

# 十七年雙層監管之後會有甚麼轉變？

## What to come next after 17 years of two-tier regulation?

本刊記者 Staff reporter

(編按：本刊上期登載了介紹議會歷史的文章，文中並描述了旅行社行業的雙層監管制度——一種把自律監管與政府監督有效結合起來的制度。下文將條陳監管的幾種可行方法，以及簡介議會會章中一些規限議會與會員關係的條文。)

(Editor's note: We ran a story in the last issue about the history of the TIC and the travel agent industry's two-tier regulatory system, which successfully combines self-regulation and government supervision. In what follows are a brief analysis of several possible ways of regulation and an outline of the provisions in the TIC's Memorandum and Articles of Association (M&A) governing the relationship between the TIC and its members.)

起初，甚麼監管也沒有。於是政府創出一套發牌制度。但它並不成功。於是政府引入自律監管。這次成功了，並且一直沿用至今。

### 監管階段

以上的勾畫寥寥數語，對旅行社監管制度的發展來說，或許簡單了點，但已足以清楚展現出三個監管階段。階段一：沒有監管(一九八五年以前)。階段二：政府獨力監督(一九八五至一九八八年)。階段三：政府監督與行業自律監管並行(一九八八年至今)。既然經過了三個階段的發展，或許有人會問道：「下一個階段又會怎樣呢？」

假如日後真的出現階段四的話，大概不出以下五種情況之一。讓我們逐一分析那幾種情況，希望能鼓勵理性的討論，同時使現行的制度精益求精。

### 回到過去

情況一：撤除所有監管。這種情況大可一筆抹去，因為根本不可能再出現。為甚麼？有誰可以想像隨便一家公司，連牌照也沒有就自稱是旅行社，收取旅客的大量金錢，然後逃之夭夭？今天不可能再容許毫無監管的情形了，雖然在一九八五年發牌制度實施前，的確曾出現過這種日子。

情況二：回到由政府獨力監督的年代。不管是誰支持這種做法，都必須知道，十七年前，由於政府的監督過於

In the beginning, there was no regulation. Then Government created a licensing scheme. And it failed. Then Government introduced self-regulation. This time it worked, and has since been in place until the present.

### Stages of regulation

The above may be too short an account of the development of the travel agent industry's regulatory system, but it sets out clearly the three stages of regulation which the industry has gone through. Stage 1: the stage of no regulation (before 1985). Stage 2: the stage of exclusive government supervision (1985-1988). Stage 3: the stage of government supervision and self-regulation enforced by the industry (1988-present). There being three stages of development, one might wish to ask, "What will be the next stage?"

If Stage 4 were to come one day in the future, it would most likely be one of the following five scenarios. Let us take a look at them one by one in a bid to encourage rational discussion and to make the existing system even better.

### Back to the past

Scenario 1: scrap all regulation. It can be easily ruled out because it is simply a non-starter. Why? Can anyone image a company claiming itself to be a travel agent, without any licence, receiving plenty of travellers' money and then disappearing with the money? Surely unimaginable today, although such things did happen before the licensing scheme was introduced in 1985.

Scenario 2: revert to exclusive government supervision. Anyone in support of it has to be reminded that 17 years ago this model of regulation came to a sudden stop because of

寬鬆，致使旨在保障外遊旅客的「旅行代理商儲備基金」耗盡款項，終於令這種監管模式無以為繼。最後政府不得不邀請議會執行自律監管，以求與政府的監督相輔相成，並以印花繳款方式成立「旅遊業議會儲備基金」，以保障旅客。假使重新採用政府獨力監督的模式，需要對現行的整個監管架構作重大改動，顯然必須慎重處理。

## 循序漸進

接下來再看看情況三：讓自律監管進一步發展，賦予旅行社行業完全的自主權。所謂自律監管，並不是現代才發展起來的概念，前身大概可追溯到西方中古和文藝復興時期的手工業行會。今天，很多專業，像醫學、法律、會計等，都採用自律監管的模式。自律監管的原則，是只有同行才有資格批評。正因為這原則，自律監管機構往往一方面被公眾責難只懂照顧會員的利益，另一方面又被會員指摘偏袒公眾。這種不信任看來十分普遍，在很多國家的很多專業都可看到。對香港旅行社的監管會不會發展成完全自律監管的模式？這大概得看公眾、政府、會員對議會的信心，同時還得看議會本身有沒有向這方向邁步的計劃。

