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來函檔號 Your Ref. : LS/B/12/16-17

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20 November 2017

Ms Clara Tam
Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Ms Tam,

Travel Industry Bill

I refer to your letter dated 20 October 2017. Our reply on your further observations on the Travel Industry Bill (the Bill) is set out below.

A. Comparison with Existing Regulatory Regime (paragraphs 1 to 5 of your letter refer)

Regulation of on-line travel agents (paragraphs 1 and 2 of your letter refer)

2. In your paragraph 1, you asked us to consider whether it is appropriate to add a provision to the Bill setting out the matters/criteria the Travel Industry Authority (TIA) should take into consideration in determining whether a person “actively markets” its travel agent business to the public of Hong Kong. We noted that the Securities and Futures Ordinance (Cap. 571) and Insurance Companies Ordinance (Cap. 41) both use the notion “actively markets” but do not set out an exhaustive list of matters/criteria to be taken into account. The Securities and Futures Commission and the Insurance Authority need to consider the nature of the business activities as a whole in determining whether or not a person engages in “active marketing”. Under the same principle, the future TIA will need to consider the nature of the business activities as a whole in determining whether or not a person “actively markets” its travel agent business to the public of Hong Kong. We consider it undesirable to set out

specific matters/criteria in the Bill as TIA will need to enjoy flexibility to cater for changes in market circumstances, including (but not limited to) technological advancements in business marketing, over time. Whether or not a person has engaged in “active marketing” will very much depend upon the particular facts and circumstances in a given case.

3. In your paragraph 2(a), you suggested that we consider adding the phrase “whether by himself or another person on his behalf” to clause 4(1)(b)(ii) of the Bill, which reads “actively markets, whether in Hong Kong or from a place outside Hong Kong, to the public of Hong Kong any of those [outbound travel] business activities”, as in section 115 of the Securities and Futures Ordinance (Cap. 571). We will consider adding a gender-neutral phrase “whether or through another person or not” to clause 4(1)(b)(ii).

4. In your paragraph 2(b), you asked whether an on-line travel agent outside Hong Kong which uses “search engine marketing” (i.e. the advertisement will only pop up if the customer makes certain searches in the internet in relation to offers of transport/accommodation) to advertise his travel agent business will be regarded as “actively markets” to the public of Hong Kong, and whether there will be any difference if the person has advertised his travel agent business through paid or unpaid efforts with the search engines (e.g. Yahoo and Google). As mentioned in paragraph 2 above, TIA will need to consider the nature of the business activities as a whole in determining whether or not a person “actively markets” its travel agent business. A person’s sheer use of “search engine marketing” per se is not the conclusive evidence that the person concerned actively markets his business activities to the public of Hong Kong. Various factors relating to “search engine marketing” will need to be examined by TIA, including (but not limited to) whether the person uses a jurisdiction-specific domain for his website, whether the person adopts geo-tagging to attract traffic from Hong Kong to his website, whether the website per se is in Chinese with travel products denominated in Hong Kong dollars, etc.

Licensing requirements applicable to on-line travel agents (paragraphs 3 and 4 of your letter refer)

5. As regards the enquiries in your paragraphs 3 and 4, we will address them in our consolidated response to the matters raised at the meeting of the Bills Committee on the Bill on 27 October 2017 as well as the views raised by the travel trade before and after the meeting in one go.

Proposed offence in relation to publication of advertisements (paragraph 5 of your letter refers)

6. In your paragraph 5, you asked whether a person who provides a hyperlink to the webpages of unlicensed on-line travel agents will constitute a publication of advertisements and thus commit an offence under clause 165. We are still looking into the matter and will separately reply to you.

B. Regulation of unscrupulous acts in the travel trade (paragraphs 6 to 7 of your letter refer)

7. In your paragraph 6, you asked about the means for TIA to enforce the administrative measures and to invoke the disciplinary mechanism for non-compliance. According to clause 68 of the Bill, TIA “may conduct an inspection for the purpose of ascertaining whether a licensee is complying with, has complied with, or is likely to comply with, **the requirements in this Ordinance**” (emphasis added). According to clause 72, TIA “may conduct an investigation if (a) the Authority has received a complaint under section 71 [which reads, “A person may lodge a complaint with the Authority alleging that... a person has contravened a **requirement in this Ordinance**”]; or (b) the Authority reasonably suspects that... a person has contravened a **requirement in this Ordinance**” (emphasis added). Clause 55, which pertains to a licensee’s duty to comply with guidelines, directives or codes of conduct (collectively called “administrative measures”), is a requirement in the Bill, such that TIA has statutory powers to conduct inspections of and investigations into licensees’ suspected non-compliance with such administrative measures. Clause 97 accordingly provides for the handling of such non-compliance cases through the disciplinary proceedings under Part 7 of the Bill.

8. In your paragraph 7, you asked about acts or conduct of the licensees that would bring or pose an imminent risk of bringing the travel industry of Hong Kong into disrepute. Whether an act or conduct of a licensee brings or poses an imminent risk of bringing the travel industry of Hong Kong into disrepute will depend on the actual circumstances of each case. TIA is expected to take into account all relevant factors, including (but not limited to): the licensee’s act or conduct and the impact thereof on the tourists, including any resulting injury or death of the tourists concerned, the extent of mass media coverage in and outside Hong Kong on the licensee’s act or conduct to the detriment of the reputation of Hong Kong, any remedial action taken by the licensee and the effect thereof, etc.

9. Furthermore, you asked in your paragraph 7 whether the criteria would be set out in codes of conduct or guidelines to be issued by TIA. TIA may consider setting out, in the form of guidelines, the aforementioned factors

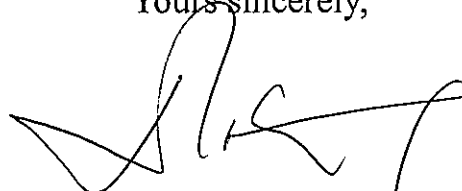
relevant to determining whether an act or conduct of a licensee brings or poses an imminent risk of bringing the travel industry of Hong Kong into disrepute. That said, flexibility is required to this end such that TIA, when regulating licensees' acts or conduct, can tackle the myriad of situations a travel agent will encounter in the course of its travel agent business operation that cannot be easily or comprehensively identified. Wider terms will have to be used in such guidelines.

C. Existing subsidiary legislation made under the Travel Agents Ordinance (Cap. 218) (paragraph 8 of your letter refers)

10. In your paragraph 8, you suggested that, for the sake of clarity, a provision be added to the Bill to expressly repeal all of the subsidiary legislation made under the Travel Agents Ordinance (Cap. 218). We have no objection to your suggestion.

11. Please let us know if you have any further enquiries or comments.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Nicky Ng', written in a cursive style.

(Nicky Ng)
for Commissioner for Tourism

Encl.

c.c. DoJ (Attn.: Mr Michael Lam & Mr Jonathan Luk) (By E-mail)
Clerk to Bills Committee (By E-mail)