

政府就監管架構改革向公眾諮詢

Government consults public on reform

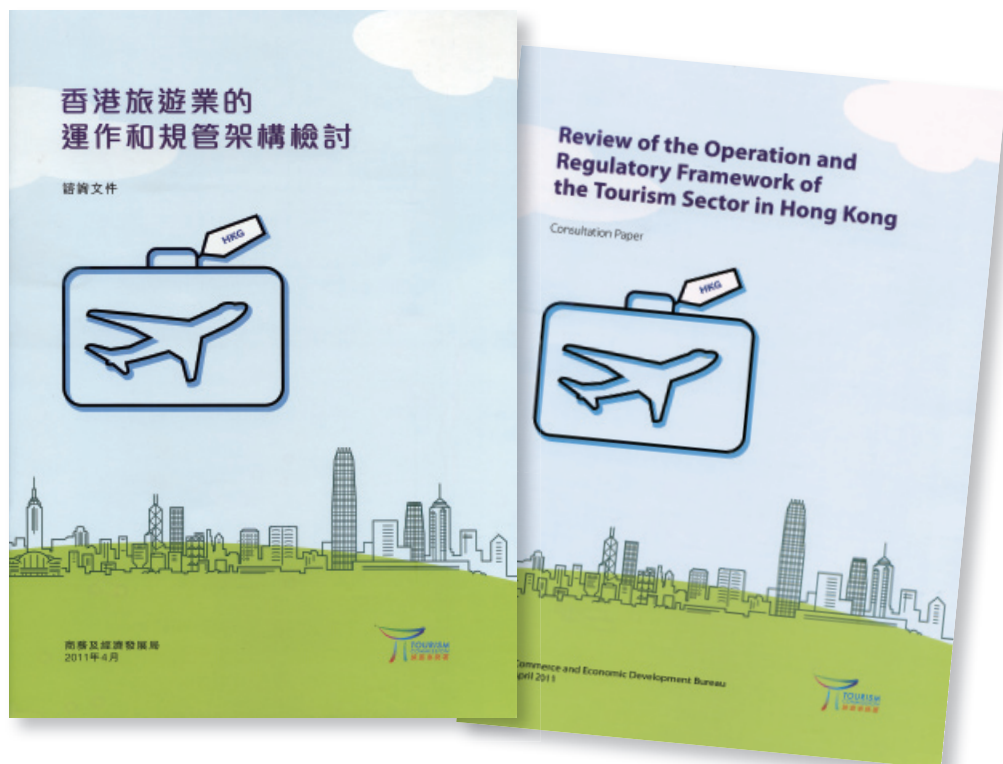
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去年十月，行政長官在施政報告中宣佈，政府會檢討香港旅遊業的運作和監管架構，檢討範疇包括議會的角色、權責、運作，以及議會與旅行代理商註冊處(註冊處)的工作關係等。商務及經濟發展局於是在今年四月二十九日發出諮詢文件，展開為期兩個半月的諮詢，諮詢期將於七月十五日結束，業界和公眾人士都可提出意見。

香港與各地監管現狀

香港現在實行的是雙軌監管制度，由議會負責行業自律監管，包括頒佈作業守則和指引，以及實施紀律處分機制，處理違反守則和指引的個案，而註冊處則是發牌當局，負責簽發旅行代理商牌照及相關工作，包括根據《旅行代理商條例》監察旅行社的財務狀況。至於隸屬於商務及經濟發展局的旅遊事務署，主要負責制訂旅遊發展策略，統籌與旅遊業的聯絡工作，以及加強協調各方推動旅遊業發展，而註冊處則是該署轄下的一個部門。

目前國際社會沒有一套普遍認同的旅遊業最佳監管模式。舉例而言，內地、台灣、澳門及新加坡都由統一機構執行旅遊政策、旅遊推廣宣傳及行業監管，而英國、南韓、澳洲(新南威爾



In October last year, the Chief Executive announced in the Policy Address that the Government would review the operation and regulatory framework of Hong Kong's tourism sector, including the role, powers, responsibilities and operation of the TIC, as well as its working relationship with the Travel Agents Registry (TAR). **The Commerce and Economic Development Bureau therefore released a consultation paper on 29 April this year, and the two-and-a-half month consultation exercise will end on 15 July. Members of the industry and the public may submit their views to the Government by the deadline.**

