

**Business Facilitation Advisory Committee  
Task Force on Business Liaison Groups**

***Enforcement Actions against Unlicensed Guesthouses and  
Brief Introduction to the Hotel and Guesthouse Accommodation  
(Amendment) Ordinance 2020***

**Background**

Operation of hotels and guesthouses in Hong Kong is regulated by the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) (“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 and fire safety standards specified in the Buildings Ordinance (Cap. 123) and the Fire Safety Ordinance (Cap. 95). Any premises held out as providing sleeping accommodation at a fee shall obtain a licence unless they are exempted by the Hotel and Guesthouse Accommodation (Exclusion) Order (Cap. 349C). The Office of the Licensing Authority (“OLA”) under the Home Affairs Department is responsible for administering the Ordinance.

**Part I Law Enforcement against Unlicensed Guesthouses**

***Current enforcement actions***

2. In order to combat against unlicensed premises, we have closely monitored the situations and stepped up our efforts in conducting inspections and taking enforcement actions against unlicensed premises. Upon receipt of report of suspected unlicensed premises, the OLA will conduct inspection to a suspected unlicensed guesthouse within eight working days. Separately, the OLA has also been carrying out proactive inspections and institute prosecutions, including conducting inspections and surprise checks during and outside office hours (e.g. at nights, during and before holidays) and collecting evidence by posing as clients (commonly known as “snaking”) when necessary. To enhance deterrent effect, for prosecution cases, the OLA will also inform relevant

departments, relevant owners' corporations/property management companies, etc., of information of the premises concerned so as to facilitate their consideration of necessary follow-up actions under their respective purview.

3. To combat and raid unlicensed hotels/guesthouses soliciting lodgers via online platforms, including those operating in the form of "home-stay lodging", the OLA has 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 fora, blogs, etc. Law enforcement officers of the OLA will initiate follow-up investigation when information on unlicensed hotels/guesthouses is found. Prosecution will be instituted immediately if there is sufficient evidence that the establishments concerned are involved in operation of unlicensed hotels/guesthouses. The OLA also writes to all online platform operators on a regular basis on the licence requirement for operating a hotel/guesthouse in Hong Kong, urges them to post information (including the type of licence and the licence number) of only licensed hotels/guesthouses in Hong Kong on their websites, and appeals to them to remind lodgers to patronise licensed premises.

### ***Publicity***

4. The OLA has also been stepping up publicity through different channels, including broadcast of Announcements in Public Interest (APIs) on television and online platforms, as well as distribution of promotional leaflets, to remind the public of the possible legal and safety consequences of operating unlicensed hotels/guesthouses and to urge visitors and members of the public to patronise only licensed hotels/guesthouses. Members of the public and tourists are also encouraged to provide information about suspected unlicensed guesthouses to the OLA for necessary follow-up/enforcement actions.

5. Moreover, to encourage visitors' patronage of licensed hotels/guesthouses, the OLA has uploaded the full list of licensed hotels/guesthouses onto its webpage ([www.hadla.gov.hk](http://www.hadla.gov.hk)) and the mobile application named "Hong Kong Licensed Hotels and Guesthouses" to facilitate the search by visitors and members of the public for the latest

details, licence numbers and addresses of licensed hotels/guesthouses. The OLA has also conducted publicity through major Internet search engines on the Mainland and overseas to facilitate tourists' access to the information provided by the OLA in the course of planning their trips, so that they can make use of the search functions on OLA's website to distinguish whether the guesthouse reserved is licensed or not.

6. Furthermore, during festive seasons, to ensure the safety of tourists and combat unlicensed hotels/guesthouses letting out through online platforms, the OLA will also, in collaboration with members of the local community and owners' corporations of estates and buildings, launch enhanced enforcement actions and public education activities, which include inspecting housing estates and residential buildings in various districts, and posting advisory notices in target estates and residential buildings, alerting tourists and visitors that there are no licensed hotels/guesthouses in those buildings.

## **Part II Proposed Amendments to the Ordinance**

7. In 2013, arising from a fire incident which caused casualties in a guesthouse located at a building whose deed of mutual covenant ("DMC") does not permit hotel or guesthouse operation, there have been strong calls for tightening up the licensing regime by empowering the Hotel and Guesthouse Accommodation Authority ("the Authority") to take into account factors concerning the land use, local residents' views as well as whether the applicant is a "fit and proper" person. The public are also expecting more effective enforcement actions and stronger deterrent effect against unlicensed hotels and guesthouses.

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

8. After extensive public engagement, we proposed legislative amendments to the Ordinance, the relevant amendments have been included in the Hotel and Guesthouse Accommodation (Amendment) Ordinance 2020 ("Amendment Ordinance") which passed by the Legislative Council on 11 June 2020 and will be commenced on 1 December 2020. The Amendment Ordinance aims to (a) improve the existing licensing regime, (b) facilitate enforcement actions against

unlicensed hotel and guesthouses, and (c) enhance deterrence by increasing the penalties for offences under the Ordinance.

