

Consumer Council

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

1. The Consumer Council (the Council) is pleased to submit views to the Tourism Commission (TC), Commerce and Economic Development Bureau (CEDB) regarding the consultation on the review of the operation and regulatory framework of the tourism sector in Hong Kong.

2. The following sets out some of the consultation questions that have direct implication on consumer interests, and the corresponding response of the Council for consideration of the TC and CEDB. The numbering in brackets depicts the question numbers used in the Government consultation paper.

Regulatory Arrangement of Travel Agents

(1) Does the existing regulatory arrangement for travel agents require any changes?

3. Yes, back in 2009, the Council urged the Government to conduct study and review the self-regulatory structure of the tourism sector. In this regard, the Council is glad that the Government has taken on board its suggestion and conducts the public consultation on the review of the operation and regulatory framework of the tourism sector and also puts forward options for reform.

4. Whilst recognizing the important role of the Travel Industry Council of Hong Kong (TIC) and its contribution to the tourism sector in the past two decades, the Council is of the view that the self-regulatory mechanism may not be effective in providing adequate protection to consumers in light of rapid development of the tourism sector nowadays.

5. The views quoted in Chapter 3 of the consultation paper reflect the real situation. For instance, the TIC lacks sufficient power to carry out investigation and sanctioning of the trade; the same licensing and regulatory framework is not able to address the different modes of operation in the outbound and inbound sectors. More importantly, the TIC is still perceived by the public as having vested interest despite participation of increased number of non-trade directors.

6. The Council considers that reform of the present regulatory framework presents an opportunity for the Government to strengthen the supervision of the tourism sector and regulate its operation more closely, much needed in view of serious travelling consumer issues that have arisen over the past few years.

7. The Council fully supports change of the existing self-regulatory system in the tourism sector and sees it as advancement in the protection of the interests of travelling consumers and enhancement of the service quality of the travel industry in Hong Kong.

(2) If changes are required, apart from examining the merits, drawbacks, implications and cost-effectiveness of the reform options, are there factors other than those in paragraph 4.2 (of the consultation paper) that should be considered?

8. Paragraph 4.2 of the consultation paper lists out a number of key factors (e.g. effective coordination amongst the different organizations, balance between sufficient trade participation and independence, resource implications and timeframe for implementation of the reform). The Council is of the view that some of those key factors such as timing and costing are important but are not overriding factors in determining which reform option would provide the best way forward.

9. The Council believes the interest of the consuming public should be an overriding factor to be considered by the Government and as such should be included in working out the best regulatory model to be put in place for enhancing the overall level of traveller protection and promoting sustainable development of the tourism sector.

(3) Which of the four options set out in the consultation paper would best cater for Hong Kong's situation and needs?

10. On the basis of information given in the consultation paper, the Council generally prefers introduction of a direct regulatory model (Option 3 or Option 4) for reasons set out below.

11. To a certain extent, Option 1 (i.e. to revamp the composition of the TIC) and Option 2 (i.e. to review the functions, powers and responsibilities of the TIC) retain the current two-tier regulatory regime. The Council believes that a crucial question to be seriously considered is whether the options of merely restructuring the TIC will really bring about benefits to the tourism sector and travellers in the long run. The Council is of the view that for any regulatory framework to emerge from these two options in which the TIC remains the self-regulatory body, the lack of recognition and accountability issues will remain to be resolved.

12. In recent years, the tourism sector has attracted much public attention involving both internal and external problems. The problems include: an upsurge of tourist complaints as a result of the Mainland's relaxation of travel of mainland visitors to Hong Kong, disputes arising from some tourist guides' undesirable practices of forced shopping, and criticism/suspicious of "insiders regulating insiders".

13. The Council believes that a piece-meal reform approach (which had been done so in the past) as suggested in Option 1 and Option 2 is unlikely, to

effectively address the problems and respond to rising public expectation of a fair and independent mechanism for greater traveller protection.

14. Option 3 and Option 4 will put an independent statutory body or the Government in place of the TIC to take over the overall regulation of the tourism sector. The Council considers that Option 3 and Option 4 could enhance the independence and credibility of the regulatory framework for the tourism sector, as compared to Option 1 and Option 2.

15. In terms of regulatory efficiency, Option 3 and Option 4 recommend bringing the licensing and regulation functions under one roof. This will strengthen the powers of the regulatory body to regulate the trade and facilitate the coordination and execution of regulatory policies.

16. Although Option 3 and Option 4 are similar in that in creating a direct regulatory role, the Council sees that Option 4 will cover a wider range of responsibilities as a result of bringing enforcement of tourism policies, planning and regulation all under the purview of the Government. This will also have the advantage of helping the Government to better understand market development and manage the implementation of policies.

