

立法會
Legislative Council

LC Paper No. LS96/17-18

**Paper for the House Committee Meeting
on 5 October 2018**

**Legal Service Division Report on
Hotel and Guesthouse Accommodation (Amendment) Bill 2018**

I. SUMMARY

- 1. The Bill** The Bill seeks to:

 - (a) amend the Hotel and Guesthouse Accommodation Ordinance and its subsidiary legislation to strengthen the regulation and control of hotels and guesthouses;
 - (b) provide for transitional and other related matters; and
 - (c) make related amendments to other enactments.

- 2. Public Consultation** The Administration had conducted public consultation from July to August in 2014 during which members of the public, the 18 District Councils and the trade were consulted. The Administration had engaged the trade during the drafting of the Bill and briefed the Constitutional, Executive-Legislative Relations, and District Administration Policy Group of the Executive Council in January 2018 on the refined proposals.

- 3. Consultation with LegCo Panel** The Panel on Home Affairs was consulted on the legislative proposals on 24 March 2015 and 17 July 2017 respectively. While members were generally supportive of the proposals, some members expressed concerns on various issues.

- 4. Conclusion** The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill relates to an enhanced regulatory regime for hotels and guesthouses, Members may consider whether a Bills Committee should be formed to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 11 July 2018. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: HAD HQ CR/15/3/20/(C)) issued by the Home Affairs Department on 4 July 2018 for further details.

Object of the Bill

2. The Bill seeks to:
 - (a) amend the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) and its subsidiary legislation to strengthen the regulation and control of hotels and guesthouses;
 - (b) provide for transitional and other related matters; and
 - (c) make related amendments to other enactments.

Background

3. Cap. 349 was enacted in 1991 to provide for the regulation, control and safety of hotel and guesthouse accommodation. Under Cap. 349, any person who operates, keeps, manages or has control of a hotel or guesthouse has to obtain a licence issued by the Hotel and Guesthouse Accommodation Authority, i.e. the Secretary for Home Affairs ("the Authority"), unless a certificate of exemption has been issued by the Authority or the hotel or guesthouse is exempted by the Hotel and Guesthouse Accommodation (Exclusion) Order (Cap. 349C). Any person who operates an unlicensed hotel or guesthouse commits an offence and is currently liable on summary conviction to a fine of \$200,000 and to imprisonment for two years, and to a daily fine of \$20,000 during which the offence continues.

4. According to paragraphs 27 and 28 of the LegCo Brief, a consultation paper was published by the Home Affairs Department in July 2014 to gauge public views on the proposed measures to enhance the existing licensing regime and facilitate enforcement actions against unlicensed hotels and guesthouses to address public concerns arising from a fire incident in 2013 causing casualties in a guesthouse in a building with the Deed of Mutual Covenant ("DMC") prohibiting hotel or guesthouse operation. The Administration has introduced the Bill to implement the proposals put forth in the consultation paper with a view to enhancing deterrence, enhancing the existing licensing regime and facilitating enforcement actions against unlicensed hotels and guesthouses.

Provisions of the Bill

5. The major provisions of the Bill are summarized below.

Enhancing deterrence

6. Clause 9 of the Bill seeks to amend Cap. 349 by repealing Part II of Cap. 349 and substituting a new Part 2 to:

- (a) enable the offence of operating unlicensed hotel or guesthouse to be prosecuted on indictment with higher penalties, in addition to the summary offence under the existing Cap. 349. Under the Bill, a person committing the offence would be liable (i) on summary conviction, to a fine of \$200,000 and imprisonment for two years and, in the case of a continuing offence, to a further daily fine of \$20,000 (i.e. the same as under the existing Cap. 349); or (ii) on conviction on indictment, to a fine of \$500,000 and imprisonment for three years and, in the case of a continuing offence, to a further daily fine of \$20,000; and
- (b) create a new offence in new section 5A under which owners and tenants of hotel or guesthouse premises would commit an offence if no licence is in force for the premises. This offence would be subject to the same penalties as those provided for the offence of operating unlicensed hotel or guesthouse in (a) above. A person charged with the new offence would be entitled to be acquitted under the circumstances specified in new section 5A(3) and (4).

Enhancing the licensing regime

7. Clause 11 seeks to amend Cap. 349 by adding a new Part 4A to provide for an enhanced licensing regime. The existing regime under Parts III and IV of Cap. 349 would be repealed under clause 10 accordingly.

8. Under the proposed licensing regime, there would be two types of licences, namely hotel licence and guesthouse licence. In considering whether to issue, renew, cancel or suspend, permit the transfer of a hotel licence or guesthouse licence or to vary the conditions of the licence, it is proposed that the Authority be empowered to take into account the new requirements as provided in the new Part 4A, in particular:

- (a) no-use restriction requirement, which requires that DMC of the building concerned (or if there is no DMC, the Government lease of the premises concerned) does not contain any restrictive provision which prohibits the premises concerned to be used as a hotel or guesthouse, for commercial purposes or for any purpose other than private residential purposes;
- (b) suitability and operation requirements, which largely reflect the existing requirements under Cap. 349, relating to compliance of the structural, types of building, sanitation, safety or management requirements etc. specified in the Fire Services Ordinance (Cap. 95) and the Buildings Ordinance (Cap. 123), and non-contravention of any provision of Cap. 349

and compliance with all the requirements, orders and directions made under Cap. 349;

- (c) fit and proper requirement, which requires that the applicant is a fit and proper person to operate, keep, manage or have control of a hotel or guesthouse, having regard to whether the applicant, or (if the applicant is a body of persons) a related person, has been convicted of an offence under Cap. 349, or any offence resulting in imprisonment for more than three months, or is an undischarged bankrupt, in liquidation or the subject of a winding-up order; and
- (d) local consultation requirement, which requires that before approving a new or renewal licence application, a consultation must have been conducted to take into account views of affected persons (i.e. owners or occupiers in the same building or in the surrounding area; or owners or occupiers of any other premises situated in the surrounding area if the premises form the whole of a building) collected by an advisory panel appointed by the Authority. The advice given by the advisory panel would not be binding on the Authority. This local consultation requirement would not apply if the use of premises as a hotel or guesthouse is permitted under the Town Planning Ordinance (Cap. 131).

