

Ref : CB1/BC/11/95/2

**Bills Committee on Estate Agents Bill**

**Minutes of Meeting  
held on Monday 29 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 Ronald ARCULLI, 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 Edward S T HO, OBE, JP  
Hon LI Wah-ming  
Hon CHAN Kam-lam
- 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 (Atg)
- 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

---

## I. THE MEETING

The Chairman reported that the Chinese translation of the Administration's response to the written representations had been circulated to members vide LegCo Paper No. CB(1) 1296/95-96.

2. Two members sought to re-iterate their positions on the subject of representation of estate agents and exemptions before proceeding with examination of Clause 7. One considered separate representation unnecessary if both the vendors and the purchasers were able to obtain sufficient information in property transactions, either through the proposed central data bank or other available sources. The other emphasised the need to exempt executive arms of property developers selling the developers' properties from the application of the Bill.

### **Clause 7. Directions by Secretary for Housing**

3. Members questioned the rationale for the Secretary for Housing (S for H) to give directions to the Estate Agents Authority (EAA) and requested a comparison of the working relationship between the Administration and other regulatory bodies. Mr William SHIU advised that the S for H might, if he considered public interest so required, give general directions to the EAA. Such a power was however confined to general policy matters and could not be exercised to such an extent as to interfere with the EAA's decision in particular cases. Mr SHIU advised that similar provisions existed in the Land Development Corporation Ordinance, the Urban Council Ordinance, the Hospital Authority Ordinance and the Airport Authority Ordinance etc where the Governor or a Branch Secretary would give directions to a statutory body:

4. Members expressed concern over the interpretation of the term 'public interest' and enquired whether adjudication channel was available in the event of disputes over such an interpretation. Some members suggested that the EAA should decide, by way of resolution, whether it should comply with directions so given. Members considered the comparison between the EAA and the organizations referred to in paragraph 3 of the Administration's response inappropriate since the latter were either non-professional or public funded bodies. They pointed out that interventions from policy secretaries was not envisaged in professional bodies such as the Hong Kong Monetary Authority.

5. In response, Mr SHIU advised that the practice of estate agents had been a matter of public concern and it was in public interest to ensure consumer protection in property transactions through regulation of estate agents. Under the Bill, the

Secretary for Housing (S for H) was empowered to give directives to the EAA so that licensing could take place in a planned manner without causing undue disruption of service to the public or undue anxiety to the trade. In response to a member's question on whether the S for H could exercise such a power as to fix the amount of commission payable, Mr SHIU said that the power of giving directives to the EAA under Clause 7 was meant to deal-with important policy issues and the S for H would not use it to interfere with the normal operation of the EAA. Circumstances under which the S for H should not use such power had been stipulated in sub-clause 7(4). The Administration had always maintained the stance that the amount of commission should be determined by the market.

6. In response to a member on disciplinary actions, Ms CHAN advised that any changes to provisions not stipulated under the Bill could be made a subject of the codes of practice but that would not be subject to disciplinary actions such as revocation of licences. On the question of allowing more flexibility to the EAA on whether directives given by the S for H should be followed, Ms CHAN cautioned that the spirit of the clause was to monitor the operation of the EAA and such monitoring mechanism would be undermined if excessive flexibility was given. As regards the need for such a power even though the EAA was not a public-funded body, Mr SHIU replied that in view of the importance of the work of the EAA and the fact that the EAA's initial operational expenses would be provided by the Administration through a loan, it was not unreasonable to provide the Administration a means to direct the EAA on issues relating to the performance of its functions. Miss TO supplemented that having regard to the autonomous nature of the EAA which mainly comprised non-public officers and its extensive powers under the proposed legislation, it was considered appropriate to have in place proper checks and balances to monitor the performance of the EAA.

7. Members were not convinced that the S for H should be given such an extensive power over the EAA and suggested re-phrasing sub-clause 7(2) so that the EAA could determine, by way of resolution, whether directions given by the S for H should be followed, and also including in sub-clause 7(4) an additional clause to define explicitly areas which the S for H could not exercise control over the EAA. Mr SHIU noted members' concerns and undertook to study similar provisions in other legislation to further pursue members' suggestions.

#### **Clause 8. Authority may establish committees**

8. Members noted that members of the committees, in particular those responsible for investigations, might not be members of the EAA. In order to enhance accountability, a member suggested that each of these committees should comprise at least one member of the EAA. Some members also proposed that members of the EAA should comprise at least half of the membership of all standing committees, and that working groups of standing committees could be formed on a need basis. Miss TO undertook to consider members' views but advised that the objective of the clause was to provide flexibility for the EAA in

discharging its duties. In reply to a related question, Mr SHIU said that it was not possible at that stage to provide the number of standing committees to be established as it fell under the remit of the EAA.

#### **Clause 9. Delegation and sub-delegation of Authority's functions**

9. A member sought clarification on the functions which the EAA could not delegate and the rationale for making references to sub-clause 11(2) and (3) and Clause 57 in sub-clause 9(3)(c). Miss TO advised that similar provisions also existed in other legislation and undertook to set out in writing the rationale for such an inclusion. In essence, the Administration considered it inappropriate to delegate powers concerning the formulation of remuneration packages for staff of the EAA to the committees. Ms CHAN supplemented that the power under sub-clause 11(2) or (3) outlined in sub-clause 9(3)(c) referred to the power of the EAA as the deciding authority, and confirmed that consideration would be given to make it more explicit to eliminate any grey areas.

