

LEGISLATIVE COUNCIL BRIEF

TRAVEL INDUSTRY BILL

INTRODUCTION

A At the meeting of the Executive Council on 28 February 2017, the Council ADVISED and the Chief Executive ORDERED that the Travel Industry Bill (the Bill), at **Annex A**, should be introduced into the Legislative Council (LegCo).

JUSTIFICATIONS

2. The travel industry is a pillar industry of Hong Kong, making up about five per cent of our 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 Mainland visitors, and other types of non-compliance incidents. These incidents have inevitably tarnished the image and reputation of our travel industry, calling for a need to reform the existing regulatory regime underpinned by the Travel Agents Registry (TAR) of the Tourism Commission (responsible for the licensing of travel agents under the Travel Agents Ordinance (TAO) (Chapter 218)) and the Travel Industry Council of Hong Kong (TIC) (responsible for trade self-regulation).

3. Further to the general consensus reached after the public consultation in 2011, the Government announced its decision to reform the existing regulatory regime through establishing an independent statutory body (i.e. the Travel Industry Authority (TIA)) to regulate travel agents, tourist guides and tour escorts in a holistic and impartial manner. The TIA will take up the licensing and trade regulatory roles from the TAR and TIC respectively. We seek to strike a balance when formulating the new regulatory regime by reducing the impact on law-abiding travel trade members on one hand, whilst combating unscrupulous acts to protect the

interests of the travel trade and tourists on the other. Our policy objectives are to enhance the professionalism of the travel trade and foster the healthy long-term development of the industry.

KEY ELEMENTS OF THE BILL

4. The Bill has the following key elements.

(A) Establishment of New Regulatory Regime underpinned by TIA

5. The TIA will be a statutory regulatory body responsible for the licensing and regulation of travel agents, tourist guides and tour escorts. The TIA will comprise not more than 30 members, i.e. a Chairperson, a Vice-chairperson (being the Commissioner for Tourism), and not more than 28 ordinary members. Non-travel trade members will be in the majority. We propose that the TIA should consist of 30 members, of whom 17 are non-travel trade members (the Chairperson, Vice-chairperson and members from different sectors other than the travel sector) and 13 are travel trade members (representatives of travel agents, tourist guides and tour escorts).

6. The new regulatory regime will regulate the activities of travel agents, tourist guides and tour escorts mainly from three aspects, i.e. (a) primary legislation; (b) subsidiary legislation (including licence conditions, and other prescribed requirements modelled on those under the Travel Agents Regulations (Chapter 218 sub. leg. A)); and (c) directives, codes of conduct as well as guidelines administratively formulated and issued by the TIA. Certain criminal offences targeted against major unscrupulous acts 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 the TIA's disciplinary proceedings as stipulated in the Bill (see paragraphs 14 and 15 below). Licensees that contravene only directives, codes of conduct or guidelines will be subject to the TIA's disciplinary proceedings.

7. Checks and balances will be instilled into the new regime –

- (a) at the governance level, the Chairperson and all ordinary members of the TIA will be appointed by the Chief Executive. Approval by the Secretary for Commerce and Economic Development (SCED) will be required for the TIA's appointment of the Executive Director and determination of the associated

terms and conditions. The TIA will be required to furnish to the SCED annually its annual report, statement of accounts and auditor's report. The SCED will arrange the documents to be laid on the table of the LegCo. The TIA will also be required to submit to the SCED for approval for the next financial year its annual work plan and estimates of its income and expenditure. The TIA will be subject to regulation under the Prevention of Bribery Ordinance (Chapter 201) as well as The Ombudsman Ordinance (Chapter 397) and audit by the Director of Audit; and

- (b) at the regulatory level, the Bill will provide for the establishment of an independent appeal panel to handle appeals lodged by persons who are aggrieved by the TIA's decisions or the inquiry committee's disciplinary orders (see paragraph 15 below). Members of the appeal panel will be appointed by the SCED, and must not come from the TIA, its committees (including the disciplinary committee) or working groups to ensure the panel's independence.

(B) Licensing and Regulation of Travel Agents

8. The Bill will provide for the licensing and regulation of travel agents. Besides those that carry on any outbound and/or inbound travel business activities¹ in Hong Kong (as adapted from the TAO (Chapter 218)), any persons that carry on any outbound travel business activities (i.e. obtaining carriage and/or accommodation) 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 licences. The widened scope of persons to be licensed is mainly to make on-line travel agents, which have become increasingly popular in Hong Kong's outbound tourism market, also come under the new regulatory regime so as to afford greater protection to the outbound travellers of Hong Kong, including regulation on the activities of the travel agents and protection from the Travel

¹ In gist, "outbound travel business activities" refers to obtaining for another person (a) carriage on a journey that is to commence in Hong Kong and then take place mainly outside Hong Kong; or (b) accommodation at a place outside Hong Kong. "Inbound travel business activities" refers to obtaining for a visitor to Hong Kong (a) carriage on a journey that is to commence outside Hong Kong and either terminate in Hong Kong or involve the visitor passing through the immigration controls before leaving Hong Kong; (b) accommodation in Hong Kong; or (c) any specified services (i.e. sightseeing or visits to local places of interest, meals, shopping trips, and local transport in connection with any of such services).

Industry Compensation Fund (TICF) for eligible outbound travel services² (see paragraph 17 below). Moreover, some existing travel agents have urged that on-line travel agents should also be regulated to ensure a more level playing field for both on-line and traditional travel agents.

9. The requirements for issuing and renewing travel agent licences in the Bill will be drawn up with reference to the current requirements, i.e. the factors for considering whether an applicant is suitable to hold a travel agent licence under the TAO (Chapter 218)³ and the existing requirements imposed by the TIC (e.g. capital requirement⁴ and the need for suitable premises). The Bill will introduce some new requirements, including the following –

- (a) each travel agent will be subject to a guarantee money requirement –
 - (i) 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 the TIA by bank guarantee; and
 - (ii) 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. Nonetheless, in the case where the aggregated amount of financial penalties imposed under the new regime on the existing travel agent, or the frequency of the existing travel agent's misconduct, exceeds the level specified by the TIA, the travel agent will be required to deposit guarantee money of \$250,000 by bank guarantee. If such non-compliance continues to exceed another level specified by the TIA, the travel agent will be required to deposit guarantee money of another \$250,000.

² In general, an eligible outbound travel service is a combination of two or more of the following: (a) carriage on a journey that is to commence in Hong Kong and then take place mainly outside Hong Kong; (b) accommodation at a place outside Hong Kong; and (c) arrangements for an activity that is to take place outside Hong Kong.

³ Such factors are mainly concerned with the applicants' financial capability (e.g. any bankruptcy/winding-up proceedings), and conviction records of any offences involving fraudulent, corrupt or dishonest acts or under the TAO (Chapter 218) (if any).

⁴ An applicant will be required to have capital of not less than \$500,000 and, for each branch, additional capital of not less than \$250,000.

In the event that a travel agent closes down its business without settling any of the financial penalties imposed on it, the TIA will offset the amount owed against the guarantee money deposited by the travel agent. The above arrangement seeks to ensure that all newly established travel agents are financially committed to business operation, and to avoid imposing undue burden on the existing travel agents, most of which are law-abiding and compliant;

- (b) each travel agent will be required to appoint an authorized representative 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 the TIA of any changes in the prescribed particulars about the travel agent (in relation to its suitability to hold a licence). The Bill will set out the criteria to be met by an authorized representative, including completion of courses specified by the TIA, qualification requirement, and suitability requirement of the TIA⁵; and
- (c) besides the existing factors under the TAO (Chapter 218) (see footnote 3 above), the TIA will have regard to additional factors when considering whether applicants for travel agent licences and renewal of such licences are suitable to hold licences (e.g. their conviction records of any offences involving violence or under the Trade Descriptions Ordinance (Chapter 362) (if any), and records of compliance with the TIC's regulatory requirements). If the applicant is a company, the TIA will also have regard to the compliance records of its associated companies (i.e. a subsidiary of the company, a holding company of the company, and a subsidiary of the holding company).

10. The Bill will contain express provisions to criminalize certain unscrupulous acts in the travel trade, including: carrying on travel agent business without a travel agent licence; 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 to form the tour group; employing or engaging any unlicensed tourist guide or tour escort; and failing to display the prescribed information about a tour group (e.g. the travel agent's licence number and tour code of the tour group) on the

⁵ The factors to be taken into account are in line with those for considering whether an individual is suitable to hold a travel agent licence.

vehicle arranged for transporting the tour group. In addition, the Bill will empower the TIA to impose on travel agents prescribed licence conditions, mainly to prohibit coerced shopping. Travel agents must not commit (by themselves or through any others) any acts of coerced shopping. The relevant licence conditions will make reference to the framework at **Annex B**, the details of which will be formulated through subsidiary legislation. Any travel agent that breaches a licence condition will be subject to criminal penalties and/or disciplinary orders.

B

(C) Licensing and Regulation of Tourist Guides and Tour Escorts

11. The Bill will provide for the licensing and regulation of tourist guides and tour escorts under the law, in lieu of the existing accreditation system implemented by the TIC administratively. The requirements for issuing and renewing tourist guide licences and tour escort licences in the Bill will be drawn up with reference to the 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 also be required to have completed the Continuing Professional Development Scheme specified by the TIA. The latter 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 (if any), and records of compliance with the TIC's regulatory requirements).

12. In line with the approach in respect of travel agents, the Bill will contain express provisions to criminalize certain unscrupulous acts in the travel trade, such as working as a tourist guide/tour escort without a tourist guide/tour escort licence. The Bill will also empower the TIA to impose on tourist guides and tour escorts prescribed licence conditions, mainly to tackle problems arising from their personal misconduct, particularly coerced shopping. The relevant licence conditions will make reference to the framework at **Annex B**, the details of which will be formulated through subsidiary legislation. Any tourist guide or tour escort that breaches a licence condition will be subject to criminal penalties and/or disciplinary orders.

B

13. We recognize that tourist guides and tour escorts, as front-line trade practitioners, mainly follow travel agents' instructions whilst working. The Bill will empower the TIA to issue directives for regulating travel agents. 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 TIA can impose a directive to require a travel agent to provide a job sheet to delineate the tasks and duties for its tourist guide(s)/tour escort(s). In response to the comments from some tourist guides and tour escorts that the delay in or lack of payment by travel agents for their services has become a serious problem, which has left them with no choice but to engage in coerced shopping for financial returns, the TIA can impose directives to require a travel agent to sign a service agreement with its tourist guide(s)/tour escort(s), whereby a travel agent (a) must pay service remuneration to the tourist guide(s)/tour escort(s); (b) must not require its tourist guide(s)/tour escort(s) to bear or unreasonably advance any payment for a tour group received; and (c) must not delay the reimbursement for any advance payment made by its tourist guide(s)/tour escort(s). Any travel agent that contravenes any of the directives will be subject to disciplinary orders.

(D) Inspection, Investigation and Disciplinary Mechanism

14. The Bill will empower the 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 the 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 the TIC that its power to exercise trade regulatory functions lacks legal backing.

15. The Bill will provide for the establishment of a disciplinary committee for handling cases of complaint or suspected misconduct against travel agents, tourist guides and tour escorts further to the TIA's investigation. Inquiry committees will be set up to conduct inquiries into the relevant cases and decide whether to make a disciplinary order (e.g. a warning, reprimand, demerit points, financial penalty, licence suspension or revocation). In addition, the TIA will be empowered to suspend or revoke a licensee's licence in a summary way as in the case of the existing TAO (Chapter 218). To ensure the TIA's efficiency and responsiveness, apart from invoking any of the grounds modelled on those stipulated in the TAO (Chapter 218) as a justification⁶ to suspend or revoke a licence after

⁶ The Bill will include the grounds that a licensee is not suitable to hold the licensee's licence, that it is contrary to the public interest to permit a licensee to continue to hold the licensee's licence, etc.

investigation, the Bill will introduce a new provision such that the TIA will also be able to do so if the TIA is satisfied that a licensee's act or conduct poses an imminent risk of bringing Hong Kong's travel industry into disrepute.

(E) Funding Arrangements

16. The TIA will run on a self-financing basis in the long run and adopt an incremental approach in raising the levels of various charges over the years. The TIA's major sources of revenue will be levies to the TIA on outbound fares received by travel agents (Authority levies), licence fees, and registration fees on inbound tour groups from the Mainland. To reduce the impact on the trade, we propose that the various fees and Authority levies (except registration fees on inbound tour groups from the Mainland⁷) will be maintained for five years at the prevailing levels upon the full commencement of the new ordinance. To support the initial operation of the TIA, the Government will apply to the LegCo for funding to provide the TIA with a one-off capital grant as seed money in due course. Beforehand, we will conduct a detailed study on the resource requirements for the TIA, with a view to enabling the TIA to achieve a self-financing status in the long run whilst minimizing any long-term recurrent financial implications for the Government. The TIA will also review the fee and levy levels from time to time and consider whether suitable adjustments will have to be made having regard to prevailing circumstances.

(F) Administration of TICF and Establishment of Travel Industry Development Fund

17. The Bill will provide for the TIA to take over the powers to hold, manage and apply the TICF⁸ from the TICF Management Board established by the TAO (Chapter 218). In addition, to facilitate the

⁷ The registration fees currently charged by the TIC on travel agents receiving inbound tour groups from the Mainland are low, i.e. a lump sum of \$30 for a group of 40 members or below, and a lump sum of \$60 for a group of 41 members or above. We envisage that the TIA will increase the registration fees with different rates prescribed based on the numbers of members in a tour group. The exact rates will be drawn up by the TIA having regard to the prevailing market situation, the TIA's regulatory experience, etc.

⁸ The 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.

continuous development and enhance the professionalism of Hong Kong's travel industry, the Bill will empower the SCED to prescribe by subsidiary legislation a certain percentage of the TICF as the maximum funds that the TIA may set aside to establish a new fund called the "Travel Industry Development Fund". Financial support in areas such as training and information technology application may be given to the travel trade. The TIA will determine the scope of the new fund having regard to the views gathered from the trade.

(G) Discharge of Non-regulatory Functions

18. In 2013, we considered the option that the TIC would be engaged 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 "Travel Industry Development Fund".

19. As the special resolution supporting that the TIC discharge the functions above was not passed at the TIC's Extraordinary General Meeting in March 2014, the Bill will empower the TIA instead to discharge those functions. As regards the functions in paragraph 18(a) and (b), we envisage that the TIA may engage service providers with suitable experience and expertise to assist in discharging them as necessary. As for the function in paragraph 18(c), the Bill will empower the TIA to refer to an independent panel under the TIA, members of which are to be appointed by the 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, we propose that members of the panel must not come from the TIA, its committees (including the disciplinary committee) or the appeal panel. The above arrangement will allow consumer complaints

against licensees, whether involving disciplinary or non-disciplinary matters, to be lodged with the TIA under the same roof whilst at the same time ensuring the impartial handling of disputes.

(H) Transitional Arrangements

20. After the passage of the Bill by the LegCo, we will immediately commence preparations for implementing the new regulatory regime, including seeking necessary resources to set up the TIA and enable it to recruit its staff to handle tasks such as drawing up subsidiary legislation as well as directives, codes of conduct and guidelines. 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, as well as tourist guide passes and tour escort passes issued by the 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 the TIC's regulatory requirements. As mentioned in paragraphs 9(c) and 11 above, when the relevant trade members apply to the TIA for licences or renewal of licences, the TIA will consider their compliance records under the TIC's regulatory regime.

THE BILL

21. The main provisions of the Bill are set out below –
- (a) **Part 1** – contains the definitions for the interpretation of the Bill;
 - (b) **Part 2** – contains the meaning of carrying on travel agent business; sets out the procedures and requirements for the application for travel agent licences and branch licences and relevant renewal; and provides for the regulation of travel agents;
 - (c) **Part 3** – contains the meanings of working as a tourist guide and a tour escort; sets out the procedures and requirements for the application for tourist guide licences and tour escort licences and relevant renewal; and provides for the regulation of tourist

guides and tour escorts;

- (d) **Part 4** – provides for a licensee’s duty to comply with prescribed requirements, the application for a duplicate of a licence and for amendment to particulars contained in a licence, etc.;
- (e) **Part 5** – provides for the keeping and publication of a register of licensed travel agents, tourist guides and tour escorts;
- (f) **Part 6** – provides for the inspection and investigatory powers of the TIA;
- (g) **Part 7** – provides for the establishment of a disciplinary committee for conducting inquiries into cases of complaint and suspected misconduct against licensees and making disciplinary orders, and the procedures for suspending and revoking licences in a summary way;
- (h) **Part 8** – provides for the establishment of an appeal panel for hearing appeals lodged by persons who are aggrieved by the TIA’s decisions or the inquiry committee’s disciplinary orders;
- (i) **Part 9** – provides for the administration of the TICF and imposition of levies on travel agents;
- (j) **Part 10** – provides for the establishment, functions and powers of the TIA, the TIA’s status in relation to the Government, etc.;
- (k) **Part 11** – provides for miscellaneous matters, such as requirements for publication of advertisements;
- (l) **Schedule 1** – sets out the periods within which applications for renewal of licences and branch licences must be made;
- (m) **Schedules 2, 3 and 4** – set out the matters that the TIA must have regard to when considering an application for a licence and branch licence and the relevant renewal;
- (n) **Schedule 5** – sets out the levels of amounts of capital requirement to be fulfilled by applicants for travel agent licences and branch licences;
- (o) **Schedule 6** – sets out the levels of amounts of guarantee money

to be deposited by travel agents;

- (p) **Schedule 7** – sets out the qualification requirement for the authorized representatives of travel agents;
- (q) **Schedule 8** – sets out the education requirement for applicants for tourist guide licences and tour escort licences;
- (r) **Schedule 9** – contains constitutional, administrative and financial provisions relating to the TIA;
- (s) **Schedule 10** – contains savings and transitional provisions for the transition from the existing regulatory regime to the new one; and
- (t) **Schedule 11** – contains amendments to other relevant Ordinances.

LEGISLATIVE TIMETABLE

22. The legislative timetable will be –

Publication in the Gazette	10 March 2017
First Reading and commencement of Second Reading Debate	22 March 2017
Resumption of Second Reading Debate, Committee Stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

C 23. The proposal has financial, civil service, economic and sustainability implications as set out at **Annex C**. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no productivity, environmental, gender or family⁹ implications.

⁹ The fees and Authority levies under the new regulatory regime may be adjusted upwards in an incremental manner through subsidiary legislation should practical needs arise in future. Family implications, if any, generated by such adjustments will be assessed by then.

PUBLIC CONSULTATION

24. The Government launched a ten-week public consultation on the review of the operation and regulatory framework of the tourism sector from 29 April to 15 July 2011, and announced in December the same year that an independent statutory body (i.e. the TIA) would be set up as the overall regulatory body for the travel industry.

25. We have maintained dialogue with the travel trade, including the TIC, when formulating the proposed arrangements for the new regulatory regime. We briefed the LegCo Panel on Economic Development on the proposed way forward after the consultation and the progress of taking forward the regulatory reform on 27 February 2012 and 22 July 2013 respectively. After formulating a package of key legislative proposals, we conducted intensive discussions with the travel trade (including the TIC, representatives of its Association Members, and representatives of various unions of tourist guides and tour escorts), the Advisory Committee on Travel Agents and the TICF Management Board from November to December 2016. We also consulted the LegCo Panel on Economic Development on the key legislative proposals on 23 January 2017. The travel trade, relevant bodies and LegCo Panel on Economic Development generally supported our proposals.

PUBLICITY

26. A spokesperson will be made available to address public or media enquiries.

ENQUIRY

27. Enquiries on this brief may be directed to Mr Eddie Lee, Assistant Commissioner for Tourism (1), on 2810 3525.

**Tourism Commission
Commerce, Industry and Tourism Branch
Commerce and Economic Development Bureau
8 March 2017**

Travel Industry Bill

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A BILL

To

Establish a Travel Industry Authority; 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 the Travel Industry Compensation Fund, and for the imposition of levies on travel agents; and to provide for related matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Travel Industry Ordinance.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Commerce and Economic Development by notice published in the Gazette.

2. Interpretation

- (1) In this Ordinance—
appeal board (上訴委員會) means an appeal board appointed under section 122;
Authority (旅監局) means the Travel Industry Authority established by section 151;

authorized representative (獲授權代表), in relation to a licensed travel agent, means—

- (a) the individual who becomes the travel agent's authorized representative under section 26(2); or
- (b) the individual who is approved as the travel agent's authorized representative under section 31(3) or 111(3);

branch licence (分行牌照) means a branch licence issued under section 10(1);

Chairperson (主席) means the Chairperson of the Authority referred to in section 1(1)(a) of Schedule 9;

committee (委員會), in relation to the Authority, means a committee established under section 27(1) of Schedule 9;

company (公司) has the meaning given by section 2(1) of the Companies Ordinance (Cap. 622);

company secretary (公司秘書) includes any person occupying the position of company secretary (by whatever name called);

Compensation Fund (賠償基金) means the fund that is—

- (a) established by section 32C of the repealed Ordinance as the Travel Industry Compensation Fund; and
- (b) continued under section 140(2);

controller (控權人)—see subsection (3);

director (董事) includes any person occupying the position of director (by whatever name called);

disciplinary committee (紀律委員會) means the disciplinary committee established under section 87(1);

disclosable interest (應披露利害關係)—see subsection (3);

Executive Director (行政總裁) means the Executive Director of the Authority appointed under section 7(1)(a) of Schedule 9;

function (職能) includes power and duty;

identity card (身分證) has the meaning given by section 1A(1) of the Registration of Persons Ordinance (Cap. 177);

inquiry committee (研訊委員會) means an inquiry committee established under section 99(2)(a);

legal representative (法律代表), in relation to a party to an inquiry under Part 7 or an appeal under Part 8, means a solicitor or counsel who holds a practising certificate and represents the party at the inquiry or appeal;

licence (牌照) means—

- (a) a travel agent licence;
- (b) a tourist guide licence; or
- (c) a tour escort licence;

licensed tour escort (持牌領隊) means the holder of a tour escort licence;

licensed tourist guide (持牌導遊) means the holder of a tourist guide licence;

licensed travel agent (持牌旅行代理商) means the holder of a travel agent licence;

licensee (持牌人) means the holder of a licence;

Mainland (內地) means any part of China other than Hong Kong, Macao and Taiwan;

Mainland inbound tour group (內地入境旅行團) means a tour group consisting of 2 or more visitors from the Mainland;

manager (管理人), in relation to a company—

- (a) means a person who performs managerial functions in relation to the company under the directors' immediate authority; but
- (b) excludes—

- (i) a receiver or manager of the company's property; and
- (ii) a special manager of the company's estate or business appointed under section 216 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);

non-trade member (非業界成員) means an individual who is not a trade member;

officer (高級人員), in relation to a company, includes a director, manager and company secretary of the company;

permanent identity card (永久性居民身分證) has the meaning given by section 1A(1) of the Registration of Persons Ordinance (Cap. 177);

prescribed (訂明) means prescribed by regulations made under section 164;

previous licence (先前牌照) means a licence granted under the repealed Ordinance;

register (登記冊), in relation to licences, means the register kept under section 63;

repealed Ordinance (《已廢除條例》) means the Travel Agents Ordinance (Cap. 218) repealed by section 3 of Schedule 11;

Secretary (局長) means the Secretary for Commerce and Economic Development;

tour escort licence (領隊牌照) means a tour escort licence issued under section 43(1);

tour escort pass (領隊證) means a pass issued by the Travel Industry Council under the Outbound Tour Escort Accreditation System set up by the Council;

tourist guide licence (導遊牌照) means a tourist guide licence issued under section 43(1);

tourist guide pass (導遊證) means a pass issued by the Travel Industry Council under the Tourist Guide Accreditation System set up by the Council;

trade member (業界成員) means—

- (a) an individual who is engaged in the business of a licensed travel agent;
- (b) a licensed tourist guide;
- (c) a licensed tour escort;
- (d) an individual who is engaged in the business of a holder of a previous licence;
- (e) the holder of a tourist guide pass; or
- (f) the holder of a tour escort pass;

travel agent licence (旅行代理商牌照) means a travel agent licence issued under section 8(1);

Travel Industry Council (旅遊業議會) has the meaning given by section 32A(1) of the repealed Ordinance;

Vice-chairperson (副主席) means the Vice-chairperson of the Authority referred to in section 1(1)(b) of Schedule 9;

working group (工作小組), in relation to the Authority, means a working group established under section 32(1) of Schedule 9.

(2) In this Ordinance—

- (a) a reference to a person carrying on travel agent business is to be construed under section 4;
- (b) a reference to a person carrying on Mainland inbound tour group business is to be construed under section 5;
- (c) a reference to a person working as a tourist guide is to be construed under section 38; and
- (d) a reference to a person working as a tour escort is to be construed under section 39.

- (3) For the purposes of this Ordinance, a person is the controller of a company if the directors, or a majority of the directors, of the company are accustomed to act in accordance with the person's directions (excluding advice given in a professional capacity).
- (4) For the purposes of this Ordinance, a person has a disclosable interest in a matter (however described) if—
- (a) the person has, in relation to the matter—
 - (i) a pecuniary interest (whether direct or indirect); or
 - (ii) a personal interest greater than that which the person has as a member of the public; and
 - (b) the pecuniary interest or personal interest could conflict or could reasonably be perceived to conflict with the proper performance of the person's functions under this Ordinance.

3. Exemption

The Authority may, by notice published in the Gazette, exempt a person or class of persons from the operation of this Ordinance subject to any conditions or limitations specified in the notice.

Part 2

Travel Agents

Division 1—Interpretation

4. Meaning of carrying on travel agent business

- (1) A person carries on travel agent business if—
- (a) the person carries on any of the following business activities in Hong Kong—
 - (i) obtaining for another person carriage, by any means of transport, on a journey that is to commence in Hong Kong and then take place mainly outside Hong Kong;
 - (ii) obtaining for another person accommodation at a place outside Hong Kong;
 - (iii) obtaining for a visitor to Hong Kong carriage, by any means of transport, on a journey that is to—
 - (A) commence outside Hong Kong; and
 - (B) either terminate in Hong Kong or involve the visitor passing through immigration controls before leaving Hong Kong;
 - (iv) obtaining for a visitor to Hong Kong accommodation in Hong Kong;
 - (v) obtaining for a visitor to Hong Kong any of the following services—
 - (A) a service providing sightseeing or visits to local places of interest;

- (B) a service providing restaurant meals or other catered meals;
 - (C) a service providing shopping trips;
 - (D) a service providing local transport in connection with any of the services described in sub-subparagraphs (A), (B) and (C); or
- (b) the person—
- (i) carries on any of the business activities described in paragraph (a)(i) and (ii) at a place outside Hong Kong; and
 - (ii) actively markets, whether in Hong Kong or from a place outside Hong Kong, to the public of Hong Kong any of those business activities.
- (2) Subsection (1) does not apply to a person falling within paragraph (a) or (b) of the subsection if the Authority considers that—
- (a) the person's principal business is not the carrying on of the business activities described in the paragraph; and
 - (b) the relevant business activity carried on by the person is ancillary to the person's principal business.
- (3) In determining whether a business activity is ancillary to a person's principal business, the Authority must have regard to all relevant matters, including—
- (a) the nature of the activity;
 - (b) the frequency of the activity; and
 - (c) the direct or indirect financial contribution of the activity towards the person.
- (4) Without limiting subsection (2), a person does not carry on travel agent business—

- (a) in respect of a business activity described in subsection (1)(a)(i) or (iii) if the person is the operator of the relevant means of transport;
 - (b) in respect of a business activity described in subsection (1)(a)(ii) if the relevant accommodation obtained by the person for the other person is intended to be occupied by that other person for more than 14 days;
 - (c) in respect of a business activity described in subsection (1)(a)(iv) if the relevant accommodation obtained by the person for the visitor is intended to be occupied by that visitor for more than 14 days; or
 - (d) in respect of a business activity described in subsection (1)(a)(v) if the person is the owner or operator of the relevant service.
- 5. Meaning of carrying on Mainland inbound tour group business**
- A person carries on Mainland inbound tour group business if the person obtains any of the following services for a Mainland inbound tour group organized by a person in the Mainland—
- (a) a service providing sightseeing or visits to local places of interest;
 - (b) a service providing restaurant meals or other catered meals;
 - (c) a service providing shopping trips;
 - (d) a service providing local transport in connection with any of the services described in paragraphs (a), (b) and (c).

