

**立法會**  
***Legislative Council***

LC Paper No. CB(1) 842/98-99  
(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 Thursday, 5 November 1998, at 4:30 pm  
in Conference Room B of the Legislative Council Building**

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

**Members absent** : Hon LEE Wing-tat  
Hon Ronald ARCULLI, JP

**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

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## **I Meeting with the Administration**

(Legislative Council Brief (Ref: HB TC 31/98 Pt. 4), LC Paper Nos. LS 46/98-99, CB(1) 389 and 422/98-99)

At the invitation of the Chairman, the Principal Assistant Secretary for Housing (PAS for H) highlighted the salient points in the information paper (LC Paper No. CB(1) 422/98-99(02)) setting out the Administration's response to members' questions raised at the meeting on 2 November 1998.

2. On *the definition of "existing practitioner"*, the Chairman pointed out that as new entrants were required to pass the qualifying examination before they could practise estate agency work while existing practitioners were given a grace period of three years to pass the examination, it would be unfair to the new entrants if someone could enjoy the concession offered to existing practitioners just because they had done estate agency work for only one day during the period of one year immediately before the implementation of the licensing system. Expressing similar concern, Mr Ambrose CHEUNG cautioned that someone might make use of the provision to enter the trade now so that they could continue practising for the next three years without the need to pass the qualifying examination. To plug the loophole, the members considered it necessary to prescribe a minimum period of service for qualifying as existing practitioners. Mr MA Fung-kwok also agreed that more stringent eligibility criteria should be imposed for qualifying as existing practitioners. He further suggested that both existing and new practitioners should be required to pass the examination before they were allowed to undertake estate agency work to protect consumer interest and to ensure service standard of practitioners.

3. Messrs Fred LI and CHENG Kai-nam however took a different view. While acknowledging the need to enhance service standard of the estate agency trade, Mr LI pointed out that it was not the intention of the Estate Agents Ordinance to create additional entry barriers for practitioners before the implementation of the licensing system on 1 January 1999. Furthermore, as the trade had already been consulted on the system in May 1998, any significant change to it now would create unnecessary disruptions to the trade. Given that the setting of the length of the minimum period was arbitrary, Mr CHENG considered it more desirable to leave the definition of existing practitioner unchanged.

4. PAS for H took note of members' views. She however cautioned that the proposed stipulation of a minimum period of service would create an inequitable situation wherein a person now practising estate agency work, albeit for a short period of time, would not be qualified as an existing practitioner whereas a person who was not doing estate agency work but had the requisite past experience would be eligible as an existing practitioner. Moreover, with less than two months left before the implementation of the licensing system, the requirement of a minimum period of service now would mean that those current practitioners whose service in the trade fell short of the prescribed period would lose their jobs on 1 January 1999. PAS for H stressed that the only major concession to existing practitioners under the proposed legislation was the educational requirement of Form five. However, the entry requirement for a higher educational qualification was only part of the regulatory system of the trade. All licensees, irrespective of whether they were existing practitioners or new entrants would be required

to comply with a set of practising regulations covering advertising, introduction, negotiation, property inspection and provision of property information etc. Non-compliance would be subject to disciplinary sanctions and in some cases might be liable to prosecution under the civil and criminal laws.

5. While acknowledging the Administration's concern that some current practitioners would become jobless as a result of the introduction of a minimum period of service, Mr CHEUNG opined that the problem could be resolved by including in the Regulation an additional condition to include those who were now doing estate agency work and would continue practising after the implementation date as existing practitioners. PAS for H however considered this not feasible as the Estate Agents Authority would find it difficult to ensure that the applicants concerned would continue practising after the implementation date and after the licences had been granted..

6. Members also considered the suggestion of limiting existing practitioners to those who had entered the trade before the commencement date of the Estate Agents (Licensing) Regulation on 19 November 1998 to prevent people without any experience from entering the trade now and taking advantage of the three-year grace period. The Administration however said that many estate agency firms were recruiting the necessary manpower in order to prepare for the implementation of the licensing system early next year, the suggestion would mean that those who had just been recruited and were practising estate agency work would have to leave the trade on 1 January 1999.

7. To strike a balance, PAS for H suggested to set the minimum period of service at one month as a prerequisite for any person who has done estate agency work to be qualified as an existing practitioner. The Chairman however was of the view that a minimum service period of six months should be required whereas Mr CHEUNG opined that a period of three months should be enough.

8. Given the divergent views expressed, the proposal to stipulate a minimum service period requirement of one month for existing practitioners was put to vote. Of the members present at the meeting, Mr Fred LI voted for the proposal while the Chairman, Mr Ambrose CHEUNG and Mr MA Fung-kwok voted against. The proposal was negated. As regards the proposal for a minimum service period requirement of three months, the Chairman, Mr Ambrose CHEUNG and Mr MA Fung-kwok voted for the proposal while Mr Fred LI voted against. The proposal was endorsed. As the Administration declined to amend the Regulation accordingly, the Chairman instructed that the Subcommittee would move its own amendment.

9. On *limiting the condition for extension of time*, members noted that the Administration had addressed their concern and was prepared to amend clause 7(4) to the effect that under exceptional circumstances, including the case where the practitioner was incapacitated by ill health, the Authority might, if it considered that it would be oppressive and unjust not to do so, grant an extension of not more than 12 months, for the practitioner to comply with the relevant condition. PAS for H also agreed that the extension of time would not be more than one year.

10. On *minimum number of director as licensed estate agent*, Mr CHEUNG asked if

disqualified licensed estate agents were allowed to serve as directors to estate agency companies. PAS for H advised that the Ordinance had explicitly stipulated that directors of estate agency companies should meet the “fit and proper” criteria. Therefore, any person who had been convicted under the Ordinance would not be qualified as directors.

11. Members then continued to examine the Estate Agents (Licensing) Regulation, the Estate Agents (Exemption from Licensing) Order and the Estate Agents Ordinance (Cap. 511) (Commencement) Notice 1998 clause-by-clause.

#### Estate Agents (Licensing) Regulation

*Clause 16. Acts pending disposal of application not considered contravention of sections 15 and 16 of the Ordinance*

*Schedule 1*

*Schedule 2*

12. No particular comments were made on these clauses.

#### Estate Agents (Exemption from Licensing) Order

*Clause 1. Commencement*

*Clause 2. Exemption for estate agents and salespersons dealing exclusively with properties outside Hong Kong*

*Clause 3. Dormant partner not required to hold estate agent's licence*

13. No particular comments were made on these clauses.

#### Estate Agents Ordinance (Cap. 511) (Commencement) Notice 1998

14. No particular comments were made on the Notice.

## **II Any other business**

15. The Chairman requested ALA to prepare for members' consideration a draft resolution to amend the provision regarding the definition of existing practitioner according to members' decision in paragraph 8.

16. There being no other business, the meeting ended at 6:30 pm.

#### Legislative Council Secretariat

2 February 1999