

# 立法會

## *Legislative Council*

LC Paper No. CB(2)86/14-15  
(These minutes have been seen  
by the Administration)

Ref : CB2/PL/HA

### **Panel on Home Affairs**

#### **Minutes of special meeting held on Friday, 12 September 2014, at 9:00 am in Conference Room 2 of the Legislative Council Complex**

**Members present** : Hon MA Fung-kwok, SBS, JP (Chairman)  
Dr Hon Kenneth CHAN Ka-lok (Deputy Chairman)  
Hon CHEUNG Kwok-che  
Hon IP Kwok-him, GBS, JP  
Hon Frankie YICK Chi-ming  
Hon WU Chi-wai, MH  
Hon YIU Si-wing  
Hon CHAN Chi-chuen  
Hon Alice MAK Mei-kuen, JP  
Hon IP Kin-yuen  
Hon Christopher CHUNG Shu-kun, BBS, MH, JP  
Hon Tony TSE Wai-chuen, BBS

**Members attending** : Hon Paul TSE Wai-chun, JP  
Hon KWOK Wai-keung

**Members absent** : Hon Cyd HO Sau-lan, JP  
Hon Starry LEE Wai-king, JP  
Dr Hon LAM Tai-fai, SBS, JP  
Hon Claudia MO  
Hon Steven HO Chun-yin  
Hon LEUNG Che-cheung, BBS, MH, JP  
Dr Hon Helena WONG Pik-wan  
Dr Hon CHIANG Lai-wan, JP

**Public Officers attending** : Item I  
Mr Franco KWOK, JP  
Assistant Director (4)  
Home Affairs Department

Mr AU Wing-hung  
Chief Officer (Licensing Authority)  
Home Affairs Department

**Attendance** : Item I  
**by invitation**

The Hong Kong Guest Houses Association

Mr LEUNG Tai-wai  
Founder Chairman

Mirador Mansion Guest House Association

Mr LAW Kai-yiu  
Chairman

Individual

Miss LEUNG Wing-shan

Individual

Mr CHENG Sung-hin

Individual

Mr CHENG Man-lin

Ah Shan Hostel

Ms TAI Lei-na  
Manager

The Association of Public Relations Practitioner

Mr LEUNG Nga-lun  
Secretary General

Civic Party

Mr CHENG Tat-hung  
Hong Kong Island District Developer

The Incorporated Owners of Continental Mansion

Ms CHIU Kin-san  
Chairman

Democratic Alliance for the Betterment and Progress of  
Hong Kong

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Miss Jacqueline CHUNG  
Central Committee Member

The Incorporated Owners of Bowrington Building

Mr WONG Kwong-cheung  
Chairman

The Incorporated Owners of Bright Star Mansion  
(Leighton Road)

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Mr LEE Sau-shing  
Chairman

The Incorporated Owners of Yen May Building

Ms WONG Ching-ting  
Member

The Incorporated Owners of Wing Tak Building (Wan  
Chai Road)

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Mr POON Fok-shing  
Secretary

The Incorporated Owners of Yan Wo Yuet Building

Mr CHAN Kwok-chu  
Secretary

Individual

Miss Yolanda NG Yuen-ting  
Wan Chai District Council member

Hong Kong Hostels Alliance

Mr CHANG King-chung  
President

The Tourist Guest Houses Federation of Hong Kong Limited

Mr Sam LAU  
Chairman

**Clerk in attendance** : Ms Alice LEUNG  
Chief Council Secretary (2) 2

**Staff in attendance** : Miss Josephine SO  
Senior Council Secretary (2) 6

Miss Emma CHEUNG  
Legislative Assistant (2) 2

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**I. Review of the Hotel and Guesthouse Accommodation Ordinance**  
(LC Paper Nos. CB(2)1973/13-14(03) and CB(2)2252/13-14(01))

The Chairman reminded the deputations attending the meeting that they were not covered by the protection and immunity provided under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) when addressing the Panel. At the invitation of the Chairman, 18 deputations presented views on the subject.

