

立法會
Legislative Council

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(These minutes have been
seen by the Administration)

Ref : CB2/BC/5/17

**Bills Committee on
Hotel and Guesthouse Accommodation (Amendment) Bill 2018**

**Minutes of the first meeting
held on Tuesday, 6 November 2018, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Members present : Hon YIU Si-wing, BBS (Chairman)
Hon CHEUNG Kwok-kwan, JP (Deputy Chairman)
Hon James TO Kun-sun
Hon Paul TSE Wai-chun, JP
Hon Charles Peter MOK, JP
Hon KWOK Wai-keung, JP
Hon Alvin YEUNG
Hon SHIU Ka-fai
Hon Vincent CHENG Wing-shun, MH
Hon Tony TSE Wai-chuen, BBS

Public Officers attending : Item II

Mr Jack CHAN, JP
Under Secretary for Home Affairs
Home Affairs Bureau

Miss Vega WONG, JP
Deputy Director of Home Affairs (2)
Home Affairs Department

Mr Lawrence LI
Administrative Officer (4)
Home Affairs Department

Mr Peter SZE
Senior Assistant Law Draftsman (Acting)
Department of Justice

Ms Carmen CHU
Senior Government Counsel
Department of Justice

Clerk in attendance : Mr Colin CHUI
Chief Council Secretary (2) 4

Staff in attendance : Ms Vanessa CHENG
Assistant Legal Adviser 5

Ms Catherina YU
Senior Council Secretary (2) 4

Miss Alison HUI
Legislative Assistant (2) 4

I. Election of Chairman and Deputy Chairman

Election of Chairman

Mr James TO, member who had the highest precedence in Council among members of the Bills Committee present, presided over the election of the Chairman. He invited nominations for the chairmanship of the Bills Committee.

2. Mr YIU Si-wing was nominated by Mr Tony TSE and the nomination was seconded by Mr KWOK Wai-keung. Mr YIU accepted the nomination.

3. There being no other nomination, Mr YIU Si-wing was declared Chairman of the Bills Committee.

Election of Deputy Chairman

4. The Chairman called for nominations for the deputy chairmanship of the Bills Committee. Mr CHEUNG Kwok-kwan was nominated by

Mr KWOK Wai-keung. The nomination was seconded by Mr SHIU Ka-fai. Mr CHEUNG accepted the nomination. There being no other nomination, Mr CHEUNG Kwok-kwan was declared Deputy Chairman of the Bills Committee.

Declaration of interests

5. The Chairman declared that he was an employee of a company which invested in hotel projects. Mr Tony TSE declared that he was an independent non-executive director of a company which owned and operated hotels. Mr Paul TSE declared that one of his properties had been used as an unlicensed guesthouse by the tenant before.

II. Meeting with the Administration

[File Ref.: HAD HQ CR/15/3/20(C); LC Paper Nos. LS96/17-18, CB(3)811/17-18, CB(2)190/18-19(01) to (02) and CB(2)201/18-19(01)]

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

7. The Bills Committee requested the Administration to:

- (a) provide examples of legislation (with the relevant provision(s)) with a "strict liability" offence and a comparison of these examples (with regard to the nature of offences, types of persons on which strict liability would be imposed, sanctions and penalties for breach of such strict liability offence and any defence available) with the "strict liability" offence under the new section 5A (as added by clause 9 of the Hotel and Guesthouse Accommodation (Amendment) Bill 2018 ("the Bill")), and the justifications for imposing strict liability on owners and tenants of an unlicensed hotel or guesthouse under the new section 5A;
- (b) provide a comparison of enforcement actions against the "strict liability" offence under the new section 5A with those against more serious offences under other legislation in Hong Kong;
- (c) provide examples of "sufficient evidence" as stipulated in the new section 5A(3)(a) and (4)(a), in particular, the measures

that should be taken to show that the person could not with reasonable diligence have prevented the premises from being an unlicensed hotel or guesthouse under the new section 5A(4)(a);

- (d) advise whether there would be an increase or saving in the Administration's resources and manpower for the regulation of hotels and guesthouses after the passage of the Bill, and provide the relevant details;
- (e) provide its views on the regulation of home-stay lodging with reference to the analysis and the overseas practices set out in the Information Note entitled "Regulation of home-stay lodging in selected places" prepared by the Research Office of the Legislative Council Secretariat (LC Paper No. IN01/18-19); and
- (f) advise whether agents/agencies (e.g. travel agents/agencies, real estate agents/agencies) or someone who advertised hotels or guesthouses via online platforms would be held criminally liable if they had inadvertently promoted unlicensed hotels or guesthouses.

