

立法會
Legislative Council

LC Paper No. CB(1) 841/98-99
(These minutes have been seen
by the Administration)

Ref: CB1/SS/2/98/1

**Subcommittee on
Subsidiary Legislation made under
the Estate Agents Ordinance (Cap. 511)
Gazetted on 16 October 1998**

**Minutes of meeting
held on Monday, 2 November 1998, at 8:30 am
in Conference Room A of the Legislative Council Building**

Members present : Hon Andrew CHENG Kar-foo (Chairman)
Hon LEE Wing-tat
Hon Fred LI Wah-ming
Hon Ambrose CHEUNG Wing-sum, JP
Hon Gary CHENG Kai-nam

Members absent : Hon Ronald ARCULLI, JP
Hon MA Fung-kwok

Public officers attending : Ms Eva TO, Principal Assistant Secretary, Housing Bureau

Mrs Grace CHOW, Chief Executive Officer, Estate Agents Authority

Ms Betty CHEUNG, Senior Government Counsel, Department of Justice

Clerk in attendance : Ms LEUNG Siu-kum, Chief Assistant Secretary (1)2

Staff in attendance : Mr KAU Kin-wah, Assistant Legal Adviser 6
Miss Becky YU, Senior Assistant Secretary (1)3

I Election of Chairman

At the request of members, Mr Andrew CHENG chaired the meeting for the election of Chairman of the Subcommittee.

2. Nominated by Mr CHENG Kai-nam and seconded by Mr Fred LI, Mr Andrew CHENG was elected Chairman of the Subcommittee.

II Meeting with the Administration

(LegCo Brief (Ref: HB TC 31/98) and LC Paper No. LS 46/98-99)

3. Messrs CHENG Kai-nam and Fred LI declared that they were members of the Estate Agents Authority (EAA).

4. At the invitation of the Chairman, the Principal Assistant Secretary for Housing (PAS for H) briefed members on the Estate Agents (Licensing) Regulation, the Estate Agents (Exemption from Licensing) Order and the Estate Agents Ordinance (Cap. 511) (Commencement) Notice 1998.

Estate Agents (Licensing) Regulation

5. The Chairman asked if training courses were available for practitioners to prepare themselves for the qualifying examination for obtaining a licence for estate agency work. The Chief Executive Officer/Estate Agents Authority (CE/EAA) confirmed that at present, a number of relevant courses with a total enrolment of 10,000 students were made available by nine tertiary and vocational training institutions. However, these courses had yet to be endorsed and gazetted by EAA after the commencement of the Regulation. CE/EAA admitted that the current enrolment rate of these courses was relatively low, but this was expected to increase after the implementation of the Regulation. She also confirmed that self-study was also allowed.

Estate Agents (Exemption from Licensing) Order

6. PAS for H advised that under the Order, estate agents dealing exclusively with properties outside Hong Kong including those in the Mainland would be exempt from obtaining a licence. Mr LEE Wing-tat however questioned the rationale for such an exemption. He pointed out that the Bills Committee on Estate Agents Bill had urged the Administration to incorporate in the principal Ordinance the recommendation of the Law Reform Commission (LRC) on the sales description of overseas uncompleted residential properties that all sales of Mainland properties in Hong Kong should be handled by local licensed estate agents. PAS for H explained that having regard to the different nature, scope and complexity of work relating to properties outside Hong Kong, including those in the Mainland, EAA would need to consider separate regulations for estate agents handling these properties. As regards the legislative time-table for such regulations, PAS for H anticipated that the drafting of these regulations would be completed by the end of 1999 and followed by consultation with members of the LegCo Panel on Housing.

7. As to whether the Administration would alert the public that estate agents exclusively dealing with overseas properties were not licensed estate agents in Hong Kong and were not subject to regulation of EAA, PAS for H replied that the Order had already required these estate agents to state in all their letters, accounts, receipts, pamphlets, brochures and other documents as well as advertisements that they were not licensed to deal with any property situated in Hong Kong. Nevertheless, the Administration would step up publicity to promote public awareness in this respect.

8. On the difference between the terms “overseas properties” and “properties outside Hong Kong”, the Senior Government Counsel (SGC) advised that properties in the Mainland might not be covered by “overseas properties” given the fact that Hong Kong was already part of China. The latter however clearly referred to properties situated outside Hong Kong, including those in the Mainland and was therefore preferred.

9. Members then proceeded to examine the subsidiary legislation clause-by-clause.

Estate Agents (Licensing) Regulation

Clause 1. Commencement

10. No particular comments were made on the clause.

Clause 2. Interpretation

11. On *existing practitioner*, Mr CHENG noted that only individuals who had done estate agency work within the period of one year immediately before the implementation of the licensing system on 1 January 1999 would be regarded as existing practitioners. He remarked that this might not be fair to those who had ceased practising as a result of the shrinkage of the real estate agency industry in 1997. Mr CHENG asked if the Administration would consider extending the one-year period to include these persons. PAS for H replied that the current definition was already an improvement to the original draft, under which only those who were now undertaking estate agency work would be considered as existing practitioners. The provision was relaxed after consultation with the trade and taking into account the predicament which the real estate agency industry had faced in the past year. Further extension was therefore not desirable. Moreover, former estate agents could re-enter the trade now in order to meet the requirement for existing practitioners.

