

# 旅遊業監管局臨近了

## Travel Industry Authority is near

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編按：《旅遊業條例草案》所揭示的，只是新監管制度及旅遊業監管局的框架而已。話雖如此，當中卻已包含大量直接影響業者的細節，下文因而簡單介紹了一些重點。雖然本刊力求準確解釋《草案》，但任何解釋都應以《草案》為準。

Editor's note: What the Travel Industry Bill reveals is no more than a framework of the new regulatory regime and the Travel Industry Authority (TIA). That said, the Bill contains so many details which will directly affect members of the industry that some key points deserve to be briefly mentioned in the following. Although The Voice tries to interpret the Bill as accurately as possible, the Bill itself should be the only arbiter of any interpretations.

立法會通過《草案》後，最快兩三年旅監局就可以成立了。

**After the Bill is passed by the Legislative Council, the TIA will be set up in two to three years at the earliest.**

籌備了七年(見下面的時序)，《草案》終於在今年三月向立法會提交。在過去幾年，旅行代理商、導遊、領隊等業者，必然聽到了不少關於新監管制度的種種訊息。現在《草案》公佈了，他們可以自行看看日後議會把監管職能轉交給旅監局後，他們會怎樣被監管。

### 旅監局的不同方面

以監管方法而言，新監管制度比現行的雙層監管

Even years in the making (see the chronology below), the Bill was finally introduced to the Legislative Council in March 2017. Over the past few years, industry members, travel agents, tourist guides and tour escorts alike, must have heard of quite a lot of things about the new regulatory regime. Now that the Bill is released, they should have a look on their own at how they will be regulated in the future after the TIC hands over its regulatory functions to the TIA.

### Different aspects of TIA

As far as regulatory methods are concerned, the new regulatory regime is much simpler than the current two-tier regulatory one, though there are

#### 2010

- ◆ 行政長官在施政報告中宣佈，政府會檢討香港旅遊業的運作和監管架構。
- ◆ The Chief Executive announces in his Policy Address that the Government will review the operation and regulatory frame work of Hong Kong's tourism sector.

#### 2011

- ◆ 政府於四月發出諮詢文件，展開為期兩個半月的諮詢。
- ◆ 議會於七月向政府提交建議書，認為應保留現行的雙層監管制度，但一直由議會處理的違規及上訴個案則改由獨立的委員會處理。
- ◆ 政府於十二月公佈諮詢結果，建議成立獨立的法定

機構——旅遊業監管局，負責旅遊業的整體規管。

- ◆ The Government begins a consultation exercise, which lasts two and a half months, by releasing a consultation paper in April.
- ◆ The TIC submits its proposal to the Government in July that the existing two-tier regulatory regime should be retained, but non-compliance cases and appeals, which have been handled by the TIC, should be handled by independent committees.
- ◆ The Government releases the consultation findings in December, proposing to set up an independent statutory body, the Travel Industry Authority (TIA), as the overall regulatory body of the tourism sector.

#### 2012

- ◆ 議會成立「議會持續發展專責小組」，研究議會將來不再是監管機構後，可擔當的角色與職能。
- ◆ The TIC sets up the Task Force on the Sustainable Development of the TIC to study its roles and functions when it is no longer a regulatory body in the future.

制度簡單得多，但仍有好些顯著的特點必須留意。最顯著的特點，當然是旅監局了。旅監局是獨立的法定機構，將接掌議會的監管職能，以及旅行代理商註冊處的發牌職能。旅監局的成員不超過三十人，主席為非業界成員，副主席是旅遊事務專員，業界成員不超過十三人；換言之，旅監局過半數的成員必定是非業界成員。

目前，旅行代理商由議會監管，並由註冊處發出牌照；而導遊、領隊則由議會監管，無須領取牌照。將來，所有旅行代理商、導遊、領隊全都由旅監局發牌並監管。此外，《草案》訂明，旅監局可以「設立和實施行政計劃，以規管入境旅行團在安排下光顧的商店」；換言之，現在由旅行代理商向議會登記的店舖，日後雖然無須向旅監局領取牌照，但也會受其監管。

