

LCQ9: Regulation of tourism industry

Following is a question by the Hon Lau Kwok-fan and a written reply by the Secretary for Commerce and Economic Development, Mr Edward Yau, in the Legislative Council today (October 23):

Question:

It has been reported that the Action Travel Services Limited suddenly closed down in March last year, affecting around 450 customers who suffered a loss of several million dollars in total. Before it closed down, the company had been selling for a long time promissory tour packages, i.e. air tickets and hotel accommodations without confirmed departure dates. As the receipts held by such customers were not franked with levy stamps, they were not protected by the Travel Industry Compensation Fund. Regarding the regulation of the tourism industry, will the Government inform this Council:

(1) given that over a year ago, the Customs and Excise Department arrested, under the Trade Descriptions Ordinance (Cap. 362), three persons-in-charge of the aforesaid travel agency who were suspected to have wrongly accepted payment, and yet it is learnt that the Department of Justice (DoJ) has decided not to institute prosecutions against them, of the specific justifications based on which DoJ made such decision, and whether it has studied if there are loopholes in the existing regulatory regime; if it has studied and the outcome is in the affirmative, of the measures in place to plug the loopholes; if the study outcome is in the negative, the justifications for that;

(2) of the respective numbers of cases involving the tourism industry in which DoJ (i) provided legal advice to law enforcement agencies and (ii) instituted prosecutions against the persons concerned, in each of the past five years; and

(3) given that in November last year, this Council passed the Travel Industry Bill, which provides that the Travel Industry Authority to be established will take over the duties to regulate the industry, of the progress of the relevant work?

Reply:

President,

In response to the question raised by the Hon Lau Kwok-fan, with the Department of Justice (DoJ) consulted, my reply is as follows:

(1) The Trade Descriptions Ordinance (Cap. 362) (the Ordinance) prohibits a series of unfair trade practices, including wrongly accepting payment. Under the Ordinance, any trader commits an offence if at the time of acceptance of payment, the trader intends not to supply the product or intends to supply a

materially different product, or there are no reasonable grounds for believing that the trader will be able to supply the product within a specified or reasonable period. The maximum penalty upon conviction is a fine of \$500,000 and imprisonment for five years. The Ordinance accords adequate protection to consumers.

The Customs and Excise Department (C&ED) is responsible for enforcing the Ordinance and seeks legal advice from DoJ based on the facts and evidence collected during an investigation. In making any prosecutorial decision on whether or not to prosecute, DoJ will carefully consider the evidence submitted by the law enforcement agency, the facts of the case, the applicable laws and the guidelines in the Prosecution Code. A prosecutor must consider two issues in deciding whether to prosecute, i.e. first, whether there is sufficient evidence to justify instituting proceedings; second, if there is sufficient evidence, whether the public interest requires a prosecution to be pursued. A prosecution should not be instituted unless the prosecutor is satisfied that there is legally sufficient evidence to support a prosecution, i.e. evidence that is admissible and reliable and, together with any reasonable inference able to be drawn from it, likely to prove the offence. The test is whether the evidence demonstrates a reasonable prospect of conviction.

As regards the case mentioned in the question, after carefully considering the materials submitted by C&ED, DoJ is of the view that there is insufficient evidence to support prosecution therein for offences under the Ordinance, and that there is no reasonable prospect of conviction. No prosecution is thus instituted against the persons involved under the Ordinance. This decision is in line with the abovementioned standing prosecution principles, and there is no loophole in the relevant regulatory regime. C&ED will continue to take a three-pronged approach, namely stringent enforcement, compliance promotion, and publicity and education, in enforcing the Ordinance proactively to combat unfair trade practices and protect consumer interests.

(2) DoJ does not maintain the requested statistics.

(3) The Travel Industry Bill was passed by the Legislative Council (LegCo) in end November last year to provide a legal basis for the establishment of the Travel Industry Authority (TIA) as an independent statutory body. The Tourism Commission has set up a preparatory team, headed by an Assistant Commissioner for Tourism, the proposed post creation of which was approved by the Finance Committee of LegCo in end March this year.

The preparatory team is pressing ahead with planning and undertaking various preparatory tasks, including taking forward an appointment exercise of TIA, formulating TIA's governance framework and work plans, internal administrative rules and procedures, etc., in order to establish TIA as soon as possible and to embark on formulating details of the new regulatory regime (including subsidiary legislation, rules and procedures on licensing and regulatory matters, etc.) and transitional arrangements, etc.