III. Date of next meeting

8. The Bills Committee agreed to receive public views on the Bill at the next meeting. The Chairman said that members would be informed of the date of the next meeting in due course.

IV. Any other business

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

Council Business Division 2
Legislative Council Secretariat
14 December 2018

**Proceedings of the first meeting of the
Bills Committee on Hotel and Guesthouse Accommodation (Amendment) Bill 2018
on Tuesday, 6 November 2018, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action required
<i>Agenda item I – Election of Chairman and Deputy Chairman</i>			
000353-000505	Mr James TO Mr Tony TSE Mr KWOK Wai-keung Mr YIU Si-wing	Nominations for the chairmanship of the Bills Committee. Election of Chairman	
000506-000612	Chairman Mr KWOK Wai-keung Mr SHIU Ka-fai Deputy Chairman	Nominations for the deputy chairmanship of the Bills Committee. Election of Deputy Chairman	
000613-000620	Chairman	Declaration of interests by the Chairman.	
<i>Agenda item II – Meeting with the Administration</i>			
000621-001740	Chairman Administration	Briefing by the Administration on the Hotel and Guesthouse Accommodation (Amendment) Bill 2018 ("the Bill") [Legislative Council Brief ("LegCo Brief") - File Ref.: HAD HQ CR 15/3/20(C)].	
001741-002243	Chairman Mr SHIU Ka-fai Administration	<p>Mr SHIU Ka-fai welcomed the Administration's review of the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) ("the Ordinance") and indicated his support to the Bill.</p> <p>Given that home-stay lodging had become popular, Mr SHIU expressed concern about the operation of unlicensed home-stay lodging in Hong Kong. His view was that home-stay lodging should also be regulated by the licensing regime so as to safeguard the safety of local residents and minimize inconvenience caused to them by home-stay lodging.</p> <p>The Administration advised that the Ordinance and the Bill did not prohibit promotion of licensed hotels and guesthouses via different platforms, including online platforms. Prosecution actions should be taken against unlicensed hotels and guesthouses, including those operating in the form of home-stay lodging. As at end September 2018, there were 33 prosecution cases involving unlicensed guesthouses promoted via online platforms and 27 of them were successful. Among them,</p>	

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		12 prosecution cases involved Airbnb, and 11 of them were successful.	
002244-002846	Chairman Mr Alvin YEUNG Administration	<p>Given that there was a four-year gap between the public consultation on the review of the Ordinance ("the public consultation") and the introduction of the Bill to the Council, Mr Alvin YEUNG took the view that the proposed amendments to the Ordinance might be outdated. He enquired whether the Bill dovetailed with the Government's direction of removing outdated provisions and red tape in order to foster the development of a new economy as stated in the Chief Executive's 2017 Policy Address.</p> <p>The Administration advised that the Bill should be able to strike a balance between facilitating the development of a new economy and safeguarding the interest and safety of the public. Also, since 2014, the Home Affairs Department ("HAD") had implemented a series of administrative measures to enhance the licensing regime, with a view to improving the safety and management of licensed hotels and guesthouses.</p> <p>In response to Mr Alvin YEUNG's enquiry, the Administration advised that it was not opposed to the concept of home-stay lodging. The Administration advised that guesthouse (holiday flat) licences were issued to village-type houses in the New Territories which operated in the mode of "home-stay lodging". The licensing requirements for holiday flats were relatively lower when compared with other types of guesthouse licences, and the procedures for application for such licences had been simplified in recent years. There were currently 100 odd holiday flats and HAD had provided assistance in facilitating the proposal for setting up holiday flats in Lai Chi Wo.</p> <p>Mr YEUNG made the following enquiries:</p> <p>(a) whether assisting the holiday flat sector alone was the Administration's response to the call for development of sharing economy and whether the Administration would consider providing assistance for other business models in developing sharing economy; and</p> <p>(b) in drafting the Bill, whether the Administration had taken into account the recommendation, made in the Director of Audit's Report No. 69 ("Audit Report"), that</p>	

