
Hotel and Guesthouse Accommodation (Amendment) Ordinance 2020

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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 6 OF 2020



Carrie LAM
Chief Executive
18 June 2020

An Ordinance to amend the Hotel and Guesthouse Accommodation Ordinance and its subsidiary legislation to strengthen the regulation and control of hotels and guesthouses; to provide for transitional and other related matters; and to make related amendments to other enactments.

[]

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Hotel and Guesthouse Accommodation (Amendment) Ordinance 2020.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Home Affairs by notice published in the Gazette.

2. Enactments amended

The enactments specified in Parts 2 to 5 are amended as set out in those Parts.

Part 2

Amendments to Hotel and Guesthouse Accommodation Ordinance (Cap. 349)

3. **Long title amended**

The long title, Chinese text—

Repeal

“規管及管制旅館住宿、旅館的安全及”

Substitute

“酒店及賓館住宿的規管、管制和安全以及”。

4. **Part I heading substituted**

Part I, heading—

Repeal the heading

Substitute

“Part 1

Preliminary”.

5. **Section 2 substituted**

Section 2—

Repeal the section

Substitute

“2. **Interpretation**

(1) In this Ordinance—

appeal (上訴) means an appeal under section 17A;

appeal board (上訴委員會) means an appeal board formed under section 17D;

appeal board panel (上訴委員團) means the panel of persons appointed under section 17B;

Authority (監督) means the Hotel and Guesthouse Accommodation Authority mentioned in section 4;

authorized person (認可人士) has the meaning given by section 2(1) of the Buildings Ordinance (Cap. 123);

authorized person's certificate (認可人士證明書) means a certificate required to be submitted under section 12I;

business name (營業名稱), in relation to any premises, means any name under which the premises are used as a hotel or guesthouse;

closure order (封閉令) means an order made under section 20A;

company secretary (公司秘書) includes a person occupying the position of company secretary (by whatever name called);

condition (條件), in relation to a licence, means—

- (a) a condition imposed on the licence under section 12B(5), 12C(6) or 12E(1)(a); and
- (b) if the condition has been amended under section 12E(1)(b)—the condition as amended;

Convenor (召集人) means the Convenor appointed under section 17B(3);

director (董事) includes a person occupying the position of director (by whatever name called);

eligibility criteria (資格準則), in relation to a licence, means the criteria for eligibility specified under section 12A(2) for the category and, if applicable, the subcategory to which the licence belongs;

enforcement officer (執法人員) means a public officer appointed under section 21D to be an enforcement officer;

function (職能) includes a power and a duty;

guesthouse licence (賓館牌照) means a guesthouse licence referred to in section 12A(1)(b);

hotel licence (酒店牌照) means a hotel licence referred to in section 12A(1)(a);

hotel or guesthouse (酒店或賓館)—see section 2A;

legal practitioner (法律執業者) means a barrister or solicitor as defined by section 2(1) of the Legal Practitioners Ordinance (Cap. 159);

licence (牌照), except in the definition of **owner** in section 5A(5), means—

(a) a hotel licence; or

(b) a guesthouse licence;

licence holder (持牌人), in relation to a licence, means the person named on the licence as its holder;

licence period (牌照有效期), in relation to a licence, means the licence period specified under section 12H(1)(a);

panel member (委員團成員) means a member of the appeal board panel appointed under section 17B;

premises (處所) includes part of premises;

remedial order (糾正令) means an order made under section 20;

revival order (恢復生效令) means an order made under section 20H;

Secretary (局長) means the Secretary for Home Affairs;

specified way (指明方式)—see section 2B;

suspension order (暫緩執行令) means an order made under section 20E;

variation order (更改令) means an order made under section 20F.

(2) For the purposes of this Ordinance—

(a) a reference to the provision of sleeping accommodation includes the provision of any services or facilities ancillary to the sleeping accommodation; and

(b) a reference to—

(i) the use of premises as a hotel or guesthouse; or

(ii) the operation, keeping, management or other control of premises as a hotel or guesthouse,

includes the use, or the operation, keeping, management or other control, of the premises to provide sleeping accommodation in the way described in section 2A(1).”.

6. Sections 2A and 2B added

After section 2—

Add

“2A. Meaning of *hotel or guesthouse*

- (1) For the purposes of this Ordinance, premises are a hotel or guesthouse if the premises are held out as providing sleeping accommodation to any persons presenting themselves who are willing to pay a fee for the sleeping accommodation.
- (2) To avoid doubt, in determining whether any premises are held out as providing sleeping accommodation, inference may be drawn from—
 - (a) any representation relating to the premises, regardless of the means through which the representation is made; and
 - (b) any circumstances relating to such representation, including the state or use of the premises.
- (3) In subsection (1)—
 - (a) ***any persons*** (任何人) includes any person or persons of a particular category, class, group or description; and
 - (b) ***presenting*** (到臨) includes presenting in person or through an agent or a representative, whether physically or through any other means, and whether with or without prior booking or notice.

2B. Meaning of *specified way*

For the purposes of Part 4A, an application is made in the specified way if it—

- (a) is made in the form and way specified by the Authority;

- (b) contains the information specified by the form;
and
- (c) is accompanied by the documents specified by
the Authority.”.

7. Section 3 amended (exclusion by order)

- (1) Section 3, Chinese text, heading—

Repeal

“旅館”

Substitute

“酒店或賓館”.

- (2) Section 3(1), Chinese text—

Repeal

“民政事務局”.

- (3) Section 3(1)—

Repeal

“any guesthouse” (wherever appearing)

Substitute

“guesthouse”.

8. Section 4 amended (constitution of Hotel and Guesthouse Accommodation Authority)

- (1) Section 4, English text, heading—

Repeal

“Constitution of”.

- (2) Section 4(1), English text—

Repeal

“shall”

Substitute

“is to”.

- (3) Section 4(1), Chinese text—

Repeal

“民政事務局”.

9. Part II substituted

Part II—

Repeal the Part

Substitute

“Part 2

Restriction on Operating Hotel or Guesthouse

5. Offence of operating unlicensed hotel or guesthouse

- (1) A person commits an offence if the person operates, keeps, manages or otherwise has control of any premises that are a hotel or guesthouse while no licence is in force for the premises.
- (2) A person who commits an offence under subsection (1) is liable—
- (a) on summary conviction—to a fine of \$200,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$20,000 for every day during which the offence continues; or
- (b) on conviction on indictment—to a fine of \$500,000 and to imprisonment for 3 years and, in the case of a continuing offence, to a further

fine of \$20,000 for every day during which the offence continues.

- (3) It is not a defence to a charge for an offence under subsection (1) that the person charged did not know that no licence was in force for the premises.

5A. Offence by owner and tenant of unlicensed hotel or guesthouse

- (1) If any premises are a hotel or guesthouse while no licence is in force for the premises (*unlicensed hotel or guesthouse*), each of the owners and tenants of the premises commits an offence.
- (2) A person who commits an offence under subsection (1) is liable—
 - (a) on summary conviction—to a fine of \$200,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$20,000 for every day during which the offence continues; or
 - (b) on conviction on indictment—to a fine of \$500,000 and to imprisonment for 3 years and, in the case of a continuing offence, to a further fine of \$20,000 for every day during which the offence continues.
- (3) A person charged with an offence under subsection (1) is entitled to be acquitted if—
 - (a) sufficient evidence is adduced to raise an issue that the person did not know and had no reason to suspect that the premises were an unlicensed hotel or guesthouse; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.

- (4) The person charged is also entitled to be acquitted if—
- (a) sufficient evidence is adduced to raise an issue that the person could not with reasonable diligence have prevented the premises from being an unlicensed hotel or guesthouse; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.

(5) In this section—

owner (擁有人), in relation to any premises, means—

- (a) a person holding the premises direct from the Government, whether under a lease, licence or otherwise;
- (b) a person receiving the rent of the premises, whether solely or with another; or
- (c) a person who would be entitled to receive the rent of the premises if the premises were let to a tenant;

tenant (租客), in relation to any premises, does not include a person who becomes a tenant of the premises only through being provided sleeping accommodation on the premises.

5B. Notice relating to specified offence to be registered in Land Registry

- (1) If any of the following events occurs in relation to any premises, the Authority must arrange for a written notice about the event to be registered in the Land Registry—
- (a) a charge against a person for a specified offence is laid or withdrawn;

- (b) a person is convicted or acquitted of a specified offence;
 - (c) a person's acquittal of a specified offence is appealed against;
 - (d) an appeal against a person's acquittal of a specified offence is allowed without a conviction.
- (2) A notice under subsection (1) must state—
- (a) the location of the premises concerned;
 - (b) the fact that the event occurred; and
 - (c) the date on which the event occurred.
- (3) Moreover, for a notice about the quashing of a conviction on appeal or a notice about the event mentioned in subsection (1)(d), the notice must also state whether a retrial is ordered.
- (4) A notice under subsection (1) must be prepared—
- (a) for a notice about an event mentioned in subsection (1)(a) or (c)—by the Authority; or
 - (b) for a notice about an event mentioned in subsection (1)(b) or (d)—by the court or magistrate concerned.
- (5) For a notice prepared by the Authority, the Authority must, as soon as reasonably practicable after the event occurred, arrange for the registration of the notice under subsection (1).
- (6) For a notice prepared by a court or magistrate—
- (a) the court or magistrate must, as soon as reasonably practicable after the event occurred, send the notice to the Authority; and

- (b) the Authority must, as soon as reasonably practicable after receiving the notice, arrange for its registration under subsection (1).
- (7) A notice required to be registered in the Land Registry under this section is taken to be an instrument affecting land, but a failure to register the notice does not affect its validity as against any person.
- (8) In this section—
- acquittal*** (獲判無罪) means—
- (a) an acquittal on trial; or
 - (b) the quashing of a conviction on appeal;
- conviction*** (定罪) means—
- (a) a conviction on trial;
 - (b) a record of a conviction on appeal; or
 - (c) a restoration of a quashed conviction on appeal;
- specified offence*** (指明罪行) means an offence under section 5 or 5A.”.

10. Parts III and IV repealed

Parts III and IV—

Repeal the Parts.

11. Part 4A added

The Ordinance—

Add

“Part 4A

Licences

Division 1—Categories of Licence

12A. Hotel licence and guesthouse licence

- (1) For the purposes of this Ordinance, either of the following categories of licences may be issued for any premises—
 - (a) a hotel licence;
 - (b) a guesthouse licence.
- (2) The Authority may—
 - (a) specify different criteria for eligibility for a hotel licence and a guesthouse licence; and
 - (b) specify subcategories of guesthouse licences with different criteria for eligibility.
- (3) Without limiting the conditions the Authority may impose on a licence under this Part—
 - (a) different conditions may be imposed for—
 - (i) different categories or subcategories of licence; and
 - (ii) different licences of the same category or subcategory of licence; and
 - (b) a guesthouse licence may be subject to a condition that the business name of the premises concerned must not contain the term “hotel” or “酒店”.

Division 2—Licence: Issue, Renewal, Cancellation, etc.

12B. Issue of licence

- (1) The Authority may, on application, issue a licence if it is satisfied that the eligibility criteria for the licence are met.
- (2) An application for the issue of a licence must be made in the specified way by the person intended to be the licence holder.
- (3) The Authority must refuse an application for the issue of a licence for any premises if—
 - (a) the premises do not satisfy the no-use restriction requirement under section 12J; or
 - (b) the Authority has made a request under section 12O for determining the application and the applicant fails to comply with the request.
- (4) The Authority may refuse an application for the issue of a licence for any premises if—
 - (a) the application does not comply with subsection (2);
 - (b) the premises do not satisfy the suitability requirement under section 12K; or
 - (c) the applicant does not satisfy the fit and proper requirement under section 12L.
- (5) When issuing a licence, the Authority may impose on the licence any conditions the Authority considers appropriate.
- (6) The Authority must also specify in the licence its date of issue.

