

LCQ7: Regulation of online sale of travel related products

Following is a question by the Hon Yiu Si-wing and a written reply by the Secretary for Commerce and Economic Development, Mr Gregory So, in the Legislative Council today (February 17):

Question:

Quite a number of members of the public have relayed to me that upon finding the travel products purchased by them from certain travel websites not matching the sale descriptions, they intended to lodge complaints. However, since the companies operating the websites concerned were not travel agents licensed in Hong Kong and did not even hold a Business Registration Certificate (BRC) of Hong Kong, coupled with the fact that such transactions were processed through overseas servers, they were unable to seek compensation in Hong Kong. They are therefore of the view that their rights and interests as consumers lack protection. In this connection, will the Government inform this Council:

(1) of the number of complaints involving travel websites received by government departments and relevant organisations in each of the past five years; among such complaints, the respective numbers of those involving websites operated by (i) companies which were not travel agents licensed in Hong Kong and (ii) companies not holding a BRC of Hong Kong;

(2) whether the two following acts done by companies which are not travel agents licensed in Hong Kong and which do not hold a BRC of Hong Kong are subject to regulation by the existing legislation: (i) to sell travel products to Hong Kong residents via the travel websites operated by them, and (ii) to conduct promotional activities for such products in Hong Kong; if they are subject to regulation, of the details; and

(3) if the two aforesaid acts are not subject to regulation, whether there is currently any protection for the rights and interests of the consumers concerned; if there is, of the details; whether the authorities will introduce legislation to regulate such acts, so as to protect consumers' rights and interests and ensure a level playing field for licensed travel agents to do business; if they will not introduce legislation, of the reasons for that; if they will do so, the details of that, and whether the authorities will implement interim measures to enhance protection of consumers' rights and interests before this Council completes the enactment of the relevant legislation; if they will, of the details; if not, the

reasons for that?

Reply:

President,

The Government all along attaches great importance to the protection of consumer rights of travellers. Our replies to the questions raised by Hon Yiu are as follows:

(1) The numbers of complaints from members of the public in Hong Kong about purchases of outbound travel products from travel websites received by the Travel Agents Registry of the Tourism Commission in the past five years are set out in Annex.

The Travel Industry Council of Hong Kong (TIC) and the Consumer Council do not maintain a breakdown for complaints involving travel websites in the past five years.

(2) The current Travel Agents Ordinance (Cap. 218) has provisions against activities of unlicensed travel agents, be they holders of Hong Kong business registration certificates or not. According to section 9(a) of the Ordinance, no person shall carry on business as a travel agent without a licence. Section 48(1) of the Ordinance stipulates that an offender is liable on conviction upon indictment to a fine of \$100,000 and to imprisonment for two years.

According to section 4 of the Ordinance, an outbound travel agent is defined as a person, other than a transport operator, who carries on business "in Hong Kong" by obtaining for another person carriage, by any means of conveyance, on a journey which is to commence in Hong Kong and which thereafter is to take place mainly outside Hong Kong; or by obtaining for another person accommodation at a place outside Hong Kong for which payment is, or is to be, made to that person by or on behalf of that other person of an amount on account of the cost of that accommodation. A travel website operator who is not a licensed travel agent but carries on outbound travel business as described under section 4 falls within the ambit of the Ordinance.

According to section 47(1) of the Ordinance, no person shall publish any advertisement referring to the provision of a travel service by any person required to be licensed under this Ordinance unless that advertisement relates to the provision of a travel service by a licensed travel agent and the licence number of that licensed travel agent is stated clearly in the advertisement. Section 47(2) also stipulates that violation

of section 47(1) is an offence and the liability can be a fine of \$2,000.

(3) The ambit of the Ordinance against unlicensed travel agent business is confined to "business in Hong Kong" and the nature of such business is defined as "obtaining for another person" a travel service. Whether an operator is carrying on business "in Hong Kong" does not depend solely on whether its website is hosted in Hong Kong or overseas. Factors for consideration also include the nature of the business, the means of business transactions, where the business is managed and the location of the control centre of the business, etc. It also depends on whether the conduct of the operator's obtaining for another person the air-ticket or hotel accommodation is performed in Hong Kong or overseas. Ultimately, the decision to prosecute is based on the evidence collected and the facts of individual cases. The Ordinance's regulation of activities conducted in Hong Kong is a basic matter of jurisdiction as well as a practical matter of law enforcement and collection of evidence.

As with making non-travel purchases online, consumers should be careful in choosing a service provider on the Internet and they should also understand the potential risks of making transactions via the Internet. On the consumer protection front, the Consumer Council reminds members of the public from time to time that when shopping on the Internet, consumers need to be vigilant of issues such as the terms and conditions of offers, the risks of Internet shopping and the ways to seek claims. The TIC also reminds travellers at its website to check whether the travel websites are licensed travel agents in Hong Kong when purchasing travel services on the Internet.

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