### **(A) Enforcement Action and Deterrence against Unlicensed Guesthouses under New Regime**

9. The enhanced licensing regime will be implemented on 1 December 2020. Key enforcement actions under the new regime are summarized in the ensuing paragraphs.

#### ***Search Warrant***

10. The Ordinance currently empowers a public officer authorised by the Authority, without warrant to enter and inspect, at all reasonable times, any premises which the officer has reason to suspect are used as a hotel or guesthouse. In practice, however, it is difficult to rely on this provision to gain entry into suspected unlicensed premises, as the owners or occupants are often uncooperative in granting entry. The Amendment Ordinance therefore empowers the Authority 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.

#### ***Strict Liability Offence***

11. With the proliferation of new modes of operation, such as operating via electronic platforms, the Authority finds it increasingly difficult to secure sufficient admissible evidence to prove the identity of the person who is operating, keeping, managing or controlling the unlicensed hotel or guesthouse, even though there is circumstantial evidence showing that the premises concerned are being used as an unlicensed hotel or guesthouse unless the operator is caught red-handed. With new modes of operation including those with the aid of technology, operators may not need to be physically present on the premises and can thus easily circumvent the licensing regime.

12. To address the above problems and facilitate enforcement actions against unlicensed hotels and guesthouses, the Amendment Ordinance

introduces a strict liability on the owners and tenants of premises if there is evidence to prove that the premises are used as an unlicensed hotel or guesthouse, as they should have control of the use of the premises, and are expected to ensure the premises are not put to illegal use. Nevertheless, we will provide a statutory defence, which may be established if the owner or tenant did not have knowledge or reasonable grounds for suspecting the illegal use of the premises, or could not with reasonable diligence have prevented such illegal use.

### ***Increasing the Maximum Penalty***

13. The Amendment Ordinance enables the prosecution of the offence on indictment, with a higher maximum penalty of a fine of \$500,000 and imprisonment for 3 years, to underline the seriousness of the offence so that the courts may consider passing heavier sentences on defendants in future cases. The same maximum penalty will apply to the new strict liability offence.

### ***Closure Order for Repeated Offence***

14. The Amendment Ordinance also empowers the Authority to apply to the court, upon the second conviction within 16 months of the offence of operating an unlicensed hotel or guesthouse or the new strict liability offence (“specified offence”) in respect of the same premises, to issue a closure order for the premises for six months. This will significantly enhance the deterrent effect of the Ordinance since the owners and/or tenants of the premises will suffer significant financial loss during the closure period.

## **(B) New Licensing Considerations for Hotels/Guesthouses**

15. Apart from facilitating enforcement actions, the Amendment Ordinance also seeks to improve the existing licensing regime. Major enhancements are summarised in the ensuing paragraphs.

### ***Consideration of Land Documents***

16. To address public concerns, the Amendment Ordinance expressly empowers the Authority to take into account whether the DMC of the

premises under a new licence / renewal application contains any express provision which prohibits the premises concerned from being used (i) as a hotel or guesthouse, (ii) for commercial purpose or (iii) otherwise than for private residential purpose (hereafter referred to as “restrictive provision”). The Authority empowers to require the applicant to provide a written legal advice given by a legal practitioner on whether there is a restrictive provision in the DMC concerned. The Authority will refuse to issue or renew a licence if not satisfied that there is no restrictive provision in the DMC of the premises concerned.

17. As for premises without DMCs, the Amendment Ordinance stipulates that the applicants have to provide written legal advice given by a legal practitioner that the land leases concerned do not contain any restrictive provision.

### ***Local Consultation***

18. The Amendment Ordinance empowers the Authority to take into account views of the residents before making a decision on the licence application. To strike a fair and reasonable balance between efficiency and impartiality, the Authority would not conduct the consultation itself but instead, would set up an independent panel to collect views submitted by affected residents (“local consultation”) and make recommendations to the Authority

19. However, this local consultation requirement will not apply if the use of the premises concerned as a hotel or guesthouse is permitted under the Town Planning Ordinance (“TPO”) (Cap. 131), as such use has already been covered by the relevant statutory consultation under the TPO or such use is permitted under a draft plan or an approved plan within the meaning of the TPO.

### ***“Fit and Proper” Person***

20. To offer better protection to the lodgers and the public, the Amendment Ordinance empowers the Authority to take into account in the licensing process whether an applicant is a “fit and proper” person, i.e. whether the applicant has committed an offence under the Ordinance, or any other serious offence resulting in a sentence to imprisonment for more

than three months, or is a undischarged bankrupt, in liquidation or the subject of a winding-up order.

**Home Affairs Department**  
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