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Letterhead of GOVERNMENT SECRETARIAT
民政事務局
HOME AFFAIRS BUREAU

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11 November 1998

Miss Anita Ho
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Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Miss Ho,

Hotel Accommodation (Miscellaneous Provisions) Bill 1998

Thank you for your letter dated 27 October 1998. We have consulted the relevant Bureaux and Departments. The Administration's comments are consolidated in the following paragraphs.

Paragraphs 1 and 2 (short titles and definitions)

The short title of the Hotel and Guesthouse Accommodation Ordinance and its relationship with the Hotel Proprietors Ordinance and Hotel Accommodation Tax Ordinance were deliberated and agreed in the Legislative Council on 1 May 1991 during the Resumption of Second Reading Debate on the Hotel Accommodation Bill 1990. I attach the relevant extracts from Hansard at *Annex 1* for your reference please.

The provisions under the Hotel Proprietors Ordinance (Cap. 158) do not make any reference to "guesthouse". The rights and liabilities of a proprietor operating a hotel or guesthouse in the context of

Cap.158 are the same. The name of the establishment carries no significance. Adding the term “guesthouse” will not improve the coverage of Cap.158 nor make the definition clearer. It is considered inappropriate and unnecessary to amend the short title of Cap.158 as suggested.

The Administration’s view is that every Ordinance serves a different purpose and a definition in a particular Ordinance is not of general application. It is only applicable within that Ordinance and must be read in that context. The purpose of the captioned Bill is not to consolidate or synchronize all the meanings of the cited terms that appear in the different Ordinances. If a review of the definitions of “hotel” and “guesthouse” and similar terms is considered necessary, the hotel and guesthouse industries, among others, should be fully consulted. This will unnecessarily prolong the processing of the Bill which in fact was previously introduced into the Legislative Council in 1996. Further, incorporating such major revisions at this late stage of the Bill is likely to cause provocation and suspicion from the Hon Members and the industries. The review is beyond the scope of the Bill and should be processed, if necessary, as a separate exercise.

Paragraph 3 (drafting differences)

There are no special reasons for using different versions of the definitions of “hotels” and “guesthouse” since the relevant Ordinances were drafted at different times for different purposes. The term “sleeping accommodation” is not defined in both Cap.158 and Cap.349 but is translated as “住宿的地方”. However, “accommodation” is defined in Cap.348 as “any furnished room or suite of rooms.....” thus “住房” is used.

Although the phrase “to the extent of his (available) accommodation” is not used in Cap.158, it is immaterial in the context of Cap.158 which concerns the proprietor's liability for the loss of or damage to a guest’s belongings, and his right to sell such property in order to recover payment for boarding or lodging. The proprietor's right and liability as an innkeeper will not and should not be affected by the extent he holds out his premises as a hotel as long as the damage or loss to the hotel guest's property takes place in the hotel.

In the English version of Cap.348, the link between “the establishment” and “the accommodation” is provided by the words “the proprietor of which”, i.e. it is the proprietor of the establishment who holds out to provide the accommodation. We are not aware of any special meaning for using “who is able and willing to pay” instead of “who appears able and willing to pay”.

Whether a particular establishment falls within the definition of “hotel” and “guesthouse” under Cap.348 or 349 is a question of fact in each case. For university hostels and staff quarters, they are not open to any person presenting himself. As for private hospitals, rehabilitation centres and similar caring organizations, their primary objective is not to provide “accommodation”. Hence all these establishments will not be subject to the application of Cap.348 or 349 since they are outside the legislative intents of the Ordinances. Further, we may consider giving an exclusion order under section 3 of Cap.349 expressly for these establishments if necessary.