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		<p>a comprehensive review of issues relevant to home-stay lodging should be conducted.</p> <p>The Administration advised that it had taken into account home-stay lodging in drafting the Bill. It welcomed new ideas or concepts and would consider applications for use of suitable premises for home-stay lodging.</p>	
002847-003420	Chairman Mr Charles MOK Administration	<p>Mr Charles MOK's view that the passage of the Bill would impede the development of home-stay lodging. He expressed dissatisfaction that the proposed amendments to the Ordinance had not taken account of the home-stay lodging sector's views.</p> <p>Referring to the Information Note entitled "Regulation of home-stay lodging in selected places" ("Information Note") prepared by the Research Office of the LegCo Secretariat (LC Paper No. IN01/18-19), Mr MOK called on the Administration to make reference to the regulation of home-stay lodging in other places in considering such regulation in Hong Kong.</p> <p>The Administration advised that home-stay lodging in places (e.g. Hong Kong, California and New York in the United States, etc.) where the urban living environment was more crowded might be less feasible. The Administration had not precluded home-stay lodging under the existing licensing regime, but it was necessary to improve the existing licensing regime to address the public's concern.</p> <p>Mr MOK's view that the Bills Committee should receive public views on the Bill.</p>	
003421-004051	Chairman Mr James TO	<p>Mr James TO's views that:</p> <ul style="list-style-type: none"> (a) the Bills Committee should receive public views on the Bill; (b) it was important to clearly define "hotel" and "guesthouse" to avoid grey areas in their interpretation; and (c) the "strict liability" offence, introduced under the new section 5A (as added by clause 9 of the Bill) appeared to be much more stringent than more serious offences such as drug trafficking or keeping a vice establishment. <p>Mr TO's request for the Administration to provide examples of legislation (with the relevant</p>	Admin (paragraph

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		provision(s)) with a "strict liability" offence and the justifications for imposing strict liability on owners and tenants of an unlicensed hotel or guesthouse under the new section 5A.	7(a) of the minutes)
004052-004720	Chairman Mr KWOK Wai-keung Administration	<p>Mr KWOK Wai-keung's view that empowering the Hotel and Guesthouse Accommodation Authority ("the Authority") to take into account compliance with any deed of mutual covenant ("DMC") in the licensing process could address certain problems faced by owners' corporations. He indicated his support to the Bill.</p> <p>The Administration's response to the following views and enquiries from Mr KWOK:</p> <ul style="list-style-type: none"> (a) the Administration should reflect its stance on home-stay lodging in the Bill; (b) how the passage of the Bill would help enhance enforcement actions; (c) whether the trustee (e.g. a bank) of the premises which were used as an unlicensed hotel or guesthouse would be held liable; and (d) how the Administration could plug the loophole under which the tenancy period in a tenancy agreement was falsified with a view to leasing the premises concerned for accommodation purposes for less than 28 consecutive days. <p>In response to Mr James TO's enquiry about examples of other legislation with a "strict liability" offence, the Administration advised that the Dutiable Commodities Ordinance (Cap. 109) and the Water Pollution Control Ordinance (Cap. 358) were some examples.</p>	
004721-005322	Chairman Deputy Chairman Administration	<p>Taking the view that the proposed amendments to the Ordinance could address public's concern about safety of hotels and guesthouses, the Deputy Chairman indicated his support to the Bill.</p> <p>The Deputy Chairman's enquiry and the Administration's response regarding:</p> <ul style="list-style-type: none"> (a) in addition to requiring a licence applicant to provide written legal advice on whether there were restrictive provisions in the DMCs concerned, whether the Authority would seek legal advice in this regard; and 	

