

# **CHAPTER 6**

**Home Affairs Bureau  
Home Affairs Department**

**Regulation of hotels and guesthouses**

**Audit Commission  
Hong Kong  
27 October 2017**

*This audit review was carried out under a set of guidelines tabled in the Provisional Legislative Council by the Chairman of the Public Accounts Committee on 11 February 1998. The guidelines were agreed between the Public Accounts Committee and the Director of Audit and accepted by the Government of the Hong Kong Special Administrative Region.*

Report No. 69 of the Director of Audit contains 9 Chapters which are available on our website at <http://www.aud.gov.hk>

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# REGULATION OF HOTELS AND GUESTHOUSES

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# REGULATION OF HOTELS AND GUESTHOUSES

## Executive Summary

1. The Hotel and Guesthouse Accommodation Ordinance (HAGAO — Cap. 349) provides a licensing regime to regulate premises that provide hotel and guesthouse accommodation at a fee. Licensed premises shall meet the building structure and fire safety standards specified in the Buildings Ordinance (Cap. 123) and the Fire Services Ordinance (Cap. 95). The main purpose is to safeguard lodgers and the public (e.g. residents of nearby premises) against risks of building safety and fire safety. The Secretary for Home Affairs is the Hotel and Guesthouse Accommodation Authority under the HAGAO. The Office of the Licensing Authority (OLA) under the Home Affairs Department (HAD) is delegated by the Authority to administer the HAGAO (e.g. issuing licences and performing relevant enforcement duties), which accounts for a significant proportion of the workload of the OLA. As at 30 June 2017, there were 2,024 establishments licensed under the HAGAO, comprising 286 licensed hotels (providing 77,724 rooms) and 1,738 licensed guesthouses (providing 14,029 rooms). The OLA had an establishment of 130 full-time posts and 58 part-time posts. For 2017-18, the estimated staff cost of the OLA is \$66.3 million. The Audit Commission (Audit) has recently conducted a review on the regulation of hotels and guesthouses.

### Regulating licensed establishments

2. *Processing applications for new and renewal licences.* Licence applications usually go through a number of stages, such as “initial inspection” (the OLA inspects the premises concerned and specifies the required improvement works), “improvement works” (applicants carry out the required improvement works), and “follow-up inspection” (the OLA ascertains the completion of the required improvement works). The lead time for granting a licence comprises the times spent on individual stages of a licence application. Audit noted that:

- (a) *Need to monitor lead time.* For new licence applications, the average lead time was long (e.g. 469 calendar days in 2017);

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- (b) ***Need to enhance performance management practices.*** Of the nine “target times” which the OLA set for different stages of applications, two were published performance pledges and the remaining seven were internal targets only. The internal targets had generally not been attained. Furthermore, the seven internal targets had not been published for improving transparency and accountability, and management information for monitoring attainment had not been generated for them; and
  - (c) ***Long processing time due to many rounds of submission.*** During the stages of “improvement works” and “follow-up inspection”, applicants’ submission of full information to the OLA on the completion of improvement works could be a long process which would lengthen the lead time for granting licences (paras. 2.2 to 2.6, 2.8 and 2.10).
3. ***Renewing licences for unprotected cases.*** Under section 9(1) of the HAGAO, a renewal licence application may be submitted not less than three months before the expiration date of the existing licence (referred to as a “protected case”). According to section 9(5) of the HAGAO, for a protected case, the existing licence will remain in effect until the application is determined (e.g. approved or rejected) by the OLA, regardless of the expiration date of the existing licence. On the other hand, a renewal licence application submitted within three months before the expiration date of the existing licence is not protected by section 9(5) (referred to as an “unprotected case”). Audit noted that:
- (a) ***Disparities in lead times for renewing licences.*** Due to the OLA’s established practice to accord priority to processing unprotected cases, the average lead time for granting renewal licences for unprotected cases was notably shorter than that for protected cases (e.g. 90 calendar days for unprotected cases in 2017, versus the 134 calendar days for protected cases); and
  - (b) ***Need to better promote timely submission of applications.*** A considerable proportion (e.g. 61% in the first six months of 2017) of unprotected cases were still approved after the expiration of existing licences. It had been the OLA’s practice to remind licensees to submit applications for renewal licences in a timely manner under section 9(1). However, there were still many unprotected cases (e.g. 209 cases in 2016) in which the operator might fall into the state of operating without a valid licence (paras. 2.17 to 2.20, 2.22 and 2.24).



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4. *Need to ensure compliance with licence requirements.* In 2016, the OLA's Building Safety Unit (BSU) conducted annual inspections on 76 establishments which had a 2-year or 3-year licence for monitoring compliance with building safety requirements. The OLA's Fire Safety Team (FST), which conducted annual inspections on all establishments with a 2-year or 3-year licence, also separately inspected these 76 establishments for monitoring compliance with fire safety requirements. The BSU and the FST found that a total of 12 (16%) establishments had areas of non-compliance. Audit noted that: (a) in other inspections conducted by the OLA, the percentage of establishments having areas of non-compliance was higher (e.g. in approving renewal licence applications in 2016, 25% of the 533 establishments with a 2-year or 3-year licence were found to have areas of non-compliance); and (b) there were areas for improvement relating to annual inspections, namely, the selection of establishments for the BSU's annual inspections was not risk-based, annual inspections were not conducted on a surprise basis, and information on the progress and results of annual inspections was not compiled for management consideration (paras. 2.30 to 2.32).

### Combating unlicensed establishments

5. *Need to monitor the increasing number of unresolved suspected cases.* The OLA's Enforcement Team identifies suspected unlicensed establishments from various sources (e.g. complaints from the public). The Team takes follow-up actions on suspected cases, such as inspecting the premises concerned, and instigating prosecutions where there is sufficient evidence of operation of unlicensed establishments. Despite the efforts in completing follow-up actions, the number of suspected cases in progress (i.e. outstanding cases) had doubled from 644 as at 1 January 2012 to 1,322 as at 30 June 2017. Of the 1,322 outstanding cases, many (270 cases or 20%) had been outstanding for more than three years. Audit noted that it was not the OLA's practice to compile and report information on the number of outstanding suspected cases and their outstanding durations for consideration by the HAD management (paras. 3.3 to 3.6).

6. *Investigating suspected unlicensed establishments.* Audit noted the following issues:

- (a) *Difficulties in collecting evidence for prosecution.* Of the 270 suspected cases which had been outstanding for over three years as at 30 June 2017, prosecutions had been instigated for 90 (33%) cases.

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However, for the remaining 180 (67%) cases, evidence for prosecution had been difficult to collect;

- (b) *Need for effective measures in conducting investigations.* Some unlicensed establishments were being advertised and booked on websites. Audit noted cases where unlicensed establishments operating on such websites did not show the full address and did not serve walk-in lodgers. Although this mode of operation would require additional measures (e.g. conduct of decoy operations) to supplement the OLA's investigations, they had not always been taken; and
- (c) *Need to make reference to overseas experiences.* As the HAGAO was currently under review, a number of overseas cities had already enacted legislation to combat illegal provision of sleeping accommodation through the Internet (paras. 3.10, 3.11, 3.14 and 3.16).

7. *Need for enhanced measures for prosecuting unlicensed establishments.* Under the HAGAO, a person who operates an unlicensed establishment is liable on conviction to a fine of \$200,000 and imprisonment for 2 years, and a fine of \$20,000 for each day the offence continues. Audit noted that some operators of unlicensed establishments were recalcitrant regardless of repeated prosecutions. For imprisonment cases, the person caught red-handed and prosecuted was usually a keeper rather than the business owner behind. There is a need to give a clear message to the community that operating unlicensed establishments is a criminal offence, which may risk the life and property of lodgers and the public. Audit noted that the continuous offence provision under the existing HAGAO (i.e. imposing a fine of \$20,000 for each day the offence continues) had so far not been invoked (paras. 3.19, 3.20, 3.22 and 3.24).

### Other administrative and licensing issues

8. *Need to step up efforts in recovering costs.* The Hotel and Guesthouse Accommodation (Fees) Regulations (Cap. 349B) have prescribed the fees for issuing new licences and renewal licences. It is the Government's policy that fees charged by the Government should in general be set at levels adequate to recover the full cost of providing the goods or services. Audit noted that, in 2016-17, full cost recovery was still not achieved for the licensing of hotels and guesthouses. The cost recovery rates ranged from 32% to 75% for new licences, and from 40% to 72% for renewal

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licences. Since the last revision in November 2007, the HAD had made five attempts to revise the licence fees but all the fee proposals had not been taken forward (paras. 4.2, 4.3 and 4.6 to 4.8).

9. *Need to closely monitor caseloads of Licensing Inspectors.* Cases of suspected unlicensed establishments are each assigned to a responsible officer (case officer). Case officers need to follow up their cases and conduct inspections on the premises concerned. The OLA's Licensing Inspectors were all designated as case officers and new cases are assigned to them in sequence. According to the OLA, this allocation mechanism is in line with the principle and spirit of corruption prevention by limiting individual officers' control on the allocation of cases. As at 30 June 2017, the 24 Licensing Inspectors had in total a caseload of 1,322 outstanding cases. Audit noted that the caseloads of individual Licensing Inspectors were quite uneven, ranged from 32 cases (i.e. 58% of the average caseload of 55 cases) to 75 cases (i.e. 136% of the average caseload). Licensing Inspectors with heavier caseloads generally tended to have more long outstanding cases. There was a risk that Licensing Inspectors with heavy caseloads could not deal with their cases expeditiously and effectively. Audit also noted that it was not the practice of the OLA to compile statistics of caseloads for management information, or for discussion in regular management meetings (paras. 4.12 to 4.17).

10. *Need to conduct comprehensive review of issues relating to home-stay lodging.* There have been calls to develop home-stay lodging in Hong Kong. In July 2017, when reporting to the Legislative Council Panel on Home Affairs the progress in the review of the HAGAO, the HAD expressed that the development of home-stay lodging involved land use, planning, tourism, environmental and transport issues, which were under the purview of different bureaux and departments. The HAD was exploring with relevant bureaux and departments the idea of drawing up a set of guidelines to cater for licence applications for home-stay lodging, with a view to simplifying the licence requirements without compromising building safety and fire safety. In Audit's view, in drawing up the proposed guidelines for home-stay lodging, the HAD needs to address a number of issues, including the possible need to differentiate home-stay lodging from other types of guesthouses, consult relevant stakeholders, and consider whether overseas examples on the regulation of home-stay lodging may be applicable to Hong Kong (paras. 4.21 to 4.23).

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### Audit recommendations

11. **Audit recommendations are made in the respective sections of this Audit Report. Only the key ones are highlighted in this Executive Summary. Audit has recommended that the Director of Home Affairs should:**

- (a) **keep the lead time for granting licences under closer monitoring, with a view to taking timely action to improve the lead time where necessary (para. 2.15(a));**
- (b) **expedite action to enhance the HAD's practices in managing performance on internal targets, taking into account factors such as the need for setting and publishing appropriate target times (para. 2.15(b));**
- (c) **step up efforts to facilitate applicants' submission of the required information on the completion of improvement works (para. 2.15(d));**
- (d) **look into the considerable and persistent disparities in lead times between protected cases and unprotected cases, and take necessary action to rectify the situation (para. 2.26(a));**
- (e) **step up the OLA's efforts in promoting timely submission of applications under section 9(1) of the HAGAO (para. 2.26(b));**
- (f) **monitor the effectiveness of annual inspections in identifying non-compliance with licence requirements (para. 2.34(a));**
- (g) **take necessary measures to enhance the conduct of annual inspections, having regard to the need for taking a risk-based approach, incorporating surprise elements into inspections, and compiling adequate management information (para. 2.34(b));**
- (h) **ensure that adequate management information for monitoring outstanding suspected cases is compiled (para. 3.7(a));**
- (i) **explore further measures to facilitate the investigations of suspected unlicensed establishments (para. 3.17(a));**

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- (j) **keep in view, for warranted cases, the possible invoking of the continuous offence provision under the existing HAGAO (para. 3.26);**
- (k) **take measures to ensure that a work plan for revising the licence fees of hotels and guesthouses is formulated in a timely manner, and monitor the implementation of the work plan (para. 4.10(a) and (c));**
- (l) **more closely monitor the caseloads of Licensing Inspectors (para. 4.19(a)); and**
- (m) **in drawing up the proposed guidelines for home-stay lodging, in collaboration with the relevant bureaux and departments, conduct a comprehensive review of issues relevant to home-stay lodging (para. 4.24).**

### **Response from the Government**

12. The Director of Home Affairs agrees with the audit recommendations.



## **PART 1: INTRODUCTION**

1.1 This PART describes the background to the audit and outlines the audit objectives and scope.

### **Background**

1.2 The Hotel and Guesthouse Accommodation Ordinance (HAGAO — Cap. 349) provides a licensing regime to regulate premises that provide hotel and guesthouse accommodation at a fee. Licensed premises shall meet the building structure and fire safety standards specified in the Buildings Ordinance (Cap. 123) and the Fire Services Ordinance (Cap. 95). The main purpose of the licensing regime is to safeguard lodgers and the public (e.g. residents of nearby premises) against risks of building safety and fire safety.

