

**立法會**  
**Legislative Council**

LC Paper No. CB(4)748/17-18  
(These minutes have been seen  
by the Administration)

Ref: CB4/BC/5/16

**Bills Committee on Travel Industry Bill**

**Minutes of the seventh meeting held on  
Thursday, 21 December 2017, at 9:00 am  
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, GBS, JP  
Hon Starry LEE Wai-king, SBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon WU Chi-wai, MH  
Hon MA Fung-kwok, SBS, JP  
Hon Charles Peter MOK, JP  
Hon CHAN Chi-chuen  
Hon POON Siu-ping, BBS, MH  
Hon Holden CHOW Ho-ding  
Hon SHIU Ka-fai  
Hon LAU Kwok-fan, MH

**Members absent** : Hon Mrs Regina IP LAU Suk-ye, GBS, JP  
Hon Martin LIAO Cheung-kong, SBS, JP  
Dr Hon CHIANG Lai-wan, JP  
Hon Alvin YEUNG  
Dr Hon Junius HO Kwan-yiu, JP  
Hon HO Kai-ming

**Public Officers  
attending** : Agenda item I

Commerce and Economic Development Bureau

Dr Bernard CHAN, JP  
Under Secretary for Commerce and Economic  
Development

Mr Aaron LIU  
Deputy Commissioner for Tourism

Mr LEE Sheung-yuen  
Assistant Commissioner for Tourism 1

Mr Nicky NG  
Senior Administrative Officer (Tourism) 1

Mr Brendan AU  
Registrar of Travel Agents

Department of Justice

Mr Michael LAM  
Senior Assistant Law Draftsman

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

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**I. Meeting with the Administration**

[File Ref.: TC CR T1 22/2/26/3, LC Paper Nos. LS48/16-17, CB(3)393/16-17, CB(4)792/16-17(01) to (02), CB(4)74/17-18(01), CB(4)246/17-18(01) and CB(4)346/17-18(01) to (03)]

Action

Declaration of interests

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

2. Mr MA Fung-kwok declared that he was a non-remunerated independent director of the Board of the Travel Industry Council of Hong Kong.

Discussion

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

(At 10:59 am, the Chairman directed that the meeting be extended for five minutes.)

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 owners of companies cooperating with travel agents to provide services with tourism elements such as overseas wedding services would be required to apply for a travel agent licence or branch licence under the Bill; if so, how clause 6(2)(a) of the Bill which specified that "a licensed travel agent must not carry on travel agent business at any premises other than the premises specified in the travel agent licence or any branch licence concerned" would apply to this kind of businesses; if not, how customers of these companies could be protected;
- (b) under the new regulatory regime, a travel agent would be required to pay a levy in respect of the outbound travel services and arrangements relating to the same tour that were bought at different times by a customer. Given that many consumers would like to buy different outbound travel services relating to the same tour from different travel agents, travel agents might not have full knowledge of the travel services bought by an individual customer, and hence, might be inadvertently caught by the law. As such, the Administration was requested to explain whether non-payment of levy under such circumstances would constitute a case of misleading omissions under

Action

the Trade Descriptions Ordinance (Cap. 362) and whether civil claims could be initiated by customers against the travel agents concerned; if so, what was the defence for travel agents in civil claims initiated by customers;

- (c) whether a travel agent/on-line platform that arranged outbound travel services for travellers but did not require the travellers to pay before using the services would be required to pay a levy in respect of the outbound travel services relating to the same tour that were bought by a customer;
- (d) a list of the subsidiary legislation which could be made by the future Travel Industry Authority and the Secretary for Commerce and Economic Development after the passage of the Bill;
- (e) to review the drafting of the definition of "trade member" in clause 2(1) of the Bill in view of the legislative intent, in particular "an individual who is engaged in the business of a licensed travel agent" and "an individual who is engaged in the business of a holder of a previous licence"; and
- (f) whether the Registrar of Travel Agents had ever exempted any person or class of persons from the operation of the Travel Agents Ordinance (Cap. 218) in the past.