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		<p>(b) in respect of a building which stairs/elevators were shared with an adjacent building where a hotel or guesthouse was proposed to be located and there were separate DMCs for the two buildings, whether the relevant District Council members and the residents concerned would also be consulted on the relevant licence application.</p>	
005323-005916	<p>Chairman Mr Tony TSE Administration</p>	<p>Declaration of interests by Mr Tony TSE.</p> <p>The Administration's response to Mr TSE's enquiry regarding:</p> <p>(a) the Administration's assessment on the changes in the time and manpower required for processing licence applications and taking enforcement actions against unlicensed hotels and guesthouses after the passage of the Bill; and</p> <p>(b) whether a licence would be issued if dissenting views were received during the local consultation exercise.</p> <p>The Administration's explanation of the transitional arrangements for hotels and guesthouses affected by the new licensing requirements.</p> <p>Mr TSE's concern about the introduction of a "strict liability" offence to the Bill and his request for more information about other legislation which had introduced a "strict liability" offence.</p>	
005917-010422	<p>Chairman Mr Vincent CHENG Administration</p>	<p>Mr Vincent CHENG's indication of his support to the Bill.</p> <p>The Administration responded to Mr CHENG's concern about the existing enforcement actions against unlicensed hotels and guesthouses.</p> <p>Mr CHENG said that although no Guesthouse (Holiday Camp) - Caravan Camp Site licence had been issued so far, renting out of caravans for short-term accommodation was found in the New Territories. Noting that the Bill did not cover renting out caravans for short-term accommodation, he enquired about how the Administration would deal with the matter and ensure the safety of lodgers.</p> <p>The Administration advised that HAD had conducted inspection and taken prosecution actions against the persons renting out caravans</p>	

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		for short-term accommodation and there was a successful prosecution case.	
010423-010951	Chairman Administration	<p>The Chairman's enquiry and the Administration's response regarding:</p> <ul style="list-style-type: none"> (a) examples of legislation (with the relevant provision(s)) with a "strict liability" offence and a comparison of these examples (with regard to the nature of offences, types of persons on which strict liability would be imposed, sanctions and penalties for breach of such strict liability offence and any defence available) with the "strict liability" offence under the new section 5A, and the justifications for imposing strict liability on owners and tenants of an unlicensed hotel or guesthouse under the new section 5A; (b) a comparison of enforcement actions against the "strict liability" offence under the new section 5A with those against more serious offences under other legislation in Hong Kong; (c) the proportion of representatives from within and outside the hotel/guesthouse sector to be appointed to the independent panel which was responsible for collecting views during local consultation ("the Panel"); (d) the weighting of the Panel's recommendations for approval of licence applications; and (e) whether there would be an increase or saving in resources and manpower requirements for the regulation of hotels and guesthouses after the passage of the Bill, and the relevant details. <p>At the Chairman's request, the Administration undertook to provide information on (a), (b) and (e) above.</p>	Admin (paragraph 7(a), (b) and (d) of the minutes)
010952-011436	Chairman Mr KWOK Wai-keung	Mr KWOK Wai-keung's enquiry and the Administration's response regarding the Administration's measures to assist guesthouses and hotels which had restrictive provisions in their DMCs or the Government leases in their relocation and whether the Administration would make alternative accommodation arrangements for the guests of a hotel or guesthouse to which a closure order had been made.	

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011437-012800	Chairman Mr Charles MOK Mr Alvin YEUNG Administration	<p>Mr Charles MOK's view that some provisions in the Bill might be outdated as there was a four-year gap between the public consultation and the introduction of the Bill to the Council.</p> <p>Mr MOK's enquiry and the Administration's response regarding the impact of the passage of the Bill on the existing home-stay lodging.</p> <p>Reiteration of Mr MOK and Mr Alvin YEUNG of their concerns that the passage of the Bill would obstruct new business models of sharing economy.</p> <p>The Administration reiterated that it supported sharing economy and had no intention to deal a blow to a particular business model but premises held out for providing short-term accommodation at a fee without a licence should be eliminated.</p> <p>Mr Alvin YEUNG's enquiry regarding whether the Administration would take forward the recommendation made in the Audit Report about differentiating home-stay lodging from other types of guesthouses, and if so, the timetable for introducing relevant amendments to the Ordinance.</p> <p>The Administration responded that the Bill focused on addressing major concerns of the public. The Administration welcomed lawful operation of home-stay lodging which was not precluded by the existing licensing regime, and was open-minded towards differentiating home-stay lodging from other types of guesthouses. The Administration welcomed views and was willing to explore the development of home-stay lodging.</p> <p>Mr YEUNG's enquiry and the Administration's response regarding whether the Administration had considered the Information Note prepared by the LegCo Secretariat. The Administration provided information on regulation of home-stay lodging in some overseas places.</p> <p>Mr YEUNG's view that the Administration should study the aforesaid Information Note and provide the reasons why it considered home-stay lodging not feasible in Hong Kong.</p> <p>At the Chairman's request, the Administration undertook to provide its views on the regulation of home-stay lodging with reference to the analysis and the overseas practices set out in the</p>	Admin (paragraph 7(e) of the minutes)