Deputations' views

*Oral presentation by deputations/individuals attending the meeting*

*The Hong Kong Guest Houses Association*  
(LC Paper No. CB(2)2252/13-14(02))

2. Mr LEUNG Tai-wai presented the views of the Hong Kong Guest Houses Association, as set out in its submission.

*Mirador Mansion Guest House Association*  
(LC Paper No. CB(2)2252/13-14(03))

3. Mr LAW Kai-yiu presented the views of Mirador Mansion Guest House Association, as detailed in its submission.

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*Miss LEUNG Wing-shan*  
(LC Paper No. CB(2)2268/13-14(01))

4. Miss LEUNG Wing-shan presented her views, as set out in her submission.

*Mr CHENG Sung-hin*  
(LC Paper No. CB(2)2252/13-14(04))

5. Mr CHENG Sung-hin presented his views, as set out in his submission.

*Mr CHENG Man-lin*  
(LC Paper No. CB(2)2252/13-14(05))

6. Mr CHENG Man-lin presented his views, as set out in his submission.

*Ah Shan Hostel*  
(LC Paper No. CB(2)2252/13-14(06))

7. Ms TAI Lei-na presented the views of Ah Shan Hostel, as detailed in its submission.

*The Association of Public Relations Practitioner*  
(LC Paper No. CB(2)2252/13-14(08))

8. Mr LEUNG Nga-lun presented the views of the Association of Public Relations Practitioner, as detailed in its submission.

*Civic Party*  
(LC Paper No. CB(2)2268/13-14(02))

9. Mr CHENG Tat-hung presented the views of Civic Party, as detailed in its submission.

*The Incorporated Owners of Continental Mansion*  
(LC Paper No. CB(2)2252/13-14(09))

10. Ms CHIU Kin-san presented the views of the Incorporated Owners of Continental Mansion, as detailed in its submission.

*Democratic Alliance for the Betterment and Progress of Hong Kong ("DAB")*

11. Miss Jacqueline CHUNG presented the following views of DAB -

- (a) to minimize the nuisance and inconvenience caused by licensed guesthouses to the local residents and members of the public,

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it would be desirable for the Administration to take into account the provisions in the Deed of Mutual Covenant ("DMC") of the building and the views of residents when processing a licence application;

- (b) the Administration should conduct a comprehensive review on the current licensing regime governing hotels and guesthouses, including the definition of the terms "hotel" and "guesthouse"; and
- (c) more vigorous enforcement action should be taken against unlicensed guesthouses and targeted at those guesthouse licensees who operated unlicensed guesthouses at other premises (commonly known as "shadow guesthouses").

*The Incorporated Owners of Bowrington Building  
(LC Paper No. CB(2)2252/13-14(10))*

12. Mr WONG Kwong-cheung presented the views of the Incorporated Owners of Bowrington Building, as set out in its submission.

*The Incorporated Owners of Bright Star Mansion (Leighton Road)*

13. Mr LEE Sau-shing expressed concerns about the need to comply with the provisions of DMC by different parties to this private contract and the assistance provided by the Home Affairs Department ("HAD") to owners' corporations ("OCs") and property owners to facilitate them in carrying out their building management duties under the Building Management Ordinance (Cap. 344).

*The Incorporated Owners of Yen May Building*

14. Ms WONG Ching-ting pointed out the nuisance and impact caused by licensed guesthouses, and considered it necessary for the Administration to introduce measures to tighten the regulation of guesthouse operation in residential buildings.

*The Incorporated Owners of Wing Tak Building (Wan Chai Road)*

15. Mr POON Fok-shing stressed the inconvenience, nuisance and hazards caused by guesthouses to residents in the relevant buildings. He supported tightening the regulation of guesthouse operation in residential buildings.

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*The Incorporated Owners of Yan Wo Yuet Building*

16. Mr CHAN Kwok-chu highlighted various problems associated with unlicensed and shadow guesthouses, and supported the Administration's proposal to enhance enforcement against unlicensed guesthouses.

*Miss Yolanda NG Yuen-ting, Wan Chai District Council member*

17. Miss Yolanda NG expressed support for the proposed improvements to the licensing regime and called on the Administration to take forward the legislative amendment exercise with a view to minimizing the nuisance or impact caused by licensed guesthouses and enhancing the effectiveness of enforcement action against unlicensed/shadow guesthouses.

