

立法會

Legislative Council

LC Paper No. CB(2)2252/13-14(01)

Ref : CB2/PL/HA

Panel on Home Affairs

Background brief prepared by the Legislative Council Secretariat for the special meeting on 12 September 2014

Review of the Hotel and Guesthouse Accommodation Ordinance

Purpose

This paper provides background information on the review of the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) ("HAGAO"), and highlights major concerns of members of the Panel on Home Affairs ("the Panel") on the subject.

Background

2. Operation of hotels and guesthouses in Hong Kong is regulated by HAGAO. According to the Administration, the primary purpose of HAGAO was to ensure, through the implementation of a licensing regime, that premises intended to be used as hotels and guesthouses¹ meet the building structure and fire safety standards specified in the Buildings Ordinance (Cap. 123) and the Fire Services Ordinance (Cap. 95), so as to safeguard 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 ("the Authority")² for implementing HAGAO, including issuing licences and carrying out relevant regulatory and enforcement actions.

¹ As stipulated by HAGAO, any premises providing sleeping accommodation at a fee shall obtain a licence unless they are exempted by the Hotel and Guesthouse Accommodation (Exclusion Order) (Cap.349C), which provides general exemption to child care centres, bedspace apartments, elderly homes and those premises providing accommodation with a tenancy period of 28 consecutive days or more for each letting.

² In accordance with section 4(1) of HAGAO, the Secretary for Home Affairs is the Authority of HAGAO.

3. 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 injured³, the Panel discussed with the Administration issues relating to the regulation of guesthouses at its meeting on 10 January 2014. During the meeting, members expressed concerns that the proliferation of guesthouses in residential buildings had caused safety hazards and nuisances to the residents. Members were advised that the Administration had already kick-started the review of HAGAO and was of the view that there was room for improvement.

4. Subsequently, at the Panel meeting on 24 July 2014, members were briefed on the public consultation document on "Review of the Hotel and Guesthouse Accommodation Ordinance" ("the consultation document") issued by HAD on 4 July 2014. The consultation document set out various proposed measures to - (a) improve the licensing regime so as to minimize the nuisance or impact caused by licensed guesthouses; and (b) enhance the effectiveness of actions against unlicensed guesthouses. A table summarizing the present situations and the proposed measures as stated in the consultation document is in the **Appendix I**.

Members' concerns

5. The Panel discussed the subject of review of HAGAO at the meeting on 23 July 2014. Major views and concerns of members on the consultation document are summarized in the ensuing paragraphs.

Licensing requirements

Consultation with the residents

6. Members expressed support for the Administration's proposal that, apart from the safety matters, the provisions in the Deed of Mutual Covenant ("DMC") and the views of the residents should be considered when vetting and approving an application for guesthouse licence. The Administration was urged to expedite the implementation of the proposed measures so as to minimize the nuisance or impact caused by licensed guesthouses and to enhance the effectiveness of enforcement actions against unlicensed guesthouses.

7. Members, however, expressed diverse views on the three proposed options regarding how to gauge the views of local residents when processing a

³ 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>

licence application, namely (a) conducting local consultation through District Officers ("DO") ("Option I"), (b) setting up an independent panel comprising unofficial members to consider local views ("Option II") and (c) setting up a new statutory body responsible for the licensing work ("Option III"). While some members expressed support for the adoption of Option I so as to expeditiously minimize the nuisance or impact caused by licensed guesthouses, some other members considered that it would be more prudent to set up an independent body to consider residents' views before a decision was taken on the licence application.

8. According to the Administration, it was open-minded to the three options, and would listen to the views of members and the community during the consultation period. As regards the merits of the three options, the Administration advised that -

- (a) Option I was simple, straight-forward and easy to implement. Its impact on the processing time of an application was relatively small as compared to other options. However, this option might be considered not appropriate nor desirable, due to the absence of an independent body to consider the objections received;
- (b) for Option II, the independent panel could provide impartial advice and make recommendation having regard to all relevant factors. It was believed that the recommendation made by the independent panel would be more acceptable to the parties concerned; and
- (c) for Option III, the decision to grant or renew a licence was made by independent unofficial members after careful consideration of all relevant factors including local views. It might be perceived as more impartial, legitimate and acceptable. However, as this involved fundamental and substantial changes to the existing licensing regime, it would take longer time to revamp the procedures for processing applications and work out the detailed consultation arrangements before implementation.

Provisions in DMC

9. Members noted that the Administration proposed to amend HAGAO to empower the Authority to refuse issuance/renewal of licences or to cancel existing licences if DMC of the building concerned contained explicit restrictive provisions stipulating that guesthouse operations or commercial activities were not allowed in the building or the premises were for "private residential use" only. Concern was raised about the future possible

proliferation of guesthouses in residential buildings whose DMC did not contain such explicit restrictive provisions after the proposed amendments were made to HAGAO.

