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By Fax

4 May 2000

Mrs Mary Tang
Clerk to Panel
Legislative Council
Legislative Council Building
8 Jackson Road
Central, Hong Kong

Dear Mrs Tang,

Bills Committee: Buildings (Amendment) Bill 2000
Meeting on 8 May 2000

Thank you for sending us copies of the four representations commenting on the Buildings (Amendment) Bill 2000, from The Federation of Hong Kong Hotel Owners, The Hong Kong Institution of Engineers, The Hong Kong Institute of Architects and The Real Estate Developers Association of Hong Kong. To facilitate the deliberation of this Bills Committee, we provide the Administration's initial comments on the concerns raised by the individual organisations:-

A. The Federation of Hong Kong Hotel Owners (copy at Annex A)

We welcome the Federation's support to review the Building (Planning) Regulations to provide statutory backing to hotel concessions. The Federation has concerns on:-

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

During the drafting stage of the Bill, we have consulted the Federation on the proposals relevant to the proposed hotel concessions. The Federation requests in its submission that the Planning and Lands Bureau clarify whether a certain degree of flexibility would be in place to allow the inclusion of other facilities which are also unique and integral to hotel operations. As proposed in new Regulation 23A(3)(iv) of the Building (Planning) Regulations, we would consider granting appropriate concessions to “other similar supporting facilities”.

(2) Offence provisions

The Federation is of the view that there already exist adequate offence provisions in the Buildings Ordinance, and the Federation objects to the proposed section 23A(8)(a) under the Building (Planning) Regulations. The objective of increasing the penalty level is to create an adequate deterrent, taking into account the potential financial gains which would be derived from unauthorised change of use. The existing section 25 in the Buildings Ordinance appears to be too narrow in scope to cover the change of use under the proposed Building (Planning) Regulations Regulation 23A(4) and (6). Therefore the new provisions are necessary.

B. The Hong Kong Institution of Engineers (copy at Annex B)

We welcome the Institution’s support of the proposed amendments in the Bill. The Institute had the following concerns:

Regarding the access facilities for telecommunications and broadcasting services, the Government will issue a Practice Note for Authorised Persons and Registered Structural Engineers (PNAP). The PNAP will provide guidelines and typical designs for reference of the professionals and the industry.

In terms of policing of hotel concessions, we do not anticipate that additional resources will be needed solely for the purpose of monitoring the hotel concessions. We will rely on the Hotel and Guesthouse Accommodation Authority and public reports to assist the Building Authority to police the concessions.

On the level of fees provided for in the Buildings Ordinance, the Buildings Department regularly does costing exercises of its fees and charges and will propose appropriate adjustments. These will be put forward for Members' consideration in future as amendments to the Building (Administration) Regulations.

C. The Hong Kong Institute of Architects (copy at Annex C)

We welcome the Institute's general support of the various proposals in the Bill. The Institute raised a question on the status of hotel guests and whether hotel guests will be taken as "occupiers" in the context of the offence provision. In the context of the Amendment Bill, hotel guests will not be considered as occupiers as they are not in exclusive possession of any hotel room and their stays are only temporary.

D. The Real Estate Developers Association of Hong Kong (copy at Annex D)

We welcome the Association's support of the proposed amendments in the Bill.

Yours sincerely,

(Johnny H. K. CHAN)
for Secretary for Planning and Lands

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 (3)(a) which says “any proprietor ... or any owner or occupier who contravenes section (4) 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 abort, 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 21, 2000

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Your ref: CB1/BC/10/99

Annex B

31 March 2000

By Fax and by Post
(Fax No: 2877 8024)

Miss Becky Yu
for Clerk to Bills Committee
Bills Committee on Buildings (Amendment) Bill 2000
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Miss Yu

Bills Committee on Buildings (Amendment) Bill 2000
- Comments from the HKIE

Thank you for your letter dated 17 March 2000 to Ir Prof C C Chan, our President, inviting comments on the above captioned Bill. Comments from the Institution are submitted as follows for the Bills Committee's consideration.

