

立法會
Legislative Council

LC Paper No. CB(1) 1576/98-99

Ref : CB1/SS/9/98

**Paper for the House Committee meeting
on 25 June 1999**

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

Purpose

This paper reports on the deliberations of the Subcommittee on Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation and Estate Agents (Determination of Commission Disputes) Regulation made under the Estate Agents Ordinance (Cap. 511).

Background

2. The Estate Agents Ordinance (the Ordinance) (Cap. 511), enacted in May 1997, aims to improve the standard of services provided by estate agents and to protect consumers in property transactions. It provides for the setting up of an Estate Agents Authority (the Authority) to regulate the trade through the implementation of a licensing system. The Estate Agents (Licensing) Regulation made by the Authority was passed by the Legislative Council on 18 November 1998 and the licensing system was introduced on 1 January 1999. Estate agents and salespersons who practise estate agency work are now required to obtain a licence from the Authority.

3. Under the Ordinance, the Authority is also empowered to prescribe, basing on the broad framework in the Ordinance on the regulation of estate agents, matters relating to the conduct and practice of estate agents as well as the procedures for the determination of disputes over commission. On 21 May 1999, the Authority, with the approval of the Secretary for Housing, gazetted the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation and the Estate Agents (Determination of Commission Disputes) Regulation.

The subsidiary legislation

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

4. The Practice Regulation aims to ensure that sale and leasing of local residential properties are to be conducted in a fair, open and honest manner and that the interests of both consumers and estate agents can be better protected. It prescribes, inter alia, the following matters:

- (a) General duties of licensed estate agents and licensed salespersons;
- (b) Conduct and practices of licensed estate agents and licensed salespersons; and
- (c) A number of forms for the purposes of the Ordinance, in particular in relation to estate agency agreements.

Estate Agents (Determination of Commission Disputes) Regulation (the Determination Regulation)

5. The Determination Regulation provides for the determination by the Authority of a dispute referred to it under section 49 of the Ordinance. The Authority shall have jurisdiction over disputes as regards a commission or other fee not exceeding \$300,000. A legally qualified officer of the Authority will be appointed as adjudicator to determine a dispute. The Determination Regulation also provides for the procedures to be adopted in determination proceedings, the form and effect of determination, and the payment of costs.

The Subcommittee

6. At the House Committee meeting on 28 May 1999, Members agreed to form a Subcommittee to study the two aforesaid Regulations. Dr Hon Raymond HO Chung-tai was elected Chairman of the Subcommittee. The Subcommittee held four meetings with the Administration and met with the deputations at one of the meetings. The membership list of the Subcommittee is in **Appendix I**. The list of deputations which have given oral representations/written submissions to the Subcommittee for consideration is in **Appendix II**.

Deliberations of the Subcommittee

7. The Subcommittee has examined the Regulations in detail. Its deliberation is summarized in the paragraphs below.

The supply of property information by estate agents

8. Under section 36 of the Ordinance, a licensed estate agent is required to provide specified property information to his client upon the introduction of a property. Such information includes prima facie evidence of ownership, subsisting encumbrances, saleable floor area, year or period of completion of the property, permitted use, unexpired term of the Government lease and whether there is a right of renewal and if so, the term. To assist the trade in the provision of property information, the Authority prescribes a set of standard forms in the Practice Regulation for use by estate agents. During the course of deliberation, the deputations pointed out that the prescribed information may not be easily available to estate agents. Appreciating the deputations' concern, members of the Subcommittee have enquired about the present position of the setting up of a centralized property databank, which was raised during the deliberation of the Bills Committee on Estate Agents Bill before its passage in the Legislative Council.

