

Subcommittee Brief

ESTATE AGENTS (LICENSING) (AMENDMENT) REGULATION 2001

A Subsidiary Legislation to be made under The Estate Agents Ordinance (Cap. 511)

Purpose

This paper briefs Members on the Estate Agents (Licensing) (Amendment) Regulation 2001 (the “Amendment Regulation”) which was tabled at the Legislative Council on 27 June 2001.

Background

2. The Estate Agents Authority (the “EAA”) was set up on 1 November 1997 to regulate the practice of estate agents through, inter alia, the implementation of a licensing system. The Estate Agents (Licensing) Regulation (the “Regulation”) was passed by the Legislative Council on 18 November 1998 and the licensing system was introduced on 1 January 1999.

3. The Regulation sets out, inter alia, the licensing requirements, the level of licence fees, the licensing procedures and the forms. Estate agents and salespersons who practise estate agency work are required to obtain a licence from the EAA.

Licensing Arrangements for existing practitioners - 3-year transition

4. To ensure that the standard of service provided by estate agents is of the stipulated standard, new entrants to the trade are required to have completed at least Form 5 or equivalent and pass a qualifying examination.

5. The aim of introducing a licensing system was to raise the standard of service provided by practitioners. To minimize disruptions to the trade, however, existing practitioners are granted **conditional licences** to continue their practice. They are not required to have completed Form 5 and are also given three years until 31 December 2001 to pass the qualifying examination, or to complete relevant training courses for those estate agents who have practised for six years or more. Those who fail to fulfil these requirements cannot renew their licences after 31 December 2001. Should they apply for the licence again afterwards, they will have to meet the educational and other requirements as required of new entrants to the trade.

Review of the Regulation

6. The EAA has reviewed the Regulation which has been in operation for two years and proposes amendments to the Regulation to provide more flexibility to the existing licensing arrangement and to reduce the present level of licensing fees with effect from **1 January 2002** in accordance with section 56 of the EAO, with the approval of the Secretary for Housing.

Proposals

Flexibility to existing licensing arrangements

Re-entry conditions for licensees whose licences have expired

7. Under the existing regulation, a licensee who has not renewed his licence before the end of the transition period but who seeks the licence after the transition period will be regarded as a new entrant. Notwithstanding his having satisfied the licensing requirements before, he will be required to pass the appropriate qualifying examination again, and fulfil the educational and other conditions. In other words, a licensee who does not have an education up to Form 5 standard will have to continuously renew his licence in order to maintain his licensee status, or else he will not be able to re-enter the trade after the expiry of the licence. Furthermore, even with a Form 5 education, a licensee whose licence has expired must also pass the relevant qualifying examination again by the time he reapplies

for the licence. These requirements are considered excessively rigid in comparison to those observed in other more demanding trades and professions. The EAA has noted that there is a considerable number of licensees who are not actually practising estate agency work. However, they have to seek renewal of licences continuously in order to maintain their licensee status. To allow greater flexibility for such licensees so that they do not have to pay the licence fees when out of practice, **it is proposed that, with effect from 1 January 2002, an ex-licensee who applies for a licence not more than 24 months from the expiry date of his last licence should be exempted from the educational and examination requirements stipulated in section 7(1)(a) of the Regulation.**

8. The proposal gives licensees the option to move out of the trade temporarily without losing his credentials. The EAA proposes that the time allowed for such an option to be exercised should be limited to 24 months in consideration of the fact that the trade is not expected to experience significant changes over a period of 24 months. The professional knowledge of an estate agent who has left the trade for less than two years should not be so dated as to adversely affect the standard of his service. As to whether a practitioner who re-enters the trade possesses the professional ethics, it is not a matter that is directly linked to whether he has been continuously employed in the trade. As a matter of fact all licensees are subject to strict regulation under the Estate Agents Ordinance and its subsidiary legislation, and are required to abide by series of Practice Circulars and the Code of Ethics. The EAA will continue to strengthen its training activities and assist practitioners to update and upgrade their professional knowledge from time

to time so that standards will not be compromised by a temporary departure from the trade.

