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Concern Group of
Travel Industry in
Hong Kong

Mr. Philip Yung
Commissioner for Tourism
Tourism Commission,
Commerce and Economic Development Bureau.
The Government of Hong Kong SAR
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Lower Albert Road, Central, Hong Kong
Tel : 2810 2555 Fax : 2121 1468

28 June 2011

Dear Mr. Yung,

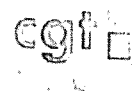
In referring to "Review of the Operation and Regulatory Framework of the Tourism Sector in Hong Kong", we support "option 4 of regulatory regime" also, we express our points of view as following :-

Self regulatory framework is an anachronism and doomed to be a failure.

Ripping off the tourists should not be a chronic problem in any country; it undermines the reputation of our society and putting all the promotional efforts and sources spent by the Tourism Board overseas down to the drain each year. Fleecing the tourists and jettisoning them on the street plus intimidation for not spending enough money on fake and adulterated goods at the fixed places appointed by the local travel agents are immoral to cover up or playing down. Unfortunately, our government opts to adopt the policy of scuttle even though it is the public expectation to take a fundamental change. Contrary to governments everywhere that they take zero toleration on mal-practice and fleece on the tourists, our government is harboring other logic. In Hong Kong, our government seeing all the rackets and improper practices prevail in the tourism sector is only a moral issue of the trade and never recognize it is a debacle of the existing system – a system so called "The Self-regulatory Regime" which is on a different tangent to serve an intended and far reaching purpose.

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The establishment and incorporation of the Travel Industry Council in July 1988 is a "trade-off deal "by the then 6 Member Associations in the outbound trade under the leadership of Harold Wu with a handful of ex- Colonial Government officials. They exchanged the continuing levy and the Travel Industry Compensation Fund from the out bound tour industry for the connivance of the ex-Colonial Government to allow T.I.C, an organization which was incorporated under limited liability to implement the self-regulatory regime under the auspices of the so called two-tier regulatory regime

The enactment of the Travel Agents Ordinance in 1988 entailing all the outbound tour travel agents in Hong Kong must be the members of T.I.C was only to facilitate the T.I.C as a levy collector by virtue of the ordinance and the de facto self-regulatory powers were come from the Memorandum and Articles of Association of Travel Industry Council of Hong Kong not from the legislation per se. There is a problem of information asymmetry to the real situation in that there are absolute discretionary powers of the Board of T.I.C enshrines in the M&A which to a certain extent, overtake the fiduciary duty of T.I.C as a trade association under the object clause of their M&A.

Contrary to the contents of the "Consultation Paper" issued by the government on Review of the Operation and Regulatory Framework of the Tourism Sector in Hong Kong April 2011, in which the paper describes that T.I.C lacks sufficient power, such as statutory investigative power and sanctions in regulating the trade and hence the efficiency of its regulatory work is undermined is not true. In fact T.I.C Board has the absolute discretionary powers conferred by the M&A to draw up directives and impose pecuniary fines on its members without having to go through any legal process or consultations from the trade. As for the investigation power, T.I.C can always refer cases to the relevant law enforcing departments in Hong Kong for evidences collections and prosecutions while internally T.I.C has all the power to summon its members to their Committees or

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Tribunals to face allegations of violating the Directives. There is absolutely no lack of power in the T.I.C but why the system fails and what plays the havoc?

A so questionable and vote rigging system for election of Board Members -

First, who can become the regulating insiders and what criteria are set to ensure the ethics, integrity, professionalism, impartiality and most importantly, the fiduciary duties of the regulatory insiders from the travel trade to govern an industry which brings in revenue of more than 200 billions each year from the inbound tourists and involves million of employments from concomitant sectors like, hotels, retails, catering, transports, and tourist attractions?

