

**For discussion
on 13 December 2016**

Legislative Council Panel on Economic Development

Key Legislative Proposals of Travel Industry Bill

Purpose

This paper briefs Members on the key legislative proposals of the Travel Industry Bill (“the Bill”).

Background

2. The Government conducted a public consultation on the review of the operation and regulatory framework of Hong Kong’s travel industry in 2011. Having duly considered the views gathered, the Government decided to set up the Travel Industry Authority (“TIA”) and formulate a new piece of legislation. A comprehensive licensing regime for travel agents, tourist guides and tour escorts would be put in place to regulate Hong Kong’s travel industry in a holistic manner, with a view to enhancing the quality and promoting a healthy long-term development of the industry.

3. After the introduction of the preliminary proposals of the new regulatory framework to the trade and this Panel in 2013, we commenced the drafting of the Bill, and have been refining the details of the new regulatory framework having regard to the latest developments of the industry.

4. In fact, a majority of travel trade members have been carrying on business properly. However, cases of non-compliance in the trade, some even involving injuries and deaths, have taken place from time to time in recent years. Furthermore, a small number of trade members launched the so-called “non-co-operation movement” in early 2016 in attempts to circumvent the trade self-regulation. These have tarnished the image and reputation of Hong Kong’s travel industry. We have therefore strived to strike a balance when drafting the Bill, reducing the impact on law-abiding travel agents on the one hand, whilst combating unscrupulous acts through targeted measures to protect the interests of the travel trade and tourists on the other hand.

Key Legislative Proposals of the Bill

(1) Establishment of the TIA with a legal basis for trade regulation

5. Under the new regulatory regime, the TIA is a statutory regulatory body which will take up the licensing and trade regulatory roles from the Travel Agents Registry and the Travel Industry Council of Hong Kong (“TIC”). We propose that the TIA will comprise 30 members, of whom non-travel trade members are in the majority, i.e. 17 non-trade members (including a chairperson, a vice-chairperson being the Commissioner for Tourism, and non-trade members from different sectors) and 13 trade members (including representatives of travel agents, tourist guides and tour escorts). Members will be appointed by the Chief Executive, with a majority of them coming from outside the travel trade, with a view to establishing an independent and impartial image.

6. The new regulatory regime will regulate the acts of travel agents, tourist guides and tour escorts mainly from three aspects, i.e. primary legislation, subsidiary legislation (mainly licensing conditions formulated), and directives, codes of conduct as well as guidelines formulated administratively by the TIA. The primary and subsidiary legislation will prescribe certain criminal offences, and the TIA will also impose disciplinary orders upon licensees who commit offences through disciplinary proceedings. Those breaching directives, codes of conduct or guidelines will be followed up by the TIA through disciplinary proceedings.

(2) Strengthening of the licensing and regulatory regime for travel agents

7. Under the new regulatory regime, there will not be any differential requirements for issuing and renewing a travel agent licence based on the travel agent’s mode of operation (sole proprietorship, partnership or company) or business being carried on (outbound or inbound travel business). The definition of carrying on travel business will be based on the one under the Travel Agents Ordinance (Cap. 218) at present. Any person who carries on outbound travel business and/or inbound travel business¹ must obtain a travel agent licence.

¹ Simply put, carrying on outbound travel business refers to obtaining for another person: (a) 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; and/or (b) accommodation at a place outside Hong Kong. Carrying on inbound travel business refers to obtaining for a visitor to Hong Kong: (a) carriage, by any means of conveyance, on a journey which is to commence outside Hong Kong and which either terminates in Hong Kong or involves the visitor passing through immigration controls before departing from Hong Kong; (b) accommodation in Hong Kong; and/or (c) sightseeing or visits to local places of interest, meals, shopping trips, and/or local transport in connection with any of such activities.

8. The new regulatory regime will generally adopt the current requirements for the issue and renewal of a travel agent licence, namely the various considerations on whether an applicant is suitable for holding a licence under the current Travel Agents Ordinance (Cap. 218) and the requirements stipulated by the TIC². Same as under the current regime, a travel agent licence will normally be valid for one year. In addition, the new regime has the following new requirements –

Requirement to deposit guarantee money

9. The requirement for travel agents to deposit guarantee money with the TIA aims to ensure that the travel agents are committed to carrying on business and willing to come under the regulation by the regulatory authority. In the event that a travel agent closes down its business without settling any of the financial penalties imposed by the TIA, the TIA will offset the amount owed against the guarantee money of the travel agent. After putting forward a preliminary proposal on the guarantee money requirement in 2013, we have reviewed the trade's operation and thus formulated the latest proposal.