Service rooms charging both monthly and daily rates (e.g. the advertisement enclosed to your letter) will be subject to the application of Cap.349 since our intention is to only exclude premises in which all accommodation is exclusively provided for continuous periods of 28 days or more. Please refer to paragraph 9(e) of the Legislative Brief on the Bill. We suspect that the rooms advertised are illegal establishments under Cap 349. The Licensing Authority will follow-up and take enforcement action as appropriate. For hotel accommodation tax purposes, the basis of charging is not the decisive factor. Where the proprietor is carrying on (or is considered to be carrying on) a hotel business, that fact per se does not disable him from conducting a lodging-house business. He may conduct both. In any case, it is a question of fact whether he has received a customer in his capacity of innkeeper or of boarding-house keeper. In the latter case, no hotel accommodation tax will be payable. As for the profits tax case, this will be separately dealt with under the Inland Revenue Ordinance, Cap.112. Generally speaking, all profits arising in or derived from the Hong Kong Special Administrative Region are chargeable to profits tax.

Paragraph 4 (title of SHA)

The change of the Chinese title of the Secretary for Home Affairs from (政務司) to (民政事務局局長) has been effected by the Declaration of Change of Titles (General Adaptation) Notice 1997 (L.N. 362 of 1997). It is not necessary to repeat the amendment in this Bill. The title in the loose-leaf edition of the Laws of Hong Kong will be amended editorially.

Paragraph 5 (court case)

I do not recall that we mentioned a court case at the meeting of the Bills Committee on 20 October 1998. I note that there was a Lands Tribunal case in 1997 whereby the owners' corporation of a building obtained injunctions against two licensed guesthouses operating in the building. The Administration was not party to the case. A copy of the court report is attached at *Annex 2* for your information.

Yours sincerely,

(Francis LO)
for Secretary for Home Affairs

In addition to slightly over 700 existing beneficiaries of the War Memorial Fund and the Far Eastern Relief Fund, the proposed pensions will also benefit new applicants who meet basic eligibility criteria derived from the existing War Memorial Fund Ordinance: in other words, pensions will be paid to persons who, while serving in specified volunteer units, were held in captivity by the enemy and to the widows or widowers of those who were killed during the fighting or who died in subsequent captivity. Civilians who were tortured and the widows or widowers of those executed for acts of resistance will also continue to be eligible.

It is estimated that there are 48 potential applicants who meet the eligibility criteria and will benefit from the removal of the income threshold requirement.

The existing level of benefits under the Hong Kong War Memorial Fund will provide the benchmark for payments under the new pension arrangements. These payments will be reviewed annually in line with inflation.

Sir, this year marks the 50th anniversary of the defence of Hong Kong. The award of pensions is fitting recognition for the suffering which an unbowed group of men and women endured and have had to live with since those painful days.

I move, Sir, that the debate on this motion be now adjourned.

Question on the adjournment proposed, put and agreed to.

Loud clapping in the public galleries

HIS EXCELLENCY THE PRESIDENT: Order! Order! Could I ask those in the galleries, whatever their distinguished service to Hong Kong in the past years, to maintain the order of this Chamber?

SECURITIES (AMENDMENT) (NO. 2) BILL 1991

Resumption of debate on Second Reading which was moved on 17 April 1991

Question on the Second Reading of the Bill proposed, put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

ELECTORAL PROVISIONS (AMENDMENT) (NO. 2) BILL 1991

Resumption of debate on Second Reading which was moved on 13 March 1991

Question on the Second Reading of the Bill proposed, put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

HOTEL ACCOMMODATION BILL 1990

Resumption of debate on Second Reading which was moved on 9 January 1991

Question on Second Reading proposed.

MR CHUNG: Sir, the Hotel Accommodation Bill 1990 seeks to establish a licensing system and a licensing authority for hotels, guesthouses and similar accommodation. The main purpose of the proposed licensing system is to enable Government to deal with fire safety, structural safety, health and hygiene in respect of these establishments more effectively by keeping a comprehensive register of these establishments and by imposing certain necessary requirements and standards for their operation. The Bill was introduced into the Legislative Council on 9 January 1991.

A Legislative Council ad hoc group consisting of seven members was formed to study this Bill. The group held eight meetings including two meetings with the Administration and one meeting with the Hong Kong Hotels Association, the Hong Kong Federation of Hotel Owners Limited and the Hong Kong Tourist Association. Having regard to the views expressed by these interested parties and the Administration, the group considered that the Bill could be improved in a number of areas.

