

## 立法會參考資料摘要

《酒店東主條例》(第 158 章)

《酒店房租稅條例》(第 348 章)

《旅館業條例》(第 349 章)

## 《1998 年酒店住宿(雜項條文)條例草案》

### 前言

A

在一九九八年九月一日會議上，行政會議**建議**，行政長官**指令**附件 A 所載的《1998 年酒店住宿(雜項條文)條例草案》(條例草案)重新提交立法會審議。

### 背景及論據

2. 《酒店東主條例》、《酒店房租稅條例》和《旅館業條例》存有一些缺點，須予改善。為改善這些缺點，我們在一九九六年五月廿九日提交了條例草案與當時的立法局審議。但由於有其他立法事項必須優先處理，條例草案之二讀辯論一直未能恢復。因此，我們必須重新把條例草案提交立法會審議，以解決三條與管制旅館有關的法例的現存缺點。

### 《旅館業條例》

3. 《旅館業條例》(條例)於一九九一年五月制定，就旅館業的規管、控制及安全標準訂立規定。該條例授權民政事務局局長設立一套旅館業發牌制度，以確保這些旅館能符合消防和樓宇安全以及健康與衛生方面的規定。

4. 旅館業發牌制度是由民政事務總署轄下的牌照事務處負責實施的。從實施經驗顯示，條例有以下的缺點 -

B

- (a) 條例對“旅館”所界定的定義(載於附件 B)，使為某些限定類別人士(例如某一國籍的人士或某一旅行社的顧客)提供住宿的處所，可不受條例的管制而經營，因為這些處所並不是為“任何人士”提供住宿。

這些處所其實是用作經營旅館，所以應受條例的規管和根據有關的規定領取牌照，以確保其安全受到監管。

## C

- (b) 高等法院杜輝大法官於一九九六年三月一日就女皇訴陽明山莊地產開發有限公司上訴案所作的判決(載於英文版附件 C)中指出，條例對旅館所界定的定義中，“任何到臨……的人”一詞的釋義限制了該條例的適用範圍。杜輝大法官裁定，招待預先訂房的顧客的酒店，並不在條例的管制範圍之內。從執法的角度來看，這項判決造成了法律漏洞，讓提供住宿的處所可聲稱他們是租出房間予預先訂房的顧客(例如電話預訂)而得免根據條例的規定領取牌照。有鑑於此，條例須修訂以堵塞漏洞。
- (c) 大部分酒店每年獲發的牌照附載某些條件，規定持牌人須進行某些改善酒店安全的工程，以及完成這些工程的時間表。牌照事務處會按個別情況考慮發牌給已完成有關工程的酒店，牌照有效期可長達三年，以省卻每年續牌的手續。原則上，只有那些具有良好紀錄，證明一向履行消防及樓宇安全規定，而且不會濫用這項手續的酒店，才會獲發給三年期的牌照。賓館如果符合上述條件，牌照事務處也會考慮發給這種牌照。不過，由於條例規定發出的牌照和續期後的牌照有效期不得超過 12 個月，因此，如果不修改條例，牌照事務處便不能發出三年期的牌照。
- (d) 現時，牌照事務處可根據條例第 19 條，以專人送遞或掛號郵遞方式向旅館負責人送達通知，指示有關負責人必須進行某些補救工程，以及告知該負責人當局打算根據條例第 20 條向區域法院申請封閉令。如果牌照事務處不清楚旅館負責人的下落或身分，則在送達上述通知方面便會有困難。如果發出的通知得以用張貼在旅館當眼處的方式送達，而毋須寫明收件人的姓名，則對條例的執行工作會有幫助。
- (e) 條例第 20 條規定，當局可向法庭申請發出封閉令，以停止將處所用作旅館。但這條文有欠妥善，因為處所一旦被下令封閉，則工作人員即使為了進行糾正工程亦無法再進入其內。如果不能進行糾正工程，便無法改善處所的安全，而旅館亦不能重新開業。

## D

- (f) 根據《裁判官條例》第 26 條(附件 D)的規定，倘某一罪項(例如違反牌照條件)是在牌照事務處發出傳票前超過六個月觸犯的話，牌照事務處會因時限關係而無法提出檢控。這情況有欠理想，因為有些罪項可能是在牌照事務處人員在牌照續期時剛視察有關樓宇後才觸犯的。在此情況下，有關罪項便不會即時被發現。因此，很多罪項可能會因時限關係而得以免被檢控。

### 5. 我們建議對條例作出下列修訂，以解決上文所提及的缺點 —

- (a) 修訂條例中“旅館”的定義，令該定義的範圍涵蓋只提供住宿地方

予某些限定類別的人士的處所，並包括親身或透過代理人或代表到臨旅館的人士，而不論其是否有預先訂房；

- (b) 根據第 8 條簽發或第 9 條續期的牌照的有效期可長達三年；
- (c) 根據第 19 及 20 條發出的通知，可以用張貼於有關旅館當眼處的形式送達而毋須在通知上列明收件人的姓名；
- (d) 根據第 20 條，任何獲民政事務局局長書面授權的人士，可以在封閉令的有效期內進入旅館進行補救工程；及
- (e) 在條例內增添一項新條文，以訂明提出檢控的時限，是由觸犯有關罪項後計算的六個月內，或由牌照事務處發現或獲悉有關罪項後計算的六個月內，兩者以日期較後者為準。

### 《酒店房租稅條例》

6. 由於《酒店房租稅條例》亦是以類似方式界定“酒店”的定義，因此上文第 4(a)和 4(b)段所述的法律漏洞，亦使當局在向一些其實用作經營酒店的處所徵收酒店房租稅時遇到困難。目前，這類酒店共有三間，均不受《酒店房租稅條例》的規限。倘若其他酒店仿效他們的經營方式，只招待某些類別或預先訂房的顧客，則會嚴重影響酒店房租稅的收入。因此，我們建議對《酒店房租稅條例》作出類似的修訂，將上文第 5(a)段提及的處所包括在條例所管制的範圍之內，從而堵塞有關的法律漏洞。在《酒店房租稅條例》獲得修訂後，有關的三間酒店便會受到這條條例的管制。

### 《酒店東主條例》

7. “酒店”的定義亦出現於《酒店東主條例》之內。為了劃一各項條例中“酒店”一詞的定義和堵塞上文第 4(a)和 4(b)段所述同樣的法律漏洞，我們建議修訂《酒店東主條例》中“酒店”的定義。

### 條例草案

8. 本草案包括下列主要條款 -

#### 《酒店東主條例》

- (a) 草案第 2 條修訂此條例第 2 條中“酒店”一詞的定義，以達致上文第 5(a)段所述的目的；

#### 《酒店房租稅條例》

- (b) 草案第 4 條修訂此條例第 2 條中“酒店”一詞的定義，以達致同樣的目的；

#### 《旅館業條例》

- (c) 草案第 5 條修訂此條例第 2 條中“旅館”一詞的定義，以達致

同樣的目的。本條並進一步修訂“旅館”的定義，以刪除提及《床位寓所條例》所指的任何處所不受條例規限的條文。當局認為由民政事務局局長根據條例第 3 條發出命令豁免床位寓所及其他類型的處所受此條例規限，會較為妥當(見下文第 9 段)；

- (d) 草案**第 6 及 7 條**將根據此條例第 8 條簽發及第 9 條續期的牌照有效期延長，但最多以 36 個月為限(見上文第 5(b)段)；
- (e) 草案**第 8 及 9 條**容許根據此條例第 19 及 20 條發出的通知以張貼於有關旅館當眼處的方式送達(見上文第 5(c)段)；
- (f) 草案**第 9 條**容許任何獲民政事務局局長書面授權的人士，在封閉令有效期間進入旅館進行糾正工程(見上文第 5(d)段)；而草案**第 10 條**規定獲授權人士進入該等處所不屬違法；
- (g) 草案**第 11 條**延長條例下各項罪項的檢控時限(見上文第 5(e)段)。

B 上述三條條例的受影響部分載於附件 B。

### 豁免令

9. 我們打算由民政事務局局長發出豁免令，以豁免下列各類處所受《旅館業條例》規限 -

- (a) 受《幼兒服務條例》所規管的處所；
- (b) 受《會社(房產安全)條例》所規管的處所；
- (c) 受《床位寓所條例》所規管的處所；
- (d) 受《安老院條例》所規管的處所；及
- (e) 所有其內住宿地方只供連續租住 28 天或以上的處所。

