licence under the Travel Agents Ordinance (Cap. 218)¹, as well as the existing requirements of the Travel Industry Council of Hong Kong (TIC) including –

- (a) requirement that the premises is suitable for travel agent business: the premises must be within separate and independent commercial premises/buildings and be easily and directly accessible to the general public (herewith called “open business location”);
- (b) capital requirement: an applicant must have capital of not less than \$500,000 (herewith called “basic capital requirement”) and, for each additional premises, additional capital of not less than \$250,000 (herewith called “branch capital requirement”); and
- (c) staffing requirement: at each premises, there must be at least one manager with a minimum of two consecutive years’ experience of the travel industry within five years before the relevant application, and one full-time staff member.

On the other hand, in view of the general consensus reached during the public consultation in 2011, the Bill, as it now stands, has introduced certain new requirements, including requiring a licence applicant to deposit guarantee money with the Travel Industry Authority (TIA) and appoint an authorized representative, with a view to strengthening travel agents’ commitment to carrying on business, as well as additional factors for considering whether an applicant for a travel agent licence and its renewal is suitable to hold a licence².

6. We understand that, upon rapid technological advances, consumers nowadays do not just buy travel products at traditional physical business locations of travel agents, and it is also increasingly common for consumers to enter into transactions with travel agents on-line. After thorough consideration, to ensure that the Bill moves with the times and can reasonably cater for travel

¹ Such factors are mainly concerned with the applicant’s financial capability (e.g. any bankruptcy/winding-up proceedings), and conviction record (if any) of any offences involving fraudulent, corrupt or dishonest acts or under the Travel Agents Ordinance (Cap. 218).

² Such additional factors include the conviction record (if any) of any offence involving violence or under the Trade Descriptions Ordinance (Cap. 362) and record of compliance with the regulatory requirements of the Travel Industry Council of Hong Kong. If the licence applicant is a company, TIA will also have regard to the compliance records of its associate companies (i.e. a subsidiary of the company, a holding company of the company, and a subsidiary of the holding company).

agents' different modes of operation, we propose that it is not necessary to impose the following three requirements on travel agent licence applicants in the Bill –

- (a) requirement that the premises is suitable for travel agent business (see clauses 8(2)(a)(ii) and 10(2)(b)(i));
- (b) staffing requirement (see clauses 8(2)(a)(vii) and 10(2)(b)(iii)); and
- (c) branch capital requirement (see clause 10(2)(b)(ii)).

7. Our proposed revised arrangements are summarised below –

- (a) any travel agent licence applicant can choose whether to carry on travel agent business at a local open business location, and must inform TIA in the application. Irrespective of whether to plan to carry on business at a local open business location, each applicant must fulfil the suitability requirement, basic capital requirement, guarantee money requirement and authorized representative requirement (see clause 8(2)(a)(iii), (iv), (v) and (vi));
- (b) after being issued a licence, if a licensee carrying on travel agent business at a local open business location carries on travel agent business at any other local open business location than the premises specified in the licence, it must apply to TIA for its prior approval;
- (c) if a travel agent licence applicant intends to carry on travel agent business at a local business location that is not open to the public (herewith called “non-local open business location”) (e.g. to carry on travel agent business by means of a website at a premises that is not open to the public), the applicant must provide a correspondence address in the application. The address will be contained in the register of licensed travel agents maintained by TIA for the purposes of identification and communication. After being issued a licence, if a licensee changes the address concerned, it must apply to TIA for its prior approval;
- (d) as regards provisions related to licensees' premises, the requirement that travel agent business can only be carried on at the premises specified in the licence (see clause 6(2)(a)) and requirement to display the licence at the premises specified in the licence (see clause 36) will not be applicable to licensees that carry on travel agent business at non-local open business locations;

- (e) after being issued a licence, if a licensee changes its mode of operation from carrying on business at a non-local open business location to doing so at a local open business location, it must apply to TIA for its prior approval, and vice versa; and
- (f) if a travel agent (whether carrying on travel agent business at a local open business location or not) carries on travel agent business by means of a website or any other electronic means, it must apply to TIA for its prior approval. After being approved, it must display its licence number on the website, or on the other electronic means, for the purpose of identification.