10. The Administration advised that the consultation document was proposing to take into consideration residents' views even if the DMC concerned did not contain any explicit restrictive provisions. Irrespective of which of the three options of local consultation proposed in the consultation document was adopted eventually, the proposed measure of engaging the public in the consultation process would serve to balance the interests of all parties.

Impact on the trade

11. Some members expressed concern about the impact of the proposed new measure of engaging residents in the same building in the licensing process on existing licensed guesthouses' continued operation. Concern was raised that the proposed new measure might lead to the closure of many guesthouses, rendering some existing practitioners unemployed and adversely affecting the tourism industry. Expressing the view that the Administration should be mindful of the need of some tourists for budget accommodation when visiting Hong Kong, these members suggested that the Administration should explore the potential of allowing the use of certain land/industrial buildings for guesthouse operation and consider developing home-stay lodgings in the rural areas.

12. The Administration advised that the consultation document aimed primarily at improving the licensing regime so as to minimize the nuisance and inconvenience caused by licensed guesthouses to the local residents and members of the public, and enhancing the effectiveness of enforcement actions against unlicensed guesthouses to provide better protection to lodgers and the public. In drawing up the proposed legislative amendments in the consultation document, relevant bureaux and departments had been consulted. In the Administration's view, the implementation of various measures proposed in the consultation document would not adversely affect the tourism industry.

13. The Administration assured members that it was not its intention to force licensed guesthouses out of the market. The Administration would make a decision after hearing the views of relevant sectors and different strata of the community on various proposals set out in the consultation document. A transitional period might be provided to facilitate the trade to prepare for the implementation of the proposed enhancements to the licensing regime if the proposed enhancement measures were implemented.

Appeal mechanism

14. Concern was raised about the appeal channels available for the aggrieved parties, including the applicant or the residents, who might be dissatisfied with the decision made by the Authority. There was a view that a fair appeal mechanism should be established to allow aggrieved parties to seek review of the Authority's decisions pursuant to HAGAO.

15. The Administration advised that the decision to grant or renew licences was made after careful consideration of all relevant factors including local views. To ensure that the process was fair and impartial, both the applicant and the objectors would be given a fair chance to express their views and make statements. In addition, the applicant and the objectors could appeal to the Appeal Board (Hotel and Guesthouse Accommodation) pursuant to HAGAO.

Enforcement actions against unlicensed guesthouses

16. Members reiterated their concern about the relatively small numbers of inspection and prosecutions against unlicensed guesthouses, and questioned whether the Administration had deployed sufficient and dedicated manpower to conduct inspections on suspected unlicensed guesthouses. 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 wondered whether it was necessary to amend the legislation so as to combat the problem more effectively. Concern was raised that the penalties imposed on convicted cases of unlicensed guesthouses did not appear to have a sufficient deterrent effect against the operation of these guesthouses.

17. According to the Administration, over the past few years, there had been multifold increases in enforcement raids including joint departmental operations against suspected unlicensed guesthouses. However, OLA had encountered great difficulties in securing sufficient evidence to prove that unlicensed guesthouse activities were taking place/had taken place at those premises and the persons therein were operating, keeping, managing or otherwise controlling that guesthouse. At present, most of the prosecution cases had to rely on decoy operations in order to collect sufficient evidence. It was not uncommon for OLA officers to be refused entry, even though they were undercover. Even with sufficient evidence, if the owner or the operator was not caught red-handed, it was still very difficult to institute prosecution against them and OLA might only be able to prosecute the keeper who was employed to manage the unlicensed guesthouse.

18. Members noted that the consultation document set out a number of proposed amendments to HAGAO with a view to facilitating the collection of evidence for prosecution purposes and enhancing the deterrent effect of penalties. There was a view that the proposed inclusion of "deeming provisions" in HAGAO would facilitate the collection of evidence for the instigation of prosecutions against operators of unlicensed guesthouses, as "the deeming provision" stipulated that - (a) to the effect that until the contrary was proved, any premises which were found to be offering or to have provided short-term sleeping accommodation at a price should be deemed to be used as a guesthouse; and (b) the property owner, tenant or occupier of the premises concerned should also be deemed to be the operator of the guesthouse. There was another view that apart from proposing an increase in the maximum penalty for operating unlicensed guesthouses, consideration should be given to specifying the minimum level of penalties to be imposed by the courts under HAGAO.

Public consultation exercise

19. Noting that the consultation period would last for eight weeks from 4 July 2014 till 28 August 2014, some members requested the Administration to extend the consultation period so as to allow sufficient time for the public to give views on the proposals set out in the consultation document.

20. The Administration advised that the 8-week consultation period was considered sufficient as the proposals put forward in the consultation document were specific and concrete, and were intended to urgently address, among others, the problem of unlicensed guesthouse. The Administration assured members that it would take all views and comments received during the public consultation period into account before finalizing its proposals.

