

**Part 8: Effective Agency Management and Supervision
of Salespersons to Ensure Compliance**

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** This section should be read in conjunction with the regulatory matters discussed in Part 2.

VICARIOUS LIABILITY

The Employer and Employee Relationship

1. An employee is a person employed by another person under a contract of service. The contract of service is often distinguished from the contract for service. A contract for service is a contract between an independent contractor and the party who engages him whereby the independent contractor agrees to undertake the work specified in the contract. The independent contractor has control over the work and can use his discretion about how to do the contracted work. By contrast, the employee does regular and ongoing work for the employer, in return for wages and other remuneration and benefits. The employer directs and controls the manner in which that work is carried out, and the employee must comply with all reasonable instructions of the employer in relation to the carrying out of the work.

The Employer's Liability for the Employee's Actions or Omissions

2. An employee is personally liable for wrongful acts or omissions he commits. For example, an employed estate agent who has made a misrepresentation to a client about a property, or has omitted to reveal pertinent information about the property to a client, is personally liable to the client for the foreseeable loss and damage which the client has suffered from the misrepresentation or omission.
3. In certain circumstances, an employer may be legally responsible for certain acts or omissions his employee has committed, even though the employer is personally without fault. In such a situation, it is said that the employer has vicarious liability for the acts and omissions of his employee.
4. An employer has vicarious liability where the wrongful acts or omissions of the employee are committed in "the course of the employee's employment". The imposition of vicarious liability on the employer gives the victim of the employee's wrongful acts or omissions a right to claim against the employer, (who more likely than not has more resources to pay than the employee).
5. Generally speaking, a wrongful act is committed in the course of employment where the act itself is authorised by the employer, as well as where, although the act is not expressly or implicitly authorised by the employer, the employee does the act for the purpose of and in connection with carrying out his duties under the contract of employment. For example, where an employed estate agent, in the course of negotiating

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a property sale and purchase transaction, makes a misrepresentation about the property to the client, the estate agency company who employs the agent would likely be liable for the loss and damage to the client resulting from the misrepresentation, although the estate agency company does not authorise the employee to make the misrepresentation, and does not know beforehand that the employee will do so. The estate agency company is liable because in engaging in the negotiation the employee is carrying out his duties in the course of employment and for the benefit of the employer's business.

6. Usually the relationship between an estate agency company and the estate agents/salespersons working for it is that of an employer/employee relationship. Generally speaking, that is so even where the estate agents/salespersons do not have a basic salary and are remunerated purely on a commission basis.
7. Some Hong Kong legislation imposes vicarious liability on employers if an employee is in breach of such legislation. For example, the PDPO provides that anything that an employee does in the course of his employment is to be treated as done by his employer, whether or not he did it with the employer's knowledge or approval.¹ The Sex Discrimination Ordinance, the DDO, the FSDO, and the Race Discrimination Ordinance each has similar provisions.²

REGULATION OF EMPLOYMENT

Observance of Regulations

8. An estate agency company should set up a system to ensure that all its estate agents and salespersons are licensed. The employment and cessation of employment of all licensees must be reported to the Authority in accordance with the statutory form (see Part 2).
9. When recruiting employees to carry out estate agency work, the estate agency company should always ask job applicants to produce their licences for verification before offering employment. The estate agency company should ensure those of its employees who handle estate agency work renew their licences before expiry within the period provided in the Licensing Regulation and require such employees to produce the renewed licences for verification. The company should retain copies of all licences of employees. It is an offence to employ any person who is not a licensed estate agent or salesperson to do estate agency work. Every estate agency company should have a system monitoring the licensee status of employees who handle estate agency work.

¹ "Any act done or practice engaged in by a person in the course of his employment shall be treated for the purposes of this Ordinance as done or engaged in by his employer as well as by him, whether or not it was done or engaged in with the employer's knowledge or approval." Section 65 (1), PDPO, Chapter 486.

² "Anything done by a person in the course of his employment shall be treated for the purposes of this Ordinance as done by his employer as well as by him, whether or not it was done with the employer's knowledge or approval." Section 46(1), Sex Discrimination Ordinance; See also Section 48(1), DDO, Section 34(1), FSDO, and Section 47(1), Race Discrimination Ordinance.

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Disclosure of Interests

10. An agent must make a full and frank disclosure of relevant facts to his principal where there is the possibility of a conflict between his own interests and those of the principal in relation to the endeavours the agent is engaged to undertake for the principal. This is called the agent's duty of disclosure. The relationship between an estate agent and his client is one of agent and principal, and hence an estate agent has a duty to disclose to his client all facts and matters which are relevant to his interests vis-à-vis the interests of his client.
11. Section 36(1)(a)(vi) and (vii) of the EAO sets out certain specific matters which an estate agent must disclose to his client regarding property in relation to which he has entered into an estate agency agreement, namely:
 - Under Section 36(1)(a)(vi), an estate agent must disclose to a client full particulars of any pecuniary or other beneficial interest which such agent has in the property concerned, together with particulars of any benefit, including any commission or any interest of any kind whatever in such property, whether monetary or otherwise, which will accrue to such agent should the property be disposed of; and
 - Under Section 36(1)(a)(vii), an estate agent must, if as regards a particular property he acts both for the vendor and for the purchaser:
 - inform both such clients that he is so acting; and
 - provide to either of such clients at the request of that client any information provided by the other client as regards the property concerned, unless he has been expressly instructed by that other client not to do so.
12. It should be noted that the matters in respect of which an estate agent is under a duty of disclosure are not confined to those set out in the EAO, the Practice Regulation, and the Code. For example, where a relative of the agent is the vendor or purchaser of the property or has any beneficial interest in the property, the agent should disclose the same to the other party to the transaction.

