



本署檔號 Our Ref. HAD/LA/1/88

電話 Tel.: 3107 3021
傳真 Fax: 2894 8343

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To whom it may concern,

**Hotel and Guesthouse Accommodation (Amendment) Ordinance 2020
will commence on 1 December 2020**

Operation of hotels and guesthouses in Hong Kong is regulated by the Hotel and Guesthouse Accommodation Ordinance (Ordinance). According to the Ordinance, "hotel" and "guesthouse" mean any premises whose occupier, proprietor or tenant holds out that, to the extent of his available accommodation, he will provide sleeping accommodation at a fee for any person presenting himself at the premises. Any premises providing short-term sleeping accommodation at a fee, if the mode of operation falls within the definition of "hotel" and "guesthouse" under the Ordinance, a hotel or a guesthouse licence must be obtained before lawful operation. However, premises in which all accommodation is provided for a period of 28 continuous days or more for each letting are excluded from the application of the Ordinance. The Office of the Licensing Authority (OLA) under the Home Affairs Department (HAD) is responsible for administering the Ordinance, including issuing licences and performing enforcement duties.

2. Passed by the Legislative Council, the Hotel and Guesthouse Accommodation (Amendment) Ordinance 2020 (Amendment Ordinance) would take effect on 1 December 2020 so as to improve the existing licensing regime, facilitate enforcement actions, and enhance deterrence. The main points are explained at the attached information note.

3. For enquiries related to the Amendment Ordinance or the application of licence, please contact us at 3107 3021.

Yours faithfully,

(SIGNED)

(Ms. PANG Mei-tuan, Pauline)
Chief Officer (Licensing Authority)
Office of the Licensing Authority

Information Note:

Hotel and Guesthouse Accommodation (Amendment) Ordinance 2020

The Hotel and Guesthouse Accommodation (Amendment) Ordinance 2020 (“Amendment Ordinance”) will take effect on **1 December 2020**. The legislative amendment aims to:

- (a) improving the existing licensing regime by empowering the Hotel and Guesthouse Accommodation Authority (“the Authority”) to take into account relevant restrictive provisions in land documents and local residents’ views in the licensing process, and introducing a number of enhancement measures to better protect the lodgers and the public;
- (b) facilitating enforcement actions against unlicensed hotels and guesthouses by introducing a “strict liability” offence and empowering the Authority to apply for search warrants; and
- (c) enhancing deterrence by increasing the penalties for offences under the law, and empowering the Authority to apply for closure of premises in particular cases.

New Licensing Regime

2. After implementation of the Amendment Ordinance, application of licence will have to meet the requirements under the new regime, including the following major items:

(a) Consideration of Land Documents

The applicant is required to provide a written legal advice given by a legal practitioner on whether there is any restrictive provision in the deed of mutual covenant (DMC) or land lease concerned. There shall be no express provision which prohibits the premises concerned from being used as a hotel or guesthouse, for commercial purpose, or otherwise than for private residential purpose.

(b) Local Consultation

The Authority will set up an advisory panel, comprising professionals, local communities and members of the industry, etc., to collect and consider views submitted by affected residents (“local consultation”). Where the premises concerned form part of the building, the affected residents will be those in the same building unless otherwise specified by the Authority, and where the premises concerned take up the whole building, the affected residents will be those of other buildings in the immediate vicinity. In general, the advisory panel would invite the affected residents, through letter or notice, to provide views by written submission or participating in the panel meeting. Applicants might be required to provide supplementary information or respond to the questions raised by the advisory panel. The recommendations of the panel are not binding, but are among the factors which the Authority may take into account in deciding whether or not a licence should be issued, and whether or not to impose suitable licensing conditions.

(c) “Fit and Proper” Person

The individual applicant or the related persons of a body (if the applicant is a body of persons) are required to declare in the application form that, he is a “fit and proper” person, i.e. whether the applicant or related persons of the body have committed an offence under the Hotel and Guesthouse Accommodation Ordinance, or any other serious offence, or an undischarged bankrupt, in liquidation or the subject of a winding-up order. The Authority will take into account the declaration when considering the application.

(d) Differentiation of “hotel licence” and “guesthouse licence”

Guesthouses are prohibited from using of the word “酒店” or “Hotel” in their business name.

Business Facilitation

3. The regulatory regime under the Hotel and Guesthouse Accommodation Ordinance, under the premise that public safety is safeguarded, also offer sufficient flexibility to cater for and to facilitate the licence application for premises providing short-term accommodation under different modes of business operation, including guesthouses in general, holiday flats, holiday camps, caravan camp sites, Homestay Lodging, etc. When the Authority considers the licence application for premises providing short-term accommodation, the regulatory requirements to be imposed on the premises are proportionate to the scale and mode of operation of the premises. For those who would like to apply for a licence for lawful operation, please contact the Office of the Licensing Authority (OLA).

Enforcement and Prosecution against Unlicensed Hotels and Guesthouses

4. In order to combat unlicensed hotels and guesthouses, the Amendment Ordinance introduces a new offence, empowers the Authority new enforcement power and increases the penalties for offences under the Ordinance. Details are as below:

(a) Strict Liability Offence

If there is evidence which proves that the premises are used as an unlicensed hotel or guesthouse, the **owners** and **tenants** of the premises (which refer to persons given exclusive possession of the premises concerned under a tenancy and do not include guests patronising the premises) will be held criminally liable, unless they can provide a relevant statutory defence. The owners and tenants of the premises are urged not to operate unlicensed hotel or guesthouse, and are expected to ensure the premises are not put in illegal use. If there is information regarding suspected unlicensed hotels or guesthouses, please report it to the OLA by the hotline (Hotline Tel: 2881 7498).

(b) Search Warrant

The Amendment Ordinance empowers the Authority to apply to the court for a search warrant to allow enforcement officers to break into, with reasonable force when necessary, a suspected unlicensed hotel or guesthouse to inspect or collect evidence.

(c) Increasing the Maximum Penalty

The maximum penalty will be increased from a fine of \$200,000 to \$500,000, and imprisonment from 2 years to 3 years.

(d) Closure Order for Repeated Offence

According to the Amendment Ordinance, the Authority would arrange for a written notice, about those premises that used as unlicensed hotels or guesthouses, to be registered in the Land Registry. The amended Ordinance also empowers the Authority to apply to the court, upon the second conviction within 16 months of operating an unlicensed hotel or guesthouse or the new strict liability offence in respect of the same premises, to issue a closure order for the premises for 6 months.

Commencement Date and Transitional Arrangement for Existing Licence Holders

5. The amended Ordinance will commence on 1 December 2020. All new applications shall be processed in accordance with the requirements under the new regime. Also, the Authority could exercise the power granted by the Amendment Ordinance in respect of enforcement and prosecution work with immediate effect for the newly introduced and existing offences under the Ordinance. To allow existing licence holders making preparation for migration to the new regime, we will put in place a transitional period of 12 months. After the end of the transitional period (i.e. after 30 November 2021), the licensee will have to meet all new requirements for renewal of the licence.