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**Paper for the House Committee meeting on 16 November 2018**

**Report of the Bills Committee on Travel Industry Bill**

**Purpose**

This paper reports on the deliberations of the Bills Committee on Travel Industry Bill ("the Bills Committee").

**Background**

2. Currently, travel agents, tourist guides and tour escorts in the travel trade in Hong Kong are regulated under a two-tier regulatory regime. The Travel Agents Registry ("TAR") is responsible for the licensing of travel agents under the Travel Agents Ordinance (Cap. 218) ("TAO"). The Travel Industry Council of Hong Kong ("TIC") is responsible for trade self-regulation. Through promulgating codes of conduct and directives and putting in place a disciplinary mechanism, TIC regulates travel agents, tourist guides and tour escorts. TAO provides for, among other things, the licensing of travel agents, the appointment of TAR as the licensing authority, the establishment of an Advisory Committee on Travel Agents, the establishment of the Travel Industry Compensation Fund ("TICF") and a board for the management of TICF; and the imposition of levies on travel agents.

3. According to paragraph 2 of the Legislative Council ("LegCo") Brief on the Bill (File Ref.: TC CR T1 22/2/26/3), the Administration considers that non-compliance incidents of the travel trade over the years, particularly those involving the operation of Mainland inbound tour group business, called for a need to reform the existing regulatory regime.

## **The Bill**

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

5. The key areas of the Bill are as follows –

- (a) TIA will be an independent statutory regulatory body, of which non-travel trade members will be in the majority to establish an impartial image. The Bill will put in place checks and balances, such as establishing an independent appeal panel to handle appeals against TIA's decisions or disciplinary orders;
- (b) the Bill will strengthen the licensing regime for travel agents with new requirements of depositing guarantee money by bank guarantee, appointing authorized representatives ("ARs"), etc.;
- (c) the Bill will establish a statutory licensing regime for tourist guides and tour escorts to enhance the service quality and professionalism of front-line trade practitioners;
- (d) the Bill will empower TIA to formulate licence conditions through subsidiary legislation, particularly to tackle problems in relation to coerced shopping;
- (e) TIA will run the current TICF to offer protection to outbound travellers. Furthermore, funds of a certain percentage of TICF will be set aside to set up the Travel Industry Development Fund ("TIDF") to provide funding support for the travel trade to facilitate the continuous development of the industry; and
- (f) upon the full commencement of the new regulatory regime, TIA will take up the licensing and trade regulatory roles from TAR and TIC respectively. All existing travel agent licences issued by TAR, as well as existing tourist guide passes and tour escort passes issued by TIC, by then will 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.

Other details under the new regulatory framework will be formulated by TIA through subsidiary legislation and administrative measures. During the process, TIA will maintain thorough discussion with the travel trade.

### **The Bills Committee**

6. At the House Committee meeting on 24 March 2017, Members agreed to form a bills committee to scrutinize the Bill. The membership list of the Bills Committee is at **Appendix I**. Under the chairmanship of Hon YIU Si-wing, the Bills Committee held 19 meetings between April 2017 and October 2018 to deliberate on the details of the Bill with the Administration, including one meeting to receive oral representations from 31 individuals/deputations. A list of individuals/deputations who/which have submitted views to the Bills Committee is at **Appendix II**.

### **Deliberations of the Bills Committee**

7. The Bills Committee generally supports the proposals in the Bill to enhance the professionalism of the travel trade, foster the healthy long-term development of the travel industry and safeguard consumer interests. In the course of discussion, the Bills Committee has looked into different aspects of the proposed regulatory regime. The major issues deliberated by the Bills Committee are set out below:

- (a) establishment of a new regulatory regime underpinned by TIA (paragraphs 8-22);
- (b) composition and appointment of TIA (paragraphs 23-32);
- (c) licensing and regulation of travel agents (paragraphs 33-51);
- (d) licensing and regulation of tourist guides and tour escorts (paragraphs 52-61);
- (e) regulation of shops arranged to be patronized by inbound tour groups (paragraphs 62-66);
- (f) inspection, investigation and disciplinary mechanism (paragraphs 67-98);
- (g) financial arrangements of TIA (paragraphs 99-104);

- (h) administration of TICF and establishment of TIDF (paragraphs 105-122);
- (i) discharge of non-regulatory functions (paragraphs 123-124); and
- (j) transitional arrangements (paragraphs 125-129).

### Establishment of a new regulatory regime underpinned by TIA

#### *Need of and justifications for introducing a new regulatory regime*

8. The Bills Committee has examined the need of and justifications for introducing a new regulatory regime underpinned by TIA. The Administration advises that the travel industry is a pillar industry of Hong Kong, making up about 5% of Gross Domestic Product and employing about 270 000 people. The Government has all along attached great importance to the sustainable development of the travel industry. Whilst a majority of travel trade members have been carrying on business properly, there have been shopping-related incidents in the Mainland inbound tourism market, some of which have even involved the injuries and deaths of the Mainland visitors, and other types of non-compliance incidents. These incidents have inevitably tarnished the image and reputation of Hong Kong's travel industry, calling for a need to reform the existing regulatory regime underpinned by TAR and TIC.

9. The Administration further advises that the proposal of establishing TIA has undergone years of extensive consultation and discussion since 2011. The majority of the travel industry members and the Consumer Council are in support of the Administration's proposal to establish a statutory regulatory body for the industry as soon as possible. Whilst some people suggest exploring the setting up of a tourism bureau first, the Administration considers that this proposal cannot replace the legislative work for setting up a regulatory body. The early establishment of TIA will be conducive to safeguarding consumer interests, enhancing the professionalism of the travel trade and fostering the healthy long-term development of the travel industry.

10. The Administration also advises that the new regulatory regime under the Bill has made reference to TAO and its subsidiary legislation as well as the existing regulatory requirements imposed by TIC. It also contains new requirements. A comparison between the existing and new regulatory regimes of the travel industry in relation to the key areas of the Bill is in the Annex to LC Paper No. CB(4)1578/16-17(01).

*Regulation of unscrupulous acts in the travel trade*

11. The Bills Committee notes that, under the new regulatory regime, unscrupulous practices in the travel trade will be deterred and combated through two tiers, namely legislative means (i.e. primary legislation and subsidiary legislation) and administrative measures (i.e. directives, codes of conduct and guidelines administratively formulated and issued by TIA). Certain criminal offences targeted against major unscrupulous acts in the travel trade will be set out in the primary and subsidiary legislation. Offenders on conviction will be liable to a maximum punishment of a fine and imprisonment, and those that are licensees will also be subject to TIA's disciplinary proceedings as stipulated in the Bill. Licensees that contravene only administrative measures issued by TIA will be subject to TIA's disciplinary proceedings.

12. The Bill contains express provisions to criminalize certain unscrupulous acts in the travel trade, including: (a) carrying on travel agent business without a travel agent licence; (b) obtaining services for an inbound tour group that is organized by a Mainland travel agent not approved by the tourism regulatory organization in the Mainland; (c) employing or engaging any unlicensed tourist guide or tour escort; (d) failing to display the prescribed information about a tour group on the vehicle arranged for transporting the tour group; and (e) working as a tourist guide/tour escort without a licence.

13. As different types of contravention in the Bill will be subject to different levels of criminal penalties and/or disciplinary orders, the Bills Committee has examined the factors which have been taken into consideration in regulating the unscrupulous practices through the legislative means under the new regulatory regime. The Administration has advised that in determining the unscrupulous practices to be regulated through legislative means, it has taken into account a host of factors, including –

- (a) whether the unscrupulous practices are criminal offences under TAO at present;
- (b) the seriousness of the unscrupulous practices in terms of their impact on tourists' safety and interests as well as the reputation of Hong Kong's travel industry and the frequency of recurrence of cases involving such practices;
- (c) the need for enhancing deterrent effect against the unscrupulous practices and improving compliance with the regulatory regime; and
- (d) similar regulatory experience in other sectors.

14. In addition, the Bill empowers TIA to prescribe conditions on the licences of travel agents, tourist guides and tour escorts. A licence holder that breaches any licence condition will commit an offence. The licence conditions will mainly tackle the unscrupulous act of coerced shopping and be prescribed by subsidiary legislation subject to LegCo's approval. The framework of the relevant provisions of the subsidiary legislation proposed by the Administration is as follows –

- (a) a travel agent must not force any inbound tour group member to enter or stay in any shop or coerce any inbound tour group member into shopping, or commit any such act through any others;
- (b) a travel agent must take all reasonable steps to prevent the travel agent's employees, agents and service providers from engaging or otherwise getting involved in any act of coercing any inbound tour group member into shopping; and
- (c) a tourist guide must not force any inbound tour group member to enter or stay in any shop, or engage or otherwise get involved in any act coercing any inbound tour group member into shopping when he or she is working.

15. On the other hand, clause 153(2)(k) empowers TIA to regulate the activities of licensed travel agents, tourist guides and tour escorts through administrative measures. Under clause 55, a licensee must comply with these administrative measures, which seek to regulate the licensees' activities at the operational and working level. TIA can make necessary changes to them in response to the prevailing circumstances in the travel industry in a timely manner. The Administration envisages that, when formulating administrative measures, TIA will take into account all relevant circumstances, including the prevailing industry development, the measures implemented by TIC under the existing regulatory regime and TIC's regulatory experience, the travel trade's views, etc.

16. Given the statutory regulatory power of TIA, the Bills Committee is concerned whether suitable checks and balances are instilled into the new regulatory regime. The Administration advises that suitable safeguards are built in at both the governance and regulatory levels. At the governance level, the Chairperson and all ordinary members of TIA will be appointed by the Chief Executive. Approval by the Secretary for Commerce and Economic Development ("SCED") will be required for TIA's appointment of the

Executive Director and determination of the associated terms and conditions. TIA will be required to furnish to SCED annually its annual report, statement of accounts and auditor's report. SCED will arrange the documents to be laid on the table of LegCo. TIA will also be required to submit to SCED for approval for the next financial year its annual work plan and estimates of its income and expenditure. TIA will be subject to regulation under the Prevention of Bribery Ordinance (Cap. 201) as well as The Ombudsman Ordinance (Cap. 397) and audit by the Director of Audit. At the regulatory level, the Bill provides for the establishment of an independent appeal panel to handle appeals lodged by persons who are aggrieved by TIA's decisions or disciplinary orders. Members of the appeal panel will be appointed by SCED and must not come from TIA, its committees or working groups to ensure the panel's independence.

17. There are views that the Bill mainly focuses on the Mainland inbound tour group market. The Administration advises that regardless of carrying on inbound or outbound travel business, all travel agents will come under the regulation of the Bill. On the one hand, there were incidents of improper operation of Mainland inbound tour group business in recent years, so targeted measures need to be introduced into the Bill to strengthen the regulation of the market concerned. On the other hand, the Bill similarly subjects those that carry on outbound travel business to regulation in such aspects as requirements for obtaining and renewing licences, financial surveillance, as well as the licence conditions and administrative measures formulated by TIA, to ensure that the outbound travel market continues to operate in an orderly manner.

18. Some members have raised concern that many short-haul outbound tours travelling from Hong Kong to the Mainland are currently not accompanied by tour escorts. To enhance the protection of consumer interests, Mr LUK Chung-hung has indicated that he may consider moving amendments to clauses 37 and 164 to the effect that if a licensed travel agent has not arranged a tour escort to accompany an outbound tour group, it must display, in the prescribed way, the prescribed information to the participants of the tour group. The Administration agrees in principle with the regulatory requirement proposed by Mr LUK, but considers that such a regulatory requirement should be formulated by TIA by administrative measure, instead of being stated in the primary and subsidiary legislation. In future, TIA can require, by way of administrative measure, that a licensed travel agent must clearly state in its promotional materials about whether a tour escort is arranged to accompany the outbound tour, so that consumers can make informed decisions upon tour enrolment.

*Provisions against co-operation with unauthorized travel agents in the Mainland*

19. The Bill contains provisions to criminalize local travel agents' co-operation with unauthorized travel agents in the Mainland. Clause 6(3) prohibits local travel agents from obtaining inbound travel services for Mainland inbound tour groups organized by Mainland travel agents (i.e. persons who carry on the business of organizing Mainland inbound tour groups in the Mainland) that are not approved by the regulatory organization in the Mainland.

20. Addressing the concern that there are cases where local travel agents obtain travel services for Mainland inbound tour groups organized by parties in the Mainland other than travel agents approved by the regulatory organization in the Mainland, the Administration explains that clause 6(3) seeks to prohibit local travel agents from co-operating with unapproved travel agents in the Mainland only. Local travel agents' co-operation with persons in the Mainland that do not carry on the business of organizing tour groups to Hong Kong from the Mainland is not subject to the said provision. Furthermore, it is a defence if all practicable steps are taken by the defendant to determine whether the Mainland travel agent is an approved travel agent, and it is reasonable for the defendant to determine that the Mainland travel agent is an approved Mainland travel agent. TIA will issue guidelines on the practicable steps that can be taken by travel agents to reasonably determine whether a person who organizes a Mainland inbound tour group is approved to carry on the business of organizing Mainland inbound tour groups by the regulatory organization in the Mainland.

21. Having considered the Bills Committee's views and to improve clarity, the Administration will move amendments to clauses 2(1), 5 and 6(1A), 6(3) and 6(5).

