

LCQ11: Combating the operation of unlicensed hotels or guesthouses

Following is a question by the Hon Yiu Pak-leung and a written reply by the Secretary for Home and Youth Affairs, Miss Alice Mak, in the Legislative Council today (June 21):

Question:

According to the Hotel and Guesthouse Accommodation Ordinance (Cap. 349), operating or managing an unlicensed hotel or guesthouse is a criminal offence. It has been reported that during the COVID-19 epidemic, some people rented out yachts for use as "floating guesthouses". Some members of the hotel and guesthouse industries have also relayed that since the full resumption of normal travel between Hong Kong and the Mainland in early February this year, some operators of unlicensed hotels or guesthouses have accepted room reservations via online platforms. In this connection, will the Government inform this Council:

- (1) of the number of complaints in relation to unlicensed hotels or guesthouses received by the authorities in each of the past six months, and the respective numbers of persons who were prosecuted and convicted;
- (2) of the following information on the law enforcement actions taken by the authorities in respect of suspected operation of unlicensed hotels or guesthouses in each of the past six months: (i) the number of inspections, (ii) the districts inspected, and (iii) the number of times for which evidence was collected by means of decoy operations;
- (3) given that according to section 5(1) of Cap. 349, a person commits an offence if the person operates, keeps, manages or otherwise has control of any premises that are a hotel or guesthouse while no licence is in force for the premises, whether the provision applies to pleasure vessels used for residential purposes in the waters of Hong Kong; if so, of the details; and
- (4) of the concrete plans the Government has in place to step up the efforts in combating unlicensed hotels or guesthouses and conduct more publicity and promotion for Cap. 349, so as to enhance the deterrent effect?

Reply:

President,

Operation of hotels or guesthouses in Hong Kong is regulated by the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) (the Ordinance). The Ordinance aims to ensure that premises intended to be used as hotels or guesthouses are suitable for such a purpose, including compliance with statutory standards in respect of building and fire safety to safeguard

lodgers and members of the public. As stipulated in the Hotel and Guesthouse Accommodation (Exclusion) Order (Cap. 349C), if a premise in which all accommodation is provided for a period of 28 continuous days or more for each letting, it is excluded from the application of the Ordinance.

The Office of the Licensing Authority (OLA) under the Home Affairs Department is responsible for administering the Ordinance, including issuing licences and performing enforcement duties.

In consultation with the Transport and Logistics Bureau, our reply to the question raised by the Hon Yiu is as follows:

(1) The number of complaints related to suspected unlicensed hotels or guesthouses received by the OLA and the enforcement statistics in the last six months (from December 2022 to May 2023) are provided below:

€€	Dec 2022	Jan 2023	Feb 2023	Mar 2023	Apr 2023	May 2023	Total
Number of Complaints	14	98	19	54	54	141	380
Number of Prosecutions*	6	4	5	7	4	13	39
Number of Convictions*	5	5	8	5	7	0	30

*The number of prosecutions and convictions for operating unlicensed hotels or guesthouses usually relate to incidents happened before that particular month.

(2) The statistics of inspections to suspected unlicensed hotels or guesthouses carried out by the OLA in each of the 18 districts in the last six months (from December 2022 to May 2023) are provided below:

District	Dec 2022	Jan 2023	Feb 2023	Mar 2023	Apr 2023	May 2023	Total
Islands	79	47	49	46	35	30	286
North	16	3	3	4	3	3	32
Sai Kung	28	9	17	16	18	11	99
Sha Tin	6	1	2	1	3	5	18
Tai Po	5	1	0	2	2	3	13
Tsuen Wan	9	2	4	4	5	6	30
Tuen Mun	14	3	2	4	5	6	34
Yuen Long	40	11	14	18	12	11	106
Kwai Tsing	1	1	2	0	0	2	6

Central and Western	45	9	22	23	31	13	143
Wan Chai	119	27	33	39	49	66	333
Eastern	34	11	10	6	8	7	76
Southern	2	2	3	1	1	7	16
Kowloon City	6	2	2	2	3	2	17
Kwun Tong	4	3	4	2	1	1	15
Sham Shui Po	41	5	13	11	16	9	95
Wong Tai Sin	1	1	2	1	1	1	7
Yau Tsim Mong	587	291	277	329	342	438	2 264
Total	1 037	429	459	509	535	621	3 590

In order not to undermine investigation and enforcement work in the future, it would not be appropriate to disclose the specific investigation tactics adopted by the OLA (including collecting evidence by posing as clients (commonly known as "snaking")) and the related statistics.

