

議會指引為整個行業著想

Directives are to serve the whole industry

本刊記者 Staff reporter

議會制訂的規例，旨在維護業界與香港的整體利益與聲譽。

Rules of the TIC are made to protect the overall interests and reputation of the industry and Hong Kong.


今年四月二十七日，高等法院原訟法庭裁定，一家會員旅行社質疑議會三個指引的訴訟敗訴，兼且需要支付議會的訟費。

那家會員是友利國際發展有限公司，去年二月二日要求法庭宣佈第一百九十四號、第二百零一號、第二百零五號指引不合法和無效。友利國際的論點是，第一百九十四號、第二百零一號指引監管導遊與旅行社的關係，因而抵觸了議會《組織章程大綱》第3(21)(b)項；而第一百九十四號、第二百零一號指引，以及第二百零五號指引的「入境旅行團(登記店舖)購物退款保障計劃」違反《競爭條例》，因而抵觸了《組織章程大綱》第3(1)(e)項。

法官認為第3(21)(b)項只監管僱主及僱員的關係，因此議會可以發出指引監管其會員與自僱導遊的關係。如果導遊是旅行社的僱員，由於第一百九十四號、第二百零一號指引旨在維持可以為人接受的商業常規，以及保障會員及業界的聲譽，也都屬於議會的宗旨，因此，雖然兩個指引可能影響了一些僱員的僱傭條件，但不會因此而令它們超出議會的宗旨。

至於友利國際認為上述三個指引違反《競爭條例》的觀點，法官指出，違反相關競爭規例的投訴，必須按《競爭條例》由競爭事務委員會向競爭事務審裁處提出，而不是由私人提出。

議會獲判給的訟費分兩部份：有關《競爭條例》的論辯要按彌償基準計算訟費，即議會實際付出的法律費用獲准全數付還，而訟費的餘下部份則按訴訟雙方對評基準計算。

友利國際已於五月二十五日向上訴法庭提出上訴，聆訊日期仍未決定。議會已委託原來的律師行與大律師處理上訴。 

On 27 April this year, a member travel agent lost its lawsuit filed with the Court of First Instance of the High Court to challenge three directives of the TIC, and was ordered to pay the TIC's costs.

That member, Loyal Profit International Development Limited, sought on 2 February last year to request the court to declare that Directive Nos. 194, 201 and 225 were illegal and void. It argued that Directive Nos. 194 and 201, which regulated the relations between tourist guides and travel agents, were contrary to Clause 3(21)(b) of the TIC's Memorandum of Association, and that Directive Nos. 194 and 201 and the "Refund Protection Scheme (Registered Shops) for Inbound Tour Group Shoppers" contained in Directive No. 225, which were in contravention of the Competition Ordinance, were contrary to Clause 3(1)(e) of the Memorandum of Association.

The Judge ruled that since Clause 3(21)(b) only regulated the relations between employers and employees, the TIC might issue Directives to regulate the relations between its members and self-employed tourist guides. If tourist guides, however, were employed by travel agents, given that Directive Nos. 194 and 201 were aimed at maintaining acceptable business practices and protecting the reputation of members and the industry, which also came within the TIC's objects, the fact that the two Directives might impact on the terms of employment of some employees did not render them out with the TIC's objects.

As for Loyal Profit's argument that the three Directives were in contravention of the Competition Ordinance, the Judge pointed out that the Competition Ordinance required that a complaint of infringement of competition rules should be brought by the Competition Commission, rather than by private parties, to the Competition Tribunal for adjudication.

The costs awarded to the TIC consisted of two parts: the costs of dealing with the Competition Ordinance argument should be assessed on an indemnity basis, which means that the TIC was allowed a full reimbursement of its out-of-pocket legal expenses, and the rest would be party-and-party costs.

Loyal Profit filed an appeal with the Court of Appeal on 25 May, and the date of hearing has yet to be fixed. The TIC has instructed the original law firm and barristers to handle the appeal. 