

立法會
Legislative Council

LC Paper No. CB(4)1556/16-17

(These minutes have been seen
by the Administration)

Ref: CB4/BC/5/16

Bills Committee on Travel Industry Bill

**Minutes of the fourth meeting held on
Tuesday, 4 July 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 Starry LEE Wai-king, SBS, JP
Hon WU Chi-wai, MH
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon Martin LIAO Cheung-kong, SBS, JP
Hon POON Siu-ping, BBS, MH
Dr Hon CHIANG Lai-wan, JP
Hon Alvin YEUNG
Dr Hon Junius HO Kwan-yiu, JP
Hon Holden CHOW Ho-ding
Hon Tanya CHAN

Members absent : Hon WONG Ting-kwong, GBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon HO Kai-ming
Hon SHIU Ka-fai
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

Department of Justice

Mr Michael LAM
Senior Assistant Law Draftsman (I)1

Mr Jonathan LUK
Senior Government Counsel (Acting)

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)1226/16-17(01) — Letter dated 13 June 2017 from
Hon Charles Peter MOK
(Chinese version only))

Members accepted the application from Mr Charles Peter MOK for late membership of the Bills Committee pursuant to Rule 23(c) of the House Rules.

Action

II. Meeting with the Administration

Matters arising from previous meetings

(LC Paper No. CB(4)1333/16-17(01) — List of follow-up actions arising from the discussion at the meeting on 6 June 2017

LC Paper No. CB(4)1333/16-17(02) — Administration's response to issues raised at the meeting on 6 June 2017

LC Paper Nos. — Letter from Hon WU Chi-wai
CB(4)1120/16-17(01) and dated 29 May 2017 requesting
CB(4)1333/16-17(03) further information relating to the
Bill (Chinese version only) and
the Administration's reply

LC Paper Nos. — Letter from Chairman dated
CB(4)1221/16-17(01) and 12 June 2017 requesting further
CB(4)1333/16-17(04) information relating to the Bill
(Chinese version only) and the
Administration's reply)

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

Action

LC Paper No. CB(4)1101/16-17(02) — Assistant Legal Adviser's letter dated 25 May 2017 to the Administration)

Declaration of interests

2. The Chairman declared that he was holding a remunerated post in a travel agent. He was also the unremunerated honorary chairmen/advisers 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**).

4. In order to facilitate members' voting at the Public Works Subcommittee meeting, the meeting was adjourned at 5:46 pm.

Council Business Division 4
Legislative Council Secretariat
31 August 2017

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

| Time marker | Speaker | Subject(s) | Action required |
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| Agenda item I – Application for late membership | | | |
| 000758 – 000845 | Chairman | Opening remarks Application for late membership | |
| Agenda item II – Meeting with the Administration | | | |
| 000846 – 000947 | Chairman | Declaration of interests [LC Paper No. CB(4)849/16-17(01)] | |
| 000948 – 002852 | Chairman Administration | Administration's response to issues raised in members' letters and at the previous meeting [LC Paper Nos. CB(4)1333/16-17(02) to (04)] | |
| 002853 – 004032 | Chairman Assistant Legal Adviser 9 ("ALA9") Administration | <p>The Administration advised that it would provide a response to issues raised by ALA9 in her letter (LC Paper No. CB(4)1101/16-17(02)). In gist –</p> <p>(a) in comparison with the existing regulatory regime, the new regime under the Bill sought to establish an independent statutory body, i.e. the Travel Industry Authority ("TIA"), to take up the licensing and trade regulatory roles from the Travel Agents Registry of the Tourism Commission ("TC") and the Travel Industry Council of Hong Kong ("TICCHK") respectively. In addition, the Bill provided for the licensing and regulation of tourist guides and tour escorts under the law, in lieu of the existing accreditation system implemented by TICCHK administratively. The Bill also empowered TIA to impose on travel agents as well as tourist guides/tour escorts prescribed licence conditions, including those against coerced shopping;</p> <p>(b) under the new regulatory regime, criminal offences against major unscrupulous acts of the travel trade, as well as the empowering provisions to make subsidiary legislation, would be set out in the primary legislation. Licence conditions and requirements modelled on those under the Travel Agents Regulations (Cap. 218 sub leg. A) would be prescribed by subsidiary legislation to regulate the trade operation in general. Breaching any licence conditions or prescribed requirements would be an offence. The Bill also empowered TIA to regulate the activities of licensed travel agents, tourist guides</p> | |