(3) Pleasure vessels are outside the scope of the Ordinance. Under the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulations (Cap. 548D), a pleasure vessel (i.e. Class IV vessel) shall only be used by its owner, or if it has been let to any person, by that person exclusively for pleasure purposes. If a pleasure vessel is used for non-pleasure purposes in the Hong Kong waters, the owner of the vessel, his agent and the coxswain each commits an offence and is liable on conviction to a maximum fine of \$10,000.

The Marine Department (MD) conducts daily patrols in different areas of Hong Kong and carries out investigations based on reports or complaints from the public. If illegal activities are found, such cases will be handled in accordance with the law. In recent years, the MD has noticed that some pleasure vessels are being used for non-pleasure purposes. In view of this, the MD has taken law enforcement operations specifically, including "snaking", to combat pleasure vessels being used for non-pleasure purposes.

(4) The OLA has spared no effort and adopted a multi-pronged approach to combat unlicensed hotels and guesthouses, including strengthening law enforcement action, enhancing deterrent effect, stepping up publicity.

As for law enforcement action, when a suspected unlicensed hotel or guesthouse operation is identified or such a report is received, the OLA will inspect the premises concerned within eight working days. Having regard to the circumstances of individual cases, the OLA will follow up and collect evidence by employing the most appropriate and effective means, such as conducting surprise inspections at different times, launching inter-departmental joint operations with other relevant departments, or adopting

"snaking" to collect evidence.

To strengthen law enforcement action, the Ordinance was amended in December 2020 and introduced a "strict liability" offence. The offence targets a new mode of business operation, where with the aid of technology, illegal operators could avoid the need to be physically present at the premises. If there is evidence which proves that the premises are used as unlicensed hotels or guesthouses, the owners and tenants of the premises, even if not physically present at the premise, may be held criminally liable. In addition, the Ordinance also empowers the OLA to apply to the court for a search warrant to enter into the concerned premises to inspect and search for evidence to combat unlicensed hotels and guesthouses.

Operating or managing an unlicensed hotel or guesthouse is a criminal offence and will lead to a criminal record if convicted. The owner or tenant of the subject premises, unless a statutory defence can be established, also commits a criminal offence. The maximum penalty is a fine of \$500,000 and three years' imprisonment. A six-month closure order may also be issued for the premises involved in a repeated offence.

To strengthen the deterrent effect, the OLA will pass information on convicted records of successful prosecution cases and their relevant details to the Rating and Valuation Department, the Inland Revenue Department, mortgage banks or monetary institutions, owners' corporations of the buildings, etc, so that they can take follow-up actions under their respective purviews. Should an estate agent be convicted, the OLA will also pass the conviction record to the Estate Agents Authority for follow-up actions.

As regards publicity, the OLA has uploaded a list of licensed hotels and guesthouses onto its webpage (www.hadla.gov.hk) and launched a mobile application "Hong Kong Licensed Hotels and Guesthouses" to help tourists search for the latest details, licence numbers and addresses of licensed hotels or guesthouses. In order to facilitate tourists in identifying whether the guesthouses they are staying in are licensed, the OLA requires all licensed guesthouses to display guesthouse logos at main entrances as well as the door of each of the rooms of the guesthouses. The OLA has also conducted publicity works on internet search engine outside Hong Kong to help tourists access information of licensed hotels and guesthouses.

The OLA will review and flexibly adjust its enforcement and publicity strategies and continue to combat and eradicate unlicensed hotels and guesthouses vigorously.