

ESTATE AGENTS (DETERMINATION OF COMMISSION
DISPUTES) REGULATION

(Made by the Estate Agents Authority, with the approval
of the Secretary for Housing, under section 49(3)
of the Estate Agents Ordinance (Cap. 511))

1. Commencement

This Regulation shall come into operation on a day to be appointed by the Secretary for Housing by notice in the Gazette.

2. Interpretation

In this Regulation, unless the context otherwise requires---

"adjudicator" (審裁員) means an adjudicator appointed under section 5 or 7;

"claimant" (申索人) means the party making the claim in respect of a dispute being referred to the Authority for determination;

"determination proceedings" (審裁程序) means the proceedings of a determination of any dispute under section 49 of the Ordinance;

"dispute" (爭議) means any dispute within the meaning of section 49 of the Ordinance;

"party" (一方、各方) means a party to a dispute;

"respondent" (答辯人) means the party against whom a claim is made in respect of the dispute being referred to the Authority for determination;

"working day" (工作日) means any day other than a public holiday and other than a gale warning day or black rainstorm warning day within the meaning of section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1).

3. Jurisdiction regarding disputes on commission

The amount of the commission or other fee in dispute prescribed for the purpose of section 49(2)(a) of the Ordinance shall be \$300,000.

4. Reference of dispute for determination

(1) A licensed estate agent and his client may refer a dispute between themselves to the Authority for determination under section 49 of the Ordinance by---

(a) sending a letter signed by them to the Authority, which shall include---

(i) the names and addresses of the parties;

(ii) a statement that the parties agree to, and do by the letter, refer the dispute to the Authority for determination under section 49 of the Ordinance;

(iii) a reference to the estate agency agreement or other agreement out of or in relation to which the dispute arises; and

(iv) a brief summary of the claimant's claim and an indication of the amount of money involved; and

(b) each party paying to the Authority a filing fee of \$500.

(2) Determination proceedings shall be deemed to have commenced on the date when

the letter and the filing fees referred to in subsection (1) are received by the Authority.

(3) Where any party is a body corporate or a partnership, any letter sent under this section shall be completed and signed on its behalf by one of its directors or partners, as the case may be.

(4) No filing fee paid shall be refundable except as provided for in section 25(2).

5. Appointment of adjudicator

(1) For a dispute referred to the Authority for determination under section 4, the Authority shall, as soon as practicable, appoint one of its officers as adjudicator for determining the dispute on behalf of the Authority.

(2) No person shall be appointed to be an adjudicator unless he is a barrister or solicitor within the meaning of the Legal Practitioners Ordinance (Cap. 159).

6. Declaration of interest by adjudicator

(1) An adjudicator appointed by the Authority shall declare his interest, if any, in the dispute, whether such interest relates to the subject property regarding the dispute or any party or otherwise.

(2) Such declaration of interest shall be made at the time of his appointment or, if the interest arises later, within 3 working days after his becoming aware of the same.

(3) Upon receipt of the declaration of interest by the adjudicator, the Authority shall notify the parties in writing of the interest within 3 working days.

(4) Without prejudice to section 7, the Authority may upon its own initiative terminate, at any time during the determination proceedings, the appointment of an adjudicator under any of the following circumstances---

- (a) the adjudicator has a pecuniary or other beneficial interest in the subject property;
- (b) any party is a specified relative of the adjudicator;
- (c) circumstances exist which, in the opinion of the Authority, otherwise give rise to justifiable doubts as to the impartiality or independence of the adjudicator.

(5) In this section, "specified relative" (指明親屬) has the same meaning as in section 46(5)(b) of the Ordinance.

7. Challenge of adjudicator

(1) The parties may challenge an adjudicator appointed by the Authority if circumstances exist to give rise to justifiable doubts as to the adjudicator's impartiality or independence.

