

監管機制：今日與未來（二）

Regulatory regimes: now and future (2)

上期介紹了監管機制的架構，這期則介紹與旅行代理商有關的一些重要規定。

After introducing the regulatory frameworks in the last issue, *The Voice* will briefly describe some of the key requirements for travel agents in this issue.

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根據新的《旅遊業條例》，經營旅行代理商業務的涵義，也就是需要領取旅行代理商牌照的情況，將來和現行《旅行代理商條例》大體上沒有很大差別。對於在香港境內經營的外遊旅行代理商而言，只要代他人獲取由香港出發往其他地方的交通載運，或在香港境外的住宿，那就是經營旅行代理商業務了。不過，新法例增加了一項規定：**即使是在香港境外的網上旅行社，假如向香港的公眾積極推廣旅行代理商業務的活動，則同樣算是經營旅行代理商業務。**

對入境旅行代理商而言，經營相關業務的涵義現在和將來基本上相同：代到港旅客獲取由香港境外到香港來的交通載運、在香港境內的住宿，或者觀光、膳食、購物行程服務、與此相關的本地交通服務，那就是了。不過，**將來的法例特別訂明，持牌旅行代理商不得代未經核准的內地旅行代理商獲取有關服務。**

簡化規定

按照新法例，旅行代理商必須遵守的規定，與在現行雙軌監管機制下議會規例及法例規定有一些顯著的不同，主要在五方面。第一，營業地點規定；第二，人手規定；第三，資本規定；第四，保證金規定；第五，獲授權代表規定(見表)。

Under the new Travel Industry Ordinance, the meaning of carrying on travel agent business, and hence when it is necessary to apply for a travel agent licence, are more or less the same as stipulated in the existing Travel Agents Ordinance. As far as outbound travel agents operating in Hong Kong are concerned, they are carrying on such business if they obtain for others carriage by means of transport from Hong Kong to other places, or accommodation outside Hong Kong. **There is, however, a new requirement: online travel agents operating outside Hong Kong will still be considered to be carrying on travel agent business if they actively market to the public of Hong Kong any of such business activities.**

As regards inbound travel agents, the meaning of carrying on the relevant business is basically the same under the existing and future Ordinances: those who obtain for inbound visitors carriage by means of transport from places outside Hong Kong to Hong Kong, accommodation in Hong Kong, or services providing sight-seeing, meals, shopping trips or local transport relating to sight-seeing, meals or shopping trips, are carrying on such business. **The new Ordinance specially stipulates that licensed travel agents must not obtain these services for mainland travel agents which are not approved.**

Requirements simplified

There are mainly five key areas where the requirements under the new Ordinance on the one hand and the rules of the TIC and the legal requirements under the existing two-tier regulatory regime on the other differ significantly. First, the business location requirement; second, the staffing requirement; third, the capital requirement; fourth, the guarantee money requirement; and fifth, the authorised representative requirement (see the table).

關於上述第一項規定，議會規例和現行法例都有條文監管：會員旅行社的營業地點必須獨立設置於商用樓宇或大廈內，而按法例，有關地點必須適宜於經營旅行代理商業務。第二、第三項規定則只是由議會訂定而

已：會員旅行社的每個營業地點都要有符合規定的兩名職員，而會員旅行社總行的實收資本額不得少於港幣五十萬元，分行則每家港幣二十五萬元。至於上述第四及第五項規定，都是將來才執行的。

在將來的法例下，第一項的營業地點規定及第二項的人手規定都取消了，原因是消費者已無須再在旅行代理商的實體店舖購買旅遊產品，因此營業地點及人手的規定就都不再需要了。要經營旅行代理商業務，當然必須領取牌照，而打算在香港的實體店舖經營的話，還需要業務許可證；業務許可證必須指明本地營業地點的地址，有關地點必須適合經營旅行代理商業務，並且展示業務許可證。以網站等經營的話，則需要在網站等述明牌照號碼。

至於第三項的資本規定，將來無論是公司、合夥，還是個人，指明資本額都是港幣五十萬；換言之，分行再沒有資本規定了。

新增規定

上述第四項保證金規定的具體細節較為複雜，但訂立的原因則比較簡單，即確保持牌旅行代理商清繳罰款。保證金規定主要可分為兩種情況，第一種情況：日後凡向旅遊業監管局申請牌照的旅行代理商，一律須以銀行擔保的形式繳存港幣五十萬元保證金。

第二種情況：現已持有旅行代理商牌照的旅行代理商，將來無須繳存保證金；不過，假如被施加的罰款額或犯下指明不當行為的頻密

旅行代理商現在及將來需要符合的主要規定

Key requirements for travel agents under existing and future regulatory regimes

規定 Requirements	現行監管機制 Existing regulatory regime	將來監管機制 Future regulatory regime
營業地點規定 Business location requirement	○	×
人手規定 Staffing requirement	○	×
資本規定 Capital requirement	○	○/×
保證金規定 Guarantee money requirement	×	○
獲授權代表規定 Authorised representative requirement	×	○

The first requirement is subject to the provisions of the TIC and the existing Ordinance, namely that the business locations of member travel agents must be within separate and independent commercial premises or buildings, and such locations must be suitable for carrying on travel agent business under the Ordinance.

The second and third requirements are laid down by the TIC only, which stipulate that each business location of member travel agents must have two employees who meet specified requirements, and the paid-up capital for the head office of member travel agents must not be less than HK\$500,000 and that for each branch office HK\$250,000. As for the fourth and fifth requirements, they are to be implemented in the future.

