

入境旅遊的違規個案

Inbound violation cases

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議會規管入境旅遊業已經六年，監管機制可說是相當完備。入境旅行社、登記店舖、導遊都有必須遵守的規例及守則；紀律機制方面，則有四個委員會負責處理各類違規個案，即購物事宜委員會、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。這些委員會都由議會獨立理事擔任召集人，而且業外成員都佔一半以上，力求處理個案時做到公平公正。

由於部份規例實施時間尚短，會員可能還未熟習，以致違規的次數較多。今年一月至八月期間，第一百六十八號指引的違規次數達十六次，第一百六十七號則為十四次。以下選輯了三宗違規個案，希望會員、導遊、登記店舖都能藉此瞭解入境業的規管措施及違規個案的處理程序，並且以此為鑑，避免違規、違諾。

個案一

個案概述

投訴人隨旅行團來港旅遊期間，在一家議會登記店舖買了一台數碼攝錄機，其後不滿攝錄機的功能，加上發現那台攝錄機的型號在中國內地已停售半年，於是要求店舖退款。但店舖卻表示，貨品必須沒有損壞並且包裝完整才會退款。投訴人於是向議會求助。由於店舖拒絕履行退款承諾，個案於是交由購物事宜委員會處理。

解釋

店舖認為，所有原裝貨品都會在包裝盒和機身印上編號。貨品沒有了包裝盒，就只能當作二手貨出售。若接受退款，就要蒙受損失，因此拒絕投訴人的要求。

After six years in the job, the TIC has established a rather comprehensive regulatory regime for the inbound trade. Rules and codes for inbound agents, registered shops and tourist guides are well in place, with four committees responsible for handling different kinds of violation cases, namely the Committee on Shopping-related Practices, the Compliance Committee, the Mainland China Inbound Tour Compliance Committee and the Tourist Guide and Tour Escort Deliberation Committee. **To ensure fairness and impartiality, Independent Directors are appointed convenors of these committees, each of which must have at least 50% of non-trade members.**

As some of the rules have taken effect for a short time, members may not know them well and are prone to violate them. From January to August this year, there were 16 violations concerning Directive No. 168 and 14 concerning Directive No. 167. Through the following three cases, it is hoped that members, tourist guides and registered shops can understand the inbound regulatory regime and the procedures for handling violation cases, and learn a lesson from them to avoid violation of rules and pledges.

Case 1

Case descriptions

A complainant bought a camcorder from a shop registered with the TIC on a package tour to Hong Kong, and was later dissatisfied with its functions. After discovering that such a model had no longer been on sale on the mainland for half a year, the complainant asked for a refund, but was told that a refund would only be offered if the camcorder was not damaged and was returned with the whole of its packaging. He sought help from the TIC as a result. Since the shop refused to honour its refund pledge, the case was submitted to the Committee on Shopping-related Practices.

Explanations

The shop stated that any genuine brand-new product would have a serial number printed on the packaging box and the product. If a product did not have the packaging box, it could only be sold second-hand. The complainant's refund request was rejected because to do otherwise would incur a loss.

Committee decisions

According to Directive No. 164, registered shops whose clientele was mainland tour groups had to pledge to offer six-month refund protection to

委員會決定

根據議會第一百六十四號指引，接待內地入境團的登記店舖必須承諾向旅客提供六個月全數退款保障，條件是退回的貨品沒有損壞，也沒有因使用而導致的損耗。購物事宜委員會認為，投訴人符合退款條件，店舖拒絕退款是違反承諾。委員會並且指出，舊的退款保障計劃要求旅客退回貨品包裝，但有些店舖卻以包裝不全而拒絕退款，因此議會去年中修訂該計劃時，才把退回包裝的要求刪除。在現行的退款保障計劃下，**無論退回的貨品有沒有包裝，店舖都必須全數退款，否則即屬違諾**。委員會認為店舖違反承諾，要記兩分。

個案二

個案概述

九名投訴人參加旅行團來港，第二天香港導遊向團員表示，這天每人的最低消費額為港幣三千元，不達標就要多逛幾家店舖。原定的購物活動結束後，導遊說消費額太少，要增加購物點。團員拒絕再逛店舖，導遊卻說這是行規。投訴人後來得悉香港接待社因為此事向隨團的內地領隊施壓，於是向議會同時投訴導遊和接待社。個案交由內地來港旅行團規條委員會處理。

解釋

導遊表示，當時全團旅客都要求不進店購物，他於是向他們解釋，合約上訂明有三個購物點。他否認說過不達消費指標就要繼續「走店」，反指旅客因為不進店舖的要求被拒絕，所以才無理投訴。旅行社也表示，根據合約，旅行團的行程包括購物活動，團員因不想進店而投訴是無理取鬧，要求議會公正處理。

委員會決定

內地來港旅行團規條委員會認為，旅行社按合約帶旅客購物無可厚非，但設下購物指標、強迫購物則屬違規。旅客已按行程完成了購物活動，但導遊卻嫌消費金額不足而向旅客施壓。

their customers provided that the products returned for a refund were not damaged and there was no wear and tear because of use. The Committee on Shopping-related Practices considered that the complainant was entitled to a refund, and that the shop had violated its pledge in refusing to refund. The Committee pointed out that the previous refund scheme required that the packaging should be returned with the product, but some shops refused to refund on the grounds that some of the packaging was missing. The TIC therefore rescinded such a requirement when reviewing the scheme in the middle of last year. Under the current refund scheme, **even if a product did not have the packaging, the shop still had to offer a full refund, or it might be deemed in breach of its pledge**. The Committee decided that the shop had violated its pledge and would be given two demerits.

