

**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 second meeting**

(a) EAA’s jurisdiction over conduct and behaviour of EAA licensees outside Hong Kong

1. For the reasons set out below, we consider that EAA has jurisdiction over the conduct and behaviour of EAA licensees outside Hong Kong, and make reference to it when considering whether the licensee is still “fit and proper to hold a licence”.
 - (i) The Estate Agents Ordinance (EAO) and its subsidiary legislation have not imposed any territorial limit on the conduct and behaviour of EAA licensees which EAA may look into for determining whether a licensee is a fit and proper person to continue to hold a licence. In considering whether a person is fit and proper to hold or continue to hold an estate agent’s licence, the EAA is required to have regard to, among others, “*any conviction, whether in Hong Kong or elsewhere [emphasis added], of the person for any offence (other than an offence under the EAO), being a conviction as regards which it was necessary to find that the person acted fraudulently, corruptly or dishonestly.*” (section 19(2)(d) of the EAO).
 - (ii) In “*Disciplinary and Regulatory Proceedings*” by Brian Harris QC (2009, Jordans), the author considered the application of statutes regulating professional conduct and said: “*Where no territorial limit is imposed and the purpose of the jurisdiction is the protection of the public[,] jurisdiction may be presumed to extend outside the UK (see R (on the application of the Health Professions Council) v Disciplinary Committee of the Chiropodists Board [2002] EWHC 2662 (Admin).*”
 - (iii) In the Scottish case of *Swanney v Full Decision of the General Medical Council’s Fitness to Practise Panel* [2006] CSIH 35:

[17] ...It appears to us to be inconceivable that the legislation would not permit inquiry into the conduct of a registered person, with a view to seeing whether serious professional misconduct had occurred, simply because that conduct had occurred in some other state. If the contrary view were accepted it would mean that a practitioner whose conduct could be regarded as serious professional misconduct in some other jurisdiction could come to the United Kingdom and practice medicine here with impunity, it might be to the danger of the public. Such a result would undermine the objective of the respondents, enshrined in [section 1(1A) Medical Act 1983], which provides that the main objective of the respondents is to "protect, promote and maintain the health and safety of the public".

(b) Jurisdiction and licensing considerations of the CIREA in relation to conduct and behaviour of CIREA-licensed estate agents outside the Mainland

2. According to the 《房地產經紀人員職業資格制度暫行規定》 (“Temporary Implementing Rules on the Professional Qualification Regime for Real Estate Agents”) promulgated by the Ministry of Personnel of the Central Government, “... the organization responsible for registration shall revoke the registration of a real estate agent under any of the following circumstances –

- (1) he does not have full capacity for civil conduct;
- (2) he has been penalized for criminal conduct;
- (3) he has not been engaged in the position of a real estate agent for a continuous period of 2 or more years;
- (4) he works as an estate agent for 2 or more estate agencies concurrently; or
- (5) he has seriously breached the moral standard expected of and regulations governing the real estate agency trade.”¹

¹ 《房地產經紀人員職業資格制度暫行規定》第二十一條原文如下：

“經註冊的房地產經紀人有下列情況之一的，由原註冊機構註銷註冊：

3. The EAA is seeking advice from the CIREA on whether CIREA can regulate the conduct of CIREA-licensed estate agents outside the Mainland, and whether CIREA will take those conduct of its licensees which took place outside the Mainland into account when considering whether to re-grant or revoke the registration of an estate agent.

(c) Whether the EAA would exercise supervision over EAA-licensed Mainland estate agents regarding their estate agency work for Mainland properties.

4. The EAA is empowered by the EAO and its subsidiary legislation, in particular, the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation to, *inter alia*, regulate and control the practice of estate agents in connection with Hong Kong residential properties. Therefore, the EAA will not supervise the daily estate agency work of an EAA-licensed Mainland estate agent in connection with Mainland properties *per se*. Given that an EAA-licensed Mainland estate agent will also hold CIREA estate agent's licence under the Scheme, supervision on his estate agency work in connection with Mainland properties should come from the CIREA.