Division 2—Prohibitions**6. Prohibitions**

- (1) No person may, without a travel agent licence, carry on travel agent business.
- (2) A licensed travel agent must not carry on travel agent business—
 - (a) at any premises other than the premises specified in the travel agent licence or any branch licence concerned; or
 - (b) otherwise than in accordance with the conditions imposed on the travel agent licence or any branch licence concerned.
- (3) A licensed travel agent must not obtain any of the services described in section 5 for a Mainland inbound tour group organized by a person in the Mainland unless the person is approved to organize the tour group by a regulatory organization in the Mainland that regulates the travel industry of the Mainland.
- (4) A person who contravenes subsection (1), (2) or (3) commits an offence and is liable—
 - (a) on conviction on indictment to a fine at level 6 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 3 and to imprisonment for 6 months.
- (5) It is a defence for a defendant charged with an offence against subsection (3) to establish that—
 - (a) all practicable steps were taken by the defendant to determine whether the person in the Mainland was approved to organize the Mainland inbound tour group by a regulatory organization in the Mainland that regulates the travel industry of the Mainland; and

- (b) it was reasonable for the defendant to conclude that the person was approved to organize the tour group by the regulatory organization.
- (6) The defendant is taken to have established a fact that needs to be established for the defence if—
 - (a) there is sufficient evidence to raise an issue with respect to that fact; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.

Division 3—Licensing**7. Application for travel agent licence**

- (1) If a person intends to carry on travel agent business, the person may apply for a travel agent licence.
- (2) An application for a travel agent licence must be—
 - (a) made to the Authority in the specified form; and
 - (b) accompanied by—
 - (i) the prescribed fee; and
 - (ii) any document the Authority may require.

8. Issue of travel agent licence

- (1) The Authority may, on application, issue a travel agent licence to a company, a partnership or an individual carrying on business as a sole proprietor.
- (2) The Authority must not issue a travel agent licence unless—
 - (a) the Authority is satisfied that—
 - (i) the applicant is a company, a partnership or an individual carrying on business as a sole proprietor;

- (ii) the premises in Hong Kong to which the application relates, and the location of the premises, are suitable for travel agent business;
- (iii) the applicant is suitable to hold the licence having regard to the matters set out in Division 4;
- (iv) the applicant meets the capital requirement set out in Division 5;
- (v) the applicant meets the guarantee money requirement set out in Division 6;
- (vi) the applicant meets the authorized representative requirement set out in Division 7; and
- (vii) the applicant meets the staffing requirement set out in Division 8; and

(b) the applicant has paid the prescribed fee.

- (3) A travel agent licence must be in the specified form.
- (4) A travel agent licence is not transferable.
- (5) The Authority may impose on a travel agent licence the conditions, including prescribed conditions, that it considers appropriate.
- (6) The Authority must specify in a travel agent licence the validity period of the licence.
- (7) The period specified under subsection (6) must not be longer than 12 months beginning on the date on which the licence is issued.

9. Application for branch licence

- (1) If a licensed travel agent intends to carry on travel agent business at any premises in addition to the premises specified in the travel agent licence, the travel agent may apply for a

branch licence for the other premises or for each of the other premises.

- (2) An application for a branch licence must be—
 - (a) made to the Authority in the specified form; and
 - (b) accompanied by—
 - (i) the prescribed fee; and
 - (ii) any document the Authority may require.

10. Issue of branch licence

- (1) The Authority may, on application, issue a branch licence to a licensed travel agent—
 - (a) in respect of the premises specified in the application; or
 - (b) if 2 or more premises are specified in the application, in respect of each of those premises.
- (2) The Authority must not issue a branch licence unless—
 - (a) the applicant holds a valid travel agent licence;
 - (b) the Authority is satisfied that—
 - (i) the premises in Hong Kong to which the application relates, and the location of the premises, are suitable for travel agent business;
 - (ii) the applicant meets the capital requirement set out in Division 5; and
 - (iii) the applicant meets the staffing requirement set out in Division 8; and
 - (c) the applicant has paid the prescribed fee.
- (3) Subsection (2)(b)(ii) and (iii) does not apply to an application for a branch licence for a period not exceeding 14 days.
- (4) A branch licence must be in the specified form.

- (5) A branch licence is not transferable.
- (6) The Authority may impose on a branch licence the conditions, including prescribed conditions, that it considers appropriate.
- (7) The Authority must specify in a branch licence the validity period of the licence.
- (8) The period specified under subsection (7) must not be longer than the validity period of the travel agent licence of the applicant.

11. What travel agent licence or branch licence authorizes

A travel agent licence or branch licence authorizes the person named in the licence to carry on travel agent business at the premises specified in the licence.

12. Refusal to issue travel agent licence or branch licence

- (1) If the Authority intends to refuse to issue a travel agent licence or branch licence, it must, by notice in writing given to the applicant—
 - (a) notify the applicant of the intention; and
 - (b) give reasons for the intention.
- (2) The applicant may, within 7 days after the date of the notice, or a longer period the Authority may permit, make representations in writing to the Authority as to why the Authority should not refuse to issue the travel agent licence or branch licence.
- (3) If the Authority decides not to issue a travel agent licence or branch licence, it must, by notice in writing given to the applicant within 21 days beginning on the date on which the decision is made—
 - (a) notify the applicant of the decision; and
 - (b) give reasons for the decision.

13. Application for renewal of travel agent licence or branch licence

- (1) A licensed travel agent may apply for the renewal of the travel agent licence or branch licence concerned.
- (2) The application must be—
 - (a) made to the Authority in the specified form within the period specified in section 1(1) of Schedule 1; and
 - (b) accompanied by—
 - (i) the prescribed fee; and
 - (ii) any document the Authority may require.

14. Renewal of travel agent licence or branch licence

- (1) The Authority may, on application, renew a travel agent licence or branch licence.
- (2) The Authority must not renew a travel agent licence unless—
 - (a) the Authority is satisfied that—
 - (i) the premises to which the application relates, and the location of the premises, are suitable for travel agent business;
 - (ii) the applicant is suitable to hold the licence having regard to the matters set out in Division 4;
 - (iii) the applicant meets the guarantee money requirement set out in Division 6;
 - (iv) the applicant meets the authorized representative requirement set out in Division 7; and
 - (v) the applicant meets the staffing requirement set out in Division 8; and
 - (b) the applicant has paid the prescribed fee.
- (3) The Authority must not renew a branch licence unless—

- (a) the applicant holds a valid travel agent licence;
 - (b) the Authority is satisfied that—
 - (i) the premises to which the application relates, and the location of the premises, are suitable for travel agent business; and
 - (ii) the applicant meets the staffing requirement set out in Division 8; and
 - (c) the applicant has paid the prescribed fee.
- (4) A renewed travel agent licence or renewed branch licence must be in the specified form.
 - (5) A renewed travel agent licence or renewed branch licence is not transferable.
 - (6) The Authority may impose on a renewed travel agent licence or renewed branch licence the conditions, including prescribed conditions, that it considers appropriate.
 - (7) The Authority must specify in a renewed travel agent licence or renewed branch licence the validity period of the licence.
 - (8) The period specified under subsection (7)—
 - (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 branch licence, must not be longer than the validity period of the travel agent licence of the applicant.
 - (9) A travel agent licence or branch licence may be renewed more than once.

- 15. Refusal to renew travel agent licence or branch licence**
 - (1) If the Authority intends to refuse to renew a travel agent licence or branch licence, it must, by notice in writing given to the applicant—
 - (a) notify the applicant of the intention; and
 - (b) give reasons for the intention.
 - (2) The applicant may, within 7 days after the date of the notice, or a longer period the Authority may permit, make representations in writing to the Authority as to why the Authority should not refuse to renew the travel agent licence or branch licence.
 - (3) If the Authority decides not to renew a travel agent licence or branch licence, it must, by notice in writing given to the applicant within 21 days beginning on the date on which the decision is made—
 - (a) notify the applicant of the decision; and
 - (b) give reasons for the decision.
- 16. No fresh application for travel agent licence etc. within prescribed period after refusal**
 - (1) This section applies to a person whose application for a travel agent licence or branch licence, or the renewal of a travel agent licence or branch licence, has been refused.
 - (2) The person may not reapply for a travel agent licence or branch licence, or the renewal of a travel agent licence or branch licence, within the prescribed period.
 - (3) Despite subsection (2), the Authority may permit the person to reapply for a travel agent licence or branch licence, or the renewal of a travel agent licence or branch licence, within the prescribed period if the Authority is satisfied that the ground for the refusal no longer exists.

17. No fresh application for travel agent licence etc. within prescribed period after revocation

- (1) This section applies to a person whose travel agent licence or branch licence has been revoked.
- (2) The person may not reapply for a travel agent licence or branch licence within the prescribed period.
- (3) Despite subsection (2), the Authority may permit the person to reapply for a travel agent licence or branch licence within the prescribed period if the Authority is satisfied that exceptional circumstances exist that justify the permission.

Division 4—Suitability Requirement**18. Suitability requirement for applicant for travel agent licence or renewal of travel agent licence**

- (1) In this section—
associated company (有聯繫公司), in relation to a company, means—
 - (a) a subsidiary of the company;
 - (b) a holding company of the company; or
 - (c) a subsidiary of the holding company mentioned in paragraph (b).
- (2) In determining for the purposes of sections 8(2)(a)(iii) and 14(2)(a)(ii) whether a company is suitable to hold a travel agent licence, the Authority must have regard to all relevant matters, including—
 - (a) the matters set out in Schedule 2;
 - (b) whether every officer and controller of the company is suitable to be associated with the business of a travel agent; and

- (c) any information in the possession of the Authority, whether provided by the company or not, on any matters relating to an associated company of the company, including—
 - (i) the matters set out in Schedule 2; and
 - (ii) whether every officer and controller of the associated company is suitable to be associated with the business of a travel agent.
- (3) In determining for the purposes of sections 8(2)(a)(iii) and 14(2)(a)(ii) whether a partnership is suitable to hold a travel agent licence, the Authority must have regard to all relevant matters, including—
 - (a) the matters set out in Schedule 3; and
 - (b) whether every person responsible or proposed to be responsible for the management of the travel agent business of the partnership, or any part of the business, is suitable to be associated with the business of a travel agent.
- (4) In determining for the purposes of sections 8(2)(a)(iii) and 14(2)(a)(ii) whether an individual is suitable to hold a travel agent licence, the Authority must have regard to all relevant matters, including—
 - (a) the matters set out in section 1(1) of Schedule 4; and
 - (b) whether every person responsible or proposed to be responsible for the management of the travel agent business of the individual, or any part of the business, is suitable to be associated with the business of a travel agent.
- (5) In determining for the purposes of subsections (2)(b), (3)(b) and (4)(b) whether a person is suitable to be associated with the business of a travel agent, the Authority must—

- (a) if the person is a company, have regard to all relevant matters, including the matters set out in Schedule 2;
- (b) if the person is a partnership, have regard to all relevant matters, including the matters set out in Schedule 3; and
- (c) if the person is an individual, have regard to all relevant matters, including the matters set out in section 1(1) of Schedule 4.

Division 5—Capital Requirement

19. Capital requirement for applicant for travel agent licence and branch licence

(1) In this section—

basic capital amount (基本資本額) means the amount specified in Part 1 of Schedule 5;

branch capital amount (分行資本額) means the amount specified in Part 2 of Schedule 5.

- (2) For the purposes of section 8(2)(a)(iv), the capital requirement for an applicant is that—
- (a) if the applicant is a company, the amount of the company's paid-up share capital must not be less than the basic capital amount;
 - (b) if the applicant is a partnership, the aggregate of amounts in all partners' capital accounts must not be less than the basic capital amount; and
 - (c) if the applicant is an individual, the amount in the individual's capital account must not be less than the basic capital amount.
- (3) For the purposes of section 10(2)(b)(ii), the capital requirement for an applicant is that—

- (a) if the applicant is a company, the amount of the company's paid-up share capital must not be less than the aggregate of—
 - (i) the basic capital amount; and
 - (ii) for each branch, the branch capital amount;
- (b) if the applicant is a partnership, the aggregate of amounts in all partners' capital accounts must not be less than the aggregate of—
 - (i) the basic capital amount; and
 - (ii) for each branch, the branch capital amount; and
- (c) if the applicant is an individual, the amount in the individual's capital account must not be less than the aggregate of—
 - (i) the basic capital amount; and
 - (ii) for each branch, the branch capital amount.

Division 6—Guarantee Money Requirement

20. Purpose of guarantee money

The purpose of guarantee money is to guarantee the settlement of any financial penalties imposed on a licensed travel agent under Part 7 or 8.

21. Guarantee money requirement for applicant for travel agent licence or renewal of travel agent licence

(1) This section applies to—

- (a) an applicant for a travel agent licence under section 7; or
- (b) an applicant for the renewal of a travel agent licence under section 13.

- (2) However, this section does not apply to a person who is taken to be a licensed travel agent under Schedule 10.
- (3) For the purposes of sections 8(2)(a)(v) and 14(2)(a)(iii), the guarantee money requirement for an applicant is that the applicant must deposit guarantee money with the Authority in accordance with this section.
- (4) The amount of the guarantee money is to be the amount specified for level 2 in Schedule 6.
- (5) The guarantee money is to be in the form of a bank guarantee, in terms acceptable to the Authority, from an authorized institution within the meaning of section 2(1) of the Banking Ordinance (Cap. 155).
- (6) The period for which the guarantee money is to be deposited is the period specified by the Authority which—
 - (a) for an applicant for a travel agent licence, may be longer than the validity period of the licence, if issued; or
 - (b) for an applicant for the renewal of a travel agent licence, may be longer than the validity period of the licence, if renewed.

22. Guarantee money requirement for person taken to be licensed travel agent under Schedule 10

- (1) In this section—

commencement date (生效日期) means the commencement date of this section;

pre-existing controller (原有控權人)—

- (a) in relation to a company, means a person who, directly or indirectly, is entitled to exercise, or control the exercise of, the voting rights at a general meeting of the company immediately before the commencement date; or

- (b) in relation to a partnership, means a person who, directly or indirectly, is entitled to exercise, or control the exercise of, the voting rights in the partnership immediately before the commencement date;

pre-existing partner (原有合夥人), in relation to a partnership, means a person who is a partner in the partnership immediately before the commencement date;

pre-existing shareholder (原有股東), in relation to a company, means a person who is a shareholder of the company immediately before the commencement date;

specified misconduct (指明不當行為), in relation to a person, means a contravention by the person of a requirement in this Ordinance that is specified by the Authority.

- (2) This section applies to a person who is taken to be a licensed travel agent under Schedule 10.
- (3) The guarantee money requirement for a person to whom this section applies is that if the Authority requires the person to do so, the person must deposit guarantee money in accordance with this section.
- (4) If—
 - (a) the amount or aggregated amount of financial penalties imposed under Parts 7 and 8 on a person to whom this section applies exceeds the level specified by the Authority; or
 - (b) the frequency of specified misconduct by a person to whom this section applies exceeds the level specified by the Authority,
 the Authority may require the person to deposit guarantee money of the amount specified for level 1 in Schedule 6 in accordance with this section.
- (5) If—

- (a) a person to whom this section applies is a company; and
- (b) on or after the commencement date—
 - (i) the total shareholding of the pre-existing shareholders in the company becomes less than 50% of the issued share capital of the company; or
 - (ii) the total voting rights which the pre-existing controllers are entitled to exercise, or the exercise of which the pre-existing controllers are entitled to control, at a general meeting of the company become less than 50% of the voting rights in the company,

the Authority may require the company to deposit guarantee money of the amount specified for level 2 in Schedule 6 in accordance with this section.

(6) If—

- (a) a person to whom this section applies is a partnership; and
- (b) on or after the commencement date—
 - (i) the total entitlement of the pre-existing partners in the capital or profits of the partnership becomes less than 50% of the capital or profits of the partnership; or
 - (ii) the total voting rights which the pre-existing controllers are entitled to exercise, or the exercise of which the pre-existing controllers are entitled to control, in the partnership become less than 50% of the voting rights in the partnership,

the Authority may require the partnership to deposit guarantee money of the amount specified for level 2 in Schedule 6 in accordance with this section.

- (7) Subject to section 23, if a person who has deposited guarantee money under subsection (4) applies for the renewal of the person's travel agent licence under section 13, the Authority may require the person to deposit guarantee money of the amount specified for level 1 in Schedule 6 in accordance with this section.
- (8) If a person who has deposited guarantee money under subsection (5) or (6) applies for the renewal of the person's travel agent licence under section 13, the Authority may require the person to deposit guarantee money of the amount specified for level 2 in Schedule 6 in accordance with this section.
- (9) The guarantee money is to be in the form of a bank guarantee, in terms acceptable to the Authority, from an authorized institution within the meaning of section 2(1) of the Banking Ordinance (Cap. 155).
- (10) The period for which the guarantee money is to be deposited is the period specified by the Authority which—
 - (a) for the guarantee money required under subsection (4), (5) or (6), may be longer than the validity period of the relevant travel agent licence; or
 - (b) for the guarantee money required under subsection (7) or (8), may be longer than the validity period of the relevant travel agent licence, if renewed.

23. Additional guarantee money requirement for person taken to be licensed travel agent under Schedule 10

(1) In this section—

specified misconduct (指明不當行為) has the meaning given by section 22(1).

- (2) This section applies to a person who has deposited guarantee money under section 22(4).
- (3) The guarantee money requirement for a person to whom this section applies is that if the Authority requires the person to do so, the person must deposit guarantee money in accordance with this section.
- (4) If—
 - (a) the amount or aggregated amount of financial penalties imposed under Parts 7 and 8 on a person to whom this section applies exceeds the level specified by the Authority; or
 - (b) the frequency of specified misconduct by a person to whom this section applies exceeds the level specified by the Authority,
 the Authority may require the person to deposit additional guarantee money of the amount specified for level 1 in Schedule 6 in accordance with this section.
- (5) If a person who has deposited additional guarantee money under subsection (4) applies for the renewal of the person's travel agent licence under section 13, the Authority may require the person to deposit guarantee money of the amount specified for level 2 in Schedule 6 in accordance with this section.
- (6) The guarantee money is to be in the form of a bank guarantee, in terms acceptable to the Authority, from an authorized institution within the meaning of section 2(1) of the Banking Ordinance (Cap. 155).
- (7) The period for which the guarantee money is to be deposited is the period specified by the Authority which—

- (a) for the guarantee money required under subsection (4), may be longer than the validity period of the relevant travel agent licence; or
- (b) for the guarantee money required under subsection (5), may be longer than the validity period of the relevant travel agent licence, if renewed.

Division 7—Authorized Representative Requirement and Other Provisions

24. Authorized representative requirement for applicant for travel agent licence or renewal of travel agent licence

- (1) For the purposes of sections 8(2)(a)(vi) and 14(2)(a)(iv), the authorized representative requirement for an applicant is that—
 - (a) the application must set out—
 - (i) the particulars of the individual who is proposed to be the applicant's authorized representative; and
 - (ii) the individual's consent; and
 - (b) the Authority approves the individual as the applicant's authorized representative.
- (2) The Authority may approve an individual as the applicant's authorized representative only if—
 - (a) the Authority is satisfied that the individual is suitable to be an authorized representative of a travel agent; and
 - (b) the individual is not already an authorized representative of a licensed travel agent other than the applicant.

25. Individual suitable to be authorized representative of travel agent

- (1) In determining for the purposes of section 24(2)(a) whether an individual is suitable to be an authorized representative of a travel agent, the Authority must have regard to all relevant matters, including—
 - (a) the matters set out in section 1(1) of Schedule 4;
 - (b) whether the individual is associated with the business of the travel agent in the capacity of—
 - (i) a director, manager, company secretary or controller of a company;
 - (ii) a partner in a partnership, or a person concerned in the management of the partnership; or
 - (iii) a sole proprietor, or a person concerned in the management of the sole proprietorship;
 - (c) whether the individual has completed the courses specified by the Authority; and
 - (d) whether the individual meets the qualification requirement set out in Schedule 7.
- (2) If the Authority is not satisfied that an individual is suitable to be an authorized representative of a travel agent, the individual is also not suitable to be an authorized representative of any other travel agent within the prescribed period.
- (3) Despite subsection (2), the Authority may permit the individual to be an authorized representative of a travel agent within the prescribed period if the Authority is satisfied that the ground for determining that the individual is not suitable no longer exists.

26. Authorized representative of licensed travel agent

- (1) This section applies if—
 - (a) a person applies for a travel agent licence or the renewal of a travel agent licence; and
 - (b) the licence is issued or renewed.
- (2) The individual named in the application as authorized representative becomes the licensed travel agent's authorized representative.

27. Duties of authorized representative of licensed travel agent

The duties of an authorized representative of a licensed travel agent are—

- (a) to ensure adequate supervision of the operation, management and control of the travel agent for protecting the interest and safety of the customers of the travel agent;
- (b) to ensure that the operation of the travel agent is in compliance with all the requirements in this Ordinance; and
- (c) to inform the Authority of any changes in the prescribed particulars of the travel agent in the prescribed way.

28. Requirement to cease to be authorized representative

- (1) The Authority may require an individual to cease to be the authorized representative of a licensed travel agent if the Authority reasonably believes that—
 - (a) having regard to the matters set out in section 25(1), the individual is no longer suitable to be an authorized representative of a travel agent; or
 - (b) the individual has failed to fulfil a duty set out in section 27.

- (2) If the Authority intends to make the requirement under subsection (1), it must—
- (a) by notice in writing given to the individual—
 - (i) notify the individual of the intention; and
 - (ii) give reasons for the intention; and
 - (b) send a copy of the notice to the travel agent.
- (3) The individual and the travel agent may, within 7 days after the date of the notice, or a longer period the Authority may permit, make representations in writing to the Authority as to why the Authority should not make the requirement.
- (4) If the Authority decides to make the requirement, it must, within 21 days beginning on the date on which the decision is made—
- (a) by notice in writing given to the individual—
 - (i) notify the individual of the decision;
 - (ii) give reasons for the decision; and
 - (iii) notify the individual that—
 - (A) the individual will also not be suitable to be an authorized representative of any travel agent for the period specified in the notice; and
 - (B) unless the ground for making the decision no longer exists, an application for a travel agent licence, or the renewal of a travel agent licence, made during the specified period will be refused if the individual is proposed to be the applicant's authorized representative; and
 - (b) by notice in writing given to the travel agent—
 - (i) notify the travel agent of the decision;

- (ii) give reasons for the decision; and
 - (iii) notify the travel agent that—
 - (A) the travel agent must, within 14 days after the date of the notice, or a longer period the Authority may permit, apply to the Authority for approval of another individual as the travel agent's authorized representative; and
 - (B) if the travel agent fails to make the application within that period, or if the application is refused, the travel agent's licence may be revoked or suspended.
- (5) The period specified under subsection (4)(a)(iii)(A) must be reasonable in the circumstances.
- (6) The travel agent must within 14 days after the date of the notice given to the travel agent under subsection (4)(b), or a longer period the Authority may permit, apply to the Authority for approval of an individual as the travel agent's authorized representative.

29. Death or incapacity of authorized representative

If the authorized representative of a licensed travel agent dies or becomes incapable of acting, the travel agent must, within 14 days after the date on which the travel agent becomes aware of that fact, or a longer period the Authority may permit, apply to the Authority for approval of another individual as the travel agent's authorized representative.

30. Change of authorized representative

If a licensed travel agent proposes, for any reason other than the death or incapacity of the travel agent's authorized representative, another individual for approval as the travel agent's authorized

representative, the travel agent must apply to the Authority for the approval.

31. Application for approval of new authorized representative

- (1) A licensed travel agent, in making an application under section 28(6), 29 or 30, must give notice in writing to the Authority, setting out—
 - (a) the particulars of the individual who is proposed to be the travel agent's authorized representative (*proposed individual*); and
 - (b) the proposed individual's consent.
- (2) On receiving a notice given under subsection (1), the Authority must decide whether, having regard to the matters set out in section 25(1), the proposed individual is suitable to be an authorized representative of a travel agent.
- (3) If the Authority decides that the proposed individual is suitable, it may approve the application and may do one or more of the following—
 - (a) amend or remove the existing conditions of the travel agent licence;
 - (b) impose new conditions on the travel agent licence.
- (4) If the Authority decides that the proposed individual is not suitable, it may refuse the application.
- (5) If the Authority intends to refuse the application, it must, by notice in writing given to the travel agent and proposed individual—
 - (a) notify the travel agent and individual of the intention; and
 - (b) give reasons for the intention.

- (6) The travel agent and proposed individual may, within 7 days after the date of the notice given under subsection (5), or a longer period the Authority may permit, make representations in writing to the Authority as to why the Authority should not refuse the application.
- (7) If the Authority decides to refuse the application, it must, within 21 days beginning on the date on which the decision is made—
 - (a) by notice in writing given to the travel agent—
 - (i) notify the travel agent of the decision; and
 - (ii) give reasons for the decision; and
 - (b) by notice in writing given to the proposed individual—
 - (i) notify the individual of the decision;
 - (ii) give reasons for the decision; and
 - (iii) notify the individual that—
 - (A) the individual will also not be suitable to be an authorized representative of any travel agent for the period specified in the notice; and
 - (B) unless the ground for making the decision no longer exists, an application for a travel agent licence, or the renewal of a travel agent licence, made during the specified period will be refused if the individual is proposed to be the applicant's authorized representative.
- (8) The period specified under subsection (7)(b)(iii)(A) must be reasonable in the circumstances.

Division 8—Staffing Requirement

32. Staffing requirement for applicant for travel agent licence, branch licence, and renewal of travel agent and branch licence

For the purposes of sections 8(2)(a)(vii), 10(2)(b)(iii) and 14(2)(a)(v) and (3)(b)(ii), the staffing requirement for an applicant is that—

- (a) if the applicant is a company, at the premises to which the application relates, there must be—
 - (i) at least one manager who has had, within 5 years before the application, at least 2 consecutive years of work experience in the travel industry; and
 - (ii) at least one other member of staff who is employed full time in travel agent business;
- (b) if the applicant is a partnership, at the premises to which the application relates, there must be—
 - (i) at least one partner who has had, within 5 years before the application, at least 2 consecutive years of work experience in the travel industry, and—
 - (A) at least one other partner who works full time in travel agent business; or
 - (B) at least one member of staff who is employed full time in travel agent business; or
 - (ii) at least one person who performs managerial functions in relation to the partnership and has had, within 5 years before the application, at least 2 consecutive years of work experience in the travel industry, and—
 - (A) at least one partner who works full time in travel agent business; or

- (B) at least one other member of staff who is employed full time in travel agent business; and
- (c) if the applicant is a sole proprietor, at the premises to which the application relates, there must be—
 - (i) the sole proprietor who has had, within 5 years before the application, at least 2 consecutive years of work experience in the travel industry, and at least one member of staff who is employed full time in travel agent business; or
 - (ii) at least one person who performs managerial functions in relation to the sole proprietorship and has had, within 5 years before the application, at least 2 consecutive years of work experience in the travel industry, and—
 - (A) the sole proprietor who works full time in travel agent business; or
 - (B) at least one other member of staff who is employed full time in travel agent business.

Division 9—Miscellaneous

33. Registration fee for Mainland inbound tour group

- (1) A licensed travel agent who carries on Mainland inbound tour group business must, for each Mainland inbound tour group for which the travel agent obtains services, pay a registration fee.
- (2) The registration fee must be—
 - (a) calculated under the prescribed scale of fees; and
 - (b) paid to the Authority in the prescribed way.

34. Change of ownership or control—offence

- (1) A licensed travel agent must not change, or permit a change of, the ownership or control of its business as a travel agent without the Authority's prior approval in writing.
- (2) A licensed travel agent who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 3.

35. Change of ownership or control—process

- (1) A licensed travel agent who intends to change the ownership or control of its business as a travel agent must give notice in writing to the Authority.
- (2) On receiving a notice given under subsection (1), the Authority must decide whether, having regard to the matters set out in section 18, the proposed owner or controller is suitable to hold a travel agent licence.
- (3) If the Authority decides that the proposed owner or controller is suitable, it may approve the proposed change and may do one or more of the following when the change happens—
 - (a) amend or remove the existing conditions of the travel agent licence;
 - (b) impose new conditions on the travel agent licence.
- (4) If the Authority decides that the proposed owner or controller is not suitable, it may refuse to approve the proposed change.
- (5) If the Authority intends to refuse to approve the proposed change, it must, by notice in writing given to the travel agent—
 - (a) notify the travel agent of the intention; and
 - (b) give reasons for the intention.

- (6) The travel agent may, within 7 days after the date of the notice given under subsection (5), or a longer period the Authority may permit, make representations in writing to the Authority as to why the Authority should not refuse to approve the proposed change.
- (7) If the Authority decides not to approve the proposed change, it must, by notice in writing given to the travel agent within 21 days beginning on the date on which the decision is made—
 - (a) notify the travel agent of the decision; and
 - (b) give reasons for the decision.

36. Display of travel agent licence and branch licence

- (1) A licensed travel agent must—
 - (a) display the travel agent licence at a conspicuous part of the premises specified in the licence; and
 - (b) if a branch licence has been issued to the travel agent, display the branch licence at a conspicuous part of the premises specified in the branch licence.
- (2) No person may display a travel agent licence or branch licence unless—
 - (a) the licence or branch licence is valid;
 - (b) the licence or branch licence is issued to the person; and
 - (c) the licence or branch licence is displayed at the premises specified in the licence or branch licence.
- (3) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine at level 3.

