

PLB(B) 30/30/88(00)IV

Tel No.: 2848 6297  
Fax No.: 2899 2916

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

香港工程師學會

香港德輔道中11號九龍九字樓  
電話 (852) 2878 4444 傳真 (852) 2877 7771  
電郵 hko-sec@hkia.org.hk 網址 http://www.hkie.org.hk  
總務主任 郭煥基



THE HONG KONG INSTITUTION OF ENGINEERS  
115 Nord Street No 1 Grand Garage Street Causeway Bay HK  
Tel (852) 2878 4444 Fax (852) 2877 7771  
Email hko-sec@hkia.org.hk Website http://www.hkie.org.hk  
Secretary and Director General  
L F F Bunk, CBM, MSA, FRSE, FRCGS, FRSA  
President PCMB, FRSE, FRSA, FRASAB

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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

「工程師」為註冊工程師之專有名稱 「E」為註冊工程師之專有字樣，為香港工程師學會會員之專有字樣 "E" is the abbreviation for the prefix "Engineer", used by Corporate Members of the HKIE

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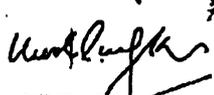
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- (4) Regarding building concessions for hotel development, we strongly support sanction against abuse of such concession. But we caution the need to avoid increasing government staff for policing contravention. A monitoring system should be devised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

5<sup>th</sup> 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 17<sup>th</sup> 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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Person : Mr Tung Chao Hui, 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)

18th Floor, One Hyman Avenue, Causeway Bay, Hong Kong, P.O. Box 20334 Hennessy Road Post Office. Tel : 2511 8382 Fax : 2519 8011, 2610 3364  
香港特別行政區中環18號

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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

香港中環德輔道中十九號環球大廈1403室  
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