1.3 Under the HAGAO, hotels and guesthouses are premises that provide short-term sleeping accommodation for any person who pays for the services and facilities (Note 1). Pursuant to the Hotel and Guesthouse Accommodation (Exclusion) Order (Cap. 349C), the HAGAO does not apply to certain premises which comprise:

- (a) premises providing accommodation with a tenancy period of 28 consecutive days or more for each letting; and

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**Note 1:** *According to the HAGAO, hotels and guesthouses mean any premises whose occupier, proprietor or tenant holds out that, to the extent of his available accommodation, he will provide sleeping accommodation for any person presenting himself who appears able and willing to pay a reasonable sum for the services and facilities provided and is in a fit state to be received.*

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- (b) bedspace apartments, child care centres, clubs, elderly homes and homes for the disabled. These premises are under the regulation of other ordinances (Note 2).

### *Licensing hotels and guesthouses*

1.4 The Secretary for Home Affairs is the Hotel and Guesthouse Accommodation Authority (the Authority) under the HAGAO. The Office of the Licensing Authority (OLA) under the Home Affairs Department (HAD) is delegated by the Authority to administer the HAGAO, including issuing licences (see paras. 1.5 to 1.8) and performing relevant enforcement duties (see paras. 1.9 to 1.12).

1.5 To apply for a licence, the applicants' premises to be used as hotels or guesthouses must be approved for domestic or hotel/guesthouse use by the Building Authority of the Buildings Ordinance. The premises must also be in compliance with the requirements relating to building structure, fire safety and sanitary conditions as specified in the Buildings Ordinance and the Fire Services Ordinance. The OLA will conduct inspections on the premises concerned to ensure compliance. The OLA may issue to the applicants a letter of requirements specifying the required upgrading works. The OLA will also conduct further inspections to ascertain the completion of the required upgrading works. A licence is granted only if all the licence requirements are met.

1.6 A licence is only valid for a period of time. The OLA has set criteria for different licence periods which vary from one to seven years (e.g. a period of one to three years for non-purpose-built premises, while purpose-built premises may have a period of four to seven years). To enable the continuous operation of the licensed premises without interruption, the licensee may apply for renewal of the licence not less than three months prior to its expiration. The HAGAO provides that for such an application, the licence will remain in effect until the application is determined (e.g. approved or rejected) by the OLA (see para. 2.17).

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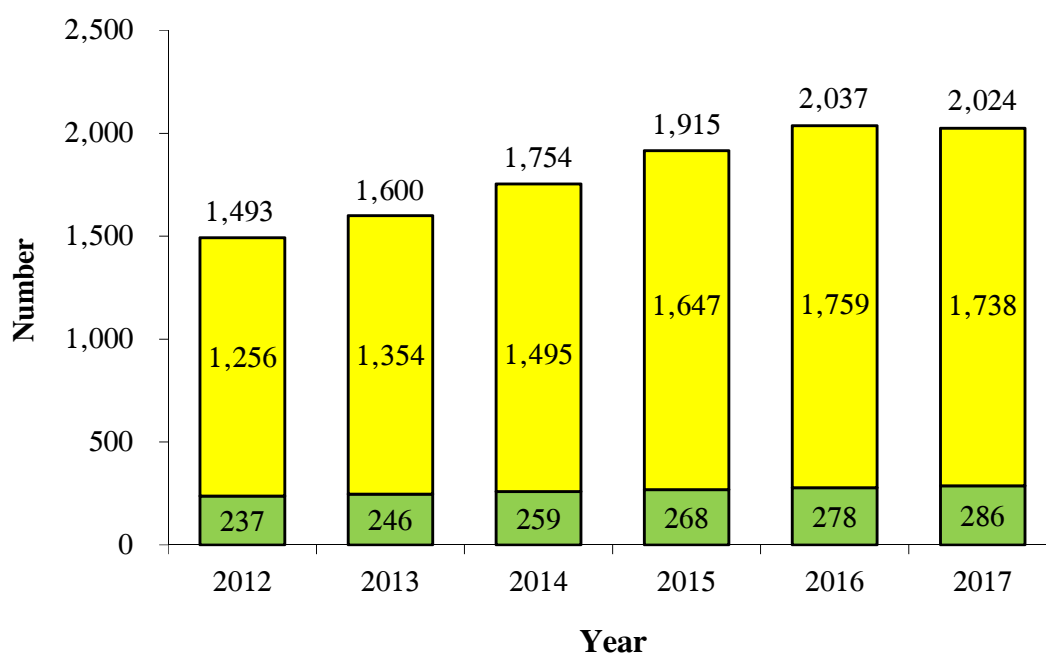
**Note 2:** *The ordinances relevant to these premises comprise Bedspace Apartments Ordinance (Cap. 447), Child Care Services Ordinance (Cap. 243), Clubs (Safety of Premises) Ordinance (Cap. 376), Residential Care Homes (Elderly Persons) Ordinance (Cap. 459), and Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613).*



1.7 As at 30 June 2017, there were 2,024 establishments operating on premises licensed under the HAGAO. Different types of licences had been issued for these establishments according to the type of accommodation provided, which comprised “hotel” licences (286 establishments), “guesthouse (general)” licences (1,552 establishments), “guesthouse (holiday flat)” licences (140 establishments) and “guesthouse (holiday camp)” licences (46 establishments). For simplicity, establishments with “hotel” licences are hereinafter referred to as licensed hotels. Establishments with other types of licences are hereinafter referred to as licensed guesthouses. Figure 1 shows the number of licensed hotels and licensed guesthouses in 2012 to 2017.

**Figure 1**

**Licensed hotels and guesthouses  
(2012 to 2017)**



Legend: ■ Licensed guesthouses  
■ Licensed hotels

Source: HAD records

Remarks: Figures for 2012 to 2016 show the position as at 31 December of the year. Figures for 2017 show the position as at 30 June of the year.

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1.8 As at 30 June 2017, of the 2,024 establishments, there were 286 licensed hotels (providing 77,724 rooms) and 1,738 licensed guesthouses (providing 14,029 rooms).

### ***Combating unlicensed establishments***

1.9 Provision of sleeping accommodation on unlicensed premises may risk the life and property of lodgers and the public. Operation of unlicensed establishments is also a criminal offence, which is liable on conviction to a fine of \$200,000 and imprisonment for two years. The OLA has adopted a multi-pronged approach to combating unlicensed establishments, including strengthening law enforcement action, enhancing deterrent effect and stepping up publicity (see paras. 1.10 to 1.12).

1.10 For suspected unlicensed establishments (e.g. identified through public complaints), the OLA conducts inspections to follow up the cases. It will instigate prosecutions if there is sufficient evidence. In recent years, to strengthen its efforts in combating unlicensed guesthouses, the OLA has increased its staff resources for enforcement work and recruited frontline staff with law enforcement experience.

1.11 To achieve a greater deterrent effect, if a licensee is convicted of an offence involving operation of an unlicensed establishment, the OLA may cancel or refuse to renew licences held by the licensee concerned. The OLA can also pass information on convicted cases to relevant parties (e.g. the Inland Revenue Department, the Rating and Valuation Department, mortgage banks, property owners, owners' corporations and management offices of the buildings concerned) for taking necessary follow-up actions under their purview (e.g. prosecution against tax evasion).

1.12 As regards publicity, the OLA takes measures to remind lodgers (e.g. tourists to Hong Kong) to patronise licensed hotels and guesthouses. Such measures include making announcements in public interest on radio, television and the Internet, displaying posters and banners, distributing publicity leaflets, and disseminating messages on the Government's official websites. The OLA has also uploaded a full list of licensed establishments onto its website for easy reference by lodgers and the general public. It has also launched a mobile application for searching licensed establishments.

### *Organisational structure and key activities of OLA*

1.13 The OLA comprises three units, namely, the Building Safety Unit (BSU), the Fire Safety, Enforcement and Prosecution Unit, and the Entertainment Licensing and Administration Unit. The three units are overseen by a Chief Officer (a Chief Building Surveyor). Appendix A shows an organisation chart of the OLA as at 30 June 2017. Table 1 summarises the key activities of the OLA in administering the HAGAO in the period from 2012 to 2017 (up to 30 June 2017).

## Introduction

**Table 1**

**Key activities of OLA in administering HAGAO  
(2012 to June 2017)**

	2012	2013	2014	2015	2016	2017 (up to June)
	(Number)					
<b><i>Licensing hotels and guesthouses</i></b>						
New licence applications received	394	391	340	302	144	86
Applications processed	227	269	314	411	312	133
Applications in progress at year end	325	447	473	364	196	149
Renewal licence applications received (Note)	555	553	762	715	1,236	939
Applications processed	574	533	687	772	883	620
Applications in progress at year end	178	198	273	216	569	888
<b><i>Combating unlicensed establishments</i></b>						
Complaints and referrals received	1,824	1,744	2,070	1,713	1,843	1,122
Inspections conducted	6,791	9,889	13,153	13,188	13,574	7,237
Prosecutions instigated	131	170	147	149	158	77

Source: HAD records

Note: The HAD had restricted the licence period for guesthouse (general) licences and guesthouse (holiday flat) licences to a period of: (i) not more than 24 months for licences issued during 1 September 2014 to 27 December 2015; and (ii) not more than 12 months for licences issued thereafter. According to the HAD, the restrictions were intended to prepare the trade for the future licensing regime (see para. 1.15) and to facilitate the trade complying with the three new administrative enhancement measures introduced on 28 December 2015 (viz. requiring licensees to procure third party risks insurance, to provide a 24-hour manned counter, and to indicate clearly the type of licence issued (see para. 1.7) in promotional materials/advertisements). The restrictions were subsequently removed on 1 March 2017, in view of the trade's general compliance with the administrative enhancement measures. Most licences falling under categories (i) and (ii) expired starting from September 2016 and December 2016 respectively. Hence, there was an upsurge in the number of renewal licence applications in 2016 and 2017.

1.14 The administration of the HAGAO accounts for a significant proportion of the OLA's workload. Apart from the HAGAO, the OLA also administers six other ordinances (Note 3). As at 30 June 2017, the OLA had an establishment of 130 full-time posts and 58 part-time posts. Personnel of the OLA included professional and technical staff seconded from the Buildings Department, and disciplined service staff seconded from the Fire Services Department, as well as non-civil service contract staff (e.g. Licensing Inspectors). For 2017-18, the estimated staff cost of the OLA is \$66.3 million.

### *Proposed modifications to licensing regime*

1.15 The HAGAO was enacted in 1991. To enhance the licensing regime, the Government conducted a public consultation in July and August 2014 to gauge public views on the matter. Issues addressed included:

- (a) operation of guesthouses might cause nuisance and annoyance to residents living in the same building. However, the HAGAO does not specify the consideration of the Deed of Mutual Covenant of the building concerned (e.g. whether commercial activities are allowed) or local residents' views in processing applications for licences. Legislative amendments would be needed to provide express provisions to enable the OLA to take into account the Deed of Mutual Covenant and local residents' views; and
- (b) legislative amendments would be needed to facilitate the OLA to collect evidence to prosecute unlicensed guesthouses, and to enhance the deterrent effect of penalties.

1.16 In March 2015, the Government informed the Panel on Home Affairs of the Legislative Council (LegCo) of the outcome of the public consultation and the legislative proposals. In July 2017, the Government informed the Panel of the

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**Note 3:** *The six other ordinances administered by the OLA are the Amusement Game Centres Ordinance (Cap. 435), Bedspace Apartments Ordinance (Cap. 447), Clubs (Safety of Premises) Ordinance (Cap. 376), Gambling Ordinance (Cap. 148), Karaoke Establishments Ordinance (Cap. 573), and Miscellaneous Licences Ordinance (Cap. 114).*

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progress on the legislative proposals. The Government intended to introduce the amendment bill into LegCo in 2018.

### **Audit review**

1.17 In 2006, the Audit Commission (Audit) completed a review entitled “Licensing of hotels and guesthouses”. The results were reported in Chapter 8 of the Director of Audit’s Report No. 47 of October 2006. In April 2017, Audit commenced a review on the regulation of hotels and guesthouses. The review focused on the following areas:

- (a) regulating licensed establishments (PART 2);
- (b) combating unlicensed establishments (PART 3); and
- (c) other administrative and licensing issues (PART 4).