*(Post-meeting note: The Administration's written response for the above items was issued to members vide LC Paper No. CB(4)468/17-18(02) on 11 January 2018.)*

**II. Any other business**

Date of next meeting

5. The Chairman advised that the next meeting of the Bills Committee would be held on Monday, 8 January 2018 at 4:30 pm.

*(Post-meeting note: The meeting was subsequently held on 15 January 2018.)*

6. There being no other business, the meeting ended at 11:03 am.

**Proceedings of the seventh meeting of  
the Bills Committee on Travel Industry Bill  
on Thursday, 21 December 2017, at 9:00 am  
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<b>Agenda item I – Meeting with the Administration</b>			
001804 – 001822	Chairman	Opening remarks	
001823 – 001851	Chairman	Declaration of interests [LC Paper No. CB(4)849/16-17(01)]	
001852 – 001930	Chairman Mr MA Fung-kwok	Declaration of interests	
001931 – 002325	Chairman Administration	Administration's responses to issues raised at the previous meeting and in Assistant Legal Adviser's letter dated 20 October 2017 [LC Paper Nos. CB(4)346/17-18(02), (03), and CB(4)246/17-18(01)]	
002326 – 003119	Chairman Administration	<p>Discussion on the composition of and the selection mechanism for the Travel Industry Authority ("TIA"), and measures against carrying on travel agent business without licence</p> <p>The Chairman raised concern that some institutions might occasionally organize overseas visits and inadvertently get caught by the law. He also urged the Administration to strengthen patrol against parties carrying on travel agent business without a licence.</p> <p>The Administration said that it would encourage parties that intended to organize overseas visits to engage licenced travel agents in obtaining the outbound travel services involved. The future TIA would also step up public education.</p>	
003120 – 003652	Chairman Mr POON Siu-ping Administration	<p>Mr POON Siu-ping referred to the incident of Peya Travel, which was found to have sold a number of air-tickets to the public but had not made relevant flight bookings with airlines, and enquired about the measures taken/to be taken by the Travel Industry Council of Hong Kong ("TICCHK")/TIA to protect outbound travellers.</p> <p>The Administration said that the Peya Travel's case was an isolated incident. In future, TIA would make reference to the practice of TICCHK in working out suitable guidelines and directives to protect outbound travellers.</p>	

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		<p>Mr POON considered that the current measures adopted by TICHK in regulating travel agents were ineffective to protect outbound travellers against unscrupulous acts of the trade. To accord better protection to consumers, TIA should increase the related penalty to achieve greater deterrent effect.</p> <p>In response to Mr POON's further enquiry about the detailed composition of non-trade members in TIA, the Administration said that it was unnecessary to impose a ratio of non-trade members among different sectors. This was in line with the practice adopted by the statutory bodies of other sectors.</p>	
003653 – 004606	Chairman Mr WU Chi-wai Administration	Discussion on the composition of TIA and its selection mechanism	
004607 – 005128	Chairman Ms Starry LEE Administration	<p>Discussion on measures to combat zero/negative-fare tours and the impact brought by the operation of inbound tour group business on local neighbourhood</p> <p>The Administration added that to curb zero/negative-fare tours, it was essential to provide TIA with necessary statutory powers. Meanwhile, the Commerce and Economic Development Bureau had entered into a co-operation agreement with the China National Tourism Administration ("CNTA") in August 2017 aiming to, among other things, strengthen the cooperation in regulating travel trade markets.</p>	
005129 – 010002	Chairman Mr MA Fung-kwok Administration	<p>Mr MA Fung-kwok was dissatisfied with the Administration's explanation about the measures to deal with cases like the Peya Travel incident. He pointed out that the new regulatory regime should provide for effective and comprehensive measures to protect the interests of both inbound and outbound travellers. Otherwise, it was not justified to establish TIA simply for combating zero/negative-fare tours and coerced shopping, which could be addressed by TICHK upon restructuring and empowerment. Mr MA urged the Administration to devise concrete measures to avoid reoccurrence of similar incidents.</p> <p>The Administration explained that the development of the outbound travel market had been relatively mature with fewer irregularities than the inbound travel market. Under the existing regulatory</p>	

