

Legislative Council Panel on Housing

**Scheme on the Mutual Recognition of
Professional Qualifications of Estate Agents
between Mainland and Hong Kong**

Purpose

This paper briefs Members on the progress of the Scheme for the Mutual Recognition of Professional Qualifications of Estate Agents (the “Scheme”) between the Estate Agents Authority (EAA) and the China Institute of Real Estate Appraisers and Agents (CIREA).

Background

2. Mutual recognition of each other’s professional qualifications for estate agents is one of the liberalization measures agreed under the Mainland and Hong Kong Closer Economic Partnership Arrangement. In January 2009, EAA and CIREA signed a Memorandum of Understanding to indicate their commitment to enter into an agreement on the Scheme (the Agreement).

3. To enable EAA to exercise its obligations under the Scheme, namely, to grant estate agent’s licences to Mainlanders who hold a registration certificate issued by CIREA, are nominated by CIREA and are qualified for EAA’s estate agent’s licences through the Scheme, the Administration submitted the Estate Agents (Licensing) (Amendment) (No. 2) Regulation 2009 (the Amendment Regulation) to the Legislative Council (LegCo) in October 2009. LegCo passed the Amendment Regulation at the recommendation of the LegCo Subcommittee (the Subcommittee) which was formed to examine the Amendment Regulation. The Amendment Regulation came into effect on 7 December 2009.

4. In examining the Amendment Regulation, the Subcommittee requested that, before EAA issues licences to Mainland estate agents under the Scheme, the Administration should furnish a copy of the Agreement and information on the operational details of the Scheme, which were then not yet available, to the Panel on Housing (the Panel). The Administration submitted a paper (LC Paper No. CB(1)271/10-11(01)) on the above to the Panel on 29 October 2010.

5. EAA and CIREA signed the Agreement on 3 November 2010. A copy of the Agreement is at **Annex A**.

Latest Development

6. After entering into the Agreement, EAA publicized the details of the Scheme at its half-year review press conference in January 2011, its website and through sending e-mails to holders of the estate agent's licence. Details provided include the basic requirements for Hong Kong estate agents to participate in the Scheme, the quota, the selection criteria, and the dates for the training and examination. A summary of the information provided in EAA's website is at **Annex B**.

7. EAA accepted applications under the Scheme from licensed estate agents in Hong Kong from 1 to 28 February 2011. 266 applications were received¹, of which 248 applications met the basic requirements². The EAA subsequently informed the qualified applicants that they would be nominated for the Scheme.

8. In the course of examining the Amendment Regulation, the Subcommittee requested EAA to send correspondence and notices concerning complaints or disciplinary matters to the Hong Kong registered address and the Mainland address (if provided) of licensees under the Scheme. In this regard, EAA has requested Hong Kong estate agents to provide a Mainland address (if available), in addition to the Hong Kong registered address, in their applications. Also, EAA will make similar request to Mainland estate agents when they submit applications to EAA for a licence after having obtained the required qualifications.

9. EAA and CIREA will provide a training course and an examination for participants nominated by the other side. They will exchange lists of nominees before July 2011. The training course is scheduled for 18 and 19 July 2011 and the examination is scheduled for 20 July 2011. Both the training course and the examination will be held in Shenzhen. EAA and CIREA will notify the nominees of the examination result before September 2011.

10. The objective of the training course and the examination is to bridge possible knowledge gaps arising from the differences in the legal systems and practices between Hong Kong and the Mainland. The training course and the examination conducted by EAA will be based on the syllabus of the Hong Kong qualifying examination for estate agents. EAA staff will conduct the training, set the examination questions and invigilate the examination. EAA's course outline is at **Annex C**.

¹ For 2011, each side may nominate not more than 300 persons for the Scheme.

² Those not meeting the basic requirements included those not meeting the requirement on relevant working experience and not holding a valid estate agent's licence.

