

立法會
Legislative Council

LC Paper No. CB(1) 960/99-00
(These minutes have been seen
by the Administration)

Ref: CB1/SS/9/98/1

**Subcommittee on
Estate Agents Practice
(General Duties and Hong Kong Residential Properties) Regulation
and Estate Agents (Determination of Commission Disputes) Regulation**

**Minutes of meeting
held on Tuesday, 15 June 1999, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Members present : Dr Hon Raymond HO Chung-tai, JP (Chairman)
Hon LEE Wing-tat
Hon Fred LI Wah-ming
Hon Margaret NG
Hon Gary CHENG Kai-nam
Hon Mrs Miriam LAU Kin-yee, JP

Members absent : Hon David CHU Yu-lin
Hon Cyd HO Sau-lan
Hon Edward HO Sing-tin, JP
Hon Ronald ARCULLI, JP

**Public officers
attending** : **Housing Bureau**

Ms Eva TO, Principal Assistant Secretary (1)

Department of Justice

Mr G A Fox, Senior Assistant Law Draftsman

Miss Betty CHEUNG, Senior Government Counsel

Ms Stella CHAN, Government Counsel

**Attendance : Estate Agents Authority
by invitation**

Mrs Grace CHOW, Chief Executive Officer

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

Staff in attendance : Miss Anita HO, Assistant Legal Adviser 2
Miss Becky YU, Senior Assistant Secretary (1)3

I Meeting with the Administration
(LC Paper Nos. CB(1) 1502/98-99(01) to (03))

Before commencing discussion, the Chairman advised that he would move a motion at the Council meeting on 16 June 1999 to extend the scrutiny period of the proposed Regulations to 30 June 1999. The deadline for amendments to these Regulations would be 23 June 1999.

2. At the invitation of the Chairman, the Principal Assistant Secretary for Housing (1) (PAS for H (1)) briefed members on the Administration's response (LC Paper No. CB(1) 1502/98-99(02)) to the views expressed at the last meeting on 9 June 1999.

Estate agency agreement

3. While agreeing that written agreements were necessary to avoid disputes arising from the use of oral instructions, Mr LEE Wing-tat remarked that effort should be made to simplify the estate agency agreement taking into account the trade's views.

The supply of property information by estate agents

4. The Chairman asked if estate agents were required to inspect the deed or floor plan of a property to ensure that the information provided was accurate. PAS for H (1) explained that under section 36 of the Estate Agents Ordinance (the Ordinance), estate agents were not required to check deeds nor building plans. Besides, the interpretation of technical documents and plans was beyond the knowledge and expertise of estate agents. Mrs Miriam LAU also remarked that estate agents might not be able to obtain the deeds of properties, particularly for properties under mortgage as the deeds concerned were usually kept by the banks.

5. Referring to Annex II to the information paper, Mrs LAU expressed concern that the Land Registry (LR) might not be able to provide information on saleable floor area of very old properties since such information was not filed with LR in the past. PAS for H (1) advised that starting from 1980, information on saleable area of new properties had been

provided for in the agreement for sale and purchase of the first assignment filed with LR. Information on saleable area of properties built before 1980 could be obtained from the Info-Hotline Service provided by the Rating & Valuation Department (RVD). On the operation of the Info-Hotline System, PAS for H (1) explained that an estate agent had to first confirm the Account Enquiry Number printed on the top left-hand corner of the Rates and/or Government Rent Demand of the concerned property. He could then use a tone-dialed telephone with registered IDD Infoline Category A service to call the Info-Hotline and follow the recorded instructions. The required information would be released to him through a fax machine. As regards the extent of coverage of the Info-Hotline System, PAS for H (1) advised that the System currently provided information in respect of nearly one million private housing units, some 220,000 Home Ownership Scheme and Private Sector Participation Scheme units. Mr Fred LI remarked that the Administration should consider providing property information to estate agents free of charge in order not to increase their operational cost.

