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***Legislative Council***

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**Paper for the House Committee meeting on 26 October 2001**

**Report of the Subcommittee on  
Estate Agents (Licensing)(Amendment) Regulation 2001**

**Purpose**

This paper reports on the deliberations of the Subcommittee on Estate Agents (Licensing)(Amendment) Regulation 2001 (the Amendment Regulation).

**Background**

2. The Estate Agents Ordinance (Cap. 511) (the Ordinance) enacted in August 1997 provides for the establishment of the Estate Agents Authority (EAA) for the licensing of estate agents and regulation of estate agency work. EAA, with 20 members including five in the trade, was appointed to become a licensing body of the trade on 1 November 1997. The Estate Agents (Licensing) Regulation, passed by the Legislative Council on 18 November 1998, sets out, inter alia, the licensing requirements, level of fees as well as licensing procedures and forms.

**The Amendment Regulation**

3. The Amendment Regulation proposes amendments to the Regulation to provide more flexibility to the existing licensing arrangement and to reduce the present level of licensing fees. It seeks to -

- (a) facilitate re-entry of ex-licensees to the estate agency trade, and switch between estate agent's and salesperson's licence;
- (b) reduce licence fees;
- (c) increase the maximum validity period of licences from 12 to 24 months;

- (d) modify the requirement of licensed estate agents in stating information; and
- (e) revise certain prescribed forms.

The Amendment Regulation will come into operation on 1 January 2002.

### **The Subcommittee**

4. At the House Committee meeting on 29 June 2001, members agreed to form a Subcommittee to study the Amendment Regulation. Under the chairmanship of Hon CHAN Kam-lam, the Subcommittee has held four meetings. The membership list of the Subcommittee is at **Appendix I**. Apart from examining the proposed legislation with the Administration, the Subcommittee has also invited views from the trade. Six groups, representing real estate agencies, salespersons and professional property consultants, have made oral and/or written representation to the Subcommittee. A list of these groups is at **Appendix II**.

### **Deliberations of the Subcommittee**

5. The Subcommittee notes that when the LegCo Panel on Housing was consulted on the proposed Amendment Regulation, some concerns have been expressed by some members on the appropriateness to exempt ex-licensees from the educational and examination requirements for re-entry to the profession, as well as the propriety of the proposed reduction of licence fees. The trade, on the other hand, has expressed support for the proposals but considered some of the proposed arrangements not sufficient enough to address the needs of the trade. The main concerns of the trade are as follows -

- (a) the period for exemption from the educational and examination requirements for re-entry should be extended from 24 to 36 months;
- (b) there is scope for further reduction of licence fees; and
- (c) failure of EAA to improve the conduct and integrity of practitioners.

### **Re-entry conditions for licensees whose license have expired**

6. The Amendment Regulation proposes 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 exempt from the prescribed educational and examination requirements. The aim of this amendment is to provide more flexibility to the existing licensing system so that licensees temporarily not practising estate agency work need not renew and pay licence fees continuously in order to maintain their licences. The Subcommittee has examined whether the proposal will have any

impact on retaining the professional standard of estate agents, as practitioners not practising might not be able to upkeep their professional knowledge. The majority of members however consider that at present, due to the economic downturn, many licence holders are not doing estate agency work. It will not be fair to regard those ex-licensees seeking re-entry as new entrants and require them to pass the appropriate qualifying examination again and fulfil the educational and other conditions simply because they do not have the money to maintain their licences. The proposal is a step in the right direction and a positive move to help the practitioners.

7. Regarding the trade's request for extending the period of exemption from educational and examination requirements for re-entry, the Subcommittee notes that in determining the current proposal of 24 months, the Administration has recognized that estate agency is a professional career which demands for professional knowledge from practitioners, and that professional standard should not be compromised by the provision of greater flexibility to the licensing system. However, as major changes in the operation of the profession are not anticipated within a short period of time, the Administration considers it appropriate to recommend a period of 24 months so as to strike a balance between the practical needs of practitioners and the need for maintaining the professional standard of estate agents.

8. In this respect, some members have suggested that consideration could be given to extending the period for re-entry to 36 months, subject to the taking of refresher courses upon re-entry. According to the Administration, to put the suggestion in practice, EAA will have to carefully consider the implementation details, including the period for re-entry, the scope and content of the refresher courses and the financial burden on the practitioners and these will take time. It would also be necessary for EAA has to consult the trade since the suggestion is at variance with the latter's request for unconditional re-entry within 36 months. EAA intends to complete a review of the system of licence renewal by the end of the first quarter in 2002.

#### Reduction in licence fees

9. The Subcommittee notes that EAA will register a surplus of \$4.9 million in 2001-02 and it will have a cumulative fund of \$49.1 million after setting aside a capital fund of \$22 million. Members welcome the reduction of licence fees by 20% with effect from 1 January 2002. They however note that the trade has questioned the high operating expenses of EAA and considered that there is still room for further reduction if EAA exercises more stringent control over its expenditure.

