

民政事務總署

香港灣仔軒尼詩道一百三十號
修頓中心二十九，三十及三十一樓



Home Affairs Department

29th, 30th and 31st Floors,
Southorn Centre,
130 Hennessy Road,
Wan Chai, Hong Kong.

本署檔號 Our Ref. HAD HQ CR/15/3/20(C)
來函檔號 Your Ref. CB2/BC/5/17
電話 Tel.: 2835 2223
傳真 Fax.: 2575 1009

10 November 2020

Miss Lilian Mok
Chief Council Secretary (2)4
Council Business Division 2
Legislative Council Secretariat
1 Legislative Council Road
Central, Hong Kong

Dear Miss Mok,

**Subcommittee on Hotel and Guesthouse Accommodation (Amendment)
Ordinance 2020 (Commencement) Notice
("Subcommittee")**

In response to the enquiry made by the Subcommittee Members at the meeting on 3 November 2020 in relation to Government's study on the regulatory regimes of hotels/guesthouses operating in the mode of homestay lodging ("Homestay Lodging"), our replies are set out in the ensuing paragraphs.

2. In Hong Kong, neither the existing regulatory regime under the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) ("HAGAO"), nor the new regulatory regime to be implemented on 1 December 2020 under the Hotel and Guesthouse Accommodation (Amendment) Ordinance 2020 ("the Amendment Ordinance") precludes Homestay Lodging.

3. We have to emphasise that public safety is a key element under both the existing and new regulatory regimes and can never be compromised. In this regard, a premises must meet all building and fire safety standards set by our professional departments before an application of a licence may be approved

for the premises to be legally operated as hotels or guesthouses. This not only safeguards public safety, but also meets the expectation of the general public for better trade regulation. We also note that regulatory regimes in other places also impose relevant requirements on building and fire safety requirements on such premises.

4. The regulatory regimes respectively under the existing HAGAO and the Amendment 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 we consider 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.

5. Specifically, village-type houses in the New Territories operating in the mode of Homestay Lodging may apply for Guesthouse (Holiday Flat) Licences, with a set of relatively less restrictive licence requirements and conditions (as set out in "A Guide to Licence Application for Holiday Flat"). For a typical village-type house with a floor area of less than 230 m², the operator is only required to adopt minor modifications for ensuring safety of the premises, such as providing fire detection systems, ventilators, and fire extinguishers, in order to comply with relevant requirements of the Guesthouse (Holiday Flat) Licence.

6. In the course of the discussion at the Bills-Committee-stage for the Amendment Ordinance, we submitted a paper on our study on Homestay Lodging upon request of the Bills Committee (Annex C to LC Paper No. CB(2)640/18-19(01) as set out in the **Annex**). The paper made reference to the Information Note entitled "Regulation of home-stay lodging in selected places" prepared by the Research Office of the Legislative Council Secretariat (LC Paper No. IN01/18-19) and provided response in detail.

7. Overall speaking, we note that regulatory regimes on Homestay Lodging in other places generally impose building and fire safety requirements on subject premises. The regimes also take into consideration the impact of the operation of Homestay Lodging to the neighbours in the vicinity. In some places, there are even stringent requirements on the locations where Homestay Lodging may be operated (e.g. Homestay Lodging is not allowed in urban areas).

8. We would like to reiterate that both the existing regime and new regime under the Amendment Ordinance in Hong Kong are generally consistent with those in other jurisdictions. Our regimes are sufficiently flexible and pragmatic, allowing adjustments of safety requirements with regard to the respective natures of various facilities (including hotels, guesthouses and Homestay Lodging), so as to cater for their different modes of operation and developments of short-term accommodation in Hong Kong.

Yours sincerely,



(Miss Grace Li)
for Director of Home Affairs

**Regulation of Home-stay Lodging in Selected Places
- Information Note prepared by the Research Office,
Legislative Council Secretariat**

Home Affairs Department's Observations

The Information Note prepared by the Research Office of the Legislative Council (“LegCo”) Secretariat (ref. IN01/18-19) (“the Note”) sets out recent global developments of home-stay lodging and discusses the regulatory regimes in some selected places. As requested by the LegCo Bills Committee on the Hotel and Guesthouse (Amendment) Bill 2018 (“the Bill”), the Home Affairs Department sets out its observations and responses in the ensuing paragraphs.

Global Trends

2. As set out in the Note, while home-stay lodging may bring about certain benefits, they also give rise to a number of potential issues and concerns, leading to more regulation and more stringent compliance requirements on home-stay lodging. **The regulation of hotels and guesthouses, home-stay lodging or other forms of short-term rental sleeping accommodation varies in different jurisdictions depending on the overall environment and living conditions**, without any uniform standard. While there is a dedicated regulatory regime on home-stay lodging in some places, home-stay lodging is completely prohibited in some other places. It appears that, in places of higher population density, the regulation of home-stay lodging tends to be more stringent (e.g. Singapore and New York State, as mentioned in *paragraph 2.4 of the Note*).