*Display of information about tour groups*

22. The Bills Committee has examined the justifications for imposing the requirement of displaying required information on vehicles arranged to transport tour groups under clause 37(1) and the implementation of such a requirement. The Administration advises that this clause aims to assist participants of inbound and outbound tour groups, as well as inspectors and investigators of TIA, in identifying the vehicles arranged by licensed travel agents for transporting the participants in Hong Kong. This is a basic and reasonable requirement to receive inbound and outbound tour groups, and can also facilitate the regulatory work of TIA. The information to be displayed,



and the way in which the information is to be displayed, will be prescribed by TIA through subsidiary legislation. When formulating the requirements, TIA will make reference to the relevant requirements of TIC, and consult the trade and other stakeholders.

### Composition and appointment of TIA

23. The Bills Committee has examined the matters relating to the appointment of TIA, including the composition of and criteria for appointment to TIA. According to section 1 in Schedule 9 to the Bill, members of TIA comprise one Chairperson (non-trade member), one Vice-chairperson (taken up by the Commissioner for Tourism) and not more than 28 ordinary members (not more than 15 non-trade members and not more than 13 trade members).

24. The Bills Committee considers that the proportion of representatives of travel agents, tourist guides and tour escorts in TIA is crucial since it will have a bearing on the decision-making of TIA and interests of stakeholders. Some members suggested that the Bill should specify the exact number of representatives from each travel trade sector and formulate a suitable selection mechanism or criteria (e.g. nomination by the trade) to ensure proper representation of the travel trade in TIA and fairness of the appointment process.

25. The Administration advises that a majority of members of TIA will be non-trade members to ensure TIA's independence. In considering the appointment of trade members, the Government will ensure balanced representation in the composition to cover travel agents of different businesses as well as front-line trade practitioners. All along, the Government makes appointments of non-official members to statutory bodies on the basis of the merit of the individuals concerned. When appointing a member to serve on TIA, the Government will take into account the candidate's ability, expertise, experience, integrity and commitment to public service, with due regard to the functions and nature of business of TIA as well as the statutory provisions of the new Ordinance.

26. The Administration further advises that the Government will appoint not more than three individuals who are engaged in the outbound travel agent business, and not more than three individuals who are engaged in the inbound travel agent business. Furthermore, as a trade association experienced in practising trade regulation, TIC can continue to contribute on various fronts and act as a key bridge of communication link between TIA and the trade. The Government will therefore appoint not more than three representatives of TIC. To assist TIA to understand more effectively the work conditions and

views of front-line trade practitioners, the Government will also appoint not more than four individuals who work as tourist guides or tour escorts. As regards non-trade members, the Government will appoint individuals who have knowledge in law, accountancy, finance, insurance, education, consumer affairs or general administration, or professional or occupational experience, such that TIA can effectively tap different views from outside the trade to assist its discharge of different functions. Upon members' requests, the Administration will make amendments to section 1(4) in Schedule 9 to the Bill to set out the composition of TIA members in a more detailed manner.

27. Some members consider that the number of tourist guides and tour escorts in TIA should be increased. To this end, the Bills Committee notes that Mr LUK Chung-hung may consider moving amendments to section 1(4)(c) in Schedule 9 to the Bill to the effect that the appointed trade members of TIA will consist of not less than six tourist guides and tour escorts. The Administration does not support the amendments proposed by Mr LUK and considers that the composition of TIA's members as mentioned in paragraph 26 above can already ensure balanced representation in the composition of TIA's trade members.

28. On the criteria for TIA's appointment of its Executive Director, the Administration advises that 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. TIA will be responsible for formulating details about the recruitment and selection procedures, which include setting up a selection committee to facilitate the identification of a suitable candidate.

#### *Meetings of TIA*

29. The Bills Committee has examined the general procedure for conduct of meetings of TIA. As TIA meetings can be conducted by telephone, video conference or other electronic means ("assisted meetings"), members have raised concerns on measures to ensure real-time communication between TIA members with distance participation and TIA members being actually present at the assisted meetings.

30. The Administration advises that members of TIA will attend meetings of TIA in person under normal circumstances. Nevertheless, in view of the increasing popularity of the use of telecommunications, as well as the rapid advancement of technologies, allowing TIA members to participate in meetings by telephone, video conference or other electronic means will help keep pace with the times. Sections 10(5) and 12(4)(b) in Schedule 9 to the Bill are

essential to enable TIA members who cannot attend a meeting in person to participate in the meeting by electronic means, thereby facilitating TIA's handling of its business. As regards regulating assisted meetings, section 12(4)(b) in Schedule 9 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 provision 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. Moreover, TIA will make standing orders in accordance with section 12(5) in Schedule 9 for the purposes of regulating the conduct of assisted meetings.

31. Under section 14(1) in Schedule 9 to the Bill, a resolution is a valid resolution of TIA, even if it is not passed at a meeting of TIA, if (a) it is in writing; (b) proper notice of it is given to all members of TIA; and (c) it is signed, or assented to, by a majority of members of TIA. To facilitate decision-making by written resolution and having taken into account members' view that the degree of urgency of individual matters warranting TIA's handling may vary, the Administration will propose amendments to section 14(1) and (7) in Schedule 9 to the effect that a TIA member's request under subsection (6) (i.e. that the proposed resolution must be referred to a meeting) may be made within the period specified in the notice given under subsection (1)(b), but not within a hard-and-fast period of 14 days after the notice is given. Similar amendments will also be proposed to section 31(1) and (7) in Schedule 9.

32. Having regard to members' views, the Administration will also propose amendments to refine the scope of the provision under section 16 in Schedule 9 to the Bill such that decisions of TIA are not invalidated solely by, inter alia, any omission, defect or irregularity in the procedures adopted by TIA that does not affect the decision made.

### Licensing and regulation of travel agents

#### *Regulation of on-line travel agents*

33. The Bills Committee notes that the Bill provides for the licensing and regulation of travel agents. Apart from those travel agents that carry on any outbound or inbound travel business activities in Hong Kong, 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 will be required to obtain travel agent licences.

34. The Bills Committee in general welcomes the Administration's proposal of bringing those on-line travel agents that carry on outbound travel business activities targeted at the public of Hong Kong under the regulation of the Bill, with a view to according greater protection to Hong Kong outbound travellers and creating a level playing field between traditional travel agents with physical presence and on-line travel agents. Some members, however, are concerned about the enforcement issues as some of these on-line travel agents carry on business outside Hong Kong.

35. The Administration explains that although it is still at an early stage worldwide for a country/place to regulate persons based outside the country/place concerned that carry on travel agent business, it is necessary to take a step forward by bringing under the regulation of the Bill those on-line travel agents that carry on outbound travel business activities targeted at the public of Hong Kong in view of the growing popularity of buying and selling travel products on-line. Notwithstanding the fact that the business or physical location of some on-line travel agents is outside Hong Kong, the Bill provides a solid legal basis for TIA to follow up suspected offence cases involving those travel agents through complaints received or based on reasonable suspicion, and exercise the powers of investigation provided for in the Bill as far as reasonably practicable. Upon knowing their business or physical location, TIA will attempt to contact the tourism regulatory authorities of the jurisdictions concerned to take appropriate action. TIA will also publish up-to-date lists of licensed travel agents from time to time and assist local consumers in identifying and choosing licensed travel agents through public education.

36. On members' concern about the circumstances under which a person will be regarded as "actively markets" an outbound travel business activity, the Administration explains that TIA will consider all relevant circumstances, including whether there is a detailed marketing plan; whether the activity is extensively advertised via marketing means such as direct mailing, advertisements in local newspapers, broadcasting or other "push" technology over the Internet; whether the marketing is conducted in a concerted manner and executed according to a plan or schedule which indicates a continuing activity rather than an one-off exercise; and 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. The Administration considers it undesirable to set out specific criteria in the Bill that TIA should take into consideration in determining whether a person "actively markets" any travel agent business activity to the public of Hong Kong, since TIA will need to enjoy flexibility to cater for changes in market

circumstances, including technological advancements in business marketing over time. Having regard to members' view and to improve clarity, the Administration will propose amendments to clause 4(1)(b)(ii) to qualify "actively markets" as being whether or not through another person.

37. As to 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, the Administration advises that its policy intent behind the offence provision is to catch intentional publication of advertisements relating to the provision of travel services by persons who are required to be licensed as travel agents but have not obtained any travel agent licence, as well as intentional publication of advertisements relating to the provision of travel services by licensed travel agents whose licence numbers have not been clearly stated. The Administration will make amendments to clause 165 to reflect its policy intent.

#### *Issuing and renewing travel agent licences*

38. The Bills Committee has examined the requirements for issuing and renewing travel agent licences under the Bill. Members note that such requirements have been drawn up with reference to the requirements under the existing regulatory regime, i.e. the factors for considering whether an applicant is suitable to hold a licence under TAO<sup>1</sup>, as well as the existing requirements of TIC, including –

- (a) premises requirement: the premises is suitable for travel agent business (i.e. the premises must be within separate and independent commercial premises/buildings and be easily and directly accessible to the general public);
- (b) capital requirement: an applicant must have capital of not less than \$500,000 ("basic capital requirement") and, for each additional premises, additional capital of not less than \$250,000 ("branch capital requirement"); and
- (c) staffing requirement: at each premises, there must be at least one manager with a minimum of two consecutive years' experience of the travel industry within five years before the relevant licence application, and one full-time staff member.

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<sup>1</sup> Such factors are mainly concerned with the applicant's financial capability (e.g. any bankruptcy/winding-up proceedings), and conviction record of any offences involving fraudulent, corrupt or dishonest acts or under TAO.

39. On the other hand, the Bill has introduced certain new requirements, including requiring a licence applicant to deposit guarantee money with TIA<sup>2</sup> and appoint an AR<sup>3</sup>, to strengthen travel agents' commitment to carrying on business, as well as additional factors for considering whether an applicant for a travel agent licence or its renewal is suitable to hold a licence. Such additional factors include conviction record of any offence involving violence or under the Trade Descriptions Ordinance (Cap. 362) and record of compliance with the regulatory requirements of TIC.

40. Considering that it is increasingly common for consumers to enter into transactions with travel agents on-line upon the advances of information technology, the Bills Committee has urged the Administration to re-examine the requirements related to the issue and renewal of travel agent licences in the Bill, with a view to ensuring that travel agents' different modes of operation can be reasonably catered for whilst suitable protection can be accorded to consumer interests.

41. After consideration, the Administration proposes removing the premises, branch capital and staffing requirements (see paragraph 38(a) to (c) above) imposed on travel agent licence applicants in the Bill so as to cater for travel agents' different modes of operation. A series of amendments and consequential amendments to the Bill will be proposed by the Administration to this effect. Under the revised arrangement, a travel agent licence applicant can choose to carry on travel agent business at a local place of business that is open to the public or not open to the public (e.g. by means of a website at a premises that is not open to the public). Regardless of the mode of operation involved, a person must first obtain from TIA a travel agent licence before carrying on travel agent business. On this basis –

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<sup>2</sup> A travel agent with a valid licence obtained after the full commencement of the new Ordinance will be required to not only fulfill the capital requirement, but also deposit guarantee money of \$500,000 with TIA by bank guarantee. A travel agent with a valid licence immediately before the full commencement of the new Ordinance will not be required to immediately deposit guarantee money. Its deposit will be triggered when the aggregated amount of financial penalties imposed on it under the new regime, or the frequency of its misconduct, exceeds the levels specified by TIA.

<sup>3</sup> Each travel agent will be required to appoint an AR from amongst its owner(s) or senior management to ensure adequate supervision of the operation, management and control of the travel agent concerned, to ensure that the travel agent's operation is in compliance with the new regulatory regime, and to inform TIA of any changes in the prescribed particulars about the travel agent in relation to its suitability to hold a licence.

- (a) a licensed travel agent carrying on travel agent business at a local place of business must first obtain from TIA a business permit. The permit must be displayed at the place concerned and will be subject to inspection by TIA's inspectors and investigators; and
- (b) a licensed travel agent carrying on travel agent business by using a website or any other communication network must clearly state the number of the travel agent's licence on the website or communication network.

Each applicant, however, must still fulfill the suitability, basic capital, guarantee money and AR requirements as stipulated in clause 8(2)(a)(iii), (iv), (v) and (vi).

42. The Bills Committee welcomes the Administration's proposed amendments to the Bill which will cater for the future development of the travel industry. Some members consider that the licensing mechanism to regulate the activities of travel agents under the new regulatory regime should not be too stringent so as to facilitate the entrance of new market players and promote healthy competition. These members worry that the new requirement of depositing guarantee money of \$500,000 with TIA by bank guarantee may constitute a high entry threshold to the travel industry and undermine the development of tourism products by local start-ups or business entrepreneurs with little start-up fund.

43. The Administration advises that, when formulating the Bill, the Government has been striving to ensure that the new regulatory regime will safeguard consumer interests, enhance the professionalism of the travel trade and foster the healthy long-term development of the industry. To further strengthen travel agents' commitment to carrying on business, the Government has adopted the general consensus reached in the public consultation in 2011 to require licence applicants to deposit guarantee money with TIA and appoint ARs. As a basic entry threshold, such requirements will apply to all licence applicants regardless of their modes of business operation.

44. The Administration also advises that the general procedures by which the travel agents concerned deposit guarantee money with TIA, including the period in which the guarantee money is to be deposited, will be formulated by TIA administratively. If a person makes an application for travel agent licence to TAR, but the application has yet to be determined by TAR before the Bill fully commences, TIA must determine the application in accordance with TAO. As TAO does not require an applicant to deposit guarantee

money, the applicant in the case is not obliged to deposit guarantee money with TIA immediately after the full commencement of the Bill.