9. The Administration explained to the Subcommittee that since the enactment of the Ordinance, the Government has taken various steps to facilitate the trade in obtaining property-related information. At present, the majority of the information required such as particulars of current ownership, subsisting encumbrances, year of completion and user restrictions in the occupation permit, are already accessible at the Land Registry. Land searches can be conducted in the Land Registry or through the Department's Direct Access Service which enables access to the land register by electronic means. The Land Registry has also provided other supporting services such as special information counters to help filing search tickets, bulk-request counter, all-service counter and self-service terminal for placing orders. Some prescribed information such as saleable area and age of properties can also be accessed easily through the new 24-hour Info-Hotline Service provided by the Rating and Valuation Department. In the event that information which is available in the occupation permit is not accessible from the above two sources, individual estate agents may approach the Buildings Department. The Buildings Department has also streamlined its information access system on certified copies of Occupation Permit. The retrieval time has been reduced to three days.

10. To allay the concern of the trade, the Administration has advised that an estate agent has already been given a "due diligence" defence in disciplinary and civil proceedings under section 36 of the Ordinance if he has taken reasonable steps to obtain the information from the prescribed sources.

11. As regards the centralized property databank for all properties in Hong Kong, the Administration has put forward its explanation that the setting up of a territory-wide databank will 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. As majority of secondary market transactions concentrates on a number of popular estate developments and the Government has already taken steps to facilitate the accessibility to property information from various sources, the Administration considers that the setting up of a centralized property databank is not a pre-requisite for the implementation of the Practice Regulation.

12. Members agree that the implementation of a regulatory system for estate agents should not be deferred. Nevertheless, they have requested the Administration to pursue the proposal of setting up the databank in the long run.

The vendor's statement

13. While agreeing that a vendor's statement should be provided to facilitate a prospective purchaser to acquire information on structural alterations, additions, repairs or improvements of a property and the additional cost it might incur, members are concerned that the vendor might have difficulties in providing information on structural changes taken place before the period of his ownership of the property.

14. In this respect, the Administration explained that the vendor is only requested to disclose property information within his knowledge. Nevertheless, in light of members' comments, the Administration has agreed to amend the vendor's statement to facilitate the disclosure of information by the vendor on structural changes to the property taken place prior and during the vendors' ownership under separate questions in the statement, instead of all in one question without specifying the period as originally proposed.

Timing for the provision of property information

15. Under the Practice Regulation, a licensed estate agent is required to complete the prescribed property information form upon the introduction of a property. Some deputations suggested that the provision of property information to prospective purchasers could be deferred until the signing of the agreement for sale and purchase. The Administration however pointed out that the absence of property information to prospective purchasers at the outset under the current practice is in fact the cause of many disputes and complaints. It is therefore important to ensure that essential property information is provided to prospective purchasers as soon as possible to allow them to have a more complete picture of the property before making a decision, especially when they are under the influence to make a hasty decision.

Estate agency agreement

16. Section 45 of the Ordinance has provided for the signing of an estate agency agreement. It aims to avoid disputes arising from oral instructions and to codify clearly the duties of estate agents.

17. Some deputations have expressed reservation on the need to prescribe the estate agency agreement forms under the Practice Regulation to replace the existing “property viewing form” and “engagement agreement” which are widely used by the trade at the moment. In response, the Administration explained that the prescribed forms contain provisions which are much more comprehensive and objective than those featured in the various agreements provided by different estate agents. With the standardized format, the Administration trusts that consumers, after the launching of the education and publicity programmes on the Practice Regulation by the Authority, will be more willing to enter into such agreements.

Format and choice of words used in the forms under the Practice Regulation

18. Taking into account views of members and the trade, the Administration has agreed to amend Forms 1 to 6 under the Practice Regulation with a view to fine-tuning the format and improving on the choice of words to make the Forms more user-friendly.

Requirement for the estate agent to ascertain the identity of the vendor before the signing of the agreement for sale and purchase

19. Under section 13(3) of the Practice Regulation, an estate agent is required, for the purpose of avoiding the fraudulent misrepresentation of identity in an agreement for sale and purchase or a lease of a residential property, to ensure that the name of the vendor concerned is correct by collecting a copy of the vendor’s identity card. Members have expressed concern about measures to ascertain the identity of the vendor, as well as his authorization to sell the property, in particular when the property is owned under the name of a company. In light of members’ comments, the Administration has decided to amend section 13(3) to state more clearly that an estate agent has to take all practicable steps to ensure that the identity of the vendor is correct. The Authority has also assured members that it will issue practice guidelines to advise estate agents on how to ascertain the identity of the vendor and his capacity to sell the property.