Secondly, what reference we can draw from the regulatory insiders of the travel trade that their ability and credentials are capable to sustain a healthy environment both in the outbound and inbound market. With the rapid growth in the inbound and outbound tourism markets to-day, how well they can define and implement effective policies to tackle issues like tourist fleeces, illegal workers posed as tourist guides, natural disasters, terrorist acts, zero commission, fuel surcharge and airlines monopoly with anti-trust acts and even the minimum wages in the industry? These questions would have tempted people to the thinking that there must already be a very sound and fair mechanism to choose the competence in the Self-regulatory Frame Work but unfortunately, the truth is just like a sublime turns into ridiculous

The core of the problem comes from the 8 Member Associations of the Travel Industry Council, for all these years the T.I.C has accumulated a large scale of charlatans and mingled with assorted yes men and cartels of different vested interests from the 8 Member Associations through a notorious and esoteric electoral system. As we know, all the elected and ex-officiate Board of Directors in the T.I.C are working with no pay and are either the proprietors or senior



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managers of a travel agent, not being offered with remuneration, they have to spent hundred of thousand dollars on their election vying for the Directorship on the Board every two years.

It is not unusual and almost an open secrecy that some single candidates could spend more than \$300,000 in one single election, how can small agents afford to stand for the election? Moreover since the jobs and duties of the Board of Directors are honorary and performed on a voluntary basis, if not quixotic, and require profound knowledge and expertise in the trade, why they bother to squander so much?

The election of the T.I.C Board of Director is notorious and it is blasphemous if election is sainted and stands for equality. The election in the travel trade is not governed by any legislation and as a result, all the candidates can openly buy votes from the travel agents through foods and drinks and cheap tours.

In addition to the unbridled system, the authorities never care to investigate any possible vote rigging and the integrity of Tic's Board Election all these years. If they do, they will have no difficulty to find out there are a lot of shell, empty travel agents with just registered membership of T.I.C but not operative on tourism business in the tourism industry. Most of these shell and empty companies are located in residential buildings with their offices either have had been used for other business or have had been shared with other tenants with just one or two desks to pose as a makeshift travel agent, some of them are operating on traveling business without a valid license.

Also it is not rare that some of the active and big travel agents in the T.I.C Board own a number of shell travel agents as their subsidiaries with just one registered office address to house more than one licensed travel agents with voting rights to counter the upper-hands of their competitors in the electoral campaign. These

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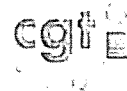
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acts are conspicuously violating the licensing requirement as the criteria clearly stipulates that a licensed travel agent must be operated in an independent office within a commercial building and the premises can only be used for travel agent exclusively. Should this phenomenon be continuously connived, it is unfair to the well behaved.

Ironically, the criteria are supposed to be checked and verified by the representatives of the 8 Member Associations on all the fresh applications or renewal of the agent memberships filed by their member agents. It is bylaw that, all applicants for T.I.C membership must be first checked and approved by the Member Associations on these criteria before the travel agent can proceed to apply the travel agent license from TAR – as a procedure of the “Self Regulatory Regime” to ensure the compliance.

Go back to the election, duration the election period, almost every Member Association of the T.I.C and the candidate will activate their festive boards to entertain the potential voters and there is not just palatal pleasure but also a rampancy of cheap tours and binges in karaoke lounges to rig the election.

Under such an election, how the representation of the T.I.C could be established with creditability, reliability or transparency. What is the ceiling of the electoral expenses spent by the candidates if any? And how it is justified and what mechanism is responsible to monitor the election process in order to uphold the integrity, cleanliness', and the honesty of the Board election? All these standard codes seemed to have been taken care by the Rules for Election of Elected Director in 2010 but unfortunately, the details have never been publicized to the public and most importantly, it lacks of the legislation to govern the electoral practice and to sanction the culprit, so therefore, the Rules for Election of Elected Director is factitious and is difficult to enforce.



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Why the election of Tic's Board of Director can stray from all the virtues? Because T.I.C is a trade association with all the funding and resources generated by its member agents, the Council Levy which account for all the operational expenditure of T.I.C is contributed by the members of travel agents and there are no government subsidies or subvention at all, therefore, the government turns a blind eye to this dirty linen by ignoring it had been specified as a "public body".

As a result of the questionable electoral system for years, there are a large number of Board Directors from the 8 Member Associations who have been staying and controlling the Board for more than 20 years and still have no intention to retire, they are striving to stay or to re-elect on the Board and other Committees after serving their maximum terms.