45. Under clause 25(1)(d), each AR has to meet the qualification requirement set out in Schedule 7 to the Bill, namely: (a) completion of Form 5 education under the 5-year secondary academic structure, or Senior Secondary 3 education under the New Senior Secondary academic structure (or equivalent), and possession of at least 5 years of management experience in the travel industry; or (b) possession of at least 10 years of management experience in the travel industry. Some members suggest relaxing the requirement of management experience in the travel industry imposed on ARs by the Bill, with a view to facilitating the entry of persons who intend to carry on travel agent business into the market.

46. The Administration advises that the AR of each travel agent is to ensure adequate supervision of the operation, management and control of the agent, as well as to ensure that the operation of the agent is in compliance with all of the requirements in the new Ordinance. It is necessary to ensure that the candidates concerned possess a general understanding of and management experience about the operation of the travel industry. Permitting travel agents to carry on business in the absence of persons with certain management experience in the travel industry will not be conducive to safeguarding consumers against unscrupulous trade practices.

*Definition of carrying on travel agent business*

47. As carrying on travel agent business without licence will be criminalized under the Bill, the Bills Committee has examined the definition of carrying on travel agent business in the light of different types of travel business activities, including companies co-operating with travel agents to provide services with tourism elements, on-line platforms that provide information about different travel products or guide-matching services, airlines that provide outbound travel services, etc.

48. On members' concern about whether the scope of the Bill has covered more types of travel business activities than TAO at present, the Administration explains that the proposed coverage follows that of TAO. Clause 4 defines "carrying on travel agent business". Clause 4(1) sets out the business activities that belong to "carrying on travel agent business" and clause 4(2) and (3) set out the relevant in-principle considerations. Under clause 4(2), if a person's principal business is not the carrying on of the business activities described in clause 4(1)(a) or (b), and the relevant business activity carried on by the person is ancillary to the person's principal business,



the person is not considered "carrying on travel agent business". Under clause 4(3), in determining whether a business activity is ancillary to a person's principal business, TIA must have regard to all relevant matters, including the nature of the activity, the frequency of the activity, and the financial contribution of the activity towards that person. In other words, in determining "carrying on travel agent business", the totality of facts has to be considered in each case.

49. In order to address the concern raised by the trade that people engaging in business with tourism elements may be easily caught by the new legislation, the Administration advises that TIA can explain in the form of guidelines the various considerations under the new Ordinance, with reference made to past court cases, for the trade's reference. The Administration has provided its preliminary analysis in LC Paper No. CB(4)1333/16-17(03) on the need to obtain travel agent licences in some scenarios.

50. The Bills Committee is aware that nowadays some persons personally engage with visitors to Hong Kong through an on-line platform and provide guiding service in person. The Administration clarifies that operators of this kind are required to obtain a travel agent licence under the regulatory regime underpinned by TAO at present and will also be required to obtain a licence under the new regulatory regime.

51. Clause 4(4)(b) and (c) provides that any person who obtains for another person/a visitor to Hong Kong accommodation outside Hong Kong/in Hong Kong intended to be occupied by that other person/that visitor for more than 14 days does not carry on travel agent business, and is therefore not required to hold a travel agent licence. The Bills Committee has examined whether such a clause should be amended to align with the provisions in the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) under which premises providing accommodation for a period of 28 consecutive days or more for each letting are excluded from the application of the Ordinance. Having regard to members' views and to avoid unnecessary confusion, the Administration will propose amendments to clause 4(4)(b) and (c) so that it will tally with the Schedule to the Hotel and Guesthouse Accommodation (Exclusion) Order (Cap. 349C) in respect of the subject exemption from obtaining hotel or guesthouse licences. Therefore, a person does not carry on travel agent business if the relevant accommodation obtained by the person for another person/a visitor to Hong Kong is intended to be occupied by that other person/visitor for 28 or more days.

## Licensing and regulation of tourist guides and tour escorts

52. The Bills Committee notes that the Bill will provide for the licensing and regulation of tourist guides and tour escorts under the law, in place of the existing accreditation system implemented by TIC administratively. The requirements for issuing and renewing tourist guide licences and tour escort licences in the Bill have been drawn up with reference to TIC's current requirements (e.g. age, education level, completion of training courses, and passing of the examination). To further enhance the service quality and professionalism of front-line trade practitioners, tourist guides and tour escorts upon each licence renewal will be required to have completed the Continuing Professional Development Scheme specified by TIA. TIA will comprehensively consider whether applicants for tourist guide licences or tour escort licences, as well as renewal of such licences, are suitable to hold licences (e.g. their conviction records of any relevant offences and records of compliance with the TIC's regulatory requirements).

### *Legal responsibilities of travel agents and front-line practitioners*

53. Under the new regulatory regime, travel agents, tourist guides and tour escorts will be liable for certain unscrupulous conducts or acts criminalized by the Bill. Concerns have been expressed about the delineation of the legal responsibilities between the travel agent and front-line practitioner when a suspected offence case arises, particularly in the case of a tourist having been coerced into shopping in Hong Kong.

54. The Administration advises that a tourist guide, as a front-line practitioner that directly receives an inbound tour group, regardless of his or her co-operation relationship with the travel agent or whether the travel agent has instructed him or her to coerce members of a tour group into shopping, must not coerce any member of the tour group into shopping under any circumstances. Otherwise, he or she may be held liable for breaching the relevant licence condition under the new regulatory regime. If the tourist guide commits the act of coerced shopping at the travel agent's instructions, the travel agent may also be held liable for breaching the relevant licence condition.

55. On the other hand, if the travel agent has taken all reasonable steps (including but not limited to: providing clear guidelines and proper training, and conducting regular reviews and making adjustments as necessary; prior to employing or otherwise engaging a tourist guide for receiving an inbound tour group, checking whether he or she has committed any coerced shopping act before, etc.) to prevent its tourist guide from committing the act of coerced

shopping, but the tourist guide still coerces the inbound tour group member into shopping, the tourist guide may be held liable as a result of breaching the relevant licence condition. The travel agent has not breached the relevant licence condition and accordingly will not be held liable. When formulating the subsidiary legislation in relation to licence conditions, TIA will consider the views collected from the travel trade to ensure that the legal responsibilities between travel agents and front-line practitioners can be clearly delineated so as to prevent both parties from shoving their responsibilities to each other.

56. To address the concerns of some tourist guides and tour escorts that their work is mainly subject to the directions or arrangements of travel agents, and that different parties may shove their responsibilities to each other in a suspected criminal case, the Administration advises that TIA can issue a directive to require a travel agent to provide a job sheet to delineate the tasks and duties for its tourist guides/tour escorts in future.

*Relationship between travel agents and front-line practitioners*

57. The Bills Committee has divergent views on whether the co-operation relationship between travel agents and tourist guides/tour escorts should be regulated through the Bill. The Administration does not support the amendments proposed by Mr LUK Chung-hung to clauses 38 and 39 to mandate the collaboration between travel agents and tourist guides/tour escorts to be an employer-employee one across the board. The Administration points out that Hong Kong is a free market, and that there is no legislation thus far that mandates, for any individual sector, all front-line practitioners to be employees. The collaboration relationship between individual firms and persons working for them should be decided as appropriate through liaison having regard to the circumstances of the sector and business concerned. At present, tourist guides and tour escorts can work as employees or self-employed persons for travel agents. Mandating all front-line practitioners to be employees of the travel agents will violate the free market principles all along adopted by Hong Kong. To safeguard the rights and benefits of tourist guides and tour escorts, TIA will require, through administrative measures, that a travel agent must sign a service agreement with its tourist guide or tour escort before entering into collaboration, whereby the travel agent must pay service remuneration to the tourist guide or tour escort; must not require its tourist guide or tour escort to bear or unreasonably advance any payment for a tour group received; and must not delay the reimbursement for any advance payment made by its tourist guide or tour escort.

58. The Bills Committee also notes that some members of the travel trade are concerned about the issue of "false self-employment". The

Administration points out that the Labour Department has been educating the public and employers on the differences, pros and cons as well as legal rights and obligations of the two contractual relationships of employment and self-employment. The Labour Department has also adopted different measures to deter the malpractices of evading liabilities by purposely and falsely labelling an employee as a self-employed person. Such measures include providing consultation and conciliation service to those involved in disputes over false self-employment, referring them to the Labour Tribunal, or Minor Employment Claims Adjudication Board, as necessary to seek adjudication or institute civil claims, and taking enforcement actions against any employers who fail to fulfill their responsibilities under labour legislation.

59. The Administration advises that, to avoid any misunderstanding or dispute, before entering into collaboration, a travel agent and a tourist guide or tour escort should understand clearly their mode of collaboration according to their intention, and the tourist guide or tour escort should clearly identify his/her identity as an employee or a self-employed person, to safeguard mutual rights and benefits. In differentiating the two identities, all relevant factors of the case should be taken into account. The court has already set out different factors for distinguishing an employee from a self-employed person in past cases. Even though a tourist guide or tour escort is called a self-employed person or has been labelled as a self-employed person in the contract, if in essence there exists an employer-employee relationship between the travel agent and tourist guide or tour escort, the travel agent is still required to fulfill its responsibilities as employer under the relevant legislation.

60. To protect the interests of front-line practitioners, Mr LUK Chung-hung has indicated that he may consider proposing amendments to clause 164 to the effect that TIA may make regulations to prescribe the insurance policy that a licensed travel agent must take out for a person who is working as a tourist guide providing guiding service, or a person who is working as a tour escort, in accordance with its directions.

61. On Mr LUK Chung-hung's proposed amendments, the Administration considers that if tourist guides and tour escorts are employees of travel agents, the travel agents concerned are already required to take out employees' compensation insurance policies for them. To ensure those self-employed tourist guides and tour escorts providing service to travel agents are appropriately protected during their service period, TIA can require, through administrative measures, that such persons must have a work insurance policy that meets TIA's prescribed basic requirements, and that the travel agents concerned must ensure that the tourist guides or tour escorts have taken out the relevant work insurance before entering into collaboration with them.

Furthermore, the relevant premium for the work insurance, which is to be taken out by the self-employed tourist guides or tour escorts, will be borne by the travel agents concerned. To ensure the timely implementation of the arrangement, TIC will discuss with relevant parties to formulate the requirements of the work insurance and the reference amount of the relevant premium, such that the arrangement, taking the form of an industry best practice, can be implemented by the trade voluntarily as a pilot before the formulation of the administrative measures by TIA. The Administration undertakes to provide further information on the proposed arrangement during the resumption of the Second Reading debate on the Bill.

#### Regulation of shops arranged to be patronized by inbound tour groups

62. Clause 152(b) provides that TIA is empowered to regulate the shops that inbound tour groups are arranged to patronize in relation to that patronage. The Bills Committee has enquired whether such power goes beyond the scope of the Bill as the long title of the Bill only seeks to regulate the activities of travel agents, tourist guides and tour escorts. Some members are also concerned about the excessive regulation by TIA over different kinds of tourist activities.

63. The Administration points out that while the subjects of licensing under the new regulatory regime are travel agents, tourist guides and tour escorts, the regulation of shops arranged to be patronized by inbound tour groups is ancillary to the regulation of travel agents and tourist guides receiving such tour groups. Shopping trips for an inbound tour group is a common element of the itinerary designed by travel agents that carry on inbound tour group business. As in the case of the existing arrangement implemented by TIC (i.e. the "Refund Protection Scheme (Registered Shops) for Inbound Tour Group Shoppers" ("the Scheme")), the Administration considers it necessary for TIA to implement an administrative scheme to regulate shops arranged by travel agents to be patronized by inbound tour groups. TIA will formulate the administrative scheme having regard to all relevant circumstances, including the prevailing industry development, the scheme being implemented by TIC at present, the TIC's regulatory experience, the travel trade's views, etc.

64. On members' enquiry about whether the scope of "shops" in clauses 152(b) and 153(2)(j) can also cover restaurants and places of public entertainment that inbound tour groups are arranged to patronize, the Administration advises that it is proposed that the target regulated by the administrative scheme initially be the same as that under the Scheme of TIC, namely shops that inbound tour groups are arranged to patronize for shopping.

As of now, the Administration does not see a need to bring under the future regulation restaurants and places of public entertainment that inbound tour groups are arranged to patronize. That said, TIA will take into account all relevant circumstances when formulating concrete details of the administrative scheme.

*Impact brought by the operation of inbound tour group business on the local neighbourhood*

65. Some members have expressed grave concern about the impact brought by the operation of inbound tour group business on the local neighbourhood, and considered that suitable provisions should be provided in the Bill to address the problem. The Administration advises that it has all along worked closely with the travel trade to minimize such impact through various targeted measures, including encouraging coaches to use legal parking spaces, urging the trade to maintain order when receiving tour groups and leveraging information technology to strengthen visitor and vehicular flow control, etc. From time to time, TIC also conducts on-site inspections, as well as issues circulars to and holds talks for the trade to appeal for their proper management of tour groups.

66. The Administration expects that TIA, upon its full operation, can strengthen regulation on various fronts. It will propose to TIA to conduct on-site inspection before registering a shop to which inbound tour groups are arranged to patronize, with a view to ensuring that the premises is suitable for receiving tourists, or that appropriate visitor and vehicular flow control measures have been put in place. It will also recommend that TIA deploy more manpower to conduct on-site inspections in affected areas, as well as formulate suitable administrative measures against licensees or shops that are not amenable to repeated advice and willfully undertake poor management in arranging inbound tour groups to visit shops and restaurants in a non-co-operative manner, with actions to be taken after investigations and relevant proceedings. If there remains no improvement to the community's situation over time, the Administration will also request TIA to, when formulating the requirements and details of the administrative scheme (e.g. devising a mechanism for assessing the visitor and vehicular flow), take into account fully all relevant circumstances, including the prevailing industry development, TIC's regulatory experience and different stakeholders' views, etc. Any travel agent that violates the administrative measures will be subject to disciplinary actions. TIA can also refuse to register shops that violate the administrative measures.