- (7) The date of issue must not be earlier than the date on which the application for the issue of the licence is approved.

12C. Renewal of licence

- (1) The Authority may, on application, renew a licence if it is satisfied that the eligibility criteria for the licence are met.
- (2) An application for the renewal of a licence must be made in the specified way by the licence holder.
- (3) Moreover—
 - (a) the application must be made within the period beginning 6 months before, and ending 3 months before, the end of the licence period of the licence (*application period*); but
 - (b) the Authority may accept an application made after the application period if the Authority considers there is a good reason for doing so.
- (4) The Authority must refuse an application for the renewal of a licence for any premises if—
 - (a) the premises do not satisfy the no-use restriction requirement under section 12J; or
 - (b) the Authority has made a request under section 12O for determining the application and the applicant fails to comply with the request.
- (5) The Authority may refuse an application for the renewal of a licence for any premises if—
 - (a) the application does not comply with subsection (2) or (3)(a);
 - (b) the premises do not satisfy the suitability requirement under section 12K;

- (c) the applicant does not satisfy the fit and proper requirement under section 12L; or
 - (d) the operation requirement under section 12M is not satisfied in respect of the premises.
- (6) When renewing a licence, the Authority may impose on the licence any conditions (including a condition previously imposed) the Authority considers appropriate.
- (7) The Authority must also specify in the licence its date of renewal.
- (8) The date of renewal must be—
- (a) if the application is made within the application period—the date immediately following the last date of the licence period of the licence; or
 - (b) if the application is made after the application period but accepted under subsection (3)(b)—not earlier than the date provided under paragraph (a).

12D. Cancellation or suspension of licence

- (1) The Authority must cancel or suspend a licence for any premises if—
- (a) the premises do not satisfy the no-use restriction requirement under section 12J; or
 - (b) the Authority has made a request under section 12O for determining whether or not to cancel or suspend the licence and the licence holder fails to comply with the request.
- (2) The Authority may cancel or suspend a licence for any premises if—

- (a) the premises do not satisfy the suitability requirement under section 12K;
- (b) the licence holder does not satisfy the fit and proper requirement under section 12L; or
- (c) the operation requirement under section 12M is not satisfied in respect of the premises.

12E. Variation of licence condition

- (1) During the licence period of a licence, the Authority may, in any of the circumstances specified in subsection (2)—
 - (a) impose on the licence any conditions the Authority considers appropriate; or
 - (b) amend or revoke a condition of the licence as the Authority considers appropriate.
- (2) The circumstances are—
 - (a) the premises do not satisfy the suitability requirement under section 12K;
 - (b) the licence holder does not satisfy the fit and proper requirement under section 12L; and
 - (c) the operation requirement under section 12M is not satisfied in respect of the premises.
- (3) The variation of a condition of a licence must be made by a written notice specifying the condition imposed or the amendment or revocation.
- (4) In this section—

variation (更改), in relation to a condition, means the imposition, amendment or revocation of the condition under subsection (1).

12F. Transfer of licence

- (1) Except as provided in subsection (2), a licence is not transferable.
- (2) The Authority may, on application and on cause being shown to the Authority's satisfaction, permit the transfer of a licence from the licence holder (*transferor*) to another person (*transferee*) by—
 - (a) endorsing the transfer on the licence; and
 - (b) replacing the transferor with the transferee as the person named on the licence as the holder.
- (3) An application for the transfer of a licence must be made in the specified way by the transferor.
- (4) Without limiting subsection (2), the Authority may refuse to permit a transfer if—
 - (a) the application does not comply with subsection (3);
 - (b) the transferee does not satisfy the fit and proper requirement under section 12L;
 - (c) it appears to the Authority that the operation, keeping, management or other control of the premises as a hotel or guesthouse would not be under the continuous and personal supervision of the transferee; or
 - (d) the transferee does not meet any other criteria specified by the Authority.
- (5) A transfer permitted under subsection (2) does not change the licence period of the licence.

Division 3—Licence Fee, Licence Period, etc.

12G. Licence fee and form

- (1) A prescribed fee is payable to the Authority for—
 - (a) the issue of a licence under section 12B; and
 - (b) the renewal of a licence under section 12C.
- (2) A licence issued or renewed must be in the form specified by the Authority and contain the following information—
 - (a) the category and, if applicable, the subcategory to which it belongs;
 - (b) its licence period;
 - (c) the name of its holder;
 - (d) the business name of the premises concerned; and
 - (e) any conditions imposed under section 12B(5) or 12C(6).

12H. Licence period and effect

- (1) The licence period of a licence—
 - (a) is to be specified by the Authority; and
 - (b) must not exceed 84 months beginning on the date of issue, or the date of renewal, specified in the licence.
- (2) A licence has effect during its licence period subject to subsections (3) and (4).
- (3) A licence does not have effect until the prescribed fee payable under section 12G(1) is paid.

- (4) A licence remains in effect despite the end of its licence period if—
 - (a) an application for the renewal of the licence has been made in accordance with section 12C(2) and (3)(a); but
 - (b) the application is pending as at the end of the licence period.
- (5) A licence remains in effect under subsection (4) until the end of the earliest of the following dates—
 - (a) if the application is withdrawn—the date of the withdrawal;
 - (b) if the application is approved—the date of the approval; or
 - (c) if the application is refused and—
 - (i) the decision to refuse is suspended under section 17A(2)—the date on which the decision ceases to be suspended according to that section; or
 - (ii) the decision to refuse is, because of section 17A(3), not suspended—the date of the refusal.

12I. Authorized person's certificate required if licence period exceeds 36 months

- (1) This section applies if the licence period of a licence exceeds 36 months.
- (2) The licence holder must, within the period beginning 1 month before, and ending 1 month after, each anniversary of the licence, submit to the Authority a certificate that—
 - (a) is in the form specified by the Authority;

- (b) is signed by an authorized person; and
 - (c) contains a statement by the authorized person certifying the matters specified in subsection (3).
- (3) The matters are that, since the date of issue specified in the licence or since the immediately preceding anniversary of the licence (as the case requires), the premises covered by the licence—
- (a) have not undergone any alteration resulting in a substantial deviation from the latest plan showing the layout of the premises deposited with and agreed to by the Authority;
 - (b) have been operated, kept, managed or otherwise controlled by the licence holder as a hotel or guesthouse in a way that does not contravene any of the conditions of the licence; and
 - (c) have been maintained by the licence holder in a proper condition with regard to building safety and fire safety.
- (4) For the purposes of this section, the anniversary of a licence is to be counted with reference to—
- (a) for a licence that has not been renewed—the date of issue specified in the licence; or
 - (b) for a licence that has been renewed—the date of renewal specified in the licence.

Division 4—Licence Requirements

12J. Licence requirement: no-use restriction requirement

- (1) Premises satisfy the no-use restriction requirement only if the Authority is satisfied that the premises are free from a use restriction.

- (2) For the purposes of subsection (1), premises are not free from a use restriction if—
- (a) in respect of any part of the premises that is covered by a deed of mutual covenant—a restrictive provision applies under the deed of mutual covenant; or
 - (b) in respect of any part of the premises that is not covered by a deed of mutual covenant—a restrictive provision applies under the Government lease under which the part is held.
- (3) In this section—

deed of mutual covenant (公契) has the meaning given by section 2 of the Building Management Ordinance (Cap. 344);

restrictive provision (限制性條文), in relation to a part of premises, means an express provision to the effect that—

- (a) the part is prohibited from being used as a hotel or guesthouse;
- (b) the part is prohibited from being used for commercial purposes; or
- (c) the part is permitted to be used only for private residential purposes.

12K. Licence requirement: suitability requirement

Premises satisfy the suitability requirement only if it does not appear to the Authority that—

- (a) the premises are not suitable to be used as a hotel or guesthouse for reasons connected with—

- (i) the situation, means of ingress or egress, design, construction, size, equipment or type of building of the premises; or
 - (ii) the protection of life and property under the Fire Services Ordinance (Cap. 95);
- (b) the premises do not comply with a requirement relating to design, structure, fire precautions, health, sanitation or safety that is set out in the Buildings Ordinance (Cap. 123); or
- (c) the operation, keeping, management or other control of the premises as a hotel or guesthouse would not be under the continuous and personal supervision of the applicant or licence holder (as the case requires).

12L. Licence requirement: fit and proper requirement

- (1) A person satisfies the fit and proper requirement only if it appears to the Authority that the person is a fit and proper person to operate, keep, manage or otherwise have control of a hotel or guesthouse.
- (2) When considering whether a person is a fit and proper person to operate, keep, manage or otherwise have control of a hotel or guesthouse, the Authority must have regard to whether the person—
 - (a) has been convicted of an offence under this Ordinance;
 - (b) has been convicted of an offence, other than an offence under this Ordinance, in Hong Kong or elsewhere and, in respect of the conviction, sentenced to imprisonment for a term exceeding 3 months; or

- (c) is an undischarged bankrupt, is in liquidation or is the subject of a winding-up order.
- (3) For the purposes of subsection (2), if the person is a body of persons, the Authority must also have regard to whether a related person of the body of persons falls within paragraph (a), (b) or (c) of that subsection.
- (4) In this section—

related person (相關人士), in relation to a body of persons, means—

 - (a) for a body corporate—
 - (i) a director of the body corporate;
 - (ii) a company secretary of the body corporate; or
 - (iii) a person concerned in the management of the body corporate;
 - (b) for a partnership—
 - (i) a partner in the partnership;
 - (ii) a person concerned in the management of the partnership; or
 - (iii) an office holder in the partnership; or
 - (c) for an unincorporated body other than a partnership—
 - (i) a person concerned in the management of the body; or
 - (ii) an office holder in the body.

12M. Licence requirement: operation requirement

- (1) The operation requirement is satisfied in respect of any licensed premises only if none of the following applies—
 - (a) in respect of the premises or any person accommodated on the premises—
 - (i) a provision of this Ordinance has been or is being contravened; or
 - (ii) a requirement, order or direction made or given under this Ordinance has not been complied with by the licence holder;
 - (b) a condition of the licence has not been or is not being complied with by the licence holder;
 - (c) it appears to the Authority that—
 - (i) the premises have ceased to be a hotel or guesthouse; or
 - (ii) the licence holder has ceased to operate, keep, manage or otherwise have control of the premises as a hotel or guesthouse;
 - (d) an authorized person's certificate has not been submitted within the period required;
 - (e) an authorized person's certificate that has been submitted is incomplete, incorrect or false in a material particular.

- (2) In this section—

licensed premises (持牌處所) means premises covered by a licence, including any period during which the licence—

- (a) is suspended under section 12D;

- (b) has yet to take effect because of section 12H(3);
or
- (c) remains in effect under section 12H(4).

Division 5—Other Functions of Authority

12N. Consideration of views of affected persons

- (1) The Authority may appoint a panel of persons (*advisory panel*) for advising the Authority on matters specified in subsection (2) that relate to a licence application.
- (2) The matters are—
 - (a) the views of affected persons in respect of a licence application; and
 - (b) having regard to those views and any response from the applicant, recommendations on the application, including—
 - (i) whether to approve or refuse the application; and
 - (ii) whether to impose any conditions on the licence.
- (3) The advice given by an advisory panel (including the recommendations made under subsection (2)(b)) is not binding on the Authority.
- (4) For the purpose of advising the Authority, an advisory panel may—
 - (a) conduct consultation to collect the views of affected persons in respect of a licence application; and
 - (b) invite the applicant to provide a response to those views.

