

**Government's Response to the Matters raised  
at the Meeting of Bills Committee on Travel Industry Bill  
held on 16 May 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 16 May 2018.

**Time Limit for Establishing Inquiry Committee after Receipt of Complaint**

2. A Member suggested specifying a time limit by administrative measure for establishing an inquiry committee after the receipt of a complaint against a licensee.

3. As complaint cases will differ in nature and complexity, the time required for the Travel Industry Authority (TIA) to conduct investigations will vary accordingly. As regards the time between receipt of a complaint and determination of how to handle the complaint (e.g. through an inquiry committee), we agree that TIA can consider formulating pertinent administrative measures to ensure the appropriate, fair and efficient handling of complaint cases. We also believe that TIA will regularly review the implementation of disciplinary procedures, including the time used in handling different cases and, as the circumstances so warrant, improve the measures concerned.

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

4. A Member enquired whether, under clause 115, a travel agent whose licence is revoked or suspended still needs to honour its obligations/liabilities under any agreement/transaction/arrangement relating to the provision of travel services that the travel agent entered into with its customers before the revocation or suspension, including continuing the arrangement of ongoing outbound tours, arranging outbound tours for customers, and obtaining travel services (e.g. carriage departing from Hong Kong, accommodation outside Hong Kong) for customers; and whether the travel agent can shift its obligations/liabilities to any other travel agent.

5. Under clause 115, the revocation or suspension of a licence does not operate to avoid or affect any right, obligation or liability of the travel agent concerned under any agreement/transaction/arrangement mentioned in paragraph 4 above. The travel agent should continue the arrangement of ongoing outbound tours, arrange outbound tours for its customers, and obtaining travel services for its customers or, as actual circumstances so warrant, make contingency arrangements, in order to prevent consumers' interests from being affected. To reflect the legislative intent more clearly, we will consider amending the Bill to the effect that, after the licence of a travel agent is revoked, or during the period in which the licence of a travel agent is suspended, when the travel agent honours its obligations/liabilities under any agreement/transaction/arrangement mentioned in paragraph 4 above (which include continuing the arrangement of ongoing outbound tours, arranging outbound tours for its customers, and obtaining travel services for its customers), despite the licence revocation or suspension, that person –

- (a) shall not be regarded as contravening clause 6(1) for carrying on travel agent business without a licence; and
- (b) shall continue to be required to comply with such provisions of the Bill relating to a licensed travel agent as would apply to the person were the licence not so revoked or suspended. In other words, if that person contravenes any provision relating to a licensed travel agent when honouring the obligations/liabilities under any agreement/transaction/arrangement mentioned in paragraph 4 above, that person would still be subject to both disciplinary actions and criminal sanctions.

6. Of course, if a travel agent cannot honour its obligations/liabilities under any agreement/transaction/arrangement mentioned in paragraph 4 above after its licence is revoked or during its licence suspension period, under the coverage provided by clause 115, the affected customers retain the rights to recover losses through civil proceedings under the common law, and to apply for compensation from the Travel Industry Compensation Fund for losses of outbound fares paid for outbound packages.

### **Removal of Members of Appeal Panel from Office (clause 120)**

7. A Member suggested that the Chinese drafting of clause 120(1) be improved, and another Member suggested listing the factors to be considered in removing members in that clause.

8. The formulation of clause 120(1) about removing members of the appeal panel from office is on par with that of clause 89(1) about removing members of the disciplinary committee from office, and those of sections 4(1) and 29(1) in Schedule 9 about removing members of TIA and its committees from office. As we pointed out at the meeting held on 30 April 2018 and in paragraph 10 of LegCo Paper No. CB(4)953/17-18(02), we made reference to the formulation of section 5(1) in Schedule 3 to the Property Management Services Ordinance (Cap. 626) when drafting the provision. In the light of the Member's view, we will amend the Chinese formulation of clause 120 as follows: “局長如認為，罷免上訴委員團某成員，會有利於該委員團有效執行職能，則可罷免該成員”，and amend other provisions in the Bill that use the same Chinese formulation (i.e. clause 89(1), as well as sections 4(1) and 29(1) in Schedule 9).

9. As regards the factors for considering the removal of members from office, as we pointed out at the aforementioned meeting and in paragraph 10 of the aforementioned paper, depending on actual circumstances, there can be various reasons for removal, including 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 120(1) already sets out an in-principle scope within which the power of removal may be exercised, i.e. that the Secretary for Commerce and Economic Development (SCED) must consider that removing a member of the appeal panel from office is desirable for the committee to perform its functions effectively. We consider the formulation of clause 120(1) appropriate.