## Inspection, investigation and disciplinary mechanism

### *Powers of inspection and investigation*

67. The Bills Committee notes that the Bill will empower TIA to appoint inspectors to conduct inspections for ascertaining whether licensees are in compliance with the new regulatory regime; and to appoint investigators to conduct investigations into cases of complaint and suspected misconduct against licensees. Any person who, without reasonable excuse, obstructs TIA's inspectors or investigators from performing their functions, or does not provide the inspectors or investigators with the required assistance, information or documents, will be subject to criminal penalties. This will address the existing deficiency of TIC that its power to exercise trade regulatory functions lacks legal backing.

68. Noting that clauses 74 to 81 provide for the powers relating to an investigation, including a power to enter and search under a warrant, and to obtain an order preventing a person from leaving Hong Kong, the Bills Committee has examined the enforcement and exercise of such powers. Some members have expressed concern about the wide power granted to TIA under the Bill and urge the Administration to ensure suitable checks and balances are in place.

69. Some members have suggested that the retention of valuable properties for investigation purpose should only be allowed with a court warrant. The Administration advises that, based on the actual circumstances of each case, TIA's investigator will exercise different investigation powers under the Bill to conduct an investigation. Where necessary, the investigator will retain the property as obtained during the investigation so as to conduct the investigation effectively and collect the necessary evidence. Whether to exercise the power concerned is not contingent upon the value of the property. Moreover, clause 77 regulates the duration in which an investigator can retain property as obtained during an investigation, so the retention is subject to appropriate checks and balances. On the other hand, the purpose of applying for a warrant from the magistrate under clauses 75(1)(a) and 76 is to subject the investigator's exercise of the power to enter and search premises to appropriate checks and balances, such that the relevant parties' premises are safeguarded against arbitrary or unlawful search.

70. The Bills Committee notes that, different from TAO, persons other than those associated with the business of a travel agent might be prohibited from leaving Hong Kong under clause 79. Members have examined the need of and justification for expanding the scope of such a power under the Bill. The

Administration explains that, under clause 79(1) and (2), if, in relation to an investigation conducted under clause 72, an investigator reasonably believes that (a) a person is likely to be able to assist the investigator in relation to the investigation, and (b) the person intends to leave Hong Kong, or has left Hong Kong to reside elsewhere, the investigator may apply to a magistrate for an order prohibiting the person from leaving Hong Kong without first assisting the investigator in relation to the investigation. As the Bill covers more regulatory targets and has a wider scope than the existing TAO, and the nature and complexity of each case of investigation differ, TIA needs to be accorded with necessary power to address unforeseeable circumstances. Furthermore, clause 79(3) sets a threshold for issuing an order to prohibit the person concerned from leaving Hong Kong, namely that the magistrate needs to be satisfied that: (a) the investigator's application is well-founded; and (b) it is in the public interest to ensure that the person does not leave Hong Kong, or if the person having left, and returned to, Hong Kong, does not leave again, without first assisting the investigator in relation to the investigation. TIA's investigator will need to have sufficient justifications and establish that the measure is in the public interest before applying to the magistrate for an order to prohibit any person from leaving Hong Kong.

#### *Disciplinary mechanism*

71. The Bills Committee notes that, under the Bill, a disciplinary committee will be established by TIA for handling cases of complaint or suspected misconduct against travel agents, tourist guides and tour escorts further to TIA's investigation. Inquiry committees will be set up under the disciplinary committee to conduct inquiries into the relevant cases and decide whether to make a disciplinary order. The Bills Committee has examined the establishment and functions of the disciplinary committee and inquiry committees.

72. Under clause 87, the disciplinary committee will consist of a chairperson (non-trade member), two vice-chairpersons (non-trade members), and at least 15 ordinary members (at least eight being members of TIA, of whom at least half are non-trade members). Members of the disciplinary committee will be appointed by TIA. Under clause 100, an inquiry committee will consist of a chairperson and at least two ordinary members. Only a member of the disciplinary committee is eligible to be a member of an inquiry committee. If an inquiry committee is established by the chairperson of the disciplinary committee, the chairperson of the disciplinary committee or a vice-chairperson of the disciplinary committee nominated by the chairperson of the disciplinary committee will be the chairperson of the inquiry committee.



73. The Bills Committee has examined whether the resignation or removal of a non-trade member of the disciplinary committee from office will lead to the disciplinary committee's in-compliance with the composition stated in the Bill, and whether the meetings conducted by the disciplinary committee, and the inquiries conducted by any inquiry committee(s) already established, will remain valid before the composition requirement of the disciplinary committee is complied with.

74. The Administration advises that, under section 51 of the Interpretation and General Clauses Ordinance (Cap. 1), where any committee is established by or under any Ordinance, the powers of such committee shall not be affected by any vacancy in the membership thereof. Therefore, under normal circumstances, in the case of a vacancy as described in paragraph 73 above, the subsequent meetings conducted by the disciplinary committee, and the subsequent inquiries conducted by any inquiry committee(s) already established, will remain valid. That said, if the member who has resigned or has been removed is coincidentally a member of an inquiry committee already established, and the vacancy concerned results in the inquiry committee's in-compliance with the quorum for meetings under clause 102, then the vacancy will need to be filled first by a new appointee before the committee can hold any meeting that is in compliance with the requirement under clause 102 and continue to handle the same case. In any event, the Administration considers that TIA, from the administrative perspective, will appoint a new member to fill the vacancy as soon as possible.

75. Under clause 89(1), TIA may remove a member of the disciplinary committee from office if TIA considers that the removal is desirable for the committee to effectively perform its functions. Under clause 89(2), if a member of the disciplinary committee is removed from office, TIA must inform the member of the removal by written notice. Some members consider that the in-principle grounds on which a member of the disciplinary committee may be removed should be set out in the Bill, and that TIA should be required to inform removed members of the reasons for the removal.

76. The Administration advises that the formulation of clause 89(1) and 89(2) makes reference to that of similar sections of the Property Management Services Ordinance (Cap. 626). The Insurance Ordinance (Cap. 41) and the Securities and Futures Ordinance (Cap. 571) also contain similar provisions to empower the Insurance Authority and the Securities and Futures Commission respectively to revoke the appointment of a member of any committee established by them. None of the three Ordinances set out in-principle grounds for the revocation nor mandate that the reason for removal be disclosed to the removed member. As a matter of fact, there can be various

reasons for removal. Possible reasons include the member being incapacitated by physical or mental illness, or otherwise being unable or unfit to carry on his duties as a member, etc. As clause 89(1) already sets out an in-principle scope within which the power of removal may be exercised, the Administration considers the formulation of the clause to be appropriate. TIA may decide the contents of the written notice depending on the actual circumstances of every case of removal.

77. Clause 91 empowers TIA to give written directions to the disciplinary committee. Some members consider that if TIA gives written directions to the disciplinary committee, the disciplinary committee should take the directions as reference only but should not be obliged to act in accordance with the directions. The Administration advises that the disciplinary committee is established by TIA as one of its committees. A key function of TIA is to regulate travel agents, tourist guides and tour escorts through statutory licensing systems. The purpose of establishing the disciplinary committee is essentially to assist TIA in carrying out the regulatory work. The disciplinary committee's conduct of business must fully implement the policy direction and objectives of TIA on regulatory matters. It is reasonable to oblige a committee established by a regulatory authority to act in accordance with the directions given by the authority concerned.

78. Having considered members' views and to improve clarity, the Administration will make amendments to clause 90 to reflect its policy intent that the disciplinary committee may give general written directions on matters relating to the performance of functions by the chairperson of the disciplinary committee, persons exercising the functions of the chairperson under clause 98 or 99, and an inquiry committee, rather than consider individual cases and decide how they should proceed.

79. Under clause 98, if the chairperson of the disciplinary committee is satisfied that a case is trivial, frivolous, vexatious, misconceived or lacking in substance, the chairperson may decide that the case is not to proceed further. To ensure procedural justice and proper handling of the case concerned, the Bills Committee has examined whether the disciplinary committee should be empowered to review such a decision made by its chairperson.

80. The Administration advises that, when designing the whole schemes of disciplinary and appeal proceedings under the Bill, it has observed the principle of ensuring that each and every case be efficiently and appropriately handled to prevent the licensees involved from being unfairly treated or unreasonably disciplined. To this end –

- (a) if the chairperson of the disciplinary committee –
  - (i) decides that a case is not to proceed further under clause 98, the chairperson must, by notice in writing given to the complainant concerned, notify the complainant of the decision and give reasons for the decision. In fact, if the complainant considers that the decision merits reconsideration, he or she can approach TIA for follow-up on conducting a further investigation and then referring all the facts of the case to the chairperson of the disciplinary committee for reconsideration; and
  - (ii) decides that a case is to proceed further under clause 99, and TIA, the inquiry committee or the chairperson of the disciplinary committee subsequently decides that an order be made on the licensee concerned, the licensee aggrieved by the decision may lodge an appeal under Part 8 of the Bill for handling by the appeal board, which is independent from TIA. The appeal board may confirm, vary or reverse the decision concerned; and
- (b) to ensure that persons assisting TIA in carrying out disciplinary proceedings are those that effectively discharge pertinent functions, the Bill contains provisions enabling TIA to have full control over various matters including composition, appointments, removal, practices, etc. in relation to the disciplinary committee.

81. The Administration considers that the Bill contains the necessary provisions to ensure that TIA and members of the disciplinary committee are provided with appropriate powers to carry out regulatory work efficiently and effectively, whilst at the same time providing for suitable channels through which objections against the relevant decisions by TIA and members of the disciplinary committee can be handled. There is thus no need to empower the disciplinary committee in the Bill to review the decisions made by the chairperson of the committee.

82. The Bills Committee has examined measures to be taken by TIA to expedite the handling of inquiry cases, in particular whether a mechanism should be put in place for requiring an inquiry committee to report to TIA if the handling time of the inquiry exceeds certain timeframe. The Administration considers it not suitable to set a time limit on an inquiry under the law as cases will differ in nature and complexity, the time required for

conducting inquiries will vary accordingly. TIA and its disciplinary committee should be allowed to formulate administrative measures applicable to disciplinary procedures. TIA and its disciplinary committee will regularly review the implementation of disciplinary procedures.

83. Clause 108 sets out the disciplinary orders that may be made after an inquiry. In response to members' concern on the criteria for determining the level of a financial penalty imposed on a travel agent under clause 108(1)(c), the Administration advises that an inquiry committee will need to consider all circumstances of the case for the imposition of the financial penalty. Relevant factors include the nature, seriousness and impact of the contravention, the conduct of the licensee after the contravention, the disciplinary record of the licensee, whether the travel agent commits the same contravention again etc.

#### *Revocation or suspension of travel agent licence*

84. The Bills Committee notes that under the Bill, TIA will be empowered to suspend or revoke a licensee's licence in a summary way as in the case of the existing TAO. To ensure TIA's efficiency and responsiveness, apart from invoking any of the grounds modelled on those stipulated in TAO as a justification to suspend or revoke a licence after investigation, TIA will also be able to do so if it is satisfied that a licensee's act or conduct poses an imminent risk of bringing Hong Kong's travel industry into disrepute.

85. In response to members' enquiry, the Administration advises that 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 will need to take into account all relevant factors, including 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.

86. The Bills Committee has examined whether a travel agent whose licence is revoked or suspended is still required 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.

87. The Administration advises that, 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 86 above. To reflect its legislative intent, the Administration will propose amendments to clause 115 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, 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 the provisions of the Bill relating to a licensed travel agent as would apply to the person as if the licence was 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, that person will still be subject to both disciplinary actions and criminal sanctions.

*Advice given by legal adviser appointed by an inquiry committee*

88. According to clause 105(1)(f), an inquiry committee has the power to appoint a legal adviser to assist and advise the committee on any question of law as to evidence, procedure or any other matter in relation to the inquiry. Clause 117 requires that the legal adviser must give advice in the presence of every party to the inquiry or person representing each party. The Bills Committee has enquired about the rationale behind clause 117, in particular whether the advice given by a legal adviser appointed by an inquiry must be made known to every party to the inquiry or person representing each party.

89. The Administration advises that such requirement aims to improve the transparency and credibility of an inquiry. Moreover, that parties to an inquiry have an opportunity to address the legal advice given by the legal adviser to the committee can improve the committee's decision-making and reduce the chance of legal challenges against the decision made. To guarantee the transparency and credibility of an inquiry, if a legal adviser advises the committee on any question of law as to evidence, procedure or any other matter in relation to the inquiry, clause 117 should be binding regardless of occasion.

90. The Bills Committee notes that the Administration will make amendments to clause 117(1A) and (1) and clause 137(1A) and (1) to state that a legal adviser appointed by an inquiry committee/appeal board may be present at not only any inquiry/hearing before the inquiry committee/appeal board, but also deliberations of the committee/appeal board, to advise the committee/board for the avoidance of doubt.

#### *Appeal mechanism*

91. Under the Bill, persons who are aggrieved by TIA's decisions or the inquiry committee's disciplinary orders may appeal to an independent appeal panel. Members of the appeal panel will be appointed by SCED and must not come from TIA, its committees or working groups to ensure the panel's independence. Under clause 118, the appeal panel will consist of at least 18 members. In appointing members of the panel, SCED must ensure that the chairperson is a non-trade member and at least half of the other members are non-trade members. Under clause 122, as soon as practicable after a notice of appeal has been lodged, the chairperson of the appeal panel must appoint from the panel an appeal board to hear the appeal. The appeal board is to consist of a chairperson and at least two ordinary members. In appointing members of the appeal board, the chairperson of the appeal panel must ensure that a majority of the members of the appeal board are non-trade members, and the members do not have a disclosable interest in the matter appealed against.