Members spent quite some time considering whether the Bill's present title was an appropriate one. The hotel trade and the Hong Kong Tourist Association were strongly opposed to the Bill being entitled "Hotel Accommodation Bill" for fear that it would encourage sub-standard establishments to claim themselves hotels after obtaining a licence under the new legislation. To prevent this from happening, they suggested that the title of the Bill be changed to "Guest Accommodation Bill". After some discussion, it was agreed unanimously by members of the ad hoc group that a more appropriate title for the Bill should be explored. In reaching this view, the group was conscious of the following considerations:

- (i) first, the strong sentiments expressed by the hotel industry were not without grounds and should not be overlooked;
- (ii) second, the Hotel Proprietors Ordinance and the Hotel Accommodation Tax Ordinance did not have the same problem because they did not carry the same degree of public concern; and
- (iii) finally, a suitably revised title should not be objectionable provided that it would not change or reduce the intended effect of the Bill.

Another area which required amendment was the powers of the licensing authority proposed. Members considered that the powers to be granted to the licensing authority should not be too wide. Instead, they should be confined to areas directly related to the administration of the licensing system such as the inspection of hotels and guesthouses to ensure that the safety requirements were complied with.

In order to enable an applicant whose application for a licence was refused to fully assess his position, the ad hoc group also considered that the reasons for refusal of issue of a licence should be given by the licensing authority and that this should be made clear in the Bill.

The last point made by the ad hoc group which I would like to mention here is about penalty. The maximum penalties for operating without a licence and for contravening certain conditions of the licence proposed in the Bill were the same. The group considered the former offence to be of a more serious nature and, therefore, should attract a heavier punishment.

These views were conveyed to the Administration. After discussion, and having sought the advice of the Law Draftsman, it was agreed that the title of the Bill should be amended to "Hotel and Guesthouse Accommodation Bill 1991". It was also agreed:

- (a) that the clause in which the licensing authority could give directions to any hotel in relation to its operation, upkeep and management should be deleted so as to allay the fear of the industry that the Authority would interfere in the general management of hotels;
- (b) that in the event of an application for a licence being refused, the applicant should be given notice stating the grounds of refusal to enable him to fully assess his position; and
- (c) that the maximum financial penalty for operating without a licence be doubled.

The ad hoc group has been assured by the Administration that the Bill is not intended to include premises let out on periodical tenancy with services or

facilities provided on payment, such as serviced apartments. The Secretary for Home Affairs will no doubt clarify this point in his speech.

Before closing, I must thank my colleagues for their time and efforts in studying this Bill. I also wish to thank the Administration for their understanding and co-operative attitude in compromising on the amendments to be introduced.

Sir, with these remarks, I support the Bill.

MR EDWARD HO: Sir, I rise to support the Hotel Accommodation Bill 1990. The purpose of the Bill is to enable Government to deal with fire safety, structural safety, and health and hygiene matters in hotels, guesthouses and similar accommodation which are presently not licensed.

Although Occupation Permits for these premises may have been obtained, such permits may have been issued either a long time ago when safety and health requirements were of a lower standard than what they are today, or that such permits have been issued for purposes other than what these premises are presently used for. This is especially true for many guesthouses in highrise buildings. The Occupation Permits for such premises would probably have been issued for the purpose of residential accommodation but not for accommodation for transient visitors or for the number of people that would occupy such premises in relation to appropriate fire exits and health requirements.

There has been a lot of concern in respect of safety and health on some of these premises and therefore I support that a form of control, which does not at present exist, should be introduced. In supporting the Bill, I would like to bring up a couple of points for the consideration of the Administration.

There are probably two general categories of such accommodation that we are talking about: the first category being purpose-built hotel buildings, and the second category being guesthouses and holiday flats which were not originally designed as a type of hotel accommodation.