Latest development

21. The Panel will hold a special meeting to receive views from deputations⁴ on the public consultation document on 12 September 2014.

⁴ All the submissions received from deputations before the closing date of the public consultation exercise (i.e. 28 August 2014) had been forwarded to HAD for consideration before the consultation deadline.

Relevant papers

22. A list of relevant papers at the Legislative Council website is in the **Appendix II**.

Council Business Division 2
Legislative Council Secretariat
8 September 2014

The present situations and proposed improvement measures as stated in the public consultation document on "Review of the Hotel and Guesthouse Accommodation Ordinance"

	Present situations	Proposed improvement measures
<i>Licensing regime</i>		
Consideration of the Deed of Mutual Covenant ("DMC")	There is currently no clear provision in the Hotel and Guesthouse Accommodation Ordinance ("HAGAO") to empower the Hotel and Guesthouse Accommodation Authority ("the Authority") to consider the provisions of DMC.	The Administration proposes to amend HAGAO to - (a) enable the Authority to refuse to issue/renew licences or cancel the existing licences where DMC of the building concerned contains explicit restrictive provisions stipulating that guesthouse operations or commercial activities are not allowed in the building concerned, or the premises are for "private residential use" only; and (b) require the applicant to submit a certificate signed by a solicitor affirming that there are no such explicit restrictive provisions in DMC.
Local consultation	There is currently no clear provision in HAGAO to empower the Authority to take into consideration local views in the licensing process.	The Administration proposes to amend HAGAO. Three possible options are set out as follows - (a) Option I - conducting local consultation through District Officers; (b) Option II - setting up an independent panel to consider local views; and (c) Option III - setting up a new statutory body responsible for the licensing work.

	Present situations	Proposed improvement measures
Other enhancements	The Office of the Licensing Authority ("OLA") is not empowered to consider the conviction records of applicants in processing a licence application.	The Administration considers it reasonable and necessary to amend HAGAO to introduce a requirement for the guesthouse licensing regime that the applicant must be "fit and proper".
	There is currently no mandatory requirement in HAGAO and in the licensing conditions for guesthouse licensees to procure third-party liability insurance for their guesthouses.	The Administration proposes to require all guesthouse licensees to procure third-party risk insurance for their guesthouses.
	There are existing provisions under HAGAO requiring the guesthouses to be under the "continuous and personal supervision" of the applicants/licencees.	The Administration proposes to make it clear by specifying in the licensing conditions that the licensee shall provide a 24-hour manned reception counter inside their guesthouses. No legislative amendment will be required.
	Under the definitions of HAGAO, the terms "hotel" and "guesthouse" carry the same meaning and no differentiation is made.	The Administration proposes to issue "hotel licence" to purpose-built hotels and "guesthouse licence" to other types of short-term sleeping accommodation located in residential buildings. It can be achieved through administrative arrangement without legislative amendment.
<i>Enforcement against unlicensed guesthouses</i>		
Premises for unlicensed guesthouse	To instigate a prosecution, OLA has to collect sufficient admissible evidence pursuant to the Evidence Ordinance (Cap. 8) and prove beyond reasonable doubt that the defender has committed an offence under HAGAO. As	The Administration proposes to add new "deeming provisions" in HAGAO to the effect that until the contrary is proved, any premises which are found to be offering or have provided short-term sleeping accommodation at a price shall be deemed to be used as a guesthouse. The property owner,

	Present situations	Proposed improvement measures
	a result, most of the prosecution cases have to rely on decoy operations in order to collect sufficient evidence.	tenant or occupier of the premises concerned shall also be deemed to be the operator of the guesthouse.
Entry to a suspected unlicensed guesthouse	Section 18(a) of HAGAO currently empowers the public officer authorized by the Authority, without warrant, at all reasonable times to enter and inspect any premises which he has reason to suspect are used as a guesthouse.	The Administration proposes to make provision to allow OLA to apply to the Magistrate's Court for warrants to facilitate its public officers to enter into, and break in if necessary, individual premises for inspection and enforcement actions.
Penalties	Any person who operated an unlicensed guesthouse is liable on conviction to a fine of \$200,000 and to imprisonment of two years.	The Administration proposes to - (a) increase the maximum fines for operating unlicensed guesthouses from \$200,000 to \$500,000 and imprisonment from two years to three years; and (b) amend HAGAO to empower the OLA to apply to the Court, upon the second conviction of an unlicensed guesthouse, to issue a Closure Order against the relevant premises for six months.

Source: The public consultation document on "Review of the Hotel and Guesthouse Accommodation Ordinance" issued by the Home Affairs Department on 4 July 2014.

**Relevant papers on
Review of the Hotel and Guesthouse Accommodation Ordinance**

Committee	Date of meeting	Paper
Panel on Home Affairs	10.1.2014 (Item V)	Agenda Minutes
	23.7.2014 (Item IV)	Agenda

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