

A Layman's Guide to Licence Applications

under the Hotel & Guesthouse
Accommodation Ordinance (Chapter 349)

Office of the Licensing Authority
Home Affairs Department

March 2017

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1.Introduction

This guide explains how to apply for a licence under the Hotel and Guesthouse Accommodation Ordinance (HAGAO), Chapter 349 of the Laws of the Hong Kong Special Administrative Region.

- Under HAGAO, any person who intends to operate, keep, manage or otherwise has control of the following premises should apply for and hold a valid licence before commencing operation -
 - hotel
 - guesthouse (general)
 - guesthouse (holiday camp)
 - guesthouse (holiday flat)

- The authority for the issue/renew of a licence and the enforcement work under HAGAO is the Hotel and Guesthouse Accommodation Authority (Licensing Authority). Application can be submitted to the Office of the Licensing Authority, Home Affairs Department.

2.General requirements

The purpose of the licensing system is to ensure that premises licensed under HAGAO reach certain standards in respect of building and fire safety, health and sanitation so as to safeguard the patrons and the employees therein. The general requirements are specified below.

Building safety, health and sanitation requirements

The premises should -

- Satisfy the following Codes of Practice issued by the Buildings Department -
 - provision of means of escape in case of fire
 - fire resisting construction
 - means of access for firefighting and rescue;
- Comply with statutory requirements of the Minor Works Control System;
- Be free of unauthorized building works; and
- Have -
 - adequate lighting and ventilation; and
 - sufficient sanitary fitments, ie. waterclosets, wash hand basins, baths and/or showers, together with proper water supply and drainage systems.

Fire safety requirements

The premises should satisfy the requirements under -

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

Choice of location

In choosing premises, applicants are required to note the following -

- The premises should be for domestic or hotel/guesthouse use approved by the Building Authority or situated in a domestic use village type house.
- A Deed of Mutual Covenant (DMC) is a private covenant among the owners, the property manager and the developer of a building. Engaged parties are empowered to act under the power conferred by the DMC to enforce the DMC provisions in relation to the control, management and administration of the building. They may also take appropriate actions and measures against any owner who does not comply with the DMC. The operator of a licensed guesthouse, as one of the occupants of the building, is obliged to observe and comply with all the provisions of the DMC. A guesthouse licence issued by the Hotel and Guesthouse Accommodation Authority does not act as a waiver of any terms in any lease, tenancy agreement or licence granted by the Government, nor does it affect or change the provisions of the DMC or other covenants relating to the building in which the guesthouse is situated. The issuance of a licence does not exempt or protect the licence holder from any consequence and liability of any breach of the laws, DMC or other leases and agreements. Applicant should check in advance whether his application would be in contravention of the above documents in order to avoid any dispute or litigation that may arise. The applicant should seek legal advice where necessary. (Copy of DMC or Government Lease can be obtained from the Land Registry for a fee.)
- If the chosen premises is for non-domestic use approved by the Building Authority, written acceptance from the Building Authority should be obtained for the proposed change in use from non-domestic to domestic/hotel under the Buildings

Ordinance (Cap.123) prior to the conversion to the hotel/guesthouse. Otherwise, the Licensing Authority may refuse the application under HAGAO.

- Premises situated in village type houses in the New Territories should -
 - comply with the requirements set out in the Buildings Ordinance (Application to the New Territories) Ordinance (Cap.121);and
 - be issued with a Certificate of Compliance or a letter of No Objection to Occupy by the District Lands Office of the Lands Department.

The Licensing Authority will not issue a licence in respect of premises situated in -

- An industrial building;
- A basement;
- An unauthorized structure;
- A building which contains any of the following incompatible uses -
 - a motor repair shop;
 - a vulcanizing shop;
 - automobile or carriage painting; and/or
 - a paint shop where paint or varnish is manufactured or mixed.
- Areas designed for emergency or circulation use such as the “buffer” floor or the common area of a building;
- Areas for manufacturing of any dangerous goods within the meaning of the Dangerous Goods Ordinance (Chapter 295); or
- Accommodation adjoining a dangerous goods storage area;
- Upper floors* (i.e. all floors above the ground floor) of a building (except it is permitted under the Code of Practice for the Provision of Means of Escape in case

of Fire issued by the Building Authority in August 1996 (MoE Code 1996) to have a single staircase) which has not been constructed to have not less than 2 exit routes each with minimum width of 1050 mm or such greater number and minimum width of exit routes as required under MoE Code 1996; or

- Upper floors* (i.e. all floors above the ground floor) of a single staircase building but does not comply with the relevant requirements in the MoE Code 1996.

