

**Government's Response to the Matters raised
at the Meeting of Bills Committee on Travel Industry Bill
held on 30 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 30 April 2018.

Proceedings of Inquiry Committee (clause 105)

2. A Member at the meeting suggested setting a time limit on an inquiry and requiring an inquiry committee to report to the Travel Industry Authority (TIA), or seek its approval, before an inquiry under its charge exceeds the time limit.

3. As we pointed out at the meeting, we have formulated appropriate, fair and efficient disciplinary procedures for handling cases of suspected contraventions by licensees. Relevant measures include setting up different procedures for suitably handling cases in accordance with their circumstances and nature of seriousness under clauses 98 and 99, stipulating that each inquiry committee is only required to comprise at least three members, and allowing the concurrent establishment of more than one inquiry committee to handle different inquiry cases.

4. As cases will differ in nature and complexity, the time required for conducting inquiries will vary accordingly. We consider it not suitable to set a time limit on an inquiry under the law. TIA and its disciplinary committee should be allowed to formulate administrative measures applicable to disciplinary procedures. We believe that TIA and its disciplinary committee will regularly review the implementation of disciplinary procedures, including the time used by inquiry committees in handling different cases and, as the circumstances so warrant, improve relevant administrative measures to ensure the appropriate, fair and efficient handling of all cases.

Advice by Legal Adviser (clauses 105(1)(f) and 117)

5. A Member at the meeting enquired about the rationale behind clause 117(1)¹. When formulating the provision, we have made reference to similar requirements in other pieces of legislation² and the arguments in relevant previous court cases³. The requirements in clause 117(1) aim to improve the transparency and credibility of an inquiry to ensure that the defendant in the inquiry enjoys a fair, just and impartial hearing. Moreover, that parties to an inquiry have an opportunity to address the legal advice given by the legal adviser to the committee can improve the committee's decision-making and reduce the chance of legal challenges against the decision made. We consider it suitable for the Bill to include the relevant requirements.

Disciplinary Orders (clause 108)

6. A Member at the meeting enquired about the criteria for determining the level of a financial penalty imposed on a travel agent under clause 108(1)(c), including whether a heavier financial penalty would be imposed on a repeated offender. When deciding in a case whether to impose a financial penalty on the licensed travel agent concerned and, if so, the amount of the penalty, an inquiry committee will need to consider all circumstances of the case. Relevant factors include, but are not limited to: the nature, seriousness and impact of the contravention (e.g. whether the contravention is intentional, reckless or negligent, the duration and frequency of the contravention, whether the contravention is common in the industry), the conduct of the licensee after the contravention (e.g. whether the licensee attempted to conceal its contravention, any remedial steps taken by the licensee since the contravention

¹ The provision reads,

“If a legal adviser appointed under section 105(1)(f) advises an inquiry committee on any question of law as to evidence, procedure or any other matter in relation to an inquiry—

- (a) the legal adviser must do so in the presence of every party to the inquiry or person representing each party; or
- (b) if the advice is given after the committee has started to deliberate as to its decision, every party to the inquiry or person representing each party must be informed of the advice.”

² Relevant provisions include regulation 37 of Dentists (Registration and Disciplinary Procedure) Regulations (Cap. 156A), section 8 of the Medical Registration (Miscellaneous Provisions) Regulation (Cap. 161D) and section 46 of the Physiotherapists (Registration and Disciplinary Procedure) Regulation (Cap. 359J).

³ In *Medical Council of Hong Kong v Helen Chan* [2010] HKCFA 19, the Court of Final Appeal noted that the practice of informing all parties to an inquiry of any legal advice given by the legal adviser to the Medical Council of Hong Kong after it has started its deliberation would make it easier for the parties to understand the legal basis on which the Council had proceeded. In *Dr Lam Kwok Pun v Dental Council of Hong Kong* [2000] HKCA 302, the Court of Appeal of the High Court noted that the practice whereby the legal adviser provides legal advice to the Dental Council of Hong Kong in private during the course of deliberation would deprive the defendant (and his legal representative) of the opportunity to address the Council on the accuracy of such advice.

was identified), the disciplinary record of the licensee, etc. The fact that the licensed travel agent commits the same contravention again is one of the factors for an inquiry committee to decide whether to impose a financial penalty and, if so, whether to impose a heavier financial penalty. In respect of a single contravention by a licensed travel agent, the maximum financial penalty that can be imposed is \$300,000.

7. As regards the enquiry raised by a Member at the meeting about who will be responsible for writing the findings about a disciplinary order made by an inquiry committee, under clause 108(6)(a), if an inquiry committee makes a disciplinary order against a licensee, it must, by notice in writing given to the licensee, notify the licensee of the order and give reasons for the order. The arrangements about the writing of findings will be administratively formulated by the inquiry committee.

Effect of Revocation or Suspension of Travel Agent Licence (clause 115)

8. A Member at the meeting suggested adding the wording “to protect the interests of consumers and service providers” into clause 115 in hopes of clearly requiring a travel agent to honour the responsibilities under the agreements entered into with consumers and service providers before its licence is revoked or suspended.

9. Under clause 115, the revocation or suspension of a licensed travel agent’s licence under Part 7 of the Bill does not operate to avoid or affect any right, obligation or liability under any agreement, transaction or arrangement relating to the provision of a travel service (a) that is entered into by the travel agent at any time before the revocation or suspension; and (b) in relation to which a sum of money has been paid at any time before the revocation or suspension. The “agreement, transaction or arrangement” in the provision covers any agreement, transaction or arrangement entered into between a travel agent and others (including consumers and service providers), so any right, obligation or liability of the travel agent and such others under the relevant agreement, transaction or arrangement is not avoided or affected by licence revocation or suspension. In other words, the parties to the agreement, transaction or arrangement are still required to honour the obligation or liability concerned. Therefore, we consider it unnecessary to add the suggested wording into the provision.

Tourism Commission

Commerce and Economic Development Bureau

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