See also Forms 3, 4, 5 and 6 of the prescribed Forms of Estate Agency Agreement and Part 2.
13. The estate agency company should ensure that employees know their statutory obligations under the EAO and its subsidiary legislation, are generally aware of their common law obligations as the agent of their clients, and are conversant with the Practice Regulation, the Code and the guidelines in circulars issued by the Authority from time to time. This can be done by:

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- the company compiling (and regularly updating) an employees' handbook and/or guidelines and/or circulars setting out such matters;
- the company regularly educating and instructing its employees on matters which estate agents/salespersons have to comply with, e.g. organising seminars and discussions between management and staff;
- the management of the company devising a checklist for ensuring the company's compliance with the law, the Code of Ethics and the guidelines in the Authority's circulars in all relevant matters. The checklist should be used by a manager or a supervisor during the various stages of each transaction, including the signing of the provisional agreement for sale and purchase; and
- constant supervision by the management over employees.

Procedures and Systems

14. Licensees should note that under Section 15 of the Practice Regulation, a licensed estate agent is required to establish proper procedures or systems to supervise and manage his business to ensure that his employees or persons under his control comply with the provisions of the EAO and its subsidiary legislation.

DATA PROTECTION

Personal Data of Clients

15. Principle 4 of the Data Protection Principles of the PDPO, which are set out in Schedule 1 of the ordinance, requires all practical steps be taken to ensure that personal data held by a data user are protected against unauthorised or accidental access, processing or erasure or other use. The PDPO was amended in 2012 to introduce new security requirements with respect to personal data transferred by data users to third-party data processors. If a data user engages a data processor, whether within or outside Hong Kong, to process personal data on the data user's behalf, the data user must adopt contractual or other means to prevent unauthorised or accidental access, processing, erasure, loss or use of the data transferred to the data processor for processing.³ The following are some measures which may be useful for the protection of personal data:

³ Paragraph (2) of Data Principle 4 set out in Schedule 1 to the PDPO.

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- a data user should ensure that personal data is stored in a safe and secure place;
 - access to manual files should be restricted to authorised staff only;
 - computer access to data should be restricted to authorised staff by the use of passwords which are changed regularly, and for which appropriate security is exercised;
 - when data is being processed, monitors should be so positioned to maintain confidentiality;
 - active terminals should not be left unattended; and
 - security measures should apply to data retention and data disposal. Computer printouts and other paper should be properly disposed of or shredded where appropriate.
16. Principle 6 of the Data Protection Principles of the PDPO provides that a data subject is entitled to request access to personal data held by a data user and to request the correction of such data. The Privacy Commissioner for Personal Data has issued a Data Access Request Form⁴ for use in request for personal data. The Form sets out how a data access request should be complied with, but in the following circumstances a data user shall refuse to comply with the request:
- when not supplied with sufficient information to identify the data subject; or
 - if the personal data sought under the request comprises personal data of another individual and the request cannot be complied with without disclosing the personal data of that other individual (unless that other individual consents to the disclosure); or
 - compliance with the request is being prohibited under the PDPO or any other ordinance.
17. In the following circumstances a data user may refuse to comply with a data access request:
- the request is not in writing in Chinese or English;
 - the party is not provided with sufficient information to locate the data requested;

⁴ In the Important Notice to Requestor of the Data Access Request Form, Form OPS003 (revised 09/2012), it is stated that "This Form is specified by the Privacy Commissioner for Personal Data under section 67(1) of the PDPO with effect from 1 October 2012. The data user may refuse to comply with your data access request if it is not made in this Form (see section 20(3)(e) of the PDPO)".

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- the request follows two or more similar requests;
- another party controls the use of the personal data in a way that prohibits the data user receiving the request from complying with it;
- the request is not made on the Privacy Commissioner for Personal Data's specified form; or
- there is an applicable exemption from the requirement to comply with an access request provided for in the PDPO or any other ordinance.

Confidential Information

18. In addition to observance of the PDPO, licensees also have a duty to their client not to release information obtained from the client or otherwise passed onto the licensee which is of a confidential nature without the client's authorisation.
19. Sometimes, particularly where the licensee is acting for both the vendor and the purchaser, situations may arise which there is a conflict between the duty of confidentiality owed to one client (for example, duty to keep confidential information provided to him by the vendor about the vendor's financial situation) and the agent's duty to disclose all relevant information which may affect the interest of the other client (for example, duty to protect the interests of the purchaser where the agent, knowing the vendor's financial situation, may have to advise the purchaser of the risk of payment of deposits to the vendor). In such situations, the licensee should seek legal advice. Where the conflict cannot be satisfactorily resolved without compromising the interests of each of the parties, the licensee should cease to act.

