

Legislative Council Panel on Economic Development

Review of the Operation and Regulatory Framework of the Tourism Sector in Hong Kong

Consultation Findings and Proposed Way Forward

Purpose

This paper outlines the findings of the public consultation on the review of the operation and regulatory framework of the tourism sector in Hong Kong, and the Administration's proposed way forward.

Background

2. The Chief Executive announced in his Policy Address in October 2010 that the Government would review the operation and regulatory framework of the tourism sector in Hong Kong, including the role, powers, responsibilities and operation of the Travel Industry Council of Hong Kong (TIC), as well as its working relationship with the Travel Agents Registry (TAR). The aim is to promote the healthy and sustainable development of the tourism industry.

3. We launched a ten-week public consultation exercise on the review of the operation and regulatory framework of the tourism sector from 29 April to 15 July 2011. We published a consultation document to invite views from the public and the trade on four options for reforming the regulatory framework of the tourism sector, the licensing system for travel agents as well as the regulation of tourist guides. During the consultation period, we met with and listened to the views of Association Members of the TIC, tourist guide and tour escort organisations, Chairmen and Vice-chairmen of District Councils, and academics, etc. We also gathered views from travel agents at the annual Exchange Forum of the TAR; met with the Independent Directors of the TIC, the Hong Kong Tourism Board, and the Chairman and Chief Executive of the Consumer Council as well as its Trade Practices Committee. We attended a meeting of the Panel on Economic Development of the Legislative Council (the ED Panel) in which deputations on the review were received.

Findings of the Consultation

4. A total of 1 249 written submissions were received from individuals and organisations/companies, including 13 submissions forwarded to us by the ED Panel and three late submissions. Of these 1 249 submissions, 1 148 were submissions from the travel trade that were basically drawn from six template versions. Counting each version as a single submission, there were 107 submissions. The major views and comments received are summarised at **Annex**.

5. We have proposed four reform options in the consultation document:

- (1) retain the current two-tier regulatory regime, reform the TIC and specify its role as a public association;
- (2) in addition to implementing Option (1), further transfer certain regulatory functions from the TIC to a Government department;
- (3) establish an independent statutory body to regulate the tourism sector; and
- (4) a Government department to take over the regulation duties from the TIC.

While different sectors of the travel trade and the public have offered a variety of views during the consultation, there is broad consensus that the current regulatory regime of the tourism sector should be reformed to instil a higher degree of independence, credibility and transparency.

6. During the consultation period, the TIC put forward a modified option which was built on Option (2). The TIC's modified option accepted revamping the composition and functions of the TIC Board. It proposed an equal number of trade and non-trade directors on the Board so that, with a government official as ex-officio member, non-trade practitioners would form a slight majority of the Board of directors as envisaged under the original Option (2). In addition, building on the proposal to set up a separate independent committee to handle appeal cases, the TIC's modified option further proposed to transfer all compliance cases involving travel agents, tourist guides and tour escorts to another new independent committee. The TIC would continue to draw up codes of conduct and directives for the travel trade and handle refund requests directed at travel agents. The TIC considered that this modified option would address the criticism of "insiders regulating insiders" without having to set up a new statutory body. The

majority of submissions from travel agents, including the standard letters, supported the TIC's proposal. Some of them further held the view that an effective regulatory framework should be one presided by a majority of trade representatives who possessed sufficient understanding of the operation of the trade and the necessary expertise.

7. Other than the travel trade, those organisations and members of the public that had submitted views mainly favoured either Options (3) or (4), and considered a comprehensive reform of the current regime was the only way to instil a higher degree of credibility to the regulatory framework. The majority of public bodies, academics, political parties, etc. that had expressed their views considered an independent statutory body, with non-trade members constituting the majority on its Board and with well-defined statutory functions, would be the most effective in addressing the public's concern over "insiders regulating insiders". More resolute actions would be expected of an independent statutory body in dealing with unscrupulous trade practices. Such a view was also expressed consistently by the mainstream local media and commentators during the consultation period. There was, nevertheless, general agreement that Option (3) would incur higher costs and would require more time to roll out.

Licensing system for travel agents and regulation of tourist guides

8. Views collected during the consultation period favoured one single licence to regulate all travel agents operating outbound and inbound travel businesses. As for the operation of the current licensing arrangements for travel agents, there were views that the existing minimum capital requirement¹ for setting up travel business was too low. There was general support for a statutory licensing system to regulate tourist guides. The introduction of separate licensing requirements for tourist guides receiving Mainland tour groups was not supported as the general view was that tourist guides, regardless of which market segment they served, should be subject to the same requirements. Some of the submissions also expressed views on the regulation of tour escorts and the general view was that a statutory licensing system should also be introduced for them.

1. Any persons in Hong Kong applying for a Travel Agents Licence must be a member of the TIC as specified in Schedule 1 of the Travel Agents Ordinance. The TIC requires its members who conduct any travel and tourism business to have a minimum paid-up capital of HK\$500,000, plus an additional HK\$250,000 for each branch office. For members whose business is restricted to booking hotel rooms and air tickets, retailing package tours, and other travel related dealings, the TIC requires them to provide a bank guarantee of HK\$150,000 in favour of the TIC.

