

**Government's Response to the Matters raised  
at the Meeting of Bills Committee on Travel Industry Bill  
held on 20 June 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 20 June 2018.

**Levy Arrangements (Part 9 of the Bill)**

2. Further to his enquiry at the meeting on 4 June, a Member asked about the arrangements for a licensed travel agent to pay levies in respect of an outbound fare received after the commencement of an outbound tour.

3. Under the Bill, the integral basis for the obligation of a licensed travel agent to pay levies lies in the amount received by the travel agent in respect of an outbound package, namely an "outbound fare". It is a commercial decision of a travel agent to collect an outbound fare from a traveller (e.g. the outbound fare involved in the arrangements for an activity) after the commencement of the outbound tour. The travel agent remains liable to pay levies in respect of any such amount received. On the premise of this basic principle, the Travel Industry Authority (TIA) can formulate concrete administrative measures for travel agents to observe, as in the case of the Travel Industry Council of Hong Kong under the existing regulatory regime.

4. As regards self-paid activities, under normal circumstances, when a licensed travel agent arranges a self-paid activity for an outbound tour, the travel agent shall provide the traveller with detailed information about the activity, through the itinerary or self-paid activity list, in order for the traveller to decide whether to join it. If the traveller pays the participation fee to the travel agent in the destination that receives the tour/to the organiser of the self-paid activity in the destination in the course of the outbound tour, and the fee is not relevant to the travel agent in Hong Kong that organises the tour, the fee will not constitute a part of the outbound fare. The travel agent in Hong Kong will not be liable to pay levies in respect of that fee. On the other hand, if the fee involved in the self-paid activity is received by the travel agent in Hong Kong that organises the tour, it will constitute a part of the outbound fare. Regardless of the means and timing of such receipt (e.g.

receiving the fee from the traveller upon his/her applying to join the outbound tour, or through the tour escort accompanying the tour group in the course of the outbound tour), the travel agent in Hong Kong will be liable to pay levies in respect of that part of the outbound fare.

### **Appointment of TIA Members (including acting Chairperson) (sections 1 and 6 in Schedule 9 to the Bill)**

5. A Member enquired whether the announcement of the appointment of TIA members (including the acting Chairperson) needs to be gazetted.

6. The validity of appointment of TIA members will not be affected by whether such appointment is announced by gazette. As a matter of fact, the ways of announcement concerning members of trade-related statutory regulatory bodies are not the same. For instance, the appointment of members of the Securities and Futures Commission is announced by press release; and that of members of the Property Management Services Authority, the Estate Agents Authority, the Insurance Authority and the Communications Authority is announced by gazette and press release. The Government will make reference to similar ways of announcing the appointment of TIA members.

### **Recruitment of Executive Director (section 7 in Schedule 9 to the Bill)**

7. A Member enquired about the criteria for TIA's appointment of the Executive Director.

8. We envisage that, same as other trade-related statutory regulatory bodies, TIA will conduct an open recruitment exercise for candidates of high integrity, leadership and sound management skills, as well as with a pertinent understanding about Hong Kong's travel industry, to serve as the Executive Director of TIA. TIA will be responsible for formulating details about the recruitment and selection procedures, which include to consider setting up a selection committee to facilitate the identification of a suitable candidate.

### **Assisted Meetings (sections 10 to 12 in Schedule 9 to the Bill)**

9. Members and the Assistant Legal Adviser raised various matters about assisted meetings, including whether to require in-person attendance by

Chairperson/Vice-chairperson of TIA or by a certain number of TIA members, the treatment about the meeting quorum, whether to prohibit TIA members from participating in meetings with the use of voice messages in WhatsApp or similar mobile applications, as well as other trade-related statutory regulatory bodies' standing orders applicable to regulating meetings with members' distance participation.

10. We envisage that, under normal circumstances, the Chairperson, Vice-chairperson and other members of TIA would attend meetings of TIA in person. Nevertheless, in view of the increasing popularity of the use of telecommunications, as well as the rapid advancement of technologies, we consider that allowing TIA members (including the Chairperson and Vice-chairperson) to participate in meetings by telephone, video conference or other electronic means helps keep pace with the times. Our policy intent of formulating sections 10(5) and 12(4)(b) in Schedule 9 to the Bill is essentially to enable members who cannot attend a meeting in person to participate in the meeting by electronic means, thereby facilitating the authority's handling of its business. As a matter of fact, similar arrangements can be found in other ordinances, such as the Communications Authority Ordinance (Cap. 616) (see section 10) and the Property Management Services Ordinance (Cap. 626) (see section 9 in Schedule 3). We consider it unnecessary to impose constraints on the ways of attendance by the Chairperson, Vice-chairperson or any other members of TIA, or on the numbers of members joining meetings by various ways.

