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**Urgent By Fax No. 25727007**  
27 October 1998

Mr. Ben Chong  
Assistant Secretary  
Home Affairs Bureau  
31/F Southorn Centre  
130 Hennessy Road  
Hong Kong

Dear Mr. Chong,

**Hotel Accommodation (Miscellaneous Provisions) Bill 1998**  
**《1998年酒店住宿(雜項條文)條例草案》**

I am scrutinizing the legal and drafting aspects of the above Bill with a view to advising Members. I have noted the following points and shall be grateful if you can let me have your early comments.

1. The purpose of this Bill is to amend the scope of the definitions of "hotel" and "guesthouse" in the Hotel Proprietors Ordinance (Cap. 158) 《酒店東主條例》, the Hotel Accommodation Tax Ordinance (Cap. 348) 《酒店房租稅條例》 and the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) 《旅館業條例》. From an ordinary reader's point of view, the short titles of these Ordinances may give rise to the impression that Cap. 158 and Cap. 348 refer only to "hotel" and not "guesthouse", that "guesthouse" can be exempted from hotel accommodation tax and that guesthouse proprietors are not subject to the Hotel Proprietors Ordinance. Would opportunity be taken to amend the short titles of these two Ordinances as well as the short title of this Bill as to add the words "and guesthouse" after the word "hotel" in the English version and to change "酒店" to "旅館" in the Chinese version? Incidentally, it is noted that in the short title of this Bill, "accommodation" is translated as "住宿" while in Cap. 348, it is "房". As in Cap. 349, it is not even translated but instead with the word "業" added.

2. The Chinese equivalents of the terms of "hotel", "guesthouse" and "hotel and guesthouse" in the Laws of Hong Kong are quite confusing. For ease of reference, I now list out the terms as follows:-

No	Term in English	Term in Chinese	Ordinance
1.	hotel	(a) 酒店	in hotel Accommodation Tax Ordinance (Cap. 348)
		(b) 旅館	in Building Ordinance (Cap. 123)

No	Term in English	Term in Chinese	Ordinance
2.	guesthouse	(a) 賓館	in Building Ordinance (Cap. 123)
		(b) 旅館	in Hotel and Guesthouse Accommodation Ordinance (Cap. 349)
3.	Boarding house	(a) 旅館	in Landlord and Tenant (Consolidation) Ordinance (Cap. 7)
		(b) 供膳食的旅舍	in Census and Statistics Ordinance (Cap. 316)
		(c) 公寓	in Noise Control Ordinance (Cap. 400)

The above are some examples only (see Annex A). Should there be consistency in these terms? In particular for the word "旅館", it can be "hotel", "guesthouse", "boarding house" as well as "hotel and guesthouse".

3. On the definitions of "hotel" and "guesthouse", it is noted that there are some drafting differences in the three Ordinances.

- (a) In the Hotel Proprietors Ordinance (Cap. 158), "hotel" means "an establishment held out by the proprietor as offering sleeping accommodation to any person 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".
- (b) In the Hotel Accommodation Tax Ordinance (Cap. 348), "hotel" means "any establishment, the proprietor of which holds out to the extent of his accommodation that he will provide 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".
- (c) In the "Hotel and Guesthouse Accommodation Ordinance" (Cap. 349), "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".

Is there any special reason for using different versions? For example, in Cap. 158, "sleeping accommodation"(住宿) is mentioned while in the other two Ordinances, "to the extent of his (available) accommodation" (住房) is emphasised. Is there any particular meaning for making such emphasis?

In the English version of Cap. 348, what is the link between "the establishment" and "the accommodation"? Is there any particular meaning for using "who is able and willing to pay" instead of "who appears able and willing to pay"?

In Cap. 349, the word "premises" is used instead of "establishment". The word "premises" may mean a room, shop, building or any definite area. It can be residential premises or commercial premises. Would lettings or sub-lettings of furnished residential premises of less than 28 days be included in this definition? I enclose an advertisement of serviced rooms charging both monthly and daily rates (with contact telephone number deleted) for your reference (Annex B). Would such serviced rooms be regarded as "hotel" under this Ordinance? Would university hostels which sometimes offer short term tenancies of less than 28 days to visiting professors or students be regarded as "hotel" by this definition and therefore has to pay hotel accommodation tax and profits tax? Further, would private hospitals, rehabilitation centres and similar organizations offering beds to patients and changing linen for them every day be included in this definition? Would premises offered by an employer to his overseas employees coming to stay in Hong Kong for less than 28 days be also included? Would students, patients, employees be regarded as "any person of any particular group" as now defined?

4. Clause 9 amends section 20 of Cap. 349. Section 20(2)(b) states that "政務司可進行.....必須進行的工程" whilst after amendment by clause 9(d) and if enacted, section 20(3)(b) will read as "獲民政事務局局長.....". I realize that by the Declaration of Change of Titles (General Adaptation) Notice 1997 (L.N. 362 of 1997), the Chinese title of the Secretary for Home Affairs has been amended. But would the Administration take this opportunity to amend the Chinese title of the Secretary in this Ordinance so that consistency can be achieved?

5. During the Bills Committee meeting held on 22 October 1998, a District Court case holding that it is illegal for guesthouses to be opened in residential premises has been mentioned. Could you please let me have a copy of that judgment?

I look forward to hearing from you soon and shall be grateful if you can let me have your reply in both Chinese and English languages.

Yours sincerely,

(Anita Ho)  
Assistant Legal Adviser

Encls.

cc: D of J (Attn: Ms Anastasia M H Kwong, Senior Govt Counsel)  
Mr. Jimmy MA, LA