

**WRITTEN QUESTION TO THE CHIEF MINISTER BY  
DEPUTY P.V.F. LE CLAIRE OF ST. HELIER**

**ANSWER TO BE TABLED ON TUESDAY 2ND DECEMBER 2008**

**Question**

“Would the Minister outline what performance conditions, if any, were written into the lease for the Waterfront Hotel and advise whether the lessees are meeting these conditions?”

Would he further advise if it is now policy to direct those coming to the Island to do business with the States to stay at this hotel, and if so are discounts offered which could affect any potential return to the States?”

**Answer**

The Waterfront Hotel sub-lease contains a number of performance conditions which the Lessee must comply with. The sub-lessee is meeting these conditions. Extracts of performance conditions from the sub-lease entered into between the Waterfront Enterprise Board Limited and the Waterfront Hotel Holding Limited (passed before the Royal Court on 9<sup>th</sup> September 2005) are detailed below in italics.

I can confirm that it is not States policy to direct visitors coming to the Island to do business with the States to stay at this hotel. The States has secured a corporate rate at the Waterfront Hotel which is available for all States funded requirements. The hotel, however, has not been given exclusivity in terms of States business. States requirements for hotels vary and therefore a range of hotels and corporate rates are used as appropriate.

3. *TENANT'S COVENANTS*

*THE TENANT COVENANTS with the Landlord as follows:*

3.1 *RENT AND INTEREST*

3.1.1 *To pay the rent reserved by this Lease, free from any deductions and rights of set-off, at the times and in the manner required under Schedule 3 and the additional rents required by this Lease at the times and in the manner specified in relation to each of them.*

3.1.2 *To pay Interest on so much of the rents, reviewed rents, and other moneys payable under this Lease as remain unpaid twenty-one days after they have become due from the date that they became due until the payment is received by the Landlord.*

3.1.3 *To pay Interest under Clause 3.1.2 for any period during which the Landlord properly refuses to accept the tender of payment because of an unremedied breach of covenant of the Tenant.*

3.2 *OUTGOINGS*

3.2.1 *To pay all outgoing in respect of the Premises.*

3.2.2 *For the purposes of Clause 3.2.1, 'outgoings' means all rates (both foncier and occupiers), water rates, water charges, sewage rates, sewage charges and all existing and future rates, taxes, charges, assessments, impositions and outgoings whatsoever (whether Insular, Parochial or otherwise) which are now or may at any time be payable, charged or assessed on property or the owner or occupier of property, but 'taxes' in this context does not include taxes imposed on the Landlord in respect of the yearly rent reserved by this Lease or in respect of a disposal of its immediate reversion to this Lease.*

### 3.3 *INSURANCE*

3.3.1 *To keep the Premises insured or to procure that the Premises are insured with an insurer approved by the Landlord (such approval not to be unreasonably withheld or delayed) in the name of the Tenant and the Landlord against loss or damage by the Insured Risks in the full replacement cost of the Premises including cover for the cost of demolition, shoring up and site clearance, Architects', Surveyors' and other requisite professional advisers' fees in relation to the reinstatement of the Premises and third party and public liability risks and the loss of four years rent of the Premises.*

3.3.2 *To pay or to procure the payment of the premiums for insurance promptly as they become due and maintain in force the policies of insurance on the Premises.*

3.3.4 *To produce to the Landlord a copy of the insurance policy whenever reasonably requested and the receipt for the latest premium or other evidence of renewal and up-to-date details of the amount of cover.*

3.3.5 *Not to do or omit to do anything whereby any policy of insurance relating to the Premises may become void or voidable.*

### 3.5 *REPAIR*

3.5.1 *Following the completion of the Development, well and substantially to repair (and where beyond economic repair to rebuild or renew), maintain, decorate and clean the Premises and to keep the same in good and substantial repair, (and if necessary as aforesaid rebuilt or renewed), maintained, decorated and in clean condition. **PROVIDED ALWAYS** that the Tenant shall not be obliged to rebuild or substantially refurbish the Hotel in the last ten (10) years of the Term unless it has been destroyed or substantially damaged by an Insured Risk.*

### 3.8 *ALTERATIONS*

3.8.1 *Not to erect any new buildings or structures on the Premises nor demolish nor remove any structure on the Premises without the consent of the Landlord (such consent not to be unreasonably withheld or delayed) **PROVIDED ALWAYS** that the Tenant can put up signage on the exterior of the Premises and any building forming part thereof without the prior consent of the Landlord provided that the Tenant obtains any necessary consent under the Planning Law.*

3.8.2 *Not to make any material alterations or additions to or affecting the structure or materially affecting the exterior appearance of the Premises without the consent of the Landlord (such consent not to be unreasonably withheld or delayed).*

### 3.9 *ALIENATION*

3.9.1 *Save by assignment of this Lease or sub-sub-letting or other arrangement permitted under the following provisions of this Clause 3.9 not to;*

3.9.1.1 *Assign or otherwise dispose of this Lease or sub-sub-let the whole or any part of the Premises; or*

3.9.1.2 *Part with or share possession or occupation of the whole of any part of the Premises; or*

