

**For Discussion
10 January 2014**

**LEGISLATIVE COUNCIL
PANEL ON HOME AFFAIRS**

**The Licensing and Enforcement Matters under
the Hotel and Guesthouse Accommodation Ordinance**

Introduction

This paper briefs Members of matters relating to processing guesthouse licence applications, regulation and enforcement by the Office of the Licensing Authority (OLA) under the Home Affairs Department (HAD) in accordance with the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) (the Ordinance).

Hotel and Guesthouse Accommodation Ordinance

2. Operation of guesthouses in Hong Kong is regulated by the Ordinance. The purpose of the Ordinance is, through a licensing regime, to ensure that premises used as guesthouses meet the building structure and fire safety standards specified in the Buildings Ordinance (Cap. 123) (BO) and the Fire Services Ordinance (Cap. 95) (FSO) to safeguard the lodgers and public. In accordance with the Ordinance, any premises providing sleeping accommodation at a fee shall obtain a guesthouse licence unless all accommodation in the premises is provided with a tenancy period of 28 consecutive days or more for each letting. The OLA is responsible for the implementation of the Ordinance, including issuing licences and performing relevant regulation and enforcement duties.

Licensing Procedures

3. In processing and approving the applications for guesthouse licences, the OLA shall act under the power conferred by the Ordinance. Under the current licensing regime, premises intended to be used as a guesthouse must obtain the

approval of the Building Authority¹ for “domestic purposes”. Under the Buildings Ordinance, “domestic”, in relation to a building, refers to a part that is constructed or intended for habitation whereas “habitation”, in relation to the use of building, includes use of it for hotel, guesthouse, boarding-house, etc. If the subject premises of the application are situated in the part of the building which is for “domestic purpose”, the basic licensing requirements are met. The OLA will only issue a licence when it is satisfied that the premises have met the building structure and fire safety standards as stipulated in the Buildings Ordinance and Fire Services Ordinance. The licence will specify the maximum number of persons to be accommodated in the respective guesthouse.

4. Moreover, licensed guesthouses are required to display the licensed guesthouse logo at the main entrance and on the doors of all guestrooms, in accordance with the licence conditions. The OLA has uploaded the full list of licensed hotels and guesthouses onto its website (www.hadla.gov.hk). This facilitates owners’ corporations (OCs) or managers of the buildings to print out the list of licensed guesthouses in their buildings and post it in the lobby for easy identification by tourists and avoidance of nuisance to other residents.

5. Guesthouse licences issued by the OLA do not act as a waiver of any terms in any lease, tenancy agreement or licence granted by the Government, nor do they affect or change the provisions of the Deed of Mutual Covenant (DMC) or other covenants relating to the building in which the guesthouse is situated. The OLA clearly reminds the licensees to ensure that the operation of the guesthouse on the premises is in compliance with the terms and conditions of relevant leases and covenants in the application forms and guidelines, the notification letters for issuance of licence and other relevant documents. The issuance of a licence does not exempt or protect the holder of licence from any consequence and liability of any breach of the laws.

6. A DMC is a private covenant among the owners, the property manager and the developer of a building. Engaged parties are empowered to act under the power conferred by the DMC to enforce the DMC provisions in relation to the control, management and administration of the building. They may also take appropriate actions and measures against any owner who does not comply with the DMC. Provisions vary among DMCs. The Government, which is

¹ Under the Buildings Ordinance, the Building Authority is the Director of Buildings.

not a party to the DMC, has no power or obligation to interpret the provisions. Where the parties concerned have different interpretation of the DMC, they may seek a ruling from the Lands Tribunal in accordance with the Building Management Ordinance (BMO) (Cap. 344).

Regulation of Licensed Guesthouses

7. As mentioned above, the OLA will ensure that premises concerned meet the building structure and fire safety standards as stipulated in the BO and the FSO to safeguard the lodgers and public before issuing a license. For renewal application, OLA will inspect the subject premises to ensure that they continue to meet the relevant safety standards before the licence is renewed. If there is any suspected breach of licensing conditions or upon receipt of such a report, the OLA will take immediate follow up and enforcement actions.

8. Any person who contravenes any licensing condition commits an offence and is liable to imprisonment upon conviction and will lead to a criminal record. The maximum penalty is a fine of \$100,000 and imprisonment for two years, and a fine of \$10,000 for each day during which the offence continues.

Combating Unlicensed Guesthouse

9. The OLA has spared no effort to combat and raid unlicensed guesthouses by adopting a multi-pronged approach, including strengthening law enforcement action, enhancing deterrent effect and stepping up publicity, etc.,. In recent years, it has increased manpower resources and recruited frontline officers with law enforcement experience. It has also adjusted its enforcement strategies and employed different enforcement approaches flexibly to increase the number of inspections significantly, and make every effort to collect evidence of suspected unlicensed guesthouse operation.

10. As for law enforcement action, when suspected unlicensed guesthouse operation is identified or such a report is received, the OLA will conduct an inspection within eight working days, and will adopt the most appropriate and effective means to follow up and investigate the case having regard to the circumstances of individual cases. Targeted enforcement actions, such as conducting surprise inspections at different time (including non-working hours), launching large-scale and targeted inter-departmental operations, or posing as

clients (commonly known as “snaking”), will be employed to collect evidence. Prosecution will be instituted immediately if there is sufficient evidence that the premises concerned is involved in unlicensed guesthouse operation.

11. The OLA also steps up inspection to buildings with higher fire risks to combat suspected unlicensed guesthouses in these buildings. Moreover, the OLA has strengthened its efforts to collect intelligence. In addition to gather and investigate information about promotion of suspected unlicensed guesthouses during blitz inspections, a dedicated Internet enforcement team has been set up to closely monitor websites, discussion boards, blogs, etc. for collecting information and intelligence on the Internet about suspicious unlicensed guesthouses on one hand and encouraging tourists to patronise licensed hotels or guesthouses on the other.