Although the T.I.C had established a Governance Committee in 2009 to introduce the maximum terms of the Directors to serve on the Board and to encourage injecting new members to various Committees, still, the domination of the Member Associations' in the Tic's Board seems not to be receding these years, thanks for their collective influence and resources. Eventually, small and medium sized member agents who do not build up a rapport and connection with the Member Associations are being deprived of the collective negotiation rights and become outcast to defy the exploitation imposed on them by airlines in the outbound realm and in the inbound realm, rules set up by the Board are not straight forward to uproot the problem of zero price tour operations but leaving ways and loopholes to circumvent the rules.

Should not be the malpractice of the inbound travel agents arousing the public indignation, the government can never calculate wrong to trade in the regulatory regime to the T.I.C for the Compensation Levy. With the bad publicity of the fleece on in-bound tourists comes to light, T.I.C to-day is more a negative asset

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to the society than a knight in the industry. However, all the Independent Directors appointed by the government in the T.I.C Board know too well about the inside malady and witness how T.I.C falls into the decay in the hands of the 8 Member Associations but it is their juggernaut to defense the system and opted for reticence until the time comes

How unfairness is formed by a secret cartel of Executive Committee of IATA

There are no shortage of unfair competitions, manipulation, scandals on the wishy washy handlings of the complaint lodged on the insiders being covered up for years on the outbound tour domain, but since T.I.C is under the blessing of the government, the society as a whole couldn't care less on the adverse situations inflicted on the aggrieved small and medium sized travel agents by the T.I.C.

The majority of the trade is isolated and those agents without good relationship with T.I.C are frequently shut off the updated information and developments affecting their business, for example, there is neither agenda nor minutes of the Board meetings disseminated to the member agents before or after the meetings, no agent member is allowed to side hear the regular Board meetings or any of the committee meetings held within the T.I.C, no consultation is made on policies to be implemented on member agents.

Despite there are strong intention and aspirations expressed by a lot of travel agent members for all these years to side hear in particular meetings which may directly concern their business and livelihood either in the Board or the Committee Meetings, all their faith and efforts to fight for enhancing the transparency turned out to be futile. T.I.C is likely to be operated behind iron curtain and because of these watertight and submarine like ruts; agent members are deprived of their right to know and to be heard also, the practice distorts the

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fair competition amongst travel agents, more seriously it may constitute manipulation which could carry impacts on the travel public.

There are two Committees connecting to T.I.C namely the Executive Committee, (EC also called APJCs), and the Ticketing Committee amongst various Committees in T.I.C. These two Committees are peculiarly set up to path communication channels and dialogues with the most intimate partners of the outbound travel agents – the airlines. These two Committees are influential in outbound tour business and ticketing agents. The APJCs involves rules and regulations of IATA tariff, air ticket refund policies and Bank Settlement Plan – a clearing system between airlines and the appointed agencies. A number of Board Directors in T.I.C are also occupying the seats in the APJCs by the appointment of the T.I.C Chairman. The Executive Committee and now often referred as APJCs (Agency Program Joint Council) is the most important entity in terms of their authority and representation amongst airlines and its appointed agents. The APJCs is directly under the Passenger Agency Conference (PAconf) of IATA in Geneva and which comprises of 7 travel agents members and 7 airline members. The PAconf adopts Resolutions by unanimous votes which upon receipt of approval from concerned governments become binding upon all IATA member airlines and their appointed travel agents.

Before the PAconf holding a regular conference in Geneva, they will issue agenda to the local APJCs to invite their feedbacks and comments on the agenda before votes but rarely, if not none of the IATA travel agency in Hong Kong is likely to have received any information about the consultation before the resolution on criteria concerning their business are adopted. Some IATA travel agencies in Hong Kong even did not know about the existence of this APJCs/EC structure, it was only until the lawsuit acted against the alleged procedural impropriety of the PAconf on implementing "The Same Day Void Ticket" come to light in 2007 (*American Lloyd Travel Service Ltd vs IATA 2007*) when the member agents

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were alert that their right to be heard was so infringed. T.I.C had never publicized or opened the Committee Membership of this APJCs to the trade. It is so absurd that in such an important Committee with all the negotiation powers and mandate, all the members of travel agents sitting in the APJCs are exclusively appointed by the Chairman of T.I.C according to his own preference. The process of the appointment is not transparent to any member agents.

