

立法會 *Legislative Council*

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Paper for the House Committee meeting on 13 November 1998

Report of the Subcommittee on Subsidiary Legislation made under the Estate Agents Ordinance (Cap. 511) Gazetted on 16 October 1998

Purpose

This paper reports on the deliberations of the Subcommittee on Subsidiary Legislation made under the Estate Agents Ordinance (Cap. 511).

Background

2. The Estate Agents Ordinance (the Ordinance) (Cap. 511) was enacted in May 1997. It aims to improve the standard of service provided by estate agents and protect consumers involved in property transactions. It provides for the setting up of an Estate Agents Authority (the Authority) to regulate the trade through, inter alia, the implementation of a licensing system. The Authority, with the approval of the Secretary for Housing, made and gazetted the Estate Agents (Licensing) Regulation and the Estate Agents (Exemption from Licensing) Order under the Ordinance on 16 October 1998. On the same day, the Secretary for Housing also gazetted the Estate Agents Ordinance (Cap. 511) (Commencement) Notice 1998.

The subsidiary legislation

The Estate Agents (Licensing) Regulation

3. The Estate Agents (Licensing) Regulation provides for the licensing of estate agents and salespersons. It prescribes, inter alia, the following matters:

- (a) New entrants to the trade are required to have completed Form 5 secondary education or its equivalent, and to have passed the relevant examination specified by the Authority;
- (b) Existing practitioners will be given three years until 1 January 2002 to pass the relevant examination and will in the meantime be granted licences to continue to practice;
- (c) Estate agents who have six years' experience in estate agency work within the period of seven years immediately before the implementation date of the licensing system, i.e. 1 January 1999, will be exempted from the examination, and will be given three years until 1 January 2002 to complete a training course relevant to the estate agency work as specified by the Authority. In the meantime they will be granted licences to continue to practice; and
- (d) Professional surveyors with one years' estate agency work experience within the period of 24 months immediately before 1 January 1999 will be eligible for the grant of Estate Agent's licences and Salesperson's licences before 1 January 2002.

Estate Agents (Exemption from Licensing) Order

4. The Exemption Order exempts estate agents dealing exclusively with properties outside Hong Kong and dormant partners of a partnership from the requirement of obtaining a licence.

Estate Agents Ordinance (Cap. 511) (Commencement) Notice 1998

5. The Notice appoints 21 October 1998 as the day on which those provisions of the Ordinance therein specified shall come into operation.

The Subcommittee

6. At the House Committee meeting on 23 October 1998, Members agreed to form a subcommittee to study the aforesaid gazetted subsidiary legislation made under the Estate Agents Ordinance (Cap. 511). Hon Andrew CHENG Kar-foo was elected Chairman of the Subcommittee. The Subcommittee held three meetings with the Administration. The membership list of the Subcommittee is in **Appendix I**.

Deliberations of the Subcommittee

7. The Subcommittee has examined in detail the Regulation, the Exemption Order and the Notice. Its deliberation is summarized in the paragraphs below.

Estate Agents (Licensing) Regulation

Definition of “existing practitioner”

8. Under section 2, “existing practitioner” means an individual, including a senior practitioner, who has done estate agency work in Hong Kong for any period of time within the period of one year immediately before the implementation date (i.e. 1 January 1999) of the licensing regime. Some members consider it too loose to regard those who have taken part in the trade for any period of time within 1998, irrespective of the length of their experience of working as estate agents, as existing practitioners. The provision indeed allows a person who has only been in the trade for one day to obtain a licence which will enable him to practise in the trade for the next three years. These members therefore propose to set a “minimum period” requirement to ensure that any licenced practitioner will have reasonable experience in the trade.

9. The Administration is of the view that the licensing system should be implemented in a planned and gradual manner to minimize disruption to the trade and services to the public. It is therefore appropriate to regard those who are currently practising estate agency work before the implementation date of the licensing system as existing practitioners. However, in recognition of the aftermath of the Asian financial crisis and the resulting shrinkage of the real estate agency industry in the past one year, the Administration has decided to relax the requirement by including those who have practised for any period of time within the past 12 months as existing practitioners. With less than two months left before implementation, the Administration is concerned about the disruption that could result from the stipulation of a “minimum period” requirement. Current practitioners whose service in the trade fall short of the “minimum period” will lose their jobs on 1 January 1999. The Administration stresses that all licensees, irrespective of whether they are existing practitioners or new entrants will in future be required to comply with a set of practising regulations numbering over 60 and covering advertising, introduction, negotiation, property inspection and provision of property information, etc. Consumer interests will be further protected upon the introduction of additional regulations.

10. Noting the Administration’s concern, members still consider it reasonable to require a minimum service period for a licensed practitioner. To strike a balance between improving the service standard of estate agents and bringing minimum disruption to the trade, the Administration has agreed to make an amendment to the effect that “existing practitioner” means an individual who either has done estate agency work in Hong Kong for a period or periods totalling at least three months within the period of 18 months immediately before the implementation date of the licensing system, or is doing estate agency work in Hong Kong on the date of his making an application for the grant of a licence and the application is made before

1 January 1999.

Limiting the condition for extension of time

11. Under section 7(4), the Authority may, if it considers it justified and reasonable to do so, grant an extension of time beyond 1 January 2002 within which period an existing practitioner or a senior practitioner must comply with the relevant condition for obtaining a licence. The relevant condition is defined in section 7(5). Members consider that the Authority should at least give some indications as to the principles under which an extension of time will be granted and set a limit for the extension period.

