

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1190/18-19  
(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 third meeting  
held on Tuesday, 22 January 2019, 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 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

**Member absent** : Hon James TO Kun-sun

**Public Officers attending** : 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

Miss Grace LI, JP  
Assistant Director of Home Affairs (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** : Ms Wendy JAN  
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

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**I. Meeting with the Administration**

[File Ref.: HAD HQ CR/15/3/20(C); LC Paper Nos. CB(3)811/17-18, LS96/17-18, CB(2)190/18-19(01) to (02), CB(2)201/18-19(01), CB(2)339/18-19(01), CB(2)640/18-19(01) to (04) and IN01/18-19]

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

2. The Bills Committee requested the Administration to provide:

- (a) the number of successful and unsuccessful applications for guesthouse (holiday flat) licences; and
- (b) elaborations of "a right to exclusive possession".

*(Post-meeting note: The Administration's response had been issued to members vide LC Paper No. CB(2)882/18-19(02) on 26 February 2019.)*

3. The Chairman said that members would be informed of the date of the next meeting in due course.

**II. Any other business**

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

Council Business Division 2  
Legislative Council Secretariat  
10 April 2019

**Proceedings of the third meeting of the  
Bills Committee on Hotel and Guesthouse Accommodation (Amendment) Bill 2018  
on Tuesday, 22 January 2019, 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 – Meeting with the Administration</i>			
000505-000657	Chairman Mr Tony TSE	<p>The Chairman reminded members to declare interests in the matter under discussion, if any.</p> <p>Declaration by the Chairman that he was an employee of a company which invested in hotel projects.</p> <p>Declaration by Mr Tony TSE that he was an independent non-executive director of a listed company which operated hotels.</p>	
000658-001402	Chairman Administration	The Administration briefed members on its response to issues raised at the meetings of the Bills Committee on 6 November 2018 and 4 December 2018 (LC Paper Nos. CB(2)640/18-19(01) and (03)).	
001403-002005	Chairman Administration	<p>The Administration's response to the Chairman's enquiry regarding:</p> <ul style="list-style-type: none"> <li>(a) how circumstantial evidence could facilitate enforcement actions against unlicensed hotels and guesthouses and could be used in strict liability offence cases;</li> <li>(b) how the Hotel and Guesthouse Accommodation Authority ("the Authority") could successfully obtain search warrants if the guesthouses concerned were situated in domestic premises; and</li> <li>(c) whether search warrants were required for carrying out decoy operations against suspected unlicensed guesthouses after the passage of the Hotel and Guesthouse Accommodation (Amendment) Bill 2018 ("the Bill") and if not, the legal basis for such decoy operations without search warrants.</li> </ul> <p>The Administration's advice that such circumstantial evidence as advertising posters, leaflets, and other online advertisements in relation to certain premises offering sleeping accommodation and a substantial number of people other than owners or tenants gaining access to the premises could be evidence used to establish the fact that the premises were used as guesthouses. Further, the address of the premises could be checked against the record in the Authority to verify whether the premises were licensed guesthouses. Under the Bill, an enforcement officer could apply to a magistrate for a search warrant to enter and search a suspected unlicensed hotel or guesthouse and might use any force that was reasonable in the circumstances for gaining entry into the premises.</p>	

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002006-002542	Chairman Mr KWOK Wai-keung Administration	<p>The Administration's response to the following enquiry and view from Mr KWOK Wai-keung:</p> <ul style="list-style-type: none"> <li>(a) whether there were measures to assist owners to recover the possession of their properties which were used for operating unlicensed guesthouses;</li> <li>(b) the composition and mode of operation of the independent panel ("the Panel") which would be set up for local consultation in processing licence applications; and</li> <li>(c) the Administration should consider appointing District Officers as members of the Panel.</li> </ul> <p>The Administration's advice that it might not be appropriate for the Administration to intervene in the private contractual agreement entered into between the owner and the tenant governing the recovery of possession of the properties which were used for operating unlicensed guesthouses.</p> <p>The Administration's further advice that the Panel would be comprised of representatives from various professions, local communities and hotel and guesthouse sector so as to ensure that the views of the Panel were fair and balanced. The representatives from the hotel/guesthouse sector however could not discuss or advise on the application for a hotel/guesthouse licence in which they had interest. Certain members would be selected from the list of the Panel members to make assessment in relation to each application for issue and renewal of hotel or guesthouse licence. The Administration added that District Officers of various districts would not be appointed as members of the Panel, but they would assist the Panel in conducting local consultation in their districts.</p>	
002543-003349	Chairman Mr Tony TSE Administration	<p>The Administration's response to Mr Tony TSE's view and enquiry regarding:</p> <ul style="list-style-type: none"> <li>(a) follow-up action taken in response to the Director of Audit's recommendations regarding the processing time for the licence application for hotels and guesthouses as set out in the Director of Audit's Report No. 69;</li> <li>(b) measures to be taken by the Administration to assist applicants if the aforesaid lead time could not be reduced; and</li> <li>(c) whether there would be an increase or saving in the Administration's manpower resources after the increase in the workload arising from the passage of the Bill had levelled off with time.</li> </ul> <p>The Administration's advice that a set of performance pledges had been published by the Office of Licensing Authority for the handling of the licence application. The Administration's remark that the long time required for granting a licence was often due to an applicant being unable to meet the relevant licensing requirements.</p>	

