

自律監管之路既遠且長

A bumpy road to effective self-regulation

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根據《2001年旅行代理商(修訂)條例草案》，所有入境旅行社都必須成為議會會員，並領取旅行代理商牌照。當立法會二零零二年四月二十四日通過這個將由同年十一月一日起生效的草案時，各方相關人士的反應大都正面而樂觀，相信議會可以監管好入境旅行社，從而為入境旅客，尤其是內地旅客，提供最佳的保障。

那時候的反應，除了是正面而樂觀之外，還會是甚麼呢？議會那時候已經妥善地監管了外遊旅行社十四年，而撇開偶然倒閉的幾家外遊旅行社不算，外遊業運作得井井有條，不住增加的外遊旅客也都得到良好的照顧。此外，那時候整個香港除了議會外，似乎沒有任何合資格的組織，是既有監管旅行社的經驗和專業知識，以及最重要的，又確實曾經把旅行社監管得妥妥當當。可是，事情並沒有按計劃發展下去。

《2002年旅行代理商(修訂)條例》生效至今已五年，在這期間內地旅客的人數由二零零二年的六百八十三萬，變成二零零七年估計的一千五百萬，即增加了超過一倍，而所有其他旅客合起來也不過是增加了百分之三十而已。同樣在這期間，關於內地旅客的報導不時成為頭條新聞，只可惜報導的很少是他們年復一年的雙位數字增幅，而多數是他們被本地旅行社丟下不顧，又或者被狡詐的零售商欺騙等等。

在過去幾年間，儘管議會推行了不少措施以整頓入境旅行社，但公眾當初對議會的信心似乎已經減少了，而若干話不留情的人，甚至批評旅行社現行的監管機制已經不起作用，需要動一次大手術。現在的機制真的失去效用嗎？又或者那只是錯誤的觀感？要解答這類問題，需要從更寬廣的視野去詳細研究。

When the Legislative Council passed on 24 April 2002 the Travel Agents (Amendment) Bill 2001, which required all inbound travel agents to apply for TIC membership and then the Travel Agents Licence, and which would take effect from 1 November 2002, the responses from all stakeholders were generally positive and optimistic. It was believed that the TIC would be able to police inbound agents, thus rendering better protection for inbound visitors, especially those from mainland China.

How could responses then be anything but positive and optimistic? At that time, the TIC had been successfully regulating outbound travel agents for 14 years, and apart from occasional incidents where some of them defaulted, the outbound industry was running smoothly and properly, and the growing numbers of outbound travellers were well taken care of. And in the whole of Hong Kong, there seemed to be no other qualified candidate which had had the experience and expertise in regulating travel agents, and most importantly, an excellent track record in having done so. But things did not play out according to plan.

Now, it is five years since the Travel Agents (Amendment) Ordinance 2002 took effect, and during that period, the number of mainland visitors has more than doubled from 6.83 million in 2002 to an estimated 15 million in 2007, compared with a 30% increase for all other visitors combined. Also during that period, stories about mainland visitors hit the headlines from time to time, rarely for double-digit growth in their numbers year after year, but, unfortunately, mostly for their having been left unattended by local agents or having been cheated by dishonest retailers.

Despite the many measures implemented by the TIC during the past few years to try to put the inbound agent house in order, the initial public confidence in the TIC seems to be wearing thin and a few vocal critics have even suggested that some drastic surgery on the existing regulatory regime of travel agents has to be carried out since it obviously is not functioning. Is the current regime not working? Or is that just a misperception? A wider perspective is needed before this kind of question can be answered.

