

**Special Meeting of Panel on Home Affairs  
Review of the Hotel and Guesthouse Accommodation Ordinance**

Operation of hotels and guesthouses in Hong Kong is regulated by the Hotel and Guesthouse Accommodation Ordinance (Cap.349) (the Ordinance). Enacted in 1991, the Ordinance aims to, through a licensing regime, ensure that premises intended to be used as hotels or guesthouses meet the building structure and fire safety standards specified in the Buildings Ordinance (Cap. 123) and the Fire Services Ordinance (Cap. 95) to safeguard the lodgers and the public. The Office of the Licensing Authority (OLA) under the Home Affairs Department (HAD) is delegated by the Hotel and Guesthouse Accommodation Authority<sup>1</sup> (the Authority) for implementing the Ordinance, including issuing licences and performing relevant regulatory and enforcement duties.

Under the current licensing regime, the OLA is not obliged to have regard to the DMC or conduct any local consultation in considering a licence application. Nevertheless, a guesthouse licence is by no means a waiver of any DMC provisions. As the operation of guesthouses may to a certain extent cause nuisance and inconvenience to the residents living in the building, the Government appreciates views expressed by some quarters of the community that the licensing regime should take into account DMC provisions and the views of local residents. In the consultation document on the Review of the Hotel and Guesthouse Accommodation Ordinance, we have set out various proposals to enhance the licensing regime with a view to addressing public concern in the recent years, especially the impact on and nuisance caused to the daily lives of residents by the guesthouses in multi-storey residential buildings.

As DMC is a private contract *per se*, the Government should not interpret its terms and provision in the licensing process. Nevertheless, if a DMC contains explicit restrictive provisions, or the court of law has already handed down a judgment against the use of the premises for guesthouse purpose, then it is reasonable for OLA not to issue a licence because an injunction order will likely be granted if the case is brought to the court. Such action by the OLA will save the residents' time, costs and trouble in bringing the case before the court by themselves, and assist them in managing their building properly in accordance with the DMC. In view of this, we propose to amend the Ordinance to -

- (i) enable the Authority to refuse to issue/renew licences or cancel the existing licences where the DMC of the building concerned contains explicit restrictive provisions stipulating that hotel/guesthouse operations or commercial activities are not allowed in the building concerned, or the premises are for "private residential use" only; and

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<sup>1</sup> In accordance with section 4(1) of the Ordinance, the Secretary for Home Affairs is the Authority of the Ordinance.

- (ii) require the applicant to submit a certificate signed by a solicitor affirming that there are no such explicit restrictive provisions in the DMC.

According to the record of OLA, as at the end of August 2014, there were 1 270 licensed guesthouses located in composite buildings, providing about 10 310 rooms in total. The OLA does not have copies of the DMC of these buildings. We have inspected the DMCs of some of these buildings from the record of the Land Registry and estimated that the DMCs of some buildings with about 250 licensed guesthouses situated therein may contain explicit restrictive provisions. However, since these guesthouses employ only a small number of employees and the licensees can relocate their guesthouses to other places which meet the licensing requirements to continue their operations, it is believed the proposed amendments will have limited impact on the trade and practitioners.

In combating unlicensed guesthouses, upon receipt of a report of suspected unlicensed guesthouse, the OLA will conduct an inspection within eight working days and, having regard to the circumstances of individual cases, collect evidence through various means. Operating an unlicensed guesthouse is a criminal offence. Upon conviction, an offender is liable to imprisonment and may have a criminal record. Therefore, there must be sufficient evidence before any allegation of unlicensed guesthouse operation in the premises concerned can be made, in which case the OLA will institute prosecution immediately. Between January and August 2014, the OLA received about 1 100 complaints against suspected unlicensed guesthouse operation, some of which involved repeated complaints. Upon follow-up investigation, some were found not to involve guesthouse operation (e.g. lease on a monthly basis). The OLA will actively follow up and investigate all complaints.

Under sections 19<sup>2</sup> and 20<sup>3</sup> of the existing Ordinance, the Secretary for Home Affairs (the Secretary) can apply to the court for closing the premises concerned only when there is any danger or risk of danger to the guests in the

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<sup>2</sup> The Secretary may, in respect of any hotel or any guesthouse, by notice in writing, give such directions as appear to him to be required to secure that- (a) the safety of guests in the hotel or the guesthouse is promoted in a proper manner; (b) adequate apparatus and equipment required as safeguards against fire or other hazard are provided in the hotel or the guesthouse; and (c) the provisions of this Ordinance are complied with.

<sup>3</sup> Where it is proved to the satisfaction of the District Court on the sworn information of the Secretary that- (a) not less than 24 hours notice in writing served either personally or by registered post or by posting in a conspicuous part of the hotel or the guesthouse of his intention to swear the information was given by the Secretary to the person being the operator, keeper, manager or otherwise having control of the hotel or the guesthouse; and (b) it appears to the Secretary that there is any danger or risk of danger to guests in the hotel or the guesthouse, the District Court shall make an order in writing directing that the hotel or the guesthouse shall close and shall cease to be used as a hotel or a guesthouse until the Secretary gives notice.

licensed guesthouse. The existing Ordinance does not empower the Secretary to issue a Closure Order against any premises convicted for unlicensed guesthouse operation. To strengthen the combat against unlicensed guesthouses and enhance the deterrent effect, we have proposed in the consultation document that reference should be drawn to the practice of combating vice establishments pursuant to the Crimes Ordinance (Cap. 200), i.e. the Authority may apply to the Court, upon the second conviction of an unlicensed guesthouse, to issue a Closure Order against the relevant premises for six months. Since the Closure Order will cause substantial financial loss to the owner concerned, it is believed that this will deter owners from operating unlicensed guesthouses themselves or letting out the premises for such business.

The public consultation conducted by HAD on the proposed amendments to the Ordinance was ended on 28 August 2014. We have received about 1 100 written submissions during the consultation period. We have also taken the initiative to consult the Legislative Council Panel on Home Affairs, the 18 District Councils and the relevant industry. We are now consolidating and analysing the comments received and exploring the practicable enhancement options.

Home Affairs Department  
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