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003350-003814	Chairman Mr Alvin YEUNG Administration	<p>Mr Alvin YEUNG's view that, in providing its response to some members' call for differentiating home-stay lodging from other types of guesthouses, the Administration had not considered the fact that Hong Kong lacked a specific legal definition for home-stay lodging. Concurring that home-stay lodging should also comply with stipulated building and fire safety requirements, he enquired whether the Administration would, in future, formulate policy on home-stay tourism and provide a specific legal definition for home-stay lodging.</p> <p>The Administration's advice that both the existing and the proposed regulatory regimes of the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) ("the Ordinance") did not preclude home-stay lodging. While there was no separate regime for home-stay lodging, the existing and proposed regimes were flexible enough to cater for various types of hotels and guesthouses, including those operating in the mode of home-stay lodging. The regulatory requirements had all along been imposed on the subject premises flexibly having regard to the circumstances of each case.</p> <p>Mr YEUNG's further view that the Administration's stance on home-stay lodging might not help the development of various business models for tourist accommodation in Hong Kong. He urged the Administration to introduce more measures to facilitate the operation of home-stay lodging in the long run.</p> <p>The Administration's response that it would keep in view the situation in Hong Kong and the global trends in home-stay lodging.</p>	
003815-004438	Chairman Mr KWOK Wai-keung Administration	<p>The Administration's response to the following enquiry from Mr KWOK Wai-keung:</p> <ul style="list-style-type: none"> <li>(a) whether advertisements of hotels or guesthouses on the Internet was a type of circumstantial evidence and if so, whether such evidence would be sufficient for obtaining a search warrant for a premises suspected of operating unlicensed hotels or guesthouses;</li> <li>(b) how to determine whether the force used by enforcement officers to enter into a suspected unlicensed hotel or guesthouse to collect evidence was reasonable;</li> <li>(c) how the Administration would ensure that enforcement actions against unlicensed hotels or guesthouses would be effective; and</li> <li>(d) whether the Panel would take into account the nuisance caused by the structure of licensed guesthouses (e.g. water seepage) to residents of the building concerned in considering their applications for licence renewal, and impress upon the operators concerned the need to rectify the problems.</li> </ul> <p>The Administration's advice that the Authority had set up an Internet enforcement team to browse web pages for information and intelligence about suspected unlicensed guesthouses. What was a</p>	

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		reasonable force used to enter into a suspected hotel or guesthouse would depend on the circumstances of the case and enforcement officers would resort to the assistance of the police if necessary. Such reasonable force might include breaking open the lock of the premises if necessary.	
004439-005102	Chairman Administration	<p>The Chairman's request for the number of successful and unsuccessful applications for guesthouse (holiday flat) licences.</p> <p>The Chairman's enquiry and the Administration's response regarding:</p> <p>(a) whether administrative guidelines would be provided for the Panel on conducting local consultation and making recommendations to the Authority; and</p> <p>(b) whether an agent/agency would be held criminally liable if he/she promoted hotels or guesthouses via online advertisements knowing that the hotels or guesthouses were operated without a licence.</p> <p>The Administration's advice that depending on the circumstances of the case, an agent would not incur legal liability by merely promoting unlicensed hotels or guesthouses via online advertisements unless the acts of agents could be construed as falling within the elements of "operates, keeps, manages or otherwise has control of any premises" under the proposed new section 5.</p>	Admin (paragraph 2 (a) of the minutes)
<p><u>Clause-by-clause examination</u></p> <p>[The Bill (LC Paper No. CB(3)811/17-18; Marked-up copy of the relevant provisions to be amended by the Bill prepared by the Legal Service Division]</p>			
005103-005437	Chairman Administration	Briefing of the framework and main provisions of the Bill by the Administration.	
005438-005513	Chairman Administration	<p><u>Clauses 1 to 2</u></p> <p>Members raised no question.</p>	
005514-005959	Chairman Administration	<p><u>Clauses 3 to 8</u></p> <p>Members raised no question.</p>	
010000-011303	-	Break	
011304-013212	Chairman Administration Assistant Legal Adviser 5 ("ALA5") Mr Alvin YEUNG	<p><u>Clause 9</u></p> <p><i>Proposed new section 5</i></p> <p>ALA5's observation that under the proposed new section 5(2), the maximum penalty for offences for operating, keeping, managing or otherwise having control of the premises while no licence was in</p>	