37. Display of information about tour group

- (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.
- (2) A licensed travel agent who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 1.

Part 3

Tourist Guides and Tour Escorts

Division 1—Interpretation

38. Meaning of working as tourist guide

- (1) In this section—

guiding service (導遊服務) means the service of providing information, description or explanation in relation to an itinerary or a place of interest in Hong Kong.

- (2) A person works 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 travel agent business (whether or not that other person is a licensed travel agent).

39. Meaning of working as tour escort

A person works 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 travel agent business (whether or not that other person is a licensed travel agent).

Division 2—Prohibitions

40. Prohibition on working without licence

- (1) No person may, without a tourist guide licence, work as a tourist guide.

- (2) No person may, without a tour escort licence, work as a tour escort.
- (3) A licensed tourist guide must not work as a tourist guide otherwise than in accordance with the conditions imposed on the licence.
- (4) A licensed tour escort must not work as a tour escort otherwise than in accordance with the conditions imposed on the licence.
- (5) A person who contravenes this section commits an offence and is liable—
 - (a) on conviction on indictment to a fine at level 5 and to imprisonment for 1 year; or
 - (b) on summary conviction to a fine at level 2 and to imprisonment for 3 months.

41. Prohibition on employing or engaging person without licence

- (1) A licensed travel agent must not—
 - (a) employ, or otherwise engage, a person as a tourist guide who is not a licensed tourist guide; or
 - (b) employ, or otherwise engage, a person as a tour escort who is not a licensed tour escort.
- (2) A licensed travel agent who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.

Division 3—Licensing**42. Application for tourist guide licence or tour escort licence**

- (1) If a person intends to work as a tourist guide, the person may apply for a tourist guide licence.

- (2) If a person intends to work as a tour escort, the person may apply for a tour escort licence.
- (3) An application for a tourist guide licence or tour escort licence must be—
 - (a) made to the Authority in the specified form; and
 - (b) accompanied by—
 - (i) the prescribed fee; and
 - (ii) any document the Authority may require.

43. Issue of tourist guide licence or tour escort licence

- (1) The Authority may, on application, issue a tourist guide licence or tour escort licence to an individual.
- (2) The Authority must not issue a tourist guide licence or tour escort licence unless—
 - (a) the Authority is satisfied that—
 - (i) the applicant—
 - (A) holds a permanent identity card; or
 - (B) holds an identity card (other than a permanent identity card), and is not subject to any condition of stay that prohibits the applicant from working as a tourist guide or tour escort;
 - (ii) the applicant has reached the age of 18 years;
 - (iii) the applicant is suitable to hold the licence;
 - (iv) the applicant holds a valid certificate of competency in first aid, or another similar certificate, issued by an institution specified by the Authority;
 - (v) the applicant meets the education requirement set out in Schedule 8;

- (vi) the applicant has completed the pre-examination training courses specified by the Authority;
- (vii) for an applicant for a tourist guide licence, the applicant has passed the licensing examination of tourist guides specified by the Authority; and
- (viii) for an applicant for a tour escort licence, the applicant has passed the licensing examination of tour escorts specified by the Authority; and

(b) the applicant has paid the prescribed fee.

- (3) A tourist guide licence or tour escort licence must be in the specified form.
- (4) A tourist guide licence or tour escort licence is not transferable.
- (5) The Authority may impose on a tourist guide licence or tour escort licence the conditions, including prescribed conditions, that it considers appropriate.
- (6) The Authority must specify in a tourist guide licence or tour escort licence the validity period of the licence.
- (7) The period specified under subsection (6) must not be longer than 36 months beginning on the date on which the licence is issued.

44. What tourist guide licence or tour escort licence authorizes

- (1) A tourist guide licence authorizes the individual named in the licence to work as a tourist guide.
- (2) A tour escort licence authorizes the individual named in the licence to work as a tour escort.

45. Refusal to issue tourist guide licence or tour escort licence

- (1) If the Authority intends to refuse to issue a tourist guide licence or tour escort licence, it must, by notice in writing given to the applicant—
 - (a) notify the applicant of the intention; and
 - (b) give reasons for the intention.
- (2) The applicant may, within 7 days after the date of the notice, or a longer period the Authority may permit, make representations in writing to the Authority as to why the Authority should not refuse to issue the tourist guide licence or tour escort licence.
- (3) If the Authority decides not to issue a tourist guide licence or tour escort licence, it must, by notice in writing given to the applicant within 21 days beginning on the date on which the decision is made—
 - (a) notify the applicant of the decision; and
 - (b) give reasons for the decision.

46. Application for renewal of tourist guide licence or tour escort licence

- (1) A licensed tourist guide or licensed tour escort may apply for the renewal of the tourist guide licence or tour escort licence concerned.
- (2) The application must be—
 - (a) made to the Authority in the specified form within the period specified in section 1(2) of Schedule 1; and
 - (b) accompanied by—
 - (i) the prescribed fee; and
 - (ii) any document the Authority may require.

47. Renewal of tourist guide licence or tour escort licence

- (1) The Authority may, on application, renew a tourist guide licence or tour escort licence.
- (2) The Authority must not renew a tourist guide licence or tour escort licence unless—
 - (a) the Authority is satisfied that—
 - (i) the applicant—
 - (A) holds a permanent identity card; or
 - (B) holds an identity card (other than a permanent identity card), and is not subject to any condition of stay that prohibits the applicant from working as a tourist guide or tour escort;
 - (ii) the applicant is suitable to hold the licence;
 - (iii) the applicant holds a valid certificate of competency in first aid, or another similar certificate, issued by an institution specified by the Authority;
 - (iv) for an applicant for the renewal of a tourist guide licence, the applicant has completed the Continuing Professional Development Scheme for Tourist Guides specified by the Authority; and
 - (v) for an applicant for the renewal of a tour escort licence, the applicant has completed the Continuing Professional Development Scheme for Tour Escorts specified by the Authority; and
 - (b) the applicant has paid the prescribed fee.
- (3) A renewed tourist guide licence or renewed tour escort licence must be in the specified form.
- (4) A renewed tourist guide licence or renewed tour escort licence is not transferable.

- (5) The Authority may impose on a renewed tourist guide licence or renewed tour escort licence the conditions, including prescribed conditions, that it considers appropriate.
- (6) The Authority must specify in a renewed tourist guide licence or renewed tour escort licence the validity period of the licence.
- (7) The period specified under subsection (6) must not be longer than 36 months beginning on the date on which the licence is renewed.
- (8) A tourist guide licence or tour escort licence may be renewed more than once.

48. Refusal to renew tourist guide licence or tour escort licence

- (1) If the Authority intends to refuse to renew a tourist guide licence or tour escort licence, it must, by notice in writing given to the applicant—
 - (a) notify the applicant of the intention; and
 - (b) give reasons for the intention.
- (2) The applicant may, within 7 days after the date of the notice, or a longer period the Authority may permit, make representations in writing to the Authority as to why the Authority should not refuse to renew the tourist guide licence or tour escort licence.
- (3) If the Authority decides not to renew a tourist guide licence or tour escort licence, it must, by notice in writing given to the applicant within 21 days beginning on the date on which the decision is made—
 - (a) notify the applicant of the decision; and
 - (b) give reasons for the decision.

- 49. No fresh application for tourist guide licence etc. within prescribed period after refusal**
- (1) This section applies to a person whose application for a tourist guide licence, or the renewal of a tourist guide licence, has been refused.
 - (2) The person may not reapply for a tourist guide licence, or the renewal of a tourist guide licence, within the prescribed period.
 - (3) Despite subsection (2), the Authority may permit the person to reapply for a tourist guide licence, or the renewal of a tourist guide licence, within the prescribed period if the Authority is satisfied that the ground for the refusal no longer exists.
- 50. No fresh application for tour escort licence etc. within prescribed period after refusal**
- (1) This section applies to a person whose application for a tour escort licence, or the renewal of a tour escort licence, has been refused.
 - (2) The person may not reapply for a tour escort licence, or the renewal of a tour escort licence, within the prescribed period.
 - (3) Despite subsection (2), the Authority may permit the person to reapply for a tour escort licence, or the renewal of a tour escort licence, within the prescribed period if the Authority is satisfied that the ground for the refusal no longer exists.
- 51. No fresh application for tourist guide licence within prescribed period after revocation**
- (1) This section applies to a person whose tourist guide licence has been revoked.
 - (2) The person may not reapply for a tourist guide licence within the prescribed period.

- (3) Despite subsection (2), the Authority may permit the person to reapply for a tourist guide licence within the prescribed period if the Authority is satisfied that exceptional circumstances exist that justify the permission.
- 52. No fresh application for tour escort licence within prescribed period after revocation**
- (1) This section applies to a person whose tour escort licence has been revoked.
 - (2) The person may not reapply for a tour escort licence within the prescribed period.
 - (3) Despite subsection (2), the Authority may permit the person to reapply for a tour escort licence within the prescribed period if the Authority is satisfied that exceptional circumstances exist that justify the permission.
- 53. Individual suitable to hold tourist guide licence or tour escort licence**
- In determining for the purposes of sections 43(2)(a)(iii) and 47(2)(a)(ii) whether an individual is suitable to hold a tourist guide licence or tour escort licence, the Authority must have regard to all relevant matters, including the matters set out in section 1(2) of Schedule 4.
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Part 4

General Provisions Relating to Licences and Licensees

54. Duty to comply with prescribed requirements

- (1) A licensee must comply with prescribed requirements.
- (2) A licensed travel agent who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 3.
- (3) A licensed tourist guide or licensed tour escort who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 2.

55. Duty to comply with guidelines etc.

A licensee must comply with any guidelines, directives or codes of conduct issued under section 153(2)(k).

56. Correspondence address

- (1) A licensee must have a correspondence address in Hong Kong to which communications of the Authority may be sent.
- (2) Subject to subsection (3), the correspondence address of a licensee is the correspondence address stated in the application for the licensee's licence or the renewal of the licensee's licence.
- (3) If a licensee is a company, the correspondence address of the licensee is the address of its registered office within the meaning of the Companies Ordinance (Cap. 622).
- (4) If the correspondence 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.

57. Duty to inform Authority of changes in prescribed particulars

- (1) A licensed tourist guide must inform the Authority of any changes in the prescribed particulars of the tourist guide in the prescribed way.
- (2) A licensed tour escort must inform the Authority of any changes in the prescribed particulars of the tour escort in the prescribed way.

58. Amendment to licence or branch licence

- (1) The Authority may, on application by the holder of a licence or branch licence, amend any particulars contained in the licence or branch licence.
- (2) An application for an amendment must be—
 - (a) made to the Authority in the specified form; and
 - (b) accompanied by—
 - (i) the prescribed fee; and
 - (ii) any document the Authority may require.

59. Duplicate of licence or branch licence

- (1) The Authority may, on application by the holder of a licence or branch licence, issue a duplicate of the licence or branch licence.
- (2) An application for a duplicate of a licence or branch licence must be—
 - (a) made to the Authority in the specified form; and
 - (b) accompanied by—
 - (i) the prescribed fee; and
 - (ii) any document the Authority may require.

- (3) The Authority must not issue a duplicate of a licence or branch licence unless the Authority is satisfied that the original licence or original branch licence has been lost, damaged or destroyed.
- (4) A duplicate of a licence or branch licence has the same effect as the original licence or original branch licence.
- 60. Offence relating to application for travel agent licence or branch licence, etc.**
- (1) This section applies to an application—
- for a travel agent licence or branch licence;
 - for the renewal of a travel agent licence or branch licence;
 - for a duplicate of a travel agent licence or branch licence; or
 - for amendment of any particulars contained in a travel agent licence or branch licence.
- (2) A person commits an offence if—
- the person, in connection with the application, provides any information or document to the Authority that is false or misleading in a material particular; and
 - the person knows that, or is reckless as to whether, the information or document is false or misleading in a material particular.
- (3) A person who commits an offence under this section is liable—
- on conviction on indictment to a fine at level 6 and to imprisonment for 2 years; or
 - on summary conviction to a fine at level 3 and to imprisonment for 6 months.

- 61. Offence relating to application for tourist guide licence or tour escort licence, etc.**
- (1) This section applies to an application—
- for a tourist guide licence or tour escort licence;
 - for the renewal of a tourist guide licence or tour escort licence;
 - for a duplicate of a tourist guide licence or tour escort licence; or
 - for amendment of any particulars contained in a tourist guide licence or tour escort licence.
- (2) A person commits an offence if—
- the person, in connection with the application, provides any information or document to the Authority that is false or misleading in a material particular; and
 - the person knows that, or is reckless as to whether, the information or document is false or misleading in a material particular.
- (3) A person who commits an offence under this section is liable—
- on conviction on indictment to a fine at level 5 and to imprisonment for 1 year; or
 - on summary conviction to a fine at level 2 and to imprisonment for 3 months.

62. Effect of suspension

If a person's licence is suspended under this Ordinance, the licence is not valid during the period of suspension.

Part 5**Register****63. Keeping of register**

- (1) The Authority must keep a register of licences.
- (2) The purpose of the register is to enable the public to ascertain—
 - (a) whether a person is a licensed travel agent, licensed tourist guide or licensed tour escort; and
 - (b) the particulars of a licensed travel agent, licensed tourist guide or licensed tour escort in relation to the services provided by them.

64. Content of register

- (1) The register must contain separate lists for licences issued to travel agents, tourist guides and tour escorts.
- (2) For a travel agent licence or branch licence, the register—
 - (a) must state—
 - (i) the name and, if applicable, the business name, of the licensee;
 - (ii) the period for which the licence is issued and, if applicable—
 - (A) the period for which the licence is renewed;
 - (B) the period during which the licence is suspended; and
 - (C) the date on which the licence is revoked; and
 - (iii) the address of the premises specified in the licence; and

- (b) may contain any other particulars that the Authority considers are reasonably required for the purpose specified in section 63(2).
- (3) For a tourist guide licence or tour escort licence, the register—
 - (a) must state—
 - (i) the name of the licensee; and
 - (ii) the period for which the licence is issued and, if applicable—
 - (A) the period for which the licence is renewed;
 - (B) the period during which the licence is suspended; and
 - (C) the date on which the licence is revoked; and
 - (b) may contain any other particulars that the Authority considers are reasonably required for the purpose specified in section 63(2).

65. Inspection and copying of register

- (1) For the purpose specified in section 63(2), the Authority must make the register available for inspection—
 - (a) at the offices of the Authority during ordinary business hours;
 - (b) through the Internet or a similar electronic network; and
 - (c) in any other way the Authority considers appropriate.
- (2) A person may, on payment of the prescribed fee—
 - (a) inspect the register at the offices of the Authority during ordinary business hours and take copies of it; or
 - (b) obtain a copy, certified by the Executive Director as correct, of any particulars contained in the register.

66. Certified copies to be admissible as evidence

- (1) The Executive Director may certify a copy of any particulars contained in the register as correct (*certified copy*).
- (2) In any legal proceedings—
 - (a) unless the contrary is proved, the certified copy is evidence of the particulars contained in the register; and
 - (b) it is not necessary to prove a signature on the certified copy, or to prove that the signature is that of the person holding the office of Executive Director on the date of the copy.

Part 6**Inspection and Investigation****Division 1—Interpretation****67. Interpretation of Part 6**

In this Part—

enforcement officer (執法人員) means—

- (a) an immigration officer, or immigration assistant, within the meaning of section 2(1) of the Immigration Ordinance (Cap. 115); or
- (b) a police officer;

inspector (查察員) means an inspector appointed under section 69(1);

investigator (調查員) means an investigator appointed under section 73(1);

licensee (持牌人) includes a person who was the holder of a licence;

prohibition order (禁止離境令) means an order made under section 79(3);

subject person (禁令對象), in relation to a prohibition order, means the person against whom the order is made.

Division 2—Inspection**68. Authority's power to conduct inspection**

The Authority may conduct an inspection for the purpose of ascertaining whether a licensee is complying with, has complied

with, or is likely to comply with, the requirements in this Ordinance.

69. Appointment of inspector

- (1) The Authority may in writing appoint any of its employees, or any other person, as an inspector to conduct an inspection under section 68.
- (2) When exercising a power under this Division, an inspector must produce evidence of the inspector's identity, and of the inspector's appointment, to any person who requests the inspector to do so.

70. Power to enter and inspect, etc.

- (1) In this section—
premises (處所) does not include—
 - (a) domestic premises; or
 - (b) premises occupied by or provided to a participant of an inbound tour group for sleeping.
- (2) For the purposes of conducting an inspection under section 68, an inspector may, at any reasonable time—
 - (a) enter and inspect any premises if the inspector reasonably suspects that—
 - (i) travel agent business is being carried on by a licensed travel agent at the premises;
 - (ii) the books of account of a licensed travel agent are kept at the premises; or
 - (iii) a licensed travel agent has arranged an inbound tour group to visit the premises;

- (b) stop, board and inspect any vehicle or vessel that the inspector reasonably suspects to be arranged by a licensee for transporting a tour group;
- (c) require—
 - (i) any person at the premises referred to in paragraph (a)(i) to produce the travel agent licence or branch licence in respect of the premises for inspection;
 - (ii) any person at the premises referred to in paragraph (a)(ii) to provide the inspector with the books of account for inspection;
 - (iii) any person at the premises referred to in paragraph (a)(iii) to provide the inspector with any information or document relating to the operation of the inbound tour group for inspection; and
 - (iv) any person whom the inspector reasonably suspects to be working as a tourist guide or tour escort to produce the person's licence and identity card for inspection; and
- (d) make any examination and inquiry that the inspector considers necessary for the purposes of the inspection.
- (3) The power under subsection (2) to require a person to provide information or a document includes—
 - (a) if the information or document is recorded otherwise than in a legible form, the power to require the production of a copy of the information or document—
 - (i) in a visible and legible form; or
 - (ii) in a form from which it can readily be produced in a visible and legible form; and
 - (b) if the information or document is stored electronically, the power to require—

- (i) the provision of directions on the operation of the equipment containing the information or document; and
 - (ii) the provision of the appropriate system for reducing the information or document into a written form on paper.
- (4) The power under subsection (2) to require a person to provide a document includes—
- (a) if the document is provided, the power—
 - (i) to make copies of it or to take extracts from it; or
 - (ii) to require the person, or another person whom the inspector reasonably believes is able to do so, to give an explanation of, or further particulars about, the document; and
 - (b) if the document is not provided, the power to require the person to state, to the best of the person's knowledge and belief, where it is.

Division 3—Investigation

71. Complaints

A person may lodge a complaint with the Authority alleging that—

- (a) a person has contravened a requirement in this Ordinance;
- (b) a licensee is not suitable to hold the licensee's licence; or
- (c) the act or conduct of a licensee is contrary to the public interest, or brings the travel industry of Hong Kong into disrepute.

72. Authority's power to conduct investigation

The Authority may conduct an investigation if—

- (a) the Authority has received a complaint under section 71; or
- (b) the Authority reasonably suspects that—
 - (i) a person has contravened a requirement in this Ordinance;
 - (ii) a licensee is not suitable to hold the licensee's licence; or
 - (iii) the act or conduct of a licensee is contrary to the public interest, or brings the travel industry of Hong Kong into disrepute.

73. Appointment of investigator

- (1) The Authority may in writing appoint any of its employees, or any other person, as an investigator to conduct an investigation under section 72.
- (2) When exercising a power under this Division, an investigator must—
 - (a) produce evidence of the investigator's identity, and of the investigator's appointment; and
 - (b) if a warrant has been issued to the investigator under section 76, produce the warrant,to any person who requests the investigator to do so.

74. Power to obtain information and documents

- (1) This section applies if an investigator reasonably suspects that, in relation to an investigation conducted under section 72, a person—
 - (a) has or may have possession or control of information or documents relevant to the investigation; or

- (b) may otherwise be able to assist the investigator in relation to the investigation.
- (2) The investigator may, by notice in writing given to the person, require the person—
 - (a) to provide the investigator with any information or document relating to a matter the investigator reasonably believes to be relevant to the investigation;
 - (b) to attend before the investigator at a specified time and place, and answer any question relating to a matter the investigator reasonably believes to be relevant to the investigation;
 - (c) to answer any written question relating to a matter the investigator reasonably believes to be relevant to the investigation;
 - (d) to make a statement relating to a matter the investigator reasonably believes to be relevant to the investigation; or
 - (e) to give the investigator all the assistance that the investigator reasonably requires for the investigation.
- (3) A notice under subsection (2) must—
 - (a) be in the specified form;
 - (b) be signed by the Executive Director; and
 - (c) indicate the subject matter and purpose of the investigation.
- (4) The investigator may also specify in the notice—
 - (a) the time and place at which the information or document is to be provided; and
 - (b) the way and form in which the information or document is to be provided.
- (5) The power under subsection (2) to require a person to provide information or a document includes—

- (a) if the information or document is recorded otherwise than in a legible form, the power to require the production of a copy of the information or document—
 - (i) in a visible and legible form; or
 - (ii) in a form from which it can readily be produced in a visible and legible form; and
- (b) if the information or document is stored electronically, the power to require—
 - (i) the provision of directions on the operation of the equipment containing the information or document; and
 - (ii) the provision of the appropriate system for reducing the information or document into a written form on paper.
- (6) The power under subsection (2) to require a person to provide a document includes—
 - (a) if the document is provided, the power—
 - (i) to make copies of it or to take extracts from it; or
 - (ii) to require the person, or another person whom the investigator reasonably believes is able to do so, to give an explanation of, or further particulars about, the document; and
 - (b) if the document is not provided, the power to require the person to state, to the best of the person's knowledge and belief, where it is.

75. Power to enter and search, etc.

- (1) For the purposes of conducting an investigation under section 72, an investigator may, at any reasonable time—

- (a) in accordance with a warrant issued under section 76, enter and search any premises, and seize, remove and detain any document or thing at the premises;
 - (b) stop, board and search any vehicle or vessel that the investigator reasonably suspects to be arranged for transporting a tour group;
 - (c) require any person at the premises at which the investigator reasonably suspects that travel agent business is being carried on to produce the travel agent licence or branch licence in respect of the premises for inspection;
 - (d) require any person whom the investigator reasonably suspects to be working as a tourist guide or tour escort to produce the person's licence and identity card for inspection; and
 - (e) make any examination and inquiry that the investigator considers necessary for the purposes of the investigation.
- (2) An investigator authorized by a warrant issued under section 76 to enter and search any premises may take with the investigator any other person and any equipment that the investigator reasonably considers necessary in entering and searching the premises.

76. Warrant to enter and search, etc.

- (1) A magistrate may issue a warrant to an investigator in respect of any premises if the magistrate is satisfied by information on oath that there is reasonable ground for suspecting that there are at the premises documents or things that are or contain evidence for the purposes of an investigation conducted under section 72.
- (2) A warrant issued under subsection (1) to an investigator in respect of any premises authorizes the investigator to—

- (a) enter and search the premises; and
- (b) seize, remove and detain any document or thing at the premises that the investigator reasonably suspects to be or to contain evidence for the purposes of an investigation conducted under section 72.

77. Retention of property

- (1) If property is produced to an investigator in response to a requirement under this Part or is obtained under a warrant issued under section 76, the investigator may retain that property—
 - (a) for as long as may be necessary for the purposes of the investigation; or
 - (b) where it may be required for legal proceedings, for as long as may be necessary for the purposes of the proceedings.
- (2) If a document (including a document in electronic form) obtained under this Part is in the possession of the investigator, the investigator must, if requested by a person otherwise entitled to possession of the document, provide that person with a copy of the document certified by the Authority to be a true copy of the original (*certified copy*).
- (3) Until such a certified copy is provided, the investigator must, at the time and place the investigator reasonably considers appropriate, permit a person otherwise entitled to possession of the document, or a person authorized by that person, to inspect and make copies of, or take extracts from, the document.
- (4) A certified copy of a document provided under this section is admissible in evidence in all courts as if it were the original.

78. Disposal of property

- (1) If any property has come into the possession of the investigator under this Ordinance, a magistrate may order the disposal of the property in the way provided in this section:
- (2) The magistrate may, whether on the magistrate's own initiative or on application by the Authority or an interested person—
 - (a) make an order for the delivery of the property to the person who appears to the magistrate to be entitled to the property;
 - (b) if the person entitled to the property is unknown or cannot be found, make an order that the property be sold or retained in the possession of the magistrate or the Authority; or
 - (c) if the property is of no value, make an order that the property be destroyed.
- (3) An order for the delivery, sale or destruction of property must not, except if the property is perishable, be made under subsection (2) unless the magistrate is satisfied that the property will not be required for the purpose of—
 - (a) any proceedings before the magistrate or any other court; or
 - (b) any proceedings under Part 7 or 8.
- (4) If—
 - (a) the magistrate orders the sale or retention of any property under subsection (2)(b); and
 - (b) no person establishes a claim to the property or the proceeds of sale of the property within 6 months after the date on which the order is made,

the magistrate may, whether on the magistrate's own initiative or on application by the Authority, order that the property or the proceeds of sale become the property of the Government.

- (5) An order made under subsection (2), other than an order for the retention of property, must not, except if the property is perishable, be carried out until the period for making an appeal against the order has expired or, if such an appeal is made, until the appeal is disposed of.
- (6) For the purposes of subsection (5), an appeal is disposed of if—
 - (a) it is determined and the period for bringing any further appeal has ended; or
 - (b) it is abandoned or otherwise ceases to have effect.

79. Prohibition on leaving Hong Kong

- (1) This section applies if, in relation to an investigation conducted under section 72, an investigator reasonably believes that—
 - (a) a person is likely to be able to assist the investigator in relation to the investigation by producing any information or document or giving any evidence that the investigator may require; and
 - (b) the person intends to leave Hong Kong, or has left Hong Kong to reside elsewhere.
- (2) 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.
- (3) If the magistrate is 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,

the magistrate may make an order against the person and issue the order to the Director of Immigration and the Commissioner of Police, directing them to prevent the person from leaving Hong Kong without first assisting the investigator in relation to the investigation.

- (4) The magistrate must, as soon as practicable after the prohibition order is made, serve a copy of it on the subject person, if the person can be found.
- (5) Whether or not a copy of the prohibition order is served, the order—
 - (a) comes into force immediately after it is made; and
 - (b) continues in force until—
 - (i) the subject person has given assistance to the satisfaction of the investigator in relation to the investigation; or
 - (ii) the order is set aside under section 81(2)(a)(i).
- (6) An enforcement officer may take any steps (including the use of force) that may be necessary to prevent the subject person from leaving Hong Kong if the officer reasonably believes that—
 - (a) the prohibition order against the person is in force;
 - (b) the person is about to leave Hong Kong; and
 - (c) the person has not been permitted to leave Hong Kong under—
 - (i) an authorization given by the Authority under section 80(1); or

(ii) an order made by the Court of First Instance under section 81(2)(a).

- (7) The investigator must, as soon as practicable after—
 - (a) the subject person has given assistance to the satisfaction of the investigator in relation to the investigation;
 - (b) the Authority has authorized the subject person to leave Hong Kong under section 80(1); or
 - (c) the prohibition order has been set aside or suspended under section 81(2)(a),

notify the Director of Immigration and the Commissioner of Police that the subject person is permitted to leave Hong Kong.

80. Change to prohibition order by Authority

- (1) The Authority may, for good cause, whether on its own initiative or on application by a subject person, authorize the person to leave Hong Kong on one or more occasions as specified in the authorization.
- (2) The Authority must, by notice in writing given to the subject person—
 - (a) if the Authority decides to give the authorization, notify the person of the decision; or
 - (b) if, on the application by the person, the Authority decides not to give the authorization—
 - (i) notify the person of the decision; and
 - (ii) give reasons for the decision.

81. Change to prohibition order by Court

- (1) If a subject person is aggrieved by a prohibition order or a decision under section 80(2)(b), the person may appeal to the Court of First Instance against the order or decision.
- (2) The Court of First Instance may order that—
 - (a) the prohibition order be—
 - (i) set aside; or
 - (ii) suspended or otherwise varied; or
 - (b) the appeal be dismissed.
- (3) On making an order under subsection (2)(a), the Court of First Instance may impose any conditions it considers appropriate.

Division 4—Offences**82. Offence relating to inspection**

- (1) A person commits an offence if the person, without reasonable excuse—
 - (a) obstructs an inspector in the performance of the inspector's functions under section 70; or
 - (b) fails to give any assistance, or provide any information or document, that an inspector reasonably requires in the performance of the inspector's functions under section 70.
- (2) A person who commits an offence under this section is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

83. Offences relating to investigation

- (1) A person commits an offence if the person, without reasonable excuse, fails to comply with a requirement of a notice given to the person under section 74(2).
- (2) A person commits an offence if—
 - (a) the person, in purported compliance with a requirement of a notice given to the person under section 74(2), provides any information or document, gives any answer, explanation or particular, or makes any statement, that is false or misleading in a material particular; and
 - (b) the person knows that, or is reckless as to whether, the information, document, answer, explanation, particular or statement is false or misleading in a material particular.
- (3) A person commits an offence if the person, without reasonable excuse—
 - (a) obstructs an investigator in the performance of the investigator's functions under section 75; or
 - (b) fails to give any assistance, or provide any information or document, that an investigator reasonably requires in the performance of the investigator's functions under section 75.
- (4) A person who commits an offence under subsection (1) or (2) is liable—
 - (a) on conviction on indictment to a fine at level 6 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 3 and to imprisonment for 6 months.