旅監局的收入來源主要有三項：旅行代理商、導遊、領隊的牌照費用；旅行代理商就收到的外遊費而繳付的「旅監局徵費」；以及向「內地入境旅行團」提供服務的旅行代理商所繳付的登記費。《草案》沒有訂明牌照費用、徵費、登記費的金額。除了旅監局徵費，現在的基金徵費將來仍會存在，那是旅行代理商繳付給旅遊業賠償基金的供款，用於向外遊旅客支付特惠賠償及其他付款。《草案》訂明，將來上述兩種徵費都可以用訂明的電子系統繳付。

some prominent features in it that need to be noticed. The most prominent feature, of course, is the TIA – an independent statutory body which will take over the regulatory functions of the TIC and the licensing functions of the Travel Agents Registry (TAR). **The TIA will have a maximum of 30 members, with its Chairperson being a non-trade member, Vice-chairperson being the Tourism Commissioner and trade members being not more than 13 people. In other words, the majority of the TIA must be non-trade members.**

Currently, travel agents are regulated by the TIC and licensed by the TAR, and tourist guides and tour escorts are regulated by the TIC without the need to obtain a licence. **In the future, all travel agents, tourist guides and tour escorts will be licensed and regulated by the TIA. Apart from that, the TIA may, as stipulated in the Bill, “establish and implement an administrative scheme for regulating shops that inbound tour groups are arranged to patronise”,** which means that those shops currently registered by travel agents with the TIC will also be regulated by the TIA, though they need not be licensed.

The TIA will have three major sources of revenue: the licence fees of travel agents, tourist guides and tour escorts; an “Authority levy” paid by travel agents in respect of outbound fares received by them; and a registration fee paid by travel agents for obtaining services for “Mainland inbound tour groups”. The amounts of the licence fees, the Authority levy and the registration fee are not mentioned in the Bill. Apart from the Authority levy, the current Fund levy will continue to exist, which is contributed by travel agents to the Travel Industry Compensation Fund (TICF) for the provision of ex gratia and other payments to outbound travellers. Payments of both kinds of levy may be made through a prescribed electronic system in the future.

## 2013

- ◆ 議會於三月把專責小組的建議書交給旅遊事務署，其中提出旅監局成立後，議會除了繼續為業界促進並維護權益外，還可擔當一些公共職能，例如處理突發事件，考核領隊及導遊，評審領隊及導遊的培訓課程，調停旅行社與外遊及入境旅客的糾紛；此外，政府應設立發展基金，支持議會推動行業發展的工作。
- ◆ 立法會經濟發展事務委員會於七月召開會議，討論政府就旅遊業監管制度的改革而提交的文件。在文件中，政府表明議會可在旅監局成立後，執行非規管性質的公共職能，即調停不涉及紀律的糾紛；評審導遊和領隊的訓練課程，並且舉辦為他們而設的資格考試；處理涉及入境或出境旅行團的突發旅遊事件；以及管理為推動旅遊業而新成立的「旅遊業發展基金」。

- ◆ The TIC submits the proposal prepared by the Task Force to the Tourism Commission in March, which suggests that after the establishment of the TIA, the TIC should, apart from continuing to promote and protect the interests of the industry, take up certain public functions such as handling emergency incidents, assessing tour escorts and tourist guides and accrediting training courses for them, and conciliating disputes between travel agents and outbound travellers and inbound visitors; and that the Government should set up a development fund and support the TIC in promoting development of the industry.
- ◆ The Panel on Economic Development of the Legislative Council (Legco) meets in July to discuss the paper submitted by the Government on the reform of the regulatory regime of the tourism sector. In the paper, the Government states that after the TIA is set up, the TIC may perform non-regulatory public functions, namely conciliating disputes that do not involve disciplinary matters; accrediting training courses and administering licensing examinations for tourist guides and tour escorts; handling emergencies involving inbound and outbound tours; and managing a newly established “Travel Industry Development Fund” in support of development of the industry.

