

**Government's Response to the Matters raised
at the Meeting of Bills Committee on Travel Industry Bill
held on 9 February 2018**

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 9 February 2018.

Requirement to Deposit Guarantee Money

2. If the holder of a licence issued by the Registrar of Travel Agents that is valid immediately before the full commencement of the Travel Industry Ordinance (the Ordinance) (i.e. a person taken to be a licensed travel agent under section 3 of Schedule 10 to the Bill) is required to deposit guarantee money with the Travel Industry Authority (TIA), the guarantee money is, under clauses 22(9) and 23(6), to be in the form of bank guarantee across the board. The bank guarantee is to be issued by an authorized institution within the meaning of section 2(1) of the Banking Ordinance (Cap. 155) and in terms acceptable to TIA, which include the purpose of the guarantee money (i.e. to guarantee the settlement of financial penalties imposed on the travel agent under the Ordinance). As we pointed out at the meeting, the general procedures by which the travel agents concerned deposit guarantee money with TIA, including the period in which the guarantee money is to be deposited, will be formulated by TIA administratively.

Requirement to Appoint Authorized Representative

3. A travel agent is required to propose, in accordance with the requirements of the Bill, an individual to be its authorized representative (AR) when applying for a travel agent licence and (if it is issued with a travel agent licence) when applying for the renewal of the licence. Clause 27 stipulates the duties of an AR, namely: (a) to ensure adequate supervision of the operation, management and control of the travel agent for protecting the interest and safety of the customers of the travel agent; (b) to ensure that the operation of the travel agent is in compliance with all of the requirements in the Ordinance; and (c) to inform TIA of any changes in the prescribed

particulars¹ of the travel agent in the prescribed way (i.e. prescribed by way of subsidiary legislation).

4. If a licensed travel agent commits an offence under the Ordinance, the travel agent bears the liability. In addition, if the travel agent is a company, under clause 166(1), if it is proved that the offence was committed with the consent or connivance of its AR (whether as a director, manager, company secretary or controller of the company), or is attributable to any neglect on the part of the AR, the AR also commits the offence. If the travel agent is a firm, under clause 166(3), if it is proved that the offence was committed with the consent or connivance of its AR (whether as a partner in the firm or a person concerned in the management of the firm), or is attributable to any neglect on the part of the AR, the AR also commits the offence.

5. A Member at the meeting opined that a company secretary is not suitable to be the AR of a travel agent. Under clause 25(1)(b)(i), if the person applying for a travel agent licence or renewing a travel agent licence is a company, that person can propose to TIA that its director, manager, company secretary or controller serve as the AR. This arrangement aims to require ARs to come from the management personnel or controllers of the travel agents concerned so as to have a general understanding of and commitment to the travel agent business concerned. When formulating the requirement, we have made reference to the interpretation of “officer” under the Companies Ordinance (Cap. 622). According to the interpretation, besides directors and managers, company secretaries are also officers. We consider it reasonable to provide flexibility for companies applying for licences and renewing licences by allowing them to choose their directors, managers, company secretaries or controllers to be ARs.

6. Another Member at the meeting proposed relaxing the requirement of management experience in the travel industry imposed on ARs by the Bill, with a view to facilitating the entry of persons who intend to carry on travel agent business into the market. Under clause 25(1)(d), each AR has to meet the qualification requirement set out in Schedule 7, namely: (a) completion of Form 5 education under the 5-year secondary academic structure, or Senior Secondary 3 education under the New Senior Secondary academic structure (or equivalent), and possession of at least 5 years of management experience in the travel industry; or (b) possession of at least 10 years of management experience in the travel industry. After all, the AR of each travel agent is to

¹ The particulars are factors on whether the travel agent is suitable to hold a licence, and will be prescribed by way of subsidiary legislation.

ensure adequate supervision of the operation, management and control of the agent, as well as to ensure that the operation of the agent is in compliance with all of the requirements in the Ordinance, we consider it necessary to ensure that the candidates concerned possess a general understanding of and management experience about the operation of the travel industry. Permitting travel agents to carry on business in the absence of persons with certain management experience in the travel industry will not be conducive to safeguarding consumers (no matter inbound tourists or outbound travellers) against unscrupulous trade practices.

7. In fact, we have preserved flexibility when formulating the requirement on candidates for ARs. If a person who intends to carry on travel agent business meets the qualification requirement (including the years of management experience in the travel industry) as set out in the Bill, or his/her business partner (e.g. in the form of partnership) does so, the person can choose himself/herself or his/her business partner to be the AR. Alternatively, the person can identify anyone who meets the qualification requirement in the market to be the AR. Considering that the travel industry has been a pillar industry of Hong Kong for years, there should be a number of personnel with management experience in the travel industry that are qualified to be ARs in the market. We believe that the qualification requirement for ARs as set out in the Bill has suitably taken into account the regulatory needs and operation of the trade, without deterring any persons who intend to carry on travel agent business from entering the sector.

Tourism Commission
Commerce and Economic Development Bureau
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