

立法會
Legislative Council

LC Paper No. CB(4)1521/16-17
(These minutes have been seen
by the Administration)

Ref: CB4/BC/5/16

Bills Committee on Travel Industry Bill

**Minutes of the third meeting held on
Tuesday, 6 June 2017, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Members present : Hon YIU Si-wing, BBS (Chairman)
Hon LUK Chung-hung (Deputy Chairman)
Hon WONG Ting-kwong, SBS, JP
Hon Starry LEE Wai-king, SBS, JP
Hon WU Chi-wai, MH
Hon CHAN Chi-chuen
Hon Martin LIAO Cheung-kong, SBS, JP
Hon POON Siu-ping, BBS, MH
Hon Alvin YEUNG
Dr Hon Junius HO Kwan-yiu, JP
Hon HO Kai-ming
Hon Holden CHOW Ho-ding
Hon SHIU Ka-fai
Hon Tanya CHAN

Members absent : Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon MA Fung-kwok, SBS, JP
Dr Hon CHIANG Lai-wan, JP
Hon LAU Kwok-fan, MH

Public Officers attending : Agenda item II
Commerce and Economic Development Bureau

Mr Aaron LIU
Deputy Commissioner for Tourism

Mr Eddie LEE
Assistant Commissioner for Tourism 1

Mr Brendan AU
Registrar of Travel Agents

Mr Nicky NG
Senior Administrative Officer (Tourism)1

Clerk in attendance : Ms Shirley CHAN
Chief Council Secretary (4)5

Staff in attendance : Ms Clara TAM
Assistant Legal Adviser 9

Ms Shirley TAM
Senior Council Secretary (4)5

Ms Lauren LI
Council Secretary (4)5

Ms Zoe TONG
Legislative Assistant (4)5

Action

I. Application for late membership

(LC Paper No. CB(4)1047/16-17(01) — Letter dated 17 May 2017 from
Hon Starry LEE Wai-king
(Chinese version only))

Action

Members accepted the application from Ms Starry LEE for late membership of the Bills Committee pursuant to Rule 23(c) of the House Rules.

II. Meeting with the Administration

Matters arising from previous meetings

- (LC Paper No. CB(4)955/16-17(01) — List of follow-up actions arising from the discussion at the meeting on 10 April 2017
- LC Paper No. CB(4)955/16-17(02) — Administration's response to issues raised at the meeting on 10 April 2017
- LC Paper No. CB(4)1101/16-17(01) — Administration's responses to written submissions received and views expressed by individuals/deputations at the meeting on 9 May 2017)

Relevant papers

- (LC Paper No. CB(3)393/16-17 — The Bill
- File Ref: TC CR T1 22/2/26/3 — Legislative Council Brief issued by the Commerce and Economic Development Bureau
- LC Paper No. LS48/16-17 — Legal Service Division Report
- LC Paper No. CB(4)792/16-17(01) — Marked-up copy of relevant legislation to be amended by the Bill prepared by the Legal Service Division (Restricted to members only)
- LC Paper No. CB(4)792/16-17(02) — Background brief prepared by the Legislative Council Secretariat
- LC Paper No. CB(4)1101/16-17(02) — Assistant Legal Adviser's letter dated 25 May 2017 to the Administration

Action

LC Paper No. CB(4)1120/16-17(01) — Letter from Hon WU Chi-wai dated 29 May 2017 requesting further information relating to the Bill (Chinese version only)

Declaration of interests

2. The Chairman declared that he was holding a remunerated post in a travel agent. He was also the unremunerated honorary chairman/adviser of nine tourism related associations. Details were set out in the LC Paper No. CB(4)849/16-17(01).