跟着是情況四：稍為調整現行的雙層監管制度，使政府涉及較多或較少的監管工作。目前政府(即旅行代理商註冊處)主要負責發牌給旅行社，而議會在《旅行代理商條例》與會章(詳見另文)的授權下，則負責監管旅行社的日常營運。由於日常監管由議會負責，因此在政府層面的監督可以說並不多。也因此可以說這制度既保留了自律監管的優點，同時又在體制中添置了一重防範機制，以防自律監管機構沒有履行責任。那麼，倘若政府在雙層監管制度中的參與變得更多或更少，局面會怎樣？應不應該把議會現時的監管工作分一部份給政府？讓政府和議會一起監管旅行社的日常運作又怎麼樣？要回答這些問題，必須先深入研究所有與旅遊有關的人的意見才行。

loose supervision and also because the Travel Agents Reserve Fund set up for protecting outbound travellers was entirely drained. The TIC was then enlisted to enforce self-regulation alongside government supervision, and another levy-financed fund, the Travel Industry Council Reserve Fund, was set up to protect travellers. Readopting such a model would require a major revamp of the whole regulatory framework currently in place, and therefore extreme caution is obviously needed.

## Progressive change

Then, Scenario 3: progress to self-regulation with full autonomy. Self-regulation is not a modern invention. Its ancestors may be traced back to the craft guilds in the Middle Ages and the Renaissance and it is now commonly adopted in many professions such as medicine, law and accounting. Since the principle of self-regulation is that one should only be judged by one's peers, self-regulatory bodies are often criticised by the public for looking after the interests of their members and at the same time censured by their members for siding with the public. This kind of mistrust appears to be a universal phenomenon, seen in many professions and across national borders. Will the regulatory system of Hong Kong's travel agents evolve into one of self-regulation with full autonomy? That may depend on the confidence of the public, the Government and members in the TIC, and also on whether the TIC has any plan to proceed along this path.

Next comes Scenario 4: modify the existing two-tier regulatory system with greater/lesser government involvement. At present, the Government (i.e. the Travel Agents Registry) is mainly responsible for issuing licences to travel agents, and the TIC, empowered by the Travel Agents Ordinance and its M&A (see the other article), for monitoring the daily operation of travel agents. Since day-to-day monitoring is administered by the TIC, supervision at government level may be said to be rather limited. And as such, it may be argued that the merits of self-regulation are retained, while a protective valve is built in the regulatory system through a limited degree of government supervision against the self-regulatory body not doing its work properly. What would the situation become if the two-tier system were to have greater or lesser government involvement? Should some of the monitoring tasks done by the TIC be handed over to the Government? Should the Government be involved in regulating the day-to-day operation of travel agents together with the TIC? These questions can only be answered after the opinions of all stakeholders are carefully studied.

## 維持不變

最後，情況五：一切維持不變。現行的雙層監管制度自一九八八年推行以來，至今已經十七年了。這期間議會的監管措施不住因應時代的轉變而發展，為行業的成長和旅客的保障作出了明顯可見的貢獻。例如外遊領隊一向是不受議會監管的，但鑒於他們對外遊團的素質非常重要，議會於是實施「外遊領隊證書制度」，規定由一九九九年七月一日起，所有外遊領隊必須接受培訓並考取認可資格，大大提高了外遊業的整體水平。

美國有一句名言：「沒出漏子就別去碰它」，意思是如果意圖改進運作良好的制度，結果往往會弄巧成拙。這句話究竟可靠不可靠，當然可以細細探討，但現行的雙層監管制度運作良好，這確實無可置疑，特別是在旅客和政府眼中更是如此。

## 今後發展

上述五種情況，可以歸納為兩種監管模式：自律監管與政府監督。究竟是自律監管優勝，還是把一切監管權力交給政府來得有效？這沒有放諸四海皆準的答案。有些人會說，在安隆(Enron)的醜聞後，美國會計界把自律監管的權力交回政府，這不正好證明自律監管本身的嚴重缺陷嗎？不過，也有人會反駁說，在內地和東南亞國家有越來越多的自律監管機構，正好證明自律監管的優點。

香港旅行社現行的雙層監管制度，經過了十七年的不斷發展與改良，已經是非常成熟而有效的監管方法。今後一成不變固然不行，但一切推倒重來恐怕更不行。假如所有與旅遊有關的人，像旅客、旅行社、政府、議會等，都認為現行的監管制度需要改進，那應當先作理性的討論與深入的研究，然後才審慎探究怎樣逐步落實經廣泛討論而達成的共識。TTC

## Remain unchanged

And finally, Scenario 5: maintain the status quo. The existing two-tier system, in place since 1988, has developed with the needs of the time over the past 17 years, making obvious contributions to the growth of the industry and the protection for travellers. For example, outbound tour escorts used not to be monitored by the TIC. In view of their importance to package tours, the TIC launched the Outbound Tour Escort Certificate System on 1 July 1999, under which all outbound tour escorts are required to receive training and pass a qualifying examination. This has greatly raised the overall standard of the outbound industry.

