

立法會 *Legislative Council*

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Panel on Home Affairs
Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 23 July 2014

The licensing and regulation of guesthouses

Purpose

This paper provides background information on the licensing and regulation of guesthouses, and highlights major concerns of members of the Panel on Home Affairs ("the Panel") on the subject.

Background

2. Operation of guesthouses in Hong Kong is regulated by the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) ("the Ordinance"). In the light of public concerns about the incident of a No. 3 alarm fire at the Continental Mansion in North Point on 29 December 2013 which caused 25 people injured¹, the Panel discussed with the Administration issues relating to the regulation of guesthouses at its meeting on 10 January 2014.

Licensing requirements

3. According to the Administration, the primary purpose of the Ordinance was 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 lodgers and the public. The Office of the Licensing Authority ("OLA") under the Home Affairs Department ("HAD") was responsible for the administration of the Ordinance, including issuing licences and carrying out relevant enforcement actions.

¹ HAD's press release in response to the fire was available at the following hyperlink - <http://www.info.gov.hk/gia/general/201312/29/P201312290580.htm>

4. The Ordinance stipulated that any premises providing sleeping accommodation at a fee with a tenancy term of less than 28 consecutive days shall apply for a licence before commencing operation as hotels or guesthouses. The validity periods of licences ranged from 12 to 84 months, and licensees were subject to renewal upon their expiration. OLA would remind the licensee to ensure that the premises concerned were in compliance with the lease conditions, the Deed of Mutual Covenant ("DMC") and other relevant legislation.

Enforcement actions against unlicensed hostels

5. Under the Ordinance, any person who operated an unlicensed guesthouse was 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 continued. As for contravention of any licensing condition, a person was 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 continued.

6. At the Panel meeting on 10 January 2014, members were advised that when suspected guesthouse operation was identified or such a report was received, OLA would conduct an inspection within eight working days. The number of inspections conducted, prosecutions instituted and cases convicted in relation to suspected unlicensed guesthouse operation between 2009 and 2013 were as follows -

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

Members' concerns

7. Issues relating to the licensing and regulation of guesthouses were discussed at two Panel meetings on 18 March 2011 and 10 January 2014. Major concerns of members are summarized below.

Licensing requirements

8. When discussing with the Administration the licensing and enforcement

matters under the Ordinance at the meeting on 10 January 2014, a concern was raised that the proliferation of guesthouses in residential buildings had caused safety hazards and nuisances to the residents. There was a view that the vetting and approving procedures for processing applications for operating guesthouses in residential buildings should include consultation with the residents of the buildings concerned. Some members enquired why provisions in DMC were not taken into account in the vetting and approval of guesthouse licences.

9. The Administration advised that OLA had to process a guesthouse licence application within the powers conferred by the Ordinance. Upon receipt of a licence application, 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. 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. However, the Ordinance did not empower OLA to refuse an application because of other considerations, including terms of land leases, DMC and residents' views. Members were also advised that as a DMC was a private covenant among the owners, the property manager and the developer of a building, only these parties were empowered to act under the power conferred by DMC to enforce the provisions therein in relation to the control, management and administration of the building.

10. Some members, however, were not convinced of the Administration's explanation that it would not consider, interpret or enforce provisions in DMC in vetting and approving an application for guesthouse licence. These members urged the Administration to review the existing guesthouse licensing regime for the sake of public interest and if necessary, amend the law to tighten the regime, with a view to protecting the interests of residents living in buildings where guesthouses operated. The Administration advised that the regulatory regime should strike a reasonable balance between maintaining room for the survival of licensed guesthouses and minimizing the safety hazards or nuisances for other residents. The Administration reviewed from time to time the implementation of the Ordinance and explored feasible options for improvement.

Enforcement actions against unlicensed guesthouses

11. When discussing with the Administration the monitoring of unlicensed hostels and guesthouses at the meeting on 18 March 2011, some members expressed concern about the relatively small numbers of inspection and prosecutions against unlicensed guesthouses. The Administration was urged to deploy sufficient and dedicated manpower to conduct inspections on suspected

unlicensed guesthouses so as to crack down on any illegal operations. Noting the problem of shadow guesthouses (i.e. licence-holders making use of their licensed premises for unlicensed guesthouse operation in other premises), some members asked whether it was necessary to amend the legislation so as to combat the problem more effectively.

12. There was also concern about the rising trend of promoting unlicensed guesthouses through websites. The Administration was urged to monitor such promotion and publicity activities in a more rigorous manner. There was also a view that the penalties imposed on convicted cases of unlicensed guesthouses by the court were too lenient, and the Administration should, where necessary and appropriate, consider seeking a review of the court's sentences.

13. According to the Administration, OLA had in recent years increased its manpower resources and recruited frontline officers with law enforcement experience to assist in combating unlicensed guesthouses, including the setting up of an eight-member dedicated Internet enforcement team to collect information and intelligence on the Internet about suspicious 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 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.

14. Members were assured that prosecution would be instituted immediately if there was sufficient evidence that the premises concerned were involved in unlicensed guesthouse operation. 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. As regards shadow guesthouses, OLA would consider cancelling all the licences being held by the licensee concerned or refusing applications for licence renewal if a guesthouse licence holder was convicted of an offence involving operation of an unlicensed guesthouse.

15. The Administration also advised that in light of the law enforcement experience gathered in the past few years, it had already kick-started the review of the Ordinance and was of the view that there was room for improvement. The Administration would consider members' suggestions and explore various options, including enhancing penalties for offences, in its review of the Ordinance.

Latest development

16. On 4 July 2014, HAD released a consultation document entitled "Review of the Hotel and Guesthouse Accommodation Ordinance" to consult the public on the measures to improve the licensing regime for guesthouses and to enhance the effectiveness of enforcement actions against unlicensed guesthouses.

17. The Administration will brief the Panel on the consultation document at the meeting on 23 July 2014.

Relevant papers

18. A list of relevant papers at the Legislative Council's website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
10 July 2014

Appendix

Relevant papers on the licensing and regulation of guesthouses

Committee	Date of meeting	Paper
Panel on Home Affairs	18.3.2011 (Item V)	Agenda Minutes
	10.1.2014 (Item V)	Agenda Minutes

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