11. EAA will continue to liaise with CIREA to ensure the smooth implementation of the Scheme.

**Transport and Housing Bureau
Estate Agents Authority
June 2011**

Annex A

**Mainland Real Estate Agents and Hong Kong Estate Agents
Agreement for Mutual Recognition of Professional Qualifications**

3 November 2010

Section A. Foreword

1. Parties

This Agreement is made on the 3rd day of November 2010

between

(1) The China Institute of Real Estate Appraisers and Agents
(hereinafter referred to as “the Institute”);

and

(2) The Estate Agents Authority of Hong Kong
(hereinafter referred to as “the Authority”)

2. Background

(a) Pursuant to Article 15 of the *Mainland and Hong Kong Closer Economic Partnership Arrangement* (hereinafter referred to as “CEPA”) signed between the Central Government and the Government of the Hong Kong Special Administrative Region:

“(1) The two sides will encourage mutual recognition of professional qualifications and promote the exchange of professional talents between each other.

(2) Competent authorities and professional bodies of both sides will, in consultation with each other, consider and design specific methodologies for mutual recognition of professional qualifications.”

(b) To bolster joint economic prosperity and the development of the Mainland and Hong Kong, and to take Article 15 of CEPA forward, the Ministry of Construction of the People’s Republic of China and the Government of the Hong Kong Special Administrative Region are desirous of promoting the exchange of talents and cooperation between professionals in the real estate agency sector through the mutual

recognition of the professional qualifications of real estate agents of the two sides (hereinafter referred to as the “Mutual Recognition of Qualifications”).

- (c) To achieve the above, the Institute and the Authority have undertaken comprehensive negotiations and reached the following consensus on the Mutual Recognition of Qualifications.

3. The Basis and Principles for Mutual Recognition of Qualifications

- (a) The principles for Mutual Recognition of Qualifications are:
 - (i) Reciprocity and mutual benefit;
 - (ii) Complementarity of each other’s comparative advantages;
 - (iii) Total quantity control;
 - (iv) Priority for practitioners; and
 - (v) Pragmatic and progressive approach.
- (b) The professional level and ethical standards of Mainland real estate agents and Hong Kong estate agents are both stringent. Notwithstanding institutional differences of the two sides and the existence of differences in specific requirements, the parties hereto agree to reach consensus on the contents of this Agreement to ensure that practitioners of the two sides comply with the requirements and standards of the other side, in order to attain the Mutual Recognition of Qualifications.

4. Definitions

The following are the meanings ascribed to “Applicant”, “Estate Agent”, “Estate Agents Ordinance”, “Estate Agent’s Licence (Individual)”, “Law on the Administration of Urban Real Estate”, “Regulations on the Administration of Services by Agents on Urban Real Estate”, “Temporary Implementing Rules on the Professional Qualification Regime for Real Estate Agents”, “Relevant Qualification”, “Real Estate Agent”, “Certificate of Registration for Real Estate Agent”, “Mutual Recognition of Qualifications”, “Membership Card”, “Non-compliance” used in this Agreement:

“Applicant” refers to a Mainland Real Estate Agent or a Hong Kong Estate Agent who applies for the Mutual Recognition of Qualifications.

“Estate Agent” refers to an individual holding an Estate Agent’s Licence (Individual) granted by the Authority in accordance with the Estate Agents Ordinance (Cap. 511, Laws of Hong Kong) of the Hong Kong Special Administrative Region.

“Estate Agents Ordinance” refers to the Estate Agents Ordinance (Cap. 511, Laws of Hong Kong) of the Hong Kong Special Administrative Region and its subsidiary legislation as may be amended from time to time.

“Estate Agent’s Licence (Individual)” refers to an Estate Agent’s Licence (Individual) granted by the Authority in accordance with the Estate Agents Ordinance (Cap. 511, Laws of Hong Kong) of the Hong Kong Special Administrative Region.

“Law on the Administration of Urban Real Estate” (《城市房地產管理法》) refers to the law passed in 1994 and as amended on 30th August 2007 by the 29th Session of the 10th National People’s Congress Standing Committee of the People’s Republic of China.

“Regulations on the Administration of Services by Agents on Urban Real Estate” (《城市房地產中介服務管理規定》) refers to the regulations promulgated in 1996 and as amended in 2001 by the Ministry of Construction of the People’s Republic of China.

