

立法會
Legislative Council

LC Paper No. CB(1)505/09-10
(These minutes have been seen by
the Administration)

Ref : CB1/SS/2/09

Subcommittee on Estate Agents (Licensing) (Amendment)
(No. 2) Regulation 2009

Minutes of the third meeting held on
Friday, 13 November 2009, at 10:45 am
in Conference Room B of the Legislative Council Building

- Members present** : Hon Miriam LAU Kin-ye, GBS, JP (Chairman)
Hon James TO Kun-sun
Hon Audrey EU Yuet-mee, SC, JP
Dr Hon Joseph LEE Kok-long, SBS, JP
Hon Tanya CHAN
- Members absent** : Hon CHAN Kam-lam, SBS, JP
Hon LEE Wing-tat
- Public Officers attending** : Agenda item II

Mr Eugene FUNG Kin-yip
Principal Assistant Secretary for Transport and Housing
(Private Housing)

Mr Raymond LAW Fuk-ki
Chief Executive Officer (Private Housing)
Transport and Housing Bureau

Miss Carrie WONG Ka-yee
Senior Government Counsel, Law Drafting Division
Department of Justice

- Attendance by invitation** : Agenda Item II
Estate Agents Authority
Mrs Rosanna URE
Chief Executive Officer

Ms Eva LAU
Director of Regulatory Affairs and General Counsel

Mr Kevin CHEUNG
Manager (Licensing)
- Clerk in attendance** : Ms Debbie YAU
Chief Council Secretary (1)6
- Staff in attendance** : Mr Kelvin LEE
Assistant Legal Adviser 1

Ms Angel SHEK
Senior Council Secretary (1)1

Action

- I Confirmation of minutes of meeting**
(LC Paper No. CB(1)350/09-10 -- Minutes of meeting held on 2 November 2009)
- The minutes of the meeting held on 2 November 2009 were confirmed.
- II Meeting with the Administration**
(LC Paper No. CB(1)343/09-10(01) -- List of follow-up actions arising from the discussion at the meeting on 9 November 2009 prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)343/09-10(02) -- Administration's response to LC Paper No. CB(1)343/09-10(01)
- LC Paper No. CB(1)184/09-10(05) -- Marked-up copy of the Amendment Regulation prepared by the Legal Service Division
- LC Paper No. CB(1)269/09-10(02) -- Administration's response to members' concerns raised at the

meeting on 2 November 2009

LC Paper No. CB(1)412/09-10(01) -- Information paper provided by the
(*tabled at the meeting and* Estate Agents Authority on the
subsequently issued on 18 November issue of double jeopardy)
2009)

2. The Subcommittee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions required to be taken by the Administration

3. The Subcommittee requested the Administration/Estate Agents Authority (EAA) to:

- (a) provide information on the principles of regulating licence holders under the mutual recognition of qualifications scheme (the Scheme) to be entered between EAA and the China Institute of Real Estate Appraisers and Agents (CIREA), including the delineation of respective jurisdictions and the determination on the appropriate authority to conduct investigation and take disciplinary action, in particular when there were conflicting views between EAA and CIREA on the case in question, and confirm whether EAA had agreed with CIREA on the principles; and
- (b) provide an undertaking to report to the Panel on Housing all the details of the operation of the Scheme before issuing any licence under the Scheme, including –
 - (i) tabling the agreement between EAA and CIREA, which would be signed after the Amendment Regulation had been passed;
 - (ii) arrangements on sending communications and notices in relation to complaint or disciplinary matters against a Mainland licensee to his/her address in the Mainland, if provided, in addition to the registered address in Hong Kong;
 - (iii) outcome of the clarification with CIREA on whether the scope of "having no criminal conviction history", which is one of the requirements for a Hong Kong applicant to be eligible to EAA for nomination under the Scheme, would include minor convictions such as minor traffic offences; and
 - (iv) detailed arrangements of the tailor-made course and examination organized by EAA for estate agents nominated by CIREA under the Scheme.

