

Ref : CB1/BC/11/95/2

**Bills Committee on Estate Agents Bill**

**Minutes of meeting  
held on Tuesday, 18 March 1997, at 8:30 am  
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Andrew CHENG Kar-foo (Chairman)  
Hon Mrs Selina CHOW, OBE, JP  
Hon Albert CHAN Wai-yip  
Hon LI Wah-ming  
Hon CHAN Yuen-han  
Dr Hon LAW Cheung-kwok  
Hon NGAN Kam-chuen
- Members absent** : Hon Edward S T HO, OBE, JP  
Hon Ronald ARCULLI, OBE, JP  
Hon LEE Wing-tat  
Hon James TO Kun-sun  
Hon CHAN Kam-lam
- Public officers attending** : Miss Eva TO, Principal Assistant Secretary for Housing  
Ms Sherman CHAN, Senior Assistant Law Draftsman
- Clerk in attendance** : Mrs Vivian KAM, Assistant Secretary General 1(Acting)
- Staff in attendance** : Mr Stephen LAM, Assistant Legal Adviser 4  
Miss Becky YU, Senior Assistant Secretary (1)3
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In the absence of a quorum at the beginning of the meeting, members agreed to hold the meeting as an informal discussion. A quorum was subsequently formed at 9:00 am.

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**I Draft Committee stage amendments**

2. The Chairman said that the purposes of the meeting were for the Administration to report on the five areas raised at the meetings on 3 and 13 March 1997 which required follow-up actions; for the Assistant Legal Adviser (ALA) to advise if the Committee stage amendments (CSAs) on clauses 39 to 50 were in order; and for the Bills Committee to scrutinize the remainder of the marked-up copy of the Bill.

Areas requiring follow-up

3. In response to the Chairman, the Principal Assistant Secretary for Housing (PAS for H) advised that the Administration had amended relevant CSAs in the light of members' comments made at previous meetings. The major areas covered by the supplementary CSAs tabled at the meeting were as follows.

*Clause 2. Interpretation*

4. PAS for H advised that the Administration had incorporated the terms "architect" and "tender" in clauses 2(2)(b) and 2(3)(b) respectively.

*Clause 31. Disciplinary powers*

5. PAS for H said that the Administration remained of the view that notices of decisions consequent upon the exercise of such disciplinary actions as suspension and revocation of licences should be published in the Gazette while discretion would be accorded to the Estate Agents Authority (EAA) to publish notices of admonishment in either the Gazette or the newspapers. Reference had been made to the Securities and Futures Commission (SFC) Ordinance and the Leveraged Foreign Exchange Trading Ordinance in drawing up these CSAs. While agreeing that serious sanctions such as suspension and revocation of licences should be published, members remarked that regard should be made to the seriousness of offences by requiring only cases other than admonishment and reprimand to be published. Dr Hon LAW Cheung-kwok suggested that the current system of SFC in publishing notices of decisions immediately after the exercise of serious disciplinary actions in Gazette or newspapers and minor penalties in in-house digests would serve as a useful reference for EAA. PAS for H undertook to consider members' views.

6. Some members considered the upper ceiling of \$500,000 under clause 31(1)(va) too high and sought clarification on the rationale for setting such a ceiling. PAS for H advised that this was consistent with the penalties provisions under clause 56; the important point was to ensure an effective deterrent against non-compliance. However, the Administration had no objection to revising the ceiling to \$300,000 as suggested by members.

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### *Clause 33. Appeal panel and tribunal*

7. The Senior Assistant Law Draftsman (SALD) advised that the term "serve on" had been replaced by "give" in clause 33(6A)(b).

### *Clause 37. Information as regards properties*

8. A member expressed reservations at the phrase "the happening of a specified event under that agreement" in clause 37(1)(a)(v) as this would easily be open to arguments. She suggested spelling out in the clause eventualities such as the signing of Agreements for Sale and Purchase to eliminate possible grey areas. While acknowledging the member's concern, SALD cautioned that the proposed inclusion of specific events in the principal ordinance might fetter the application of the contract law given the numerous possible causes leading to the cessation of contracts. Nevertheless, EAA might specify in the prescribed estate agency agreement circumstances under which the agreement ceased to be of effect. The important point was to strike a balance between the interests of the estate agents and the clients. As Hon Ronald ARCULLI had raised particular concern on clause 37(1)(a)(v), the Clerk was requested to consult him on the acceptability of the CSAs.