12. Mr LEE however considered the one-year period too lenient since according to the definition, any person would be regarded as an existing practitioner if he had done estate agency work for just one day within the one-year period. This was at variance with the spirit of the Estate Agents Ordinance to improve the service standard of practitioners. PAS for H explained that the definition as drafted aimed to minimize disruptions to the trade. She stressed that existing practitioners were also required to pass the qualifying examination within a period of three years and abide by the stringent code of practice to be drawn up by EAA. Non-compliance might be subject to revocation of licences or

disciplinary sanctions. CE/EAA added that the long-term objective of improving the service standard of estate agents had to be achieved through continuing education and training. The requirement for licensing was only the first step.

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13. The Chairman shared Mr LEE's concern and asked if the Administration would consider requiring practitioners to have a minimum length of service within the one-year period in order to be qualified as existing practitioners. PAS for H responded that since it was not the intention of the Administration to create additional entry barriers before the implementation of the licensing system, it would not be appropriate to prescribe an arbitrary minimum period of service. She nevertheless undertook to consider members' views and revert back to the Subcommittee at the next meeting.

14. On *implementation date*, PAS for H explained that this was the date upon which the licensing system came into effect. No one would be allowed to undertake local estate agency work without a licence after that date. The commencement date of the Estate Agents (Licensing) Regulation would however be set at an earlier date to allow sufficient time for EAA to process applications for licences.

15. On *senior practitioner*, Mr LI considered that there was a need to ascertain the qualifications of practitioners before they could be regarded as senior practitioners. PAS for H advised that although senior practitioners were exempt from the qualifying examination, they were required to complete within a period of three years a training course relevant to estate agency work to be specified in the Gazette by EAA. The educational institutions concerned would ensure that those completed the course had reached a certain standard. As regards the differences between the courses for estate agents and salespersons, CE/EAA explained that both courses were similar in nature but with different emphasises and duration. The former focused more on resource management within an organization and had a longer duration (80 hours) than that for the latter (30 hours).

Clause 3. Register

16. As to whether EAA would consider making the register available through other media so that enquiries could be made without going to EAA direct, PAS for H confirmed that EAA would make available the register for public inspection.

Clause 4. Forms

17. In reply to the Chairman's question, SGC explained that the objective of sub-clauses (2)(c)(ii) and (iii) was to provide greater flexibility for EAA to allow the appointment of other persons to collect the forms if circumstances so required.

Clause 5. Prescribed fees

18. As to whether the trade had been consulted on the levels of fees, PAS for H replied that the Administration had issued a consultative paper to the trade in May 1998 to gauge the opinion of the trade, relevant professional bodies and the public on the proposed licensing system, including the licence fee structure. She assured members that the

prescribed fee levels were the minimum requirement to enable EAA to discharge its duties effectively on a self-financing basis based on the estimated number of licence applications.

Clause 6. Minimum age

19. No particular comments were made on the clause.

Clause 7. Educational qualifications and experience for licencees

20. As regards the rationale for exempting professional surveyors from the qualifying examination, PAS for H advised that this was in recognition of their professional knowledge and experience required to meet a standard generally higher than that of the estate agents. However, such an exemption applied only to those practising surveyors with evidence to prove that they had done estate agency work for a period or periods totalling at least 12 months within the period of 24 months immediately before the implementation date. Surveyors who were thereafter interested in undertaking estate agency work would have to take the qualifying examination.

21. While acknowledging the Administration's explanation that extension of time for renewing licences would only be granted under special circumstances where applicants had great difficulties in complying with the conditions such as chronic illness, members considered it necessary to stipulate in the Regulation the scenarios in which such an extension should be granted to avoid abuse. They also proposed to impose a limit within which the extension should expire. In reply, PAS for H pointed out that the elaboration of various scenarios in which EAA should exercise its discretion would limit its flexibility in considering other genuine cases which had not been specified. Furthermore, as the length of the extension would depend on individual circumstances, it might not be feasible to set a time limit for the extension. She nevertheless undertook to re-consider members' views and revert back to the Subcommittee at the next meeting.

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Clause 8. Minimum number of licensed directors for corporate licensed estate agent

22. Mr CHEUNG Wing-sum was of the view that the Administration should stipulate the maximum number of estate agency companies to which a licensed estate agent could act as an executive or non-executive director in order to ensure effective control of the business. PAS for H advised that under section 20(1)(a) of the Estate Agents Ordinance, EAA was empowered to prescribe the minimum number or proportion of directors that were licensed estate agents. However, it was beyond the scope of this Regulation to prescribe further requirements regarding the number of companies to which a licensed estate agent could act as director and the status of such a director within an organization. PAS for H assured Mr CHEUNG that section 20(1)(b) required that there must a licensed estate agent in effective control of the estate agency business. In addition, section 38 of the Ordinance had provided for the appointment of a licensed estate agent as manager in each place of business of a company to ensure adequate and proper control of an estate agency business.

Clause 9. Period of validity of licence

Clause 10. Statement of particulars of business

Clause 11. Replacement of licence or statement of business

Clause 12. Amendment of particulars of licence, etc.

Clause 13. Renewal of licence

Clause 14. General conditions imposed on licencees

23. No particular comments were made on these clauses.

Clause 15. Application for licence not to be made within prescribed period

24. The Assistant Legal Adviser (ALA) pointed out that clause 15 as drafted might be seen as an oppressive deterrent against appeal since an applicant would not be entitled to make an application for the grant or renewal of a licence within the prescribed period of 12 months after the date on which an appeal against the refusal or revocation was determined or abandoned. PAS for H undertook to consider ALA's view and revert back to the Subcommittee at the next meeting.

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III Any other business

25. Members agreed that the next meeting would be held on Thursday, 5 November 1998, at 4:30 pm.

26. There being no other business, the meeting ended at 10:40 am.

Legislative Council Secretariat
2 February 1999