12. In addressing members' concern, the Administration agreed to amend section 7(4) to the effect that where an existing practitioner or a senior practitioner who does not comply with the relevant condition before 1 January 2002, satisfies the Authority that the reason he did not so comply was due to exceptional circumstances (including the case where the practitioner is incapacitated by ill health), then the Authority may, if it considers that it would be oppressive and unjust not to do so, grant an extension of time, expiring not later than 31 December 2002, within which period the practitioner must comply with the relevant condition.

Appeal against refusal or revocation of licence

13. Section 15(c) provides that an application for licence cannot be made within 12 months of the date on which an appeal against the refusal or revocation of licence is determined or abandoned. Members consider and the Administration agrees that the subsection should be deleted as it may discourage appeals.

Minimum number of licensed directors for corporate licensed estate agent

14. Section 8 stipulates that a company shall not be eligible to be granted or hold or continue to hold an estate agent's licence unless at least one director of the company is a licensed estate agent. Members have raised concern if such a requirement can ensure that an estate agency business is under adequate and proper control.

15. According to the Administration's explanation, the Authority is empowered to prescribe the minimum number or proportion of directors of a licensed corporate estate agent that are licensed estate agents under section 20(1)(a) of the Ordinance. However, it is beyond the scope of this Regulation to prescribe any further requirement regarding the status of directors so licensed. The Administration has further clarified that under section 20(1)(a), every director who is engaged in estate agency work shall be a licensed estate agent and section 20(1)(b) further requires that for each corporate estate agent there must be a licensed estate agent in effective control of its estate agent business. In addition, section 38 of the Ordinance has provided for the appointment of a manager in each place of business of a corporate estate agent who must be a licensed estate agent. The Administration considers that these two sections, taken together, can adequately ensure that an estate agency business is under proper control.

Estate Agents (Exemption from Licensing) Order

16. Members have noted that under the Exemption Order, estate agents and salespersons dealing exclusively with properties outside Hong Kong including properties in the Mainland, irrespective of whether these property transactions are processed in Hong Kong, are exempted from obtaining a licence. In view of the large number of Mainland properties being sold in Hong Kong every year, members have raised concern about consumer protection involved in these property transactions.

17. The Administration's explanation is that owing to the different nature, scope and complexity of work relating to overseas properties, the Authority will need to consider different regulations for such properties. To address members' concern, the Administration has undertaken to complete the drafting of the regulations in respect of estate agency work relating to overseas properties by the end of 1999.

Recommendation

18. The Subcommittee recommends that subject to the Administration's proposed amendments to the Regulation as attached in **Appendix II**, the subsidiary legislation made under the Estate Agents Ordinance (Cap. 511) gazetted on 16 October 1998 be supported.

Advice sought

19. Members are invited to note the deliberations of the Subcommittee and support the recommendation at paragraph 18 above.

Legislative Council Secretariat

12 November 1998

**Subcommittee on
Subsidiary Legislation made under
the Estate Agents Ordinance (Cap. 511)
Gazetted on 16 October 1998**

Membership list

Hon Andrew CHENG Kar-foo (Chairman)
Hon LEE Wing-tat
Hon Fred LI Wah-ming
Hon Ronald ARCULLI, JP
Hon MA Fung-kwok
Hon Ambrose CHEUNG Wing-sum, JP
Hon Gary CHENG Kai-nam

Total : 7 Members
Date : 2 November 1998

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

RESOLUTION

(Under section 34(2) of the Interpretation and
General Clauses (Cap. 1))

ESTATE AGENTS (LICENSING) REGULATION

RESOLVED that the Estate Agents (Licensing) Regulation, published as Legal Notice No. 328 of 1998 and laid on the table of the Legislative Council on 21 October 1998, be amended -

- (a) in section 2, by repealing the definition of "existing practitioner" and substituting -

""existing practitioner" (現存從業員) means an individual, including a senior practitioner, who -

- (a) has done estate agency work in Hong Kong for a period or periods totalling at least 3 months within the period of 18 months immediately before the implementation date; or
- (b) is doing estate agency work in Hong Kong on the date of his making an application for the grant of a licence and the application is made before the implementation date;"

- (b) in section 7 -

- (i) in subsection (1) -

- (A) by repealing "subsection (2)" and substituting "the other provisions of this section";
- (B) in paragraph (b)(ii), by repealing the fullstop at the end and substituting "; or";
- (C) by adding -

"(c) the licence to be renewed is one granted or renewed under this subsection.";

- (ii) by repealing subsection (4) and substituting -

"(4) Where an existing practitioner or a senior practitioner who does not comply with the relevant condition before 1 January 2002, satisfies the Authority that the reason he did not so comply was due to exceptional circumstances (including the case where the practitioner is

incapacitated by ill health), then the Authority may, if it considers that it would be oppressive and unjust not to do so, grant an extension of time, expiring not later than 31 December 2002, within which period the practitioner must comply with the condition.";

(c) in section 15 -

(i) in paragraph (a), by adding "or" at the end;

- (ii) in paragraph (b), by repealing "; or" and substituting a comma;
- (iii) by repealing paragraph (c).