Under the future Ordinance, there will be no business location and staffing requirements (the first and second requirements) since consumers need no longer purchase travel products at the brick-and-mortar stores of travel agents. To carry on travel agent business will need, of course, a travel agent licence and if such business is carried on at a brick-and-mortar store in Hong Kong, a business permit specifying the address of the local place of business will also be needed. The business permit must be displayed at the business location, which must be suitable for travel agent business. If travel agent business is carried on by using, say, a website, then the licence number must be stated on the website.

As far as the capital requirement (the third requirement) is concerned, the specified capital amount will be HK\$500,000 irrespective of whether the travel agent is a company, a partnership or an individual. In other words, there will no longer be any branch capital requirement in the future.

Requirements added

When it comes to the guarantee money requirement (the fourth requirement) mentioned above, its details are quite complicated, though the reason for it is not: to ensure that licensed travel agents settle financial penalties. There are, mainly, two situations where the guarantee money requirement will apply. The first one is when travel agents apply for a travel agent licence to the Travel Industry Authority (TIA) in the future, in which case, they will all be required to deposit HK\$500,000 guarantee money in the form of a bank guarantee.

The second situation: those travel agents holding a travel

程度超過旅監局指明的水平，則需要繳存港幣二十五萬元保證金。已經繳存港幣二十五萬元保證金的旅行代理商，假如罰款額或指明不當行為的頻密程度再超過另一指明的水平，將需要繳存港幣二十五萬元額外保證金。

至於第五項新增的獲授權代表規定，則相對簡單：每家旅行代理商都必須有一名適合的獲授權代表，他們不可擔任多於一家旅行代理商的獲授權代表，而且要與有關旅行代理商的業務有關聯，例如是公司的董事、管理人等。在職責方面，他們需要確保有關旅行代理商的營運、管理受到充份監督，以及旅行代理商的營運符合法例的規定。

繳付印花徵費

關於俗稱印花徵費的規定，相信會員都耳熟能詳。簡單來說，現行法例規定，旅行代理商必須就收到的每筆外遊費繳付印花徵費，而外遊費指旅行代理商為外遊旅客提供離港交通載運、境外住宿、境外活動三者中的任何兩項或全部三項而收到的款項。將來的法例在這方面也大同小異，不過卻加了一個「關乎同一次旅程」的條件：關乎同一次旅程的離港交通載運、境外住宿、境外活動三者中的任何兩項或全部三項，只要旅行代理商為此而收取款項，就要繳付印花徵費了。

去年立法會審議《旅遊業條例草案》時，議會曾經反對這個新增的條件，因為旅行代理商未必能知悉旅客在不同時間購買的機票、酒店、活動中的任何兩樣是否關乎同一次旅程，因而必須繳付印花徵費。可是，政府執意認為，越來越多旅客會在不同時間向同一家外遊旅行代理商為同一次旅程購買外遊產品及服務，因此《草案》不宜修改，但會建議旅監局日後制定劃一字句，方便旅行代理商在銷售產品或服務前把有關字句向顧客顯示，藉以把有關情況通知他們。

礙於篇幅所限，本文只能非常簡略地介紹與旅行代理商有關的一些規定。讀者如對新法例有任何疑問，應當參考法例原文，或者是向律師求教。☞

agent licence now will not need to deposit guarantee money in the future, but if the amount of financial penalties imposed on them or the frequency of specified misconduct committed by them exceeds the level specified by the TIA, they will be required to deposit guarantee money in the amount of HK\$250,000. For those travel agents having already deposited such an amount of guarantee money, they will have to deposit additional guarantee money of HK\$250,000 if the amount of financial penalties or the frequency of specified misconduct exceeds another level specified by the TIA.

As regards the newly-added authorised representative requirement, which is the fifth one mentioned above, it is relatively simple: each travel agent must have one suitable authorised representative, who must not be the authorised representative of more than one travel agent, and who must be associated with the business of the travel agent such as being its director, manager, etc. And their duties are to ensure adequate supervision of the operation and management of travel agents and compliance of the operation of travel agents with the legal requirements.

Payment of levies

Concerning the requirements in relation to levy payments, members must know them very well. Simply put, according to the existing Ordinance, travel agents are required to pay the levies in respect of every outbound fare received and outbound fares refer to the payments received by travel agents for providing outbound travellers with any two or all of the following: carriage by means of transport from Hong Kong and accommodation and activities outside Hong Kong. In this regard, the requirements under the new Ordinance are more or less the same except that a new condition is added, namely that if travel agents receive payments for any two or all of the following which are “relating to the same tour”: carriage by means of transport from Hong Kong and accommodation and activities outside Hong Kong, then they need to pay the levies.

Last year when the Travel Industry Bill was examined by the Legislative Council, the TIC raised its opposition to this new condition on the grounds that travel agents might not know whether any two of air tickets, hotel accommodation and activities purchased by travellers on different occasions are relating to the same tour, thus requiring payment of levies. The Government, however, insisted that the Bill should not be amended since travellers would increasingly choose to buy outbound products and services relating to the same tour from the same travel agent but on different occasions, but agreed to recommend the TIA to formulate standardised wording to assist travel agents in informing customers of the situation by displaying the wording to them before selling them the products or services.

As space is limited, this article can only describe very briefly some requirements relating to travel agents. Readers who have any enquiries about the new Ordinance should refer to the original text or consult their lawyers. ☞