E 上述豁免令的初稿載於附件 E。

### 立法程序時間表

10. 立法程序時間表如下 -

刊登憲報	一九九八年九月四日
首讀和進行二讀辯論	一九九八年九月十六日

## **與人權的關係**

11. 律政司認為本條例草案對人權不會有任何影響。

## **法例的約束力**

12. 雖然民政事務局局長是負責執行《旅館業條例》的旅館業監督，條例並無任何對國家有約束力的明文規定。此外，在《酒店東主條例》，《酒店房租稅條例》及根據《旅館業條例》第 3 條發出的命令中，亦無任何對國家有約束力的明文規定。

## **對財政和人手的影響**

13. 我們估計，向目前因法律漏洞而免遭徵稅的酒店徵收酒店房租稅，每年可帶來 2,000 萬元額外收入。除此之外，本條例草案不會有其他財政和人手方面的影響。

## **對經濟的影響**

14. 本條例草案有助確保實際為旅館的提供住宿的處所，符合消防和樓宇安全及健康與衛生方面的規定，這對香港旅遊業的發展有所幫助。此外，條例草案堵塞了《酒店房租稅條例》的漏洞，使各酒店能夠有較公平的競爭。《酒店東主條例》下酒店東主應有的權利及應盡的法律責任，亦會適用於本條例草案所指明的幾類處所。

## **公眾諮詢**

15. 我們曾諮詢過香港酒店業主聯會及香港旅遊業賓館聯會的意見。香港酒店業主聯會要求牌照事務處發給有效期為五年的牌照；除此以外，並不反對條例草案本身的條款，但卻提出了幾項屬於條例草案範圍以外的問題，例如發牌予酒店時所採用的安全標準，辨別酒店與賓館；以及將旅館業條例實施工作小組轉為法定機構。香港旅遊業賓館聯會亦不反對條例草案本身的條款，但卻對非法賓館的經營表示關注。我們將繼續與該兩個聯會舉行會議，以解決雙方所共同關注的問題。

16. 我們已分別於一九九六年四月二十六日和一九九八年七月二十七日的立法會(一九九六年時稱為“立法局”)民政事務委員會會議席上向議員簡介條例草案的內容。

## **宣傳安排**

17. 我們會於條例草案在九月四日刊登憲報當日，發出立法會參考資料摘要和新聞稿，屆時並會委派發言人解答新聞界和公眾的提問。

## **查詢**

18. 任何有關本摘要文件的查詢，請與助理民政事務局局長莊永康先生聯絡，電話：2835 1485。

民政事務局  
一九九八年九月二日

Cref: .../paper/brief/LegCo-Hotel-China.doc/cl

## 《1998 年酒店住宿(雜項條文)條例草案》：附件

附件 A — 《1998 年酒店住宿(雜項條文)條例草案》

附件 B — 《酒店東主條例》，《酒店房租稅條例》及  
《旅館業條例》之部份內容

[ 附件 C — 杜輝大法官就女皇訴陽明山莊地產開發有限  
公司一案所作的判決 ] (請閱英文版)

附件 D — 《裁判官條例》(第 227 章)第 26 條

附件 E — 《旅館業(豁免)令》初稿

**《1998 年酒店住宿（雜項條文）條例草案》**

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## 本條例草案

### 旨在

修訂《酒店東主條例》、《酒店房租稅條例》及《旅館業條例》。

由立法會制定。

#### 1. 簡稱及生效日期

- (1) 本條例可引稱為《1998 年酒店住宿（雜項條文）條例》。
- (2) 第 6 及 7 條自民政事務局局長以憲報公告指定的日期起實施。

### 《酒店東主條例》

#### 2. 釋義

《酒店東主條例》（第 158 章）第 2 條現予修訂—

- (a) 將該條重訂為第 2 (1) 條；
- (b) 在第 (1) 款中，廢除“酒店”的定義而代以—

““酒店”（hotel）指任何場所，其東主顯示該場所是一處向到臨該場所的任何人提供住宿的地方，而該人看似是有能力並願意為所提供的服務及設施繳付合理款項，並且是在宜於予以接待的狀況的。”；

(c) 加入—

“ (2) 在第 (1) 款中，就“酒店”的定義中的“到臨該場所的任何人”一語而言，並僅就該語而言—

(a) “任何人”包括任何特定類別、界別、組別或種類的人；

(b) “到臨”包括—

(i) 任何人親自到臨；

(ii) 任何人透過代理人或代表到臨；

(iii) 任何人不論是親自或是透過代理人或代表，以圖文傳真、信件、電報、電話或任何其他方式到臨；

(iv) 任何人不論是親自或是透過代理人或代表並經事先預定或通知而到臨；

(v) 任何人不論是親自或是透過代理人或代表並未經事先預定或通知而到臨。”。

3. 作為旅店主理人的法律責任  
及權利的修改

第 4 (1) 條現予修訂，廢除所有“旅客”而代以“人”。

《酒店房租稅條例》

4. 釋義

《酒店房租稅條例》（第 348 章）第 2 條現予修訂—

(a) 將該條重訂為第 2 (1) 條；

(b) 在第 (1) 款中，在“酒店”的定義中，廢除“會在無需特別合約的情況下，提供住房予任何到臨該場所並且有能力和願意為所獲提供的服務及設施繳付合理款項而本身狀況亦屬宜於獲得接待的人”而代以“會向到臨該場所的任何人提供住房，而該人是有能力並願意為所提供的服務及設施繳付合理款項，並且是在宜於予以接待的狀況的”；

(c) 加入—

“ (2) 在第 (1) 款中，就“酒店”的定義中的“到臨該場所的任何人”一語而言，並僅就該語而言—

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(b) “到臨”包括—

(i) 任何人親自到臨；

- ( ii ) 任何人透過代理人或代表到臨；
- ( iii ) 任何人不論是親自或是透過代理人或代表，以圖文傳真、信件、電報、電話或任何其他方式到臨；
- ( iv ) 任何人不論是親自或是透過代理人或代表並經事先預定或通知而到臨；
- ( v ) 任何人不論是親自或是透過代理人或代表並未經事先預定或通知而到臨。”。

### 《旅館業條例》

#### 5. 釋義

《旅館業條例》（第 349 章）第 2 條現予修訂—

- ( a ) 將該條重訂為第 2 ( 1 ) 條；
- ( b ) 在第 ( 1 ) 款中，在“旅館”的定義中—

- (i) 廢除“(《床位寓所條例》(第 447 章)的條文所適用的處所除外)”；
  - (ii) 廢除“他會”之後的所有字句而代以“向到臨該處所的任何人士提供住宿的地方，而該人士看似是有能力並願意為所提供的服務及設施繳付合理款項，並且是在宜於予以接待的狀況的；”；
- (c) 加入—
- “(2) 在第(1)款中，就“旅館”的定義中的“到臨該處所的任何人士”一語而言，並僅就該語而言—
- (a) “任何人”包括任何特定類別、界別、組別或種類的人士；
  - (b) “到臨”包括—
    - (i) 任何人士親自到臨；
    - (ii) 任何人士透過代理人或代表到臨；
    - (iii) 任何人士不論是親自或是透過代理人或代表，以圖文傳真、信件、電報、電話或任何其他方式到臨；

(iv) 任何人不論是親自或是透過代理人或代表並經事先預定或通知而到臨；

(v) 任何人不論是親自或是透過代理人或代表並未經事先預定或通知而到臨。”。

## **6. 牌照的申請及發出**

第 8 (5) (d) 條現予修訂，廢除 “12” 而代以 “36” 。

## **7. 牌照續期**

第 9 (1) 及 (6) 條現予修訂，廢除 “12” 而代以 “36” 。

## **8. 民政事務局局長可指示糾正措施**

第 19 條現予修訂—

(a) 在第 (2) (a) 款中，在 “有關旅館的人” 之後加入 “，或以張貼該通知於有關旅館當眼處的方式送達” ；

(b) 加入—

“ (3) 如根據第 (1) 款發出的通知是以張貼該通知於有關旅館當眼處的方式送達的，則該通知須以中、英文書寫，而在提述收件人時，只須提述其在該旅館的身分，而無須述明該人的姓名。” 。

**9. 民政事務局局長可下令停止  
將處所用作旅館**

第 20 條現予修訂—

- (a) 在第(1)(a)款中，在“掛號郵遞”之後加入“或以張貼該通知於有關旅館當眼處的方式”；
- (b) 加入—
  - “(1A) 如根據第(1)(a)款發出的通知是以張貼該通知於有關旅館當眼處的方式送達的，則該通知須以中、英文書寫，而且在提述收件人時，只須提述其在該旅館的身分，而無須述明該人的姓名。”；
- (c) 在第(2)(b)款中，廢除“可進行或安排進行為執行命令而必須進行的”而代以“為執行命令或為消除第(1)(b)(i)款所述的危險或可能遇到的危險或為執行第(1)(b)(ii)款所述的指示（視屬何情況而定），可進行或安排進行必須進行的工程，並可為該等目的而以書面授權任何人進行該”；
- (d) 廢除第(3)(b)款而代以—
  - “(b) 獲民政事務局局長根據第(2)款授權的任何人及任何公職人員。”；
- (e) 在第(4)款中，廢除“有關旅館可重新開放及可用作旅館”而代以“該命令自該通知指明的日期起停止生效”。



