

立法會 *Legislative Council*

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**Panel on Home Affairs
Background brief prepared by the Legislative Council Secretariat
for the meeting on 10 January 2014**

Regulation of guesthouse operation

Purpose

This paper provides background information on the regulation of guesthouse operation, and highlights the concerns of Legislative Council ("LegCo") Members on the subject.

Background

2. Operation of guesthouses in Hong Kong is regulated by the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) ("the Ordinance"). According to the Administration, the primary purpose of the Ordinance is to ensure, through the implementation of a licensing regime, that premises used as hotels and guesthouses meet the building and fire safety standards specified in the Buildings Ordinance (Cap. 123) ("BO") and the Fire Services Ordinance (Cap. 95) ("FSO"), so as to safeguard the safety of tourists and the public. The Office of the Licensing Authority ("OLA") under the Home Affairs Department ("HAD") is responsible for the administration of the Ordinance, including issuing licences and carrying out relevant enforcement actions.

Licensing requirements

3. Under the Ordinance, any premises providing sleeping accommodation at a fee with a tenancy term of less than 28 consecutive days shall apply for a licence from OLA before commencing operation as hotels or guesthouses. The validity periods of licences range from 12 to 84 months. Licences are subject to renewal upon their expiration. The applicant has the responsibility

to ensure that the premises concerned comply with the lease conditions, Deed of Mutual Covenant and other relevant legislation.

Inspection

4. OLA maintains a register of hotels and guesthouses accommodations. In processing new or renewal applications, OLA will conduct inspections to the premises to ensure that they comply with the relevant statutory requirements. Upon receipt of a complaint against a suspected unlicensed guesthouse, OLA will inspect the premises within eight working days. If the investigation shows that there is prima facie evidence indicating unlicensed operation of a guesthouse, OLA will seek legal advice on appropriate actions for prosecution.

Penalties

5. Under the Ordinance, any person who operates an unlicensed guesthouse is liable on conviction to a fine of \$200,000 and to imprisonment for two years, and to a fine of \$20,000 for each day during which the offence continues. As for contravention of any licensing condition, a person is liable on conviction to a fine of \$100,000 and to imprisonment for two years, and to a fine of \$10,000 for each day during which the offence continues.

Enforcement

6. According to the Administration, the number of complaints received, inspections conducted, prosecutions instituted and cases convicted in relation to suspected unlicensed guesthouse operation between 2011 and 2013 (as at 30 June 2013) were as follows –

	Complaint	Inspection	Prosecution	Conviction
2011	696	3 125	53	39
2012	1 418	6 791	128	110
2013 (as at 30 June)	546	4 379	86	84

Members' concerns

7. The subject of the monitoring of unlicensed hotels and guesthouses was discussed by the Panel on Home Affairs ("the Panel") at its meeting on 18 March 2011. Questions relating to the regulation of guesthouse operation were also raised at various Council meetings in the past three years. Members' major concerns are summarized in the ensuing paragraphs.

Issue of guesthouse licences

8. Concern was raised that some members of the public had expressed dissatisfaction with the authorities' permission of the operation of guesthouses in residential buildings, which seriously affected the building management, security and the residents' entry to and exit from the buildings. The Administration was urged to consider including consultation with the residents of the buildings concerned as a necessary step of the vetting and approving procedures for processing applications for operating guesthouses in residential buildings.

9. According to the Administration, upon receipt of an application for a guesthouse licence, OLA would first ascertain whether the premises intended to be used as a hotel or guesthouse fell into the category of premises which could be used for such purposes under BO before processing the licence application in accordance with the Ordinance. OLA would issue a licence only after it had ascertained that the premises concerned complied with the standard of structural and fire safety as provided in BO and FSO, so as to ensure the safety of patrons and other users of the building.

10. The Administration further explained that pursuant to section 8(3) of the Ordinance, the Hotel and Guesthouse Accommodation Authority (the Authority) might refuse to issue a licence in respect of a hotel or guesthouse only on the ground that the premises intended to be used as a hotel or guesthouse failed to comply with the requirements relating to structural and fire safety, sanitary configuration, guesthouse management, etc. as set out in BO and FSO. The Ordinance did not empower the Authority to consider refusing the issue of a licence based on reasons other than those stated in Section 8(3) of the Ordinance (e.g. objection from the residents of the buildings concerned) when processing a guesthouse licence application. OLA had to process the application within the powers set out in the Ordinance.