** : For premises in a pre-war building or building whose building plans were approved prior to the adoption of the standards set out in the MoE Code 1996, the standards laid down in MoE Code 1986 will be applied.*

The Licensing Authority may consider equivalent standards acceptable under the HAGAO, if the above requirements could not be achieved or maintained by reason of design, type, construction, structure or location of the building in which the premises are situated.

3. Administrative enhancement measures

To enhance the safety and management of premises being licensed as a hotel or a guesthouse under HAGAO,

- a third party risks insurance (public liability insurance) policy with a minimum limit of indemnity of HK\$10 million per event and cover for unlimited events for any one period of insurance is required to be taken out by the applicant in respect of the use of the licensed premises by any person;
- a 24-hour manned counter is required to be installed at the licensed guesthouse (general); and
- four different forms of licences viz Hotel, Guesthouse(General), Guesthouse(Holiday Camp) and Guesthouse(Holiday Flat) licences will be issued by the Licensing Authority under HAGAO on the basis of the approved use of the premises.

For details, please read the letter to licensees/applicants dated 11 December 2015 and its attached “Guideline on New Licensing Requirements Under the Hotel and Guesthouse Accommodation Ordinance (Cap. 349)” at the column ‘General Advice to Licence/Certificate of Compliance/Permit Holders and Potential Applicants’ on the website of the Office of the Licensing Authority (www.hadla.gov.hk).

4. Licence application procedure

Documents to accompany the application form

- the original and one copy of the completed application form;
- a photocopy of the Hong Kong Identity Card of the applicant (if the applicant is an individual) or business registration certificate of the applicant (if the applicant is a limited company);
- If applicant is not a permanent resident of Hong Kong, he / she should submit the completed “consent form” at Appendix I of the application form and a copy of his / her travel document;
- a photocopy of the business registration certificate of the hotel/guesthouse (may be submitted before the licence is issued);
- a copy of insurance proof (e.g. the valid insurance policy, certificate of insurance, etc. issued by the insurance company) for procurement of third party risks insurance (public liability insurance) policy with a minimum limit of indemnity of HK\$10 million per event and cover for unlimited event for any one period of insurance (may be submitted before the licence is issued if the required insurance information is not duly provided in the application form);
- 3 sets of detailed layout plans in metric and to scale (normal not less than 1:100) with the boundary of the premises of the hotel/ guesthouse area under this licence application clearly delineated and partitions layout of the hotel/guesthouse shown;
- Evidence showing that the Building Authority has granted prior approval for the change of use of the premises from non-domestic to domestic use (if the proposed guesthouse/hotel is situated in premises approved by the Building Authority for non-domestic use);

- a Certificate of Compliance or a letter of No Objection to Occupy issued by the District Lands Office of the Lands Department (if the proposed guesthouse/hotel is a village type house in the New Territories).

The application may not be considered if the applicant fails to provide all the information requested.

The layout plans should contain the following particulars in detail -

- The area intended for licence clearly delineated;
- Intended use of all designated areas and rooms, with the necessary dimensions and annotations;
- All existing and/or proposed building works in the premises;
- The types, standards and specifications of all materials used and/or intended to be used in the premises;
- All existing and proposed sanitary fitments and drainage works;
- The location of all windows, ventilation ducting and means of mechanical ventilation;
- The extent and details of raised floors, partitions and other alterations; and
- The location, extent and details of the 24-hour manned counter.

Appointment of authorized persons/registered contractors

Applicants are strongly recommended to appoint an authorized person (AP) to advise on the suitability and layout of the premises and to prepare plans for the licence application; applicants are also recommended to appoint a registered general building contractor registered with the Buildings Department to carry out all the upgrading works.