10. Indeed, a majority of the existing travel agents are committed to carrying on business. According to the TIC's information, from 2011 to the first half of 2016, only about 10% of the travel agents were fined by the TIC as a result of breaching its rules. Out of these travel agents, about 90% have settled their fines with the TIC and only the remaining 10% have not yet done so. Therefore, we have revisited our proposal from two aspects. On the one hand, the proposal seeks to ensure that newly established travel agents are financially committed to carrying on business. On the other hand, we do not intend to impose a heavier burden on the majority of existing travel agents that carry on business properly as a result of the guarantee money requirement, yet existing travel agents will still be bound by the guarantee money requirement.

11. We propose that, after the full implementation of the new ordinance, all newly established travel agents will be required to not only fulfil the requirement of a paid-up capital of not less than \$500,000, but also deposit guarantee money of \$500,000 with the TIA by bank guarantee.

12. All existing travel agents coming under the new regime, regardless of carrying on outbound or inbound travel business, will not be required to

² These include the requirements that, when one applies for a licence, he must have a paid-up capital of not less than \$500,000 and each business location is suitable with at least one manager of at least two years of travel related work experience over the past five years and one full-time staff member; and that when one applies for licence renewal, he still needs to fulfil the requirements in relation to business location and staff needed.

immediately deposit guarantee money of \$500,000 with the TIA by bank guarantee. Nonetheless, when an existing travel agent reaches the specified threshold of accumulated financial penalties imposed by the TIA or accumulated frequency of non-compliance, it will be required to immediately deposit guarantee money of \$250,000; if its level of non-compliance reaches another specified threshold, it will be further required to immediately deposit guarantee money of \$250,000.

Requirement to appoint authorised representative

13. The requirement for travel agents to appoint authorised representatives is formulated having regard to some past individual cases of non-compliance by travel agents, where the responsibilities between the persons-in-charge and management personnel were unclear and, during emergencies encountered by travel tours, the persons involved sought to avoid taking up the responsibilities. These have created difficulties for the regulatory body to handle the emergencies and undertake follow-up action and investigation.

14. In view of this, the new regulatory regime will require each of the newly established travel agents and existing travel agents applying for licence renewal to appoint an authorised representative to facilitate the TIA's identification of the person in charge of the travel agent's operation. If the travel agent carries on business in the form of a company, either its controller or a member from its management (i.e. director, manager or company secretary) will be required to serve as the authorised representative; if the travel agent carries on business in the form of sole proprietorship or partnership, either the sole proprietor/one of its partners or a member from its management will be required to serve as the authorised representative. Each authorised representative will have to possess the specified qualifications³ with the course specified by the TIA completed and satisfy the TIA as a suitable candidate⁴. In addition, each person can serve as the authorised representative of one travel agent only so that he can focus on managing the operation of the travel agent concerned.

15. An authorised representative is responsible for ensuring that the travel agent carries on business properly and complies with the regulatory requirements under the new system. If the travel agent commits an offence

³ Education attainment equivalent to Form 5 under the old academic structure or Senior Secondary 3 under the new academic structure and a minimum of five years of management experience in the travel industry; or at least a minimum of ten years of management experience in the travel industry.

⁴ The considerations will be the same as those considerations on whether an individual is suitable to hold a travel agent licence, including those new considerations mentioned in paragraph 16 of this paper.

with the consent or connivance of, or because of neglect by, the authorised representative, that authorised representative will have to bear legal responsibility.

New considerations on whether applicants for licences and renewal of licences are suitable to hold licences

16. The TIA will consider more comprehensively whether applicants for licences and renewal of licences are suitable to hold travel agent licences. New considerations include: whether the applicant has been convicted of any offence involving violence, or any offence under the Trade Descriptions Ordinance (Cap. 362) or the Travel Industry Ordinance to be implemented; his travel agent business operation under the old regime, namely whether he has been convicted of any offence under the Travel Agents Ordinance (Cap. 218) and his non-compliance record under the TIC's regulatory regime, e.g. whether he has frequently breached any rules or willfully circumvented the TIC's regulation by non-co-operative means.

