LCQ17: Regulation of travel agents
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Following is a written reply by the Secretary for Commerce and Economic Development, Mr Gregory So, to a question by the Hon Paul Tse in the Legislative Council today (January 30):

Question:

The travel agent's licence of the GTG International Travel Limited (i.e. "Smart Holiday") was revoked by the Travel Agents Registry (the Registry) on January 8 this year. There have been newspaper commentaries pointing out that the facts that (i) the total liabilities of Smart Holiday have reached a high amount of $60 million, (ii) quite a number of travellers have suffered losses, and (iii) there are even cases which are not protected under the Travel Industry Compensation Fund (TICF) mechanism because the original receipts of outbound fares were not duly franked with the levy stamp, and therefore there is no proof that levies have been paid by the travel agent, reflect a big loophole in the regulatory work of the Government. Also, the authorities, albeit knowing well beforehand that Smart Holiday was heavily in debt, not only failed to make timely announcement, but even renewed its licence allowing it to continue to operate, making it possible for Smart Holiday to accept travellers' enrolment for tours during the Lunar New Year period and to obtain services from its suppliers. This is tantamount to giving travel agents which are on the brink of closing down a last chance to reap money and to treat TICF as an automatic teller machine. In this connection, will the Government inform this Council:

(a) during the 12-month period prior to the revocation of the licence of Smart Holiday, how the Registry had monitored the financial situation and operation of the travel agent, and why the Registry had revoked the licence of Smart Holiday only when the liabilities had accumulated to a high amount of $60 million; of the reasons why the Registry had allowed Smart Holiday, which was already in serious financial difficulties, to continue to engage in pre-sale of services to travellers;

(b) of the total liabilities of SIG Holiday Limited (SIG), another travel agent which had ceased operation earlier due to financial difficulties, before the closure of its business;

(c) whether it has assessed the respective amounts of ex-gratia payments that TICF are required to pay to the travellers affected by the closure of Smart Holiday and SIG;

(d) of the objective criteria (e.g. the percentage of debts in the total assets) based on which the Registry decides to revoke the licences of travel agents in financial difficulties; whether the same criteria are adopted for handling cases involving different travel agents; if not, of the reasons for that; and

(e) whether it has reviewed if the revocation of the licence of Smart Holiday only after its liabilities had accumulated to $60 million reflects a loophole in the Registry's regulation of travel agents; if it has, of the outcome of the review; if it has not, the reasons for that, and whether it will conduct such a review immediately to avoid recurrence of the aforesaid situation?

Reply:

President,

The Government attaches great importance to the sustainable and healthy development of the travel industry. The Travel Agents Registry (TAR) under the Tourism Commission (TC), is responsible for the licensing of travel agents and related work, including administering the Travel Agents Ordinance (TAO) (Cap 218) by monitoring the financial situation of travel agents, processing applications for travel agents' licences and their renewal, and scrutinising the financial reports of over 1 600 travel agents. The TAR maintains close communication with travel agents through its daily operation. It also co-ordinates the efforts of the Travel Industry Council of Hong Kong (TIC) and travel agents in case of emergency; and assists the TIC in its communication with other government departments.

My reply to the five questions is set out below -

(a) Upon receipt of report in August 2012 that Smart Holiday did not meet its normal wage payment schedule, the TAR sent officers to the headquarters of Smart Holiday twice and inspected records of the latest balance of the agent's bank accounts, payments of wages to staff and rentals for its branches. As Smart Holiday was unable to give reasonable explanation for its failure to produce breakdowns of current assets and liabilities, the TAR issued a written warning to the company and summoned its shareholders and directors to a meeting at which the company's responsible persons admitted that Smart Holiday's total debts amounted to about $27 million.

Taking into account the number of customers at the time (about 11 000 enrolled customers yet to depart, involving about $14 million in tour fees) and the operation and financial situation of the company, the TAR issued a two-month licence to the company in September 2012, so that it could carry out financial and business restructuring. In view of the company's operation and financial situation, the TAR imposed stricter conditions to require auditor's report (ending March 31, 2012), six-monthly management account (ending September 30, 2012) endorsed by its board of directors, weekly reports on the number of customers and tour fees classified by destinations and package type, balance of bank accounts, total bank loans and strategic plan on the company's sales and financial management.

On October 8, 2012, Smart Holiday submitted its auditor's report ending March 31, 2012. Having considered the auditor's report and the company's uncertain financial situation, the Registrar of Travel Agents (RTA) summoned the company's controllers to investigation under section 21 of the TAO on November 6, 2012. Before the investigation, Smart Holiday submitted a proposal to improve its business and finance, by selling private assets to realise cash to reduce the company's debts, seeking injection of new capital from new investors, reducing expenditures on advertisement and scaling down the number of branches to reduce operating costs. The controllers of Smart Holiday also pledged injection of new capital of $3 million. Having considered the company's financial situation and the controllers' detailed improvement measures, RTA issued a one-month licence to the company, expiring on December 10, 2012.

