

Hotel and Guesthouse Accommodation (Amendment) Ordinance 2020 to commence tomorrow

The Hotel and Guesthouse Accommodation (Amendment) Ordinance 2020 (Amendment Ordinance) will take effect from tomorrow (December 1).

"The Amendment Ordinance seeks to improve the existing licensing regime, facilitate enforcement actions and enhance deterrence against unlicensed hotels and guesthouses," a spokesman for the Home Affairs Bureau said.

To improve the existing licensing regime, the Amendment Ordinance empowers the Hotel and Guesthouse Accommodation Authority (Authority) to take into account in the licensing process the relevant restrictive provisions in land documents, affected persons' views, and whether the licence applicant is a "fit and proper" person. The Amendment Ordinance also provides for a differentiation between a hotel licence and a guesthouse licence, and empowers the Authority to impose a licence condition on a guesthouse licence to prohibit the use of the word "hotel" in its business name.

"To allow existing licensees sufficient time for migrating to the new regime, we will put in place a transitional period of 12 months after the commencement of the Amendment Ordinance. During the transitional period, licensees can apply for a licence renewal based on the original requirements for a period not exceeding 12 months," the spokesman added.

To facilitate enforcement actions, the Amendment Ordinance introduces 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. Moreover, in order to combat unlicensed hotels and guesthouses, 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, any suspected premises to inspect or collect evidence.

As regards enhancing deterrence, the Amendment Ordinance empowers the Authority to arrange for a written notice, about those premises that used as unlicensed hotels or guesthouses, to be registered in the Land Registry. The Authority can also 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 six months. The maximum penalty for operating an unlicensed hotel or guesthouse will also be increased from a fine of \$200,000 to \$500,000, and imprisonment from two years to three years.

"Upon the commencement of the Amendment Ordinance, the Home Affairs Department (HAD) will be able to combat unlicensed hotels and guesthouses more effectively. Meanwhile, the Amendment Ordinance will improve the regulatory regime, enhance the service quality of the trade, and promote visitors' confidence," said the spokesman.

According to the Hotel and Guesthouse Accommodation Ordinance (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. 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, as stipulated in the Hotel and Guesthouse Accommodation (Exclusion) Order (Cap. 349C).

For details of the Amendment Ordinance, please contact the Office of the Licensing Authority (OLA) under the HAD at 3107 3021 or visit the website of the OLA (www.hadla.gov.hk).