

立法會
Legislative Council

LC Paper No. CB(1)976/00-01
(These minutes have been seen
by the Administration)

Ref: CB1/BC/7/00/2

Bills Committee on
Hong Kong Tourist Association (Amendment) Bill 2001
Minutes of the second meeting
held on Thursday, 15 February 2001, at 8:30 am
in Conference Room A of the Legislative Council Building

- Members present** : Hon Howard YOUNG, JP (Chairman)
Hon NG Leung-sing
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon CHEUNG Man-kwong
Hon CHAN Kwok-keung
Hon CHAN Kam-lam
Hon Tommy CHEUNG Yu-yan, JP
- Members absent** : Dr Hon YEUNG Sum
Hon Cyd HO Sau-lan
Hon CHOY So-yuk
Hon Abraham SHEK Lai-him, JP
Hon LEUNG Fu-wah, MH, JP
- Public Officers attending** : Economic Services Bureau

Mr WU Kam-yin
Assistant Commissioner for Tourism

Miss Karyn CHAN
Assistant Secretary for Economic Services
(Tourism)

Department of Justice

Mr Allen LAI
Senior Government Counsel

Attendance by invitation: Hong Kong Tourist Association

Mrs Grace LEE
Acting Executive Director

Clerk in attendance : Mr Andy LAU
Chief Assistant Secretary (1)2

Staff in attendance : Miss Anita HO
Assistant Legal Adviser 2

Ms Erin TSANG
Senior Assistant Secretary (1) 3 (Designate)

I. Meeting with the Administration

The Administration's response to issues raised by the Bills Committee at the last meeting held on 12 February 2001 and the proposed Committee Stage amendments to be moved by the Administration were tabled at the meeting and circulated to members after the meeting vide LC Paper No. CB(1) 609/00-01.

Clause-by-clause examination

2. Members went through the Bill clause by clause. The main points of the deliberations were as follows:

Clauses 1 to 3 - Short/long title and commencement

3. Members noted that clause 1 was a general commencement clause, whilst clauses 2 and 3 were substitution clauses. In reply to the Chairman, the Assistant Commissioner for Tourism (ACT) advised that upon commencement of the Bill, the "body corporate" referred to in clause 2 would be the 20 members appointed to the future Hong Kong Tourism Board (the future Board).

Clause 4 - Interpretation

4. ACT explained that clause 4 sought to define the terms used in the

Bill. Concerning the term "licensed travel agent", he stated that in the light of Assistant Legal Adviser 2 (ALA)'s advice that a licence could be granted to either a natural person or a body corporate under the Travel Agents Ordinance (Cap. 218), the Administration, upon the advice of the Department of Justice (D of J), would move a Committee Stage amendment (CSA) to amend the definition of "licensed travel agent" as "a natural person who is engaged in the business of a travel agent licensed under section 11 of the Travel Agents Ordinance", and "travel agent" had the same meaning as in that Ordinance to avoid ambiguity, and to bring out clearly the legislative intent that "licensed travel agent" included controller, director or officer of a corporate which was a travel agent, as well as a natural person who himself/herself was a travel agent.

Clauses 5 and 6 - Establishment and objects of the future Board

5. Members noted that the purpose of clauses 5 and 6 was to provide for the establishment of the future Board to replace Hong Kong Tourist Association (HKTA) and its Board of Management, and to update some of the objects of the future Board to put more emphasis on promoting Hong Kong globally as a world class tourist destination and stepping up the future Board's advisory role to the Government.

Clauses 7 to 9 - Seal and general powers of the future Board

6. Noting that HKTA had in actuality been working with concerned organizations, not just with its members, in its promotion work, and that the existing membership system of HKTA was outdated, members agreed to repeal the provisions relating to the criteria of, application for and termination of membership of HKTA as provided for in clauses 7 to 9 to effect the abolition of the membership system, and to substitute therein provisions relating to the seal and general powers of the future Board. In this connection, ALA drew members' attention that the Administration had accepted her advice to replace "接納" in clause 7 with "收取" to ensure consistency with the existing HKTA Ordinance (Cap. 302), and members noted that the Administration would move a CSA to effect the above amendment.

7. Referring to clause 9(j) which provided that the future Board might "enter into, execute or accept the assignment of, and vary or rescind any contract, agreement, memorandum of understanding or obligation", ACT advised the meeting that since the term "enter into" was wide enough to cover the meaning as construed by "execute", the Administration intended to move a CSA to delete the word "execute" from the above clause.