### **Appeals against Decisions or Orders (clause 121)**

10. A Member enquired about the reasons for empowering SCED to extend the appeal-lodging period, and the arrangements about extending the appeal-lodging period under other ordinances (including the Accreditation of Academic and Vocational Qualifications Ordinance (Cap. 592) and the Amusement Game Centres Ordinance (Cap. 435)).

11. On the appeal-lodging period, we note that the arrangements vary across different ordinances. For instance (relevant provisions at **Annex A**) –

- (a) under such ordinances regulating specific industries as the Estate Agents Ordinance (Cap. 511) and the Property Management Services Ordinance (Cap. 626), the appeal panel is appointed by the subject Bureau Secretary. An appellant needs to lodge his/her appeal with the Bureau Secretary responsible for appointing the appeal panel. Both

ordinances do not contain any provision empowering the Bureau Secretary or any other party to extend the appeal-lodging period;

- (b) under the Accreditation of Academic and Vocational Qualifications Ordinance (Cap. 592), an appellant needs to lodge his/her appeal with the Appeal Board, and the Chairman of the Appeal Board is empowered to allow a longer period for lodging a notice of appeal; and
- (c) under the Amusement Game Centres Ordinance (Cap. 435), an appellant needs to lodge his/her appeal with the Appeal Board. The ordinance does not contain any provision to empower the Appeal Board or any other party to extend the appeal-lodging period.

12. We understand the Member's concern that applications for a longer appeal-lodging period by appellants generally involve considerations beyond administrative ones, including whether there is a good reason for the extension, whether any injustice would be caused as a result of the extension, etc. After thorough examination, we agree that the power to extend the appeal-lodging period be vested in the chairperson of the appeal panel. We will amend clause 121(3) accordingly.

### **Appointment of Appeal Board (clause 122)**

13. Some Members enquired about the number of members in an appeal board under normal circumstances, and suggested reviewing the relevant requirement (such as increasing the minimum number and setting a maximum number of members). Furthermore, some Members suggested specifying in the Bill that an appeal board must include trade member(s) to ensure that the trade's operations can be taken into account when handling appeal cases.

14. Under clause 122(2), the appeal board is to consist of a chairperson and at least two ordinary members. We consider that, under normal circumstances, an appeal board is to consist of three members for the efficient handling of appeal cases. Of course, subject to the actual circumstances of individual appeal cases, the chairperson of the appeal panel can form an appeal board consisting of more than three members to hear such appeals. As regards the composition of an appeal board, having regard to Members' views, we will consider refining the requirement of clause 122(3) such that, in appointing members of an appeal board, the chairperson of the appeal panel must ensure that (a) the chairperson of the appeal board is a non-trade member and (b) out of the ordinary members, at least one of them a trade member and at least half of them are non-trade members. This seeks to ensure that the appeal board can

take into account the trade's operations as appropriate.

### **Voting at Hearings (clause 125)**

15. A Member suggested reviewing the need for the chairperson of an appeal board to have a casting vote for making a final decision about an appeal.

16. Enabling the chairperson of an appeal board to have a casting vote for making a final decision about an appeal aims to ease any deadlock in a decision upon an equality of votes and helps ensure the efficient operation of the appeal board. Many ordinances, including the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) (see section 15(3)), the Construction Workers Registration Ordinance (Cap. 583) (see section 55(6)), the Accreditation of Academic and Vocational Qualifications Ordinance (Cap. 592) (see section 13(2)), etc., also adopt the same kind of arrangement<sup>1</sup>. Therefore, we consider clause 125(3) appropriate.

### **Date, Time and Place of Hearing (clause 127)**

17. A Member suggested formulating guidelines on the fixing of the date, time and place of a hearing, and Assistant Legal Adviser enquired whether it is necessary to stipulate a minimum period for giving notice about the hearing. After thorough examination, we consider that the arrangements of clause 127 appropriate. The arrangements about fixing the date, time and place of a hearing can be determined administratively, without a need to further impose any time limit under the law.

### **Proceedings of Appeal Board (clause 128)**

*Determination of appeal based on written submissions and in case of the matter appealed against reversed by TIA or disciplinary committee*

18. Having regard to the views of the Assistant Legal Adviser, we will consider amending the relevant provisions in the Bill such that the relevant

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<sup>1</sup> As regards the Insurance Ordinance (Cap. 41) and the Securities and Futures Ordinance (Cap. 571) mentioned by a Member, section 6(3) in Schedule 10 to the former and section 18 in Schedule 8 to the latter both stipulate that the tribunal responsible for conducting a hearing comprises three members only (i.e. a chairperson and two ordinary members), and generally speaking, every question before the tribunal must be determined by the majority of votes cast by members.

requirements of clauses 123 to 125 apply to the appeal cases handled in accordance with clause 128(2) and (3).