#### **Clause 10. Disclosure of interest, etc.**

10. Some members requested making sub-clause 10(1) more explicit so that the public could have access to declarations so made. They considered that a member of the EAA who had direct or indirect interest in a contract made by the Authority under sub-clause 10(2)(b) should be denied of all information papers concerning the contract and attendance at relevant meetings. Other members however held a different view and suggested that the proposed arrangements should be invoked only when pecuniary interest was involved. Ms CHAN cautioned that members of the EAA might only become aware of the subject matter and decide on the conflict of interest upon receipt of the information papers. Mr SHIU added that the important point was to ensure that proper arrangements were in place to require members to disclose their interests and other members would not be unduly influenced by those members who had an interest in the matter to be discussed. In reply to a related question, Ms CHAN confirmed that the EAA might prescribe its own standing orders in accordance with sub-clause 10(1).

#### **Clause 11. Staff of Authority**

#### **Clause 12. Accountants and audits, Authority's report**

11. Members were concerned that, with the independent status of the EAA, the LegCo and the Administration would not be able to exercise control over the salaries and remuneration packages of its staff. In reply, Mr SHIU advised that the EAA would enjoy full autonomy in the employment of staff including the Chief Executive Officer (CEO). Staff so appointed would not be civil servants and neither would secondment from the Administration to the EAA be expected in the long run. The EAA would be responsible for the formulation of remuneration packages for its staff taking into factors such as its financial position, market trends and civil service comparisons. Members considered that staff costs, in particular

remuneration for the CEO, would have a definite bearing on the licence fees which constituted the major income of the EAA, and enquired about the role of the S for H in this regard. Mr SHIU advised that the EAA was required under sub-clause 12(1)(b) to submit a statement of accounts including an income and expenditure account to the S for H at the end of each financial year. Such a statement would serve as a useful indicator of the state of affairs of the EAA. If the S for H considered public interests to be at risk, he could exercise his authority in accordance with the provisions in Clause 7. At members' request, Mr SHIU undertook to set out in writing the preliminary estimated establishment and staff costs for the EAA.

12. As regards licence fees, Mr SHIU estimated that the cost for a licence both for a salesperson and an estate agent might be in the region of a few thousand dollars. Members considered the fees relatively high when compared with other professional licences.

13. On the levy from property transactions, Mr SHIU advised that the EAA was expected to recoup its annual operating costs through licence fees and other fees charged for services provided. There was no need to impose a levy on property transactions. Miss TO supplemented that the EAA was empowered to prescribe fees under sub-clause 57(1)(f) for services it provided such as for issue and renewal of licences. However, there was no intention to impose a levy on property transactions through the Bill, not only because the Administration expected that operating costs could be recouped from licensing and other fees, but it had also taken into account the fees that persons involved in property transactions already had to pay, such as stamp duty, solicitors' fees, agents' commission, etc. She added that any fees prescribed under the Bill would have to be introduced through subsidiary legislation and would be subject to the scrutiny of LegCo.

14. Members noted that the principle of cost recovery was not stated clearly in sub-clause 57(1)(f) and enquired whether it would be an offence for the EAA to recoup expenses in excess of the costs. Mr SHIU explained that as the EAA would be a self-financing body, it would have to operate on prudent financial principles. He would examine whether this clause needed to be strengthened.

### **Clause 13. The register**

15. In referring to sub-clause 13(3), members requested making it compulsory for the EAA to publish the register of licensed estate agents and salespersons. Miss TO advised that under sub-clause 13(5), the EAA would be required to make the register available for public inspection. Mr SHIU supplemented that the EAA might publish the names and registered addresses of all persons whose names were added to the register in the gazette or newspapers as deemed appropriate. Members suggested that the fee prescribed under sub-clause 13(5) be waived and that an interactive voice system be introduced to facilitate easy access to the register. They also proposed that, as with the Travel Agents Ordinance, the provision on

publication of licence numbers in advertisements should also apply to estate agents. Mr SHIU noted members' concern and undertook to consider their views.

16. In reply to members, Miss TO advised that according to information supplied by the Census and Statistics Department in, 1995, there were 17,000 salespersons and 5,000 estate agents practising estate agency work in Hong Kong. The figures might change depending on the market situation and the number of new comers joining the trade. As regards the validity of a licence, Miss TO said that it would have to be decided by the EAA but an initial period of two years was expected for the transitional licences.

## **II. Date of Next Meetings**

17. The Chairman reminded members that the next meeting had been scheduled for Tuesday, 30 April 1996. Members also agreed to hold two meetings on:

- Friday, 24 May 1996 at 8:30 am; and
- Tuesday, 28 May 1996 at 10:45 am.

18. There being no other business, the meeting closed at 4:45 pm.

LegCo Secretariat  
7 June 1996