6. Mr LI recalled that when the Estate Agents Bill was examined by the then Bills Committee, the Administration was requested to set up a centralized databank for all properties in Hong Kong. He enquired about the progress of such a databank. PAS for H (1) replied that although the setting up of a territory-wide databank was worth pursuing, it would take a long period of preparatory time as it would involve manipulation of a huge volume of land and building data as well as extensive integration of incompatible data now stored in different forms in different departments. Given that the Administration had already taken steps to facilitate accessibility to property information from various sources, PAS for H(1) held the view that the setting up of the centralized property databank was not a pre-requisite for the implementation of a regulatory system for estate agents. In the absence of the databank, the Chairman considered that EAA should issue guidelines on the avenues through which the requisite property information could be obtained to facilitate the work of estate agents. PAS for H (1) affirmed that apart from practice guidelines, EAA would also organize large-scale educational programmes for both the estate agents and the public to promote greater awareness of the Ordinance.

The vendor's statement

7. Mrs LAU expressed concern that vendors might have difficulties in providing information on unauthorized building works (UBWs) which had been carried out prior to their ownership of the properties. To tackle the problem, she urged the Administration to include an additional box of "not known" as appropriate in the vendor's statement. PAS for H (1) explained that the purpose of the vendor's statement was to reduce the chances of disputes arising from UBWs by requiring the disclosure of such works at an early stage. Besides, vendors were only requested to disclose information within their knowledge without the need to engage estate surveyors to ascertain the presence of UBWs within their properties. The Senior Assistant Law Draftsman (SALD) added that as disclosure of information by vendors was not a statutory obligation under the Ordinance, they could choose not to disclose the required information. Mrs LAU however questioned the effectiveness of the vendor's statement in the event of non-disclosure. SALD replied that buyers would become more cautious about whether they should proceed with the property transaction if vendors refused to disclose the information.

8. Mrs LAU was not satisfied with the Administration's explanation. She remarked that the Administration should impose a statutory obligation on the vendors to disclose information within their knowledge. The Administration should also improve the vendor's statement to facilitate disclosure of information by vendors. For instance, an additional box of "Not known" should be included in question 1. The drafting of question 2 should also be refined to reflect its original intent of enabling prospective purchaser to know whether there were any outstanding repair and maintenance charges which would probably pass onto the purchaser. The Chief Executive Officer/Estate Agents Authority (CEO/EAA) replied that it was inappropriate to use the Ordinance, which primarily regulated the estate agency trade, as a means to impose a statutory obligation with penalties on vendors for non-disclosure. PAS for H (1) added that concerns raised by Mrs LAU were already taken care of by questions 3 and 4. She nevertheless undertook to consider the suggestion of putting an additional box of "Not known" where necessary in the vendor's statement. Mr LI however pointed out that the inclusion of an additional box in question 1 might not be necessary if the scope of the question was confined to the period within which the vendors owned the properties. Mrs LAU agreed with Mr LI's observation. She opined that the Administration might consider including an additional question in the statement to enable vendors to disclose information on UBWs constructed prior to their ownership of properties. An additional box of "Not known" should be provided for under such circumstances. PAS for H (1) took note of Mrs LAU's suggestion.

Legal representation in the determination of commission

9. Mr LEE expressed concern that if some large estate agency companies insisted on using the court of law rather than the determination mechanism under EAA to resolve commission disputes, the clients concerned might be forced to compromise in order to avoid the possible legal cost incurred. While acknowledging Mr LEE's concern, CEO/EAA however pointed out that according to section 49 of the Ordinance, a commission dispute could only be referred to EAA for determination with the consent of both parties.

Appointment of elected representatives of the trade as members of the Estate Agents Authority

10. Mrs LAU noted that at the last meeting on 9 June 1999, deputations from six estate agency associations had expressed reservations at the representativeness of the EAA members appointed from the trade. She asked how the Administration would address the trade's concern. PAS for H (1) explained that all EAA members were appointed in their personal capacity. At present, there were five EAA members who were appointed from the trade and they had provided valuable advice in the formulation of the proposed Regulations. Apart from advice given by these EAA members, the Administration had also met with the five major trade associations to gauge their views on the Regulations. She assured members that without prejudice to the spirit of both the Ordinance and the Regulations, the Administration had taken on the trade's views as far as practicable. To avoid recurrence of similar problem, Mrs LAU opined that EAA should step up communication with the trade such as conducting regular meetings with the trade to discuss major issues concerning them. However, the best solution to the problem would be for the Administration to appoint elected representatives of the trade as EAA members. PAS for

H (1) confirmed that the Administration would take into consideration Mrs LAU's suggestion in future appointment of EAA.

