

Ref : CB1/BC/11/95/2

Bills Committee on Estate Agents Bill

**Minutes of Meeting
held on Tuesday, 30 April 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 Albert CHAN Wai-yip
Hon LEE Wing-tat
Hon James TO Kun-sun
Hon CHAN Kam-lam
Hon CHAN Yuen-han
Hon NGAN Kam-chuen

Members Absent : Hon Edward S T HO, OBE, JP
Hon Ronald ARCULLI, OBE, JP
Hon LI Wah-ming
Dr Hon LAW Cheung-kwok

**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

Members continued with a clause-by-clause examination of the Bill.

Clause 14. Registered address

2. Members considered the 14-day period stipulated under sub-clause 14(3)(a) for notification of changes in address acceptable.

Clause 15. Estate agents to be licensed

3. Members noted that under existing legislation, it was not an offence for a law clerk to render legal services to a client nor for nurses to provide assistance in clinics. They enquired whether the same could apply to middlemen working for estate agents in view of their essential role in the trade. They sought clarification on whether the phrase "business of an estate agent" used in sub-clause 15(1)(a) and 15(2)(a) was equivalent to estate agency work, and on the Administration's view on the suggestion made by the Hong Kong Association of Banks for a tightening up of the provisions..

4. Ms Sherman CHAN said in response that under sub-clause 15(1)(c), no persons should undertake functions of an estate agent without a licence. On the role of silent partners of estate agents, Ms CHAN advised that there were separate clauses in the Bill dealing with partnerships but in essence partners were prohibited to operate according to sub-clause 15(1)(a)-(c) unless licensed. Miss Eva TO supplemented that there were two types of licences: partners to individual licensees and corporate licensees. On the phrase "business of an estate agent", Ms CHAN clarified that this covered business done by an estate agent as defined in Clause 2 on Interpretation. To allay members' concern and to eliminate any possible grey area, Ms CHAN proposed to add "doing estate agency work as" after the term "business". The Assistant Legal Adviser advised that such an approach was acceptable. Members were of the view that silent partners of estate agents should be exempted from the Bill. Mr William SHIU undertook to consider members' views but emphasized that the spirit of the Clause was to ensure parity treatment to all estate agency work and to protect the interests of both estate agents and clients.

5. Members were worried that the general public might be unnecessarily caught by the Bill for any word or deed made in relation to a property transaction and considered a need to define clearly the phrase "any of the functions of an estate agent" in sub-clause 15(1)(c). Ms CHAN advised that one possible approach would be by including the phrase "in the course of business" after the word "done" in the definition of "estate agency work" under Clause 2 on Interpretation and replacing the phrase in question by "doing estate agency work as an estate agent".

6. Members held different views on the inclusion of the phrase "doing estate agency work as" after the words "business of" in sub-clause 15(2)(a). While some considered it necessary to eliminate any possible grey area, others favoured leaving the clause intact as the term "business" should be interpreted in a wider context.

Clause 16. Salespersons to be licensed

7. On the status of employees of licensed salespersons, Mr SHIU advised that those who were not engaged in any estate agency work would not be covered by the Bill. Otherwise, the licensing requirements pertaining to the Bill would apply.

Clause 17. Licences and conditions

8. Members noted that the EAA was conferred extensive flexibility under sub-clause 17(3) to attach conditions to a licence in addition to those prescribed under Clause 57. They enquired whether a redress system was available in the event estate agents found it difficult to comply with the additional conditions. Ms CHAN advised that other licensing authorities also enjoyed similar powers under existing legislation. The objective of sub-clause 17(3) was to enable the EAA to prescribe additional conditions for circumstances not covered by subsidiary legislation. On the question of appeal, Ms CHAN advised that estate agents were entitled under sub-clause 32(1)(b) to appeal against a condition attached to a licence under Clause 17.

9. In referring to comments made by the Hong Kong General Chamber of Commerce, Mr SHIU 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. Mr SHIU re-iterated that the objective of the Bill was to protect the interests of both estate agents and their clients.

Clause 18. Right to grant of licenses

10. Members asked for the Administration's stance on the suggestion for a transitional period of at least two years to allow the trade to meet the full licensing requirements. Mr SHIU advised that the Administration was fully aware of the need to ensure a smooth transition to prevent undue disruption to the trade and the service to the public. It was also the Administration's intention to have transitional licences issued as soon as essential aspects of the regulatory system such as licensing requirements and practising guidelines were available. Mr SHIU emphasized that the length of the transitional period would have to be determined by the EAA taking into consideration the progress of implementation of the regulatory system. It would be imprudent to prescribe a fixed transitional period at that stage, as a member suggested, as it would limit the operational flexibility of the EAA. While members agreed that the EAA should be accorded flexibility, they urged the Administration to consider stipulating a period of say two years as the transitional period and to undertake prior consultation with the trade on transitional arrangements.

Clause 19. Grant of estate agent's licenses to individuals restricted

11. Some members were worried that small scale estate agents would be forced out of business if the levels of educational qualifications and experience required under sub-clause 19(1)(b)(ii) were set unduly high. They considered that educational qualifications should not be regarded as licensing criteria and that sub-clause 19(1)(b)(ii) should be deleted since sub-clause 19(1)(b)(i) had already prescribed the pre-requisite qualifications of estate agents. A member however took a different view and considered that 19(1)(b)(ii) should remain subject to deletion of the term 'educational qualifications'. Mr SHIU advised that the licensing requirements including educational qualifications were to be determined by the EAA taking into account the needs of trade. The objective of Clause 19 was to ensure professional integrity and competence among estate agents. As regards members' concern on sub-clause 19(1)(b), Ms CHAN advised that the focus of sub-clause 19(1)(b)(i) and (ii) were different: the former sought to prescribe the conduct or practice to be observed by estate agents and the latter stipulated the pre-requisite qualifications of licensees. She agreed with a member that the said educational qualifications might not be taken to refer to academic qualifications instead of mere training requirements. A member cautioned that a substantial increase in estate agency fee would be expected if the educational qualifications were set at a professional level.

12. Some members considered that no entry barriers should be imposed but that estate agents should be required to acquire the necessary qualifications prescribed by the EAA after practising as an estate agent. Mr SHIU welcomed members' suggestion and emphasized that one of the principal functions of the EAA was to liaise with educational institutions for the provision of training courses relevant to estate agency work. At members' request, Mr SHIU undertook to provide information on the requirements of educational qualifications of estate agents in overseas countries. A member remarked that information on costs borne by clients in return for the estate agents' professional service would also be useful.

13. In reply to members on the basis upon which a person was deemed fit and proper for holding an estate agent's licence, Mr SHIU advised that the criteria had been spelt out in a number of clauses in the Bill. The Administration would be prepared to consider refining the term if this was deemed necessary.

14. There being no other business, the meeting closed at 6:40 pm.