

New Regulatory Regime for Travel Industry of Hong Kong **Frequently Asked Questions**

1. If I am a licensed travel agent at present, what actions should I take now to prepare myself for the new regulatory regime?

We expect that it will take some time before the full commencement of the Bill subsequent to its passage by the Legislative Council. Meanwhile, existing travel agents can operate as usual, and must continue to comply with the existing regulatory requirements.

After the full implementation of the new ordinance, the licences of existing travel agents issued by the Travel Agents Registry will be recognised by the Travel Industry Authority and remain valid until they expire, or three months after the date of the full implementation of the new ordinance, whichever is the later. Existing travel agents will not be required to immediately apply for licence renewal. When applying to the Travel Industry Authority for licence renewal in future, existing travel agents must fulfil the licence renewal requirements under the new ordinance.

2. If I am a tourist guide or tour escort with a pass at present, what actions should I take now to prepare myself for the new regulatory regime?

We expect that it will take some time before the full commencement of the Bill subsequent to its passage by the Legislative Council. Meanwhile, existing tourist guides and tour escorts can work as usual, and must continue to comply with the existing regulatory requirements.

After the full implementation of the new ordinance, the passes of existing tourist guides and tour escorts issued by the Travel Industry Council of Hong Kong will be recognised by the Travel Industry Authority and remain valid until they expire, or three months after the date of the full implementation of the new ordinance, whichever is the later. Existing tourist guides and tour escorts will not be required to immediately apply to the Authority for licences. Upon licence application in future, existing tourist guides and tour escorts must have completed the course specified by the Authority or otherwise passed the specified examination.

3. Before the full commencement of the new regulatory regime, must travel agents, tourist guides and tour escorts continue to comply with the existing regulatory requirements?

Yes. We expect that it will take some time before the full commencement of the Bill subsequent to its passage by the Legislative Council. Meanwhile, travel agents, tourist guides and tour escorts must continue to comply with the regulatory requirements of the Travel Agents Ordinance (Cap. 218) and the Travel Industry Council of Hong Kong.

It should be noted that, when the Travel Industry Authority in future consider any applications for licence renewal applications from the existing travel agents, tourist guides and tour escorts, it will check their compliance records under the old regime, including whether they have frequently breached any rules or willfully circumvented the regulation of the Travel Industry Council of Hong Kong by non-co-operative means, in order to determine whether they are suitable to hold licences.

4. Under the new regulatory regime, what circumstances will be taken as violating the law? What circumstances will be taken as committing misconduct?

The new ordinance will stipulate serious unscrupulous acts as criminal offences, committing which will be taken as violating the law. These include –

Travel agents

- carrying on travel agent business without a licence;
- co-operating with an Mainland travel agent not approved to carry on outbound travel business by the China National Tourism Administration (or the relevant regional tourism regulatory authorities) to receive an inbound tour group;
- breaching any licensing conditions (primarily targeted at coerced shopping);
- failing to display the licence number or tour group number on the tour coach for receiving an inbound tour group;
- employing an unlicensed tourist guide or tour escort to work;

Tourist guides/Tour escorts

- working as a tourist guide or tour escort without a licence;
- breaching any licensing conditions (primarily targeted at coerced shopping); and

Any person

- without reasonable excuse, obstructing the officers of the Travel Industry Authority from conducting inspection or investigation or failing to co-operate with them during the inspection or investigation.

Any person who has been convicted by the court would, depending on the penalty level of the offence in question, be liable to a fine or even imprisonment. The Travel Industry Authority will also impose through disciplinary proceedings a disciplinary order upon the licensee who commits an offence.

As regards other aspects of regulation, the Travel Industry Authority will administratively formulate and implement directives, codes of conduct as well as guidelines, breaching which will constitute misconduct and will be followed up by the Authority through disciplinary proceedings.

5. If an applicant for a travel agent licence, tourist guide licence or tour escort licence, or licence renewal, has been convicted of an offence involving violence or any other offences, will the Travel Industry Authority invariably refuse to issue a licence to the applicant?

The Travel Industry Authority will consider comprehensively whether the applicant is suitable to hold a licence. Whether the applicant has been convicted of an offence involving violence or any other offences is one of the considerations. In respect of the applicant's conviction record, the Travel Industry Authority will consider various factors, including –

- the time, place, nature and seriousness of the conviction;
- the sentence by the court and the applicant's age at the time of the conviction;
- whether the offence committed has posed and would pose a threat to the personal or property safety of visitors;
- whether the offence was committed when carrying on travel agent business, or working as a tourist guide or tour escort; and
- whether the relevant offence has been repeatedly committed.

6. Is it a must for a travel agent to specifically employ a person as an authorised representative? Can a person serve as the authorised representative for various travel agents at the same time?

If the travel agent carries on business in the form of a company, either its controller or a member from its management (i.e. director, manager or company secretary) will be required to serve as the authorised

representative; if the travel agent carries on business in the form of sole proprietorship or partnership, either the sole proprietor/one of its partners or a member from its management will be required to serve as the authorised representative.