1.18 Audit has found room for improvement in the above areas and has made a number of recommendations to address the issues.

### **Acknowledgement**

1.19 Audit would like to acknowledge with gratitude the assistance and full cooperation of the staff of the HAD during the course of the audit review.

## **PART 2: REGULATING LICENSED ESTABLISHMENTS**

2.1 This PART examines the OLA’s work in regulating licensed hotels and guesthouses, focusing on the following issues:

- (a) processing applications for new and renewal licences (paras. 2.2 to 2.16);
- (b) renewing licences for unprotected cases (paras. 2.17 to 2.27); and
- (c) ensuring compliance with licence requirements (paras. 2.28 to 2.35).

### **Processing applications for new and renewal licences**

2.2 The OLA issues licences for hotels and guesthouses under the HAGAO. Licence applicants comprise prospective operators who apply for new licences, and existing operators (i.e. existing licensees) who apply for renewal licences. Applications usually go through six stages:

- (a) ***Acknowledgement of applications.*** The OLA conducts initial vetting on the applications received (e.g. checking that all required documents are received) and issues to the applicants an “acknowledgement”;
- (b) ***Initial inspection.*** The OLA inspects the premises concerned and prepares inspection reports. The OLA may issue to the applicants a letter specifying the required improvement works (i.e. “letter of requirements” specifying the upgrading works for new licence applications and “letter for rectification” specifying the rectification works for renewal licence applications). Appendix B shows the general licence requirements under the HAGAO;
- (c) ***Improvement works.*** The applicants carry out the required improvement works and submit a “completion report” together with other relevant information (e.g. photographs showing completed works, and manufacturers’ test reports and certificates of materials used) for the OLA’s checking;

## Regulating licensed establishments

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- (d) ***Follow-up inspection.*** The OLA checks the completion reports and information submitted and inspects the premises concerned to ascertain the completion of the required improvement works. The OLA compiles a “compliance report” to support the approval for applications;
- (e) ***Approval of applications.*** The OLA approves the applications which meet the licence requirements, prepares the licences and issues to the applicants a “collection letter” for collecting the licences. Applications not meeting the requirements are refused; and
- (f) ***Collection of licences.*** Upon payment of licence fees, applicants collect the licences from the OLA.

The OLA has been using a computer system named Application Tracking Facility System to keep track of the processing time and progress of individual applications at various stages.

2.3 Of the six stages, the OLA has set target processing times (i.e. target times) for the four stages for which the OLA is primarily responsible (i.e. “acknowledgement of applications”, “initial inspection”, “follow-up inspection” and “approval of applications”). For the other two stages for which applicants are primarily responsible (i.e. “improvement works” and “collection of licences”), no target times have been set. Table 2 shows the OLA’s nine target times set for the four stages. Of the nine target times, two are published performance pledges (i.e. “acknowledgement of applications” and “initial inspection” for new licence applications) and the remaining seven are internal targets only.



**Table 2**

**Stages of licence applications and target times**

Stage	Target time in working days		
	New licence applications	Renewal licence applications involving rectification works	Renewal licence applications not involving rectification works
Acknowledgement of applications	4* (100%)	5 (100%)	
Initial inspection	22* (100%)	49 (94%)	39 (67%)
Improvement works (Note 1)	N.A.		
Follow-up inspection	20 (78%)	30 (96%)	N.A.
Approval of applications	8 (38%)	14 (38%)	
Collection of licences (Note 2)	N.A.		

*Source: HAD records*

*Note 1: The OLA has not set target times for “improvement works”. According to the OLA, it is applicants’ responsibility to carry out such works within the time limit allowed. Normally, the OLA allows 6 months (for guesthouses) or 12 months (for hotels) for applicants to complete upgrading works for new licence applications. Extensions of time to complete upgrading works may be granted by the OLA.*

*Note 2: The OLA has not set target times for “collection of licences”. Normally, the OLA advises applicants to pay licence fees and collect licences within 14 days from the date of the collection letter.*

*Remarks: 1. The two target times with an asterisk are the OLA’s performance pledges. The seven target times without an asterisk are the OLA’s internal targets.*

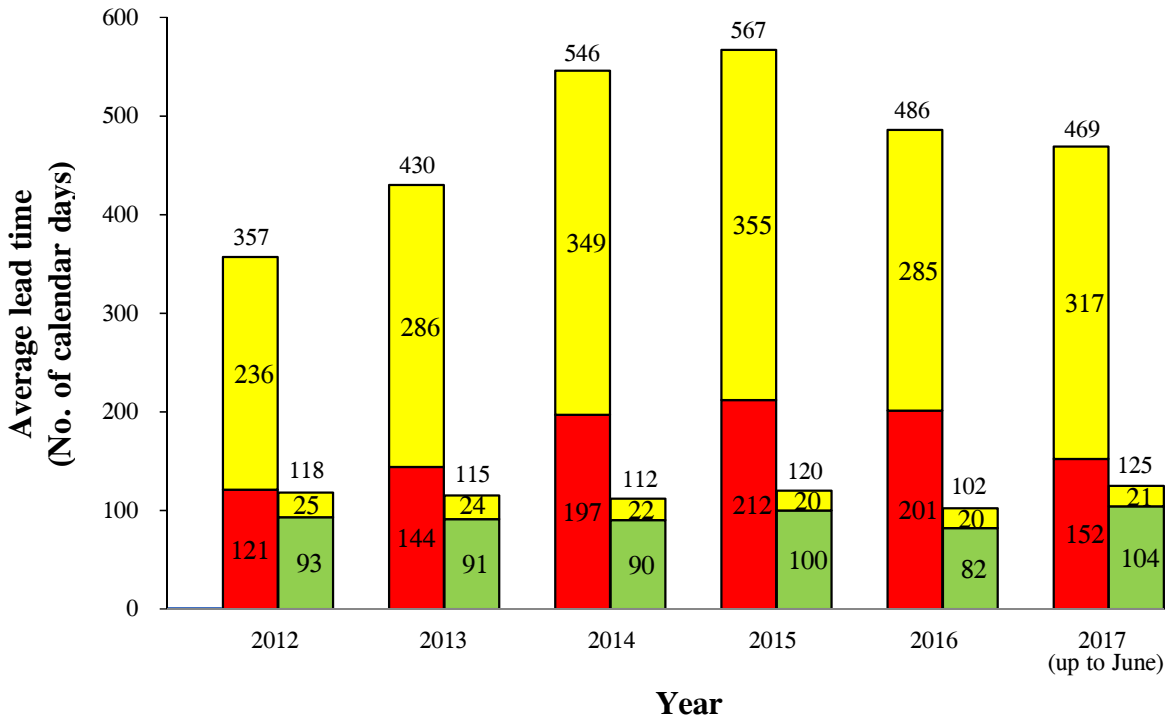
*2. Percentages of cases attaining target times in 2017 (up to 30 June 2017) are shown in brackets.*

### *Need to monitor lead time*

2.4 The lead time for granting a licence refers to the time (in calendar days) which has elapsed since the OLA received the application. The lead time comprises the times spent on individual stages of a licence application. Figure 2 shows that during the period from 2012 to 2017 (up to 30 June 2017), for new licence applications, the average lead time had increased by 59% from 357 days in 2012 to 567 days in 2015 and had then decreased by 17% to 469 days in 2017. For renewal licence applications, the average lead time had increased slightly by 6% from 118 days in 2012 to 125 days in 2017.

Figure 2

Average lead time for granting licences  
(2012 to June 2017)



- Legend:
- Applicants' average action time (for "improvement works" and "collection of licences") for new licence applications or renewal licence applications
  - OLA's average processing time for new licence applications
  - OLA's average processing time for renewal licence applications

Source: *Audit analysis of HAD records*

Remarks: *The majority of renewal licence applications were received more than three months before the licence expiration date. According to the HAD, for efficient use of resources, the OLA processed these applications after they had been received some time when the licence expiration date drew near. For these renewal licence applications, in calculating the OLA's average processing time, they were taken as if they had been received three months before the licence expiration date.*

## Regulating licensed establishments

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2.5 For new licence applications, the long average lead time of over a year (e.g. 469 days in 2017) is not entirely satisfactory. Any increasing trend of the average lead time (e.g. during the period from 2012 to 2015) is also a cause for concern. According to the OLA, it has kept the lead time for new licence applications under close watch through a number of measures, namely, monitoring the progress in processing completion reports on a weekly basis, and holding meetings within the OLA and monthly meetings with the HAD management to monitor the lead time. Nevertheless, Audit noted that the OLA's internal targets were generally not attained (see paras. 2.6 to 2.7) and there was room for improving the HAD's practices in managing performance on internal targets and the lead time (see paras. 2.8 to 2.14).

### *Internal targets not attained*

2.6 According to the HAD, the two performance pledges (see Table 2 in para. 2.3) are the OLA's promulgated commitments of performance to the public. The OLA spares more efforts and resources to meet these two performance pledges as far as possible. Whereas the seven internal targets (see Table 2 in para. 2.3) are the OLA's internal reference for guiding its work priority. Audit noted that in 2017 (up to 30 June 2017), while the two performance pledges (i.e. the pledges on "acknowledgement of applications" and "initial inspection" for new licence applications) were attained, the seven internal targets were generally not attained, as follows:

- (a) one internal target, i.e. the target on "acknowledgement of applications" for renewal licence applications, was 100% attained;
- (b) two internal targets, i.e. the targets on "initial inspection" and "follow-up inspection" for renewal licence applications involving rectification works, were 94% and 96% respectively attained (slightly short of 100%); and
- (c) for the remaining four internal targets, the percentages of cases attaining the targets ranged from 38% to 78%.

2.7 For the four internal targets mentioned in paragraph 2.6(c), Figure 3 further shows that, during the period from 2012 to 2017 (up to 30 June 2017), the percentages of cases attaining the targets had generally decreased, as follows:

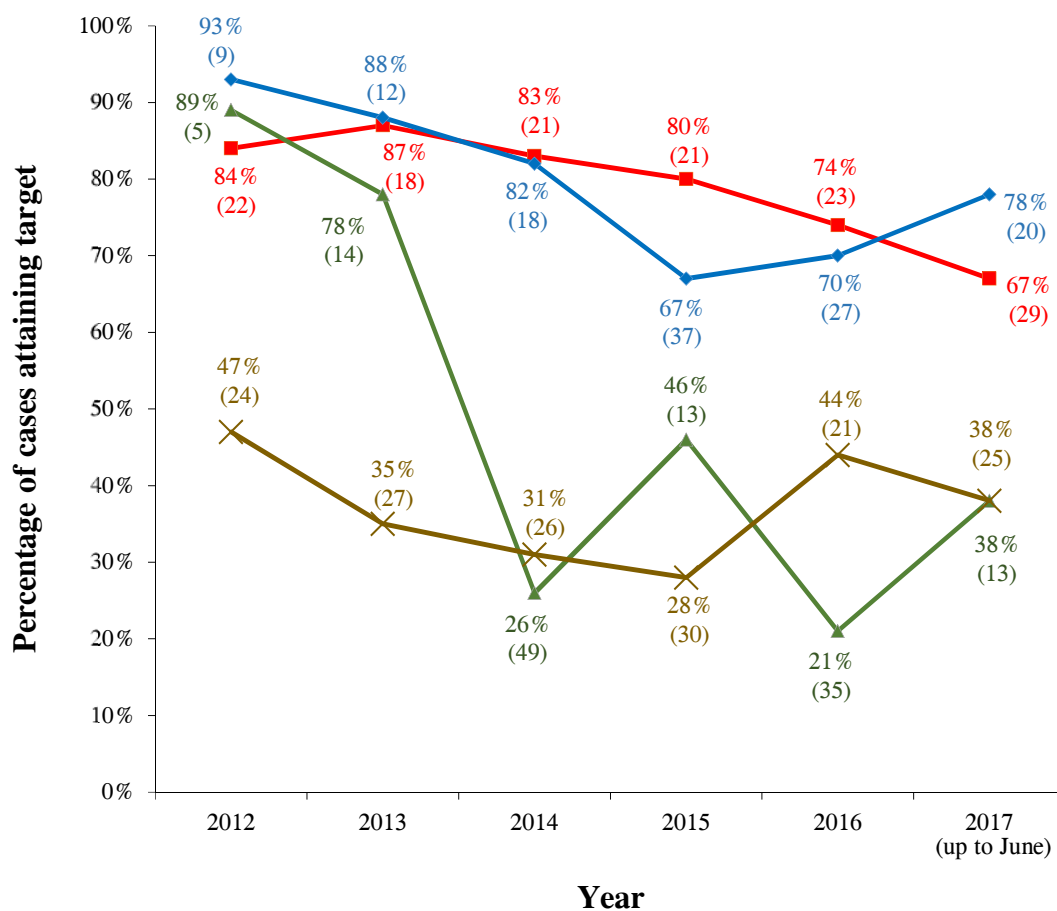
## **Regulating licensed establishments**

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- (a) ***Initial inspection for renewal licence applications not involving rectification works.*** The percentage had decreased from 84% in 2012 to 67% in 2017;
  
- (b) ***Follow-up inspection for new licence applications.*** The percentage had decreased from 93% in 2012 to 78% in 2017;
  
- (c) ***Approval of applications for new licences.*** The percentage had decreased from 89% in 2012 to 38% in 2017; and
  
- (d) ***Approval of applications for renewal licences.*** The percentage had decreased from 47% in 2012 to 38% in 2017.

