



TURKS AND CAICOS ISLANDS

CHAPTER 19.10
HOTEL AND RESTAURANT
(SERVICE CHARGE) ORDINANCE

Revised Edition
showing the law as at 31 March 2021

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This edition contains a consolidation of the following laws—

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Amended by Ordinance: 3 of 2019 .. in force 8 February 2019 (L.N. 7/2019)

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CHAPTER 19.10

HOTEL AND RESTAURANT (SERVICE CHARGE) ORDINANCE

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Application of Ordinance
4. Registration of hotels and restaurants to which this Ordinance applies
5. Tips
6. Imposition of service charge
7. Facility fee
8. Variation of rate of service charge or facility fee
9. Distribution of service charge
10. Designation of troncmaster
11. Accounts to be kept by proprietor
12. Returns
13. Power to obtain information
14. Offences
15. Regulations
16. Transitional and savings

SCHEDULE

CHAPTER 19.10

HOTEL AND RESTAURANT (SERVICE CHARGE) ORDINANCE

(Ordinances 29 of 2018 and 3 of 2019)

AN ORDINANCE TO REPEAL AND REPLACE THE SERVICE CHARGES (HOTELS AND RESTAURANTS) ORDINANCE; TO MAKE PROVISIONS FOR THE COLLECTION OF CHARGES FOR SERVICES PROVIDED BY HOTELS AND RESTAURANTS; AND FOR CONNECTED PURPOSES.

Commencement

[8 February 2019]

Short title

1. This Ordinance may be cited as the Hotel and Restaurant (Service Charge) Ordinance.

Interpretation

2. (1) In this Ordinance—

“all-inclusive hotel” means a hotel in which no separate charge is made for meals provided;

“contract of employment” has the meaning given in section 2(1) of the Employment Ordinance; *(Inserted by Ord. 3 of 2019)*

“employee” has the meaning given in section 2(1) of the Employment Ordinance; *(Inserted by Ord. 3 of 2019)*

“employer” has the meaning given in section 2(1) of the Employment Ordinance; *(Inserted by Ord. 3 of 2019)*

“facility fee” means a fee imposed by section 7(1); *(Amended by Ord. 3 of 2019)*

“hotel” means a building or group of buildings, managed together or not, containing in the aggregate three or more bedrooms for the accommodation of guests for reward; *(Substituted by Ord. 3 of 2019)*

“inspector” has the meaning assigned to that expression in section 2 of the Employment Ordinance;

“Labour Commissioner” means the Labour Commissioner appointed under section 31 of the Employment Ordinance;

“Minister” means the Minister with responsibility for labour;

“proprietor” means the person who carries on, or intends to carry on any hotel or restaurant business whether on his own behalf or on behalf of another as manager or otherwise;

“restaurant” means any premises *bona fide* used, or intended to be used, as a business for providing for reward any meals, including any intoxicating liquor or other beverage;

service charge” means any money collected or received from a guest or customer of a hotel or restaurant which is over and above the price charged for accommodation, food, intoxicating liquor or other beverage, or other services provided to that guest or customer, but does not include a facility fee, tip or any tax required to be paid under any Ordinance; *(Substituted by Ord. 3 of 2019)*

“tip” means a voluntary gratuitous payment that a customer makes to an employee or employees for service provided and which satisfies the following requirements—

- (a) the payment made must be free from compulsion;
- (b) the customer has the unrestricted right to determine the amount;
- (c) the payment should not be the subject of negotiations or dictated by employer policy; and
- (d) the customer has the right to determine who receives the payment;
(Substituted by Ord. 3 of 2019)

“troncmaster” means a person designated under section 10(1).

(2) Should any issue arise as to whether an establishment is an all-inclusive hotel, the decision of the Minister shall be final.

Application of Ordinance

3. (1) This Ordinance applies to—

- (a) all hotels; and
- (b) restaurants that are operated as part of an all-inclusive hotel.

