

Legislative Council Brief

Estate Agents Ordinance (Cap. 511)

ESTATE AGENTS (LICENSING) (AMENDMENT) REGULATION 2009

Introduction

A In exercise of the power under section 56 (1) (f) of the Estate Agents Ordinance (Cap. 511) (“the Ordinance”), the Estate Agents Authority, with the approval of the Secretary for Transport and Housing, proposes to make the Estate Agents (Licensing) (Amendment) Regulation 2009 (the Amendment Regulation), at Annex A, to give effect to the concession of fees for licences under the Ordinance for the period from 1 May 2009 to 30 April 2010 inclusive.

Proposed Licence Fee Concession

2. Given the impact of the current local economic and property market conditions on the estate agency sector, the EAA would provide a fee concession of 50% of the 12-month fee in respect of each type of licence as prescribed in item 1 of Schedule 2 to the Estate Agents (Licensing) Regulation (Cap. 511 sub. leg. A) (the Licensing Regulation) on a one-off basis, in the form of fee reduction and/or fee refund, during the period from 1 May 2009 to 30 April 2010 inclusive, with a view to help tiding the estate agent sector over the difficult time. The proposed fee concession will cover salesperson’s licence, and estate agent’s licences for individuals and companies.

3. Under the proposed fee concession, all holders of valid licences during the period from 1 May 2009 to 30 April 2010 inclusive (including new applicants who apply for licences during this period), shall be able to benefit from the aforementioned licence fee concession, in the following ways:

- (a) a new applicant applying for any type of licences as specified in item 1 of Schedule 2 to the Licensing Regulation which commence during the period from 1 May 2009 to 30 April 2010 inclusive and applicants for the renewal of licences which commence during the period from 1 May 2009 to 30 April 2010 inclusive, for as long as they have not received

refund as mentioned in (b) below at all, shall be entitled to pay a licence fee which is reduced by 50 % of the 12-month licence fee in respect of each of such licence (the “reduction amount”);

- (b) a licence holder who is holding any types of licences as specified in item 1 of Schedule 2 to the Licensing Regulation which are valid during the period from 1 May 2009 to 30 April 2010 and for which no fee reduction as mentioned in (a) above has been enjoyed, may apply for refund for any of those licences on a pro-rata basis taking into account the number of months for which the licence is valid within the period from 1 May 2009 to 30 April 2010 inclusive (part of a month shall be reckoned as a month), up to the full reduction amount for those particular types of licences from 1 May 2009 to 30 April 2010 inclusive; and
- (c) where only part but not all of the reduction amount of a particular type of licence has been refunded to a licence holder, he shall be entitled to the balance of the reduction amount upon grant or renewal of the same type of licence from 1 May 2009 to 30 April 2010 inclusive.

4. The purpose of providing a refund mechanism for holders of valid licences as mentioned in paragraph 3(b) above is to ensure that those who have paid for a new licence or a renewal of licence before the commencement of the fee concession period (i.e. 1 May 2009) will not have to wait until the renewal of the licence, which may take as long as twelve months, in order to benefit from the fee concession, and that all of them will have a channel to benefit from the fee concession.

5. With the proposed one-off fee concession, the amount of fees which a licence holder has to pay in respect of each type of licence when he applies for a new or renewal of the licence during the period from 1 April 2009 to 31 March 2010 inclusive will be as shown in Annex B. The maximum concession amount for each type of licence, by way of fee reduction or refund or a combination of both, is shown in the last column of Annex B.

B

Expected Number of Beneficiaries

6. The proposed one-off fee concession, by way of fee reduction and refund, will benefit all the holders of valid licences as at 1 May 2009, plus new applicants who may apply for licences during the period from 1 May 2009 to 30 April 2010. As at 31 January 2009, there

were 24,248 valid licences as specified in item 1 of Schedule 2 to the Licensing Regulation. 22,612 were individual licences and 1,636 were company licences.

7. The amount of savings in licence fees per licence, or the amount of refund in licence fees per licence, will range from \$640 to \$1400 depending on the types of licences.

The Amendment Regulation

8. The Amendment Regulation adds a new section 5A to the Licensing Regulation to provide for the reduction of licence fees for the grant or renewal of licences during the concession period as mentioned in paragraph 3(a) above, and a new section 5B to provide for the refund of licence fees paid before 1 May 2009 for licences which are valid during any part of the concession period as mentioned in paragraph 3(b) above.

9. The Amendment Regulation also adds new definitions which are necessary for defining the scope and applicability of the proposed fee reduction and fee refund, and a new Schedule 3 to show the total reduction amount for each type of licences.