*Hong Kong Hostels Alliance  
(LC Paper No. CB(2)2252/13-14(11))*

18. Mr CHANG King-chung presented the views of Hong Kong Hostels Alliance, as set out in its submission.

*The Tourist Guest Houses Federation of Hong Kong Limited  
(LC Paper No. CB(2)2268/13-14(03))*

19. Mr Sam LAU presented the views of the Tourist Guest Houses Federation of Hong Kong Limited, as set out in its submission.

*Written submissions from organizations/individual not attending the meeting*

20. Members noted the following submissions from organizations/individual not attending the meeting -

- (a) Submission from Fujian Guest House (LC Paper No. CB(2)2252/13-14(07));
- (b) Submission from Tuen Mun District Council (LC Paper No. CB(2)2252/13-14(12));
- (c) Submission from the Incorporated Owners of Hang Lung Bank Eastern Branch Building (LC Paper No. CB(2)2252/13-14(13));
- (d) Submission from the Incorporated Owners of Yeebo Mansion (LC Paper No. CB(2)2252/13-14(14)); and
- (e) Submission from Mr YEUNG Wai-sing, Eastern District Council member (LC Paper No. CB(2)2272/13-14(01)).

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21. The Chairman said that all the written submissions received from deputations had been forwarded to the Administration before the meeting for its consideration.

Administration's response to deputations' views

22. At the invitation of the Chairman, Assistant Director of Home Affairs (4) ("ADHA(4)") gave a consolidated response to the views and concerns raised by the deputations as follows -

- (a) the public consultation on the review of the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) ("HAGAO") had ended on 28 August 2014. This special meeting arranged by the Panel provided a useful forum for the Administration to listen to public views in addition to those collected during the consultation period. The Administration attached importance to the views expressed by the deputations and would take their views into account when finalizing the legislative proposals;
- (b) in Hong Kong, the operation of hotels and guesthouses was regulated by HAGAO. The primary purpose of HAGAO was to, through the implementation of a licensing regime, ensure that premises intended to be used as hotels or guesthouses met the building structure and fire safety standards specified in the Buildings Ordinance (Cap. 123) ("BO") and the Fire Services Ordinance (Cap. 95) ("FSO") for the safety of the lodgers, the residents and the public;
- (c) in processing and approving applications for guesthouse licence, the Office of the Licensing Authority ("OLA") under HAD acted under the power conferred by HAGAO, which at present did not extend to cover the interpretation of DMC. Although OLA was not obliged to have regard to DMC in considering a licence application, a guesthouse licence was by no means a waiver of any DMC provisions. OLA stated clearly in the application forms and guidelines, the notification letters for issuance of licence and other relevant documents, reminding applicants and prospective licensees to ensure that the operation of guesthouses on any premises was in compliance with the terms and conditions of the relevant leases and covenants;
- (d) in recent years, the upsurge of incoming visitors had led to an increased demand for guesthouses and an increasing number of such establishments in multi-storey residential buildings, causing nuisance and inconvenience to residents in the relevant buildings. There had been suggestions that the Government



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should take into account DMC of the building and the views of local residents when processing a licence application;

- (e) the Administration reviewed from time to time the implementation of HAGAO and explored feasible options for improvement. In the light of the practical experience gathered in the past few years, the Administration had launched a review of HAGAO well before the fire broke out at Continental Mansion in North Point on 29 December 2013;
- (f) it was not the intention of the Government to eradicate licensed guesthouses. The consultation document aimed primarily at improving the licensing regime so as to minimize the nuisance and inconvenience caused by licensed guesthouses to the local residents and members of the public, and enhancing the effectiveness of enforcement action against unlicensed guesthouses to provide better protection to lodgers and the public;
- (g) regarding some deputations' concern about the long lead time required for obtaining a guesthouse licence, it should be noted that according to OLA's current performance pledge, upon receipt of a licence application, the professional staff of OLA, seconded from the Buildings Department and Fire Services Department, would inspect the premises concerned and issue a letter of requirements requiring the applicant to conduct any necessary upgrading works within 26 working days. After the applicant had completed the required upgrading works and submitted all the necessary certificates, OLA would, within 28 working days, arrange inspection of the premises again and make determination on the issue or otherwise of a guesthouse licence; and
- (h) operating unlicensed guesthouses was a criminal offence. Over the years, OLA had spared no effort in combating unlicensed guesthouses through a multi-pronged approach. To enhance the effectiveness of enforcement against unlicensed guesthouses, the Administration proposed to amend HAGAO to the effect that until the contrary was proved, any premises which were found to be offering or to have provided short-term sleeping accommodation at a price should be deemed to be used as a guesthouse. The property owner, tenant or occupier of the premises concerned should also be deemed to be the operator of the guesthouse. The "deeming provisions" could effectively facilitate the collection of evidence for the instigation of prosecutions against operators of unlicensed guesthouses. The

