

**立法會**  
***Legislative Council***

LC Paper No. CB(2)217/20-21

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**Paper for the House Committee meeting on 13 November 2020**

**Report of Subcommittee on Hotel and Guesthouse Accommodation  
(Amendment) Ordinance 2020 (Commencement) Notice**

**Purpose**

This paper reports on the deliberations of the Subcommittee on Hotel and Guesthouse Accommodation (Amendment) Ordinance 2020 (Commencement) Notice ("the Subcommittee").

**Background**

Hotel and Guesthouse Accommodation (Amendment) Ordinance 2020

2. The Hotel and Guesthouse Accommodation (Amendment) Bill 2018<sup>1</sup> was passed by the Legislative Council on 11 June 2020 and published in the Gazette on 19 June 2020 as the Hotel and Guesthouse Accommodation (Amendment) Ordinance 2020 ("the Amendment Ordinance") (Ord. No. 6 of 2020). The Amendment Ordinance amends the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) ("HAGAO") and its subsidiary legislation mainly to: (a) improve the existing licensing regime for hotels and guesthouses by empowering the Hotel and Guesthouse Accommodation Authority ("the Authority") to take into account new factors including no-use restriction requirements and views of affected persons in considering licensing matters; (b) facilitate enforcement actions against unlicensed hotels and guesthouses by empowering the Authority to apply for search warrants to enter and search any premises that are used as a hotel or guesthouse and to apply to court for closure of premises in particular circumstances; and (c) enhance deterrence by enabling the offence of operating unlicensed hotel or guesthouse

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<sup>1</sup> Members may refer to the Report of the Bills Committee on Hotel and Guesthouse Accommodation (Amendment) Bill 2018 [LC Paper No. CB(2)1008/19-20] for further details.

to be prosecuted on indictment with higher penalties and creating a new offence against owners and tenants of premises used as a hotel or guesthouse while no licence is in force for the premises. The Amendment Ordinance also provides for transitional and other related matters.

### **Hotel and Guesthouse Accommodation (Amendment) Ordinance 2020 (Commencement) Notice**

3. The Hotel and Guesthouse Accommodation (Amendment) Ordinance 2020 (Commencement) Notice (L.N. 140 of 2020) ("the Commencement Notice") was published in the Gazette on 10 July 2020. The Commencement Notice is made by the Secretary for Home Affairs under section 1(2) of the Amendment Ordinance to appoint 1 December 2020 as the day on which the Amendment Ordinance comes into operation.

### **The Subcommittee**

4. At the House Committee meeting held on 16 October 2020, Members agreed to form a subcommittee to study the Commencement Notice. To allow sufficient time for the Subcommittee to study the Commencement Notice, the Chairman of the House Committee gave notice to move a proposed resolution at the Council meeting of 21 October 2020 to extend the scrutiny period of the subsidiary legislation to 11 November 2020. However, the proposed resolution was not dealt with at the Council meeting of 21 October 2020 before the adjournment of the meeting. As such, the period for amending the Commencement Notice expired at the said Council meeting.

5. Under the chairmanship of Hon Charles Peter MOK, the Subcommittee held one meeting with the Administration on 3 November 2020 to complete scrutiny of the Commencement Notice. The membership list of the Subcommittee is in the **Appendix**.

### **Deliberations of the Subcommittee**

6. While members in general have no objection to the appointment of 1 December 2020 as the commencement date of the Amendment Ordinance, they have expressed concerns on various issues, in particular the development of home-stay lodging, enforcement actions and deterrence against unlicensed hotels and guesthouses, publicity work on the enhanced licensing regime and

local consultation on licence application. Details of the Subcommittee's major deliberations are set out in the ensuing paragraphs.

### Development of home-stay lodging

7. In view of the growing application of the concept of sharing economy, some members consider that home-stay lodging has become a new business model enriching the diversity of tourist accommodation. They have expressed concern that there are calls for formulation and adoption of a more facilitative policy on home-stay lodging but the enhanced licensing regime under the Amendment Ordinance may impede the development of home-stay lodging in Hong Kong. To keep up with the new tourism trend, Dr Fernando CHEUNG has urged the Administration to introduce a dedicated regulatory regime for home-stay lodging and requested for the Administration's updated views on the regulation of home-stay lodging with reference to the analysis and the overseas practices set out in the Information Note entitled "Regulation of home-stay lodging in selected places" prepared by the Research Office of the Legislative Council Secretariat (LC Paper No. IN01/18-19).<sup>2</sup>

8. The Administration advises that it welcomes the lawful operation of hotels and guesthouses, including those operating in the mode of home-stay lodging; and both the existing and the enhanced licensing regimes do not preclude such mode of operation. While there is no dedicated regime for premises operating in the mode of home-stay lodging, the existing and enhanced regimes are flexible enough to cater for hotels and guesthouses operating in different modes, including home-stay lodging. The regulatory requirements have been imposed on the subject premises flexibly having regard to the circumstances of each case. The Administration will keep in view the situation in Hong Kong and the global trends in home-stay lodging.