## **10. 關於豁免證明書及牌照的罪行**

第 21 (6) (e) 條現予修訂—

- (a) 在“公職人員”之前加入“人或”；
- (b) 廢除“20 (2) (a) 條”而代以“20 (2) 條以”。

## **11. 加入條文**

現加入—

### **“21A. 檢控罪行的時限**

根據本條例的條文進行的檢控，須在以下限期之內展開—

- (a) 犯了有關罪行之後 6 個月內；或
  - (b) 有關罪行為監督所發現或知悉之後 6 個月內，
- 兩個限期中以較遲者為準。”。

## **12. 以“處所”代替“房產”**

第 2、8、18、20 及 21 條現予修訂，廢除所有“房產”而代以“處所”。

### **摘要說明**

本條例草案的主要目的是修訂《酒店東主條例》（第 158 章）、《酒店房租稅條例》（第 348 章）及《旅館業條例》（第 349 章），分別指明在該 3 條條例中“酒店”及“旅館”的定義的範圍；並對《旅館業條例》（第 349 章）作出修訂，使該條例所訂的發牌制度能更暢順地運作。

2. 條例草案第 2 及 3 條修訂《酒店東主條例》（第 158 章）—

- (a) 草案第 2 條修訂第 2 條中“酒店”的定義，使該定義的範圍包括有以下情況的場所：該場所的東主顯示他會提供住宿予任何人或任何特定類別、界別、組別或種類的人；而該人可以是親自或透過代理人或代表而到臨的人，亦可以是經或未經事先預定而親自或透過代理人或代表而到臨的人；
- (b) 草案第 3 條將“旅客”修訂為“人”。

3. 條例草案第 4 條修訂《酒店房租稅條例》（第 348 章）第 2 條中“酒店”的定義，其目的與草案第 2 條的相同。

4. 條例草案第 5 至 12 條修訂《旅館業條例》（第 349 章）—

- (a) 草案第 5 條修訂第 2 條中“旅館”的定義，其目的與草案第 2 條的相同；
- (b) 草案第 6 及 7 條將牌照最長的有效期延展至 36 個月；
- (c) 草案第 8 及 9 條容許以張貼通知於旅館當眼處的方式送達通知。此外，草案第 9 條亦容許任何獲民政事務局局長以書面授權的人在封閉令有效時進入旅館進行任何糾正工程；
- (d) 草案第 10 條規定任何獲民政事務局局長授權進行糾正工程的人在封閉令有效時進入任何處所並不屬犯罪；
- (e) 草案第 11 條延展檢控《旅館業條例》（第 349 章）所訂罪行的時限；
- (f) 草案第 12 條將“房產”修訂為“處所”。

Extracted copies of  
部份內容

Hotel Proprietors Ordinance,Cap.158  
《酒店東主條例》（第 158 章）

Hotel Accommodation Tax Ordinance,Cap.348  
《酒店房租稅條例》（第 348 章）

Hotel and Guesthouse Accommodation Ordinance,Cap.349  
《旅館業條例》（第 349 章）

## CHAPTER 158

## HOTEL PROPRIETORS

To amend the law relating to inns and innkeepers.

[1 February 1962]

## 1. Short title

This Ordinance may be cited as the Hotel Proprietors Ordinance.

## 2. Interpretation

In this Ordinance, unless the context otherwise requires—  
“hotel” (酒店) means an establishment held out by the proprietor as offering food, drink and, if so required, sleeping accommodation, without special contract, to any traveller presenting himself who appears able and willing to pay a reasonable sum for the services and facilities provided and who is in a fit state to be received.

[cf. 1956 c. 62 s. 1(3) U.K.]

## 3. Inns and Innkeepers

(1) An hotel within the meaning of this Ordinance shall, and any other establishment shall not, be deemed to be an inn; and the duties, liabilities and rights which immediately before the commencement of this Ordinance by law attached to an innkeeper as such shall, subject to the provisions of this Ordinance, attach to the proprietor of such an hotel and shall not attach to any other person.

(2) The proprietor of an hotel shall, as an innkeeper, be under the like liability, if any, to make good to any guest of his any damage to property brought to the hotel as he would be under to make good the loss thereof.

[cf. 1956 c. 62 s. 1(1) & (2) U.K.]

## 第 158 章

## 酒店東主條例

本條例旨在修訂有關旅店及旅店主理人的法律。

[1962 年 2 月 1 日]

## 1. 簡稱

本條例可引稱為《酒店東主條例》。

## 2. 釋義

在本條例中，除文意另有所指外——

“酒店”(hotel) 指任何場所，其東主展示該場所是一處無需特別合約而向到臨該場所的任何旅客供應食物飲品，並於有需要時提供住宿的地方，而該旅客是看來有能力並願意為所提供的服務及設施繳付合理款項，而且是在宜於予以接待的狀況的。

[比照 1956 c. 62 s. 1(3) U.K.]

## 3. 旅店及旅店主理人

(1) 本條例意指的酒店須當作為旅店，而任何其他場所均不得當作為旅店；在緊接本條例生效日期前，依法加於旅店主理人身上作為旅店主理人的職責、法律責任和權利，除本條例條文另有規定外，須加於本條例意指的酒店東主身上，而不得加於其他人身上。

(2) 酒店東主對帶進其酒店的財物所受的損毀作為旅店主理人向其任何客人所須負的法律責任(如有的話)，與假使該財物損失時，他須負的補償責任相同。

[比照 1956 c. 62 s. 1(1) & (2) U.K.]

#### 4. Modifications of liabilities and rights of innkeepers as such

(1) Without prejudice to any other liability incurred by him with respect to any property brought to the hotel, the proprietor of an hotel shall not be liable as an innkeeper to make good to any traveller any loss of or damage to such property except where—

- (a) at the time of the loss or damage sleeping accommodation at the hotel had been engaged for the traveller; and
- (b) the loss or damage occurred during the period commencing with the midnight immediately preceding, and ending with the midnight immediately following, a period for which the traveller was a guest at the hotel and entitled to use the accommodation so engaged.

(2) Without prejudice to any other liability of his or to the provisions of section 5 or other right of his with respect thereto, the proprietor of an hotel shall not as an innkeeper be liable to make good to any guest of his any loss of or damage to, or have any lien on, any vehicle or any property left therein.

(3) Where the proprietor of an hotel is liable as an innkeeper to make good the loss of or any damage to property brought to the hotel, his liability to any one guest shall not exceed the sum of one thousand dollars in respect of any one article, or the sum of two thousand dollars in the aggregate, except where—

- (a) the property was stolen, lost or damaged through the default, neglect or wilful act of the proprietor or some servant of his; or
- (b) the property was deposited by or on behalf of the guest expressly for safe custody with the proprietor or some servant of his authorized, or appearing to be authorized, for the purpose, and, if so required by the proprietor or that servant, in a container fastened or sealed by the depositor and when property is deposited in accordance with the provisions of this paragraph, the liability of the proprietor as an innkeeper to any one guest in respect of the loss of or damage to property so deposited shall not exceed the value thereof as declared by or on behalf of the guest at the time of deposit; or
- (c) at a time after the guest had arrived at the hotel, either the property in question was offered for deposit as aforesaid and the proprietor or his servant refused to receive it, or the guest or some other guest acting on his behalf endeavoured to offer the property in question but, through the default of the proprietor or a servant of his, was unable to do so: Provided that the provisions of this paragraph shall not apply where the value of

#### 4. 作為旅店主理人的法律責任及權利的修改

(1) 在不影響酒店東主就帶進其酒店的財物所承擔的其他法律責任的原則下，酒店東主無須作為旅店主理人而就該等財物的損失或損毀向任何旅客作出補償，但下列情況除外——

- (a) 在財物遭受損失或損毀時，該酒店已保留住宿地方給該旅客；及
- (b) 在某段期間內，該旅客是該酒店的客人，並有權使用已如此保留的住宿地方，而損失或損毀事件的發生時間，是介乎緊接該段期間之前的午夜與緊接該段期間之後的午夜之間。