Before the expiry of the licence, RTA summoned the company's controllers to investigation on December 6, 2012 and learned that the business and assets of the company had been taken over by a "Joint and Several Receiver and Manager" appointed by its creditor. The Joint and Several Receiver and Manager produced documentary proof of its financial support in the company's daily operation to protect the interest of travellers. The Joint and Several Receiver and Manager planned to restructure the company's organisation and finance so as to continue with its travel business. In view of the Joint and Several Receiver and Manager's actual capital injection and concrete plan to restructure the company's organisation and finance, RTA issued another one-month licence to facilitate the company's organisational and financial restructuring. The tours of Smart Holiday had been departing as scheduled since August 2012, whilst the number of travellers and tour fees dropped to 4 200 and $5.5 million from its peak of 11 000 travellers and $14 million.

On January 8, 2013, RTA summoned Smart Holiday's controllers to investigation at which the Joint and Several Receiver and Manager indicated that it had ceased the injection of new capital and gave up the company restructuring. RTA thus revoked Smart Holiday's licence under section 19(1)(c) of the TAO. The number of travellers affected was 1 900, involving $2.8 million in tour fees. The TAR subsequently activated the application mechanism of the Travel Industry Compensation Fund (TICF) to help affected travellers.

(b) Since April 2012, there had been incidents of financial disputes and problems related to SIG Holiday Limited (SIG)'s operation and personnel management, in addition to financial disputes with its business counterparts outside Hong Kong. Apart from creditors who approached the TAR on SIG's defaults, there were also SIG travellers stranded at destinations with difficulties in returning to Hong Kong. In view of this situation, the TAR required in May 2012 that SIG should produce its auditor's report in September 2012. However, up to the expiry of its licence in December 2012, SIG had not been able to produce such reports. The TAR was therefore unable to make an accurate assessment of the indebtedness of the company.

The management account ending September 30, 2012 indicates that SIG's debts amounted to $2.81 million. SIG's tour receiving counterparts in the Mainland also made claims to the TAR that the company owed them about $5.6 million in tour reception fees. In view of the uncertainties of SIG's financial situation, its failure to meet the licensing conditions of submitting auditor's reports, and the fact that SIG employees also approached Labour Department, the TIC and the TAR on the company's wage defaults, the TAR issued to SIG a one-month licence in November 2012 and closely monitored its business and financial situation as well as the progress of capital injection.

Under the monitoring of the TAR, SIG injected new capital twice. But the company's business, management and financial situation remained chaotic, leaving the TAR unconvinced that the company could carry on its business in the public interest. RTA summoned the controllers of SIG to investigation on November 30, 2012 before its licence expired. The controllers of SIG however did not show up. The licence of SIG expired on December 4, 2012.

(c) We estimate that the TICF needs to give out about $2.5 million and less than $10,000 in compensation to customers of Smart Holiday and SIG respectively. The TICF has previously received 33 applications for compensation at about $239,180 from 176 customers of Smart Holiday. The TICF also received an application for compensation at about $5,000 from two customers of SIG. The application was subsequently withdrawn.

(d) According to section 14 of the Travel Agents Regulations (Cap 218A), the licensee shall keep and maintain proper books of account. "Proper books of account" are books of account which explain all transactions entered into by the licensee in the course of the business of travel agent carried on by him and give a true and fair view of the state of that business. The existing financial monitoring mechanism of the TAR requires licensed travel agents to submit balance sheet, annual profit and loss account, and cash flow statement audited by independent auditors every year.

For travel agents with a high gearing ratio (those with unsatisfactory balance sheets and persistent loss in business), the TAR takes tougher monitoring measures by requiring business restructuring plan, quarterly submission of management account, injection of new capital and/or issuing licences of a shorter duration, so as to closely monitor their financial situation.

Given the wide scope of business, differing modes of operation and business environments, it is not appropriate to impose a single cap in the gearing ratio as a licensing condition. When deciding whether a licence should be renewed, the TAR will generally consider the following factors -

- whether the state of business of the travel agent meets the requirements of the TIC and whether it holds a valid membership of the TIC;
- whether the financial situation of the travel agent, as evidenced by its balance sheet, cash level, profit and loss status, can sustain its business;
- whether the licensee has violated any licensing conditions or written requirements imposed by the TAR; and
- whether all controllers of the company remain fit and proper to carry on business as a travel agent (whether there have been any new criminal records, bankruptcy records and violation of Code of Conduct).

These aside, the TAR may conduct investigation into a travel agent under section 21 of the TAO to find out whether the licensee has carried on business on contrary to the public interest and thus warrants suspension or revocation of his licence. Where there is no imminent need to suspend or revoke a licence, the TAR may consider issuing a licence of a shorter duration and imposing stricter monitoring measures to compel the travel agent to improve the quality of its operation.

(e) Given the differing business scales, types of business, modes of operation and business environments, it is not appropriate to consider applications for licence renewal solely on account of the indebtedness of the travel agents.

As depicted above, the TAR had been closely monitoring Smart Holiday from August 2012 to January 2013. In the defence of the public interest, the TAR spared no efforts under the TAO in investigating the company's financial situation and compelling it to make improvement. As a matter of fact, subsequent to the imposition of strict licensing conditions and the issue of licences of a shorter duration, the number customers of the company dropped gradually from 11 000 in early September 2012 to 1 900 in early January 2013. The impact on the general public was greatly minimised.

The TAR reviews its financial monitoring mechanism from time to time to ensure effective regulation of travel agents. We will actively listen to the views of the trade and the public to enhance the existing system.

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