### Enforcement actions and deterrence against unlicensed hotels and guesthouses

9. Members note that the outbreak of Coronavirus Disease 2019 has taken an unprecedented heavy toll on the tourism sector of Hong Kong and the number of visitor arrivals of Hong Kong plummeted. In response to Mr YIU Si-wing's enquiry about the total number of licensed hotels and guesthouses which have been closed down since January 2020 in Hong Kong, the Administration has advised that up to September 2020, there are 2 088 licensed hotels and guesthouses, which represent 39 premises less when compared with last year and the figures do not show a substantial drop. Meanwhile, there are

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<sup>2</sup> Members may refer to LC Paper No. CB(2)226/20-21(01) for the Administration's updated views.

altogether 31 new licence applications received this year, some of which are being processed and hence have not yet been reflected in the 2 088 licences.

10. Some members, including Mr YIU Si-wing, Dr Fernando CHEUNG, Dr Helena WONG and Mr HUI Chi-fung, are concerned about the safety, hygiene and security concerns and serious nuisance caused by unlicensed hotels and guesthouses to the community. The Administration has advised that the Office of the Licensing Authority ("OLA") under the Home Affairs Department is responsible for administering the current licensing regime, including performing related enforcement duties. Upon receipt of reports of suspected unlicensed premises, OLA will conduct inspection to the suspected guesthouses (including surprise checks during and outside office hours). They will collect evidence by posing as clients (commonly known as "snaking") when necessary. While about 1 200 complaint cases were received and close to 17 000 operations were conducted in 2019, the period from January to September 2020 saw a significant drop in the number of complaints with only around 360 cases and some 7 000 operations.

11. According to the Administration, to combat and raid unlicensed hotels and guesthouses, especially those soliciting lodgers via online platforms, OLA has been carrying out proactive inspections and investigations. They have strengthened intelligence collection by forming a dedicated team to search information and intelligence on suspected unlicensed hotels/guesthouses through browsing webpages, mobile applications, social media, discussion forums, blogs, etc. Dr Helena WONG has expressed disappointment that the Administration can hardly provide an accurate number of unlicensed hotels and guesthouses currently operating. In the absence of such figure, she casts doubt on how OLA is able to take more effective enforcement actions against unlicensed premises. The Administration has explained that given the unlawful and hidden nature of the unlicensed premises, there can hardly be any accurate figure. That said, OLA does have an understanding on the situation through complaints received and online investigations.

12. Mr YIU Si-wing and Mr HUI Chi-fung seek elaboration on how far the Amendment Ordinance will bring effective enforcement actions and strengthen deterrent effect against unlicensed hotels and guesthouses. The Administration has explained that the Authority is empowered under the Amendment Ordinance to apply to the court for a search warrant to allow enforcement officers to enter into, or break into, with reasonable force when necessary, a suspected unlicensed hotel or guesthouse to collect evidence. The Amendment Ordinance also enables the prosecution of the offence on indictment (in addition to the summary offence under HAGAO) with a higher maximum penalty of a fine of \$500,000 and imprisonment for three years to underline the seriousness

of the offence so that the courts may consider passing heavier sentences on defendants in future cases. Mr Alvin YEUNG, however, takes the view that the Administration should adopt a relatively moderate approach in dealing with non-compliance cases during the initial phase of implementation of the Amendment Ordinance.

13. Regarding the manpower arrangement for the enhanced licensing regime, the Administration has advised that the staffing establishment of OLA has been expanded from 144 in 2018-2019 to 171 in 2020-2021 to make preparation for the commencement of the Amendment Ordinance. Part-time staff may also be recruited subject to operational needs. Meanwhile, OLA has been providing internal training and guidelines on the relevant regulatory and enforcement duties for its staff.

14. In response to Mr YIU Si-wing's enquiry about how the Administration would deal with the existing licences which would expire after the implementation of the Amendment Ordinance, in particular those granted to guesthouses situated in buildings with Deed of Mutual Covenants which contain restrictive provisions,<sup>3</sup> the Administration has advised that under section 28 of the Amendment Ordinance, a transitional period of 12 months, beginning on the date on which the Amendment Ordinance comes into operation, is put in place. Specifically, if an existing licence expires within the 12-month transitional period, the licensee can apply for renewal based on the existing licensing requirements for a period not exceeding 12 months. If a licence expires beyond the 12-month transitional period, the renewal application will be processed in accordance with the enhanced licensing regime.