12. To facilitate reporting of suspected illegal operation of guesthouses by the public or tourists, the OLA has provided a hotline (Tel. No.: 2881 7498) and an email address (hadlaenq@had.gov.hk) and uploaded a report form onto its website (www.hadla.gov.hk). The public can make a report to the OLA by fax (Fax No.: 2504 5805).

13. The figures of enforcement and prosecution against suspected unlicensed guesthouse operation in the past five years are at **Annex I**. During the period from 2009 to 2013, the number of inspection of suspected unlicensed guesthouses by the OLA has increased by more than threefold from 2 430 to 9 889. The number of prosecutions has also risen significantly by more than threefold from 39 to 171, whereas the number of conviction has also grown by over 3.5 times from 36 to 161. These demonstrate the efforts and effectiveness of the enhanced measures against unlicensed guesthouse operation.

14. Operating an unlicensed guesthouse is a criminal offence. The convicted person is liable to imprisonment and will lead to a criminal record. The maximum penalty is a fine of \$200,000 and imprisonment for two years, and a fine of \$20,000 for each day during which the offence continues. In the past five years, the fines for contravening the Ordinance were generally about \$2,000 to \$3,000. The number of persons sentenced to imprisonment and their term of imprisonment for unlicensed guesthouse operation are at **Annex II**.

15. To have greater deterrent effect, the OLA passes information on convicted cases and details to the Rating and Valuation Department, the Inland Revenue Department, mortgage banks or monetary institutions, property owners, OCs and management offices of the buildings for following up under their respective purview such as prosecution against tax evasion and recovery of tax. Should any property agent or insurance agent be convicted, the OLA will also pass the conviction records to the Estate Agents Authority or the Office of the Commissioner of Insurance for their follow up actions.

16. Moreover, the OLA has recently implemented a stringent measure targeting at licensed guesthouses operators who operate unlicensed guesthouses at different premises. If a guesthouse licensee is convicted of an offence involving operation of an unlicensed guesthouse, the OLA will consider cancelling all the licences being held by the licensee concerned or refusing to renew the licences pursuant to the Ordinance. So far, the OLA has cancelled or refused to renew the licences of 13 guesthouses for this reason.

17. The OLA has also established a mechanism with the Travel Industry Council (TIC) and the Consumer Council (CC). If it is found during investigation that unlicensed guesthouse operators are receiving Mainland tour groups, the OLA will notify the Mainland tourism authorities and inform TIC for appropriate follow-up actions. The OLA will also take immediate follow-up actions upon receipt of complaints of suspected unlicensed guesthouse operation referred by the CC.

18. As regards publicity, the OLA has launched the Licensed Guesthouse Logo Scheme to facilitate tourists to identify licensed guesthouses. The frequency of Announcements in Public Interest on television and radio has also been increased, whilst posters/banners are displayed and publicity leaflets distributed at immigration checkpoints and districts with more suspected unlicensed guesthouses in order to remind tourists to Hong Kong of patronising licensed guesthouses. Moreover, the OLA collaborates with the Tourism Commission and Hong Kong Tourism Board to encourage tourists to patronise licensed guesthouses and to convey relevant messages to the Mainland tourism authorities. The CC is also urging visitors not to patronise unlicensed guesthouses on its dedicated "Shopsmart" website for Mainland tourists. A

full list of licensed hotels and guesthouses has been uploaded onto the OLA's webpage (www.hadla.gov.hk) for easy reference by tourists.

19. The OLA plans to launch a new round of publicity in Hong Kong and on the Internet before the Lunar New Year holidays, appealing to tourists to patronise licensed guesthouses. It also plans to launch a smartphone application for tourists to search information of licensed guesthouses anytime and anywhere later this year.

The Way Forward

20. Tourism is a major pillar of the economy of Hong Kong. With edges on affordability and location, licensed guesthouses in residential buildings play an important role in enhancing our tourism facilities. Therefore, we consider that the regulatory regime should strike a reasonable balance between maintaining room for the survival of licensed guesthouses and minimising the safety hazards or nuisances for other residents.

21. The HAD reviews from time to time the implementation of the Ordinance and explore feasible options for improvement. The primary consideration is to facilitate OLA to take enforcement action more effectively to combat and eradicate unlicensed guesthouses. In fact, in the light of the law enforcement experience gathered in the past few years, we have already kicked start a preliminary review of the Ordinance and are of the view that there are rooms for improvement. The HAD plans to consult the Panel on the review of the Ordinance in due course.

Home Affairs Bureau/
Home Affairs Department
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Annex I

Enforcement figures on inspection, prosecution and conviction against unlicensed guesthouses (2009-2013)

	2009	2010	2011	2012	2013
Inspection	2 430	2 678	3 125	6 791	9 889
Prosecution(Note)	39	38	53	128	171
Conviction(Note)	36	44	39	110	161

Note: The figures of prosecution and those of conviction in the same year are slightly different because trials of some prosecution cases were/will be conducted in the following/next year.

Annex II

Number of persons sentenced to imprisonment for unlicensed guesthouse operation (2009-2013)

	2009	2010	2011	2012	2013
Imprisonment of four months	1 (1)	0	0	0	0
Imprisonment of three months	0	1 (1)	2 (1)	0	0
Imprisonment of two months	2 (1)	2 (1)	0	4 (2)	3
Imprisonment of six weeks	0	0	0	2 (1)	0
Imprisonment of one month or less	0	3 (3)	1 (1)	1	4 (1)
Total	3	6	3	7	7

Note: The figures in () represent cases of suspended sentence of imprisonment.