(2) 在不影響酒店東主的其他法律責任、不影響第 5 條條文、亦不影響酒店東主就第 5 條所享有的其他權利的原則下，酒店東主無須作為旅店主理人而就任何車輛或任何留在車輛內的財物的損失或損毀向其客人作出補償，對該等車輛或財物亦無留置權。

(3) 凡酒店東主作為旅店主理人有法律責任就帶進其酒店的財物的損失或損毀作出補償時，他對任何一名客人的法律責任，以每件物件計，不得超逾款額 \$1,000，以總數計，不得超逾款額 \$2,000，但下列情況除外——

- (a) 上述財物被竊、遺失或遭受損毀，是因該東主或其受僱人的過失、疏忽或故意作為所致；或
- (b) 上述客人或其代表，將上述財物表明為作安全保管而存放在該東主處或存放在獲該東主為此目的而授權或看來已獲如此授權的受僱人處，而且在該東主或受僱人提出要求時，已將上述財物放入由存放人繫牢或密封的容器內；凡財物依照本段條文的規定存放，則該東主就如此存放的財物的損失或損毀而作為旅店主理人須對任何一名客人所負的法律責任，不得超逾該客人或其代表在存放該財物時所報稱的該財物的價值；或
- (c) 當客人抵達酒店後，已如上述般提出存放有關財物，而酒店東主或其受僱人拒絕接收，又或客人或代表他的其他客人曾盡力提出將有關財物存放，而由於酒店東主或其受僱人的過失以致無法辦到；但客人或其代表在提出存放財物時，報稱財物價值超過 \$10,000 者，則本段條文並不適用；

## 第 348 章

## CHAPTER 348

### 酒店房租稅條例

### HOTEL ACCOMMODATION TAX

本條例旨在就酒店房租徵稅。

To impose a tax on hotel accommodation charges.

[1966 年 7 月 1 日]

[1 July 1966]

#### 1. 簡稱

本條例可引稱為《酒店房租稅條例》。

#### 1. Short title

This Ordinance may be cited as the Hotel Accommodation Tax Ordinance.

#### 2. 釋義

在本條例中，除文意另有所指外——

“住房” (accommodation) 指由酒店東主租予客人住宿，或供客人作住宿用途的任何備有家具的房間或套房，其中並包括通常在其內所提供的家具、用具及裝置；

“房租” (accommodation charge) 指須由客人或其代表為所獲提供的住房而繳付的款項；

“社團” (society) 指任何會社、公司、學校、機構、協會或不論冠以任何名稱的其他團體；

“酒店” (hotel) 指任何場所，而該場所的東主顯示他在其提供的住房的範圍內，會在無需特別合約的情況下，提供住房予任何到臨該場所並且有能力和願意為所獲提供的服務及設施繳付合理款項而本身狀況亦屬宜於獲得接待的人；

“稅”、“稅項” (tax) 指本條例所徵收的酒店房租稅；

#### 2. Interpretation

In this Ordinance, unless the context otherwise requires—

“accommodation” (住房) means any furnished room or suite of rooms hired by the proprietor of the hotel to guests, or for the use of guests, for lodging and includes such furnishings, appliances and fittings as are normally provided therein;

“accommodation charge” (房租) means the sum payable by or on behalf of guests for accommodation received;

“Collector” (署長) means the Collector of Stamp Revenue; (*Replaced 31 of 1981 s. 65*)

“hotel” (酒店) means any establishment, the proprietor of which holds out to the extent of his accommodation that he will provide, without special contract, accommodation to any person presenting himself who is able and willing to pay a reasonable sum for the services and facilities provided and is in a fit state to be received;

“payment” (繳付) means any payment in money or money's worth made by any person to the proprietor of a hotel for accommodation received whether by that person or by some other person and includes any credit, book entry, set off or any other act by which a debt due to the proprietor of a hotel for accommodation charges may be discharged;

## CHAPTER 349

## HOTEL AND GUESTHOUSE ACCOMMODATION

An Ordinance to provide for the regulation, control and safety of hotel and guesthouse accommodation and for connected purposes.

[The Ordinance, except sections 5,  
8 to 17 and 21 : 1 June 1991  
Sections 5, 8 to 17 and 21 : 1 September 1991] L.N. 217 of 1991

## PART I

## PRELIMINARY

## 1. Short title

This Ordinance may be cited as the Hotel and Guesthouse Accommodation Ordinance.

## 2. Interpretation

In this Ordinance, unless the context otherwise requires—  
“Appeal Board” (上訴委員會) means the Appeal Board constituted under section 15;  
“Authority” (監督) means the Hotel and Guesthouse Accommodation Authority constituted under section 4;  
“certificate of exemption” (豁免證明書) means a certificate of exemption issued or renewed under section 6;  
“Chairman” (主席) means the person appointed as Chairman of the Appeal Board under section 14;  
“hotel” and “guesthouse” (旅館) mean any premises whose occupier, proprietor or tenant holds out that, to the extent of his available accommodation, he will provide sleeping accommodation for any person presenting himself who appears able and willing to pay a reasonable sum for the services and

## 第 349 章

## 旅館業條例

本條例對規管及管制旅館住宿、旅館的安全及有關連的目的作出規定。

[本條例除第 5、8 至 17 及 21 條外 : 1991 年 6 月 1 日  
第 5、8 至 17 及 21 條 : 1991 年 9 月 1 日] 1991 年第 217 號法律公告

## 第 I 部

## 導言

## 1. 簡稱

本條例可引稱為《旅館業條例》。

## 2. 釋義

在本條例中，除文意另有所指外——

“上訴委員會”(Appeal Board)指根據第 15 條組成的上訴委員會；

“主席”(Chairman)指根據第 14 條獲委任為上訴委員會主席的人；

“旅館”(hotel、guesthouse)指任何房產(《床位寓所條例》(第 447 章)的條文所適用的處所除外)，其佔用人、東主或租客顯示在他可提供的住宿的範圍內，他會提供住宿予任何到臨該房產，及看似是有能力及願意為所提供的服務及設施付出合理款額，並且其狀況是宜於接待的人；(由 1994 年第 24 號第 36 條修訂)

facilities provided and is in a fit state to be received, but exclude any premises to which the provisions of the Bedspace Apartments Ordinance (Cap. 447) apply; (Amended 24 of 1994 s. 36)

“licence” (牌照、牌) means a licence issued under section 8 or renewed under section 9;

“Secretary” means the Secretary for Home Affairs.

### 3. Exclusion by order

(1) The Secretary may by order—

(a) in relation to any hotel or any guesthouse, for reasons connected with the situation, means of ingress or egress, design, construction, size or equipment therein; or

(b) in relation to any type or description of hotel or guesthouse, for reasons connected with any such type or description,

exclude any hotel or any guesthouse or type or description of hotel or guesthouse from the application of this Ordinance.

(2) An order under subsection (1) shall be published in the Gazette and may—

(a) be made subject to such conditions;

(b) be made subject to such geographical limitations;

(c) have effect for such period of time; or

(d) have such partial application,

as may be indicated in the order.

### 4. Constitution of Hotel and Guesthouse Accommodation Authority

(1) The Secretary shall be the Hotel and Guesthouse Accommodation Authority for the purposes of this Ordinance.

(2) The Authority may authorize in writing any public officer to perform or exercise on behalf of the Authority all or any of the functions which are imposed or conferred on the Authority by this Ordinance.

## PART II

### RESTRICTION ON OPERATION OF HOTELS AND GUESTHOUSES

#### 5. Restriction on operating hotel or guesthouse unless exempted or licensed

(1) Any person who on any occasion operates, keeps, manages or otherwise has control of a hotel or a guesthouse in respect of which neither of the conditions indicated in subsection (2) has been satisfied commits an offence and is liable on conviction to a fine of \$200,000 and to imprisonment for 2 years and to a fine of \$20,000 for each day during which the offence continues.

