

立法會
Legislative Council

LC Paper No. CB(1)350/09-10
(These minutes have been seen
by the Administration)

Ref : CB1/SS/2/09

Subcommittee on Estate Agents (Licensing) (Amendment)
(No. 2) Regulation 2009

Minutes of the first meeting held on
Monday, 2 November 2009, at 11:15 am
in Conference Room B of the Legislative Council Building

- Members present** : Hon Miriam LAU Kin-yee, GBS, JP (Chairman)
Hon James TO Kun-sun
Hon LEE Wing-tat
Dr Hon Joseph LEE Kok-long, SBS, JP
Hon Tanya CHAN
- Members absent** : Hon CHAN Kam-lam, SBS, JP
Hon Audrey EU Yuet-mei, SC, JP
- Public Officers attending** : Agenda item II

Mr Eugene FUNG Kin-yip
Principal Assistant Secretary for Transport and Housing
(Private Housing)

Mr Raymond LAW Fuk-ki
Chief Executive Officer (Private Housing)
Transport and Housing Bureau

Miss Carrie WONG Ka-yee
Senior Government Counsel, Law Drafting Division
Department of Justice

- Attendance by invitation** : Agenda Item II
Estate Agents Authority
Mrs Rosanna URE
Chief Executive Officer

Ms Eva LAU
Director of Regulatory Affairs and General Counsel

Mr Kevin CHEUNG
Manager (Licensing)
- Clerk in attendance** : Ms Debbie YAU
Chief Council Secretary (1)6
- Staff in attendance** : Mr Kelvin LEE
Assistant Legal Adviser 1

Ms Angel SHEK
Senior Council Secretary (1)1

Ms Michelle NIEN
Legislative Assistant (1)9

Action

I Election of Chairman

Ms Miriam LAU was elected the Chairman.

II Meeting with the Administration

(LC Paper No. CB(1)184/09-10(01) -- Information paper provided by the Administration

LC Paper No. CB(1)184/09-10(02) -- Assistant Legal Adviser's letter dated 20 October 2009 to the Administration

LC Paper No. CB(1)184/09-10(03) -- Administration's response dated 22 October 2009 to LC Paper No. CB(1)184/09-10(02)

LC Paper No. CB(1)184/09-10(04) -- Background brief prepared by the Legislative Council Secretariat

- LC Paper No. CB(1)184/09-10(05) -- Marked-up copy of the Regulation prepared by the Legal Service Division
- L.N. 181 of 2009 -- Estate Agents (Licensing) (Amendment) (No. 2) Regulation 2009
- Ref.: HD(CR) 55/213 Pt.5 -- Legislative Council Brief issued by Transport and Housing Bureau
- LC Paper No. LS 1/09-10 -- Legal Service Division Report)

2. The Subcommittee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions required to be taken by the Administration

3. The Subcommittee requested the Administration to consider specifying in the Amendment Regulation the exclusivity of the tailor-made course to be organized by the Estate Agents Authority (EAA) to candidates nominated by the China Institute of Real Estate Appraisers and Agents (CIREA).

4. Some members expressed concern about EAA's jurisdiction and the mode of regulation for its licensed estate agents before and after implementation of the Amendment Regulation. The Administration was requested to provide written responses to the concerns raised specifically as follow:

- (a) whether under the existing legislation, EAA could regulate the conduct of an EAA licensed Hong Kong estate agent who carried out estate agency work in the Mainland for a Mainlander who, based on misrepresentation made by the said agent in the Mainland, purchased a Hong Kong property and signed the relevant purchasing agreement in Hong Kong;
- (b) in relation to (a), whether there would be any change in the mode of regulation after the implementation of the Amendment Regulation;
- (c) whether under the Amendment Regulation, EAA could regulate the conduct of licensed Hong Kong or Mainland estate agents who carried out estate agency work in the Mainland for Hong Kong people purchasing Mainland properties;
- (d) whether the Amendment Regulation could regulate the conduct of EAA licensed Mainland estate agents who carried out estate agency work in the Mainland for Mainlanders purchasing Hong Kong properties, and whether CIREA would revoke the licence of such a

Mainland estate agent if he/she was found to have provided misrepresented information in the Mainland or Hong Kong; and

- (e) whether the EAA licence of a Mainland estate agent would be revoked if he was absent and did not provide a defence for his alleged misconduct while practising in Hong Kong or in the Mainland.