- (5) A person who commits an offence under subsection (3) is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

84. Offence relating to prohibition order

- (1) A person commits an offence if—
- (a) a copy of a prohibition order has been served on the person or the person has been verbally advised of its existence by an enforcement officer;
 - (b) the person has not been permitted to leave Hong Kong under—
 - (i) an authorization given by the Authority under section 80(1); or
 - (ii) an order made by the Court of First Instance under section 81(2)(a); and
 - (c) the person leaves or attempts to leave Hong Kong.
- (2) A person who commits an offence under this section is liable—
- (a) on conviction on indictment to a fine at level 6 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 3 and to imprisonment for 6 months.

Division 5—Miscellaneous

85. Privileges and immunities

- (1) A person who, in connection with an inspection under Division 2, or an investigation under Division 3, gives evidence to the Authority has the same privileges and immunities as the person would have if the inspection or investigation were a proceeding in a court.

- (2) In subsection (1), the reference to the giving of evidence includes a reference to providing any information or document, giving any answer, explanation or particular, and making any statement.

Part 7**Disciplinary Matters****Division 1—Interpretation****86. Interpretation of Part 7**

In this Part—

licensee (持牌人) includes a person who was the holder of a licence.

Division 2—Disciplinary Committee**87. Establishment of disciplinary committee**

- (1) The Authority must establish a disciplinary committee.
- (2) The disciplinary committee is to consist of the following members—
 - (a) the chairperson;
 - (b) 2 vice-chairpersons;
 - (c) at least 15 ordinary members.
- (3) Each member of the disciplinary committee is to be appointed by the Authority.
- (4) In appointing the members of the disciplinary committee, the Authority must ensure that—
 - (a) the chairperson and vice-chairpersons are members of the Authority who are non-trade members;
 - (b) at least 8 of the ordinary members are members of the Authority, of whom at least half are non-trade members; and

- (c) for the ordinary members who are not members of the Authority, at least half of them are non-trade members.
- (5) Each member of the disciplinary committee is to be appointed for a period of not more than 2 years, but is eligible for reappointment.

88. Resignation of members of disciplinary committee

- (1) A member of the disciplinary committee may, at any time, resign from office by giving written notice of the resignation to the Chairperson.
- (2) The notice must be signed by the member.
- (3) The notice takes effect on—
 - (a) the date on which the notice is received by the Chairperson; or
 - (b) if a later date is specified in the notice, the later date.

89. Removal of members of disciplinary committee from office

- (1) The Authority may remove a member of the disciplinary committee from office if the Authority considers that the removal is desirable for the committee to effectively perform its functions.
- (2) If a member of the disciplinary committee is removed from office, the Authority must give the member written notice informing the member of the removal.

90. Functions of disciplinary committee

The functions of the disciplinary committee are—

- (a) to consider the facts of a case of complaint or suspicion referred to it by the Authority; and
- (b) to decide how the case should proceed.

91. Authority may give directions to disciplinary committee

- (1) The Authority may give written directions to the disciplinary committee, whether generally or in any particular case, and whether regarding the way in which it must act or otherwise.
- (2) The disciplinary committee must act in accordance with the directions.

92. General procedure for meeting of disciplinary committee

- (1) Subject to this Division and the regulations made under section 164, the procedure for convening meetings of the disciplinary committee and for the conduct of business at those meetings is to be decided by the committee.
- (2) A meeting of the disciplinary committee is to be presided over by—
 - (a) the chairperson of the committee; or
 - (b) if the chairperson of the committee is absent, one of the vice-chairpersons.

93. Quorum for meeting

- (1) The quorum for a meeting of the disciplinary committee is one half of the members of the committee.
- (2) For determining the quorum, if the number of members of the disciplinary committee is not an even number, the number is to be regarded as having been increased by 1.

94. Voting at meeting

- (1) At a meeting of the disciplinary committee, every question before the committee is to be decided by a majority of votes of the members present and entitled to vote.
- (2) Subject to subsection (3), each member of the disciplinary committee who is present at the meeting has 1 vote.

- (3) If there is an equality of votes in respect of any question to be decided at the meeting, the member who is presiding over the meeting has a casting vote in addition to his or her original vote.

95. Minutes

The disciplinary committee must maintain minutes of the proceedings, including a record of all decisions made, at each meeting of the committee.

96. Disclosure of interests in matters under discussion

- (1) If a member of the disciplinary committee has a disclosable interest in a matter under discussion at a meeting of the committee—
 - (a) the member must disclose the nature of the interest at the meeting; and
 - (b) the disclosure must be recorded in the minutes.
- (2) If the member making the disclosure is not presiding over the meeting, the person who is presiding over the meeting may make any of the following directions—
 - (a) the member must withdraw from the meeting during the discussion;
 - (b) the member must not vote in relation to the matter under discussion;
 - (c) the member must not be counted for a quorum.
- (3) If the member making the disclosure is presiding over the meeting—
 - (a) the member must not continue to preside over the meeting during the discussion; and
 - (b) the majority of the other members present may make any of the following directions—

- (i) the member must withdraw from the meeting during the discussion;
 - (ii) the member must not vote in relation to the matter under discussion;
 - (iii) the member must not be counted for a quorum.
- (4) The validity of any proceedings of the disciplinary committee is not affected by the failure by a member of the committee to comply with this section.

Division 3—Inquiries

97. Authority to refer facts of case to chairperson of disciplinary committee

- (1) At the conclusion of an investigation conducted because of a case of complaint lodged under section 71, or a case of suspicion mentioned in section 72(b), in relation to a licensee, the Authority may refer the facts of the case to the chairperson of the disciplinary committee.
- (2) The chairperson of the disciplinary committee must consider the facts of the case.
- (3) If the chairperson of the disciplinary committee has a disclosable interest in the case—
 - (a) the chairperson must disclose the nature of the interest to the Chairperson;
 - (b) the chairperson must not deal with the case; and
 - (c) the Authority may appoint another member of the committee who—
 - (i) is a non-trade member; and
 - (ii) does not have a disclosable interest in the case,

to deal with the case and, for this purpose, the references to the chairperson in sections 98 and 99 are construed to be references to that member.

- (4) Subject to subsection (3), the chairperson of the disciplinary committee may delegate the chairperson's functions under sections 98 and 99 to a vice-chairperson of the committee who does not have a disclosable interest in the case.

98. Chairperson of disciplinary committee may decide case not to proceed

- (1) This section applies to a case investigated under section 72(a), the facts of which have been referred to the chairperson of the disciplinary committee.
- (2) If the chairperson of the disciplinary committee is satisfied that the case is trivial, frivolous, vexatious, misconceived or lacking in substance, the chairperson may decide that the case is not to proceed further.
- (3) If the chairperson of the disciplinary committee decides that the case is not to proceed further, the chairperson must, by notice in writing given to the complainant concerned within 14 days beginning on the date on which the decision is made—
 - (a) notify the complainant of the decision; and
 - (b) give reasons for the decision.

99. Chairperson of disciplinary committee may decide how case to proceed

- (1) This section applies to a case investigated under section 72(a) or (b), the facts of which have been referred to the chairperson of the disciplinary committee.
- (2) If the chairperson of the disciplinary committee is satisfied that there is evidence that tends to establish the case—

- (a) subject to paragraphs (b) and (c), the chairperson must establish an inquiry committee to conduct an inquiry into the case;
 - (b) the chairperson may deal with the case in an expedited way in accordance with the regulations made under section 164 and make any of the orders described in section 108(1)(a), (b), (c), (d) and (e) against the licensee if the chairperson is satisfied that the licensee's contravention of a requirement in this Ordinance is minor in nature; or
 - (c) the chairperson may recommend that the Authority revoke or suspend the licensee's licence in a summary way under section 112 if the chairperson is satisfied of any of the matters set out in subsection (3).
- (3) For subsection (2)(c), the matters are that—
- (a) the licensee is not suitable to hold the licensee's licence;
 - (b) it is contrary to the public interest to permit the licensee to continue to hold the licensee's licence;
 - (c) the act or conduct of the licensee—
 - (i) endangers, or poses an imminent danger to, the safety of any person or property; or
 - (ii) brings, or poses an imminent risk of bringing, the travel industry of Hong Kong into disrepute.
- (4) The chairperson of the disciplinary committee must, as soon as practicable after a decision is made under subsection (2)(a) to conduct an inquiry in relation to a licensee, notify the licensee in writing of the decision.
- (5) For the purposes of considering an order under subsection (2)(b) against a licensee—

- (a) the chairperson of the disciplinary committee may have regard to any record of conviction of the licensee; and
 - (b) if the licensee was the holder of—
 - (i) a previous licence;
 - (ii) a tourist guide pass; or
 - (iii) a tour escort pass,the chairperson may also have regard to any disciplinary order that had been made by the Travel Industry Council against the licensee.
- (6) When considering a record of conviction of a licensee under subsection (5)(a)—
- (a) the chairperson of the disciplinary committee is not required to inquire into whether the licensee was properly convicted; but
 - (b) the chairperson may consider any record of the case in which the conviction was recorded and any other evidence that may be available and is relevant as showing the nature and gravity of the offence, including any mitigating or aggravating circumstances.
- (7) If the chairperson of the disciplinary committee makes an order under subsection (2)(b) against a licensee, the chairperson must—
- (a) by notice in writing given to the licensee within 21 days beginning on the date on which the order is made—
 - (i) notify the licensee of the order; and
 - (ii) give reasons for the order; and
 - (b) publish notice of the order in any way the chairperson considers appropriate.
- (8) An order made under subsection (2)(b) takes effect on—

- (a) the date of the notice given under subsection (7)(a); or
- (b) if a later date is specified in the notice, the later date.

(9) Subsection (8) applies even if—

- (a) an appeal has been lodged under section 121(1)(h) against the order;
- (b) the period specified in section 121(2) has not expired; or
- (c) a notice of the order has not been published under subsection (7)(b).

100. Composition of inquiry committee

- (1) An inquiry committee is to consist of the following members—
 - (a) the chairperson;
 - (b) at least 2 ordinary members.
- (2) Only a member of the disciplinary committee is eligible to be a member of an inquiry committee.
- (3) If an inquiry committee is established by the chairperson of the disciplinary committee—
 - (a) the chairperson of the disciplinary committee; or
 - (b) a vice-chairperson of the disciplinary committee nominated by the chairperson of the disciplinary committee,
 is to be the chairperson of the inquiry committee.
- (4) If an inquiry committee is not established by the chairperson of the disciplinary committee—
 - (a) the person who establishes the inquiry committee; or
 - (b) a vice-chairperson of the disciplinary committee nominated by the person who establishes the inquiry committee,

is to be the chairperson of the inquiry committee.

- (5) In nominating a vice-chairperson of the disciplinary committee (*nominee*) as the chairperson of an inquiry committee under subsection (3)(b) or (4)(b), the person who establishes the inquiry committee must ensure that the nominee does not have a disclosable interest in the case into which an inquiry is to be conducted.
- (6) The ordinary members of an inquiry committee are to be appointed by the person who establishes the committee.
- (7) In appointing the ordinary members of an inquiry committee, the person who establishes the committee must ensure that—
 - (a) at least one of them is a trade member, and at least half of them are non-trade members; and
 - (b) they do not have a disclosable interest in the case into which an inquiry is to be conducted.

101. General procedure for meeting of inquiry committee

- (1) Subject to this Division and the regulations made under section 164, the procedure for convening meetings of an inquiry committee and for the conduct of business at those meetings is to be decided by the committee.
- (2) A meeting of an inquiry committee is to be presided over by the chairperson of the committee.

102. Quorum for meeting

- (1) The quorum for a meeting of an inquiry committee is 3 members of the committee or one half of the members of the committee, whichever is the greater.
- (2) For determining the quorum, if the number of members of an inquiry committee is not an even number, the number is to be regarded as having been increased by 1.

- (3) A meeting of an inquiry committee may be conducted only if a majority of the members present are non-trade members.

103. Voting at meeting

- (1) At a meeting of an inquiry committee, every question before the committee is to be decided by a majority of votes of the members present and entitled to vote.
- (2) Subject to subsection (3), each member of an inquiry committee who is present at the meeting has 1 vote.
- (3) If there is an equality of votes in respect of any question to be decided at the meeting, the chairperson of the inquiry committee has a casting vote in addition to his or her original vote.

104. Parties to inquiry

The parties to an inquiry are the licensee concerned, the Authority and the complainant (if any).

105. Proceedings of inquiry committee

- (1) An inquiry committee has the following powers when conducting an inquiry—
- (a) power to take evidence on oath;
- (b) power to summon a person to—
- (i) attend the inquiry as a witness;
- (ii) give evidence; and
- (iii) provide any information or document in the person's possession or under the person's control that may be relevant to the inquiry;
- (c) power to examine witnesses;

- (d) power to receive and consider any material, whether by way of oral evidence, written statements, documents or otherwise, and whether or not the material would be admissible in civil or criminal proceedings;
- (e) power to determine the way in which any material mentioned in paragraph (d) is received;
- (f) 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;
- (g) power to award to a person the expenses that, in the committee's opinion, the person has reasonably incurred because of the person's compliance with a summons issued to the person under paragraph (b);
- (h) power to make any order that may be necessary for or ancillary to the conduct of the inquiry or the carrying out of its functions.
- (2) With the consent of the licensee and the complainant (if any), the inquiry committee may conduct the inquiry on the basis of written submissions only.
- (3) After consulting the licensee and the complainant (if any), the inquiry committee may, on application by any of the parties to the inquiry, by order, give directions on who may be present.
- (4) For the purposes of subsection (3), the inquiry committee must have regard to the views or private interests of the licensee and of the complainant (if any), including any claims as to privilege.
- (5) A party to the inquiry—
- (a) may, subject to any order made by the inquiry committee, be present at the inquiry; and
- (b) may participate—

- (i) in person;
- (ii) through a legal representative; or
- (iii) with the consent of the inquiry committee, through another person.

(6) For the purposes of subsection (5)(b)(i)—

- (a) a company is to be regarded as participating in person if it participates through any of its directors; and
- (b) a partnership is to be regarded as participating in person if it participates through any of its partners.

106. Summons

A summons issued to a person under section 105(1)(b) must—

- (a) be in the specified form;
- (b) be signed by the chairperson of the inquiry committee; and
- (c) specify the requirements that the person must comply with.

107. Prohibition on disclosure of inquiry matters

- (1) An inquiry committee may, by order, prohibit or restrict the publication or disclosure by all or any of the persons present at the inquiry of—
 - (a) any evidence given at the inquiry; or
 - (b) any matter contained in any information or document provided or received in evidence at the inquiry.
- (2) If a person fails to comply with an order made under subsection (1), the inquiry committee may make an order against the person imposing a financial penalty not exceeding \$5,000.

- (3) If the inquiry committee makes an order under subsection (2) against a person, it must, by notice in writing given to the person within 21 days beginning on the date on which the order is made—
 - (a) notify the person of the order; and
 - (b) give reasons for the order.
- (4) An order made under subsection (2) takes effect on—
 - (a) the date of the notice given under subsection (3); or
 - (b) if a later date is specified in the notice, the later date.
- (5) Subsection (4) applies even if—
 - (a) an appeal has been lodged under section 121(1)(i) against the order; or
 - (b) the period specified in section 121(2) has not expired.

108. Disciplinary orders

- (1) If, at the conclusion of an inquiry under section 105, an inquiry committee is satisfied that a matter mentioned in section 72(b)(i), (ii) or (iii) is established in respect of a licensee, the committee may make any of the following orders against the licensee—
 - (a) an order giving a warning or reprimand;
 - (b) an order imposing demerit points;
 - (c) if the licensee is a licensed travel agent, an order imposing a financial penalty not exceeding \$300,000;
 - (d) an order imposing a condition on the licensee's licence;
 - (e) an order amending a condition of the licensee's licence;
 - (f) if the licensee is a licensed travel agent, an order requiring the travel agent's authorized representative to cease to be the travel agent's authorized representative;

- (g) an order suspending the licensee's licence for a specified period;
- (h) an order revoking the licensee's licence.
- (2) For the purposes of considering an order under subsection (1) against a licensee—
 - (a) the inquiry committee may have regard to any record of conviction of the licensee; and
 - (b) if the licensee was the holder of—
 - (i) a previous licence;
 - (ii) a tourist guide pass; or
 - (iii) a tour escort pass,
 the inquiry committee may also have regard to any disciplinary order that had been made by the Travel Industry Council against the licensee.
- (3) When considering a record of conviction of a licensee under subsection (2)(a)—
 - (a) the inquiry committee is not required to inquire into whether the licensee was properly convicted; but
 - (b) the inquiry committee may consider any record of the case in which the conviction was recorded and any other evidence that may be available and is relevant as showing the nature and gravity of the offence, including any mitigating or aggravating circumstances.
- (4) Before the inquiry committee makes an order under subsection (1) against a licensee, it must give the licensee a reasonable opportunity of being heard.
- (5) If the inquiry committee makes an order under subsection (1) against a licensee, it may also order the licensee to pay the costs and expenses incurred in relation to the inquiry, whether

- by the committee, any party to the inquiry, or any person attending the inquiry as a witness.
- (6) If the inquiry committee makes an order under this section against a licensee, it must—
 - (a) by notice in writing given to the licensee within 21 days beginning on the date on which the order is made—
 - (i) notify the licensee of the order; and
 - (ii) give reasons for the order; and
 - (b) publish notice of the order in any way the committee considers appropriate.
- (7) An order made under this section takes effect on—
 - (a) the date of the notice given under subsection (6)(a); or
 - (b) if a later date is specified in the notice, the later date.
- (8) Subsection (7) applies even if—
 - (a) an appeal has been lodged under section 121(1)(h) against the order;
 - (b) the period specified in section 121(2) has not expired; or
 - (c) a notice of the order has not been published under subsection (6)(b).

109. Offences relating to inquiries

- (1) A person commits an offence if the person, without reasonable excuse, fails to comply with a summons issued to the person under section 105(1)(b).
- (2) A person commits an offence if—
 - (a) the person, in connection with an inquiry under section 105, gives any evidence, or provides any information or document, that is false or misleading in a material particular; and

- (b) the person knows that, or is reckless as to whether, the evidence, information or document is false or misleading in a material particular.
- (3) A person who commits an offence under this section is liable—
 - (a) on conviction on indictment to a fine at level 6 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 3 and to imprisonment for 6 months.

110. Notices relating to order about authorized representative

- (1) This section applies if an inquiry committee makes an order requiring the authorized representative of a licensed travel agent to cease to be the travel agent's authorized representative.
- (2) The inquiry committee must, in the notice given to the travel agent under section 108(6)(a), notify the travel agent that—
 - (a) the travel agent must, within 14 days after the date of the notice, or a longer period the Authority may permit, apply to the Authority for approval of another individual as the travel agent's authorized representative; and
 - (b) if the travel agent fails to make the application within that period, or if the application is refused, the travel agent's licence may be revoked or suspended.
- (3) The inquiry committee must, within 21 days beginning on the date on which the order is made, by notice in writing given to an individual who is the travel agent's authorized representative—
 - (a) notify the individual of the order;
 - (b) give reasons for the order; and
 - (c) notify the individual that—

- (i) the individual will also not be suitable to be an authorized representative of any travel agent for the period specified in the notice; and
- (ii) unless the ground for making the order no longer exists, an application for a travel agent licence, or the renewal of a travel agent licence, made during the specified period will be refused if the individual is proposed to be the applicant's authorized representative.
- (4) The period specified under subsection (3)(c)(i) must be reasonable in the circumstances.
- (5) The travel agent must, within 14 days after the date of the notice given to the travel agent under section 108(6)(a), or a longer period the Authority may permit, apply to the Authority for approval of an individual as the travel agent's authorized representative.

111. Application for approval of new authorized representative

- (1) A licensed travel agent, in making an application under section 110(5), must give notice in writing to the Authority, setting out—
 - (a) the particulars of the individual who is proposed to be the travel agent's authorized representative (*proposed individual*); and
 - (b) the proposed individual's consent.
- (2) On receiving a notice given under subsection (1), the Authority must decide whether, having regard to the matters set out in section 25(1), the proposed individual is suitable to be an authorized representative of a travel agent.

- (3) If the Authority decides that the proposed individual is suitable, it may approve the application and may do one or more of the following—
 - (a) amend or remove the existing conditions of the travel agent licence;
 - (b) impose new conditions on the travel agent licence.
- (4) If the Authority decides that the proposed individual is not suitable, it may refuse the application.
- (5) If the Authority intends to refuse the application, it must, by notice in writing given to the travel agent and proposed individual—
 - (a) notify the travel agent and individual of the intention; and
 - (b) give reasons for the intention.
- (6) The travel agent and proposed individual may, within 7 days after the date of the notice given under subsection (5), or a longer period the Authority may permit, make representations in writing to the Authority as to why the Authority should not refuse the application.
- (7) If the Authority decides to refuse the application, it must, within 21 days beginning on the date on which the decision is made—
 - (a) by notice in writing given to the travel agent—
 - (i) notify the travel agent of the decision; and
 - (ii) give reasons for the decision; and
 - (b) by notice in writing given to the proposed individual—
 - (i) notify the individual of the decision;
 - (ii) give reasons for the decision; and
 - (iii) notify the individual that—

- (A) the individual will also not be suitable to be an authorized representative of any travel agent for the period specified in the notice; and
 - (B) unless the ground for making the decision no longer exists, an application for a travel agent licence, or the renewal of a travel agent licence, made during the specified period will be refused if the individual is proposed to be the applicant's authorized representative.
- (8) The period specified under subsection (7)(b)(iii)(A) must be reasonable in the circumstances.

Division 4—Summary Procedure of Revocation or Suspension of Licence

112. Authority may revoke or suspend licence in summary way

- (1) The Authority may revoke or suspend a licensee's licence in a summary way if—
 - (a) the licensee receives a notice under section 28(4)(b) and—
 - (i) the licensee fails to make an application under section 28(6) within the period specified in that section; or
 - (ii) the licensee makes the application, but the application is refused;
 - (b) the authorized representative of the licensee dies or is incapable of acting and—
 - (i) the licensee fails to make an application under section 29 within the period specified in that section; or

- (ii) the licensee makes the application, but the application is refused;
- (c) the Authority receives a recommendation made by the chairperson of the disciplinary committee under section 99(2)(c); or
- (d) section 110 applies and—
 - (i) the licensee fails to make an application under section 110(5) within the period specified in that section; or
 - (ii) the licensee makes the application, but the application is refused.
- (2) If the Authority decides to revoke or suspend a licensee's licence in a summary way under subsection (1), it must—
 - (a) by notice in writing given to the licensee within 21 days beginning on the date on which the decision is made—
 - (i) notify the licensee of the decision; and
 - (ii) give reasons for the decision; and
 - (b) publish notice of the decision in any way the Authority considers appropriate.
- (3) A decision made under subsection (2) takes effect on—
 - (a) the date of the notice given under subsection (2)(a); or
 - (b) if a later date is specified in the notice, the later date.
- (4) Subsection (3) applies even if—
 - (a) an appeal has been lodged under section 121(1)(d) against the decision;
 - (b) the period specified in section 121(2) has not expired; or
 - (c) a notice of the decision has not been published under subsection (2)(b).

- 113. Authority's additional power to revoke or suspend licence in summary way**
- (1) Without limiting section 112, the Authority may also revoke or suspend a licensee's licence in a summary way if—
 - (a) the licensee fails to pay—
 - (i) a registration fee required by section 33;
 - (ii) a financial penalty imposed under section 99(2)(b) or 108(1)(c); or
 - (iii) a levy required by section 147 or 148; or
 - (b) for a licensed travel agent, the Authority considers that the travel agent has ceased to carry on travel agent business.
 - (2) If the Authority intends to revoke or suspend a licensee's licence in a summary way under subsection (1), it must, by notice in writing given to the licensee—
 - (a) notify the licensee of the intention; and
 - (b) give reasons for the intention.
 - (3) The licensee may, within 7 days after the date of the notice, or a longer period the Authority may permit, make representations in writing to the Authority as to why the licence should not be revoked or suspended.
 - (4) If the Authority decides to revoke or suspend the licensee's licence, it must—
 - (a) by notice in writing given to the licensee within 21 days beginning on the date on which the decision is made—
 - (i) notify the licensee of the decision; and
 - (ii) give reasons for the decision; and
 - (b) publish notice of the decision in any way the Authority considers appropriate.

- (5) A decision made under subsection (4) takes effect on—
 - (a) the date of the notice given under subsection (4)(a); or
 - (b) if a later date is specified in the notice, the later date.
- (6) Subsection (5) applies even if—
 - (a) an appeal has been lodged under section 121(1)(d) against the decision;
 - (b) the period specified in section 121(2) has not expired; or
 - (c) a notice of the decision has not been published under subsection (4)(b).

114. Authority may shorten period of suspension or lift suspension

- (1) For a licence suspended under section 112 or 113, the Authority may, for good cause, whether on its own initiative or on application by the licensee concerned, shorten the period of suspension or lift the suspension.
- (2) If the Authority decides to shorten the period of suspension of a licensee's licence or lift the suspension, it must—
 - (a) by notice in writing given to the licensee within 21 days beginning on the date on which the decision is made, notify the licensee of—
 - (i) the decision; and
 - (ii) the period for which the period of suspension has been shortened, or the date on which the suspension is lifted; and
 - (b) publish notice of the decision in any way the Authority considers appropriate.
- (3) A decision made under subsection (1) takes effect on—
 - (a) the date of the notice given under subsection (2)(a); or
 - (b) if a later date is specified in the notice, the later date.

- (4) Subsection (3) applies even if a notice of the decision has not been published under subsection (2)(b).

Division 5—Miscellaneous**115. Effect of revocation or suspension of travel agent licence**

The revocation or suspension of a licensed travel agent's licence under this Part 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 travel agent 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.

116. Privileges and immunities

- (1) An inquiry committee established by the disciplinary committee, when conducting an inquiry under this Part, has the same privileges and immunities as it would have if the inquiry were a proceeding in a court.
- (2) A party, legal representative, witness or any other person who appears before an inquiry committee at an inquiry under this Part has the same privileges and immunities as the person would have if the inquiry were a proceeding in a court.

117. Advice by legal adviser

- (1) If a legal adviser appointed under section 105(1)(f) advises an inquiry committee on any question of law as to evidence, procedure or any other matter in relation to an inquiry—
 - (a) the legal adviser must do so in the presence of every party to the inquiry or person representing each party; or

- (b) if the advice is given after the committee has started to deliberate as to its decision, every party to the inquiry or person representing each party must be informed of the advice.
- (2) If the inquiry committee does not accept the advice of the legal adviser on a question, every party to the inquiry or person representing each party must be informed of that fact.
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Part 8

Appeals

Division 1—General

118. Appeal panel

- (1) For hearing appeals under this Part, there is to be an appeal panel.
- (2) The Secretary must appoint at least 18 individuals as members of the panel.
- (3) The Secretary must not appoint to the panel—
 - (a) a public officer;
 - (b) a member of the Authority or disciplinary committee; or
 - (c) a member of a committee or working group of the Authority.
- (4) The Secretary is to appoint one of the members of the panel as chairperson.
- (5) In appointing the members of the panel, the Secretary must ensure that—
 - (a) the chairperson is a non-trade member; and
 - (b) at least half of the other members are non-trade members.
- (6) Each member of the panel is to be appointed for a period of not more than 2 years, but is eligible for reappointment.

119. Resignation of members of appeal panel

- (1) A member of the appeal panel may, at any time, resign from office by giving written notice of the resignation to the Secretary.
- (2) The notice must be signed by the member.
- (3) The notice takes effect on—
 - (a) the date on which the notice is received by the Secretary; or
 - (b) if a later date is specified in the notice, the later date.

120. Removal of members of appeal panel from office

- (1) The Secretary may remove a member of the appeal panel from office if the Secretary considers that the removal is desirable for the panel to effectively perform its functions.
- (2) If a member of the appeal panel is removed from office, the Secretary must give the member written notice informing the member of the removal.

