

# 業者將面對監管巨變

## Traders to face sea change in regulation

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議會將不再負責自律監管，新成立的法定機構將挑起監管旅行社、導遊、領隊的全責。

The TIC will no longer be responsible for self-regulation, and a newly established statutory body will take up all duties in regulating travel agents, tourist guides and tour escorts.

**旅**遊業現在實行的是雙軌監管制度；換言之，有兩個單位負責監管，即議會及旅行社代理商註冊處。議會是業界組織，負責第一線的自律監管工作，而註冊處則是政府部門，負責發牌給旅行社。雙軌制由一九八八年起一直實行至今，最初只監管經營外遊業務的旅行社，由二零零二年，再兼管從事入境旅遊業務的旅行社。



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### 諮詢結果

政府為求改善旅遊業現行的監管架構，於是在去年四月至七月間，就四個改革方案向公眾諮詢意見。諮詢文件列出了四個方案：(一)保留現行的雙軌制，改革議會並訂明它是公共組織；(二)除了實行方案一外，還把議會部份的監管職能轉移至一個政府部門；(三)成立獨立的法定機構，以全盤負責旅遊業的監管工作；以及(四)由一個政府部門接掌議會的所有監管工作。議會在廣泛徵詢業者的意見後，把方案二加以改良，然後向政府提交了建議(詳見二零一一年第三期「主題故事」)。

公眾諮詢期結束後五個月，政府於去年十二月二十日召開記者會，公佈諮詢結果和未來的改革路向。政府在諮詢期內合共收到一千二百四十九份意見書，由於有些意見書的內容大致來自六個範本，而每個範本都當作一份意見書計算，因此合計只有一百零七份意見書。除了旅遊業界的團體和從業員外，市民、學者、公共機構、政黨、區議員等也都

The current regulatory regime for the travel industry is a two-tier one; in other words, there are two bodies responsible for regulation, namely the TIC and the Travel Agents Registry (TAR). While the TIC, a trade association, is in charge of front-line self-regulation, the TAR, a government department, is the licence-issuing authority for travel agents. The two-tier regime has been in place since 1988, initially regulating only travel agents engaged in outbound business and then since 2002, policing travel agents doing inbound business as well.

### Findings of consultation

To improve the industry's existing regulatory framework, the Government consulted the public about four reform options between April and July last year. The consultation paper listed four options: (1) the current two-tier regime would be retained and the TIC reformed, with its role specified as a public association; (2) in addition to implementing Option 1, certain regulatory functions would be transferred from the TIC to a government department; (3) an independent statutory body would be established to regulate the entire tourism sector; and (4) a government department would take over all the regulatory duties from the TIC. After seeking the views of a large number of traders, the TIC came up with

提交了意見書。

旅遊業界大都支持議會的建議，而其他提交意見的團體及市民則主要支持方案三或四，認為只有全面改革現行制度，才可以提高監管架構的公信力。提交意見的大部份公共機構、學者、政黨等，都認為成立獨立的法定機構，並由法例賦予明確的法定職能，最能有效釋除公眾對旅遊業界「自己人管自己人」的疑慮。這樣的機構處理不良的經營手法時，當會採取更加果斷的行動。

關於目前的旅行社牌照安排，有意見認為現在開設旅行社的最低資本要求過低。此外，收集到的意見認為應設立法定的發牌制度，藉以監管導遊和領隊。至於未來監管架構的財政安排，有回應者對「用者自付」和「收回成本」的原則表示關注，擔心可能導致旅行社、導遊、領隊的牌費增加，甚至可能使現在外遊團的印花徵費安排擴展至入境團。

## 旅監局的安排

政府除了公佈諮詢結果外，還提出今後改革的路向。簡單而言，就是推行方案三，即成立獨立的法定機構，負責旅遊業所有的監管工作。

那個法定機構暫時稱為旅遊業監管局(旅監局)，主要的職能及權力如下：(一)發牌給旅行社、導遊、領隊；(二)制訂各種規則，以監管旅行社、導遊、領隊的工作；(三)處理針對旅行社、導遊、領隊的投訴；(四)調查涉嫌違反相關法例、規則等的個案，並施以處分；(五)管理旅遊業賠償基金。

