

## **Guidelines on Fit and Proper 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 whether the applicant is a “fit and proper person” when processing application for new licence, renewal or transfer of a licence under the new licensing regime. Other factors to be considered for issue or renewal of licence include the suitability requirement, no-use restriction requirement, local residents’ views and operation requirement<sup>1</sup>.

### **Fit and proper requirement**

2. The fit and proper requirement under the new section 12L(1) of the Ordinance requires that the applicant is a fit and proper person to operate, keep, manage or otherwise have control of a hotel or guesthouse.

3. In considering whether a person is a fit and proper person under the new section 12L(2) of the Ordinance, the Authority must have regard to whether the applicant, or (if the applicant is a body of persons) a related person<sup>2</sup>, has been convicted of an offence under the Ordinance, or any offence (other than an offence under this Ordinance) resulting in imprisonment for more than three months, or is an undischarged bankrupt, in liquidation or the subject of a winding-up order.

4. The Authority may refuse to issue, renew a licence or permit the transfer of a licence respectively if it appears to the Authority that the applicant or (if the applicant is a body of persons) a related person is not a fit and proper person to operate, keep, manage or otherwise have control of a hotel or guesthouse.

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<sup>1</sup> Operation requirement is applicable to licence renewal only.

<sup>2</sup> Under section 12L(4) of the Ordinance, related person, in relation to a body of persons, means – (a) for a body corporate – (i) a director of the body corporate; (ii) a company secretary of the body corporate; or (iii) a person concerned in the management of the body corporate; (b) for a partnership – (i) a partner in the partnership; (ii) a person concerned in the management of the partnership; or (iii) an office holder in the partnership; or (c) for an unincorporated body other than a partnership – (i) a person concerned in the management of the body; or (ii) an office holder in the body.

## **Application for a licence**

5. In submitting an application for new issue, renewal or transfer of a hotel licence or a guesthouse licence, the applicant should declare on the application form the conviction records and financial status on whether he/she or any related person in case of a body of persons –

- (a) has been convicted of an offence under this Ordinance within 5 years preceding the date of application;
- (b) has been convicted of an offence, other than an offence under this Ordinance, in Hong Kong or elsewhere and, in respect of the conviction, sentenced to imprisonment for a term exceeding 3 months within 5 years preceding the date of application; or
- (c) is an undischarged bankrupt, is in liquidation or is the subject of a winding-up order.

6. The applicant or (if the applicant is a body of persons) a related person should also complete an authorisation form and provide the photocopy of his/her identity document for the purpose of checking the conviction records with the Hong Kong Police Force. The applicant should note that he/she may have to provide fingerprint impressions to the Hong Kong Police Force to facilitate the checking process.

7. The applicant or (if the applicant is a body of persons) a related person should also complete a consent form and provide the photocopy of his/her identity document to allow the Authority to check with the Official Receiver on the bankrupt/liquidation/winding-up order record of the applicant or any related person in case of a body of persons.

8. Depending on the circumstances, an application may be rejected without processing further under the following circumstances –

- (a) the applicant or any related person in case of a body of persons fails to provide the relevant declaration of the conviction records and financial status on the application form or refuses to submit the completed authorisation form(s) before issuance of licence;

- (b) the applicant or any related person in case of a body of persons has been convicted of an offence under the Ordinance and the offence was committed less than 5 years prior to the date of application;
- (c) the applicant or any related person in case of a body of persons has been convicted of an offence, other than an offence under the Ordinance, in Hong Kong or elsewhere in respect of which the person has been sentenced to imprisonment for a term exceeding 3 months, and the offence was committed less than 5 years prior to the date of application;
- (d) currently the applicant or any related person in case of a body of persons is an undischarged bankrupt, is in liquidation or is the subject of a winding-up order; or
- (e) the applicant or any related person in case of a body of persons is otherwise not a fit and proper person<sup>3</sup>.

### **Validity period of the licence**

9. Under section 12H of the amended Ordinance, the licence period of a licence is to be specified by the Authority. Hotel/guesthouse licence with a validity period exceeding 12 months will only be issued to applicant/transferee having “relevant experience” of supervising the operation, keeping, management and control of licensed hotel/guesthouse for 12 months preceding the date of the application. For avoidance of doubt, “relevant experience” also takes into account whether the licensee has breached any licensing condition of any hotel(s)/guesthouse(s) under his/her control resulting in warning letter issued by the Authority within 12 months preceding the date of the application. Notwithstanding this, the final validity period of a licence is to be specified by the Authority.

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<sup>3</sup> A number of other factors will be considered on a case-by-case basis if applicable. Other factors include whether the conviction of the person is for an offence for which it is necessary to find out the person has acted fraudulently, corruptly or dishonestly; whether the person has entered into a composition or arrangement with his or her creditors; whether a receiver has been appointed; whether the person is a mentally disordered person; and whether the person or a related person is a director, officer, partner or sole proprietor in a business entity whose application for a hotel licence or a guesthouse licence has been refused or whose licence has been revoked or suspended. The applicant has to provide such information (if any) in the application form.

10. If such warning letter is issued to the hotel/guesthouse under a renewal application, the licensee may not fulfil the operation requirement under section 12M<sup>4</sup> of the amended Ordinance. As a general rule, if the subject matter(s) in the warning letter has not been resolved or rectified to the satisfaction of the Authority at the time of the application, the application for renewal may be refused. Otherwise, the licence may be renewed for a validity period of not more than 12 months.

11. The aforesaid requirements for determining multi-year licence are generally in line with the administrative measures before the commencement of the amended Ordinance.

### **Transitional arrangements**

12. To allow existing licence holders making preparation for migration to the new regime, the Authority has put in place a transitional period of 12 months (from 1 December 2020 to 30 November 2021). If an existing licence expires before the end of the transitional period (i.e. on 30 November 2021 or before) and its renewal application is submitted between 1 September 2020 and 30 November 2021 (both dates inclusive), the renewal application can be processed in accordance with the requirements under the old regime and the licence can be renewed for a period not exceeding 12 months. Upon expiry of the licence, the licensee will have to meet all new requirements for further renewal of the licence.

13. For a new licence or transfer application made under the old regime and has yet to be determined by 1 December 2020, the Authority may approve to issue a licence for a duration not exceeding 12 months or allow the transfer of a licence based on the requirements under the old regime.

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<sup>4</sup> Under section 12M(1)(b) of the amended Ordinance, the operation requirement is not satisfied if a condition of the licence has not been or is not being complied with by the licence holder.

## **Enquiries**

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

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**Office of the Licensing Authority**  
**Home Affairs Department**  
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