5. The Administration was requested to provide information on the legal basis, apart from section 5(b) of the Estate Agents Ordinance (Cap. 511), for EAA to nominate eligible candidates (up to 300 for the first year) to apply for estate agent licences to be granted by CIREA, and details of the system based on which EAA would make the nomination.

Extension of scrutiny period

6. Members agreed that the Chairman should move a motion at the Council meeting on 11 November 2009 to extend the scrutiny period of the Amendment Regulation to 2 December 2009.

Date of next meeting

7. Members agreed to hold the next meeting on Monday, 9 November 2009 at 10:45 am.

III Any other business

8. There being no other business, the meeting ended at 12:25 pm.

Council Business Division 1
Legislative Council Secretariat
12 November 2009

**Proceedings of the first meeting of
the Subcommittee on Estate Agents (Licensing) (Amendment)
(No. 2) Regulation 2009
on Monday, 2 November 2009, at 11:15 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 – 000439	Ms Miriam LAU Miss Tanya CHAN Dr Joseph LEE	Election of Chairman	
000440 – 000724	Chairman	Extension of the scrutiny period	
000725 – 001141	Chairman Administration	Briefing by the Administration on the Amendment Regulation (File ref: HD(CR)55/213 Pt. 5 and CB(1)184/09-10(01))	
001142 – 002559	Chairman Mr LEE Wing-tat Estate Agents Authority (EAA)	<p>Mr LEE Wing-tat's concern about the need and ways to ensure the standards and professional levels of the estate agents licensed by EAA in Hong Kong or through the proposed mutual recognition of qualifications scheme (the Scheme) to be implemented jointly by EAA and the China Institute of Real Estate Appraisers and Agents (CIREA) in due course</p> <p>EAA's highlight that CIREA's threshold of granting estate agent licence was relatively higher than that of EAA. To ensure consistent standards of the licences granted in Hong Kong and under the Scheme, EAA would provide a tailor-made course to the Mainland candidates nominated by CIREA and require them to pass a tailor-made examination before granting the licence</p> <p>Mr LEE Wing-tat's concern whether under the Amendment Regulation, EAA could regulate the conduct of licensed Hong Kong or Mainland estate agents who carried out estate agency work in the Mainland for Hong Kong people purchasing Mainland properties, as EAA had no jurisdiction outside Hong Kong</p> <p>EAA's advice that in principle, sales of Mainland properties were subject to the control of Mainland's regulatory framework. However, if EAA received a complaint concerning a Mainland estate agent licensed by it under the Scheme, it would proceed with investigation as far as practicable despite there might be some difficulties during the process if the incident under complaint happened outside Hong Kong. If the estate agent concerned was found to have violated the code of conduct or practices, EAA would impose disciplinary sanction according to the nature of the violation in question, and revocation of licence might result in the most serious cases. To strengthen supervision of estate agents licensed under the Scheme, EAA and CIREA would notify the other side if any of their member estate</p>	The Administration to provide a written response as required in paragraph 4(c) of the minutes

