

**Government's Response to the Matters raised
at the Meeting of Bills Committee on Travel Industry Bill
held on 19 March 2018, as well as in the Letters from
Hong Kong Tourism Association and Hon Lau Kwok-fan to
Committee Chairperson**

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 19 March 2018, as well as in the letters from the Hong Kong Tourism Association and Hon Lau Kwok-fan to the Committee Chairperson.

Content of Register (clause 64)

2. Noting Assistant Legal Adviser's views given at the meeting, we will amend clause 64(2) and (3) so as to include the licence numbers of licensees. Furthermore, as we mentioned at the meeting, along the direction of amendments as set out in paragraph 7 of LC Paper No. CB(4)468/17-18(02), we will amend the formulation of "the address of the premises specified in the licence" in clause 62(2)(a)(iii). If a licensee is licensed to carry on travel agent business in premises open to the public in Hong Kong, the register must state the address of each of such premises open to the public at which the licensee may carry on travel agent business; otherwise, the register must state the correspondence address of the licensee.

Title of "行政總裁" (see, for instance, clauses 65 and 66)

3. A Member at the meeting enquired whether the title of "行政總裁" (see, for instance, clauses 65 and 66) in the Bill is used in other ordinances. In this regard, the same title can be found in other ordinances, such as the Estate Agents Ordinance (Cap. 511), Securities and Futures Ordinance (Cap. 571) and Property Management Services Ordinance (Cap. 626), etc.

Retention of Property (clause 77)

4. A Member at the meeting enquired whether it is necessary to amend clause 77 such that an investigator of the Travel Industry Authority (TIA) can

retain valuable property only with a warrant issued by the magistrate.

5. Based on the actual circumstances of each case, TIA's investigator will exercise different investigation powers under the Bill to conduct an investigation, including the power to enter and search premises. Where necessary, the investigator will retain the property as obtained during the investigation so as to enable the investigator to conduct the investigation effectively and collect the necessary evidence. Whether to exercise the power concerned is not contingent upon the value of the property. Clause 77 regulates the duration in which an investigator can retain property (whether obtained under a warrant issued under clause 76) as obtained during an investigation, such that the retention of the property by the investigator is subject to appropriate checks and balances. On the other hand, the purpose of applying for a warrant from the magistrate under clauses 75(1)(a) and 76 is to subject the investigator's exercise of the power to enter and search premises to appropriate checks and balances, such that the relevant parties' premises are safeguarded against arbitrary or unlawful search. Taking the foregoing into account, we consider it unnecessary to further regulate that an investigator can retain valuable property only with a warrant issued by the magistrate. In fact, clause 77, together with clause 78, is not unique to the Bill. Similar provisions can be found in the Competition Ordinance (Cap. 619) (see sections 56 and 57).

Prohibition on Leaving Hong Kong (clause 79)

6. Some Members at the meeting enquired about the enforcement of the provisions about prohibition on leaving Hong Kong under the Bill, including those relating to visitors to Hong Kong.

7. Under clause 79(1) and (2), if, in relation to an investigation conducted under clause 72, an investigator reasonably believes that (a) a person is likely to be able to assist the investigator in relation to the investigation, and (b) the person intends to leave Hong Kong, or has left Hong Kong to reside elsewhere, the investigator may apply to a magistrate for an order prohibiting the person from leaving Hong Kong without first assisting the investigator in relation to the investigation.

8. As the Bill covers more regulatory targets and has a wider scope than the existing Travel Agents Ordinance (Cap. 218), and the nature and complexity of each case of investigation differ, TIA needs to be accorded with necessary power to address unforeseeable circumstances under which it

can make a well-founded application for an order prohibiting a person from leaving Hong Kong. Therefore, clause 79(1) is not confined to persons associated with the business of a travel agent as in section 29 of the Travel Agents Ordinance. Furthermore, clause 79(3) clearly sets a threshold for issuing an order to prohibit the person concerned from leaving Hong Kong, namely that the magistrate needs to be satisfied that: (a) the investigator's application is well-founded; **and** (b) it is in the public interest to ensure that the person does not leave Hong Kong, or if the person having left, and returned to, Hong Kong, does not leave again, without first assisting the investigator in relation to the investigation. TIA's investigator will need to have sufficient justifications and establish that the measure is in the public interest before applying from the magistrate for an order to prohibit any person from leaving Hong Kong without first assisting the investigator in relation to an investigation. TIA's investigator cannot rashly apply for an order to prohibit a visitor to Hong Kong or anyone else from leaving Hong Kong.