Commercial and industrial properties not under the coverage of the Practice Regulation

20. Noting that the Practice Regulation will only apply to the sale and leasing of local residential properties, members have enquired for the reasons

for not applying the Regulation to commercial and industrial properties. The Authority has explained that at present, most of the disputes and complaints are relating to residential properties. The Authority has therefore drafted the regulations covering residential properties as a first step. In the meantime, pending the availability of Regulations for non-residential premises, estate agents conducting commercial and industrial properties are still required to comply with the current practice guidelines issued by the Authority and are subject to disciplinary actions in the event of non-compliance.

Legal representation in the determination of commission under the Determination Regulation

21. In response to the suggestion of some trade members that legal representation should be allowed in the determination proceedings, the Administration explained that the purpose of the commission dispute mechanism is to provide a speedy, informal and relatively inexpensive avenue for estate agents and their clients to resolve commission disputes. Legal representation is therefore not allowed as this will invariably lead to higher costs and lengthy proceedings which will defeat the purpose of the proposed commission dispute mechanism. Since the mechanism is only meant as an alternative avenue for the resolution of commission disputes with the consent of both parties, there is no question of the interest of the parties involved being compromised as they can always choose to resolve their disputes in a court of law. Allowing legal representation in the determination proceedings will deter consumers to make use of the avenue for fear of the substantial legal fees.

22. In relation to section 10(2) of the Determination Regulation, members also deliberated on the possible abuse of an estate agent company which might employ a barrister or solicitor as a director for the purpose of representing the company in conducting the determination proceedings. The Administration's explanation is that there is no reason for disallowing a director, if it is the case, of an estate agent company under authorization to conduct determination proceedings on behalf of the company simply because this director is a barrister or a solicitor. The existing provisions under sections 10(1) and (2) of the Determination Regulation are similar to related provisions under the Small Claim Tribunal Ordinance (Cap. 338) and therefore no amendment is necessary.

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

23. The Secretary for Housing is empowered under the Ordinance to appoint members of the Authority. Pursuant to members' suggestion, the Administration has undertaken to consider appointing elected representatives of the trade as members of the Authority upon the expiry of the current term on 31 October 1999.

Recommendation

24. The Subcommittee recommends that subject to the Administration's proposed amendments to the Regulations as attached in **Appendix III**, the Practice Regulation and the Determination Regulation be supported.

Advice sought

25. Members are invited to note that deliberations of the Subcommittee and support the recommendation at paragraph 24 above.

Legislative Council Secretariat

24 June 1999

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

Membership list
(as at 16 June 1999)

Dr Hon Raymond HO Chung-tai, JP (Chairman)

Hon David CHU Yu-lin

Hon Cyd HO Sau-lan

Hon Edward HO Sing-tin, JP

Hon LEE Wing-tat

Hon Fred LI Wah-ming

Hon Ronald ARCULLI, JP

Hon Gary CHENG Kai-nam

Hon Mrs Miriam LAU Kin-yee, JP

Total : 9 Members

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

**List of deputations which have given
oral representations/written submissions to the Subcommittee**

1. Consumer Council
2. Hong Kong Chamber of Professional Property Consultants Limited
3. Hong Kong Institute of Real Estate Administration #
4. Hong Kong Institute of Surveyors #
5. Hong Kong Real Estate Agencies Association
6. HKU Professional Real Estate Agencies Alumni Limited
7. Midland Property Holdings Limited #
8. New Territories Estate Agency Association Limited
9. Property Agencies Association Limited
10. Society of Hong Kong Real Estate Agents Limited
11. The Real Estate Developers Association of Hong Kong *

Only oral representation is given by the deputation.

* Only written submission is provided by the deputation.