Discussion

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

Follow-up actions to be taken by the Administration

4. The Administration was requested to provide a written response in respect of the following issues –

- (a) whether suitable provisions would be included in the Bill to tackle nuisance caused to local residents by businesses in relation to the operation of inbound tour groups, and if not, what the considerations would be, how the nuisance could be otherwise dealt with and whether there would be any complaint mechanism in relation to such nuisance;
- (b) the estimated annual budget of the Travel Industry Authority ("TIA") during its first five years of operation vis-à-vis that of the Travel Industry Council of Hong Kong at the moment;
- (c) the proposed committee structure of TIA, including the functions and membership compositions of the committees to be formed under TIA; and
- (d) whether section 6(3) of the Bill would be amended to cater for circumstances where travel agents in Hong Kong might need to provide services to Mainland inbound tour groups organized by parties other than travel agents registered in the Mainland;

(Post-meeting note: The Administration's written response for the above items (except item (b)) was issued to members vide LC Paper No. CB(4)1333/16-17(02) on 3 July 2017.)

Action

III. Any other business

Date of next meeting

5. The Chairman advised that the next meeting of the Bills Committee would be held on Tuesday, 4 July 2017 at 4:30 pm.
6. There being no other business, the meeting ended at 6:29 pm.

Council Business Division 4
Legislative Council Secretariat
21 August 2017

**Proceedings of the third meeting of
the Bills Committee on Travel Industry Bill
on Tuesday, 6 June 2017, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda item I – Application for late membership			
000419 – 000518	Chairman	Opening remarks Application for late membership	
Agenda item II – Meeting with the Administration			
000519 – 000611	Chairman	Declaration of interests [LC Paper No. CB(4)849/16-17(01)]	
000612 – 002048	Chairman Administration	Follow-up to previous meetings [LC Paper Nos. CB(4)955/16-17(02) and CB(4)1101/16-17(01)]	
002049 – 002605	Chairman Ms Starr Y LEE Administration	<p>Ms Starr Y LEE enquired whether suitable provisions would be included in the Bill to tackle nuisance caused to local residents by businesses in relation to the operation of inbound tour groups, and if not, what the considerations would be, how the nuisance could be otherwise dealt with and whether there would be any complaint mechanism in relation to such nuisance.</p> <p>The Administration responded that the Government attached great importance to minimizing the nuisance caused by the operation of travel activities on the local community. Regarding the problem of traffic congestion, the Police and relevant departments had taken suitable law enforcement action in response to cases of violation. The Administration had also put forwarded various measures including the allotment of more parking spaces for tour coaches in the districts concerned. The Travel Industry Council of Hong Kong ("TICHK") had closely liaised with the trade to ensure that tour coaches complied with traffic rules. In future, while TIA would be responsible for the liaison with the trade, it might also consider addressing the matter through administrative measures if necessary.</p>	The Administration to follow up as per paragraph 4(a) of the minutes
002606 – 003230	Chairman Deputy Chairman Administration	<p>The Deputy Chairman expressed grave concern about the "false self-employment" problem among tourist guides and tour escorts in the travel industry, and suggested that the Administration should –</p> <p>(a) regulate the cooperation relationship between travel agents and tourist guides/tour escorts, including that of the latter working part-time,</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>under the Bill by requiring them to enter into employment agreements instead of service agreements, so as to protect the rights and interests of tourist guides/tour escorts;</p> <p>(b) consider empowering TIA under section 164 of the Bill to require travel agents to procure employees' insurance for the tourist guides/tour escorts they employed/engaged; and</p> <p>(c) stipulate clearly the representation of frontline practitioners in TIA in the Bill.</p> <p>The Administration responded that –</p> <p>(a) the trade held different views on whether the cooperation relationship between travel agents and tourist guides as well as tour escorts should be regulated through the Bill, and had yet to reach a consensus. As Hong Kong was a free market and there was no legislation mandating for any particular sector that all practitioners providing services must be employees, the Administration considered it inappropriate to mandate the cooperation relationship between travel agents and tourist guides as well as tour escorts to be an employer-employee one across the board through the Bill; and</p> <p>(b) the Government would take into account candidates' ability, expertise and experience when considering the appointment to TIA, with due regard to the functions and powers of TIA. To provide for flexibility for TIA, the numbers of representatives from travel agents, tourist guides and tour escorts would not be specified in the Bill. Nevertheless, all these three sectors would be represented in TIA. This proposal was an improvement as compared with the current arrangement of TICHK's Board of Directors, of which all trade members were from travel agents.</p>	
003231 – 003750	Chairman Mr POON Siu-ping Administration	Mr POON Siu-ping shared the concerns about the relationship between travel agents and tourist guides/tour escorts, as well as the representation of frontline practitioners in TIA. On the latter, he suggested that membership appointment for TIA could be made based on industry nomination. He also raised concern if the education requirement to be imposed on tourist guides and tour escorts under respective licensing systems would be more stringent than the current requirement under TICHK's accreditation systems.	