Way Forward

4. The Chairman concluded that the Subcommittee had completed examination of the Amendment Regulation and would report its deliberations to the House Committee on 20 November 2009. Members noted that the deadline of giving notice of amendments to the Amendment Regulation was 25 November 2009, and the Amendment Regulation would come into operation on 7 December 2009.

III Any other business

5. There being no other business, the meeting ended at 12:45 pm.

Council Business Division 1
Legislative Council Secretariat
30 November 2009

**Proceedings of the third meeting of
the Subcommittee on Estate Agents (Licensing) (Amendment) (No. 2) Regulation 2009
on Friday, 13 November 2009, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000413 – 000454	Chairman	(a) The Chairman's introductory remarks (b) Confirmation of minutes of meeting held on 2 November 2009 (CB(1)350/09-10)	
000455 – 001714	Chairman Administration Estate Agents Authority (EAA) Mr James TO Assistant Legal Adviser (ALA)	<p>Briefing by the Administration and EAA on their consolidated responses to concerns raised at the meeting on 9 November 2009 (CB(1)343/09-10(02))</p> <p>Mr James TO's view that the deliberate reference to "any conviction whether in Hong Kong or elsewhere" in section 19(2)(d) of the Estate Agents Ordinance (Cap. 511) (EAO) reflected that the Principal Ordinance had in fact imposed territorial limit on the conduct and behaviour of EAA licensees which it might look into for determining whether a licensee was a fit and proper person to continue to hold a licence, which was in direct contrary to the inference stated in (a)1(i) of CB(1)343/09-10(02). As such, his worry that the passage of the Amendment Regulation might acknowledge or reinforce the inference that EAO and its subsidiary legislation had not imposed territorial limit on conduct and behaviour of EAA's licensees</p> <p>ALA's advice that while extra-territorial jurisdiction did not apply to criminal acts, a licensee's conduct and behaviour outside the territory would in some cases be considered in disciplinary proceedings under the common law practices. In reply to James TO's further query about the aforesaid inference in the Principal Regulation, ALA's advice that such inference was not observed in the Amendment Regulation. The Chairman's remark that judicial review might be sought as appropriate</p>	
001715 – 002954	Chairman Mr James TO EAA	<p>Mr James TO's concern whether it would be appropriate to notify CIREA the names of EAA-licensed Mainland estate agents on whom it had disciplined if CIREA would not take into account the conduct of its licensees outside the Mainland when considering whether to re-grant or revoke the registration of an estate agent</p> <p>EAA's advice that before entering into the agreement with CIREA on the Scheme, EAA would clarify with CIREA its jurisdiction over the conduct of CIREA-licensed estate agents outside the Mainland</p> <p>ALA's advice that under section 30 of EAO, if EAA suspended or revoked the licence of its licensees, it had to publish notice of the decision in the Gazette. As the revocation of licences under the Scheme would be made</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>public, his consideration that EAA could provide the same to CIREA for reference</p> <p>Dr Joseph LEE's suggestion that to protect the interest of EAA and for administrative purpose, EAA should duly inform the Scheme licensees about the notification mechanism between EAA and CIREA at the time of granting the licences</p>	
002955–005444	<p>Chairman Ms Audrey EU EAA Administration ALA Mr James TO</p>	<p>As a former member of EAA, Ms Audrey EU's observation that the Scheme was the result of strenuous efforts of EAA over the years. Her view that as the Scheme would serve important reference for other industries in implementing similar mutual recognition of qualifications schemes, the Subcommittee should be informed of the principles agreed between EAA and CIREA of regulating the Scheme licensee, including the delineation of respective jurisdictions and the determination on the appropriate authority to conduct investigation and take disciplinary action, in particular when there were conflicting views between EAA and CIREA on the case in question. Sharing similar views, Mr James TO's concern about the delineation of jurisdictions in relation to the collection of fines</p> <p>EAA's response that while the details had yet to be discussed with CIREA, it was a basic principle of the future agreement that EAA could exercise jurisdiction over the Scheme licensees in respect of Hong Kong properties. EAA would seek assistance from CIREA should it encounter difficulties in investigation in the Mainland. Ms Audrey EU's view that EAA should conduct investigation for estate agency cases of wide public concern that involved malpractices and misconduct of EAA's licensees even if relevant complaints were not lodged</p> <p>The Administration's highlight of EAA's jurisdiction as stated in paragraphs 4 and 5 of CB(1)343/09-10(02) that the jurisdiction of EAA and CIREA hinged on the place of the properties, i.e. EAA and CIREA would regulate the practice of Scheme licensees in connection with Hong Kong properties and Mainland properties respectively</p> <p>ALA's advice that EAA was empowered by EAO and its subsidiary legislation to regulate and control the practice of estate agents in connection with Hong Kong residential properties instead of the place of transactions. EAA's jurisdiction should be related to the place of properties</p> <p>In reply to Ms Audrey EU, EAA's further advice that there was no question of double jeopardy in the regulation of professional conduct by different jurisdictions, as highlighted in the Scottish case of <i>Swanney v Full Decision of the General Medical Council's Fitness to Practise Panel</i> [2006] CSIH35 (CB(1)412/09-10(01) tabled and issued on 18 November 2009)</p>	<p>The Administration to provide information as required in paragraph 3 (a) of the minutes</p>