Time marker	Speaker	Subject(s)	Action required
		<p>agents had been sanctioned</p> <p>Mr LEE Wing-tat's worry that the Amendment Regulation might raise public's expectation for an enhanced protection over the purchase of Mainland properties, and his concern whether EAA was prepared to handle the anticipated rising number of complaints effectively</p>	
002600 – 004155	Chairman Dr Joseph LEE Administration EAA	<p>Dr Joseph LEE's declaration that he was a member of EAA. His worry that the Amendment Regulation might create a wrong impression among the general public that the purchase of Mainland properties would gain a better protection as the Mainland estate agent who carried out the agency work was now also licensed by EAA</p> <p>The Chairman's query whether the Mainland estate agent who had obtained EAA's licence through the Scheme would be held as violating the code of conduct if he/she provided misrepresented information about a Mainland property during a sales briefing in Hong Kong or during a site visit in the Mainland</p> <p>EAA's advice that it would follow the existing practice to act on complaints and collect evidence from relevant parties, irrespective of the location of properties concerned. The Administration's further advice that if the complainant also lodged a complaint in the Mainland, CIREA could initiate investigation separately</p> <p>In reply to Dr Joseph's LEE's concern whether local people could join EAA's training course, EAA's advice that the tailor-made course to be organized by EAA for CIREA's nominees aimed at highlighting the differences between the systems in the two places. The course would enable course members to gain a basic understanding of the essential elements in the Hong Kong system before they attempted the tailor-made examination to be held in Shenzhen or Zhuhai. Dr LEE's request that the exclusivity of the tailor-made course should be specified in the Amendment Regulation</p>	The Administration to provide a written response as required in paragraph 3 of the minutes
004156 – 004701	Mr LEE Wing-tat Chairman EAA	<p>Mr LEE Wing-tat's remark that EAA's licence might help boost consumers' confidence on Mainland estate agent, and his grave concern about the difficulty in regulating those EAA licensed Mainland estate agents who stationed in the Mainland</p> <p>EAA's acknowledgment that it might be more difficult and take longer time to collect evidence if the Mainland estate agents under complaint stationed in the Mainland. Its assurance that CIREA would exercise prudence in selecting nominees. As EAA would notify CIREA about the sanction it had imposed on the licence holders, the Mainland estate agents concerned might run the risk of having their Mainland licence being revoked by CIREA. EAA would discuss with CIREA the details of the notification mechanism</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>In reply to the Chairman, EAA's confirmation that Mainland estate agents licensed by EAA through the Scheme had to apply for work permits upon employment by a local company before they could work in Hong Kong</p>	
<p>004702 – 010716</p>	<p>Chairman Mr James TO Assistant Legal Adviser (ALA) EAA</p>	<p>Mr James TO's concern about EAA's jurisdiction and the effect of the Amendment Regulation -</p> <ul style="list-style-type: none"> (a) whether under the existing legislation, EAA could regulate the conduct of an EAA licensed Hong Kong estate agent who carried out estate agency work in the Mainland for a Mainlander who, based on misrepresentation made by the said agent in the Mainland, purchased a Hong Kong property and signed the relevant purchasing agreement in Hong Kong; (b) in relation to (a), whether there would be any change in the mode of regulation after the implementation of the Amendment Regulation; (c) whether the Amendment Regulation could regulate the conduct of EAA licensed Mainland estate agents who carried out estate agency work in the Mainland for Mainlanders purchasing Hong Kong properties, and whether CIREA would revoke the licence of such a Mainland estate agent if he/she was found to have provided misrepresented information in the Mainland or Hong Kong; and (d) whether the EAA licence of a Mainland estate agent would be revoked if he was absent and did not provide a defence for his alleged misconduct while practising in Hong Kong or in the Mainland <p>EAA's reiteration that in line with existing practice, EAA would act on complaints and proceed with investigation accordingly, and its agreement to provide written information in response to the concerns raised at the meeting</p> <p>Mr James TO's further concern about the legal basis for EAA or any other authority to nominate eligible estate agents, and his view that the criteria to be adopted for making the nomination had to be objective, fair and reasonable</p> <p>ALA's advice that according to section 5(b) of the Estate Agents Ordinance (Cap. 511) (EAO), one of EAA's functions was to "maintain or enhance the status of estate agents and salespersons" and his view that the nomination of eligible local estate agents to apply for CIREA's licence would help enhance their status</p> <p>EAA's sharing of the same opinion. In case the number of applicants exceeded the annual quota (up to 300 for the first year), the candidates would be selected according to a set of</p>	<p>The Administration to provide a written response as required in paragraphs 4(a), (b), (d) and (e) of the minutes</p>

Time marker	Speaker	Subject(s)	Action required
		<p>pre-determined selection criteria laid down by EAA, which would include additional working experience in the estate agency field, higher educational attainment, credits gained from EAA's Continuing Professional Development Programme. Should the number of shortlisted candidates still exceed the quota, the nominations would be decided by balloting. EAA had sought the advice from ICAC in working out the selection criteria</p> <p>Mr James TO's view that section 5(b) of EAO did not provide an adequate legal basis for EAA to make the said nominations, in particular if there was a quota. His request for further information on the legal basis, apart from section 5(b) of EAO, for EAA to make the nomination, and details of the selection system</p>	<p>The Administration to provide a written response as required in paragraph 5 of the minutes</p>
010717 – 010928	Chairman Dr Joseph LEE Mr James TO	Date of next meeting	