121. Appeals against decisions or orders

- (1) A person aggrieved by any of the following matters may lodge an appeal against the matter—
 - (a) a decision not to issue or renew a licence or branch licence;
 - (b) a decision to impose conditions on a licence or branch licence, or a renewed licence or renewed branch licence;
 - (c) a decision to amend or remove the conditions imposed on a licence or branch licence;
 - (d) a decision to revoke or suspend a licence;
 - (e) a decision or order to require an individual to cease to be an authorized representative of a licensed travel agent;

- (f) a decision to refuse an application of a licensed travel agent made under section 28(6), 29, 30 or 110(5) for approval of an individual as the travel agent's authorized representative;
 - (g) a decision to refuse to approve a licensed travel agent's proposed change of the ownership or control of its business as a travel agent;
 - (h) an order made under section 99(2)(b) or 108(1) or (5) against a licensee;
 - (i) an order made under section 107(2).
- (2) A person who wishes to appeal against a matter under subsection (1) must lodge a notice in writing with the Secretary within 28 days beginning on the date on which the notice of the matter is received, setting out the grounds of appeal.
 - (3) The Secretary may in a particular case extend the period specified in subsection (2) if the Secretary considers it appropriate to do so.

Division 2—Appeal Board**122. Appointment of appeal board**

- (1) As soon as practicable after a notice of appeal has been lodged under section 121, the chairperson of the appeal panel must appoint from the panel an appeal board to hear the appeal.
- (2) The appeal board is to consist of the following members—
 - (a) the chairperson;
 - (b) at least 2 ordinary members.

- (3) In appointing the members of the board, the chairperson of the panel must ensure that—
- (a) a majority of the members of the board are non-trade members; and
 - (b) the members do not have a disclosable interest in the matter appealed against.

123. General procedure for hearing

- (1) Subject to this Division and the regulations made under section 138, the procedure for convening a hearing of an appeal board and for the conduct of the hearing is to be decided by the board.
- (2) A hearing of an appeal board is to be presided over by the chairperson of the board.

124. Quorum for hearing

- (1) The quorum for a hearing of an appeal board is 3 members of the board or one half of the members of the board, whichever is the greater.
- (2) For determining the quorum, if the number of members of the board is not an even number, the number is to be regarded as having been increased by 1.
- (3) A hearing of the board may be conducted only if a majority of the members present are non-trade members.

125. Voting at hearing

- (1) In the hearing of an appeal, every question before an appeal board is to be decided by a majority of votes of the members present and entitled to vote.
- (2) Subject to subsection (3), each member of the board who is present at the hearing has 1 vote.

- (3) If there is an equality of votes in respect of any question to be decided at the hearing, the chairperson of the board has a casting vote in addition to his or her original vote.

126. Parties to appeal

The parties to an appeal are the appellant and the Authority.

127. Date, time and place of hearing

The chairperson of an appeal board must—

- (a) fix the date, time and place for the hearing of the appeal so that the hearing may commence as soon as practicable; and
- (b) serve on the parties to the appeal a notice of the date, time and place of the hearing.

128. Proceedings of appeal board

- (1) An appeal board has the following powers when hearing an appeal—
 - (a) power to take evidence on oath;
 - (b) power to summon a person to—
 - (i) attend the hearing as a witness;
 - (ii) give evidence; and
 - (iii) provide any information or document in the person's possession or under the person's control that may be relevant to the hearing;
 - (c) power to examine witnesses;
 - (d) power to receive and consider any material, whether by way of oral evidence, written statements, documents or otherwise, and whether or not the material would be admissible in civil or criminal proceedings;

- (e) power to determine the way in which any material mentioned in paragraph (d) is received;
 - (f) power to appoint a legal adviser to assist and advise the board on any question of law as to evidence, procedure or any other matter in relation to the hearing;
 - (g) power to award to a person the expenses that, in the board's opinion, the person has reasonably incurred because of the person's compliance with a summons issued to the person under paragraph (b);
 - (h) power to make any order that may be necessary for or ancillary to the conduct of the hearing or the carrying out of its functions.
- (2) With the consent of the parties to the appeal, the board may determine the appeal without a hearing on the basis of written submissions only.
- (3) If it appears to the board that the Authority 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.
- (4) A party to the appeal—
- (a) may, subject to any order made by the board, be present at the hearing; and
 - (b) may participate—
 - (i) in person;
 - (ii) through a legal representative; or
 - (iii) with the consent of the board, through another person.
- (5) For the purposes of subsection (4)(b)(i)—
- (a) a company is to be regarded as participating in person if it participates through any of its directors; and

- (b) a partnership is to be regarded as participating in person if it participates through any of its partners.
- (6) The board may make an order as to the payment of the costs and expenses incurred in relation to the hearing, whether by the board, any party to the appeal, or any person attending the hearing as a witness.

129. Summons

A summons issued to a person under section 128(1)(b) must—

- (a) be in the specified form;
- (b) be signed by the chairperson of the appeal board; and
- (c) specify the requirements that the person must comply with.

130. Offences relating to appeal

- (1) A person commits an offence if the person, without reasonable excuse, fails to comply with a summons issued to the person under section 128(1)(b).
- (2) A person commits an offence if—
- (a) the person, in connection with an appeal under section 128, gives any evidence, or provides any information or document, that is false or misleading in a material particular; and
 - (b) the person knows that, or is reckless as to whether, the evidence, information or document is false or misleading in a material particular.
- (3) A person who commits an offence under this section is liable—
- (a) on conviction on indictment to a fine at level 6 and to imprisonment for 2 years; or

- (b) on summary conviction to a fine at level 3 and to imprisonment for 6 months.

131. Hearing generally public

- (1) Subject to subsection (2), the hearing of an appeal is to be held in public.
- (2) After consulting the parties to the appeal, an appeal board may, by order, direct that the hearing, or any part of the hearing, be held in private.
- (3) For the purposes of subsection (2), the board must have regard to the views or private interests of the parties to the appeal, including any claims as to privilege.

132. Prohibition on disclosure of appeal matters

- (1) An appeal board may, by order, prohibit or restrict the publication or disclosure by all or any of the persons present at the hearing of an appeal of—
 - (a) any evidence given at the hearing; or
 - (b) any matter contained in any information or document provided or received in evidence at the hearing.
- (2) If a person fails to comply with an order made under subsection (1), the board may make an order against the person imposing a financial penalty not exceeding \$5,000.
- (3) If the board makes an order under subsection (2) against a person, it must, by notice in writing given to the person within 21 days beginning on the date on which the order is made—
 - (a) notify the person of the order; and
 - (b) give reasons for the order.
- (4) An order made under subsection (2) takes effect on—
 - (a) the date of the notice given under subsection (3); or

- (b) if a later date is specified in the notice, the later date.

133. Abandonment of appeal

- (1) The appellant may abandon the whole or any part of the appeal by notice in writing lodged with the chairperson of the appeal board.
- (2) The appellant must, as soon as practicable after the notice is lodged, serve a copy of the notice on the other parties to the appeal.

134. Failure of appellant to attend hearing

- (1) If at the time fixed for the hearing of an appeal, the appellant fails to attend the hearing, whether in person or through a legal representative or some other person, an appeal board may—
 - (a) if it is satisfied that the appellant's failure to attend the hearing was due to illness or another reasonable ground, postpone or adjourn the hearing for a period it considers appropriate; or
 - (b) if it is satisfied that the appellant's failure to attend the hearing was not due to illness or another reasonable ground—
 - (i) proceed to hear the appeal; or
 - (ii) by order, dismiss the appeal.
- (2) If an appeal is dismissed under subsection (1)(b)(ii)—
 - (a) the appellant may, within 28 days after the order for dismissal is made, apply to the board for a review of the order by notice in writing lodged with the chairperson of the board; and

- (b) the board may, if it is satisfied that the appellant's failure to attend the hearing was due to illness or another reasonable ground, set aside the order for dismissal.
- (3) A notice under subsection (2)(a) must be in the form specified by the chairperson of the appeal panel.
- (4) The appellant must, as soon as practicable after a notice is lodged under subsection (2)(a), serve a copy of the notice on the other parties to the appeal.
- (5) If the board sets aside an order for dismissal under subsection (2)(b), the chairperson of the board must—
 - (a) fix the date, time and place for a new hearing of the appeal so that the hearing may commence as soon as practicable; and
 - (b) at least 14 days before the date so fixed serve on the parties to the appeal a notice of the date, time and place of the hearing.

135. Decisions of appeal board

- (1) An appeal board hearing an appeal may confirm, vary or reverse any decision or order to which the appeal relates.
- (2) The board must give reasons in writing for its decision, and those reasons must include its findings on material questions of fact and a summary of the evidence or other material on which those findings were based.
- (3) The board must serve a copy of its decision and of the reasons for its decision on the parties to the appeal.
- (4) The board's decision takes effect—
 - (a) subject to paragraph (b), immediately after the decision is made; or
 - (b) if the board orders that its decision is not to come into operation until a specified date, on that date.

- (5) A document purporting to be a copy of a decision or order of the board and to be certified by the chairperson of the board to be a true copy of the decision or order is admissible in any proceedings as evidence of the decision or order.
- (6) The decision of the board is final.

Division 3—Miscellaneous**136. Privileges and immunities**

- (1) An appeal board, when hearing an appeal under this Part, has the same privileges and immunities as it would have if the appeal were a proceeding in a court.
- (2) A party, legal representative, witness or any other person who appears before an appeal board at a hearing of an appeal under this Part has the same privileges and immunities as the person would have if the appeal were a proceeding in a court.

137. Advice by legal adviser

- (1) If a legal adviser appointed under section 128(1)(f) advises an appeal board on any question of law as to evidence, procedure or any other matter in relation to a hearing—
 - (a) the legal adviser must do so in the presence of every party to the appeal or person representing each party; or
 - (b) if the advice is given after the board has started to deliberate as to its decision, every party to the appeal or person representing each party must be informed of the advice.
- (2) If the board does not accept the advice of the legal adviser on a question, every party to the appeal or person representing each party must be informed of that fact.

138. Regulations for Part 8

The Secretary may make regulations for one or more of the following purposes—

- (a) to prescribe the procedures for the hearing of appeals under this Part;
- (b) to provide generally for the better carrying out of the purposes of this Part.

Part 9**Travel Industry Compensation Fund and Levies****Division 1—Interpretation****139. Interpretation of Part 9**

(I) In this Part—

outbound fare (外遊費) means the amount of any payment paid in relation to an outbound package (whether the payment amounts to the whole or a part of the price of the package);

outbound package (外遊服務組合) means a combination of 2 or more of the services and arrangements described in the following paragraphs relating to the same tour—

- (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;

outbound travel service (外遊旅行服務) means a service that is an outbound package—

- (a) provided or obtained by a licensed travel agent for the public; and

- (b) constituted by services or arrangements decided in advance of being made available to the public;

outbound traveller (外遊旅客)—see subsection (2);

pre-existing fund (原有基金) means the fund established by section 32C of the repealed Ordinance as the Travel Industry Compensation Fund.

- (2) For the purposes of this Part, a person is an outbound traveller if the person has paid an outbound fare to a licensed travel agent, or an outbound fare has been paid for the person to a licensed travel agent, in connection with or in anticipation of the travel agent obtaining for the person an outbound travel service.
- (3) In this Part, a reference to a levy being payable or a requirement that a levy must be paid is to be construed as including the payment of the levy in advance.
- (4) To avoid doubt, for the purposes of this Part, if an outbound fare is paid to a person who, at the time the payment is made, is a licensed travel agent, the payment is not to be regarded as not having been made only because of a subsequent revocation or suspension of the licence of that travel agent.

Division 2—Travel Industry Compensation Fund

140. Travel Industry Compensation Fund

- (1) In this section—

commencement date (生效日期) means the commencement date of this section.

- (2) Despite the repeal of the repealed Ordinance, the pre-existing fund is to continue in existence in its original name “Travel Industry Compensation Fund”.
- (3) The Compensation Fund consists of—

- (a) the balance of the pre-existing fund, including any part of the fund that had been invested and income from the investment, immediately before the commencement date;
- (b) money received on account of the Fund levy;
- (c) income from any investment made under section 141; and
- (d) any other money paid into the Compensation Fund.

141. Powers of Authority in relation to Compensation Fund

Without limiting the Authority’s general powers to hold, manage and apply the Compensation Fund, any money of the Compensation Fund that is not immediately required for the purposes of payments under sections 143 and 146 may be—

- (a) deposited on fixed term or call deposit or in a savings account in a bank nominated by the Financial Secretary, whether generally or in a particular case, for the purpose; or
- (b) invested in a way approved by the Financial Secretary.

142. Funds of Authority do not include Compensation Fund

- (1) To avoid doubt, the funds of the Authority do not include the Compensation Fund.
- (2) The Authority must ensure that—
- (a) a separate account is opened at a bank located in Hong Kong for the purpose of maintaining the Compensation Fund;
- (b) all money in the Compensation Fund is credited to that account; and
- (c) all money so credited is kept in that account until applied in accordance with this Ordinance.

Division 3—Ex Gratia and Other Payments**143. Ex gratia payments**

The Authority may, on application, make ex gratia payments from the Compensation Fund to or in respect of outbound travellers in accordance with the regulations made under section 150.

144. Authority's rights of subrogation

- (1) This section applies if—
 - (a) an outbound fare has been paid by or for an outbound traveller to a licensed travel agent; and
 - (b) the Authority, in relation to a loss suffered by the outbound traveller in respect of the outbound fare, makes an ex gratia payment from the Compensation Fund to or in respect of the outbound traveller.
- (2) The Authority is subrogated, to the extent of the amount of the ex gratia payment, to all the rights and remedies of the outbound traveller by reason of the loss suffered by the outbound traveller.
- (3) The rights of the outbound traveller and the Authority in a bankruptcy or winding up or by legal proceedings or otherwise to receive, in respect of the loss, any sum out of the assets of the travel agent, are to rank equally.
- (4) All assets (whether in cash or otherwise) recovered by the Authority under this section become part of the Compensation Fund.

145. Offence relating to application for ex gratia payment

- (1) A person commits an offence if—
 - (a) the person, in connection with an application for an ex gratia payment, makes any statement, or provides any

information or document, that is false or misleading in a material particular; and

- (b) the person knows that, or is reckless as to whether, the statement, information or document is false or misleading in a material particular.
- (2) A person who commits an offence under this section is liable—
- (a) on conviction on indictment to a fine at level 6 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 3 and to imprisonment for 6 months.

146. Other payments

- (1) The Authority may also make from the Compensation Fund—
 - (a) payments regarding expenses incurred by the Authority in performing its functions in relation to the Compensation Fund, including—
 - (i) payment of fees as regards the collection of the Fund levy; and
 - (ii) payment of auditors' fees and expenses incurred in examining the economy, efficiency and effectiveness with which the Authority applies the Compensation Fund; and
 - (b) payments for ex gratia payments that have been determined under the repealed Ordinance.
- (2) The Authority may—
 - (a) set aside a certain percentage of the Compensation Fund as specified by the Secretary for supporting the continuous development of the travel industry; and
 - (b) control the funds so set aside.

- (3) For the purposes of subsection (2), the Secretary may, by notice published in the Gazette, specify a percentage of the Compensation Fund as the maximum funds that the Authority may set aside to support the continuous development of the travel industry.

Division 4—Levies

147. Authority levy

- (1) A licensed travel agent is liable to pay to the Authority, in respect of every outbound fare received by the travel agent, a levy (*Authority levy*).
- (2) The amount of the Authority levy is to be ascertained by reference to a specified percentage of the outbound fare.
- (3) The Secretary may, by notice published in the Gazette, specify the percentage.
- (4) The Authority levy must be paid to the Authority in the way and at the time decided by the Authority.

148. Fund levy

- (1) A licensed travel agent is liable to contribute to the Compensation Fund by way of levy (*Fund levy*) in respect of every outbound fare received by the travel agent.
- (2) The amount of the Fund levy is to be ascertained by reference to a specified percentage of the outbound fare.
- (3) The Secretary may, by notice published in the Gazette, specify the percentage.
- (4) The Fund levy must be paid to the Authority in the way and at the time decided by the Authority.

149. Electronic system

Payments of Authority levy and Fund levy, and the recording and proof of the payments, may be made through an electronic system prescribed by regulations made under section 150.

Division 5—Miscellaneous

150. Regulations for Part 9

- (1) The Authority may, after consulting the Secretary, make regulations for one or more of the following purposes—
 - (a) to prescribe the circumstances in which—
 - (i) an application for an ex gratia payment may be made by or in respect of an outbound traveller; and
 - (ii) an ex gratia payment may be made to or in respect of an outbound traveller;
 - (b) to prescribe the maximum amount or rate payable as an ex gratia payment to or in respect of an outbound traveller;
 - (c) to prescribe the operation and details of a system for the collection, payment and recording of levies, including an electronic system.
- (2) Regulations made for the purposes of subsection (1)(c) may prescribe offences for contravention of the regulations, and may provide for the imposition in respect of such an offence of a fine not exceeding \$200,000.
- (3) The Authority may also make regulations for one or more of the following purposes—
 - (a) to prescribe the way in which an application for an ex gratia payment is to be made;

- (b) to prescribe a period within which an application for an ex gratia payment is to be made;
 - (c) to enable the Authority—
 - (i) to submit an application for an ex gratia payment as a proof of debt in any bankruptcy or winding up proceedings; and
 - (ii) to require the assignment of an outbound traveller's rights of action as a pre-condition for the making of an ex gratia payment;
 - (d) to provide generally for the better carrying out of the purposes of this Part.
- (4) For the purposes of subsection (3), the regulations may provide that—
- (a) an authorization to apply for an ex gratia payment in respect of an outbound traveller will survive the traveller's subsequent death or mental incapacity within the meaning of section 2(1) of the Mental Health Ordinance (Cap. 136); and
 - (b) if—
 - (i) an application for an ex gratia payment in the case of a loss suffered in respect of an accident is made in respect of an outbound traveller pursuant to an authorization; and
 - (ii) the application is accepted,
 the ex gratia payment may be made to any person who has incurred relevant expenses in respect of the traveller, even though the traveller has died or is mentally incapacitated within the meaning of section 2(1) of the Mental Health Ordinance (Cap. 136).

- (5) For the purposes of subsection (3)(a), the regulations may provide that an application for an ex gratia payment must be accompanied by proof of levy payment.

Part 10**Travel Industry Authority****151. Establishment of Authority**

- (1) A body corporate is established with the name “Travel Industry Authority” in English and “旅遊業監管局” in Chinese.
- (2) The Authority—
 - (a) has perpetual succession;
 - (b) must have a common seal; and
 - (c) may sue and be sued in its name.
- (3) Schedule 9 (which contains constitutional, administrative and financial provisions) has effect in relation to the Authority.

152. Functions of Authority

The functions of the Authority are—

- (a) to promote the integrity, competence and professionalism of—
 - (i) travel agents;
 - (ii) tourist guides; and
 - (iii) tour escorts;
- (b) to regulate shops that inbound tour groups are arranged to patronize in relation to that patronage;
- (c) to advise the Government on matters relating to the regulation of—
 - (i) travel agents;
 - (ii) tourist guides; and

- (iii) tour escorts;
- (d) to receive and process applications for licences;
- (e) to issue, renew, amend, revoke and suspend licences;
- (f) to impose licence conditions that it considers appropriate;
- (g) to hold, manage and apply the Compensation Fund; and
- (h) (without limiting the above paragraphs) to perform any function conferred on the Authority by or under this Ordinance or another Ordinance.

153. Powers of Authority

- (1) The Authority may do anything it considers necessary for, or incidental or conducive to, the performance of its functions under this Ordinance.
- (2) Without limiting subsection (1), the Authority may—
 - (a) acquire, hold and dispose of property of any kind including land and grant leases of land (including parts of buildings);
 - (b) make contracts or other agreements;
 - (c) receive and expend moneys;
 - (d) borrow and raise moneys as may be required for the performance of its functions on such security or other terms as may be approved in writing by the Financial Secretary;
 - (e) invest any money of the Authority that is not immediately required to be expended and is available for investment;
 - (f) accredit and administer courses and examinations in relation to applications for licences and renewal of licences;

- (g) deal with emergencies involving inbound and outbound tour groups;
- (h) gather and publish information on fees and costs relating to the organization of inbound and outbound tour groups;
- (i) design and implement a penalty system, including warnings, reprimands, demerit points, financial penalties, revocation and suspension of licences, to be used in disciplinary actions against licensees;
- (j) establish and implement an administrative scheme for regulating shops that inbound tour groups are arranged to patronize;
- (k) issue guidelines, directives and codes of conduct for regulating licensees;
- (l) refer to an independent panel to be appointed by the Secretary disputes between consumers and licensees that do not involve disciplinary matters, and administer the panel; and
- (m) subject to this Ordinance, regulate its own procedure and the conduct of its business.

154. Authority not servant or agent of Government

The Authority is not a servant or agent of the Government and does not enjoy any status, immunity or privilege of the Government.

155. Delegation by Authority

- (1) The Authority may delegate any of its functions to—
 - (a) the Executive Director;
 - (b) another officer of the Authority with managerial duties or occupying a senior position in the Authority (whether

by reference to the name of the officer or to the office held by the officer);

- (c) the disciplinary committee; or
- (d) a committee of the Authority.

(2) However, the following functions must not be delegated—

- (a) the power conferred by subsection (1) to delegate;
- (b) the power to appoint the Executive Director and to decide terms of employment of the Executive Director;
- (c) the power to remove a person from the office of Executive Director;
- (d) the duty to establish the disciplinary committee;
- (e) the power to appoint a person to be a member of the disciplinary committee;
- (f) the power to remove a member of the disciplinary committee from office;
- (g) the power to refer the facts of a case to the chairperson of the disciplinary committee;
- (h) the power to establish committees;
- (i) the power to appoint a person to be a member of a committee;
- (j) the power to remove a member of a committee from office;
- (k) the power to refer a matter to a committee for consideration, inquiry or handling;
- (l) the power to amend the terms of reference of a committee or to dissolve a committee;
- (m) the power to borrow, raise or invest money;
- (n) the power to make regulations;

- (o) the power to issue guidelines, directives and codes of conduct;
 - (p) the power to authorize a person to authenticate the affixing of the common seal of the Authority;
 - (q) the duty to prepare and submit the Authority's annual work plan, and estimates of its income and expenditure, to the Secretary;
 - (r) the duty to prepare a financial statement.
- (3) A delegation under this section does not prevent or restrict the concurrent performance by the Authority of any of its functions.
 - (4) A delegation under this section may contain terms relating to the performance of the functions delegated.
 - (5) The Authority may revoke a delegation under this section in whole or in part at any time.
 - (6) A person purporting to act in accordance with a delegation under subsection (1) is presumed, unless the contrary is proved, to be acting in accordance with the terms of the delegation.

156. Authority may specify form

- (1) The Authority may specify the form of any document required for the purposes of this Ordinance.
- (2) Subsection (1) does not apply to a document the form of which is prescribed by regulations made under this Ordinance.
- (3) In specifying the form of a document, the Authority may specify more than one form of the document, whether as alternatives or for use in different circumstances.
- (4) A form specified under this section must be—

- (a) completed in accordance with the directions specified in the form; and
- (b) provided to the recipient in the way (if any) specified in the form.

157. Immunity from civil liability

- (1) This section applies to a person who is—
 - (a) a member of the Authority or disciplinary committee;
 - (b) a member of a committee or working group of the Authority;
 - (c) an officer or employee of the Authority; or
 - (d) engaged by the Authority to provide services.
- (2) The person is not civilly liable for an act done or omitted to be done by the person in good faith in performing or purportedly performing a function of the Authority under this Ordinance.
- (3) Subsection (2) does not affect any liability of the Authority for the act or omission.

158. Register of interests

- (1) The Authority must establish and maintain a register of interests in the specified form.
- (2) If a person makes a disclosure under section 159, the Authority must record the person's name and the particulars of the disclosure in the register of interests, and if a further disclosure is made, the Authority must record the particulars of the further disclosure in the register of interests.
- (3) The Authority must make the register of interests available for public inspection at any reasonable time.

159. Disclosure of interests generally

- (1) This section applies to a person who is—
 - (a) a member of the Authority or disciplinary committee; or
 - (b) a member of a committee or working group of the Authority.
- (2) The person must disclose to the Authority any interest that the person has which is of a class or description decided under section 160—
 - (a) as soon as practicable after the person's appointment to the membership of Authority, disciplinary committee, committee or working group;
 - (b) at the beginning of each calendar year after the person's appointment;
 - (c) on becoming aware of the existence of an interest not previously disclosed under this subsection;
 - (d) after any change occurs to an interest previously disclosed under this subsection; and
 - (e) as soon as practicable after the person becomes aware that the interest that the person has or acquires could conflict or could reasonably be perceived to conflict with the proper performance of the person's functions in relation to—
 - (i) a matter being investigated, considered or handled by the Authority; or
 - (ii) a matter relating to the Authority.

160. Classes or descriptions of interests to be decided by Authority

For the purposes of section 159, the Authority may—

- (a) decide the class or description of the interests required to be disclosed;

- (b) decide the details of the interest required to be disclosed and the way in which the interest is to be disclosed; and
- (c) from time to time change any matter decided under paragraph (a) or (b).

161. Disclosure of interests in matters under discussion

- (1) If a member of the Authority has a disclosable interest in a matter under discussion at a meeting of the Authority—
 - (a) the member must disclose the nature of the interest at the meeting; and
 - (b) the disclosure must be recorded in the minutes.
- (2) If the member making the disclosure is not presiding over the meeting, the person who is presiding over the meeting may make any of the following directions—
 - (a) the member must withdraw from the meeting during the discussion;
 - (b) the member must not vote in relation to the matter under discussion;
 - (c) the member must not be counted for a quorum.
- (3) If the member making the disclosure is presiding over the meeting—
 - (a) the member must not continue to preside over the meeting during the discussion; and
 - (b) the majority of the other members present may make any of the following directions—
 - (i) the member must withdraw from the meeting during the discussion;
 - (ii) the member must not vote in relation to the matter under discussion;
 - (iii) the member must not be counted for a quorum.

- (4) If—
- (a) a matter is being dealt with by circulating written resolutions under section 14 of Schedule 9; and
 - (b) a member of the Authority has a disclosable interest in the matter,
- the member must disclose the nature of the interest by attaching to the papers being circulated a note recording the disclosure.
- (5) For the purposes of section 14(1)(c) of Schedule 9, if a member of the Authority has made a disclosure under subsection (4), the member's signature (if any) is not to be counted unless the Chairperson directs otherwise.
- (6) If the member making a disclosure under subsection (4) is the Chairperson, the power under subsection (5) is to be exercised by the Vice-chairperson.
- (7) If both the Chairperson and the Vice-chairperson have made a disclosure under subsection (4) on the same matter, section 14 of Schedule 9 does not apply to the matter.
- (8) The validity of any proceedings of the Authority is not affected by the failure by a member of the Authority to comply with this section.

162. Application of section 161 in relation to members of committees or working groups

- (1) Section 161 applies in relation to a member of a committee of the Authority as if in that section—
- (a) a reference to the Authority were a reference to the committee;
 - (b) a reference to the Chairperson were a reference to the chairperson of the committee;

- (c) a reference to the Vice-chairperson were a reference to the vice-chairperson of the committee;
 - (d) a reference to section 14 of Schedule 9 were a reference to section 31 of the Schedule; and
 - (e) a reference to section 14(1)(c) of Schedule 9 were a reference to section 31(1)(c) of the Schedule.
- (2) Section 161(1), (2), (3) and (8) applies in relation to a member of a working group of the Authority as if in that section—
- (a) a reference to the Authority were a reference to the working group;
 - (b) a reference to the Chairperson were a reference to the chairperson of the working group; and
 - (c) a reference to the Vice-chairperson were a reference to the vice-chairperson of the working group.