Financial arrangement

9. As for the financial arrangement for the future regulatory regime, there were concerns regarding the adoption of the “user-pay and cost-recovery” principle, lest it might lead to an increase in licence fees for travel agents, tourist guides and escorts, or might even result in the extension of the current levy to inbound tours. Some submissions expressed concern that it would be difficult to define the users under the “user-pay” principle since, apart from the travel trade, other sectors such as retail, hotel and catering would also benefit from a well-regulated tourism industry. There was however broad consensus that the Government should provide a one-off capital grant to support the operation of an independent regulatory body at its initial stage, if one were to be set up.

Detailed Proposals

10. Having carefully considered the comments received, and the relevant considerations, such as independence and credibility of the regulatory body, the participation by trade members, regulatory effectiveness, etc., we propose setting up the following new regulatory framework for the tourism sector –

- (a) an independent statutory body be established as the overall regulatory body of the tourism sector as envisaged under Option (3);
- (b) the minimum capital requirement for Travel Agents Licences be raised;
- (c) a statutory licensing system for tourist guides and tour escorts be introduced;
- (d) an independent appeal mechanism be set up to handle appeals against the decisions of the regulatory body in (a) above; and
- (e) the independent statutory body, which will be mainly funded by the levy on outbound tours, licence fees from travel agents and Mainland inbound tour registration fees, should run on a self-financing basis in the long run. A one-off capital grant will be provided by the Government to support the operation of the independent body at its initial stage.

Establishment of an independent statutory body

A. Functions and regulatory role

11. We propose that an independent statutory body, tentatively named the Travel Industry Authority (TIA), should be set up to regulate the operation of the tourism sector. The TIA would have the following functions and powers –

- (a) licensing of travel agents, tourist guides and tour escorts;
- (b) drawing up codes of conduct, guidelines, and directives to govern the work of travel agents, tourist guides and tour escorts, and regular monitoring of their work;
- (c) handling complaints against travel agents, tourist guides and tour escorts;
- (d) investigating suspected breaches of the provisions of the relevant legislation, codes of conduct, guidelines and directives by travel agents, tourist guides or tour escorts and taking disciplinary action where appropriate;
- (e) advising the Government on matters relating to the regulation of the tourism sector; and
- (f) managing the Travel Industry Compensation Fund.

In other words, the TIA would be the sole regulatory body of the tourism sector. It would take over the current regulatory functions of the TIC and the TAR, the advisory functions of the Advisory Committee on Travel Agents and the functions of the Travel Industry Compensation Fund Management Board.

B. Composition

12. We propose that all members of the TIA Board should be appointed by the Government. To ensure credibility and independence of the TIA, the Chairman should be a non-trade member, and that non-trade members drawn from different professions should form the majority. The professional knowledge and expertise of these members would be beneficial to the TIA in the process of drawing up codes of conduct, guidelines and directives for its regulatory work. We propose that there should be adequate trade members

serving the TIA Board and its Committees to ensure that the TIA possesses the necessary knowledge and expertise in the operation of the trade. This would also facilitate communication between the Government, the TIA, and trade practitioners, such that the directives and codes of conduct drawn up by the TIA could address the crux of problems, be operationally practical for the trade, and most importantly, would not strangle businesses nor hinder the development of the sector. Representatives of tourist guides and tour escorts would also be appointed to reflect the interests and concerns of these practitioners in the TIA. Moreover, to underline the importance the Government attaches to the co-operation with the TIA and the industry, the Government would enhance its participation in the new regulatory regime, including appointing the Commissioner for Tourism as the vice-chairman of the TIA, and requiring that the appointment of the executive head of the TIA would be subject to the approval of the Government etc., to ensure that the TIA would take protecting the interest of the public as its prime mission. We believe that the proposed composition above would strike a balance between the needs for achieving independence of the TIA from undue influence of the trade, and ensuring adequate trade knowledge and expertise for effective regulation of the tourism sector.

Licensing of travel agents

13. Given that the comments we received in general do not support introducing separate licences for travel agents operating outbound and inbound travel businesses, we do not propose any major changes to the current licensing system of travel agents.

A. Minimum capital requirement for setting up business

14. To address the concerns about the relatively low threshold for setting up travel business, we propose raising the minimum capital requirement for applicants of Travel Agents Licences. A higher entry threshold could enhance the quality of the travel trade. In revising the minimum capital requirement, we would make reference to those imposed in other places and discuss with the trade the appropriate level of the minimum capital requirement. To reduce the impact on the travel trade, we would adopt a phased approach in raising the capital requirement for existing travel agents under the new licensing system.

B. Regulation of conduct of travel agents

15. To address the public concern about the operation of some Mainland inbound tours, we propose that the TIA should put in place an effective

disciplinary system and measures with legal backing to temporarily suspend or revoke the licences of travel agents found guilty of malpractices. The TIA should also introduce appropriate financial penalties, and step up inspection on travel agents.