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		<p>In response to Mr James TO and the Chairman, the Administration/EAA's undertaking that it would report to the Panel on Housing all the details of the operation of the Scheme, and address outstanding issues raised by Subcommittee members, before issuing any licence under the Scheme</p>	<p>The Administration to provide an undertaking as required in paragraph 3(b) of the minutes</p>
005445 – 005854	<p>Chairman Mr James TO EAA Administration</p>	<p>In reply to Mr James TO, EAA's undertaking that it would send communications and notices in relation to complaints and disciplinary matters to its Mainland licensees to the registered address in the Mainland, if provided, in addition to the one in Hong Kong</p>	<p>The Administration to provide an undertaking as required in paragraph 3(b) of the minutes</p>
005855 – 011610	<p>Chairman EAA Administration Mr James TO Dr Joseph LEE</p>	<p>Noting that one of the requirements for a Hong Kong applicant to apply to EAA for nomination under the Scheme was "having no criminal conviction history", Mr James TO's enquiry whether the requirement would include those convictions classified as "spent" under the Rehabilitation of Offenders Ordinance (Cap. 297) (ROO) and minor convictions</p> <p>The Chairman's suggestion that EAA should discuss with CIREA whether the threshold could be lowered to exclude convictions "spent" under ROO, or be on par with the existing licensing requirements of EAA for local applicants</p> <p>EAA's advice that the eligibility requirement of "having no criminal conviction history" for Hong Kong applicants was in line with the existing licensing requirement of CIREA for Mainland applicants. Under the existing arrangements, applicants for EAA licence had to disclose information on his/her history of convictions, if any, including convictions "spent" under ROO for EAA's consideration whether or not to grant or renew a licence. However, CIREA had already indicated that it would not give exemptions to convictions "spent" under ROO. EAA's response to Dr Joseph LEE's enquiry that the requirement had been discussed by the working group of the Scheme which comprised industry players, and they generally found the requirements acceptable</p> <p>While acknowledging that the applicants should have "no criminal conviction history" in the Mainland, Mr James TO's urge for EAA to liaise with CIREA for local adjustment in respect of "having no criminal conviction history" in Hong Kong</p> <p>In reply to the Chairman, EAA's agreement to clarify with CIREA the scope of "having no criminal conviction history" to see whether it would include minor convictions such as minor traffic offences (e.g. jay-walking)</p>	<p>The Administration to provide an undertaking as required in paragraph 3(b) of the minutes</p>

