

擔起自律監管工作二十一年

In the job of self-regulation for 21 years

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(編按：今年七月十六日，立法會經濟發展事務委員會召開會議討論議會的運作。議會向委員會提交了文件，以解釋議會各方面的情況；該文件其後發給了全體會員。下文重新組織了該文件的重點。)

(Editor's note: The Legislative Council's Panel on Economic Development met on 16 July this year to discuss the operation of the TIC. A submission was made, which contained various aspects of the TIC and which was later sent to all members. The main points of the submission are restated here.)

香港旅行社的監管

香港及其他地方主要有三種監管模式，即法定監管、自律監管、共同監管。法定監管由政府部門或法定機構負責，自律監管則由業者所屬的專業團體實施監管，可能有法律賦予的權力，也可能沒有。至於共同監管，指的是上述兩種模式的結合，依賴政府與業界的合作。

由上述角度來看，香港的外遊旅行社經過了三個監管階段，而入境旅行社則經過了兩個。一九八五年以前，外遊旅行社不受監管，這不妨稱為首個階段。到了一九八五至八八年間，《旅行代理商條例》規定外遊旅行社必須領取牌照，並且由政府部門旅行代理商註冊處獨力監管。這個第二階段完結後，迎來了共同監管的第三階段。這一階段由一九八八年底開始，當時政府修訂了《旅行代理商條例》，而議會也變為自律監管機構，旅行代理商註冊處則繼續負責發牌。

至於入境旅行社，則只經過了兩個監管階段，因為並沒有法定監管的階段。換言之，沒有監管的階段於二零零二年結束，當時政府再次修訂《旅行代理商條例》，使入境旅行社也要接受議會和旅行代理商註冊處的共同監管。

組成與監管範圍

議會的組成包括八個屬會、約一千五百家會員旅行社、理事會、上訴委員會、二十個委員會和工作小組，以及議會辦事處。

旅行社需要先加入一個屬會，然後才可以加入議會，成為基本會員或普通會員。理事會共

Regulation of travel agents in Hong Kong

There are mainly three regulatory models in Hong Kong and elsewhere, namely statutory regulation, self-regulation and co-regulation. Whereas statutory regulation is enforced by government departments or statutory bodies, self-regulation refers to regulation of industry members by their own professional bodies, with or without legal backing. As for co-regulation, it means a combination of the above two models, relying on cooperation between government and industry.

Seen in this perspective, **outbound travel agents in Hong Kong have undergone three regulatory stages while inbound travel agents, two.** Before 1985, outbound agents were not subject to any regulation, which is the first stage. Then between 1985 and 1988, they were required to obtain a licence under the Travel Agents Ordinance, and were solely regulated by the Travel Agents Registry, a government department. The end of this second stage ushered in the third stage of co-regulation, which began in late 1988 when the Ordinance was amended and the TIC was turned into a self-regulatory body, with the Travel Agents Registry continuing to be the licensing authority.

There are only two stages of regulation so far as inbound agents are concerned, as the statutory regulation stage does not exist here. In other words, the stage of no regulation ended in 2002, when the Ordinance was amended again to put inbound agents also under the co-regulatory regime enforced by the TIC and the Travel Agents Registry.

Composition and scope of regulation

The TIC is composed of eight Association Members, about 1,500 member agents, the Board of Directors, the Appeal Board, 20 committees and working groups and the Executive Office.