(2) A party who proposes to challenge an adjudicator shall send his challenge to the Authority, in writing, setting out the reasons for such challenge, with a copy

to the other party, within 7 working days of the notification of appointment of the adjudicator in question or, if later, of his becoming aware of the circumstances giving rise to doubts regarding the adjudicator's suitability.

(3) Where the other party concurs with the challenge posed or the challenged adjudicator withdraws from the appointment, the challenged adjudicator shall vacate his office and the Authority may appoint a new adjudicator in accordance with section 5 or decline jurisdiction in accordance with section 49(2)(b) of the Ordinance. In neither case does this imply acceptance of the validity of the grounds for the challenge.

(4) Where the other party does not concur with the challenge and the challenged adjudicator does not withdraw, a decision on the challenge shall be made by the Chief Executive Officer.

(5) If the Chief Executive Officer upholds the challenge, the Authority may appoint a new adjudicator in accordance with section 5 or decline jurisdiction in accordance with section 49(2)(b) of the Ordinance.

8. Conduct of determination proceedings

(1) The adjudicator may, subject to the widest discretion allowed by law, conduct the determination proceedings in such manner as he considers appropriate and shall have the power to adopt, whenever possible, simplified or expedited procedure and to conduct proceedings to ensure the just, expeditious and economical determination of the dispute, provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting his case.

(2) Without prejudice to the generality of subsection (1), the adjudicator may in conducting determination proceedings decide whether and to what extent he should take the initiative in ascertaining the facts and the law relevant to those proceedings.

9. Language

(1) The adjudicator may order that any document submitted in the course of proceedings, if not in an official language, to be accompanied by a translation into an official language, such translation to be certified if not agreed.

(2) Unless the adjudicator otherwise orders, witnesses shall be entitled to give their evidence in the language of their choice and the adjudicator may order the translation of that evidence, if not given in an official language, into an official language by a suitably qualified person.

(3) Without prejudice to any order as to costs under section 26, the costs of translation of any document or of evidence of witnesses shall be borne by the party submitting the document or the party on whose behalf the evidence is given.

10. Representation

(1) Subject to the other provisions of this section, the parties may conduct determination proceedings in person or be represented by any other person of their choice.

(2) Where a party is a body corporate or a partnership, it may be represented by a director or a partner, as the case may be, or any other person of its choice authorized by it.

(3) The parties shall send the names and addresses of their representatives in writing to the other party, with a copy sent to the Authority for filing, as soon as they have been decided on and shall immediately notify the Authority and the other party of any change.

(4) No barrister or solicitor, including a barrister or solicitor who is a public officer whether or not qualified to practise in a court in Hong Kong, shall be allowed to conduct determination proceedings on behalf of any party unless he is acting on his own behalf as a claimant or respondent.

11. Statement of claim

(1) Unless a statement of claim was contained in the letter referring the dispute for determination, the claimant shall send his statement of claim in writing to the respondent and to the adjudicator within 7 working days after the date of the commencement of the determination proceedings.

(2) A copy of the estate agency agreement or other agreement relating to the dispute shall be annexed to the statement of claim.

(3) The statement of claim shall include---

- (a) the names and addresses of the parties;
 - (b) a statement of the facts supporting the claim; and
 - (c) the points at issue,
- and shall be signed by the claimant.

(4) The claimant may annex to his statement of claim all documents he considers relevant or may add a reference to the documents or other evidence he intends to submit.

12. Statement of defence or counter-claim

(1) The respondent shall send a statement of defence in writing replying to the particulars of the statement of claim to the claimant and to the adjudicator within 7 working days from the date he receives the statement of claim.

(2) The respondent may annex to the statement of defence documents on which he relies for his defence or may add a reference to the documents or other evidence he intends to submit.

(3) In his statement of defence, or at a later stage in the determination

proceedings if the adjudicator decides that the delay was justified under the circumstances, the respondent may make a counter-claim arising out of the same agreement or rely on a claim arising out of the same agreement for the purpose of a set-off.

