

立法會
Legislative Council

LC Paper No. CB(2)1502/01-02

(These minutes have been
seen by the Administration)

Ref : CB2/BC/26/00

Bills Committee on Travel Agents (Amendment) Bill 2001

**Minutes of the fifth meeting
held on Thursday, 7 March 2002 at 2:30 pm
in Conference Room B 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 CHOY So-yuk
Hon LI Fung-ying, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon LEUNG Fu-wah, MH, JP
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

Ms Betty CHEUNG
Senior Government Counsel

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. Confirmation of minutes of meeting held on 5 February 2002
(LC Paper No. CB(2)1141/01-02)

The minutes of the above meeting were confirmed.

II. Meeting with the Administration
(LC Paper Nos. CB(2)1234/01-02(01) to (03))

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

3. The Bills Committee noted the Administration's written response to the various issues raised by members at the meeting on 5 February 2002. It also noted that the Administration had accepted Hon Ambrose LAU's proposal to amend the new section 4A (and section 4 of the Ordinance to maintain consistency) by deleting the condition of "holds himself out as carrying on the business of". Members had no comments on the proposed Committee Stage amendments (CSAs) to be moved by the Secretary for Economic Services.

4. The Bills Committee was in support of the Bill and the proposed CSAs. Members agreed that a report on the Bills Committee should be made to the House Committee on 22 March 2002 recommending resumption of the Second Reading debate on the Bill at the Council meeting on 24 April 2002. The Administration noted that the deadlines for giving notice of resumption of the Second Reading debate and Committee Stage amendments were 4 April 2002 and 15 April 2002 respectively.

Action

5. The Chairman and some members shared Hon Fred LI's view that the four additional independent directors to be appointed to the Board of the Travel Industry Council of Hong Kong (TIC) should all be nominated by the Government instead of having two of them nominated by the TIC in order to enhance credibility of the TIC. The Administration undertook to take up the suggestion formally with the TIC again and provide members with a written response in due course.

6. There being no other business, the meeting ended at 3:25 pm.

Council Business Division 2
Legislative Council Secretariat
3 April 2002

**Proceedings of the fifth meeting of the
Bills Committee on Travel Agents (Amendment) Bill 2001
on Thursday, 7 March 2002 at 2:30 pm
in Conference Room B of the Legislative Council Building**

Time	Speaker	Subject(s)	Action required
0000-0206	Chairman	(a) Confirmation of minutes of last meeting; and (b) Admin's written response to issues raised by members at last meeting	
0207-0320	Mr Fred LI	Expressing dissatisfaction with the arrangement that two of the four additional independent directors to be appointed to the TIC Board were to be nominated by TIC	
0321-0339	Chairman	Inviting members' views on the above arrangement	
0340-0348	Mr LEUNG Fu-wah	Enquiring about the reason(s) for making the above arrangement	
0349-0414	Ms Audrey EU	Sharing the view of Mr Fred LI	
0415-0628	Admin	Response to the above	
0629-0755	Mr Fred LI	Expressing dissatisfaction with the existing arrangement as not all of the independent directors of the TIC Board were nominated by Government	
0756-0824	Mr LEUNG Fu-wah	Seeking clarification of the existing nomination arrangement	
0825-0945	Admin	Response to the above	
0946-1105	Mr Howard YOUNG	Expressing confidence in the existing mechanism for the appointment of independent directors to the TIC Board	
1106-1125	Mr LEUNG Fu-wah	Following up his earlier enquiry	
1126-1252	Admin	Response to the above	
1253-1415	Ms Audrey EU	Enquiry as to whether Government could only appoint candidates who were accepted by TIC and the trade	
1416-1421	Chairman	Inviting Admin to consider members' views	
1422-1432	Admin	Pointing out that appointment of directors to the TIC Board was outside the scope of the Bill, but undertook to follow up the issue with TIC in the light of members' views	
1433-1529	Mr Howard YOUNG	Suggesting Admin to follow up the issue with TIC tactfully in order not to discourage TIC to continue performing the regulatory role for the trade	
1530-1701	Chairman	Supporting the view that the four additional independent directors to be appointed to the TIC Board should be nominated by Government	

Time	Speaker	Subject(s)	Action required
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Action

