

立法會
Legislative Council

LC Paper No. CB(2)1085/01-02

(These minutes have been
seen by the Administration)

Ref : CB2/BC/26/00

Bills Committee on Travel Agents (Amendment) Bill 2001

**Minutes of the third meeting
held on Thursday, 17 January 2002 at 4:30 pm
in Conference Room A of the Legislative Council Building**

Members Present : Hon SIN Chung-kai (Chairman)
Hon Cyd HO Sau-lan
Hon Fred LI Wah-ming, JP
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon CHAN Kam-lam
Hon Howard YOUNG, JP
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon LI Fung-ying, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon LEUNG Fu-wah, MH, JP

Members Absent : Hon CHOY So-yuk
Hon Audrey EU Yuet-mee, SC, JP

Public Officers Attending : Mr Duncan PESCOD
Deputy Commissioner for Tourism

Mr WU Kam-yin
Assistant Commissioner for Tourism

Mr Eric HO
Registrar of Travel Agents

Miss Bella MUI
Assistant Secretary (Tourism) for Economic Services

Mr W B MADDAFORD
Senior Assistant Law Draftsman

Ms Stella CHAN
Government Counsel

Clerk in Attendance : Ms Doris CHAN
Chief Assistant Secretary (2) 4

Staff in Attendance : Miss Anita HO
Assistant Legal Adviser 2

Ms Dora WAI
Senior Assistant Secretary (2) 4

I. Meeting with the Administration
(LC Paper Nos. CB(2)797/01-02(12) and CB(2)915/01-02(01) to (03))

The Bills Committee deliberated (index of proceedings attached at **Annex**).

Clause-by-clause examination of the Bill

Clause 5

New section 4A(1)

2. The Bills Committee pointed out that the drafting of the section could be interpreted in such a way that a person might not be regarded as an inbound travel agent if he carried on the business of obtaining for another person the services prescribed in section 4A(1)(a) to (c) but without holding himself out as carrying on such business. The Bills Committee considered that such person should be regarded as an inbound travel agent, regardless of whether he held himself out as carrying on the business. To improve the clarity of the provision, the Bills Committee asked the Administration to consider whether the word “and” before the words “carries on the business of” under section 4A(1) should be replaced by the word “or”.

3. The Administration explained that the drafting of section 4A(1) followed that of the provisions for outbound travel agents. Nevertheless, it undertook to look into the matter and provide a response to the Bills Committee.

4. The Administration agreed to add the words “one or more” before the words “prescribed services” in section 4A(1)(c) in the light of the comments made by the Assistant Legal Adviser 2 (ALA2) in her letter to the Administration dated 10 January 2002.

Action

Clause 10

5. The Administration also agreed to amend Forms 4 and 5 in the light of the comments made by ALA2 in her letter to the Administration dated 19 September 2001. The Administration's proposed amendments were set out in its letter to ALA2 dated 5 October 2001.

Definition of "inbound travel agent"

6. Members expressed worry that the Bill might unintentionally apply to persons or organisations arranging or providing tour-related services on an occasional and ad hoc basis, such as event organisers, universities, hotel concierges, local community organisations, etc. The Administration explained that only those who carried on business as an inbound travel agent, i.e. the primary function of the business was to provide inbound travel service, would be covered under the Bill.

7. As requested by the Bills Committee, the Administration undertook to provide a paper setting out the types of businesses/operations which the Administration did not intend to require licensing under the Bill. The Administration also undertook to explain the issue of incidental and core business in the paper.

8. In addition, the Administration undertook to check with universities to obtain information in respect of the tour-related services provided by universities for their overseas visitors participating in academic exchange programmes or other related activities in Hong Kong.

II. Date of next meeting

9. At the request of the Administration, the Bills Committee agreed to defer the next meeting originally scheduled for 29 January 2002 at 8:30 am to 5 February 2002 at 10:45 am tentatively to consider the Administration's response and the relevant proposed Committee Stage amendments.

