

# 立法會 *Legislative Council*

LC Paper No. CB(1)504/09-10  
(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 second meeting held on  
Monday, 9 November 2009, at 10:45 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 CHAN Kam-lam, SBS, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon LEE Wing-tat  
Dr Hon Joseph LEE Kok-long, SBS, JP  
Hon Tanya CHAN

**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-yeo  
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

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Action

- I      **Meeting with the Administration**  
(LC Paper No. CB(1)269/09-10(01)) -- List of follow-up actions arising from the discussion at the meeting on 2 November 2009 prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)269/09-10(02) -- Administration's response to LC Paper No. CB(1)269/09-10(01)
- LC Paper No. CB(1)184/09-10(05) -- Marked-up copy of the Regulation prepared by the Legal Service Division)

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

Follow-up actions required to be taken by the Administration

2.      The Subcommittee requested the Administration to provide written responses to the following concerns raised at the meeting:

- (a) whether the Estate Agents Authority (EAA) could exercise jurisdiction over the conduct and behaviour of EAA-licensed estate agents outside Hong Kong, and make reference to it when considering whether he/she was still "fit and proper to hold a licence"; and if yes, the legal basis (or authoritative interpretations/precedent cases, if any) and conditions for exercising such jurisdiction;
- (b) the jurisdiction and licensing considerations of the China Institute of Real Estate Appraisers and Agents (CIREA) in relation to the conduct and behaviour of CIREA-licensed estate agents outside the Mainland;
- (c) whether EAA would exercise supervision over EAA-licensed Mainland estate agents regarding their estate agency work for Mainland properties;
- (d) regarding the communications and notices sent by EAA to the address of a licensee deemed to have been served under EAA's Proceedings Rules on Inquiry Hearings, whether the Administration would consider providing statutory basis for serving notices etc in the Estate Agents Ordinance (Cap. 511) or its subsidiary legislation, including whether to request an EAA-licensed estate agent practising outside Hong Kong to provide a registered address other than that in Hong Kong to which all communications and notices might be sent; and
- (e) further information on the detailed operation of the points system whereby applicants would be shortlisted for nomination by EAA to CIREA to attend the tailor-made course and sit for the relevant examination of the mutual recognition of qualifications scheme.

Date of next meeting

3. Members agreed to hold the next meeting on Friday, 13 November 2009 at 10:45 am.

**II Any other business**

4. There being no other business, the meeting ended at 12:30 pm.

**Proceedings of the second meeting of  
the Subcommittee on Estate Agents (Licensing) (Amendment) (No. 2) Regulation 2009  
on Monday, 9 November 2009, at 10:45 am  
in Conference Room B of the Legislative Council Building**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
000220 – 000333	Chairman	The Chairman's introductory remarks	
000334 – 000843	Chairman Administration Estate Agents Authority (EAA)	Briefing by the Administration and EAA on their consolidated responses to concerns raised at the meeting on 2 November 2009 (CB(1)269/09-10(02))	
000844 – 002336	Chairman Mr James TO Administration EAA Assistant Legal Adviser (ALA)	<p>Noting that EAA did not have the power to handle complaints the nature of which was beyond the ambit under the Estate Agents Ordinance (Cap. 511) (EOA), Mr James TO's enquiry whether EAA could exercise jurisdiction over the conduct and behaviour of its licensees outside Hong Kong and hold the relevant disciplinary hearing, and make reference to the outcome or sanctions imposed by authorities in other jurisdictions when considering whether he/she was still "fit and proper to hold a licence"; and if yes, the legal basis and conditions for exercising such jurisdiction</p> <p>The Administration and EAA's confirmation that in accordance with section 29(1)(b) of EAO, if a complaint was received on an EAA licensee, the issue of whether the licensee was a "fit and proper to hold a licence" under section 19, 20 or 21 of EAO would come in, and EAA could deal with the matter itself or refer it to a disciplinary committee, and an inquiry might be conducted as appropriate. EAA's further advice that the control exercised by professional regulatory bodies did not have territorial limit as highlighted in the legal publication on "Disciplinary and Regulatory Proceedings"</p> <p>In reply to Mr James TO, ALA's advice that extra-territorial application was more stringent for criminal acts, but less rigid for licensing purposes. While EAA was empowered by EAO to determine whether or not a person was "fit and proper" for the purpose of holding an estate agent's licence having regard to, inter alia, any conviction of the person in Hong Kong or elsewhere, it was necessary to examine how far EAA could assess its licensees' extra-territorial conduct and behaviour, given the greater difficulty in collecting evidence for acts outside Hong Kong</p> <p>Mr James TO's query about the legal basis for EAA to exercise its jurisdiction for its licensees' conduct and behaviour outside the territory, given his understanding that the legal system of a place could only be applied within its territory. If affirmative, his advice that the Administration should consider making legislative amendments to make this clear in the statutory framework, and the estate agents holding both EAA and CIREA licences should be informed of</p>	The Administration to follow up as required in paragraph 2(a) of the minutes