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		<p>regime, the Travel Agents Registry required travel agents to submit financial reports regularly and conducted inspections to monitor their operation. Under the new regulatory regime, TIA could also formulate administrative measures against any unscrupulous acts of the trade, including those in the outbound market. For greater deterrent effect, TIA could further make subsidiary legislation to criminalize unscrupulous acts.</p>	
010003 – 010244	Chairman Deputy Chairman Administration	<p>Discussion on matters relating to the insurance protection for frontline practitioners and measures to combat zero/negative-fare tours</p> <p>The Deputy Chairman considered the provisions of the Bill too vague. To deal with the issues raised by members, the Administration should put forward concrete measures, instead of relying on TIA to devise appropriate measures after the enactment of the Bill.</p>	
010245 – 010624	Chairman Assistant Legal Adviser 9 ("ALA9") Administration	<p>Discussion on the application of clauses 6(2), 8(2)(ii) (relating to office premises) and 8(2)(vii) (relating to staffing requirement) of the Bill to on-line travel agents. The Administration agreed to provide written response on this matter.</p>	<p>The Administration to respond the outstanding issues raised by ALA9 in her letter dated 20 October 2017 [LC Paper No. CB(4)74/17-18(01)]</p>
010625 – 011234	Chairman Administration	<p>Discussion on matters relating to levy payment. The Administration agreed to provide a written response on this matter.</p>	<p>The Administration to follow up as per paragraph 4(b) of the minutes</p>
011235 – 011922	Chairman Ms Starry LEE Administration	<p>Ms Starry LEE said that even with the implementation of the Tourism Law by the Mainland authority, irregularities arising from the zero/negative-fare tours still existed in the inbound travel market of Hong Kong. She was concerned about the effectiveness of the new ordinance.</p> <p>The Administration explained that the new regulatory regime provided for targeted measures to combat coerced shopping with a view to firstly minimizing the incentives of organizing and eventually curbing zero/negative-fare tours. Meanwhile, the Administration had been working closely with CNTA to address zero/negative-fare tours and TIA, with more statutory powers, would continue efforts along this direction. TIA would also issue directives to address the problems about</p>	

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		the delay in or lack of payment by travel agents for the services provided by tourist guides and tour escorts.	
011923 – 012320	Chairman Mr WU Chi-wai Administration	Discussion on matters relating to companies cooperating with travel agents to provide services with tourism elements. The Administration agreed to provide a written response on this matter.	The Administration to follow up as per paragraph 4(a) of the minutes
012321 – 012651	Chairman Deputy Chairman Administration	<p>The Deputy Chairman raised concern about the situation that no tourist guide was assigned to some inbound tour groups or the one assigned was without a tourist guide pass.</p> <p>The Administration said that TICHK had issued a directive that travel agents were required to assign the same tourist guide who possessed a valid tourist guide pass to receive the same Mainland inbound tour group throughout its journey in Hong Kong. TIA would consider issuing a similar directive and stepping up the measure if necessary. TIA would also take into account the public views, particularly about the measures to combat coerced shopping, when making subsidiary legislation on licence conditions.</p>	
012652 – 013701	Chairman Administration	<p>Discussion on matters relating to levy payment. The Administration agreed to provide a written response on this matter.</p> <p>In response to the Chairman's further enquiries, the Administration advised that –</p> <p>(a) under the administrative scheme provided for by the Bill, travel agents receiving Mainland inbound tour groups should register the shops that would be arranged to be patronized by the tour groups to facilitate TIA's monitoring and patrol. Registered shops that were found to be involved in coerced shopping could be taken out from the register, and inbound tour groups should not be arranged to patronize the shops not registered; and</p> <p>(b) TIA was expected to achieve a self-financing status in Year 11 after the full implementation of the new ordinance, and the one-off capital grant would help offset the estimated deficit aggregated before Year 11.</p>	The Administration to follow up as per paragraph 4(c) of the minutes