Travel agents have to join one of the Association Members before being admitted to the TIC as either Ordinary Members or Affiliate Members. The Board of Directors has 29 directors: one chairman, 16 trade directors and 12 independent directors. Responsible for implementing policies of the Board of Directors, the Executive Office has about 50 staff working in 10

有二十九名理事，包括一名主席、十六名業界理事、十二名獨立理事。議會辦事處有十個部門，約五十人，負責執行理事會的各项政策。

嚴格而言，議會雖然一向都致力於監管外遊領隊、導遊及登記店舖，但本身只是負責自律監管的旅行社專業團體而已。議會之所以監管外遊領隊、導遊及登記店舖，是因為假如容許三者監管機制之外，那麼外遊和入境旅客就難以享有充足的保障了。

因此，議會於二零零七年推行外遊領隊核證制度(其前身於一九九九年實施)，於二零零四年實施導遊核證制度，規定會員旅行社只可委派持有有效領隊證和導遊證的人士，擔任領隊和導遊的工作，而持證領隊和持證導遊，都必須遵守外遊領隊和導遊的作業守則。

此外，議會於二零零二年時，規定會員旅行社如要帶團體旅客前往店舖購物，必須先把店舖資料向議會登記，而有關店舖必須承諾在一個指定期限內向團體旅客全數退款。二零零五年，議會對登記店舖實施扣分制。

監管與其他職能

議會目前有九個守則及七十多個指引生效，規管著會員旅行社、外遊領隊、導遊、理事、各委員會委員的商業手法和專業操守。

所謂有效監管，是指不斷監察市場的情況，並且果斷推行新措施以應付新問題。議會鑒於專門設計給學生參加的遊學團漸受歡迎，於是在二零零六年實施遊學團守則以監管這類旅行團，這可以算是迅速反應的上佳例子。

不斷監察市場包括不少日常工作，如登記外遊團行程表(每年約有五萬二千個登記)及內地入境團確認書(每年約有七萬個登記)；巡查各景點(每年一百次，大約涉及二百三十家入境旅行社、四百八十名導遊)及登記店舖(每年二百二十次)；視察會員的營業地點(每年約五百家)。

除了自律監管的工作外，議會歷年還為業者提供各式各樣的服務。這些服務包括為外遊領隊、導遊、票務顧問等旅遊從業員提供培訓；協助旅行社改善營運(例如舉辦各類講座)；處理

departments.

Strictly speaking, the TIC is only a self-regulatory professional body of travel agents, even though it has also taken an active role in regulating outbound tour escorts, tourist guides and registered shops as outbound travellers and inbound visitors can hardly have enough protection if these three kinds of stakeholder are allowed to stay outside the regulatory regime.

That is why **the TIC launched the Outbound Tour Escort Accreditation System in 2007 (its predecessor in 1999) and the Tourist Guide Accreditation System in 2004**, and required its member agents to assign only those who hold valid Tour Escort Passes and Tourist Guide Passes to tour-escorting and tour-receiving duties. Holders of the Passes must observe the codes of conduct for outbound tour escorts and tourist guides.

Apart from that, **the TIC required in 2002 member agents to register the information of retail shops before taking group visitors to shop there, and in order to be registered, those shops needed to undertake to offer a full refund for group visitors within a specified period after purchase.** These registered shops were later subject to a demerit system put in place in 2005.

Regulatory and other functions

Currently, there are nine codes of conduct and more than 70 directives in force, governing the business practice and professional conduct of member agents, outbound tour escorts, tourist guides, directors and committee members.

Effective regulation means constant monitoring of market situations and prompt adoption of new measures to tackle new issues. A good example of prompt response is the introduction of a code of business practice on study tours in 2006, following growing popularity in tours tailored for students.

Constant monitoring involves plenty of routine work such as registration of outbound tour itineraries (about 52,000 registrations a year) and mainland China's inbound tour confirmation agreements (about 70,000 registrations a year); spot checks at tourist attractions (100 times a year, involving about 230 inbound agents and 480 tourist guides) and registered shops (220 times a year); and inspections at business locations of member agents (about 500 members a year).

Apart from playing a self-regulatory role, the TIC has also delivered a whole range of services for industry members over the years. Some examples of these services include providing training for outbound tour escorts, tourist guides, ticketing consultants and many trade practitioners; helping member agents to improve their operation (such as holding various kinds of seminar); handling emergencies; and bringing up industry concerns with the authorities (such as seeking government assistance to help members tide over various crises).

