

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.