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Administration also proposed to make provision to allow OLA to apply to the Magistrate's Court for warrants to facilitate its public officers to enter into, and break in if necessary, individual premises which were suspected of being used as unlicensed guesthouses, for inspection and enforcement actions.

Discussion

*Enhancing the licensing regime*

23. Given that the operation of guesthouses in residential buildings caused nuisance to other residents and posed a high risk to the life and property of the lodgers and the public, Mr Christopher CHUNG suggested and sought views from deputations and the Administration on whether amendments should be made to HAGAO to the effect that guesthouse operation should, in future, be confined to commercial buildings or the commercial part of composite residential/commercial buildings. Mr WU Chi-wai also suggested that the Administration should explore the feasibility of converting industrial buildings for use as premises for operating guesthouses, in the context of the policy on revitalization of industrial buildings.

24. Mr LEUNG Nga-lun of the Association of Public Relations Practitioner said that while he did not object to the suggestion put forward by Mr Christopher CHUNG, he considered that there should be separate treatment for existing operators and new comers so that the suggested requirement should only be applicable to new comers and exemption be granted for existing licensees who had acquired a residential property for operating guesthouse in accordance with the existing licensing requirements.

25. ADHA(4) responded that Mr Christopher CHUNG's and Mr WU Chi-wai's proposals involved fundamental and substantial changes to the existing licensing regime. While the Administration was willing to explore their feasibility, careful consideration had to be given to aspects such as the risk level, structural designs and the safety factor of design when deciding whether commercial or industrial buildings should be used for operating guesthouses.

26. Mr YIU Si-wing, Mr CHEUNG Kwok-che and Mr KWOK Wai-keung expressed grave concern about the impact of the proposed new measures of taking into account DMC provisions and the views of local residents in the licensing process on existing licensed guesthouses' continued operation. They envisaged that the residents would object to the operation of an existing guesthouse on grounds other than fire or building safety, thereby affecting the guesthouse's application for licence renewal. The initiative of consulting the public when considering a licence application might eventually result in closure of business of many licensed guesthouses, adversely affecting the

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tourism industry. Mr YIU added that following the enhancement of the licensing regime, it might be less easy for a person to obtain a guesthouse licence and hence the proliferation of unlicensed guesthouses in future. They enquired about the measures to be taken by the Administration to address the problems, in parallel with taking forward the consultation initiatives.

27. Mr YIU Si-wing pointed out that HAGAO was enacted in 1991 to regulate the operation of hotels and guesthouses in Hong Kong. While hotels, guesthouses, holiday camps and holiday flats all fell within the ambit of HAGAO, some provisions had become outdated and needed to be reviewed. He enquired whether the Administration had any plan to conduct a more comprehensive review on the licensing regime governing hotels and guesthouses, in the light of their difference in size, mode of operation and facilities etc. Echoing his view, Mr KWOK Wai-keung called on the Administration to formulate a regulatory system which could foster the healthy development of the guesthouse industry.