For the following works, the appointment of registered contractors is essential -

- Ventilation works - a registered specialist contractor (ventilation works) registered with the Buildings Department;
- Fire service installations and equipment - a fire service installation (FSI) contractor registered with the Fire Services Department;
- Electrical installation works - an electrical contractor/worker registered with the Electrical and Mechanical Services Department; and
- Gas works - a gas contractor registered with the Electrical and Mechanical Services Department.

[The lists of APs and relevant registered contractors are available for inspection free of charge in the offices and websites of the Buildings Department, the Fire Services Department and the Electrical and Mechanical Services Department.]

Process

Key steps	Details
Submission of application	<ul style="list-style-type: none">● The applicant shall complete an application form (Form HAD 133) and submit the original and a copy to the Licensing Authority together with the necessary supporting documents.
Inspection and issue of a list of required upgrading works	<ul style="list-style-type: none">● On receipt of the application, the Licensing Authority will contact the applicant for inspection of the premises at a mutually convenient time.● The Licensing Authority will issue a letter listing out all the required upgrading works. The letter will enclose a “Report of Completion” form.
Completion of upgrading works	<ul style="list-style-type: none">● The applicant should complete all the upgrading works as soon as possible.● Upon completion of all the works, the applicant shall complete the “Report of Completion” form and return it to the Licensing Authority together with all the certificates and relevant documentation.

Key steps	Details
Final compliance inspection	<ul style="list-style-type: none"> ● Upon receipt of the Report of Completion, the Licensing Authority will contact the applicant for a final inspection of the premises at a mutually convenient time.
Issue of licence and submission of as-built drawings	<ul style="list-style-type: none"> ● When all works are found satisfactorily completed and all required certificates/documents have been checked and in order, the Licensing Authority will notify the applicant for provision of the required insurance proof, payment of the prescribed fee and collection of the licence. ● The applicant will be requested to submit 2 sets of as-built general layout and fire services installation drawings of the subject premises for endorsement by the Licensing Authority. One set of the endorsed plans will be returned to the applicant.

If the upgrading works cannot be completed by the time specified by the Licensing Authority, the applicant should notify the Licensing Authority and apply for extension of time.

If the applicant fails to complete the upgrading works within a reasonable period of time, the Licensing Authority may consider refusing the application.

When all the requirements under HAGAO are satisfied, the licence will be issued upon payment of the prescribed fee and provision of the required insurance proof (if the required insurance information is not duly provided in the application form).

5. Licence Renewal

There is a validity period for licences issued under HAGAO. A person holding a licence in respect of a hotel and guesthouse should apply for renewal not less than 3 months prior to the expiry of the licence.

The process

- The licence holder should ensure all conditions stipulated in the licence are fully complied with;
- The licence holder shall submit the Renewal Application Form (HAD 140) together with the following documents and certificates to the Licensing Authority –
 - a copy of valid Certificate of Fire Service Installations and Equipment (F.S. 251) issued by a registered fire service contractor who certified that all fire services installations and equipment in the licensed premises are in efficient working order;
 - a copy of valid “Work Completion Certificate – Form WR1” or “Periodic Test Certificate – Form WR2” issued by a registered electrical worker who certified that the Fixed Electrical Installation complies with the Electrical Ordinance and is in safe working order in the premises, where -
 - If a low voltage fixed electrical installation located in such premises that has an approved loading exceeding 100A, single or three phase, shall have the installation inspected, tested and certified at least once every 5 years; or
 - If a low voltage fixed electrical installation located in the premises that is used for sleeping accommodation such as hotel, guesthouse, holiday flat and holiday camp shall have the installation inspected, tested and certified at least once every 5 years.