#### Publicity work on the enhanced licensing regime

15. To help hotel and guesthouse operators and the general public to make preparation for migration to the enhanced licensing regime, members have strongly urged the Administration to employ more up-to-date channels of communication to proactively enhance publicity on the implementation of the Amendment Ordinance.

16. The Administration has responded that OLA will continue to step up publicity through various channels, including broadcast of Announcements in Public Interest on television and online platforms, as well as distribution of promotional leaflets, to remind the public of the possible legal and safety

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<sup>3</sup> Such restrictive provisions prohibit the premises concerned from being used as a hotel or guesthouse, for commercial purposes and for any purpose other than private residential purposes.

consequences of operating unlicensed hotels or guesthouses and to urge visitors and members of the public to patronize only licensed hotels or guesthouses. Moreover, OLA will communicate with the Estate Agents Authority, so as to remind real estate agents of the need to remind their clients, before any transaction is processed, of the legal consequences of allowing any premises to be used for operating unlicensed hotels and guesthouses; and to check whether there are previous convictions of operating unlicensed hotels and guesthouses in respect of certain premises. Briefing sessions and seminars will also be organized for the tourism, hotel and guesthouse sectors to appeal to them to remind tourists to patronize licensed premises. The Administration will further consider arranging meetings with leading online home sharing platform operators to brief them on the new licensing requirements and remind them to post only information on licensed hotels and guesthouses in Hong Kong.

17. Some members have further suggested that the Administration should work closely with owners' corporations of target estates and residential buildings to raise their awareness of the implementation of the enhanced licensing regime and appeal to them to report suspected cases to OLA.

#### Local consultation on licence application

18. Some members, including Mr HUI Chi-fung, Mr Alvin YEUNG and Dr Helena WONG, criticize the Administration for not engaging the 18 District Councils ("DCs") in the local consultation on licence applications. They are of the view that DCs are important components in Hong Kong's political structure and have all along been giving pertinent advice on district affairs. All DC members regardless of their political affiliations should be consulted on the relevant licence applications in their respective districts.

19. The Administration has advised that the Amendment Ordinance empowers the Authority to appoint a panel of persons ("the advisory panel") to advise the Authority on views of affected persons when considering a licence application. "Affected person" is defined in the Amendment Ordinance as, subject to the location of the premises in question, an owner or occupier of any other part of the building, and/or an owner or occupier of any other premises situated in the surrounding area. The Administration will follow the statutory requirements and take into account the views of affected persons in considering licence applications. To strike a fair and reasonable balance between efficiency and impartiality, the advisory panel to be appointed will comprise representatives from various professions, local communities and the hotel and guesthouse sector. To enhance transparency, the membership list of the advisory panel will be made public. Similar to the current practice, a list of

prospective guesthouses applying for licences would also be posted on OLA's homepage for public viewing.

### **Advice Sought**

20. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2  
Legislative Council Secretariat  
11 November 2020

**Subcommittee on Hotel and Guesthouse Accommodation  
(Amendment) Ordinance 2020 (Commencement) Notice**

**Membership list\***

<b>Chairman</b>	Hon Charles Peter MOK, JP
<b>Members</b>	Hon James TO Kun-sun Hon LEUNG Yiu-chung Hon YIU Si-wing, BBS Hon MA Fung-kwok, GBS, JP Hon KWOK Wai-keung, JP Dr Hon Fernando CHEUNG Chiu-hung Dr Hon Helena WONG Pik-wan Hon Andrew WAN Siu-kin Hon LAM Cheuk-ting Hon SHIU Ka-chun Hon HUI Chi-fung Hon LUK Chung-hung, JP Hon LAU Kwok-fan, MH Hon KWONG Chun-yu Hon Jeremy TAM Man-ho Hon Vincent CHENG Wing-shun, MH, JP Hon Tony TSE Wai-chuen, BBS, JP  (Total : 18 members)
<b>Clerk</b>	Miss Lilian MOK
<b>Legal adviser</b>	Ms Vanessa CHENG

\*Changes in membership are shown in Annex to Appendix.

**Subcommittee on Hotel and Guesthouse Accommodation**

**(Amendment) Ordinance 2020 (Commencement) Notice**

**Changes in membership**

<b>Member</b>	<b>Relevant date</b>
Prof Hon Joseph LEE Kok-long, SBS, JP	Up to 10 November 2020

According to the announcement made by the Hong Kong Special Administrative Region Government on 11 November 2020 pursuant to the Decision of the Standing Committee of the National People's Congress on Issues Relating to the Qualification of the Members of the Legislative Council of the Hong Kong Special Administrative Region, Kenneth LEUNG, KWOK Ka-ki, Dennis KWOK Wing-hang and Alvin YEUNG were disqualified from being a member of the Legislative Council on 30 July 2020.