Figure 3

Attainment of four internal targets  
(2012 to June 2017)



- Legend:
- Initial inspection for renewal licence applications not involving rectification works (with a target time of 39 working days)
  - ◆ Follow-up inspection for new licence applications (with a target time of 20 working days)
  - ▲ Approval of applications for new licences (with a target time of 8 working days)
  - ✕ Approval of applications for renewal licences (with a target time of 14 working days)

Source: Audit analysis of HAD records

Remarks: Figures in brackets show the average processing times in working days.

### *Need to enhance performance management practices*

2.8 The HAD's practices in managing performance on internal targets were not entirely satisfactory. Audit noted that:

- (a) ***Some internal targets not met.*** For some internal targets, there were significant disparities between the target time and the processing time attained. For example, in 2017 (up to June 2017):
  - (i) the average processing time for the approval of applications for new licences was 13 working days, which was 63% longer than the target of 8 working days (see Figure 3 in para. 2.7); and
  - (ii) the average processing time for the approval of applications for renewal licences was 25 working days, which was 79% longer than the target of 14 working days (see Figure 3 in para. 2.7).

The HAD needs to ascertain the reasons for the disparities and take improvement measures;

- (b) ***Internal targets not published.*** While the two performance pledges (see para. 2.3) had been published in the public domain (e.g. on the OLA website), the seven internal targets had not been published. There was room for improving transparency and accountability by publishing more targets;
- (c) ***Management information not generated.*** For the two published performance pledges, management information was generated monthly from the Application Tracking Facility System (see para. 2.2) for monitoring by the HAD. However, no similar management information on attainment was generated for the seven internal targets for regular monitoring by the HAD; and
- (d) ***Data in computer system not updated promptly.*** According to its laid-down procedures, within four days after completing an action in processing licence applications, the OLA needs to update the data stored in the Application Tracking Facility System. However, this requirement had not always been followed (e.g. in 2016, only 88% of the updates were performed within four days).

## **Regulating licensed establishments**

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In September 2017, the HAD informed Audit that it started in July 2017 a review on the appropriateness of the internal targets, with a view to publishing more target times.

2.9 Audit considers that the HAD needs to expedite action to enhance its practices in managing performance on internal targets, taking into account Audit's findings as shown in paragraph 2.8 which include the need for setting appropriate target times and publishing them for the purpose of enhancing transparency and public accountability. The HAD also needs to take measures to ensure that the target times set are satisfactorily attained.

### ***Long processing time due to many rounds of submission***

2.10 Audit noted that during the stages of "improvement works" and "follow-up inspection" (see para. 2.2(c) and (d)), applicants had not always submitted full information on the completion of improvement works (i.e. completion reports and supporting documents) in a timely manner. Furthermore, the submission of full information could sometimes be a long process which would lengthen the lead time for granting licences. Case 1 shows an example.



Case 1

**Submission of information on improvement works  
(June 2015 to March 2017)**

1. In June 2015, the OLA received a new licence application for a 6-room guesthouse. After completing initial inspections in July 2015, the OLA issued in August 2015 to the applicant a letter of requirements on the upgrading works required to be completed within six months (i.e. by February 2016).

2. In February 2016, the applicant submitted a completion report, which was missing some documents (e.g. copies of reports/documents submitted to the Buildings Department under the Minor Works Control System — see para. 2.13) and was not accepted by the OLA. Some of the missing documents were subsequently submitted in April 2016.

3. In May 2016, the applicant submitted another completion report, which was again missing some documents (see para. 2 above) and was not accepted by the OLA. Some of the missing documents were subsequently submitted in June and July 2016. The OLA then conducted the follow-up inspection and found that the upgrading works were not satisfactorily completed.

4. After the aforementioned 5 submissions of reports/documents, during the period from July 2016 to February 2017, the applicant made another 11 submissions of reports/documents. Finally, in February 2017, the OLA concluded that the upgrading works were satisfactorily completed. In March 2017, the licence was approved.

5. In the 13-month period from the submission of the first completion report in February 2016 to the satisfactory completion of the upgrading works in February 2017, the applicant made 16 submissions of reports/documents. In the submissions, very often, documents (e.g. copies of reports/documents submitted to the Buildings Department under the Minor Works Control System) were missing, incomplete, inconsistent or not acceptable.

***Audit comments***

6. The many rounds of submission of reports/documents, due to incomplete information submitted by the applicant, hindered the progress of approving and granting the licence by the OLA.

*Source: Audit analysis of HAD records*

## Regulating licensed establishments

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2.11 Audit noted that, for new licence applications, the average number of rounds of submission was 2.2, 2.1, 2.3, 2.7, 2.8 and 3.2 respectively for each year during 2012 to 2017 (up to 30 June 2017). The average number of submissions was increasing. For renewal licence applications, the average number of rounds of submission was either 1 or 1.1 during the same period.

2.12 The OLA has implemented a number of measures to facilitate applicants carrying out improvement works and submitting information on the completion of such works. For example:

- (a) since 2011, “A Layman’s Guide to Licence Applications under the HAGAO”, setting out the general requirements and procedures of applying for licences, has been uploaded onto the OLA’s website;
- (b) since September 2013, the OLA has held meetings with applicants and their agents (e.g. consultants and contractors) to go through the letter of requirements or any list of outstanding requirements;
- (c) since July 2015, for information of applicants, e-mail addresses of responsible officers have been uploaded onto the Application Tracking Facility System (to which applicants have access); and
- (d) since August 2017 (during the course of this audit review), all licence conditions and requirements have been uploaded onto the OLA’s website.

2.13 The OLA has also published on its website a set of questions and answers on common mistakes of licence applicants in carrying out improvement works and in submitting information on the completion of improvement works. However, Audit noted that the questions and answers have not been updated since they were first published in June 2009. For example, with the introduction of the Minor Works Control System (Note 4) under the Buildings Ordinance in December 2010, licence applicants are required to submit to the OLA copies of reports/documents prepared under the system. As the OLA has not updated the set of questions and answers with

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**Note 4:** *The Minor Works Control System aims to facilitate building owners and occupants carrying out small-scale building works safely and lawfully through simplified requirements.*

this requirement, applicants may miss submitting these reports/documents to the OLA.

2.14 Audit considers that the HAD needs to step up its efforts to facilitate applicants' submission of the required information on the completion of improvement works.

### **Audit recommendations**

2.15 **Audit has *recommended* that the Director of Home Affairs should:**

- (a) **keep the lead time for granting licences under closer monitoring, with a view to taking timely action to improve the lead time where necessary;**
- (b) **expedite action to enhance the HAD's practices in managing performance on internal targets, taking into account factors such as the need for setting and publishing appropriate target times (see para. 2.8);**
- (c) **take measures to ensure that the internal target times set are satisfactorily attained; and**
- (d) **step up efforts to facilitate applicants' submission of the required information on the completion of improvement works.**

### **Response from the Government**

2.16 The Director of Home Affairs agrees with the audit recommendations. She has said that the HAD will:

- (a) monitor the lead time for granting licences more closely, with a view to taking timely action for improvement;
- (b) enhance the practices in managing performance on internal targets, and suitably review the appropriateness of such targets, with a view to publishing appropriate target times; and

## **Regulating licensed establishments**

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- (c) step up efforts to further facilitate applicants' submission of the required information as promulgated in the relevant guidelines uploaded onto the OLA's website.

### **Renewing licences for unprotected cases**

2.17 Under section 9(1) of the HAGAO, a licensee may submit a renewal licence application not less than three months before the expiration date of the existing licence (hereinafter referred to as a "protected case"). According to section 9(5) of the HAGAO, for a protected case, the existing licence will remain in effect until the application is determined (e.g. approved or rejected) by the OLA, regardless of the expiration date of the existing licence. This protects the applicant from any inconvenience caused by the lead time, namely, the risk of possible disruption of hotel/guesthouse operation if the renewal licence application cannot be approved in time. When the application is approved, the licence is deemed to be renewed on the day immediately after the expiration date.

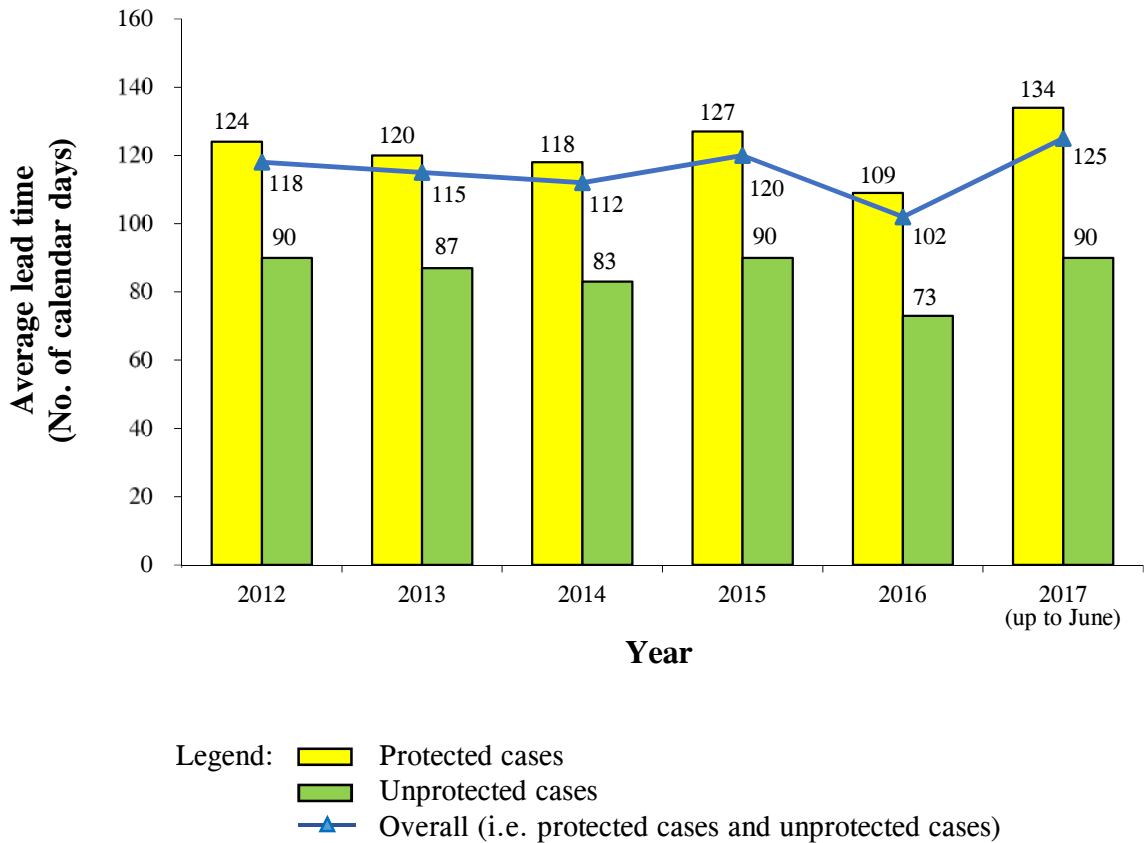
2.18 A renewal licence application submitted within three months before the expiration date of the existing licence (hereinafter referred to as an "unprotected case" — i.e. not submitted under section 9(1)) is not protected by section 9(5). Accordingly, the existing licence will lapse on the expiration date if the application cannot be approved in time. During the period from 2012 to 2017 (up to June 2017), the proportions of unprotected cases received ranged from 14% (79 cases in 2013) to 20% (110 cases in 2012).

### ***Disparities in lead times for renewing licences***

2.19 Figure 4 shows that, during the period from 2012 to 2017 (up to 30 June 2017), the average lead time for granting renewal licences for unprotected cases was notably shorter than that for protected cases. In 2017, the average lead time was 90 calendar days for unprotected cases, which was 33% less than the 134 calendar days for protected cases.

