

3 March 2017

Division 5, Financial Services Branch  
Financial Services and the Treasury Bureau  
24/F, Central Government Offices  
Tim Mei Avenue, Tamar  
Central, Hong Kong

By email: [aml\\_consultation@fstb.gov.hk](mailto:aml_consultation@fstb.gov.hk)

Dear Sirs,

**Re : Enhancing Anti-Money Laundering Regulation of Designated Non-Financial Businesses and Professions**

1. We are an association of non-Chinese speaking estate agency practitioners formed with the aim of promoting fair estate agency practice in Hong Kong. We fully support your proposal to expanding the scope of the AMLO to subject solicitors, accountants, estate agents and TCSPs to the CDD and related record-keeping requirements.
2. We write mainly to point out one loophole in the present regulatory regime – the total absence of supervision over Hong Kong estate agents dealing with properties located outside Hong Kong. They are presently exempted from obtaining a licence (**‘Exemptees’**) and are therefore outside the jurisdiction of the Estate Agents Authority (**‘EAA’**). And this not what the law says, as explained below.

**The present licensing regime**

3. The *Estate Agents Ordinance* Cap. 511 (**‘EAO’**), which is the statute that regulates estate agents, says in section 2 that :
  - **"estate agency work"**, subject to subsection (3), means any work done in the course of business for a client- (a) being work done in relation to the introduction to the client of a third person who wishes to acquire or dispose of a **property**...
  - **"property"**, except in section 6(2)(a), means an interest in land;
  - **"land"** has the meaning assigned to it by section 2 of the



Conveyancing and Property Ordinance (Cap 219), and this definition also **applies to property outside Hong Kong.**

4. Sections 15 and 16 of EAO state that a licence is required for a person to carry out estate agency work as an estate agent or salesperson respectively. So practitioners in Hong Kong introducing overseas properties to Hong Kong buyers are doing estate agency work and need be licensed under the EAO.

### **Exemption from licensing**

5. The only reason why Exemptees are presently not required to obtain a licence is solely because of an exemption order signed in 1998 by the late Mr. Marvin Cheung, the first EAA Chairman (**L.N. 329 of 1998**, see attached).
6. It is difficult to understand why an administrative decree by a policy secretary/regulator can override laws enacted by the legislature, and for so long. At the least this exemption has led to Hong Kong not fully fulfilling its international AML obligations as a member of FATF.

### **Overseas AML practice**

7. In England their *Money Laundering Regulations 2007* governs AML for professions including estate agents. Since 1 October 2012 it has been extended to regulate estate agents based in the UK who deal with overseas property, either exclusively or alongside other property services, see :  
<https://www.gov.uk/guidance/registration-guide-for-estate-agency-businesses>.
8. The anomaly is that an estate agent in England selling Hong Kong properties in London is subject to the FATF AML regime, while a Hong Kong practitioner selling London properties in Hong Kong is totally unregulated and need not follow FATF AML directives. There are plenty of Exemptees operating in Hong Kong, in particular since the recent increases in anti-speculation stamp duties by the Hong Kong Government.

### **The case of one shady overseas properties dealer**

9. While we are not party to the case and have no idea what the dispute is about, the judgment HCA 1779/2011 (weblink below) aptly illustrates how unsatisfactory the present state of affairs is. For a snapshot of the size of that business, see para. 25 of the judgment (note - 2012 figure); for the type of Exemptees involved, see para. 13-15. The weblink is :  
[http://legalref.judiciary.gov.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=82069&QS=%2B&TP=JU](http://legalref.judiciary.gov.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=82069&QS=%2B&TP=JU).
10. As for the background of certain parties to the suit, please read ‘*The intriguing Direct Property Group*’ (SCMP 30<sup>th</sup> September 2013) :  
<http://www.scmp.com/comment/blogs/article/1321400/intriguing-direct-property-group>.
11. There must be similar operators around because the return is high and made more so by the hike in stamp duties on local properties in recent years. It is a magnet for undesirables to come to Hong Kong.