- (5) Before approving a licence application in respect of any premises, the Authority must be satisfied that either—
- (a) a consultation under subsection (4)(a) has been conducted in respect of the application; or
 - (b) the use of the premises as a hotel or guesthouse is permitted (whether because of a permission for the premises or for the building or area in which the premises are situated) according to—
 - (i) a draft plan or an approved plan within the meaning of the Town Planning Ordinance (Cap. 131); or
 - (ii) a permission granted in respect of such a plan under that Ordinance.
- (6) In this section—
- affected person*** (受影響人士), in relation to a licence application for any premises, means—
- (a) if the premises form part but not the whole of a building—
 - (i) an owner or occupier of any other part of the building; and
 - (ii) if the Authority considers appropriate—an owner or occupier of any other premises situated in the surrounding area specified by the Authority for the application; or
 - (b) if the premises form the whole of a building—
an owner or occupier of any other premises situated in the surrounding area specified by the Authority for the application;

licence application (牌照申請) means—

- (a) an application for the issue of a licence under section 12B; or
- (b) an application for the renewal of a licence under section 12C.

12O. Authority's power to request documents, information and legal advice

- (1) This section applies if the Authority is determining—
 - (a) an application for the issue of a licence under section 12B;
 - (b) an application for the renewal of a licence under section 12C;
 - (c) whether or not to cancel or suspend a licence under section 12D;
 - (d) whether or not to impose, amend or revoke a condition of a licence under section 12E; or
 - (e) an application for the transfer of a licence under section 12F.
- (2) The Authority may, by written notice to a specified person, request the person to provide, within the period specified in the notice—
 - (a) any document or information that is reasonably necessary to enable the Authority to make the determination concerned; and
 - (b) without limiting paragraph (a), a written legal advice given by a legal practitioner about whether the premises to which the application or licence relates are free from a use restriction within the meaning of section 12J.
- (3) In this section—

specified person (指明人士)—

- (a) in relation to a determination described in subsection (1)(a), (b) or (e)—means the applicant; and
- (b) in relation to a determination described in subsection (1)(c) or (d)—means the licence holder.

12P. Duty of Authority to give notices of certain intentions or decisions

- (1) If the Authority intends to exercise any of the powers referred to in subsection (2) in relation to a licence, then, before exercising the power, the Authority must give a written notice to the licence holder—
 - (a) informing the licence holder of—
 - (i) the Authority's intention; and
 - (ii) the grounds on which the Authority will rely in exercising the power; and
 - (b) indicating that the licence holder may make written representations to the Authority.
- (2) The powers are—
 - (a) to refuse to renew a licence under section 12C;
 - (b) to cancel or suspend a licence under section 12D; and
 - (c) to impose, amend or revoke a condition of a licence under section 12E.
- (3) If the Authority decides to exercise any of the powers referred to in subsection (4) in relation to a licence, the Authority must give a written notice to each interested person, informing the person of the decision and the reasons for it.

- (4) The powers are—
- (a) to issue or refuse to issue a licence under section 12B;
 - (b) to renew or refuse to renew a licence under section 12C;
 - (c) to cancel or suspend a licence under section 12D;
 - (d) to impose, amend or revoke a condition of a licence under section 12E; and
 - (e) to permit the transfer or refuse to permit the transfer of a licence under section 12F.
- (5) A notice given under subsection (1) or (3) must—
- (a) state the date of notice;
 - (b) be signed by the Authority or a public officer authorized under section 4(2) to give the notice; and
 - (c) be given to the licence holder or interested person (*recipient*) by—
 - (i) serving it personally on the recipient; or
 - (ii) sending it to the recipient by registered post at the recipient's address last known to the Authority.
- (6) In this section—
- interested person*** (有利害關係的人)—
- (a) means the applicant for the licence or the licence holder (as the case requires); and
 - (b) for a notice about a decision to exercise a power referred to in subsection (4)(a) or (b) where a consultation has been conducted under section 12N(4)(a) in respect of the application

concerned—also means any affected person who has given a view to the advisory panel in response to the consultation.”.

12. Part V repealed (appeals)

Part V—

Repeal the Part.

13. Part 5A added

The Ordinance—

Add

“Part 5A

Appeals

17A. Appeals against decisions of Authority

- (1) A person aggrieved by a decision of the Authority under section 12B, 12C, 12D, 12E or 12F may appeal against the decision by commencing the appeal under section 17C.
- (2) A suspendable decision is suspended in its operation from the date on which the decision is made until—
 - (a) if no notice of appeal in relation to the decision is given within the period specified in section 17C(2)—the end of that period; or
 - (b) if an appeal against the decision is commenced under section 17C—the end of the date on which the appeal is disposed of, withdrawn or abandoned.

- (3) However, a suspendable decision is not suspended in its operation if—
 - (a) the Authority considers that it is contrary to the public interest to suspend the operation of the decision; and
 - (b) the notice of decision given under section 12P(3) contains a statement to that effect.
- (4) In this section—

suspendable decision (可暫緩執行的決定) means—

 - (a) a decision to refuse to renew a licence under section 12C;
 - (b) a decision to cancel or suspend a licence under section 12D; or
 - (c) a decision to impose, amend or revoke a condition of a licence under section 12E.

17B. Appeal board panel

- (1) The Chief Executive is to appoint a panel of persons for the purposes of hearing appeals under this Part.
- (2) The panel is to consist of the following members—
 - (a) at least 2 individuals appointed by the Chief Executive, each of whom must be an individual qualified for appointment as a District Judge under section 5 of the District Court Ordinance (Cap. 336); and
 - (b) not less than 16 other individuals appointed by the Chief Executive.
- (3) The Chief Executive is to appoint one of the panel members referred to in subsection (2)(a) to be the Convenor.

- (4) An individual who is a public officer is not eligible for appointment under this section.
- (5) A panel member is to be appointed for a term of 2 years and may be reappointed after the expiry of the member's term of office.
- (6) A panel member may resign at any time by giving a written notice to the Chief Executive.
- (7) The resignation takes effect on the date specified in the notice given under subsection (6) for the resignation to take effect or, if no such date is specified, the date on which the notice is received by the Chief Executive.
- (8) The Chief Executive may terminate the appointment of a panel member if satisfied that the member—
 - (a) has become a public officer;
 - (b) has become bankrupt, or has entered into a voluntary arrangement as defined by section 2 of the Bankruptcy Ordinance (Cap. 6) with the member's creditors;
 - (c) is unable or unfit to perform the functions of a panel member due to physical or mental illness; or
 - (d) is for any other reason unable or unfit to perform the functions of a panel member.
- (9) The Chief Executive is to give notice in the Gazette of the appointment, resignation or termination of the appointment of a panel member.

17C. Commencement of appeal

- (1) A person who intends to appeal against a decision of the Authority under section 17A (*appellant*) may commence the appeal by giving the Convenor a written notice of appeal under this section.
- (2) The notice of appeal must be given to the Convenor within 28 days after the date of notice stated in the notice of decision given under section 12P(3).
- (3) The notice of appeal must—
 - (a) be made in the form and way specified by the Convenor;
 - (b) set out the grounds of the appeal;
 - (c) be accompanied by a document containing—
 - (i) the particulars of the evidence to be adduced by the appellant at the appeal hearing; and
 - (ii) the name of every witness whom the appellant intends to call at the appeal hearing; and
 - (d) be accompanied by a copy of every document the appellant intends to produce at the appeal hearing.

17D. Hearing of appeal by appeal board

- (1) Within 21 days after receiving a notice of appeal given under section 17C, the Convenor must form an appeal board to hear the appeal.
- (2) An appeal board is to consist of the following 3 members appointed by the Convenor—

- (a) a chairperson appointed from the panel members referred to in section 17B(2)(a) (who may be the Convenor); and
 - (b) 2 other members appointed from the panel members referred to in section 17B(2)(b).
- (3) The quorum for a meeting of an appeal board is all members of the board.
- (4) In hearing an appeal, an appeal board may give the Authority any directions about the Authority's performance of a function of the Authority under this Ordinance that is relevant to the appeal.
- (5) The Authority must comply with a direction given under subsection (4).
- (6) A question before an appeal board, except a question of law, is to be determined—
 - (a) by a majority of all members of the board who are voting; or
 - (b) if there is an equality of votes—by a casting vote of the chairperson.
- (7) A question of law before an appeal board is to be determined by the chairperson.
- (8) In hearing an appeal, an appeal board may—
 - (a) receive evidence on oath;
 - (b) admit or take into account any statement, document, information or matter whether or not it would be admissible in evidence in a court of law;
 - (c) by written notice, summon any person to appear before it as a witness to produce any document relating to the appeal or to give evidence;

- (d) confirm, vary or reverse the decision appealed against or substitute the board's decision for that decision;
 - (e) make an award of a sum that is just and equitable in the circumstances of the case in respect of any costs involved in the appeal; and
 - (f) make any other order the board considers appropriate.
- (9) An appeal board has the powers that are vested in the Court of First Instance in the exercise of its powers under subsection (8).
- (10) A member of an appeal board has, in the performance of the member's function under this Ordinance, the same privileges and immunities as a judge of the Court of First Instance in civil proceedings in that Court.
- (11) A witness before an appeal board has the same privileges and immunities as if the witness were a witness in civil proceedings in the Court of First Instance.

17E. Disclosure of interest of member of appeal board

- (1) If a member of an appeal board has a disclosable interest in any matter under consideration by the board—
- (a) the member must, as soon as reasonably practicable after noticing the interest in that matter, disclose to the board the fact that the member has a disclosable interest in a matter and the nature of the interest; and
 - (b) the member ceases to be a member of the board when the disclosure is made.

(2) In this section—

disclosable interest (應予披露的利害關係) means—

- (a) a pecuniary interest (whether direct or indirect);
or
- (b) a personal interest greater than that which a person has as a member of the public.

17F. Sum awarded in respect of appeal

- (1) A sum awarded under section 17D(8)(e) (***costs sum***) is recoverable, as a civil debt, in the District Court.
- (2) A costs sum awarded to the Authority is a debt due to the Government.
- (3) A costs sum payable by the Authority is to be charged on the general revenue.

17G. Inquiry of contempt

- (1) The chairperson of an appeal board may certify, in writing to the Court of First Instance, any of the following conduct of a person as an alleged contempt—
 - (a) if duly summoned as a witness before the board, failing to attend as a witness;
 - (b) if in attendance as a witness, refusing to—
 - (i) take an oath that is legally required by the board to be taken;
 - (ii) produce a document in the person's power or control that is legally required by the board to be produced; or
 - (iii) answer a question to which the board may legally require an answer;

- (c) doing any other thing that would, if the board had been a court of law having power to commit for contempt, have been contempt of that court.
- (2) The Court of First Instance may then inquire into the alleged contempt and, after hearing—
 - (a) any witnesses produced against or on behalf of the person charged with the contempt; and
 - (b) any statement offered in defence,may punish or take steps for the punishment of that person in the same way as if that person had been guilty of contempt of the court.

17H. Convenor may determine procedure of appeal boards

The Convenor may, subject to this Ordinance, determine the procedure in relation to appeal boards, including determining the procedure in relation to a particular appeal board.

17I. Acting Convenor, vacancy in appeal board, etc.

- (1) If the Convenor is precluded by illness, absence from Hong Kong or any other cause from performing the Convenor's functions, the Chief Executive may appoint any other panel member referred to in section 17B(2)(a) to act as the Convenor and to perform the functions of the Convenor during the period of the appointment.
- (2) If a vacancy occurs in an appeal board before the appeal hearing begins, the Convenor must, as soon as reasonably practicable, appoint a panel member as a member of the board to fill the vacancy so that the board is composed in accordance with section 17D(2).