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		<p>The Administration replied that –</p> <p>(a) industry nomination was unsuitable for TIA's formation as the authority would be the statutory regulatory body for the industry. To ensure its independence while maintaining a good representation of the industry, TIA members would be appointed by the Chief Executive, with not more than 17 members being non-trade members and not more than 13 members being trade members; and</p> <p>(b) the education requirement for issuing tourist guide and tour escort licenses in the Bill remained the same as that under TICHK's accreditation systems.</p>	
003751 – 004254	Chairman Mr Holden CHOW Administration	<p>To enhance the protection of Mainland inbound visitors, Mr Holden CHOW considered that in carrying on travel business activities, local travel agents should be prohibited from cooperating with travel agents which were not approved by a regulatory organization in the Mainland.</p> <p>The Administration said that it was essential to combat cooperation with unauthorized travel agents in the Mainland so as to curb "zero/negative-fare" tours. Therefore, the Bill stipulated provisions to combat the obtaining of inbound travel services by Hong Kong travel agents for Mainland inbound tour groups organized by unauthorized travel agents in the Mainland. Nonetheless, if a travel agent was found to co-operate with an unauthorized Mainland travel agent but had taken all reasonable steps to check whether the Mainland travel agent was authorized, this might constitute a defence under the relevant offence.</p>	
004255 – 004849	Chairman Mr WU Chi-wai Administration	<p>Mr WU Chi Wai expressed concern if the future development of the travel industry and the entrance of new market players riding on the emerging development of "sharing economy" would be undermined by the new regulatory regime.</p> <p>The Administration explained that as in the case of other industries, upon the advancement of information technology, new modes of operation would come on stream in the travel industry. Nevertheless, as travel business activities involved the interests of visitors/travellers and advanced payment for services, it was necessary to subject all persons that carried on travel business activities, regardless of their mode of</p>	

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		<p>operation (traditional one with physical presence or on-line), to appropriate regulation so as to accord sufficient protection to Hong Kong outbound travellers. Given that a vast majority of existing travel agents were small and medium-sized enterprises and subject to regulation, it was envisaged that those that carried on new modes of travel business should not encounter substantial difficulty in complying with the future regulatory regime.</p>	
004850 – 005533	Chairman Administration	<p>The Chairman expressed concern about the operation hardship faced by the travel industry in recent years, and the levels of travel agent licence fees charged by TIA in future. He enquired about the estimated annual budget of TIA during its first five years of operation vis-à-vis that of TICHK at the moment, and the possible waiver of such fees after the establishment of TIA.</p> <p>The Administration advised that it was conducting a study on the resource requirements for TIA (including the estimated annual budget) and would engage a consultant for assistance, with a view to ensuring that TIA would run on a self-financing basis in the long run and at the same time taking into account the financial affordability of the trade. The Government would apply to the Legislative Council ("LegCo") for funding to provide TIA with a one-off capital grant, and travel agent licence fees, inter alia, would be maintained for five years at the prevailing levels upon the full commencement of the new ordinance. It was envisaged that TIA would adopt an incremental approach in raising the levels of its various charges after the five-year freeze. As regards the licence fee concessions provided for travel agents previously, it should be noted that they were one-off relief measures. TIA would consider the need to formulate suitable measures to help the industry having regard to the then prevailing circumstances. The Administration also clarified that as an independent statutory body, TIA would recruit its own staff.</p>	The Administration to follow up as per paragraph 4(b) of the minutes
005534 – 010205	Chairman Ms Starry LEE Administration	<p>Ms Starry LEE reiterated her concern about the enduring nuisance caused to local residents by businesses in relation to the operation of inbound tour groups. She suggested that penalties could be imposed under the relevant licensing regimes, and a mechanism could be established for the public to lodge complaints.</p> <p>The Administration said that the matter involved a wide scope of issues, some of which were outside the</p>	The Administration to follow up as per paragraph 4(a) of the minutes