### **Reining in people selling overseas properties in Hong Kong**

12. Broadly speaking, estate agents in Hong Kong are regulated in two ways : (i) by passive checks on their fitness to qualify for a licence (without detailed guidelines as to how to practise) , and/or (ii) by regulating the practice itself.
13. Estate agents dealing in non-residential properties fall within the first category. They need to be a *fit and proper* person to obtain a licence, but otherwise how they go about their work is regulated mainly by the EAA Code of Ethics which follows the common law principles of agency.
14. On the other hand those dealing in residential properties additionally need to comply with the *Estate Agents Practice (General Duties & Hong Kong Residential Properties) Regulation* (‘**Practice Regulation**’), ie. category (ii). Relevant documentation and procedures are prescribed by law.

15. At the stroke of a pen, the Secretary for Transport and Housing can lift **L.N. 329 of 1998**, giving back EAO its full strength and effect. Exemptees will then need to obtain a licence to practise, just like their local counterpart. At the minimum undesirable practitioners can be screened out for their criminality.
16. With licensing, overnight the full strength of AML measures can be applied equally to practitioners selling local or overseas properties, enabling Hong Kong to comply with its FATF obligations.

### **The step forward**

17. If for any unreasonable reason this step is not taken, people dealing in overseas properties should **obtain a licence from the Registrar of Companies** the same way that Trust or Company Service Providers will have to (para. 2.13 of consultation paper).
18. Please also note that since 2014 first sale of residential properties falls within the jurisdiction of the Sales of First-hand Residential Properties Authority ('**SRPA**'). They may also have an AML role to play.
19. We simply cannot let Exemptees taint Hong Kong's AML reputation, or allow rogue estate agents who cannot practise in their home country to flock here to abuse Hong Kong consumers.
20. Our Honorary Researcher, Mr. Stanley To, will be happy to handle any questions that you may have. He can be contacted on 9747 9057.

Yours faithfully,



Moran Zukerman  
President

1998 年第 329 號法律公告

## 《地產代理 (豁免領牌) 令》

(由地產代理監管局在房屋局局長批准下根據  
《地產代理條例》(第 511 章)  
第 3 條訂立)

## 1. 生效日期

本命令自 1998 年 11 月 19 日起實施。

2. 純粹處理香港以外地方的物業的  
地產代理及營業員獲豁免

任何作出本條例第 15 或 16 條所提述的任何事情的人如符合以下說明，則獲豁免而不受領取地產代理牌照或營業員牌照的規定規限——

- (a) 該人純粹就香港以外地方的物業作出上述事情；及
- (b) 在其所有信件、帳目、收據、單張、小冊子及其他文件內及在任何廣告中，述明其本人並無處理位於香港的任何物業的牌照。

## 3. 不任事合夥人無須持有地產代理牌照

(1) 儘管有本條例第 15 條的規定，任何作為經營地產代理業務的合夥的成員的人如符合以下說明，則獲豁免而不受領取地產代理牌照的規定規限——

- (a) 該人並非以地產代理身分從事該合夥業務；
- (b) 該人並非不適當的人；及
- (c) 該合夥有至少另一名成員是持牌地產代理。

(2) 在本條中，“不適當的人”(unfit person)指——

- (a) 以下的人——
  - (i) (如該人是個人)未獲解除破產的破產人，或在緊接監管局考慮或(如適當的話)開始考慮他是否不適當的人當日之前 5 年內，已與其債權人訂立債務重整協議或債務償還安排的人；

L.N. 329 of 1998

## ESTATE AGENTS (EXEMPTION FROM LICENSING) ORDER

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

## 1. Commencement

This Order shall come into operation on 19 November 1998.