163. Offence for giving or disclosing information obtained or received officially

- (1) In this section—

confidential information (機密資料) means—

- (a) any trade or business secret;
- (b) any information that is classified by the Government or by the Authority as confidential;
- (c) any information produced or provided in confidence to—
 - (i) the Authority;
 - (ii) a member of the Authority or disciplinary committee, or of a committee or working group of the Authority;
 - (iii) a person authorized by the Authority or disciplinary committee, or by a committee or

- working group of the Authority, in connection with the performance of any function of the Authority;
- (iv) an officer or employee of the Authority, or a service provider engaged by the Authority, in connection with the performance of any function of the Authority; or
- (d) any matter or information produced or given or otherwise provided for the purposes of an investigation under Part 6 or an inquiry under Part 7.
- (2) If a person has obtained or received any confidential information because of the person's position as—
- (a) a member of the Authority or disciplinary committee, or of a committee or working group of the Authority;
- (b) a person authorized by the Authority or disciplinary committee, or by a committee or working group of the Authority; or
- (c) an officer or employee of the Authority, or a service provider engaged by the Authority, in connection with the performance of any function of the Authority,
- the person must not give or disclose the confidential information to any other person.
- (3) Subsection (2) does not apply to—
- (a) the giving or disclosure of information that has already been made available to the public, except for information that is only in the public domain due to an unlawful disclosure;
- (b) the giving or disclosure of information with a view to the institution of, or otherwise for the purpose of, any criminal proceedings or any investigation carried out under the laws of Hong Kong;

- (c) the giving or disclosure of information in connection with, or with a view to bringing, any civil or other proceedings to which the Authority is a party;
- (d) the giving or disclosure of information for the purpose of seeking advice from, or giving advice by, a solicitor or counsel or other professional adviser acting or proposing to act in a professional capacity;
- (e) the giving or disclosure of information in accordance with an order of a court, or in accordance with a law or a requirement made under a law;
- (f) the giving or disclosure of information to the Chief Executive, the Chief Executive in Council, the Chief Secretary for Administration, the Financial Secretary, the Secretary for Justice or the Secretary in circumstances where the Authority considers that it is in the public interest to do so;
- (g) the giving or disclosure of information by the Authority or a person authorized by the Authority in the form of a summary compiled from any information in the possession of the Authority, if the summary is so compiled as to ensure that none of the particulars relating to the business or identity, or trading particulars of the following persons may be ascertained from the summary—
- (i) any of those persons who have produced or provided the information; or
- (ii) any persons to whom the information relates;
- (h) the giving or disclosure of information by the Authority or a person authorized by the Authority, with the consent of the person from whom the information was obtained or received and, if the information relates to a different

- person, with the consent also of the person to whom the information relates;
- (i) the giving or disclosure of information by the Authority in order to perform any function conferred on the Authority by or under this Ordinance or another Ordinance;
 - (j) communications to or within the Authority; or
 - (k) the giving or disclosure of information by a public officer in the belief that the act was required or authorized to perform the officer's functions under this Ordinance or another Ordinance or in accordance with or incidental to the officer's official duty.
- (4) A person who contravenes subsection (2) commits an offence and is liable—
- (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (5) It is a defence for a defendant charged with an offence under this section to establish that at the time of the alleged offence—
- (a) the defendant—
 - (i) believed that there was lawful authority for the person to give or disclose the information to the other person; and
 - (ii) had no reasonable cause to believe otherwise; or
 - (b) the defendant did not know and had no reasonable cause to believe that the information given or disclosed was confidential information.

- (6) The defendant is taken to have established a fact that needs to be established for the defence if—
- (a) there is sufficient evidence to raise an issue with respect to that fact; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.
-

Part 11**Miscellaneous****164. Regulations by Authority**

The Authority may make regulations for one or more of the following purposes—

- (a) to prescribe the registration fees payable in relation to a Mainland inbound tour group, and the way in which the fees are to be paid to the Authority;
- (b) to prescribe the period within which an individual is not eligible to be a licensed travel agent's authorized representative;
- (c) to prescribe the information about a tour group to be displayed by a licensed travel agent on the vehicle arranged for transporting the tour group, and the way in which the travel agent is to display the information;
- (d) to prescribe the fees payable in an application—
 - (i) for a licence or branch licence;
 - (ii) for the renewal of a licence or branch licence;
 - (iii) for a duplicate of a licence or branch licence; or
 - (iv) for amendment of any particulars contained in a licence or branch licence;
- (e) to prescribe the fees payable—
 - (i) for the issue or renewal of a licence or branch licence;
 - (ii) for inspecting the register of licences; or
 - (iii) for obtaining a certified copy of particulars contained in the register of licences;

- (f) to prescribe the conditions that may be imposed on a licence or branch licence, or a renewed licence or renewed branch licence;
- (g) to prescribe the period within which an application for a licence or branch licence, or the renewal of a licence or branch licence, must not be made again;
- (h) to prescribe the requirements that a licensee must comply with;
- (i) to prescribe the particulars and the way mentioned in section 27(c) or 57;
- (j) to prescribe the procedures to be followed by the disciplinary committee and an inquiry committee in conducting meetings;
- (k) to prescribe the procedures to be followed by the disciplinary committee in dealing with minor contraventions by licensees of a requirement in this Ordinance;
- (l) to provide generally for the better carrying out of the purposes of Parts 2, 3, 4, 5, 6 and 7.

165. Publication of advertisements

(1) In this section—

publish (發布) includes issue, circulate, display, distribute and broadcast.

- (2) A person must not publish an advertisement relating to the provision of a travel service by a person required to be licensed under this Ordinance unless—
 - (a) the advertisement relates to the provision of a travel service by a licensed travel agent; and
 - (b) the number of the licensed travel agent's licence is stated clearly in the advertisement.

- (3) A person who contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 1.
- (4) It is a defence for a defendant charged with an offence under subsection (3) relating to an advertisement to establish that—
 - (a) the defendant carries on the business of publishing or arranging for the publication of advertisements;
 - (b) the defendant received the advertisement for publication in the ordinary course of business; and
 - (c) at the time the defendant published the advertisement, the defendant reasonably believed that the advertisement related to the provision of a travel service by—
 - (i) a licensee; or
 - (ii) a person exempted under section 3.
- (5) The defendant is taken to have established a fact that needs to be established for the defence if—
 - (a) there is sufficient evidence to raise an issue with respect to that fact; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.

166. Liability of officers, partners, etc.

- (1) If a company commits an offence under this Ordinance, and it is proved that the offence—
 - (a) was committed with the consent or connivance of a person specified in subsection (2); or
 - (b) is attributable to any neglect on the part of the person, the person also commits the offence.
- (2) The person referred to in subsection (1) is—

- (a) a director, manager, company secretary or controller of the company; or
- (b) a person purporting to act in the capacity of a person referred to in paragraph (a).
- (3) If a firm commits an offence under this Ordinance, and it is proved that the offence—
 - (a) was committed with the consent or connivance of a person specified in subsection (4); or
 - (b) is attributable to any neglect on the part of the person, the person also commits the offence.
- (4) The person referred to in subsection (3) is—
 - (a) a partner in the firm;
 - (b) a person concerned in the management of the firm; or
 - (c) a person purporting to act in the capacity of a person referred to in paragraph (a) or (b).

167. Service of notices or summonses

A notice or summons required to be served on a person under this Ordinance may be served—

- (a) by delivering it to the person personally; or
- (b) by sending it by post addressed to the person at the person's last known address or, if the person is a licensee, at the licensee's correspondence address.

168. Paid fees not refundable

Fees paid under this Ordinance are not refundable.

169. Recovery of financial penalty etc.

The following are recoverable as a civil debt—

- (a) a registration fee required by section 33;
- (b) a financial penalty imposed under section 99(2)(b), 107(2), 108(1)(c) or 132(2);
- (c) any costs and expenses ordered to be paid under section 108(5) or 128(6);
- (d) a levy required by section 147 or 148.

170. Amendment of Schedules

The Secretary may, by notice published in the Gazette, amend Schedules 1, 2, 3, 4, 5, 6, 7, 8 and 9.

171. Savings and transitional provisions

The savings and transitional provisions specified in Schedule 10 have effect.

172. Related amendments

The enactments specified in Schedule 11 are amended as set out in that Schedule.

Schedule 1

[ss. 13, 46 & 170]

Period within which Application for Renewal of Licence or Branch Licence must be Made**1. Specified period**

- (1) For the purposes of section 13(2)(a), an application for the renewal of a travel agent licence or branch licence must be made not more than 2 months and not less than 1 month before the expiry of the licence.
 - (2) For the purposes of section 46(2)(a), an application for the renewal of a tourist guide licence or tour escort licence must be made—
 - (a) if the application is made before the expiry of the licence, within 3 months before the date on which the licence expires; or
 - (b) if the application is made after the expiry of the licence, within 2 years after the date on which the licence expires.
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Schedule 2

[ss. 18 & 170]

Company Matters

1. Company matters

For the purposes of section 18(2)(a) and (c)(i) and (5)(a), the matters in relation to a company are—

- (a) whether the company has entered into a composition or scheme of arrangement with its creditors, or has made an assignment of its estate for the benefit of its creditors;
- (b) whether the company is in liquidation or is the subject of a winding up order;
- (c) whether a receiver or manager of the company's property has been appointed;
- (d) whether the company has been convicted, whether in Hong Kong or elsewhere, of a criminal offence involving a finding that the company acted fraudulently, corruptly or dishonestly;
- (e) whether the company has been convicted of a criminal offence under this Ordinance;
- (f) whether the company has been convicted of a criminal offence under the Trade Descriptions Ordinance (Cap. 362);
- (g) the company's record relating to—
 - (i) any application for a licence, or the renewal of a licence, under the repealed Ordinance;

- (ii) any application for a travel agent licence or the renewal of a travel agent licence; and
- (iii) the travel agent business of a licensed travel agent or a person who holds a licence under the repealed Ordinance; and
- (h) the company's record in complying with—
 - (i) the directives, codes of conduct and any other instruments made by the Travel Industry Council before the repeal of the repealed Ordinance; and
 - (ii) the requirements in this Ordinance.

Schedule 3

[ss. 18 & 170]

Partnership Matters**1. Partnership matters**

For the purposes of section 18(3)(a) and (5)(b), the matters in relation to a partnership are—

- (a) whether any partner in the partnership is an undischarged bankrupt;
- (b) whether any partner in the partnership has entered into a composition or scheme of arrangement with the partner's creditors, or has made an assignment of the partner's estate for the benefit of the partner's creditors;
- (c) whether any partner in the partnership is in liquidation or is the subject of a winding up order;
- (d) whether a receiver or manager of the property of any partner in the partnership has been appointed;
- (e) whether any partner in the partnership is a mentally disordered person, or a patient, within the meaning of section 2(1) of the Mental Health Ordinance (Cap. 136);
- (f) whether any partner in the partnership has been convicted, whether in Hong Kong or elsewhere, of a criminal offence involving a finding that the partner acted fraudulently, corruptly or dishonestly;
- (g) whether any partner in the partnership has been convicted of a criminal offence under this Ordinance;

- (h) whether any partner in the partnership has been convicted of a criminal offence under the Trade Descriptions Ordinance (Cap. 362);
- (i) whether any partner in the partnership has been convicted, whether in Hong Kong or elsewhere, of a criminal offence involving violence;
- (j) the record of any partner in the partnership relating to—
 - (i) any application for a licence, or the renewal of a licence, under the repealed Ordinance;
 - (ii) any application for a tourist guide pass or tour escort pass, or the renewal of a tourist guide pass or tour escort pass;
 - (iii) any application for a licence, or the renewal of a licence, under this Ordinance; and
 - (iv) the travel agent business of a licensed travel agent or a person who holds a licence under the repealed Ordinance; and
- (k) the record of any partner in the partnership in complying with—
 - (i) the directives, codes of conduct and any other instruments made by the Travel Industry Council before the repeal of the repealed Ordinance; and
 - (ii) the requirements in this Ordinance.

Schedule 4

[ss. 18, 25, 53 & 170]

Individual Matters

1. Individual matters

- (1) For the purposes of sections 18(4)(a) and (5)(c) and 25(1)(a), the matters in relation to an individual are—
 - (a) whether the individual is an undischarged bankrupt;
 - (b) whether the individual has entered into a composition or scheme of arrangement with the individual's creditors, or has made an assignment of the individual's estate for the benefit of the individual's creditors;
 - (c) whether the individual is a mentally disordered person, or a patient, within the meaning of section 2(1) of the Mental Health Ordinance (Cap. 136);
 - (d) whether the individual has been convicted, whether in Hong Kong or elsewhere, of a criminal offence involving a finding that the individual acted fraudulently, corruptly or dishonestly;
 - (e) whether the individual has been convicted of a criminal offence under this Ordinance;
 - (f) whether the individual has been convicted of a criminal offence under the Trade Descriptions Ordinance (Cap. 362);
 - (g) whether the individual has been convicted, whether in Hong Kong or elsewhere, of a criminal offence involving violence;

- (h) the individual's record relating to—
 - (i) any application for a licence, or the renewal of a licence, under the repealed Ordinance;
 - (ii) any application for a tourist guide pass or tour escort pass, or the renewal of a tourist guide pass or tour escort pass;
 - (iii) any application for a licence, or the renewal of a licence, under this Ordinance; and
 - (iv) the travel agent business of a licensed travel agent or a person who holds a licence under the repealed Ordinance; and
- (i) the individual's record in complying with—
 - (i) the directives, codes of conduct and any other instruments made by the Travel industry Council before the repeal of the repealed Ordinance; and
 - (ii) the requirements in this Ordinance.
- (2) For the purposes of section 53, the matters in relation to an individual are—
 - (a) the matters set out in subsection (1) (except paragraphs (a) and (b)); and
 - (b) whether the individual has been convicted, whether in Hong Kong or elsewhere, of a criminal offence involving sex or drugs.

Schedule 5

[ss. 19 & 170]

Capital Requirement

Part 1

Basic Capital Requirement

\$500,000

Part 2

Capital Requirement for Each Branch

\$250,000

Schedule 6

[ss. 21, 22, 23 & 170]

Guarantee Money Requirement

Level	Amount
1	\$250,000
2	\$500,000

Schedule 7

[ss. 25 & 170]

Qualification Requirement for Authorized Representative of Travel Agent

1. Qualification requirement

- (1) For the purposes of section 25(1)(d), the qualification requirement is—
 - (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.
 - (2) For education completed outside Hong Kong, the individual concerned must prove, to the satisfaction of the Authority, that it is equivalent to completion of the education specified in subsection (1)(a).
-

Schedule 8

[ss. 43 & 170]

Education Requirement for Applicant for Tourist Guide Licence or Tour Escort Licence

1. Education requirement

- (1) For the purposes of section 43(2)(a)(v), the education requirement is 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).
 - (2) For education completed outside Hong Kong, the applicant must prove, to the satisfaction of the Authority, that it is equivalent to completion of the education specified in subsection (1).
-

Schedule 9

[ss. 2, 151,
161, 162 & 170]

Travel Industry Authority

Part 1

Members

1. Appointment of members of Authority

- (1) The Authority is to consist of the following members—
 - (a) the Chairperson;
 - (b) the Vice-chairperson;
 - (c) not more than 28 ordinary members.
- (2) The Chairperson and the ordinary members are to be appointed by the Chief Executive.
- (3) The Commissioner for Tourism is to be the Vice-chairperson.
- (4) In appointing the Chairperson and the ordinary members, the Chief Executive must ensure that—
 - (a) a majority of the appointed members are non-trade members;
 - (b) the Chairperson and not more than 15 ordinary members are non-trade members; and
 - (c) not more than 13 ordinary members are trade members.
- (5) A person who for the time being is a member of the appeal panel appointed under section 118, or an independent panel

appointed under section 153(2)(1), is not eligible to be appointed as a member of the Authority.

2. Terms of appointment

- (1) Except the Vice-chairperson, each member of the Authority is to be appointed for a period of not more than 2 years, but is eligible for reappointment.
- (2) The Chief Executive may decide the terms of appointment of the members of the Authority.

3. Resignation of members of Authority

- (1) A member of the Authority appointed under section 1(2) of this Schedule may, at any time, resign from office by giving written notice of the resignation to the Chief Executive.
- (2) The notice must be signed by the member.
- (3) The notice takes effect on—
 - (a) the date on which the notice is received by the Chief Executive; or
 - (b) if a later date is specified in the notice, the later date.

4. Removal of members of Authority from office

- (1) The Chief Executive may remove a member of the Authority appointed under section 1(2) of this Schedule from office if the Chief Executive considers that the removal is desirable for the Authority to effectively perform its functions.
- (2) If a member of the Authority is removed from office, the Chief Executive must give the member written notice informing the member of the removal.

5. Vacancy in office

- (1) The office of a member of the Authority appointed under section 1(2) of this Schedule becomes vacant if the member—
 - (a) dies;
 - (b) resigns from office; or
 - (c) is removed from office.
- (2) If the office of a member becomes vacant, the Chief Executive may appoint a person to be a member to fill the vacancy.
- (3) A member appointed under subsection (2)—
 - (a) is to hold office for the period specified by the Chief Executive, being—
 - (i) the unexpired period of the office of the member who caused the vacancy; or
 - (ii) a period of not more than 2 years; and
 - (b) is eligible for reappointment under section 1 of this Schedule.

6. Acting Chairperson

- (1) If, for any period, the Chairperson is temporarily absent from Hong Kong or, temporarily unable to perform the functions of the office of Chairperson due to illness, incapacity or another reasonable ground, the Chief Executive may appoint a member to act in the office of the Chairperson during the period.
- (2) When acting in the office of the Chairperson, the member appointed under subsection (1) has all the functions of, and is taken to be, the Chairperson.

Part 2**Staff and Service Providers****7. Power to employ staff**

- (1) The Authority may—
 - (a) with the approval of the Secretary, appoint a person it considers suitable to be its Executive Director; and
 - (b) appoint other officers or employees necessary to perform its functions effectively.
- (2) To avoid doubt—
 - (a) the Executive Director is an employee of the Authority; and
 - (b) the Executive Director and the other officers and employees appointed under subsection (1)(a) and (b) are the staff of the Authority.
- (3) The Authority may—
 - (a) with the approval of the Secretary, decide the remuneration and other conditions of employment of the Executive Director; and
 - (b) decide the remuneration and other conditions of employment of its other staff.
- (4) The Authority may provide and maintain schemes (whether contributory or not) for the payment of retirement benefits, gratuities or other allowances to its staff or former staff and to their dependants.

8. Power to engage service providers

- (1) The Authority may engage a person to provide services necessary to perform its functions effectively.

- (2) The Authority may decide the remuneration and other conditions of engagement of the person.

Part 3

Seal

9. Seal of Authority

- (1) The common seal of the Authority may be affixed only with the authority of a resolution of the Authority.
- (2) The affixing of the common seal must be authenticated by—
- the Chairperson; or
 - a member or employee of the Authority authorized by the Authority, whether generally or specifically, for this purpose.
- (3) A document sealed with the common seal is—
- admissible in evidence; and
 - presumed to have been properly sealed unless the contrary is proved.

Part 4

Meeting

10. General procedure for meeting of Authority

- (1) Meetings of the Authority are to be held as often as may be necessary for the performance of its functions.
- (2) Subject to this Part, the procedure for convening meetings of the Authority and for the conduct of business at those meetings is to be decided by the Authority.

- (3) Subject to subsection (4), a meeting of the Authority is to be convened by the Chairperson.
- (4) If the Chairperson is absent from Hong Kong or is unable to convene a meeting, a meeting of the Authority may be convened by the Vice-chairperson.
- (5) A meeting may be held by telephone, video conference or other electronic means.

11. Presiding member at meeting

A meeting of the Authority is to be presided over by—

- the Chairperson;
- if the Chairperson is absent, the Vice-chairperson; or
- if both the Chairperson and the Vice-chairperson are absent, one of the members of the Authority who is a non-trade member and who is elected by the members present.

12. Quorum for meeting

- (1) In this section—

assisted meeting (有遙距參與者會議) means a meeting at which a member is regarded as being present only because of subsection (4)(b).

- (2) The quorum for a meeting of the Authority is one half of the members of the Authority.
- (3) If both the Chairperson and the Vice-chairperson are absent, despite subsection (2), there is no quorum unless at least one non-trade member of the Authority is present.
- (4) For determining the quorum—

- (a) if the number of members of the Authority is not an even number, the number is to be regarded as having been increased by 1; and
 - (b) a member of the Authority who participates in the meeting by telephone, video conference or other electronic means is to be regarded as being present at the meeting if—
 - (i) the member is able to hear the other members who are actually present at the meeting; and
 - (ii) the other members who are actually present at the meeting are able to hear that member.
- (5) The Authority must make standing orders, not inconsistent with this Ordinance, for the purposes of regulating the conduct of assisted meetings, in order to ensure that the confidentiality of assisted meetings is not compromised.

13. Voting at meeting

- (1) At a meeting of the Authority, every question before the Authority is to be decided by a majority of votes of the members present and entitled to vote.
- (2) Subject to subsection (3), each member of the Authority who is present at the meeting has 1 vote.
- (3) If there is an equality of votes in respect of any question to be decided at the meeting, the member who is presiding over the meeting has a casting vote in addition to his or her original vote.
- (4) The member who is presiding over a meeting of the Authority must ask each member who is present at the meeting to indicate how he or she has voted.
- (5) The result of the vote, showing which way each member has voted, must be recorded in the minutes.

14. Written resolutions of Authority

- (1) A resolution is a valid resolution of the Authority, even if it is not passed at a meeting of the Authority, if—
 - (a) it is in writing;
 - (b) proper notice of it is given to all members of the Authority; and
 - (c) it is signed, or assented to, by a majority of members of the Authority.
- (2) A resolution may be—
 - (a) in the form of one document; or
 - (b) in the form of more than one document, each in the same form and signed by one or more members of the Authority.
- (3) If a resolution is in the form of more than one document as described in subsection (2)(b), the requirement under subsection (1)(c) is satisfied if the documents together bear the signatures of the majority of the members of the Authority.
- (4) A resolution is taken to have been signed by a member of the Authority if a fax or other electronic transmission of a document bears the signature of the member.
- (5) The date of a resolution referred to in this section is the date on which the last of the members of the Authority constituting a majority of the members signs or assents to the resolution.
- (6) If any member of the Authority requests, by notice in writing given to the Chairperson, that a resolution proposed to be made under subsection (1) be referred to a meeting of the Authority for consideration, the proposed resolution must be referred to a meeting of the Authority.

- (7) A request under subsection (6) by a member of the Authority must be made within 14 days after the date on which the notice referred to in subsection (1)(b) is given to the member.
- (8) If, in respect of any matter being dealt with by circulating written resolutions, a request is made under subsection (6), any resolution signed, or assented to, under subsection (1)(c) becomes void.

15. Minutes

The Authority must maintain minutes of the proceedings, including a record of all decisions made, at each meeting of the Authority.

16. Proceedings not invalidated by defects in appointment etc.

The validity of any proceedings of the Authority is not to be affected 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 proceedings are being conducted; or
- (d) any omission, defect or irregularity in the procedures adopted by the Authority in the proceedings if the omission, defect or irregularity does not affect the merit of the case about which the proceedings are being conducted.

Part 5**Financial Provisions****17. Financial year**

The financial year of the Authority is—

- (a) the period beginning on the commencement date of this section and ending on the next 31 March; or
- (b) the period of 12 months ending on 31 March in each subsequent year.

18. Funds

(1) The funds of the Authority consist of—

- (a) all money received by the Authority by way of fees, costs, expenses and Authority levies under section 147;
- (b) all money obtained from investments made by the Authority;
- (c) all money borrowed by the Authority; and
- (d) all other money and property, including interest and accumulations of income, lawfully received by the Authority for its purposes.

(2) Any funds of the Authority that are not immediately required by it for the performance of its functions may be—

- (a) deposited on fixed term or call deposit or in a savings account in a bank nominated by the Financial Secretary, whether generally or in a particular case, for the purpose; or
- (b) invested in a way approved by the Financial Secretary.

19. Authority is exempt from taxation

The Authority is exempt from taxation under the Inland Revenue Ordinance (Cap. 112).

Part 6**Accounts, Audit and Annual Report****20. Accounts**

- (1) The Authority must—
 - (a) keep accounts and other records that accurately record and explain—
 - (i) the financial position of the Authority; and
 - (ii) the financial transactions of the Authority; and
 - (b) ensure that a statement of accounts is prepared within 3 months, or a longer period the Secretary may permit, after the end of each financial year of the Authority.
- (2) The statement of accounts must—
 - (a) give a true and fair view of—
 - (i) the state of affairs of the Authority as at the end of the financial year;
 - (ii) the results of the Authority's operation in the financial year; and
 - (iii) the cash flows of the Authority in the financial year;
 - (b) include an income and expenditure account for the financial year and a balance sheet as at the last day of the financial year; and
 - (c) be signed by the Chairperson and the Executive Director.

21. Authority to appoint auditor

- (1) The Authority must appoint an auditor approved by the Secretary to audit its statement of accounts.
- (2) The Authority must, as soon as practicable after the end of each financial year of the Authority, submit the statement of accounts for the previous financial year to the auditor appointed for the current financial year of the Authority.
- (3) If the auditor considers it necessary for the performance of the auditor's duties, the auditor may—
 - (a) gain access at all reasonable times to the books, accounts, vouchers, records and documents of the Authority that are relevant to the auditor's duties; and
 - (b) request information and explanation from the members and staff of the Authority.
- (4) The Authority must comply with the auditor's request under subsection (3).
- (5) The auditor must, as soon as practicable after the end of each financial year of the Authority—
 - (a) audit the accounts and statement of accounts required under section 20 of this Schedule;
 - (b) prepare and submit an auditor's report on the statement of accounts to the Authority; and
 - (c) include a statement in the auditor's report as to whether, in the auditor's opinion, the statement of accounts gives a true and fair view of—
 - (i) the state of affairs of the Authority as at the end of the financial year to which the statement of accounts relates;
 - (ii) the results of the Authority's operation in the financial year; and

- (iii) the cash flows of the Authority in the financial year.

22. Annual report

- (1) As soon as practicable, and in any case within 6 months, after the end of each financial year of the Authority, the Authority must prepare an annual report about its activities in the financial year.
- (2) The annual report must contain the following information in relation to the financial year—
 - (a) statistics on the applications received for travel agent licences, tourist guide licences and tour escort licences, and the number of licences issued;
 - (b) statistics on the disciplinary cases dealt with by the Authority;
 - (c) an outline of key disciplinary cases dealt with by the Authority, subject to the confidentiality of the identity of the parties concerned; and
 - (d) audited financial statements.
- (3) The Secretary may extend the period under subsection (1) within which an annual report must be prepared.

23. Authority to provide other information

- (1) On the request of the Secretary, the Authority must provide all financial or other information of the Authority to the Secretary.
- (2) The information may include—
 - (a) information on the operation of the Authority;
 - (b) a summary of investigations conducted by the Authority; and

- (c) a full set of accounts of the Authority.

24. Annual report and audited accounts to be laid on table of Legislative Council

- (1) As soon as practicable, and in any case within 6 months, after the end of each financial year of the Authority, the Authority must give the following documents to the Secretary—
 - (a) a copy of its annual report prepared under section 22 of this Schedule;
 - (b) a copy of its statement of accounts;
 - (c) a copy of the auditor's report on the statement of accounts.
- (2) The Secretary may extend the period under subsection (1) within which the documents must be given.
- (3) The Secretary must arrange for the documents received under subsection (1) to be laid on the table of the Legislative Council.

25. Authority must submit annual work plan and estimates of income and expenditure

The Authority must, not later than 31 December in each financial year of the Authority, submit the following documents for the next financial year to the Secretary for approval—

- (a) the Authority's annual work plan;
- (b) the Authority's estimates of its income and expenditure.

26. Director of Audit's examination

- (1) The Director of Audit may, for any financial year of the Authority, conduct an examination into the economy, efficiency and effectiveness with which the Authority has used its resources in performing its functions.

- (2) For the purposes of conducting the examination, the Director of Audit may, at all reasonable times—
 - (a) gain full and free access to all accounts, records and documents in the custody or under the control of the Authority;
 - (b) make a copy of the whole or any part of those accounts, records and documents; and
 - (c) require a person who is in possession of or is accountable for those accounts, records or documents to give any information or explanation that the Director of Audit considers necessary.
- (3) The Director of Audit may report to the President of the Legislative Council the results of the examination.

Part 7

Committees and Working Groups

27. Authority may establish committees

- (1) The Authority may establish one or more committees, whether as standing committees or special committees.
- (2) The Authority may refer a matter within the scope of its functions to a committee for consideration, inquiry or handling.
- (3) A committee must consist of at least 3 members.
- (4) Each member (including the chairperson and vice-chairperson) of a committee is to be appointed by the Authority.
- (5) A committee may include members who are not members of the Authority, but the majority of the members of a standing committee must be members of the Authority.

- (6) A reference under subsection (2) does not prevent or restrict the concurrent performance by the Authority of any of its functions.
- (7) When the Authority establishes a committee, it must specify in writing the terms of reference of the committee. The terms must include—
 - (a) the matter referred to the committee for consideration, inquiry or handling; and
 - (b) the timeframe within which the committee must conduct its work.
- (8) The Authority may—
 - (a) amend the terms of reference of a committee; or
 - (b) dissolve a committee.

28. Resignation of members of committees

- (1) A member of a committee of the Authority may, at any time, resign from office by giving written notice of the resignation to the Chairperson.
- (2) The notice must be signed by the member.
- (3) The notice takes effect on—
 - (a) the date on which the notice is received by the Chairperson; or
 - (b) if a later date is specified in the notice, the later date.

29. Removal of members of committee from office

- (1) The Authority may remove a member of a committee from office if the Authority considers that the removal is desirable for the committee to effectively perform its functions.

- (2) If a member of a committee is removed from office, the Authority must give the member written notice informing the member of the removal.

30. Committee procedure

- (1) A committee may, subject to any directions given by the Authority, regulate its own procedure, including the quorum for a meeting of the committee.
- (2) A committee must meet at the time and the place the chairperson of the committee determines, subject to any directions given by the Authority and any procedure fixed by the committee.

