

香港酒店業主聯會的信頭  
**Letterhead of The Federation of Hong Kong Hotel Owners Limited**

Our Ref: 087/2000/ML

May 16, 2000

The Hon Ronald ARCULLI, JP  
Chairman  
Bills Committee  
Buildings (Amendment) Bill 2000  
C/o Room 2718 Jardine House  
1 Connaught Place  
Central, Hong Kong

Dear Donald,

**Re: Hotel Concessions**

On behalf of the Federation of Hong Kong hotel Owners, I would like to state our position as follows regarding the Bills on Buildings (Amendment) Bill 2000:

- 1) We welcome the Administration's policy intent to consider granting hotel concessions and other similar supporting facilities to be exempted from Gross Floor area (GFA) calculations.
- 2) We consider the offence provisions appropriate if hotel concessions are misused. But we strongly object the offence provisions as contained in section (8) (a) as there are already adequate provisions to deal with unauthorised "change of use". Our position in this regard is enclosed at Annex 1.
- 3) However, we have strong reservation on paragraph (5) (a) and (b) under the heading "Regulation Added" which states "(5) For the purpose of paragraph (4), if since a hotel building or the hotel part of a building has been put into use: -
  - (a) no license issued under section 8 or renewed under section 9 of the Hotel and Guesthouse Accommodation Ordinance (Cap 349) is in effect in respect of the hotel concerned; or
  - (b) an order of exclusion is in effect under section 3 of that Ordinance in respect of the Hotel concerned, then any use of the building, or of the hotel part of the building in whole or in part shall be deemed to be a change of the use to a use other than that of a hotel"

If a hotel owner or operator changes the use of the hotel concessions in whole or in part, paragraph (5) (a) or (b) will apply and constitute an offence and hotel license will be revoked under such circumstances. On the other hand, under the conditions of not having a hotel license due to fire improvement works or any other similar circumstances under negotiation with the Licensing Authority, the offence of change of use is totally inappropriate.

Since the Administration cannot clarify the above situation and in the absence of the clarification from Home Affairs Bureau, we consider it appropriate to defer the part on hotel concessions under the Bills until a much clearer picture is in place.

Thank you very much for your urgent attention.

Yours sincerely,

Michael LI  
Executive Director

Encl. Annex 1

CC: Mr Francis LO, Home Affairs Bureau  
Mr Mike ROWSE, Commissioner for Tourism

The Federation of Hong Kong Hotel Owners  
Submission  
Bills Committee on Buildings (Amendment) Bill 2000

The Federation of Hong Kong Hotel Owners supports the Bureau to review the Buildings Regulations and give hotel concessions with statutory backing. The Federation has the following observation and comment regarding the proposed regulation :

1) Concessions which are unique and integral to hotel operations.

The Federation observes that under section (3)(b)(i), (ii) and (iii) of the proposed regulation that the mentioned facilities which are unique and integral to the normal hotel operations include many but should not be limited. There are some other facilities which are also unique and integral, for example, IT functions like computer room, arts room for making art works, etc are not included.

The Federation wishes the Bureau to clarify that a certain degree of flexibility would be in place to allow individual officers to include other facilities which are also unique and integral to hotel operations which are not specified under section (3)(b)(i), (ii) and (iii). The reason is that hotel operations may change in response to the future need of the tourism and hotel industry. Disney theme hotels may be a good example.

2) Offence provisions.

Whilst, we agree in principle to incorporate the existing practice into legislation, we strongly object the offence provisions as contained in section (8)(a) which says “any proprietor ... or any owner or occupier ... who contravenes section (5) or (6) shall be liable on conviction to a fine at level 6 and to imprisonment for 2 years”.

As we all are aware, the owner of a hotel is often not the operator and he may not be aware of any change of use of the exempted areas. It is not fair to hold him liable (especially imprisonment) for acts without his knowledge.

After reviewing the current provisions in the Building Ordinance and Building Planning Regulations, the Federation feels that there are already adequate provisions to deter unauthorised “change of use” and thus (8)(a) and (8)(b) are not necessary.

In the Building (Planning) Regulations, there is another provision Reg. 23 (3)(b) for exemption of areas (in nature, exemption of area is also kind of concession) for uses such as carpark, loading/unloading and M/E rooms etc and there is no offence provisions for unauthorised change of use of these areas in a building in the Building Planning Regulations.

Instead there are provisions dealing with “offences” in the Building Ordinance. Section 25 deals with change of use of “a building”. By definition, building includes part of a building.

Under Section 40 “offences” :

- (2)(a) deals with notice to the Building Authority required under Section 25 (1) and the penalty is “\$10,000 fine and 6 months imprisonment”
- (1B)(b) deals with failure of compliance with Building Authority’s order and the penalty is “\$50,000 fine and 1 year imprisonment”

In short, the Federation thinks there are already adequate provisions in the Ordinance stating :

- a) Owner’s obligation to notify B.A. for any change of use.
- b) B.A. has power to order compliance.
- c) Different levels of penalties for different levels of contravention.

We hope we have put our position in order, and we would be more than happy to discuss with you further.

\* \* \* \* \*

March 18, 2000