11. As to the quorum for a meeting of TIA, under section 12(2) in Schedule 9 to the Bill, the number concerned is one half of the members of TIA. When TIA conducts meetings (whether being assisted meetings or not), the quorum will need to be met; if the quorum is not met, TIA cannot commence or continue with a meeting to handle its business.

12. As regards regulating assisted meetings, same as the arrangement in the ordinances of other trade-related statutory regulatory bodies (e.g. the Communications Authority Ordinance (Cap. 616) (see section 10(6)) and the Property Management Services Ordinance (Cap. 626) (see section 9(2) in Schedule 3)), section 12(4)(b) in Schedule 9 to the Bill stipulates an in-principle requirement. So long as members participating in a meeting by telephone, video conference or other electronic means and members being actually present at the meeting can hear each other, the requirement in the aforementioned provisions is fulfilled. On the premise of this in-principle requirement, TIA can formulate the procedure for convening assisted meetings and for the conduct of business at those meetings in accordance with section 10(2) in Schedule 9 of the Bill. Moreover, TIA will make

standing orders, not inconsistent with the Travel Industry Ordinance, in accordance with section 12(5) in Schedule 9 of the Bill for the purposes of regulating the conduct of assisted meetings, in order to ensure that the confidentiality of assisted meetings is not compromised.

13. As far as we understand, the procedure for convening meetings (including assisted meetings) and the conduct of business at those meetings of trade-related statutory regulatory bodies is in general a matter of house rules to the bodies concerned and is not publicly disclosed. Insofar as TIA is concerned, we envisage that its standing orders regulating assisted meetings, subject to Part 4 (including section 12) in Schedule 9 to the Bill, can include: requiring members with distance participation in a meeting (whether by telephone, video conference or other electronic means) to stay connected throughout the whole meeting, so as to ensure their participation in the meeting for instant communication with other members<sup>1</sup>; requiring TIA members to sign written undertakings that they will attend any meetings with distance participation only in a secured environment and keep the meeting proceedings confidential. TIA will formulate standing orders in this regard as house rules for its members to observe.

### **Written Resolutions of TIA (section 14 in Schedule 9 to the Bill)**

14. A Member enquired whether it is necessary to specify a period for TIA to give notice to its members about a proposed resolution under subsection (1)(b) of section 14 in Schedule 9 to the Bill so as to dovetail with the requirements under subsections (6) and (7) of that section.

15. We understand the Member's views that, generally speaking, as compared with convening meetings, handling TIA's business by way of written resolution seeks to enable TIA to make decisions more efficiently; on the other hand, the degree of urgency of individual matters warranting TIA's handling may vary, and the dates on which the relevant proposed resolutions become valid will need to dovetail with the degree of urgency at stake and can hardly be generalised. Having taken into account the considerations above and made reference to the arrangement about written resolutions under

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<sup>1</sup> In other words, if a member of TIA just participates in a meeting using the video-recording function of a mobile application in such a way as to send his/her voice messages to members who are actually present at the meeting, yet without being able to hear such members unilaterally, his/her participation will not be considered fulfilling the requirement under section 12(4)(b) in Schedule 9 to the Bill.

the Communications Authority Ordinance (Cap. 616)<sup>2</sup>, we will make amendments to subsection (7) of section 14 in Schedule 9 to the Bill to the effect that a request under subsection (6) (i.e. a request that the proposed resolution be referred to a meeting of TIA for consideration) by a member of TIA must be made by notice in writing given to the Chairperson within the period specified in the notice referred to in subsection (1)(b).

**Proceedings not Invalidated by Omission etc. (section 16(d) in Schedule 9 to the Bill)**

16. In view of a Member's concern about the formulation of section 16(d) in Schedule 9 to the Bill, we, in consultation with the Department of Justice, are reviewing the wording of the provision.

**Tourism Commission**

**Commerce and Economic Development Bureau**

**July 2018**

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<sup>2</sup> In accordance with section 12 of the Communications Authority Ordinance (Cap. 616), under subsection (1), any member of the Communications Authority may request any business which is being transacted by the circulation of papers under section 11 to be transacted at a meeting of the Authority; and under subsection (2), a request under subsection (1) must be made by way of a notice in writing to the chairperson of the Authority within the period specified in the papers being circulated.