

Responses to concerns raised by Members of
the Bills Committee on 8 May 2000
(In accordance with the list of questions provided by
Clerk to the Bills Committee's letter of 9 May 2000)

Question 1: Concessions which are unique and integral to hotel operations

(Interpretation of the proposed regulation 23A(3)(b)(iv) of Building (Planning) Regulations on “other similar supporting facilities”.)

Question 1(a): To review the drafting to reflect the intended scope of supporting facilities to be exempted from Gross Floor Area (GFA) calculations.

Answer 1(a): The present scope of the amendment Regulation 23A(3)(b) reflects the Administration's policy intent. It is also agreed by the Federation of Hong Kong Hotel Owners that such facilities are unique and essential to hotel operation.

Question 1(b): To consider the need for formalizing these supporting facilities (e.g. in the form of Practice Notes); and

Answer 1(b): The criteria for the supporting facilities which may be exempted from GFA calculations will be specified in the Practice Notes for Authorized Persons (AP) and Registered Structural Engineers (RSE). Please see at Annex A a copy of the draft Practice Note on “Hotel Development” for reference.

Question 1(c): To provide a list of types of supporting facilities which are exempted from GFA calculation for members' reference.

Answer 1(c): A list of the types of supporting facilities which may be exempted from GFA calculation is enclosed at Annex B.

Question 2: Offence provisions
(Proposed regulation 23A(8) of Building (Planning) Regulations)

Question 2(a): To consider including the word “knowingly” in proposed regulation 23A(8)

Answer 2(a): We have considered the suggestion carefully. We do not consider that we can exempt hotel owners from the possibility of prosecution for an offence under Regulation 23A(8). The building concessions for a hotel would have been granted by the Building Authority at the request of the hotel owner. It is therefore incumbent upon the hotel owner to ensure that the concessions are not misused – and it is also incumbent upon hotel proprietors or occupiers. This is the position for the existing offence under section 40(1B)(b) regarding material change of use under section 25(2). The amendment Regulation 23A(8) is consistent with this and also encompasses non-material change of use – such as changing a staff canteen into a fast food outlet. We consider that to require an element of knowledge to be proved by the prosecution under Regulation 23(A)(8) would considerably dilute the worth of this regulation and would be inconsistent with similar existing provisions in the main Ordinance.

Question 2(b): To explain the meaning of an occupier in proposed regulation 23A(4), (6) and (7) and whether hotel guests should be regarded as occupiers.

Answer 2(b): The term “occupier” is defined in section 2 of the Buildings Ordinance to mean “in the case of domestic building a person resident therein and in the case of other buildings means a person carrying on an occupation full time in such building.” Technically speaking, a hotel guest answers the description of “occupier” simply because he is a person in possession of a

part of hotel building (e.g. a hotel room for his exclusive enjoyment). As discussed briefly at the last Bills Committee meeting, and on account of the need to effectively and fairly administer and enforce the amendment Regulation, it does not appear acceptable to specifically exclude hotel guests from the offence provisions. If hotel guests commit an offence under the provision of the Regulation, it is only fair and equitable that they be so prosecuted. However, we consider it most unlikely in any realistic circumstances that hotel guests would be prosecuted for an offence of changing the particular use of hotel concessionary areas or facilities.

Question 3: Performance review of geotechnical design
(Clause 3, section 17(1) of Buildings Ordinance)

To consider Members' request to specify in item 6(g) of Column B, section 17(1) that the performance review will be carried out by a Registered Professional Engineer in the geotechnical discipline.

Answer 3 : We are at present consulting the professions on the registration, qualifications and duties of geotechnically qualified persons under the Buildings Ordinance. The suggestion that only Registered Professional Engineer (Geotechnical) could carry out a performance review is narrower than the proposals set out in the consultation paper. For the time being, we suggest that the present situation of not specifying who conducts the performance review be maintained. We will review this once the outcome of the consultation process is completed.

Food & Beverage Store

Cold Food Store

Dry Goods Store

Furniture Store

Uniform/Linen Store

Silverware & Chinaware Store

General Store Room

Laundry

Luggage Storeroom

Staff Rest Room

Staff Canteen

Staff Pantry

Staff Changing Room & Lavatory

Staff Common Room

Electrical Workshop

Mechanical Workshop

Engineering Workshop

Carpentry Workshop

Hotel Development

Building (Planning) Regulation (B(P)Reg) 23A provides the Building Authority with a discretionary power to treat a hotel building or the hotel part of a building as a non-domestic building for site coverage as well as plot ratio purposes and to disregard certain back-of-the-house facilities together with the setting down and picking up areas for hotel users from gross floor area calculations.

2. This practice note sets out the criteria that the Building Authority will take into consideration, for purposes of B(P)Reg 23A, in deciding whether a hotel proposal will be accorded with the favourable treatment detailed in the identified regulation.