17. However, it may be of concern that the Government (or the new government department), in view of greater scope of work, might pay less attention to dealing with the urgent need of improving the protection of travellers. If this is indeed of issue, the Council considers Option 3 may be preferable to Option 4.

18. Regardless of which reform option will be chosen ultimately, the Council considers it important to set out clearly that the key objective in establishing the relevant regulatory framework is the protection of travellers.

(4) Do you have any comments regarding the substantive arrangements (such as functions, power, composition, governance and checks-and-balances) of the preferred option?

19. Considering the interest of the consuming public, the Council views it important that any regulatory body to be set up should be independent, and its regulatory framework should have the following fundamental attributes:

- **Comprehensiveness and representativeness:** A regulatory framework will be effective only if aimed with full power to monitor the overall operation of the tourism sector. This entails power not limited to monitoring the financial position of travel agents, but also covering regulation of the operation of travel agents as well as of the conduct of their frontline staff (tourist guides and tour escorts);
- **Credibility:** The regulatory body should have credibility and be independent, command public recognition and support so as to boost public confidence in the trade;

- **Fairness:** Disputes between frontline staff and travellers are to be dealt with fairly and effectively, regardless of whether a complainant is an outbound or inbound traveller, to ensure equal and indiscriminate treatment to all;
- **Accountability:** The licensing and regulation functions are taken up by the same body (i.e. performed under one roof), they will be better able to complement each other, and serve to enhance effectiveness in the oversight of the tourism sector; and
- **Sustainability:** The regulatory framework should be sufficiently flexible to cater for rapid changes in the business environment which is conducive to the sustainable development of the tourism sector.

20. The Council supports vesting the regulatory body with explicit powers to carry out regulation, inspection and investigation of the trade, powers to impose supervisory sanctions and the power to handle complaints and disputes between travellers and the trade, as proposed in the consultation paper.

21. In dealing with emergencies or incidents (e.g. forced shopping, desertion of tourists), the Council suggests that the regulatory body should be empowered with power of intervention to direct travel agents or frontline staff to stop undesirable practices or conduct for the protection of travellers and the reputation of Hong Kong's tourism sector as a whole.

22. On the proposed governance arrangements for the regulatory body, the Council considers a governing board comprising a wide cross-section of the community should be established to provide direction to the body. As to the composition, the Council supports having non-trade members forming the majority of the board in order to ensure its credibility. Furthermore, the Council suggests that the Customs and Excise Department should become a board member to secure effectiveness. The Council also believes that setting up an advisory committee open to inputs from user/consumer groups is important for enhancing understanding of issues of interest to travellers.

23. If it is eventually settled that an independent body should take up the overall regulation of the tourism sector, the Council considers that necessary arrangements should be made by the Government to ensure close collaboration with the relevant stakeholders including the TC and the TIC to minimize inconsistencies, overlap or gaps in tourism policies, planning and regulation.

Regulation of Tourist Guides

(6) If the tourism sector is to be regulated by an independent statutory body or the Government (i.e. Option 3 or 4), should a statutory tourist guide licensing system be introduced? If yes, should there be a transition period and how

long should the period last?

24. Yes, the Council supports introduction of a tourist guide licensing system as soon as practicable, given that similar arrangements (i.e. the Tourist Guide Accreditation System, and the Continuing Professional Development Scheme for Tourist Guides) are already in place in the trade.

(7) Given the problems associated with Mainland inbound tours, should a separate Tourist Guide Pass or Licence be introduced to further regulate the qualification requirements for tourist guides receiving Mainland inbound tours?

25. Yes, the Council believes that it is appropriate to introduce a separate tourist guide licence to further regulate the qualification requirements for tourist guides receiving Mainland inbound tours, since mainlanders are a major source of tourists visiting Hong Kong but there have been rising number of complaints in relation to Mainland inbound tours.

(8) If a separate Tourist Guide Pass or Licence for tourist guides receiving Mainland inbound tours is introduced, what additional requirements should be prescribed for the Pass/Licence? Would it be unfair to tourist guides receiving Mainland inbound tours if the requirements are more stringent than those for the existing passes?

26. The Council does not consider it unfair to impose a more stringent licensing system for tourist guides receiving Mainland inbound tours given the extent of problems associated with Mainland inbound tours. The Council is of view that licensing requirements should take account of the case or risks of misconduct associated with the activities involved.

27. Applying different licensing conditions for different business activities within a trade is not uncommon in Hong Kong. Reference can be drawn from the Securities and Futures Ordinance which requires that a person engaging in different regulated activities (e.g. dealing with securities, futures contracts, foreign exchange trading) to apply different licences (with specified licensing conditions imposed for each type of regulated activity) in order to carry out those regulated activities.