Case 2

Case descriptions

Nine complainants joined a package tour to Hong Kong, and were told by the Hong Kong tourist guide on the second day of the trip that each of them had to spend at least HK\$3,000 on that day, and failure to do so would mean more shopping visits. When all such visits were completed as planned, the tourist guide complained that they had spent too little and therefore would be taken to more shops. The complainants refused to comply, and the tourist guide said that it was trade practice. After knowing that the Hong Kong receiving agent had put pressure on the mainland tour escort for that, they filed a complaint with the TIC against both the tourist guide and the receiving agent. The case was thus submitted to the Mainland China Inbound Tour Compliance Committee.

Explanations

The tourist guide remarked that the whole tour group was reluctant to enter any shops at that time, and he therefore explained to them that the contract specified that there were three shopping visits. He denied having said that failure to reach the minimum spending amount would mean more shopping visits. He accused the visitors of filing a groundless complaint because their request for skipping shopping visits had been turned down. The travel agent also stated that according to the contract there were shopping visits on the itinerary, and that the complainants were merely making trouble since they did not want to go to any shops. It urged the TIC to handle the case fairly.

Committee decisions

The Mainland China Inbound Tour Compliance Committee stated that whereas it was acceptable to take visitors to shops according to the contract, setting any spending amount or forcing the visitors to make purchases was a violation of the rules. The visitors had completed the shopping visits as required by the itinerary, but the tourist guide still pressed them to spend more as their spending amount was deemed insufficient. The Committee

委員會認為導遊強迫旅客購物，違反了《導遊作業守則》第4(i)、9(iii)、9(iv)段。鑒於導遊已有兩次違規紀錄，委員會決定發出警告信。此外，委員會認為旅行社沒有採取措施去防止導遊強迫購物，必須負上僱主或聘用者的責任，因此違反了《經營入境旅行服務守則》第3(6)(a)段，要被罰款。

個案三

個案概述

議會辦事處職員巡查旅遊景點時，發現旅行社沒有向議會登記與內地組團社簽訂的團隊確認書，涉嫌違反第一百六十八號指引。此外，旅行社還把團隊確認書當作行程表派發給旅客，當中內容也不符議會規定，因此涉嫌違反第一百六十七號指引。個案交由規條委員會處理。

解釋

旅行社表示由於把登記團隊確認書的工作交由新職員負責，因此在運作上出現了混亂，旅行社事後已立即補辦登記手續，並且處分了該職員。旅行社又說公司開業不久，不熟悉議會的規例，以為行程表只需要包含行程項目；現在已明白行程表與確認書的分別，對於違規甚為抱歉，希望委員會從寬處理。

委員會決定

規條委員會指出，旅行社加入議會已一年多，不能以開業不久為不登記確認書的求情理由。確認書登記後，議會可以知道組團社與接待社之間的合約安排，以便跟進旅行團的事故或投訴，因此那樣做是必要的。此外，第一百六十七號指引訂明，旅行社派發給內地旅客的行程表必須以「行程表」三字為標題，並且不得把團隊確認書當作行程表派發給旅客。旅行社當作行程表派發的文件，並沒有按指引規定包含百分百退款保障計劃及常用熱線等資料，使旅客不清楚自己的權益和求助途徑。委員會認為個案成立，旅行社被罰款。☞

considered that the tourist guide had forced the visitors to shop, and therefore had violated paragraphs 4(i), 9(iii) and 9(iv) of the Code of Conduct for Tourist Guides. Since it was his third violation, the Committee decided to issue a warning letter to him. As for the travel agent, **the Committee decided that it should be held vicariously responsible for the tourist guide's behaviour for it had not adopted any measures to prevent him from forcing the visitors to shop.** The agent was therefore fined for having violated paragraph 3(6)(a) of the Code of Business Practice on Inbound Travel Service.

Case 3

Case descriptions

During a spot check by TIC staff at a tourist attraction, a travel agent was found to have failed to register with the TIC the tour confirmation agreement it had signed with the mainland tour operator, and was suspected of violating Directive No. 168. The agent was also suspected of violating Directive No. 167 for distributing the tour confirmation agreement to the visitors as if it were the itinerary and for failure to meet the requirements for itinerary contents. The case was handled by the Compliance Committee.

Explanations

The agent explained that since a new member of staff had been assigned to register its tour confirmation agreements, there were some administrative irregularities. It immediately registered the agreement afterwards, and disciplined the staff member. It added that having been in the business for a short time, it did not fully understand TIC rules and thought that the itinerary only needed to contain activity items. Now that it understood the difference between the tour confirmation agreement and the itinerary, it was very sorry for the violation and hoped that the Committee would be lenient.

Committee decisions

The Compliance Committee pointed out that as the agent had joined the TIC for over a year, being a novice in the trade would not be accepted as a mitigating factor for not registering the tour confirmation agreement. It is crucial to have tour confirmation agreements registered because that would enable the TIC to know the contractual arrangements between the tour operator and the receiving agent and to follow up any incidents or complaints. Besides, Directive No. 167 specifically stipulated that **itineraries distributed to mainland visitors had to use the Chinese characters “行程表” (itinerary) as their title and that the tour confirmation agreement was not to be distributed to visitors as if it were the itinerary.** The document purported to be the itinerary did not contain information about the full refund protection scheme and useful hotlines, thus making the visitors unaware of their rights and the ways to seek help. The Committee considered the case substantiated and fined the agent. ☞