9. Details about the enforcement of a prohibition order can be found in clause 79(3) to (7), which include that the magistrate must, as soon as practicable after the prohibition order is made (i.e. the order is made by the magistrate against the subject person, as well as issued to the Director of Immigration and the Commissioner of Police, directing them to prevent the person from leaving Hong Kong without first assisting the investigator in relation to an investigation), serve a copy of it on the subject person, if the person can be found. Generally speaking, the prohibition order will continue in force until the subject person has given assistance to the investigator (i.e. by producing relevant information or document, or giving relevant evidence) in relation to the investigation. The manner in which the subject person provides assistance in relation to the investigation, and the arrangements by TIA to cater for the subject person's stay in Hong Kong, will be subject to the actual circumstances of each case of investigation.

Privileges and Immunities (clause 85)

10. A Member at the meeting enquired whether, under certain circumstances (e.g. when TIA's investigator exercises the power under clause 74 or 79), the privileges and immunities under clause 85 could be used by a person as the basis for not complying with the relevant requirements.

11. Under Divisions 2 and 3 in Part 6 of the Bill, inspectors and investigators are vested with inspection and investigation powers respectively,

which include requiring relevant persons to provide information or documents. Division 4 in Part 6 states that a person who, without reasonable excuse, fails to provide any information or document that an inspector or investigator reasonably requires commits an offence. Under clause 85, a person who, in connection with an inspection under Division 2, or an investigation under Division 3, gives evidence (which includes providing information or documents, giving answers, explanations or particulars, and making statements) to TIA has the same privileges and immunities as the person would have if the inspection or investigation were a proceeding in a court. Clause 85 makes reference to section 25 of the Travel Agents Ordinance (Cap. 218). Under this existing ordinance, a witness appearing before the Registrar of Travel Agents in connection with an investigation shall have the same privileges and immunities as they would have if that investigation were a proceeding in a court.

12. The privileges and immunities under clause 85 serve two purposes –
 - (a) first, to protect persons who give evidence from any civil liability (e.g. any damage resulting from negligence or defamation) so that they would not be deterred from giving evidence for fear of being sued in civil proceedings in the future; and
 - (b) second, to protect the common law privilege against self-incrimination enjoyed by persons who give evidence. The persons concerned are required to provide the relevant information or documents, but if the information or documents provided might tend to incriminate them, the direct use of such information or documents as evidence in subsequent criminal proceedings would be prohibited. This seeks to prevent them from refusing to co-operate for fear that the information or documents provided might incriminate themselves. This arrangement strikes a fair balance between enabling inspectors and investigators to obtain the necessary information or documents for conducting an inspection and investigation on the one hand, and respecting the privilege of the persons providing the information or documents against self-incrimination on the other.

Impact of Inbound Tour Groups on the Community

13. A Member at the meeting enquired about the short-, medium- to long-term measures to minimise the impact of the activities of inbound tour

groups on the community, and expressed views about the “Refund Protection Scheme (Registered Shops) for Inbound Tour Group Shoppers” currently implemented by the Travel Industry Council of Hong Kong (TIC) and a similar scheme to be implemented by TIA in future.

14. Under the present “Refund Protection Scheme (Registered Shops) for Inbound Tour Group Shoppers”, before taking visitors to registered shops, travel agents must register those shops with TIC. The shops concerned are required to make pledges to TIC, including providing refund protection for visitors, not coercing visitors into making purchases, etc. These pledges are premised on safeguarding visitors’ interests. Likewise, clause 153(2)(j) empowers TIA to implement an administrative scheme under the new regulatory regime for regulating shops that inbound tour groups are arranged to patronise. Details of the administrative scheme will be formulated by TIA administratively.

15. All along, the Government is deeply concerned about the impact brought about by inbound tour groups to the community and, together with TIC, has adopted various counter-measures. From time to time, TIC conducts on-site inspection and tasks its relevant committees with formulating counter-measures. It also takes follow-up actions with trade members involved, including issuing advisory letters, holding meetings, etc. Furthermore, from time to time, TIC not only issues circulars to travel agents urging them to ensure coaches’ compliance with traffic rules when going to tourist attractions and minimise the inconvenience caused to other road users, but also appeals to tourist guides for proper management of inbound tour groups through talks.