Figure 4

Average lead time for granting renewal licences  
(2012 to June 2017)



Source: Audit analysis of HAD records

2.20 Audit noted that, for both unprotected cases and protected cases, applications were required to go through the same stages of processing (see para. 2.2). The much shorter lead time for unprotected cases over the years was mainly due to the OLA’s established practice to accord priority to these cases and expedite action in processing them. According to the OLA, this practice had taken into account the consequence to the licensees concerned if the applications were not approved before the licence expiration date (see para. 2.23).

2.21 While noting the OLA’s rationale for its practice (see para. 2.20), Audit considers that the HAD needs to look into the considerable and persistent disparities in lead times between protected cases and unprotected cases (see Figure 4 in para. 2.19), and take necessary action to rectify the situation.

## Regulating licensed establishments

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### *Need to better promote timely submission of applications*

2.22 Audit noted that despite that the OLA accorded priority to processing unprotected cases, a considerable proportion of such cases were still approved after the expiration of existing licences. Table 3 shows that, during the period from 2012 to 2017 (up to 30 June 2017), the proportions ranged from 11% in 2016 to 61% in 2017.

**Table 3**

**Approval of applications for renewal licences in unprotected cases  
(2012 to June 2017)**

Approval	No. of unprotected cases with applications approved					
	2012	2013	2014	2015	2016	2017 (up to June)
Before licence expiration date	58 (53%)	52 (69%)	77 (70%)	98 (70%)	159 (89%)	52 (39%)
After licence expiration date	52 (47%)	23 (31%)	33 (30%)	43 (30%)	19 (11%)	81 (61%)
Total	110 (100%)	75 (100%)	110 (100%)	141 (100%)	178 (100%)	133 (100%)

*Source: Audit analysis of HAD records*

2.23 For both hotel/guesthouse operators and the OLA in unprotected cases, approval of applications after the expiration of existing licences carries undesirable consequences. Firstly, applications are not protected by section 9(5) of the HAGAO (see para. 2.18). The existing licences will lapse upon expiration, rendering the hotels and guesthouses concerned no longer licensed establishments. These hotels and guesthouses need to stop operation until the applications are approved. Secondly, according to the OLA's practices, all unprotected cases with applications not yet approved upon the expiration of existing licences are referred internally to its Enforcement Team for combating any operation of unlicensed establishments (see para. 3.3). The follow-up of many such cases will create extra workload of the OLA.

2.24 To remind licensees to submit applications for renewal licences under section 9(1) of the HAGAO, it has been the OLA's practice to issue reminders (including follow-up reminders) and make telephone calls to licensees during the last four months before the expiration of licences. The OLA has also alerted the trade of the risk of disruption of operation associated with late submission of applications. However, as reflected by the many unprotected cases in which applications had not been submitted in a timely manner under section 9(1) (ranging from 79 cases in 2013 to 209 cases in 2016, during the period from 2012 to 2016), the OLA's practice was not entirely effective. In these cases, the operator might fall into the state of operating without valid licence. There were, in particular, cases where licensees repeatedly failed to submit timely applications under section 9(1). Audit noted that in one extreme case, a licensee persistently failed to submit timely applications in 8 out of 9 instances during 2008 to 2017.

2.25 Audit considers that the HAD needs to step up the OLA's efforts in promoting timely submission of applications under section 9(1) of the HAGAO.

### **Audit recommendations**

2.26 **Audit has recommended that the Director of Home Affairs should:**

- (a) **look into the considerable and persistent disparities in lead times between protected cases and unprotected cases, and take necessary action to rectify the situation; and**
- (b) **step up the OLA's efforts in promoting timely submission of applications under section 9(1) of the HAGAO.**

### **Response from the Government**

2.27 The Director of Home Affairs agrees with the audit recommendations. She has said that the HAD will suitably review the existing measures to promote timely submission of applications under section 9(1) of the HAGAO.

### Ensuring compliance with licence requirements

2.28 Under the HAGAO, licences can be issued for a period up to 84 months (7 years). For licensees with good records in complying with licence requirements, it is the practice of the OLA to issue to them licences for periods of 2 or 3 years, and for periods of 4 to 7 years if the establishment concerned is a purpose-built hotel/guesthouse.

2.29 Of the licences issued for the 2,024 establishments as at 30 June 2017, 1,269 (63%) were 1-year licences, 696 (34%) were 2-year or 3-year licences, and 59 (3%) were licences with periods ranging from 4 to 7 years (Note 5). The OLA has established mechanisms to monitor licensees' compliance with licence requirements for the different types of licences:

- (a) **1-year licences.** For establishments with 1-year licences, the OLA fully checks compliance with licence requirements when processing renewal licence applications;
- (b) **2-year or 3-year licences.** For establishments with these licences, the OLA's BSU and Fire Safety Team (FST) conduct annual inspections during the licence period:
  - (i) **BSU.** 20% of the establishments are selected annually on a random basis and inspected for compliance with building safety requirements; and
  - (ii) **FST.** All the establishments are inspected annually for compliance with fire safety requirements; and
- (c) **Licences with periods ranging from 4 to 7 years.** The BSU does not conduct annual inspections for establishments with these licences, while the FST does. In parallel with the FST's annual inspections of all these establishments, the OLA requires all these licensees to submit annually an

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**Note 5:** *The 2,024 licensed establishments included 286 hotels. Of them, 25 hotels held 1-year licences, 202 hotels held 2-year licences or 3-year licences, and 59 hotels held licences with licence periods ranging from 4 to 7 years.*



authorised person's certificate to certify compliance with licence requirements (Note 6).

### *Need to ensure compliance with licence requirements*

2.30 In 2016, the BSU conducted annual inspections on 76 establishments which had a 2-year or 3-year licence (see para. 2.29(b)(i)). The FST, which conducted annual inspections on all such establishments (see para. 2.29(b)(ii)), also separately inspected these 76 establishments. The BSU and the FST found that a total of 12 (16%) establishments had areas of non-compliance (Note 7).

2.31 Audit noted that in other inspections conducted by the OLA, the percentage of establishments found to have areas of non-compliance was higher. For example:

- (a) in 2013, subsequent to a fire at a commercial-cum-residential building, the OLA conducted inspections on the 5 licensed guesthouses which were located in the same building but did not have fires. In 3 (60%) of the 5 guesthouses, irregularities (such as addition of beds, addition of storage cabinets in corridors, and blocking of smoke detectors) were found; and
- (b) in 2016, the OLA approved renewal licence applications of 876 establishments, which included 533 establishments with a 2-year or 3-year licence. Of the 533 establishments, 133 (25%) establishments were found to have areas of non-compliance with building safety or fire safety requirements. The 25% was higher than the 16% of establishments revealed through annual inspections of the BSU and the FST (see para. 2.30).

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**Note 6:** *An authorised person refers to an architect, engineer or surveyor whose name is on the authorised persons' register kept under the Buildings Ordinance. The authorised person's certificate needs to certify that the establishment concerned has not undergone any substantial alteration, has been operated according to licence requirements, and has been properly maintained regarding building safety and fire safety.*

**Note 7:** *Follow-up actions were subsequently taken by the licensees to rectify the areas of non-compliance.*

## Regulating licensed establishments

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2.32 In this connection, Audit noted areas for improvement in relation to the conduct of annual inspections, as follows:

- (a) *Not risk-based.* The 20% of establishments for the BSU's annual inspections were selected on a random basis. Adopting a risk-based approach in selecting establishments would improve the effectiveness of annual inspections in detecting non-compliance (e.g. taking into account establishments' track records in complying with requirements);
- (b) *No surprise elements.* Arrangements were made with the establishments concerned prior to the conduct of annual inspections. However, the ad hoc inspections in 2013 (see para. 2.31(a)), which revealed that a significant percentage of establishments had areas of non-compliance, were conducted on a surprise basis; and
- (c) *Inadequate management information.* It was not the OLA's practice to compile management information on annual inspections for consideration by the head of the OLA or by the HAD management. Regular information (e.g. on the progress and results of annual inspections) would facilitate the management making informed decisions on enhancing the conduct of inspections.

2.33 Audit considers that the HAD needs to monitor the effectiveness of annual inspections in identifying non-compliance with licence requirements, and take necessary measures to enhance the conduct of annual inspections.

## Audit recommendations

2.34 **Audit has recommended that the Director of Home Affairs should:**

- (a) **monitor the effectiveness of annual inspections in identifying non-compliance with licence requirements; and**
- (b) **take necessary measures to enhance the conduct of annual inspections, having regard to the need for taking a risk-based approach, incorporating surprise elements into inspections, and compiling adequate management information.**

## **Response from the Government**

2.35 The Director of Home Affairs agrees with the audit recommendations. She has said that the HAD will:

- (a) enhance the Application Tracking Facility System to better monitor the inspections; and
- (b) review the method of selecting licensed premises for annual inspections for enhancement with a view to incorporating a risk-based approach and surprise elements, as appropriate.

## **PART 3: COMBATING UNLICENSED ESTABLISHMENTS**

3.1 This PART examines the OLA's work in combating unlicensed establishments, focusing on the following issues:

- (a) keeping watch on suspected unlicensed establishments (paras. 3.2 to 3.8);
- (b) investigating suspected unlicensed establishments (paras. 3.9 to 3.18); and
- (c) prosecuting unlicensed establishments (paras. 3.19 to 3.27).

### **Keeping watch on suspected unlicensed establishments**

3.2 Operation of unlicensed establishments is a criminal offence (see para. 1.9). Within the OLA, the Enforcement Team (see Appendix A) is responsible for combating unlicensed establishments (Note 8).

3.3 To identify suspected unlicensed establishments, the Enforcement Team collects information from various sources. Examples are complaints from the public, referrals from other departments (e.g. the Buildings Department, the Fire Services Department, the Hong Kong Police Force, and the Immigration Department), internal referrals (e.g. unprotected cases referred from the BSU — see para. 2.23), and information collected by the Enforcement Team itself (e.g. through conducting surveillance operations at selected buildings and browsing websites). Taking into account the information collected, cases will be opened or updated:

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**Note 8:** *As at 30 June 2017, the Enforcement Team had a manpower of 75 staff, including 8 disciplined service staff, 32 non-civil service staff (e.g. Senior Licensing Inspectors and Licensing Inspectors) and 35 part-time staff (i.e. Licensing Assistants).*

## **Combating unlicensed establishments**

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- (a) for premises which have not been investigated before, the Enforcement Team will open new cases of suspected unlicensed establishments (hereinafter referred to as “suspected cases”); and
- (b) for premises which were previously or are currently under investigation, the Enforcement Team will reactivate the previous “suspected cases”, update the reactivated “suspected cases” or the “suspected cases” currently under investigation, and follow up the updated “suspected cases”.

The Enforcement Team takes a series of follow-up actions on suspected cases, such as inspecting the premises concerned, collecting evidence of operation of unlicensed establishments, and instigating prosecutions where there is sufficient evidence.

3.4 The Enforcement Team will close a suspected case when follow-up actions are completed, namely, when no unlicensed establishment is discovered, or when the unlicensed establishment discovered is no longer operating (e.g. after the case has been prosecuted). Suspected cases with follow-up actions in progress are referred to as “outstanding” cases (including cases for which prosecutions are in-progress). During the period from January 2012 to June 2017, the number of outstanding suspected cases had doubled from 644 as at 1 January 2012 to 1,322 as at 30 June 2017 (see Table 4).

## Combating unlicensed establishments

**Table 4**

**Number of suspected cases  
(2012 to June 2017)**

	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017 (up to June)</b>
Outstanding cases as at 1 January (a)	644	1,163	1,086	1,223	1,170	1,249
Cases opened or reactivated (b)	1,008	958	1,166	891	1,135 (Note)	751 (Note)
Cases closed (c)	489	1,035	1,029	944	1,056	678
Outstanding cases as at 31 December (d) = (a) + (b) - (c)	1,163	1,086	1,223	1,170	1,249	1,322 (as at 30 June)

*Source: Audit analysis of HAD records*

*Note: The increased number of cases was partly due to a bulk complaint on hundreds of suspected unlicensed guesthouses, made in July 2016 by an association of licensed guesthouses. Taking into account the information provided in the bulk complaint, 176 and 144 suspected cases were opened or reactivated in 2016 and 2017 respectively.*

*Remarks: For some cases, full addresses of the suspected unlicensed establishments were not known (e.g. not provided by complainants). These cases included complaints lodged against certain buildings, certain floors of certain buildings or certain websites (see Case 3 of para. 3.11). As at 30 June 2017, of the 1,322 outstanding cases, there were 111 such cases.*

### ***Need to monitor the increasing number of unresolved suspected cases***

3.5 Despite the Enforcement Team's efforts in completing follow-up actions on suspected cases (e.g. 1,056 cases closed in 2016 — see Table 4 in para. 3.4), as at 30 June 2017, there were still 1,322 outstanding cases. Of these outstanding cases, many (270 cases or 20%) had been outstanding for more than three years (see Table 5). There was a risk that some unlicensed establishments related to these outstanding cases had been in operation for a long time.