旅監局的理事會成員會全部由政府委任，而為求公信力與獨立性，理事會的主席會由非業界人士擔任，副主席由旅遊事務專員出任，多數理事則是來自不同專業界別的非業界人士。另一方面，為了保證旅監局能掌握旅遊業運作的知識，以及所制訂的規則既能針對問題，又不會扼殺業界的生存空間，旅監局的理事會及轄下的委員會將有足夠的業界成員。導遊和領隊的代表也會獲委任加入理事會，以表達從業員所關注的事宜。

在財務安排方面，旅監局長遠而言應以自負盈虧的方式運作，收入將來自牌照費用、出境團的印花徵費及內地入境團的登記費。為了減低對業界

its own proposal, an improved version of Option 2, and submitted it to the Government (see “Cover Story” of the No. 3, 2011 issue for details).

Five months after the consultation period ended, the Government held a press conference on 20 December last year to announce the findings of the consultation and the proposed way forward for the future. **A total of 1,249 written submissions were received, and since some of them basically came from six template versions and each version was counted as a single submission, there were merely 107 submissions in total.** Apart from industry organisations and practitioners, members of the public, academics, public bodies, political parties, District Councillors, etc also submitted their views.

**Whereas the travel industry was largely in support of the TIC’s proposal, those organisations and members of the public that had submitted views mainly favoured Option 3 or 4, considering a comprehensive reform of the current regime to be the only way to raise the credibility of the regulatory framework. The majority of public bodies, academics, political parties, etc that had expressed their views considered that an independent statutory body with well-defined statutory functions would be the most effective in addressing the public’s concern over “insiders regulating insiders”. More resolute actions would be expected of such a body in dealing with unscrupulous trade practices.**

As for the current licensing arrangements for travel agents, there were views that the existing minimum capital requirement for setting up travel business was too low. There was support for a statutory licensing system to regulate guides and escorts. When it came to the financial arrangements for the future regulatory regime, there was concern over the adoption of the “user pays” and “cost recovery” principles, for fear that it might lead to an increase in licence fees for agents, guides and escorts, or might even result in the levy currently imposed on outbound tours extending to inbound tours.

## Arrangements for TIA

Announced with the findings of the consultation was the proposed way forward for the future. In a nutshell, Option 3 was adopted, namely the establishment of an independent statutory body to take charge of all regulatory work of the industry.

The statutory body, tentatively named the Travel Industry Authority (TIA), will have these major functions and powers: (1) licensing agents, guides and escorts; (2) laying down various kinds of rules to govern the work of agents, guides and escorts; (3) handling complaints against agents, guides and escorts; (4) investigating suspected breaches of the relevant legislation, rules, etc by agents, guides or escorts, and taking disciplinary action; and (5) managing the Travel Industry Compensation Fund.

**All members of the TIA board will be appointed by the Government, with the chairman being a non-trader, the vice-chairman being the Commissioner for Tourism, and the majority of members being non-traders drawn from different professions, in order to ensure cred-**

的影響，旅監局成立後不會即時調高牌照費或印花費，但內地入境團的登記費卻大有調高的餘地，因為議會在這方面的收入只佔整體收入的百分之六至七左右(外遊團印花費則佔大約百分之六十)，而近年監管內地入境團卻花了大量資源。由於長遠目標是自負盈虧，旅監局日後將難免要逐步調整收費。為免成立旅監局而使業界在短期內經營成本大增，政府會建議向旅監局提供一筆僅只一次的種子基金，以支付成立費用和部份營運開支，並作應急儲備。

