

LegCo Paper No. CB(1) 1577/95-96
(These minutes have been seen
by the Administration)

Ref : CB1/BC/11/95/2

Bills Committee on Estate Agents Bill

Minutes of Meeting
held on Tuesday, 23 April 1996 at 8:30 am
in Conference Room B of the Legislative Council Building

- Members Present** : Hon Andrew CHENG Kar-foo (Chairman)
Hon LEE Wing-tat
Hon LI Wah-ming
Hon CHAN Kam-lam
Dr Hon LAW Cheung-kwok
Hon NGAN Kam-chuen
- Members Absent** : Hon Mrs Selina CHOW, OBE, JP
Hon Edward S T HO, OBE, JP
Hon Ronald ARCULLI, OBE, JP
Hon Albert CHAN Wai-yip
Hon James TO Kun-sun
Hon CHAN Yuen-han
- Public Officers Attending** : Mr William SHIU
Principal Assistant Secretary for Housing

Miss Eva TO
Assistant Secretary for Housing

Ms Sherman CHAN
Senior Assistant Law Draftsman (Acting)
- Staff in Attendance** : Mrs Vivian KAM
Chief Assistant Secretary (1)2

Mr Stephen LAM
Assistant Legal Adviser 4

Miss Becky YU
Senior Assistant Secretary (1)3

THE MEETING

The Chairman reported that the Administration had provided a written response to concerns made by deputations in respect of Parts I, II and III of the Bill. The English version of the response, together with an updated summary of the representations by parties and by clauses had been circulated to members vide LegCo Paper No. CB(1) 1248/95-96. The Chinese version of the response was tabled at the meeting for members' reference.

2. The Chairman welcomed representatives from the Administration and invited them to brief the Bills Committee on the Administration's comments on the submissions by clauses.

Clause 2. Interpretation

"client" and "estate agency agreement"

3. Members expressed concern over a possible procrastination of signing of an agreement on the part of some small estate agents, and requested a clear definition of the term "client" and its relationship with the term "estate agency agreement". A member considered that changes which might lead to undue disruptions to the trade should be avoided and enquired about the envisaged impact of such a linkage.

4. In reply, Ms Sherman CHAN explained that the definition of "client" related mainly to Clause 37 of the Bill. The clause stipulated the obligations of licensed estate agents including the duty to supply information on a property to a client. The concern was on whether persons merely obtaining information or making enquiries about a particular property should be classified as clients, alongside with those who had actually signed an estate agency agreement. The definition would only cover a person in direct contact with an estate agent and in this way the Administration had adopted a moderate approach in this respect. As for Clause 37, it would be possible to promote public awareness and an understanding of the importance of an estate agency agreement in property transactions. Mr William SHIU said the Administration would take into account

members' views and public opinion collated in re-examining the definition of 'client'.

"estate agency work" and "dual agency system"

5. Some members asked whether the Administration would consider the acceptability of an estate agent acting for both the vendor and the purchaser in a transaction as this was considered undesirable because of a possible conflict of interest. Mr SHIU acknowledged that the system was unique in Hong Kong, and advised that no scientific comparison had been made between the local practice with that of overseas countries. He however advised that the Working Group on Regulation of Estate Agents had examined the practice and recommended retention of the dual agency system on the basis that it was a long established and widely accepted system and had a number of advantages including for example its efficiency and cost-effectiveness. In order to guard against a possible misrepresentation of facts, measures were in place to require estate agents to disclose fully to their clients (the purchaser/vendor or both) their interest in a property transaction as well as information on all offers made so that parties concerned could reach their own decision based on the available information. While the Bill did not stipulate the mode of representation in property transactions, it provided flexibility to customers in the choice of single or dual representation by estate agents. Mr SHIU supplemented that both the Consumer Council and the Independent Commission Against Corruption which dealt with complaints against malpractices of estate agents were also agreeable to such an approach.

6. Members held different views on the mode of representation. While some advocated separate representation similar to that of the spirit of the Legal Practitioners Ordinance, others agreed with the Administration on allowing flexibility and avoiding undue disruptions to the trade. Mr SHIU emphasised that a clear definition on the role and responsibilities of estate agents and the requirement for full disclosure of information would facilitate the best possible decision to be made in property transactions. At members' request, Mr SHIU undertook to set out in writing the envisaged impact of dual agency on the efficiency and cost-effectiveness of property transactions. He would also provide data on the percentage of property transactions where one agent was acting for both parties, and on the number of court cases involving fraud or illegal commissions by estate agents.

