

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

**Consolidated written reply by the Transport and Housing Bureau
and the Estate Agents Authority to the questions raised at the first meeting**

Response to Question (a)

We consider it not necessary to specifically include additional wordings in the Estate Agents (Licensing) (Amendment) (No.2) Regulation 2009 (the Amendment Regulation) to specify that the tailor-made course, which the Estate Agents Authority (EAA) will organise for the purpose of the mutual recognition of qualifications scheme between the Mainland and Hong Kong (the Scheme), is restricted to holders of the certificate of registration for real estate agents (the Certificate) who are nominated by the China Institute of Real Estate Appraisers and Agents (CIREA) to participate in the Scheme. This is because the relevant provisions in the Amendment Regulation have provided EAA with the power to decide whether to provide the tailor-made course and, if so, to which type of holders of the Certificate. Some of the Legislative Council (LegCo) Members pointed out that other holders of the Certificate may not know that the aforementioned tailor-made course is not open to them. EAA will make clear to the relevant parties, through CIREA, the prerequisites for enrolling on the course when announcing the Scheme. From the law drafting perspective, we do not see the need to amend the Amendment Regulation to specify that only those nominated persons concerned can enroll on the course.

Response to Question (b)(i) to (iv)

According to the Estate Agents Ordinance (the Ordinance), all EAA licensees are under its regulation. According to Section 19(1)(c) of the Ordinance, licensees must meet the “fit and proper” requirement. On receiving complaints against EAA licensees (including those who are Mainlanders) on misconduct, EAA may handle the complaints by virtue of the powers conferred by the Ordinance. EAA’s consideration of whether an individual is “fit and proper to hold a licence” is not constrained by geographical boundaries. In other words, EAA’s consideration is not constrained by whether the cases occur within or outside Hong Kong, the complainant is a Hong Kong or non-Hong Kong citizen, and the property in question is situated in or outside Hong Kong. As regards complaints the nature of which is beyond the ambit of EAA under the

Ordinance, EAA does not have the power to handle them at present or in future.

There will be no difference in the above situation between now and after the implementation of the Scheme.

One of the challenges which EAA faces in handling complaints about cases taking place in Hong Kong is collecting relevant information. Similarly, EAA will possibly encounter greater difficulty in collecting relevant information for cases taking place in the Mainland or outside Hong Kong.

Under the Scheme, EAA and CIREA will notify each other of the name lists of its own estate agents who have been disciplined and are holding the licences of the other side. EAA and CIREA will decide individually on the appropriate follow-up actions on those licensees disciplined by the other side.

Members are concerned that the Scheme may generate undue expectation among the public that EAA will have greater powers to handle complaints against cross-border property transactions following the launch of the Scheme. In this connection, EAA will, when announcing the Scheme, arrange publicity and public education as appropriate with a view to making the public understand that the objective of the Scheme is to bring forward the spirit of “the Mainland and Hong Kong Closer Economic Partnership Arrangement” to encourage mutual recognition of professional qualifications and promote exchange of professionals between the two places for mutual benefits.

Response to Question (b)(v)

According to Section 14 of the Ordinance, any holder of an EAA licence shall have an address in Hong Kong to which all communications and notices may be sent. Under EAA’s Proceedings Rules on Inquiry Hearings, the communications and notices sent by EAA to the address of a licensee shall be deemed to have been served on the fifth day after the date they are sent, unless there is evidence that they are not yet served. If a Mainlander holding an EAA licence fails to make a representation to EAA in respect of the complaint against him/ her or fails to attend the inquiry hearing of the Disciplinary Committee of EAA when a complaint case against him/ her is being dealt with by EAA, EAA may still proceed with the handling of the complaint according to the information available at the time. If, based on the information available at the time, the Disciplinary Committee rules that the licensee “is not a fit and proper person to hold a licence” and decides to revoke his/ her licence, the revocation of licence will not be withheld on the grounds that the licensee concerned has failed to make a representation to EAA in respect of the complaint against him/

her or has failed to attend the inquiry hearing of the Disciplinary Committee.

Response to Question (c)

We consider that Section 5(b) of the Ordinance, which stipulates that EAA may take such actions as it considers appropriate or necessary to enhance the status of local estate agents, has conferred upon EAA the statutory authority to enter into the Scheme with CIREA. LegCo's Assistant Legal Adviser concurred with this view at the Subcommittee meeting.

Under the Scheme, there is an annual quota on the number of individuals nominated by each party to its counterpart to attend the tailor-made course and sit for the tailor-made examination of the Scheme. The quota for the first year is 300. Should the number of applicants exceeds the quota, EAA being the administrator of the Scheme in Hong Kong will select the nominees among the applicant licensees so that the number of nominees will not exceed the quota. This is one of the tasks required of EAA in implementing the Scheme. The task is also in line with the legislative intent of Section 5(b) of the Ordinance.

EAA will adopt a points system whereby applicants will be shortlisted according to the number of points awarded to them. Under the points system, an applicant, who has more than five years of working experience in the estate agency industry, possesses an academic qualification which is higher than the basic requirement (which is the completion of Form 5), or has obtained credits from EAA's Continuing Professional Development Scheme will be awarded different number of points respectively. In the event that the number of applicants shortlisted under the points system still exceeds the quota, EAA will determine on the successful candidates by ballot. These selection criteria have been formulated upon discussion by EAA's working group comprising EAA's Board Members and the co-opted members from the estate agency sector, and after consultation with the Independent Commission Against Corruption.

Transport and Housing Bureau
Estate Agents Authority

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