

RESPONSE OF EAA TO TRADE ASSOCIATIONS' SUBMISSIONS ON AMENDMENTS TO THE LICENSING REGULATION

1. Licence Fees

1.1 Licence fees are set on the basis of the number of licensees and the operational cost of the EAA.

1.2 EAA expenditure is approved through strict procedures. The Authority has always been prudent in its financial management and exercises stringent control over expenditure. In point of fact, the annual actual expenditure of the EAA during the past few years invariably fell short of budgeted amounts. The expenditure of the EAA will not decrease with the close of the transition period. Apart from the fact that licensing work will have to go on as before, the proposed amendments to the Licensing Regulation, if passed by the Legislative Council, will enable licensees to re-enter the trade without conditions within 24 months from the expiry of their last licence. This will have considerable implication on the Authority's training activities which will need to be stepped up. Furthermore, there is a substantial need for resources on the enforcement of regulations and the handling of complaints.

1.3 The number of licensees has always been subject to fluctuations in the property market, and an accurate estimation is hard to obtain. The EAA is thus obliged to make forecasts with great caution. If sharp reductions to the fee levels are abruptly introduced and the number of licensees is not to increase correspondingly, then it would become necessary for fees to be raised again within a short period of time.

2. Re-entry in 24 months

2.1 The EAA recommends that the period during which an ex-licensee is allowed to return to the trade without conditions be limited to 24 months. This represents a balance between the practical needs of practitioners on the one hand, and the need for professional standards to be maintained at a certain level on the other. Estate agency is a professional career and demand for professional knowledge exists for

practitioners. The Authority believes that there will not be major changes in the profession within a 24-month period, during which time the licensee may keep himself sufficiently in touch with the business to the extent that, when he comes back, his service will not be hampered by an inadequacy in professional knowledge. This notwithstanding, the EAA will strengthen its training functions to assist practitioners to learn and renew their knowledge continuously.

- 2.2 If the period allowed for re-entry is to be further extended, and if this is based on the assumption that an ex-licensee will be required to undertake a refresher course upon re-entry, then this is not the idea behind the proposed amendment. The proposal for unconditional re-entry is made so that practitioners who have to leave the trade for a relatively short period of time for whatever reason may do so without having to shoulder the annual licence fees. To make the attendance at refresher courses a condition for re-entry will subject licensees to added burdens in terms of time and finance, and contrary to the concept of allowing for greater flexibility in the trade's manpower supply vis-a-vis mutations in the property market.

3. Period of validity of licenses

- 3.1 The proposal for a choice between a 12-month and a 24-month licence is made to give greater elasticity to the licensing system to the convenience of the licensees.

4. Participation of the trade

- 4.1 Members of the EAA who are from the trade sit on the main Board and its various Standing Committees. Out of the 20 members of the Authority, 5 are trade members. Members may also choose to sit on various Standing Committees according to their interests and expertise. At present there are trade members on all the Standing Committees, their numbers ranging from 1 to 4 on these Committees, and the Chairman and Vice Chairman of the Training Committee have been trade members through the years.
- 4.2 The EAA has been holding consultative meetings with the representatives of the major trade associations since May 1999 in order to obtain the trade's views. In addition, the Administration

frequently meets with individuals, companies and organisations in the trade and takes part in their activities for the exchange of opinions on various relevant matters.

- 4.3 In May 2000, the EAA Board agreed to a co-opted membership on the Training Committee and that a representative of the trade associations should be invited to join the Committee as a co-opted member. After discussion among themselves, the major trade associations nominated a representative to take up the co-opted membership in November 2000.
- 4.4 Other Standing Committees are also considering the appointment of representatives from the trade as co-opted members as warranted by circumstances.
- 4.5 The Working Group on the Review of the Practice Regulation, which comprises trade members of the Board, is also planning to invite representatives of the trade associations to join in its deliberations.

5. The Role of EAA and its Finance

- 5.1 EAA expenditure is approved through strict procedures. All items in the EAA annual workplan are vetted by the respective Standing Committees and all budget items are assessed by the Administration and Finance Committee before they are submitted to the EAA Board for consideration and approval. Every year income and expenditure are subject to audit by professional auditors and published in detail in the Authority's annual report.
- 5.2 The EAA has always exercised stringent control over its expenditure. In point of fact the annual actual expenditure of the Authority in the past years invariably fell short of budgeted amounts. More recently operational cost has been kept low through freezing (and reducing) staff headcount and flexible and value-added deployment of staff. Efforts have been made to reduce the rental cost of EAA offices by moving the Resource Centre and other facilities from the Central Plaza to 88 Gloucester Road, where rental rates are lower, and through successfully negotiating for substantial reduction in the rental of the premises at the Dah Sing Financial Centre.