Facilitating enforcement actions

9. Under the existing regime, any public officer authorized by the Authority may enter and inspect, without warrant, any premises used as or suspected to be a hotel or guesthouse. Clauses 14 to 17 of the Bill seek to amend the existing Part VI of Cap. 349 by updating the supervision regime of hotels and guesthouses. In particular, a new section 18A is proposed to be added to provide for the power of an enforcement officer, with a warrant issued by a magistrate, to enter (with reasonable force if necessary) and search any premises that are used as a hotel or guesthouse. The existing power of enforcement officers to enter and inspect premises without warrant is proposed to be limited to licensed premises only, i.e. premises covered by a licence.

10. Under the existing regime, the Secretary for Home Affairs ("SHA") may apply to the District Court for an order that the hotel or the guesthouse shall be closed and ceased to be used as a hotel or guesthouse if it appears to him that there is any danger or risk of danger to guests in the hotel or guesthouse or non-compliance of the requirements of remedial measures directed by SHA for securing safety of guests, apparatus and equipment required against fire or other hazard or non-compliance of the provisions of Cap. 349 in respect of the hotel or guesthouse. The new Part 6A of Cap. 349, as added by the Bill, seeks to repeal section 20 of Cap. 349 and provide for an updated regime in relation to order for closure of premises as a hotel or guesthouse. Under section 20A of the new Part 6A, the Authority may apply to a court or magistrate, upon the second conviction within 16 months of a specified offence (i.e. the offence of operating an unlicensed hotel or guesthouse or the new offence committed by the owner

or tenant of unlicensed hotel or guesthouse under section 5 or 5A of the new Part 2) in respect of the same premises, for a closure order of the premises directing that the premises are to be closed for six months.

Updated appeal mechanism

11. Clause 13 of the Bill seeks to amend Cap. 349 by replacing the existing Part V with a new Part 5A to provide for an updated appeal system for appeals against the decisions of the Authority under the enhanced licensing regime. Under the updated appeal system, the existing single Appeal Board would be replaced by multiple appeal boards formed by the Convenor (from members of an appeal board panel appointed by the Chief Executive) to hear separate appeals (new section 17D). The existing Part V of Cap. 349 would thereby be repealed under clause 12.

Transitional arrangement

12. Clause 28 of the Bill seeks to add a new Part 8 and a Schedule to Cap. 349 to provide for the transitional and saving arrangements. A transitional period of 12 months, beginning on the commencement of the Bill after it is enacted as an Ordinance ("commencement date"), is proposed under the Bill. Specifically, the Authority may renew an existing licence once on the basis of existing licensing requirements, for a period not exceeding 12 months, after the enhanced licensing regime under the Bill comes into operation. If a licence expires beyond the 12-month transitional period, the renewal application would be processed in accordance with the new regime. There are also provisions in the Bill dealing with applications for licences and appeals against decisions of the Authority etc. made/lodged before the commencement date.

Miscellaneous provisions and related amendments

13. The Bill proposes miscellaneous provisions to update the provisions in Cap. 349 about miscellaneous offences,¹ and to facilitate the administration and enforcement of Cap. 349 under the enhanced licensing regime. Related amendments to other enactments are also proposed in the Bill.

Commencement

14. The Bill, if passed, would come into operation on a day to be appointed by SHA by notice published in the Gazette.

¹ These offences are relating to operation of a hotel or guesthouse in contravention of licence conditions, failing to provide document or information in relation to licence applications or furnishing information or document that is false in a material particular, obstructing the Authority and an enforcement officer in performing a function under Cap. 349, and failing to comply with reasonable requirements made by an enforcement officer acting under a warrant for entry and inspection of the premises etc. There are also provisions relating to the liability of officers of body corporate and unincorporated bodies for an offence under Cap. 349.

Public Consultation

15. According to paragraph 23 of the LegCo Brief, the Administration had conducted public consultation from July to August in 2014. During the consultation, the Administration briefed the 18 District Councils and met with the representatives of the hotel, guesthouse and tourism sectors, and owners and resident organizations to listen to their views. A total of 1 100 submissions were also received from the public. According to the Administration, the proposals received overwhelming support from the public. Further, as stated in paragraph 24 of the LegCo Brief, the Administration had engaged the trade during the drafting of the Bill and briefed the Constitutional, Executive-Legislative Relations, and District Administration Policy Group of the Executive Council on 8 January 2018 on the refined proposals. Members of the Group were generally supportive of the proposals.

Consultation with LegCo Panel

16. According to the Clerk to the Panel on Home Affairs, the Panel was consulted on various legislative proposals for enhancing the licensing regime for guesthouses and facilitating enforcement actions against unlicensed guesthouses at its meeting on 24 March 2015. The Panel was further consulted on the Administration's refined proposals at its meeting on 17 July 2017. While members were generally supportive of the proposals, some members expressed concerns on various issues including the mechanism for handling local views in processing licence applications, the requirement to provide a 24-hour manned counter in the guesthouses and the impact of such requirement and the legislative proposals in the Bill on the guesthouse trade.

Conclusion

17. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill relates to an enhanced regulatory regime for hotels and guesthouses, Members may consider whether a Bills Committee should be formed to study the Bill in detail.

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