## 持牌旅行代理商

在新監管制度下，持牌旅行代理商必須遵守的規定甚多，其中有兩項值得一提：保證金規定、獲授權代表規定。旅行代理商如向旅監局申請旅行代理商牌照或申請為牌照續期，須以銀行擔保的形式向旅監局繳存港幣五十萬元保證金，才符合保證金規定。旅行代理商如持有由註冊處發出的牌照，將無須符合保證金規定；原有牌照將繼續有效至屆滿，或新監管制度生效後三個月為止（以日期較後者為準）。不過，現時持有牌照的旅行代理商，如被旅監局施加的總罰款額或不當行為的頻密程度超過指明的水平，將需要繳存港幣二十五萬元保證金；如再超過另一指明的水平，將需要額外繳存港幣二十五萬元保證金。

每家持牌旅行代理商，將來都必須按新規定有一名獲授權代表，才符合獲授權代表規定；每名獲授權代表只可代表一個旅行代理商。旅行代理商是公司的話，獲授權代表必須以董事、管理人、公司秘書或控權人的身份，與旅行代理商的業務有關聯；必須修畢旅監局指明的課程；以及必須符合相關資歷規定等等。持牌旅行代理商的獲授權代表，將需要確保旅行代理商的營運符合《旅遊業條例》中的規定，而且需要為旅行代理商的營運、管理及控制負上責任。

除了以上所述，《草案》還嘗試處理一些困

## Licensed travel agents

Under the new regulatory regime, licensed travel agents must fulfil quite a number of requirements, among which two requirements deserve a mention: the guarantee money and authorised representative requirements. **A travel agent that applies to the TIA for a travel agent licence or for the renewal of its licence will be required to fulfil the guarantee money requirement by depositing with the TIA guarantee money of HK\$500,000 in the form of a bank guarantee**, which will not apply to travel agents that hold the existing licences issued by the TAR. The existing licences will continue to be valid until they expire or three months after the new regime becomes effective (whichever is the later). **An existing travel agent, however, will be required to deposit guarantee money of HK\$250,000 if the amount of its accumulated financial penalties or the frequency of its misconduct exceeds the specified level, and to deposit additional guarantee money of HK\$250,000 if the next specified level is exceeded.**

**In the future, each licensed travel agent will be newly required to have an authorised representative, who cannot be the authorised representative of another travel agent.** An authorised representative of a travel agent, if it is a company, must be associated with its business in the capacity of a director, manager, company secretary or controller; complete the courses specified by the TIA; and fulfil the relevant qualification requirement. The authorised representative of a licensed travel agent will be required to ensure that the operation of the travel agent complies with the Travel Industry Ordinance and will be held responsible for the operation, management and control of the travel agent.

Apart from the above, the Bill also seeks to address some issues which have been the concerns of the industry for quite a long time. One such concern is online travel agents not registered in Hong Kong and yet actively marketing their outbound travel business to Hong Kong people,

bers who attend the EGM vote for the special resolution. The special resolution is not adopted.

### 2014

- ◆ 鑒於建議書關乎議會與會員的未來，理事會於二月決定以特別決議案形式（即必須獲百分之七十五以上出席的會員投票贊成才可通過），把建議書提交特別會員大會，以供會員考慮並通過。
- ◆ 議會於三月舉行特別會員大會，出席的會員只有百分之五十二贊成特別決議案。決議案未能通過。
- ◆ Since the proposal has an important bearing on the future of the TIC and its members, the Board of Directors decides in February that it will be submitted to an Extraordinary General Meeting (EGM) in the form of a special resolution (whose adoption requires at least 75% of those present to vote for it) in order for members to consider and approve.
- ◆ The TIC holds the EGM in March, and only 52% of those mem-

### 2017

- ◆ 立法會經濟發展事務委員會於一月二十三日召開會議，討論政府就《旅遊業條例草案》提交的主要立法建議。
- ◆ 三月十日，政府在憲報刊登《旅遊業條例草案》。
- ◆ 三月二十二日，《旅遊業條例草案》在立法會首讀及二讀。
- ◆ The Panel on Economic Development of Legco meets on 23 January to discuss the key legislative proposals of the Travel Industry Bill submitted by the Government.
- ◆ The Travel Industry Bill is gazetted on 10 March.
- ◆ The Travel Industry Bill is introduced to Legco for its first and second readings on 22 March.

