

**Letterhead of LEGISLATION COUNCIL SECRETARIAT LEGAL SERVICE
DIVISION**

CB(1)585/00-01(02)

YOUR REF : ESB CR 20/2091/00
OUR REF : LS/B/20/00-01
TELEPHONE : 2869 9209
FACSIMILE : 2877 5029

By Fax No. 2801 4458

31 January 2001

Secretary for Economic Services
(Attn: Mr. WU Kam Yin Assistant Commissioner for Tourism)
Economic Services Bureau
2/F Main and East Wings
Central Government Offices
Hong Kong

Dear Mr. WU,

Hong Kong Tourist Association (Amendment) Bill 2001

I am scrutinizing the above Bill with a view to advising Members on its legal and drafting aspects. I would be grateful if you could clarify the following:

Clause 7 (new section 5 - Seal of Board)

2. In new section 5(2), the Chinese equivalent for the English term "received in evidence" is "接納為證據". In "The English-Chinese Glossary of Legal Terms" prepared by the Department of Justice, the term "received in evidence" is translated as "收取為證據" and not "接納為證據". Should the Chinese version be "收取為證據"?

Clause 9 (new section 7 - General powers of Board)

3. In new section 7(j), can an obligation be executed (簽立...義務)?

Clause 11 (new section 9 - Constitution and membership of Board)

4. Under the Travel Agents Ordinance (Cap. 218), a licence can be granted to either a natural person or a body corporate. In the new section 9(2), it is specifically provided that the licensed travel agent is to be a natural person. Can a controller, director or officer of a licensed travel agent (being a corporate) be appointed as a member?

.../p.2

5. Is there any ex officio member on the Board? If yes, should there be a provision to provide for the appointment of such member?

6. In new section 9(8), what does "or otherwise" refer to? Could it refer to "other circumstances" and not "other enactment" as suggested in the Chinese version?

Clause 29 (new section 23 - Validity of proceedings)

7. In new section 23, it reads as "不受該局成員的空缺所影響". Would it be better to add "出現" before "的空缺" so that it reads as "不受該局成員出現的空缺所影響"?

Clause 32 (new section 26(4) and Clause 33 (new section 27(3))

8. Is it the policy intent that the Legislative Council could only extend the expiry date once? If so, it seems that this provision could be amended to clarify this intent.

General Observation

Schedule

9. In the existing Schedule, section 24 is referred to in the square bracket. Since section 24 is now repealed, should [s. 24] be amended to [s. 26]?

Membership fee of HKTA

10. On the commencement of this Ordinance, how are the remaining membership fees that have been collected by Hong Kong Tourist Association to be dealt with? Is there any need to provide for the refund of any membership fee?

I would be grateful if you could let me have your reply in both English and Chinese before the date of the first meeting of the Bills Committee (i.e. before 12 February 2001).

Yours sincerely,

Anita HO
Assistant Legal Adviser

c.c. Department of Justice (Attn: Mr. Allen Lai, GC)
(Fax No. 2869 1302)
LA

Letterhead of ECONOMIC SERVICES BUREAU GOVERNMENT SECRETARIAT

Tel:2810 3525

Fax:2801 4458

12 February 2001

Urgent by Fax

Ms Anita Ho
Assistant Legal Adviser
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central, Hong Kong
[Fax No. : 2877 5029]

Dear Ms Ho,

Hong Kong Tourist Association (Amendments) Bill 2001

Thank you for your letter of 31 January 2001. After consulting the Department of Justice (D of J), we have the following response to your questions -

Clause 7 (new section 5 - Seal of Board)

D of J advised that there is no standard Chinese equivalent for the term "received" in the expression of "received in evidence". The different versions used in other ordinances are set out at Annex for your reference. The Chinese equivalent "接納" for the English term "received" in the proposed section 5(2) is therefore considered in order.