5. That said, as mentioned in paragraph 1(i) above, the EAO and its subsidiary legislation have not imposed any territorial limit on the conduct and behaviour of EAA licensees which EAA may look into for determining whether a licensee is a fit and proper person to continue to hold a licence. The EAA will, pursuant to section 19(1)(c) of the EAO, consider whether the licensee in question has done anything, whether in relation to Mainland properties or otherwise, which impinges on his being a fit and proper person to continue to hold a licence. If the EAA considers that an EAA-licensed Mainland estate agent has done something which impinges on his being a fit and proper person to continue to hold a licence, it will take appropriate disciplinary action pursuant to section 29(1)(b) of the EAO.

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- (一) 不具有完全民事行為能力。
 - (二) 受刑事處罰。
 - (三) 脫離房地產經紀工作崗位連續 2 年 (含 2 年) 以上。
 - (四) 同時在 2 個及以上房地產經紀機構進行房地產經紀活動。
 - (五) 嚴重違反職業道德和經紀行業管理規定。”

(d) Deemed service of notice of inquiry hearing; statutory basis for service notices; request to a licensee under the Scheme to provide an additional address for service

6. Section 8 of the Interpretation and General Clauses Ordinance, Cap 1, states that:

“Where any Ordinance authorizes or requires any documents to be served or any notice to be given by post or by registered post, whether the expression “serve” or “given” or “send” or any expression is used, the service or notice shall be deemed to be effected by properly addressing, pre-paying the postage thereon and dispatching it by post or registered post, as the case may be, to the last known postal address of the person to be served or given notice, and, unless the contrary is proved, such service or notice shall be deemed to have been effected at the time at which the document or notice would be delivered in the ordinary course of post.”

7. Section 8(5) of the EAO states that “a committee may regulate its own procedure and business”. Pursuant to this provision, EAA’s Disciplinary Committee made the Proceedings Rules on Inquiry Hearings (the Proceeding Rules).

8. Section 41 of the EAO states that “any notice which is required by this Ordinance to be given shall be properly given if -

(a) in the case of an individual, it is -

(i) delivered to him; or

(ii) left at, or sent by post to, his registered address;”

9. Since the wordings of section 41 of the EAO fulfils the requirements as stated in the first part of section 8 of Cap 1, “deemed service” as described by the underlined words in paragraph 6 above can be relied on, unless the contrary is proved.

10. It should be noted that the “ordinary course of post” as described in section 8 of Cap 1 is in practice a shorter period than the one referred in the “deemed service” provision in the Proceedings Rules, namely “the

fifth day after the date they are sent to the registered address”. Therefore, the “deemed service” provision in the Proceedings Rules can be regarded as more lenient to the licensee and thus his existing rights should not be regarded as adversely affected by the provision in question.

11. We do not consider it necessary to request an EAA-licensed estate agent practicing outside Hong Kong to provide a registered address other than that in Hong Kong to which all communications and notices might be served. This is because according to section 14 of the EAO, “every licensee shall have an address in Hong Kong to which all communications and all notices may be sent”. It is very clear that the purpose of the registered address is that it is the place where all communications and all notices may be sent. The licensee has an obligation to ensure that there is a mechanism in place whereby everything sent to the registered address will be received by him.

12. To ensure that EAA-licensed estate agents practicing outside Hong Kong are aware of their obligation to ensure that there is a mechanism in place whereby everything sent to the registered address will be received by him, the EAA will give each of them a copy of the Proceedings Rules so that the rules, including deemed service and other relevant matters, are brought to their attention upon granting of the licence.

