

立法會
Legislative Council

LC Paper No. CB(1) 961/99-00
(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 Thursday, 17 June 1999, at 10:45 am
in Conference Room A of the Legislative Council Building**

Members present : Dr Hon Raymond HO Chung-tai, JP (Chairman)
Hon Cyd HO Sau-lan
Hon LEE Wing-tat
Hon Fred LI Wah-ming
Hon Gary CHENG Kai-nam

Members absent : Hon David CHU Yu-lin
Hon Edward HO Sing-tin, JP
Hon Ronald ARCULLI, JP
Hon Mrs Miriam LAU Kin-ye, 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) 1530/98-99(01) and (02))

At the Chairman's invitation, the Principal Assistant Secretary for Housing (1) (PAS for H (1)) briefed members on LC Paper No. CB(1) 1530/98-99(02) tabled at the meeting which set out the Administration's response to members' concerns raised at the last meeting on 15 June 1999.

Estate Agents (Determination of Commission Disputes) Regulation

2. Mr LEE Wing-tat remained concerned that some estate agency companies might exploit the loopholes under sections 10(1) and (2) to appoint barristers or solicitors as directors of the companies so that they could represent the companies in the determination proceedings. It would be unfair to the other party of the proceedings. PAS for H (1) replied that according to the advice from the Department of Justice, it would be against the Hong Kong Bill of Rights Ordinance to prohibit a director of an estate agent company to appear in a determination proceeding on account of his professional capacity as a barrister or a solicitor. She pointed out that the existing provisions under the proposed Regulation were similar to that under the Small Claims Tribunal Ordinance (SCTO). As there was no evidence showing possible abuse of the related provisions under SCTO, no amendments to the proposed Regulation were recommended. Mr LEE responded that he would look into SCTO to ascertain the need for amendments to the relevant provisions.

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

3. PAS for H (1) remarked that the Administration had revised the forms under the proposed Regulation taking into account members' views.

Form 1 - Property Information Form

4. Mr LEE noted that the Chinese translation of the term "saleable area" would be changed from "實用面積" to "可售面積" under the impending Sales Description of Uncompleted Residential Properties Bill. He asked if the same term in Part 1B(2) of the

Form would have to be changed. PAS for H (1) replied that it would not be appropriate to change the Form in this respect at this stage since the Bill concerned was not yet introduced. Nevertheless, consequential changes to the proposed Regulation after the enactment of the Bill would be made by way of subsidiary legislation.

5. The Assistant Legal Adviser 2 (ALA 2) remarked that the Administration might need to add "Government" before "lease" in Part 1B(6) to avoid confusion with the lease referred to in Part 1B(1)(d). PAS for H (1) took note of ALA 2's point. In order to save time, the Chief Executive Officer/Estate Agents Authority (CEO/EAA) suggested and members agreed that the drafting of the Forms should be followed up by the Administration with ALA 2 after the meeting.

6. Mr CHENG Kai-nam held the view that the categories of flats under Part 1C(6) might not be able to include those subsidized home ownership flats of which land premium had been paid. CEO/EAA undertook to look into the matter. She added that in recognition of the distinct sale arrangements for Home Ownership Scheme (HOS) flats, EAA had issued two sets of practice guidelines in this respect to estate agents. A third set of guidelines, together with a list of HOS estates which were eligible for sale would be issued shortly. A seminar jointly organized by EAA and the Housing Authority would also be held in July 1999 to promote a better understanding of the sale arrangements for HOS flats.

Form 2 - Leasing Information Form

7. Without prejudice to its legal effect, Mr Fred LI considered that the existing term of "restrictions on alienation" under Part B(5) should be replaced by a more commonly used term such as "resale restriction". The Government Counsel advised that the existing term was in line with that used in the principal Ordinance. CEO/EAA suggested and members agreed that this could be resolved between the Administration and ALA2.

Form 3 - Estate Agency Agreement for Sale of Residential Properties in Hong Kong

8. As regards the definition of "substantial shareholder" under Schedule 4, CEO/EAA confirmed that this was a common term used to describe a person who was entitled to exercise or control the exercise of 10% or more of the voting power at a general meeting of an estate agency company.

Form 4 - Estate Agency Agreement for Purchase of Residential Properties in Hong Kong

9. No particular comments were made on the Form.

Form 5 - Estate Agency Agreement for Leasing of Residential Properties in Hong Kong

10. In reply to Mr LEE's question on list rental, PAS for H (1) advised that if this was inclusive of water and electricity fees, such fees should be spelt out clearly in clause 12 of the agreement.

11. PAS for H (1) advised that as Forms 7 to 12 mainly dealt with administrative matters, no amendments to these forms were recommended.

Other concerns

12. Mr LI expressed worries that the capacity of the existing information retrieval systems under the Land Registry, Rating and Valuation Department and Buildings Department might not be able to meet future demand which was expected to rise substantially after enactment of the proposed Regulation. PAS for H (1) assured members that this should not be a problem taking into account the current low utilization consuming only 1% of the capacity of these systems. Moreover, these systems were designed in a scaleable manner so that their capacities could be readily expanded to meet increasing demand.

13. The Chairman asked if there were channels through which estate agents could express their views on the services provided by the relevant departments. CEO/EAA confirmed that estate agents could put forward the problems they encountered in the retrieval of property information through hotlines run by the relevant departments. EAA also maintained close liaison with the relevant departments to ensure expeditious delivery of the required property information. At members' request, the Administration undertook to provide an update on the Administration's plan on setting up a centralized property databank

(Post-meeting note: The Administration's response was circulated vide LC Paper No. CB(1) 1626/98-99.)

Submission from the Real Estate Developers Association of Hong Kong
(LC Paper No. CB(1) 1545/98-99(02))

14. CEO/EAA advised that as the first sale by developers was exempt from the principal Ordinance, the concerns raised by the Association should not be of a particular problem.

Joint submissions from the Hong Kong Real Estate Agencies Association, Property Agencies Association Limited, New Territories Estate Agency Association Limited and Hong Kong Chamber of Professional Property Consultants Limited
(LC Paper No. CB(1) 1545/98-99(03))

Submission from the Property Agencies Association Limited
(LC Paper No. CB(1) 1545/98-99(04))

15. PAS for H (1) affirmed that the Administration would carefully consider the views on drafting of various Forms put forward by these associations and would simplify the Forms as far as possible. She however emphasized that the legality of these Forms should not be compromised.

II Any other business

16. As the Subcommittee had completed scrutiny of the proposed Regulations, the Chairman advised that a report on the deliberations of the Subcommittee would be submitted for consideration of the House Committee at its meeting on 25 June 1999. The deadline for giving notice of amendments to the proposed Regulations was 23 June 1999.

17. There being no other business, the meeting ended at 12:10 pm.

Legislative Council Secretariat

11 February 2000