

LEGISLATIVE COUNCIL BRIEF

Travel Agents Ordinance
(Chapter 218)

TRAVEL AGENTS (AMENDMENT) BILL 2001

INTRODUCTION

At the meeting of the Executive Council on 19 June 2001, the Council ADVISED and the Chief Executive ORDERED that the Travel Agents (Amendment) Bill 2001, at Annex A, should be introduced into the Legislative Council, to put in place a licensing scheme to regulate inbound travel agents.

A

BACKGROUND AND ARGUMENT

General Background

2. At present, the Travel Agents Ordinance only provides for the control and regulation of outbound travel agents. It does not regulate services provided by inbound travel agents. The Travel Agents Ordinance requires all outbound travel agents to apply for a licence. Operation of an outbound travel agent without a licence is unlawful. The Registrar of Travel Agents (RTA) is responsible for the licensing of outbound travel agents. He conducts financial surveillance on licensed travel agents, and imposes licence conditions. In addition to his licensing function, the RTA can initiate investigation if he suspects that a particular travel agent is operating against the public interest including defaults and serious malpractices. He can suspend or revoke a licence, subject to a proper hearing, if he considers that the agent is operating against the public interest.

3. The statutory regulatory framework is supported by a self-regulatory regime. Membership of an approved organisation is one of the licence conditions for outbound travel agents. The Travel Industry Council of Hong Kong (TIC) is at present the only approved organisation under section 11 of the Travel Agents Ordinance. The TIC is a self-regulatory body of the travel industry. It sets and enforces codes of conduct and rules to regulate business operations in areas such as advertising and business practices. Violation of codes of conduct will result in penalties including warning, fine, suspension and revocation of TIC membership. To enhance the service quality of outbound tour escorts, the TIC and the Vocational Training Council jointly organise a certificate course for outbound tour escorts. The TIC requires its members to employ only certified tour escorts for tour-escorting

duties.

4. The TIC has set up a Consumer Relations Committee to hear and resolve disputes between travellers and travel agents. Where a complaint against travel agent malpractice is substantiated, the TIC may impose penalties on the travel agent. In cases of complaints about service quality, the TIC may arbitrate or, if not successful, decide on settlement. The decision of the TIC is binding on the travel agent but not on the complainant, who may seek other forms of redress if dissatisfied with the decision.

5. The RTA and the TIC have maintained close liaison and cooperation in respect of the surveillance of outbound travel agents and case investigations. The RTA also hears appeals against the refusal of TIC membership. Any persons aggrieved by the Registrar's decision of refusing to grant, suspending or revoking a licence may appeal to the Administrative Appeal Board.

Present Position

6. Although there is general consumer protection legislation in place to protect consumers including tourists, there is a lack of an appropriate and direct channel for dealing with malpractices in the treatment of inbound tourists such as leaving them unattended or taking them to shops which charge exorbitant prices not commensurate with the quality of the goods sold.

7. The TIC estimates that there are about 500 travel agents involved in the provision of inbound travel service. Of these, about 300 are licensed travel agents and members of the TIC. The remainder, around 200, only deal with inbound tourists and are not members of the TIC. They are not subject to the regulation of the Travel Agents Ordinance and the TIC's codes of conduct drawn up for compliance by its members.

The Proposals

8. We are well aware of public concern and have been working closely with the trade to uphold the standard of inbound travel agents and protect Hong Kong's reputation as a tourist-friendly city. After careful consideration of the views and recommendations made by the trade and related bodies, we propose to amend the Travel Agents Ordinance to put in place a licensing scheme to regulate inbound travel agents. This will be complemented by self-regulation in the industry through the TIC. In addition, the TIC is liaising with the relevant parties on the introduction of a certification scheme for tour co-ordinators modelling after that for outbound tour escorts.

9. We propose to require all inbound travel agents to apply for a licence as in the case of outbound agents. Any person carrying on a business as an inbound travel agent without a licence would commit a criminal offence. The RTA will serve as the licensing authority of both inbound and outbound travel agents. We also propose to adopt the licensing requirements currently applicable to outbound travel

agents for inbound agents, which include membership of TIC. It follows that inbound agents will be required to observe TIC's codes of conduct and be regulated by the industry itself.