- 5.3 Since the Practice Regulation came into force, consumers in property transactions have become increasingly aware of their rights. According to estimates based on actual figures in the first six months of 2001, the total number of complaints against estate agents by the end of the year is expected to increase by 13% over the previous year's figure. Hence there is a substantial need for resources on the enforcement of regulations and the handling of complaints, and there is little room for further cuts in expenditure.
- 5.4 Some members of the trade seem to have a confused view as to the respective roles of the EAA and the trade associations, and do not have a comprehensive understanding of the rationale behind the establishment of the EAA. The principal duty of the EAA is to raise the professional standard of the trade and hence the social esteem of the practitioners through the licensing regime, regulation, and training. As to the provision of services and welfare activities for members of the trade in relation to the estate agency business, it is more appropriately the province of the trade associations.

6. Training activities for the Trade

- 6.1 After the completion of each training course, each student is asked to complete a course evaluation questionnaire in respect of major items like course content and teaching quality. Records of the Authority show that students have a high regard for the courses run by the nine training institutions and that, over the past three years, the recommendability of these courses stood at 86% or above (please see details at Annex).
- 6.2 EAA staff members periodically attend the training courses to monitor their progress.
- 6.3 The success of a training course depends on a number of factors. Apart from the design of the programme and the quality of teaching, the students' attitude towards learning and their active participation are also important determinants.

7. Views of the Property Agency Rights Group

7.1 The majority of the views expressed by the Group in its written submission do not relate to the proposed amendments to the Licensing Regulation, and have indeed been responded to by the EAA, repeatedly and through many channels. The following is a summarised response to the points raised:

7.1.1 Provision of prescribed property information

The Practice Regulation requires an estate agent to be in possession of the prescribed information of the property concerned as soon as possible after accepting a listing for the reference of prospective purchasers when they inspect the property. This requirement is meant to enable the prospective purchaser to have a thorough understanding of the property before he makes up his mind so as to eliminate loss resulting from an uninformed choice. The requirement exists because the actual conditions of a property, eg, size, age, and the presence of structural changes, often cannot be comprehensively known through an inspection. Other aspects such as encumbrances impact directly on the title of the property and often affect the transaction itself. It is therefore essential that the prospective purchaser be aware of such information at the first instance so that he may make comparison and an informed choice among different properties. As a matter of fact, a large number of the complaints against agents received by the EAA arise from the lack of property information or its delayed provision.

7.1.2 Central property database

A feasibility study was carried out by a consultancy company which put forward a number of short-term and long-term proposals. It was found that the prescribed property information is currently owned by different government departments and the creation of a one-stop central databank will take a long time and a lot of resources. At the same time, the Land Registry is undertaking a major revamp of its property information retrieval system which will take a few years to complete. In the circumstances the EAA is arranging for information on user restriction, currently available from the Occupation Permit of the Buildings Department, to be incorporated into the Info-Hotline Service maintained by the Rating and Valuation Department, from

which information on the age and area of properties is already available. This will provide a fast, convenient and economical mode of property information retrieval. The new Info-Hotline Service will be available from late 2001 and practitioners need only take a land search from the Land Registry and dial the Info-Hotline to obtain all the property information he is required to possess by law. The cost will be reduced from about \$70 at existing levels to about \$35.

7.1.3 *Simplification of the Estate Agency Agreement*

This is a legally binding document of a contractual nature between an estate agent and his client. Its contents must be comprehensive to stipulate, in detail, the rights and responsibilities of both parties and, as such, cannot be over-simplified.

7.1.4 *The Statement of Particulars of Business*

One of the basic principles on which the licensing system operates is fair treatment for all practitioners, and the EAA has taken special care to make sure that large operators do not enjoy any special privileges. A large estate agency company operates with many branches which are distributed throughout the territory and each of the branches is run more or less like a single-shop business. In this context, the company must pay licence fees for each and every one of these branch operations. If a large company with over 100 branches is required to pay the same licence fee as a single-shop business, then the large company would be enjoying undue advantage. In addition, some large companies operate a franchise system whereby a network of small companies carry on estate agency business under the same company name. If such companies are allowed to pay the licence fee for just one single shop, then it would also be very unfair to the small operators. Furthermore, the EAA spends an equal amount of time, resources and manpower on regulating each place of business, whether that be a single-shop business or a branch of a large company. Each place of business must therefore be required to pay fees as a business entity out of fairness to all.

