

立法會

Legislative Council

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Paper for the House Committee Meeting on 24 March 2017

Legal Service Division Report on Travel Industry Bill

I. SUMMARY

1. The Bill

The Bill seeks to repeal the Travel Agents Ordinance (Cap. 218) and to introduce a new regulatory framework for licensing and regulating travel agents, tourist guides and tour escorts by the new Travel Industry Authority; to provide for administration of the Travel Industry Compensation Fund; and to impose levies on travel agents.

2. Public Consultation

The Administration launched a ten-week public consultation on the review of regulatory framework of the tourism sector in 2011. After formulating the key legislative proposals, the Administration conducted discussions with the travel trade and relevant bodies in 2016 and they generally supported the proposals.

3. Consultation with LegCo Panel

The Panel on Economic Development was briefed on the key proposals of the Bill on 23 January 2017. The Panel members were generally supportive of the proposals. However, concerns were expressed on various issues relating to the proposed regulatory regime and the resultant impact on the travel trade members.

4. Conclusion

The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to establish a new regulatory regime for the tourism sector, Members may wish to form a Bills Committee to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 22 March 2017. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: TC CR T1 22/2/26/3) issued by the Commerce and Economic Development Bureau and dated 8 March 2017 for further details.

Object of the Bill

2. The Bill seeks to establish a Travel Industry Authority ("the Authority"); to provide for the licensing of travel agents, tourist guides and tour escorts; to regulate the activities of the licensees; to provide for administration of the Travel Industry Compensation Fund ("the Fund"), and for the imposition of levies on travel agents; and to provide for related matters.

Background

3. Currently, the tourism sector (including travel agents, tourist guides and tour escorts) in Hong Kong is regulated under a two-tier regulatory regime. The Registrar of Travel Agents ("TAR") is responsible for the licensing of travel agents under the Travel Agents Ordinance (Cap. 218). The Travel Industry Council ("TIC") is responsible for self-regulation of its member agents, including promulgating codes of conduct and directives and issuing passes for the tourist guides and tour escorts. Cap. 218 provides, among others, for the licensing of travel agents, the appointment of TAR as the licensing authority, the establishment of an Advisory Committee on Travel Agents ("Advisory Committee"), the establishment of the Fund and a Management Board ("the Board") for the management of the Fund; and the imposition of levies on travel agents.

4. According to paragraph 2 of the LegCo Brief, the Administration considers that the recent non-compliance incidents, particularly those shopping-related incidents involving the Mainland inbound tours, called for a need to reform the existing regulatory regime.

Provisions of the Bill

5. The Bill proposes to repeal Cap. 218 and to introduce a new regulatory framework. The Bill contains 11 Parts and 11 Schedules. The main features of the proposed regulatory regime are summarized below.

Licensing and regulation of travel agents, tourist guides and tour escorts

Travel Agents

6. Part 2 proposes the licensing and regulation of the travel agents by the Authority. Apart from those travel agents that carry on any outbound and/or inbound travel business activities¹ in Hong Kong (as adapted from Cap. 218), persons who carry on any outbound travel business activities at a place outside Hong Kong and actively market, whether in Hong Kong or from a place outside Hong Kong, to the public of Hong Kong any of such business activities would be required to obtain licences (clause 4(1)(b)). According to paragraph 8 of the LegCo Brief, the proposed widened scope of persons to be licensed is mainly to make on-line travel agents come under the new regulatory regime.

7. Under the proposed licensing system, each travel agent must meet the suitability requirement (clause 18 and Schedules 2 to 4), the capital requirement (clause 19 and Schedule 5), the guarantee money requirement (clauses 20 to 23 and Schedule 6), the authorized representative requirement (clauses 24 to 31 and Schedule 7) and the staffing requirement (clause 32) for the issue and renewal of the relevant licence.

Tourist guides and tour escorts

8. Part 3 provides, under the proposed licensing system, for the licensing and regulation of tourist guides and tour escorts. Under the Bill, it would be an offence if a person works as a tourist guide or tour escort without a licence (clause 40) or if a licensed travel agent employs or engages an unlicensed person as tourist guide or tour escort (clause 41).

9. Under the Bill, an applicant for the issue of a tourist guide/tour escort licence must satisfy the requirements as to age, education level (Schedule 8), completion of relevant training (e.g. first aid) and passing of licensing examinations as specified by the Authority (clause 43). For renewal of the licence, the applicant would also be required to have completed the Continuing Professional Development Scheme specified by the Authority (clause 47).

