

The Audit Commission ("Audit") conducted a review of the Home Affairs Department ("HAD")'s regulation of hotels and guesthouses under the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) ("HAGAO").

2. HAGAO regulates premises that provide hotel and guesthouse accommodation at a fee with a view to safeguarding lodgers and the public against risks of building safety and fire safety. The Office of the Licensing Authority ("OLA") under HAD is delegated by the Hotel and Guesthouse Accommodation Authority (i.e. Secretary for Home Affairs) to administer HAGAO, for example, issuing licences for hotels and guesthouses and performing relevant enforcement duties. As at 30 June 2017, there were 2 024 establishments licensed under HAGAO, comprising 286 licensed hotels (providing 77 724 rooms) and 1 738 licensed guesthouses (providing 14 029 rooms). Meanwhile, advertising and booking of home-stay lodging through the internet is becoming more common, and there have been calls to develop home-stay lodging in Hong Kong.

3. The Committee noted the following findings from the Director of Audit's Report:

- from 2012 to 30 June 2017, the average lead time for granting new licences and renewal licences had respectively increased from 357 days to 469 days and from 118 days to 125 days;
- nine internal targets had been set on the target processing times for different stages of licence application,¹ but only two of them were published performance pledges and had been met, while the remaining were internal targets that had generally not been attained. From 2012 to 30 June 2017, the percentages of cases attaining four internal targets² had generally decreased, and there were significant disparities between the target time and the processing time attained for some internal targets;

¹ Licence applications usually go through six stages, i.e. "acknowledgement of applications", "initial inspection", "improvement works", "follow-up inspection", "approval of applications" and "collection of licences". OLA has not set target processing times for "improvement works" and "collection of licences" as applicants are responsible for these two stages.

² These four targets are: (i) initial inspection for renewal licence applications not involving rectification works; (ii) follow-up inspection for new licence applications; (iii) approval of applications for new licences; and (iv) approval of applications for renewal licences.

- renewal licence applications submitted not less than three months before expiration dates of existing licences were protected under HAGAO, the existing licences would remain in effect until applications were approved, regardless of existing licence expiration dates. Applications submitted within three months before expiration dates were "unprotected". However, in the first six months of 2017, the average lead time for processing unprotected cases (90 calendar days) was significantly shorter than protected cases (134 calendar days), and 61% of the unprotected cases were approved after expiration of existing licences;
- annual inspections conducted by OLA for monitoring compliance with licence requirements were neither risk-based nor conducted on a surprise basis. Information on the progress and results of annual inspections was not compiled;
- the number of outstanding suspected cases³ had doubled from 644 in January 2012 to 1 322 in June 2017, and 270 (20%) of the 1 322 cases had been outstanding for more than three years. There was a risk that some unlicensed establishments related to these outstanding cases had been in operation for a long time. However, OLA did not compile and report the number of outstanding suspected cases and their outstanding durations to HAD;
- for unlicensed establishments operated through websites not showing the full addresses on websites and serving walk-in lodgers, OLA was not able to collect sufficient evidence for prosecution. A number of overseas cities had already enacted legislation to combat illegal provision of sleeping accommodation through the internet;
- from 2012 to 2017 (up to 30 June 2017), 832 prosecutions were instigated by OLA on 467 unlicensed establishments, resulting in 779 convictions. Audit analysed the penalties imposed on the convictions and noted that unscrupulous operators might treat penalties as part of operating costs regardless of repeated prosecutions, and the persons caught red-handed and prosecuted were usually keepers rather than the business owners. Meanwhile, HAGAO continuous offence provision (i.e. imposing a fine of \$20,000 for each day the offence

³ OLA's Enforcement Team identifies suspected unlicensed establishments from various sources and takes follow-up actions accordingly.

continues) had not been invoked on recalcitrant operators of unlicensed establishments;

- based on HAD's costing review conducted at the 2016-2017 price level, the cost recovery rates of the current licence fees⁴ ranged from 32% to 75% for new licences, and from 40% to 72% for renewal licences;
- as at 30 June 2017, 24 Licensing Inspectors in OLA had in total a caseload of 1 322 outstanding cases.⁵ Audit noted that the caseloads of individual Licensing Inspectors were uneven. OLA did not compile statistics of caseloads for management information, or for discussion in regular management meetings; and
- under the existing regulatory regime of HAGAO, there were difficulties for HAD in addressing issues arising from the emergence of home-stay lodging in Hong Kong, which included land use, planning, tourism, environmental and transport issues under the purview of different bureaux and departments.

4. The Committee did not hold any public hearing on this subject. Instead, it asked for written responses regarding the manpower and expenditure for the processing of licence applications and outstanding suspected cases; underlying reasons for long processing time for the licence applications and not attaining the internal targets; the handling of protected and unprotected cases; follow-up actions on non-compliance establishments and outstanding suspected cases; measures to facilitate investigation and combating of suspected unlicensed establishments; penalties on non-compliance; work plan for revising the licence fees; the monitoring of the caseloads of Licensing Inspectors; and the review progress of issues relating to home-stay lodging. The replies from **Director of Home Affairs** are in *Appendix 32*.

⁴ According to the Hotel and Guesthouse Accommodation (Fees) Regulations (Cap. 349B), the fees for issuing new licences and renewal licences are based on the licence period and the number of rooms of the licensed establishment. Currently, the fees for new licences range from \$4,570 (for a 1-year licence of an establishment with one to three rooms) to \$107,100 (for a 7-year licence of an establishment with more than 500 rooms). The fees for renewal licences range from \$2,650 to \$63,150 respectively.

⁵ OLA's Enforcement Team is responsible for investigating unlicensed establishments. Cases of suspected unlicensed establishments are each assigned to a responsible Licensing Inspector.

5. The Committee wishes to be kept informed of the progress made in implementing the various recommendations made by Audit.