Enforcement actions against unlicensed guesthouses

11. Some Members had expressed concern about the low rate of prosecutions against unlicensed guesthouses, as only about 10% of the number of complaints received by OLA had resulted in prosecutions. Noting the problem of shadow guesthouses (i.e. licence-holders making use of their licensed premises for unlicensed guesthouse operation in another premises), these Members enquired whether legislation had to be amended to combat the problem more effectively. The Administration was also requested to deploy sufficient and dedicated manpower to conduct inspections on suspected

unlicensed guesthouses so as to crack down on any illegal operations.

12. As explained by the Administration, reports on suspected unlicensed guesthouse operation usually involved repeated complaints against the same premises. Upon investigation, some premises were found to be fallen beyond the purview of the Ordinance as they were leased on a monthly basis. Given that unlicensed guesthouse operation was a criminal offence, OLA would take account of individual circumstances and launch multiple law enforcement actions with a view to gathering sufficient evidence for instituting prosecutions. Therefore, figures of complaints received and prosecutions instituted could not be compared directly.

13. The Administration further advised that OLA had in recent years increased its manpower resources and recruited frontline officers with law enforcement experience to assist in combating unlicensed guesthouses. Upon identification of unlicensed guesthouse operation, or upon receipt of such a report, OLA would investigate the case and collect evidence through various specific means, such as conducting surprise inspections, launching large-scale and targeted inter-departmental operations, or posing as clients and visitors to Hong Kong (commonly known as "snaking"), etc. Prosecution would be instituted immediately if there was sufficient evidence that the premises concerned were involved in unlicensed guesthouse operation. The Administration considered its enforcement actions effective, as the success rate for prosecutions had been high. As regards measures against shadow guesthouses, if a guesthouse licence holder was convicted of an offence involving operation of an unlicensed guesthouse, OLA would consider cancelling all the licences being held by the licensee concerned or refusing to renew the licences pursuant to the Ordinance.

14. In response to a Member's enquiry about whether the Administration would consider reviewing the existing legislation and enhancing the penalty for unlicensed guesthouse operation, the Administration advised that it considered the existing penalty level sufficient to create a deterrent effect. In instituting a prosecution, prosecution officers would appeal to the Court to reflect the seriousness of the offence in its sentence having regard to the threat posed by unlicensed guesthouses to the safety of its lodgers, residents of the building and members of the public as well as previous conviction record(s) of a re-offender. OLA would also seek the advice of Department of Justice as to whether an appeal or a review should be filed to the Court against the sentence of individual verdicts.

Latest development

15. On 29 December 2013, a No.3 alarm fire broke out at Continental Mansion in North Point, causing 25 people injured. According to the press release issued by the Home Affairs Department on 29 December 2013 in response to media enquiries, a licensed guesthouse on the 3/F of the building was also affected by the fire. OLA had received complaints against the guesthouses in the building and conducted investigations accordingly. In the past three years, five prosecutions were instituted against those guesthouses and five persons were convicted.

16. The fire has aroused wide public concern about the regulation, control and safety of guesthouse operation. Seven Members (including six Panel members and one non Panel-member) have either jointly or separately written to the Panel Chairman requesting discussion of the subject at a Panel meeting. For details, please refer to LC Paper Nos. CB(2)601/13-14(01) to (05). The Panel will discuss the licensing and enforcement matters under the Ordinance at its meeting on 10 January 2014.

Relevant papers

17. A list of relevant papers with their hyperlinks at LegCo's website is in the **Appendix**.

Appendix

Relevant papers on regulation of guesthouse operation

Committee	Date of meeting	Paper
Panel on Home Affairs	18.3.2011 (Item V)	Agenda Minutes
Council meeting	23.11.2011	Written question raised by Hon Starry LEE on "Regulation of guesthouses"
Council meeting	11.1.2012	Official Record of Proceedings Pages 4318 to 4326 (oral question raised by Hon Jeffrey LAM on "Regulation of residential flats for lease on a short-term basis)"
Council meeting	19.6.2013	Official Record of Proceedings Pages 13967 to 13977 (oral question raised by Hon YIU Si-wing on "Regulation of accommodation for tourists")
Council meeting	10.7.2013	Written question raised by Hon WONG Kwok-hing on "Combating the operation of unlicensed guesthouses"