8. In response to Mrs Selina CHOW, the Senior Government Counsel (SGC) explained that the word "execute" denoted an act of signing in the name of a corporate or the fixing of the corporate's seal. Since clause 7 which provided for the seal of the future Board and instruments executed under the

seal had already connoted the power of the future Board to execute an instrument, it was considered not necessary to repeat such power of the future Board in clause 9. Addressing Mrs Selina CHOW's concern as to whether such deletion was legally in order, ALA confirmed that since it was not a common usage to modify "obligation" by the verb "execute", and that the term "enter into" in the same section already covered the meaning of "sign, seal and deliver", the deletion of "execute" from the clause was in order. In further reply to Mrs Selina CHOW as to whether it would be more appropriate to amend the word "obligation" rather than deleting the word "execute" from the clause, ALA pointed out that the term "obligation" was commonly employed in similar provisions in other ordinances where the powers of a body corporate were provided, such as the Hong Kong Trade Development Council (HKTDC) Ordinance (Cap. 1114), to denote a legal duty or a bond by deed. Hence, it would be preferable to retain the word "obligation" in and delete the word "execute" from the aforesaid clause of the Bill. In this connection, ALA advised and both the Administration and members agreed that as a result of the deletion of "execute" from the clause, the word "及" after "簽立" should also be deleted in the Chinese text of the provision to avoid ambiguity.

Setting up of offices in and outside Hong Kong

9. ALA highlighted that if a body corporate had to engage, via its overseas offices, in activities abroad for marketing or promotion purposes, it would usually be stipulated expressly in the respective ordinance; without which it would be presumed that the provisions of the ordinance only covered the body corporate's activities within the confines of Hong Kong. As for this Bill, she cautioned that although it was provided in the objects that the future Board was to promote Hong Kong globally as a world class tourist destination, such object could be achieved by sending delegations to overseas countries instead of setting up offices there. Regarding the proposed section 7(c), she was concerned that it might not be wide enough to cover the setting up of overseas offices by the future Board. In the circumstances, she enquired whether the Administration would consider adding a clause to spell out clearly in the legislation the future Board's power of setting up offices outside Hong Kong.

10. In response, ACT held that since the proposed section 7(c) had already provided, in general terms, the power of the future Board to promote activities which were conducive to the better carrying out of its objects, which might include setting up of offices outside Hong Kong for such purpose, it was considered not necessary to pinpoint specifically in the legislation such power of the Board. Mr NG Leung-sing shared with the Administration that it would be more desirable as not to detail specifically each and every power of the future Board in the legislation lest it would undermine the flexibility to be exercised by the future Board.

11. In the light of ALA's advice, however, that it had been laid down expressly in the HKTDC Ordinance that HKTDC might establish and maintain offices both in and outside Hong Kong to facilitate the better carrying out of its functions, Mrs Selina CHOW opined that it would be desirable to follow suit as to stipulate clearly in the legislation the power of the future Board to maintain and set up offices outside Hong Kong. Mr CHAN Kam-lam echoed Mrs Selina CHOW's view, and added that the Hong Kong Science and Technology Parks Corporation Bill had also provided explicitly the power of the Corporation to do, in any part of the world, such things as were expedient for and conducive to the attainment of its purposes. Mr CHEUNG Man-kwong shared the two members' view and supported addition of a clause in the proposed section 7 to put beyond doubt the power of the future Board to establish overseas offices. Having regard to members' views and concerns, the Administration undertook to move a CSA to this effect.

Clause 10 - Appointment of Executive Director and Deputy Executive Director

12. Members noted D of J's advice that it was appropriate to use "appoint" and its Chinese equivalent "委任" in the context of clause 10 which provided for the appointment of Executive Director and Deputy Executive Director of the future Board and the determination of their remuneration, and that the term "委任" was also used as the Chinese equivalent of the term "appoint" in similar provisions in some other ordinances, such as HKTDC Ordinance, the Hong Kong Council for Academic Accreditation Ordinance (Cap. 1150) and the Occupational Safety and Health Council Ordinance (Cap. 398), where all the Executive Directors concerned might receive a remuneration.

13. In spite of the Administration's explanation, however, Mr NG Leung-sing remarked that in Chinese, the expression "委任" 某人 was commonly interpreted or perceived as requesting somebody to take up a position without remuneration. To avoid causing confusion, he suggested that the Administration should, in future drafting exercises, consider making a clear demarcation on usage of words such that "聘請" referred to appointment with remuneration whereas "委任" denoted appointment without remuneration.