16. Furthermore, the Tourism Commission, together with TIC and other relevant Government departments, has been holding meetings with trade representatives from time to time to follow up their arrangements of receiving inbound tour groups. We have repeatedly urged the trade to maintain order when receiving inbound tour groups, and encouraged them to use information technology to strengthen visitor and vehicular flow control. Measures being implemented include: using instant messaging software with a chat room set up to strengthen communication among trade members; and installing video cameras outside a restaurant that serves inbound tour groups, on a pilot basis, to enable the trade to know the real-time on-the-spot situation so as to avoid an influx of a large number of tour groups at the same time.

17. After the Financial Secretary convened a high-level tourism co-ordinating meeting in October 2017, the relevant Government departments

have been strengthening enforcement actions against illegal coach parking, as well as exploring and introducing different measures to promote the use of legal parking spaces by more coaches. The Government has been providing additional pick-up/drop-off spaces and parking spaces for coaches at appropriate locations (including tourist and shopping hotspots) on condition that road safety and other road users are not affected, letting car parks for coach parking on the basis of short-term tenancy (STT), as well as piloting the provision of a half-hourly concessionary parking rate in an STT car park with a view to improving coach drivers' incentive of using the car park.

18. In fact, the orderly management of visits by inbound tour groups to restaurants and shops in the community calls for close co-operation and co-ordination among trade members, including travel agents, tourist guides, restaurants, shops, coach drivers, etc., but is not the responsibility shouldered by any single trade member alone. In the short to medium run, the Government, together with TIC, will continue to closely monitor whether the various trade members have continually adopted measures to minimise the inconvenience caused by inbound tour groups to the community. If there remains no improvement to the situation over time, in the medium to long run, TIA, upon its full operation, can strengthen regulation on various fronts, including: to formulate suitable administrative measures against those licensees that are not amenable to repeated advice and wilfully undertakes poor management in arranging inbound tour groups to visit shops and restaurants in a non-co-operative manner, with disciplinary orders to be made after investigations and disciplinary proceedings; and targeting, through the administrative scheme for regulating shops that inbound tour groups are arranged to patronise, those travel agents/shops that are not amenable to repeated advice and wilfully poorly manage incoming inbound tour groups in a non-co-operative manner, with actions to be taken (e.g. issuance of warning letters, imposition of demerit points) after investigations and relevant proceedings. TIA can also deploy more manpower to conduct on-site inspections to ascertain whether licensees and shops are in compliance with relevant requirements. When formulating such requirements, TIA will take into account all relevant circumstances, including the prevailing industry development, TIC's regulatory experience, different stakeholders' views, etc.

Level of Mainland Inbound Tour Group Registration Fee

19. As regards the matters mentioned in the letter of the Hong Kong Tourism Association to the Committee Chairperson on 19 March 2018, as we have pointed out at various meetings as well as in the documents submitted to

the Committee, over the years, there have been incidents involving Mainland inbound tour group business in Hong Kong, some of which have even involved injuries and deaths, reflecting the subpar conditions of carrying on such business and also seriously tarnishing the image and reputation of Hong Kong's tourism industry. Furthermore, TIC has been allocating a large amount of resources to inspecting the operation of Mainland inbound tour groups and handling relevant complaints. As compared with that of the outbound tour levy, the present level of the Mainland inbound tour group registration fee is also considerably low, with room for upward adjustment¹.

20. The Government previously proposed in 2013 that the level of the Mainland inbound tour group registration fee be increased to \$200 per group in the first year upon the full implementation of the new ordinance. Nevertheless, having considered the affordability of the trade, we have already proposed that the level of the registration fee be increased under an incremental approach, i.e. increasing to \$100 per group in Year 1 upon the full implementation of the new ordinance, and then to \$150 and \$200 per group in Years 6 and 11 respectively.

Matters about Travel Industry Compensation Fund

21. As regards the letter from Hon Lau Kwok-fan to the Committee Chairperson on 28 March 2018, in view of the recent case of an individual travel agent's closure, the relevant Government departments are conducting investigations and have arrested the persons in question. Furthermore, the Government is gathering the views of different stakeholders on the scope of protection under the Travel Industry Compensation Fund and operational issues. The Government will holistically consider and weigh all relevant factors (including risk assessment, operations of travel agents, financial position of the Fund and levy rate, consumer protection, etc.) when reviewing the relevant arrangements.

Tourism Commission Commerce and Economic Development Bureau April 2018

¹ At present, the registration fee on each Mainland inbound tour group is only \$30, meaning that the per-head fee is about \$0.75 for a tour group of 40 members. As for the outbound tour levy, at present, the TIC collects Council levy at a rate of 0.15% based on each outbound fare, meaning that the per-head levy is about \$5 for an outbound tour group fee of about \$3,330 per member.