There is a famous expression originated in the United States: "if it ain't broke, don't fix it", which means any attempt to improve on a system that already works may turn out to be detrimental. Whether this expression is valid or not is, of course, subject to debate; but that the current two-tier regulatory system already works is beyond doubt, especially in the eyes of the travelling public and the Government.

## Future development

The above five scenarios boil down to two different modes of regulation: self-regulation and government supervision. Is it better to have self-regulation or to leave regulatory powers all in the hands of the Government? There is no universal answer to this question. Whereas some may quote the surrender of self-regulatory powers by the accounting profession in the United States to the Government after the Enron scandal to prove significant flaws in self-regulation, some may also quote a growing number of self-regulatory bodies in mainland China and Southeast Asian countries as a counter-example of the merits of self-regulation.

In the case of Hong Kong's travel agents, after 17 years of continuing development and improvement, their two-tier regulatory system has already become a very mature and effective way of regulation. Although keeping everything unchanged may not be an option for the future, starting everything from scratch may be an even worse option. If all the stakeholders, such as travellers, travel agents, the Government, the TIC and the like, believe that it needs to be improved, then rational discussion and careful study have to be given top priority first, followed by painstaking analysis of methods to gradually implement any consensus reached after widespread discussion. TTC

# 看一看你的會章

## A glance at your M&A

**議**會的會章主要包括兩部份：《組織章程大綱》(大綱)和《組織章程細則》(細則)。在《大綱》和《細則》之中，有一些條文規定了議會與會員的關係，同時關乎議會監管會員的權力。

首先，會員應當知道，《大綱》列出了議會必須達成的目標，而在那些目標中，有些條文與會員的經營手法有關。具體來說，**議會必須**：

- 制訂與維持作業守則，務使議會會籍獲認可為具備誠信與能力，以及服務優良的保證(第 3(1)(d)項)；
- 阻止不公平的競爭(第 3(1)(e)項)；
- 擔當會員與會員之間，以及會員與非會員之間的調停人(第 3(13)項)；
- 制訂、修改與會員操守有關的規例(第 3(15)項)；以及
- 成立一個或多個委員會，以執行議會規例(第 3(16)項)。

與《大綱》相似，《細則》中也有一些條文，明確指陳一些議會和會員都必須遵守的規定：

- 會員均視為已與議會訂立契約，必須遵守議會的《細則》、作業守則，以及各種規例(第 8(4)條)；
- 理事會必須制訂作業守則，以監管會員的操守和運作(第 10(1)條)；以及
- 理事會在一些情況下可進行調查，例如當會員從事旅行社業務時涉嫌違反公眾利益，即可調查(第 11(5)(a)條)。

由上述可見，根據會章，議會必須制訂監管會員營運的規例，而會員也必須遵守那些規例。最後應該注意的，是議會會章的任何修訂都必須得到公司註冊處處長的書面批准，有些條文更要有財政司司長的書面批准。TC

The TIC's M&A mainly consists of two parts: the Memorandum of Association (MoA) and the Articles of Association (AoA). There are a number of provisions in the MoA and AoA which govern the relationship between the TIC and its members, and which are related to the TIC's regulatory powers over its members.

First of all, members should know that the MoA has stipulated the objects which the TIC must fulfil. Among them, several clauses concern the business practice of members. In particular, the TIC has to:

- establish and maintain Codes of Conduct so that TIC membership is recognised as a guarantee of integrity, competence and a high standard of service (Clause 3(1)(d));
- discourage unfair competition (Clause 3(1)(e));
- act as arbitrator between members, and between members and non-members (Clause 3(13));
- make and amend rules regarding the conduct of members (Clause 3(15)); and
- set up one or more committees to enforce TIC rules (Clause 3(16)).

Similarly, the following articles of the AoA lay down specific requirements concerning what must be done by the TIC and its members:

- members must be deemed to have covenanted with the TIC to comply with the AoA, Codes of Conduct and all rules of the TIC (Article 8(4));
- the TIC Board must prepare Codes of Conduct regulating the conduct and practices of members (Article 10(1)); and
- the TIC Board may conduct investigations in various circumstances such as when a member is suspected of carrying on its business as a travel agent contrary to the public interest (Article 11(5)(a)).

Therefore, it is evident that the TIC must stipulate rules regulating the practices of members and members must abide by those rules as required by the M&A. Finally, it should also be noted that any amendments to the TIC's M&A must be approved by the Registrar of Companies in writing, and alterations to a number of its provisions require the written approval of the Financial Secretary. TC

