

旅行社的責任

Liability of travel agents

本刊記者 Staff reporter



議會向來關注旅行社的責任問題，早於一九九五年就已着手研究旅行社所面對的風險及購買保險等事宜（詳見通告：C778/042004/AC）。自去年中旅行社的風險再次成為業界的關注焦點後，議會於今年一月特別成立責任保險研究小組，以制定措施保障旅行社，同時減低其營運風險。

小組成員包括法律界、保險業、學術界及議會等多方代表，經過多番磋商後，建議議會開展一項組團旅行社業務保障計劃，透過風險管理及索償監控，以增強旅行社的業務保障，並提昇其競爭力。議會已採納小組的建議，並密鑼緊鼓籌備有關工作。

為了讓會員初步瞭解旅行社的責任問題，議會於四月二十七日假座龍堡國際賓館舉辦旅行社責任午餐會，並邀請了小組的顧問張文菊律師及保險業人士陳成興先生主講。午餐會除嘉賓楊孝華議員外，議會理事和會員合共一百七十多人出席。

法律界的看法

顧問張文菊律師表示，旅客經零售旅行社報名參加組團旅行社的旅行團，萬一在行程中發生意外，組團社也須負

The liability of travel agents having always been one of its major concerns, the TIC took steps, as early as 1995, to address problems relating to risks faced by travel agents and the purchase of insurance policies (see Circular: C778/042004/AC for details). Prompted by a renewed concern within the industry over the liability issue in mid-2003, the TIC set up in January this year a Liability Insurance Study Group to formulate measures protecting travel agents and lowering their operational risks.

After repeated discussions, the Study Group, comprising representatives from the legal, insurance and academic sectors, and several TIC directors, suggested that the TIC should launch a Business Protection Plan for Tour Operators to enhance protection for the business and competitiveness of travel agents through risk management and claims control. The suggestion has been adopted and work is now under progress.

To give members some rough ideas of their liability, the TIC held a lunch meeting at the BP International House on 27 April and invited two members of the Study Group, Ms Christine Koo, a solicitor, and Mr Francis Chan, an insurance professional, to give a talk to members respectively. Over 170 members and TIC directors attended the meeting, with the Honourable Mr Howard Young as special guest.

Legal angle

Ms Christine Koo remarked that when travellers join a package tour organised by a tour operator through a retail agent, the tour operator will also be held responsible should an accident occur during the trip. Apart from that, the tour operator would be liable for accidents resulting from its negligence even if it did not sign any contract with the travellers. For instance, if a tour coach crashes because its driver has overworked, the Hong Kong tour operator may not be absolved of liability despite the fact that the accident is caused by the negligence of the local receiving agent. In other words, if negligence is the cause of an accident, which means it is predictable, the tour operator may have to be responsible for it.

上責任。此外，即使組團社與團員沒有直接簽署任何合約，但假如因為組團社的疏忽而導致意外，組團社仍須承擔責任。例如在行程中旅遊車司機因為工作時間過長，休息不足，而導致意外發生，這雖然是當地接待旅行社的疏忽所致，但並不表示香港的組團社可以免除一切責任。換言之，倘若人為疏忽是肇事原因，那就是說意外是可以預見的，組團社因而可能須承擔責任。

關於自費活動等問題，顧律師提醒旅行社，應在章程上註明自費活動的責任與旅行社無關。假如領隊建議並安排旅客參加行程表以外的活動，一旦發生意外，領隊可能須負責任。至於旅客自行付款給旅遊車司機，要求前往行程表以外的地方，發生意外的話，司機、旅客，甚至領隊都可能有責任。

至於售賣機票，顧律師認為，要是航機發生意外，旅行社一般無須負責。但旅行社向旅客建議選用甚麼航空公司時，最好給旅客多些選擇，讓旅客自行決定並承擔後果。旅行社替旅客預訂酒店房間時，需要負上的責任較代訂機票為大，因此旅行社應預先檢查酒店的情況，並向酒店查詢是否已購買保險保障旅客及旅行社。

顧律師最後提醒會員，意外發生後即使關閉旅行社然後再開另一家，也不能逃避法律上的賠償責任。因為假如

As far as optional tours are concerned, Ms Koo reminded members to publish disclaimers in the brochure denying responsibility relating to such tours. If tour escorts recommend any activities not included on the itinerary to the travellers and arrange for them to take part in the activities, they may be liable for accidents related to the activities. If the travellers pay the coach driver to take them to places not on the itinerary, then the driver, the travellers or even the tour escort may all be responsible for accidents.

