

立法會秘書處法律事務部的信頭
Letterhead of Legislative Council Secretariat Legal Service Division

Your Ref: HAB/CR/8/10/6 Pt. 5
Our Ref: LS/B/10/98-99
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By Fax No. 25727007
27 October 1998

Mr. Ben Chong
Assistant Secretary
Home Affairs Bureau
31/F Southorn Centre
130 Hennessy Road
Wanchai
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 Buildings Ordinance (Cap. 123)

No	Term in English	Term in Chinese	Ordinance
2.	guesthouse	(a) 賓館	in Buildings 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

CHAPTER 158

第 158 章

HOTEL PROPRIETORS

酒店東主條例

"hotel" (酒店) 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.

"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。

(2) For the purposes of "any person presenting himself" in the definition of "hotel" in subsection (1) and only for those purposes—

(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) "any person" includes any person of any particular category, class, group or description;
- (b) "presenting himself" includes—
 - (i) any person presenting himself in person;
 - (ii) any person presenting himself through an agent or a representative;
 - (iii) any person presenting himself, whether in person or through an agent or a representative, by facsimile, letter, telegram, telephone or any other means;
 - (iv) any person presenting himself, whether in person or through an agent or a representative, with prior booking or notice;
 - (v) any person presenting himself, whether in person or through an agent or a representative, without prior booking or notice.

- (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。

"domestic premises" (住用處所) means

- (a) any premises used wholly or mainly for residential purposes and constituting a separate household unit; and
- (b) any part of a hotel or boarding-house that is let by the keeper of the hotel or boarding-house to a guest;

"住用處所" (domestic premises) 指——

- (a) 全部或主要作居住用途，並且作為獨立住戶單位的任何處所；及
- (b) 由酒店或公寓管理人租予客人的任何酒店或公寓部分；

PART IV

DELIVERY AND COMPLETION OF SCHEDULES

12. Delivery of schedules

(1) For the purpose of carrying out a statistical inquiry, the Commissioner may direct any census officer to deliver, in accordance with such direction, to any specified person one or more schedules for completion by such person.

(2) For the purpose of taking a census of population, the Commissioner may direct any census officer to deliver or cause to be delivered to the person in charge of any of the following premises—

(a) any public or private institution of any kind whatsoever in which inmates reside, whether for payment or otherwise, including any penal, corrective or remand establishment; or

(b) any hotel, boarding house, lodging-house, club or other residential establishment,

a schedule to be completed by that person in respect of the persons who, at the time of taking the census, are in or upon such premises.

第 IV 部

統計表格的送遞及填寫

12. 統計表格的送遞

(1) 為進行統計查詢，處長可指示任何統計員按照其指示向任何指明的人送遞一份或多於一份統計表格，供該人填寫。

(2) 為進行人口普查，處長可指示任何統計員向掌管任何以下處所的人送遞或安排向該人送遞統計表格——

(a) 供人以付款或其他方式入住的任何類別的公立或私營院舍，包括懲治、懲教及羈留機構；或

(b) 任何酒店、供膳食的旅舍、不供膳食的旅舍、會社或其他住宿場所，供該人填報關於在該項普查進行時身在上述處所的人的資料。

"domestic premises" (住宅處所) means premises the subject of a separate letting (including any bed-space, cubicle, room, floor or portion of a floor or building) which are used wholly or primarily for human habitation: (Amended 22 of 1953 s. 2)

Provided that the following shall not be deemed to be domestic premises within the meaning of this definition—

- (a) any building or portion of a building which is used for habitation only by caretakers or watchmen not exceeding 2 in number;
- (b) any building or portion of a building which is used for habitation only by office attendants or their families;
- (c) any particular portion of an hotel or boarding-house which is let by the keeper of such hotel or boarding-house to a guest of such hotel or boarding-house;

"住宅處所"(domestic premises)指獨立出租而完全或主要供人居住的處所(包括床位、小間、房間、整層樓、整層樓的一部分或建築物)：(由1953年第22號第2條修訂)

但以下的處所須不當作本定義所指的住宅處所——

- (a) 只供不超過2名管理員或看守員居住的建築物或建築物的一部分；
- (b) 只供辦公室雜務人員或其家人居住的建築物或建築物的一部分；
- (c) 由主理酒店或旅館的人出租予客人的該等酒店或旅館的任何個別部分；

CHAPTER 349

第 349 章

HOTEL AND GUESTHOUSE ACCOMMODATION

旅館業條例

"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 facilities provided and is in a fit state to be received.

"旅館"(hotel, guesthouse)指任何處所，其佔用人、東主或租客顯示在他可供的住宿的範圍內，他已向到臨該處所的任何人士提供住宿的地方，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；

(2) For the purposes of "any person presenting himself" in the definition of "hotel" and "guesthouse" in subsection (1) and only for those purposes—

(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) "any person" includes any person of any particular category, class, group or description;
- (b) "presenting himself" includes—
 - (i) any person presenting himself in person;
 - (ii) any person presenting himself through an agent or a representative;
 - (iii) any person presenting himself, whether in person or through an agent or a representative, by facsimile, letter, telegram, telephone or any other means;
 - (iv) any person presenting himself, whether in person or through an agent or a representative, with prior booking or notice;
 - (v) any person presenting himself, whether in person or through an agent or a representative, without prior booking or notice.

- (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。

“居住”(habitation) 就建築物或建築物某部分的使用而言，包括將其作為旅館、賓館、公寓、宿舍、集體寢室或類似的住宿設施而使用；(由 1983 年第 73 號第 2 條增補)

“habitation” (居住) in relation to the use of a building, or part of a building, includes use of it for hotel, guest-house, boarding-house, hostel, dormitory or similar accommodation; (Added 73 of 1983 s. 2)

第 348 章

CHAPTER 348

酒店房租稅條例

HOTEL ACCOMMODATION TAX

“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向到臨該場所的任何人士提供住房，而該人士有能力並願意為所提供的服務及設施繳付合理款項，並且是在寬於予以接納的狀況的。

“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.

(2) 在第(1)款中，就“酒店”的定義中的“到臨該場所的任何人士”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；
- (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。

(2) For the purposes of “any person presenting himself” in the definition of “hotel” in subsection (1) and only for those purposes—

- (a) “any person” includes any person of any particular category, class, group or description;
- (b) “presenting himself” includes—
 - (i) any person presenting himself in person;
 - (ii) any person presenting himself through an agent or a representative;
 - (iii) any person presenting himself, whether in person or through an agent or a representative, by facsimile, letter, telegram, telephone or any other means;
 - (iv) any person presenting himself, whether in person or through an agent or a representative, with prior booking or notice;
 - (v) any person presenting himself, whether in person or through an agent or a representative, without prior booking or notice.