Regulation in Hong Kong and elsewhere

Under the two-tier regulatory regime now implemented in Hong Kong, the TIC is responsible for trade self-regulation, including the promulgation of codes of conduct and directives, as well as maintaining a disciplinary mechanism to handle breaches of the codes and directives, whereas the TAR, as the licensing authority, is responsible for issuing licences to travel agents and the related work, including monitoring the financial position of travel agents under the Travel Agents Ordinance. As for the Tourism Commission, which is under the Commerce and Economic Development Bureau, it is mainly tasked

斯省)、美國(加利福尼亞州)則由不同機構負責。由此可見，各個國家及地區都會因應各自不同的歷史背景、業界情況、行業發展需要等因素，訂立最能配合行業情況的監管架構。

政府在諮詢文件中，列出四個改革方案，並表明考慮的主要因素包括：(一)機構之間的協調是否暢順；(二)業界人士在主事機構中的參與程度，以及如何兼顧業界參與和機構獨立；(三)各方案所需資源及如何應付因而增加的開支；(四)推行改革所需時間；以及(五)改革對現行架構的影響，例如會否削弱議會應付突發事件的能力，減慢議會推動業界培訓的工作等。

方案一、二

這兩個方案都會維持現行的雙軌監管制度，但對議會的體制會有不同程度的改革。

方案一主要有三點：(一)改組議會理事會，使非業界成員佔理事會的大多數，並且委任領隊及導遊代表加入理事會；至於議會主席一職，可由業界和業外成員互選產生，也可由政府委任業外人士出任。(二)議會的各個紀律委員會及上訴委員會的成員，由目前以業外人士佔多數改為全部由業外人士出任，但可邀請業界代表列席，提供業界運作的資料。(三)修改《旅行代理商條例》，清楚表明議會在監管架構中是公共組織。

方案二也有三個要點：(一)採納方案一的改革內容。(二)在議會以外另設獨立的委員會處理上訴個案，該委員會除了處理旅行社、導遊及領隊違規個案的上訴外，也會處理旅客的上訴。(三)議會可繼續負責制訂守則和指引，但這些守則和指引要徵得商務及經濟發展局局長同意，才可執行，而局長有需要時也可指示議會訂立或修改守則和指引。

根據諮詢文件的估計，如推行方案一，政府一年內可把《旅行代理商條例》的修訂草案提交立法會，而議會則要同時修訂《組織章程大綱及細則》；此外，這個方案無須額外開支。如推行方案二，有關條例的修訂草案可於兩年內提交立法會，議會也要同時修訂《組織章程大綱及細則》；至於額外開支方面，則需

with mapping out tourism development strategies, providing a focal point for liaison with the trade and enhancing coordination in developing the sector, with the TAR being an arm of it.

Currently, there is no single set of best practices in tourism regulation that is adopted worldwide. Whereas, for example, in mainland China, Taiwan, Macau and Singapore, a central authority implements tourism policies, promotes tourism and regulates the trade, in the United Kingdom, South Korea, Australia (New South Wales) and the United States (California), different organisations are in place to do the work. As such, each country/region has developed a regulatory regime that best meets the circumstances of its tourism sector, having regard to the historical context, industry situation and trade development requirements.

In the consultation paper, the Government lists four reform options and states the key factors to be considered: (1) whether the coordination amongst the different organisations would be effective; (2) the degree of participation by members of the trade in the regulatory body and how to strike a balance between sufficient trade participation and independence; (3) the resource implications of the various options and how to meet the corresponding additional expenditure; (4) the time frame for implementation of the reform; and (5) the implications of the reform on the current regime; for instance, whether the changes will undermine the TIC's ability to promptly handle emergency incidents and its efforts in promoting manpower training for the sector.

Options 1 and 2

These two options retain the current two-tier regulatory regime, with varying degrees of reform made to the structure of the TIC.

There are three major points in Option 1: (1) The TIC Board will be restructured so that non-trade directors will form the majority, and tour escort and tourist guide representatives will be appointed to the Board; and the TIC Chairman may be elected by and among trade and non-trade directors on the Board, or a non-trade Chairman can be appointed by the Government. (2) The TIC's disciplinary committees and appeal board will be made up of all, instead of the current majority of, non-trade members, with trade representatives invited to attend meetings to provide information on how the trade operates. (3) The Travel Agents Ordinance will be amended to set out clearly the role of the TIC as a public association in the regulatory framework.