Legislative Timetable

10. The legislative timetable is as follows:

Publication in the Gazette	27 February 2009
Tabling at the Legislative Council	4 March 2009
Effective date of the Amendment Regulation	1 May 2009

Financial Implications of the Fee Concession Proposal

11. On the assumption that the licensee population remains unchanged, and that all existing licensees have valid licences throughout the entire concession period, the maximum financial implications of the proposed fee concession to the EAA will be about \$24.5 million.

12. EAA's financial position as at the end of the 2007 - 08 financial year was as follows :

Annual income	\$53.1 million
Annual operating cost	<u>\$48.9 million</u>
	\$4.2 million (surplus)
Cumulative reserve	\$93.4 million

13. The proposed fee concession may, to its fullest extent, reduce EAA reserve to \$68.9 million. The EAA Board considers that the EAA will remain financially healthy in spite of the reduction in the cumulative reserve arising from the proposed one-off fee concession.

14. EAA is a self-financing body funded primarily by licence fees. The proposed licence fee concession will not have financial implications to the Government.

Public Consultation

15. The EAA has consulted the estate agency trade on the proposed one-off licence fee concession. The trade is generally satisfied with the magnitude of the licence fee concession and the implementation arrangements.

Publicity

16. The EAA will issue a press release on the licence fee concession before the implementation date of 1 May 2009.

Background

17. Individuals or companies engaging in estate agency work are required to obtain various types of licences issued by the EAA. The fees for the various types of licences under the Ordinance are prescribed in item 1 of Schedule 2 to the Licensing Regulation. The current licence fees are shown in Annex C.

C

18. EAA is a self-financing statutory body set up in 1997 under the Ordinance to regulate the practice of estate agency practitioners and enhance the professional competence and standard of service of the trade, with a view to enhancing protection for consumers and encouraging fair, open and honest property transactions. One of its regulatory functions is to issue licences.

Enquiries

19. Enquiries on this brief should be addressed to Mr Eugene Fung, Principal Assistant Secretary for Transport and Housing (Private Housing) at 2761 5039.

**Transport and Housing Bureau
February 2009**

**ESTATE AGENTS (LICENSING) (AMENDMENT)
REGULATION 2009**

(Made by the Estate Agents Authority, with the approval of the Secretary for Transport and Housing, under section 56 of the Estate Agents Ordinance (Cap. 511) and section 29 of the Interpretation and General Clauses Ordinance (Cap. 1))

1. Commencement

This Regulation comes into operation on 1 May 2009.

2. Interpretation

Section 2 of the Estate Agents (Licensing) Regulation (Cap. 511 sub. leg. A) is amended by adding –

““authorized reduction amount” (獲准扣減款額) means, in relation to an estate agent’s licence or a salesperson’s licence, the amount set out in the third column in Schedule 3 opposite to the licence;

“concession period” (寬免期) means the period beginning on 1 May 2009 and ending on 30 April 2010;”.

3. Sections added

The following are added –

**“5A. Prescribed fees for licences
commencing during concession period**

(1) Section 5(1) does not apply in relation to the grant or renewal of an applicable licence.

(2) Subject to subsection (3), the fee prescribed for the grant or renewal of an applicable licence is calculated in accordance with the following formula –

original fee – concession amount.

(3) If, after a concession amount is permitted for the purpose of calculating a fee under this section, the aggregate of every concession amount so permitted, and every amount refunded under section 5B, for the estate agent's licence, or the salesperson's licence, exceeds the authorized reduction amount for that licence, the fee prescribed for the grant or renewal of that licence shall increase by the amount of the excess.

(4) Section 5(2) and (3) applies to a fee prescribed under this section as it applies to a fee prescribed under section 5(1).

(5) In this section –

“applicable licence” (適用牌照) means an estate agent's licence, or a salesperson's licence, the term of which commences on a date falling within the concession period;

“concession amount” (寬免款額) –

(a) in relation to an applicable licence for not less than 12 months but not more than 24 months, means the authorized reduction amount for the licence; or

(b) in relation to an applicable licence for less than 12 months, means the portion of the authorized reduction amount for the licence that the number of applicable months bears to 12;

“number of applicable months” (適用月份數目) means –

(a) the number of months for which the applicable licence is granted or renewed; or

(b) if that number of months is not a whole number, that number of months rounded up to the next whole number;

“original fee” (原定費用) means the fee that, but for subsection (1), would have been prescribed for the grant or renewal of the applicable licence under section 5(1).

5B. Refund of licence fees

- (1) This section applies if –
 - (a) a person has applied and paid the prescribed fee for the grant or renewal of an estate agent’s licence, or a salesperson’s licence before 1 May 2009;
 - (b) the licence is granted to or renewed in favour of the person under the Ordinance; and
 - (c) the licence is valid during the concession period or any part of it.

(2) The Authority shall, on application by the person, make a refund of the prescribed fee paid for the grant or renewal of the licence or a portion of that fee.