17. We notice that some people have owned a number of travel agents, some of which have adopted unscrupulous business practices. Under the new regime, if an applicant for a licence or licence renewal runs any other travel agent(s), the TIA will also thoroughly consider the business operation of such other travel agent(s). This will help to make those running a number of travel agents be more vigilant and ensure that all of their travel agents are properly run.

To combat unscrupulous acts including co-operating with unauthorised Mainland travel agents, coercing tourists into making purchases, etc.

18. Considering that many of the past cases of serious non-compliance, particularly involving coerced shopping⁵, in the trade were related to Mainland inbound tour group business, which have seriously impaired the image and reputation of Hong Kong's travel industry, the new regulatory regime will strengthen the regulation of Mainland inbound tours.

19. The new regulatory regime will be premised upon the Travel Agents Ordinance (Cap. 218) and the TIC's existing regulatory requirements. Against the backdrop of past cases of non-compliance in the trade, particularly the problems of coerced shopping which caused concern to the trade, the new regime will also introduce the following new requirements through primary and

⁵ "Coerced shopping" means the use of harassment, coercion or undue influence by any person to significantly impair the freedom of choice or conduct of another person with a view to causing that second person to make a purchase or other transaction that he would not otherwise have made.

subsidiary legislation –

- (a) the primary legislation will stipulate that a travel agent must not co-operate with any Mainland travel agent not approved to carry on outbound travel business by the China National Tourism Administration (or the relevant regional tourism regulatory authorities) to receive an inbound tour group. Nonetheless, if a travel agent is found to co-operate with an unauthorised Mainland travel agent but has taken all reasonable steps⁶ to check whether the Mainland travel agent is authorised, this may constitute a defence for consideration; and
- (b) the subsidiary legislation will stipulate a series of new licensing conditions against coerced shopping on travel agents, including that a travel agent must –
 - (i) take all reasonable steps⁷ to safeguard the safety and interest of any member of the inbound tour group that it receives (“inbound tour member”);
 - (ii) not force any inbound tour member to enter or stay in any shop or coerce any inbound tour member into shopping, commit any such act through any others, or allow any others to commit any such act;
 - (iii) take all reasonable steps⁸ to prevent its employees, agents and service providers (e.g. tourist guides, shops on the itinerary) from engaging or otherwise getting involved in any act of coercing any inbound tour member into shopping; and

⁶ It is up to the court to determine whether a travel agent is considered to have taken all reasonable steps having regard to the circumstances of each case. The steps may include (but are not limited to): checking from the list of travel agents published on the website of the China National Tourism Administration whether the Mainland travel agent concerned has been approved by the Mainland authority to carry on outbound travel business.

⁷ It is up to the court to determine whether a travel agent is considered to have taken all reasonable steps having regard to the circumstances of each case. The steps may include (but are not limited to): providing employees and agents (e.g. front-line staff, tourist guides) with clear guidelines and proper training, conducting regular reviews and making adjustments as necessary; prior to employing or engaging any persons and arranging any service providers (e.g. shops on the itinerary) for receiving an inbound tour, checking whether the relevant persons have committed any coerced shopping act before.

⁸ See footnote 7.

- (iv) without valid reasons, not abandon or threaten to abandon any inbound tour member, and ensure that its tourist guides must not commit any such act (this licensing condition is proposed in response to a common practice of coerced shopping that tour members are compelled to make purchases under the threat of the tour group being abandoned and members thereof being left unattended).

20. During the so-called “non-co-operation movement” launched by individual trade members in early 2016, some travel agents did not display their licence numbers or tour group numbers on the tour coaches for receiving inbound tour groups, making it difficult for the tour members and the TIC’s inspection officers to identify the tour groups concerned. Such acts were meant not only to circumvent regulation, but also to pose difficulty to tour members in lodging complaints effectively. In this regard, the primary legislation will stipulate that a travel agent must display its licence number and tour group number on the tour coach for receiving an inbound tour group.

21. Any travel agent which carries on business without a licence, co-operates with an unauthorised Mainland organising agent or breaches a licensing condition (including committing coerced shopping) would commit an offence and be prosecuted after the TIA’s investigation. The travel agent after trial in the court would be liable on conviction to a maximum fine of \$100,000 and two years of imprisonment⁹. Any travel agent which does not display on the tour coach for receiving an inbound tour group its licence number or the tour group number would also commit an offence and, after the TIA’s investigation and trial in the court likewise, would be liable on conviction to a maximum fine of \$2,000. The exact sentencing will be determined by the court having regard to the circumstance of each case. On the other hand, the TIA will take disciplinary action.