Switch between estate agent's and salesperson's licence

9. There are two categories of licences for individual practitioners: the estate agent (individual) licence and the salesperson licence. Both types of licensees may practise estate agency work, but the estate agent may run an estate agency business as a sole proprietor, director, partner or manager, while the salesperson must be employed by a licensed estate agent. In addition to different annual licence fees (\$2,880 for the estate agent licence and \$1,840 for the salesperson licence), there are also differences in examination requirements with the estate agent having to possess greater breadth and depth in terms of professional knowledge.

10. Under the existing regulation, a licensee who wishes to switch to another category after the transition will be considered as a new entrant, ie, he has to fulfil all the educational and examination requirements again. In other words, if an estate agent wishes to change his licence to that of a salesperson, he will have to take the salesperson qualifying examination, despite the fact that he has previously passed the estate agent qualifying examination, which is a test that embraces more knowledge and in greater depth than the salesperson qualifying examination. At the moment, while the transition period is still on, some practitioners who have already passed the estate agent qualifying examination are indeed practising on a salesperson licence for various reasons including cost considerations.

However, such practitioners will have to pass the estate agent qualifying examination yet again if they seek the estate agent licence after the transition period. Such stipulation is deemed harsh and, to address the problem, **it is proposed that, with effect from 1 January 2002, licensees intending to switch to another category of practice may have their licensing credentials preserved, without having to fulfil requirements imposed on new entrants. Thus a licensee switching from estate agent to salesperson does not have to take a qualifying examination while one switching from salesperson to estate agent will have to pass the estate agent qualifying examination if he has not already done so.**

11. A summary of the proposed arrangements for switching between licences is at **Annex I**.

Reduction in licence fees

12. The licence fees were last adjusted by a reduction of 20% with effect from 1 January 2000.

13. The EAA has completed a review of licence fees having regard to the trade's strong demand for a reduction. It is expected that in 2001-02, the EAA will register a surplus of \$4.9M. It will also have a cumulative fund of \$49.1M after setting aside a capital fund of \$22M (for funding various capital projects including enhancement of RVD's Info-Hotline service & setting up a new electronic licensing system) and a litigation fund of \$1.5M per annum. Taking the above into consideration,

the EAA considers that it is in a position to reduce the level of licence fees.

14. In deciding the level of reduction in the licence fees, the EAA has considered the following factors –

(a) *uncertainty in the licensee population*

It is anticipated that the number of licensees will be reduced following the lapse of the transition period¹ on 1 January 2002 and as a result of the 24-month re-entry arrangement proposed in para. 7 above. It is projected that the licensee population will be decreased by about 17% at the close of the transition period on 31 December 2001.

(b) *increase in the number of practitioners holding the salesperson licence*

The ratio between salespersons and estate agents has decreased considerably from 1:6, when the licensing regime began, to the present 1:4.3. In view of the fact that both types of licence entitle the licensee to undertake estate agency work, some of those who are not contemplating running their own businesses or working at managerial levels may, out of economy reasons,

¹ The Regulation provides for a transition period from 1 January 1999 to 31 December 2001 during which certain licensing requirements are relaxed for estate agents practising on or before 1 January 1999 when the licensing system was introduced.

have chosen the salesperson licence. Furthermore, the EAA began to conduct computerised salesperson qualifying examinations in March 2001. With the examination now available many times a week, it is anticipated that there will be more and more practitioners opting for the salesperson licence. The proportion of salespersons to estate agents may as a result further diminish, thereby affecting the income of the EAA.

(c) *financial commitments*

The EAA, being a self-financing public body, has to ensure that its finance is in order and that provision is in place for its day-to-day operation and future commitments, including repayment of the start-up loan to the Government. Since the implementation of the Practice Regulation, consumers have become increasingly aware of their rights, and complaints and allegations against estate agents have been on the rise. While the EAA has made considerable efforts to keep down its administrative and operational costs, the handling of complaints will remain an item of substantial expenditure. Furthermore, the EAA aims to maintain a cumulative reserve fund equivalent to 25% of the expenditure of the following year as a buffer against contingencies.