31. Written resolutions of committee

- (1) A resolution is a valid resolution of a committee, even if it is not passed at a meeting of the committee, if—
- (a) it is in writing;
 - (b) proper notice of it is given to all members of the committee; and
 - (c) it is signed, or assented to, by a majority of members of the committee.
- (2) A resolution may be—
- (a) in the form of one document; or
 - (b) in the form of more than one document, each in the same form and signed by one or more members of the committee.
- (3) If a resolution is in the form of more than one document as described in subsection (2)(b), the requirement under subsection (1)(c) is satisfied if the documents together bear the signatures of the majority of the members of the committee.

- (4) A resolution is taken to have been signed by a member of the committee if a fax or other electronic transmission of a document bears the signature of the member.
- (5) The date of a resolution referred to in this section is the date on which the last of the members of the committee constituting a majority of the members signs or assents to the resolution.
- (6) If any member of the committee requests, by notice in writing given to the chairperson of the committee, that a resolution proposed to be made under subsection (1) be referred to a meeting of the committee for consideration, the proposed resolution must be referred to a meeting of the committee.
- (7) A request under subsection (6) by a member of the committee must be made within 14 days after the date on which the notice referred to in subsection (1)(b) is given to the member.
- (8) If, in respect of any matter being dealt with by circulating written resolutions, a request is made under subsection (6), any resolution signed, or assented to, under subsection (1)(c) becomes void.

32. Committees may establish working groups

- (1) A committee of the Authority may establish one or more working groups.
- (2) The committee may refer a matter within its terms of reference to the working group for advice.
- (3) Each member (including the chairperson and vice-chairperson) of the working group is to be appointed by the committee.
- (4) The working group may include persons who are not members of the committee.

- (5) A reference under subsection (2) does not prevent or restrict the concurrent performance by the committee of any of its functions.
- (6) When the committee establishes the working group, it must specify in writing the terms of reference of the working group. The terms must include—
 - (a) the specific area on which the working group's advice is sought; and
 - (b) the timeframe within which the working group must conduct its work.
- (7) The committee may—
 - (a) amend the terms of reference of the working group; or
 - (b) dissolve the working group.

33. Working group procedure

- (1) A working group established by a committee may, subject to any directions given by the Authority or the committee, regulate its own procedure, including the quorum for a meeting of the working group.
- (2) The working group must meet at the time and the place the chairperson of the working group determines, subject to any directions given by the Authority or the committee and any procedure fixed by the working group.

34. Minutes

A committee or working group must maintain minutes of the proceedings, including a record of all decisions made, at each meeting of the committee or working group.

35. Authority may give directions to committees and working groups

- (1) The Authority may give written directions to a committee or working group, whether generally or in any particular case, and whether regarding the way in which it must act or otherwise.
- (2) The committee or working group must act in accordance with the directions.

Schedule 10[ss. 21, 22, 23
& 171]**Savings and Transitional Provisions****Part 1****Interpretation****1. Interpretation of Schedule 10**

In this Schedule—

applicable rules (適用規則) means any directive, code of conduct or other instrument that is—

- (a) made by the Travel Industry Council;
- (b) applicable to specified persons; and
- (c) in force immediately before the commencement date of section 3 of Schedule 11;

personal data (個人資料) has the meaning given by section 2(1) of the Personal Data (Privacy) Ordinance (Cap. 486);*pre-existing licence* (原有牌照) means a previous licence that is valid immediately before the commencement date of Part 2 of this Schedule;*pre-existing tour escort pass* (原有領隊證) means a tour escort pass that is valid immediately before the commencement date of Part 3 of this Schedule;*pre-existing tourist guide pass* (原有導遊證) means a tourist guide pass that is valid immediately before the commencement date of Part 3 of this Schedule;*Registrar* (註冊主任) means the Registrar of Travel Agents appointed under section 5 of the repealed Ordinance whose appointment is valid immediately before the commencement date of section 3 of Schedule 11;*specified person* (指明人士) means the holder of—

- (a) a pre-existing licence;
- (b) a pre-existing tourist guide pass; or
- (c) a pre-existing tour escort pass.

Part 2**Travel Agents****Division 1—Interpretation****2. Interpretation of Part 2**

In this Part—

commencement date (生效日期) means the commencement date of this Part.**Division 2—Licensing****3. Holder of pre-existing licence**

(1) If a person holds a pre-existing licence, on and after the commencement date, the licence is taken to be a travel agent licence and, accordingly, the person is taken to be a licensed travel agent until—

- (a) the pre-existing licence expires; or

(b) 3 months after the commencement date,
whichever is the later.

- (2) A condition imposed on a pre-existing licence that is in force immediately before the commencement date is, on and after that date, taken to be a condition imposed on the travel agent licence.

4. Outstanding application for licence under repealed Ordinance

(1) If—

- (a) a person makes an application under section 10 of the repealed Ordinance for a licence; and
(b) the application has not been determined before the commencement date,

on and after that date, the Authority is to determine the application in accordance with the repealed Ordinance as if section 3 of Schedule 11 had not been enacted.

- (2) If the Authority is satisfied that the application complies with the repealed Ordinance, the Authority may issue a travel agent licence to the person and, accordingly, the person is taken to be a licensed travel agent.

5. Outstanding application for renewal of pre-existing licence

(1) If—

- (a) a person makes an application under section 15 of the repealed Ordinance for the renewal of a pre-existing licence; and
(b) the application has not been determined before the commencement date,

on and after that date, the Authority is to determine the application in accordance with the repealed Ordinance as if section 3 of Schedule 11 had not been enacted.

- (2) If the Authority is satisfied that the application complies with the repealed Ordinance, the Authority may issue a travel agent licence to the person and, accordingly, the person is taken to be a licensed travel agent.

Division 3—Revocation and Suspension

6. Decision about revocation or suspension

- (1) This section applies if, immediately before the commencement date, the Registrar is dealing with a matter under the repealed Ordinance but has not decided whether to revoke or suspend a pre-existing licence.
- (2) On and after the commencement date, the Authority is to deal with the matter in accordance with the repealed Ordinance as if section 3 of Schedule 11 had not been enacted.
- (3) To avoid doubt, for the purposes of subsection (2)—
- (a) if, before the commencement date, any power could have been, but was not, exercised under section 22, 29, 45 or 46 of the repealed Ordinance, the power may be exercised on and after that date; and
- (b) if, before the commencement date, any power has been exercised under any of the provisions referred to in paragraph (a), and the exercise of the power would, but for this Ordinance, continue to have effect on and after that date, the exercise of the power is to continue to have effect on and after that date.
- (4) A pre-existing licence revoked or suspended under this section is taken to be a travel agent licence revoked or suspended under this Ordinance.

7. **Suspension in force immediately before commencement date**
- (1) If the suspension of a previous licence is in force immediately before the commencement date, the suspension is to continue in force for the remainder of the suspension period as if this Ordinance had not been enacted.
 - (2) If, on the expiry of the suspension period, the previous licence is resumed, the previous licence is taken to be a travel agent licence and, accordingly, the holder of the previous licence is taken to be a licensed travel agent until—
 - (a) the previous licence expires; or
 - (b) 3 months after the commencement date, whichever is the later.
 - (3) A condition imposed on a previous licence that is in force immediately before it was suspended is, after the previous licence is resumed under subsection (2), taken to be a condition imposed on the travel agent licence.

Division 4—Appeals

8. **Interpretation of Division 4**

In this Division—

specified decision (指明決定) means a decision of the Registrar referred to in section 32(a), (b), (c) or (d) of the repealed Ordinance.

9. **Appeal not made to Administrative Appeals Board before commencement date**

- (1) If—
 - (a) but for the enactment of this Ordinance, a person has a right to appeal to the Administrative Appeals Board

- against a specified decision under section 32 of the repealed Ordinance;
 - (b) the person has not made the appeal before the commencement date; and
 - (c) the period within which the person may make the appeal has not expired on the commencement date,
- on and after that date, the person may make the appeal to the Board within that period as if this Ordinance had not been enacted.
- (2) If the person makes the appeal to the Administrative Appeals Board under subsection (1), the Board is to deal with the appeal as if this Ordinance had not been enacted.

10. **Appeal not yet determined by Administrative Appeals Board**

If an appeal against a specified decision—

- (a) has been made to the Administrative Appeals Board under section 32 of the repealed Ordinance; but
 - (b) has not been disposed of before the commencement date,
- on and after that date, the Board is to continue to deal with the appeal as if this Ordinance had not been enacted.

11. **Determination of appeal on or after commencement date**

- (1) If a specified decision is confirmed by the Administrative Appeals Board on or after the commencement date under section 9 or 10 of this Schedule, the Authority must act in accordance with the specified decision in accordance with the repealed Ordinance when the determination of the Administrative Appeals Board takes effect.
- (2) If a specified decision is reversed by the Administrative Appeals Board on or after the commencement date under section 9 or 10 of this Schedule—

- (a) for a decision referred to in section 32(a) of the repealed Ordinance, the Authority must issue a travel agent licence to the appellant and, accordingly, the appellant is taken to be a licensed travel agent;
 - (b) for a decision referred to in section 32(b) of the repealed Ordinance, the conditions imposed under section 11(1) or 18 of the repealed Ordinance cease to have effect when the determination of the Administrative Appeals Board takes effect;
 - (c) for a decision referred to in section 32(c) of the repealed Ordinance, the Authority must approve the change of ownership or control of business of the appellant; or
 - (d) for a decision referred to in section 32(d) of the repealed Ordinance, the revocation or suspension of the relevant licence under section 19(1) of the repealed Ordinance ceases to have effect when the determination of the Administrative Appeals Board takes effect.
- (3) If a licence is resumed under subsection (2)(d), the licence is taken to be a travel agent licence and, accordingly, the holder of the licence is taken to be a licensed travel agent until—
- (a) the licence expires; or
 - (b) 3 months after the commencement date,
- whichever is the later.
- (4) A condition imposed on a licence that is in force immediately before it was revoked or suspended under section 19(1) of the repealed Ordinance is, after the licence is resumed under subsection (3), taken to be a condition imposed on the travel agent licence.

Division 5—Licence Subject to Conditions

12. **Licence is subject to conditions imposed by Authority**
- (1) This section applies to—
 - (a) a licence that is taken to be a travel agent licence under section 3(1), 7(2) or 11(3) of this Schedule; or
 - (b) a travel agent licence issued under section 4(2), 5(2) or 11(2)(a) of this Schedule.
 - (2) A licence to which this section applies is subject to any condition that the Authority imposes.
 - (3) The Authority may, at any time during the validity period of the licence, by notice in writing given to the holder of the licence, do one or more of the following—
 - (a) amend or remove the existing conditions of the licence;
 - (b) impose new conditions on the licence.
 - (4) If the Authority amends, removes or imposes a condition under subsection (3), the amendment, removal or imposition takes effect on—
 - (a) the date of the notice given under that subsection; or
 - (b) if a later date is specified in the notice, the later date.

Part 3

Tourist Guides and Tour Escorts

Division 1—Interpretation

13. **Interpretation of Part 3**
In this Part—

commencement date (生效日期) means the commencement date of this Part.

Division 2—Licensing

Subdivision 1—Holder of Pre-existing Tourist Guide Pass or Pre-existing Tour Escort Pass

14. Holder of pre-existing tourist guide pass

- (1) If a person holds a pre-existing tourist guide pass, on and after the commencement date, the pass is taken to be a tourist guide licence and, accordingly, the person is taken to be a licensed tourist guide until—
 - (a) the pass expires; or
 - (b) 3 months after the commencement date, whichever is the later.
- (2) A condition imposed on a pre-existing tourist guide pass that is in force immediately before the commencement date is, on and after that date, taken to be a condition imposed on the tourist guide licence.

15. Holder of pre-existing tour escort pass

- (1) If a person holds a pre-existing tour escort pass, on and after the commencement date, the pass is taken to be a tour escort licence and, accordingly, the person is taken to be a licensed tour escort until—
 - (a) the pass expires; or
 - (b) 3 months after the commencement date, whichever is the later.
- (2) A condition imposed on a pre-existing tour escort pass that is in force immediately before the commencement date is, on

and after that date, taken to be a condition imposed on the tour escort licence.

Subdivision 2—Outstanding Application for Tourist Guide Pass or Tour Escort Pass

16. Outstanding application for tourist guide pass

- (1) If—
 - (a) a person makes an application to the Travel Industry Council for a tourist guide pass; and
 - (b) the application has not been determined before the commencement date,
 on and after that date, the Authority is to determine the application by reference to the applicable rules.
- (2) If the Authority is satisfied that the application complies with the applicable rules, the Authority may issue a tourist guide licence to the person and, accordingly, the person is taken to be a licensed tourist guide.

17. Outstanding application for tour escort pass

- (1) If—
 - (a) a person makes an application to the Travel Industry Council for a tour escort pass; and
 - (b) the application has not been determined before the commencement date,
 on and after that date, the Authority is to determine the application by reference to the applicable rules.
- (2) If the Authority is satisfied that the application complies with the applicable rules, the Authority may issue a tour escort licence to the person and, accordingly, the person is taken to be a licensed tour escort.

Subdivision 3—Outstanding Application for Renewal of Pre-existing Tourist Guide Pass or Pre-existing Tour Escort Pass

18. Outstanding application for renewal of pre-existing tourist guide pass

- (1) If—
 - (a) a person makes an application to the Travel Industry Council for the renewal of a pre-existing tourist guide pass; and
 - (b) the application has not been determined before the commencement date,

on and after that date, the Authority is to determine the application by reference to the applicable rules.
- (2) If the Authority is satisfied that the application complies with the applicable rules, the Authority may issue a tourist guide licence to the person and, accordingly, the person is taken to be a licensed tourist guide.

19. Outstanding application for renewal of pre-existing tour escort pass

- (1) If—
 - (a) a person makes an application to the Travel Industry Council for the renewal of a pre-existing tour escort pass; and
 - (b) the application has not been determined before the commencement date,

on and after that date, the Authority is to determine the application by reference to the applicable rules.
- (2) If the Authority is satisfied that the application complies with the applicable rules, the Authority may issue a tour escort

licence to the person and, accordingly, the person is taken to be a licensed tour escort.

Division 3—Revocation and Suspension

20. Decision of revocation or suspension not yet made before commencement date

- (1) This section applies if, immediately before the commencement date, the Travel Industry Council is dealing with a matter but has not decided whether to revoke or suspend a pre-existing tourist guide pass or pre-existing tour escort pass.
- (2) On and after the commencement date, the Authority is to deal with the matter by reference to the applicable rules that would have applied to the matter had the Travel Industry Council continued to have the power to deal with the matter.
- (3) A pre-existing tourist guide pass revoked or suspended under this section is taken to be a tourist guide licence revoked or suspended under this Ordinance.
- (4) A pre-existing tour escort pass revoked or suspended under this section is taken to be a tour escort licence revoked or suspended under this Ordinance.

21. Suspension in force immediately before commencement date

- (1) If the suspension of a tourist guide pass or tour escort pass is in force immediately before the commencement date, the suspension is to continue in force for the remainder of the suspension period as if this Ordinance had not been enacted.
- (2) If, on the expiry of the suspension period, the tourist guide pass is resumed, the pass is taken to be a tourist guide licence and, accordingly, the holder of the pass is taken to be a licensed tourist guide until—

- (a) the pass expires; or
 - (b) 3 months after the commencement date,
whichever is the later.
- (3) If, on the expiry of the suspension period, the tour escort pass is resumed, the pass is taken to be a tour escort licence and, accordingly, the holder of the pass is taken to be a licensed tour escort until—
- (a) the pass expires; or
 - (b) 3 months after the commencement date,
whichever is the later.
- (4) A condition imposed on a tourist guide pass that is in force immediately before it was suspended is, after the pass is resumed under subsection (2), taken to be a condition imposed on the tourist guide licence.
- (5) A condition imposed on a tour escort pass that is in force immediately before it was suspended is, after the pass is resumed under subsection (3), taken to be a condition imposed on the tour escort licence.

Division 4—Appeals

22. **Appeal not made to Appeal Board of Travel Industry Council before commencement date**
- (1) Despite section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), if—
- (a) but for the enactment of this Ordinance, a person has a right to appeal to the Appeal Board of the Travel Industry Council under the applicable rules against a decision not to issue or renew a tourist guide pass or tour escort pass;

- (b) the person has not made the appeal before the commencement date; and
 - (c) the period within which the person may make the appeal under the applicable rules has not expired on the commencement date,
on and after that date, the person may not make the appeal, but may instead make an appeal against the decision within that period under Part 8.
- (2) If the person makes the appeal under subsection (1), Part 8, with necessary modifications, applies in relation to the appeal.

23. **Appeal not yet determined by Appeal Board of Travel Industry Council**

- (1) This section applies if—
- (a) a decision was made by the Travel Industry Council before the commencement date not to issue or renew a tourist guide pass or tour escort pass; and
 - (b) an appeal against the decision—
 - (i) has been made to the Appeal Board of the Travel Industry Council; but
 - (ii) has not been disposed of before the commencement date.
- (2) Despite section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), on and after the commencement date—
- (a) the Appeal Board of the Travel Industry Council ceases to have power to deal with the appeal; and
 - (b) the appeal may instead only be dealt with by an appeal board under Part 8 as if the appeal were made under that Part.

- (3) For the purposes of subsection (2)(b), Part 8, with necessary modifications, applies in relation to the appeal.

24. Determination of appeal on or after commencement date

- (1) If a decision not to issue or renew a tourist guide pass or tour escort pass is confirmed by an appeal board on or after the commencement date under Part 8, the Authority must act in accordance with the decision by reference to the applicable rules when the decision of the appeal board takes effect.
- (2) If a decision not to issue or renew a tourist guide pass is reversed by an appeal board on or after the commencement date under Part 8, the Authority must issue a tourist guide licence to the appellant and, accordingly, the appellant is taken to be a licensed tourist guide.
- (3) If a decision not to issue or renew a tour escort pass is reversed by an appeal board on or after the commencement date under Part 8, the Authority must issue a tour escort licence to the appellant and, accordingly, the appellant is taken to be a licensed tour escort.

**Division 5—Application for Renewal of Pre-existing Pass
Taken to be Licence etc.**

25. Application for renewal of pre-existing tourist guide pass taken to be tourist guide licence etc.

- (1) In this section—
specified licence (指明牌照) means—
- (a) a pre-existing tourist guide pass that is taken to be a tourist guide licence under section 14(1) or 21(2) of this Schedule; or
- (b) a tourist guide licence issued under section 16(2), 18(2) or 24(2) of this Schedule.

- (2) Sections 46 and 47 (except subsection (2)(a)) apply to the first application of the holder of a specified licence for the renewal of the licence.
- (3) Also, the Authority must not renew the specified licence unless the Authority is satisfied that—
- (a) the applicant—
- (i) holds a permanent identity card; or
- (ii) holds an identity card (other than a permanent identity card), and is not subject to any condition of stay that prohibits the applicant from working as a tourist guide;
- (b) the applicant is suitable to hold a tourist guide licence;
- (c) the applicant holds a valid certificate of competency in first aid, or another similar certificate, issued by an institution specified by the Authority;
- (d) the applicant has passed the licensing examination of tourist guides, or completed the training course, specified by the Authority; and
- (e) the applicant has completed the Continuing Professional Development Scheme for Tourist Guides specified by the Authority.
- (4) Sections 46 and 47 apply to any subsequent application for the renewal of the specified licence.

26. Application for renewal of pre-existing tour escort pass taken to be tour escort licence etc.

- (1) In this section—
specified licence (指明牌照) means—

- (a) a pre-existing tour escort pass that is taken to be a tour escort licence under section 15(1) or 21(3) of this Schedule; or
 - (b) a tour escort licence issued under section 17(2), 19(2) or 24(3) of this Schedule.
- (2) Sections 46 and 47 (except subsection (2)(a)) apply to the first application of the holder of a specified licence for the renewal of the licence.
- (3) Also, the Authority must not renew the specified licence unless the Authority is satisfied that—
- (a) the applicant—
 - (i) holds a permanent identity card; or
 - (ii) holds an identity card (other than a permanent identity card), and is not subject to any condition of stay that prohibits the applicant from working as a tour escort;
 - (b) the applicant is suitable to hold a tour escort licence;
 - (c) the applicant holds a valid certificate of competency in first aid, or another similar certificate, issued by an institution specified by the Authority; and
 - (d) the applicant has passed the licensing examination of tour escorts, or completed the training course, specified by the Authority.
- (4) Sections 46 and 47 apply to any subsequent application for the renewal of the specified licence.

Division 6—Licence Subject to Conditions

27. Licence is subject to conditions imposed by Authority

- (1) This section applies to—

- (a) a pre-existing tourist guide pass that is taken to be a tourist guide licence under section 14(1) or 21(2) of this Schedule;
 - (b) a pre-existing tour escort pass that is taken to be a tour escort licence under section 15(1) or 21(3) of this Schedule;
 - (c) a tourist guide licence issued under section 16(2), 18(2) or 24(2) of this Schedule; or
 - (d) a tour escort licence issued under section 17(2), 19(2) or 24(3) of this Schedule.
- (2) A licence to which this section applies is subject to any condition that the Authority imposes.
- (3) The Authority may, at any time during the validity period of the licence, by notice in writing given to the holder of the licence, do one or more of the following—
- (a) amend or remove the existing conditions of the licence;
 - (b) impose new conditions on the licence.
- (4) If the Authority amends, removes or imposes a condition under subsection (3), the amendment, removal or imposition takes effect on—
- (a) the date of the notice given under that subsection; or
 - (b) if a later date is specified in the notice, the later date.

Part 4

Registrar of Travel Agents

28. Interpretation of Part 4

In this Part—

specified date (指明日期) means the commencement date of section 3 of Schedule 11.

29. Registrar

- (1) If, immediately before the specified date, an act is being done by the Registrar, the act may be continued by the Authority on and after that date in accordance with the repealed Ordinance as if section 3 of Schedule 11 had not been enacted.
- (2) If, immediately before the specified date, an act is being done in relation to the Registrar, the act is to be continued in relation to the Authority on and after that date.
- (3) If, immediately before the specified date, any legal proceedings to which the Registrar is a party are pending, on and after that date—
 - (a) the Authority is substituted as a party to the proceedings in lieu of the Registrar; and
 - (b) the proceedings are to continue as if the Authority had always been the party.
- (4) If, immediately before the specified date, any legal proceedings instituted on behalf of the Registrar are pending, on and after that date—
 - (a) the Authority is substituted as a party to the proceedings in lieu of the Registrar; and
 - (b) the proceedings are to continue as if the Authority had always been the party.
- (5) If a form, document, instrument or act—
 - (a) has been issued, made or done by or on behalf of the Registrar; and
 - (b) is in force immediately before the specified date, or is to take effect on or after that date,

it has effect as if it had been issued, made or done by or on behalf of the Authority in so far as that is required for continuing its effect after that date.

- (6) If an act of performing a function or exercising a power by or on behalf of the Registrar is in force immediately before the specified date, or is to take effect on or after that date, the act has effect as if the function were performed or the power were exercised by the Authority in so far as that is required for continuing its effect after that date.
- (7) If, immediately before the specified date—
 - (a) an application for anything referred to in subsection (5);
 - (b) a request for the performance of a function or exercise of power referred to in subsection (6); or
 - (c) an application or request of a similar nature made to the Registrar,
 has not been disposed of, it is to be regarded as an application or request to the Authority, and is to be disposed of accordingly.
- (8) If a form, document or instrument (including a form, document or instrument referred to in subsection (5) issued or made by or on behalf of the Registrar for the performance of the Registrar's function under the repealed Ordinance)—
 - (a) was specified, prescribed, printed or duplicated for use in connection with the repealed Ordinance; and
 - (b) is in force immediately before the specified date,
 it may be so used even if it contains a reference to the Registrar, and that reference is to be construed as a reference to the Authority.

30. Transfer of Registrar's records to Authority

- (1) All records that are in the Registrar's custody and are, in the opinion of the Authority, required for it to perform its functions under this Ordinance must be transferred from the Registrar to the Authority on or before the specified date.
- (2) In relation to a record transferred under this section, all the rights and obligations of the Registrar subsisting immediately before the transfer are to be transferred to the Authority on the transfer of the record.
- (3) The Authority must ensure that there are in place proper procedures and systems to safeguard against unauthorized access to, or unauthorized use of, the records transferred under this section.
- (4) In relation to personal data transferred under this section—
 - (a) the Personal Data (Privacy) Ordinance (Cap. 486) applies as if the data had been received by the Authority rather than the Registrar;
 - (b) the Authority must ensure that the data is used, disclosed and retained for the purpose for which the data was to be used at the time of the collection and the performance of its functions under this Ordinance; and
 - (c) the Privacy Commissioner for Personal Data may, on and after the date on which the data is transferred, exercise in relation to the Authority any power under the Personal Data (Privacy) Ordinance (Cap. 486) that the Commissioner could have, immediately before that date, exercised in relation to the Registrar for a breach or alleged breach by the Registrar of a requirement under that Ordinance.
- (5) The transfer of a record by the Registrar to the Authority under this section does not amount to—

- (a) a breach of duty of confidentiality to which the Registrar is subject immediately before the transfer; or
- (b) a contravention by the Authority or the Registrar of the Personal Data (Privacy) Ordinance (Cap. 486).

31. Costs and witness expenses under repealed Ordinance

- (1) If—
 - (a) immediately before the specified date, the Registrar has not received the sum ordered to be paid under section 28 of the repealed Ordinance; or
 - (b) on or after the specified date, the Authority orders a person to pay a sum in accordance with section 28 of the repealed Ordinance,
 the sum received on or after that date is to be paid into the funds of the Authority.
- (2) If, on or after the specified date, the Authority decides to pay any witness at any investigation in accordance with section 26 of the repealed Ordinance, the expense is to be paid by the Authority.

32. Other matters not yet determined by Registrar

- (1) Subsection (2) applies if, immediately before the specified date, the Registrar is dealing with a matter under the repealed Ordinance and has not decided whether to—
 - (a) direct the Travel Industry Council to accept an applicant as its member or to reinstate or restore the membership of a licensed travel agent under section 11A of the repealed Ordinance;
 - (b) approve the application of a person for a change of ownership or control of the person's business under section 16 of the repealed Ordinance;

- (c) approve an application made under the repealed Ordinance—
 - (i) for amending a pre-existing licence;
 - (ii) for issuing a duplicate of a pre-existing licence;
 - (iii) for inspecting the register, or any part of the register, maintained by the Registrar under section 6 of the repealed Ordinance;
 - (iv) for issuing a copy of or extract from any entry in that register; or
 - (v) for certifying a copy of or extract from any entry in that register.
- (2) On and after the specified date, the Authority is to deal with the matter in accordance with the repealed Ordinance as if section 3 of Schedule 11 had not been enacted.

Part 5

Travel Industry Council

Division 1—Interpretation

33. Interpretation of Part 5

In this Part—

specified date (指明日期) means the commencement date of section 3 of Schedule 11.

Division 2—Disciplinary Powers of Travel Industry Council

34. Alleged contravention before specified date

- (1) This section applies if—

- (a) there is a case of alleged contravention by a specified person of an applicable rule that occurred before the specified date; but
 - (b) the case has not been disposed of by the Compliance Committee of the Travel Industry Council before the specified date.
 - (2) Despite section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), on and after the specified date—
 - (a) the Compliance Committee of the Travel Industry Council ceases to have power to deal with the case; and
 - (b) the case may instead only be dealt with by the Authority under Parts 6 and 7 by reference to the applicable rules.
- 35. Appeal not made to Appeal Board of Travel Industry Council before specified date**
- (1) Despite section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), if—
 - (a) a decision was made by the Compliance Committee of the Travel Industry Council before the specified date in relation to a specified person;
 - (b) but for the enactment of this Ordinance, a person has a right to appeal to the Appeal Board of the Travel Industry Council under the applicable rules against the decision;
 - (c) the person has not made the appeal before the specified date; and
 - (d) the period within which the person may make the appeal under the applicable rules has not expired on the specified date,

on and after that date, the person may not make the appeal, but may instead make an appeal against the decision within that period under Part 8.

- (2) If the person makes the appeal under subsection (1), Part 8, with necessary modifications, applies in relation to the appeal.

36. Appeal not yet determined by Appeal Board of Travel Industry Council

- (1) This section applies if—
- (a) a decision was made by the Compliance Committee of the Travel Industry Council before the specified date in relation to a specified person; and
 - (b) an appeal against the decision—
 - (i) has been made to the Appeal Board of the Travel Industry Council; but
 - (ii) has not been disposed of before the specified date.
- (2) Despite section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), on and after the specified date—
- (a) the Appeal Board of the Travel Industry Council ceases to have power to deal with the appeal; and
 - (b) the appeal may instead only be dealt with by an appeal board under Part 8 as if the appeal were made under that Part.
- (3) For the purposes of subsection (2)(b), Part 8, with necessary modifications, applies in relation to the appeal.

37. Effect of disciplinary order made by Travel Industry Council

Subject to sections 35 and 36 of this Schedule, if—

- (a) the Travel Industry Council has made a disciplinary order against a specified person; and

- (b) the order is in force immediately before the specified date,

on and after that date, the order is to continue in force, until the expiry of the period (if any) specified by the Council in respect of the order, as if the order were made under Part 7.

