

**For discussion
on 22 June 2009**

Legislative Council Panel on Economic Development

Proposals to amend the Travel Agents Ordinance (Specification of Fund Levy) Notice (Cap. 218D) and the Travel Industry Compensation Fund Rules (Cap. 218E & F)

Purpose

This paper sets out proposed amendments to the Travel Agents Ordinance (Specification of Fund Levy) Notice (Cap. 218D) and the Travel Industry Compensation Fund Rules (Cap. 218E & F). The amendments aim to suspend the Travel Industry Compensation Fund (the Fund) Levy, increase ex gratia payments to travellers who die or are injured whilst travelling abroad and introduce a new set of procedures including a new authorisation form to be signed by an outbound traveller before departure.

Background

2. The Fund was established in 1993 under the Travel Agents Ordinance (TAO) (Cap. 218) to provide compensation to outbound travellers of up to 90% of the loss in outbound package tour fares in case of default by travel agents. The Fund is held, managed and applied by the Board. Its scope of protection was extended in 1996 through the introduction of the Package Tour Accident Contingency Fund Scheme (the Scheme) to provide ex gratia payment to outbound package tour travellers who die or are injured in accidents whilst travelling abroad. The ex gratia payments cover expenses incurred by the outbound travellers concerned in medical treatment and funeral-related expenses and their relatives in making compassionate visits to the place of accident.

3. The Fund derives its income from the Fund levy which is contributed by travel agents in accordance with section 32H of the TAO. By end May 2009, the Fund had a balance of \$527 million. The rate of levy is stipulated in the Travel Agents Ordinance (Specification of Fund levy) Notice (Cap. 218D), which is at present 0.15% of every outbound fare.

4. With a view to enhancing the protection to travellers and facilitating trade development, the Board conducted a public consultation between 13 March and 30 April 2009 to collect the views of stakeholders on four proposals. Details of these proposals are set out at the Annex.

5. The consultation document was distributed to every travel agent (around 1 480) to invite their views. The document was put on the Board's website and placed at the District Offices of the Home Affairs Department for access by members of the public. Consultation sessions with interested bodies including the Travel Industry Council of Hong Kong (TIC), the Advisory Committee on Travel Agents and the Consumer Council were also conducted upon request.

6. A total of 28 written submissions reflecting the views of 421 respondents were received. Apart from the written submissions, verbal views expressed by travel agents/trade members on various occasions were also taken into consideration.

7. The Board reported that the proposals have received support from stakeholders as detailed below -

	Proposal 1	Proposal 2	Proposal 3	Proposal 4
Support	82% (346)	84% (352)	69% (289)	62% (260)
Non-support	8% (35)	8% (36)	19% (80)	25% (107)
Neutral/ no views given	10% (40)	8% (33)	12% (52)	13% (54)
Total	100% (421)			

8. During the consultation, the Board also received a number of suggestions relating to the general protection of travellers as below -

- to extend the scope of the Fund's protection to cover purchases of single item of air tickets, hotel accommodation, etc;
- to cover loss suffered by agents and travellers arising from cancellation of trips due to natural disasters, civil riots in the destinations, endemics, etc;
- to assist Hong Kong residents stranded in other places due to natural disasters, civil riots, etc. to return to Hong Kong; and
- to use the Fund to assist the travel trade in taking out a professional liability and indemnity insurance.

The Board noted that while the above issues currently fall outside the statutory ambit of the Fund, they are related to traveller protection, and the Board would study them in future meetings.

The Board's Recommendations

9. After examining the views received and the financial position of the Fund, the Board recommended to the Secretary for Commerce and Economic Development (SCED) to implement the following four measures -

- (a) setting up a levy rate adjustment mechanism, with the prudent level set at \$400 million and the buffer level set at \$500 million. This will enhance the transparency of the Fund levy setting process and allow a predictable and timely response to market situations;
- (b) suspending the collection of Fund levy under the adjustment mechanism. The suspension will help reduce the operation cost of travel agents, thus help them tide over the difficult times amidst the global economic downturn. According to the Board's actuarial consultant, the proposed suspension of the Fund levy will not affect the Board's ability to meet its statutory obligations in ex gratia payments even in the worst case scenario⁽¹⁾;
- (c) increasing the amount of ex gratia payments to outbound travellers under the Scheme for compassionate visits by relatives and funeral-related expenses from \$40,000 to \$100,000 respectively, increasing the maximum amount of ex gratia payment for making compassionate visit from \$20,000 to \$25,000 per relative to provide more flexibility, and removing the restriction on number of relatives which is currently capped at two. These proposals will enhance the protection to outbound travellers; and
- (d) introducing a set of new procedures for travellers to make advance authorisation to their representatives before departure on outbound package tours. This will provide additional protection to travellers by helping to ensure that they and their representatives will be able to obtain the necessary ex gratia payments from the Fund in a timely manner. The arrangement will also facilitate the travel agents in assisting the relatives to visit the injured travellers or handle funeral related issues in a timely manner if the travel agents' staff is so

(1) The worst case scenario as depicted by the Board's actuarial consultant refers to the situation when two large-scale and a number of small-scale travel agents default simultaneously.

pre-authorised by the travellers.

Considerations

10. We consider that the Board's recommendations have taken into account the long-term financial health of the Fund, the interest of the travelling public and operation of the travel trade. Noting also that all four proposals have received majority support during the consultation, we agree with the Board's recommendations.