Even though a Travel Agent has Fully Complied with the Administrative Measure involving Levy Payment, whether it will Commit the Offence of Misleading Omission under Trade Descriptions Ordinance (Cap. 362), or whether its Customer can Institute Civil Proceedings, for Non-payment of Levy

8. As we pointed out in paragraph 22 of LC Paper No. CB(4)257/17-18(02), under the new regulatory regime, if a travel agent has not paid a levy in respect of the outbound travel services and arrangements relating to the same tour that are bought at different times by a customer, but there is proof showing that the travel agent has complied with the administrative measure formulated by TIA as set out in paragraph 20 of the paper, the travel agent would be considered as having taken reasonable steps in avoiding contravening the levy requirement and would not be subject to disciplinary action.

9. At the meeting, a member asked whether the travel agent concerned will commit the offence of misleading omission under the Trade Descriptions Ordinance (Cap. 362). Under section 13E(2) of the Ordinance, a commercial practice is a misleading omission if, in its factual context, taking account of the relevant matters³, (a) it omits material information⁴; (b) it hides material

³ Under the Trade Descriptions Ordinance (Cap. 362), such relevant matters are: (a) all the features and circumstances of the commercial practice; (b) the limitations of the medium used to communicate the practice (including limitations of space or time); and (c) if the medium used to communicate the commercial practice imposes limitations of space or time, any measures taken by the trader to make the information available to consumers by other means.

⁴ Under the Trade Descriptions Ordinance (Cap. 362), “important information” means, in every case, (a) the information that the average consumer needs, according to the context, to make an informed transactional decision; or (b) any other information required in relation to a commercial communication under any other enactment.

information; (c) it provides material information in a manner that is unclear, unintelligible, ambiguous or untimely; or (d) it fails to identify its commercial intent, unless this is already apparent from the context, and as a result it causes, or is likely to cause, the average consumer to make a transactional decision that the consumer would not have made otherwise.

10. If a travel agent has set out the standardised wording in the relevant contract or invoice in full compliance with the administrative measure, and it can provide proof that its non-payment of a levy to TIA is due to the fact that the customer has not requested it to combine the outbound services and/or arrangements separately bought but relating to the same tour into an outbound package, this will not constitute the commercial practice of misleading omission under the Trade Descriptions Ordinance (Cap. 362). Obviously, every case is unique. Whether an offence under the Trade Descriptions Ordinance (Cap. 362) is committed should be determined according to the facts and evidence of each case. As the main enforcement agency of the Trade Descriptions Ordinance (Cap. 362), the Customs and Excise Department will examine in detail the circumstances and evidence of each case and take appropriate follow-up action.

11. Furthermore, at the meeting, a member asked whether the customer can institute civil proceedings against the travel agent concerned. We consider that, in general, the fact that a travel agent does not pay a levy to TIA as a result of the customer not having requested the travel agent to combine the outbound services and/or arrangements relating to the same tour into an outbound package does not constitute a ground on which the consumer can make a civil claim against the travel agent. Obviously, every case is unique. Whether a customer can file a civil claim against a travel agent in any particular case should be determined according to the facts and circumstances of each case. A generalised conclusion cannot be drawn readily.

Whether a Travel Agent will be Required to Pay Levy if it has Obtained for an Outbound Traveller Certain Outbound Travel Services and/or Arrangements relating to the Same Tour (i.e. Outbound Package) but it has not Required the Traveller to Pay any Fee for the Outbound Package

12. Under the Bill, a travel agent will be required to pay levies in respect of any every outbound fare received, irrespective of whether the traveller pays the outbound fare to the travel agent before or after consuming the outbound package. As we pointed out in paragraph 26 of LC Paper No. CB(4)257/17-18(02), that a travel agent collects outbound fares from consumers only after tour completion is its commercial decision. Nonetheless, the

Government will recommend that TIC and, in future, TIA should, through administrative measures, require travel agents to clearly inform consumers of the scope of protection by the Travel Industry Compensation Fund and relevant terms and conditions (including the legal responsibility of the travel agent to pay Fund levy on every outbound fare received), and suggest travel agents to consider collecting part of the outbound fares from the outbound travellers before the tour commences, so that the outbound travellers can be protected by the Travel Industry Compensation Fund.

Subsidiary Legislation that the Bill Empowers Secretary for Commerce and Economic Development and TIA to Make

13. The provisions of the Bill that empower the Secretary for Commerce and Economic Development and TIA to make subsidiary legislation are at Annex.