¹ Under clause 4 of the Bill, "outbound travel business activities" refers to obtaining for another person carriage to travel to or accommodation at a place outside Hong Kong. "inbound travel business activities" refers to obtaining for an overseas visitor (a) carriage to or in transit via Hong Kong; (b) accommodation in Hong Kong; or (c) any specified services in Hong Kong (e.g. sightseeing or visits to local places of interest).

10. Further, the Authority would be empowered to make regulations to impose prescribed licence conditions on travel agents, tourist guides and tour escorts (clause 164(f)). Such regulations would be subsidiary legislation subject to scrutiny and amendment by LegCo under the Interpretation and General Clauses Ordinance (Cap. 1).

Establishment of the Authority

Functions and powers

11. Part 10 seeks to establish the Authority as the sole and independent regulatory body of the tourism sector and it would take over the current licensing and regulatory functions of TAR and TIC, the advisory functions of the Advisory Committee, and the functions of the Board. The Bill proposes to vest in the Authority a wide range of functions, including those relating to licensing of travel agents, tourist guides and tour escorts and management of the Fund (clause 152), and to confer on it various regulatory powers which include the design and implementation of a penalty system to be used in disciplinary actions against licensees, and the issuing of guidelines and codes of conduct for regulating licensees (clause 153).

Composition

12. The Authority would consist of a Chairperson, a Vice-chairperson and not more than 28 ordinary members to be appointed by the Chief Executive. The Chairperson and a majority of ordinary members must be non-trade members (Part 1 of Schedule 9).

Disciplinary and appeal mechanism

13. The Bill proposes that the Authority would have the powers to conduct inspections and investigations for the purposes of ensuring compliance with new regulatory regime. The Authority would establish a disciplinary committee for handling cases of complaint or suspected misconduct against the licensees further to the investigation. Inquiry committees might be set up to conduct inquiries into such cases and decide whether to make a disciplinary order (Parts 6 and 7).

14. Under the Bill, persons who are aggrieved by the Authority's decisions or the inquiry committee's disciplinary orders may appeal to an independent appeal panel. Members of the appeal panel would be appointed by the Secretary for Commerce and Economic Development and must not come from the Authority, its committees or working groups (Part 8).

Transitional Arrangements

15. Schedule 10 sets out the savings and transitional arrangements including those in relation to the pre-existing licences and passes, pending

licence applications, appeals against the TAR's decisions, provision of records and assistance from TIC to the Authority, and transfer of the Board's assets and liabilities to the Authority.

16. The effect of the proposed savings and transitional provisions on the existing licensing regime is that upon the full commencement of the new regulatory regime, all pre-existing travel agent licences, as well as tourist guide passes and tour escort passes issued by TIC would be taken to be licences issued under the new ordinance until they expire, or three months after the commencement date of the new regulatory regime, whichever is the later. Upon applying for licence renewal, the travel agents, tourist guides and tour escorts concerned would be required to comply with the new requirements under the new ordinance. Before the full commencement of the new regime, travel agents, tourist guides and tour escorts must continue to comply with the TIC's regulatory requirements.

Commencement

17. The Bill, if passed, would come into operation on a day to be appointed by the Secretary for Commerce and Economic Development by notice published in the Gazette.

Public Consultation

18. According to paragraphs 24 and 25 of the LegCo Brief, the Administration launched a ten-week public consultation on the review of the operation and regulatory framework of the tourism sector in 2011. After formulating a package of key legislative proposals, the Administration conducted discussions with the travel trade (including TIC, representatives of its members, and representatives of various unions of tourist guides and tour escorts), the Advisory Committee and the Board from November to December 2016. The travel trade and relevant bodies generally supported the proposals.

Consultation with LegCo Panel

19. The Clerk to the Panel on Economic Development has advised that the Panel was briefed on the key proposals of the Bill on 23 January 2017. The Panel members were generally supportive of the proposals. However, concerns were expressed on a wide range of matters including the impact of the proposed regulatory regime on travel trade members, statutory inspection and investigation powers of the Authority, role of the court in handling misconduct, disciplinary mechanism for handling cases of complaint or suspected misconduct, as well as the mechanism for handling appeals against the Authority's decisions or disciplinary orders.

Conclusion

20. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to establish a new regulatory regime for the tourism sector, Members may wish to form a Bills Committee to study the Bill in detail.

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