22. The TIA will have statutory inspection and investigation powers (see paragraph 32 below) to enforce the new ordinance. After the TIA’s search for evidence, if a case is found to involve a suspected breach of the ordinance, it will be passed to the Department of Justice for considering whether to initiate criminal prosecution in accordance with the established practice for trial in the court.

23. Furthermore, the TIA will make reference to the TIC’s existing regulatory requirements for travel agents and take into account the industry’s latest development when drawing up suitable directives, codes of conduct and

⁹ The maximum penalty levels are on par with the ones under the Travel Agents Ordinance (Cap. 218) at present.

guidelines administratively. Such measures will include requiring a Hong Kong travel agent to sign a contract with the Mainland travel agent concerned before receiving a mainland inbound tour group to delineate the responsibilities of both parties, register the itinerary with the TIA in advance, etc. Making reference to the TIC's current practice, the TIA will also publish from time to time the general historical costs in Hong Kong for receiving inbound tour groups from the Mainland to enhance market transparency and assist Mainland citizens in ascertaining whether a tour to Hong Kong belongs to a "zero/negative fare tour" or "low-fare tour".

24. After the full implementation of the new ordinance, all existing and newly established travel agents must comply with the relevant regulatory requirements. The licences of existing travel agents issued by the Travel Agents Registry will be recognised by the TIA and remain valid until expiry. Existing travel agents will not be required to immediately apply for licence renewal. When applying to the TIA for licence renewal in future, existing travel agents must fulfil the licence renewal requirements under the new ordinance (including those mentioned in paragraphs 13 to 17 above).

(3) Establishment of a statutory licensing and regulatory regime for tourist guides and tour escorts

25. A statutory licensing regime for tourist guides and tour escorts will be set up by the new ordinance to replace the TIC's current accreditation system for them. The requirements for issuing and renewing licences under the new regulatory regime will make reference to the TIC's existing requirements. Same as under the current system, a tourist guide licence and a tour escort licence will normally be valid for three years. With a view to further enhancing the service quality and professionalism of front-line trade practitioners, tourist guides and tour escorts must have completed the specified Continuing Professional Development Scheme upon each licence renewal (details about accreditation and training are found in paragraph 47 below).

26. In addition, the TIA will comprehensively consider whether applicants for licences or renewal of licences are suitable for holding tourist guide licences and tour escort licences. The considerations include: whether the applicant has been convicted of any offence involving violence, sex or drugs¹⁰, or any offence under the Trade Descriptions Ordinance (Cap. 362) or the Travel Industry Ordinance to be implemented; whether he holds a Hong Kong permanent identity card or a Hong Kong identity card not subject to any condition of stay; his non-compliance record of working as a tourist guide or tour escort under the

¹⁰ The TIC also considers these factors under its accreditation system for tourist guides and tour escorts at present.

old regime, e.g. whether he has frequently breached any rules or willfully circumvented the TIC's regulation by non-co-operative means upon applying to the TIA for a licence.

27. After the full implementation of the new ordinance, all existing and new tourist guides and tour escorts must comply with the relevant regulatory requirements. The passes of existing tourist guides and tour escorts issued by the TIC will be recognised by the TIA and remain valid until expiry. Existing tourist guides and tour escorts will not be required to immediately apply to the TIA for licences. Upon licence application in future, existing tourist guides and tour escorts must have completed the course specified by the TIA or otherwise passed the specified examination (details about accreditation and training are found in paragraph 47 below).

28. We recognise that tourist guides and tour escorts, as front-line practitioners, mainly follow travel agents' instructions whilst working. Under the new regulatory regime, the TIA will require by administrative means that a travel agent must formulate for distribution to its tourist guide/tour escort a job sheet for each tour group received, where the arrangements of all activities throughout the itinerary as well as the specific tasks and duties of the tourist guide/tour escort are clearly stated. Furthermore, the TIA will require by administrative means that a travel agent must sign a service agreement with a tourist guide/tour escort, whereby the travel agent must pay service remunerations (e.g. a basic remuneration/salary and a tour-guiding fee) to the tourist guide/tour escort and must not require the tourist guide/tour escort to bear or unreasonably advance any payment for a tour received. The travel agent must not delay the reimbursement for any advanced payment by the tourist guide/tour escort.