Licensing of tourist guides and tour escorts

16. In addition to regulating travel agents, we propose that the TIA should also be responsible for regulating tourist guides and tour escorts. We would introduce a statutory licensing system for tourist guides and tour escorts to replace the accreditation system currently undertaken² by the TIC. As the accreditation system for tourist guides and tour escorts under the TIC has generally been operating smoothly, we propose that the new licensing system under the TIA could model on the existing arrangements, with refinements made to individual aspects in line with trade realities and the objectives of enhancing the service quality and standard of trade practitioners in the long run. The TIA would also be responsible for drawing up codes of conduct and setting up a disciplinary system to ensure effective regulation of tourist guides and tour escorts. To reduce the impact on practitioners, we propose putting in place transitional arrangements whereby holders of Tour Escort and Tourist Guide Passes would continue to be recognised until their existing Passes expire.

Appeal mechanism

17. We propose that there should be an independent appeal mechanism to handle appeals against the decisions of the TIA. Persons aggrieved by the decisions of the TIA with regard to application for the issue or renewal of a licence, or penalty imposed in respect of any breaches of licensing conditions, codes, directives, etc. could lodge an appeal direct with the Appeal Board.

Funding arrangements

18. To avoid substantially increasing the operating costs of the trade upon the establishment of the TIA, and causing an unreasonable burden to the travelling public, we propose that the Government should provide a one-off capital grant to the TIA as seed money for meeting the set-up cost and part of

2. The TIC currently undertakes an accreditation system of tourist guides and tour escorts. Applicants for the Tour Escort Pass must attend the "Certificate Course for Outbound Tour Escort" organised by the TIC, pass the examination and hold the relevant certificate. Applicants for the Tourist Guide Pass must hold certificates recognised by the TIC and pass the relevant qualifying examinations before they could obtain the Pass.

the operating expenses, and as contingency reserve in events of extremely poor market conditions which would reduce its annual income.

19. We propose that the TIA should operate on a self-financing basis in the long run, and its sources of funding would include the licence fees from travel agents, levy on outbound tours, and registration fees for Mainland inbound tours. With a view to achieving self-financing in the long run, the TIA would inevitably have to adjust its fees by adopting an incremental approach. To reduce the impact on the industry, particularly having regard to the affordability of small and medium sized travel agents, we do not propose any increase to the existing licensing fees and levy immediately upon the establishment of the TIA. As regards the registration fee for Mainland inbound tours, notwithstanding that the TIC has deployed substantial resources in regulating Mainland inbound tours in recent years, the income in this respect has remained extremely low³, which leaves much room for a substantial upward adjustment. We anticipate that the adjustment in the Mainland inbound registration fee would not have a widespread impact on the trade given that of the 1 600 travel agents in Hong Kong, only around 110 (around 7%) are receiving agents for Mainland inbound tours.

Trade participation

20. The current regulatory regime, with the TIC as the trade's self-regulatory body, has been in operation for over 20 years. It has witnessed the evolution and development of the Hong Kong tourism industry. Indeed, this regime has made significant contribution in the past, and its achievements, particularly in regulating outbound tours and coordinating the trade in handling tourism-related emergency incidents, deserves ample recognition. To facilitate smooth transition of the regulatory work under the new regime, we will draw reference from the current regime and make further improvements. The experience accumulated in the past two decades will provide the blueprint for developing an improved and enhanced regulatory regime.

21. As regards the TIC, it is familiar with the operation of the trade and has accumulated years of regulatory experience. Through the years, it has been playing an important role in regulating and developing the tourism sector. With a view to tapping the TIC's expertise and strength, the Government would enter into discussions with the TIC to explore its involvement in the future regulatory regime, and to examine the possibilities

3. Only inbound tours from the Mainland are required to pay a registration fee which is currently set at \$20 per tour. The registration fee is \$20 for tour groups comprising not more than 40 members; and \$20 for every 40 members or part thereof for tour groups comprising more than 40 members.

of entrusting to it certain non-regulatory public functions, e.g. coordinating the trade in dealing with emergency incidents involving inbound or outbound tours. If it is concluded that such arrangement is appropriate, we would consider providing financial support to the TIC for carrying out such non-regulatory public functions.

Next Steps

22. As the next step, we will proceed with drafting a new legislation to replace the current Travel Agents Ordinance (Chapter 218). If things are progressing well, we expect that the draft new legislation could be introduced into the Legislative Council in about two and a half years. When drafting the legislation, we will continue to listen to the views of the public and the trade in ironing out the detailed arrangements under the new regulatory regime, and explore with the TIC on its future public functions.

23. We expect that there may be a transition period of at least three years, from now to the enactment of the new legislation. During the transition period, we will continue to adopt the current two-tier regulatory regime, the TAR under the Tourism Commission will step up its surveillance work. We will also engage the TIC and encourage it to continue with its current regulatory efforts.

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