11. Members then proceeded to examine the Regulations section by section.

Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation

Section 1 - Commencement

12. No particulars comments were made on the section.

Section 2 - Interpretation

13. The Assistant Legal Adviser 2 (ALA 2) remarked that the “或” in the Chinese version of section 2(2)(b) should be replaced by “及” so that the Chinese version of the section tallied with that of the English version. PAS for H (1) took note of ALA 2's point.

Section 3 - Forms

14. ALA 2 asked if the Administration would consider adding a “地” after “相應” in the Chinese version of section 3(1) to enhance clarity. The Government Counsel considered it not necessary as the section as drafted was clear enough to reflect its purpose. She nevertheless agreed to discuss other issues relating to the drafting of the Regulation with ALA 2 after the meeting.

Section 4 - Guidelines as to professional standards

Section 5 - Licensed estate agents and salespersons to inform clients they are licensed

Section 6 - Use of estate agency agreement

Section 7 - First sale of undivided share in land in which residential property forms part

Section 8 - Seeking instruction

15. No particular comments were made on these sections.

Section 9 - Advertising

16. As to whether the written consent referred to in section 9(2) included consent in electronic form, CEO/EAA replied that she personally considered this acceptable if the estate agents were able to identify the sender. She assured members that EAA would spell out the application details of the provision in circulars and practice guidelines issued to estate agents.

Section 10- Property inspection and viewing, etc.

Section 11- Conduct of negotiation

17. No particular comments were made on these sections.

Section 12- Keeping of accounts and records

18. On section 12(8), CEO/EAA explained that a certificate issued by a professional accountant would only be required when EAA decided to ascertain compliance of section 12(1) by an estate agent.

Section 13 - Agreements for sale and purchase and leases

19. On section 13(3), SALD confirmed that an estate agent was required to collect copies of identity cards of all co-owners of a property in the event of joint ownership. Mrs LAU however pointed out that the agent concerned might have difficulty in obtaining all the copies of identity cards, particularly when some of the co-owners were away from Hong Kong. The situation would be further complicated if the property was owned by a company. She also expressed concern on how the estate agent could ascertain the capacity of the vendor to sell the property if it was jointly owned by a number of co-owners or held by a company.

20. In response, CEO/EAA recognized that apart from the vendor's identity, an estate agent had to ensure the vendor's capacity to sell the property. In the case that a property was owned by a company, the agent concerned might have to check the memorandum of article to ascertain that the company had the right to own or alienate the property. She agreed that section 13(3) should be amended to state more clearly that an estate agent had to take all practicable steps to ensure that the identity of the vendor was correct. EAA would also issue practice guidelines to advise estate agents on how to ascertain the identity of the vendor and his capacity to sell the property.

Section 14 - Commission

21. Addressing Mr LEE's question on commission, PAS for H (1) confirmed that commission was negotiable between estate agents and their clients without a fixed rate. The commission so agreed should be spelt out in Schedule 2 of the Estate Agency Agreement for Sale of Residential Properties in Hong Kong.

Section 15 - Effective Control

Section 16 - Compliance by partnership

22. No particular comments were made on these sections.

Schedule

23. Mr LEE considered that the Administration should refine the Chinese version of the Forms under the Schedule to ensure that they were user friendly and to avoid subsequent amendments. PAS for H (1) took note of Mr LEE's view and agreed to review the Forms under the Schedule. Members therefore decided that examination of these Forms be postponed to the next meeting.

Estate Agents (Determination of Commission Disputes) Regulation

Section 1 - Commencement

Section 2 - Interpretation

Section 3 - Jurisdiction regarding disputes on commission

Section 4 - Reference of dispute for determination

24. No particular comments were made on these sections.

Section 5 - Appointment of adjudicator

25. Mr LEE noted that under section 5(2), no person should be appointed as an adjudicator unless he was a barrister or solicitor. He enquired about the rationale behind such an arrangement and the possible cost incurred. CEO/EAA advised that the decision to use barristers or solicitors as adjudicators was made on account of their legal knowledge. She assured members that no additional cost would be incurred as EAA would appoint its qualified officers as adjudicators.

