

Ref : CB1/BC/11/95/2

**Bills Committee to study the Estate Agents Bill**

**Minutes of Meeting  
held on Tuesday, 9 April 1996 at 2:30 pm  
in Conference Room B of the Legislative Council Building**

**Members Present** : Hon Andrew CHENG Kar-foo (Chairman)  
Hon Mrs Selina CHOW, OBE, JP  
Hon Edward S T HO, OBE, JP  
Hon Albert CHAN Wai-yip  
Hon LEE Wing-tat  
Hon James TO Kun-sun  
Hon CHAN Kam-lam  
Hon CHAN Yuen-han  
Dr Hon LAW Cheung-kwok

**Members Absent** : Hon Ronald ARCULLI, OBE, JP  
Hon LI Wah-ming  
Hon NGAN Kam-chuen

**Public Officer Attending** : Mr William SHIU  
Principal Assistant Secretary for Housing

**Staff in Attendance** : Mr Arthur CHEUNG  
Assistant Legal Adviser 5  
  
Mrs Vivian KAM  
Chief Assistant Secretary (1)2  
  
Miss Becky YU  
Senior Assistant Secretary (1)3

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## **I. Internal Discussion**

The Chairman said that the Bills Committee would commence a clause-by-clause examination of the Bill at the current meeting. He also reported that the Administration had provided a written response on the relatively major issues raised at the meetings in March 1996, and a copy had been circulated to members vide LegCo Papers No. PL 1136/95-96 and CB(1) 1193/95-96. In addition, a submission from the Hong Kong Real Estate Agencies Association was also tabled at the meeting for members' reference.

## **II. Meeting with the Administration**

2. Before commencing the clause-by-clause examination of the Bill, members sought clarifications on the Administration's stance on the suggestion for operational matters of estate agents to be included in subsidiary legislation and the time frame for implementation of the Bill. In response, Mr William SHIU said that since complaints against malpractices of estate agents were related mainly to operational issues, it was necessary for the Bill to set the parameters and for specific provisions to be included in the Bill for addressing such issues. Some members however took a different view and considered the Bill, as currently drafted, would adversely affect the operational flexibility of the future Estate Agents Authority (EAA). Mr SHIU pointed out that it was the Administration's intention to set up the EAA three months after the passage of the Bill, the transitional arrangements might take one to two years to complete. Mr SHIU emphasised that the timing for implementation of the Bill could be adjusted if circumstances so dictated.

### Part I - Preliminary

#### *Clause 1. Short title and commencement*

3. No particular comments were made on this clause.

#### *Clause 2. Interpretation*

4. On the suggestion for a central data bank of property information, Mr SHIU advised that neither the Bill nor the report of the Working Group on Regulation of Estate Agents had specified this as a pre-requisite. The Administration recognised the importance of access to information and there were existing six different channels through which property information could be obtained. These included the Direct Access System launched by the Land Registry which enabled subscribers to conduct on-line searches of land registers through computer terminals; and a new infoline to be introduced by the Rating and Valuation Department this summer where the public including estate agents could have access to information such as the date of completion and saleable area of a particular property. Mr SHIU supplemented that the Administration was well aware of the concern of the trade in

this regard and was prepared to bring in escape clauses such as the concept of "due diligence" so that estate agents who had taken all reasonable steps to comply with the requirements would not be unduly penalised. A member cautioned that as outlined in the report produced by the Research and Library Services Division of the LegCo Secretariat, access to property information was not as easy as that envisaged by the Administration. Another member also requested the Administration's written response on this subject.

5. Members requested that the definition of estate agency work be made more explicit to eliminate any grey areas including for example solicitors practising their profession in property disposition and acquisition, and executive arms of property developers selling the developers' properties. Mr SHIU undertook to consider members' concern.

### *Clause 3. Exemptions*

6. Members expressed concern over the possible duplication between Clause 3 and sub-clause 2(2) in view of their similarity in nature, in particular sub-clause 3(3) which stated that the provisions for exemption were in addition to those of sub-clause 2(2). Mr SHIU clarified that the focus of the two clauses were different. While the former aimed at stipulating the class or description of persons to be exempted from the provisions of the Bill, the latter was an illustration of the type of work which was related to the sale of properties but was not regarded as estate agency work for the purpose of the proposed legislation. Mr SHIU supplemented that it was a common approach in law drafting to include in the interpretation section areas in which the legislation did not apply. The Assistant Legal Adviser (ALA) also confirmed that the manner in which such clauses were included in the Bill was only a matter of presentation and presented no legal difficulties.

7. Members considered that the work undertaken by surveyors and architects in property disposition and acquisition was very similar to those of solicitors and accountants, and that consideration should be given to exempting the former category from the application of the Bill. In reply, Mr SHIU re-iterated that the Bill did not provide blanket exemption for any professions including solicitors and accountants. Rather than exempting certain categories of persons by profession, delineation would be on the basis of the nature of work performed. Mr SHIU added that the Bill provided the EAA the power of exemption, subject to the approval of the Secretary for Housing. The criteria on this would be formulated by the EAA after it became operational. The important point was to ensure parity treatment for all parties involved in estate agency work.

8. Members were worried that the LegCo might not have the opportunity to examine the list of exemptions if it were only to be gazetted and suggested publications of the list in the form of a subsidiary legislation. The ALA clarified that any order, rule or regulation which had a legislative effect would be subsidiary legislation. However, if it was considered necessary to be more explicit, the Bills

Committee could request the Administration to re-phrase the relevant clause. Mr SHIU assured members that the list would be submitted to the LegCo for scrutiny according to normal legislative procedures and undertook to consider the feasibility of re-phrasing the clause concerned.

9. Members found it difficult to proceed further in the absence of a position paper and requested the Administration to respond to the summary of submission by clauses before the next meeting. In order to allow adequate time for the Administration to prepare the response, members agreed to cancel the meeting on 10 April 1996. The next two meetings would be held on Friday, 19 April 1996, and Tuesday, 23 April 1996.

(Post meeting note: At the instruction of the Chairman, the meeting on 19 April 1996 was subsequently cancelled).

10. There being no other business, the meeting closed at 4:00 pm.

LegCo Secretariat  
15 May 1996