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		scope of the Bill. Nevertheless, the Administration would explore possible solutions, such as conciliation by TIA to handle relevant complaints having regard to the experience of TICHK in dealing with such cases.	
010206 – 010906	Chairman Mr HO Kai-ming Administration	<p>Mr HO Kai-ming expressed concern about the rights and interests of tourist guides/tour escorts on "false self-employment". He supported the suggestion that TIA should require travel agents to procure employees' insurance for the tourist guides/tour escorts who worked for them, so that the tourist guides/tour escorts concerned would receive proper compensation if they were injured whilst working.</p> <p>The Administration said that the travel agent's responsibilities under an employer-employee relationship had been clearly set out in relevant legislation such as the Employment Ordinance (Cap. 57) and the Employees' Compensation Ordinance (Cap. 282). If a tourist guide/tour escort only acted as an agent but not an employee for a travel agent, the travel agent was not bound to procure employees' insurance for the tourist guide/tour escort. In fact, to enhance the protection at work, self-employed tourist guides and tour escorts could procure insurance in the market.</p> <p>The Administration added that to avoid any misunderstanding or dispute, the most important thing was that travel agents and tourist guides or tour escorts, before entering into cooperation, should understand clearly their mode of cooperation according to their intention, and that the tourist guides or tour escorts should identify their identities as employees or self-employed persons, to safeguard mutual rights and benefits. In differentiating the two identities, all relevant factors of the case should be taken into account. The court had already set out different factors for distinguishing an employee from a self-employed person in past cases.</p>	
010907 – 011508	Chairman Mr WU Chi-wai Administration Assistant Legal Adviser 9 ("ALA9")	Referring to Schedule 11 of the Bill which contained related amendments to other enactments, Mr WU Chi-wai enquired that with the licensing regimes imposed on travel agents, tourist guides and tour escorts under the new regulatory regime, whether the electorate base for the tourism functional constituency of LegCo elections could be expanded from travel agents to cover tourist guides and tour escorts, so as to better represent the interests of the industry. He also enquired if committee stage amendments ("CSAs") to this effect would be allowed to move at the Council.	

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		<p>The Administration advised that since the Bill aimed to establish TIA with relevant provisions, matters relating to the electorate bases for the functional constituencies of the LegCo elections and election committee subsector elections in relation to electing the Chief Executive would fall outside the scope of the Bill. In this legislative exercise, amendments would only be made to the LegCo Ordinance (Cap. 542) and the Chief Executive Election Ordinance (Cap. 569) to reflect the consequential changes arising from the new regulatory regime.</p> <p>ALA9 advised that in accordance with Rule 57(4)(a) of the Rules of Procedure ("RoP"), an amendment must be relevant to the subject matter of the bill and to the subject matter of the clause to which it related. Referring to the long title of the Bill, the subject matter of the Bill was to, among other things, establish TIA, to provide for the licensing of travel agents, tourist guides and tour escorts, and to regulate the activities of the licensees. In this regard, the Government proposed amendments to Cap. 542 and Cap. 569 to reflect the consequential changes to relevant electorate bases as a result of the repeal of Travel Agents Ordinance (Cap. 218). Depending on the content of Mr WU's CSA(s), she considered that CSAs which aimed to expand the electorate bases might fall outside the scope of the Bill. However, it would be for the President to decide whether any CSA was admissible under RoP.</p>	
011509 – 012118	Chairman Administration	<p>The Chairman requested the Administration to provide the estimated annual budget of TIA before the next session. He also enquired about the criteria to be adopted by TIA in choosing a suitable service provider to deal with emergencies involving inbound and outbound tour groups.</p> <p>The Administration envisaged that such a service provider should have a good understanding of the trade's operations and maintain close liaison with the trade so as to discharge its functions effectively. Once TIA was established upon the passage of the Bill, it would carry out the necessary preparations for the full commencement of the new ordinance, including working out the mechanism for dealing with emergencies involving tour groups.</p> <p>In response to the Chairman's further enquiry about the committee structure of TIA, the Administration said that the Bill had provided for the establishment of a disciplinary committee, an independent panel for</p>	The Administration to follow up as per paragraph 4(b) of the minutes

