

# Summaries of Direct Investigations Completed

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## Home Affairs Department (“HAD”)

Case No. OMB/DI/354

### The Government’s Regulation of Guesthouses

(Investigation declared on 5 June 2014 and completed on 14 August 2014; full report available at [www.ombudsman.hk](http://www.ombudsman.hk))

#### Background

Operation of guesthouses is regulated by the Office of Licensing Authority (“OLA”) under the Home Affairs Department (“HAD”) pursuant to the Hotel and Guesthouse Accommodation Ordinance (“the Ordinance”).

2. This Office received from time to time public complaints about OLA loosely issuing licences to guesthouses in multi-storey buildings without taking into account the nuisances and even dangers that such guesthouses may cause to people living in the same building. Other complainants reproached OLA for its ineffective enforcement against unlicensed guesthouses, which had resulted in the proliferation of such unlicensed establishments.

3. Against this background, The Ombudsman initiated a direct investigation to probe into the inadequacies in the Government’s regime for regulation of guesthouses.

#### Our Findings and Comments

##### *Licensing Regime Failed to Keep up with the Times*

4. The legislative intent of the Ordinance was to ensure, through a licensing regime, that the premises used as guesthouses would meet the prescribed standards in respect of building structure and fire safety so as to protect the lodgers and the public. The licensing requirements prescribed in the Ordinance do not include compliance with the provisions of the land lease or the deed of mutual covenant (“DMCs”), or the views of people residing in the building.

5. Given the limitations of the Ordinance, we considered HAD to be acting in accordance with the law when it did not take into account the provisions of the land lease or DMC, or the residents’ views, in processing applications for guesthouse licence. From an administrative point of view, we could not say that there was impropriety. Nevertheless, the number of guesthouses has been continuously on the rise in recent years. Understandably, some residents feel that their daily lives have been affected by the operation of guesthouses in their buildings (e.g. increased maintenance costs for the buildings). They expect that the Government’s regulation of guesthouses should address not only safety concerns, but also the impact of such operations on their daily lives. We considered that HAD should have reviewed long ago the licensing regime for guesthouses and introduced improvement measures or even legislative amendments, so as to address the community’s concerns.

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### ***Ineffective Enforcement Measures against Unlicensed Guesthouses***

6. OLA had in recent years increased manpower and stepped up inspections and investigations to combat the rapid increase of unlicensed guesthouses. However, the prosecution rates remained exceedingly low because:

- (1) as advised by the Department of Justice, the Government could not institute prosecutions merely based on “circumstantial evidence” (such as the layout and setting of the premises) under the existing legislation;
- (2) uncooperative owners/operators of guesthouses had made it difficult for OLA officers to enter the premises for investigation;
- (3) the penalties were light; and
- (4) there had not been enough decoy operations for collecting evidence.

7. We considered that in face of such an unsatisfactory situation, HAD should have sought to change its enforcement strategy long ago (e.g. redeploying resources to conduct more decoy operations for collecting evidence) in order to achieve better results.

### ***Public Consultation by HAD***

8. After we declared our commencement of this direct investigation, HAD, in view of the concerns of different sectors of the community about the existing regulatory regime for guesthouses, launched in July 2014 a public consultation exercise on review of the Ordinance. In its consultation paper, HAD proposed a number of legislative amendments, including:

- (1) to empower the Department to refuse to issue/renew licences or cancel existing licences on the grounds that the DMC provisions of the building concerned explicitly prohibit the operation of guesthouses;
- (2) to empower the Department to take into account residents’ views collected through local consultation;
- (3) to add “deeming provisions” to the Ordinance for admission of “circumstantial evidence”, such that the standard of proof by OLA can be lowered to facilitate prosecution against owners/operators of unlicensed guesthouses;
- (4) to empower OLA to apply for a court warrant for entry into, and breaking in if necessary, any suspected unlicensed guesthouses for inspection; and
- (5) to increase the maximum penalty for operating unlicensed guesthouses to a fine of \$500,000 and imprisonment for three years, in the hope that the court would impose heavier sentences in future.

### **Recommendations**

9. This Office generally supported HAD’s improvement proposals. In addition, The

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Ombudsman urged the Department:

- (1) should it decide to conduct local consultation when considering licence applications in future, to draw up reasonable and workable criteria for assessing residents' objections;
- (2) to consider including compliance with land lease conditions as a licensing requirement; and

to further enhance OLA's investigation of unlicensed guesthouses by conducting more decoy operations to obtain evidence in order to increase the effectiveness of its enforcement actions.