Review of the Formulations “An Individual who is Engaged in the Business of a Licensed Travel Agent” and “An Individual who is Engaged in the Business of a Holder of a Previous Licence” in the Definition of “Trade Member” under the Bill

14. At the meeting, some Members and Assistant Legal Adviser suggested reviewing the formulations in paragraph (a) “an individual who is engaged in the business of a licensed travel agent” and paragraph (d) “an individual who is engaged in the business of a holder of a previous licence” in the definition of “trade member” under the Bill. The formulations seek to express that the members concerned are appointed ad personam, and that the appointments are based on the fact that they are engaged in travel agent business under the existing Travel Agents Ordinance (Cap. 218) and future Travel Industry Ordinance. The formulations have made reference to those in the provisions on the appointment of trade members under the Property Management Services Ordinance (Cap. 626) and Estate Agents Ordinance (Cap. 511)⁵. Along the established principle of appointment of members to different trade-related statutory regulatory bodies, the Chief Executive will make appointments on the basis of the merit of the individuals concerned. In the process, the Chief Executive will take into account the candidate’s ability, expertise, experience, integrity and commitment to public service, with due regard to the functions and

⁵ See the formulation “individuals who are engaged in property management services” in section 2(2)(a) of Schedule 3 under the Property Management Services Ordinance (Cap. 626), and the formulation “individuals who do estate agency work” in section 3(1)(c)(ii) of the Schedule under the Estate Agents Ordinance (Cap. 511).

nature of business of TIA as well as the statutory provisions of the future Travel Industry Ordinance.

15. The defined meaning of “previous licence” in the formulation “an individual who is engaged in the business of a holder of a previous licence” is in clause 2(1), i.e. “the licence granted under the repealed Ordinance”. The defined meaning of “repealed Ordinance” is likewise in clause 2(1), i.e. “the Travel Agents Ordinance (Cap. 218) repealed by section 3 of Schedule 11”.

Exemption Provision under Travel Agents Ordinance (Cap. 218)

16. Under section 3 of the Travel Agents Ordinance (Cap. 218), the Registrar of Travel Agents is empowered to exempt any person or any class of persons from the operation of the Ordinance. The Registrar of Travel Agents has not granted any such exemption by way of subsidiary legislation.

**Tourism Commission
Commerce and Economic Development Bureau
January 2018**

**Overview of Provisions that Empower
Secretary for Commerce and Economic Development Bureau and
TIA to Make Subsidiary Legislation**

A. To be made by Secretary for Commerce and Economic Development

Clause	Extracts of Contents
1 Short title and commence- ment	(2) This Ordinance comes into operation on a day to be appointed by the Secretary for Commerce and Economic Development by notice published in the Gazette.
138 Regulations for Part 8	The Secretary may make regulations for one or more of the following purposes— (a) to prescribe the procedures for the hearing of appeals under this Part; (b) to provide generally for the better carrying out of the purposes of this Part.
146 Other payments	(2) The Authority may— (a) set aside a certain percentage of the Compensation Fund as specified by the Secretary for supporting the continuous development of the travel industry; and (b) control the funds so set aside. (3) For the purposes of subsection (2), the Secretary may, by notice published in the Gazette, specify a percentage of the Compensation Fund as the maximum funds that the Authority may set aside to support the continuous development of the travel industry.
147 Authority levy	(1) A licensed travel agent is liable to pay to the Authority, in respect of every outbound fare received by the travel agent, a levy (<i>Authority levy</i>). (2) The amount of the Authority levy is to be ascertained by

Clause	Extracts of Contents
	<p>reference to a specified percentage of the outbound fare.</p> <p>(3) The Secretary may, by notice published in the Gazette, specify the percentage.</p> <p>(4) The Authority levy must be paid to the Authority in the way and at the time decided by the Authority.</p>
148 Fund levy	<p>(1) A licensed travel agent is liable to contribute to the Compensation Fund by way of levy (<i>Fund levy</i>) in respect of every outbound fare received by the travel agent.</p> <p>(2) The amount of the Fund levy is to be ascertained by reference to a specified percentage of the outbound fare.</p> <p>(3) The Secretary may, by notice published in the Gazette, specify the percentage.</p> <p>(4) The Fund levy must be paid to the Authority in the way and at the time decided by the Authority.</p>
170 Amendment of Schedules	The Secretary may, by notice published in the Gazette, amend Schedules 1, 2, 3, 4, 5, 6, 7, 8 and 9.