“Temporary Implementing Rules on the Professional Qualification Regime for Real Estate Agents” (《房地產經紀人員職業資格制度暫行規定》) refers to the rules promulgated in 2001 by the Ministry of Personnel and the Ministry of Construction of the People’s Republic of China.

“Relevant Qualification” refers to the professional qualification successfully obtained by an Applicant pursuant to the Mutual Recognition of Qualifications under this Agreement.

“Real Estate Agent” refers to an individual who holds a Certificate of Registration for a Real Estate Agent granted by the Institute in accordance

with the requirements of the Ministry of Construction of the People's Republic of China.

“Certificate of Registration for Real Estate Agent” refers to the certificate in the form prescribed for use by the Administration Office of the Ministry of Construction of the People's Republic of China and granted by the Institute.

“Mutual Recognition of Qualifications” refers to the mutual recognition of professional qualifications of Hong Kong Estate Agents within the Mainland and of Mainland Real Estate Agents within the Hong Kong Special Administrative Region as implemented under this Agreement.

“Membership Card” refers to a membership card issued by the Institute.

“Non-compliance” refers to any non-compliance of the Law on the Administration of Urban Real Estate, the Regulations on the Administration of Services by Agents on Urban Real Estate or the Temporary Implementing Rules on the Professional Qualification Regime for Real Estate Agents and any related laws, regulations and rules, or any non-compliance of the Estate Agents Ordinance and any related laws, regulations and rules.

Section B. Specific Arrangement of Mutual Recognition of Qualifications

5. Steps for Implementing Mutual Recognition of Qualifications

The Institute and the Authority agree that both parties will follow the steps below to implement the Mutual Recognition of Qualifications in batches:

- (a) Step 1: Confirm the respective list of recommended candidates;
- (b) Step 2: Exchange lists of recommended candidates;
- (c) Step 3: Provide training course and examination;
- (d) Step 4: Confer qualifications by issuing the Certificate of Registration for Real Estate Agent and the Estate Agent's Licence (Individual) for Estate Agent.

6. Step 1: Confirming the Respective List of Recommended Candidates

- (a) The Institute and the Authority will respectively select Applicants who fulfill the basic requirements as stated below and provide to the other party the list of recommended candidates each year. Each party may determine its own procedures of application for recommendation and fees (if any).
- (b) The basic requirements for a Mainland Applicant are:
 - (i) Being at least 18 years of age;
 - (ii) Holding a valid Certificate of Registration for Real Estate Agents (such certificate not having been obtained pursuant to any form of mutual recognition of qualifications between the Mainland and any other country or region), and also be a practising member of the Institute;
 - (iii) Having carried out estate agency work in the Mainland for not less than 2 years or having been a professor or an associate professor specializing in real estate related subjects in a higher educational institution in the Mainland; and
 - (iv) Being a “fit and proper person” as required under section 19 of the Estate Agents Ordinance of the Hong Kong Special Administrative Region.
- (c) The basic requirements for a Hong Kong Applicant are:
 - (i) Being at least 18 years of age;
 - (ii) Holding a valid Estate Agent’s Licence (Individual) (such licence not having been obtained pursuant to any form of mutual recognition of qualifications between the Hong Kong Special Administrative Region and any other country or region);
 - (iii) Having no less than a total of 5 years of estate agency work experience or relevant working experience after obtaining a valid Estate Agent’s Licence (Individual); and
 - (iv) Not having criminal record and being in good health.

7. Step 2: Exchanging Lists of Recommended Candidates

- (a) Each year the Institute and the Authority will provide its list of recommended candidates to the other party for that relevant year. The number of recommended candidates shall not exceed the quota agreed beforehand.
- (b) In any one year, if the actual number of candidates recommended by one party who pass the examination is less than the quota of that party for that year, the quota for the following year for that party shall be increased by a number equal to the remaining quota of the preceding year.
- (c) The annual quota for recommendation by each party shall be computed as follows:
 - (i) First year:
The quota will not exceed 300.
 - (ii) The second year and the third year:
The quota for each year will be around 200 in principle. The actual quota will be negotiated and confirmed by the parties having regard to the application exercise of the preceding year and be adjusted by the supplementary quota (if any) pursuant to the aforementioned sub-clause (b).
 - (iii) The fourth year and the fifth year:
The quota is to be confirmed through further negotiations between the parties.
- (d) After formulating one's own list of candidates for recommendation, the parties will exchange such lists which shall contain the following information pertaining to the Applicants:
 - (i) Name
 - (ii) Date of birth
 - (iii) Type and number of identification document
 - (iv) Licence number or certificate of registration number
 - (v) Criminal record (if any); and
 - (vi) Declaration of health conditions.