Legislative Amendments

11. The proposals to suspend Fund Levy, to increase ex gratia payments to travellers and to introduce new advance authorisation arrangements require amendments to the Travel Agents Ordinance (Specification of Fund Levy) Notice (Cap. 218D) and the Travel Industry Compensation Fund Rules (Cap. 218E & F). Under the TAO, the SCED has the authority for setting the rate of the Fund levy. The Board has the authority, after consulting the SCED, to make rules to change level of protection and application procedures of the Fund.

12. As regards the proposed levy adjustment mechanism, the SCED will process the necessary legislative amendments to adjust the levy rate in future, having regard to this mechanism as well as the balance of the Fund, turnover of outbound package tours, business environment of travel agents, findings of the actuarial consultant and any other relevant factors.

Legislative Timetable

13. Subject to Members' endorsement, we intend to introduce the proposed amendments to the Travel Agents Ordinance (Specification of Fund Levy) Notice (Cap. 218D) to the Legislative Council for negative vetting on 8 July 2009 to reduce the Fund levy rate from 0.15% to 0%. We aim at implementing the suspension of the Fund levy on 1 November 2009.

14. Amendments to the Travel Industry Compensation Fund Rules (Cap. 218 E & F) to increase the ex gratia payments to travellers and to introduce the advance authorisation form are being prepared. We aim at introducing the amended Rules to the Legislative Council for negative vetting by end 2009 for implementation in the first quarter of 2010.

Advice Sought

15. Members are invited to endorse the legislative amendment proposals set out in paragraphs 11 and 12 above.

**Tourism Commission
Commerce and Economic Development Bureau
June 2009**

**Four Proposals Put Forward by the Travel Industry Compensation Fund
Management Board for Public Consultation
from 13 March to 30 April 2009**

Proposal 1: Putting in place a mechanism with triggering thresholds to suspend or resume collection of the Fund levy

- The Board proposes to put in place a mechanism with triggering thresholds for enhancing transparency for the suspension and resumption of the collection of the Fund levy. On the recommendations of a professional actuarial study, the Board proposes to set the prudent level of the Fund at \$400 million and the buffer level at \$500 million.
- When the balance of the Fund reaches \$500 million, the Board will recommend to reduce the levy rate to zero, i.e. to suspend the collection of the Fund levy; and when the balance drops below \$400 million, the Board will recommend to resume the collection of the Fund levy, at a rate to be decided in the light of the balance of the Fund, the turnover of outbound package tours, business environment of travel agents, findings of the actuarial consultant and other relevant factors.
- The Board will continue to conduct regular reviews of the prudent level of the Fund with a view to recommending adjustments to the triggering thresholds as and when necessary. The frequency of the reviews should be no less than once every three years.

Proposal 2: Reducing the Fund levy rate to zero

- According to the adjustment mechanism for the Fund levy set out in Proposal 1, the Board proposes to suspend the collection of the Fund levy (i.e. by reducing the Fund levy rate to 0%).
- In view of the current economic climate, some travel trade members have suggested to suspend the collection of the Fund levy to help the travel agents ride out the financial crisis. Others prefer to reduce it to a nominal rate so as to provide a steady stream of income for the Fund and maintain a habit of Fund levy contribution by the travel agents and the travelling public.

- Some consumer protection advocates propose to maintain a higher buffer level for the Fund to cater for possible compensation claims until the economy recovers.
- The Board notes that the proposal will benefit the travel trade by reducing their operating costs and the travelling public may enjoy lower package tour fares should the travel agents pass on the reduction in Fund levy to their clients.
- The Board is also mindful that the recent global financial turmoil and its as yet unclear impact on the economy may make it difficult to predict accurately the Fund's future commitments in ex gratia payments.

Proposal 3: Increasing ex gratia payments to outbound travellers

- The Board proposes to enhance the protection to travellers under the Package Tour Accident Contingency Fund Scheme. It provides ex gratia payments to outbound travellers who die or are injured while on an outbound package tour.
- The Board proposes to increase the maximum amount of ex gratia payments for the following two items -
 - (a) for expenses incurred in relation to the funeral, cremation or repatriation of the remains of the deceased outbound traveller back to Hong Kong – to increase from \$40,000 to \$100,000; and
 - (b) for compassionate visits by relatives to the place of accident of the injured or deceased travellers – to increase from \$40,000 to \$100,000 and to remove the restriction on the number of relatives currently set at a maximum of two.
- The proposal will enhance the protection for outbound travellers and will not cause a great burden to the Fund.
- The Board recognises that the amount of increase should be set at an appropriate level lest it creates a disincentive for travellers to take out travel insurance. The Board is conscious that the Fund should not be a substitute for travel insurance.

Proposal 4: Advance authorisation by outbound travellers

- The Board proposes to introduce an arrangement whereby travellers can make advance authorisation before departure on outbound package tours to enable their authorised representatives to apply for ex gratia payments under the Scheme, if needed.
- The advance authorisation arrangement is to address situations where the travellers have been hospitalised outside Hong Kong after a travel accident and are not able to give the requisite authorisation to apply for ex gratia payments.
- The Board considers that the new arrangement will facilitate travel agents in assisting the spouse and relatives to visit the injured travellers at the place of accident immediately afterwards or to handle the repatriation and the funeral services of the dead travellers, if the travel agents are pre-authorised as their representatives.
- The new arrangement will be administered on a voluntary basis and widely publicised to enable general travellers to have a better understanding of how it works so that they can make an informed choice.