

政府總部房屋局的信頭
Letterhead of Government Secretariat Housing Bureau

Our Ref. HB 9/7/35 V
Your Ref.

.Tel. 2509 0290
Fax 2509 9988

Fax - 2524 3802 2869 6794
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

(Attn: Ms LEUNG Siu-kum)

4 November 1998

Dear Ms LEUNG,

**Subcommittee on
Estate Agents (Licensing) Regulation and
Estate Agents (Exemption from Licensing) Order**

Thank you for your letter of 2 November. We have carefully considered the four issues raised by Members at the Sub-committee meeting and are pleased to set out our views as follows -

(a) Definition of "Existing Practitioner" (clause 2)

To minimise disruption to the trade and services to the public, it has been our view that the licensing system should be implemented in a planned and gradual manner. In view of this, we considered it appropriate to regard those who have already entered into the trade before the implementation date of the licensing system as existing practitioners, irrespective of the length of their service. In recognition of the exceptional adjustment and shrinkage of the real estate agency industry in the past one year, we further decided that those who have practised for any period of time within the past 12 months should also be considered as existing practitioners. If we now prescribe a minimum period of service, this will create an inequitable situation whereby a person who is now practising estate agency work (albeit for a short period of time) is to be excluded

from being qualified as an existing practitioner whereas a person who is not doing estate agency work is considered to be an existing practitioner.

We share members' view that our proposal is not watertight but in the first place, it is not our intention to create additional barriers to entry before the implementation of the licensing system. In essence, the only major concession to existing practitioners is the educational requirement of Form 5. However, the requirement for better educational/professional qualifications is but one part of our regulatory system of the trade. All licensees, irrespective of whether they are existing practitioners or new entrants will in future be required to comply with a set of practising regulations covering advertising, introduction, negotiation, property inspection and provision of property information, etc.

In addition, we are concerned about the disruption as a result of setting a "minimum period" requirement when the implementation date is less than two months away. There are bound to be some who may not be able to meet the requirement. On the other hand, if a fairly relaxed requirement is set to avoid this problem, this may defeat the purpose of having one.

Members have drawn analogy on the definitions of "senior practitioners" and "professional surveyors" under which a minimum serving period is set. However, it is reasonable to have a more stringent requirement for these two groups as they are exempted from the qualifying examination, which is different from the case of existing practitioners.

(b) Limiting the condition for extension of time (clause 7)

To elaborate the various scenarios in which the Estate Agents Authority (EAA) could exercise its discretion would limit EAA's flexibility in considering other genuine cases which have not been specified and may prompt abuses as licensees may derive hints as to what could be the basis for extension. To address Members' concern, we are prepared to consider amendments along the following lines and on the issue of extension time, we agree with Members' suggestion and propose a limit of not more than 12 months -

"The Authority shall not grant an extension of time beyond 1 January 2002 unless in exceptional circumstances (including the case of an applicant having been incapacitated by ill health and) where

the denial of granting such extension would have been oppressive and unjust. Any extension so grant shall not exceed 12 months.”

(c) Minimum number of director as licensed estate agent (clause 8)

Under section 20(1)(a) of the Estate Agents Ordinance (“Ordinance”), the EAA is empowered to prescribe the minimum number or proportion of directors that are licensed estate agents. However, it is beyond the scope of this regulation to prescribe any further requirement regarding the status of directors so licensed.

Section 20(1)(a) stipulates that every director who is engaged in estate agency work shall be a licensed estate agent and section 20(1)(b) further requires that there must be a licensed estate agent in effective control of the business. In addition, section 38 of the Ordinance has provided for the appointment of a manager in each place of business of a company who must be a licensed estate agent. We are of the view that these two sections, taken together, will ensure that an estate agency business is under adequate and proper control.

(d) Appeal against refusal or revocation of licence (regulation 15)

We appreciate Members’ concern that clause 15(c) may discourage appeals. We are prepared to delete 15(c) as appropriate.

As regards the officers to attend the second meeting of the Subcommittee to be held on 5 November, please be informed that there is no change in the list of attending officers.

Yours sincerely,

(Ms Eva TO)
For Secretary for Housing

c.c. EAA (Attn. : Mrs Grace CHOW)
D of J (Attn. : Miss Betty CHEUNG)