8. Step 3: Providing Training Course and Examination

- (a) The Institute and the Authority will annually provide a training course for the Applicants recommended by the other party and will also set an examination regarding the training course.
- (b) The party responsible for providing the training course and the examination will adhere to the principle of reciprocity and negotiate with the other party to determine the contents, fees (if any), time and location, the format and number of questions for the examination, and the pass mark for the examination.

9. Step 4: Conferring Qualifications by Issuing Certificate of Registration for Real Estate Agent and Estate Agent's Licence (Individual)

- (a) An eligible Mainland Applicant who has successfully passed the examination shall be granted an Estate Agent's Licence (Individual) in accordance with the following procedures:
 - (i) The Mainland Applicant applies to the Authority for an Estate Agent's Licence (Individual) within a period of 12 months after passing the examination. Late applications will not be entertained;
 - (ii) The Authority grants an Estate Agent's Licence (Individual) to the Mainland Applicant who has fulfilled the requirements stipulated in clause 6(b) hereof, completed the application procedures and paid the applicable fees; and
 - (iii) For the avoidance of doubt, the Mainland Applicant shall not be required to pass the Hong Kong Estate Agents qualifying examination and comply with the academic qualification for the qualifying examination requirement (if any), except the examination referred to in clause 8 hereof. In addition, the final decision of whether or not to grant an Estate Agent's Licence (Individual) rests with the Authority.

- (b) An eligible Hong Kong Applicant who has successfully passed the examination shall be granted a Certificate of Registration for Real Estate Agent in accordance with the following procedures:
 - (i) The Hong Kong Applicant applies to the Institute for a Certificate of Registration for Real Estate Agent within a period of 12 months after passing the examination. Late applications will not be entertained;
 - (ii) The Institute grants a Certificate of Registration for Real Estate Agent to the Hong Kong Applicant who has fulfilled the requirements mentioned in clause 6(c) hereof, completed the application procedures and paid the applicable fees; and
 - (iii) For the avoidance of doubt, the Hong Kong Applicant shall not be required to pass the Real Estate Agent's qualifying examination and comply with the academic qualification of the qualifying examination or work requirements (if any), except the examination referred to in clause 8 hereof. In addition, the final decision of whether or not to grant a Certificate of Registration for Real Estate Agent rests with the Institute.
- (c) The amount of fees for obtaining the qualification of a Mainland Real Estate Agent and a Hong Kong Estate Agent shall be determined by negotiation between the Institute and the Authority following the principle of reciprocity.

10. Disciplinary Powers

- (a) For the avoidance of doubt, the parties hereto agree that:
 - (i) the disciplinary powers of the Authority (including the revocation / suspension of licence and any other powers) applicable to Estate Agents in Hong Kong shall be equally applicable to Mainland Real Estate Agents who has obtained an Estate Agent's Licence (Individual) through the Mutual Recognition of Qualifications.

- (ii) the disciplinary powers of the Ministry of Construction or the Institute applicable to Real Estate Agents in the Mainland shall be equally applicable to Hong Kong Estate Agents who has obtained a Certificate of Registration for Real Estate Agent through the Mutual Recognition of Qualifications.
- (b) Hence, if any person having obtained a Relevant Qualification through the Mutual Recognition of Qualifications is disciplined for ethical or any other reasons by the party who recommended that person, the Relevant Qualification may be revoked or suspended by the other party. The happening of such event shall not affect the quota of recommended candidates of the Institute or the Authority in the subsequent years.

