

**Government's Response to the Matters raised  
at the Meeting of Bills Committee on Travel Industry Bill  
held on 11 April 2018, as well as in the Letter from  
Chairperson of Travel Industry Council of Hong Kong to  
Committee Chairperson on 10 April 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 11 April 2018, as well as in the letter from the Chairperson of the Travel Industry Council of Hong Kong (TIC) to the Committee Chairperson on 10 April 2018.

**Change to Prohibition Order by Travel Industry Authority (TIA)  
(clause 80)**

2. A Member at the meeting raised whether there is a need to specify the basis on which, as well as the circumstances under which, TIA exercises the power under clause 80(1).

3. Under clause 80(1), the TIA may, for good cause, whether on its own initiative or on application by a person against whom a prohibition order is made, authorise the person to leave Hong Kong on one or more occasions as specified in the authorisation. In fact, this clause makes reference to section 29(7) of the Travel Agents Ordinance (Cap. 218), i.e. where a prohibition order made under section 29 of the Ordinance is in force, the Registrar of Travel Agents may, if he or she thinks fit, on the written application of the person the subject of the order or, in the absence of any such application, of the Registrar's own initiative, authorise, in writing, the person to depart from Hong Kong on one or more occasions as specified in the authorisation. As cases involving prohibition orders differ, TIA needs to be provided with the necessary power to address unforeseeable circumstances in reality. Therefore, we consider the formulation of clause 80(1) to be appropriate.

## **Functions of Disciplinary Committee, and Relationship between the Committee and TIA (clauses 87, 90 and 91)**

4. The Committee at the meeting discussed the functions of the disciplinary committee, and the relationship between the committee and TIA. A Member enquired whether it is necessary to amend clause 91 such that, if TIA gives written directions to the disciplinary committee, the committee is required to take the directions as reference only but is not mandated to act in accordance with the directions.

5. The disciplinary committee is established by TIA under clause 87 as one of its committees. A key function of TIA is to regulate travel agents, tourist guides and tour escorts through statutory licensing systems. The purpose of establishing the disciplinary committee is essentially to assist TIA in carrying out the regulatory work. The disciplinary committee is part of the regulatory structure underpinned by TIA. Its conduct of business must fully implement the policy direction and objectives of TIA on regulatory matters about licensed travel agents, tourist guides and tour escorts (including disciplinary proceedings) to promote the integrity, competence and professionalism of the trade.

6. Therefore, TIA must have full control over matters including appointments, practices, etc. in relation to the disciplinary committee. The relevant provisions in the Bill essentially serve to reflect this policy intent. Each member of the disciplinary committee is to be appointed by TIA, and the chairperson, vice-chairpersons and at least eight ordinary members will come from TIA (see clause 87); TIA may remove a member of the disciplinary committee from office (see clause 89); and the disciplinary committee must act in accordance with the written directions given by TIA (see clause 91). It is reasonable to oblige a committee established by a regulatory authority to act in accordance with the directions given by the authority concerned, and this arrangement can be found in Ordinances regulating other sectors, such as the Property Management Services Ordinance (Cap. 626) (see section 23(9) in Schedule 3). Taking the foregoing into account, we consider the arrangement under clause 91 to be appropriate.

7. As regards the suggestion made by a Member at the meeting that clause 90 be amended to reflect the policy intent more accurately, we will consider amending the clause in such a way that the function of the disciplinary committee is to give in-principle directions on matters relating to the exercise of powers and performance of functions by the chairperson of the

disciplinary committee and inquiry committees, rather than to handle individual cases.

### **Resignation and Removal of Members of Disciplinary Committee (clauses 88 and 89)**

8. A Member at the meeting enquired, where the resignation of a non-trade member of the disciplinary committee, or the removal of a member of the committee from office, leads to the committee's incompliance with the composition stated in clause 87(4), whether the meetings conducted by the disciplinary committee, and the inquiries conducted by any inquiry committee(s) already established, will remain valid before the disciplinary committee complies with the composition stated in that clause upon a new member appointed by TIA.

9. Under section 51 of the Interpretation and General Clauses Ordinance (Cap. 1), where any committee is established by or under any Ordinance, the powers of such committee shall not be affected by any vacancy in the membership thereof. Therefore, under normal circumstances, in the case of a vacancy as described by paragraph 8 above, the subsequent meetings conducted by the disciplinary committee, and the subsequent inquiries conducted by any inquiry committee(s) already established, will remain valid. That said, if the member who has resigned or has been removed is coincidentally a member of an inquiry committee already established, and the vacancy concerned results in the inquiry committee's incompliance with the quorum for meetings under clause 102, then the vacancy will need to be filled first by a new appointee before the committee can hold any meeting that is in compliance with the requirement under clause 102 and continue to handle the same case. In any event, we believe that TIA, from the administrative perspective, will appoint a new member to fill the vacancy as soon as possible.