Division 3—Records and Assistance Required from Travel Industry Council

38. Travel Industry Council to provide records and assistance to Authority

- (1) On or before the specified date, the Travel Industry Council must provide the Authority with records and assistance that the Authority requires for—
- (a) ascertaining whether a person is a specified person;
 - (b) considering any outstanding application—
 - (i) for a licence under the repealed Ordinance;
 - (ii) for a tourist guide pass;
 - (iii) for a tour escort pass;
 - (iv) for the renewal of a pre-existing licence;
 - (v) for the renewal of a pre-existing tourist guide pass; or
 - (vi) for the renewal of a pre-existing tour escort pass;
 - (c) compiling a register of every person who is or may be—
 - (i) taken to be a licensed travel agent under section 3(1), 7(2) or 11(3) of this Schedule;
 - (ii) taken to be a licensed tourist guide under section 14(1) or 21(2) of this Schedule; or

- (iii) taken to be a licensed tour escort under section 15(1) or 21(3) of this Schedule;
- (d) considering whether a person is suitable to hold a travel agent licence, tourist guide licence or tour escort licence; and
- (e) compiling a record of—
 - (i) the cases of alleged contravention of the applicable rules that have not been disposed of by the Compliance Committee of the Travel Industry Council;
 - (ii) the appeals that have been made to, but have not been disposed of by, the Appeal Board of the Travel Industry Council; and
 - (iii) the disciplinary orders that have been made by the Travel Industry Council.
- (2) The records and assistance must be provided to the Authority in the way, and within the time, specified by the Authority.

39. Records to be provided under section 38 of Schedule 10

- (1) In relation to a record provided by the Travel Industry Council to the Authority under section 38 of this Schedule, all the rights and obligations of the Council subsisting immediately before the provision are to be transferred to the Authority on the provision of the record.
- (2) The Authority must ensure that there are in place proper procedures and systems to safeguard against unauthorized access to, or unauthorized use of, the records provided under section 38 of this Schedule.
- (3) In relation to personal data provided under section 38 of this Schedule—

- (a) the Personal Data (Privacy) Ordinance (Cap. 486) applies as if the data had been received by the Authority rather than the Travel Industry Council;
- (b) the Authority must ensure that the data is used, disclosed and retained for the purposes set out in that section and the performance of its functions under this Ordinance; and
- (c) the Privacy Commissioner for Personal Data may, on and after the date on which the data is transferred, exercise in relation to the Authority any power under the Personal Data (Privacy) Ordinance (Cap. 486) that the Commissioner could have, immediately before that date, exercised in relation to the Travel Industry Council for a breach or alleged breach by the Council of a requirement under that Ordinance.
- (4) The provision of a record by the Travel Industry Council to the Authority under section 38 of this Schedule does not amount to—
 - (a) a breach of duty of confidentiality to which the Travel Industry Council is subject immediately before the provision; or
 - (b) a contravention by the Authority or the Travel Industry Council of the Personal Data (Privacy) Ordinance (Cap. 486).

40. Travel Industry Council to provide documents to Authority

- (1) On or before the specified date, the Travel Industry Council must provide the Authority with a copy of the following documents—
 - (a) the Memorandum and Articles of Association of the Council;

(b) the applicable rules.

(2) The documents must be provided to the Authority in the way, and within the time, specified by the Authority.

41. Authority may upload documents to Internet or similar electronic network

The Authority may, after receiving the documents under section 40 of this Schedule, make the content of the documents available for inspection by the public, free of charge, through the Internet or a similar electronic network.

Part 6

Travel Industry Compensation Fund Management Board

Division 1—Interpretation

42. Interpretation of Part 6

In this Part—

Board (管委會) means the Travel Industry Compensation Fund Management Board that is—

- (a) established by section 32B of the repealed Ordinance; and
- (b) in existence immediately before the specified date;

pre-existing fund (原有基金) means the fund established by section 32C of the repealed Ordinance as the Travel Industry Compensation Fund;

specified date (指明日期) means the commencement date of section 3 of Schedule 11.

Division 2—Transfer of Board's Assets, Liabilities and Records to Authority

43. Transfer of Board's assets and liabilities to Authority

- (1) All assets and liabilities of the Board are, on the specified date, to be transferred to and vested in the Authority's separate account for the Compensation Fund.
- (2) Without limiting subsection (1), the following are to become the property of the Authority on the specified date—
 - (a) the money that, immediately before the specified date, constituted the pre-existing fund;
 - (b) if any money of the pre-existing fund had been invested, any such investment.
- (3) All money or investments that become the property of the Authority under subsection (2) and that were, immediately before the specified date, standing in the books of any bank, or were registered in the books of any bank, corporation or company in the name of the Board are to be transferred in those books by the bank, corporation or company into the name of the Authority.
- (4) The Authority must deposit the money that becomes its property under this section into its separate account for the Compensation Fund.
- (5) Every contract that was made and is in force immediately before the specified date between the Board and any person is to continue in force on and after that date, but is to be construed and have effect as if the Authority were substituted for the Board and the contract is enforceable by or against the Authority accordingly.
- (6) Without affecting subsection (5), any right of the Board as regards the repayment of the whole or a part of any debt or the

payment of interest, which was so in force, and chose in action relating to any such right is, under this subsection, to be transferred to and vested in the Authority.

- (7) Despite any provisions to the contrary in the Board's constitution governing the winding up or dissolution of the Board, and despite the provisions of any other Ordinance, the Board is deemed to be dissolved on the specified date under the relevant legal procedures applicable to a company.

44. Transfer of Board's records to Authority

- (1) All records that are in the Board's custody and are, in the opinion of the Authority, required for it to perform its functions under this Ordinance must be transferred from the Board to the Authority on or before the specified date.
- (2) In relation to a record transferred under this section, all the rights and obligations of the Board subsisting immediately before the transfer are to be transferred to the Authority on the transfer of the record.
- (3) The Authority must ensure that there are in place proper procedures and systems to safeguard against unauthorized access to, or unauthorized use of, the records transferred under this section.
- (4) In relation to personal data transferred under this section—
 - (a) the Personal Data (Privacy) Ordinance (Cap. 486) applies as if the data had been received by the Authority rather than the Board;
 - (b) the Authority must ensure that the data is used, disclosed and retained for the purpose for which the data was to be used at the time of the collection and the performance of its functions under this Ordinance; and

- (c) the Privacy Commissioner for Personal Data may, on and after the date on which the data is transferred, exercise in relation to the Authority any power under the Personal Data (Privacy) Ordinance (Cap. 486) that the Commissioner could have, immediately before that date, exercised in relation to the Board for a breach or alleged breach by the Board of a requirement under that Ordinance.

- (5) The transfer of a record by the Board to the Authority under this section does not amount to—
- (a) a breach of duty of confidentiality to which the Board is subject immediately before the transfer; or
 - (b) a contravention by the Authority or the Board of the Personal Data (Privacy) Ordinance (Cap. 486).

45. Legal proceedings

- (1) If, immediately before the specified date, any legal proceedings to which the Board is a party are pending, on and after that date—
 - (a) the Authority is substituted as a party to the proceedings in lieu of the Board; and
 - (b) the proceedings are to continue as if the Authority had always been the party.
- (2) If, immediately before the specified date, any legal proceedings instituted on behalf of the Board are pending, on and after that date—
 - (a) the Authority is substituted as a party to the proceedings in lieu of the Board; and
 - (b) the proceedings are to continue as if the Authority had always been the party.

Division 3—Ex Gratia Payment**46. Application for ex gratia payment**

(1) In this section—

former application (先前申請) means an application for an ex gratia payment made under section 32E of the repealed Ordinance.

(2) If a determination has been made under the repealed Ordinance in respect of a former application to pay an ex gratia payment, but the payment has not been made before the specified date, the Authority is to make the payment under section 146(1)(b).

(3) If a former application has not been determined before the specified date—

(a) the application is taken to be an application made to the Authority under this Ordinance; and

(b) the Authority is to determine the application, and may pay to the applicant an ex gratia payment of an amount it considers appropriate, in accordance with the regulations made under section 150.

(4) Subsection (5) applies if—

(a) but for the enactment of this Ordinance, a person has a right to apply for an ex gratia payment under section 32E of the repealed Ordinance;

(b) the person has not made the application before the specified date; and

(c) the period within which the person may make the application has not expired on the specified date.

(5) On and after the specified date—

- (a) the person may apply to the Authority for the ex gratia payment; and
- (b) if the person makes the application under paragraph (a), the Authority is to determine the application, and may pay to the person an ex gratia payment of an amount it considers appropriate, in accordance with the regulations made under section 150.
-

Schedule 11

[ss. 2 & 172 & Sch. 10]

Related Amendments

Part 1

Amendments to Inland Revenue Ordinance (Cap. 112)

1. Schedule 13 amended (institutions that may accredit or recognize training or development courses for the purpose of section 12(6)(c)(iii))
 - (1) Schedule 13—
Repeal item 35.
 - (2) Schedule 13—
Add
“39. The Travel Industry Authority established by section 151 of the Travel Industry Ordinance (of 2017)”.

Part 2

Amendments to Prevention of Bribery Ordinance (Cap. 201)

2. Schedule 1 amended (public bodies)
 - (1) Schedule 1—
Repeal items 55 and 69.
 - (2) Schedule 1—

Add

- “134. Travel Industry Authority (including any committees and working groups established under the Travel Industry Ordinance (of 2017)).”.

Part 3

Repeal of Travel Agents Ordinance (Cap. 218)

3. Travel Agents Ordinance repealed
Travel Agents Ordinance—
Repeal the Ordinance.

Part 4

Amendment to Hong Kong Tourism Board Ordinance (Cap. 302)

4. Section 2 amended (interpretation)
Section 2(1)—
Repeal the definition of *licensed travel agent*
Substitute
“*licensed travel agent* (持牌旅行代理商) means a natural person who is engaged in the business of a licensed travel agent licensed under the Travel Industry Ordinance (of 2017);”.

Part 5

Amendment to The Ombudsman Ordinance (Cap. 397)

- 5. **Schedule 1 amended (organizations to which this Ordinance applies)**
Schedule 1, Part 1—
Add in alphabetical order
“Travel Industry Authority.”

Part 6

Amendment to Administrative Appeals Board Ordinance (Cap. 442)

- 6. **Schedule amended**
The Schedule—
Repeal item 13.

Part 7

Amendment to Legislative Council Ordinance (Cap. 542)

- 7. **Section 200 amended (composition of the tourism functional constituency)**
Section 200—
Repeal paragraph (b)
Substitute

“(b) persons holding travel agent licences under the Travel Industry Ordinance (of 2017);”.

Part 8

Amendment to Chief Executive Election Ordinance (Cap. 569)

- 8. **Schedule, section 2 amended (how Election Committee is to be constituted)**
The Schedule, section 2, Table 5, item 2, column 3—
Repeal paragraph (1)
Substitute
“(1) Persons holding travel agent licences under the Travel Industry Ordinance (of 2017).”.

Explanatory Memorandum

The main purpose of this Bill is to regulate the activities of travel agents, tourist guides and tour escorts.

2. The Bill also establishes a Travel Industry Authority (*Authority*).
3. The Bill contains 11 Parts and 11 Schedules.

Part 1—Preliminary

4. Clause 1 sets out the short title and provides for commencement.
5. Clause 2 contains the definitions for the interpretation of the Bill.
6. Clause 3 empowers the Authority to exempt a person or class of persons from the operation of the Bill.

Part 2—Travel Agents

7. Clause 4 provides for the meaning of carrying on travel agent business.
8. Clause 5 provides for the meaning of carrying on Mainland inbound tour group business.
9. Clause 6 contains prohibitions relating to travel agent business and Mainland inbound tour group business.
10. Clause 7 provides for the procedures for the application for a travel agent licence.
11. Clause 8 empowers the Authority to issue travel agent licences.
12. Clause 9 provides for the procedures for the application of a branch licence.
13. Clause 10 empowers the Authority to issue to a licensed travel agent who carries on travel agent business at more than one location a branch licence in respect of each of the branch locations.

14. Clause 11 states what a travel agent licence and a branch licence authorize.
15. Clause 12 requires the Authority to notify the applicant if it refuses to issue a travel agent licence or branch licence.
16. Clause 13 provides for the procedures for the application for the renewal of a travel agent licence or branch licence.
17. Clause 14 empowers the Authority to renew a travel agent licence or branch licence.
18. Clause 15 requires the Authority to notify the applicant if it refuses to renew a travel agent licence or branch licence.
19. Clause 16 prohibits a person whose application for a travel agent licence or branch licence, or whose application for the renewal of a travel agent licence or branch licence, has been refused, from applying for the licence, or the renewal of the licence, again within the prescribed period.
20. Clause 17 prohibits a person whose travel agent licence or branch licence has been revoked from applying for the licence or branch licence again within the prescribed period.
21. Clauses 18 to 32 relate to the requirements that an applicant for a travel agent licence or branch licence or the renewal of a travel agent licence or branch licence, or a licensed travel agent, must meet, including—
 - (a) the suitability requirement (clause 18);
 - (b) the capital requirement (clause 19);
 - (c) the guarantee money requirement (clauses 20 to 23);
 - (d) the authorized representative requirement (clauses 24 to 31); and
 - (e) the staffing requirement (clause 32).

22. Clause 33 requires a licensed travel agent who carries on Mainland inbound tour group business to pay a registration fee for each Mainland inbound tour group.
23. Clauses 34 and 35 require that a licensed travel agent must not change, or permit a change of, the ownership or control of its business as a travel agent without the Authority's prior approval.
24. Clause 36 requires a licensed travel agent to display the travel agent licence or branch licence at the premises specified in the licence.
25. Clause 37 requires a licensed travel agent to display particular information on a vehicle arranged by the travel agent for transporting a tour group.

Part 3—Tourist Guides and Tour Escorts

26. Clause 38 provides for the meaning of working as a tourist guide.
27. Clause 39 provides for the meaning of working as a tour escort.
28. Clause 40 makes it an offence for a person to work as a tourist guide without a tourist guide licence or to work as a tour escort without a tour escort licence.
29. Clause 41 makes it an offence for a licensed travel agent to employ, or otherwise engage, a person who is not a licensed tourist guide as a tourist guide, or a person who is not a licensed tour escort as a tour escort.
30. Clause 42 provides for the procedures for the application for a tourist guide licence or tour escort licence.
31. Clause 43 empowers the Authority to issue tourist guide licences and tour escort licences.
32. Clause 44 states what a tourist guide licence and a tour escort licence authorize.

33. Clause 45 requires the Authority to notify the applicant if it refuses to issue a tourist guide licence or tour escort licence.
34. Clause 46 provides for the procedures for the application for the renewal of a tourist guide licence or tour escort licence.
35. Clause 47 empowers the Authority to renew a tourist guide licence or tour escort licence.
36. Clause 48 requires the Authority to notify the applicant if it refuses to renew a tourist guide licence or tour escort licence.
37. Clause 49 prohibits a person whose application for a tourist guide licence, or whose application for the renewal of a tourist guide licence, has been refused, from applying for the licence, or the renewal of the licence, again within the prescribed period.
38. Clause 50 prohibits a person whose application for a tour escort licence, or whose application for the renewal of a tour escort licence, has been refused, from applying for the licence, or the renewal of the licence, again within the prescribed period.
39. Clause 51 prohibits a person whose tourist guide licence has been revoked from applying for the licence again within the prescribed period.
40. Clause 52 prohibits a person whose tour escort licence has been revoked from applying for the licence again within the prescribed period.
41. Clause 53 sets out the matters that the Authority must have regard to in determining whether a person is suitable to hold a tourist guide licence or tour escort licence.

Part 4—General Provisions Relating to Licences and Licensees

42. Clause 54 requires a licensed travel agent, licensed tourist guide or licensed tour escort (*licensee*) to comply with prescribed requirements.

43. Clause 55 requires a licensee to comply with guidelines, directives and codes of conduct issued by the Authority.
44. Clause 56 requires that a licensee must have a correspondence address in Hong Kong to which communications of the Authority may be sent.
45. Clause 57 requires a licensed tourist guide or licensed tour escort to inform the Authority of any changes in the prescribed particulars of the tourist guide or tour escort.
46. Clause 58 provides for the amendments to the particulars contained in a licence or branch licence.
47. Clause 59 empowers the Authority to issue a duplicate of a licence or branch licence if the licence or branch licence has been lost, damaged or destroyed.
48. Clause 60 creates offences relating to the application for a travel agent licence or branch licence, for the renewal of a travel agent licence or branch licence, for a duplicate of a travel agent licence or branch licence, or for amending any particulars contained in a travel agent licence or branch licence.
49. Clause 61 creates offences relating to the application for a tourist guide licence or tour escort licence, for the renewal of a tourist guide licence or tour escort licence, for a duplicate of a tourist guide licence or tour escort licence, or for amending any particulars contained in a tourist guide licence or tour escort licence.
50. Section 62 sets out the effect of the suspension of a licence.

Part 5—Register

51. Clause 63 requires the Authority to keep a register of licences.
52. Clause 64 provides for the content of the register.

53. Clause 65 requires the Authority to make the particulars contained in the register available for inspection and copying.
54. Clause 66 provides for the effect of a copy of particulars contained in the register that has been certified by the Executive Director of the Authority as correct.

Part 6—Inspection and Investigation

55. Clause 67 contains the definitions for the interpretation of Part 6.
56. Clause 68 provides that the Authority may conduct an inspection to ascertain whether the requirements in the Bill have been complied with.
57. Clause 69 empowers the Authority to appoint an inspector to conduct an inspection.
58. Clause 70 provides for the powers relating to an inspection.
59. Clause 71 provides that a person may lodge a complaint with the Authority against a licensee or any other person, making particular allegations.
60. Clause 72 provides that the Authority may, on complaint or on reasonable suspicion, conduct an investigation.
61. Clause 73 empowers the Authority to appoint an investigator to conduct an investigation.
62. 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.
63. Clauses 82, 83 and 84 create offences relating to an inspection or investigation under Part 6.
64. Clause 85 provides for privileges and immunities relating to an inspection or investigation.

Part 7—Disciplinary Matters

65. Clause 86 contains the definitions for the interpretation of Part 7.
66. Clause 87 provides for the establishment of a disciplinary committee by the Authority.
67. Clause 88 provides that a member of the disciplinary committee may resign from office.
68. Clause 89 empowers the Authority to remove a member of the disciplinary committee from office.
69. Clause 90 sets out the functions of the disciplinary committee.
70. Clause 91 empowers the Authority to give directions to the disciplinary committee.
71. Clauses 92 to 96 provide for the procedures of the disciplinary committee's meetings.
72. Clause 97 empowers the Authority to refer the facts of a case of complaint or suspicion to the chairperson of the disciplinary committee after the case is investigated and provides for how the chairperson is to deal with the case.
73. Clauses 98 and 99 provide for how the chairperson of the disciplinary committee is to deal with the case.
74. Clauses 100 to 107 are constitutional and procedural provisions relating to an inquiry committee established for an inquiry into the case.
75. Clause 108 sets out the disciplinary orders that may be made after the inquiry.
76. Clause 109 creates an offence relating to inquiries.
77. Clause 110 requires an inquiry committee to give notices to a licensed travel agent and the travel agent's authorized representative if it makes an order requiring the authorized

- representative to cease to be the travel agent's authorized representative.
78. Clause 111 provides for the procedures for application for approval of an individual as a licensed travel agent's new authorized representative.
79. Clauses 112 and 113 empower the Authority to revoke or suspend a license in a summary way.
80. Clause 114 empowers the Authority to shorten the period of suspension or lift the suspension.
81. Clause 115 provides for the effect of the revocation or suspension of a travel agent licence.
82. Clause 116 provides for privileges and immunities relating to an inquiry.
83. Clause 117 requires that if a legal adviser appointed by an inquiry committee gives advice to the committee, the advice must be given in the presence of the parties to the inquiry.

Part 8—Appeals

84. Clause 118 requires the Secretary for Commerce and Economic Development (*Secretary*) to appoint a panel of individuals (*appeal panel*) for hearing appeals under Part 8.
85. Clause 119 provides that a member of the appeal panel may resign from office.
86. Clause 120 empowers the Secretary to remove a member of the appeal panel from office.
87. Clause 121 provides that a person aggrieved by any of the specified matters may lodge an appeal with the Secretary.
88. Clauses 122 to 135 are constitutional and procedural provisions relating to the appeal board and the hearing of an appeal.

89. Clause 136 provides for privileges and immunities relating to an appeal.
90. Clause 137 requires that if a legal adviser appointed by an appeal board gives advice to the board, the advice must be given in the presence of the parties to the appeal.
91. Clause 138 empowers the Secretary to make regulations for the purposes of Part 8.

Part 9—Travel Industry Compensation Fund and Levies

92. Clause 139 contains the definitions for the interpretation of Part 9.
93. Clause 140 provides that the fund established by section 32C of the Travel Agents Ordinance (Cap. 218) (*Compensation Fund*) is to continue in existence in its original name.
94. Clause 141 provides for the powers of the Authority in relation to the Compensation Fund.
95. Clause 142 clarifies that the funds of the Authority do not include the Compensation Fund.
96. Clause 143 empowers the Authority to make ex gratia payments to or in respect of outbound travellers from the Compensation Fund.
97. Clause 144 provides for the subrogation of the Authority to the rights and remedies of an outbound traveller after an ex gratia payment has been made to or in respect of the traveller from the Compensation Fund.
98. Clause 145 creates an offence relating to an application for an ex gratia payment.
99. Clause 146 empowers the Authority to make other payments from the Compensation Fund.

100. Clause 147 provides for the liability of a licensed travel agent to pay an Authority levy to the Authority in respect of every outbound fare received by the travel agent.
101. Clause 148 provides for the liability of a licensed travel agent to contribute to the Compensation Fund by way of Fund levy to the Authority in respect of every outbound fare received by the travel agent.
102. Clause 149 provides that the levies may be paid through an electronic system.
103. Clause 150 provides that the Authority may, after consulting the Secretary, make regulations for the purposes of Part 9.

Part 10—Travel Industry Authority

104. Clause 151 establishes the Authority.
105. Clause 152 sets out the Authority's functions.
106. Clause 153 sets out the Authority's powers.
107. Clause 154 sets out the Authority's status in relation to the Government.
108. Clause 155 provides for delegation of functions by the Authority.
109. Clause 156 empowers the Authority to specify the form of any document required for the purposes of the Bill.
110. Clause 157 provides immunity for an act done or omitted to be done in good faith by members of the Authority and others in the performance of the Authority's functions.
111. Clauses 158 to 162 provide for disclosure of interests by a member of the Authority or disciplinary committee, or of a member of a committee or working group of the Authority.
112. Clause 163 creates offences for giving or disclosing information that is obtained or received officially.

Part 11—Miscellaneous

- 113. Clause 164 empowers the Authority to make regulations for the purposes of Parts 2 to 7 of the Bill.
- 114. Clause 165 contains a prohibition relating to the publication of an advertisement about the provision of travel services.
- 115. Clause 166 provides for the liability of officers, partners and persons concerned in the management of a firm.
- 116. Clause 167 sets out how a notice or summons may be served on a person.
- 117. Clause 168 provides that fees paid are not refundable.
- 118. Clause 169 provides that registration fees, financial penalties, costs, expenses and levies payable under the Bill are recoverable as a civil debt.
- 119. Clause 170 provides for amendments to Schedules 1 to 9.
- 120. Clause 171 applies Schedule 10, which contains savings and transitional provisions.
- 121. Clause 172 applies Schedule 11, which contains related amendments to other enactments.

Schedules

- 122. Schedule 1 sets out the period within which an application for the renewal of a travel agent licence, branch licence, tourist guide licence or tour escort licence must be made.
- 123. Schedules 2, 3 and 4 set out the matters that the Authority must have regard to when considering an application for a licence or branch licence, or the renewal of a licence or branch licence.
- 124. Schedule 5 sets out the amounts of the capital requirement.

- 125. Schedule 6 sets out the amounts of the guarantee money requirement.
- 126. Schedule 7 sets out the qualification requirement for an authorized representative of a travel agent.
- 127. Schedule 8 sets out the education requirement for an applicant for a tourist guide licence or tour escort licence.
- 128. Schedule 9 contains constitutional, administrative and financial provisions relating to the Authority.
- 129. Schedule 10 contains savings and transitional provisions.
- 130. Schedule 11 contains related amendments to other enactments.

**Framework of New Licence Conditions against Unscrupulous Acts,
particularly Coerced Shopping
(Details to be formulated through Subsidiary Legislation)**

On Travel Agents

- (a) A travel agent must take all reasonable steps¹ to safeguard the safety and interest of any member of the inbound tour group that the travel agent receives.
- (b) 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.
- (c) A travel agent must take all reasonable steps² to prevent the travel agent's employees, agents and service providers (e.g. tourist guides, shops on the itinerary) from engaging or otherwise getting involved in any act of coercing any inbound tour group member into shopping.
- (d) A travel agent must not, without reasonable excuse, abandon or threaten to abandon any inbound tour group member, and take all reasonable steps³ to ensure that the travel agent's tourist guides must not commit any such act.

¹ 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 group, checking whether the relevant persons have committed any act of coerced shopping before.

² See footnote 1 above.

³ See footnote 1 above.

On Tourist Guides and Tour Escorts

- (a) A tourist guide must take all reasonable steps⁴ to safeguard the safety and interest of any member of the inbound tour group that the tourist guide receives when he or she is working.
- (b) 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.
- (c) A tourist guide, without reasonable excuse, must not abandon or threaten to abandon any inbound tour group member when he or she is working.
- (d) A tourist guide or tour escort must not lend his or her licence to any others or allow any others to use it.

⁴ 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 TIA upon noticing that a tourist is assaulted or coerced into making purchases.

Implications of the Proposal

Financial and Civil Service Implications

The TIA will operate on a self-financing basis in the long run, and will be mainly supported by Authority levies, licence fees, and registration fees on inbound tour groups from the Mainland. Subject to the passage of the Bill, to support the initial operation of the TIA, the Government will apply to the LegCo for funding to provide the TIA with a one-off capital grant as seed money in accordance with the established mechanism. There will be no long-term recurrent financial implications for the Government.

2. Upon the full commencement of the new ordinance, the TAR of the Tourism Commission will be disbanded. This will mean savings to the public coffer of about \$11.5 million per annum, being the recurrent funding for the TAR, and deletion of 16 civil service posts¹ in the General Grades. On the other hand, licence fees from travel agents and miscellaneous income (including that from issuing duplicates of travel agent licences and making amendments to travel agent licences) are now collected by the TAR and deposited into the Government's General Revenue Account. After the full commencement of the new regulatory regime, the licence fees and related income will become one of the major sources of revenue of the TIA, which will result in a reduction in the Government revenue of about \$11.4 million per annum. As an independent statutory regulatory body, the TIA will recruit its own staff and engage service providers as necessary to achieve institutional independence and operational flexibility under the new regulatory regime. In addition, the Commerce and Economic Development Bureau will provide secretariat support for the independent appeal panel under the new regulatory regime.

3. Any additional resources for the Commerce and Economic Development Bureau in preparing for and taking forward the new regulatory regime, if required, will be sought with justifications in accordance with the established mechanism. Besides, the proposal may

¹ These are from the grades of Executive Officer, Treasury Accountant, Clerical Officer, Personal Secretary, Clerical Assistant and Office Assistant. Affected officers will be redeployed to other bureaux/departments as in normal posting arrangements.

increase the court's workload. Under the established funding arrangements agreed between the Judiciary and the Government, the Government will provide any additional resources to the Judiciary through the established mechanism as necessary.

Economic Implications

4. The proposal will help improve the service quality of the travel industry, reduce malpractices in the trade and enhance consumer rights protection. It will also strengthen Hong Kong's reputation as an international tourist destination, benefiting the tourism sector and the economy of Hong Kong in the long run.

5. The guarantee money requirement set out in paragraph 9(a) of the main paper is proposed in response to the outcome of the public consultation in 2011. Under the proposed arrangement, all newly established travel agents will be required to immediately deposit guarantee money of \$500,000, whilst existing travel agents will be required to deposit guarantee money if their non-compliance exceeds certain levels specified by the TIA. From the competition perspective, whilst this arrangement would impose additional costs and thus have an impact on new market entrants, it is the Government's policy intention to ensure that all newly established travel agents are financially committed to business operation, so as to better protect consumers' interests. On the other hand, most existing travel agents are small and medium-sized and have been law-abiding and compliant all along. Applying the same guarantee money requirement on them may drive some out of the market, thus reducing competition in the market.

Sustainability Implications

6. The proposal will help improve the overall quality of the travel industry by enhancing the service quality and professionalism of travel agents, tourist guides and tour escorts. It is expected to be conducive to the sustainable and healthy development of the travel industry in the long run.