11. Handling Non-compliance

The parties hereto agree that where it is necessary to determine which party is to investigate and handle any non-compliance by those having obtained a Relevant Qualification through the Mutual Recognition of Qualifications, the criteria below shall be followed:

- (a) If the non-compliance involves a property, then the location of the property shall be the determinant determining which party is to investigate and handle the non-compliance. In other words, if the non-compliance involves a property located in:
 - (i) the Mainland, then the Institute will investigate and handle the non-compliance or will assist the relevant department to investigate and handle the non-compliance. The Institute may take any appropriate action according to the circumstances and its relevant laws and regulations. Where necessary, the Institute may request the Authority to provide assistance; or
 - (ii) Hong Kong, then the Authority will investigate and handle the non-compliance or will assist the relevant department to investigate and handle the non-compliance. The Authority may take any appropriate action according to the circumstances and

its relevant laws and regulations. Where necessary, the Authority may request the Institute to provide assistance.

- (b) If the non-compliance in question does not involve any property, then it shall be determined by the agreement between the parties.

For the avoidance of doubt, the method of determination in sub-clauses (a) and (b) above shall not affect the powers of the Institute and the Authority under the relevant laws and regulations.

12. Duty to Notify

- (a) The parties hereto agree that the continuance of the Relevant Qualification thus conferred upon through the Mutual Recognition of Qualifications is predicated upon the continued fulfillment of the relevant requirements in clauses 6(b) and 6(c) hereof.
- (b) Hence, if the Institute or the Authority at any time discovers any incorrect or missing information about a recommended Applicant as provided to the other party, or that a recommended Applicant ceases to fulfill the requirements specified in clauses 6(b) or 6(c) hereof (including the fact that a Mainland Applicant no longer holds a Certificate of Registration for Real Estate Agent or a Membership Card, or the fact that a Hong Kong Applicant no longer holds an Estate Agent's Licence (Individual)), or that a recommended Applicant has been disciplined, the party who recommended the Applicant is then under an obligation to notify the other party in writing of such information at its earliest convenience.
- (c) The party receiving such notice may revoke the Relevant Qualification of the Applicant in question or take appropriate action in accordance with the circumstances and its relevant laws and regulations.
- (d) The happening of the event mentioned in sub-clause (c) above shall not affect the quota of recommended candidates of either party in the subsequent years.

13. Rights and Obligations

- (a) A Mainland Applicant having been granted an Estate Agent's Licence (Individual) through the Mutual Recognition of Qualifications shall have the same rights and obligations as those applicable to a holder of an Estate Agent's Licence (Individual) obtained in Hong Kong.
- (b) A Hong Kong Applicant having been granted with a Certificate of Registration for Real Estate Agent through the Mutual Recognition of Qualifications shall have the same rights and obligations as those applicable to a holder of a Certificate of Registration for Real Estate Agent obtained in the Mainland.
- (c) For the avoidance of doubt, both parties confirm that an Estate Agent's Licence (Individual) or a Certificate of Registration for Real Estate Agent, as the case may be, obtained in accordance with this Agreement shall not be invalidated or affected in any way by the expiry of this Agreement.

14. Effective Date

This Agreement shall be effective on the date of the signing hereof and will expire on the 2nd day of November 2015.

15. Entirety of Agreement

This Agreement sets out in full the agreement between the parties hereto and supersedes all previous discussions, understanding and agreements for the Mutual Recognition of Qualifications. Any matter not dealt with in this Agreement or not settled in the course of the Mutual Recognition of Qualifications shall be determined by the parties hereto, through further negotiations, and in a cordial and cooperative spirit.

This Agreement is signed in Hong Kong this 3rd day of November 2010.

China Institute of Real Estate
Appraisers and Agents

Estate Agents Authority of Hong Kong

President: Mr. Song Chun Hua

Chairman: Ms. Vivien Chan, BBS, J.P.

**Scheme on the Mutual Recognition of
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Summary of information provided in Estate Agents Authority's website

Introduction

The following steps will be involved under the Scheme:

- selecting candidates;
- nominating applicants by the Estate Agents Authority (EAA) and the China Institute of Real Estate Appraisers and Agents (CIREA) and exchanging the list of nominees;
- holding training courses to facilitate each other's estate agents to understand the differences in the legal systems and practices between Mainland and Hong Kong;
- holding examinations; and
- granting the required qualification.