10. In order to avoid creating unnecessary disruption or incurring additional costs to existing licence holders, we intend to grant one single licence to eligible travel agents providing outbound and/or inbound travel service. This means that only those travel agents (around 200) currently providing inbound travel service alone will need to apply for a new licence.

11. Under the Travel Agents Ordinance, outbound agents are required to contribute to the Travel Industry Compensation Fund (TICF) through a levy charged on outbound package tours. The levy provides the TICF with a steady source of income to protect travellers from Hong Kong in the event of defaults by outbound agents or travel accidents outside Hong Kong through ex gratia payment. We consider that it will not be appropriate for ex gratia payments to be made from the TICF to inbound travellers. Inbound travel agents therefore will not be required to contribute to the Fund levy. Nonetheless, the TIC has agreed to handle complaints against inbound agents as well as disputes between travellers and travel agents and undertakes to take care of visitors found unattended.

THE BILL

12. The main provisions of the Bill 2001 are –

- (a) **Clause 1(2)**
Provides for bringing into effect the legislation on a date to be appointed by the Secretary for Economic Services by notice in the Gazette. This is intended to allow time for eligible inbound travel agents to apply and for the RTA to process and issue the licences.
- (b) **Clause 3**
Adds new definitions of “inbound travel agent” and “inbound travel service”, “outbound travel agent” and “outbound travel service”.
- (c) **Clause 5**
Adds a new section describing what constitutes carrying on business as an inbound travel agent.
- (d) **Clauses 9 and 10**
Makes consequential amendments to the Travel Agents Regulations.

 B The existing provisions in the Travel Agents Ordinance and its subsidiary legislation to which consequential amendments are to be made are at Annex B.

PUBLIC CONSULTATION

13. We have consulted the Legislative Council Panel on Economic Services and the Advisory Committee on Travel Agents on the proposed amendments. Both of them supported the proposals.

14. We have also consulted key industry bodies including the TIC, the Hong Kong Tourism Board, the Consumer Council, the Hong Kong Hotels Association, the Federation of Hong Kong Hotels Owners Ltd., the Hong Kong Association of Registered Tour Co-ordinators and the Hong Kong Inbound Tour Operator Association Ltd. on the proposed amendments. They generally welcomed the proposals.

BASIC LAW IMPLICATIONS

15. The Department of Justice advises that the Bill does not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

16. The Department of Justice advises that the Bill is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE BILL

17. The Bill will not affect the current binding effect of the Travel Agents Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

18. The RTA will take up responsibility of licensing inbound travel agents using his existing resources. The TIC may require additional resources to handle complaints against inbound agents and disputes between travellers and travel agents, and to take care of visitors found unattended. However, the TIC is a self-financing body and will bear fully its operating costs from its own source of income including membership fees. The proposal therefore will not give rise to additional financial and staffing implications for the Government.

ECONOMIC IMPLICATIONS

19. The proposed amendments should have some cost impact on travel agents currently providing inbound travel service only. The overall impact on the economy is positive as the proposed amendments should help to uphold the standard of inbound travel agents and protect Hong Kong's reputation as a tourist-friendly city.

ENVIRONMENTAL IMPLICATIONS

20. The proposed amendments do not have any impact on the environment.

LEGISLATIVE TIMETABLE

21. The legislative timetable will be as follows –

Publication in the Gazette	29 June 2001
First Reading and commencement of Second Reading debate	11 July 2001
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

PUBLICITY

22. We will issue a press release on the day when the Bill is published in the Gazette on 29 June 2001. A spokesman will be available to handle enquiries.

ENQUIRY

23. Enquiries may be directed to Mr Wu Kam Yin, Assistant Commissioner for Tourism, Economic Services Bureau at tel. no. 2810 3525.

**Economic Services Bureau
22 June 2001**

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