*Way of attending hearing by party to appeal*

19. A Member suggested improving the formulation of clause 128(4)(b) insofar as the wording “participate” is concerned to ensure the legal effect of the evidence given by a party to an appeal (including through another person) at a hearing.

20. Having reviewed clause 128(4), we consider its formulation appropriate. Paragraphs (a) and (b) of that clause have to be read conjunctively for an accurate understanding of the provisions concerned, i.e. that **a party to the appeal** may, subject to any order made by the appeal board, **be present** at the hearing **and** may **participate** in person, through a legal representative or (with the consent of the board) through another person. Clause 128(4)(b) aims to elaborate on the way in which a party to the appeal attends the hearing pursuant to clause 128(4)(a). The formulation is not unique to the Bill, but is likewise used in the Estate Agents Ordinance (Cap. 511) (see section 33(2)(a)) and the Property Management Services Ordinance (Cap. 626) (see section 37(7)). Moreover, the legal effect of the evidence by a party to the appeal at a hearing will not be affected by the way in which the party attends the hearing.

21. Separately, a Member enquired about the factors based on which the appeal panel gives consent to a party to an appeal for participating through another person at a hearing under clause 128(4)(b)(iii).

22. We believe that, under normal circumstances, an appellant would attend a hearing in person or through a legal representative (see clause 128(4)(b)(i) and (ii)). Clause 128(4)(b)(iii) aims to provide flexibility for the appeal board to give consent to a party to an appeal for attending a hearing through another person based on the actual circumstances of any particular case, which can vary. Factors to be considered can involve whether the person authorised by the appellant can act for him or her in appeal proceedings (e.g. the person has a thorough understanding of the business of the travel agent involved), whether the appellant has a practical need for attending the hearing through another person (e.g. the appellant is unable to attend the hearing in person by reason of absence from Hong Kong for a prolonged period or sickness), etc. As a matter of fact, the arrangement about attending a hearing through another person only with the consent of the appeal board or its chairperson is also provided for in the appeal proceedings in other pieces of legislation, including the Estate Agents Ordinance (Cap. 511) (see

section 33(2)(a)), the Registration of Persons Regulations (Cap. 177 sub. leg. A) (see section 6 in Schedule 4), the Public Health and Municipal Services Ordinance (Cap. 132) (see section 128D), etc.

*Payment of costs and expenses incurred in relation to a hearing*

23. A Member enquired whether the appeal board is capable of determining the costs and expenses incurred in relation to a hearing to be paid by any party to the appeal, about factors based on which such determination is made, and whether the board has the power to make such an order. Another Member enquired whether the order is subject to appeal.

24. Clause 128(6) vests the statutory power to make an order as to the payment of the costs and expenses incurred in relation to a hearing in the appeal board. The nature and complexity of appeal cases differ, so the costs and expenses incurred (including the amounts) in relation to the hearings concerned (including the amounts involved) vary correspondingly. Whether the appeal board orders that a party to the appeal pay the costs and expenses incurred in relation to the hearing is subject to the actual circumstances of the appeal case. Factors to be considered include the result of the hearing, the conduct of parties to the appeal, etc. Furthermore, in order to ensure that the appeal panel is capable of making such orders, when appointing members to serve on the appeal panel, SCED will take into account the candidates' ability, expertise, experience, integrity and commitment to public service, with due regard to the functions and nature of business of the appeal panel as well as the requirements of the Bill. A party to the appeal aggrieved by the order made by the appeal board can seek a judicial review.

**Matters about Appeal Proceedings to be Formulated by way of Subsidiary Legislation (clause 138)**

25. A Member enquired about the matters about appeal proceedings that will be formulated by way of subsidiary legislation.

26. Under clause 138, SCED may make regulations by way of subsidiary legislation to prescribe the procedures for the hearing of appeals under Part 8 of the Bill. The principal legislation laid down by the Bill already imposes a basic framework on appeal proceedings. Clause 138 aims to preserve certain flexibility by empowering SCED to make any necessary regulations by way of subsidiary legislation in view of the actual circumstances after the implementation of the Bill.

## **Appeal Cases Handled by Travel Industry Council of Hong Kong**

27. A Member enquired about the number of appeal cases involving attendance at hearings by Travel Industry Council of Hong Kong (TIC) and/or appellants through legal representatives out of the total appeal cases handled by TIC in the past five years, as well as the legal costs involved.

28. The pertinent case figures are at **Annex B**. As TIC's Appeal Board does not have any statutory power to make an order as to the payment of the costs and expenses incurred in relation to a hearing, TIC does not compile any statistics in relation to the costs and expenses in relation to appointing legal representatives.