Option 2 also has three major points: (1) The proposals in Option 1 will be adopted. (2) Independent committee(s) outside the TIC will be set up to handle appeals of non-compliance cases lodged by travel agents, tourist guides and tour escorts, as well as appeals filed by travellers. (3) The TIC will continue to draw up codes of conduct and directives, but such codes of conduct and directives will have to be approved by the Secretary for Commerce and Economic Development before implementation, and the Secretary may direct the TIC to promulgate or amend the codes and directives.

要港幣九百萬元。

方案三、四

這兩個方案都放棄現行的雙軌監管制度，而改為推行政府主導的監管模式。

方案三會成立法定獨立機構，負責旅行社、導遊及領隊的監管工作；換言之，議會不再負責監管，而會變成純粹的業界商會。該法定獨立機構的工作主要包括：監察旅行社的財務狀況；執行具體的監管工作；頒佈作業守則、指引等；設立紀律處分機制，以處理違規個案；處理旅客對旅行社、導遊或領隊的投訴和糾紛。至於發牌工作，可考慮由該法定獨立機構一併處理，或由政府發牌。該法定獨立機構理事會的主席、副主席及所有成員都由政府委任，主席及副主席須由業外人士擔任，業外人士並且應佔理事會成員的多數。

方案四會由註冊處取代議會負責監管，而議會同樣會變成業界商會組織。推行這個方案需要大幅擴充註冊處現在的編制，以應付監管旅行社、導遊及領隊的額外工作，新註冊處的職能與方案三的法定獨立機構相若。

根據諮詢文件，方案三推行的話，政府估計可在約兩年半內把條例草案提交立法會審議，議會則同時修訂《組織章程大綱及細則》，而委任機構成員、招聘職員、預備辦公室等工作則需時約半年至一年；額外開支約為港幣一千七百萬至二千二百萬元。如推行方案四，把條例草案提交立法會約需時兩年半，議會也要同時修訂《組織章程大綱及細則》；額外開支則約為港幣一千二百萬元。

設立導遊發牌制度？

除了方案一至四外，諮詢文件還提出應否設立導遊發牌制度的問題。

議會在二零零四年七月設立了導遊核證制度，以提高導遊的知識、技巧及專業操守。根據該制度的規定，旅行社只可指派持有由議會發出的有效導遊證的導遊接待入境旅客。至於所有持證導遊，都必須遵守議會的《導遊作業守則》，

According to estimations in the consultation paper, it will take about a year to introduce an amendment bill of the Travel Agents Ordinance into the Legislative Council (LegCo) and the TIC may concurrently amend its M&A if Option 1 is adopted; no additional expenditure will be needed. As for Option 2, an amendment bill could be presented to LegCo in about two years, with the TIC's M&A being amended in the meantime. The additional cost will be about HK\$9 million.

Options 3 and 4

Both options will substitute a government-directed regulatory model for the current two-tier regime.

Under Option 3, an independent statutory body will be established to regulate travel agents, tourist guides and tour escorts; in other words, the TIC will no longer be responsible for self-regulating the trade, and will become solely a trade organisation. The functions of the independent statutory body will include monitoring the financial position of travel agents; carrying out various regulatory work; promulgating codes of conduct and directives; putting in place a disciplinary mechanism to handle non-compliance cases; and handling complaints and disputes from travellers which involve travel agents, tourist guides and tour escorts. As for licensing work, it could either be entrusted to the independent statutory body, or be carried out by the Government. **The chairman, vice-chairman and all members of the board of directors of the independent statutory body will be appointed by the Government, with the chairman and vice-chairman being non-trade members and non-trade members forming the majority of the board of directors.**

Option 4 will make the TAR take over the regulatory functions of the TIC, which will also become a trade body. To implement this option, the current establishment of the TAR will be expanded to take up the additional workload in regulating travel agents, tourist guides and tour escorts. The duties of the new TAR would be similar to those of the independent statutory body under Option 3.

The consultation paper mentions that if Option 3 is adopted, it will take two and a half years for an amendment bill to be introduced into LegCo and in the meantime the TIC's M&A will need to be amended. In addition, the appointment of board members, recruitment of staff and preparation of office accommodation will take around six months to one year. The additional expenses are about HK\$17 to 22 million. In the case of Option 4, the time needed to introduce an amendment bill into LegCo is two and a half years, with the concurrent amendment of the TIC's M&A; and an extra amount of HK\$12 million will be needed.