92. Some members have suggested reviewing the membership size of an appeal board by increasing the minimum number and setting a maximum number of members in an appeal board to ensure consistency in handling appeals. Furthermore, some members have suggested specifying in the Bill that an appeal board must include trade members to ensure that the trade's operations can be taken into account when handling appeal cases.

93. The Administration considers that, under normal circumstances, an appeal board is to consist of three members for the efficient handling of appeal cases. 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. Having regard to members' views, the Administration will make amendments to clause 122(3) to the effect 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 is 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.

94. Clause 121 provides that a person aggrieved by any of the specified matters may lodge an appeal with SCED in writing within 28 days beginning on the date on which the notice of the matter is received. SCED may in particular case extend the period if he considers it appropriate to do so. The Administration has accepted the Bills Committee's view that the power to extend appeal-lodging period should rest with the chairperson of the appeal panel, rather than SCED, as such a decision may involve detailed considerations of the case concerned. Amendments to clause 121(3) to this effect will be proposed by the Administration.

95. Some members enquired about the need for the chairperson of an appeal board to have a casting vote for making a final decision about an appeal under clause 125(3). The Administration advises that such an arrangement 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), the Construction Workers Registration Ordinance (Cap. 583), the Accreditation of Academic and Vocational Qualifications Ordinance (Cap. 592) etc., also adopt similar arrangement.

96. Under clause 128(2) and (3), with the consent of the parties to the appeal, the appeal board may determine the appeal without a hearing on the basis of written submission only, and if it appears to the board that TIA or the disciplinary committee has reversed the matter appealed against, the board may determine the appeal summarily in favour of the appellant without a hearing. To ensure consistency, the Administration has accepted the Bills Committee's view that relevant procedural requirements under clauses 123 to 127 shall also apply to the appeal cases handled without a hearing. Amendments to clause 128(2) and (3) to this effect will be proposed by the Administration.

97. Clause 128(6) provides that an appeal board may make an order as to the payment of costs and expenses incurred in relation to the hearing. The Bills Committee has examined the factors based on which such determination is made. The Administration advises that the nature and complexity of appeal cases differ, so the costs and expenses incurred in relation to the hearings concerned 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. 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.

98. The Bills Committee notes that, under clause 138, SCED may make regulations by way of subsidiary legislation to prescribe the procedures for the hearing of appeals under the Bill. The Administration clarifies that 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 new Ordinance.

#### Financial arrangements of TIA

99. The Bills Committee notes that, TIA will run on a self-financing basis in the long run and, as necessary, adjust the levels of its charges under an incremental approach. TIA's major sources of revenue will be levies to TIA on outbound fares received by travel agents ("TIA levies"), licence fees, and registration fees on inbound tour groups from the Mainland. The Bills Committee is concerned whether the new regulatory regime will increase the financial burden of the travel trade, and has examined the funding arrangements for TIA as well as the mechanism for monitoring TIA's charge increase.

100. The Bills Committee notes the trade's concern about whether TIA will significantly increase the levels of its charges. The Administration advises that it has examined different ways to ensure that TIA can cope with its daily operation and achieve a self-financing status in the long run, whilst at the same time taking into account the affordability of the trade –

- (a) the Government will apply for funding to provide TIA with a one-off capital grant as seed money in due course to support its initial operation. As long as the amount of the grant is adequate, TIA will be able to obtain stable income through investment to cover part of its operating expenditure, so there is no need to increase significantly the overall levels of its charges to cope with its expenditure; and
- (b) to reduce the impact brought about by the new regulatory regime on the trade, the Administration proposes maintaining TIA levies and licence fees for five years at the prevailing levels upon the full implementation of the new Ordinance. As regards registration fees on inbound tour groups from the Mainland, TIC's experience suggests that it has been allocating a large amount of resources to the inspection of the operation of



inbound tour groups from the Mainland and handling of relevant complaints. As compared with that of outbound tour levies, the present level of the registration fee is also considerably low, with room for upward adjustment. In the past, the Government proposed increasing the level of registration fees on inbound tour groups from the Mainland to \$200 per group in the first year upon the full implementation of the new Ordinance; nevertheless, having considered the affordability of the trade, the Administration now proposes increasing the level of the registration fees since the first year upon TIA's full operation under an incremental approach, i.e. increasing to \$100 per group in Year 1 upon the full implementation of the new Ordinance, and then to \$150 and \$200 per group in Years 6 and 11 respectively.

101. With the investment income generated from the seed money and upward adjustments of registration fees of inbound tour groups from the Mainland, TIA is expected to have stable income sources to cope with its operating expenditure. According to the preliminary estimates made by a consultant engaged by the Administration, even for a certain period of time after the full implementation of the new Ordinance, there should be no significant pressure to drive any increase in TIA levies or licence fees. The Bills Committee also notes the indicative budget for TIA as preliminarily formulated by the consultant engaged by the Administration (LC Paper No. CB(4)257/17-18(01)).

102. The Administration advises that it will closely monitor the finances of TIA after its establishment. If TIA adjusts the level of TIA levies, licence fees or registration fees on inbound tour groups from the Mainland in future, the subsidiary legislation concerned will be subject to LegCo's approval.

103. The Administration also advises that section 27 in Schedule 9 to the Bill contains empowering provisions such that TIA can establish committees to assist it in handling the matters within the scope of its functions. The scope covers formulation of statement of accounts, as well as management and application of TICF. It envisages that TIA will establish a standing committee to advise TIA on affairs related to general financial management, including reviewing annual statements of accounts and auditors' reports. Furthermore, it also envisages that TIA, with reference made to the practice of the existing regulatory regime of the travel industry, will establish a standing committee on TICF management to advise TIA on affairs related to management and application of TICF. In the light of the above, on appointment of non-trade members to TIA, the Administration will add into the proposed amendments to

the Bill possession of knowledge in finance as one of the considerations. It is expected that the non-trade member(s) concerned will serve on the aforementioned standing committees.

104. In response to members' concern about the arrangements for waiving licence fees in future, the Administration advises that TIA, same as other trade-related statutory regulatory bodies, will be financially independent from the Government. As under the arrangement of the existing regulatory regime of the travel industry, the waiving of licence fees is not a recurrent measure. Whether TIA will introduce the measure will depend on the actual circumstances, including the macro-economic environment, situation of the trade's business operations, etc., prevailing by then. Irrespective of the existing or future regulatory regime at issue, the Government will pay close attention to the development of the industry and needs of the trade, and consider and adopt suitable measures to support the trade.

#### Administration of TICF and establishment of TIDF

105. The Bills Committee notes that TIA will take over the powers to hold, manage and apply TICF<sup>4</sup> from TICF Management Board established by TAO. In addition, to facilitate the continuous development and enhance the professionalism of Hong Kong's travel industry, the Bill will empower SCED to prescribe by subsidiary legislation a certain percentage of TICF as the maximum funds that TIA may set aside to establish a new fund called TIDF. Financial support in areas such as training and information technology application may be given to the travel trade. TIA will determine the scope of TIDF having regard to the views gathered from the trade.

#### *Matters on levies and TICF*

106. Under the Bill, a travel agent is liable to pay TICF levy and TIA levy in respect of every outbound fare received. "Outbound fare" means the amount of any payment paid in relation to an outbound package, and "outbound package" means a combination of two or more of the services and arrangements described in the following relating to the same tour ("outbound travel services and arrangements") –

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<sup>4</sup> TICF serves to provide outbound travellers with ex gratia payments to compensate them for (a) their losses of outbound fares; and (b) their losses in relation to three types of expenses, i.e. medical expenses at destinations, expenses in funerals at destinations or delivery of bodies/ashes from destinations to Hong Kong, and expenses in family members' visits to destinations for follow-up, in cases of their injuries or deaths in any accidents arising out of and in the course of the activities provided or organized by travel agents during outbound travel. Details will be set out in the subsidiary legislation.

- (a) a service concerning carriage, by any means of transport, on a journey that is to commence in Hong Kong and then take place mainly outside Hong Kong;
- (b) a service concerning accommodation at a place outside Hong Kong;
- (c) arrangements for an activity (i) that is not ancillary to a service mentioned in paragraph (a) or (b); (ii) that is to take place outside Hong Kong; and (iii) that, if included in the package, constitutes a substantial part of it.

107. The Administration has advised that, in recent years, apart from joining traditional outbound tours arranged by travel agents and buying free independent tour packages from travel agents, many consumers would like to mix and match different outbound travel services and arrangements relating to the same tour from travel agents. To reflect more accurately the development of "outbound packages", the Bill adopts a refined definition of "outbound package" with the formulation "relating to the same tour", in lieu of the formulation "a package which is available only at an inclusive price" under TAO. Under the Bill, outbound travellers buying a combination of outbound travel services and arrangements relating to the same tour from the same travel agent, no matter whether such outbound travel services and arrangements are bought at the same time or at different times, will be protected by TICF in future.

108. In enforcing the above, the Administration is aware that travel agents may have difficulties in ascertaining whether the outbound travel services and arrangements that outbound travellers buy at different times relate to the same tour. Nonetheless, the Administration does not support the trade's suggestion to amend the definition of "outbound package" into "a combination of two or more of the outbound travel services and arrangements relating to the same tour in the same transaction". The Administration advises that -

- (a) with faster access to information due to technological advances, more and more consumers tend to buy different outbound travel services and arrangements (e.g. air tickets, hotel accommodation) relating to the same tour at different times in order to come up with outbound packages that most suit their needs out of such services and arrangements whose prices fluctuate over time. If the new Ordinance brushes aside this trend, an increasing number of consumers in future will not come under TICF's

protection. This will defeat the purpose of establishing TICF, which is to accord protection to consumers who buy outbound packages from travel agents;

- (b) at present, some travel agents will combine outbound travel services and arrangements bought at different times but relating to the same tour for customers to ensure protection by TICF. The new legislation should move with the times and cater for outbound travel services and arrangements bought at different times but relating to the same tour, with a view to according suitable protection to the outbound travellers concerned; and
- (c) the use of the wording "in the same transaction" will easily create considerable loopholes, such as enabling travel agents to break up a combination relating to the same tour so as to provide an outbound traveller with the travel services and arrangements involved in several transactions, thereby bypassing the levy requirement.

109. The Administration considers that amending the definition of "outbound package" into "a combination of two or more of the outbound travel services and arrangements relating to the same tour in the same transaction" will be a retrogressive move, weakening the protection for outbound travellers and nullifying the levy requirement. It is not appropriate for the Administration to alter the objective of according protection to travellers buying outbound packages simply because of operational matters. That said, the Administration strives to maintain a balance between safeguarding consumer interests and addressing travel agents' practical operational needs. To this end, it will recommend that TIA should formulate standardized wording to assist travel agents, before selling any individual outbound travel service or arrangement, in informing customers of the relevant arrangements so that the customers can be protected by TICF.

110. To ensure that customers know the aforementioned message, the Administration will recommend that TIA should, through administrative measures, require a travel agent to –

- (a) display the relevant wording in a conspicuous position if it conducts transactions with customers in a physical store;
- (b) display a message containing the relevant wording on its webpage if it conducts transactions with customers on an on-line platform; and

- (c) add a voice message containing the relevant wording if it conducts transactions with customers through a telephone system.

111. The Administration advises that it has all along encouraged travel agents to move with the times and make use of information technology to enhance their competitiveness and provide services that suit customers' needs. The Administration has also established the "Pilot Information Technology Development Matching Fund Scheme for Travel Agents" through TIC. Travel agents can consider applying for funding to upgrade their information technology system to dovetail with the aforementioned administrative measure prior to the full commencement of the new regulatory regime. In addition, in view of technological advances, the Administration is pressing ahead with preparations for the launch of the electronic levy system to facilitate the making of levy payments by the trade as well as the checking of the levy payment status by outbound travellers.

112. The Administration further advises that, under the new regulatory regime, if a travel agent has not paid a levy in respect of the outbound travel services and arrangements relating to the same tour that are bought at different times by a customer, but there is proof showing that the travel agent has complied with the aforementioned measure, the travel agent will be considered as having taken reasonable steps in avoiding contravening the levy requirement and will not be subject to disciplinary action. Furthermore, TIA will step up consumer education with respect to the aforementioned measure.

113. Some members consider that the scope and operation of TICF should be reviewed to provide better protection to outbound travellers. The Administration advises that the Bill has enhanced the protection for outbound travellers under TICF as explained in paragraph 107 above. For any further review, all relevant factors (including risk assessment, operations of travel agents, financial position of TICF and levy rate, consumer protection, views of different stakeholders, etc.) will have to be holistically considered and weighed.

*Protection by TICF to travellers under different situations*

114. The Bills Committee has examined protection by TICF to travellers under different situations, including paying outbound fares after the tours, one-day outbound tours commencing and ending outside Hong Kong, and levy payments involving cruise trips, self-paid activities and tips for tourist guides/tour escorts.

115. The Administration advises that, under TAO at present, a travel agent must pay TICF levy in respect of every outbound fare received. If a travel agent receives an outbound fare after completion of the travel service but does not pay any levy, it will contravene the levy requirement. The arrangement under the Bill is the same. Although it is the travel agent's commercial decision to collect outbound fares from consumers after tour completion, the Administration will recommend that TIC and TIA in future should, through administrative measures, require travel agents to clearly inform consumers of the scope of protection by TICF and relevant terms and conditions, and suggest that travel agents consider collecting at least part of the outbound fares from the outbound travellers before the tour commences, so that the outbound travellers can be protected by TICF.