Time marker	Speaker	Subject(s)	Action required
		<p>handling disputes between consumers and licensees that did not involve disciplinary matters, and an independent appeal panel which would perform functions similar to those of the Compliance Committee, the Consumer Relations Committee and the Appeal Board under TICHK respectively. The setting up of other committees, if any, would be subject to the decision of TIA. At the Chairman's request, the Administration agreed to provide its views on the committee structure of TIA, including the functions and membership compositions of the committees to be formed, after the meeting.</p>	<p>The Administration to follow up as per paragraph 4(c) of the minutes</p>
012119 – 012636	Chairman Deputy Chairman Administration	<p>The Deputy Chairman reiterated his proposal to mandate the employment relationship between travel agents and tourist guides/tour escorts under the Bill. He said that having regard to the stringent regulatory regime to be applied on the frontline practitioners of the industry, such a proposal warranted the consideration of the Government even though no precedent case of similar nature had been adopted in other sectors.</p> <p>The Administration said that other sectors such as insurance, property management, and real estate agent industries were also subject to respective regulatory regimes. The new regulatory regime of the travel industry was not designed to be more stringent than that of other sectors, but would lay a legal basis for industry regulation through the introduction of a new piece of legislation.</p>	
012637 – 013218	Chairman Mr Holden CHOW Administration	<p>Mr Holden CHOW enquired about the Travel Industry Development Fund ("TIDF") to be developed. He also suggested that TIA could liaise with similar authorities in other jurisdictions so as to attract more visitors to Hong Kong.</p> <p>The Administration said that similar to the practice of the Tourism Commission and TICHK, it was necessary for TIA to maintain close collaboration with relevant authorities in other jurisdictions, especially the China National Tourism Administration, so as to optimize its regulatory work. Although the Hong Kong Tourism Board ("HKTB") took the lead in promoting tourism, TICHK from time to time participated jointly with HKTB in international events. It was expected that TIA would adopt the same practice.</p> <p>On TIDF, since it would be established by the money set aside from the Travel Industry Compensation</p>	