With the above factors in mind, the EAA proposes a reduction of the level of licence fees by 20% with effect from 1 January 2002. With this

level of reduction, the EAA will begin to run an operating deficit of \$14M in 2002/03. The 25% buffer can still be maintained until 2003/04, but the cumulative fund will be fully depleted by 2004/05. The projected income and expenditure of the EAA from 2001-02 to 2005-06 and the revised fee schedule are at **Annexes II and III** respectively.

15. The Authority will continue its stringent control on expenditure. The freeze on staff establishment as well as flexible and value-added deployment of human resources will continue. An electronic licensing system which is under development will further reduce the operational expenses of the Authority in the long term. The EAA will monitor its financial position and the licensee population carefully, particularly after the end of the transition period when the forecast parameters become less uncertain. The EAA would take appropriate action including consideration to increase licence fees when necessary.

16. Upon the passage of the proposed amendments to the fee levels, the basic licensing costs of being employed in estate agency work or running an estate agency business will be as shown in the table at **Annex IV**.

Miscellaneous amendments

17. To give further flexibility in the licensing systems, a number of miscellaneous amendments to the Regulation are proposed. These include : extension of the validity period of the licence from 12 months to

either 12 months or 24 months at the licensees' choice; amendments to the register of licences and various application forms to suit current usage; and rationalisation of the provision of information in business documents and on advertisements.

Consultation with the trade

18. The EAA has consulted the trade on the above proposals through regular contacts, at briefing meetings and through trade members on the EAA Board. The trade are generally supportive of the proposed measures to introduce more flexibility into the licensing system. They also welcome the proposed reduction in licence fees though some would wish for a larger reduction.

LegCo Panel on Housing

19. The LegCo Panel on Housing was briefed about the proposed amendments on 7 May 2001.

Commencement

20. The amendment will take effect on 1 January 2002.

Enquiry

21. Members may address any enquiries about the Amendment Regulation to Miss Ophelia Tsang, Principal Assistant Secretary of the Housing Bureau at 2509 0343.

Housing Bureau

September 2001

Switch between estate agent's licence and salesperson's licence

Type of licence held	Licensing credentials achieved	Proposed examination requirement for the other license category*
Estate Agent	Passed licensing examination for estate agents or completed course for estate agents (for senior practitioners)	Not required (for switching to salesperson's licence)
Salesperson	Passed licensing examination for estate agents or completed course for estate agents (for senior practitioners)	Not required (for switching to estate agent's licence)
	Passed licensing examination for salespersons only or completed course for salespersons only (for senior practitioners)	Required to pass the Licensing Examination for Estate Agents** (for switching to estate agent's licence)

* An applicant shall also fulfil the other licensing requirements such as the fit and proper criterion [under ss. 19(2) and 21(3) of the Estate Agents Ordinance, Cap. 511]

** From 1.1.2002, no applicant may base on the status of senior practitioner to complete a specified training course to fulfil the licensing requirement

Note : All new entrants shall have to pass the requisite examination before being issued a licence