28. In response, ADHA(4) made the following points -

- (a) as at end of March 2014, there were 1 220 licensed guesthouses over the territory providing a total of about 8 000 to 9 000 guest rooms, representing 10% of the total number of guest rooms in Hong Kong;
- (b) according to the Tourism Commission ("TC"), quite a number of new hotels would come into operation in the next few years providing a total of about 14 000 hotel rooms to cater for the increasing demand arising from the continuous visitor growth. TC and the Commerce and Economic Development Bureau would continue to monitor the situation, ensuring adequate hotel room supply for tourists;
- (c) over the years, OLA had spared no effort in combating unlicensed guesthouses. The current consultation exercise was conducted for the purposes of ameliorating the nuisance or impact caused by licensed guesthouses and enhancing the effectiveness of enforcement action against unlicensed guesthouses. While the Administration acknowledged the need to strive for a balance to avoid any adverse impact on the tourism industry, the primary licensing requirements in relation to building structure and fire safety, which were drawn up based on the prescribed standards as provided in BO and FSO, should not be compromised;
- (d) the consultation document suggested that, apart from the building and fire safety issues, the provisions in DMC and the

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views of the residents should be considered. In view of the fact that some DMCs did not contain any provision against the establishment of guesthouses in the building, the Administration proposed that the Hotel and Guesthouse Accommodation Authority ("the Authority") should take into account the views of the residents concerned before making a decision on the licence application. Irrespective of which option out of the three proposed options for conducting local consultation as set out in the consultation document was adopted eventually, the measure of engaging the residents in the licensing process would serve to balance the interests of all parties. Under the consultation initiative, the applicant and the objectors would be given a fair chance to express their views; and

- (e) under HAGAO, the terms "hotel" and "guesthouse" carried the same meaning and no differentiation was made. There had been suggestions from the hotel industry that in the light of their difference in size, mode of operation and facilities etc., the Authority should issue different types of licence to purpose-built hotels and guesthouses in multi-storey residential buildings. The Administration appreciated the industry's views and considered it helpful to facilitate tourists in choosing suitable sleeping accommodation. It therefore proposed to issue "hotel licence" to purpose-built hotels and "guesthouse licence" to other types of short-term sleeping accommodation located in residential buildings.

Admin

29. The Chairman and Mr YIU Si-wing requested the Administration to provide the number of licensed and unlicensed guesthouses in Hong Kong as well as the number of guest rooms they respectively provided. Mr YIU and Mr WU Chi-wai also requested that the Administration should make an assessment on whether implementation of the legislative proposals to amend HAGAO as set out in the consultation document would lead to closure of business of many licensed guesthouses and, if the answer was positive, the estimated number of licensed guesthouses to be affected.

30. Mr Paul TSE strongly supported the proposal to enable the Authority to take into account the provisions in DMC in considering a licence application. Noting that OLA had introduced in April 2014 a Notification System under which OLA would issue letters to the owners and OC concerned when a licence application had been received, thus allowing time for the concerned parties to consider whether they would initiate any legal actions based on DMC, he expressed the view that the measure should be of an interim nature pending the passage of legislative amendments to HAGAO to address public concerns about OLA's interpretation of DMCs.

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31. The Chairman, Mr Tony TSE and Mr Paul TSE said that the guesthouse industry had, through the provision of budget accommodation to tourists, contributed to the development of Hong Kong's tourism industry all through the years. In their view, in contemplating any changes to the existing licensing regime, the Administration should balance the interests of relevant parties and introduce complementary/facilitating measures to help existing licensed guesthouses operators to meet the new requirements. The Chairman considered it necessary for the Administration to spell out clearly the circumstances under which the Authority would grant or reject a licence application when DMC and local residents' views were to be taken into account. Mr Tony TSE added that the review on the licensing regime and related enforcement work against unlicensed guesthouses should be conducted holistically, rather than placing emphasis on certain subjects only.

32. In response, ADHA(4) reiterated the object of HAGAO, stressing the need for premises intended to be used as hotels or guesthouses to meet the building structure and fire safety standards specified in BO and FSO. Explaining the background to the current review of HAGAO, ADHA(4) advised that the Administration was aware of the possible impact of the proposals on existing licensed guesthouses. There were suggestions from Members and the trade proposing measures to help existing licensees ride over the difficult time, such as the provision of platforms for parties affected to discuss and sort out their differences over a licence application and a transitional period to facilitate the trade to prepare for the implementation of the proposed enhancements to the licensing regime. At this stage, the Administration maintained an open mind on the suggestions and would finalize the proposals in light of the views collected during the consultation period.