*(Post-meeting note: Hon Ronald ARCULLI advised that the CSAs were acceptable.)*

### *Clause 50. Form and content of estate agency agreement*

9. Although noting that the term "foster child" had been used in other legislation including the Independent Commission Against Corruption Ordinance, SALD shared members' concern on the need to confine the scope of "specified relative" under clause 50(5)(a)(a). To this end, the Administration had proposed removing "foster child" from clause 50(5)(b). Furthermore, the term "spouse" had been refined to cover all legitimate spouses including marriages that took place before the year 1971.

### Report by the Assistant Legal Adviser

10. In reply to the Chairman, ALA advised that the CSAs on clauses 39 to 50 were in order.

11. Members continued with a clause-by-clause examination of the marked-up copy of the Bill commencing with clause 53.

### Clause 53. Disputes as regards commission, etc.

12. A member expressed reservations at the CSAs on clause 53(2)(b) since the CSAs as drafted would accord EAA unfettered discretion to decline jurisdiction of

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disputes which, in her view, would reduce the role of EAA as an adjudication channel. PAS for H advised that reference had been made to the Small Claims Tribunal Ordinance in drawing up the clause; the tribunal concerned might at any time dismiss a claim which was considered frivolous or vexatious. SALD undertook to consider to refine the clause in question taking into account similar provisions in other legislation. As regards the monetary limit within which disputes could be heard by EAA, PAS for H advised that this would be prescribed by EAA in the form of subsidiary legislation.

13. In reply to a related question, PAS for H explained that clause 53C aimed at spelling out the manner in which determinations of EAA should be registered as was the case with the District Court.

### Clause 55. Immunity

14. No particular comments were made on the clause.

### Clause 56. Offences

15. ALA advised that the phrase "any false or misleading" following the word "furnishes" in clause 56(1)(c) in the marked-up copy should be deleted.

16. Some members asked if the Administration would consider replacing the phrase "false or misleading in a material particulars" by "wilful deceit" so that non-compliance due to negligence would not be unduly penalized. PAS for H advised that reference had been made to other licensing systems in drawing up the clause. A more lenient approach had been adopted to ensure that criminal sanction would only apply if information provided in connection with an application for the grant or renewal of a licence was false or misleading in material particulars. Nevertheless, it would be difficult to substantiate wilfulness in the real situation. As regards the offences in relation to advertising, SALD advised that these would be prescribed by EAA in parallel with regulations on advertising.

### Clause 57. Regulations

17. While agreeing with the need to enhance professional competence of estate agents in the long term, some members remained of the view that educational qualifications should not be regarded as licensing criteria. They were worried that such requirements would be difficult for some serving estate agents, and suggested adding the phrase "or experience" to the CSAs for clause 57(1)(d). SALD suggested that one possible solution would be to amend the clause as "prescribe any educational qualifications or experience or both required to be held for the purposes of section 18, 19 or 21". This would similarly apply to clause 19(b)(ii) as a consequential amendment.

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### Schedule

18. In response to members, SALD advised that reference had been made to other legislation in drawing up section 14(d) to ensure that minor irregularities in the convening of meetings of EAA would not affect the validity of proceedings.

19. Before concluding, ALA was requested to follow-up on the wordings of the CSAs on clauses 53 onwards to ensure that these truly reflected members' views expressed.

## **II Any other business**

20. The Chairman proposed and members agreed that a verbal report of the Bills Committee would be made at the meeting of the House Committee (HC) on 4 April 1997 in order to vacate the slot. A written report would be submitted for consideration of HC on 25 April 1997. Members who wished to move CSAs on the Bill were requested to provide the Clerk with the CSAs before 18 April 1997. Furthermore, the Administration would resume Second Reading of the Bill on 14 May 1997.

*(Post-meeting note: In view of the time taken for the Administration to prepare the final bi-lingual versions of the CSAs on the Bill, the schedule for the Bills Committee to report to HC had been deferred to 9 May 1997. The date for resumption of Second Reading debate would accordingly be deferred to 21 May 1997.)*

21. As the Bills Committee had concluded deliberations on the Bill and the draft CSAs, members agreed to cancel the meeting scheduled for 19 March 1997.

22. There being no other business, the meeting ended at 10:30 am.

Legislative Council Secretariat  
7 May 1997