## 今後的轉變

目前旅行社的牌照沒有資本要求，但領取牌照的先決條件是加入議會，而加入議會成為基本會員則必須有不少於港幣五十萬元的實收資本，成為普通會員則必須提供港幣十五萬元的銀行擔保。由於有意見認為開設旅行社的門檻偏低，政府因此建議提高旅行社的最低資本要求，藉以提高行業水平，但會與業界討論最低資本要求的合適水平，並會分階段提高日後的資本要求。

旅監局除了會監管旅行社外，還會負責監管導遊和領隊。政府將為導遊和領隊設立法定的發牌制度，以取代現在由議會執行的「導遊核證制度」和「外遊領隊核證制度」。為了減低對業界的影響，政府建議訂立過渡期，容許持有議會導遊證和領隊證的導遊和領隊，在證件有效期屆滿前可以繼續從事導遊和領隊的工作。

旅監局不僅會發牌給旅行社、導遊、領隊，三者如有違反牌照條件、規則等情況，還會加以懲處。政府將設立獨立的上訴機制，處理針對旅監局就上述情況所施加懲處的上訴。

政府認為，現行的雙軌制實施了二十多年，在出境團監管、處理突發事件等事情上有不少貢獻，必須大力肯定。而議會在行業自律監管和推動旅遊業發展的方面，多年來都擔當重要角色，因此政府會盡量吸取議會的經驗和長處，與它商討在新監管制度下議會的參與，以及研究可不可以委託議會協助旅監局處理一些非規管性質的公共職能，例如協調業界處理涉及入境團或出境團的突發事件等。

**ibility and independence.** On the other hand, there will be adequate trade representation on the board and committees of the TIA so that it can master the knowledge of the operation of the industry, and the rules formulated by it can tackle the problems without strangling business of the industry. Representatives of guides and escorts will also be appointed to the TIA board to reflect the concerns of these practitioners.

As for its financial arrangements, the TIA should operate on a self-financing basis in the long run, and its sources of funding will include licence fees, the levy on outbound tours and registration fees for mainland inbound tours. There will not be any increase in the licence fees and levy immediately upon the establishment of the TIA in order to reduce the impact on the industry. Nevertheless, there is much room for a substantial increase in the registration fee for mainland inbound tours because, although the TIC has deployed considerable resources in regulating them in recent years, the income in this respect has merely made up 6-7% of its total revenue (compared with about 60% from the levy on outbound tours). With a view to self-financing in the long run, the TIA will inevitably have to adjust its fees incrementally in the future. To avoid substantially increasing the operating costs of the industry shortly after it is set up, the Government proposed a one-off capital grant to the TIA as seed money for meeting the set-up cost and part of the operating expenses, and as contingency reserves.

## Changes down the road

Although currently there is no capital requirement for a travel agent's licence, a prerequisite for one is to join the TIC, whose Ordinary Membership requires a paid-up capital of no less than HK\$500,000 and Affiliate Membership a bank guarantee in the sum of HK\$150,000. **As there was concern about the relatively low threshold for setting up a travel agent, the Government proposed raising the minimum capital requirement for agents in a bid to enhance the quality of the industry. As for the appropriate level, industry members will be consulted on that, and a phased approach will be adopted in raising the future capital requirement.**

Apart from regulating travel agents, the TIA will also be responsible for regulating guides and escorts. A statutory licensing system for guides and escorts will be introduced to replace the Tourist Guide and the Outbound Tour Escort Accreditation Systems currently implemented by the TIC. To reduce the impact on the industry, the Government proposed putting in place transitional arrangements whereby holders of the TIC's Tourist Guide and Tour Escort Passes will be allowed to continue working as guides and escorts until their Passes expire.

The TIA will not only issue licences to agents, guides and escorts, but also discipline them if there are any breaches of licensing conditions, rules, etc. There will be an independent appeal mechanism to handle appeals against the disciplinary decisions of the TIA.

