

Legislative Council 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 will be published in the Gazette on 22 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 and licensing procedures and 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 an educational qualification of 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 either to pass the qualifying examination, or to complete relevant training courses instead 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, subject to 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, an ex-licensee who wishes to re-enter the trade must sit and pass the requisite qualifying examination again just like a new entrant. This is considered excessively rigid when compared with the licensing systems for other professions and trades. **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 EAA does not propose to impose compulsory training requirements on estate agents in connection with the proposed exemption as the estate agent 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 standards of his service. If mandatory refresher courses are imposed on the proposed exemption, the cost and time incurred to both the EAA and the ex-licensees will run counter to the objective of the proposal which is to provide an administratively simple system for practitioners to leave and re-enter the trade within a reasonable period of time. However, the EAA will still reinforce its training effort to help practitioners upgrade and update their knowledge from time to time. In addition, a licensed practitioner is under strict regulation of the EAO and its subsidiary legislation. His professional and ethical conduct are also

subject to code of ethics and practice directions issued as and when the need arises.

Switch between estate agent's and salesperson's licence

9. There are two categories of licences for individual practitioners: the “estate agent” licence and the “salesperson” licence. The two types of licensees basically carry out the same type of work, except that the “estate agent” may run an estate agency business as a proprietor, director, partner or manager, while the “salesperson” must be employed by a licensed “estate agent”. In addition to different annual licensing 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 will be considered as a new entrant when applying for a licence. This means that he has to fulfil the educational and examination requirements for new entrants again. There are licensees who have passed the estate agent qualifying examination but who choose to

practise on a salesperson licence for various reasons. For these licensees to switch to the estate agent licence after the expiration of the transition period, they would have to take the estate agent qualifying examination again. Such stipulations are considered 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 license fees having regard to the trade's strong demand for a reduction. 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 Infoline 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 how much the licence fees may be reduced, 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 unconditional 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) *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. The EAA aims to maintain a cumulative reserve fund equivalent to 25% of the expenditure of the following year as a buffer against contingencies

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.

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 necessary action including consideration to increase licence fees before the cumulative reserve fund is depleted completely.

Miscellaneous amendments

16. 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

17. 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

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

Commencement

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

Enquiry

20. Members may address any enquiries about the Amendment Regulation to Miss M.L. Wong, Principal Assistant Secretary of the Housing Bureau at 2509 0343.

**Housing Bureau
June 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
Salesperson	Passed licensing examination for estate agents or completed course for estate agents (for senior practitioners)	Not required
	Passed licensing examination for salespersons only or completed course for salespersons only (for senior practitioners)	Required to pass the Licensing Examination for Estate Agents**

* 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