(3) Subject to subsection (4), the amount to be refunded is the portion of the authorized reduction amount for the licence that the number of valid months bears to 12.

(4) If, after a refund is made under this section, the aggregate of every concession amount permitted for the purposes of section 5A, and every amount refunded under this section, for the estate agent’s licence, or the salesperson’s licence, exceeds the authorized reduction amount for that licence, the amount of the refund shall be reduced by the amount of the excess.

(5) An application for the purposes of subsection (2) may only be made during the concession period.

(6) In this section –

“number of valid months” (有效月份數目) means –

- (a) the number of months for which the licence is valid during the concession period; or
- (b) if that number of months is not a whole number, that number of months rounded up to the next whole number.

(7) For the purposes of this section, an estate agent’s licence, or a salesperson’s licence, is not valid during the period when it is suspended under section 27 or 30 of the Ordinance.”.

4. Schedule 3 added

The following is added –

“SCHEDULE 3 [s. 2]

AUTHORIZED REDUCTION AMOUNT

Item	Licence	Amount \$
1.	Salesperson’s licence	640
2.	Estate agent’s licence (individual) - for individual estate agent	1,005
	<u>plus</u> - for operation of a sole proprietorship/partnership under each business name at one place of business	1,060
	<u>plus</u> - for operation of each additional place of business under each business name	1,060
3.	Estate agent’s licence (company) - for operating under one business name – (a) at one place of business	1,400

(b) at each additional place of business	1,060
<u>plus</u>	
- for operating under each additional business name –	
(a) at one place of business	1,400
(b) at each additional place of business	1,060”.

Chairman,
Estate Agents Authority

2009

Explanatory Note

This Regulation amends the Estate Agents (Licensing) Regulation (Cap. 511 sub. leg. A) (“the principal Regulation”) to give effect to the concession of fees for an estate agent’s licence and a salesperson’s licence.

2. Section 3 adds a new section 5A to the principal Regulation. The new section 5A prescribes the fees for the grant or renewal of an estate agent’s licence or a salesperson’s licence commencing during the period from 1 May 2009 to 30 April 2010. The fees are lower than the fees prescribed under section 5 of the principal Regulation.

3. Section 3 also adds a new section 5B to the principal Regulation. The new section 5B provides for the refund of the fees paid before 1 May 2009 for an estate agent’s licence or a salesperson’s licence that is valid during any part of the period from 1 May 2009 to 30 April 2010.

4. Sections 2 and 4 add new definitions and a new Schedule to the principal Regulation respectively, with which the new sections 5A and 5B are to be read.

Licence Fees during the Concession Period

	<u>Fees</u>		Maximum Reduction Amount per licence (this is also the maximum amount which licensees may receive under a refund scenario) \$
	(Per 12 months)	(Per 24 months)	
(a) Salesperson's licence	640	1,870	640
(b) Estate agent's licence (individual)	1,005	2,925	1,005
– for individual estate agent			
<u>plus</u>			
– for operation of a sole proprietorship/partnership under each business name at one place of business	1,060	3,080	1,060
<u>plus</u>			
– for operation of each additional place of business under each business name	1,060	3,080	1,060
(c) Estate agent's licence (company)			
– for operating under one business name–			
(i) at one place of business	1,400	4,060	1,400
(ii) at each additional place of business	1,060	3,080	1,060
<u>plus</u>			
– for operating under each additional business name–			
(i) at one place of business	1,400	4,060	1,400
(ii) at each additional place of business	1,060	3,080	1,060

Schedule 2

FEES

Item	Matter in respect of which the fee is payable	Fee \$	
		(Per 12 months)	(Per 24 months)
1.	Grant or renewal of a licence		
	(a) Salesperson's licence	1,280	2,510
	(b) Estate agent's licence (individual)	2,010	3,930
	– for individual estate agent		
	<u>plus</u>		
	– for operation of a sole proprietorship/partnership under each business name at one place of business	2,120	4,140
	<u>plus</u>		
	– for operation of each additional place of business under each business name	2,120	4,140
	(c) Estate agents' licence (company)		
	– for operating under one business name–	2,800	5,460
	(i) at one place of business	2,120	4,140
	(ii) at each additional place of business		
	<u>plus</u>		
	– for operating under each additional business name–	2,800	5,460
	(i) at one place of business	2,120	4,140
	(ii) at each additional place of business		

Where a licence is granted or renewed for a period of less than 12 months, the licence fee payable shall be calculated by multiplying one-twelfth of such fee as set out in the third column as is appropriate by the number of months for which the licence is granted or renewed (part of a month shall be reckoned as a month).

Where a licence is granted or renewed for a period of more than 12 months, the licence fee payable shall be calculated by multiplying one-twenty fourth of such fee as set out in the fourth column as is appropriate by the number of months for which the licence is granted or renewed (part of a month shall be reckoned as a month).