28. In respect of what additional requirements should be prescribed for the licence, the Council considers that professional conduct (e.g. no forced shopping) should be upheld to improve the service quality of tourist guides, and unscrupulous practices must be banned to prevent tourists from being cheated, mistreated, or forced to participate in shopping trips which would tarnish Hong Kong's reputation. Disciplinary provisions should be in place to ensure regulatory compliance.

29. The Council would expect to see that tourist guides and tour escorts who provide tourism services, whether they are receiving inbound tours or outbound tours, to be more directly and robustly regulated than they are now. For instance, closer monitoring of compliance and stricter regulatory controls should be implemented to prevent recurrence of incidents of illegal use of

tourist guide licenses.

Licensing System for Travel Agents

(9) Do you think different licences (with different requirements) should be introduced to regulate outbound and inbound travel agents?

30. In light of different operating environment with different associated risks for the trade and travellers, the Council considers it appropriate to introduce different licences with different requirements to regulate outbound and inbound travel agents. Again, requirement should take into account the nature of services rendered and the associated risks to travellers.

31. To ensure effective supervision of the tourism sector as a whole, the Council is of the view that the regulation should be comprehensive (despite different licensing requirements) so as not to leave any areas unregulated. Activities should not be left unregulated due to absence of risks as perceived by the regulator.

(10) Do you think a separate licence for travel agents receiving Mainland inbound tours should be introduced in view of the problems associated with those tours?

32. Yes, for reasons similar to those provided under response to question (7).

(11) If you think a separate licence should be introduced for travel agents receiving Mainland inbound tours, what additional requirements should be prescribed for this licence? Would it be unfair to the travel agents receiving Mainland inbound tours if the requirements are more stringent than those for the existing licence?

33. Yes, for reasons and suggestions similar to those provided under response to question (8).

Financial Arrangement

(12) Regardless of your chosen option, do you agree that the financial arrangement should be based on a "user-pay and cost-recovery" principle? If yes, do you agree that reasonable means to generate additional income should be considered? What means would you consider appropriate?

34. Yes, the Council generally agrees that the financial arrangement should be based on a "cost-recovery" principle.

35. In considering the appropriate funding source, the Council is of the view that the mechanism should provide a means of recovering, from the trade, the costs of the prudential supervision and regulation of that trade to be performed by the regulatory body.

36. Apart from recovering cost with reference to various licence fees and registration fees, the Council recommends introduction of other fees for demand-driven services e.g. charging regulated entities for complaints handling.

37. In any case, the financial implication of implementing any of the reform options should not become an overriding factor which would lead to choosing an option that requires the least resources.

(13) If an independent statutory body is to be established, do you consider it reasonable for the Government to provide the body with a one-off grant or loan to support the expenditure at its initial stage of operation? If you consider it unreasonable, what other approach would you suggest?

38. Yes, the Council believes it is important for the Government to provide adequate resources, both in terms of finance and supporting services, to back up the regulatory body in its initial stage of operation.

39. If the body is to have only limited resources at hand and lacks staff experienced and well-skilled enough to perform the regulatory tasks in question, it is difficult to see how regulation and supervision can be effectively enforced, for the protection of travellers.

Other comments

40. The Council would like to take this opportunity to voice out its concerns with some other issues which are of paramount importance not only to the traveller protection but also to the development of the tourism sector and other economic activities related to tourism in Hong Kong.

- **Zero-fee or negative-fee tours and forced shopping**

41. Problems arise from "zero-fee" tours where Mainland tourists joining those tours are forced to make purchases, and undesirable practices are employed to get shopping commissions to recoup costs (as well as to remunerate tourist guides and tour escorts). The Council is of the view that priority should be given by the Government to urgently resolve these structural issues.

42. Notwithstanding measures (e.g. refund guarantee scheme, unified outbound contracts) launched to tackle the problems, incidents of unscrupulous practices still come up in Hong Kong. This led to public concern whether the measures as well as the existing regulatory framework for the tourism sector can effectively protect the interest of travellers.

43. The Council urges the Government to take this opportunity not just to consider the desirability of an institutional revamp, but also to carry out a comprehensive review of the operation of the tourism sector to build up confidence of travellers and foster the long-term sustainable development of Hong Kong's tourism sector.

- **Appeal mechanism for travellers**

44. As the present mechanism does not provide an appeal channel for travellers aggrieved by the TIC's decision, the Council urges the Government to set up forthwith an independent appeal mechanism to handle appeals from travellers concerning disputes between travellers and travel agents.

Conclusion

45. The Council understands that any reform inevitably entails changes which could lead to compliance burden to the trade. Yet, it is necessary to confront problems at root and bring about changes because tourism is an important pillar of Hong Kong's economy. The Council strongly supports reforming the regulatory framework of the tourism sector as operations of the sector impact directly not just travellers but also the image and reputation of Hong Kong as a leading international city and a world-class tourist destination.

Consumer Council
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