116. Regarding one-day outbound tours commencing and ending outside Hong Kong (e.g. Shenzhen and Macao), the Administration advises that, generally speaking, such tours cover item (c) in paragraph 106 above only (i.e. an activity outside Hong Kong), but do not cover item (a) and/or item (b) in paragraph 106 above (i.e. carriage from Hong Kong to the Mainland and/or accommodation at a place outside Hong Kong) as well. They will not fulfill the definition of "outbound package" and accordingly will not come within the scope of protection by TICF.

117. On levy payment involving cruise trips, the Administration advises that, as under TAO at present, if the cruise trip provided by a travel agent departs from Hong Kong with on-board accommodation outside Hong Kong, it covers items (a) and (b) in paragraph 106 above. It will fulfill the definition of "outbound package" and the travel agent concerned will be required to pay a levy to TIA. If a cruise trip provided by a travel agent does not depart from Hong Kong, but includes on-board accommodation outside Hong Kong and an excursion/on-shore activity outside Hong Kong, it covers items (b) and (c) in paragraph 106 above. It will fulfill the definition of "outbound package" and the travel agent concerned will be required to pay a levy to TIA.

118. As regards self-paid activities, the Administration advises that, 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, the travel agent in Hong Kong will be liable to pay levies in respect of that part of the outbound fare.

119. On tips for tourist guides/tour escorts, the Administration advises that, if an outbound traveller gives tips to a tour escort/local tourist guide on his/her own initiative during an outbound tour (i.e. the tips are not the fare received from the outbound traveller through the tour escort/local tourist guide by the travel agent), the amount concerned will not come under an outbound fare, and the travel agent will not be required to pay any levy in respect of that amount.

120. In response to members' enquiry on whether travel agents can charge outbound travellers the amount of TICF levy and TIA levy under the existing and new regulatory regimes respectively, the Administration advises that whether the travel agent charges the outbound traveller the amount equivalent to the levy, and the manner in which the amount is so charged, are indeed the commercial decisions of the travel agent concerned. Neither TAO nor the Bill imposes any restriction in this regard.

121. On how to regulate on-line travel agents to ensure their compliance with levy payment requirements under the Bill, the Administration advises that, if a person so fulfills the definition contained in clause 4, regardless of carrying on business through traditional premises or on-line, that person will be required to obtain a travel agent licence from TIA and come under its regulation, including the regulation on levy payment. TIA will be empowered by the Bill to conduct statutory investigations into any suspected cases of contravening the Bill. Where necessary, TIA will also strive to liaise and follow up with the relevant regulatory body and law enforcement agency of the country/place concerned. Furthermore, TIA will publish up-to-date lists of licensed travel agents from time to time and assist local consumers in identifying and choosing licensed travel agents through public education.

122. The Administration points out that, at first, TICF was established to offer protection, i.e. an ex gratia payment equivalent to 90% of the loss of an outbound fare, to outbound travellers in the event of a travel agent's default on provision of travel services (e.g. due to closing down its business). When TICF was extended to cover specified expenses in relation to outbound travel accidents in 1996, it was meant to provide basic assistance only but was not meant to replace travel insurance taken out by individual travellers. The Administration has been encouraging outbound travellers, no matter joining tours or going out of town at their own arrangements, to take out travel

insurance based on their needs. The Administration will recommend that TIA should, through administrative measures, require travel agents to remind consumers of the importance of taking out travel insurance and suggest to consumers that their travel insurance policy should cover all activities of the tour. If the outbound fare has included travel insurance, the travel agent must provide all information relevant to the travel insurance to ensure that the consumer concerned understands the scope of the insurance policy.

#### Discharge of non-regulatory functions

123. The Bills Committee notes that, in 2013, the Administration considered the option of engaging TIC to discharge the following non-regulatory functions under the new regime –

- (a) to accredit and administer courses and examinations in relation to applications for licences and renewal of licences;
- (b) to deal with emergencies involving inbound and outbound tour groups;
- (c) to conciliate disputes not involving disciplinary matters against licensees; and
- (d) to hold, manage and apply the newly established TIDF.

124. As the special resolution supporting that TIC discharge the functions above was not passed at TIC's Extraordinary General Meeting in March 2014, the Bill seeks to empower TIA instead to discharge those functions. As regards the functions in paragraph 123(a) and (b), the Administration envisages that TIA may engage service providers with suitable experience and expertise to assist in discharging them as necessary. As for the function in paragraph 123(c), the Bill will empower TIA to refer to an independent panel under TIA, members of which are to be appointed by SCED, disputes between consumers and licensees that do not involve disciplinary matters for the panel's handling (e.g. conducting conciliation and, subject to the mutual agreement between both parties, making a binding decision on the disputes). To uphold impartiality, the Administration proposes that members of the panel must not come from TIA, its committees or the appeal panel. The above arrangement will allow consumer complaints against licensees, whether involving disciplinary or non-disciplinary matters, to be lodged with TIA under the same roof whilst at the same time ensuring the impartial handling of disputes.



## Transitional arrangements

125. The Bills Committee notes that, to reduce the impact on the existing players in the travel trade, upon the full commencement of the new regulatory regime, all existing travel agent licences issued by TAR, as well as existing tourist guide passes and tour escort passes issued by TIC, by then will 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 will 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 TIC's regulatory requirements.

126. The Bills Committee also notes that, after the passage of the Bill by LegCo, the Administration will immediately commence preparations for implementing the new regulatory regime, including seeking necessary resources to set up TIA and enable it to recruit staff to handle tasks including, among other things, formulation of subsidiary legislation, guidelines, directives, codes of conduct and other administrative arrangements<sup>5</sup>. The Administration expects that TIA will need about two years to complete all necessary preparations for taking over the trade regulatory and licensing functions from TIC and TAR respectively for the full implementation of the new regulatory regime. In the preparatory process, the Administration will closely co-operate with TIA and maintain liaison with the travel trade and other relevant stakeholders to ensure that the new regulatory regime can be implemented in full swing as soon as possible.

127. The Administration envisages that the new Ordinance will be commenced in two phases by and large –

- (a) SCED will first appoint by subsidiary legislation a day on which the provisions in the Bill for establishing TIA come into operation; and
- (b) thereafter, TIA will formulate subsidiary legislation covering the matters in clauses 150 and 164, whereas SCED will formulate subsidiary legislation covering the matters in clauses 138, 146 to 148. The matters contained in Cap. 218A, C to F at present,

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<sup>5</sup> These include training matters of the trade, the scope of the newly established TIDF, the administrative scheme for regulating shops that inbound tour groups are arranged on itineraries to patronize, the mechanism to handle disputes between consumers and licensees that do not involve disciplinary matters, etc.

excluding those covered in the Bill and those no longer applicable to the new regulatory regime, will generally be covered by the new subsidiary legislation to be made pursuant to the new Ordinance. All of the new subsidiary legislation will take effect upon the full commencement of the new Ordinance i.e. on the day appointed by SCED by subsidiary legislation for bringing the remaining provisions of the new Ordinance into operation. Accordingly, TAO and all of its subsidiary legislation will be repealed.

128. The Administration advises that the subsidiary legislation formulated by TIA and SCED will be subject to the negative vetting procedure. As requested by the Bills Committee, the Administration has provided for members' reference an overview of the provisions in the Bill that empower SCED and TIA to make subsidiary legislation in the Annex to LC Paper No. CB(4)468/17-18(02).

129. In response to the Bills Committee's enquiry, the Administration further advises that Parts 2 and 3 in Schedule 10 to the Bill concern the transitional arrangements of existing travel agents, tourist guides and tour escorts after the commencement of the new Ordinance. The commencement dates of these two parts will be the same as the date of full commencement of the new Ordinance. Parts 4, 5 and 6 in Schedule 10 to the Bill concern the transitional arrangements of TAR, TIC and TICF Management Board before TAO is repealed. The commencement dates of these three parts will be earlier than the date of full commencement of the new Ordinance.

### **Proposed amendments to the Bill**

130. Apart from the amendments mentioned in paragraphs 21, 26, 31, 32, 36, 37, 41, 51, 78, 87, 90, 93, 94, 96 and 103 above, having considered the Bills Committee's views, the Administration will also propose certain amendments to improve the operation of the new regulatory regime and the drafting of the Bill. The major ones are as follows –

- (a) amendments to require a licence applicant to provide an electronic mail address, in addition to a correspondence address, for communication purposes in respect of licensees under the new Ordinance, and amendments to the effect that serving personally, or by post cum electronic means, serves communication purposes in respect of persons other than licensees under the new Ordinance (clauses 7(2), 42(3), 56 and 167);

- (b) amendments to include in the register the licence numbers of licensed travel agents, tourist guides and tour escorts, correspondence and email addresses of licensed travel agents, and the addresses of the local places of business specified in the permits (clause 64(2)(a) and (3)(a)); and
- (c) amendments to expressly provide that the subsidiary legislation made under TAO is to be repealed together with that Ordinance (section 3 in Schedule 11).

131. A full set of the draft amendments to be moved by the Administration is at **Appendix III**. The Bills Committee has examined all the proposed amendments from the Administration and raised no objection. Separately, Mr LUK Chung-hung has indicated to the Bills Committee that he may consider moving certain amendments as contained in paragraphs 18, 27, 57 and 60 (**Appendix IV**). The Bills Committee will not propose any amendments to the Bill.

### **Resumption of Second Reading debate on the Bill**

132. The Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting of 28 November 2018, subject to the moving of amendments by the Administration.

### **Advice sought**

133. Members are invited to note the deliberations of the Bills Committee.

Council Business Division 4  
Legislative Council Secretariat  
15 November 2018

**Bills Committee on Travel Industry Bill**

**Membership list\***

<b>Chairman</b>	Hon YIU Si-wing, BBS
<b>Deputy Chairman</b>	Hon LUK Chung-hung, JP
<b>Members</b>	Hon WONG Ting-kwong, GBS, JP Hon Starry LEE Wai-king, SBS, JP Hon Mrs Regina IP LAU Suk-ye, GBS, JP Hon Paul TSE Wai-chun, JP Hon WU Chi-wai, MH Hon MA Fung-kwok, SBS, JP Hon Charles Peter MOK, JP Hon CHAN Chi-chuen Hon Martin LIAO Cheung-kong, SBS, JP Hon POON Siu-ping, BBS, MH Dr Hon CHIANG Lai-wan, SBS, JP Hon Alvin YEUNG Dr Hon Junius HO Kwan-yiu, JP Hon HO Kai-ming Hon Holden CHOW Ho-ding Hon SHIU Ka-fai Hon LAU Kwok-fan, MH  (Total : 19 members)
<b>Clerk</b>	Ms Shirley CHAN
<b>Legal Adviser</b>	Ms Clara TAM

\* Changes in membership are set out in **Annex to Appendix I**.

**Annex to Appendix I**

**Bills Committee on Travel Industry Bill**

**Changes in membership**

<b>Member</b>	<b>Relevant date</b>
Hon Starry LEE Wai-king, SBS, JP	since 6 June 2017
Hon Charles Peter MOK, JP	since 4 July 2017
Hon Tanya CHAN	up to 26 October 2017

**Bills Committee on Travel Industry Bill**

List of deputations/individuals which/who have given oral representation to the Bills Committee

1. Advisory Committee on Travel Agents
2. Democratic Alliance For The Betterment And Progress of Hong Kong
3. Hong Kong (Chinese) Tour Guides General Union
4. Hong Kong Association of China Travel Organisers Limited
5. Hong Kong Association of Travel Agents
6. Hong Kong Certified Tour Escort Association
7. Hong Kong Inbound Tour Operators Association
8. Hong Kong Inbound Travel Association
9. Hong Kong Outbound Tour Operators' Association Ltd.
10. Hong Kong Professional Tourist Guides General Union
11. Hong Kong Tour Guides General Union
12. Hong Kong Tourism Association
13. Hong Kong Tourism Industries General Union
14. Hong Kong Tourism Industry Employees General Union
15. Hong Kong Travel Agent Owners Association Ltd.
16. Hongkong Japanese Tour Operators Association
17. Hongkong Taiwan Tourist Operators Association
18. International Chinese Tourist Association
19. Liberal Party
20. Mr CHAN Sai-tong
21. Mr CHOI Pat-tai
22. Mr Joseph TUNG
23. Mr LEUNG Pur-yin
24. Mr WHY
25. No. 1 Travel Service Ltd.
26. Society of IATA Passenger Agents Ltd.
27. The Civic Party
28. The Federation of Hong Kong Chinese Travel Agents Limited
29. The Hong Kong Association of Registered Tour Co-ordinators
30. Travel Industry Council of Hong Kong
31. 香港旅遊從業員聯會

List of deputations/individuals which/who have provided written submissions only

1. Consumer Council
2. Mr Timothy CHIU
3. Travel Expert Limited
4. Travel Industry Compensation Fund Management Board

Travel Industry Bill

Committee Stage

Amendments to be moved by the Secretary for Commerce and Economic Development

<u>Clause</u>	<u>Amendment Proposed</u>
2(1)	By deleting the definition of <i>branch licence</i> .
2(1)	By deleting the definition of <i>company</i> and substituting— “ <i>company</i> (公司) means— (a) a company formed and registered under the Companies Ordinance (Cap. 622); (b) a company formed and registered under a former Companies Ordinance as defined by section 2(1) of the Companies Ordinance (Cap. 622); or (c) a body corporate established or incorporated outside Hong Kong;”.
2(1)	By deleting the definition of <i>Mainland inbound tour group</i> and substituting— “ <i>Mainland inbound tour group</i> (內地入境旅行團) means a tour group to Hong Kong from the Mainland;”.
2(1)	By adding in alphabetical order— “ <i>business permit</i> (業務許可證) means a business permit issued under section 10(1); <i>local place of business</i> (本地營業地點) means a place of business in Hong Kong to which the public ordinarily have physical access; <i>Mainland travel agent</i> (內地旅行代理商) means a person who carries on the business of organizing Mainland inbound tour groups in the Mainland;”.
4(1)(b)(ii)	By adding “whether or not through another person and” after “markets;”.