Clause 9 (new section 7 - General Powers of Board)

D of J advised that according to the "Osborn's Concise New Dictionary", "execute" (簽立) means "to formally sign and deliver" a deed. An "obligation" (義務) is a legal duty or a bond by deed (see "A concise Dictionary of Law" (Oxford University Press)). An obligation could be executed.

Clause 11 (new section 9 - Constitution and Membership of Board)

With respect to your para. 4, the expression "licensed travel agent" is intended to include the controller, director or officer of a corporate that is a travel agent as well as a natural person who is himself/herself a travel agent. We consider that the existing definition of "licensed travel agent" may be slightly modified to avoid ambiguity. On the advice of D of J, we propose to introduce a CSA to amend the definition as follows -

"licensed travel agent" means a natural person who is engaged in the business of a travel agent licensed under Section 11 of the Travel Agents Ordinance (Cap. 218), and "travel agent" has the same meaning as in that Ordinance.

As regards your para. 5, you may wish to know that the Secretary for Economic Services (SES) or the Commissioner for Tourism (CT) is an incumbent member of the Board of Management of the Hong Kong Tourist Association (HKTA) appointed under section 9(1)(a) of the HKTA Ordinance. The appointment would be carried forward to the Hong Kong Tourism Board (HKTB) by virtue of clause 38 of the HKTA (Amendment) Bill 2001 and re-appointment would be made under clause 11 (the new section 9) of the Bill in the future. SES or CT will continue serving as one of the appointed members of the future HKTB.

With respect to your para. 6, the word "otherwise" in the new section 9(8) means other reasons that the post of Chairman may become vacant. On the advice of D of J, we propose to amend the Chinese text of the new section 9(8) to the following by way of CSA to better reflect the meaning of the English text -

"如主席的職位因主席根據第 10 條辭職或遭免任，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 29 (new section 23 - Validity of Proceedings)

D of J advised that the existing Chinese version of the proposed section 23 accurately reflects the legal effect of that section and is linguistically in order. It is not necessary to add "出現" in the provision.

Clause 32 (new section 26(4)) and Clause 33 (new section 27(3))

We have no intention to restrict the number of times that the LegCo may extend the expiry date and therefore do not see a need to amend the provisions as suggested.

General Observation

Schedule

On the advice of D of J, we propose to amend the section number within the square brackets to "s.20" by way of CSA.

Membership fees of HKTA

The collection of membership fees by the HKTA ties in with the financial year. The HKTA has no plan to collect membership fees for the financial year of 2001-02 and will unlikely encounter a need to arrange refund to its members. The HKTA has devised comprehensive plans and administrative arrangements to facilitate the process of abolishing its membership system.

I hope the above would help clarify our position. Please let us know if you require further information.

We are working on the three proposed CSAs and will submit to the Bills Committee for consideration once available.

Yours sincerely,

(Wu Kam Yin)
for Secretary for Economic Services

cc D of J (Attn: Mr Allen Lai and Mr M Y Cheung) - 2869 1302 and 2523 5104 Acting Executive Director, Hong Kong Tourist Association (Attn: Mrs Grace Lee) - 2503 6300

Annex

Provision	English version	Chinese version
Marine Fish (Marketing) Ordinance (Cap. 291) s.19(6)	received in evidence	接受為證據
Protection of Wages on Insolvency Ordinance (Cap. 380) s.2(2) of Schedule	received in evidence	接受為證據
Environment and Conservation Fund Ordinance (Cap. 450) s.5(3)	received in evidence	接受為證據
The Hong Kong Institute of Housing Ordinance (Cap. 507) s.3	received in evidence	接納為證據
The Hong Kong Institute of Architects Incorporation Ordinance (Cap. 1147) s.3(3)	received in evidence	接納為證據
The Hong Kong Institute of Surveyors Ordinance (Cap. 1148) s.3(3)	received in evidence	接納為證據
Hong Kong Sports Development Board Ordinance (Cap. 1149) s.5I(2)	received in evidence	接納為證據
The Hong Kong Institute of Planners Incorporation Ordinance (Cap. 1153) s.3(3)	received in evidence	接納為證據