- (3) If a vacancy occurs in an appeal board after the appeal hearing has begun—
- (a) the board is dissolved when the vacancy occurs; and
 - (b) the Convenor must form an appeal board under section 17D(1) as if the Convenor had received, on the date on which the vacancy occurred, the notice of appeal given under section 17C in relation to the subject matter of the appeal.
- (4) In this section—
- vacancy*** (空缺) includes the case where a member of an appeal board—
- (a) ceases to be a panel member;
 - (b) ceases to be a member of the board under section 17E(1)(b); or
 - (c) is precluded by illness, absence from Hong Kong or any other cause from performing the member's functions in relation to the board.

17J. Case may be stated for Court of Appeal

- (1) Before determining an appeal, an appeal board may refer any question of law arising in the appeal to the Court of Appeal for determination by way of case stated.
- (2) On the hearing of the case, the Court of Appeal may amend the case or order it to be sent back to the appeal board for amendment.”.

14. Part VI heading substituted

Part VI, heading—

Repeal the heading
Substitute

“Part 6

Supervision of Hotel or Guesthouse”.

15. Section 18 substituted

Section 18—

Repeal the section
Substitute

“18. Inspection of licensed premises

- (1) For the purpose of ascertaining whether this Ordinance has been or is being complied with in respect of any licensed premises, an enforcement officer may, without a warrant, exercise any of the following powers—
- (a) at all reasonable times enter and inspect the premises;
 - (b) require a person who takes part in the operation, keeping, management or other control of the premises as a hotel or guesthouse to produce, provide or disclose to the officer any document, thing or information relating to—
 - (i) the operation, keeping, management or other control of the premises as a hotel or guesthouse; or
 - (ii) any other activity in connection with the use of the premises as a hotel or guesthouse;

- (c) remove for further examination a document or thing that the officer has reasonable grounds to believe to be—
 - (i) evidence of an offence under this Ordinance; or
 - (ii) evidence of a ground for cancelling or suspending the licence for the premises;
 - (d) do anything that is reasonably necessary—
 - (i) for the inspection of the premises; or
 - (ii) for the inspection or testing of any equipment, works or system used for or in connection with the operation, keeping, management or other control of the premises as a hotel or guesthouse.
- (2) Subsection (1) however does not empower an enforcement officer to require a person to produce, provide or disclose any document, thing or information that the person would, on grounds of legal professional privilege, be entitled to refuse to produce, provide or disclose.
- (3) In this section—
- licensed premises*** (持牌處所) means premises covered by a licence—
- (a) including any period during which the licence—
 - (i) is suspended under section 12D; or
 - (ii) remains in effect under section 12H(4); but
 - (b) excluding any period during which the licence has yet to take effect because of section 12H(3).”.

16. Section 18A added

After section 18—

Add

“18A. Warrant to enter and search premises

- (1) A magistrate may issue a warrant authorizing an enforcement officer to enter and search any premises if the magistrate is satisfied by information on oath that there are reasonable grounds to believe that—
 - (a) the premises are or have been a hotel or guesthouse without a licence;
 - (b) a condition of a licence issued for the premises has been or is being contravened; or
 - (c) there is or may be on the premises anything that is or contains evidence of an offence under this Ordinance.
- (2) In addition, for licensed premises within the meaning of section 18, the magistrate must also be satisfied that an entry by an enforcement officer under that section was refused.
- (3) A warrant issued under this section must specify—
 - (a) the premises covered by the warrant;
 - (b) the purpose of the entry and search;
 - (c) the name and capacity of the person authorized under the warrant to enter and search the premises; and
 - (d) the date of issue of the warrant.

- (4) Unless otherwise specified in a warrant issued under this section, the warrant continues to be in force until the purpose of the entry and search as specified in it has been satisfied.
- (5) An enforcement officer authorized by a warrant issued under this section to enter and search any premises may—
 - (a) enter the premises at the time specified in the warrant or, if no time is specified, at any time; and
 - (b) use any force that is reasonable in the circumstances for gaining entry into the premises.
- (6) For the purpose of searching the premises, the enforcement officer may exercise any of the following powers—
 - (a) stop and require any person found on the premises whom the officer has reasonable grounds to believe has committed or is committing an offence under this Ordinance—
 - (i) to state the person's name, correspondence address and contact telephone number; and
 - (ii) to produce for the officer's inspection the person's proof of identity as defined by section 17B(1) of the Immigration Ordinance (Cap. 115);
 - (b) search for, or require the production of, and examine, any document relating to the premises;

- (c) search for, or require the production, provision or disclosure of, and examine, any other document, thing or information that the officer has reasonable grounds to believe to be or to contain evidence of an offence under this Ordinance;
 - (d) take and make copies of any document, thing or information referred to in paragraph (b) or (c);
 - (e) seize, remove and detain anything that the officer has reasonable grounds to believe to be or to contain evidence of an offence under this Ordinance;
 - (f) take any photograph, or make any recording, of anything referred to in paragraph (a), (b), (c), (d) or (e);
 - (g) require any person found on the premises to provide, without cost, facilities and assistance that the officer reasonably requires for exercising a power of the officer under this section.
- (7) Subsection (6) however does not empower an enforcement officer to require a person to produce, provide or disclose any document, thing or information that the person would, on grounds of legal professional privilege, be entitled to refuse to produce, provide or disclose.
- (8) The enforcement officer may be accompanied and assisted by any person the officer considers necessary for assisting the officer in entering or searching the premises.

- (9) On leaving any unoccupied premises entered under this section, the enforcement officer must leave the premises as effectually secured against trespass by any person as the premises were found at the time of entry.”.

17. Section 19 amended (Secretary may direct remedial measures)

- (1) Section 19, heading—

Repeal

“direct remedial measures”

Substitute

“give directions to secure safety, etc.”.

- (2) Section 19(1)—

Repeal

“in respect of any hotel or any guesthouse, by notice in writing, give such directions as appear to him”

Substitute

“by written notice, give any directions in respect of a hotel or guesthouse that the Secretary considers”.

- (3) Section 19(1)(a) and (b)—

Repeal

“the guesthouse”

Substitute

“guesthouse”.

- (4) Section 19(2)(a) and (b), English text—

Repeal

“shall” (wherever appearing)

Substitute

“must”.

- (5) Section 19(2)(a)—

Repeal

“the guesthouse” (wherever appearing)

Substitute

“guesthouse”.

- (6) Section 19(3)—

Repeal

“the guesthouse, such notice shall”

Substitute

“guesthouse, the notice must”.

- (7) Section 19(3)—

Repeal

“his capacity in relation to the hotel or the guesthouse”

Substitute

“the addressee’s capacity in relation to the hotel or guesthouse”.

18. Part 6A heading, and Part 6A, Division 1 heading added

After section 19—

Add

“Part 6A

Orders Made by Court or Magistrate

Division 1—Order of District Court Made on Grounds of Safety, etc.”.

19. Section 20 substituted

Section 20—

Repeal the section

Substitute

“20. Remedial order

- (1) The Secretary may, by sworn information in writing, request the District Court to make an order under this section (*remedial order*) in respect of a hotel or guesthouse if it appears to the Secretary that—
 - (a) there is any danger or risk of danger to guests in the hotel or guesthouse; or
 - (b) a direction given under section 19 in respect of the hotel or guesthouse has not been complied with within the period indicated in the notice served under that section.
- (2) However, the Secretary must give a written notice of his or her intention to make the request at least 24 hours before making the request.
- (3) On receiving the request, the District Court must make a remedial order if it is satisfied by the sworn information that the Secretary has given the notice required under subsection (2).
- (4) A remedial order must—

- (a) identify the premises being a hotel or guesthouse; and
 - (b) direct that the premises are to be closed and cease to be a hotel or guesthouse—
 - (i) from the date specified in the order; and
 - (ii) until the date specified in a written notice given by the Secretary.
- (5) If a remedial order is made in respect of a hotel or guesthouse, the Secretary may—
- (a) execute, or cause to be executed, any work necessary to—
 - (i) give effect to the order;
 - (ii) remove the danger or risk of danger mentioned in subsection (1)(a); or
 - (iii) give effect to the direction mentioned in subsection (1)(b);
 - (b) for any such purpose, authorize in writing any person to carry out the work; and
 - (c) recover in the District Court any expenses incurred because of the work, as a debt due to the Government, from any responsible person for the hotel or guesthouse.
- (6) Moreover, an enforcement officer may, in order to effect the closure of the premises as directed—
- (a) enter any place at the time specified in the order or, if no time is specified, at any time;
 - (b) use any reasonable force and take any reasonable measures, including using any force that is reasonable in the circumstances for gaining entry into the premises; and

- (c) evict any person from the premises.
- (7) An enforcement officer effecting the closure of any premises pursuant to a remedial order must affix a copy of the order to a conspicuous part of the premises.
- (8) While a remedial order is in force in respect of a hotel or guesthouse—
- (a) no unauthorized person may enter or be in the hotel or guesthouse; and
 - (b) a police officer or an enforcement officer may remove from the hotel or guesthouse any unauthorized person found there.
- (9) A notice given under subsection (2) or (4)(b)(ii) must be—
- (a) in both English and Chinese;
 - (b) addressed to the responsible persons for the hotel or guesthouse; and
 - (c) given by affixing it to a conspicuous part of the hotel or guesthouse.
- (10) For the purposes of subsection (9)(b), a responsible person may be addressed by reference to the person's capacity in relation to the hotel or guesthouse without the need to state the name of the person.
- (11) In this section—
- hotel or guesthouse*** (酒店或賓館), except in subsections (1) and (4), includes premises that have ceased to be a hotel or guesthouse;
- responsible person*** (負責人), in relation to a hotel or guesthouse, means a person who operates, keeps, manages or otherwise has control of the hotel or guesthouse;

unauthorized person (未獲授權的人) means a person other than—

- (a) a police officer or an enforcement officer in the course of the officer's duty; or
- (b) a person authorized under subsection (5)(b)."