For the first category, where the design of the building was for a purpose-built hotel, then matters of safety and health under the provisions of the then current Buildings Ordinance and various building and fire safety regulations would have been complied with. Some of these buildings may have been built as far back as the early 1960s and even earlier, and it may be necessary for additional fire safety and health requirements to be added to conform with present day standards. I understand that this type of additional requirements for the purpose of licensing may become necessary for even some of our most reputable hotels. In such cases, since the premises concerned were built in compliance of the law, discretion should be given so that any additional requirement would be practical or indeed physically possible. In addition, there

are purpose-built hotels constructed in the last five to 10 years, also with proper Occupation Permits, in which case it would be reasonable to expect that little modifications should be required of them.

Naturally, for premises in the second category which were not purpose-built hotels or guesthouses, they would have to be required to comply fully with modern-day safety and health standards.

With the creation of the Hotel Accommodation Authority, there would be an additional authority dealing with matters of fire safety, structural safety and health and hygiene matters, matters that are also being dealt with by the Building Authority. The latter Authority, through the Buildings Ordinance Office, currently adopts a central processing procedure, co-ordinating with different relevant government departments, in dealing with plans submission. This procedure should in future extend to obtaining comments and approvals on the building plans from the Hotel Accommodation Authority. In other words, when the Building Authority approves a set of general building plans, it should be deemed that the same plans would eventually be approved by the Hotel Accommodation Authority. The development of a hotel requires very heavy financial investments and it would be very unfortunate and unfair if, after a building has been built in accordance with plans approved by the Building Authority and other government departments, it would not be approved by the Hotel Accommodation Authority.

Conversely, when the Hotel Accommodation Authority processes an application for licence under the Hotel Accommodation Ordinance, it should give due account to the fact that the building design has been approved by the Building Authority and other government departments: the Hotel Accommodation Authority should conform very closely to the requirements of the Building Authority and the Fire Services Department in matters of fire safety, structural safety and health and hygiene matters.

Sir, I have used the titles "Hotel Accommodation Bill" and "Hotel Accommodation Authority" as in the Bill, but I understand that, in response to comments from the hotel and tourist industry, these will be amended in the Committee stage. I support those amendments and, with these observations, I support the Bill.

MR BARROW: Sir, I have little to add to the points made by the Honourable CHUNG Pui-lam and the Honourable Edward HO.

The tourism industry has for many years been concerned about the conditions prevailing in guesthouse accommodation and the very real worry that a major incident in those premises would be damaging to the Hong Kong tourism industry.

The decision to implement this legislation was therefore very welcome to the tourism industry. There was however some surprise that the title of the Bill was as per the original proposal. However, the compromise which has now been reached is a sensible one and there is now support for the Bill from the industry.

With these words, I support the Bill.

SECRETARY FOR HOME AFFAIRS: Sir, I am most grateful to the ad hoc group and to Mr CHUNG for the support that they have given to this Bill.

The Administration has also received representations from the Hong Kong Tourist Association, the Hong Kong Hotels Association and the Federation of Hong Kong Hotel Owners Limited. While there is general support for this Bill, the hotel industry has reservations as expressed to us direct on the short title of the Bill and much has been said about how the title should be fixed.

Sir, this Bill essentially deals with the safety of life and limb and is not an attempt to categorize hotels into classes of luxury or whether or not they are purpose built. Indeed if one were to attempt to classify hotels on safety grounds, some of the best known, but older purpose built hotels would probably receive a classification inferior to some establishments in Chung King Mansion. This may sound rather surprising, but is a fact established through vigorous inspections and enforcement of current safety regulations.

The expression "Hotel" follows that in the Hotel Proprietors Ordinance, Cap. 158 and the Hotel Accommodation Tax Ordinance, Cap. 348. It includes hotels, guesthouses and similar sorts of accommodation. However, the ad hoc group, as stated by Mr CHUNG, is of the view that the short title should be amended to "Hotel and Guesthouse Accommodation Ordinance" to dispel possible misunderstanding on the type of establishments subject to the Bill. While I myself do not see any strong reason for amending the title, and making some 80 incidental amendments as well, if strong concern has been expressed, and if the ad hoc group's amendment would fix them, numerous though they may be, then I shall not stand in the way of the amendment.