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		above-mentioned Information Note.	
012801-013528	Chairman Mr Tony TSE Administration	<p>Mr Tony TSE's enquiry and the Administration's response regarding:</p> <p>(a) whether increasing the maximum penalty for offences under the Ordinance would, in effect, enhance deterrence;</p> <p>(b) whether licence applications would be rejected if the premises concerned did not comply with the Government lease provisions, relevant requirements under the Buildings Ordinance (Cap. 123), etc.; and</p> <p>(c) additional manpower requirement or manpower saving of the Administration after the passage of the Bill.</p>	
013529-014104	Chairman Administration	<p>The Chairman's enquiry and the Administration's response regarding:</p> <p>(a) whether members of the Panel would comprise representatives from the hotel/guesthouse sector;</p> <p>(b) given that a guesthouse licence might be subject to a condition that the business name of the premises concerned must not contain the term 'hotel', whether there would be a transitional period for the affected guesthouses to change their business names so as to comply with the aforesaid licence condition;</p> <p>(c) whether requirements in relation to procurement of third party risks insurance, security of the premises concerned, etc. would be imposed in the form of subsidiary legislation, provisions in the Ordinance or guidelines; and</p> <p>(d) whether the agents/agencies (e.g. travel agents/agencies, real estate agents/agencies) or someone who advertised hotels or guesthouses via online platforms would be held criminally liable if they had inadvertently promoted unlicensed hotels or guesthouses.</p> <p>At the Chairman's request, the Administration undertook to provide information on (d) above.</p>	Admin (paragraph 7(f) of the minutes)

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014105-015110	Chairman Mr Paul TSE Administration	<p>Declaration of interests by Mr Paul TSE.</p> <p>Mr TSE's view that it was necessary to step up regulation of guesthouses in order to address the concern of some property owners who had been affected by the operation of guesthouses.</p> <p>Mr TSE's enquiry and the Administration's response regarding:</p> <ul style="list-style-type: none"> (a) the Government's policy on home-stay lodging; (b) whether the Authority would consider seeking legal advice on whether the DMCs concerned contained restrictive provisions; and (c) the policy consideration for drawing up the new section 5A(3) and (4). <p>Mr TSE's view that the Administration should provide clear information on "sufficient evidence" stipulated in the new section 5A(3)(a) and (4)(a).</p> <p>At the Chairman's request, the Administration undertook to provide examples of "sufficient evidence" as stipulated in the new section 5A(3)(a) and (4)(a), in particular, the measures that should be taken to show that the person could not with reasonable diligence have prevented the premises from being an unlicensed hotel or guesthouse under the new section 5A(4)(a).</p>	Admin (paragraph 7(c) of the minutes)
015111-015639	Chairman Mr Tony TSE Administration	<p>The Administration's response to Mr Tony TSE's enquiry regarding the objective of increasing the maximum penalty for operating an unlicensed hotel or guesthouse and whether a higher penalty could enhance deterrence. The Administration provided examples of the level of fine and term of imprisonment of convicted cases of unlicensed guesthouses in the past.</p> <p>The Administration responded to Mr TSE's view that fining \$20,000 each day during which the offence continued might have a greater deterrent effect.</p> <p>The Administration further advised that the Bill also empowered the Authority to apply to the court, upon the second conviction within 16 months of the offence of operating an unlicensed hotel or guesthouse or the new strict</p>	

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		<p>liability offence in respect of the same premises, to issue a closure order for the premises for six months. This would significantly enhance the deterrent effect of the Ordinance since the owners or tenants of the premises would suffer significant financial loss during the closure period.</p> <p>Mr TSE's enquiry and the Administration's response regarding the Administration's assessment on the deterrent effect brought about by a higher penalty.</p>	
015640-015853	Chairman Mr Paul TSE Administration	Mr Paul TSE's remarks on the legislative intent for increasing the maximum penalty. His view that increasing the maximum penalty would be effective in enhancing deterrence.	
015854-015917	Chairman	<p>Date of next meeting</p> <p>The Chairman said that the Bills Committee would receive public views on the Bill at the next meeting.</p>	