“牌照”、“牌”(licence)指根據第8條發出或根據第9條續期的牌照；

“監督”(Authority)指根據第4條出任的旅館業監督；

“豁免證明書”(certificate of exemption)指根據第6條發出或續期的豁免證明書。

### 3. 藉命令使旅館不受本條例規限

(1) 政務司可——

(a) 就任何旅館，以關乎該旅館的地點，出入方法、設計、建造、大小、或其內的設備的理由；或

(b) 就任何種類的旅館，以關乎該種類的理由，

藉命令豁免某一所或某一種類旅館，使其不受本條例規限。

(2) 第(1)款下的命令須在憲報刊登，並——

(a) 可受其顯示的條件規限；

(b) 可受其顯示的地域限制規限；

(c) 可在其顯示的期間內有效；或

(d) 可按其顯示作局部性適用，

而命令亦可不顯示上述事項。

### 4. 旅館業監督

(1) 政務司須為本條例的目的擔任旅館業監督。

(2) 監督可用書面授權任何公職人員代表監督行使或執行本條例委予或賦予監督的所有或任何職能。

## 第 II 部

### 限制經營旅館

#### 5. 限制在未獲豁免或發牌的情況下經營旅館

(1) 凡任何人經營、開設、管理或以其他方式控制旅館，而就該旅館來說，第(2)款所指的任何條件均不獲符合，即屬犯罪，一經定罪，可處罰款 \$200,000 及監禁 2 年，並可就罪行持續期間的每一天另處罰款 \$20,000。



- (2) The conditions referred to in subsection (1) are—
- that a certificate of exemption has been issued under section 6 in respect of the hotel or the guesthouse and is for the time being in force; or
  - that a licence has been issued under section 8 in respect of the hotel or the guesthouse and is for the time being in force.
- (3) It shall not be a defence that a person charged with an offence under subsection (1) did not know that neither of the conditions indicated in subsection (2) had been satisfied.

## PART III

## CERTIFICATES OF EXEMPTION

## 6. Application for and issue of certificate of exemption

(1) An application by a person for a certificate of exemption in respect of a hotel or a guesthouse shall be made to the Authority in such form and manner as the Authority may determine.

(2) The Authority may issue a certificate of exemption and impose such conditions as he thinks fit.

(3) A certificate of exemption issued under this section shall—

- be in such form as the Authority may determine;
- be endorsed with the conditions, if any, imposed under subsection (2);
- not take effect except on payment of the prescribed fee; and
- authorize the person in whose name it is issued to operate, keep, manage or otherwise have control of a hotel or a guesthouse for a period of 12 months, or such lesser period as may be indicated therein.

(4) The Authority may, upon application made to him in such form and manner as he may determine and on payment of the prescribed fee, renew a certificate of exemption.

(5) The Authority may revoke a certificate of exemption issued under this section by notice in writing served either personally or by registered post on the person to whom it was issued.

(6) A certificate of exemption or a copy thereof purporting to be certified under the hand of the Authority shall, unless the contrary is proved, be evidence of the facts stated therein as at the date of such certificate of exemption or such copy thereof and shall be received in evidence without further proof.

(2) 第(1)款所指的條件為——

- 政務司已根據第6條就有關旅館發出豁免證明書，而證明書在當時有效；或
- 監督已根據第8條就有關旅館發出牌照，而牌照在當時有效。

(3) 被控觸犯第(1)款的人，不得以不知道第(2)款所指的任何條件均不獲符合作為免責辯護。

## 第 III 部

## 豁免證明書

## 6. 豁免證明書的申請及發出

(1) 任何人就一所旅館申請豁免證明書，須以監督指定的表格及方式向他提出。

(2) 監督可發出豁免證明書，並施加他認為合適的條件。

(3) 根據本條發出的豁免證明書——

- 須符合監督指定的格式；
- 如受根據第(2)款施加的條件規限，則須在其上批註該等條件；
- 在訂明費用清繳後方可生效；及
- 須批准獲發證明書的人經營、開設、管理或以其他方式控制一所旅館，期限為12個月或證明書顯示的較短期間。

(4) 凡獲發豁免證明書的人，以監督指定的表格及方式向監督提出申請，監督可在訂明費用清繳後把豁免證明書續期。

(5) 監督可用專人或以掛號郵遞，向獲發豁免證明書的人送達書面通知，撤銷該證明書。

(6) 除非反證成立，否則看來是經由監督簽署的豁免證明書或證明書副本，即為其內所述事項在該證明書或副本日期當日的情況的證據，並須接受為證據而無須進一步證明。

(7) A certificate purporting to be certified under the hand of the Authority that a certificate of exemption has or has not been issued in respect of a hotel or a guesthouse shall, unless the contrary is proved, be evidence of the facts stated therein as at the date of such certificate and shall be received in evidence without further proof.

#### 7. Transfer of certificate of exemption

(1) Except as provided in this section a certificate of exemption shall not be transferable.

(2) The Authority may, upon application to him in such form and manner as he may determine, and on cause being shown to his satisfaction, permit the transfer to another person of a certificate of exemption in respect of a hotel or a guesthouse until its expiration and such transfer shall be endorsed on the certificate of exemption.

(3) Where a certificate of exemption is transferred under subsection (2), a reference in section 6(5) or 21(2) to a person to whom the certificate of exemption was issued shall, as respects that certificate of exemption, be construed as a reference to the person to whom the certificate of exemption has been transferred.

### PART IV

#### LICENCES

#### 8. Application for and issue of licence

(1) An application by a person for a licence in respect of a hotel or a guesthouse shall be made to the Authority in such form and manner as the Authority may determine.

(2) The Authority shall, on receipt of an application under subsection (1), determine the application—

(a) by issuing to and in the name of the applicant, a licence for the hotel or the guesthouse imposing such conditions as he thinks fit; or

(b) by refusing to issue a licence to the applicant.

(3) The Authority may refuse to issue a licence in respect of a hotel or a guesthouse on the ground that it appears to him—

(a) that for reasons connected with—

(i) the situation, means of ingress or egress, design, construction, size, equipment, or type of building; or

(ii) the protection of life and property under the Fire Services Ordinance (Cap. 95),

the premises to be used for the hotel or the guesthouse are not fit to be used for the purposes of a hotel or a guesthouse;

(7) 除非反證成立，否則凡有看來是經由監督簽署核證的證明書，而該證明書證明監督已經或沒有就某一旅館發出豁免證明書，則該證明書即為其內所述事項在該證明書日期當日的情況的證據，並須接受為證據而無須進一步證明。

#### 7. 豁免證明書的轉讓

(1) 除按本條規定外，豁免證明書不得轉讓。

(2) 凡就旅館獲發豁免證明書的人，以監督指定的表格及方式向監督提出申請，並提出令監督滿意的理由，監督可批准該人把該證明書轉讓予另一人持有，直至原來的有效期屆滿為止，轉讓須批註於證明書上。

(3) 凡豁免證明書根據第(2)款由獲發該證明書的人轉讓予另一人，就該證明書而言，第6(5)或21(2)條中對前者的提述，須解釋為提述後者。

### 第 IV 部

#### 牌照

#### 8. 牌照的申請及發出

(1) 任何人就一所旅館申請牌照，須以監督指定的表格及方式向他提出。

(2) 監督收到根據第(1)款提出的申請後，須就申請作出以下決定——

(a) 就有關旅館向申請人發出以申請人為持牌人的牌照並施加監督認為適當的條件；或

(b) 拒絕發出牌照予申請人。

(3) 監督有權以他認為有以下情況為理由，而拒絕就有關旅館發出牌照——

(a) 將會用作有關旅館的房產，因為關乎——

(i) 地點、出入方法、設計、建造、大小、設備或建築物種類；或

(ii) 在《消防條例》(第95章)下對生命及財產的保障，  
的理由，不適合用作旅館；

(4) A renewal of a licence under this section before the expiration of the licence shall take effect on the day following the day of its expiration.

(5) Any licence in respect of which an application for renewal is made under this section and which expires prior to the determination of such application shall, unless such application is withdrawn, or the licence is cancelled or suspended under section 10, remain in effect until the determination by the Authority of such application.

(6) A renewal of a licence under this section shall have effect on the day following the day upon which the licence would have expired but for subsection (5), for a period of 12 months or such lesser period as may be indicated by the Authority at the time of renewal.

#### 10. Cancellation and suspension of licence or refusal to renew licence, and amendment or variation of conditions of a licence

The Authority may at any time by notice in writing served upon the person holding a licence in respect of a hotel or a guesthouse cancel or suspend the licence or refuse to renew the licence or amend or vary any condition of the licence—

- (a) on any ground in section 8(3)(a), (b) or (c) which would have entitled him to refuse to issue a licence in respect of that hotel or that guesthouse;
- (b) on the ground that that person has been convicted of—
  - (i) an offence against this Ordinance; or
  - (ii) an indictable offence in respect of that hotel or that guesthouse;
- (c) on the ground that, in respect of that hotel or that guesthouse or the persons accommodated therein—
  - (i) any of the provisions of this Ordinance have been or are being contravened; or
  - (ii) any requirement, order or direction made or given under this Ordinance has not been complied with by the person holding the licence in respect of the hotel or the guesthouse;
- (d) on the ground that any condition of the licence has not been or is not being complied with by the person holding the licence in respect of the hotel or the guesthouse;
- (e) on the ground that it appears to him that—
  - (i) the hotel or the guesthouse has ceased to be operated as such or to exist; or
  - (ii) such person has ceased to operate, keep, manage or otherwise control the hotel or the guesthouse.