Introducing a tourist guide licensing system?

Apart from Options 1 to 4, the consultation paper also asks about whether a licensing system for tourist guides should be introduced.

在續證時還要符合「導遊持續專業進修計劃」的要求。


議會的導遊核證制度，雖然在提升導遊服務水平和從業員形象兩方面都有良好作用，但部份導遊組織質疑，議會由旅行社組成，由它來監管導遊是否恰當。此外也有意見認為，由於議會只能藉著監管旅行社來間接監管導遊，致使監管工作成效不彰。政府初步認為，如果最終成立法定獨立機構或由政府部門全面監管旅遊業，就應設立導遊發牌制度。

另設入境旅遊牌照？

目前旅行代理商牌照沒有按業務範圍分類，旅行社取得牌照後，可同時經營出境及入境旅遊業務。

然而，出境及入境旅遊的實際市場狀況和營運要求分別甚大，尤其是內地入境旅行團市場近年高速增長，但發展未臻成熟，涉及不良經營手法的事件時有發生；反觀出境市場已漸趨成熟。因此，劃一規定難以切合兩個不同市場的需要，應按市場設立不同牌照及不同監管規定，使監管更為直接有效。

在研究設立不同牌照監管旅行社時，應考慮以下各點：(一)應否針對內地入境團的問題另設經營接待內地入境團的牌照？(二)這個牌照應有哪些額外要求？如那些要求較牌照的現行要求更嚴格，是否對經營接待內地入境團的旅行社不公平？(三)應否另設導遊證或牌照，進一步規範接待內地入境團導遊的資歷要求？申請這導遊證或牌照的導遊應符合哪些額外要求？

上述四個方案都各有利弊，諮詢文件已列舉了一些出來，正可當作深入探討的基礎。但限於篇幅，本文就不一一撮錄了。**諮詢文件的全文**，可於旅遊事務署網站瀏覽(www.tourism.gov.hk/tc_chi/papers/papers_consultation.html)。 

The TIC introduced the Tourist Guide Accreditation System in July 2004 to enhance the knowledge, skills and professional conduct of tourist guides. Under the Accreditation System, travel agents could only assign tourist guides with valid Tourist Guide Passes issued by the TIC to receive inbound visitors. And all Pass holders must abide by the Code of Conduct for Tourist Guides and meet the requirements under the Continuing Professional Development Scheme for Tourist Guides when renewing their Passes.

Although the TIC's Accreditation System has had positive effects in enhancing the service quality and image of tourist guides, some tourist guide organisations have doubts about whether it is appropriate for the TIC, composed of travel agents, to regulate tourist guides. There are also views that since the TIC can only regulate tourist guides indirectly through regulating travel agents, its regulatory work is undermined. The initial view of the Government is that a licensing system for tourist guides should be introduced if an independent statutory body or a government department will take over the regulation of the tourism sector.

Another licence for inbound tourism?

Currently, travel agent's licences are not categorised by the nature of business, and a licensed travel agent can carry on outbound and inbound travel business at the same time.

However, the actual market situation of and operational requirements for outbound and inbound tourism differ considerably. The market of mainland inbound tours, despite its rapid growth in recent years, is as yet quite immature, and incidents involving business malpractices do occur from time to time. In contrast, the outbound tourism market has matured over the years. Therefore, a single set of regulations might not meet the needs of two different markets. Different licences and regulatory requirements should be introduced for the two markets to enhance the effectiveness of the regulatory regime.

In exploring the introduction of different licences for the regulation of travel agents, the following should be considered: (1) Should a separate licence be introduced for the reception of mainland inbound tours having regard to the problems arising from these tours? (2) What should be the additional requirements for this licence? If these requirements are more stringent than those of the existing licence, would it be unfair to travel agents that receive mainland inbound tours? (3) Should a separate tourist guide pass or licence be introduced to further standardise the required qualifications for tourist guides who receive mainland inbound tours? What should be the additional requirements for tourist guides who apply for this pass or licence?

All the four options have their merits and drawbacks. Some of them are listed in the consultation paper and may serve as a starting point for in-depth study. They are not summarised here, however, because of space. **For the full text of the consultation paper, please visit the website of the Tourism Commission at www.tourism.gov.hk/english/papers/papers_consultation.html.** 