The Ticketing Committee mainly focuses on internal and ticketing agents' affairs and is dominated by all trade members but the point is that all these two committees monopolize the communication channels and dialogues with the airlines. The travel agent members appointed by the T.I.C Chairman in these two committees are to represent the trade but, it seems to be seldom for them to raise issues on any unfair and unilateral policies implementing on the trade. There is no communication channel opened to the travel agent members between these two Committees with regards to what they are doing especially during such time, when airlines are forcing the issues of implementing zero commission on travel agents after sales are squeezed by airlines' direct Internet Fares. During recent years, so many tourism trade representative bodies overseas had launched lawsuits against the airlines for their illegality on implementing zero commission and depriving the travel agents remuneration on all the auxiliary services sold by the travel agents on their behalf despite the remuneration is bound to pay out to reward the travel agents as agreed in the IATA agency agreement. The cases were overwhelmingly won by the travel agents and the classic cases are won in UK, India and Austria

Travel agents are not affected all alone, the airlines force travel agents to collect airport tax and fuel surcharge on their behalf without remuneration. The fuel surcharge, which is the levy on the fuel price fluctuation is not included into the airfare calculation box of the air tickets, therefore, it can avert paying commission to the travel agents who sold the tickets. The fuel surcharges are levied so frequently triggered by the fuel prices.

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It is unfair to the passengers since the passengers can not clearly know about the actual airfares in advance especially the fuel surcharge is significantly high compared to the airfare. What more unfair is that the airlines are taking too much advantage from the consumers; first they are not just taking zero risks on their fuel costs by covering them with hedge on the future of the fuel prices but also they can double their benefit by capitalizing the upsurge of the fuel to impose the surcharge. In other words, had the fuel price gone up, they would have hedged the future already to off set their risk and what adds to their windfalls is the fuel surcharge passed on to the passengers. When the fuel price goes down, the airlines are always blamed for being so fast to increase the fuel surcharge but being so slow to reduce it when the fuel price is dropping. Later, when the zero commission policy against all travel agents is in full blown, the airlines will pass the travel agents handling fees on the consumers.

In addition to these unfair policies and improper practice, more is in the offing; the IATA will shorten the payment period for the billing and settlement plan in respect of purchase of air ticket from the travel agents from the original period of 15 days to 7 days. This policy will cause serious cash flow problems to small and medium travel agents hence, threatening their survival and means loss of thousand jobs and create damaging effects in the economy.

How the blunder developed and spread to the Inbound Tourism

One swallow doesn't make a summer, when the self-regulatory framework of T.I.C is not drawing any focus from the public in the outbound industry; T.I.C laid its hand on the inbound sectors in 2002. With CEPA and the liberation on the tours and individual travelers coming to Hong Kong from the increasing provinces in China, The Board of T.I.C had the discretionary power to select the in-bound operators to receive the PRC groups and registered them on list for the reference of the PRC out bound travel agents for business co-operation at the

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inchoate stage. Later on, T.I.C had established the Tourist Guides Accreditation System in 2004 and responsible for the licensing of the tourist guides. Theoretically, all the inbound operators and tourist guides were screened, well trained and disciplined under a system with ample resources and plentiful man powers to ensure the ethics and credibility of the inbound agents to take care of the tourists but why there are still endless untoward incidents inflicted on the inbound tourists? The simple answer is "No Turkey will vote X'mas to come" if you give them the right to vote.

Under such an insiders regulating insiders system, there are mutual respects and alter ego within the framework, so it is inevitable not to give rise to woes. The "One Dragon Service" to fleece the PRC tourists under the scam of zero price tours is the insidious bane to play havoc. There are cases invite suspicions on deception, fake products or violations on the description of merchandise and they may warrant the investigation either by the police or the customs and excise service department if there is any clue on criminality .Unfortunately, under the present system, the complaints and the tip offs are all siphoned to T.I.C and being sanitized. All the cases involved the malpractice and alleged fleece are heard and judged behind doors and settled with hush funds under the table, although there is no strong evidence to suggest the same, it raises the reasonable doubts of the public and events were massively published by the media. With the complainants, suddenly turned 180 degrees to praise what used to be a severe fulminations of their tour operators, the truth would never come to light.