(4) 凡牌照在原來有效期結束前根據本條續期，續期在原來有效期屆滿日的翌日生效。

(5) 如在監督對根據本條提出的續期申請作出決定前，有關牌照的有效期已告屆滿，除非續期申請被撤回，或該牌照根據第 10 條被撤銷或暫時吊銷，否則該牌照在監督作出決定前繼續有效。

(6) 牌照如沒有第 (5) 款規定便會在某日期滿，批准該牌照續期須在期滿日的翌日生效，續期後的有效期為 12 個月 或監督在續期時指定的較短期間。

#### 10. 撤銷及暫時吊銷牌照、拒絕將牌照續期、修訂或更改牌照條件

監督可隨時向就某旅館發出的牌照的持有人送達書面通知，以下列理由撤銷或暫時吊銷該牌照，或拒絕將該牌照續期，或修訂或更改該牌照的條件——

- (a) 第 8(3)(a)、(b) 或 (c) 條所指本可令監督有權拒絕就該旅館發出牌照的情況；
- (b) 該人——
  - (i) 被裁定觸犯本條例；或
  - (ii) 被裁定就該旅館觸犯其他可公訴罪行；
- (c) 在該旅館或其住客方面——
  - (i) 有人曾經或正在違反本條例規定；或
  - (ii) 就該旅館發出的牌照的持有人曾不遵守根據本條例作出或給予的要求、命令或指示；
- (d) 就該旅館發出的牌照的持有人，曾經或正在違反有關牌照指明的條件；
- (e) 監督認為——
  - (i) 該旅館已停止以旅館形式經營或已不再存在；或
  - (ii) 就該旅館發出的牌照的持有人已停止經營、開設、管理或以其他方式控制該旅館。

(2) If a person appointed by the Chairman under section 15(1) to hear an appeal is precluded by illness, absence from Hong Kong or any other cause from exercising his functions, the Chairman may appoint any other person from the panel referred to in section 14(4) to act in his place.

(3) The hearing of an appeal may be continued notwithstanding a change in the membership of the Appeal Board.

#### 17. Case may be stated for Court of Appeal

(1) The Appeal Board may, before an appeal is determined, refer any question of law arising in the appeal to the Court of Appeal for determination by way of case stated.

(2) On the hearing of the case the Court of Appeal may amend the case or order it to be sent back to the Appeal Board for amendment.

### PART VI

#### SUPERVISION OF HOTELS AND GUESTHOUSES

#### 18. Inspection of hotels and guesthouses

Any public officer authorized by the Authority in writing for the purposes of this section may, without warrant and on production, if so required, of his written authorization and his identity card issued under the Registration of Persons Ordinance (Cap. 177)—

- (a) at all reasonable times enter and inspect any hotel, any guesthouse or any premises which he has reason to suspect are used as or for the purposes of a hotel or a guesthouse;
- (b) require any person taking part in the operation or management of a hotel or a guesthouse to produce any book, document or other article relating to the operation or management of that hotel or that guesthouse or to any other activity in respect of the hotel or the guesthouse or to furnish any information relating to such operation, management or activity;
- (c) remove for further examination any book, document, apparatus, equipment or any other article which he has reason to suspect is evidence of the commission of an offence against this Ordinance, or is evidence of a ground for the cancellation of the licence issued in respect of a hotel or a guesthouse; and
- (d) do such things as are necessary for the inspection of a hotel or a guesthouse or for the inspection or testing of any equipment, works or system used for or in connection with the operation, keeping, management or other control of the hotel or the guesthouse.

(2) 如獲主席根據第 15(1) 條委任聆訊上訴的人因生病、不在香港或任何其他原因不能行使職能，主席可從第 14(4) 條所指的小組中，委任其他成員暫代該人席位。

(3) 上訴委員會的成員縱有變動，上訴聆訊仍可繼續。

#### 17. 可向上訴法院提交案件述要

(1) 上訴委員會可在對上訴作出決定之前，以提交案件述要方式，將上訴中出現的法律問題交由上訴法院決定。

(2) 上訴法院就案件述要进行聆訊時，可將案件述要修改，或命令將其發還上訴委員會修改。

### 第 VI 部

#### 旅館的監管

#### 18. 視察旅館

獲監督為本條的目的書面授權的公職人員，可無須令狀而——

- (a) 在任何合理時間進入及視察任何旅館，或他有理由懷疑被用作旅館或為旅館的目的而使用的房產；
  - (b) 要求任何參與經營或管理旅館的人，出示關於旅館或就旅館進行的活動的簿冊、文件或其他物品，亦可要求上述人士提交與上述經營、管理或活動有關的資料；
  - (c) 帶走他有理由懷疑是觸犯本條例的罪行的證據(或構成撤銷就旅館發出的牌照的理由的證據)的簿冊、文件、儀器、設備或其他物品以作進一步審閱；及
  - (d) 辦理為視察旅館，或檢查或測試有關設備或系統而需要辦理的事情，上述有關設備或系統指為用於旅館的經營、開設、管理或其他方式的控制，或在與此有關連的情況下使用的設備或系統，
- 但上述公職人員如遇到要求，須先行出示有關的授權文件及根據《人事登記條例》(第 177 章)發給他的身分證，方可行使上述權力。

**19. Secretary may direct remedial measures**

(1) The Secretary may, in respect of any hotel or any guesthouse, by notice in writing, give such directions as appear to him to be required to secure that—

- (a) the safety of guests in the hotel or the guesthouse is promoted in a proper manner;
  - (b) adequate apparatus and equipment required as safeguards against fire or other hazard are provided in the hotel or the guesthouse; and
  - (c) the provisions of this Ordinance are complied with.
- (2) A notice under subsection (1)—
- (a) shall be served by registered post upon the person being the operator, keeper, manager or otherwise having control of the hotel or the guesthouse; and
  - (b) shall indicate a period of time within which the directions shall be complied with.

**20. Order for closure and cessation of use of premises as a hotel or a guesthouse**

(1) Where it is proved to the satisfaction of the District Court on the sworn information of the Secretary that—

- (a) not less than 24 hours notice in writing served either personally or by registered post of his intention to swear the information was given by the Secretary to the person being the operator, keeper, manager or otherwise having control of the hotel or the guesthouse; and
- (b) it appears to the Secretary that—
  - (i) there is any danger or risk of danger to guests in the hotel or the guesthouse; or
  - (ii) the requirements of a direction given under section 19(1) have not been complied with in respect of the hotel or the guesthouse within the period of time indicated in the notice served under that section,

the District Court shall make an order in writing directing that the hotel or the guesthouse shall close and shall cease to be used as a hotel or a guesthouse until the Secretary gives notice under subsection (4).

(2) On the making of an order under subsection (1)—

- (a) any police officer or any public officer authorized by the Authority in writing for the purposes of this section may remove from the hotel or the guesthouse any person found in the hotel or the guesthouse and any person being in the hotel or the guesthouse in contravention of subsection (3);

**19. 政務司可指示糾正措施**

- (1) 政務司可就任何旅館藉書面通知作出他認為需要的指示，以確保——
- (a) 該旅館以恰當方式促進其內住客的安全；
  - (b) 該旅館備有足夠的所需器材及設備，以預防火警或其他災患；及
  - (c) 本條例的條文獲遵守。

(2) 根據第(1)款發出的通知——

- (a) 須以掛號郵遞送達予經營、開設、管理或以其他方式控制有關旅館的人；及
- (b) 須指定遵從指示的限期。

**20. 政務司可下令停止將房產用作旅館**

(1) 凡地方法院在考慮政務司作出的起誓告發後，信納——

- (a) 政務司作出上述告發的意向的通知，已在宣誓前 24 小時或以前以專人或掛號郵遞送達予經營、開設、管理或以其他方式控制有關旅館的人；及
- (b) 政務司認為——
  - (i) 旅館內任何住客遇到危險或可能遇到危險；或
  - (ii) 政務司根據第 19(1) 條就任何旅館作出指示，但根據該條送達的通知內的規定，在該通知指定的期限內未獲遵從，

法院須藉書面命令，指示該旅館須予封閉及在政務司根據第(4)款給予通知之前，停止用作旅館。

(2) 凡地方法院根據第(1)款作出命令，——

- (a) 任何警務人員或獲監督為本條的目的而以書面授權的公職人員，可把在有關旅館內發現的人或在違反第(3)款的情況下在其內逗留的人逐離該房產；

- (b) the Secretary may execute or cause to be executed any work necessary to give effect to the order and may recover in the District Court any expenses incurred by reason of any such work from the person being the operator, keeper, manager or otherwise having control of the hotel or the guesthouse as a debt due to the Crown.
- (3) No person other than —
- (a) a police officer in the course of his duty; or
- (b) any public officer authorized by the Secretary under subsection (2)(a),
- shall enter or be in the hotel or the guesthouse while an order under subsection (1) is for the time being in force.
- (4) An order under subsection (1) shall remain in force until the Secretary by notice in writing—
- (a) served either personally or by registered post on the person being the operator, keeper, manager or otherwise having control of the hotel or the guesthouse; or
- (b) posted in a conspicuous part of the hotel or the guesthouse,
- declares that the hotel or the guesthouse may open and may be used as a hotel or a guesthouse.