1702-1748	Ms Audrey EU	Enquiry as to whether Admin had considered using the word "or" instead of "and" between the two conditions of "holds himself out as carrying on the business of" and "carries on the business of" in new section 4A in order to ease the burden of proof as the prosecution would not be required to introduce evidence to prove that a person had actually carried on the business	
1749-2017	Admin	Response to the above	
2018-2109	Ms Audrey EU	Enquiry as to whether there was any probability that a person would only hold himself out as carrying on a business but would not actually carry on such business	
2110-2251	Admin	Response to the above	
2252-2350	Mrs Selina CHOW	Supporting to use the word "or" in new section 4A in order to bring in tighter control over the operation of travel businesses	
2351-2449	Mr Ambrose LAU	Pointing out that whether the condition of "holds himself out as carrying on the business of" should be deleted or the word "or" should be used in new section 4A depended on the legislative intent	
2450-2600	Mrs Selina CHOW	Expressing the view that the Bill should be able to catch delinquent operators but should not cause complications to prosecution	
2601-2711	Admin	Response to the above	
2712-2919	Ms Audrey EU	Pointing out that it might be easier to prove that a person held himself out as carrying on a business than to prove that he actually carried on the business as the latter required more documentary evidence	
2920-3002	Chairman	Inviting members to note the reference provided by ALA2 that the wording "a person shall not carry on the business as a travel agent or hold himself out, by advertisement or otherwise, as carrying on such business" was also used in Irish laws	
3003-3147	Admin	Response to the above	
3148-3206	Chairman	Control on acts of travel business operators in relation to advertisements was provided under section 47(1) of the Travel Agents Ordinance (Cap. 218)	
3207-3231	Ms Audrey EU	Clarifying that her concern was the burden of proof rather than the categories of persons to be covered under the Bill	
3232-3251	Chairman	Seeking Ms Audrey EU's views as to whether a person who held himself out as carrying on a business would be considered as carrying on such business in legal terms	
3252-3343	Ms Audrey EU	Response to the above	
3344-3413	Chairman	Disadvantages of using the word "or" to replace the word "and" in new section 4A	

Action

Time	Speaker	Subject(s)	Action required
3414-3615	Ms Audrey EU	Enquiring about the reasons for the proposed deletion of the condition of "holds himself out as carrying on the business of" in new section 4A	
3616-3959	Admin	Response to the above	
3750-3835	Mr Howard YOUNG	Enquiry as to whether a person who held himself out blatantly as carrying on the business of a travel agent would be covered under the Bill	
3836-3959	Admin	Response to the above	
4000-4041	Ms Audrey EU	Enquiry as to whether a person touting to offer travel-related services in public places should be covered under the Bill	
4042-4133	Admin	Response to the above	
4134-4250	Chairman	Pointing out that excluding those who only held themselves out as carrying on the business of a travel agent but did not actually carry on such business from the Bill would do no harm to society	
4251-4258	Admin	Ditto	
4259-4410	Chairman	Clauses 1 to 4 of marked-up copy of proposed CSAs	
4411-4456	Ms Audrey EU	Meaning of "on account of" under new section 4A(1)(b)	
4457-4538	Admin	Response to the above	
4539-4650	Ms Audrey EU	Enquiry as to whether only payment made in advance for the cost of accommodation would be covered under section 4A(1)(b)	
4651-4738	Admin	Response to the above	
4739-4820	Ms Audrey EU	Seeking clarification as to whether payment made after staying at the accommodation would be excluded under section 4A(1)(b)	
4821-4837	Admin	Response to the above	
4838-4906	Ms Audrey EU	Reiterating her views on the meaning of "on account of"	
4907-4956	Admin	Further response to Ms Audrey EU's views	
4957-5010	Ms Audrey EU	Comments on Admin's response	
5011-5122	Chairman	Clauses 4 to 10 of marked-up copy of proposed CSAs	
5123-5152	ALA2	Pointing out that the word "visitor" in (iii) under subclause (aa) which the Administration proposed to add to clause 10 was redundant and should be deleted	
5153-5309	Chairman	(a) Members were in support of the Bill as amended; and (b) Admin to provide written response to members' suggestion that the four additional independent directors to be appointed to the TIC Board should all be nominated and appointed by Government	
5310-5319	Admin	Undertook to follow up the suggestion in (b) above with TIC and provide a written response to members	✓

Time	Speaker	Subject(s)	Action required
5320-5411	Chairman	(a) Date of reporting the deliberations of the Bills Committee to the House Committee; (b) Date of resumption of the Second Reading debate; and (c) Dates of giving relevant notices	
5412-5423	Admin	Thanking members for their efforts in scrutinising the Bill	
5424-5440	Chairman	End of scrutiny of the Bill	

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

Council Business Division 2
Legislative Council Secretariat
3 April 2002