(4) The provisions of section 11 in relation to the particulars of the claim shall apply to a counter-claim and a claim relied on for the purpose of a set-off.

13. Amendments and further statements

(1) During the determination proceedings, either party may amend or supplement his claim or defence except where the adjudicator considers it inappropriate to allow such amendment, having regard to the delay in making it, the likelihood of prejudice to the other party and any other relevant circumstances.

(2) The adjudicator may, as condition for such amendment, impose such terms as to costs or other matters as he thinks fit.

(3) The adjudicator may require or accept further written statements, in addition to the statement of claim and the statement of defence, and shall fix the periods of time for submitting such statements.

14. Time and place of determination proceedings

(1) The adjudicator shall designate a time and place in Hong Kong for the determination proceedings to take place.

(2) Notice of the time, date and place for the initial hearing shall be sent by the Authority to the parties at least 10 working days prior to the date fixed for hearing and notice for each hearing thereafter shall be given as the adjudicator may determine.

15. Evidence

(1) Each party shall have the burden of proving the facts relied on to support his claim or defence.

(2) All evidence shall be under oath or affirmation.

(3) The adjudicator shall determine the admissibility, materiality, relevance and weight of any evidence and may, if in his opinion the interest of justice is served, admit evidence irrespective of the rules governing the admissibility of evidence in court.

(4) The adjudicator may, if he considers it appropriate, require a party to deliver to him and to the other party, within a period of time stipulated by him, a summary of the documents and other evidence which that party intends to present in support of the facts in issue set out in his statement.

16. Hearing of witnesses

(1) If witnesses are to be heard, each party shall give to the adjudicator and to the other party, at least 10 working days before the hearing, a written notice

of---

- (a) the names and addresses of the witnesses;
- (b) the subject matter of their testimony or transcripts of witness statements or expert reports; and
- (c) the languages in which such witnesses will give their testimony.

(2) The adjudicator may arrange for audio or video recordings to be made at a hearing as he considers appropriate.

(3) Hearings shall on the application of any party be held in private.

(4) The adjudicator may require the retirement of any witness during the testimony of another witness.

(5) Evidence of witnesses may also be presented in the form of written statements verified by them by oath or affirmation.

(6) The adjudicator is free to determine the manner in which witnesses are examined.

17. Powers of adjudicator

(1) An adjudicator may---

- (a) administer oaths to, or take the affirmations of, witnesses and parties;
- (b) examine witnesses and parties on oath or affirmation;
- (c) direct the attendance before him of witnesses in order to give evidence or to produce documents or other material evidence.

(2) A person cannot be required to produce in determination proceedings any document or other material evidence that the person could not be required to produce in civil proceedings before a court.

18. Privileged communications

If mediation process has been held before the dispute is referred to the Authority for determination, anything communicated to a mediator shall not be admissible in evidence in the determination proceedings except with the consent of the person who made such communication.

19. Default

(1) If, within the period of time fixed by or under this Regulation, the claimant fails to file his statement of claim without showing sufficient cause for such failure, the adjudicator may issue an order for the termination of the determination proceedings in accordance with section 21.

(2) If, within the period of time fixed by or under this Regulation, the respondent fails to file his statement of defence without showing sufficient cause for such failure, the adjudicator may, as he thinks fit, make an order in favour of the claimant or an order for termination of the determination proceedings in accordance with section 21.

(3) If one of the parties, duly notified under this Regulation, fails to appear at a hearing or fails to produce any document in his possession when required to do so without any valid excuse, the adjudicator may proceed with the determination proceedings and such proceedings shall be deemed to have been conducted in accordance with the requirements of section 8.

(4) No determination shall be made against a respondent under this section unless the adjudicator is satisfied that the statement of claim and the notice of hearing have been served on the respondent.

(5) The adjudicator may on such terms as he thinks fit set aside or vary any determination made under this section.