## PART VII

## MISCELLANEOUS

## 21. Offences in relation to certificates of exemption and licences

- (1) Any person who on any occasion operates, keeps, manages or otherwise has control of a hotel or a guesthouse in respect of which a certificate of exemption has been issued—
- (a) in contravention of any condition of the certificate of exemption so issued;
- (b) in any premises other than the premises indicated in the certificate of exemption so issued; or
- (c) under any name other than the name of the hotel or the guesthouse indicated in the certificate of exemption so issued,
- commits an offence.
- (2) Where any condition of a certificate of exemption is contravened, the person in whose name the certificate of exemption was issued shall be guilty of an offence unless he adduces evidence which proves that—

- (b) 政務司可進行或安排進行為執行命令而必須進行的工程，因工程而承擔的支出，可作為拖欠官方的債項由政務司在地方法院向經營、開設、管理或以其他方式控制有關旅館的人追討。
- (3) 除以下人士外，任何人不得在根據第(1)款作出的命令的有效期間內，進入有關旅館或在其內逗留——
- (a) 正在執行職務的警務人員；或
- (b) 獲政務司根據第(2)(a)款授權的公職人員。
- (4) 根據第(1)款作出的命令持續生效，直至政務司藉——
- (a) 由專人或掛號郵遞送達予經營、開設、管理或以其他方式控制有關旅館的人；或
- (b) 張貼於有關旅館當眼處，
- 的書面通知，宣布有關旅館可重新開放及可用作旅館為止。

## 第 VII 部

## 雜項

## 21. 關於豁免證明書及牌照的罪行

- (1) 凡監督就一所旅館發出豁免證明書，任何人——
- (a) 在違反證明書的條件的情況下；
- (b) 在證明書顯示的房產以外的房產內；或
- (c) 以證明書顯示的該旅館名稱以外的名稱，
- 經營、開設、管理或以其他方式控制該旅館，即屬犯罪。
- (2) 凡有人違反豁免證明書的條件，除非獲發有關豁免證明書的人能提出證據證明以下情況，否則他亦屬犯罪——

- (e) not being a police officer in the course of his duty or a public officer authorized by the Secretary in writing under section 20(2)(a), enters or is in a hotel or a guesthouse while an order under section 20(1) is for the time being in force, commits an offence.

(7) Any person who commits an offence under this section is liable to a fine of \$100,000 and to imprisonment for 2 years and to a fine of \$10,000 for each day during which the offence continues.

## 22. Regulations

(1) The Governor in Council may by regulation provide for or in relation to—

- (a) the adequacy, suitability and use of apparatus or equipment in hotels or guesthouses;
- (b) reports and information to be supplied to the Authority in respect of hotels or guesthouses;
- (c) the design, structure, hygiene and sanitation of hotels or guesthouses;
- (d) the precautions to be taken against fire or other hazard likely to endanger the lives or welfare of guests in hotels or guesthouses;
- (e) the lodging of appeals under section 13(3) and the practice and procedure of the Appeal Board;
- (f) the fees to be charged for any matter prescribed or permitted by this Ordinance;
- (g) generally, carrying into effect the provisions of this Ordinance.

(2) Any regulation made under this section may—

- (a) prohibit the performance of particular acts without the consent of the Authority;
- (b) authorize the Authority to require or prohibit the performance of particular acts; and
- (c) require particular acts to be performed to the satisfaction of the Authority.

(3) The Authority may, by notice in writing to the person being the operator, keeper, manager or otherwise having control of a hotel or a guesthouse, waive wholly, partly or conditionally the requirements of any regulation in respect of that hotel or that guesthouse and may amend or withdraw any such notice.

(4) Regulations made under this section may provide that a contravention thereof shall be an offence punishable by a fine not exceeding \$100,000 and a term of imprisonment not exceeding 2 years and punishable by a fine not exceeding \$10,000 for each day during which the offence continues.

- (e) 既不是正在執行職務的警務人員，亦不是獲政務司根據第 20(2)(a) 條書面授權的公職人員，而在根據第 20(1) 條作出的命令有效期間，進入有關旅館或在其內逗留。

(7) 任何人犯本條下的罪行，可處罰款 \$100,000 及監禁 2 年，並可就罪行持續期間的每一天另處罰款 \$10,000。

## 22. 規例

(1) 總督會同行政局可訂立規例對以下事項或就以下事項作出規定——

- (a) 持牌旅館的儀器或設備的充足程度、適合程度及使用情況；
- (b) 就持牌旅館向監督提交的報告及資料；
- (c) 持牌旅館的設計、結構及衛生情況；
- (d) 須針對火警或其他相當可能危害持牌旅館住客性命或健康的災患採取的預防措施；
- (e) 根據第 13(3) 條提出上訴，以及上訴委員會的實務及程序；
- (f) 就本條例訂明或容許的任何關乎持牌旅館的事項收取費用；
- (g) 施行本條例規定的一般規定。

(2) 根據本條訂立的規例可——

- (a) 禁止在未獲監督同意下作出規例指明的作為；
- (b) 授權監督規定或禁止作出若干作為；及
- (c) 規定作出若干作為須令監督滿意。

(3) 監督可給予經營、開設、管理或以其他方式控制旅館的人書面通知，完全、局部或有條件地放棄就該旅館施行任何規例的規定，並可修訂或撤銷該等通知。

(4) 根據本條訂立的規例，可規定違犯規例屬於犯罪，並可規定犯者可被處不超過 \$100,000 的罰款和不超過 2 年的監禁，及可就罪行持續期間的每一天另處罰款不超過 \$10,000。

- (b) that such premises do not comply with any requirement relating to design, structure, fire precautions, health, sanitation and safety set out in the Buildings Ordinance (Cap. 123); or
  - (c) that the operation, keeping, management and other control of the hotel or the guesthouse would not be under the continuous and personal supervision of the person to whom the licence is issued.
- (4) Where the Authority refuses to issue a licence in respect of a hotel or a guesthouse under subsection (3), he shall make a written order, properly dated and signed, to that effect stating the ground in subsection (3) on which he has refused to issue a licence and shall send a copy thereof by registered post to the applicant, at the address last known to the Authority.
- (5) A licence issued under this section shall—
- (a) be in such form as the Authority may determine;
  - (b) be endorsed with the conditions, if any, imposed under subsection (2)(a);
  - (c) not take effect except on payment of the prescribed fee; and
  - (d) authorize the person in whose name it is issued to operate, keep, manage or otherwise have control of a hotel or a guesthouse for a period of 12 months, or such lesser period as may be indicated therein.
- (6) A licence or a copy thereof purporting to be certified under the hand of the Authority shall, unless the contrary is proved, be evidence of the facts stated therein as at the date of such licence or such copy thereof and shall be received in evidence without further proof.
- (7) A certificate purporting to be certified under the hand of the Authority and stating that a hotel or a guesthouse is licensed or is not licensed shall, unless the contrary is proved, be evidence of the facts stated therein as at the date of such certificate and shall be received in evidence without further proof.

## 9. Renewal of licence

- (1) A person holding a licence in respect of a hotel or a guesthouse may, not less than 3 months before the expiration of the licence, apply for the licence to be renewed for a period of time being not more than 12 months.
- (2) An application for renewal of a licence shall be made to the Authority in such form and manner as the Authority may determine.
- (3) The renewal of a licence under this section shall not take effect except on payment of the prescribed fee and the Authority may in respect of the renewed licence impose any condition in addition to or instead of any condition previously imposed by him under section 8.