**The Government was of the view that the significant contributions of the current two-tier regime, having been in operation**

如果這被視為合適，政府會考慮向議會提供財政支援，以執行這些公共職能。

政府表示將著手草擬新法例，以取代現行的《旅行代理商條例》。在草擬法例時，政府會繼續就新監管制度的詳細安排聽取市民和業界的意見，同時也會與議會商討日後可以執行的公共職能。政府預計由現在起至新法例實施為止，將需要最少三年時間。

## 大局已定

政府在去年十二月中公佈改革路向的當天，同時把相關文件發送給立法會的經濟發展事務委員會。今年二月二十七日，委員會召開會議，聽取政府就諮詢結果和改革路向的報告。出席會議的政府官員表示，傳媒的報導大都對政府的改革方向持正面態度，而當天發言的議員也都全部支持成立法定機構的建議。雖然大多數業界人士都全力支持議會的建議，但既然政府已決定推行方案三，而輿論和立法會議員都沒有異議，那麼，現行的雙軌監管制度不久就會成為旅遊業發展史的一個章節了。

不過，雖然政府已決定成立新的法定機構，以全盤負起監管責任，但有一些問題仍值得細加思量。過去二十多年來，議會一直對外遊業施行自律監管，成績非常卓著，但為甚麼同樣的模式施之於入境業卻無以為功？議會監管外遊業大為成功的原因是甚麼？監管入境業成效不彰，原因又是甚麼？單是一句「自己人管自己人」就能解釋一切？即使成立法定機構解決了「自己人管自己人」的問題，但僅僅那樣就能保證成功？政府至今只是拋出了改革的一個總綱，一個方向，一個願景，卻始終沒有提出任何具體的執行細節，那就難怪旅遊業界未能安心了。📌

for more than 20 years, to the regulation of outbound tours and the handling of emergency incidents deserve ample recognition. Through the years, the TIC has been playing an important role in self-regulating and developing the industry. To tap the TIC's expertise and strength, the Government will enter into discussions with the TIC to explore its involvement in the new regulatory regime, and to examine the possibility of entrusting to it certain non-regulatory public functions, such as coordinating the trade in dealing with emergency incidents involving inbound or outbound tours. If such an arrangement is deemed appropriate, the Government will consider providing financial support for the TIC to carry out these functions.

According to the Government, it will begin to draft a new piece of legislation to replace the current Travel Agents Ordinance. While drafting the legislation, it will continue to listen to the views of the public and the industry in fleshing out detailed arrangements under the new regulatory regime, and discuss with the TIC its future public functions. It is estimated that it will take at least three years before the enactment of the new legislation.

## The die is cast

When the Government unveiled its proposed reform in mid-December last year, it also sent the relevant document to the Panel on Economic Development of the Legislative Council. A Panel meeting was held on 27 February this year, at which the Government explained the findings of the consultation and the proposed way forward. The officials present remarked that press reports mostly held positive views on the Government's decision, and all the Legislative Councillors who spoke that day were in favour of the proposal of setting up a statutory body. **Now that the Government has decided to adopt Option 3, and public opinion and the Legislative Councillors have expressed no opposing views, it will not take too long for the current two-tier regulatory regime to become a chapter in the history of the development of the travel industry, even though most industry members have put their weight behind the TIC's proposal.**

Whereas a decision has already been made by the Government to set up a new statutory body to take up all regulatory duties, there are some questions that deserve careful consideration. During the past two decades or so, the achievements of the TIC in self-regulating the outbound industry have been most prominent. Why has the same model failed to work miracles for the inbound industry? What has contributed to the success of the TIC in regulating the outbound industry? And what has contributed to its lacklustre performance in policing the inbound industry? Can a mere phrase of "insiders regulating insiders" enough to explain everything? Even if the statutory body can tackle the problem of "insiders regulating insiders", could that alone guarantee its future success? What the Government has done so far is to put forth a master plan, a direction, a vision for reform. With no specific details of implementation, little wonder the industry could hardly put their mind at rest. 📌