擾了業界好些日子的問題。問題之一，是不在香港註冊、卻向香港人積極推廣外遊業務活動的網上旅行社；這些網上旅行社將來需要向旅監局申請旅行代理商牌照。另一個問題，是有越來越多本地旅行代理商，提供接待服務給未經批准而組織赴港旅行團的內地組團社(俗稱「野馬」)。日後任何人沒有旅行代理商牌照而經營旅行代理商業務，或者任何持牌旅行代理商向上述未經批准而組織赴港旅行團的內地組團社提供接待服務，最高可處以港幣十萬元罰款及監禁兩年。

### 持牌導遊及持牌領隊

按議會現行規定，導遊及領隊必須持有由議會發出的導遊證及領隊證。雖然兩種證件都需要每三年續證一次，但只有持證導遊續證時，才需要達到持續專業進修的要求。日後任何人如向旅監局申請導遊牌照或領隊牌照，都必須符合相關規定，包括修畢指明的試前訓練課程，在導遊或領隊領牌考試中合格，而且獲旅監局認為適合持有牌照等等。

至於現時的持證導遊、持證領隊，他們無須即時申請導遊牌照、領隊牌照，可以繼續擔任導遊、領隊，直至其證件屆滿或新監管制度生效後三個月為止(以日期較後者為準)。日後他們向旅監局申請導遊牌照、領隊牌照時，必須符合相關規定，包括在導遊或領隊領牌考試中合格，或修畢指明的訓練課程，而導遊則再要修畢指明的導遊持續專業進修計劃。所有導遊或領隊如申請為牌照續期，都需要修畢指明的導遊或領隊持續專業進修計劃。

沒有牌照而擔任導遊或領隊，最高可處以港幣五萬元罰款及監禁一年；而持牌旅行代理商僱用或聘用沒有牌照的導遊或領隊，最高可處以港幣五萬元罰款。

### 紀律事宜及上訴

為求旅監局擁有足夠權力，可以監管旅行代理商、導遊、領隊，《草案》賦予旅監局相當廣泛的權力，使它可以憑藉刑事訴訟或紀律制裁行動，或兩者並用，以懲處違反《條例》的人。例如，妨礙旅監局所委任的調查員執行調查員的職能，一經定罪，可處以港幣一萬元罰款及監禁六個月。

旅監局開始運作後，會設立紀律委員會，其

which in the future will have to apply to the TIA for a travel agent licence. Another concern is an increasing number of local travel agents obtaining services for tour operators on the mainland which are not approved to organise tour groups to Hong Kong. **In the future, any person who carries on travel agent business without a travel agent licence or any licensed travel agent obtaining services for mainland tour operators which are not approved to organise tour groups to Hong Kong will be subject to a fine of up to HK\$100,000 and two years' imprisonment.**

### Licensed tourist guides and tour escorts

Tourist guides and tour escorts are now required by the TIC to hold the Tourist Guide and Tour Escort Passes issued by the TIC. Although both kinds of Pass need to be renewed every three years, the Continuing Professional Development (CPD) requirements are only for the renewal of the Tourist Guide Pass. In the future, any person who wishes to apply to the TIA for a tourist guide or tour escort licence will have to fulfil the relevant requirements, including completing the specified pre-examination training courses and passing the licensing examination of tourist guides or tour escorts, and being considered by the TIA to be suitable to hold the licence.

**As for holders of the existing Tourist Guide and Tour Escort Passes, they need not immediately apply for the tourist guide and tour escort licences, and may continue to work as tourist guides and tour escorts until their Passes expire or three months after the new regime becomes effective (whichever is the later). When they apply to the TIA for the tourist guide or tour escort licences, they need to fulfil the relevant requirements, including passing the licensing examination of tourist guides or tour escorts, or completing the specified training course; but tourist guides will have to complete the specified CPD scheme for tourist guides as well.** If tourist guides or tour escorts apply for the renewal of their licences, they will all be required to complete the specified CPD scheme for tourist guides or tour escorts.

**Working as a tourist guide or tour escort without a licence will be subject to a fine of up to HK\$50,000 and one year's imprisonment; and licensed travel agents who employ or engage any unlicensed tourist guide or tour escort will be fined up to HK\$50,000.**

### Disciplinary matters and appeals

To allow the TIA to have sufficient powers to regulate travel agents, tourist guides and tour escorts, **the Bill provides a wide range of powers for the TIA, which may initiate criminal proceedings or disciplinary actions or both against those who have violated the Ordinance.** For example, a person who obstructs an investigator appointed by the TIA in the performance of the investigator's functions is liable on conviction to a fine of HK\$10,000 and imprisonment of six months.