20. Settlement

(1) If, before the determination is made, the parties agree on a settlement of the dispute, the adjudicator shall record the settlement in the form of a determination on agreed terms.

(2) The adjudicator is not obliged to give any reasons for a determination made under subsection (1).

(3) A determination made under subsection (1) shall be signed by the adjudicator and shall be delivered to the parties and lodged with the Authority for filing.

21. Termination of determination proceedings

(1) If, before the determination is made, the continuation of the determination proceedings becomes unnecessary or impossible for any reason other than by way of an agreement to settle between the parties, the adjudicator may, either upon his own initiative or at the request of a party, issue an order for the termination of the determination proceedings.

(2) The adjudicator shall state in the order the reasons for the termination.

(3) An order made under subsection (1) shall be signed by the adjudicator and shall be delivered to the parties and lodged with the Authority for filing.

22. Form and effect of determination

(1) Subject to section 20(2), a determination shall be a reasoned determination made orally or in writing as the adjudicator thinks fit.

(2) The adjudicator shall, when he has made a determination orally, reduce it to writing as soon as possible, and in any case not later than 7 working days after the date of his making the determination.

(3) The determination shall be signed by the adjudicator and delivered to the parties and lodged with the Authority for filing. The determination shall be the determination of the Authority for the purposes of the Ordinance.

(4) In addition to making a final determination, the adjudicator shall have the power to make interim, interlocutory or partial determination during the

determination proceedings.

(5) A determination made by the adjudicator may be made public and published and where the adjudicator considers it appropriate to do so, the determination may be published on an anonymous basis.

(6) Notwithstanding subsection (5), the Authority shall be entitled to make use of any findings made by an adjudicator for the purposes of exercising its functions under the Ordinance, including, but without limitation, assessing whether any licensee is a fit and proper person to be so licensed.

23. Correction of determination

(1) Within 7 working days after receipt of the determination, either party may, with notice to the other party, request the adjudicator to correct in the determination any error in computation, any clerical or typographical error or any error of a similar nature.

(2) If the adjudicator considers the request made under subsection (1) to be justified, he shall make the correction within 7 working days after receiving the request.

(3) The adjudicator may on his own initiative correct any error of the type referred to in subsection (1) within 10 working days of the date of the determination.

(4) Such correction shall be in writing and the provisions of section 22 shall apply accordingly.

24. Additional determination

(1) Within 7 working days after receipt of a determination, either party may, with notice to the other party, request the adjudicator to make an additional determination as to claims presented in the determination proceedings but omitted from the determination.

(2) If the adjudicator considers the request for an additional determination justified and considers that the omission can be rectified without any further evidence, he shall make the additional determination within 7 working days after receipt of the request.

(3) When an additional determination is made, the provisions of section 22 shall apply accordingly.

25. Determination fees

(1) A determination fee shall be payable to the Authority for providing the service of an adjudicator in determining a dispute, the amount of which shall be---

(a) 10% of the total amount of commission and other fee in dispute as disclosed in the statement of claim and the statement of defence; or

(b) \$2,000,

whichever is the higher.

(2) The filing fee already paid by a party under section 4 is deductible from the amount or apportioned amount of the determination fee payable by him under the order for cost under section 26. Where the filing fee paid by a party exceeds the determination fee payable by him, the excess shall be returned to him.

26. Costs

(1) Whenever the adjudicator makes a determination, including a determination on agreed terms and an order for the termination of the determination proceedings, he may make an order for costs.

(2) The costs of determination shall in principle be borne by the parties in equal shares.

(3) Notwithstanding subsection (2), the adjudicator shall be free to apportion costs between the parties in any other manner as he considers reasonable in the circumstances.

(4) The order for costs shall specify---

(a) the sum to be paid, which shall include---

(i) the amount of determination fee payable to the Authority;

(ii) costs for translation and oral interpretation to the extent allowed by the adjudicator;

(iii) travel and other expenses of witnesses to the extent allowed by the adjudicator;

(b) the parties to and by whom payment shall be made; and

(c) the time limit for making payment.

