

Ref: CB1/BC/11/95/2

Bills Committee to study the Estate Agents Bill

**Minutes of Meeting held
on Monday, 18 March 1996 at 8:30 a.m.
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, CBE, JP
Hon CHAN Kam-lam
Hon CHAN Yuen-han
Dr Hon LAW Cheung-kwok

Members Absent : Hon Ronald ARCULLI, OBE, JP .
Hon Albert CHAN Wai-yip
Hon LEE Wing-tat
Hon LI Wah-ming
Hon James TO Kun-sun
Hon NGAN Kam-chuen

**Public Officers
Attending** : Mr William SHIU Wai-chuen
Principal Assistant Secretary for Housing

Miss Eva TO
Assistant Secretary for Housing

Mr Dennis Morris
Senior Assistant Law Draftsman

**Staff in
Attendance** : Mr Arthur CHEUNG
Assistant Legal Adviser 5

Mrs Vivian KAM
Chief Assistant Secretary (Panels)2

Miss Becky YU
Senior Assistant Secretary (Panels)3

I. Internal Discussion

The Chairman said that this was a continuation of the last meeting on 8 March 1996 during which Members went through the LegCo Brief covering the areas of Definition of Estate Agents, Licensing System and Estate Agents Authority. The purpose of the current meeting was to continue with the examination. The Chairman also reported that arising from the meeting on 31 January 1996, Miss Anne Connell of Connell and Chan Associates Limited had provided information on additional costs which the proposed Bill would place upon estate agents. A copy of this had been provided to the Administration and circulated to members vide LegCo Paper No. PL 987/95-96. In addition, a report of the Working Party of the Hong Kong Institute of Surveyors was also tabled at the meeting for members' reference.

II. Meeting with the Administration

2. The Chairman welcomed representatives from the Administration to the meeting and invited them to address members' concerns where appropriate.

General Comments

3. Members were of the view that over-regulation should be avoided as this would interfere with the day-to-day administration of estate agents. They considered that while the major regulatory framework should be spelt out in the principal legislation, operational issues should be covered by subsidiary legislation or codes of practice to allow flexibility.

Part V - Estate Agents' Duties, Liability and Advertising

Clause 37. Information as regards properties, etc.

4. Although members agreed in principle that estate agents should be required to disclose pecuniary and other beneficial interests in a transaction, some felt that operational details should be excluded from the principal ordinance. They further enquired about measures which would be in place to ensure that information provided to vendors and purchasers was fair and open in the event when estate agents were acting for both parties.

5. Mr William SHIU advised that the Bill was prepared on the basis of the recommendations in the Report of the Working Group on Regulation of Estate Agents and public opinion collated. The objective of the Bill was to protect the interests of both estate agents and their clients and to increase transparency of the trade. In order to achieve the said purposes, Mr SHIU emphasised that the rights and obligations of estate agents had to be clearly defined. The Bill would also serve as a legal basis and guidelines for the future Estate Agents Authority (EAA) in discharging its responsibilities. At members' request, Mr SHIU undertook to provide a comparison with overseas countries on the approach adopted in the control of estate agents.

6. On the Bill's application on overseas properties, members considered that this might be difficult in practice as the Bill was drafted from the Hong Kong angle. As such, consideration should be given to phasing out its implementation by stages. They also sought clarification on: whether the Bill would also apply to estate agents handling overseas properties solely; whether properties advertised in Hong Kong but sold overseas would be governed by the Bill; and in the event where legislation overseas differed from that in Hong Kong, which one would prevail.

7. Mr SHIU noted Members' concerns on overseas uncompleted properties and advised that the Law Reform Commission was currently studying the issue and a consultation document was expected to be released later this year. As regards the proposal on phased implementation, both Mr SHIU and Mr Dennis Morris affirmed that this was a possible approach and could be considered.

Clause 38. Accountant's reports

8. The Administration was asked to elaborate on the kind of information which should be included in the reports.

Clause 40. Effective control of offices; managers;

Clause 41. Certain employment prohibited;

Clause 42. Notice of certain events; and

Clause 43. Giving of notices

9. Members considered that these clauses dealt with relatively miscellaneous issues and expressed reservations on their inclusion in the principal legislation. An example was the notice period of 31 days under Clause 42 which was subject to change and which should more appropriately be included in a subsidiary legislation. Members felt that the requirements under Clause 40 would be difficult to enforce; they also enquired about the rationale for making non-compliance with Clauses 40 - 42 criminal offences.

