

For Information

**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 details of the operation of the scheme on 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 of estate agents is one of the liberalization measures 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 pursue further to enter into an agreement on the Scheme.

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

4. In examining the Amendment Regulation, the Subcommittee asked for information on the operational details of the Scheme which was then not yet available, and requested the Administration to furnish the information to the Panel on Housing before EAA would issue licences to Mainland estate agents under the Scheme. The information asked by the Subcommittee is as follows:

- (a) a copy of the agreement between EAA and CIREA when available;

- (b) details of the notification mechanism whereby EAA will notify CIREA of the names of Hong Kong estate agents whom EAA has imposed disciplinary actions and who are Mainland licence holders under the Scheme, and vice versa;
- (c) confirmation with CIREA that licensees under the Scheme may be subject to investigations and/or disciplinary sanctions from both EAA and CIREA respectively;
- (d) outcome of the clarification with CIREA on whether the requirement of “having no criminal conviction history” for Hong Kong applicants for nomination by EAA under the Scheme, will include minor convictions such as minor traffic offences;
- (e) detailed arrangements of the tailor-made course and examination to be organized by EAA for Mainland estate agents nominated by CIREA for EAA’s licence under the Scheme; and
- (f) arrangements on sending communications and notices in relation to complaints or disciplinary matters against Mainland licensees to their addresses in the Mainland, if provided, in addition to the registered addresses in Hong Kong.

## **Operational details of the Scheme**

### *(a) The Agreement*

5. After almost a year’s discussion, EAA and CIREA have recently agreed upon the implementation details of the Scheme. EAA and CIREA will sign the agreement in Hong Kong on 3 November 2010. A copy of the Agreement is at **Annex**.

### *(b) The notification mechanism*

6. As mentioned in paragraph 12 of the Agreement, a notification mechanism will be put in place under which each side will report the following matters to the other side:

- (i) any discovered incorrect or missing information on the particulars of individual estate agents who have been nominated to the other side for recognition of qualification;

- (ii) names of those estate agents who have obtained recognition from the other side but who have subsequently failed to meet the basic requirements for recognition (e.g. a Hong Kong estate agent who has obtained the Mainland licence under the Scheme ceases to hold a valid licence under the Estate Agents Ordinance); and
- (iii) names of those estate agents who have received disciplinary actions from the licensing authority of its home Government (e.g. a Hong Kong estate agent who has obtained the Mainland licence under the Scheme is disciplined by EAA).

7. Paragraph 12 of the Agreement also stipulates that the side which receives such notice may take appropriate action which includes the revocation of the recognition on the individuals concerned.

*(c) Investigations and disciplinary actions*

8. EAA has confirmed with CIREA that licensees under the Scheme may be subject to investigations and/or disciplinary sanctions from both EAA and CIREA respectively.

9. In order to facilitate the handling of complaints on estate agents under the Scheme, EAA and CIREA have agreed to the following delineation of jurisdiction as set out in paragraph 11 of the Agreement:

- (a) if the complaint involves a property in the Mainland, CIREA will have jurisdiction on the case. CIREA may ask for assistance from EAA as appropriate;
- (b) if the complaint involves a property in Hong Kong, EAA will have jurisdiction on the case. EAA may ask for assistance from CIREA as appropriate; and
- (c) if the complaint does not involve a particular property, EAA and CIREA will discuss the division of work.

*(d) Definition of “having no criminal conviction history” for Hong Kong applicants*

10. Persons wishing to be nominated for recognition must have fulfilled various basic requirements as stated in paragraphs 6(b) (for Mainland candidates) or 6(c) (for Hong Kong candidates) of the Agreement. One of the basic requirements for a Hong Kong candidate is “not having criminal record”. EAA has confirmed with CIREA that for the purpose of the Scheme, a criminal conviction is one which is decided in a court of law. For example, jaywalk or a minor traffic offence leading to the issue of a “ticket” will not be considered as a criminal conviction record. EAA will state this clearly in the application forms for nomination.

*(e) The tailor-made course and examination to be organized by EAA for Mainland estate agents under the Scheme*

11. The tailor-made course to be organized by EAA for Mainland estate agents nominated for EAA’s licence under the Scheme is intended to bridge the possible knowledge gap arising from the differences in the legal systems and practices between Hong Kong and the Mainland. The tailor-made training course, and the examination which follows, will be based on the syllabus of the qualifying examination for Hong Kong’s estate agents.

12. EAA plans to run one training course and one examination per year. The training course and the examination will be held back-to-back, and will last for a total of 3 days (the examination per se will last for half a day). The course and the examination to be conducted by EAA will be held in nearby Mainland cities (e.g. Shenzhen or Zhuhai).

*(f) Serving of notices on complaints or disciplinary matters*

13. Section 14 of the Estate Agents Ordinance requires that a licensee must provide a Hong Kong address for the purpose of communication (i.e. the registered address). A licensee under the Scheme, having qualification to do estate agency work in two jurisdictions, may not be able to receive notices sent only to the Hong Kong address. To ensure that licensees under the Scheme are given proper notice on complaints or disciplinary matters, EAA will require the licensees under the Scheme to provide an alternative address outside Hong Kong (such as a Mainland address) if available. Notices will be sent to both the Hong Kong registered address and where available, the alternative address.

## **Annex**

### **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

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President: Mr. Song Chun Hua

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