B. To be made by TIA

Clause	Extracts of Contents
3 Exemption	The Authority may, by notice published in the Gazette, exempt a person or class of persons from the operation of this Ordinance subject to any conditions or limitations specified in the notice.
150 Regulations for Part 9	<p>(1) The Authority may, after consulting the Secretary, make regulations for one or more of the following purposes—</p> <p>(a) to prescribe the circumstances in which—</p> <p>(i) an application for an ex gratia payment may be made by or in respect of an outbound traveller; and</p> <p>(ii) an ex gratia payment may be made to or in</p>

Clause	Extracts of Contents
	<p style="text-align: center;">respect of an outbound traveller;</p> <ul style="list-style-type: none"> (b) to prescribe the maximum amount or rate payable as an ex gratia payment to or in respect of an outbound traveller; (c) to prescribe the operation and details of a system for the collection, payment and recording of levies, including an electronic system. <p>(2) Regulations made for the purposes of subsection (1)(c) may prescribe offences for contravention of the regulations, and may provide for the imposition in respect of such an offence of a fine not exceeding \$200,000.⁶</p> <p>(3) The Authority may also make regulations for one or more of the following purposes—</p> <ul style="list-style-type: none"> (a) to prescribe the way in which an application for an ex gratia payment is to be made; (b) to prescribe a period within which an application for an ex gratia payment is to be made; (c) to enable the Authority— <ul style="list-style-type: none"> (i) to submit an application for an ex gratia payment as a proof of debt in any bankruptcy or winding up proceedings; and (ii) to require the assignment of an outbound traveller’s rights of action as a pre-condition for the making of an ex gratia payment; (d) to provide generally for the better carrying out of the purposes of this Part. <p>(4) For the purposes of subsection (3), the regulations may provide that—</p> <ul style="list-style-type: none"> (a) an authorization to apply for an ex gratia payment in respect of an outbound traveller will survive the traveller’s subsequent death or mental incapacity within the meaning of section 2(1) of the Mental

⁶ As we pointed out in paragraph 23 of LC Paper No. CB(4)257/17-18(02), over the past 10 years (i.e. 2007 to 2016), there were 28 cases of contravention of the levy requirement as established by TIC, suggesting that a majority of travel agents have been compliant all along. If the trade continues to be compliant, the Government believes that TIA will not make contravention of the levy requirement an offence. The Government will consider making amendment to the Bill.

Clause	Extracts of Contents
	<p>Health Ordinance (Cap. 136); and</p> <p>(b) if—</p> <p>(i) an application for an ex gratia payment in the case of a loss suffered in respect of an accident is made in respect of an outbound traveller pursuant to an authorization; and</p> <p>(ii) the application is accepted,</p> <p>the ex gratia payment may be made to any person who has incurred relevant expenses in respect of the traveller, even though the traveller has died or is mentally incapacitated within the meaning of section 2(1) of the Mental Health Ordinance (Cap. 136).</p> <p>(5) For the purposes of subsection (3)(a), the regulations may provide that an application for an ex gratia payment must be accompanied by proof of levy payment.</p>
<p>164 Regulations by Authority</p>	<p>The Authority may make regulations for one or more of the following purposes—</p> <p>(a) to prescribe the registration fees payable in relation to a Mainland inbound tour group, and the way in which the fees are to be paid to the Authority;</p> <p>(b) to prescribe the period within which an individual is not eligible to be a licensed travel agent’s authorized representative;</p> <p>(c) to prescribe the information about a tour group to be displayed by a licensed travel agent on the vehicle arranged for transporting the tour group, and the way in which the travel agent is to display the information;</p> <p>(d) to prescribe the fees payable in an application—</p> <p>(i) for a licence or branch licence;</p> <p>(ii) for the renewal of a licence or branch licence;</p> <p>(iii) for a duplicate of a licence or branch licence;</p>

Clause	Extracts of Contents
	<p style="text-align: center;">or</p> <ul style="list-style-type: none"> (iv) for amendment of any particulars contained in a licence or branch licence; (e) to prescribe the fees payable— <ul style="list-style-type: none"> (i) for the issue or renewal of a licence or branch licence; (ii) for inspecting the register of licences; or (iii) for obtaining a certified copy of particulars contained in the register of licences; (f) to prescribe the conditions that may be imposed on a licence or branch licence, or a renewed licence or renewed branch licence; (g) to prescribe the period within which an application for a licence or branch licence, or the renewal of a licence or branch licence, must not be made again; (h) to prescribe the requirements that a licensee must comply with; (i) to prescribe the particulars and the way mentioned in section 27(c) or 57; (j) to prescribe the procedures to be followed by the disciplinary committee and an inquiry committee in conducting meetings; (k) to prescribe the procedures to be followed by the disciplinary committee in dealing with minor contraventions by licensees of a requirement in this Ordinance; (l) to provide generally for the better carrying out of the purposes of Parts 2, 3, 4, 5, 6 and 7.