透析自律監管

自律監管是非常普遍的監管方式，很多國家都可以看到，像英國、俄羅斯、印度、日本等，多個工業和專業也都可以找到，像電訊業、能源業，以及法律、工程專業等。雖然自律監管歷史久遠，可以追溯到西方中古時期的行會，但要到了工業革命期間和之後的時期，具備現代特徵的自律監管體制才成為英國一些範疇的主要監管模式，像工業、金融等。

這些自律監管體制之中，有些到了二十世紀依然存在，但過去二十年的總趨勢卻是逐步遠離自律監管，由政府對原有的自律監管機制實施程度不一的監督，於是自律監管和政府監督的傳統界線就變得模糊起來了。以英格蘭和威爾斯的法律專業為例，傳統的自律監管組織主要是律師協會(Law Society)和大律師公會(Bar Council)，但現在都快受到法律服務委員會(Legal Services Board)的監督了，雖然日常的監管責任仍然由獲准的自律監管組織負責。

監管的模式雖然林林總總，但究竟應該怎樣分類，目前並沒有一致的看法。而即使真的有大家都同意的分類方法，但不同的工業和專業都各有複雜和特異之處，要現實的例子與任何這些類別密合無間，恐怕都會有一定困難。話雖如此，英國巴斯大學(University of Bath)管理學院的伊恩·巴特爾博士(Ian Bartle)和彼得·瓦斯先生(Peter Vass)所提出的模型(見圖)，看來足以包含類別多樣的監管模式，而且當中很多類別都適用於香港的情況。

香港旅遊行業的監管

一九八五年前，香港的外遊旅行社不受任何特定模式的監管(不同監管類別中的「沒有監管」)。由一九八五至八八年間，法例規定外遊旅行社必須向旅行代理商註冊處申請旅行代理商牌照(「法定監管」)。後來這種監管模式失敗了，政府於是邀請議會改組成外遊旅行社的自律監管組織，並規定議會的會籍是申請牌照的先決條件。於是自一九八八年至今，外遊業就由一個自律監管組織(議會)與一個政

Self-regulation in perspective

Self-regulation is such a common form of regulation that it can be seen in many countries such as Britain, Russia, India and Japan, and in various industries and professions such as the telecommunications and energy industries, and the legal and engineering professions. Although its long history may be traced to guilds in the Middle Ages, it was during and after the Industrial Revolution that modern systems of self-regulation became the principal means of regulation in some sectors in Britain such as industry and finance.

Some of these systems of self-regulation continued their lives well into the 20th century, but the general trend of the past two decades was one of moving away from self-regulation, with various degrees of state oversight imposed on existing self-regulatory regimes, thus blurring the traditional line between self-regulation and state regulation. For example, in England and Wales, the traditional self-regulatory bodies of the legal profession, notably the Law Society and the Bar Council, are now to be overseen by the Legal Services Board, though the responsibility for day-to-day regulation remains in the hands of the approved self-regulators.

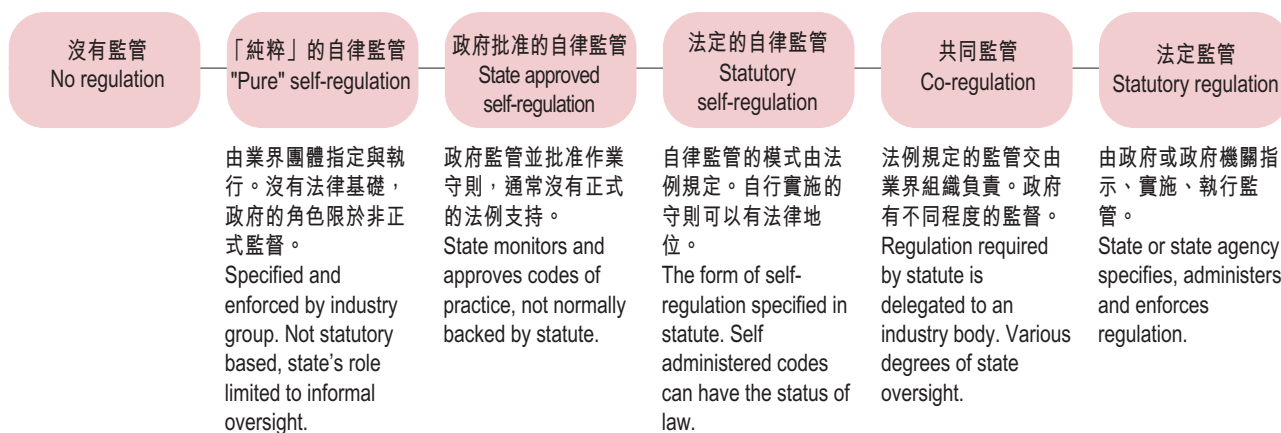
Although there are many forms of regulation, there is no consensus as to how regulation should be categorised. And even if there were to be some agreed categories, it would still be difficult to fit actual examples neatly into any one such category because of the complexities and variations in different industries and professions. Nevertheless, the model (see Figure) proposed by Dr Ian Bartle and Mr Peter Vass, of the School of Management of the University of Bath, seems to be able to capture sufficient varieties of regulation, many of which are applicable to situations in Hong Kong.