20. Part 6A, Divisions 2 and 3 added

Part 6A, after section 20—

Add

“Division 2—Order of Court or Magistrate Made in Case of Repeated Contravention of Section 5 or 5A

Subdivision 1—Closure Order

20A. Closure order

- (1) A court or magistrate may make an order under this section (***closure order***) in respect of any premises if—
 - (a) a person is convicted by the court or magistrate of a specified offence in respect of the premises (***present conviction***);
 - (b) the Authority applies in writing for the order; and
 - (c) the court or magistrate is satisfied that the conditions specified in subsection (2) are fulfilled.
- (2) The conditions are that—
 - (a) there is a previous conviction in respect of the premises;

- (b) the Authority has, in respect of the previous conviction, acted in accordance with subsection (3); and
 - (c) the specified offence to which the present conviction relates was committed within the period beginning on the date after, and ending 16 months after, the date of the previous conviction.
- (3) For subsection (2)(b), the Authority has acted in accordance with this subsection if—
- (a) within 14 days after the date of the previous conviction, the Authority has—
 - (i) published—
 - (A) a notice in English in 1 newspaper published in Hong Kong in the English language; and
 - (B) a notice in Chinese in 1 newspaper published in Hong Kong in the Chinese language; and
 - (ii) affixed both notices to a conspicuous part of the premises to which the previous conviction relates (*previous conviction premises*); and
 - (b) each of the notices mentioned in paragraph (a)—
 - (i) is addressed to the owner and the tenant of the previous conviction premises (by reference to their capacity in relation to the premises);
 - (ii) includes a statement to the effect that a person has been convicted of a specified offence in respect of the premises;

- (iii) states the nature of the offence and the date of conviction of the offence; and
 - (iv) includes a statement to the effect that a closure order may be made in respect of the premises if—
 - (A) within the period beginning on the date after, and ending 16 months after, the date of the conviction, any person commits a specified offence in respect of the premises; and
 - (B) the person is convicted of the offence.
- (4) If the previous conviction premises only form part of the premises to which the present conviction relates, a closure order may be made only in respect of that part.
- (5) A closure order must—
 - (a) identify the premises to which the order relates; and
 - (b) direct that the premises are to be closed from the date specified in the order for 6 months.
- (6) Whether a closure order is made in relation to the present conviction—
 - (a) does not affect any power of a court or magistrate to sentence or otherwise deal with the convicted person; and
 - (b) is to be left out of account when determining the appropriate sentence or other way of dealing with the convicted person.
- (7) The operation of a closure order is not affected by—

- (a) any pending appeal against the present conviction or the previous conviction; or
 - (b) any pending application made under section 20C(1) or 20E(1) to rescind or suspend the order.
- (8) If an appellate court records or restores a conviction of a person of a specified offence, the court or magistrate before which the charge for the offence was laid may make the order under subsection (1) as if the person were convicted by the court or magistrate.
- (9) In this section—

previous conviction (以往定罪) means—

- (a) the conviction of any person of a specified offence before the present conviction; and
- (b) if there is more than one such conviction before the present conviction—the one immediately preceding the present conviction;

specified offence (指明罪行) means an offence under section 5 or 5A.

20B. Issue of warrant to bailiff after making closure order

- (1) If a court or magistrate makes a closure order in respect of any premises, the court or magistrate—
- (a) must issue a warrant to a bailiff, commanding the bailiff to close the premises and to affix a copy of the order to a conspicuous part of the premises; and
 - (b) may direct that the warrant is to be executed only after a date specified in the warrant.

- (2) A bailiff executing the warrant may, in order to effect the closure of the premises—
 - (a) enter any place at the time specified in the warrant or, if no time is specified, at any time;
 - (b) use any reasonable force and take any reasonable measures, including using any force that is reasonable in the circumstances for gaining entry into the premises; and
 - (c) evict any person from the premises.
- (3) The bailiff may be accompanied and assisted by any person the bailiff considers necessary for assisting the bailiff in executing the warrant.

Subdivision 2—Rescission of Closure Order

20C. Rescission of closure order on application

- (1) If a closure order is made in respect of any premises on the basis of a present conviction within the meaning of section 20A, an interested person for the premises may apply in writing to a court or magistrate for the order to be rescinded.
- (2) A person is an interested person for any premises if the person becomes a purchaser, mortgagee or chargee in good faith for valuable consideration of an interest in the premises (*bona fide purchaser*)—
 - (a) after the date on which a notice about the previous conviction within the meaning of section 20A was registered under section 5B(1); and
 - (b) before the date on which a notice about laying of the charge resulting in the present conviction was registered under that section.

- (3) A person is also an interested person for any premises if the person becomes a bona fide purchaser of the premises—
 - (a) after the date on which a notice about the quashing of the present conviction on appeal (*acquittal*) was registered under section 5B(1); and
 - (b) before the date on which a notice about an appeal against the acquittal was registered under that section.
- (4) On receiving an application under subsection (1), the court or magistrate must—
 - (a) appoint a date for hearing the application;
 - (b) send a copy of the application and accompanying documents to the Authority; and
 - (c) inform the applicant and the Authority of the date of the hearing.
- (5) The court or magistrate may rescind the closure order if, after hearing the application and any representations made by or for the Authority, the court or magistrate is satisfied that—
 - (a) at the time the applicant became a bona fide purchaser of the premises, the applicant did not know of the charge mentioned in subsection (2)(b) or the appeal mentioned in subsection (3)(b) (as the case requires); and
 - (b) having regard to all the circumstances, it would be unjust for the applicant's interest in the premises to be affected by the order.

20D. Rescission of closure order on successful appeal against conviction

- (1) Subject to subsection (2), an appellate court must rescind a closure order if—
 - (a) the order was made by reference to a conviction (whether it is a present conviction or previous conviction within the meaning of section 20A); and
 - (b) the person convicted (*appellant*) successfully appeals to the appellate court against the conviction.
- (2) The appellate court may decide not to rescind the closure order if—
 - (a) in the same proceedings in which the conviction was made—
 - (i) the appellant or any other person was convicted of an offence of which the appellant or that other person remains convicted (*other conviction*); and
 - (ii) the order could have been made by reference to that other conviction; or
 - (b) the appellate court substitutes a verdict of guilty of another offence by reference to which the order could, if the appellant had originally been convicted of that other offence, have been made.

Subdivision 3—Suspension of Closure Order

20E. Suspension of closure order

- (1) If a closure order is made in respect of any premises, an affected person may apply in writing to a court or magistrate for an order under this section (*suspension order*)—
 - (a) that the closure order be suspended; and
 - (b) that the premises may be—
 - (i) used for a particular purpose (*proposed purpose*); and
 - (ii) for such purpose, occupied by a particular person (*proposed occupier*).
- (2) An application under subsection (1) must state—
 - (a) the proposed purpose; and
 - (b) the name, address, and business or occupation, of the proposed occupier.
- (3) On receiving the application, the court or magistrate must—
 - (a) appoint a date for hearing the application;
 - (b) send a copy of the application and accompanying documents to the Authority; and
 - (c) inform the applicant and the Authority of the date of the hearing.
- (4) The court or magistrate may make a suspension order if, after hearing the application and any representations made by or for the Authority, the court or magistrate is satisfied that the use of the premises for the proposed purpose by the proposed

occupier would not be likely to cause any nuisance or annoyance to any person residing nearby.

- (5) A suspension order has effect for a period of not more than 2 years as specified in the order (*suspension period*).
- (6) A suspension order may be subject to any conditions the court or magistrate considers appropriate, including—
 - (a) a condition that during the suspension period, the premises are to be used only for the proposed purpose and to be occupied only by the proposed occupier;
 - (b) a condition that if there is a breach of any of the conditions of the order, a person will forfeit a specified sum of money; and
 - (c) a condition that the person mentioned in paragraph (b) must give security, in the way and amount specified in the order, in respect of the sum of money that the person may forfeit.
- (7) If a suspension order is made, the applicant for the order must affix a copy of the order to a conspicuous part of the premises to which the order relates.
- (8) If a closure order is suspended under this section and is not revived under section 20H, the order ceases to have effect at the end of the suspension period.
- (9) In this section—

affected person (受影響人士), in relation to a closure order made in respect of any premises, means—

 - (a) a person who is a mortgagee or chargee of the premises; or

- (b) a person who would, if the premises were not closed because of the order—
 - (i) be entitled or permitted to occupy or possess the premises; or
 - (ii) be the immediate landlord of the occupier of the premises.

20F. Variation of conditions of suspension order

- (1) If a suspension order is subject to a condition, an affected person may apply in writing to a court or magistrate for a variation of the condition.
- (2) An application under subsection (1) must state the proposed variation.
- (3) On receiving the application, the court or magistrate must—
 - (a) appoint a date for hearing the application;
 - (b) send a copy of the application and accompanying documents to the Authority; and
 - (c) inform the applicant and the Authority of the date of the hearing.
- (4) If, after hearing the application and any representations made by or for the Authority, the court or magistrate is satisfied that a condition of the suspension order should be varied, the court or magistrate may, by order—
 - (a) vary the condition; and
 - (b) impose any other conditions the court or magistrate considers appropriate.
- (5) In this section—

affected person (受影響人士), in relation to a suspension order made to suspend a closure order, means—

- (a) an affected person as defined by section 20E(9) in relation to the closure order; or
- (b) a person who would be held liable if a condition of the suspension order is breached;

vary (更改) includes revoke.

20G. Enforcement of money forfeited

- (1) If a condition of a suspension order is breached, the payment of any sum of money to be forfeited as a result may be enforced, in the same way as if it were a judgment debt, by—
 - (a) if the order was made by a court—the court; or
 - (b) if the order was made by a magistrate—any magistrate.
- (2) Any money recovered under subsection (1) is to be paid into the general revenue.

Subdivision 4—Revival of Closure Order

20H. Revival of closure order

- (1) If a closure order made in respect of any premises is suspended by a suspension order, and a condition of the suspension order is breached, the Authority may apply in writing to a court or magistrate for an order under this section (***revival order***) that the closure order be revived.
- (2) On receiving an application under subsection (1), the court or magistrate must—
 - (a) appoint a date for hearing the application;

- (b) inform the Authority of the date of the hearing;
and
- (c) issue to each of the following persons a summons, requiring the person to appear before the court or magistrate on the hearing of the application—
 - (i) any occupier of the premises;
 - (ii) any immediate landlord of an occupier of the premises;
 - (iii) any person who would be held liable if a condition of the suspension order is breached.
- (3) Subject to subsection (4), section 8 of the Magistrates Ordinance (Cap. 227) applies to the issue of a summons under subsection (2)(c) in respect of an application under subsection (1) as if—
 - (a) the application were a complaint mentioned in that section; and
 - (b) if the summons is to be issued by a court—
references to “magistrate” or “magistrate’s court”
in that section were references to the court.
- (4) Despite anything to the contrary in section 8 of the Magistrates Ordinance (Cap. 227)—
 - (a) if the place of abode of an immediate landlord of an occupier of the premises is not known, a summons may be issued to the landlord by leaving it with any person at the premises; and
 - (b) if the identity of the immediate landlord is not known, a summons may be issued to the landlord by reference to the landlord’s status as such, without naming the landlord.

- (5) If, after hearing the application, the court or magistrate is satisfied that a condition of the suspension order is breached, the court or magistrate may—
 - (a) make an order reviving the closure order; and
 - (b) make any modifications to the closure order the court or magistrate considers appropriate.
- (6) If a revival order is made—
 - (a) the revived closure order resumes effect from the date specified in the revival order; and
 - (b) the period during which the closure order was suspended is not taken to be part of the period for which the closure order has effect.
- (7) The revival order must—
 - (a) identify the closure order and suspension order to which it relates;
 - (b) specify the date from which the closure order resumes effect; and
 - (c) specify the remaining period for which the closure order will have effect by virtue of subsection (6)(b).
- (8) If a revival order is made, the Authority must affix a copy of the order to a conspicuous part of the premises to which the order relates.
- (9) If a revival order is made, section 20B applies in relation to the revived closure order as if the making of the revival order were the making of the closure order.

Division 3—Miscellaneous

20I. Application relating to closure order

An application under section 20C(1), 20E(1), 20F(1) or 20H(1) in relation to a closure order must—

- (a) if the order was made by a court—be made to the court and, so far as is practicable, be made to the judge who made the order; or
- (b) if the order was made by a magistrate—be made to a magistrate and, so far as is practicable, be made to the magistrate who made the order.