Annex II

Estate Agents Authority					
Projected Income and Expenditure of 5 years for the review of 2002 fees					
	<u>2001/02</u>	<u>2002/03</u>	<u>2003/04</u>	<u>2004/05</u>	<u>2005/06</u>
	(HK\$ M)				
<u>0% reduction of fees</u>					
Total income	55.710	47.520	48.073	47.516	46.002
Total expenditure	(50.818)	(53.177)	(57.906)	(57.708)	(56.512)
Current year surplus/(deficit)	4.892	(5.657)	(9.834)	(10.192)	(10.510)
Cumulative fund c/f	49.133	43.477	33.643	23.451	12.940
<u>15% reduction of fees</u>					
Total income	54.570	41.214	41.380	40.595	38.852
Total expenditure	(50.818)	(53.177)	(57.906)	(57.708)	(56.512)
Current year surplus/(deficit)	3.752	(11.963)	(16.526)	(17.113)	(17.660)
Cumulative fund c/f	47.993	36.031	19.505	2.392	(15.268)
<u>20% reduction of fees</u>					
Total income	54.169	39.112	39.150	38.288	36.469
Total expenditure	(50.818)	(53.177)	(57.906)	(57.708)	(56.512)
Current year surplus/(deficit)	3.351	(14.065)	(18.757)	(19.420)	(20.043)
Cumulative fund c/f	47.592	33.528	14.771	(4.649)	(24.692)
<u>25% reduction of fees</u>					
Total income	53.810	37.010	36.919	35.981	34.086
Total expenditure	(50.818)	(53.177)	(57.906)	(57.708)	(56.512)
Current year surplus/(deficit)	2.992	(16.167)	(20.987)	(21.727)	(22.426)
Cumulative fund c/f	47.233	31.067	10.079	(11.648)	(34.074)
<u>30% reduction of fees</u>					
Total income	53.430	34.908	34.688	33.674	31.703
Total expenditure	(50.818)	(53.177)	(57.906)	(57.708)	(56.512)
Current year surplus/(deficit)	2.612	(18.269)	(23.218)	(24.034)	(24.809)
Cumulative fund c/f	46.853	28.585	5.367	(18.667)	(43.477)
Note :					
1. Attrition only applies to 2002. Thereafter licensee population assumed to be stabilised. For 2002, a net attrition 17% in the number of licensees is assumed.					
2. No adjustment in staff salaries has been taken into consideration in the projection of staff cost.					

Annex III

<u>Fees payable</u>	<u>Existing Fees</u>	<u>Proposed Fees</u>	
	Fee (\$) <u>Per 12 months</u>	Fee (\$) <u>Per 12 months</u>	Fee(\$) <u>Per 24 months</u>
1. Grant or renewal of a licence			
(a) Salesperson's licence	1,840	1,470	2,860
(b) Estate agent's licence (individual) - for individual estate agent	2,880	2,300	4,480
<u>plus</u> - for operation of a sole proprietorship/partnership under each business name at one place of business	3,040	2,430	4,730
<u>plus</u> - for operation of each additional place of business under each business name	3,040	2,430	4,730
(c) Estate agent's licence (company) - for operating under one business name:			
(i) at one place of business	4,000	3,200	6,240
(ii) at each additional place of business	3,040	2,430	4,730
<u>plus</u> - for operating under each additional business name:			
(i) at one place of business	4,000	3,200	6,240
(ii) at each additional place of business	3,040	2,430	4,730

Annex IV*Examples of licence fees payable in various scenarios*

Licence	Fees Payable (HK\$) ¹				
	Employed ² as a salesperson	Employed ³ as an estate agent	Operation of a sole proprietorship ⁴	Operation of a partnership ⁵	Operation of a company ⁶
Salesperson's licence	1,470	N.A.	N.A.	N.A.	N.A.
Estate agent's licence (individual)	N.A.	2,300	2,300	2,300	2,300
Estate agent's licence (company)	N.A.	N.A.	N.A.	N.A.	3,200
Statement of Particulars of Business ⁷	N.A.	N.A.	2,430	2,430	N.A.
Total:	1,470	2,300	4,730	4,730	5,500

Notes :

1. All fees quoted are for 12-month period and as per proposal.
2. An employed practitioner may hold either an estate agent's or a salesperson's licence.
3. A practitioner who is employed as a branch manager must hold an estate agent's licence.
4. The sole proprietor of an estate agency business must hold an estate agent's licence.
5. At least one of the partners of an estate agency business must be the holder of an estate agent's licence.
6. As least one of the directors of a company must be the holder of an estate agent's licence.
7. The fee is calculated assuming that the business is operated under one business name at one place. There is no need for the company to apply for a statement of particulars of business if it operates at one place of business only.