- a copy of valid annual ventilation maintenance certificate issued by a registered ventilation contractor who certified that all dampers / filters / precipitators in the ventilating system(s) are in safe and efficient working order in the premises where damper, filter and precipitator are presented in the ventilating system; and
 - a copy of valid annual documentary proof (e.g. valid insurance policy, certificate of insurance, etc. issued by the insurance company) for procurement of third party risks insurance (public liability insurance) policy with a minimum limit of indemnity of HK\$10 million per event and cover for unlimited event for any one period of insurance (may be submitted before the licence is issued if the required insurance information is not duly provided in the application form).
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- The Licensing Authority will inspect the premises to ensure that basic fire and building safety requirements are complied with and maintained; and
 - When all the requirements under HAGAO are satisfied, the licence will be renewed upon payment of the prescribed fee and provision of the required insurance proof (if the required insurance information is not duly provided in the application form).

6. Licence Transfer

Important Note

Under section 12(2) of the Hotel and Guesthouse Ordinance (Cap. 349), the Authority has a discretionary power to determine whether or not to permit a transfer application. In this connection, the applicant has to submit an application in such form and manner as determined by the Authority and there should be a cause shown to the Authority's satisfaction.

Application

If the person holding a licence intends to transfer the business operation to another person/company, such person has to -

- Complete Form HAD 141; and
- Ensure that the transferee is well aware of all the conditions, obligations, duties and restrictions in the current licence.

Refusal

A transfer may be refused if -

- The licence is about to expire;
- The licence is not valid;
- Special conditions stipulated in the licence have not been fully complied with and the date for compliance has already expired; or
- The prescribed fee not duly paid.

7. Appeal

Any person who objects to a decision of the Licensing Authority with regard to an application, renewal, transfer, cancellation or suspension of a licence may lodge an appeal with the Appeal Board under HAGAO, using the appeal form - Notice of Appeal (Form 1).

Points to note

When lodging an appeal, the appellant should note that-

- An appeal must be lodged in the prescribed form within 28 days after receiving the notice of the decision to which the appeal relates;
- The appellant should specify the grounds of the appeal, the particulars of evidence, etc. in the Notice of Appeal to the Chairman of the Appeal Board, copied to the Hotel and Guesthouse Accommodation Authority;
- A date and time for hearing the appeal will be fixed by the Chairman;
- The hearing will normally be conducted in public; and
- The Appeal Board may decide on costs involved in the appeal to be paid by either party.

Note :

1. *The Hotel and Guesthouse Accommodation (Fees) (Amendment) Regulation 2001 came into effect on 21 December 2001. With effect from the same date, licence may be issued/renewed for a period of up to 84 months. Applications for issue/renewal of licence for a period exceeding 12 months will be considered on a case by case basis. In general, such licences will be issued to establishments which have good records of compliance with the fire and building safety standards. For licences with a validity period of more than 36 months, the hotel/guesthouse premises should be a “purpose built” building in that it was designed and constructed as a hotel/guesthouse; and the licensees are additionally required to submit to the Licensing Authority an “Authorized Person’s Certificate” in respect of the premises to ensure fire and building safety, annually.*
2. *The Application Form, forms on renewal, transfer and appeal of HAGAO Licence can be obtained from the Licensing Authority. They can also be downloaded from the HAD website <http://www.had.gov.hk>*
3. *Other Liability*

A Deed of Mutual Covenant (DMC) is a private covenant among the owners, the property manager and the developer of a building. Engaged parties are empowered to act under the power conferred by the DMC to enforce the DMC provisions in relation to the control, management and administration of the building. They may also take appropriate actions and measures against any owner who does not comply with the DMC. The operator of a licensed hotel/guesthouse, as one of the occupants of the building, is obliged to observe and comply with all the provisions of the DMC.

A hotel/guesthouse licence issued by the Hotel and Guesthouse Accommodation Authority does not act as a waiver of any terms in any lease, tenancy agreement or licence granted by the Government, nor does it affect or change the provisions of the DMC or other covenants relating to the building in which the

guesthouse is situated. The issuance of a licence does not exempt or protect the licence holder from any consequence and liability of any breach of the laws, DMC or other leases and agreements.

In view of the concerns raised by owners of private buildings in respect of guesthouses operated in their buildings, the Office of the Licensing Authority (OLA) has implemented a Notification System with effect from April 2014 to inform the owners and residents of the buildings concerned of receipt of new or renewal application for guesthouse (general) licence.