*Enhancing enforcement against unlicensed guesthouses*

33. The Deputy Chairman said that Members belonging to the Civic Party supported the Administration's proposals to improve the licensing regime for guesthouses and to enhance the effectiveness of enforcement action against unlicensed guesthouses, so as to afford better protection to the lodgers and the public. He, however, expressed concern that as a way of circumventing the legislation, there might be possibility for property owners to operate unlicensed guesthouses by renting out their premises under "pseudo" tenancy terms and conditions including providing accommodation with a tenancy period of 28 consecutive days or more for each letting, instead of renting out the guest rooms on a daily basis. He enquired how the Administration would combat such unscrupulous practice, in taking forward the proposed initiatives in the consultation document. Sharing a similar concern, Mr CHEUNG Kwok-che said that it was his understanding that some property owners also operated unlicensed guesthouses under the cloak of providing staff quarters for different companies.

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34. ADHA(4) responded that when suspected unlicensed guesthouse operation was identified or such a report was received, OLA officers would conduct an inspection within eight working days, and having regard to the circumstances of individual cases, take follow-up actions and collect evidence by employing the most appropriate and effective tactics. In 2012-2013, around 1 000 complaints/ reports of suspected unlicensed guesthouse operation were received. As advised earlier, despite vigorous and continuous effort of OLA in combating unlicensed guesthouses, it had encountered great difficulties in securing sufficient admissible evidence to institute prosecutions. To enhance the effectiveness of enforcement action against unlicensed guesthouses, the Administration proposed the introduction of a number of amendments to HAGAO, i.e. the inclusion of "deeming provisions" in HAGAO and the application for court warrants for entry into suspected unlicensed guesthouses for inspection, with a view to facilitating the collection of evidence for prosecution purpose.

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35. Mr Paul TSE suggested that heavier penalties should be imposed to enhance the deterrent effect against the operation of unlicensed guesthouses. Noting that a Closure Order could be issued against premises used for unlicensed guesthouse upon conviction, he enquired whether an order for closure and cessation of use of premises as a hotel or a guesthouse had ever been considered/given pursuant to section 19 or 20 of HAGAO; and if yes, the details.

36. In response to Mr WU Chi-wai's enquiry, ADHA(4) advised that over the past few years, there had been multifold increases in enforcement raids including joint departmental operations against suspected unlicensed guesthouses. Despite vigorous and continuous effort of OLA in combating unlicensed guesthouses, great difficulties had been encountered in securing sufficient admissible evidence to institute prosecutions as very often, owners/operators of unlicensed guesthouses were not caught red-handed and lodgers/tourists unwilling to give statement or testify in court. To enhance the effectiveness of enforcement action against unlicensed guesthouses, the Administration proposed to introduce amendments to HAGAO to the effect that any premises should be deemed to be operated as an unlicensed guesthouse once OLA had collected sufficient circumstantial evidence, such as advertisement on the street or Internet, price list, guesthouse layout and setting etc. The property owner and tenant of the premises should also be deemed to be the operator of the guesthouse.

*Implementation Schedule*

37. Mr Frankie YICK, Mr KWOK Wai-keung and Mr CHAN Chi-chuen pointed out that Members and deputations in general supported the Administration's proposal to step up enforcement action against unlicensed guesthouses. Mr YICK suggested that consideration should be given to

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implementing in phases the proposals in the consultation document. He said that arrangements should be made for the proposed measures which sought to facilitate OLA's performance of enforcement and prosecution duties to be implemented first and the public as well as the guesthouse industry should be further consulted on the more controversial subjects, i.e. the proposals to enable the Authority to take into account DMC provisions and local residents' views in the licensing process. ADHA(4) responded that the Administration would consider Mr YICK's suggestion.

38. Responding to Mr CHAN Chi-chuen's invitation of views, Ms TAI Lei-na of Ah Shan Hostel and Mr CHANG King-chung of Hong Kong Hostels Alliance said that they were supportive of the "phased implementation" approach.

Conclusion

39. The Chairman hoped that the Administration would consider the views expressed by Members and deputations although this special meeting was held after the consultation period. He reminded the Administration to report to the Panel when the consultation results were available.

40. There being no other business, the meeting ended at 11:00 am.

Council Business Division 2  
Legislative Council Secretariat  
16 October 2014