29. As mentioned in paragraph 18 above, a number of past cases of serious non-compliance in the trade are related to Mainland inbound tour group business, including cases of tourist guides coercing tourists into shopping. In line with the approach to travel agents, the new regulatory regime will impose through subsidiary legislation licensing conditions on tourist guides and tour escorts to tackle problems arising from their personal misconduct, including that –

- (a) a tourist guide must take all reasonable steps¹¹ to safeguard the safety

¹¹ It is up to the court to determine whether a tourist guide is considered to have taken all reasonable steps having regard to the circumstances of each case. The steps may include (but are not limited to): providing services for an inbound tour group based upon the details as set out in the itinerary; informing the relevant enforcement agencies and the TIA upon noticing that a tourist is assaulted or coerced into making purchases.

and interest of any member of the inbound tour group (“inbound tour member”) that he receives when he is working;

- (b) a tourist guide must not force any inbound tour member to enter or stay in any shop, or engage or otherwise get involved in any act coercing any inbound tour member into shopping when he is working;
- (c) a tourist guide, without adequate reasons, must not abandon or threaten to abandon any inbound tour member when he is working; and
- (d) a tourist guide or tour escort must not lend his licence to any others or allow any others to use it.

30. A tourist guide or tour escort who works without a licence or breaches a licensing condition would commit an offence and would be liable on conviction to a maximum fine of \$50,000 and one year of imprisonment. The exact sentencing will be determined by the court based on the circumstance of each case. On the other hand, the TIA will take disciplinary action. If a travel agent employs an unlicensed tourist guide or tour escort to work, it would also commit an offence and be prosecuted after the TIA’s investigation. The travel agent after trial in the court would be liable on conviction to a maximum fine of \$50,000. At the same time, the TIA would also take disciplinary action.

31. Furthermore, the TIA will make reference to the TIC’s existing codes of conduct and guidelines for tourist guides and tour escorts, with refinement having regard to the industry’s latest development, when drawing up similar codes of conduct and guidelines administratively. Such measures will include requiring tourist guides when receiving inbound tour groups and tour escorts when outbound tour groups are assembled before departure from Hong Kong to wear licences, requiring tourist guides to inform the relevant enforcement agencies and the TIA upon noticing any tourist being coerced into making purchases, etc.

(4) Statutory inspection and investigation powers of the TIA

32. In view of some past cases where trade members were not co-operative in the course of the TIC’s inspection and investigation, some cases of which even involved wilful obstruction, the new ordinance will vest the TIA with sufficient powers to appoint officers to inspect the trade’s operation and conduct investigation into suspected misconduct by trade members and complaints. The new ordinance will also stipulate that any person who, without reasonable excuse, obstructs the TIA officers from conducting

inspection or investigation or does not co-operate with them during the inspection or investigation commits an offence and would be liable on conviction to a maximum fine of \$10,000 and six months of imprisonment. This measure can assist the TIA officers in discharging their regulatory functions effectively.

(5) Disciplinary mechanism

33. A disciplinary committee will be set up under the new ordinance to handle cases and complaints of suspected misconduct by travel agents, tourist guides and tour escorts. To uphold credibility and independence, non-trade members will be in the majority in the disciplinary committee. After the investigation about a case or complaint, the TIA will normally refer it to the disciplinary committee to conduct an inquiry through setting up a panel. During the inquiry, the panel may summon the licensee concerned and witness(es)¹² to receive evidence and decide whether to make a disciplinary order. Examples of disciplinary orders are warnings, reprimands, demerit points¹³, financial penalties, licence suspension or revocation. Any licence application by a travel agent whose licence is revoked would normally not be considered by the TIA for a period of 12 months after the revocation; and any licence application by a tourist guide or tour escort whose licence is revoked would normally not be considered by the TIA for a period of six months after the revocation.

34. Under the current regulatory regime, the Registrar of Travel Agents can summarily suspend or revoke a travel agent's licence after investigation if he is of the opinion that the licensee has been carrying on travel agent business contrary to the public interest. Under the new regulatory regime, apart from invoking the above as a justification, if the TIA is of the opinion that a licensee's act of non-compliance is so serious as to pose an imminent serious threat to the reputation of Hong Kong's travel industry, the TIA can summarily suspend or revoke the licensee's licence after investigation to enhance protection of tourists' interests.