緊急事故；向當局提出業界關注的事情(例如要求政府協助會員渡過各種難關)等等。

處理違規與上訴

議會目前共有二十個委員會及工作小組，其中五個負責處理違規個案及旅客投訴。

這五個委員會統稱紀律委員會，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，負責處理涉及會員旅行社、外遊領隊、導遊、登記店舖的違規個案，以及外遊和入境旅客的投訴。

所有紀律委員會的召集人都是獨立理事，委員會內必須有過半數的業外委員。委員會召開小組會議以處理違規個案或旅客投訴時，也必須有一半委員來自業外。

上訴委員會開會處理涉及違規個案的上訴時，必須包括三名獨立委員及兩名業界委員。

議會的經費與印花費的使用

一九八八年，議會獲政府授權，與旅行代理商註冊處合力負責共同監管機制，原因之一，是因為在法定監管階段所成立的旅行代理商儲備基金耗盡了儲備，無法再保障外遊團體旅客。

為了使議會能履行職責，政府於一九八八年修訂《旅行代理商條例》，使牌照有效與否取決於是否議會的會員。議會同年成立了獨立運作的香港旅遊業議會儲備基金，規定外遊旅行社必須向基金繳付外遊團費的百分之一為印花費，而議會的開支則向基金申請撥款。

一九九三年，法定的旅遊業賠償基金成立，取代了議會儲備基金，印花費(一九九二年已減為外遊團費的百分之零點五)並且分為兩部份，即賠償基金徵費和議會徵費。賠償基金徵費(外遊團費的百分之零點三五)繼續用於保障外遊團體旅客，而議會徵費(外遊團費的百分之零點一五)則用於支付議會的大部份經費。

一九九七年，印花費減為外遊團費的百分之零點三(賠償基金徵費和議會徵費各佔一半)，由二零零九年七月起，印花費再減為外遊團費

Handling of violations and appeals

The TIC now has a total of 20 committees and working groups, five of which are responsible for handling violation and complaint cases.

Collectively known as disciplinary committees, and responsible for handling violation cases (involving member agents, outbound tour escorts, tourist guides and registered shops) and complaint cases (filed by outbound travellers and inbound visitors), they include 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.

The disciplinary committees all have an independent director as convenor and a majority of members from outside the industry. When panel meetings are held to handle violation and complaint cases, a majority of non-trade members must be present.

When the Appeal Board meets to deal with appeals involving violation cases, it must consist of three independent members and two trade members.

Funding of TIC and use of levy

One of the reasons why the TIC was empowered in 1988 to become a partner of the Travel Agents Registry in the co-regulatory regime, was the depletion of the reserves of the Travel Agents' Reserve Fund (set up during the statutory regulation stage), thus making it unable to continue to protect outbound group travellers.

To allow the TIC to perform its duties, the Government amended the Travel Agents Ordinance in 1988 to make the validity of the licence of a travel agent hinge on its TIC membership. Also in the same year, the independently run TIC Reserve Fund was set up, and outbound agents were required to pay, in the form of an outbound levy, 1% of the outbound tour fares received into the Fund, from which expenses of the TIC would be reimbursed.

In 1993, the statutory Travel Industry Compensation Fund (TICF) was set up to replace the TIC Reserve Fund, and the outbound levy (reduced to 0.5% of outbound tour fares in 1992) was split into two parts, the Fund levy and the Council levy. Whereas the Fund levy (0.35% of outbound tour fares) continued to be used for outbound group traveller protection, the Council levy (0.15% of outbound tour fares) was used to cover most of the expenses incurred by the TIC.