Why the problem is still haunting our tourism industry after series of blunders? It is the T.I.C policy and directive to support registered shops to be used by the group tours from mainland. The ratification of the shops even some are unscrupulous, likes giving them an official recognition and provides a strong excuse to the rouge travel agents and tourist guides that the tourists must shop

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in these shops because they are sponsoring and subsidizing part of their tour fare. Skillful naggings with insinuations to remind group members having to repay the gratitude by shopping more in the designated shops seems to be the pre-requisite for a successful and most demanding chopper guide. With this kind of financial avenue to support the rough travel agents to do no cost business, how can the zero price tours can be eliminated. The worst yet, the policy is playing two sides and indirectly shielding the law enforcing agents to collect evidences for prosecution on deception or selling fake and adulterated goods to the tourists at huge profit and commission rebate to the rouge travel agents.

The six month refund protection scheme is in fact a factitious measure rather than a protective one. The six month cool off period is too good to be true. No shops doing decent business can offer 6 months cooling period on the goods they sold not to mention the high percentage of commission rebate, usually up to 30% -50% to travel agents on purchases made by the inbound tourists. Besides, would it be practical for a tourist who lives thousand miles away from here to return the goods by spending other trip to Hong Kong? Put thing in a nut shell, the directives are so factitious in nature, instead of protecting the tourists, it may cover up a lot of immoral business by handsome pay outs in case there is any complaints on the quality of the goods and on the other hands, encourage some fierce and greedy victims to take advantages by demanding hush money at the expenses of the innocents.

No travel industry in other countries is allowed to force the group members to visit so many shops by listing it as a condition on the itineraries, if they were, no one will join their tours but why it is exceptional in our country? It is because the compulsory shopping activities have been codified by the T.I.C with Directives to legitimate its existence.

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Conclusion

Straight to the point, option 4 is the only option if the government is keen to salvage the credibility of the tourism sector and to manifest strong governance. Option 1 to 3 is only old wine in a new bottle and they would brew other and even bigger blunders in the future.

The future regulatory bureau of the government must be run by government officials and civil servants with full independence in order to uphold its integrity and impartiality, it must be absolutely refrained from any composition of insiders or outsiders in the new bureau. Options 1 and 2 are marching in lock steps and option 3 shows that there is still ambivalence of the government to rely the trade and other professions in the regulatory function in order to shun social responsibility.

Option 3 can not rule out disputes and internal conflicts in the future having regards to its inborn nature of contrariety against two sides' interests and more importantly, it is a completely reversing logic swinging from insider regulating insider to outsider regulating insider. Option 3 seems to contradict the previous advocacy of the Government that only the trade people can be equipped with in-depth knowledge and necessary experience to run a regulatory framework effectively considering the complexity of the tourism industry. But now the stance of the Government seems to be changed to other extreme by abating the trusts on the trade and shift the responsibility to other professions in the option 3.

More over, the option 3 is more like a "Joint Consultative Council other than regulatory authority; still it has the danger of implementing "slush measures" and has the shadow of T.I.C but only the composition of the Board differs and the chairmanship changes, still the mechanism can be influenced by the force incubated and carried forward from the relic. Bear in mind that, to-day, we are

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aiming to regulate the tourism industry and the prime objective is to rectify all irregularities and to prevent any mal-practice and monopoly in the industry which are controversial, the standard of the adjudication must be measured by social ethos and penalties must be prescribed by law and judged in courts in case of mischief arises. Justice and fairness can not be perverted by prejudice or usual practice of any particular industry. The regulatory bureau must act like other disciplinary forces with teeth to target the rouge travel agents and tourist guides who are fleecing the tourists in a joint enterprise with the unscrupulous shops. The independent- regulatory bureau needs time and efforts to establish channels with the oversea Tourism Boards and Authorities in exchange of information on the future policy developments. The compulsory shopping activities in the designated shops must be eradicated and prohibited from being ratified by the new system.