35. Making reference to the TIC's current practice, The TIA will publish the non-compliance records of travel agents, tourist guides and tour escorts to strengthen deterrent effect.

¹² A party to the inquiry may participate in person, through a legal representative or, with the consent of the inquiry panel, through any other person.

¹³ The TIA will make reference to the TIC's current demerit point system when formulating a suitable demerit point system for travel agents, tourist guides and tour escorts. If a licensee accumulates specified demerit points within a specified period of time, his licence can be suspended or revoked.

(6) Independent mechanism to handle appeals

36. An independent appeal panel will be set up under the new ordinance to handle appeals against disciplinary orders and TIA's decisions through hearings. To ensure that the appeal panel operates independently and impartially, any public officers or members of the TIA or disciplinary committee must not serve as appeal panel members.

(7) Financial arrangements of the TIA

37. The TIA will operate on a self-financing basis in the long run. Its major sources of revenue will be –

- (a) levies charged on outbound tours;
- (b) licence fees of travel agents, tourist guides and tour escorts; and
- (c) registration fees for inbound tours from the Mainland.

38. To support the TIA's initial operation, the Government will apply to the Legislative Council for funding to provide the TIA with a one-off capital grant as seed money in due course. To reduce the impact on the trade, we propose that the various fees and levies (except registration fees for inbound tours from the Mainland) will be maintained for five years at the prevailing levels upon the full implementation of the new ordinance and, should practical needs arise, be adjusted upwards thereafter in an incremental manner.

39. As regards registration fees for inbound tours from the Mainland, as the current fee level is low¹⁴, we proposed in 2013 that the fee level would be increased to \$200 per tour group. Nonetheless, it was opined that the proposed uniform fee rate would be unfair to those travel agents that received only a few tourists in a tour. We have therefore revised our proposal in that the TIA will increase the registration fees with different rates prescribed based on the numbers of members in a tour. The exact rates will be drawn up by the TIA having regard to the prevailing market situation, the TIA's regulatory experience, etc.

¹⁴ At present, the TIC requires Hong Kong travel agents receiving inbound tour groups from the Mainland to pay registration fees. The lump-sum fee for a tour group of 40 members or below is \$30 and that for a tour group of 41 members or above is \$60.

(8) Management of Travel Industry Compensation Fund (“TICF”) and establishment of “Travel Industry Development Fund”

40. The TIA will take over the management of the TICF from the TICF Management Board. The scope of protection of the TICF will remain unchanged, i.e. compensating outbound travellers¹⁵ with 90% of their losses of outbound fares (common in cases of closure of travel agents); and compensating them for their losses with regard to three types of expenses (each of \$100,000 at maximum), namely medical expenses at destinations, expenses in funerals at destinations or delivery of bodies/ashes from destinations to Hong Kong, and expenses in family members’ visits to destinations for follow-up, in cases of their injuries or deaths in accidents arising out of and in the course of activities provided or organised by travel agents during outbound travel.

41. Regarding the expenses incurred from the injury or death of an outbound traveller mentioned in paragraph 40 above, under the Travel Agents Ordinance (Cap. 218) at present, if a traveller intends to authorise a person to apply for and receive an ex gratia payment, such authorisation can be made only after the accident. To enable the TICF to further meet practical needs, the new ordinance will provide for advance authorisation such that an outbound traveller may, before his departure for the outbound tour, authorise in advance a person to apply for and receive an ex gratia payment. If a travel agent is so authorised in advance, it can first make an advance payment for the expenses incurred in handling the accident for the traveller (e.g. arranging his family members to visit the destination for follow-up) and subsequently apply for and receive an ex gratia payment on the traveller’s behalf. Advance authorisation of a family member can also avoid problems associated with the difficulties in making authorisation after an accident has occurred.

42. Furthermore, we propose setting aside from the TICF an amount of a certain percentage¹⁶ to establish the “Travel Industry Development Fund” to support the continuous development and enhance the professionalism of Hong Kong’s travel industry. For instance, financial support in areas such as training and information technology application may be given to the travel trade. The scope of the Development Fund will be determined by the TIA having regard to the views gathered from the trade.