- 4(4)(b) By deleting everything after “if” and substituting—  
 “—  
 (i) the person is the operator of the relevant accommodation;  
 or  
 (ii) (whether or not subparagraph (i) is applicable) the relevant accommodation obtained by the person for the other person is intended to be occupied by that other person for 28 or more days;”.
- 4(4)(c) By deleting everything after “if” and substituting—  
 “—  
 (i) the person is the operator of the relevant accommodation;  
 or  
 (ii) (whether or not subparagraph (i) is applicable) the relevant accommodation obtained by the person for the visitor is intended to be occupied by that visitor for 28 or more days; or”.
- 5 By deleting “a person in the Mainland” and substituting “a Mainland travel agent”.
- 6 By adding before subclause (1)—  
 “(1A) In this section—  
*approved Mainland travel agent* (核准內地旅行代理商) means a Mainland travel agent that is approved to carry on the business of organizing Mainland inbound tour groups by a regulatory organization in the Mainland that regulates the travel industry of the Mainland.”.
- 6(2) By deleting paragraph (a) and substituting—  
 “(a) at any local place of business in respect of which the travel agent does not have a business permit; or”.
- 6(2)(b) By deleting “or any branch licence”.
- 6 By deleting subclause (3) and substituting—  
 “(3) A licensed travel agent must not obtain any of the services described in section 5(a), (b), (c) and (d) for a Mainland



inbound tour group organized by a Mainland travel agent unless the Mainland travel agent is an approved Mainland travel agent.”.

- 6(5) By deleting paragraphs (a) and (b) and substituting—
- “(a) all practicable steps were taken by the defendant to determine whether the Mainland travel agent was an approved Mainland travel agent; and
  - (b) it was reasonable for the defendant to determine that the Mainland travel agent was an approved Mainland travel agent.”.
- 6(6) By deleting “fact” (wherever appearing) and substituting “matter”.
- 7 By deleting subclause (2) and substituting—
- “(2) An application for a travel agent licence—
    - (a) must be made to the Authority in the specified form;
    - (b) must state the correspondence address and electronic mail address of the applicant; and
    - (c) must be accompanied by—
      - (i) the prescribed fee; and
      - (ii) any document the Authority may require.”.
- 8(2)(a) By deleting subparagraph (ii).
- 8(2)(a)(v) By adding “and” after “6;”.
- 8(2)(a) By deleting subparagraph (vii).
- 9 By deleting the clause and substituting—
- “9. Application for business permit**
- (1) If a licensed travel agent intends to carry on travel agent business at a local place of business, the travel agent may apply for a business permit in respect of that place.
  - (2) An application for a business permit—
    - (a) must be made to the Authority in the specified form;
    - (b) must state the address of the local place of business

at which the applicant intends to carry on travel agent business; and

- (c) must be accompanied by—
  - (i) the prescribed fee; and
  - (ii) any document the Authority may require.”.

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By deleting the clause and substituting—

**“10. Issue of business permit**

- (1) The Authority may, on application, issue a business permit to a licensed travel agent in respect of the local place of business stated in the application.
- (2) The Authority must not issue a business permit unless—
  - (a) the applicant holds a valid travel agent licence;
  - (b) the Authority is satisfied that the local place of business stated in the application, and the location of the place, are suitable for travel agent business; and
  - (c) the applicant has paid the prescribed fee.
- (3) A business permit—
  - (a) must be in the specified form; and
  - (b) must specify the address of the local place of business at which the applicant is permitted to carry on travel agent business.
- (4) A business permit is not transferable.
- (5) The Authority may, when issuing a business permit to the applicant, do one or more of the following—
  - (a) amend or remove the existing conditions of the travel agent licence of the applicant;
  - (b) impose new conditions on the travel agent licence.
- (6) The Authority must specify in a business permit the validity period of the permit.
- (7) The period specified under subsection (6) must not be longer than the validity period of the travel agent licence of the applicant.”.

11

By deleting the clause and substituting—

**“11. What travel agent licence or business permit permits**

- (1) A travel agent licence permits the person named in the licence to carry on travel agent business.
- (2) A business permit permits the person named in the permit to carry on travel agent business at the local place of business specified in the permit.”.

- 12 In the heading, by deleting “**branch licence**” and substituting “**business permit**”.
- 12(1), (2) and (3) By deleting “branch licence” and substituting “business permit”.
- 13 In the heading, by deleting “**branch licence**” and substituting “**business permit**”.
- 13(1) By deleting “branch licence” and substituting “business permit”.
- 14 In the heading, by deleting “**branch licence**” and substituting “**business permit**”.
- 14(1) By deleting “branch licence” and substituting “business permit”.
- 14(2)(a) By deleting subparagraph (i).
- 14(2)(a)(iii) By adding “and” after “6;”.
- 14(2)(a) By deleting subparagraph (v).
- 14(3) By deleting “branch licence” and substituting “business permit”.
- 14(3) By deleting paragraph (b) and substituting—  
 “(b) the Authority is satisfied that the local place of business stated in the application, and the location of the place, are suitable for travel agent business; and”.
- 14 By deleting subclauses (4), (5), (6), (7), (8) and (9) and substituting—  
 “(4) A renewed travel agent licence must be in the specified form.  
 (5) A renewed business permit—

- (a) must be in the specified form; and
  - (b) must specify the address of the local place of business at which the applicant is permitted to carry on travel agent business.
- (6) A renewed travel agent licence or renewed business permit is not transferable.
- (7) The Authority may impose on a renewed travel agent licence the conditions, including prescribed conditions, that it considers appropriate.
- (8) The Authority may, when renewing a business permit of the applicant, do one or more of the following—
- (a) amend or remove the existing conditions of the travel agent licence of the applicant;
  - (b) impose new conditions on the travel agent licence.
- (9) The Authority must specify—
- (a) the validity period of a renewed travel agent licence in the licence; and
  - (b) the validity period of a renewed business permit in the permit.
- (10) The period specified under subsection (9)—
- (a) for a renewed travel agent licence, must not be longer than 12 months beginning on the date on which the licence is renewed; or
  - (b) for a renewed business permit, must not be longer than the validity period of the travel agent licence of the applicant.
- (11) A travel agent licence or business permit may be renewed more than once.”.

15 In the heading, by deleting “**branch licence**” and substituting “**business permit**”.

15(1), (2) and (3) By deleting “branch licence” and substituting “business permit”.

16(1), (2) and (3) By deleting “branch licence” (wherever appearing) and substituting “business permit”.

- 17(1), (2) and (3) By deleting “branch licence” and substituting “business permit”.
- 19 In the heading, by deleting “**and branch licence**”.
- 19 By deleting subclause (1) and substituting—  
“(1) In this section—  
*specified capital amount* (指明資本額) means the amount specified in Schedule 5.”.
- 19(2)(a), (b) and (c) By deleting “basic” and substituting “specified”.
- 19 By deleting subclause (3).
- Part 2 By deleting Division 8.
- 36 By deleting the clause and substituting—  
**“36. Display of business permit etc.**  
(1) If a business permit has been issued to a licensed travel agent, the travel agent must display the permit at a conspicuous part of the local place of business specified in the permit.  
(2) No person may display a business permit at a local place of business unless—  
(a) the permit is valid;  
(b) the permit is issued to the person; and  
(c) the local place of business is specified in the permit.  
(3) If a licensed travel agent carries on travel agent business by using a website or any other communication network, the travel agent must clearly state the number of the travel agent’s licence on the website or communication network.  
(4) A person who contravenes subsection (1), (2) or (3) commits an offence and is liable on conviction to a fine at level 3.”.
- 42 By deleting subclause (3) and substituting—

- “(3) An application for a tourist guide licence or tour escort licence—
- (a) must be made to the Authority in the specified form;
  - (b) must state the correspondence address and electronic mail address of the applicant; and
  - (c) must be accompanied by—
    - (i) the prescribed fee; and
    - (ii) any document the Authority may require.”.

- 43(2)(a) In the Chinese text, by deleting subparagraph (iv) and substituting—
- “(iv) 申請人持有有效的急救技能證書或其他類似證明書，而該證書或證明書是由該局指明的機構發出的；”.
- 44 In the heading, by deleting “**authorizes**” and substituting “**permits**”.
- 44(1) and (2) By deleting “authorizes” and substituting “permits”.
- 47(2)(a) In the Chinese text, by deleting subparagraph (iii) and substituting—
- “(iii) 申請人持有有效的急救技能證書或其他類似證明書，而該證書或證明書是由該局指明的機構發出的；”.
- 56 By deleting the clause and substituting—
- “**56. Correspondence address and electronic mail address of licensee**
- (1) The correspondence address and electronic mail address of a licensee are the correspondence address and electronic mail address stated in the application for the licensee’s licence until the licensee notifies the Authority of a new correspondence address or new electronic mail address under subsection (2).
  - (2) If the correspondence address or electronic mail address of a licensee is changed, the licensee must, within 14 days after the change, notify the Authority in writing of the new correspondence address or new electronic mail address.”.
- 58 In the heading, by deleting “**branch licence**” and substituting “**business permit**”.

- 58 By deleting subclause (1) and substituting—  
“(1) The Authority may, on application by the person to whom a licence or business permit is issued, amend any particulars contained in the licence or permit.”.
- 59 In the heading, by deleting “**branch licence**” and substituting “**business permit**”.
- 59 By deleting subclause (1) and substituting—  
“(1) The Authority may, on application by the person to whom a licence or business permit is issued, issue a duplicate of the licence or permit.”.
- 59(2), (3) and (4) By deleting “branch licence” (wherever appearing) and substituting “business permit”.
- 60 In the heading, by deleting “**branch licence**” and substituting “**business permit**”.
- 60(1)(a), (b), (c) and (d) By deleting “branch licence” and substituting “business permit”.
- 62 By adding “or business permit” after “person’s licence”.
- 62 By adding “or permit” after “the licence”.
- 64(2) By deleting “or branch licence”.
- 64(2)(a) By adding—  
“(ia) the number of the licence;  
(ib) the correspondence address and electronic mail address of the licensee;  
(ic) if a business permit has been issued to the licensee, the address of the local place of business specified in the permit; and”.
- 64(2)(a) By deleting subparagraph (iii).
- 64(3)(a)(i) By deleting “and”.

- 64(3)(a) By adding—  
“(ia) the number of the licence; and”.
- 70(2) By adding before paragraph (a)—  
“(aa) enter and inspect any local place of business if the inspector reasonably suspects that travel agent business is being carried on at that place;”.
- 70(2)(a) By deleting subparagraph (i).
- 70(2)(c) By deleting subparagraph (i) and substituting—  
“(i) any person at the local place of business referred to in paragraph (aa) to produce the business permit in respect of that place for inspection;”.
- 75(1) By deleting paragraph (c) and substituting—  
“(c) require any person at the local place of business at which the investigator reasonably suspects that travel agent business is being carried on to produce the business permit in respect of that place for inspection;”.
- 89 In the Chinese text, by deleting subclause (1) and substituting—  
“(1) 旅監局如認為，罷免紀律委員會某成員，會有利於該委員會有效執行職能，則可罷免該成員。”.
- 90 By deleting the clause.
- New By adding—  
**“91A. Disciplinary committee may give general directions**  
(1) The disciplinary committee may give general written directions on matters relating to the performance of functions by—  
(a) the chairperson of the committee;  
(b) any person exercising the functions of the chairperson of the committee under section 98 or 99;  
and  
(c) an inquiry committee.  
(2) The chairperson of the disciplinary committee, the person



referred to in subsection (1)(b) and an inquiry committee must act in accordance with the directions.”.

108(1)(g) and (h) By adding “or business permit” after “licence”.

115 By deleting the clause and substituting—

**“115. Effect of revocation or suspension of travel agent licence**

- (1) This section applies to a person whose travel agent licence is revoked or suspended under this Part.
- (2) The revocation or suspension of the person’s travel agent licence does not operate to avoid or affect any right, obligation or liability under any agreement, transaction or arrangement relating to the provision of a travel service—
  - (a) that is entered into by the person at any time before the revocation or suspension; and
  - (b) in relation to which a sum of money has been paid at any time before the revocation or suspension.
- (3) Despite section 62, when the person acts for the purpose of complying with the person’s obligation or liability under any agreement, transaction or arrangement mentioned in subsection (2) after the revocation or during the period of suspension, the person—
  - (a) is not to be regarded as contravening section 6(1) for carrying on travel agent business without licence; and
  - (b) must comply with the requirements of this Ordinance applicable to a licensed travel agent.”.

117 By adding before subclause (1)—

“(1A) A legal adviser appointed under section 105(1)(f) may be present at any inquiry before an inquiry committee or deliberations of the committee to advise the committee.”.

117(1) By deleting “a legal adviser appointed under section 105(1)(f) advises an” and substituting “the legal adviser advises the”.

