



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

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By Fax (2801 4458)

20 October 2017

Mr Nicky NG
Sr AO (Tourism) 1
Commerce and Economic Development Bureau
22/F, West Wing
Central Government Offices
2 Tim Mei Avenue
Tamar, Hong Kong

Dear Mr NG,

Re: Travel Industry Bill

Thank you for your letter dated 8 September 2017 in response to our letter dated 25 May 2017. We have considered your letter and would be grateful if you would let us have your response on our further observations on the Bill as set out in **Annex**.

I would be grateful if you would let me have your response in bilingual form at your earliest convenience, preferably **before 26 October 2017**.

Yours sincerely,

(Clara TAM)
Assistant Legal Adviser

Encls.

cc. DoJ (Attn: Mr Michael LAM & Mr Jonathan LUK (By Fax: 3918 4613))
Clerk to Bills Committee

Travel Industry Bill

A. Comparison with existing regulatory regime

Regulation of on-line travel agents

1. Clause 4(1)(b) seeks to bring under regulation travel agents that carry on outbound travel business activities from a place outside Hong Kong and actively markets, whether in Hong Kong or from a place outside Hong Kong, to the public of Hong Kong any of those business activities (i.e. on-line travel agents). The Administration has at the meeting on 10 April 2017 and in its reply to Hon WU Chi-wai's letter dated 29 May 2017 (vide LC paper No. CB(4)1333/16-17(03), paragraph 6) explained the matters to be taken into consideration in determining whether the travel agent "actively markets" its business under clause 4(1)(b)(ii).¹ To enable the general public knows for certain whether one needs a travel agent licence to carry on the travel agent business, please consider whether it is appropriate to add a provision to the Bill setting out the matters/criteria the Travel Industry Authority ("the Authority") should take into consideration in determining whether a person "actively markets" its travel agent business to the public of Hong Kong. If not, please provide the reason(s).

2. Please clarify under clause 4(1)(b)(ii):

- (a) whether an on-line travel agent which instructs another person to actively market his travel agent business, whether in Hong Kong or from a place outside Hong Kong, to the public of Hong Kong will be required to apply for a travel agent licence under the Bill. If this is the case, please consider adding the phrase "whether by himself or another person on his behalf" to clause 4(1)(b)(ii) as in section 115 of the Securities and Futures Ordinance (Cap. 571); and
- (b) 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

¹ These matters would include whether there is a detailed marketing plan, whether the marketing is conducted in a concerted manner and executed according to a plan or schedule which indicates a continuous activity rather than an one-off exercise, whether the publicity material about an outbound travel product is targeted at the public of Hong Kong, e.g. written in Chinese and denominated in Hong Kong dollars.

travel agent business will be regarded as "actively markets" to the public of Hong Kong? Will there be any difference if the person has advertised his travel agent business through paid or unpaid efforts with the search engines (i.e. Yahoo and Google)?

Licensing requirements applicable to on-line travel agents

3. Clause 6(1) prohibits against carrying on travel agent business without a licence. Clause 6(2) provides that a licensed travel agent must not carry on travel agent business at any premises other than the premises specified in the travel agent licence. A person who contravenes these provisions could be liable to a fine and imprisonment. Clause 8(2)(ii) also provides that the Authority must not issue a travel agent licence unless it satisfies that the premises in Hong Kong to which the application relates and the location of the premises, are suitable for travel agent business. Clause 8(2)(vii) and Division 8 of Part 2 require the applicant for a travel agent licence to have at least one full time staff member at the premises in Hong Kong. For on-line travel agents operating their business from a place outside Hong Kong, it may not be necessary for them to have a "physical" office or have any staff member in Hong Kong. Accordingly, whether the Administration would take into account the mode of operation of the on-line travel agent business and grant exemption from compliance with these licensing requirements to those on-line travel agents under clause 3²? If not, please let us know the reasons and clarify how would the abovementioned licensing requirements be applicable to on-line travel agents who seek to apply for a travel agent licence under the new regulatory regime.

4. If exemptions may be granted to on-line travel agents in respect of certain licensing requirements, please also explain:

- (a) the criteria that must be satisfied by the on-line travel agents before the Authority may grant an exemption under clause 3; and
- (b) examples of conditions or limitations that may be imposed on an exemption to be granted.

Proposed offence in relation to publication of advertisements

5. Clause 165 seeks to prohibit publication of advertisements relating to the provision of travel service by unlicensed travel agents. The

² Under clause 3, the Travel Industry Authority may by notice published in the Gazette, exempt a person or class of persons from the operation of this Ordinance subject to any conditions or limitations specified in the notice.

"advertisement" is not defined in the Bill. In relation to on-line travel agents which are carrying on travel agent business without a licence, please clarify whether a person who provides a hyperlink to the webpages of these unlicensed travel agents will constitute a publication of advertisements and thus commit an offence under clause 165.

B. Regulation of unscrupulous acts in the travel trade

6. Clause 55 of the Bill seeks to impose a duty on the licensees to comply with any guidelines, directives or codes of conduct (collectively "the administrative measures") issued by the Authority under clause 153(2)(k) but does not provide the sanctions for the failure to comply with the administrative measures. According to your reply (paragraph 5), a licensee who contravenes an administrative measure is subject to disciplinary proceedings, which may result in the imposition of a disciplinary order. It appears that non-compliance with the administrative measures is not a matter within the Authority's power to conduct the inspection under clause 68 or the investigation under clauses 71 or 72. Please let us know the means for the Authority to enforce the administrative measures and to invoke the disciplinary mechanism for such non-compliance.

7. It is noted that clause 99(3)(c) seeks to introduce "acts or conducts of the licensees would bring or poses an imminent risk of bringing the travel industry of Hong Kong into disrepute" as one of the considerations for summarily revoking or suspending a licence under clause 112. What acts or conducts of the licensees would bring or poses an imminent risk of bringing the travel industry of Hong Kong into disrepute for the purpose of clause 99(3)(c)? Would the criteria be set out in any codes of conduct or guidelines to be issued by the Authority?

C. Existing subsidiary legislation made under the Travel Agents Ordinance (Cap. 218)

8. In the light of proposed repeal of Cap. 218 and all of its subsidiary legislation, would you consider adding provision to the Bill to expressly repeal all of the subsidiary legislation made under Cap. 218 for the sake of clarity.