10. There being no other business, the meeting ended at 6:20 pm.

**Proceedings of the third meeting of the
Bills Committee on Travel Agents (Amendment) Bill 2001
on Thursday, 17 January 2002 at 4:30 pm
in Conference Room A of the Legislative Council Building**

Time	Speaker	Subject(s)	Action required
0000-0229	Chairman	(a) Opening remarks; and (b) Admin's paper (LC Paper No. CB(2)797/01-02(12))	
0230-0311	Mr CHAN Kam-lam	Mechanism for paying restitution to travellers from the Bonding Fund	
0312-0335	Admin	Ditto	
0336-0340	Mr CHAN Kam-lam	Ditto	
0341-0427	Chairman	Channel for seeking redress if a traveller was aggrieved by the decision of the Travel Industry Council of Hong Kong (TIC)	
0428-0508	Mr CHAN Kam-lam	Clarification of the 100% refund guarantee within 14 days of purchase	
0509-0545	Admin	Ditto	
0546-0610	Chairman	Admin's paper (LC Paper No. CB(2)915/01-02(01))	
0611-0656	Mr LEUNG Fu-wah	Qualifications required for serving tour guides to enrol in courses under the training programme	
0657-0724	Admin	Ditto	
0725-0753	Mr Howard YOUNG	Qualifications required for new entrants to enrol in the above courses	
0754-0816	Admin	Ditto	
0817-0857	Ms LI Fung-ying	Need to introduce a clear definition of "inbound travel agent" to remove the ambiguity as to whether tour-related services provided on an ad hoc basis by non-travel agents such as local community organisations would be covered under the Bill	
0858-0959	Admin	Ditto	
1000-1025	Ms LI Fung-ying	Ditto	
1026-1146	Admin	Ditto	
1147-1248	Mr Howard YOUNG	Ditto	
1249-1314	Admin	Ditto	

Time	Speaker	Subject(s)	Action required
1315-1405	Ms Cyd HO	Applicability of the Bill to universities which provided tour-related services for their overseas visitors participating in academic exchange programmes or other related activities in Hong Kong	
1406-1431	Admin	Ditto	
1432-1457	Ms Cyd HO	Ditto	
1458-1526	Admin	Admin undertook to check with universities in this regard	✓
1527-1743	Mrs Selina CHOW	Her views on the need to introduce a clear definition of "inbound travel agent"	
1744-1903	Admin	Two tests to decide whether a person was "carrying on a business", which were (a) for pecuniary gain and (b) on a routine and habitual basis	
1904-1917	Chairman	Ditto	
1918-2000	Admin	Ditto	
2001-2052	Mrs Selina CHOW	Ditto	
2053-2145	Admin	Ditto	
2146-2349	Chairman	Request to state clearly in the Bill whether professional bodies or other organisations which provided tour-related services for their members or overseas visitors participating in conferences or other activities would be required to be licensed under the Bill	
2350-2436	Mr Howard YOUNG	Ditto	
2437-2455	Chairman	Ditto	
2456-2549	Mr Howard YOUNG	Ditto	
2550-2718	Admin	Ditto	
2719-2821	Mrs Selina CHOW	Support for the Chairman's request so as to avoid catching inadvertently those who did not know that they were covered under the Bill	
2822-2914	Admin	Response to the above	
2915-3034	Chairman	Types of complaints which the Government would initiate prosecution under the Bill	
3035-3143	Admin	Ditto	
3144-3220	Ms Cyd HO	Need to widely publicise the types of organisations required to be licensed under the Bill	
3221-3359	Mrs Selina CHOW	Ditto	
3400-3443	Chairman	Need to clarify the types of organisations required to be licensed under the Bill	