Basic requirements for Hong Kong estate agents participating in the Scheme

Only those fulfilling the following requirements set by the CIREA may apply:

- holding a valid estate agent's licence (individual) (such licence not having been obtained through any recognition scheme between Hong Kong and other countries or regions);
- having a total of not less than 5 years of estate agency or related working experience after holding an estate agent's licence (individual);
- having no criminal conviction record¹; and
- of good health.

EAA's selection criteria

As there is a quota (e.g. no more than 300 for the first year), in the event of over subscription, the following point system will be adopted:

- having completed university education or above (1 point).

¹ A criminal conviction is one which is decided in a court of law. Jaywalk leading to the issue of a ticket or minor traffic offence will not be considered as a criminal conviction record.

- having a total of more than 5 but less than 10 years of estate agency or related working experience (1 point); more than 10 years of such experience (2 points) (no more than 2 points will be awarded for this criterion).
- having obtained 12 or more points in EAA's Continuing Professional Development Scheme (whether core or non-core activities) in the 12 months immediately prior to the application (1 point) (points obtained pursuant to conditions attached to a licence will not be considered).
- a maximum of 4 points will be awarded under the point system.

Dates of the training course and examination

The training course conducted by EAA and CIREA respectively is scheduled for 18 and 19 July 2011. The examination held by EAA and CIREA respectively is scheduled for 20 July 2011. Both the training course and examination will be held in Shenzhen. The examination questions will be in multiple-choice.

Notification mechanism

EAA and CIREA have set up a notification mechanism under which each party is obligated to notify the other party when the licence or the registration certificate of a licensee under the Scheme ceases to be valid, or a licensee under the Scheme is subject to disciplinary sanctions or no longer fulfills the basic requirements of the Scheme. The party being notified may, if it considers necessary, revoke the licence or certificate which is issued under the Scheme or take other appropriate action according to its relevant laws and regulations.

**Scheme on the Mutual Recognition of Professional Qualifications
of Estate Agents between Mainland and Hong Kong**

Outline of Training Course by the Estate Agents Authority

	Day 1 (18.07.2011)	Day 2 (19.07.2011)
AM 3.5 hrs	<p>1. Introduction and licensing related matters</p> <ul style="list-style-type: none"> (i) The establishment of the EAA (ii) Licensing requirements (including being a “fit and proper person” and scope of work under regulation) <p>2. Statutory duties of estate agents</p> <ul style="list-style-type: none"> (i) Estate Agents Ordinance and its subsidiary legislation (ii) Code of Ethics 	<p>4. Practices and procedures of property conveyancing</p> <ul style="list-style-type: none"> (i) Purchase and sale of property (ii) Lease of property (iii) Introduction to the relevant taxes <p>5. The land registry system</p> <ul style="list-style-type: none"> (i) Land registry system in Hong Kong (ii) Other public information systems (e.g. Companies Registry and Property Information Online, etc.) (iii) Land search (iv) Common English terms used in land search
PM 3.5 hrs	<p>2. Statutory duties of estate agents (continued)</p> <ul style="list-style-type: none"> (iii) Key practice circulars (including those concerning first sale of residential properties and anti-money laundering, etc.) (iv) Disciplinary matters <p>3. Estate agency law and related legislation</p> <ul style="list-style-type: none"> (i) Introduction to Hong Kong legal system (ii) Agency law (iii) Contract law (iv) Negligence (v) Related legislation (e.g. Housing Ordinance, Conveyancing and Property Ordinance, Personal Data (Privacy) Ordinance and Prevention of Bribery Ordinance, etc.) 	<p>6. Guide to filling out “Property Information Form” and “Estate Agency Agreement” and the related legislation</p> <ul style="list-style-type: none"> (i) The prescribed key information concerning residential properties (ii) “Vendor’s statement” (iii) Points to note when filling out “Property Information Form” and “Estate Agency Agreement” (iv) Rights and responsibilities of the respective parties to the agreement (including the determination of commission disputes)