

LCQ3: Regulation of residential flats for lease on a short-term basis

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Following is a question by the Hon Jeffrey Lam Kin-fung and a reply by the Secretary for Home Affairs, Mr Tsang Tak-sing, in the Legislative Council today (January 11):

Question:

Recently, I have received complaints from members of the public that some estate agents have posted advertisements offering residential flats for lease on a daily or short-term basis, and they suspect that some people lease out residential flats to mainland tourists or pregnant women. Under the Hotel and Guesthouse Accommodation Ordinance, for 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 with a tenancy term of less than 28 continuous days, a hotel/guesthouse licence must be obtained. Yet, according to the records of the Office of the Licensing Authority under the Home Affairs Department, the premises listed on the aforesaid advertisements have not been registered as licensed guesthouses. It has been reported that some web sites use home-stay lodgings as guise to lease out residential flats in Mong Kok, Yau Ma Tei, Tsim Sha Tsui, North Point and Sha Tin, etc. on a short-term basis. In this connection, will the Government inform this Council:

(a) of the number of complaints involving the operation of unlicensed guesthouses received by the authorities last year, and the respective numbers of cases in which prosecutions were instituted and the persons involved were convicted;

(b) whether the authorities have proactively inspected the residential flats offered for lease on a short-term basis on the aforesaid web sites, with a view to combating the operation of unlicensed guesthouses; if they have, of the outcome of such inspections; if not, the reasons for that; and

(c) in respect of the aforesaid estate agents who posted advertisements to offer residential flats for lease on a daily or short-term basis, whether it knows if the Estate Agents Authority has proactively investigated if the relevant practices contravene the code of ethics in respect of their practice; if it has, of the outcome of such investigations; if not, the reasons for that?

Reply:

President,

Thank you the Hon Lam for your question regarding complaints from members of the public.

The operation of hotels and guesthouses in Hong Kong is regulated by the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) (the Ordinance), which stipulates that any premises providing sleeping accommodation at a fee with a tenancy term of less than 28 consecutive days shall obtain a licence before commencing operation. The Office of the Licensing Authority (OLA) under the Home Affairs Department is responsible for the enforcement of the Ordinance. It is tasked with the issue of licences and enforcement work.

The OLA has spared no efforts in combating unlicensed guesthouses operation. Upon receipt of a complaint, it will conduct an inspection within eight working days, and, having regard to the circumstances of each case, will also collect evidence through various means, including conducting surprise inspections during and outside office hours (e.g. at nights and during holidays, particularly long holidays) and posing as clients (commonly known as "snaking") to collect evidence when necessary. Upon investigation, if it shows that there is sufficient evidence indicating operation of unlicensed guesthouses in the premises, prosecution shall be instituted. Moreover, the OLA will conduct large-scale inter-departmental operations with other departments concerned.

My reply to the three parts of the question is as follows:

(a) In the past year, the OLA received a total of 696 complaints of suspected unlicensed guesthouses operation. The figure includes complaints that were directed against the same premises. Besides, according to the OLA's investigation, the premises in some complaint cases were beyond the purview of the Ordinance as they were let out on a monthly basis. After conducting inspections and collecting evidence, the OLA instituted 53 prosecutions. The OLA will continue to take an active approach by following up some of the unsubstantiated cases. In the same year, there were 39 successful convictions.

(b) Enforcement staff of the OLA read newspapers and browse web pages on a

regular basis to collect information and monitor suspected unlicensed guesthouses which solicit business from tourists through web-sites or advertisements. They also conduct surprise inspections and take enforcement actions. As regards soliciting tourists by posting flats for short-term lease on intermediary web-sites to which this question refers, the OLA carried out pro-active inspections in September 2011. Although no prosecution could be instituted, the OLA will continue to take an active approach in following up these cases and collecting evidence for enforcement purposes. In view of the fact that tourists are targets of "home-stay lodgings" on these web-sites, the OLA has relayed these cases to the Estate Agents Authority (EAA) and Travel Agents Registry for follow-up actions.

(c) Under the Ordinance, unless with exemption, any person (including an estate agency practitioner) who operates, keeps, manages or controls a hotel or a guesthouse in Hong Kong has to obtain a licence.

The OLA has launched an investigation into the advertisements posted by the estate agents to which this question refers. The estate agents concerned, however, claimed that no residential flats were available for lease on a daily basis. The OLA has also conducted inspections on the two buildings mentioned in the advertisements. Notwithstanding no prosecution has been instituted, the OLA will continue to follow up these cases.

The Code of Ethics issued by the EAA stipulates that estate agency practitioners must refrain from activities which may infringe the law during their practice. The EAA will take disciplinary actions against practitioners found in breach of the Code of Ethics. The OLA has worked closely with the EAA to take enforcement actions on cases involving estate agency practitioners.

Thank you President.

Ends/Wednesday, January 11, 2012

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