(e) Further information on the detailed operation of the points system whereby applicants would be short-listed for nomination by EAA

13. Please see the **Annex**.

Transport and Housing Bureau
Estate Agents Authority
12 November 2009

**Proposed Selection Criteria for nomination
under the Mutual Recognition of Professional Qualifications of Estate Agents
between the Estate Agents Authority and the
China Institute of Real Estate Appraisers and Agents**

1. As agreed with CIREA, Hong Kong applicants fulfilling the following requirements are eligible to apply to the EAA for nomination:
 - be 18 years of age or above;
 - be a holder of a valid estate agent's licence (individual) issued by the EAA¹;
 - have at least a total of 5 years of estate agency work or related experience² after obtaining an estate agent's licence (individual) issued by the EAA;
 - have no criminal conviction history; and
 - be in good health³.

2. Hong Kong applicants who are nominated for recognition will be required to attend a tailor-made Course (the "Course") organized by CIREA to bridge the possible knowledge gap arising from the differences in legal systems and practice, and pass a tailor-made examination (the "Examination") organized by CIREA.

3. Since the Scheme is subject to an annual quota⁴, in the event that the number of eligible applicants for a given year exceeds the quota for that year, a point system is introduced and higher priority will be given to applicants who can demonstrate, with acceptable documentary evidence, that
 - i. they have a recognized university degree⁵ (1 point);

¹ The licence should not be obtained pursuant to any form of mutual recognition of qualifications between the EAA and authorities of any other country or region.

² The 5-year experience does not need to be continuous.

³ The CIREA will consider that this requirement is satisfied if applicants declare that they are in good health.

⁴ The first year's quota is 300.

⁵ Degrees awarded by the 12 degree-awarding higher education institutions in Hong Kong are recognized degrees. Degrees obtained elsewhere are recognized if the awarding institutions are accredited (such as some of those in the U.S.) or listed in a formal register (such as those in the registers of the Australian Qualifications Framework) or authorized to do so under the laws of the relevant countries (such as those in the UK) or by the governments of the relevant countries (such as those in the PRC). Other degrees are considered on a case by case basis. Associate degrees or

- ii. they have 6 to 10 years of estate agency work or related experience (1 point) **or** they have over 10 years of such experience (2 points); and
 - iii. they have obtained 12 points or above from courses in the EAA's "Continuing Professional Development Scheme" in the 12 months prior to the application (1 point).
4. These additional factors are relevant for consideration as they are indicators of the applicants' competence and experience.

Selection procedures

5. If the number of eligible applicants does not exceed the quota for that year, all eligible applicants will be nominated to attend the tailor-made Course and sit for the tailor-made Examination.
6. If the number of eligible applicants exceeds the quota for that year, the point system mentioned in paragraph 3 above will be engaged and applicants will be assigned to one of the following groups:
 - Group A – those having been awarded a total of 4 points;
 - Group B – those having been awarded a total of 3 points;
 - Group C – those having been awarded a total of 2 points;
 - Group D – those having been awarded a total of 1 point;
 - Group E – those having been awarded with no point.
7. Priority for nomination will be given to those in Group A and, if the quota has not been exceeded, then those in Group B and so on. If the number of applicants in a given group exceeds the quota or remaining quota, ballot will be drawn among applicants in that group to determine the successful applicants.
8. A confirmation will be sent to each applicant stating the point(s) having been awarded to him/her. Any points not awarded will be specified in the confirmation with a reason. An applicant can make a request for review within the period specified in the confirmation (such request must be supported by reason(s) and / or further supporting documents and an administrative fee

similar degrees (such as a "foundation degree" in the UK) are not considered as a university degree for this purpose.

which is refundable in the event of a reversal of decisions upon review). The applicant seeking review will be notified of the result within a stipulated period. The review result is final. Ballot, where required as set out in paragraph 7, will be drawn only after the review result, if any, is released.

9. Full details of the Scheme, including the details of the above-mentioned selection criteria and procedure, will be attached to the application forms for nomination as well as announced in the EAA website.

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