Sir, anxiety has also been expressed that the scope of control may include monthly and leased tenancies. I would therefore wish to take this opportunity to clarify that the licensing scheme aims at regulating establishments which offer temporary sleeping accommodation to their customers. It is not the intention of the Administration to put under control premises which are let out on monthly or leased tenancies with the exception of the so-called "cage men accommodation" to which I shall refer later in this year.

Arising from discussions with the ad hoc group, I want to give assurances here that although verbal representations will not be entertained under clause

11(1), as to do so would introduce an element of uncertainty as to what representations have actually been made, my staff in the licensing office will be more than happy to meet with any licensees to discuss their problems verbally.

Sir, I will also be moving a number of amendments to the Bill at the Committee stage.

Clause 5(1) of the Bill provides for penalties on conviction for operating a hotel or a guesthouse without a certificate of exemption or a licence as mentioned earlier by Mr CHUNG. The penalties proposed are the same as those set out for contravening the conditions of a certificate of exemption. According to the recommendation of the ad hoc group to which we agreed, I shall be moving an amendment to double the financial penalty without changing the penalty of imprisonment.

It has been suggested that an applicant for a licence should be given notice in the event that the Authority intends to refuse his application under clause 8(3). This suggestion is eminently reasonable and provision to that effect will be proposed to clause 8.

The Administration has received representation from the hotel industry that the power of the Secretary for Home Affairs to give directive regarding the operation and management of a hotel or a guesthouse is too wide and that the Administration should not get involved in such matters. This point was mentioned also by Mr CHUNG in his speech. I am mindful of the primary purpose of the Bill, which is to regulate fire and structural safety in hotels and guesthouses. Accordingly, I shall move an amendment that the original clause 19(1) (a) should be deleted.

Sir, I beg to move.

Question on the Second Reading of the Bill put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

LEGAL AID (AMENDMENT) BILL 1991

Resumption of debate on Second Reading which was moved on 13 March 1991

Question on Second Reading proposed.

MRS TAM: Sir, the Legal Aid (Amendment) Bill 1991, which seeks to give effect to a new system of means testing in assessing eligibility for legal aid and to improve and give statutory effect to certain existing legal aid practices, was introduced into the Legislative Council on 13 March 1991.

A Legislative Council ad hoc group of eight members was formed to study this Bill. The group held three meetings including one meeting with the Administration. The group has also consulted the Hong Kong Bar Association and the Law Society of Hong Kong and their comments on the Bill are, on the whole, favourable.

In the first place, I welcome the new financial capacity approach in assessing eligibility. At present, an applicant is means tested separately on his capital and income and he has to satisfy the criteria of both tests before he is eligible. This system works to the disadvantage of persons who have capital above the limit but little or no income, or vice versa. Under the proposed new system, the applicant will be assessed according to his financial resources, which are defined as being the sum of his disposable annual income and capital. This new comprehensive approach will result in fairer eligibility assessment. It will avoid the anomalies of separate capital and income means tests and will result in more people becoming eligible when assessed on their total resources.

Sir, in scrutinizing the Bill, Members have expressed concern on a number of matters. The first concern is about the adoption of a financial capacity of \$120,000. According to the Administration, anyone with a financial capacity in excess of \$120,000 should be able to pay their own legal expenses in all but exceptional cases. The ad hoc group has asked what the additional staff and legal costs would be if the financial capacity limit were revised to \$130,000. The Administration estimates that this may involve additional expenditure of several million dollars. The ad hoc group accepts the financial limit of \$120,000 at this stage but feels that it should be reviewed from time to time.

The ad hoc group is aware that several years ago, some applications for legal aid were made for the purpose of delaying legal proceedings. This is because an application for legal aid has the effect of staying legal proceedings for 42 days to enable the application to be considered. Such incidents were particularly frequent in cases involving possession of domestic properties by landlords. Members were worried that the legal aid system could be unduly abused and legal proceedings unnecessarily delayed. However, the Administration has advised that the number of such cases has been greatly reduced in recent years and that problems in this area have not been serious enough to warrant genuine concern. Moreover, under regulation 11, the Director of Legal Aid may make an order that no consideration shall be given to any future application by a person whose conduct amounts to an abuse of the legal aid facilities.