3. While the Note acknowledges that there is no common regulatory trend, it provides some broad observations (*paragraph 2.3 of the Note refers*), viz. –

- (a) home-stay lodging has been subject to more regulation recently;
- (b) some places have set up a dedicated regulatory regime on home-stay lodging; and
- (c) compliance requirements on home-stay lodging have become more stringent than before.

Regulatory Regime in Hong Kong

4. We consider that Hong Kong is moving in the same direction, as elaborated below –

- (a) Home-stay lodging is already subject to regulation in Hong Kong. The current and the proposed regulatory regime of the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) (“HAGAO”) do not preclude home-stay lodging. In recent years, in response to public concerns, we have introduced more regulatory requirements by administrative measures¹;
- (b) While there is no separate regime for home-stay lodging, we would like to reiterate that the existing and proposed HAGAO regimes are flexible enough to cater for different types of hotels and guesthouses, including those operating in the mode of home-stay lodging. **The regulatory requirements have all along been imposed on the subject premises flexibly having regard to the circumstances of each case, i.e. the requirements are contextualised and “tailor-made” for each premises proportionate to the scale and mode of operation of the premises.** In fact, there have already been guesthouse licences, which are distinguished from hotel licences, with the former subject to relatively less stringent requirements.

To illustrate the flexibility of the HAGAO regime to cater for different types of short-term rental sleeping accommodation, we would like to highlight that village-type houses in the New Territories operating in the mode of home-stay lodging may apply for “Guesthouse (Holiday Flat) Licences”, which are subject to a set of relatively less restrictive licence requirements / conditions (as set out in “A Guide to Licence Application for Holiday Flat”). For a typical village-type house with a floor area of less than 230 m², the operator is only required to adopt minor modifications for the sake of ensuring safety of the premises, such as providing fire detection systems, ventilators, and fire extinguishers. We will continue to adopt a flexible and pragmatic approach in considering each application. A separate regulatory regime is therefore not necessary as the current regime has already been case-specific and can cater for different types of short-term rental sleeping accommodation, including those operated in the mode of home-stay

¹ Since 2014, the HAD has implemented a series of administrative enhancement measures, including (i) the implementation of Notification System for guesthouse applications; (ii) the requirement for all licensees to procure third party risks insurance; (iii) the requirement for licensees of Guesthouse (General) to provide a 24-hour manned counter; and (iv) the issue of four different types of licences. Licensees could generally comply with the enhancement measures.

lodging.

- (c) The proposals in the Bill seek to enhance the compliance and regulatory requirements on short-term rental sleeping accommodation.

Regulatory Regimes in Selected Places

5. The Note discusses the regulatory measures on home-stay lodging in some selected places where there is a dedicated regime. We note that these measures are similar to the regulatory requirements under HAGAO and those proposed under the Bill. In fact, our regulatory regime is even more lenient in some aspects as compared to those places as studied in the Note.

6. The Note shows that *building and fire safety requirements* are conditions **commonly imposed on home-stay lodging in different places** (*paragraphs 4.3(e-f), 5.3(e-f) and 6.3(b) of the Note*). Similar to the case in Hong Kong, such requirements include the use of fire-resistant materials, hallways with a minimum width, the installation of emergency lights and fire alarm systems, etc. It goes without saying that these conditions are imposed for the sake of ensuring public safety, which is of utmost important and can never be compromised.

7. **Another common feature of the regulatory regimes in different places is the requirements on neighbourhood protection** (*paragraphs 4.3(i), 5.3(h) and 6.3(c) of the Note*). In Hong Kong, we are proposing similar requirements to address possible concerns of the neighbourhood of hotels/guesthouses. Instead of remedial measures as in the other places (e.g. the operators are required to quickly respond to complaints from the local community), we propose in the Bill “preventive” measures – local residents’ views are to be considered in the licensing process. The proposed local consultation would provide a proper channel for affected persons to express their views. Taking into account such views, the Authority may impose specific conditions to address concerns of the neighbourhood. This should help resolve any potential conflicts between the operators and the local community.

8. The Note also shows that there are “*restrictions*” on the location where home-stay lodging can operate, e.g. only in rural area / designated urban area in Taiwan (*paragraph 4.3(b) of the Note*). **It appears that such restriction is intended to minimise the impact of home-stay lodging to the neighbourhood.** In Hong Kong, we do not have restriction on the geographical location. Yet, for similar purpose, we propose in the Bill empowering the Licensing Authority to take into account restrictive provisions in land documents (e.g. deeds of mutual covenant or land leases), which are private contracts, in the licensing process. This is to ensure that the premises to be used for short-term rental sleeping accommodation are indeed “suitable” for such purposes, and the

neighbouring community should have implied consent for such operation by entering voluntarily into the said private contracts.