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		<p>force for the premises under the proposed new section 5(1) had increased (with a maximum penalty of \$500,000 and imprisonment for three years upon conviction on indictment), and that under the proposed new section 5(3), it was not a defence for a person who was charged for an offence under the proposed new section 5(1) to say that he/she did not know that no licence was in force in respect of the premises. Given the increased penalty, ALA5 enquired whether it was justifiable to make the offence under the proposed new section 5 as an absolute offence where the defendant could not raise any defence notwithstanding that the defendant had mistakenly but honestly and reasonably believed that a licence had been in force in respect of the premises.</p> <p>The Administration's advice that the proposed new section 5(3) was similar to the existing section 5(3) and its justifications for the "no defence provision" in the proposed new section 5(3) as outlined in its reply (LC Paper No. CB(2)640/18-19(04)) to ALA5's letter. The Administration's further advice that according to the case of <i>HKSAR v Chui Shu Shing</i> (2017) 20 HKCFAR 333, the Court of Final Appeal ("CFA") held that the concept of "manage" incorporated the idea of authority and control over the premises which was managed. Further, it was a licensing condition that the licence must be displayed in the conspicuous place of the premises. As such, it was neither acceptable nor a defence for the person to allege that he did not know that no licence was in force in the premises.</p> <p>The Chairman's enquiry and the Administration's response regarding the definition of "operator" of a hotel or guesthouse (whether it referred to a person whose name was registered in the register of the Authority as an operator or the mastermind behind the scenes) and whether a person who was hired to manage an unlicensed hotel or guesthouse would be subject to lighter penalty than the operator of the hotel or guesthouse concerned.</p> <p>The Administration's advice that an operator in general referred to a person who had control of the premises and carried out the business or undertaking of the hotel or guesthouse in the premises.</p> <p>ALA5's observation that the elements of offence under the proposed new section 5 include "manages" the premises. According to the case of <i>Chui Shu Shing</i>, CFA held that in general, a person managed a hotel or guesthouse when he or she, exercising a degree of managerial authority assumed or conferred upon them, carried out the business or undertaking. The prohibition effected by section 5(1) of Cap. 349 extended to management by persons employed to manage the premises.</p> <p>ALA5's enquiry and the Administration's response regarding whether a person who was employed to manage an unlicensed hotel or guesthouse had a defence for an offence under the proposed new section 5(1) if the person was misled and reasonably believed that a licence was in force for the premises.</p> <p>The Administration's advice that if there was evidence that a person was deliberately misled to believe that the forged licence</p>	



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		<p>purportedly issued by the Authority was a valid one, that might be taken into account in the decision of whether to prosecute.</p> <p>The Administration's further advice that the threshold for establishing the commission of the offence under the proposed new section 5 was high in the sense that the elements of "operates, keeps, manages or otherwise has control of" under the proposed new section 5(1) were required to be proved by the prosecution. The concept of "manage" did not extend to a person, such as a cleaning worker, who carried out essentially non-discretionary functions which was not a manifestation of managerial authority in light of the decision of Chui Shu Shing. Given the high threshold for establishing the commission of offence, it was the Administration's policy intent that the person operating, keeping, managing or otherwise having control of the premises should have the duty to check and verify whether a licence was in force in the premises. Since the information of the licensed hotels/guesthouses was available from the Administration's webpage, there should not be difficulty for these persons to verify whether a valid licence was in force in the premises.</p> <p>Mr. Alvin YEUNG's view that the threshold for establishing the commission of the offence was high. A manager would be reasonably expected to check whether there was a licence in force as the requirement expected of a manager would be higher than a cleaning worker. He did not have much concern on the imposition of absolute liability.</p> <p>Mr Alvin YEUNG's suggestion that, from a policy perspective, the Administration should put in place a mechanism which should be simple enough to facilitate management staff of hotels/guesthouses to find out whether a licence was in force for the hotels/guesthouses concerned. Notices on the possible legal responsibilities of managing unlicensed hotels/guesthouses should be posted in conspicuous places in hotels/guesthouses.</p> <p>The Chairman's suggestion that administrative guidelines should be drawn up for management staff of hotels/guesthouses on the matters to which they should pay attention.</p> <p>The Administration's undertaking to consider the suggestions and enhance publicity in this regard after the passage of the Bill.</p> <p>ALA5's enquiry on whether the application of the common law defence of honest and reasonable belief would affect the objectives and enforcement of relevant provisions in the Bill. The Administration's advice that given the clear wordings of the proposed new section 5(3), it was clear that any common law defence of honest and reasonable belief that a licence was in force in respect of the premises would be displaced.</p>	
013213-014156	Chairman Administration ALA5 Mr Alvin	<p><i>Proposed new section 5A</i></p> <p>The Chairman's enquiry and the Administration's explanation about the justifications for including tenants of unlicensed hotels/</p>	