Regulation of travel industry in Hong Kong

In Hong Kong, outbound agents were not subject to any specific form of regulation until 1985 ("no regulation" in the regulatory spectrum). And then from 1985 to 1988, they were required by law to apply for a Travel Agents Licence from the Travel Agents Registry ("statutory regulation"). After the failure of this form of regulation, the Government invited the TIC to transform itself into a self-regulatory organisation of outbound agents, and made its membership a prerequisite for the Travel Agents Licence. Therefore, from 1988 until now, the outbound industry has been regulated by a self-regulator, the TIC, and a state agency, the Travel Agents Registry ("co-

圖：不同的監管類別

Figure: Various categories in the regulatory spectrum



府機關(旅行代理商註冊處)一起監管(「共同監管」，在香港較為普遍的名稱是「雙層監管」)。至於為外遊旅行社工作的外遊領隊，也自一九九九年納入議會的監管範圍之內。

正如前文所述，外遊業的共同監管模式十分成功，於是政府再次邀請議會與旅行代理商註冊處合作，共同監管入境旅行社(二零零二年前是「沒有監管」，由二零零二年至今是「共同監管」)。可是，要對入境業施行監管，原來遠比先前所想的來得複雜。首先，關於入境旅遊服務的投訴，主要涉及入境旅行社委派本地導遊帶內地旅客去零售店舖購物，而店舖則把品質低劣或價錢過高的貨品賣給他們。因此，議會即便是外遊與入境旅行社的前線自律監管組織，但也要制訂並推行一連串措施，以監管入境旅行社、本地導遊，以及專門招徠入境團體旅客的零售店舖。

由於議會早於一九九九年四月就已頒佈了《入境旅行社作業守則》，要把它修訂為《經營到港旅行服務守則》不大困難；後者由二零零六年九月起生效，包含了針對入境旅行社的多個指引。而導遊核證制度與《導遊作業守則》，經過兩年的籌備後，也已由二零零四年七月起生效。至於入境監管機制的最後一環，於二零零五年四月成立、用以監管店舖的登記店舖記分制，經過一番改良後，也已成了二零零七年六月生效的入境旅行團(登記店舖)購物退款保

regulation", or more commonly referred to as "two-tier regulation" in Hong Kong). And outbound tour escorts working for outbound agents have also come under the scope of regulation of the TIC since 1999.

As has been said earlier, the co-regulation formula of the outbound industry had been so successful that the TIC was again invited to work with the Travel Agents Registry to discipline inbound agents (from "no regulation" before 2002 to "co-regulation" since 2002). The regulation of the inbound industry, however, turned out to be much more complicated than had been thought. For a start, complaints about inbound services mostly concern mainland visitors having been taken by local tourist guides assigned by inbound agents to retail shops trying to sell them second-rate or overpriced goods. As a result, the TIC, the front-line self-regulator of outbound and inbound travel agents, has had to devise and implement measures in order to police inbound agents, local tourist guides and retail shops catering for inbound group visitors.