**Table 5**

**Age analysis of outstanding suspected cases  
(30 June 2017)**

Time elapsed since case opened/reactivated	No. of cases	Percentage
≤ 1 year	662	50%
> 1 year and ≤ 2 years	231	18%
> 2 years and ≤ 3 years	159	12%
> 3 years and ≤ 4 years	109	8%
> 4 years and ≤ 5 years	73	5%
> 5 years	88 (Note 1)	7%
Total	1,322	100%

*Source: Audit analysis of HAD records*

*Note 1: One extreme case had been outstanding for 15 years since June 2002.*

*Note 2: The 270 cases included 90 (33%) cases for which prosecutions had been instigated.*

3.6 On a regular basis, the OLA reported to the HAD management on its activities in combating unlicensed establishments. The information reported included statistics on prosecutions and convictions under the HAGAO. However, it was not the OLA's practice to compile and report information on the number of outstanding suspected cases (see Table 4 in para. 3.4) and their outstanding durations (see Table 5 in para. 3.5) for consideration by the HAD management. Such management information would facilitate monitoring long outstanding suspected cases, as well as making informed decisions to enhance follow-up actions on suspected cases where necessary.

### Audit recommendations

- 3.7 **Audit has recommended that the Director of Home Affairs should:**
- (a) **ensure that adequate management information for monitoring outstanding suspected cases is compiled; and**
  - (b) **keep the number of outstanding suspected cases, particularly those long outstanding cases, under close watch, with a view to taking timely measures for enhancing follow-up actions on suspected cases.**

### Response from the Government

3.8 The Director of Home Affairs agrees with the audit recommendations. She has said that the HAD has been monitoring outstanding cases with the aid of the Enforcement Management Information System, and will enhance efforts on this front.

### Investigating suspected unlicensed establishments

- 3.9 To investigate suspected cases, the Enforcement Team conducts inspections and collects evidence of operation of unlicensed establishments, as follows:
- (a) initial inspections are conducted to collect circumstantial evidence of operation of unlicensed establishments, such as the presence of guesthouse signboards, advertising posters, keepers for the establishments, and lodgers at the establishments; and
  - (b) where circumstantial evidence indicates that unlicensed establishments are operating, further inspections are conducted to collect evidence for instigating prosecutions. The inspections usually include decoy operations (i.e. Enforcement Team staff pretending to be lodgers to patronise the unlicensed establishments).



***Difficulties in collecting evidence for prosecution***

3.10 As shown in Table 5 of paragraph 3.5, as at 30 June 2017, 270 suspected cases had been outstanding for a long period of time (more than three years). Among these 270 long outstanding suspected cases, prosecutions had been instigated for 90 (33%) cases. For the remaining 180 (67%) cases, evidence for prosecution had been difficult to collect. Case 2 shows an example.

### Case 2

#### **Difficulties in collecting evidence for prosecuting a long outstanding suspected case (January 2012 to June 2017)**

1. In January 2012, a member of the public lodged with the HAD a complaint on the illegal operation of an unlicensed establishment. The establishment in question was located in a flat within a multi-storey building. The Enforcement Team accordingly opened a suspected case.

2. Up to 30 June 2017, in more than five years, the Enforcement Team received nine more complaints on the illegal operation at the establishment, and paid 66 visits to the establishment for conducting inspections and decoy operations. Of the 66 visits:

- (a) in 58 visits, inspecting staff could not enter the establishment. The door was not answered; and
- (b) in 8 visits, inspecting staff successfully entered the establishment. The staff found that:
  - (i) the establishment had three rooms, with lodgers from, for example, the Mainland, Taiwan, Malaysia and Singapore; and
  - (ii) in one instance in January 2017, the lodgers admitted that they rented the place for several days through Website A (see para. 3.11).

3. The establishment did not serve walk-in lodgers nor did it have a keeper. It also did not display any signboards nor advertising posters. As at 30 June 2017, some five years had elapsed since the case was opened, sufficient evidence had not been collected for prosecution.

#### ***Audit comments***

4. The OLA was unable to collect sufficient evidence of operation of the unlicensed establishment for prosecution. Further measures are required to facilitate the investigations of suspected unlicensed establishments not serving walk-in lodgers.

*Source: Audit analysis of HAD records*

*Need for effective measures in conducting investigations*

3.11 Website A (see Case 2 in para. 3.10), and other similar websites, are commonly referred to as online marketplaces. They provide platforms for various types of temporary accommodation, including hotels and guesthouses, and home-stay lodging (Note 9). Through such websites, operators (including homeowners) can offer sleeping accommodation and interact with lodgers to conclude a renting. This mode of operation would require additional measures (e.g. conduct of decoy operations) to supplement the OLA's investigations. However, decoy operations had not always been conducted (see Case 3 for an example).

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**Note 9:** *Home-stay lodging refers to the staying of lodgers in the homes of local people.*

### Case 3

#### **Decoy operations not conducted (January to June 2017)**

1. In January 2017, the Enforcement Team opened a suspected case upon receiving a complaint on an unlicensed establishment operating through Website A. The complaint provided the establishment's webpage on Website A but not its full address.

2. Since then until 30 June 2017, for five times, the Enforcement Team staff visited the establishment's webpage on Website A. The establishment's full address was not found. In three times, the Enforcement Team staff sent messages (through Website A) to the establishment's operator enquiring about the establishment (e.g. its availability), but the operator did not respond.

3. Due to operational considerations, the Enforcement Team did not arrange its staff to conduct decoy operations through Website A (i.e. pretending to be lodgers to patronise the establishment). As at 30 June 2017, five months had elapsed since the case was opened, there had been no progress in the investigation.

#### ***Audit comments***

4. In browsing Website A, Audit noted that the establishment's operator also provided 40 rental units other than the one in question. The OLA did not have effective measures for investigating suspected unlicensed establishments which operated through Website A.

*Source: HAD records and information on the Internet*

3.12 About Website A, Audit further noted that:

- (a) the number of public complaints on unlicensed establishments operating through Website A (e.g. Case 3 in para. 3.11) had increased from 11 in 2015 to 35 in 2016, and further to 65 in 2017 (up to 30 June 2017); and

- (b) according to the OLA, up to 30 June 2017, among the unlicensed establishments which had been prosecuted, 6 of them had been found operating through Website A. The 9 prosecutions of the 6 unlicensed establishments accounted for 1% of the 832 prosecutions since 2012.

Based on Audit's browsing of Website A, a total of 8,000 rental units in Hong Kong were posted on the Website in July 2017. Upon enquiry, the HAD informed Audit in September 2017 that the OLA had since July 2012 continuously made appeals to online platforms, namely, requesting them to post only licensed establishments on their websites and to help publicise the licence requirements under the HAGAO.

3.13 The use of online platforms is becoming more common these days. There is a risk that more unlicensed establishments would be operating through these platforms. Audit considers that the HAD needs to explore further measures to facilitate the investigations of suspected unlicensed establishments operating through online platforms. The HAD also needs to enhance its efforts in appealing to online platform operators to post only licensed establishments on their websites.

### *Need to make reference to overseas experiences*

3.14 The HAGAO is currently under review (see para. 1.15). The proposed legislative amendments intended to enable the OLA to take stronger enforcement actions are as follows:

- (a) if there is sufficient evidence, circumstantial or otherwise, showing that any premises are used as an unlicensed establishment, the owner, tenant or occupier (not including a lodger) of the premises are liable to prosecution. Under the present legislation, only the persons who operate, keep, manage or control the establishment are liable; and
- (b) the OLA can apply to the Court for a search warrant to allow enforcement officers to enter into, or break in when necessary, a suspected unlicensed establishment.

3.15 The above amendments, however, may not be entirely relevant to help overcome certain difficulties in investigations. For example, for unlicensed establishments operating through online platforms:

## Combating unlicensed establishments

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- (a) while circumstantial evidence may provide the basis for instigating prosecutions against owners, tenants or occupiers (see para. 3.14(a)), such evidence (e.g. the presence of signboards, advertising posters, and keepers) may not be available (see Case 2 of para. 3.10); and
- (b) for many suspected unlicensed cases, full addresses of the establishments concerned are difficult to ascertain (see Case 3 of para. 3.11). It may not be feasible for the OLA to apply for a search warrant (see para. 3.14(b)) to collect evidence for these cases.

3.16 In this connection, Audit noted that a number of overseas cities had enacted legislation to combat illegal provision of sleeping accommodation through the Internet. Audit considers that in exploring further measures to combat unlicensed establishments, the HAD may make reference to overseas experiences.

## Audit recommendations

3.17 **Audit has recommended that the Director of Home Affairs should:**

- (a) **explore further measures to facilitate the investigations of suspected unlicensed establishments;**
- (b) **step up efforts in appealing to online platform operators to post only licensed hotels and guesthouses on their websites; and**
- (c) **in exploring further measures to combat unlicensed establishments, consider making reference to overseas experiences as appropriate.**

## Response from the Government

3.18 The Director of Home Affairs agrees with the audit recommendations. She has said that the HAD will:

- (a) explore the feasibility of further measures to facilitate investigation and combating of suspected unlicensed establishments, making reference to overseas experience as appropriate; and

- (b) step up publicity measures, including appeals to online platform operators to post only licensed hotels and guesthouses on their websites.

### **Prosecuting unlicensed establishments**

3.19 Under the HAGAO, a person who operates an unlicensed establishment is liable on conviction to a fine of \$200,000 and imprisonment for 2 years, and a fine of \$20,000 for each day the offence continues.

### ***Recalcitrant operators***

3.20 In the period from 2012 to 2017 (up to 30 June 2017), 832 prosecutions were instigated by the OLA on 467 unlicensed establishments, resulting in 779 convictions. Table 6 shows the distribution of the 832 prosecutions among the 467 unlicensed establishments.

## Combating unlicensed establishments

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Table 6

**Number of prosecutions instigated on unlicensed establishments  
(2012 to June 2017)**

<b>No. of prosecutions per establishment (a)</b>	<b>No. of establishments (b)</b>	<b>Total no. of prosecutions (c) = (a) × (b)</b>
1	295	295
2	90	180
3	36	108
4	14	56
5	17	85
6	4	24
7	7	49
8	2	16
9	1	9
10	1	10
Total	467	832

Source: *Audit analysis of HAD records*

3.21 Audit analysed the penalties imposed on the 779 convictions (see para. 3.20) resulted from the 832 prosecutions and noted that:

- (a) for 727 convictions, fines had been imposed, the amounts of which ranged from \$100 to \$60,000. The most common amount was \$8,000 (231 times); and
- (b) for 79 convictions, imprisonment had been imposed, the durations of which ranged from 1 day to 4 months. The most common duration was 2 months (23 times).

3.22 Audit noted that, for fined cases, an unscrupulous operator might treat penalties as part of operating costs regardless of repeated prosecutions. For imprisonment cases, the person caught red-handed and prosecuted was usually a



keeper rather than the operator behind (i.e. the business owner). Case 4 shows an example.

**Case 4**

**An unlicensed establishment repeatedly prosecuted  
(May 2006 to June 2017)**

1. In May 2006, the OLA received a complaint on an unlicensed establishment which was a guesthouse. The OLA carried out usual enforcement actions (e.g. inspections and decoy operations). Up to 30 June 2017, in more than 10 years, the OLA instigated 14 prosecutions on the unlicensed guesthouse. Details of the prosecutions and penalties imposed were as follows:

- (a) a total of 7 offenders were prosecuted and convicted, each was convicted from one to six times;
- (b) fines were imposed on 13 convictions. The amounts of fines ranged from \$2,000 to \$20,000 (imposed on the third conviction of an offender who was convicted three times); and
- (c) imprisonment was imposed on 4 convictions, namely, the third to sixth convictions of an offender. The durations of imprisonment were respectively one month (suspended), three months (suspended), two weeks, and two months (plus three months of suspended imprisonment then activated).

2. In February 2017, the case was closed since the unlicensed guesthouse was under renovation and ceased to operate.

***Audit comments***

3. The operator of the unlicensed guesthouse was recalcitrant. There is a need for enhanced measures (see paras. 3.23 to 3.25) to give a clear message to the community that operating unlicensed establishments is a criminal offence, which may risk the life and property of lodgers and the public.