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	YEUNG	<p>guesthouses in the proposed new section 5A.</p> <p>ALA5's observation that the definition of "tenant" in the proposed new section 5A(5) might include a sub-tenant as clarified by the Administration in its reply (LC Paper No. CB(2)640-18/19(04)) to ALA5's letter.</p> <p>The Administration's advice that a person who became a tenant of a hotel/guesthouse only through being provided sleeping accommodation in the hotel/guesthouse ("a guest of a hotel/guesthouse") was not a tenant as defined under the proposed new section 5A(5).</p> <p>The Chairman's enquiry and the Administration's response regarding whether a guest of a hotel/guesthouse had a right to exclusive possession of the premises at which sleeping accommodation was provided.</p> <p>The Administration's further explanation on the reasons for not including a guest of a hotel/guesthouse under the definition of "tenant" in the proposed new section 5(A)5 and the meaning of "a right of exclusive possession".</p> <p>At the Chairman's request, the Administration undertook to provide elaborations of "a right to exclusive possession".</p> <p>ALA5's observation that by introducing "strict liability" offence under the proposed new section 5A(1), it was not necessary for the prosecution to prove the existence of mens rea (i.e. the mental element, which referred to a person's culpable state of mind) in respect of the owner or tenant's knowledge as to whether a licence was in force in the premises. An evidential burden was placed on the owner or tenant to raise the statutory defence that he did not know and had no reason to suspect that the premises were an unlicensed hotel or guesthouse or the person could not with reasonable diligence have prevented the premises from being an unlicensed hotel or guesthouse. However, there were other legislation where the prosecution was required to prove the mens rea of owners or tenants of premises that they had the knowledge that the premises were kept or used for illegal gambling, drug manufacturing and vice activities. Some legislation (e.g. the Noise Control Ordinance (Cap. 400) and the Fire Services (Fire Hazard Abatement) Regulation (Cap. 95 sub. leg. F)) also provided for such a requirement.</p> <p>The Administration's explanation that the proposed new section 5A(3) and (4) provided a statutory defence for a person charged with an offence under the proposed new section 5A(1) and would be justifiable.</p>	Admin (paragraph 2(b) of the minutes)
014157-014808	Chairman Administration Mr Alvin YEUNG	<p><i>Proposed new section 5B</i></p> <p>Mr Alvin YEUNG's enquiry and the Administration's response regarding the reasons for registering in the Land Registry the withdrawal of a charge against a person for a specified offence and</p>	

Time marker	Speaker(s)	Subject(s)	Action required
		the acquittal of a specified offence under the proposed new section 5B(1).	
014809-014813	Chairman Administration	<u>Clause 10</u>  Members raised no question.	
014814-015235	Chairman Administration	<u>Clause 11</u>  <i>Proposed new section 12A</i>  The Chairman's enquiry and the Administration's response that guesthouse (holiday flat) licence and guesthouse (holiday camp) - caravan camp site licence were subcategories of guesthouse licences.  The Administration's further advice that under the proposed new section 12A(2)(b), the Authority might specify subcategories of guesthouse licences with different criteria for eligibility.  The Chairman's concern as to whether the Bill could resolve legal disputes about renting out caravans for short-term sleeping accommodation as it was unclear about whether caravans were "premises".  The Administration's advice that for such structures as caravans to be considered as a "premises" and thus to be regulated by the Bill, the structures should have been attached to land and/or have a high degree of permanency. If the structures were readily movable, they might not be considered as "premises". Hence, the existing definition of "premises" was clear and there was a successful prosecution and conviction case on renting out fixed caravans for short-term sleeping accommodation.	
015236-015334	Chairman Administration	<i>Proposed new section 12B</i>  Members raised no question.	
015335-015501	Chairman Administration	<i>Proposed new section 12C</i>  The Chairman's enquiry and the Administration's response regarding the validity periods of licences for hotels and guesthouses and the number of cases the validity period of which was less than one year.	
015502-015810	Chairman Administration	<i>Proposed new sections 12D to 12I</i>  Members raised no question.	
<i>Agenda item II – Any other business</i>			
015811-015833	Chairman	Closing remarks	

Council Business Division 2  
Legislative Council Secretariat  
10 April 2019