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		Fund ("TICF"), its level of funding would be determined on condition that the operation and purposes of TICF, i.e. compensating outbound travellers under certain conditions, would not be undermined. The Government would assess the suitable level.	
013219 – 013853	Chairman Deputy Chairman Administration	<p>The Deputy Chairman did not subscribe to the view that regulating the employment relationship between travel agents and tourist guides/tour escorts might have disadvantages. He also wondered if there were any de facto self-employed tourist guides and tour escorts in the industry.</p> <p>The Administration said that regulating the employment relationship between travel agents and frontline practitioners offered little flexibility to the trade and might affect the operation of travel agents. It would limit the choices of tourist guides and tour escorts in conducting their work. In fact, some tourist guides/tour escorts objected to mandating the relevant cooperation relationship in the Bill. There were measures in place to deter malpractices in the travel industry.</p> <p>The Deputy Chairman remained unconvinced and said that members representing the labour sector would move CSAs on this matter.</p>	
013854 – 014440	Chairman Administration ALA9	<p>The Chairman pointed out that there were cases where travel agents in Hong Kong provided services to Mainland inbound tour groups organized by parties other than travel agents authorized in the Mainland. He enquired whether section 6(3) of the Bill would be amended to cater for such circumstances.</p> <p>The Administration stressed that section 6(3) of the Bill sought to prohibit the cooperation of local travel agents with unauthorized travel agents in the Mainland. Local travel agents' cooperation with persons who did not carry on travel agent business was not subject to the said section. The Administration would consider whether there was a need to amend this section to enhance clarity.</p>	The Administration to follow up as per paragraph 4(d) of the minutes
014441 – 014923	Chairman Mr Holden CHOW Administration	Mr Holden CHOW asked if the information on the disciplinary orders made by the inquiry committee in relation to misconduct of licensees would be disclosed to the public. He considered that the disclosure could achieve sufficient deterrent effect and protect the public interest.	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration responded that at present, TICHK had been publishing information on the non-compliance cases of travel agents. Under the new regime, TIA and inquiry committee would be empowered by the Bill to publish notice of a disciplinary order and would consider whether to publish such notice in each case, taking into account factors including whether and how to disclose such information, the TICHK's experience, whether the arrangement would be fair to the parties concerned, etc.</p>	
014924 – 015542	Chairman Administration	<p>The Chairman pointed out that although there was no consensus in the trade in respect of regulating the cooperation relationship between travel agents and frontline practitioners through the Bill, the rights and interests of tourist guides and tour escorts, especially on insurance protection, were not adequately protected at the moment. He called on the Government to have more exchanges with these frontline practitioners to better address their concerns and resolve the matter. He suggested that subsidiary legislation or administrative measures could be formulated to enhance protection for tourist guides and tour escorts, such as suitable insurance protection, provision of a reasonable basic salary and a tour-guiding fee, and prohibition of travel agents from requiring the tourist guides/tour escorts who worked for them to bear or unreasonably advance any payment for a tour group received.</p> <p>The Administration recognized the concerns of tourist guides and tour escorts and considered it suitable to address them through administrative means. Under the new regulatory regime, TIA would require by administrative means that a travel agent must formulate for distribution to its tourist guide/tour escort a job sheet for each tour group received. It would also require that a travel agent must sign a service agreement with a tourist guide/tour escort, whereby the travel agent must pay service remunerations (e.g. a basic remuneration/salary and a tour-guiding fee) to the tourist guide/tour escort and must not require the tourist guide/tour escort to bear or unreasonably advance any payment for a tour group received. In addition, the travel agent must not delay the reimbursement for any advanced payment by the tourist guide/tour escort. Travel agents contravening any of these administrative measures would be subject to disciplinary orders, such as warnings, reprimands, demerit points, financial penalties, licence suspension or revocation.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>Noting that travel agents were required to pay a levy to TICHK and TICF in respect of every outbound fare received with the use of franking machines, the Chairman enquired about the progress of implementing an e-levy system upon the establishment of TIA.</p> <p>The Administration advised that in view of the increasing trend of online booking, the Government had been collaborating with the Travel Industry Compensation Fund Management Board on the development of an e-levy system. The basic development of the system had now been completed. Pending the relevant empowerment under the Bill, it was anticipated that the system could be put into operation upon the full commencement of the Bill.</p>	
015543 – 015934	Chairman Mr Holden CHOW Administration	<p>Mr Holden CHOW acknowledged that persons would have different preferences on whether to be an employee or a self-employed person, but considered it necessary to enhance protection for front-line practitioners in the travel industry. He enquired whether the Administration would consider requiring travel agents to procure proper insurance coverage for the tourist guides/tour escorts who worked for them even such tourist guides/tour escorts were self-employed.</p> <p>The Administration responded that the mode of cooperation between travel agents and tourist guides/tour escorts should be subject to the deliberation and agreement between both sides on a commercial basis.</p>	
Agenda item III – Any other business			
015935 – 020008	Chairman	Date of next meeting	