7. Some members were worried that small scale estate agents might be forced out of business if double agency were permitted since clients might prefer the services of large estate agents. Mr SHIU advised that the Administration subscribed fully to free trade and would aim to maintain an environment conducive to fair competition among estate agents regardless of their size. He believed that

the setting of a parameter on the scope of service to be provided by estate agents would go some way in solving the problem.

8. Members considered that the Bill did not provide sufficient consumer protection in respect of owners' or developers' first sale and that the provision on disclosure of information should be extended to such sales. Miss Eva TO explained that since such sales did not fall within the definition of estate agency work, owners including developers would not be subject to the licensing requirement of the Bill. Mr SHIU supplemented that this was a separate issue being considered by the Law Reform Commission and a Bill would be introduced in due course for LegCo's scrutiny. He assured members that subsidiary companies of property developers selling properties other than those of their parent companies would come under the jurisdiction of the Bill, and emphasised the need for parity treatment for all estate agency work. Ms CHAN added that the Administration was working with the Attorney General's Chambers on the possibility of including an additional provision under Clause 3 to cover situations where subsidiary companies were selling properties of their parent companies.

9. At members' request, Mr SHIU agreed to consider defining in the Bill the status of subsidiary companies selling properties of developers. The suggestion for including "public tender" as in the case of "auction" in Clause 2 would also be examined.

Clause 3. Exemptions

10. In response to members, Mr SHIU re-iterated that the Estate Agents Authority (EAA) was empowered to grant exemptions, subject to the approval of the Secretary for Housing. As regards the rationale for publishing the list of exemptions by order in the gazette, Ms CHAN explained that according to the Interpretation and General Clauses Ordinance, any order made under or by virtue of any Ordinance having a legislative effect was a subsidiary legislation and should be subject to the approval of the LegCo by negative procedure within 28 days after the sitting at which it was tabled, subject to extensions under section 34 of that ordinance.

11. Members sought elucidation on the negative approving procedure of a subsidiary legislation. The Assistant Legal Adviser (ALA) said in response that policy branches could at their discretion introduce any subsidiary legislation to the relevant LegCo Panels for consultation before it was published in the gazette. The legislation so published would be subject to the covering approval of LegCo under negative procedure where a motion to amend the legislation could be moved not later than 28 days after the sitting at which it was tabled. Before the expiry of the period referred to, the LegCo might by resolution extend that period to the next

sitting. The ALA added that a positive resolution process could also be used which would provide a longer period for scrutiny.

12. Members then requested the list of exemptions to be passed by positive resolution process. Ms CHAN advised that this might be considered although in similar cases in other legislation this was uncommon under such circumstances. She suggested that as an alternative consideration could be given to deferring the commencement of the subsidiary legislation passed by negative resolution to a later date to allow sufficient time for scrutiny. Mr SHIU undertook to consider members' views.

Clause 5. Principal functions of the Authority

13. A member considered that the provision of training and examination for estate agents should not be included in the principal functions of the EAA since it fell outside the remit of a regulatory body. Miss TO advised that the role of the EAA in this regard would be to liaise with educational institutions and training bodies for training courses relevant to estate agency work. Mr SHIU supplemented that the objective of the three-pronged approach in Clause 5 (a) - (c) was to enhance and strengthen the integrity and competence of the trade.

14. On the formulation of codes of practice and regulations by the EAA, Miss TO assured members that any regulations having legislative effect would be subject to the scrutiny of the LegCo. Moreover, any disciplinary actions should only be taken against estate agents on specific grounds as set out in Clause 31 of the Bill.

Clause 6. General powers, etc of the Authority

15. Members considered a need for the term "the generality" referred to in sub-clause 6(2) to be defined clearly to eliminate any possible grey area. They also expressed concern over the compatibility of sub-clause 6(2)(d), which allowed the EAA to accept gifts, with the Prevention of Bribery Ordinance (POBO). Ms CHAN said in response that sub-clause 6(1) stated the principle while 6(2) specified areas in which the EAA could perform. On the second point, Ms CHAN assured members that the acceptance of donations or sponsorship by the EAA would come under the jurisdiction of the POBO and that the inclusion of the clause in the Bill was a common practice when compared with other legislation. This was confirmed by the ALA.

II. Any Other Business

Date of Next Meetings

16. Two meetings were scheduled as follows:
 - Monday, 29 April 1996 at 2:30 pm; and
 - Tuesday, 30 April 1996 at 4:30 pm.
17. The meeting closed at 10:35 am.

LegCo Secretariat
7 June 1996