3. For hotel buildings to qualify for consideration under B(P)Reg 23A, they should meet the following :

- (a) the site relative to its neighbourhood is suitable for hotel development and the scale of development is compatible with the surrounding developments;
- (b) an adequate number and width of streets are available to serve the proposed hotel and to cope with the additional vehicular and pedestrian traffic generated;
- (c) facilities ancillary to the functions of a hotel (eg dining, entertainment and commensurate with hotel patronage, shopping facilities) are provided;
- (d) the whole building is provided with a central air-conditioning and a centralized hot water supply systems; and
- (e) evidence indicating that the hotel building when completed will be operated as a licensed hotel under the Hotel and Guesthouse Accommodation Ordinance (Cap. 349).

4. Change of use of existing buildings into use as hotels will also be assessed on the above criteria for consideration under B(P)Reg 23A.

5. For purpose of disregarding any floor space used for provision of back-of-the-house facilities that are unique and integral to the normal operation of the hotel, the Building Authority will require to see that the facilities comply with the following criteria :

/ (a) their

- (a) their size is reasonable, their location practical and their design genuine to serve the intended purpose;
- (b) they are accessible to hotel staff only; and
- (c) abuse of use is impossible or unlikely.

6. The provisions of B(P)Reg 23A are intended to apply to bona fide hotels only. The provisions do not apply to service apartments. In considering whether a building is constructed or is intended to be used as service apartment or to provide service apartment, the Building Authority would have as one of his references to the Town Planning Board Guidelines for Development of Service Apartments¹.

7. You are requested to ask developers to remind the hotel proprietors and the owners or occupiers of the hotel buildings of the penalties for unauthorized change of the use of hotels or the concession areas under B(P)Reg 23A(8).

(LEUNG Chin-man)
Building Authority

Ref. : BD GP/BL/P/22 (V)

First issued February 1985
Last revision August 1996
This revision April 2000 (AD/D)

Index under : Hotel concessions
Hotel development

¹ An establishment held under central management to provide residential accommodation with central air-conditioning. It is characterized by fully or partly furnished studio or two-room units with small pantry/kitchenette, or a high proportion of such units in the same building or establishment, and provided with communal facilities, such as dining hall, laundry, recreational facilities and housekeeping services.

香港特別行政區政府
The Government of the Hong Kong Special Administrative Region

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By Fax

15 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 16 May 2000

Thank you for your letter 9 May 2000. Please see attached our consolidated reply to the list of concerns and questions raised by Members of the Bills Committee. The Chinese translation of our response will be forwarded to you once ready.

As discussed, in addition to the attendance last time, for the forthcoming Bills Committee meeting scheduled on 16 May 2000, Ms Carmen Chu (朱映紅), Senior Government Counsel will also attend to discuss the Amendment Bill.

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Committee Stage Amendments

The Administration has identified two minor areas in which Committee Stage Amendments (CSA) are required. Under the Telecommunication (Amendment) Bill 1999, references to ‘telecommunication’ are to be changed to ‘telecommunications’. If the Telecommunication (Amendment) Bill 1999 is passed before the Buildings (Amendment) Bill 2000, references to telecommunication have to be correspondingly amended. The proposed definition of ‘broadcasting’ in the Building (Planning) Regulation is deficient in that section 12A of the Telecommunication Ordinance relates only to sound broadcasting. Our intent is that it should include television broadcasting as well. Our proposed definition is “‘broadcasting’ (廣播) means transmission of sound or television programmes by satellite or terrestrial telecommunications intended for general reception;”

A copy of the proposed CSA for these two items is attached at Annex C.

Please let me know if further information is required.

Yours sincerely,

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

c.c.

D of J	(Attn: Ms Rayne Chai	2869 1302
	Ms Carmen Chu	2845 2215
	Mr Bernard Ip)	2136 8277
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DMA#21486/R. Chai v.5

1st working draft: 05.04.2000

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1st draft: 03.05.2000

2nd draft: 13.05.2000

BUILDINGS (AMENDMENT) BILL 2000

COMMITTEE STAGE

Amendments to be moved by the Secretary for Planning and Lands

<u>Clause</u>	<u>Amendment Proposed</u>
5(a)(iii)	In the proposed section 38(1) (c) (xiv), by deleting “telecommunication” and substituting “telecommunications”.
Schedule, section 2	(a) In the proposed definition of “access facilities”, by deleting “telecommunication” where it twice appears and substituting “telecommunications”. (b) By deleting the proposed definition of “broadcasting” and substituting - ““broadcasting”(廣播) means transmission of sound or television programmes by satellite or terrestrial telecommunications intended for general reception;”.

(c) In the proposed definition of “industrial building”, by deleting “Chambers and” and substituting “and Material Recovery Chambers and Refuse”.

(d) In the proposed definition of “telecommunication” -

(i) by deleting “telecommunication” and substituting “telecommunications”;

(ii) by deleting “Telecommunication” and substituting “Telecommunications”.

Schedule,
section 3 By deleting “telecommunication” and substituting “telecommunications”.

Schedule,
section 5 (a) In the proposed Part IIIA, in the heading, by deleting “TELECOMMUNICATION” and substituting “TELECOMMUNICATIONS”.

(b) In the proposed section 28A -

(i) in the heading, by deleting “**telecommunication**” and substituting “**telecommunications**”;

(ii) by deleting “telecommunication” and substituting “telecommunications”.