In 1997, the outbound levy was reduced to 0.3% of outbound tour fares (equally split between the Fund levy and the Council levy), and **from July 2009, it was further reduced to 0.15% (with the Council levy remaining the same).**

Evaluation of co-regulatory regime

As protection of outbound group travellers has always been the primary goal

的百分之零點一五(議會徵費維持不變)。

衡量共同監管機制的成效

旅遊業賠償基金成立於共同監管的階段，向來以保障外遊團體旅客為主要目標，因此，要衡量這個階段的監管成效，最便捷的方便就是看看賠償基金累積了多少儲備。截至二零零九年二月為止，賠償基金的結餘為港幣五億零二百萬元，而歷年因為外遊旅行社倒閉而支付的賠償總額則為港幣一千八百萬元，即賠償比率只是百分之三點六而已。


在入境業方面，議會處理一個重大問題時的快捷反應值得一提。由二零零二年起，根據議會推行的購物保障計劃，內地團體旅客可以享有十四天全數退款保障。計劃幾年來一直行之有效，但到了二零零七年初，議會發現內地團體旅客的購物投訴有所增加，於是同年六月起，把全數退款保障期延長至六個月。在此後的兩年間，投訴銳減了百分之八十四。

結語

上文已經提及，監管模式主要有三種，而三種都各有優劣。對法定監管的常見批評，是這個模式對市場實況掌握不足，兼且推行糾正措施時往往有所延誤，這或許解釋了香港以這個模式監管外遊旅行社時，為甚麼未能成功。

至於自律監管，這是很多專業都愛採用的監管模式，如會計師、律師等。可是，過去二十多年來，這種模式逐漸與程度不一的政府監督相結合，為的是加強對消費者的保障。

要說近年來最受青睞的監管模式，則非共同監管莫屬。這種模式的好處顯而易見：負責自律監管的專業團體能透徹瞭解業界的情況，迅速回應新問題，而消費者的利益，則由共同監管模式中的政府部門或法定機構來維護。

由一九八八年起，外遊業實施共同監管機制，而由二零零二年起，入境業也都一樣。這些年來，議會不斷求變，以應付市場的新情況，以及各方人士的新訴求。新情況、新訴求定會繼續出現，而議會也會繼續轉變，一一應付。 

of the TICF, a product of the co-regulatory regime, the simplest way to assess the success or otherwise of the regime is to look at how many reserves there are at the TICF. As at the end of February 2009, the balance of the TICF stood at HK\$502 million, and the total amount of compensation paid out of the TICF over the years because of outbound agent closures was HK\$18 million. In other words, the compensation rate was merely 3.6%.

As for the inbound industry, the TIC's swift reaction to a serious problem deserves to be mentioned. Since 2002, mainland group visitors were entitled to 14-day, full refund protection under a scheme launched by the TIC. **The scheme had worked well for several years until a rising number of shopping-related complaints filed by mainland group visitors was spotted by the TIC in early 2007. The full refund period was thus extended by the TIC to six months in mid-June 2007, thereby reducing complaints by 84% in the two-year period after the extension.**

Concluding remarks

As mentioned earlier, there are three major regulatory models, each of which has its strengths and weaknesses. An oft-repeated line of criticism about statutory regulation is its lack of industry knowledge and frequent delays in corrective measures, which may explain why such a model was unsuccessful in regulating outbound agents in Hong Kong.

As for self-regulation, it has long been the preferred model of regulation for many professions, such as the accounting and legal professions. This model, however, has gradually been made to combine with varying degrees of state supervision during the past two decades or so in order to enhance protection for consumers.

Co-regulation may well be said to have been the most favoured model of regulation in recent years. Its merits are obvious: whereas the self-regulatory professional body can guarantee deep knowledge about the industry and quick responses to new problems, the interests of consumers are protected by the government department or statutory body engaged in the co-regulatory regime.

This co-regulatory model has been in place for the outbound industry since 1988 and for the inbound industry since 2002. Over the years, the TIC has kept evolving in order to cope with new situations and new aspirations of all stakeholders. New situations and new aspirations are bound to emerge, as are changes at the TIC in response to them. 