Under the Notification System, the OLA will issue letters to the owners' corporation (OC)/residents' organization (RO) and/or the property management company (PMC) of the building concerned, as well as the owner of the premises concerned to inform them that an application for guesthouse (general) licence has been received and is being processed by the OLA. For those buildings without any OC/RO and are not managed by any PMC, letters will be issued to all individual occupants of the buildings concerned.

Two letters will be issued by the OLA. The first letter will be issued shortly after the OLA has received a new/renewal licence application. The second letter will be issued shortly before the new/renewal application is to be approved by the OLA. The "address of the prospective/licensed guesthouse (general)", "type of application" (i.e. new or renewal application) and "date of receipt of the new/renewal application" will be provided in the letters. Details of applicants, including personal information, will not be disclosed. Such information will also be uploaded onto the OLA's website (<http://www.hadla.gov.hk>).

In the light of the experience in combatting unlicensed hotels/guesthouses and licensing of hotels/guesthouses in recent years, the Home Affairs Department conducted a territory-wide consultation on the Review of the Hotel and Guesthouse Accommodation Ordinance in July 2014. Setting out a series of proposals, the consultation document aims to further enhance the effectiveness of enforcement actions against unlicensed hotels/guesthouses, and improve the licensing regime to minimise any impacts on residents. At the meeting of the Legislative Council Panel on

Home Affairs held on 24 March 2015, the Legislative Council Members were informed of the outcome of the public consultation exercise and the proposed way forward. The proposals include, inter alia, the implementation of administrative enhancement measures to the existing licensing regime of hotels and guesthouses.

To enhance the safety and management of the premises licensed under the Hotel and Guesthouse Accommodation Ordinance, three enhancement measures have been implemented with effect from 28 December 2015. For details, please read the letter to licensees/applicants dated 11 December 2015 and its attached “Guideline on New Licensing Requirements Under the Hotel and Guesthouse Accommodation Ordinance (Cap. 349)” at the column ‘General Advice to Licence/Certificate of Compliance/Permit Holders and Potential Applicants’ on the website of the Office of the Licensing Authority (www.hadla.gov.hk).

To avoid any inconvenience that might cause to you, you are advised to continue to keep track of the developments of other measures proposed in the consultation. Please check the ‘Latest News’ on the website of the Office of the Licensing Authority (www.hadla.gov.hk) for details.

8. Enquiries

Applications and enquiries should be made to -

Office of the Licensing Authority

Home Affairs Department

10th Floor, Cityplaza 3,

14 Taikoo Wan Road,

Taikoo Shing,

Hong Kong

Enquiry telephone (*general issues*): 2881 7034

Enquiry telephone (*administrative enhancement measures*): 3107 3021

Fax number: 2894 8343

Other useful addresses

Buildings Department

- 12th Floor, Pioneer Centre,
750 Nathan Road, Mong Kok,
Kowloon, Hong Kong.
Tel: 2626 1616 Fax: 2840 0451

Fire Services Department

- Licensing & Certificate Command
5th Floor, South Wing,
Fire Services Headquarters Building,
No 1, Hong Chong Road,
Tsim Sha Tsui East, Kowloon.
Tel: 2733 7619 Fax: 2367 3631

- Ventilation Division
5th Floor, South Wing,
Fire Services Headquarters Building,
No 1, Hong Chong Road,
Tsim Sha Tsui East, Kowloon.
Tel: 2718 7567 Fax: 2382 2495

Electrical & Mechanical Services Department

- Head Office
3 Kai Shing Street,
Kowloon.
Tel: 1823 Fax: 2890 7493
- The Gas Authority
3 Kai Shing Street,
Kowloon.
Tel: 1823 Fax: 2576 5945
- Electricity Legislation Division
3 Kai Shing Street,
Kowloon.
Tel: 1823 Fax: 2895 4929

The Land Registry

- 19th Floor, Queensway Government Offices,
66 Queensway, Hong Kong.
Tel: 3105 0000 Fax: 2523 0065