*Source: Audit analysis of HAD records*

## Combating unlicensed establishments

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### *Need for enhanced measures for prosecuting unlicensed establishments*

3.23 The HAGAO is currently under review (see para. 1.15). The proposed legislative amendments intended to enhance the deterrent effect on operating unlicensed establishments are as follows:

- (a) to increase the maximum fine from \$200,000 to \$500,000, and the maximum imprisonment from 2 years to 3 years; and
- (b) to enable the OLA to apply to the Court, upon the second conviction of an unlicensed establishment, to issue a closure order against the premises concerned for 6 months.

3.24 It is pertinent to note that under section 5 of the existing HAGAO, a person who operates an unlicensed establishment is liable on conviction to a fine of \$20,000 for each day the offence continues (see para. 3.19). However, this continuous offence provision has so far not been invoked.

3.25 Audit considers that the HAD needs to keep in view, for warranted cases, the possible invoking of the continuous offence provision under the existing HAGAO, as well as the possible invoking of other relevant offence provisions (e.g. issuing closure orders — see para. 3.23(b)) in the future.

### **Audit recommendation**

3.26 **Audit has recommended that the Director of Home Affairs should keep in view, for warranted cases, the possible invoking of the continuous offence provision under the existing HAGAO, as well as the possible invoking of other relevant offence provisions (e.g. issuing closure orders) in the future.**

### **Response from the Government**

3.27 The Director of Home Affairs agrees with the audit recommendation.

## **PART 4: OTHER ADMINISTRATIVE AND LICENSING ISSUES**

4.1 This PART examines other administrative and licensing issues relating to the regulation of licensed hotels and guesthouses, focusing on the following issues:

- (a) cost recovery (paras. 4.2 to 4.11);
- (b) caseloads of Licensing Inspectors (paras. 4.12 to 4.20); and
- (c) home-stay lodging (paras. 4.21 to 4.25).

### **Cost recovery**

4.2 According to Financial Circular No. 6/2016 entitled “Fees and Charges”, it is the Government’s policy that fees charged by the Government should in general be set at levels adequate to recover the full cost of providing the goods or services. Government fees should generally be reviewed and, where necessary, revised on an annual basis.

4.3 The Hotel and Guesthouse Accommodation (Fees) Regulations (Cap. 349B) have prescribed the fees for issuing new licences and renewal licences. According to the Regulations, the fees payable are based on the licence period and the number of rooms of the licensed establishment. Currently, the fees for new licences range from \$4,570 (for a 1-year licence of an establishment with one to three rooms) to \$107,100 (for a 7-year licence of an establishment with more than 500 rooms). The fees for renewal licences range from \$2,650 to \$63,150 respectively. The amounts of fees collected in 2016-17 totalled \$3.9 million.

### ***Audit review in 2006***

4.4 In 2006, Audit carried out a review of the licensing of hotels and guesthouses. The review indicated that:

## Other administrative and licensing issues

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- (a) up to June 2006, the objective of full cost recovery had not yet been achieved for the issuing of licences;
- (b) substantial work was carried out in processing licence applications which were subsequently rejected/withdrawn. However, the cost of such work had been excluded from the OLA's costing exercises; and
- (c) a licensee might apply to transfer his licence to another person. A fee of \$140 was collected by the OLA for the transfer in accordance with the Schedule of the Fees for Official Signatures and Miscellaneous Services Notice (Cap. 2M) (Note 10). The fee of \$140 might not have recovered the full cost (Note 11).

4.5 In response to the above observations, the Director of Home Affairs informed Audit in September 2006 that:

- (a) the licence fees under the Hotel and Guesthouse Accommodation (Fees) Regulations were being reviewed, and the fee proposals were being prepared in accordance with the Financial Services and the Treasury Bureau (FSTB) guidelines to achieve full cost recovery (Note 12); and
- (b) the OLA would review whether the cost in processing rejected/withdrawn applications should be recovered. The OLA would also consider the feasibility of revising the fee to be charged for transfer of licences. The implementation of both recommendations would require legislative

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**Note 10:** *The Hotel and Guesthouse Accommodation (Fees) Regulations have not prescribed any fee for transfer of licences. According to the Public Finance Ordinance (Cap. 2), where any Ordinance requires or authorises any transfer of any document by a public officer, such fee shall be payable therefor as may be prescribed by law. If no fee is prescribed, the fee stated in the Schedule of the Fees for Official Signatures and Miscellaneous Services Notice is to be adopted.*

**Note 11:** *In processing an application for transferring a licence, the OLA would carry out additional work such as vetting the application for any irregularities, and ascertaining whether the transferee had maintained good records if the licence concerned was a multi-year licence.*

**Note 12:** *The fee proposals had been finalised. After completing the necessary procedures, a new set of fees took effect on 1 November 2007.*

amendments to the Hotel and Guesthouse Accommodation (Fees) Regulations of the HAGAO.

The audit observations and the Director of Home Affairs' response were included in Chapter 8 of the Director of Audit's Report No. 47 of October 2006.

### *Need to step up efforts in recovering costs*

4.6 Audit noted that, in 2016-17, full cost recovery was still not achieved for the licensing of hotels and guesthouses. Based on the HAD's costing review conducted at the 2016-17 price level, the cost recovery rates of the current licence fees (see para. 4.3) ranged from 32% to 75% for new licences, and from 40% to 72% for renewal licences.

4.7 A chronology of the HAD's attempts to revise the licence fees of hotels and guesthouses is at Appendix C. The chronology shows little progress in revising the licence fees over the years since the last revision in November 2007. It is worth noting that:

- (a) ***New licences and renewal licences.*** The current licence fees took effect about 10 years ago in November 2007 (see Item 1 in Appendix C). Since November 2007, the HAD had made five attempts involving five fee proposals (see Items 2, 4, 6, 8 and 11 in Appendix C) to revise the licence fees. However, none of the proposals had been implemented;
- (b) ***Rejected/withdrawn applications.*** For unsuccessful applications, no licences would be issued and hence no licence fees would be collected (see para. 4.4(b)). To help recover the cost in processing rejected/withdrawn applications, the HAD intended to split the fees of new licences into application fees and licence fees (see Item 2 in Appendix C). According to the HAD, the new fee structure would involve more complicated legislative process; and
- (c) ***Transfer of licences.*** The Hotel and Guesthouse Accommodation (Fees) Regulations did not prescribe any fee for transfer of licences (see Note 10 to para. 4.4(c)). The HAD intended to introduce a new fee for such transfer (see Item 2 in Appendix C). According to the HAD, the

## Other administrative and licensing issues

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new fee would involve more complicated legislative process. Meanwhile, the OLA adopted a fee of \$155 for transfer of licences, which was the fee stated in the Schedule of the Fees for Official Signatures and Miscellaneous Services Notice (see Note 10 to para. 4.4(c)).

4.8 In the aforementioned five attempts, shortage of time (see Items 7, 10, 13 and 16 of Appendix C) was the major reason for not taking forward the fee proposals. In Audit's view, good planning is essential for the timely revision of licence fees. Furthermore, it is not satisfactory that under-recovery of cost has persisted for more than a decade.

4.9 In this connection, Audit noted that the HAD had informed the FSTB in November 2016, March 2017 and June 2017 that:

- (a) it was more appropriate to revise the licence fees after completing the amendment of the HAGAO; and
- (b) subject to the progress in amending the HAGAO, a work plan for revising the licence fees would be formulated in due course.

Audit considers that the HAD needs to, taking into account the need for recovering the various costs (i.e. in issuing and transferring licences, and in processing rejected/withdrawn licence applications), instigate measures to ensure that the work plan for revising the licence fees is formulated in a timely manner. The HAD also needs to monitor the implementation of the work plan to ensure that the objective of cost recovery is achieved.

## Audit recommendations

4.10 **Audit has recommended that the Director of Home Affairs should:**

- (a) **take measures to ensure that a work plan for revising the licence fees of hotels and guesthouses is formulated in a timely manner;**

- (b) **in formulating the work plan, take into account the need for recovering the costs in issuing and transferring licences, as well as the costs in processing rejected/withdrawn licence applications; and**
- (c) **monitor the implementation of the work plan to ensure that the objective of cost recovery is achieved.**

## **Response from the Government**

4.11 The Director of Home Affairs agrees with the audit recommendations. She has said that the HAD will take into account the progress of amending the HAGAO and formulate a work plan for revising the licence fees in due course.

## **Caseloads of Licensing Inspectors**

4.12 The OLA's Enforcement Team is responsible for investigating unlicensed establishments. Cases of suspected unlicensed establishments (e.g. identified through public complaints) are each assigned to a responsible officer (case officer). Case officers need to follow up their cases and conduct inspections on the premises concerned.

4.13 As at 30 June 2017, the OLA had 24 Licensing Inspectors (non-civil service contract staff) who were all designated as case officers. They were overseen by the supervisory staff (Note 13) of the Enforcement Team. Working under the Licensing Inspectors were 35 Licensing Assistants (part-time staff) who assisted in duties such as conducting inspections.

4.14 When a suspected unlicensed establishment is first identified, the Enforcement Team will open a new file for the case. Licensing Inspectors take turns

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**Note 13:** *As at 30 June 2017, the supervisory staff comprised 2 Assistant Divisional Officers, 6 Senior Station Officers and 6 Senior Licensing Inspectors.*

## Other administrative and licensing issues

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on a cycle basis to take up new files (Note 14). According to the OLA, this allocation mechanism:

- (a) aims to ensure fairness in work allocation and encourage Licensing Inspectors to take responsibility to complete their allocated cases efficiently; and
- (b) is in line with the principle and spirit of corruption prevention by limiting individual officers' control on the allocation of cases.

### *Need to closely monitor caseloads*

4.15 As at 30 June 2017, the 24 Licensing Inspectors had in total a caseload of 1,322 outstanding cases (Note 15). On average, each Licensing Inspector had a caseload of 55 outstanding cases. Table 7 shows that the caseloads of individual Licensing Inspectors were quite uneven, ranged from 32 cases (i.e. 58% of the average caseload of 55 cases) to 75 cases (i.e. 136% of the average caseload of 55 cases).

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**Note 14:** *According to the HAD, in circumstances where different locations (e.g. different units in a building) are suspected to be involved in an unlicensed establishment's operation, a series of files will be opened. Each file in the series corresponds to a suspected location. New files are allocated one by one to Licensing Inspectors. For files in a series, the entire series is allocated in one lot, as if the entire series is a single file. Licensing Inspectors take turns on a cycle basis to take up new files/new series of files.*

**Note 15:** *Outstanding cases were cases for which follow-up actions, e.g. investigation and prosecution actions, were in progress. Licensing Inspectors were also responsible for following up outstanding cases under other ordinances (see Note 3 to para. 1.14). Caseloads under the HAGAO accounted for the majority (about 90%) of Licensing Inspectors' caseloads.*



**Table 7**

**Caseloads of Licensing Inspectors  
(30 June 2017)**

<b>Caseload (No. of outstanding cases)</b>	<b>No. of Licensing Inspectors with the caseload</b>	<b>Average no. of outstanding cases per Licensing Inspector</b>	<b>Average no. of long outstanding cases per Licensing Inspector (Note)</b>
32 to 40	6	36	6
41 to 50	3	48	10
51 to 60	6	55	9
61 to 70	5	67	13
71 to 75	4	73	22
Overall	24	55	11

*Source: Audit analysis of HAD records*

*Note: Long outstanding cases referred to those cases which remained outstanding for more than three years.*

4.16 The large variations in caseloads among the 24 Licensing Inspectors was not satisfactory. For Licensing Inspectors with heavy caseloads, there was a risk that cases of suspected unlicensed establishments could not be dealt with expeditiously and effectively. In fact, as can be seen from Table 7, Licensing Inspectors with heavier caseloads generally tended to have more long outstanding cases.

4.17 Audit noted that it was not the practice of the OLA to compile statistics of caseloads for management information, or for discussion in regular management meetings. Upon enquiry, the HAD informed Audit in September 2017 that if the caseload of an Licensing Inspector was getting unmanageable, the supervisor (i.e. the Senior Licensing Inspector) would review the situation and assign other Licensing Inspectors to assist as appropriate. The Senior Licensing Inspector would also conduct inspections personally if the situation warranted.

## **Other administrative and licensing issues**

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4.18 Audit considers that the HAD needs to monitor the caseloads of Licensing Inspectors more closely and take early measures to rectify any unsatisfactory caseload situation where necessary (e.g. promptly reallocating cases where caseloads are excessively high or low, and enhancing the efficiency of individual Licensing Inspectors).

### **Audit recommendations**

4.19 **Audit has *recommended* that the Director of Home Affairs should:**

- (a) **more closely monitor the caseloads of Licensing Inspectors; and**
- (b) **take early measures to rectify any unsatisfactory caseload situation where necessary.**

### **Response from the Government**

4.20 The Director of Home Affairs agrees with the audit recommendations.

### **Home-stay lodging**

4.21 There have been calls to develop home-stay lodging in Hong Kong. From the tourism perspective, developing more diversified tourist accommodation can help attract a wider range of tourists to Hong Kong.