As the Code of Conduct for Inbound Agents had already been put in place since April 1999, it was an easier part of the task to turn it into the Code of Business Practice on Inbound Travel Service, which incorporated Directives targeting inbound agents and which took effect in September 2006. And the Tourist Guide Accreditation System and the Code of Conduct for Tourist Guides, after two years of preparation, also took effect in July 2004. As for the last component of the inbound regulatory mechanism, the Demerit System for Registered Shops, established in April 2005 to regulate registered shops, was shaken up to become the Refund Protection Scheme (Registered Shops) for Inbound Tour Group Shoppers in June 2007.

障計劃。

單是好還不夠好

雖然議會只是入境旅行社的自律監管組織，但過去幾年間已勉力實施了多項規則，務求把本地導遊和登記店舖也都納入監管範圍之內。然而即使這樣，每當有內地旅客投訴時，部份傳媒和一些公眾人士就會立即抓緊機會，申斥負責自律監管的組織。其實客觀來說，今年頭十個月議會收到二百二十二個內地旅客的投訴，而同期卻有一千二百六十七萬名內地旅客，換言之每十萬名內地旅客才有一點七五個投訴。在統計學上這個數字可以說是微不足道。

在今天的香港，對任何模式的監管制度來說，都必須越來越關注透明度是不是充足，有沒有向公眾負責，成效和效率怎樣等問題。因此，不管是政府監督機關還是自律監管組織，都必須向公眾證明本身值得委以監管的責任，以及時刻都會以公眾利益為行動的依歸。議會正是基於這種看法，所以最近才決定，與外遊旅行社、入境旅行社、外遊領隊、本地導遊、登記店舖的紀律處分或投訴處理相關的五個委員會，都會實施重大改革。

由二零零八年起，那五個委員會，即規條委員會、內地來港旅行團規條委員會、導遊及領隊審核委員會、購物事宜委員會、消費者關係委員會，全都會由獨立理事擔任召集人，而且都會有過半數的業外委員。此外，獨立理事也會由八人增至十二人，使理事會的業外人士超過百分之四十。

當上述改革實施後，希望可以明確解決一些針對所有自律監管組織的常見批評，像自律監管者與受監管者相互勾結，又或者自律監管者對受監管者手下留情之類。除此之外，也希望日後有誰要批評旅遊行業現行的共同監管機制的話，都可以做到既公平又客觀。TTC

Good is not good enough

Over the years, even though the TIC has stretched its regulatory role of inbound agents to monitor local tourist guides and registered shops through a whole range of regulations, some sectors of the media and the public are quite ready to jump at any chance of criticising the self-regulatory organisation whenever mainland visitors complained. Objectively speaking, for the first 10 months of this year, the numbers of inbound complaints filed with the TIC and inbound visitors from mainland China are 222 and 12.67 million respectively, that is 1.75 complaints per 100,000 mainland visitors, hardly a significant figure statistically.

In today's Hong Kong where transparency, public accountability, effectiveness and efficiency are becoming primal considerations in all kinds of regulatory regime, state regulators and self-regulators alike have to demonstrate to the public that they can be trusted with the duties of regulation and that they always act in the public interest. It is with this line of thought in mind that the TIC has recently decided to make major reforms to the five committees responsible for handling disciplinary matters and complaint cases relating to outbound and inbound agents, outbound tour escorts, inbound tourist guides and registered shops.

From 2008 onwards, the convenors of the five committees (the Compliance Committee, the Mainland China Inbound Tour Compliance Committee, the Tourist Guide and Tour Escort Deliberation Committee, the Committee on Shopping-related Practices and the Consumer Relations Committee) will all be Independent Directors, and each of the committees must comprise a majority of non-trade members. Apart from that, the number of Independent Directors will also be increased from eight to 12 so that more than 40% of all Directors will be from outside the trade.

When these reforms are put in place, it is hoped that the more common criticisms of all self-regulatory organisations such as collusion between the self-regulator and the regulated, and the self-regulator being soft on the regulated can be squarely tackled. It is also hoped that future comments on any shortcomings of the existing co-regulatory regime of the travel industry can be made in a fair and objective manner. TTC