As regards selling air tickets, Ms Koo remarked that in general travel agents will not be held responsible for aeroplane accidents. However, they should give the travellers a number of airlines to choose from when making recommendations. If an agent books hotels for travellers, its liability is greater than when it books air tickets for them. It should therefore check the conditions of the hotel in advance and ask the hotel whether there is any insurance policy to cover the travellers and the booking agent.



針對旅行社疏忽的索償

Negligence claims against travel agents

(編按：楊孝華議員在二零零四年五月十二日的立法會會議上，就針對旅行社疏忽的索償提出書面質詢。以下是他的問題和經濟發展及勞工局長的書面答覆。)

(Editor's note: The Honourable Mr Howard Young put forth a written question at a Legislative Council meeting on 12 May 2004 regarding negligence claims against travel agents. The following are his question and the written reply given by the Secretary for Economic Development and Labour.)

問題：

據報，近日高等法院裁定，一家旅行社須賠償一名在菲律賓沉船意外中失去妻兒的男子。就此，政府可否告知本立法會：

Question:

It is reported that the High Court has recently ruled that a travel agent has to compensate a man who lost his wife and his son in a shipwreck in the Philippines. In this connection, will the Government inform this Legislative Council:

旅行社被法庭裁定要向旅客賠償，即使原來的旅行社已經結業，並已把資產轉移到新旅行社，旅客仍可向新旅行社追討賠償。

保險業的觀點

陳成興先生認為，在資源有限的情況下，業界不妨採取一些簡單的風險管理措施，以保障旅客及旅行社的利益。例如，業界可以委託管理機構或成立管理小組，又或者設立電話熱線，以備發生意外時，立即與各地的相關部門聯絡，務求在最短時間內，向旅客提供援助。

陳先生建議業界考慮自行成立賠償基金，為旅行社處理一般的索償個案；另一方面，則集體向保險公司購買專業責任保險，以承保巨額的索償個案。此外，業界也可以告知保險公司所需承保的項目，然後由保險公司制訂一份專門為業界而設的保險合約。

最後，陳先生告誡會員，現時所有保險公司都規定投保人在當地的活動必須符合有關法律要求，才會獲得保險計劃的保障。因此，假如一家香港旅行社與某家非法經營的旅遊車公司合作，而又不幸發生了交通意外，保險公司不會作出任何賠償。TTC

Ms Koo finally advised that the closing down of a company and re-opening of a new one would not free a travel agent of claims arising from accidents. It is because if the court rules that a travel agent which is closed down and whose assets are transferred to a new agent is liable for compensation to the travellers, they can still seek compensation from the new agent.

Insurance perspective

Mr Francis Chan suggested that, with limited resources, the industry should consider adopting some simple measures to manage risks and protect travellers and travel agents. The industry may, for example, appoint a company, form a working group or set up a hotline so that relevant departments of destinations can be reached and immediate assistance provided for travellers in case of accidents.

Mr Chan also suggested that members should consider setting up a compensation fund by themselves to handle general claims against travel agents on the one hand and taking out liability insurance collectively to cover claims involving huge sums of money on the other. The industry may also inform insurance companies of areas which need to be covered so that they can work out insurance policies specifically for the industry.

Finally, Mr Chan reminded members that insurance companies only cover legitimate activities at the destination. Therefore, if the tour group of a Hong Kong travel agent which cooperates with an illegal tour coach company runs into a traffic accident, the travel agent will not be compensated for the accident. TTC

- (a) 過去五年，涉及旅行社的刑事和民事訴訟宗數及賠償款額；
- (b) 有否向辦理外遊團及接待訪港旅行團的旅行社發出指引，提供在安排行程上須遵從的守則，以確保旅客安全和避免不必要的訴訟；
- (c) 會否考慮修改現行法例，另設基金或動用現時結餘款額達港幣三億元的旅遊業賠償基金，協助被控疏忽的旅行社處理有關訴訟，以免消費者因有關旅行社倒閉而蒙受損失；及
- (d) 有何措施協助旅行社，使它們日後不會因第三者疏忽所引致的類似上述沉船意外事件或意外，而須負上賠償責任？

- (a) of the number of criminal and civil proceedings involving travel agents and the compensation amount over the past five years;
- (b) whether it has issued guidelines to travel agents operating outbound and inbound tours, specifying the codes to be complied with in respect of itinerary arrangements so as to ensure the safety of travellers and avoid unnecessary proceedings;
- (c) whether it will consider amending the existing legislation to set up another fund or utilise the Travel Industry Compensation Fund with a current balance of HK\$300 million to assist travel agents which have been sued for negligence in dealing with the proceedings concerned, in order to prevent consumers from suffering losses because of the closing down of these travel agents; and
- (d) of the measures in place for assisting travel agents so that they will not be liable for compensation in future incidents or accidents similar to the above shipwreck arising from negligence of a third party?