Section 6 - Declaration of interest by adjudicator

26. No particular comments were made on the section.

Section 7 - Challenge of adjudicator

27. On section 7(5), Mr LEE asked whether a party could appeal against the suitability of an adjudicator appointed by EAA. In response, CEO/EAA said that if a party proposed to challenge an adjudicator, EAA might appoint a new adjudicator upon the concurrence of the other party. She added that the determination mechanism was only meant as an alternative avenue for the resolution of commission disputes. If the parties involved did not give consent to referring their cases to EAA for determination, they could always choose to resolve their disputes in a court of law.

Section 8 - Conduct of determination proceedings

28. No particular comments were made on the section.

Section 9 - Language

29. Addressing Mr CHENG Kai-nam's question on the requirement for documents submitted in the course of proceedings to be translated and certified, SGC advised that this was in line with the existing court practices, under which court interpreters would be required to certify the accuracy of the translation of documents submitted to the courts. In the event of discrepancies between the original document and the translation, the adjudicator might order amendments to the translation of that document by a suitably qualified person or ask the person submitting the document to refine the translation for re-submission for certification.

Section 10- Representation

30. Mr LEE expressed concern that some large estate agency companies might exploit the loophole of section 10(4) to appoint barristers or solicitors as their directors so that they could act on the companies as a claimant or respondent. This would contravene the spirit of the Regulation to prohibit legal representation in determination proceedings and would not be fair to the other party. PAS for H(1) undertook to consider Mr LEE's view.

Section 11 - Statement of claim

31. No particular comments were made on the section.

Section 12 - Statement of defence or counter-claim

32. As to whether respondents had to engage legal professionals to complete the statement of defence, PAS for H(1) considered it not necessary as the statement would be in a standard format similar to that used by the Small Claim Tribunal. Moreover, EAA would provide a sample of a completed statement for reference of respondents.

Section 13 - Amendments and further amendments

Section 14 - Time and place of determination proceedings

Section 15 - Evidence

Section 16 - Hearing of witnesses

Section 17 - Powers of adjudicator

Section 18 - Privileged communications

Section 19 - Default

Section 20 - Settlement

Section 21 - Termination of determination proceedings

Section 22 - Form and effect of determination

Section 23 - Correction of determination

Section 24 - Additional determination

33. No particular comments were made on these sections.

Section 25 - Determination fees

34. Mrs LAU asked if the determination fee of \$2,000 was applicable to each party to the dispute. CEO/EAA explained that the original intent of EAA was to share the fee between the two parties. However, the proposal was declined by the Department of Justice since this was at variance with the existing court practices where costs were borne by the defeated parties. Moreover, the Consumer Council had proposed that adjudicators be given the discretion to decide on the party to which the fee should be imposed on. The section as drafted would provide flexibility for adjudicators to determine the share of fees to be paid between the two parties taking into account individual merits.

- Section 26- Costs*
- Section 27- Deposits of costs*
- Section 28- Interest*
- Section 29- Record of determination proceedings*
- Section 30- Communication and notice period*
- Section 31- Destruction of documents*

35. No particular comments were made on these sections.

Section 32- Confidentiality

36. Mr LEE considered that information relating to the determination proceeding's such as the outcome of the determination should not be kept confidential. PAS for H (1) clarified that section 22(5) had already stipulated that a determination made by the adjudicator might be made public and published. SGC also explained that section 32 (1) aimed to provide flexibility for the adjudicator to decide whether requests for keeping certain information relating to the determination proceedings confidential should be acceded to. As to whether the determination of an adjudicator was final, CEO/EAA confirmed that such a determination might be registered in the District Court and, on such registration, became a judgement of the District Court and might be enforced accordingly.

Section 33- Applicable law

Section 34- Interpretation and enforcement of this Regulation

37. No particular comments were made on these sections.

Legislative Council Secretariat

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