The aim of this regulatory requirement is to request a travel agent to designate a member from its senior management to be responsible for ensuring that the travel agent carries on business properly and complies with the regulatory requirements under the new system. Each person can serve as the authorised representative of one travel agent only so that he can focus on managing the operation of the travel agent concerned.

7. Under the new regulatory regime, what acts would constitute coercing tourists into shopping?

Simply put, if a person's act involves the use of harassment, coercion or undue influence by any person to significantly impair the freedom of choice or conduct of another person with a view to causing that second person to make a purchase or other transaction that he would not otherwise have made, then that act would constitute coerced shopping.

8. How should a travel agent "take all reasonable steps" to safeguard the safety and interest of any member of the inbound tour group that it receives, and to prevent its employees, agents and service providers from engaging in any act of coerced shopping?

It is up to the court to determine whether a travel agent is considered to have taken all reasonable steps having regard to the circumstances of each case. The steps may include (but are not limited to): providing employees and agents (e.g. front-line staff, tourist guides) with clear guidelines and proper training, conducting regular reviews and making adjustments as necessary; prior to employing or engaging any persons and arranging any service providers (e.g. shops on the itinerary) for receiving an inbound tour, checking whether the relevant persons have committed any coerced shopping act before.

9. How should a tourist guide "take all reasonable steps" to safeguard the safety and interest of any member of the inbound tour group that he receives?

Insofar as tourist guides are concerned, the new regulatory regime will

specifically tackle problems arising from the personal misconduct of the tourist guides whilst working. It is up to the court to determine whether a tourist guide is considered to have taken all reasonable steps having regard to the circumstances of each case. The steps may include (but are not limited to): providing services for an inbound tour group based upon the details as set out in the itinerary; informing the relevant enforcement agencies and the Travel Industry Authority upon noticing that a tourist is assaulted or coerced into making purchases.

10. How can a Hong Kong travel agent ascertain whether a Mainland travel agent is approved by the relevant tourism regulatory authority on the Mainland to carry on outbound travel business?

The Hong Kong travel agent should take all reasonable steps to check whether the Mainland travel agent is authorised. It is up to the court to determine whether a travel agent is considered to have taken all reasonable steps having regard to the circumstances of each case. The steps may include (but are not limited to): checking from the list of travel agents published on the website of the China National Tourism Administration whether the Mainland travel agent concerned has been approved by the Mainland authority to carry on outbound travel business.

11. For a case of suspected misconduct of a trade member, how will the Travel Industry Authority determine whether the travel agent or the tourist guide/tour escort should be held responsible?

If there is a case of suspected misconduct of a trade member, the responsibilities to be borne by the licensee involved (travel agent, tourist guide and/or tour escort) and any other relevant persons will be determined based on the circumstances of the case. The consideration is not a mechanical one and has to take into account the facts of individual cases. Take coerced shopping as an example, if the travel agent has taken all reasonable steps (including but not limited to: providing clear guidelines and proper training, conducting regular reviews and making adjustments as necessary; prior to employing or engaging a tourist guide for receiving an inbound tour, checking whether he has committed any coerced shopping act before, etc.) to prevent the tourist guide it employs or engages from committing any act of coerced shopping, but the tourist guide still coerced tourists into making purchases, then that tourist guide may be held responsible for his misconduct. If the travel agent has not taken all reasonable steps, then it may also be held responsible for the misconduct.

On the contrary, if the tourist guide has duly followed the travel agent's instructions to take the tour group to patronise a shop, has not taken part in any act of coerced shopping, and has taken all reasonable steps to safeguard the safety and interest of his tour group members (including but not limited to informing the relevant enforcement agencies and the Travel Industry Authority upon noticing that a tourist is assaulted or coerced into making purchases), then that tourist guide would not be held responsible for the misconduct.

12. What are the measures under the new regulatory regime to ensure that cases of suspected conduct of travel agents, tourist guides and tour escorts are handled in a fair manner?

For every case of suspected misconduct of a travel agent, tourist guide and/or tour escort, the Travel Industry Authority will conduct investigation and then normally pass the case to the disciplinary committee for handling. The disciplinary committee is empowered to conduct an inquiry through setting up an inquiry committee and summon any persons, including the licensee concerned and witness(es), to receive evidence. A party to the inquiry may participate in person, through a legal representative or, with the consent of the inquiry committee, through any other person.

If the inquiry committee has decided to impose a disciplinary order upon the licensee but the licensee is aggrieved by the decision, he may lodge an appeal. The appeal will be followed up under an independent appeal mechanism and handled by an appeal panel through a hearing. The appeal panel will then decide whether to uphold, vary or reverse the disciplinary order concerned.

To ensure that the appeal panel operates independently and impartially, any public officers or members of the Travel Industry Authority or disciplinary committee must not serve as appeal panel members.