7.1.5 *Exemption for existing practitioners*

One of the major objectives of the Estate Agents Ordinance is to enhance the professional standard of estate agents and salespersons. When the Licensing Regulation was being formulated, the government was also aware that, while seeking to raise general standards in the trade, the impact on the trade must be kept as low as possible. Hence all individuals who were practising estate agency right before the commencement of the licensing regime were allowed a licence with the proviso that a qualifying examination must be passed (for existing practitioners) or a recognised training course completed (for senior practitioners) within a three-year transition period. Those who are licensed during the transition period are also exempted from the Form 5 requirement. Furthermore, transition was originally conceived as a two-year period, and it was at the request of the trade that it was increased to three years so as to allow more time for licensees to fulfil the training and examination requirements. While giving assistance to licensees to fulfil these requirements, the EAA cannot go back on the original principles of the licensing regime and lower standards by granting exemptions. Any such attempt will be against the spirit of the Ordinance, diminish the protection that consumers are entitled to, and unfair to other licensees who have fulfilled the requirements according to rule.

7.1.6 *Enforcement and inspections*

EAA staff teams inspect estate agency establishments according to established procedures and by random sampling, regardless of the location or scale of business of these establishments. These inspections are conducted to see if business has been conducted in compliance with the Estate Agents Ordinance and the Practice Regulation. An agent, before advertising a property, must first sign an Estate Agency Agreement with the vendor and obtain his permission to advertise the property. At the same time he must have all the prescribed property information ready for the reference of any prospective purchaser who may be interested in the property. Thus, during the course of an inspection, EAA staff members will pick certain listing advertisements at random and ask for the relevant Estate Agents Agreement and Property Information Form for sighting. If the estate agent is unable to produce these items on the spot, EAA

staff will generally exercise discretion and allow the agent to fax them to the Authority within a specified time, usually noon next day, so as to allow time for the agent to retrieve the documents from his files.

7.1.7 Support staff

The scope of estate agency work is defined by the Estate Agents Ordinance. Staff of the EAA work strictly in accordance with the provisions of the Ordinance in its action against unlicensed estate agency practice.

7.1.8 Replacement of licence fees by ad valorem levy on transactions

The existing fee system is simple and direct, while a levy system will involve complicated calculations, problematic assessments, as well as an inordinate amount of administrative work and may well be a more expensive alternative to the fee system.

7.1.9 Publishing the names of licensees who have contravened the Ordinance

The law requires that the names of all licensees disciplined by the EAA be published in the *Gazette*. The names are also periodically published in the *Milestone*, the EAA newsletter.

Annex

**Training Courses offered by the EAA through Institutions
of Tertiary/Vocational Training and their Evaluation**

1. Nine institutions of tertiary/vocational training are offering recognised training courses according to syllabuses published by the EAA.
2. Upon completion of each course, the EAA will administer course evaluation questionnaires to each student through the training institution. These questionnaires are then collected and the findings collated as statistics for the EAA.
3. In the questionnaire, each student is required to give an assessment on important aspects of training such as course content and teaching quality on a 5-point scale, the most satisfactory being 5 and the most unsatisfactory 0. From June 1999 to August 2001, the average score ranges are as follows:

(A) Course Content

(1) Coverage	3.54 - 3.96
(2) Depth	3.53 - 3.77
(3) Application to Work	3.48 - 3.72

(B) Lecturer

(1) Teaching Skills	3.58 - 3.79
(2) Knowledge and Expertise	3.89 - 4.22

(C) Other Factors

(1) Course Materials	3.40 - 3.71
(2) Teaching Facilities	3.39 - 3.73
(3) Course Administration	3.52 - 3.78

(D) Overall Comments

- | | | |
|-----|----------------------------|---------------|
| (1) | Course objectives met | 3.56 - 3.87 |
| (2) | Recommendability to others | 86.5% - 90.5% |

4. The above statistics indicate that, as assessed by those who have actually participated in the courses, the appropriateness of EAA courses to agency practice, and the degree to which such courses are deemed commendable, are both at satisfactory levels.
5. On the other hand, the EAA has received complaints from the training institutions with regard to student discipline. There are cases in which students are found to have breached classroom discipline, and some have been found to have left the class soon after the roll call. While the EAA has requested the training institutions to step up class control so that those who are genuinely interested in their studies might not be unduly affected, members of the trade should also be considerate and acts that will damage normal class proceedings and others' mood for study should be avoided.