9. Apart from the above, there are also *other restrictions / requirements* imposed on home-stay lodging in other places. For example, Japan and London set a ceiling on the number of days of operation for home-stay lodging (*paragraphs 5.3(a) and 6.3(a) of the Note*); there are restrictions on the size of or the number of rooms provided by a home-stay lodging in Taiwan and Japan (*paragraphs 4.3(d) and 5.3(d) of the Note*); operators in Taiwan or Japan are required to submit guest records or statistical data on the guest records (*paragraphs 4.3(j) and 5.3(i) of the Note*). There are *no such restrictions / requirements in Hong Kong*. A summary comparison of the different licensing requirements in Hong Kong and selected places in the Note is at **Appendix**.

Conclusion

10. We agree with the observations set out in the Note that the regulation of home-stay lodging varies across places with due regard to local circumstances. Yet, some of the common objectives of the regulatory regimes are to ensure public safety, offer necessary consumer protection, and to protect the neighbourhood. **We consider that the existing and the proposed regulatory regimes under the HAGAO are in line with the global trend, appropriate and adequate to achieve the above-mentioned objectives, and flexible enough to cater for the development of different types of short-term rental sleeping accommodation, including home-stay lodging, in Hong Kong.**

Key Features of Regulation of Home-stay Lodging in Selected Places

Key Regulatory Features	Hong Kong	Taiwan	Japan	London
(a) Key legislation	Hotel and Guesthouse Accommodation Ordinance ²	Regulations for the Management of Home Stay Facilities	Private Lodging Business Act	Deregulation Act 2015
(b) Subject to the same regulation as hotels	No Guesthouse licences, which may be issued to premises operating in the mode of home-stay lodging, are distinguished from hotel licences and subject to less stringent requirements.	No	No	No
(c) Ceiling of days for leasing	No restriction	No restriction	180 days a year but may be subject to tighter restrictions imposed by local governments (e.g. only from mid-January to mid-March in Kyoto)	90 days a year
(d) Location	Restricted to premises of which the relevant land documents (e.g. deeds of mutual covenant or land leases which are private contracts) do not contain restrictive provisions. During the public consultation conducted in 2014, most respondents considered that land document should be an essential factor to be considered in the licence application process.	Restricted to non-urban land and country parks	May be subject to additional regulations by local governments	No restriction

² The features of Hong Kong’s regulatory regime are based on the Hotel and Guesthouse Accommodation (Amendment) Bill 2018, which regulates premises providing short-term rental sleeping accommodation, including guesthouses operating in the mode of home-stay lodging.

(e) Owner / Operator	The licence holder has to be a “fit and proper” person	Persons with certain types of criminal records banned	Persons with certain types of criminal records banned	Not specified
(f) Size	No restriction	Fewer than 8 guest rooms with a total area of less than 240 m ²	At least 3.3 m ² floor space per lodger	No restriction
(g) Building safety	Technical requirements (e.g. material use, width of hallways, means of escape, etc.) are imposed proportionate to the scale and mode of operation of the premises.	Comply with the building safety regulations formulated by local governments (or, in case there is none, the Regulations for the Management of Home Stay Facilities)	Meet the same ventilation standard as that of hotels and inns	Subject to local standards of residential properties
(h) Fire safety		Comply with the local safety regulation where applicable	Obligated to install emergency lighting and fire protection equipment, but exempted if certain conditions are met	
(i) Hygiene standard	Subject to the Public Health and Municipal Services Ordinance ³	Maintain cleanliness	Equipped with several facilities	Not specified

³ This Ordinance imposes sanitation and cleanliness requirements on premises in general and does not specifically target hotels and guesthouses.

(j) Insurance coverage	Procure a third party risks insurance policy with a minimum indemnity of HK\$10 million per event	Provide guests with insurance protection with a minimum insured value of NT\$24 million (HK\$6 million)	Not required	Not required
(k) Nuisance to neighbourhood	Local consultation should be conducted to collect the views of affected persons, which will be a factor for consideration in the licensing process.	Maintain peacefulness around the home-stay facility and report disturbance to the public caused by guests to the local police.	Operators need to quickly and properly respond to complaints and inquiries from local residents.	If one enforcement action against nuisance is taken, the exemption of planning permission for home sharing will be withdrawn.
(l) Guest information provided to Government	Not required	Submit statistical data on the operation of home-stay facilities (e.g. the number of lodgers and operating revenues) to the local administrative authority twice a year	Collect key personal details of lodgers and report information on both the home-stay lodging and lodgers to the government once every two months	Not required