3.9.1.3 *Grant to third parties any rights over or in the Premises.*

3.9.2.1 *Not to assign the Lease without the consent of the Landlord given by way of the participation of the Landlord in the relevant contract of assignment passed before the Royal Court which consent shall not be withheld or delayed in cases where the Tenant has established to the reasonable satisfaction of the Landlord that the assignee;*

3.9.2.1.1 *is solvent and respectable producing proper and substantial financial and other references; and either*

3.9.2.1.2 *is of sufficient financial standing proven to the satisfaction of the Landlord (acting reasonably) to enable it to discharge all the obligations imposed upon the Tenant by this Lease; or*

3.9.2.1.3 *provides a guarantor or guarantors who are of sufficient financial standing proven to the satisfaction of the Landlord (acting reasonably) to guarantee the discharge of such obligations by the intended assignee the terms of such guarantee to be as the Landlord shall reasonably require provided that the Landlord shall not be obliged to accept more than three (3) guarantors at any time who together discharge the requirement of financial standing contained in this sub-clause.*

3.9.3 *In all cases of assignment the intended assignee will be required if the Landlord so demands to covenant directly with the Landlord in the relevant contract of assignment to perform all the covenants and conditions in this Lease and imposed upon the Tenant including the covenants contained in this Clause 3.9 and without prejudice to the generality Clause 3.10 throughout the residue of the Term.*

3.9.4 *Not to sub-sub-let or licence the whole or any part of the Premises without the consent of the Landlord to be given by the Landlord's participation as a party in the contract or agreement of sub-sub-lease or licence in the terms of the draft participation clause (or as near to it as may be reasonable in all the circumstances) which forms Schedule 6 and which consent shall not be withheld or delayed in cases where the sub-sub-lease or licence is of the whole of the Premises and the Tenant has established to the reasonable satisfaction of the Landlord that the sub-sub-tenant or licensee is or has entered into a management agreement with an internationally recognised international Four Star (which expression for the purposes of this clause 3.9.4 only may also include any higher grade) hotel operator or hotel management company or is a part of a chain or group that is an internationally recognised international Four Star hotel operator or hotel management company ("**Four Star Hotel Operator**") (save if a lesser grade than Four Star is applicable under Clause 3.10.2 in which event such lesser grade hotel operator or management company, chain or group shall apply) and the Tenant has;*

3.9.4.1 *Established to the reasonable satisfaction of the Landlord that;*

3.9.4.1.1 *the intended sub-sub-tenant or licensee is solvent and respectable; and*

3.9.4.1.2 *is of sufficient financial standing proven to the satisfaction of the Landlord (acting reasonably) to enable it to discharge all the obligations imposed upon it by the sub-sub-lease or licence; or*

3.9.4.1.3 *provides a guarantor or guarantors who are of sufficient financial standing proven to the satisfaction of the Landlord (acting reasonably) to guarantee to the Tenant the discharge of the obligations of the sub-sub-tenant or licensee under the sub-sub-lease or licence the terms of such guarantee to be in such terms as the Landlord shall reasonably require provided that the Landlord shall not be obliged to accept more than three (3) guarantors at any time who together discharge the requirement of financial standing contained in this sub-clause; or*

3.9.4.1.4 *is and will remain throughout the term of such sub-sub-lease a wholly owned subsidiary of the Tenant.*

3.9.4.2 *Produced to the Landlord full details of the proposed sub-sub-lease or licence together with any other transaction ancillary thereto; and*

3.9.4.3 *Produced to the Landlord a draft of the proposed sub-sub-lease or licence for the Landlord's comment and approval (which approval shall not be unreasonably withheld or delayed).*

3.9.8 **ENFORCEMENT OF SUB-SUB-LEASE**

3.9.8.1 *Not without the consent of the Landlord (such consent not to be unreasonably withheld or delayed) to vary the terms or waive the benefit of any covenant on the part of a sub-tenant or licensee or condition contained in a sub-sub-lease or licence of the Premises.*

3.9.8.2 *Not without the consent of the Landlord (such consent not to be unreasonably withheld or delayed) to accept a surrender of any sub-sub-lease of the Premises.*

3.9.8.3 *Diligently to enforce the covenants on the part of a sub-tenant or licensee and the conditions contained in a sub-sub-lease of the Premises and (if so required by the Landlord) to exercise by way of enforcement any power of cancellation contained in a sub-sub-lease or licence.*

3.10 **USER**

3.10.1 *To use the Premises as a Four Star (or if the Tenant so desires, a higher grade) hotel (with not less than one hundred and ninety-three (193) bedrooms) and conference centre with ancillary facilities (which facilities may include, but not be limited to restaurants, retail units, health complex, entertainment venue and ancillary support services, provided that there shall be no more than two restaurants or two retail units) operated by an internationally recognised international operator and provided that any health and leisure facilities shall be conducted principally for bona fide guests of the Hotel and will allow only a maximum of Two Hundred (200) subscriptions or club memberships at any one time to persons who are not guests at the Hotel and shall not be marketed or promoted in the Island for the purposes of attracting subscriptions or membership from bona fide residents of the Island. **PROVIDED ALWAYS** that nothing in this clause shall prevent the health and leisure facilities being promoted (in a manner consistent with the restrictions contained above) in literature available within the Premises to members of the public. Any membership or subscription arrangements which are put in place in respect of the health and leisure facilities shall be bona fide membership or subscription arrangements which (i) in their substantive effect do not in any way resemble arrangements for the use of facilities under which the facilities in question are available for use by the public at large and (ii) (without prejudice to the generality of (i) above) involve periods of membership which in all cases are of not less than twelve (12) Months unless terminated by members or subscribers on giving not less than one (1) Month's notice.*

