

Review of the Hotel and Guesthouse Accommodation Ordinance (Cap.349)

PURPOSE

This paper briefs Members on the public consultation document on the Review of the Hotel and Guesthouse Accommodation Ordinance (the Ordinance) issued by the Home Affairs Department (HAD) on 4 July 2014.

BACKGROUND

2. Operation of hotels and guesthouses in Hong Kong is regulated by 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. 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)¹.

3. In recent years, the upsurge of incoming visitors has led to an increased demand for guesthouses, causing nuisance and inconvenience to residents in the relevant buildings. There have been suggestions that the Government should refer to the Deed of Mutual Covenant (DMC) of the building and take into account the views of local residents when processing a licence application.

4. On enforcement, the Office of the Licensing Authority (OLA) has spared no effort to combat unlicensed guesthouses through a multi-pronged approach, including strengthening law enforcement action, enhancing deterrent effect and stepping up publicity. Over the past few years, there have been multifold increases in enforcement raids including joint departmental operations against suspected unlicensed guesthouses.

¹ In accordance with Cap. 349C, general exemption is given to child care centres, bedspace apartments, elderly homes and those premises providing all accommodation with a tenancy period of 28 consecutive days or more for each letting.

Despite the enhanced continuous effort of the OLA in combating unlicensed guesthouses, it has encountered great difficulties in securing sufficient admissible evidence to institute prosecutions. The public are also concerned that the sentences imposed by the courts do not appear to have a sufficient deterrent effect against the operation of unlicensed guesthouses.

PUBLIC CONSULTATION

5. In order to improve the licensing regime so as to minimise the nuisance and inconvenience caused by licensed guesthouses to the local residents and members of the public, and to enhance the effectiveness of enforcement action against unlicensed guesthouses, the HAD has completed a comprehensive review on the subject and prepared a consultation document to consult the public on the possible improvement measures. The consultation period will last for eight weeks from 4 July 2014 till 28 August 2014.

PROPOSALS

6. With regard to licensing, we propose to empower the Authority to refuse to issue/renew licences and cancel the existing licences if the DMC of the buildings concerned contains explicit restrictive provisions stipulating that guesthouses or commercial activities are not allowed therein, or the premises are for “private residential use” only. In addition, views of the residents living in the same building should be taken into account in processing the licence applications and three possible consultation options are set out in the consultation document. Moreover, a number of enhancement measures which seek to offer better protection to the lodgers and the public are also proposed.

7. On enforcement, we propose to provide for “deeming provisions” in the Ordinance to facilitate instigating prosecutions against operators of unlicensed guesthouses and to empower the Authority to seek a warrant from the Magistrate to enter and, if necessary, break into any premises suspected of being used as unlicensed guesthouses. We also suggest imposing heavier penalties for operating unlicensed guesthouses including providing for the court to issue a Closure Order against premises used for unlicensed guesthouse upon a second conviction.

WAY FORWARD

8. We will consult all the 18 District Councils, owners' corporations, and relevant trade associations. Members of the public are also invited to send in their views by email, fax or post. We will finalise the proposals in light of the views collected during the consultation period.

ADVICE SOUGHT

9. Members are invited to comment on the proposals set out in the public consultation document.

Home Affairs Department
July 2014