When the TIA is operational, it will set up a disciplinary committee, which consists of a chairperson and two vice-chairpersons (all of them

成員為一名主席及兩名副主席(三人都是旅監局的非業界成員)，以及最少十五名普通成員(其中最少半數為非業界成員)。在涉嫌違反《條例》的調查完成後，紀律委員會主席可設立研訊委員會，就有關個案進行研訊。研訊委員會的成員都來自紀律委員會，最少一人為業界成員，而最少半數為非業界成員。研訊委員會擁有各項權力，例如聽取經宣誓而作出的證供，發出傳票以傳召證人出席研訊，訊問證人等等；當然也有權發出各種紀律制裁命令，包括扣分；對持牌人的牌照施加條件；向持牌旅行代理商判處最多港幣三十萬元罰款；以及暫時吊銷或撤銷持牌人的牌照等等。

為確保與旅監局的決定和紀律制裁命令有關的上訴得以公平處理，商務及經濟發展局局長會委任最少十八人加入上訴委員團，他們都不是公職人員，也不是旅監局或其紀律委員會、委員會、工作小組的成員。上訴委員團主席及最少半數其他成員都是非業界成員。上訴聆訊會由上訴委員會處理，其成員包括上訴委員團的主席及最少兩名成員，過半數成員為非業界成員。

## 其他事宜

消費者與持牌旅行代理商、導遊、領隊之間的爭議可能不涉及紀律事宜，旅監局可以把這類爭議轉介給一個由商務及經濟發展局局長委出的「獨立小組」處理。《草案》沒有披露獨立小組的詳情。

賠償基金多年來已累積了港幣六億元以上，日後將由旅監局管理，藉以繼續為外遊旅客提供保障。旅監局可撥出賠償基金中某個百分比的款額，用來「支援旅遊業的持續發展」。《草案》對此也沒有披露詳情。

正如上文所述，《草案》只是讓大家稍為看看新監管制度及旅監局的運作而已，當中仍欠缺很多細節。由議會與註冊處共同負責的雙層監管制度，在實行了將近三十年之後，終於快將落幕了。由現在起到旅監局成立為止的過渡期，對新監管制度也罷，對議會及所有業者也罷，都十分重要。希望政府儘早公佈各項細節，使大家能為未來做好準備。✎

are non-trade members of the TIA), and at least 15 ordinary members (the majority of them are non-trade members). The chairperson of the disciplinary committee, after the completion of an investigation into any suspected violation of the Ordinance, may establish an inquiry committee to conduct an inquiry into the case. All members of the inquiry committee are from the disciplinary committee, at least one of whom is a trade member and at least half of whom are non-trade members. **The inquiry committee has various powers such as taking evidence on oath, summoning a person to attend the inquiry as a witness, examining witnesses, and of course, imposing a range of disciplinary orders, which include imposing demerit points; imposing a condition on the licensee's licence; imposing a financial penalty not exceeding HK\$300,000 if the licensee is a travel agent; and suspend or revoke the licensee's licence.**

To ensure that appeals related to the TIA's decisions and disciplinary orders will be handled in a fair manner, the Secretary for Commerce and Economic Development will appoint at least 18 people as members of an appeal panel, who are neither public officers nor members of the TIA or its disciplinary committee, committees or working groups. The chairperson and at least half of the other members of the appeal panel are non-trade members. Appeals will be handled by an appeal board, which consists of the chairperson of the appeal panel and at least two other panel members, with the majority being non-trade members.

## Other matters

Disputes between consumers and licensed travel agents, tourist guides and tour escorts may not involve disciplinary matters. To handle disputes of this kind, the TIA may refer them to "an independent panel" to be appointed by the Secretary for Commerce and Economic Development. No details about this independent panel are given in the Bill.

The TICF, which has accumulated more than HK\$600 million over the years, will be administered by the TIA to continue its protection for outbound travellers. **A certain percentage of the TICF may be set aside for "supporting the continuous development of the travel industry".** No details about that are given in the Bill.

As has been said in the above, the Bill provides just a glimpse into the new regulatory regime and the operation of the TIA, many details of which are still lacking. The two-tier regulatory regime, of which the TIC and the TAR have taken charge for close to 30 years, is about to see its final curtain. The transition period, which begins now until the TIA is established, is exceptionally important not only to the new regulatory regime, but to the TIC and all industry members as well. It is hoped that the Government will announce all the details sooner rather than later in order for everyone to get prepared for the future. ✎