(5) A party against whom such an order is made shall make payment in accordance with the order.

27. Deposits of costs

(1) At any time during the determination proceedings, the adjudicator may require any party to deposit with the Authority such sum or sums to defray the expenses of the determination proceedings if the adjudicator considers it expedient to do so in the circumstances.

(2) The adjudicator shall determine the amount of any deposit, taking into account the amount in dispute, the complexity of the subject matter, the determination fee that may be incurred and other relevant circumstances of the case.

(3) If payment of the required deposits is not made within 10 working days after receipt of the request, the adjudicator may order the termination of the determination proceedings in accordance with section 21.

(4) After the proceedings are terminated, the Authority shall render an account to the parties of the total deposits received and, after all the costs required to be borne by a party have been paid, return to such party the unexpended balance of

his deposits (if any).

28. Interest

The adjudicator shall have the power to order the payment of interest on any commission or other fees or costs including the payment of compound interest if appropriate in the circumstances.

29. Record of determination proceedings

(1) The adjudicator shall take or cause to be taken in writing a full minute, so far as circumstances permit, of the following matters in respect of every dispute heard by him---

- (a) the issue in dispute;
- (b) the name of the claimant;
- (c) the name of the respondent;
- (d) the name of any person who appears as a witness for the claimant;
- (e) the name of any person who appears as a witness for the respondent;
- (f) the name of any person whom the adjudicator directs to attend before him as a witness;
- (g) the evidence of any person who gives evidence; and
- (h) the determination or order made by the adjudicator.

(2) The parties may inspect and obtain a copy of the minutes on payment of reasonable charges to the Authority.

30. Communication and notice period

(1) Any letter or document under this Regulation may be sent by physical delivery or by ordinary post or in any other way as may be determined by the adjudicator from time to time if appropriate in the circumstances.

(2) Until the contrary is proved, a letter or document sent by way of ordinary post shall be deemed to have been received on the fifth working day after the date on which it was sent to an address in Hong Kong and on the day succeeding the day on which it would have been received in the ordinary course of post if sent to an address outside Hong Kong.

(3) For the purpose of calculating a period under this Regulation, the period shall begin to run on the day following the day when the letter or document is received.

31. Destruction of documents

The Authority and the adjudicator may destroy all documents sent to them after the expiry of a period of 1 year from the date of the last correspondence received by them relating to the determination proceedings.

32. Confidentiality

(1) The adjudicator may in his discretion determine that certain information relating to the determination proceedings shall be kept confidential.

(2) Without prejudice to section 22(6), such confidential information shall not be disclosed by any person without the prior written consent of the adjudicator.

33. Applicable law

(1) Hong Kong law shall apply to the determination proceedings.

(2) The adjudicator shall determine all disputes in accordance with the terms of the estate agency agreement and any other agreement regarding commission or other fees and take into account the usages of the trade applicable to the transaction.

34. Interpretation and enforcement of this Regulation

(1) The adjudicator shall be empowered to interpret and determine the applicability of all provisions of this Regulation and to take appropriate action to obtain compliance with any ruling made by him whilst determination proceedings are being conducted.

(2) The adjudicator may modify the requirements of this Regulation in relation to the sending of letters and documents or the length of time periods in particular cases where, in his opinion, it is expedient to do so in the interest of justice.

Moses CHENG Mo-chi

Acting Chairman,

Estate Agents Authority

11 May 1999

Explanatory Note

This Regulation provides for the determination by the Estate Agents Authority ("the Authority") of a dispute referred to it under section 49 of the Estate Agents Ordinance (Cap. 511).

2. 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 and provisions are made for him to declare interest and for his appointment to be challenged. The Regulation also provides for the procedures to be adopted in determination proceedings, the form and effect of determination, and the payment of costs.