10. The Subcommittee notes that despite an anticipated decrease of 17% in the licensee population, there will be an annual increase of 7% in the operating expenses of EAA from \$50.8 million in 2001 to \$53 million in 2002 and to \$57.9 million in 2003. Besides, \$22 million will be set aside for capital projects such as the enhancement of the Info-Hotline Service and setting up of a new electronic licensing system. Some members consider the projected increases not justified, particularly when most of the statutory bodies are required to reduce their operating expenses by

1 to 2% under the Enhanced Productivity Programmes. Doubt has also been cast on the need to invest on capital projects which will only be good in the event of a booming market.

11. According to the Administration, EAA is operating on prudent financial principles and has exercised stringent control over its expenditure through the freeze on staff establishment and value-added deployment of human resources. Nevertheless, EAA should have sufficient resources available to pursue other new areas of work essential to the effective enforcement of the Ordinance. In considering the level of reduction of licence fees, EAA has taken into account the uncertainty in the licensee population and its financial commitments. As the number of licensees is subject to fluctuation in the property market and an accurate estimation is hard to obtain, EAA is obliged to make its forecasts with great caution. If sharp reductions to the fee levels are abruptly introduced and the number of licensees is not to increase correspondingly, it will become necessary for fees to be raised again within a short period of time. With the proposed 20% reduction of licence fees, EAA will begin to run an operating deficit of \$14 million in 2003/04.

12. The Subcommittee has also examined the trade's suggestion for EAA to explore other sources of income by adopting ad valorem levy on estate agency transactions. The purpose of the suggestion is to require large estate agencies which have a bigger share of the market to pay more. The Subcommittee notes the Administration's view that a levy system will involve complicated calculations and assessments, hence requiring an inordinate amount of administrative work which may turn out to be a more expensive alternative to the fee system. The proposed levy system was objected to by large estate agencies when the subject was put to the trade for consultation.

13. In this respect, the Subcommittee notes that in the present licensing system, a large estate agency company operating with many branches must pay licence fees for each and every one of its branches. The present system therefore aims at ensuring fair treatment for all practitioners. The Subcommittee notes that, notwithstanding, EAA will include the examination of licence fee in the review it will undertake to consider the system of licence renewal, as mentioned in the preceding paragraph.

#### Performance of EAA

14. The Subcommittee notes the comments from the trade on the regulatory regime of the Ordinance as well as the structure and operation of EAA. The trade finds the entry requirements for estate agents too stringent, hence deterring people from joining the trade. The appointment of those who have in fact left the trade or not actively involved in estate agency work to EAA has undermined the representativeness of EAA. They are also disappointed that EAA has failed to improve the conduct and integrity of estate agents since its establishment three years ago.

15. In this respect, the Subcommittee notes that the EAA Board has adopted co-opted membership on its Training Committee. One representative of trade association has already been appointed as a co-opted member of the Committee. Invitation to representatives of the trade associations to be co-opted members of other Standing Committees of EAA, as well as to participate in the deliberation of the Working Group on the Review of the Practice Regulation is being considered. Given that regulatory measures cannot be implemented without the active participation of the trade, the Subcommittee shares the view that consideration should be given to appointing those who have close connections with the trade to EAA. The Subcommittee also considers that efforts should be made to step up communication with the trade, particularly in respect of enforcement and inspection as well as training for estate agents.

16. The Administration takes note of members' concerns and advises that the Working Group on the Review of the Practice Regulation will examine in detail the proposals raised by the trade and will consider introducing amendments if necessary. At the request of members, the Administration undertakes to report the outcome of the review to the Panel on Housing upon its completion in April 2002.

### **Conclusion**

17. The Subcommittee considers that all aspects of the Amendment Regulation have been fully deliberated. It would be for individual Members to decide whether or not to support the Amendment Regulation.

### **Advice sought**

18. Members are invited to note the deliberations of the Subcommittee.

Prepared by  
Council Business Division 1  
Legislative Council Secretariat  
24 October 2001

**Subcommittee on Estate Agents (Licensing) (Amendment) Regulation 2001**

**Membership list**

**Chairman** Hon CHAN Kam-lam

**Members** Hon Mrs Selina CHOW LIANG Shuk-ye, JP  
Hon Bernard CHAN  
Hon Mrs Miriam LAU Kin-ye, JP  
Hon CHOY So-yuk  
Hon Henry WU King-cheong, BBS  
Hon IP Kwok-him, JP  
Hon LAU Ping-cheung

(Total : 8 Members)

**Clerk** Miss Becky YU

**Legal Adviser** Ms Bernice WONG

**Date** 11 July 2001

## **Appendix II**

### **A list of deputations which have made oral and/or written presentation to the Subcommittee**

1. Hong Kong Real Estate Agencies General Association
2. Society of Hong Kong Real Estate Agents Ltd
3. Hong Kong Chamber of Professional Property Consultants Ltd
4. New Territories Estate Agency Association Ltd
5. Property Agencies Association Ltd
6. Property Agency Right Group