- 120 In the Chinese text, by deleting subclause (1) and substituting—  
“(1) 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。”.
- 121(1)(a) By deleting “branch licence” and substituting “business permit”.
- 121(1) By deleting paragraph (b) and substituting—  
“(b) a decision to impose conditions on a licence or renewed licence;”.
- 121(1)(c) By deleting “or branch licence”.
- 121(1)(d) By adding “or business permit” after “licence”.
- 121(1)(i) By deleting “107(2)” and substituting “107(1)”.
- 121 By deleting subclause (3) and substituting—  
“(3) The chairperson of the appeal panel may in a particular case extend the period specified in subsection (2) if the chairperson considers it appropriate to do so.”.
- 122(2)(a) By deleting “the” and substituting “a”.
- 122(3) By deleting paragraph (a) and substituting—  
“(a) the chairperson of the board and at least half of the ordinary members are non-trade members;  
(ab) at least one of the ordinary members is a trade member; and”.
- 128(2) By deleting “determine the appeal without a hearing” and substituting “hear an appeal”.
- 128(3) By deleting “summarily in favour of the appellant without a hearing” and substituting “in favour of the appellant”.
- 137 By adding before subclause (1)—  
“(1A) A legal adviser appointed under section 128(1)(f) may be present at any hearing before an appeal board or deliberations of the board to advise the board.”.

- 137(1) By deleting “a legal adviser appointed under section 128(1)(f) advises an appeal” and substituting “the legal adviser advises the”.
- 153(2)(g) In the Chinese text, by deleting “遊” and substituting “行”.
- 163(6) By deleting “fact” (wherever appearing) and substituting “matter”.
- 164(d)(i), (ii), (iii) and (iv) By deleting “branch licence” and substituting “business permit”.
- 164(e)(i) By deleting “branch licence” and substituting “business permit”.
- 164 By deleting paragraph (f) and substituting—  
“(f) to prescribe the conditions that may be imposed on a licence or renewed licence;”.
- 164(g) By deleting “branch licence” (wherever appearing) and substituting “business permit”.
- 165 By deleting subclauses (2), (3) and (4) and substituting—  
“(2) A person commits an offence if the person—  
(a) publishes, or causes to be published, an advertisement (in whatever form) relating to the provision of a travel service by the person or another person who—  
(i) under this Ordinance, is required to hold a travel agent licence; but  
(ii) is not a licensed travel agent; and  
(b) knows that the person or the other person is not a licensed travel agent, or is reckless as to whether the person or the other person is a licensed travel agent.  
(3) A person commits an offence if the person—  
(a) publishes, or causes to be published, an advertisement (in whatever form) that—  
(i) relates to the provision of a travel service by a licensed travel agent; but  
(ii) does not clearly state the number of the travel agent’s licence; and  
(b) knows that the advertisement does not clearly state the

number of a licensed travel agent's licence, or is reckless as to whether the advertisement clearly states the number of a licensed travel agent's licence.

- (4) A person who commits an offence under subsection (2) or (3) is liable on conviction to a fine at level 1.”.

165 By deleting subclause (5).

167 By deleting the clause and substituting—

**“167. Service of notices or summonses**

- (1) A notice or summons required to be served on a licensee under this Ordinance is to be regarded as duly served if—
- (a) it is delivered to the licensee personally; or
  - (b) it is—
    - (i) left at, or sent by post to, the licensee's correspondence address; and
    - (ii) sent by electronic means to the licensee's electronic mail address.
- (2) A notice or summons required to be served on a person other than a licensee under this Ordinance is to be regarded as duly served if—
- (a) it is delivered to the person personally; or
  - (b) it is—
    - (i) left at, or sent by post to, the person's last known address (if available); and
    - (ii) sent by electronic means to the person's last known electronic mail address (if available).”.

Schedule 1 In the heading, by deleting “**Branch Licence**” and substituting “**Business Permit**”.

Schedule 1 By deleting section 1(1) and substituting—

- “(1) For the purposes of section 13(2)(a), an application for the renewal of a travel agent licence or business permit must be made not more than 2 months and not less than 1 month before the expiry of the licence or permit.”.

Schedule 5 By deleting the Schedule and substituting—

**“Schedule 5**

[ss. 19 & 170]

**Capital Requirement**

\$500,000”.

Schedule 9 By deleting section 1(4)(b) and (c) and substituting—

- “(b) the Chairperson and not more than 15 ordinary members are non-trade members;
- (c) at least 4 but not more than 13 ordinary members are trade members;
- (d) non-trade members are appointed either because of their knowledge in law, accountancy, finance, insurance, education, consumer affairs or general administration, or because of their professional or occupational experience; and
- (e) among the trade members who are appointed as ordinary members—
  - (i) at least one but not more than 3 are engaged in the outbound travel agent business;
  - (ii) at least one but not more than 3 are engaged in the inbound travel agent business;
  - (iii) at least one but not more than 3 are members of the Board of Directors of the Travel Industry Council; and
  - (iv) at least one but not more than 4 work as tourist guides or tour escorts.”.

Schedule 9 In the Chinese text, by deleting section 4(1) and substituting—

- “(1) 行政長官如認為，罷免根據本附表第 1(2)條委任的旅監局某成員，會有利於該局有效執行職能，則可罷免該成員。”.

Schedule 9, section 14(1) By deleting “A” and substituting “Subject to subsection (6), a”.

Schedule 9 By deleting section 14(7) and substituting—

- “(7) A request under subsection (6) must be made within the period specified in the notice given under subsection (1)(b).”.

- Schedule 9 By deleting section 16 and substituting—
- “16. Decisions not invalidated by defects in appointment etc.**
- Decisions of the Authority are not invalidated solely by—
- (a) a defect in the appointment of a member of the Authority;
  - (b) a vacancy among the members of the Authority;
  - (c) the absence of a member of the Authority from the meeting at which the decision was taken; or
  - (d) any omission, defect or irregularity in the procedures adopted by the Authority that does not affect the decision taken.”.
- Schedule 9 In the Chinese text, by deleting section 29(1) and substituting—
- “(1) 旅監局如認為，罷免委員會某成員，會有利於該委員會有效執行職能，則可罷免該成員。”.
- Schedule 9, section 31(1) By deleting “A” and substituting “Subject to subsection (6), a”.
- Schedule 9 By deleting section 31(7) and substituting—
- “(7) A request under subsection (6) must be made within the period specified in the notice given under subsection (1)(b).”.
- Schedule 10, section 1 By adding in alphabetical order—
- “duplicate licence** (牌照複本) means a duplicate of a previous licence to permit the holder of the previous licence to carry on the business of a travel agent at an additional address;
- pre-existing duplicate licence** (原有牌照複本) means a duplicate licence that is valid immediately before the commencement date of Part 2 of this Schedule;”.
- Schedule 10 By deleting section 3(1) and substituting—
- “(1) If a person holds a pre-existing licence—
- (a) on and after the commencement date, the pre-existing licence is taken to be a travel agent licence combined with business permit and, accordingly, the person is taken to be a licensed travel agent until the expiry of—

- (i) the pre-existing licence; or
  - (ii) 3 months after the commencement date, whichever is the later; and
- (b) if the person also holds a pre-existing duplicate licence, on and after the commencement date, the pre-existing duplicate licence is taken to be a business permit until the expiry of—
- (i) the pre-existing duplicate licence; or
  - (ii) 3 months after the commencement date, whichever is the later.”.

Schedule 10, section 4(2) By adding “and a business permit” after “licence”.

Schedule 10, section 5(2) By adding “and a business permit” after “licence”.

Schedule 10 By deleting section 7(2) and substituting—

“(2) If, on the expiry of the suspension period, the previous licence is revived—

- (a) the previous licence is taken to be a travel agent licence combined with business permit and, accordingly, the holder of the previous licence is taken to be a licensed travel agent until the expiry of—
  - (i) the previous licence; or
  - (ii) 3 months after the commencement date, whichever is the later; and
- (b) if the holder of the previous licence also holds a duplicate licence, the duplicate licence is taken to be a business permit until the expiry of—
  - (i) the duplicate licence; or
  - (ii) 3 months after the commencement date, whichever is the later.”.

Schedule 10, section 7(3) By deleting “the previous licence is resumed” and substituting “the licence is revived”.

- Schedule 10,  
section  
11(2)(a)      By adding “and a business permit” after “licence”.
- Schedule 10      By deleting section 11(3) and substituting—  
                   “(3) If a previous licence is revived under subsection (2)(d)—  
                   (a) the previous licence is taken to be a travel agent licence  
                   combined with business permit and, accordingly, the  
                   holder of the previous licence is taken to be a licensed  
                   travel agent until the expiry of—  
                   (i) the previous licence; or  
                   (ii) 3 months after the commencement date,  
                   whichever is the later; and  
                   (b) if the holder of the previous licence also holds a duplicate  
                   licence, the duplicate licence is taken to be a business  
                   permit until the expiry of—  
                   (i) the duplicate licence; or  
                   (ii) 3 months after the commencement date,  
                   whichever is the later.”.
- Schedule 10,  
section 11(4)      By deleting “a licence” and substituting “a previous licence”.
- Schedule 10,  
section 11(4)      In the English text, by deleting “resumed” and substituting “revived”.
- Schedule 10,  
section  
12(1)(a)      By deleting “3(1), 7(2) or 11(3)” and substituting “3(1)(a), 7(2)(a) or  
                   11(3)(a)”.
- Schedule 10,  
section 14(1)      In the English text, by deleting everything after “until” and  
                   substituting—  
                   “the expiry of—  
                   (a) the pass; or  
                   (b) 3 months after the commencement date,  
                   whichever is the later.”.



- Schedule 10, section 15(1) In the English text, by deleting everything after “until” and substituting—  
 “the expiry of—  
 (a) the pass; or  
 (b) 3 months after the commencement date,  
 whichever is the later.”.
- Schedule 10, section 21(2) and (3) In the English text, by deleting everything after “until” and substituting—  
 “the expiry of—  
 (a) the pass; or  
 (b) 3 months after the commencement date,  
 whichever is the later.”.
- Schedule 10, section 21(2), (3), (4) and (5) In the English text, by deleting “resumed” and substituting “revived”.
- Schedule 10, section 21(4) and (5) In the Chinese text, by deleting “在根據” and substituting “在”.
- Schedule 10 In the Chinese text, by deleting section 25(3)(c) and substituting—  
 “(c) 申請人持有有效的急救技能證書或其他類似證明書，而該證書或證明書是由該局指明的機構發出的；”.
- Schedule 10 In the Chinese text, by deleting section 26(3)(c) and substituting—  
 “(c) 申請人持有有效的急救技能證書或其他類似證明書，而該證書或證明書是由該局指明的機構發出的；及”.
- Schedule 10, section 32 By adding—  
 “(3) Without limiting subsection (2), if the Authority is satisfied that an application referred to in subsection (1)(c)(ii) for a duplicate licence complies with the repealed Ordinance, the Authority may issue a business permit to the applicant.”.
- Schedule 10, section By adding “or duplicate licence” after “licence”.

38(1)(b)(i)

Schedule 10,  
section  
38(1)(c)(i)      By deleting “3(1), 7(2) or 11(3)” and substituting “3(1)(a), 7(2)(a) or 11(3)(a)”.

Schedule 11,  
section 3      By adding “**and subsidiary legislation made under the Ordinance**” after “the **Ordinance**”.

Travel Industry Bill

Committee Stage

Amendment to be moved by the Honourable LUK Chung-hung

<u>Clause</u>	<u>Amendment Proposed</u>
37.	<p>By deleting the clause and substituting—</p> <p><b>“37. Display of information about tour group</b></p> <p>(1) If a licensed travel agent arranges a vehicle for transporting a tour group, it must display, in the prescribed way, the prescribed information about the tour group on the vehicle.</p> <p>(2) If a licensed travel agent has not arranged a tour escort to accompanies an outbound tour group, it must display, in the prescribed way, the prescribed information to the participants of the tour group.</p> <p>(3) A licensed travel agent who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine at level 1.”.</p>
38.	<p>By deleting the clause and substituting—</p> <p>“(2) A person is employed by a licensed travel agency and to work as a tourist guide if the person accompanies a visitor to Hong Kong for the purpose of providing any guiding service to the visitor in accordance with the directions of another person who is carrying on the business of the agent (whether or not that other person is a licensed travel agent).”.</p>
39.	<p>By deleting the clause and substituting—</p> <p><b>“39. Meaning of working as tour escort</b></p> <p>A person is employed by a licensed travel agency and to</p>

work as a tour escort if the person accompanies an outbound tour group on a journey for the purpose of taking care of the participants of the tour group during the journey in accordance with the directions of another person who is carrying on the business of the agent (whether or not that other person is a licensed travel agent).”.

164. In the proposed section 164, by deleting subclause (l) and substituting—

- “(l) to prescribe the information to be displayed by a licensed travel agent, and the way in which the travel agent is to display the information if the travel agent has not arranged a tour escort to accompanies an outbound tour group;
- (m) to prescribe the insurance policy that a licensed travel agent must take out for a tourist guide who is providing guiding service in accordance with its directions;
- (n) to prescribe the insurance policy that a licensed travel agent must take out for a person who is working as a tour escort in accordance with its directions;
- (o) to provide generally for the better carrying out of the purposes of Parts 2,3,4,5,6 and 7.”.

Schedule 9. In the proposed section 1(4)(c), after “trade members”—

**Add**

“, appointed trade members must consist of not less than 6 individuals who are engaged in carrying travel agent business and not less than 6 tourist guides or tour escorts;”.