(2) Other restaurants may elect to levy a service charge and in such cases the provisions of this Ordinance shall apply to such restaurants.

(3) This Ordinance shall not apply to any premises referred to in subsection (1)(a) or to any part of those premises, as long as those premises or that part of those premises, as the case may be, are being wholly used for the accommodation of a person of any of the following descriptions, either alone or together with his family—

- (a) a person who is a Turks and Caicos Islander;
- (b) a person who is the holder of a permanent residence certificate under the Immigration Ordinance;
- (c) a person who is lawfully engaged in any gainful occupation in the Islands.
(Inserted by Ord. 3 of 2019)

Registration of hotels and restaurants to which this Ordinance applies

4. (1) The proprietor of a hotel or restaurant who immediately before 8 February 2019 was collecting or receiving service charge under the repealed Service Charges (Hotels and Restaurants) Ordinance 2003 shall, by 8 March 2019 or, where a proprietor has not commenced to collect service charges, at least one month before the date on which he proposes to begin doing so, apply to the Labour Commissioner in the form set out in the Schedule for the registration of that hotel or restaurant as a hotel or restaurant levying service charge under this Ordinance.

(2) On receipt of an application for the registration of a hotel or restaurant under subsection (1), the Labour Commissioner if he is satisfied that the hotel or restaurant is a hotel or restaurant to which this Ordinance applies, shall register the hotel or restaurant in a register kept solely for the purpose.

Tips

5. For the avoidance of doubt—

- (a) a tip is not service charge which is payable under this Ordinance;
- (b) a tip is a payment made by a guest or customer to an employee or employees which can be by the means of cash or by credit card or debit card;
- (c) payment of service charge is mandatory under this Ordinance, and is automatically added to a customer's bill, whereas payment of a tip is optional.

(Substituted by Ord. 3 of 2019)

Imposition of service charge

6. (1) Subject to this Ordinance, there shall be paid by each guest or customer of a hotel or restaurant to which this Ordinance applies, service charge at the rate of 10% of the total amount charged to the guest or customer in respect of services provided.
(Substituted by Ord. 3 of 2019)

(2) Service charge shall not be levied or collected by a hotel or a person acting on its behalf referred to in subsection (4), where the hotel or that person has no employee providing services to the hotel. *(Inserted by Ord. 3 of 2019)*

(3) Service charge paid by a guest or customer pursuant to subsection (1) shall be accounted for and be distributed by the proprietor in accordance with section 9.

(4) Where a proprietor is not resident in the Islands, any agent of his who is resident in the Islands and who has acted on his behalf in connection with the business carried on by the proprietor, shall be accountable for, and liable to distribute the service charge in substitution for the proprietor for so long as the proprietor is not resident in the Islands.
(Amended by Ord. 3 of 2019)

(5) For the avoidance of doubt, service charge shall also be levied on the amount charged to a guest for accommodation. *(Inserted by Ord. 3 of 2019)*

Facility fee

7. (1) A hotel, or a restaurant to which this Ordinance applies, may levy a facility fee, whether calculated on the basis of a fixed percentage or otherwise, on the amount charged to a guest or customer in respect of services provided.

(2) A proprietor may use so much of the facility fee as is necessary to cover—

- (a) contributions liable to be paid by him under the National Insurance Ordinance and the National Health Insurance Ordinance in respect of his employees for earnings received from service charges; and

(b) any other costs associated with administering service charges under this Ordinance.

(3) Tax is not payable under the Hotel, Restaurant and Tourism (Taxation) Ordinance in respect of the facility fee.

(Substituted by Ord. 3 of 2019)

Variation of rate of service charge or facility fee

8. The Minister may by Order vary the rate of service charge or facility fee, and may vary those rates so as to provide for the imposition of different rates in respect of premises of different classes or descriptions or in respect of different services.

