



Guidelines on No-use Restriction Requirement

Introduction

Operation of hotels and guesthouses in Hong Kong is regulated by the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) (“the Ordinance”). The Hotel and Guesthouse Accommodation (Amendment) Ordinance 2020 was gazetted on 19 June 2020 and has come into operation on 1 December 2020. The amended Ordinance empowers the Hotel and Guesthouse Accommodation Authority (“the Authority”) to take into account relevant restrictive provisions in land documents when processing application for new licence or renewal of licence under the new licensing regime. Other factors to be considered include the suitability requirement, fit and proper requirement, local residents’ views and operation requirement¹.

2. Land documents of the premises refer to a deed of mutual covenant (“DMC”) or the land lease. The DMC is a private covenant among the owners, the property management company and the developer of a building. Land lease is a lease of land granted by the Government.

Written legal advice given by a legal practitioner

3. Under the new licensing regime, the Authority has to satisfy that the premises are free from a use restriction and is empowered under the new section 12O(2)(b) of the amended Ordinance to require the applicant to provide a written legal advice² given by a legal practitioner³ on whether there is a restrictive provision in the DMC (in the land lease if there is no DMC) of the premises concerned which prohibits the site from being used:

¹ Operation requirement is applicable to licence renewal only.

² In general, legal practitioner should prepare a written legal advice in respect of the premises under application depending on the contents of the terms of land document concerned.

³ Legal practitioner means a barrister or solicitor as defined by section 2(1) of the Legal Practitioners Ordinance (Cap. 159).

- (i) as a hotel or guesthouse,
- (ii) for commercial purposes; or
- (iii) other than for private residential purpose.

4. Under the new regime, the no-use restriction requirement becomes mandatory for new issue or renewal of a licence. The Authority must refuse to process a licence application if an applicant is unable to provide such valid written legal advice by a legal practitioner to ensure compliance with the no-use restriction requirement. The Authority may also refuse to issue or renew a licence if not satisfied that there is no restrictive provision in the DMC (or the land lease if there is no DMC) of the premises concerned. An example of a written legal advice is at Annex for reference.

5. If the written legal advice clearly shows that it is applicable to the address of the premises under application, or the floor or the whole building where the premises are located, the Authority may consider accepting the practice of sharing the use of the same written legal advice. The first applicant should provide the original copy of the written legal advice and other applicants can provide a copy of the written legal advice thereafter.

6. Provided that a licensee has submitted a written legal advice in respect of his/her licensed premises before, upon application for licence renewal, he/she may either (a) submit an updated written legal advice; or (b) declare that there has been no subsequent change to the prevailing DMC to his/her best knowledge. The latter may be subject to audit check by the Authority. If the audit check reveals a change to the DMC that a restrictive provision currently applies, the Authority would consider to cancel the licence immediately and take appropriate action on any mis-representation.

7. In case where local residents' views provide a contradictory legal advice, the Authority may ask either or both parties for further justifications and seek the advice of the relevant departments as appropriate.

Enquiries

8. For enquiries, please contact the Office of the Licensing Authority through either of the following means –

Telephone 3107 3021
E-mail hadlaapu@had.gov.hk
Postal address Office of the Licensing Authority
Home Affairs Department
10th Floor, 14 Taikoo Wan Road
Taikoo Shing
Hong Kong

Office of the Licensing Authority
Home Affairs Department
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**Example of written legal advice
(solely for reference)**

Dear Sirs,

Re: [Name, detailed address and licence number of the premises under application]

Having considered and perused the Deed of Mutual Covenant registered with Memorial No. [no.] in respect of the above premises, we hereby confirm that the said Deed does not contain any express provision which prohibits the premises concerned from being used (i) as a hotel or guesthouse; (ii) for commercial purposes; or (iii) other than for private residential purposes.

Yours faithfully,

Law Firm