Clause 11- Constitution and membership of the Board

14. ACT advised that the Administration had considered Mr CHEUNG Yu-yan's proposal to specify the number of representatives to be appointed from the sectors of licensed travel agents, tour operators, retailers and restaurant operators and that one from each sectors should be appointed. The Administration considered that the proposal was in line with the policy intent to maintain a balanced composition of the future Board and would move a CSA to this effect. Mrs Selina CHOW supported the Administration's proposal of designating separate seats for representatives of different sectors of the industry.

15. ACT advised further that taking into account members' suggestions raised at the last meeting, the Administration intended to appoint one representative from the Consumer Council and one representing the frontline workers of the tourism industry, whilst appointment of individuals from the marketing, legal and banking/finance sectors would also be considered to ensure that the remaining 12 seats would be a cross section of members whose experience and views would be of value to the strategic development of the tourism industry. In this respect, Mrs Selina CHOW sought clarification from the Administration and the latter remarked that although it would not be laid down in the legislation that a seat would be designated to the Consumer Council for representation of consumers' interests on the future Board, the Administration would articulate such policy intent at the Second Reading debate on the Bill. ACT informed members that the Administration had also consulted Mr LEUNG Fu-wah about the intended arrangement for appointing a member to represent frontline workers and Mr LEUNG was agreeable to such arrangement.

16. On Mr CHEUNG Yu-yun's suggestion of increasing the representation of restaurant operators on the future Board, ACT assured the meeting that nominations from the industry were welcomed and the Administration would take into account their views when considering appointment to the future Board. Since the majority of members present at the meeting were supportive of the Administration's arrangement, the Chairman suggested Mr CHEUNG Yu-yun to move a CSA on his own if he still considered it necessary to stipulate in the legislation an additional seat for restaurant operators.

17. With reference to Mrs Selina CHOW's concern on the criteria to be adopted by the Administration for appointment of members to the future Board and hence the transparency of the appointment mechanism, the Administration undertook to provide after the meeting a paper setting out the mechanism and criteria of appointment to the future Board for members' reference.

(Post-meeting note: The Administration's paper on the above subject was circulated to members vide LC Paper CB(1) 643/00-01(21).)

Vacancy of the office of Chairman

18. Referring to the proposed section 9(8) which stipulated that "If an office of Chairman (of the future Board) is vacant as a result of resignation or removal under section 10 or otherwise, the Deputy Chairman shall act in the office of the Chairman pending the appointment of a new Chairman," ACT explained that the word "otherwise" denoted reasons other than resignation and removal as provided in the section which might entail vacancy of the chairmanship. He pointed out that since the word "otherwise" was translated as "其他法律條文" in the Chinese text, which could not fully reflect the

meaning of the English text, the Administration would move a CSA to amend the Chinese text of the provision as follows:

"如主席的職位因根據第10條辭職或遭免任而懸空，或因其他理由而懸空，則副主席須在新主席尚待委任期間署理主席的職位。"

Clause 20 - Directions given by the Chief Executive in Council

19. In reply to the Chairman as to why the term "職責" was repealed and substituted by "責任" in clause 20, ACT explained that the term "職責" was usually used to describe a person whilst the term "責任" afforded a broader coverage which was considered a more appropriate reference for a body corporate, i.e. the future Board in the present context. He said that according to D of J, it was appropriate to use "責任" as the Chinese equivalent of the term "duties" in the provision, and that it was not necessary to substitute the term "duties" with "responsibilities" in the English text.

20. Mr CHEUNG Man-kwong was concerned, however, that members of the future Board were not remunerated for undertaking social responsibilities of the Board and hence it seemed inappropriate to refer the performance of their duties as "責任" in Chinese. In response, ACT explained that since members of the future Board were required to comply with directions given by the Chief Executive in Council under clause 20, the term "責任" was considered an appropriate reference in the context of the provision.

21. Regarding the employment of the verb "執行" to modify "責任", SGC advised that since the term "責任" referred to obligations imposed upon which had to be abided by, it was appropriate to use the term "執行" in the context of the provision. Notwithstanding SGC's explanation, however, ALA opined that in Chinese, the term "執行" was seldom used to modify "責任" and that it would be more appropriate to use the term "履行" as substitute. Mr CHEUNG Man-kwong echoed ALA's view. After deliberation, the Administration took on board members' suggestion of replacing "執行" with "履行" in the Chinese text of the Bill wherever it appeared, i.e. clauses 9, 12, 20, 21, 26 and 40, to better reflect the meaning.