Distribution of service charge

9. (1) Subject to subsection (2), the proprietor of a hotel or restaurant to which this Ordinance applies shall distribute all service charges collected or received by him amongst his employees within twenty-one days of the end of each month—

(a) in accordance with a scheme approved by the Minister, and such scheme shall be registered with the Labour Commissioner; or

(b) where no such scheme is registered, in accordance with a formula prescribed by the Minister by regulations.

(Substituted by Ord. 3 of 2019)

(2) A proprietor shall deduct from an employee's share of service charges—

(a) contributions liable to be paid by the employee under the National Insurance Ordinance and the National Health Insurance Ordinance in respect of such earnings; and

(b) any portion of the credit card transaction fees associated with the collection of service charges.

(Inserted by Ord. 3 of 2019)

(3) Every employee who receives payment under subsection (1) shall sign the register required to be maintained under subsection (4) verifying such payment.

(4) A proprietor shall keep a register, in such form as may be prescribed containing information of the amount of the service charge collected by the proprietor and paid to its employees by the proprietor.

(5) A proprietor who fails to comply with subsection (1) commits an offence.

Designation of troncmaster

10. (1) A hotel or restaurant to which this Ordinance applies with a staff complement of twenty employees or more, shall designate one of its employees as the troncmaster.

(2) The troncmaster is responsible for oversight of the management and distribution of the service charge to employees, including explaining such details to employees.

(3) The troncmaster shall not be the proprietor of the hotel or restaurant.

Accounts to be kept by proprietor

11. (1) The proprietor of a hotel or restaurant to which this Ordinance applies, shall—

- (a) keep sufficiently detailed accounts of all service charge collected or received and the manner in which the service charge was distributed;
- (b) keep those accounts for a period of twenty-four months from the date of the last entry made in the accounts.

(2) For the purposes of subsection (1), a proprietor shall keep or cause to be kept—

- (a) all original return forms;
- (b) statements giving particulars of services provided to guests or customer;
- (c) statements giving all the charges in respect of each guest or customer;
- (d) statements showing the amount of service charge payable by each guest or customer in respect of all services received;
- (e) financial statements;
- (f) bank deposit statements;
- (g) notes to clarify any transaction between the proprietor and guest or customer;
- (h) sales books and general ledgers;
- (i) such other records as may be required from time to time.

(3) The records required to be kept by a proprietor under subsection (1) shall be maintained in the currency of the Islands and in the English language and shall be kept in the Islands.

(4) If it appears to the Labour Commissioner, an inspector or any person authorised by the Minister for the purposes of section 13 that the accounts required to be kept by the proprietor under subsection (1) are inaccurate or incomplete for the purpose of enabling the Labour Commissioner, an inspector or that person to calculate the amount of service charge—

- (a) payable by or in respect of any guest or customer to whom services were provided; or
- (b) distributed to its employees,

the proprietor shall furnish the Labour Commissioner, inspector or that person with such information and evidence as he may require with a view to the correction of such inaccuracies and to those deficiencies being made good.

Returns

12. (1) The proprietor of a hotel or restaurant to which this Ordinance applies, shall within thirty days of the end of each month prepare a statement showing—

- (a) the number of customers or guests, as the case may be, that visited his business during that month and the amount of service charge collected or received during that month and distributed; and

(b) such other particulars as the Minister may prescribe.

Power to obtain information

13. (1) The Labour Commissioner or an inspector may, for the purpose of ascertaining whether or not this Ordinance is being complied with and whether or not the proper amount of service charge is being distributed by a proprietor, by notice in writing require the proprietor—

- (a) to furnish such information concerning the proprietor or any other person as specified in the notice;
- (b) to attend at such time and place as specified in the notice for the purpose of being examined on oath before the Labour Commissioner or an inspector concerning the affairs of the proprietor or any other person;
- (c) to produce any record or computer in the control of that person that the Labour Commissioner or inspector may require him to produce concerning his affairs or those of any other person;
- (d) to provide access to the premises where any business is carried on by the person or where records or books of account are kept in respect of that business in order to examine the records or books of account and any other documents that relate to the activities of the business.