Time marker	Speaker	Subject(s)	Action required
		<p>the implications of their extra-territorial conduct for licensing purposes</p> <p>EAA's remark that the Scheme participants would be informed of the licensing requirements and regulatory framework when they attended EAA's tailor-made course which aimed at enhancing their understanding of the differences between the Mainland and Hong Kong systems</p>	
002337 – 003419	Chairman Mr James TO EAA	<p>Mr James TO's concern whether there might be conflicting or incompatible requirements in the relevant codes and practices of the Mainland and Hong Kong such that licensees under the Scheme would find it difficult to follow. His advice that EAA should clearly inform these estate agents how the rules and practices under the two systems would apply in relation to location of the property</p> <p>EAA's response that estate agency work for Hong Kong properties should be conducted in accordance with Hong Kong system, irrespective of the place of transaction. While EAA was not aware of any obvious conflicts under the two systems, it would further discuss with CIREA the drafting of the formal agreement and related issues upon the commencement of the Amendment Regulation</p>	
003420 – 003547	Chairman Dr Joseph LEE EAA	<p>In response to Dr Joseph LEE's concern, EAA's confirmation that under the Scheme, EAA and CIREA would notify each other of the names of the estate agents who had been disciplined</p>	
003548 – 004617	Chairman Mr James TO EAA	<p>Mr James TO's enquiry whether the codes of practices under the Scheme would be made statutory</p> <p>EAA's assurance that as in the existing practice, EAA-licensed estate agents had to comply with the EAO and its subsidiary legislation, including the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (Cap. 511, sub. leg. C) Practice Regulation in respect of Hong Kong properties. They should also comply with the Code of Ethics and Practice Circulars issued by EAA from time to time. However, estate agency work for properties outside the territory was beyond the ambit of EAA</p> <p>Mr James TO's further concern about the issue of competition if agency work for Mainland properties in Hong Kong could be carried out by Mainland estate agents with or without licences issued by EAA, and whether the latter group was subject to Mainland's regulation</p> <p>EAA's view that many factors, such as the continuous professional development of the estate agents, the prevailing economic environment and property market conditions, would affect the competitiveness of the estate agents. On Mainland's regulation over its licensees' work in Hong Kong, EAA's reference that according to 《房地產經紀人員職業資格制度暫行規定》 ("Temporary Implementing Rules on the Professional Qualification Regime for Real</p>	<p>The Administration to follow up as required in paragraph 2(b) of the minutes</p>