**Tourism Commission**

**Commerce and Economic Development Bureau**

**May 2018**

**Provisions of Other Ordinances on Appeal-lodging Period**

**Estate Agents Ordinance (Cap. 511)**

**Section 31 Appeals**

- (1) Where—
  - (a) an application for the grant or renewal of a licence is refused under section 24;
  - (b) a condition is attached to a licence pursuant to section 17;
  - (c) a licence is suspended or revoked under section 27; or
  - (d) a power under section 30 is exercised,the applicant, the licensee concerned or the former such licensee, as the case may be, may, within the period of 21 days beginning on the date of the relevant notice under section 24(2), 27(5) or 30(5) or of the relevant licence, as the case may be, by a notice in writing addressed to the Secretary, appeal against the refusal, or, as may be appropriate, the attachment, suspension, revocation or exercise.
- (2) Where a notice of appeal under this section is given, the Secretary shall cause notice of the appeal to be published in the Gazette.
- (3)
  - (a) Where a notice of an appeal is published pursuant to subsection (2), any person may within the period of 21 days beginning on the date of such publication, by a notice in writing addressed and delivered to the Secretary, request to be heard at the appeal to which the notice so published relates.
  - (b) Where a notice referred to in paragraph (a) is received by the Secretary, the person by or on whose behalf it was given shall be entitled to be heard or represented at the appeal to which the notice relates.

**Property Management Services Ordinance (Cap. 626)**

**Section 34 Appeals against decisions etc.**

- (1) A person aggrieved by any of the following matters may lodge an appeal against the matter—

- (a) a decision not to issue or renew a licence;
  - (b) a decision to impose conditions on a licence or renewed licence;
  - (c) a decision regarding the period for which a licence is issued or renewed;
  - (d) a finding made at a hearing under section 24;
  - (e) an order made under section 25(7)(a) or 26(1) or (2) by the Authority or the disciplinary committee.
- (2) A person who wishes to appeal against a matter under subsection (1) must lodge a notice in writing with the Secretary—
- (a) for a matter that falls within subsection (1)(a), (b) or (c), within 21 days after receiving notice of the decision;
  - (b) for a matter that falls within subsection (1)(d), within 21 days after the finding is made; or
  - (c) for a matter that falls within subsection (1)(e), within 21 days after receiving notice of the order.

## **Accreditation of Academic and Vocational Qualifications Ordinance (Cap. 592)**

### **Section 11      Appeal to Appeal Board**

- (1) An operator, assessment agency or granting body aggrieved by—
- (a) a determination of the Accreditation Authority, as stated in an accreditation report;
  - (b) a decision of the Accreditation Authority on the length of the validity period of a determination of the Authority, as stated in an accreditation report;
  - (c) a decision of the Accreditation Authority as to the conditions or restrictions subject to which a determination of the Authority is to have effect, as stated in an accreditation report;
  - (d) a decision of the Accreditation Authority referred to in section 5(4);
  - (e) a decision of the QR Authority referred to in section 7(8); or
  - (f) a decision made by the Accreditation Authority or the QR Authority under section 15(b),
- made in respect of him or it may appeal to the Appeal Board.
- (2) An operator, assessment agency or granting body wishing to appeal under subsection (1) shall lodge a notice of appeal with the Appeal Board in such form as the Chairman may specify—
- (a) within 30 days of the receipt by the operator, assessment agency or

granting body of a copy of the accreditation report under section 5(3) or the notice of the decision under section 5(4), 7(8) or 15(c), as the case may be; or

- (b) within such further period as the Chairman may allow.

## **Amusement Game Centres Ordinance (Cap. 435)**

### **Section 11 Appeals against decisions of the appointed public officer**

- (1) Any person aggrieved by a decision of the appointed public officer made in respect of him under section 5, 6, or 9 may appeal to the Appeal Board.
- (2) A decision under section 9 that is appealed against under subsection (1) shall be suspended in its operation as from the day on which the appeal is made until such appeal is disposed of, withdrawn or abandoned unless such suspension would, in the opinion of the appointed public officer, be contrary to the public interest and the notice of the decision contains a statement to that effect.
- (3) Any person who wishes to appeal under this section shall lodge a notice of appeal in the prescribed form and manner within 28 days after receiving notice of the decision to which the appeal relates.

**Annex B**

**Appeal Cases Handled by Travel Industry Council of Hong Kong (TIC)  
Involving Attendance at Hearings by TIC and/or Appellants  
through Legal Representatives in the Past Five Years**

<b>Year</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018 (as at end April)</b>
Number of appeal cases	26	29	23	30	5
Of which the number of cases involving attendance at hearings by TIC and/or appellants through legal representatives	0	0	0	2	0