20J. Order and notice to be registered in Land Registry

- (1) If the District Court makes a remedial order—
 - (a) the Court must, as soon as reasonably practicable, send a copy of the order to the Authority; and
 - (b) the Authority must, as soon as reasonably practicable after receiving the copy, arrange for the copy to be registered in the Land Registry.
- (2) If a court or magistrate makes a closure order, suspension order, variation order or revival order—
 - (a) the court or magistrate must, as soon as reasonably practicable, send a copy of the order to the Authority; and
 - (b) the Authority must, as soon as reasonably practicable after receiving the copy, arrange for the copy to be registered in the Land Registry.
- (3) If a court or magistrate rescinds a closure order under section 20C or 20D—

- (a) the court or magistrate must, as soon as reasonably practicable, send a written notice to the Authority stating that fact; and
 - (b) the Authority must, as soon as reasonably practicable after receiving the notice, arrange for the notice to be registered in the Land Registry.
- (4) A copy of an order, or a notice, required to be sent to the Authority under this section must be—
- (a) if sent by a court—sealed with the seal of the court; or
 - (b) if sent by a magistrate—signed by the magistrate.
- (5) A copy of an order, or a notice, required to be registered in the Land Registry under this section is taken to be an instrument affecting land, but a failure to register the copy of the order, or the notice, does not affect its validity as against any person.”.

21. Part VII heading substituted

Part VII, heading—

Repeal the heading

Substitute

“Part 7

General and Miscellaneous Provisions”.

22. Part 7, Division 1 heading added

Before section 21—

Add

“Division 1—Miscellaneous Provisions for Offences”.

23. Section 21 amended (offences in relation to certificates of exemption and licences)

(1) Section 21, heading—

Repeal

“Offences in relation to certificates of exemption and licences”

Substitute

“Miscellaneous offences”.

(2) Section 21—

Repeal subsections (1) and (2).

(3) Section 21—

Repeal subsections (3) and (4)

Substitute

“(3) A person commits an offence if, while a licence is issued for any premises—

- (a) the person operates, keeps, manages or otherwise has control of the premises as a hotel or guesthouse in contravention of a condition of the licence;**
- (b) the person operates, keeps, manages or otherwise has control, purportedly under the licence, of any other premises as a hotel or guesthouse; or**
- (c) the person operates, keeps, manages or otherwise has control of the premises as a hotel or guesthouse under a name other than the business name contained in the licence.**

- (4) If a condition of a licence is contravened, the licence holder commits an offence.
- (4A) A person charged with an offence under subsection (4) is entitled to be acquitted if—
 - (a) sufficient evidence is adduced to raise an issue that the person—
 - (i) did not know and had no reason to suspect that the circumstances giving rise to the contravention existed; and
 - (ii) could not, by the exercise of reasonable supervision and reasonable diligence, have prevented those circumstances arising; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.”.
- (4) Section 21(5)—
Repeal
“(1) or”.
- (5) Section 21(5)—
Repeal
everything after “other control”
Substitute
“of any premises as a hotel or guesthouse is, in the absence of evidence to the contrary, proof that the defendant operated, kept, managed or otherwise had control of the premises as a hotel or guesthouse.”.
- (6) Section 21—
Repeal subsection (6)
Substitute
“(6) A person commits an offence if the person—

- (a) in, or in connection with, an application under this Ordinance, makes a statement (whether oral or written) or furnishes any information—
 - (i) that is false in a material particular; and
 - (ii) that the person knows or reasonably ought to know is false in that material particular;
- (b) wilfully obstructs the Authority, a public officer or a bailiff in performing a function under this Ordinance;
- (c) without reasonable excuse, fails to comply with a request made under section 12O for determining a matter mentioned in subsection (1)(c) or (d) of that section;
- (d) in purported compliance with a request made under section 12O, furnishes any document or information—
 - (i) that is false in a material particular; and
 - (ii) that the person knows or reasonably ought to know is false in that material particular;
- (e) without reasonable excuse, refuses to produce, provide or disclose any document, thing or information when so required under section 18 or 18A;
- (f) in purported compliance with a requirement made under section 18 or 18A, furnishes any document, thing or information—
 - (i) that is false in a material particular; and
 - (ii) that the person knows or reasonably ought to know is false in that material particular;

- (g) fails to comply with a reasonable requirement of an enforcement officer acting under a warrant issued under section 18A;
 - (h) without reasonable excuse, fails to comply with a direction given under section 19 within the period indicated in the notice served under that section;
 - (i) not being any of the following persons, and without reasonable excuse, enters or is in a hotel or guesthouse within the meaning of section 20 while a remedial order is in force in respect of the hotel or guesthouse—
 - (i) a police officer or an enforcement officer in the course of the officer's duty;
 - (ii) a person authorized under section 20(5)(b);
 - (j) not being any of the following persons, and without reasonable excuse, enters or is in any premises while a closure order is in force in respect of the premises—
 - (i) a police officer or an enforcement officer in the course of the officer's duty;
 - (ii) a bailiff authorized by a warrant issued under section 20B to enter the premises;
 - (iii) a person assisting the bailiff in executing the warrant; or
 - (k) without lawful authority or reasonable excuse, interferes with anything used to close any premises subject to a remedial order or closure order.”.
- (7) Section 21(6A)—

Repeal

“referred to in section 8 or 9”.

(8) Section 21(6A), English text—

Repeal

“he”

Substitute

“the person”.

(9) Section 21(7)—

Repeal

“of \$100,000”

Substitute

“at level 6”.

(10) Section 21(7)—

Repeal

“to a fine of \$10,000 for each”

Substitute

“, in the case of a continuing offence, to a further fine of \$10,000 for every”.

24. Section 21A substituted

Section 21A—

Repeal the section

Substitute

“21A. Time limit for prosecution of summary offences

Despite section 26 of the Magistrates Ordinance (Cap. 227), proceedings may be instituted for an offence, other than an indictable offence, under this Ordinance within whichever of the following periods ends last—

- (a) 6 months after the commission of the offence;
- (b) 6 months after the offence is discovered by or comes to the notice of the Authority.”.

25. Sections 21B and 21C added

After section 21A—

Add

“21B. Liability of officers of body corporate

- (1) If a body corporate commits an offence under this Ordinance, and it is proved that the offence—
 - (a) was committed with the consent or connivance of an officer of the body corporate; or
 - (b) is attributable to any neglect on the part of an officer of the body corporate,the officer also commits the offence.

- (2) In subsection (1)—

officer (人員) means—

- (a) a director of the body corporate;
- (b) a company secretary of the body corporate;
- (c) a person concerned in the management of the body corporate; or
- (d) a person purporting to act in the capacity of a person referred to in paragraph (a), (b) or (c).

21C. Liability of partners, office holders, etc. of unincorporated bodies

- (1) If a partner in a partnership commits an offence under this Ordinance, and it is proved that the offence—

- (a) was committed with the consent or connivance of a person specified in subsection (3); or
 - (b) is attributable to any neglect on the part of a person specified in subsection (3),
that person also commits the offence.
- (2) If a member of an unincorporated body other than a partnership commits an offence under this Ordinance, and it is proved that the offence—
- (a) was committed with the consent or connivance of a person specified in subsection (4); or
 - (b) is attributable to any neglect on the part of a person specified in subsection (4),
that person also commits the offence.
- (3) The person referred to in subsection (1) is—
- (a) a partner in the partnership;
 - (b) a person concerned in the management of the partnership;
 - (c) an office holder in the partnership; or
 - (d) a person purporting to act in the capacity of a person referred to in paragraph (a), (b) or (c).
- (4) The person referred to in subsection (2) is—
- (a) a person concerned in the management of the body;
 - (b) an office holder of the body; or
 - (c) a person purporting to act in the capacity of a person referred to in paragraph (a) or (b).”.

26. Part 7, Division 2 heading, and sections 21D to 21G added

Before section 22—

Add

“Division 2—Administration and Enforcement

21D. Appointment of enforcement officer

The Authority may appoint in writing any public officer to be an enforcement officer for the purposes of this Ordinance.

21E. Duty to produce evidence of authority

A person who, on any premises, exercises a power under section 18, 18A, 20 or 20B in respect of the premises must, if requested, produce for inspection—

- (a) documentary evidence of the person’s identity;
- (b) for a power exercised pursuant to a warrant issued under section 18A or 20B—the warrant;
- (c) for a power exercised by a person authorized under section 20(5)(b)—documentary evidence of the authorization; and
- (d) for a power exercised by an enforcement officer—documentary evidence of the appointment under section 21D.

21F. Evidence by documents

- (1) In any legal proceedings, a copy purporting to be certified by a relevant authority as a true copy of a document or part of a document given, issued or maintained by the authority is admissible in evidence without further proof and, in the absence of evidence to the contrary, is taken as so certified by the authority.

- (2) In any legal proceedings, a document purporting to be given or issued by a relevant authority and purporting to be signed by the authority or any person authorized by the authority in that behalf is admissible in evidence without further proof and, in the absence of evidence to the contrary—
 - (a) is taken as given or issued by the authority and as so signed; and
 - (b) is evidence of the facts stated in it.
- (3) In any legal proceedings, a document purporting to be given or issued by an enforcement officer and purporting to be signed by the officer is admissible in evidence without further proof and, in the absence of evidence to the contrary—
 - (a) is taken as given or issued by the officer and as so signed; and
 - (b) is evidence of the facts stated in it.
- (4) In this section—

relevant authority (有關當局) means—

 - (a) the Authority; or
 - (b) the Secretary.

21G. Immunity from civil liability

- (1) A person to whom this section applies is not civilly liable for an act done or omitted to be done by the person in good faith in performing or purportedly performing a function under this Ordinance.
- (2) Subsection (1) does not affect any liability of the Government for the act or omission.
- (3) This section applies to—

- (a) the Authority;
- (b) a public officer;
- (c) a bailiff; and
- (d) a person assisting an enforcement officer or a bailiff under section 18A(8) or 20B(3) in the performance or purported performance of a function of the officer or bailiff.”.

27. Section 22 amended (regulations)

- (1) Section 22(1)(a), (b), (c) and (d), Chinese text—

Repeal

“持牌旅館”

Substitute

“酒店或賓館”.

- (2) Section 22(1)—

Repeal paragraph (e)

Substitute

“(e) appeals under section 17A and the practice and procedure of an appeal board;”.

- (3) Section 22(1)(f), Chinese text—

Repeal

“關乎持牌旅館的”.

- (4) Section 22(3)—

Repeal

“a guesthouse”

Substitute

“guesthouse”.

- (5) Section 22(3)—

Repeal

“that guesthouse”

Substitute

“guesthouse”.

(6) Section 22—

Repeal subsection (4)

Substitute

“(4) Regulations made under this section may prescribe offences for contravention of the regulations, punishable by a fine, imprisonment or both.

(4A) The maximum fine that may be prescribed for an offence is level 6 and the maximum imprisonment is 2 years. In addition, in the case of a continuing offence, a further fine not exceeding \$10,000 for every day during which the offence continues may be prescribed.”.

(7) Section 22(5)(a)(i), (ii) and (iii)—

Repeal

“a guesthouse”

Substitute

“guesthouse”.

28. Part 8 and Schedule added

After Part 7—

Add

“Part 8

Transitional and Saving Provisions

23. Transitional and saving provisions for Hotel and Guesthouse Accommodation (Amendment) Ordinance 2020

The Schedule sets out transitional and saving provisions that have effect for the purposes of the amendments made to this Ordinance by the Hotel and Guesthouse Accommodation (Amendment) Ordinance 2020 (6 of 2020).

Schedule

[s. 23]

Transitional and Saving Provisions for Hotel and Guesthouse Accommodation (Amendment) Ordinance 2020

Part 1

Preliminary

1. Interpretation

In this Schedule—

Amendment Ordinance (《修訂條例》) means the Hotel and Guesthouse Accommodation (Amendment) Ordinance 2020 (6 of 2020);

commencement date (生效日期) means the date on which Part 2 of the Amendment Ordinance comes into operation;

former (原有), when it appears in conjunction with a reference to a section or Part, means that section or Part of the former Ordinance;

former Ordinance (《原有條例》) means this Ordinance as in force immediately before the commencement date;

licence period (牌照有效期), in relation to an old regime licence, means the period for which the licence has effect in accordance with the former section 8(5)(d) or 9(6);

old regime decision (舊制決定)—see section 10 of this Schedule;

old regime licence (舊制牌照)—see section 2 of this Schedule;

transitional period (過渡期) means the period of 12 months beginning on the commencement date.