2. Exemption for estate agents and salespersons dealing  
exclusively with properties outside Hong Kong

A person who does anything referred to in section 15 or 16 of the Ordinance shall be exempted from the requirement for obtaining an estate agent's licence or a salesperson's licence if he—

- (a) does so exclusively in relation to properties outside Hong Kong; and
- (b) states in all his letters, accounts, receipts, pamphlets, brochures and other documents and in any advertisement that he is not licensed to deal with any property situated in Hong Kong.

3. Dormant partner not required to hold  
estate agent's licence

(1) Notwithstanding section 15 of the Ordinance, any person who is a member of a partnership carrying on an estate agency business shall be exempted from the requirement for obtaining an estate agent's licence if—

- (a) he is not engaged in the partnership business as an estate agent;
- (b) he is not an unfit person; and
- (c) at least one other member of that partnership is a licensed estate agent.

(2) In this section, “unfit person” (不適當的人) means—

- (a) a person who—
  - (i) in the case of an individual, is an undischarged bankrupt, or has, within the 5 years immediately prior to the day on which the Authority considers, or, where appropriate, begins to consider whether he is an unfit person, made a composition or scheme of arrangement with his creditors;

- (ii) (如該人是一間公司)正在清盤中或是一項清盤令的標的之公司，或有接管人就之而獲委任的公司，或在第 (i) 節所指明的 5 年內，已與其債權人訂立債務重整協議或債務償還安排的公司；
- (b) 當其時根據本條例喪失持有牌照的資格的公司的董事或高級人員，或在該公司如此喪失資格當日是該公司的董事或高級人員的人；
- (c) 《精神健康條例》(第 136 章) 第 2 條所指的精神紊亂的人或該條所指的病人；
- (d) 因任何罪行(本條例所訂的罪行除外)在香港或其他地方被定罪的人，而該項定罪屬有需要裁斷該人曾有欺詐性、舞弊或不誠實的作為者；或
- (e) 因本條例所訂的罪行被定罪，並已就該項定罪被判處監禁(不論是否緩刑)的人。

地產代理監管局主席  
張建東

1998 年 10 月 13 日

#### 註 釋

本命令豁免以下的人使其不受領取牌照的規定規限——

- (a) 純粹處理香港以外地方的物業的地產代理及營業員，條件是他須在業務文件及廣告內述明他並無領牌處理位於香港的物業；
- (b) 經營地產代理業務的合夥的成員，而該成員既非以地產代理身分從事該業務，亦非不適當的人，並該合夥有至少另一名成員是持牌地產代理。

- (ii) in the case of a company, is in liquidation or is the subject of a winding-up order, or in relation to whom there is a receiver appointed, or who has, within the 5 years specified in subparagraph (i), entered into a composition or scheme of arrangement with its creditors;
- (b) a person who is a director or officer of a company which is for the time being disqualified under the Ordinance for holding a licence, or was a director or other officer of that company at the date when the company was so disqualified;
- (c) a person who is a mentally disordered person, or a patient, within the meaning of section 2 of the Mental Health Ordinance (Cap. 136);
- (d) a person who has been convicted, whether in Hong Kong or elsewhere, of any offence (other than an offence under the Ordinance), as regards which conviction it was necessary to find that the person acted fraudulently, corruptly or dishonestly; or
- (e) a person who has been convicted of an offence under the Ordinance in respect of which he has been sentenced to imprisonment, whether the sentence is suspended or not.

Marvin CHEUNG Kin-tung  
Chairman,  
Estate Agents Authority

13 October 1998

#### Explanatory Note

This Order exempts the following persons from the requirement for obtaining a licence—

- (a) estate agents and salespersons dealing exclusively with properties outside Hong Kong subject to the condition that he states in his trade documents and advertisements that he is not licensed to deal with properties situated in Hong Kong;
- (b) any member of a partnership carrying on an estate agency business where the member is neither engaged in that business as an estate agent nor an unfit person and at least one other member of the partnership is a licensed estate agent.