10. A Member at the meeting enquired whether it is necessary to set out the in-principle grounds on which members may be removed under clause 89(1). Under clause 89(1), TIA may remove a member of the disciplinary committee from office if TIA considers that the removal is desirable for the committee to effectively perform its functions. The formulation of this clause makes reference to section 5(1) in Schedule 3 to the Property Management Services Ordinance (Cap. 626)<sup>1</sup>. As regards the

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<sup>1</sup> It reads, "The Chief Executive may remove a member of the Authority from office if the Chief Executive considers that the removal is desirable for the Authority to effectively perform its functions."

enquiry at the meeting about whether the Insurance Ordinance (Cap. 41) and the Securities and Futures Ordinance (Cap. 571) contain similar provisions, we understand that section 4D(5) of the former and section 8(5) of the latter respectively empower the Insurance Authority and the Securities and Futures Commission to revoke the appointment of a member of any committee established by them, yet none of the Ordinances sets out in-principle grounds for the revocation. As a matter of fact, there can be various reasons for removal, depending on actual circumstances. Possible reasons include the member being incapacitated by physical or mental illness, or otherwise being unable or unfit to carry on his duties as a member, etc. Clause 89(1) already sets out an in-principle scope within which the power of removal may be exercised, i.e. the removal must be desirable for the committee to effectively perform its functions. Therefore, we consider the formulation of the clause to be appropriate.

11. Assistant Legal Adviser at the meeting raised whether it is necessary to further require TIA to inform removed members of the reasons for the removal. Under clause 89(2), if a member of the disciplinary committee is removed from office, TIA must give the member written notice informing the member of the removal. The formulation of this clause makes reference to section 5(2) in Schedule 3 to the Property Management Services Ordinance (Cap. 626)<sup>2</sup>. Section 5 of the Ordinance does not mandate that the reason for removal be disclosed to the removed member. Neither does the Insurance Ordinance (Cap. 41) nor the Securities and Futures Ordinance (Cap. 571) contain such a requirement insofar as revoking the appointment of a committee member is concerned. We consider that the Bill can adopt the same arrangement as the abovementioned Ordinances. TIA may decide the contents of the written notice depending on the actual circumstances of every case of removal in future.

### **TIA to Refer Facts of Case to Chairperson of Disciplinary Committee (clause 97)**

12. The Committee at the meeting discussed whether the Bill should empower the disciplinary committee to review the decisions made by the chairperson of the committee under clause 98 (i.e. if the chairperson is satisfied that a case is trivial, frivolous, vexatious, misconceived or lacking in substance, the chairperson may decide that the case is not to proceed further), with a view to ensuring the proper handling of the cases concerned.

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<sup>2</sup> It reads, "If a member of the Authority is removed from office under this section, the Chief Executive must give the member written notice informing the member of the removal."

13. In looking into the suggestion above, we must holistically consider all provisions of the Bill in relation to the handling of disciplinary cases. When designing the whole schemes of disciplinary and appeal proceedings under Parts 7 and 8 of the Bill respectively, we have observed the principle of ensuring that each and every case be efficiently and appropriately handled to prevent the licensees involved from being unfairly treated or unreasonably disciplined. To this end –

- (a) if the chairperson of the disciplinary committee –
  - (i) decides that a case is not to proceed further under clause 98, the chairperson must, by notice in writing given to the complainant concerned, notify the complainant of the decision and give reasons for the decision. In fact, if the complainant considers that the decision merits reconsideration, he or she can approach TIA for follow-up on conducting a further investigation and then referring all the facts of the case to the chairperson of the disciplinary committee for reconsideration; and
  - (ii) decides that a case is to proceed further under clause 99, and TIA, the inquiry committee or the chairperson of the disciplinary committee subsequently decides that an order be made on the licensee concerned, the licensee aggrieved by the decision may lodge an appeal under Part 8 of the Bill for handling by the appeal board, which is independent from TIA (including its disciplinary committee or the chairperson of the committee). The appeal board may confirm, vary or reverse the decision concerned; and
- (b) to ensure that persons assisting TIA in carrying out disciplinary proceedings are those that effectively discharge pertinent functions, the Bill contains provisions enabling TIA to have full control over various matters including composition, appointments, removal, practices, etc. in relation to the disciplinary committee (see paragraph 6 above).

14. Overall speaking, we consider that the Bill contains the necessary provisions to ensure that TIA and members of the disciplinary committee (including the chairperson of the committee) are provided with appropriate powers to carry out regulatory work efficiently and effectively, whilst at the

same time providing for suitable channels through which objections against the relevant decisions by TIA and members of the disciplinary committee (including the chairperson of the committee) can be handled. There is thus no need to empower the disciplinary committee in the Bill to review the decisions made by the chairperson of the committee.

### **Proceedings of Inquiry Committee (clause 105)**

15. When formulating the proceedings of an inquiry committee under clause 105, we have made reference to the relevant arrangements under other Ordinances (e.g. the Estate Agents Ordinance (Cap. 511), Property Management Services Ordinance (Cap. 626) and Travel Agents Ordinance (Cap. 218))<sup>3</sup>.

### **Matters about Travel Industry Compensation Fund**

16. As regards the letter from the Chairperson of TIC to the Committee Chairperson on 10 April 2018, the Government understands that different stakeholders have different views about the scope of protection by the Travel Industry Compensation Fund. The Government will continue to listen to stakeholders' views and strike an appropriate balance between the impact on the trade development and protection of consumer interests insofar as pertinent arrangements are concerned.

### **Tourism Commission**

### **Commerce and Economic Development Bureau**

**April 2018**

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<sup>3</sup> As regards the Insurance Ordinance (Cap. 41) and the Securities and Futures Ordinance (Cap. 571) mentioned at the meeting, we notice that the ordinances only contain general requirements on the proceedings to take disciplinary actions against regulated persons for their misconduct, i.e. the Insurance Authority and the Securities and Futures Commission must not take any disciplinary actions against regulated persons without first giving them a reasonable opportunity of being heard (see sections 41P and 41Q of the Insurance Ordinance, and sections 194 and 198 of the Securities and Futures Ordinance).