3.10.2 *If at any time after the period of twenty-five (25) years from the Commencement Date it is agreed by the Landlord and the Tenant that the use of the Hotel as a Four Star is not viable the Hotel can be used as a*

*lower grade hotel provided it shall always be used as the highest grade possible in the economic environment then current. In the event that the Landlord and the Tenant cannot agree whether or not the use of the Hotel as a Four Star hotel is or is not viable or the grade at which the Hotel shall be used the matter shall be referred to arbitration under Clause 6.*

*3.10.3 To open the Hotel for business as soon as is reasonably practicable following the Certificate of Practical Completion Date and at all times thereafter to keep the Hotel open for business and to conduct the Hotel Business from the Hotel in such a way reasonably as to maximise the Room Turnover as defined in Schedule 3. **PROVIDED ALWAYS** that notwithstanding the provisions of this Clause the Hotel or such part or parts thereof as may be appropriate can close during periods of refurbishment, re-development, repair or as required by any competent authority or for any other reason beyond the control of the Tenant.*

### *3.11 RESTRICTIONS AFFECTING USE OF THE PREMISES*

*3.11.1 Not to use the Premises for any noxious, noisy or offensive trade or business nor for any illegal or immoral act or purpose.*

*3.11.2 Not to do in or upon the Premises anything which may be or grow to be a nuisance, annoyance, disturbance, inconvenience or damage to the Landlord or to the owners, tenants and occupiers of adjoining and neighbouring properties.*

### *3.12 COMPLIANCE WITH STATUTES ETC.*

*3.12.1 To comply in all respects with all statutes for the time being in force and requirements of any competent authority relating to the Premises or anything done in or on them by the Tenant, and to indemnify the Landlord against liability by reason of failure to comply with them.*

*3.12.2 To comply with all requirements under any present or future statute, order, by-law or regulation as to the use or occupation of, or otherwise concerning, the Premises.*

*3.12.3 To execute with all due diligence all works to the Premises for which the Tenant is liable in accordance with this Clause 3.12.*

*3.12.4 If the Tenant does not comply with this Clause 3.12, to permit the Landlord after reasonable notice to enter the Premises to carry out such works, and to indemnify the Landlord on demand for the reasonable expense of so doing (including surveyors' and other professional advisers' fees) with Interest on such expense, or so much of it as may from time to time remain unpaid, from the date of expenditure*

*until payment by the Tenant to the Landlord, such moneys to be recoverable as rent in arrear. The Landlord in exercising such rights shall do so on the terms set out in sub-clauses (a) to (j) inclusive of paragraph 3 (B) of Schedule 2.*

*3.12.5 To give full particulars to the Landlord of any notice or proposal for a notice, or order or proposal for an order, made, given or issued to the Tenant under or by virtue of any statute or regulation within ten (10) Working Days of the receipt of any such by the Tenant, and if so required by the Landlord to produce the notice, order or proposal for a notice or order to the Landlord.*

*3.12.6 Forthwith to take all necessary steps to comply with any such notice or order.*

*3.12.7 At the request and cost of the Landlord, to make or join with the Landlord in making such objections or representations against or in respect of any proposal for such a notice or order as the Landlord (acting reasonably) may consider expedient.*

### *3.13 PLANNING PERMISSIONS*

*3.13.1.1 Not without the consent of the Landlord to make any application under the Planning Law to develop the Premises (which consent shall not be unreasonably withheld with regard to works permitted by the Landlord pursuant to Clause 3.8 ).*

*3.13.1.2 Not without the consent of the Landlord (which for the avoidance of any doubt will be at its absolute discretion) to make any application for the change of use of the Premises.*

*3.13.3 Forthwith to give to the Landlord full particulars in writing of the grant of any permission under the Planning Law.*

### *3.17 NOTIFY LANDLORD OF MATTERS ADVERSE TO ITS INTEREST*

*Forthwith upon the Tenant having become aware of the happening of any occurrence or upon receipt of information as to anything which may to the Tenant's knowledge be capable of materially adversely affecting the Landlord's interest in the Premises or in the event of the Premises becoming damaged to any material extent or destroyed by any cause to give full details to the Landlord.*

### *3.19 NOT TO CAUSE LANDLORD TO BREACH HEAD LEASE*

*The Tenant shall not do omit suffer or permit to be done in at or in relation to the Premises anything which would or might cause the Landlord to be in breach of the Head Lease and the Tenant shall*

*indemnify the Landlord from and against all actions proceedings claims damages costs expenses or losses arising directly or indirectly from anything done omitted suffered or permitted by the Tenant which has such effect.*