Clause 21 - Power of the future Board to appoint committees

22. Noting that it had been laid down in the respective ordinance that HKTDC could not delegate certain powers, such as approval of the estimates of income and expenditure, to its committees as those powers had to be retained by the Council, ALA was concerned that, notwithstanding subsection (3) where the delegation made under subsection (1) did not preclude the future Board from exercising its powers and duties so delegated, the scope of delegation as provided in the proposed section 17 was too broad to the extent that the future

Board might delegate all of its powers to its committees. In response, ACT emphasized that since the set-up and objects of HKTDC were not entirely the same as those of the future Board, it was inappropriate to adapt directly the legislative provisions of HKTDC Ordinance for this Bill without making reference to the particular circumstances and needs of the future Board. He pointed out further that since it would be the future Board's policy decision as to whether it would delegate all of its powers to the committees so appointed, flexibility should be provided in the legislation for HKTDC to make a conscious decision of its own.

23. In this connection, Mr NG Leung-sing asked and SGC assured the meeting that albeit the delegation of powers, the ultimate responsibility would still rest with the future Board which would be held accountable for the misdemeanors, if any, of its committees.

Clauses 26 and 28 - Power of the future Board to make rules and proceedings at meetings

24. In the light of the Administration's proposal of repealing the HKTA Rules which provided for the quorums at and proceedings of the Board's meetings and that Clause 26 vested with the future Board the power to, in the form of subsidiary legislation, make rules governing the proceedings of its meetings, ALA enquired whether subsidiary legislation prescribing the rules of procedures of the future Board's meetings would be introduced to ensure that the conduct of its meetings would be in order upon commencement of the Bill.

25. In response, SGC explained that since clause 26 was to be read in conjunction with clause 28 in the sense that the future Board could determine the proceedings of its meetings whilst the Chief Executive in Council upheld the ultimate authority to prescribe rules for the proceedings of those meetings when such a need arose, it was not necessary to introduce subsidiary legislation in that respect.

Clauses 30 and 32 - Prohibition of possession and use of former badges or emblems

26. On the question of the necessity to extend the validity period of the provisions on protection of former badges or emblems and title of HKTA, members took note of the Administration's response that HKTA had been duly consulted and was content with the existing proposal of providing the aforesaid protection until 31 December 2010. To this end, the Administration assured the meeting that the Legislative Council was empowered under the proposed sections 26(4) and 27(3) to extend the expiry date if such a need arose.

27. Responding to ALA's enquiry as to whether the badges/emblems of the future Board would be portrayed in the Schedule, Mrs Selina CHOW

informed the meeting that since the design of a badge/emblem might change in the passage of time, HKTA was of the view that the badges/emblems of the future Board should not be included in the legislation to provide for flexibility for change; nevertheless, the future Board would register its badges/emblems as trademarks to afford necessary protection.

28. In this connection, ACT advised the meeting that for the sake of tidying up an inaccurate cross-reference, the Administration would move a CSA to amend the section number within the square brackets in the Schedule to "s.26".

Clause 47 - Composition of the tourism functional constituency

29. The Chairman declared interest that he was the representative of the Tourism Functional Constituency (FC). Highlighting that members of HKTA who were entitled to vote at the general meetings of HKTA were currently eligible for registration as electors for Tourism FC of the Legislative Council elections under section 200 of the Legislative Council Ordinance (Cap. 542), he was concerned whether the eligibility of HKTA members for registration in the Tourism FC would be jeopardized upon the cessation of the existing membership system. In response, ACT informed the meeting that HKTA had already issued a circular alerting its members the implication of the cessation of membership system on their eligibility for registration in the Tourism FC and other qualification required for the FC i.e. membership of the Travel Industry Council of Hong Kong, the Board of Airline Representatives in Hong Kong, the Hong Kong Hotels Association or the Federation of Hong Kong Hotel Owners. He added that according to HKTA, most of its members had either enrolled in one or more of the above organizations. To this end, he assured members that the Administration would endeavour to render assistance should any members of HKTA had difficulty in enrolment. In further reply to the Chairman, he advised that both the Hong Kong Hotels Association and the Federation of Hong Kong Hotel Owners had indicated that they welcomed and would consider applications for membership from guesthouses.

II. Any other business

30. The Chairman informed the meeting that invitations had been sent to 45 organizations of the travel and tourism industry and the deadline for their submissions was 21 February 2001. Mrs Selina CHOW then suggested and other members agreed that subject to the views/requests of the organizations, members would decide whether the meeting on 26 February 2001 would be convened as scheduled before the Chairman reported the Bills Committee's deliberations to the House Committee on 2 March 2001 recommending the resumption of the Second Reading debate on the Bill on 14 March 2001.

31. There being no other business, the meeting adjourned at 10:40 am.

Legislative Council Secretariat

4 April 2001