- (b) 該等房產不符合《建築物條例》(第123章)所列的關於設計、結構、防火、健康、衛生及安全的規定；或
  - (c) 旅館的經營、開設、管理及其他方式的控制，將不會在獲發牌照的人的持續親自督導下進行。
- (4) 凡監督根據第(3)款拒絕就旅館發出牌照，他須發出一份載明這項決定的書面命令，命令須註明日期和妥為簽署，並說明監督根據第(3)款中那一理由拒絕發出牌照，並須將命令一份以掛號郵遞送交申請人，郵件須寄往監督所知的申請人最新地址。
- (5) 根據本條發出的牌照——
- (a) 須符合監督指定的格式；
  - (b) 如受根據第(2)(a)款施加的條件規限，則須在其上批註該等條件；
  - (c) 在訂明費用清繳後方可生效；及
  - (d) 須批准獲發給牌照的人經營、開設、管理或以其他方式控制一所旅館，期限為12個月或牌照指明的較短期間。
- (6) 除非反證成立，否則看來是由監督簽署核證的牌照或牌照副本，即為其內所述事項在該牌照或副本日期當日的情況的證據，並須接受為證據而無須進一步證明。
- (7) 除非反證成立，否則凡有看來是經由監督簽署核證的證明書，證明一所旅館已獲發牌或未獲發牌，則該證明書即為其內所述事項在該證明書日期當日的情況的證據，並須接受為證據而無須進一步證明。

## 9. 牌照續期

- (1) 牌照持有人可在牌照的有效期限滿前3個月以前，申請把牌照續期不超過12個月。
- (2) 牌照續期的申請須以監督指定的表格及方式向監督提出。
- (3) 根據本條續期的牌照須在訂明費用繳清後方可生效，而監督可就獲續期的牌照施加條件，以補充或代替先前根據第8條施加的條件。



IN THE SUPREME COURT OF HONG KONG

(Appellate Jurisdiction)

MAGISTRACY APPEAL NO. 1176 OF 1995

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BETWEEN

THE QUEEN

Respondent

and

TRIVIEW LIMITED

Appellant

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Coram : Hon Duffy J in Court

Date of hearing : 14th February 1996

Date of delivery of judgment : 1st March 1996

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JUDGMENT  
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This was an appeal against a conviction for operating or managing a hotel without there being in force a Certificate of Exemption issued under Section 6 or a licence issued under s.8 of the *Hotel and Guesthouse Accommodation Ordinance*, Cap.349.

On 1st September 1990, the *Hotel and Guesthouse Accommodation Ordinance* was enacted and required all existing hotels to apply for a Certificate of Exemption. The Appellants, Triview Limited, owner of Hong Kong Parkview Club & Suite, applied for a Certificate of Exemption on 16th August 1991. A Certificate of Exemption was issued and that expired on

31st August 1992. The exemption was renewed for a period of one year until 31st August 1993. Thereafter, the Appellants were required to apply for a licence under s.8 of the *Ordinance*. This, they refused to do.

It is important to note that the two exemptions had been applied for by the Appellants without prejudice to the Appellants' right to contend that they were not running a hotel. There was some correspondence between the Appellant and the Licensing Authority, and in November 1994, following advice from the Attorney General's Chambers, Mr Stephenson, an Assistant Director with the Home Affairs Department, at the behest of the Licensing Authority, conducted an undercover operation which involved him booking and occupying a room at Parkview for two days. He telephoned on the morning of 25th November and took occupancy of the room that same evening. He was allocated Room No.819. When he checked in he was advised by Parkview that they had no single suites available so they gave him a double-suite at no extra cost. He was also asked to sign a check-in form which included this statement:-

“Tenancy of Hong Kong Parkview Suites is subject to the Terms and Conditions as set out in the Tenancy Agreement/Rental Offer and this Registration Form. Signing this Registration Form signifies that you have accepted the said Terms and Conditions. The said TENANCY AGREEMENT/RENTAL OFFER Hong Kong Parkview apartments has been signed by your company.

Any extensions or renewals of this tenancy is subject to the Terms and Conditions of the Rental Offer and this or a revised Registration Form (which will set out the revised term and rental).”

Mr Stephenson occupied Room 819 and his evidence was, in effect, that he enjoyed facilities which would normally be provided by a first class hotel.

The definition of “hotel” which is the same as the definition for “guesthouse” is given in s.2 of the *Hotel and Guesthouse Accommodation Ordinance, Cap.349*, and is as follows:-

“‘Hotel’ and ‘guesthouse’ mean any premises whose occupier, proprietor or tenant holds out that, to the extent of his available

accommodation, he will provide sleeping accommodation for any person presenting himself who appears able and willing to pay a reasonable sum for the services and facilities provided and is in a fit state to be received ....”

It is certainly true that the Appellants provided sleeping accommodation for Mr Stephenson, and there was no denial by the Appellants that they held themselves out as providing such. The trial and indeed the appeal turned on the meaning of the words “for any person presenting himself?”

There was no evidence before the Court of any instance of the Appellants providing sleeping accommodation to anyone who simply walked in off the street. Indeed, there was evidence before the Court of an internal memorandum to all staff members of the Appellants that accommodation was not to be provided to anyone who came in off the street.

It is submitted by Mr Harris, who appeared for the Appellants on the appeal, that the words “to any person presenting himself” are surplusage, unless they are intended to distinguish hotel accommodation from any other sleeping accommodation. He submitted that the words are included because the *Ordinance* is regulating what traditionally were referred to as “inns”. He submitted that at common law, an “inn” provided accommodation for persons who arrived seeking it, rather than persons who had a previous arrangement for accommodation for a fixed period. He referred me to *Halsbury’s Laws of England, 4th ed., Vol.24, #1105, note 7, Parker v. Flint (1699) 12 Mod. Rep. 254*. There it is stated that the definition of “hotel” in the *Hotel Proprietors Act 1956* excludes establishments which fall outside the definition of a common law inn. This, he submitted, is not surprising, because the *Act* has to draw a distinction between establishments which provide conventional hotel accommodation, and lodgings or self-contained apartments, otherwise its ambit would extend to the latter. He submitted that it could not have been the intention of the legislature for the *Ordinance* to apply to all sleeping accommodation,

otherwise it would extend to most forms of lettings of residential accommodation. He submitted, therefore, that as the evidence does not show that Triview would accept any person presenting himself and seeking accommodation or who arrived seeking accommodation, then the premises cannot be described as an hotel.

Mr Reading, for the Crown, submitted that a person presenting himself could be a person either with or without a prior booking.

I was persuaded by the Appellants' arguments as it seemed to me quite clear that the definition contained in the *Ordinance* described what we know as a conventional hotel operation. That would include the holding out that the accommodation, if vacant, was available to anyone who presented himself with or without prior booking, and who was able to pay for that accommodation. If it is not proved that an establishment provided such a service, then such an establishment would not fall within the definition of an hotel.

There was no evidence before the learned Magistrate that Triview accepted guests in that way. Therefore, the learned Magistrate was wrong to find that Triview were operating an hotel. This appeal is allowed.

(LM. Duffy)

Judge of the High Court

Mr John Reading, S.A.C.P., for Crown

Mr Jonathan Harris (Richards Butler) for Appellant

**Section 26 of the Magistrates Ordinance ( Cap.227 )**

26. Limit of time for complaint or information

In any case of an offence, other than an indictable offence, where no time is limited by any Ordinance or statute for making any complaint or laying any information in respect of such offence, such complaint shall be made or such information laid within 6 months from the time when the matter of such complaint or information respectively arose.

裁判官條例第 26 條

凡條例或法規對罪行（可公訴罪行除外）並無規定作出申訴或提出告發的時效，則申訴或告發須分別於其所涉事項發生後起計的 6 個月內作出或提出。

Cref : \... \mis \mag.doc / cl

中文文本第 1 稿：28.7.98  
( 相當於英文文本第 1 稿：28.7.98 )

中文文本第 2 稿：20.8.98  
( 相當於英文文本第 2 稿：20.8.98 )

《旅館業（豁免）令》

HOTEL AND GUESTHOUSE ACCOMMODATION ( EXCLUSION ) ORDER

## 《旅館業（豁免）令》

（根據《旅館業條例》（第 349 章）  
第 3 條訂立）

### 1. 生效日期

本命令自《1998 年酒店住宿（雜項條文）條例》（1998 年第 號）第 5 條開始實施的日期起實施。

### 2. 豁免

現豁免附表所指明的處所，使其不受本條例規限。

#### 附表

〔第 2 條〕

1. 《幼兒服務條例》（第 243 章）的條文所適用的處所。
2. 《會社（房產安全）條例》（第 376 章）的條文所適用的處所。
3. 《床位寓所條例》（第 447 章）的條文所適用的處所。
4. 《安老院條例》（第 459 章）的條文所適用的處所。
5. 符合以下情況的處所：在該處所內，所有住宿的提供基準均為就每次出租而言，最短租出期間為連續 28 天，而如該次出租因任何理由縮短至少於連續 28 天，將不會免收、退還或減收費用。

民政事務局局長

1998 年          月          日

註釋

本命令豁免某些處所，使其不受《旅館業條例》（第 349 章）的規限。