¹⁵ “Outbound traveller” refers to a person who has paid a fare to a travel agent for obtaining an outbound travel service that consists of all or two of the following: carriage on a journey which is to commence in Hong Kong and thereafter take place outside Hong Kong; accommodation at a place outside Hong Kong; and arrangements for an activity that is to take place outside Hong Kong.

¹⁶ The percentage will be prescribed by the Government through subsidiary legislation.

(9) Regulation of on-line travel agents

43. In view of the growing popularity of buying travel products through on-line travel agents amongst Hong Kong citizens, which is expected to continue in future, we consider it necessary to strengthen consumer protection. Under the new regulatory regime, apart from any person mentioned in paragraph 7 above, any person who actively markets from a place outside Hong Kong to and arranges for an outbound travel service (i.e. carriage by conveyance and/or accommodation) for Hong Kong citizens will be required to obtain a travel agent licence and come under the new regulatory regime. This way, on-line travel agents and those with physical presence will both be subject to regulation. Consumers can also enjoy protection of the TICF¹⁷. The TIA will publish from time to time the latest list of licensed travel agents. It will also assist local consumers in ascertaining and choosing licensed travel agents with physical presence and licensed on-line travel agents.

(10) Discharge of other functions

44. In 2013, we proposed that the TIC would be engaged to discharge the following non-regulatory functions under the new regime –

- (a) conciliating disputes that do not involve disciplinary matters;
- (b) accrediting training courses and administering qualification examinations for licensees;
- (c) handling emergencies involving inbound and outbound tours; and
- (d) managing the “Travel Industry Development Fund”.

45. As the special resolution supporting that the TIC discharge the functions above was not passed at the Special Board Meeting of the TIC in March 2014, we have revised the proposal such that the functions will be taken up by the TIA. With ample experience accumulated over the past 20 years or so, the TIC is familiar with the trade’s operation. We believe that the TIA will maintain liaison with the TIC on different functions.

46. As regards the function mentioned in paragraph 44(a), in order to provide consumers with “one-stop” service by handling their complaints against licensees through the same body, we propose that the TIA will set up an independent conciliation panel to handle disputes not involving disciplinary

¹⁷ Consumers have to meet the definition of “outbound traveller” in footnote 15.

matters. All members, comprising trade and non-trade members (the latter being in the majority), will be appointed by the Government. Members of the TIA, disciplinary committee or appeal panel must not serve as conciliation panel members. The conciliation panel will conduct conciliation for claimants and the licensees involved (e.g. travel agents). Subject to the mutual agreement between the claimant and licensee, the conciliation panel can make a binding decision about the case after taking into account the views and information from both parties.

47. As regards the function mentioned in paragraph 44(b), we envisage that, in the course of formulating detailed requirements about course accreditation and examinations, the TIA will set up a designated committee to gather views from travel agents, tourist guides and tour escorts such that the detailed requirements concerned can cater for practical needs. The TIA may also engage any suitable organisation(s) for implementation.

48. As for the function mentioned in paragraph 44(c), the TIA can consider engaging a suitable organisation for assistance in discharging the function. Factors to consider may include the organisation's relevant work experience and performance, its network with the trade and other sectors related to the travel industry, etc.

(11) Transitional arrangements

49. It will take some time before the full commencement of the Bill subsequent to its passage by the Legislative Council. Meanwhile, travel agents, tourist guides and tour escorts must continue to comply with the TIC's regulatory requirements. As mentioned in paragraphs 16 and 26 above, when the relevant trade members apply to the TIA for licences or renewal of licences, the TIA will consider their non-compliance records under the TIC's regulatory regime. The Government will continue to fully support the TIC to undertake its regulatory work and will ensure the smooth transition from the existing regime to the new one.

Next Step

50. We will continue to explain the requirements of the new regulatory regime to the travel trade. Our plan is to introduce the Bill into the Legislative Council in the first half of 2017. Upon the passage of the Bill by the Legislative Council, we will immediately commence preparations for taking forward the new regulatory regime, including the seeking of the necessary resources and recruitment of staff for the TIA to handle tasks in relation to the

establishment of the TIA.

Advice Sought

51. Members are invited to comment on the key legislative proposals above.

**Tourism Commission
Commerce, Industry and Tourism Branch
Commerce and Economic Development Bureau
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