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<b>Clause-by-clause examination</b>			
013702 – 014351	Chairman Mr WU Chi-wai Administration ALA9	<p><b>Part 1 - Preliminary</b></p> <p><u>Clause 1 – Short title and commencement</u></p> <p>The Administration advised that it would implement the new ordinance in two phases after its enactment to firstly allow the establishment of TIA and empower TIA and the Secretary for Commerce and Economic Development ("SCED") to make related subsidiary legislation, and secondly allow the full commencement of the ordinance when the subsidiary legislation was in place. The Administration would provide assistance to TIA in formulating the subsidiary legislation and administrative measures, and TIA would take up the work after its establishment. The subsidiary legislation by TIA and SCED would be made by negative vetting procedure.</p> <p>The Administration was requested to provide a list of the subsidiary legislation that could be made by TIA and SCED after the passage of the Bill.</p>	The Administration to follow up as per paragraph 4(d) of the minutes
014352 – 014739	Chairman Administration ALA9 Mr WU Chi-wai	<p><u>Clause 2 - Interpretation</u></p> <p>On the formulation "an individual who is engaged in the business of a licensed travel agent" in the definition of "trade member" under clause 2(1), the Administration advised that he/she would generally be the owner or senior management personnel of the travel agent concerned. ALA9 considered the scope covered by the current text might be broader than that of the intent and suggested that the Administration review the drafting.</p>	The Administration to follow up as per paragraph 4(e) of the minutes
014740 – 015223	Chairman Administration Mr WU Chi-wai ALA9	<p><u>Clause 3 – Exemption</u></p> <p>Noting clause 3 that TIA might, by notice published in the Gazette, exempt a person or class of persons from the operation of the new ordinance, Mr WU Chi-wai raised concern about the implication of this provision and if there was any control mechanism on the use of this power.</p> <p>The Administration advised that this provision provided a general reserved power to the Registrar of Travel Agents ("RTA") under Cap. 218 and likewise retained for TIA under the new ordinance. It was envisaged that TIA would only exercise the power under special circumstances. TIA would go through the negative vetting procedure in order to make the required notice.</p>	

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		ALA9 requested the Administration to provide information on whether RTA had exempted any person or class of persons from the operation of Cap. 218 in the past.	The Administration to follow up as per paragraph 4(f) of the minutes
015224 – 015556	Chairman Mr CHAN Chi-chuen Administration	<p><b>Part 2 – Travel Agents</b></p> <p><u>Division 1 – Interpretation</u></p> <p><u>Clause 4 – Meaning of carrying on travel agent business</u></p> <p>In response to Mr CHAN Chi-chuen's enquiry, the Administration explained that the business activities covered by clause 4(1)(b)(ii) referred to those described in clause 4(1)(a)(i) and (ii). Hence, obtaining for another person the transport service commencing and terminating outside Hong Kong was excluded.</p>	
015557 – 020015	Chairman Mr WU Chi-wai Administration	<p>Mr WU Chi-wai enquired if a restaurant owner or attraction operator obtaining for a visitor local transport service in connection with its own service was subject to clause 4(1)(a)(v).</p> <p>The Administration explained that as stipulated in clause 4(2), clause 4(1) did not apply to a person falling within clause 4(1)(a) or (b) if TIA considered that the person's principal business was not the carrying on of the business activities described in clause 4(1)(a) or (b) and the relevant business activity carried on by the person was ancillary to the person's principal business.</p>	
020016 – 020115	Chairman Administration	In response to the Chairman's enquiry about the application of 4(1)(b)(ii), the Administration advised that TIA would be responsible for considering whether a person "actively marketed" to the public of Hong Kong the outbound travel business activities having regard to the totality of facts.	
020116 – 020648	Chairman Mr WU Chi-wai Administration	<p>On the application of clauses 4(2) and 4(3), Mr WU Chi-wai enquired whether an attraction operator providing accommodation or transport services to visitors was considered carrying on travel agent business.</p> <p>The Administration responded that if the attraction operator solely promoted its sightseeing activity that was ancillary to its principal business, such an</p>	

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		operator was outside the regulatory scope. However, if the attraction operator also carried on any of the business activities as described in clauses 4(1)(a)(iii), 4(1)(a)(iv) and 4(1)(a)(v), the operator might be subject to the regulation.	
<b>Agenda item II – Any other business</b>			
020649 – 020720	Chairman	Closing remarks	

Council Business Division 4  
Legislative Council Secretariat  
16 March 2018