Time	Speaker	Subject(s)	Action required
3444-3621	Admin	Response to Ms Cyd HO and the Chairman	
3622-3643	Chairman	Request to include on the website of the Tourism Commission or the Travel Agents Registry the frequently asked questions in respect of the self-regulatory mechanism of the travel industry	
3644-3720	Mr LEUNG Fu-wah	(a) Number of serving tour guides who could be exempted from the training programme; and (b) Timetable for the implementation of the above training programme	
3721-3742	Mrs Selina CHOW	Training for tour guides	
3743-3752	Chairman	Ditto	
3753-3854	Admin	Response to Mr LEUNG Fu-wah	
3855-3914	Chairman	Nomination and appointment of independent directors to the TIC Board	
3915-3945	Admin	Ditto	
3946-3950	Chairman	Ditto	
3951-4000	Admin	Ditto	
4001-4004	Chairman	Enquiry as to whether the Convenor of the Consumer Relations Committee of TIC was an independent member	
4005-4010	Admin	Response to the above	
4011-4030	Chairman	Composition of the Consumer Relations Committee of TIC	
4031-4038	Admin	Ditto	
4039-4041	Chairman	Functions of the Consumer Relations Committee of TIC	
4042-4058	Admin	Ditto	
4059-4106	Chairman	Chairmanship and proportion of independent members of the TIC Appeal Board	
4107-4118	Admin	Ditto	
4119-4131	Chairman	Proposal to have a higher percentage of independent members in the Consumer Relations Committee and the Appeal Board to boost public confidence in TIC	
4132-4458	Admin	Response to the above	
4459-4617	Mrs Selina CHOW	Mechanism for ensuring an even representation from the eight TIC Association Members in various committees of TIC	
4618-4705	Admin	Response to the above	

Time	Speaker	Subject(s)	Action required
4706-4749	Mrs Selina CHOW	Expressing confidence in the composition and work of various committees of TIC	
4750-4825	Mr Howard YOUNG	Ditto	
4826-4911	Chairman	Possibility for the Consumer Relations Committee of TIC to be convened by an independent member	
4912-5028	Admin	Response to the above	
5029-5059	Chairman	Reason for proposing a higher percentage of independent members in the Consumer Relations Committee of TIC	
5100-5210	Mrs Selina CHOW	Expressing confidence in the composition and work of various committees of TIC	
5211-5227	Mr Howard YOUNG	Ditto	
5228-5340	Chairman	Outstanding reply to the views expressed by the Hong Kong Inbound Travel Association Ltd concerning the requirement of membership of one of the eight TIC Association Members for applying for TIC membership	
5341-5553	Admin	Response to the above	
5554-5808	Chairman	(a) Copy of letter from TIC to South China Morning Post tabled for members' information; and (b) Clause-by-clause examination of the Bill	
5809-5821	Admin	Clause 1 – Short title and commencement Effective date of the Bill	
5822-010018	Chairman	Clause 2 – Long title amended Clause 3 – Interpretation and application; and Clause 4 – Outbound travel agents	
010019-010052	Mr Ambrose LAU	Clause 5 – Section added Drafting of section 4A(1)	
010053-010059	Admin	Ditto	
010100-010111	Mr Ambrose LAU	Ditto	
010112-010114	Admin	Ditto	
010115-010129	Mr Ambrose LAU	Ditto	
010130-010139	Admin	Ditto	
010140-010154	Mr Ambrose LAU	Ditto	
010155-010234	Admin	Ditto	
010235-010238	Mr Ambrose LAU	Ditto	
010239-010244	Admin	Ditto	

Time	Speaker	Subject(s)	Action required
010245-010341	Mr Ambrose LAU	Inviting ALA2 to give legal advice on the drafting of section 4A(1)	
010342-010444	Mr Howard YOUNG	Drafting of section 4A(1)	
010445-010602	Admin	Ditto	
010603-010606	Mr Ambrose LAU	Proposal to replace the word “and” before the words “carries on the business of” under section 4A(1) with “or”	
010607-010644	ALA2	Views on the drafting of section 4A(1), “and” should mean to be conjunctive	
010645-010650	Mr Howard YOUNG	Support for Mr Ambrose LAU’s proposal	
010651-010728	Admin	Admin undertook to consider Mr Ambrose LAU’s proposal	✓
010729-010828	Chairman	New section 4A(2) and (3)	
010829-010917	Mr Howard YOUNG	Reason for setting the period at 14 days in section 4A(2)(b)	
010918-011007	Chairman	Clause 6 – Notice of intention to revoke	
011008-011020	ALA2	The purpose of clause 6 was to amend a wrong referral in the Travel Agents Ordinance (the Ordinance)	
011021-011053	Chairman	Clause 7 – Interpretation	
011054-011153	Mr Howard YOUNG	Enquiry as to whether there would be a loophole if a person would not be regarded as carrying on business as an inbound travel agent if he was the owner or operator of the services being provided to a visitor	
011154-011238	Admin	Response to the above	
011239-011251	Mrs Selina CHOW	Prescribed services under section 4A(1)(c)	
011252-011322	Admin	Ditto	
011323-011331	Chairman	Ditto	
011332-011453	ALA2	Rationale for putting the definition of “prescribed services” under the Regulations and not in section 2 of the Ordinance	
011454-011549	Admin	Ditto	
011550-011554	Chairman	Clause 8 – Regulations	
011555-011611	Mrs Selina CHOW	(a) Rationale for putting the definition of “prescribed services” under the Regulations and not in section 2 of the Ordinance; and (b) Expressing worry that section 4A(1)(c) might unintentionally apply to non-travel agents who provided tour-related services, e.g. hotel concierge	