Part 2

Old Regime Licence

2. Old regime licence

An old regime licence is a licence issued under the former section 8, including one issued by virtue of section 7(2) of this Schedule.

3. Effect of old regime licence

(1) Subject to section 4 of this Schedule—

- (a) an old regime licence has effect under the former Part IV; and
 - (b) the former Part IV applies in relation to an old regime licence.
- (2) For the purposes of Parts 2, 6 and 7—
 - (a) a reference to “licence” includes an old regime licence;
 - (b) a reference to a “condition” of a licence includes a condition of an old regime licence; and
 - (c) a reference to “licensed premises” includes premises covered by an old regime licence—
 - (i) including any period during which the licence—
 - (A) remains in effect under the former section 9(5); or
 - (B) is suspended under the former section 10; but
 - (ii) excluding any period during which the licence has yet to take effect because of the former section 8(5)(c) or 9(3).
- (3) For the purposes of another Ordinance that refers to a licence under this Ordinance generally, the reference includes an old regime licence.
- (4) For the purposes of another Ordinance that refers specifically to a hotel licence under this Ordinance, the reference includes an old regime licence endorsed by the Authority as meeting the eligibility criteria for a hotel licence, but not any other old regime licence.

4. Renewal of old regime licence

- (1) An old regime licence may be renewed—
 - (a) if it falls within subsection (2)—only under the former section 9 and subject to section 5 of this Schedule; or
 - (b) if it does not fall within subsection (2)—only under section 12C in accordance with section 6 of this Schedule.
- (2) An old regime licence falls within this subsection if—
 - (a) its licence period ends before the end of the transitional period; and
 - (b) it has not been renewed within the transitional period.
- (3) Once an old regime licence is renewed under section 12C—
 - (a) the former Part IV ceases to apply in relation to the licence; and
 - (b) the renewed licence ceases to be an old regime licence and is taken to be a licence as defined by section 2(1) for all purposes.

5. Renewal under former section 9

- (1) The licence period of an old regime licence renewed under the former section 9 must not exceed 12 months.
- (2) If an old regime licence is renewed under the former section 9, the former Fees Regulations apply in relation to the renewal.
- (3) In this section—

former Fees Regulations (《原有費用規例》) means the Hotel and Guesthouse Accommodation (Fees) Regulations (Cap. 349 sub. leg. B) as in force immediately before the date on which Part 4 of the Amendment Ordinance comes into operation.

6. Renewal under section 12C

- (1) For the purpose of renewing an old regime licence under section 12C, Part 4A applies in relation to the licence, but only to the extent that would enable—
 - (a) the renewal of the licence as a licence that conforms with Part 4A;
 - (b) an application for such a renewal, as well as the determination of the application, in accordance with section 12C; and
 - (c) the remaining in effect of the licence, if applicable, under section 12H.
- (2) For the purposes of subsection (1), Part 4A is to be read as if—
 - (a) the power to renew a licence under section 12C were a power to renew an old regime licence as a licence that conforms with Part 4A; and
 - (b) the following references, insofar as they relate to the old regime licence, were references to—
 - (i) for a reference to “licence period”—the licence period as defined by section 1 of this Schedule;
 - (ii) for a reference to “condition”—a condition imposed under the former section 8(2)(a) or 9(3) or such a condition as amended or varied under the former section 10; and

- (iii) for a reference to “authorized person’s certificate”—an authorized person’s certificate required to be submitted under the former section 8(5A) or 9(3A).

Part 3

Pending Application

7. Pending application for licence

- (1) This section applies if, immediately before the commencement date—
 - (a) an application has been made under the former section 8 for the issue of a licence under that section; and
 - (b) the application has yet to be determined by the Authority.
- (2) Subject to subsection (3)—
 - (a) the application is to continue to be processed under the former section 8; and
 - (b) the former section 8 continues to apply in relation to the application.
- (3) The licence period of a licence issued under the former section 8 must not exceed 12 months.
- (4) If a licence is issued under the former section 8, the former Fees Regulations apply in relation to the issue.
- (5) In this section—

former Fees Regulations (《原有費用規例》) means the Hotel and Guesthouse Accommodation (Fees) Regulations (Cap. 349 sub. leg. B) as in force immediately before the date on which Part 4 of the Amendment Ordinance comes into operation.

8. Pending application for renewal of licence

- (1) This section applies if, immediately before the commencement date—
 - (a) an application has been made under the former section 9 for the renewal of an old regime licence; and
 - (b) the application has yet to be determined by the Authority.
- (2) If, by virtue of section 4(1)(a) of this Schedule, the licence may be renewed only under the former section 9, the application is to continue to be processed under the former Part IV and subject to section 5 of this Schedule.
- (3) If, by virtue of section 4(1)(b) of this Schedule, the licence may be renewed only under section 12C, the application is to be processed as if it were an application made under section 12C in accordance with section 6 of this Schedule, but only if—
 - (a) the application complies with section 12C; or
 - (b) necessary steps required by the Authority to make the application comply with section 12C have been taken within a reasonable period.

9. Pending application for transfer of licence

- (1) This section applies if, immediately before the commencement date—

- (a) an application has been made under the former section 12 for the transfer of an old regime licence; and
 - (b) the application has yet to be determined by the Authority.
- (2) The application is to continue to be processed under the former section 12.

Part 4

Old Regime Decision

10. Old regime decision

An old regime decision is a decision of the Authority under the former section 8, 9, 10 or 12, including one made by virtue of Part 3 of this Schedule.

11. Appeal against old regime decision

Sections 12 and 13 of this Schedule have effect for the purposes of an appeal against an old regime decision.

12. Appeal made before commencement date

- (1) This section applies if, immediately before the commencement date—
- (a) a notice of appeal has been lodged under the former section 13(3) against an old regime decision; and
 - (b) the appeal has yet to be determined by the Appeal Board.
- (2) The following provisions continue to apply in relation to the old regime decision and appeal—

- (a) the former Part V; and
 - (b) the former Appeal Board Regulations.
- (3) The following appointments remain in effect until the appeal is determined by the Appeal Board, withdrawn or abandoned—
- (a) the appointment of the Chairman of the Appeal Board under the former section 14(2);
 - (b) the appointment of the panel of persons under the former section 14(4); and
 - (c) the appointment of a member of the Appeal Board under the former section 15(1) to hear the appeal.
- (4) In this section—

Appeal Board (上訴委員會) means the Appeal Board constituted under the former section 15;

former Appeal Board Regulations (《原有上訴委員會規例》) means the Hotel and Guesthouse Accommodation (Appeal Board) Regulations (Cap. 349 sub. leg. A) as in force immediately before the date on which Part 3 of the Amendment Ordinance comes into operation.

13. Appeal made on or after commencement date

- (1) This section applies if, immediately before the commencement date—
- (a) a person is entitled to appeal under the former section 13(1) against an old regime decision; and
 - (b) no notice of appeal has been lodged under the former section 13(3) against that decision.

- (2) This section also applies if an old regime decision is made on or after the commencement date.
- (3) Part 5A applies in relation to the old regime decision as if—
 - (a) in section 17A(1)—the reference to a decision of the Authority included an old regime decision;
 - (b) in section 17A(2) and (3)—the reference to a suspendable decision included a decision under the former section 10; and
 - (c) in sections 17A(3)(b) and 17C(2)—the reference to a notice of decision were a reference to either of the following—
 - (i) a notice served under the former section 10;
 - (ii) an order sent under the former section 11(2).

Part 5

Existing Direction and Order

14. Direction given under former section 19

- (1) This section applies to a direction given under the former section 19 that was in force immediately before the commencement date.
- (2) The direction continues to be in force under section 19 as if it were given under that section.

15. Order made under former section 20

- (1) This section applies to an order made under the former section 20 that was in force immediately before the commencement date.
 - (2) The order continues to be in force, and may be enforced, under section 20 as if it were made under that section.”.
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Part 3

Amendments to Hotel and Guesthouse Accommodation (Appeal Board) Regulations (Cap. 349 sub. leg. A)

29. Regulation 2 amended (interpretation)

(1) Regulation 2—

Repeal the definition of *appellant*

Substitute

“*appellant* (上訴人) means a person who gives the Convenor a notice of appeal under section 17C of the Ordinance;”.

(2) Regulation 2—

Add in alphabetical order

“*specified form* (指明表格) means a form specified by the Convenor under regulation 16.”.

30. Regulation 3 repealed (notice of appeal)

Regulation 3—

Repeal the regulation.

31. Regulations 4 to 8 substituted

Regulations 4, 5, 6, 7 and 8—

Repeal the regulations

Substitute

“4. Notifying Authority and interested persons of appeal

- (1) An appellant must, on the date the notice of appeal is given to the Convenor under section 17C of the Ordinance, also serve the following documents on the Authority—
 - (a) a copy of the notice of appeal; and
 - (b) a copy of all documents accompanying the notice of appeal as mentioned in section 17C(3)(c) and (d) of the Ordinance.
- (2) The Convenor must, as soon as reasonably practicable after receiving the notice of appeal, notify every interested person as defined by section 12P(6) of the Ordinance (except the appellant) that the Convenor has received the notice.

5. Further particulars

- (1) A party to an appeal (*requesting party*) may, within the period specified in subregulation (2), serve a notice on the other party (*requested party*) requesting any further particulars relating to the appeal that are specified in the notice (*requested particulars*).
- (2) The period is—
 - (a) the period of 7 days after the date on which a copy of the notice of appeal is served on the Authority under regulation 4(1); or
 - (b) the longer period that the relevant authority may, on an application made in the specified form, allow in a particular case.
- (3) Subject to subregulation (5), the requested party must, within the period specified in subregulation (4)—

- (a) give the requested particulars to the requesting party; and
 - (b) give a copy of the requested particulars to the relevant authority.
- (4) The period is—
- (a) the period of 7 days after the date on which a notice is served on the requested party under subregulation (1); or
 - (b) the longer period that the relevant authority may, on an application made in the specified form, allow in a particular case.
- (5) The relevant authority may, on application, direct that the requested party need not comply with subregulation (3) in respect of a requested particular (*exempted particular*) if it is satisfied that—
- (a) the request for the exempted particular was unreasonable; or
 - (b) reasonable grounds exist for not giving the exempted particular.
- (6) In this regulation—
- relevant authority* (有關當局) means—
- (a) the chairperson of the appeal board formed to hear the appeal; or
 - (b) if an appeal board has yet to be formed—the Convenor.

6. Inspection of documents

- (1) A party to an appeal (*requesting party*) may, at any time, serve a notice on the other party (*requested party*) requiring the requested party to, within 7 days after the date on which the notice is served—

- (a) produce any document relating to the appeal;
and
 - (b) permit the requesting party to make any copy
of the document.
- (2) If a requested party fails to comply with a notice served under subregulation (1) in respect of a document, the party is not allowed to subsequently use the document as evidence at the appeal hearing, unless the party satisfies the appeal board that the party had a reasonable cause for the failure to comply.

7. Date, time and place of hearing

- (1) The chairperson of an appeal board must, as soon as reasonably practicable after the board is formed, fix the date, time and place for hearing the appeal.
- (2) The chairperson must also notify, in the specified form, every party to the appeal of the date, time and place of the hearing at least 28 days before the date fixed.