Time marker	Speaker	Subject(s)	Action required
011611 – 014445	Chairman Administration Mr James TO Dr Joseph LEE EAA ALA	<p><u>Section-by-section examination of the Amendment Regulation (L.N.181 of 2009 and CB(1)184/09-10(05))</u></p> <p><u>Proposed section 1 – Commencement</u></p> <p>Members did not raise any query</p> <p><u>Proposed section 2 – Educational qualifications and experience for licensees</u></p> <p>Mr James TO's enquiry on whether "the training course" to be provided under proposed subsection (4CB)(a) referred strictly to one training course without variations and exemptions</p> <p>EAA's advice that notwithstanding implementation of the Scheme, Mainland individuals might still apply to EAA for licences through the "normal" procedures, and the Scheme was meant to provide the framework for mutual recognition of qualifications of estate agents and to facilitate such by providing a tailor-made training course and a tailor-made examination for the CIREA nominees. There would be no exemptions in the requirement of the training course</p> <p>The Chairman's view that exemptions would not be applicable as the Scheme was a new scheme to give mutual recognition of the qualifications, without any grandfathering arrangements. Her consideration that the regulations could be reviewed and adjusted, where necessary, in the light of actual implementation</p> <p>In reply to Mr James TO, EAA's advice that the training course and the tailor-made examination to be provided by EAA to the CIREA nominees under the Scheme would be held once a year. Mr TO's suggestion that the examination should be organized more frequently, say twice a year, to facilitate those nominees who had failed to re-sit the examinations such that they could complete the training course and passed the examination within 12 months immediately before the date of application as stipulated in proposed subsection (4CA)(b)</p> <p>Dr Joseph LEE's advice that EAA should duly inform the Scheme applicants whether supplementary examinations would be held for nominees failing the examinations. His view that the frequency of examination should be manageable within the manpower and resources of EAA, and match the frequency of nomination made by CIREA</p> <p>EAA's explanation that taking into account the administrative procedures (i.e. arrangements of trainers and training/examination venues, preparation of examination papers, marking papers, notification to examinees and handling of appeals etc), cost-effective deployment of resources, travelling arrangements of the Mainland nominees to attend the training course and sit for the examination, the proposed</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>frequency of holding the training course and examination once a year was deemed appropriate. As tentatively agreed between EAA and CIREA at the working level, there would not be any supplementary examination arrangements and nominees failing the examination of any one year had to re-apply for nomination and if nominated, attend the training course and sit for the examination again. Re-taking the 3-day training course would help nominees refresh and update their knowledge, having regard to the latest development in the regulatory system and the code of conduct and practices for estate agency works in Hong Kong</p> <p>The Administration/EAA was requested to re-consider the duration of the training course having regard to the attendance of estate agents while in service, as well as the frequency of holding the tailor-made examination, and to report to the Panel on Housing the detailed arrangement of the tailor-made training course and examination</p> <p>ALA's confirmation that the English version of the Amendment Regulation was in order</p>	<p>The Administration to follow up as required in paragraph 3(b) of the minutes</p>
<p>014446 – 014744</p>	<p>Chairman Dr Joseph LEE Administration</p>	<p>Dr Joseph LEE's request on behalf of Ms Audrey EU for the Administration/EAA to provide information on the principles of regulating the Scheme licensees, as raised in the earlier part of the meeting</p>	<p>The Administration to provide information as required in paragraph 3(a) of the minutes</p>
<p>014745 – 015109</p>	<p>Chairman Mr James TO Administration ALA</p>	<p>Mr James TO's consideration that the Administration/EAA should make ready all the details of the operation of the Scheme before introducing the Amendment Regulation, and his indication that he might move a motion to repeal the Amendment Regulation</p> <p>In response to Mr James TO's request for the Secretary for Transport and Housing (STH) to give an undertaking during her speech that the Administration/EAA would report to the Panel on Housing all the details of operation of the Scheme before issuing any licence under the Scheme, ALA's explanation that STH would not speak on the Amendment Regulation unless there were amendments. His further advice on the procedures and deadlines for making amendments to or repealing the Amendment Regulation</p> <p>The Chairman's concluding remarks</p>	