- (1) The proposed amendments are supported in principle. They have been discussed very fully in the Authorised Persons and Structural Engineers Committee and the Building Sub-committee of LBAC for some time.
- (2) We would welcome the Government to announce early the review of other fees provided for in the Buildings Ordinance, particularly in order to ensure a more rational fee structure e.g. for the plan processing fee.
- (3) Regarding the access facilities for telecommunication and broadcasting services, it is suggested that the Government considers issuing some typical design of such facilities for guidance in the design of building layout plans.

www.hkie.org.hk

"The Hong Kong Institution of Engineers" is the abbreviation for the prefix "Engineer", used by Corporate Members of the HKIE

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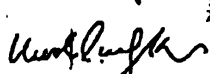
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- (4) Regarding building concessions for hotel development, we strongly support sanction against abuse of such concession. But we caution the need to avoid increasing government staff for policing contravention. A monitoring system should be devised based primarily on public surveillance and report.

Thank you for your kind attention.

Yours sincerely



Ir P K Kwok
Secretary and Director General

cc : Ir Prof C C Chan, President
Ir Dr John Luk, SVP
Ir Dr Ya-leuk Choi



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香港建築師學會
The Hong Kong Institute of Architects

Annex C

5th April, 2000

BY FAX AND POST

Clerk to Bills Committee
Legislative Council, HKSAR
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Attn : Miss Becky Yu

Dear Miss Yu,

**Bills Committee on Buildings (Amendment) Bill 2000
Invitation for Submission**

With reference to your letter of 17th March, 2000 in the above connection, the HKIA is pleased to inform its general agreement to and support for the Bill. We would offer the following views:

1. *Fees for the registration of authorized persons and registered structural engineers* – We have no comment on the amendment which regularise the fee structure.
2. *Performance review of geotechnical design* – We consider this additional safety measure acceptable.
3. *Provision of access facilities for telecommunication and broadcasting services* – We welcome the provisions which are in keeping with the relevant technological requirement.
4. *Provision of floor space and facilities for material recovery and separation of refuse* – We welcome the provisions which promote environmental protection.

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Patron : Mr Tung Chee Hwa, Chief Executive, Hong Kong Special Administrative Region
A Member of The International Union of Architects (UIA), Commonwealth Association of Architects (CAA) and Architects Regional Council Asia (ARCASIA)

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5. *Building concessions to hotel developments* – The concessions obviously aim to encourage hotel development to which our view is neutral. However, we welcome the clarifications and regularisations on plot ratio, site coverage and GFA exemptions. We are slightly concerned that confusion may arise if hotel guests are taken as ‘occupiers’ of a hotel in connection with the offences. The term ‘occupier’ should be defined.
6. *Technical amendment* – No comment.

We apologise for the late reply and thank you for your attention.

Yours sincerely,



THOMAS C. K. LING
Chairman, B.D. Committee

c.c. Mr. Barry Will
Mr. Anthony Ng, BLA

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香港地產建設商會

THE REAL ESTATE DEVELOPERS ASSOCIATION OF HONG KONG

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Room 1403, World-Wide House, 19 Des Voeux Road Central, Hong Kong.
Tel: 2826 0111 Fax: 2845 2621

7 April 2000

Annex D

Clerk to Bills Committee on
Buildings (Amendment) Bill 2000
Legislative Council Secretariat
3/F Citibank Tower
3 Garden Road
Hong Kong
(Attn.: Ms. Becky Yu)

Dear Ms. Yu,

Buildings (Amendment) Bill 2000

Thank you very much for your letter of 17 March inviting our comments on the captioned Bill.

We are in general supportive of the proposed amendments in the captioned Bill and would not have any further comments on individual clauses.

Yours sincerely,

Louis Loong
Secretary General

c.c. Mr. Keith Kerr, Chairman, Executive Committee