Clause 44. Liability of directors, etc.

10. Members doubted the need for including such provisions in the Bill as there were similar regulations under the Company Ordinance governing the liability of director(s).

Clause 45. Vicarious liability of estate agents

11. Some members considered that the Clause, as currently drafted, might be creating liability stricter than was necessary in that employers were made to bear the legal consequences of criminal acts of fraud on the part of the employees of which they had no prior knowledge. One member cautioned that similar provisions under the Leverage Foreign Trading Bill had already forced some small enterprises out of business. They questioned the need for such a provision and requested information on other trades where the management had similar liabilities.

Clause 46. Estate agent's liability for certain money received

12. The Administration was requested to elaborate on the operation of clients' trust accounts.

Clause 47. Advertising

13. Members sought elaboration on: the definition of "inaccurate information" under sub-clauses (1)(a); the rationale for seeking vendor's agreement for advertising as this might restrict owners' choice of agencies; the rationale for including and excluding certain statements in advertisements as stated in sub-clause (2)(b); and whether these provisions would apply to the media acting on behalf of estate agents and to potential buyers placing advertisements.

14. In reply, Mr SHIU advised that the EAA might, with the approval of the Secretary for Housing (S for H), prescribe regulations on advertising and penalties on non-compliance. In this connection, the Chairman requested that samples of prescribed statements or particulars to be included in advertisements be provided for members' reference.

Part VI - Estate Agency Agreement

Clause 49. Estate agency agreement required as regards certain proposals and undertakings

15. Members referred to sub-clause (1)(a) and (b) and sought clarification on whether the estate agents or the salespersons who signed the estate agency agreements should initiate prosecution, and whether clients could sue the estate agents.

Clause 50. Form and content of estate agency agreement

16. While some members considered the requirements too rigid and would limit the operational flexibility of estate agents, a member agreed with the need to specify basic information in the estate agency agreements. Some members further expressed concern on the type of information to be included in the agreements in cases where clients provided only broad descriptions on properties wanted.

Clause 51. Duty to supply copy of unexecuted estate agency agreement

17. Members requested the Administration to advise the rationale for the need to supply unexecuted agreements.

Part IV - Investigations and Discipline

Clause 29. Investigations

18. Members noted that the LegCo Brief had not made reference to this part of the Bill on Investigations and Discipline which was considered very important. A cautious examination of this part was deemed essential in view of its serious implications.

19 Members considered that without proper checks and balances to safeguard against abuse, the power of the EAA and its investigators would be too wide. Furthermore, the delegation by the EAA of disciplinary powers to a person would have significant consequences. They asked whether other statutory bodies had powers similar to the EAA and the type of persons likely to be appointed as investigators.

20. Addressing members' concern on sub-clause (3), Mr Dennis Morris advised that since the EAA would be a self-financed organization, it would have to seek extra funding from the LegCo to sponsor investigations where necessary. Members however expressed reservations on such an approach as the process involved would be unprecedented.

Clause 30. Complaints

21. Members were worried that the EAA might not have the capacity to investigate all complaint cases. They also asked if the S for H could issue guidelines on whether a complaint could be pursued. Mr SHIU advised that the S for H was empowered under Clause 7 to give directives to the EAA if he considered the public interest so required. As regards complaints, Mr SHIU said that all complaints would be submitted to the EAA for consideration through the Chief Executive Officer. The EAA would either deal with the matter itself or appoint a committee as provided under Clause 8 to conduct inquiries if deemed appropriate. Members considered that an independent monitoring mechanism

might be required to monitor the operation of the EAA in view of its extensive power.

Clause 31. Disciplinary powers

22. Members referred to sub-clause (1)(b)(ii) and asked the Administration to provide the legal definition for the term "well-founded". They also questioned the basis of the provision enabling the EAA to delegate its disciplinary power to investigators.

III. Date of the Next Meeting

23. The next meeting would be held on Tuesday, 19 March 1996 at 4:30 pm. There being no other business, the meeting closed at 6:35 pm.

LegCo Secretariat
16 May 1996