

Revised

LegCo Paper No. CB(1) 1420/95-96
(These minutes have been seen
by the Administration)

Ref : CB1/BC/11/95/2

Bills Committee to study the Estate Agents Bill

**Minutes of Meeting
held on Tuesday, 26 March 1996 at 4:30 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 Yuen-han
Dr Hon LAW Cheung-kwok
Hon NGAN Kam-chuen

Members Absent : Hon Ronald ARCULLI, OBE, JP
Hon LI Wah-ming
Hon CHAN Kam-lam

**Public Officers
Attending** : Miss Eva TO
Principal Assistant Secretary for Housing (Acting)

Mr Dennis Morris
Senior Assistant Law Draftsman

**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

I. Internal Discussion

The Chairman said that the purpose of the meeting was for the Administration to respond to observations made by members during the meetings on 8, 18 and 19 March 1996.

II. Meeting with the Administration

2. Miss Eva TO briefed members on the relatively major and controversial issues on the Bill as follows.

Over-regulation

3. On members' suggestion for operational matters of estate agents to be included in subsidiary legislation, Miss TO advised that since complaints against malpractices of estate agents were related mainly to operational issues, it was necessary to include in the Bill specific provisions for addressing these problems. These included such core issues as broad licensing requirements, accounting matters, written agency agreements, and effective control of offices by managers, etc. She emphasized that the Bill aimed to provide the necessary regulatory framework drawn up on the basis of the recommendations of the Report of the Working Group on Regulations of Estate Agents (Working Group). Such a framework was essential for setting parameters for subsidiary legislation. Miss TO added that reference had been made to the regulatory system in Victoria, Australia, as well as to local legislation such as the Travel Agents Ordinance and the Insurance Companies Ordinance where similar provisions existed.

4. While members generally supported the need to define parameters, some considered the Bill, as currently drafted, had gone beyond the scope of an enabling legislation and would adversely affect the operational flexibility of the Estate Agents Authority (EAA) in discharging its responsibilities. Another member however took a different view and agreed with the Administration's approach. He suggested that the question of over-regulation should be considered at the clause by clause examination stage of the Bill.

5. Miss TO said that the Administration recognized the importance of property transactions to the average person and had been very cautious in drawing up the legislation, having regard to both the recommendations of the Working Group and public opinion collated. The Bill would serve as a legal foundation for the EAA to

prescribe its own regulations where necessary. As regards the suggestion for a central data bank of property information, Miss TO advised that as it would take time to develop such a system, it would be impractical to withhold implementation of the legislation on such ground. To allay the concern of the trade in this regard, the Administration was prepared to bring in some escape clauses such as adopting the concept of 'due diligence' under Clause 37 so that estate agents who had taken all reasonable steps to comply with the requirements would not be unduly penalized. Although the details on such a provision had yet to be worked out, Miss TO confirmed that reference would be made to similar provisions in legislation of the United Kingdom. A member remarked that the proposed clause on 'due diligence' would run contrary to the spirit of the legislation which aimed at promoting self-discipline and enhancing professionalism among estate agents.

Provision of Information

6. In response to a member on the apparent inconsistency between the provision in Clause 47 and the recommendation in the Working Group's report for rules on advertising to be prescribed by the EAA, Miss TO advised that Clause 47 was necessary to guard against deceptive advertisements. While the Bill would lay the legal foundation for such a provision, the intention was for the EAA to prescribe its own regulations on advertisements. Such regulation-making power was consistent with powers conferred on the Authority under other provisions in the Bill. On a related question regarding disciplinary powers, Mr Dennis Morris emphasized that if there were no provisions for sanctions, rules and regulations could only be regarded as guidelines. It was essential for the EAA to have sufficient power to impose penalties in order to serve as an effective deterrent for non-compliance.

Property Developers and Subsidiary Companies

7. In respect of subsidiary companies of a developer which were selling the developer's properties, Miss TO said that the Administration shared members' view that this matter required further examination and the Administration was working with the Attorney General's Chambers on the possibility of including an additional provision under Clause 3 to cover such situations, while at the same time ensuring that no loopholes would be created. The important point was to ensure parity treatment for all estate agency work. Miss TO advised that the suggestion of annexing a list of exemptions to the Bill was also being examined. She cautioned however that a list could never be exhaustive and that indepth consideration would have to be given to each individual case.

Investigations

8. In quoting ordinances governing travel agents and the Securities and Futures Commission, Miss TO emphasized that it was not uncommon for a regulatory body to be accorded both investigation and disciplinary power in order

to be able to perform its regulatory role effectively. As regards the concern of possible abuse by the EAA, Miss TO advised that the Authority could only exercise its investigation power if, and only if as a member suggested, sufficient evidence was available to substantiate a case of non-compliance. She assured members that the decisions of the EAA would be subject to appeals, and all regulations made by the EAA would require the approval of the Secretary for Housing (S for H) who might also give general directives to the EAA if he considered public interests were at risk. This apart, the S for H would not interfere with the daily operation of the EAA. Miss TO added that similar provisions were included in the Airport Authority Ordinance.

9. As regards persons who might be appointed as investigators under Clause 29(1), Miss TO advised that the persons in question generally referred to those who might be appointed to conduct investigations on complicated issues, such as an accountant in financial matters. The Administration however did not envisage that many such cases would occur. A member remarked that although he supported the inclusion of investigation powers in the principal ordinance, the delegation of such powers to the investigators should be made more explicit. Reference should also be made to other legislation with similar provisions.

III. Date of Next Meetings

10. The next two meetings would be held on:

- Tuesday, 9 April 1996 at 2:30 pm; and
- Wednesday, 10 April 1996 at 4:30 pm.

At the Chairman's suggestion, members agreed to commence clause by clause examination of the Bill at the next meeting on 9 April 1996. They also urged the Administration to respond in writing to members' concern as well to the written representations before the next meeting on 9 April 1996.

11. There being no other business, the meeting closed at 6:00 pm.

LegCo Secretariat
17 May 1996