8. Summons to witness

- (1) A party to an appeal may apply, in the specified form, to the chairperson of the appeal board for the board to summon a person as a witness.
- (2) If an appeal board decides (whether or not on application) to summon a person as a witness, the notice required under section 17D(8)(c) of the Ordinance must be given—
 - (a) by the chairperson of the board; and
 - (b) in the specified form.

(3) In this regulation—

summon (傳召) means summon under section 17D(8)(c) of the Ordinance.”.

32. Regulation 9 amended (appeal to be conducted in public)

Regulation 9—

Repeal

“the appeal shall be conducted in public unless the Chairman of his own motion, or”

Substitute

“an appeal by an appeal board is to be conducted in public unless the chairperson of the board, of his or her own motion or”.

33. Regulation 10 amended (representation)

(1) Regulation 10, English text—

Repeal

“the appeal”

Substitute

“an appeal”.

(2) Regulation 10(a)—

Repeal

“barrister or solicitor”

Substitute

“legal practitioner”.

(3) Regulation 10(b)—

Repeal

“barrister, solicitor or legal officer”

Substitute

“legal practitioner, or a legal officer as defined by section 2 of the Legal Officers Ordinance (Cap. 87)”.

34. Regulations 11, 12 and 13 substituted

Regulations 11, 12 and 13—

Repeal the regulations

Substitute

“11. Abandonment of appeal

- (1) An appellant may abandon the whole or any part of an appeal by giving a written notice to—
 - (a) the chairperson of the appeal board formed to hear the appeal; or
 - (b) if an appeal board has yet to be formed—the Convenor.
- (2) The appellant must, on the date the notice is given under subregulation (1), also serve a copy of the notice on the Authority.

12. Failure of appellant to attend hearing

- (1) If, on the day and time fixed for hearing an appeal, the appellant fails to attend the hearing either in person or by a legal practitioner, the appeal board may—
 - (a) if satisfied that the failure to attend was because of sickness or other reasonable cause—postpone or adjourn the hearing for a period the board considers appropriate;
 - (b) proceed to hear the appeal; or

- (c) dismiss the appeal.
- (2) If an appeal is dismissed by an appeal board under subregulation (1)(c)—
 - (a) the appellant may, within 30 days after the date on which the order for dismissal is made, apply for a review of the order by giving a written notice to the chairperson of the board; and
 - (b) the board may, if satisfied that the failure to attend was because of sickness or other reasonable cause, set aside the order.
- (3) The appellant must, on the date the notice is given under subregulation (2)(a), also serve a copy of the notice on the Authority.
- (4) If an appeal board sets aside an order for dismissal under subregulation (2)(b), the chairperson of the board must, as soon as reasonably practicable after the setting aside of the order, fix the date, time and place for hearing the appeal afresh.
- (5) The chairperson must also notify, in the specified form, every party to the appeal of the date, time and place of the hearing at least 14 days before the date fixed.

13. Failure of appellant to serve notice of appeal, etc.

If an appellant fails to comply with regulation 4(1) or 5(3), the appeal board may dismiss the appeal.”.

35. Regulation 14 amended (record of proceedings)

- (1) Regulation 14—

Repeal

“The Chairman shall”

Substitute

“The chairperson of an appeal board must”.

- (2) Regulation 14—

Repeal

“every appeal heard by the Appeal Board”

Substitute

“an appeal”.

- (3) Regulation 14(e) and (g), English text—

Repeal

“Appeal Board”

Substitute

“appeal board”.

- (4) Regulation 14(h)—

Repeal

“section 15”

Substitute

“section 17D(8)(e)”.

36. Regulation 15 substituted

Regulation 15—

Repeal the regulation

Substitute

“15. Service of notices and other documents

A notice or any other document permitted or required to be served on a person under these regulations may be—

- (a) served personally on the person; or

(b) sent to the person by registered post at the person's address last known to the sender.”.

37. Regulation 16 added

After regulation 15—

Add

“16. Convenor may specify forms

The Convenor may specify a form to be used for the purposes of any matter provided for under these regulations.”.

38. Schedule repealed (forms)

The Schedule—

Repeal the Schedule.

Part 4

Amendments to Hotel and Guesthouse Accommodation (Fees) Regulations (Cap. 349 sub. leg. B)

39. Regulation 2 repealed (fee payable upon issue or renewal of certificate of exemption)

Regulation 2—

Repeal the regulation.

40. Regulations 3 and 4 substituted

Regulations 3 and 4—

Repeal the regulations

Substitute

“3. Licence fee for issue or renewal of licence

(1) The fee payable under section 12G(1)(a) of the Ordinance for the issue of a licence under section 12B of the Ordinance is prescribed in Schedule 1.

(2) The fee payable under section 12G(1)(b) of the Ordinance for the renewal of a licence under section 12C of the Ordinance is prescribed in Schedule 2.

4. Adjustment of licence fee if licence period less than 12 months

(1) If the licence period of a licence that is issued is less than 12 months, the fee payable for the issue is to be determined by multiplying one-twelfth of the fee prescribed in column 2 of Schedule 1 for a licence with the same number of rooms by the number of months covered by the licence period.

- (2) If the licence period of a licence that is renewed is less than 12 months, the fee payable for the renewal is to be determined by multiplying one-twelfth of the fee prescribed in column 2 of Schedule 2 for a licence with the same number of rooms by the number of months covered by the licence period.”.

41. Schedule 1 amended (fee payable upon issue of licence under section 8 of the Ordinance)

Schedule 1—

Repeal

everything before “Number of”

Substitute

“Schedule 1

[regs. 3 & 4]

Fee Payable for Issue of Licence under Section 12B of Ordinance”.

42. Schedule 2 amended (fee payable upon renewal of licence under section 9 of the Ordinance)

Schedule 2—

Repeal

everything before “Number of”

Substitute

“Schedule 2

[regs. 3 & 4]

Fee Payable for Renewal of Licence under Section 12C of Ordinance”.

Part 5

Related Amendments

Division 1—Amendment to Specification of Public Offices Notice (Cap. 1 sub. leg. C)

43. Schedule amended (specification of public offices)

The Schedule, entry relating to the Secretary for Home Affairs specified for the purposes of the Hotel and Guesthouse Accommodation Ordinance (Cap. 349)—

Repeal

“(2)(b), (3)(b) and (4)”

Substitute

“(2), (4)(b)(ii) and (5)”.

Division 2—Amendments to Inland Revenue Ordinance (Cap. 112)

44. Section 16F amended (expenditure on building refurbishment)

- (1) Section 16F(5), Chinese text, definition of *住用建築物或構築物*—

Repeal

“旅館”

Substitute

“酒店或賓館”.

- (2) Section 16F(5)—

Repeal the definition of *hotel and guesthouse*.

- (3) Section 16F(5)—

Add in alphabetical order

“*hotel or guesthouse* (酒店或賓館) has the meaning given by section 2A of the Hotel and Guesthouse Accommodation Ordinance (Cap. 349).”.

**Division 3—Amendments to Building (Planning) Regulations
(Cap. 123 sub. leg. F)**

45. Regulation 23A amended (provisions supplementary to regulations 19, 20, 21 and 22 in respect of hotels)

(1) Regulation 23A—

Repeal paragraph (1)

Substitute

“(1) In this regulation—

hotel (旅館) means premises held out as providing sleeping accommodation to any persons presenting themselves who are willing to pay a fee for the sleeping accommodation.”.

(2) Regulation 23A(5)(a)—

Repeal

“section 8 or renewed under section 9 of”.

46. Regulation 41B amended (fireman’s lifts)

(1) Regulation 41B(4)(c)(i), after “hotel”—

Add

“or guesthouse,”.

(2) Regulation 41B(6)—

Repeal the definition of *hotel*.

(3) Regulation 41B(6)—

Add in alphabetical order

“*hotel or guesthouse* (酒店或賓館) has the meaning given by section 2A of the Hotel and Guesthouse Accommodation Ordinance (Cap. 349);”.

Division 4—Amendment to Building (Energy Efficiency) Regulation (Cap. 123 sub. leg. M)

47. Section 2 amended (interpretation)

Section 2—

Repeal the definition of *hotel*

Substitute

“*hotel* (旅館) means premises held out as providing sleeping accommodation to any persons presenting themselves who are willing to pay a fee for the sleeping accommodation;”.

Division 5—Amendments to Hong Kong Tourism Board Ordinance (Cap. 302)

48. Section 2 amended (interpretation)

(1) Section 2(1)—

Repeal the definitions of *hotel operator* and *licensed hotel*.

(2) Section 2(1)—

Add in alphabetical order

“*hotel operator* (酒店營運人) means a natural person who operates, keeps, manages or is otherwise in control of a licensed hotel;

licensed hotel (持牌酒店) means premises for which a hotel licence as defined by section 2(1) of the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) is in force;”.

49. Section 9 amended (constitution and membership of Board)

Section 9(2)(b), Chinese text—

Repeal

“旅館”

Substitute

“酒店”.

**Division 6—Amendments to Smoking (Public Health)
Ordinance (Cap. 371)**

50. Schedule 2 amended (designated no smoking areas and exempt areas)

(1) Schedule 2, Chinese text, Part 2, item 5—

Repeal

“在旅館”

Substitute

“在酒店或賓館”.

(2) Schedule 2, Part 2, item 5(a)—

Repeal

“or certificate of exemption”.

(3) Schedule 2, Chinese text, Part 2, item 5(a)—

Repeal

“該旅館”

Substitute

“該酒店或賓館”.

Division 7—Amendment to Non-Local Higher and Professional Education (Regulation) Rules (Cap. 493 sub. leg. B)

51. Section 5 amended (premises in which registered course or exempted course is conducted)

Section 5(5)(e)(i)—

Repeal

“a hotel in respect of which a licence or a certificate of exemption within the meaning”

Substitute

“premises for which a hotel licence as defined by section 2(1)”.

Division 8—Amendment to Electronic Transactions Ordinance (Cap. 553)

52. Schedule 2 amended (proceedings in relation to which sections 5, 5A, 6, 7 and 8 of this Ordinance do not apply under section 13(1) of this Ordinance)

Schedule 2—

Repeal paragraph (t)

Substitute

“(t) an appeal board constituted or formed under the Hotel and Guesthouse Accommodation Ordinance (Cap. 349);”.

Division 9—Amendments to Karaoke Establishments Ordinance (Cap. 573)

53. Section 5 amended (application for permit or licence)

(1) Section 5(4)(b), Chinese text—

Repeal

“或旅館”

Substitute

“或賓館”.

(2) Section 5(8)—

Repeal

“, guesthouse”

Substitute

“or guesthouse.”.

Division 10—Amendments to Buildings Energy Efficiency Ordinance (Cap. 610)

54. Section 2 amended (interpretation)

(1) Section 2, definition of *residential building*—

Repeal

“a guesthouse”

Substitute

“guesthouse”.

(2) Section 2—

Repeal the definition of *hotel* and *guesthouse*.

(3) Section 2—

Add in alphabetical order

“*hotel or guesthouse* (酒店或賓館) has the meaning given by section 2A of the Hotel and Guesthouse Accommodation Ordinance (Cap. 349);”.

55. Schedule 1 amended (buildings that require Certificate of Compliance Registration and Form of Compliance)

Schedule 1, item 3—

Repeal

“and guesthouse”

Substitute

“or guesthouse”.

Division 11—Amendment to Residential Properties (First-hand Sales) Ordinance (Cap. 621)

56. Section 6 amended (interpretation: residential property)

Section 6(1), definition of *residential property*, paragraph (b)—

Repeal

“as defined by section 2(1)”

Substitute

“within the meaning of section 2A”.