Time marker	Speaker	Subject(s)	Action required
		Estate Agents") promulgated by the Ministry of Personnel of the Central Government, an estate agent's licence could be revoked for, inter alia, misconduct, violation of relevant rules and practices, or criminal convictions. Mr TO's request for information on the jurisdiction and licensing considerations of CIREA in relation to the conduct and behaviour of its licensees outside the Mainland	
004618 – 005500	Chairman Dr Joseph LEE EAA Mr James TO	<p>The Administration's confirmation of Dr Joseph LEE's understanding that the purpose of the Amendment Regulation was mainly to provide the legal framework for implementing the Scheme to enable the regulation of EAA-licensed Mainland estate agents in carrying out estate agency work for Hong Kong properties. Nevertheless, EAA would take note of the disciplinary actions taken by CIREA over a Scheme licensee in respect of his/her work carried out for a Mainland property, and decide on the appropriate follow-up actions</p> <p>Mr James TO's remark that Mainland estate agents licensed under the Scheme would have an enhanced credibility in carrying out work for Mainland properties since his/her conduct and behaviour were in effect subject to regulation by CIREA and EAA through the notification mechanism</p> <p>Dr Joseph LEE and the Chairman's advice that publicity should be stepped up to avoid misunderstanding among the public that the Amendment Regulation would empower EAA to regulate estate agency work for Mainland properties, and to increase consumers' awareness about qualified Mainland estate agents licensed by EAA under the Scheme</p> <p>EAA's advice that it would step up consumer education and publicity regarding the Scheme and post the relevant information and the list of Mainland estate agents licensed under the Scheme on EAA's website</p>	
005350 – 010621	Chairman Mr James TO Mr CHAN Kam-lam Dr Joseph LEE EAA	<p>Concerns on the scope of discussion</p> <p>EAA's highlight that the main emphasis of the regulatory regime of EAA was in respect of estate agency work for Hong Kong properties</p>	
010622 – 011125	Chairman Mr James TO Administration	<p>Mr James TO's worry that EAA-licensed Mainland estate agents might use their status as EAA licence holders to gain consumers confidence into believing that they were more qualified and competent for carrying out estate agency work for Mainland properties, whereas in fact EAA licence was not required for carrying out such work</p> <p>Discussion on the issue of double jeopardy</p>	
011126 – 012455	Chairman ALA EAA Administration Mr James TO Dr Joseph LEE	Noting that under EAA's Proceedings Rules on Inquiry Hearings (the Rules), communications and notices would be deemed to have been served if they were sent by EAA to the address of a licensee, ALA's enquiry about the nature of the Rules and the legal basis for such	The Administration to follow up as required in paragraph 2(d) of the minutes

Time marker	Speaker	Subject(s)	Action required
		<p>EAA's advice that the Rules were in-house rules made by a resolution of EAA. According to section 14 of EAO, every licensee should have an address in Hong Kong to which all communications and notices might be sent</p> <p>Mr James TO's suggestion that the Administration should consider providing statutory basis in the EAO or its subsidiary legislation for serving such notices, including whether to request an EAA-licensed Mainland estate agent practising outside Hong Kong to provide a registered address other than that in Hong Kong (such as the address in the Mainland which he/she had registered with CIREA), to which all communications and notices might be sent</p> <p>Dr Joseph LEE's view that as communications and notices concerned the conduct of disciplinary hearings, the legal basis of serving notices etc should be provided</p> <p>The Administration's response that as there were at present individuals of different nationalities holding EAA licences, it would not be appropriate to require only the Mainland estate agents to provide an additional address in the Mainland to which all notices etc might be sent</p> <p>Mr James TO's disagreement with the Administration's response and his view that Mainland estate agents to be licensed by EAA under the Scheme warranted different consideration as unlike the aforesaid licensees of other nationalities, they also held the CIREA licences and might not reside in Hong Kong</p>	
012710 – 013459	Chairman Mr James TO EAA	<p>Mr James TO and the Chairman's enquiry about shortlisting of applicants by ballot under the points system whereby applicants would be nominated by EAA to CIREA under the Scheme</p> <p>EAA's introduction of the detailed operation of the points system</p>	The Administration to follow up as required in paragraph 2(e) of the minutes
013500 – 013627	Chairman Mr James TO Administration	Mr James TO's suggestion that the agreement between EAA and CIREA, which would be signed after the Amendment Regulation had been passed, should be tabled at a meeting of the Panel on Housing. The Administration's taking note of the suggestion	
013628 – 013854	Chairman	Date of next meeting	