#### ***Need to conduct comprehensive review of issues relating to home-stay lodging***

4.22 In July 2017, when reporting to the LegCo Panel on Home Affairs the progress in the review of the HAGAO, the HAD provided in the meeting paper the following information about home-stay lodging:

- (a) the development of home-stay lodging involved land use, planning, tourism, environmental and transport issues, which were under the purview of different bureaux and departments;

## Other administrative and licensing issues

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- (b) there was both demand for and supply of home-stay lodging in Hong Kong as with other places. Some tourists looked for this unique type of accommodation experience, while some residential flat owners looked for letting their flats as short-term accommodation to tourists;
- (c) if home-stay lodging involved the provision of short-term sleeping accommodation at a fee, a licence under the HAGAO was required. It was pertinent to note that the OLA issued guesthouse (holiday flat) licences to holiday flats which were a type of guesthouses operating on New Territories exempted houses (Note 16). The building safety and fire safety requirements applicable to holiday flats were generally more relaxed as compared to those applicable to general guesthouses; and
- (d) the HAD was exploring with relevant bureaux and departments the idea of drawing up a set of guidelines to cater for licence applications for home-stay lodging, with a view to simplifying the licence requirements without compromising building safety and fire safety.

4.23 In Audit's view, in drawing up the proposed guidelines for home-stay lodging, the HAD needs to address the following issues:

- (a) the need to differentiate home-stay lodging from other types of guesthouses. The OLA also needs to delineate clearly the circumstances in which a home-stay lodging licence, a guesthouse (general) licence or a guesthouse (holiday flat) licence is applicable. This is particularly important because the licence requirements for home-stay lodging are intended to be simpler and less stringent (see para. 4.22(d));
- (b) the need to conform with the proposed legislative amendments when enacted, namely, the legislative amendments that the OLA will take into account the Deed of Mutual Covenant of the building concerned

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**Note 16:** *New Territories exempted houses generally refer to those village houses situated in the New Territories which by virtue of the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121) are exempted from certain provisions of the Buildings Ordinance and its subsidiary regulations, including the need for obtaining prior approval and consent to the commencement of works from the Buildings Department.*

## **Other administrative and licensing issues**

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(e.g. whether commercial activities are allowed) and local residents' views in processing a licence application; and

- (c) the need to consult relevant stakeholders and to consider whether overseas examples on the regulation of home-stay lodging may be applicable to Hong Kong.

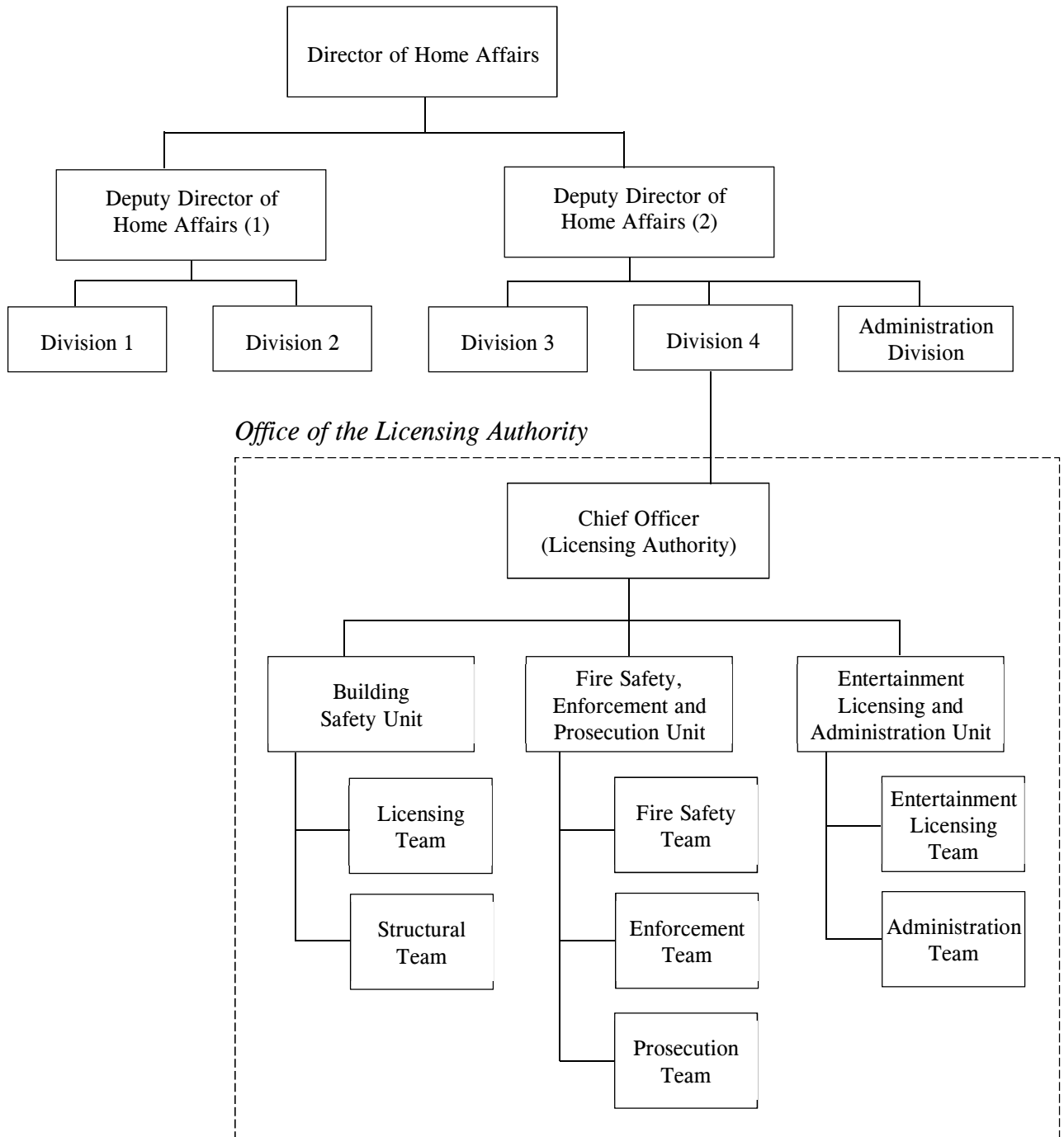
## **Audit recommendation**

4.24 **Audit has *recommended* that the Director of Home Affairs should, in drawing up the proposed guidelines for home-stay lodging, in collaboration with the relevant bureaux and departments, conduct a comprehensive review of issues relevant to home-stay lodging, including those issues raised by Audit in paragraph 4.23.**

## **Response from the Government**

4.25 The Director of Home Affairs agrees with the audit recommendation. She has said that the HAD will explore the feasibility to take forward this audit recommendation.

**Office of the Licensing Authority  
Organisation chart  
(30 June 2017)**



Source: HAD records

## **General licence requirements under Hotel and Guesthouse Accommodation Ordinance**

### **1. Building safety, health and sanitation requirements**

The premises should:

- (a) satisfy the following Codes of Practice issued by the Buildings Department:
  - (i) provision of means of escape in case of fire;
  - (ii) fire resisting construction; and
  - (iii) means of access for firefighting and rescue;
- (b) comply with statutory requirements of the Minor Works Control System;
- (c) be free of unauthorised building works; and
- (d) have:
  - (i) adequate lighting and ventilation; and
  - (ii) sufficient sanitary fitments, i.e. waterclosets, wash hand basins, baths and/or showers, together with proper water supply and drainage systems.

### **2. Fire safety requirements**

The premises should satisfy the requirements under:

- (a) the Fire Services Department's Codes of Practice for minimum fire service installations and equipment and inspection, testing and maintenance of installations and equipment;
- (b) the Building (Ventilating Systems) Regulations (Cap. 123J) for ventilation systems;
- (c) the Electricity (Wiring) Regulations (Cap. 406E) and the relevant codes of practice with regard to all fixed electrical installation works; and
- (d) the Gas Safety Ordinance (Cap. 51) with regard to the use, installation and set up of all gas works.

*Source: HAD records*

### **Chronology of attempts to revise licence fees for hotels and guesthouses (November 2007 to June 2017)**

<b>Item</b>	<b>Date</b>	<b>Key event</b>
1	1.11.2007	A new set of licence fees took effect.
<i>First attempt</i>		
2	10.9.2008	The HAD submitted to the Home Affairs Bureau (HAB) fee proposals (at the 2008-09 price level) for revising the licence fees.  The proposals included the introduction of a new fee structure (i.e. splitting fees of new licences into application fees and licence fees — see para. 4.7(b)) and the licence transfer fee (see para. 4.7(c)).
3	16.4.2009	The HAD dropped the fee proposals, as the Government extended the freeze on fees affecting the public’s livelihood (introduced in July 2008) to March 2010.
<i>Second attempt</i>		
4	9.7.2010	The HAD submitted to the HAB fee proposals (at the 2010-11 price level) for revising the licence fees.
5	7.10.2010	The HAB gave policy support for the fee proposals of July 2010.  However, the HAD did not take forward the proposals, as it planned to revise the licence fees of hotels and guesthouses as well as clubs and bedspace apartments in one go.
<i>Third attempt</i>		
6	12.5.2011	The HAD submitted to the HAB fee proposals (at the 2011-12 price level) for revising the licence fees of hotels and guesthouses, as well as fee proposals for clubs and bedspace apartments.
7	4.5.2012	The HAB’s policy support for the fee proposals of May 2011 was still outstanding.  The HAD proposed to the HAB (which subsequently gave support) to drop the fee proposals due to the following reasons:  (a) the financial year 2011-12 had elapsed; and  (b) a restructuring of the OLA was underway, which would affect licence processing procedures and processing costs.

**Appendix C**  
(Cont'd)  
(paras. 4.7 and 4.8 refer)

Item	Date	Key event
<i>Fourth attempt</i>		
8	23.4.2013	The HAD submitted to the HAB fee proposals (at the 2013-14 price level) for revising the licence fees.
9	2.10.2013	The HAB gave policy support for the fee proposals of April 2013.
10	25.10.2013	The HAD informed the FSTB and the HAB that, since the HAB's policy support was only obtained in October 2013: <ul style="list-style-type: none"> <li>(a) introduction of the new fee structure and the licence transfer fee, which would require more complicated legislative amendments, would be deferred and incorporated into the review of the HAGAO (see para. 1.15); and</li> <li>(b) legislative amendments for revising the existing fees would be postponed from March 2014 to July 2014, which was still within the 2013-14 legislative year.</li> </ul>
<i>Fifth attempt</i>		
11	6.11.2013	The HAD submitted to the HAB and the FSTB fee proposals (at the 2014-15 price level, but without the new fee structure and the licence transfer fee) for revising the licence fees.  The HAB's policy support and the FSTB's endorsement were sought simultaneously.
12	12.12.2013	The HAB gave policy support for the fee proposals of November 2013.
13	20.12.2013	The HAD proposed to the HAB and the FSTB that, to allow more time for consulting the trade, the legislative amendments for revising the existing fees would be postponed from the 2013-14 to the 2014-15 legislative year.
14	4.2014 to 11.2014	The FSTB made enquiries about the fee proposals of November 2013.
15	17.11.2014	The FSTB gave endorsement for the fee proposals of November 2013.



**Appendix C**  
(Cont'd)  
(paras. 4.7 and 4.8 refer)

Item	Date	Key event
16	16.12.2014	<p>The HAD informed the FSTB and the HAB that it would drop the fee proposals due to the following reasons:</p> <p>(a) the schedule to go through the necessary legislative process would be extremely tight; and</p> <p>(b) the review of the HAGAO (see para. 1.15) was underway, which would affect licence processing procedures and processing costs.</p>
<i>Recent developments</i>		
17	15.7.2015	<p>Upon the HAB's enquiry, the HAD deliberated that, having regard to the reaction from the trade to the proposed amendments to the HAGAO, the new fee structure and the new licence fees would not be incorporated into the review of the HAGAO (see item 10), but would be postponed to after the review.</p>
18	up to 30.6.2017	<p>Although the HAD had performed reviews of the licence fees (at the 2016-17 and 2017-18 price levels), it had not submitted fee proposals to the HAB.</p>

Source: *HAD records*

**Acronyms and abbreviations**

Audit	Audit Commission
BSU	Building Safety Unit
FST	Fire Safety Team
FSTB	Financial Services and the Treasury Bureau
HAB	Home Affairs Bureau
HAD	Home Affairs Department
HAGAO	Hotel and Guesthouse Accommodation Ordinance
LegCo	Legislative Council
OLA	Office of the Licensing Authority