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| | | <p>and tour escorts through directives, guidelines and codes of conduct ("administrative measures"), with reference made to those promulgated by TICHK. Contravention of any administrative measure would attract a disciplinary order (e.g. warning, reprimand, licence suspension or revocation); and</p> <p>(c) the long title of the Bill provided for, among other things, the regulation of the activities of the licensees (travel agents, tourist guides and tour escorts), and for related matters. Clauses 152(b) and 153(2)(j) of the Bill were related to the shops that inbound tour groups were arranged to patronize, the Government was of the view that such arrangements were related to the activities of travel agents and tourist guides, and hence these clauses came in line with the long title of the Bill. To ascertain the scope as well as the intention of the Bill, it was also important to examine the Explanatory Memorandum of the Bill and the Legislative Council Brief.</p> | |
| 004033 – 004751 | Chairman Mr WU Chi-wai Administration | <p>Mr WU Chi-wai considered that while a person operating travel tours in Hong Kong should obtain a travel agent licence and make a deposit of guarantee money of \$500,000 with TIA under the new regulatory regime, such requirements constituted a high entry barrier to the travel industry. He expressed concern that this barrier might undermine the development of tourism products with characteristics by local creative start-ups set up by freelance practitioners or business entrepreneurs with little start-up fund. He asked, for example, whether a lawyer arranging a tour on a previous courtcase on a part-time basis or a taxi driver providing day-trip transportation plus sightseeing services would be subject to the licensing requirements of travel agents.</p> <p>The Administration replied that in determining whether a person was carrying on travel agent business within the meaning of clause 4 under the Bill, TIA must examine and consider the totality of facts, including the in-principle considerations as set out in clauses 4(4) and 4(3), and whether the relevant business activity carried on by the person was ancillary to the person's principal business. On the latter, TIA must have regard to all relevant matters, including the nature and, the frequency of the activity, and the financial contribution of the activity towards the person. These considerations were in line with those under the existing regulatory regime all along.</p> | |

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| | | <p>The Administration also explained that in the light of the views gathered from the public consultation that the current threshold for setting up travel agent business was too low, and that travel business activities involved advance payments for services, it was necessary to impose a guarantee money requirement on travel agents.</p> | |
| 004752 – 005326 | <p>Chairman Deputy Chairman Administration</p> | <p>Discussion on matters relating to the "false self-employment" problem in the travel industry and insurance protection for tourist guides and tour escorts</p> | |
| 005327 – 005834 | <p>Chairman Mr Charles Peter MOK Administration</p> | <p>Mr Charles Peter MOK pointed out that different kinds of guided tour services were currently provided in Hong Kong with or without charges. These tours targeting specific places of interest might be conducted by self-employed persons. In addition, guiding services could be provided through mobile applications downloaded from business platforms. He was concerned about whether the new regulatory regime was too inflexible that the sustainability of these small businesses, which could bring benefits to tourists, would be undermined by the requirements of the new regulatory regime, particularly the guarantee money requirement.</p> <p>The Administration explained that the arrangement of local tours targeted at tourists would be subject to the relevant regulations of inbound travel business under the new regulatory regime. Local tours targeting Hong Kong citizens would be outside the regulatory scope.</p> | |
| 005835 – 010402 | <p>Chairman Dr CHIANG Lai-wan Administration</p> | <p>In response to Dr CHIANG Lai-wan, the Administration explained that –</p> <p>(a) TICHK was a trade organization whereas TIA would be an independent statutory body. While the regulatory powers of TICHK were limited, TIA would be granted sufficient statutory powers to conduct inspections and investigations with higher deterrent effect; and</p> <p>(b) on combating coerced shopping and "zero/negative-fare" tours, travel agents and tourist guides would be prohibited from committing any acts in relation to coerced shopping and any relevant non-compliance would attract criminal charges. TIA would conduct investigation and, upon sufficient evidence, refer the case to the Department of Justice for prosecutorial decision.</p> | |

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| 010403 – 011210 | Chairman Mr Holden CHOW Administration | <p>Mr Holden CHOW raised concern about the scope of protection of travel insurance products available in the market, as well as the need to increase public awareness of the coverage of travel insurance that they took out. He suggested that TIA should consider requiring travel agents to identify for the outbound tour participants suitable travel insurance options which covered high-risk activities listed in the itinerary leaflets of their tours and terrorist attacks. Travel agents should also draw the attention of outbound tour participants to the potential travel risk even if no suitable insurance options were identified.</p> <p>The Chairman considered that travel agents should make better preparations for the risk of terrorist attacks which might take place at any time and place. To draw the industry's attention, the Government should explore with TICHK the feasibility to promulgate guidelines for travel agents on the travel insurance policies recommended to tour participants.</p> <p>The Administration said that the scope of travel insurance of each product was determined by the insurance company based on its risk assessment, especially against high-risk activities and terrorist attacks, and that the suggestion could be considered by the relevant bureau or authority. While outbound tour participants made their own decisions on whether to take out travel insurance for a journey, TICHK had all along recommended licensed travel agents to remind their tour participants of such a need. TC would relay members' suggestions to TICHK for consideration.</p> | |
| 011211 – 011319 | Chairman Mr POON Siu-ping | Discussion on measures to tackle the impact brought about by the operation of inbound tour group business on the local neighbourhood | |
| 011320 – 012001 | Chairman | Meeting suspension | |
| 012002 – 012057 | Chairman | Closing remarks | |