答覆：

- (a) 我們並沒有過去五年涉及旅行代理商的刑事和民事賠償訴訟個案數目和當中涉及的賠償金額數字。
- (b) 旅遊業議會(議會)一向有發出及更新指引，提醒旅行代理商在安排行程上須注意的事項，包括須監察旅遊車司機及車輛的素質、安全駕駛，以及規定他們只准與外地持牌或合法註冊的服務供應商交易等。外遊領隊須按規定參加培訓課程，課程中亦有提醒領隊必須留意外地供應商的服務素質。
- 為確保旅客安全及提高旅行代理商對可能因疏忽引起法律責任的認識，議會最近正制訂一份新的《最佳作業守則》及開辦有關的培訓課程，為旅行代理商提供指引及培訓。
- (c) 旅遊業賠償基金根據《旅行代理商條例》成立，有清晰的應用範圍，目的是為保障外遊旅客在遇到旅行代理商倒閉或在參加旅行代理商舉辦外遊活動過程中發生意外的情況下，提供旅費損失的賠償及意外緊急援助。該基金是由徵收外遊團費的百分之零點一五而積存的一筆款項。若旅行代理商因疏忽而要面對訴訟，引致財政上的負擔，這屬於旅行代理商營運作業的其中一部份，故此應由旅行代理商負責。如果由旅遊業賠償基金協助旅行代理商支付此等訴訟費用，便有違成立此基金的目的。我們沒有計劃修改基金的應用範圍。
- (d) 旅行代理商，一如其他的商業運作，應就其提供的服務負責及管理有關的風險。我們鼓勵旅行代理商採取有效的風險管理措施，以減少因第三者疏忽而引致法律責任的可能性。議會正就此課題作出研究，並成立了一個責任保險研究小組，成員包括法律、保險、學術界代表及議會理事。該小組已展開研究一項組團旅行社業務保障計劃，希望藉此提高旅遊業界對風險管理、責任賠償及責任保險的認識，並研究為旅行代理商制訂保障措施，以減低他們在營運上的風險。

Reply:

- (a) We do not have statistics on the number of criminal and civil proceedings involving travel agents and the compensation amount over the past five years.
- (b) The Travel Industry Council (TIC) issues and revises from time to time directives to remind its members of issues to be addressed when organising outbound tours. These directives include the need to monitor the quality of the tour coaches and drivers, to pay attention to driving safety, to appoint only licensed or registered service providers overseas, etc. Outbound tour escorts are also required to attend training courses, during which they are reminded of the importance of monitoring the service quality of overseas service providers.
- To enhance travellers' safety and improve travel agents' knowledge of possible legal liabilities due to negligence, the TIC is working on a new Code of Best Practice for its member travel agents. It will also organise training programmes to provide advice and guidance to the travel agents.
- (c) The Travel Industry Compensation Fund (TICF), established under the Travel Agents Ordinance, has a clearly defined ambit with the objectives of providing protection to outbound travellers against loss of tour fees in cases of default of travel agents, and to provide emergency financial relief to them when an accident occurs in the course of an outbound tour organised by a Hong Kong travel agent. The TICF is funded through a levy on the outbound fees paid at a rate of 0.15%. Any litigation costs arising from compensation claims against travel agents for negligence should be for the travel agents concerned to handle as part of their business operation. Meeting such costs from the TICF will not be consistent with the objectives of the Fund. We have no plans to amend the ambit of the TICF.
- (d) Travel agents, like other commercial entities, should be responsible for the services they provide and in doing so must manage the risks involved. They are encouraged to adopt effective risk management measures to minimise the possibility of liability arising from third party negligence. The TIC is looking into the matter and has recently set up a Liability Insurance Study Group with members drawn from the legal, insurance and academic sectors and TIC directors. The Study Group has started to explore a Business Protection Scheme for Tour Operators which seeks to increase the travel agents' knowledge of risk management, liability indemnity and liability insurance. The Study Group will also consider relevant protection measures to reduce operational risks of travel agents.