Education and information facilitating veracious and quality travel modes will be compiled and published by joint propaganda with the local governments on edifying the tourists to choose creditable and honest traveling agents. The tourists must be provided with direct complaint channel and hot line in case mischief occurs.

In order to best perform their duties, the regulatory bureau must maintain a close co-ordination and network with various law enforcing agents and related government departments such as Police, Customs and Excise Department, Labour Department, ICAC, Inland Revenue Department, Consumer Council, etc, in exchange of information, findings and evidences in confidentiality to protect the tourism industry and in the event that complaints and tip-offs are filed on any possible fleece, intimidation, illegal workers, violation on description of merchandise, or any tax evasion arises from the shopping commission perpetrated by the relevant parties, investigation must be launched by the relevant law enforcing agents with the assistance of the regulatory bureau to

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collect evidences. If criminal acts are involved with suffice of evidences, prosecution must be initiated against the culprits so the justice can be meted out to the public and it is also fair and justice can be equally brought to the suspects to clear his name and get remedy in a fair trial in courts. On the other hand, the regulatory bureau will monitor the disciplinary codes set by the secondary legislation to be effectively implemented on the new system and they will also continue inspecting the travel agents register and to review the financial status of the travel agents respective of their license renewal from time to time.

Once the regulatory bureau resolves to crack down the zero price tours and break the chain of subterfuge on the inbound domain, the irregularities and mal-practice will disappear.

As far as outbound domain is concerned, there is no loss of flexibility to adopt option 4, through out all these years, there is already established frame work and experience acquired by the government officials working in the T.C and TAR to sustain the future development of the regulatory department. The complete alienation from the Member Associations in the travel trade or social elites work as honorary Chairman and Vice-Chairman in the new regulatory bureau can clear the way for the civil servants to effectively fulfill their responsibility with check and balance governed by the law and relevant governmental departments with regards to their performance and accountability.

The regulatory department needs not to understand the complication of the tourism trade too well; paradoxically, it is a sugar coat stultified the minimum law of required practice. For example, does the Food and Environmental Hygiene Department, who are responsible for licensing and regulating the hawkers need to rely on the profound pitching knowledge of the Federation of Hong Kong Chinese Hawker, Hong Kong Association of Chinese Hawker Organizers, Hong Kong Overseas Hawker Operators Association, Hong Kong International Association for Multi-ethics Hawker etc to perform it's duties ?

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Pari passu, the promotion and co-ordination on continuing development on tourism policies on inbound tour industry should be handled by the Tourism Board with earmarked public funding. T.I.C should only retains its trade association status to promote the well being and benefits of the outbound trade as prescribed by the Object Clause of the M&A and at the same time T.I.C must respond to the wide spread grievance of the medium and small sized travel agents by tackling the issues of airlines exploitation on the travel agents and their anti competitive measures which would undermine the interests of the public. The membership of T.I.C as a pre-requisite of license application should also be void inter alia in order to avoid manipulation. A fairly competitive, open and transparent environment in the outbound realm must be resumed after decades of being off at a tangent.

Today, the Government must be resolved to launch a fundamental reform on the tourism industry; they should use option 4 as the starting points, the other way around. Only option 4 is a pure entity and doesn't ramify with any business concern with the flexibility of laissez-faire with supports of law and legal framework. It is always much earlier and less painful to loose one's grip than tightening it in the future. If option 3 is adopted, option 4 would eventually be defunct. It will be much more difficult in the future to move from option 3 to option 4 even though option 4 may finally be found as the best option with full independence in exercising their powers.

Since there is no empirical experience on each of these 4 options, there would be advisable to adopt option 4 and later on, when the picture of the development is much clearer, and some merits in other options are found to be able to supplement the option 4, the gate can be opened for the government to merge these merits by ways of joint consultative or advisory functions instead of a strait-jacket legislative process.

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Should you have any questions, please do not hesitate to contact me at

Yours truly,
Concern Group of Travel Industry in Hong Kong



Peter Chan
Chairman

c.c. The Civic Party
Travel Agents in Hong Kong