Action

Time	Speaker	Subject(s)	Action required
011612-011707	Chairman	Support for Mrs Selina CHOW's views	
011708-011942	Mrs Selina CHOW	Expressing worry that some activities arranged by event organisers might also be covered under the Bill	
011943-012038	Admin	Response to the above	
012039-012050	Chairman	Enquiry as to whether purchasing opera tickets for a hotel guest by a concierge would fall under "prescribed services"	
012051-012105	Admin	Response to the above	
012106-011226	Chairman	Need to provide clearly in the Bill the services which would be regarded as "prescribed services" in order that providers of such services would be aware of the need to apply for a licence	
012227-012400	ALA2	(a) Ditto; and (b) Definition of "business" could be very wide	
012401-012410	Admin	Ditto	
012411-012413	ALA2	Ditto	
012414-012505	Admin	Ditto	
012506-012515	Chairman	Ditto	
012516-012610	Admin	Ditto	
012611-012615	Mr Howard YOUNG	Ditto	
012616-012640	Chairman	Exemption to apply for a licence under section 4A(2)	
012641-012645	Admin	Ditto	
012646-012702	Chairman	Ditto	
012703-012849	Admin	Ditto	
012850-012921	Chairman	Enquiry as to whether a hotel organising local tours for its guests would be required to be licensed under the Bill	
012922-012931	Admin	Response to the above	
012932-013057	Mrs Selina CHOW	Enquiry as to whether it was the legislative intent to cover event organisers under the Bill	
013058-013134	Admin	Response to the above	
013135-013206	Chairman	Admin's response at LC Paper No. CB(2)915/01-02(01) to the suggestion that the scope of the definition of "inbound travel agent" should be narrowed so as not to cover event organisers	
013207-013239	Mrs Selina CHOW	Enquiry as to whether event organisers should be covered under the Bill	
013240-013301	Admin	Response to the above	

Action

Time	Speaker	Subject(s)	Action required
013302-013348	Chairman	Admin to provide a paper setting out the types of businesses/operations which the Administration did not intend to require licensing under the Bill	✓
013349-013417	Admin	Response to the above	
013418-013439	Chairman	Information to be included in the above paper	
013440-013536	Mr Howard YOUNG	Ditto	
013537-013615	Ms LI Fung-ying	Ditto	
013616-013655	Chairman	Ditto	
013656-013727	Mr Howard YOUNG	Need to avoid creating loopholes for those who carried on inbound travel business under the types of organisations which were not covered under the Bill, e.g. clansman associations	
013728-013810	Chairman	Clause 10 – Second Schedule amended	
013811-013822	ALA2	Proposed amendments to Forms 4 and 5	
013823-013825	Admin	Admin accepted ALA2's proposal and undertook to provide the proposed Committee Stage amendments (CSAs) for members' consideration	✓
013826-013843	ALA2	Her proposed amendments to clause 9 concerning prescribed services under regulation 18	
013844-014001	Admin	Admin agreed to amend section 4A(1)(c) in the light of the comments made by ALA2 on clause 9 and undertook to provide the proposed CSAs for members' consideration	✓
014002-014024	Chairman	Request for the paper and the CSAs to be ready for discussion at the next meeting	
014025-014050	ALA2	Request to set out clearly in the paper that incidental business of travel-related nature would not be covered under the Bill	
014051-014136	Chairman	Need to clarify the scope of "business"	
014137-014200	Admin	Undertook to deal with the issue of incidental and core business in the paper	
014201-014455	Chairman, members and Admin	Date of next meeting	

Note : The audio records of the above proceedings are kept at the LegCo Library

Council Business Division 2
Legislative Council Secretariat
 7 February 2002