(2) Where the notice requires the provision of access to a business to which subsection (1)(d) refers, the Labour Commissioner or an inspector may request the proprietor or any employee or agent to give him such reasonable assistance in connection with the examination or inspection as may be necessary and to answer orally or in writing any questions relating to the examination or inspection.

(3) Where the notice requires the production of a record or computer, it is sufficient if such record or computer is described in the notice with reasonable certainty.

(4) Where during the course of any examination or inspection it appears to the Labour Commissioner or an inspector that there may not have been a correct disclosure of service charges collected and distributed, he may take possession of any books of account, other documents or computer records for further examination and after examination may retain or make copies of or take extracts from the books, documents or computer records for any of the purposes of this Ordinance.

(5) This section shall have effect despite any rule of law relating to privilege or the public interest in respect of the furnishing of information or the production of records or documents.

(6) The information furnished or the records or documents produced under this section shall be used only for the purposes for which they are furnished or produced.

(7) Any power conferred by subsection (1) to require the production of any register, copies of statements, accounts, books or other documents shall, if they are not produced, include the power to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(8) The Minister may in writing authorise any person from the Ministry with responsibility for finance to exercise any powers conferred or imposed on the Labour Commissioner or an inspector by this section.

(9) The Minister may at any time revoke an authorisation given under subsection (8).

(10) An authorisation under subsection (8) does not prevent the exercise by the Labour Commissioner or an inspector of a power under this section.

Offences

14. (1) A person who—

- (a) obstructs the Labour Commissioner, an inspector or a person authorised under section 13, in the exercise of any power conferred on him by this Ordinance; or
- (b) fails to comply with any requirement of the Labour Commissioner, inspector or person authorised under section 13 imposed in the exercise of any such power,

commits an offence and is liable in summary conviction to a fine of \$10,000 or to a term of imprisonment for one year, or to both.

(2) A proprietor who is knowingly concerned in, or in the taking of steps with a view to, the fraudulent distribution of service charge by him or any other person commits an offence and is liable on summary conviction to a fine of \$10,000 or a term of imprisonment for one year or to both.

(3) A person who—

- (a) with intent to deceive, produces, furnishes, sends or otherwise makes use of any register, statement, books, other document which is false in a material particular;
- (b) in furnishing any information for purposes of this Ordinance makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular; or
- (c) fails to comply with section 6, 10 or 11,

commits an offence and is liable on summary conviction to a fine of \$10,000 or a term of imprisonment for one year, or to both.

Regulations

15. The Minister may make regulations—

- (a) prescribing anything which is to be prescribed under this Ordinance;
- (b) amending, varying or altering any form or register; and
- (c) generally, for the better carrying into effect of the provisions of this Ordinance.

Transitional and savings

16. (1) The service charge payable under this Ordinance shall not apply to a hotel reservation made prior to 8 February 2019, if the obligation to levy or pay service charge did not exist under the repealed Service Charges (Hotels and Restaurants) Ordinance 2003.

(2) If the rate of service charge that is payable under this Ordinance is less than the rate levied by a hotel or restaurant under the repealed Service Charges (Hotels and Restaurants) Ordinance 2003, the hotel or restaurant may continue to levy service charge at the rate under that Ordinance.

SCHEDULE*(Section 4)***REGISTRATION OF A SERVICE CHARGE SCHEME**

Do you collect and distribute service charge? Yes..... No

If Yes, kindly fill out the form completely, sign below and submit.

If No, please fill out the name of the business and other applicable sections, sign the form at the bottom and submit.

Name of Accommodation Provider or Restaurant:

Address:

Business Licence No:

Number of Employees:.....

Please specify on which or what guest services are the service charges levied and collected:

Room Rate

Restaurant/Restaurant and Bar

Spa

Tours

Other (Please specify)

.....

Name and Signature of Proprietor/Manager

.....
Date

For Official Use Only

Name of Authorising Officers:

Signature:.....

Date of Registration:.....

Registration Reference No.....