Keeping Client's Accounts

20. The management of an estate agency company should ensure compliance of the accounts regulations: see Regulation 12 of the Practice Regulation. The company's accountants should be thoroughly familiar with the relevant provisions in the EAO and the Practice Regulation. As a general rule, licensees should be instructed to request that clients draw their cheques for payment of deposits in favour of the vendors or landlords, or their solicitors (as the case may be) and not the estate agency company. This will mean that, generally, the estate agency company will not have to handle money on behalf of clients. In special cases where the estate agency company has to handle money on behalf of clients, the receipt of the money should be approved by the management and the money should be put in a trust account maintained at an authorised institution: see Practice Regulation Sections 12 (3), (4) and (5).

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21. Where a licensee accepts money from a client to be held by the licensed estate agent as a stakeholder for the parties, the terms of the stakeholding should be clearly stated, in particular as to when and in what circumstances the money is to be released to the other party, and what is to be done with the stakeheld money in the event of a dispute between the parties. The licensed estate agent should ensure that provision is made to indemnify the licensed estate agent in respect of any claims made by any party to the transaction. Legal advice should be sought on the question of stakeholding.

Direct Marketing

22. Under the PDPO, a data user can only use or transfer personal information for direct marketing purposes if that data user has provided the prescribed information and response channel to the individual concerned, and obtained his consent.⁵
23. The prescribed information (which must be presented in a manner that is easily understandable and readable) includes:
- the data user intends to use the personal data of the data subject in direct marketing;
 - the data user may not so use the data unless the data user has received the data subject's consent to the intended use;
 - the kinds of personal data to be used;
 - the classes of marketing subjects in relation to which the data is to be so used; and
 - a response channel through which the data subject may, without charge by the data user, communicate the data subject's consent to the intended use.
24. For a data user's use of personal data in direct marketing, consent from the data subject may be obtained either in writing or orally. Where an oral consent is obtained from a data subject, a written confirmation must be sent to the data subject within 14 days after the oral consent is obtained.
25. A data user must, when using a data subject's personal data in direct marketing for the first time, inform the data subject that he has the right to request the data user to cease to use the data for direct marketing purposes. Data subjects may also exercise their opt-out right at any time irrespective of any prior consent given. Upon receiving an opt-out request communicated in whatever manner, including orally or in writing, the data user must, without charge, cease using the data.

⁵ For details, please refer to Part VI A of the PDPO

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26. Estate agency companies engaged in direct marketing activities should have an adequate policy or practice in force to comply with the requirements of the Part VIA of the PDPO, and maintain a list of all individuals who have indicated that they do not wish to receive further marketing approaches (“opt-out list”). The opt-out list should be distributed to all staff who undertake direct marketing activities in the most practical and efficient way, such as by means of a computer network, and the list should be updated as and when an opt-out request is received.
27. Subject to compliance with the EAO and its subsidiary legislation, the Authority’s guidelines on the retention of documents with respect to money laundering, or other applicable laws and regulations concerning the retention of personal data or the document containing personal data, the personal data of any individual who chooses not to receive further marketing approaches should be erased from the database or other records of the agency, so that his personal data will no longer be available for use.
28. The Authority’s Practice Circular No. 13-05(CR) sets out matters which licensees must pay attention to when using personal data for the purpose of direct marketing.

OBSERVANCE OF OTHER LEGISLATION

CO

29. If a licensee operates his business through a limited company, he should ensure that the company complies with the provisions of the CO. The provisions of the CO are many and varied. A few important ones are as follows:
 - Every company should in each year hold an annual general meeting, and not more than 15 months shall elapse between the date of one annual general meeting and the next: Section 111(1). However, an annual general meeting can be dispensed with if everything required to be done at the meeting is done by a resolution signed by all the members entitled to attend and vote at such meeting, and a copy of each document required to be laid before the company at the meeting is supplied to such members: Section 111(6).
 - An annual general meeting should be called with at least 21 days’ notice in writing: Section 114(1). But all members entitled to attend and vote at such meeting may agree to shorter notice: Section 114(3).
 - Every company shall cause to be kept proper books of account: Section 121.

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- The directors shall lay before the company at its annual general meeting a profit and loss account: Section 122.
 - Every private company shall have at least one director: Section 153A. But the director of a private company having only one director cannot also be its secretary: Section 154.
30. There are many provisions in the CO relating to filing of documents. For details, please visit www.legislation.gov.hk/blis_ind.nsf/CurAllEngDoc?OpenView&Start=32&Count=30&Expand=32#32.

PO

31. If licensees choose to operate their business in the form of a partnership, then they should be aware of the following:
- A partnership is a relationship which subsists between persons carrying on a business with a view of profit.
 - The formation of a partnership does not involve many formalities. Subject to compliance with the requirements of the EAO (see, for example, those set out in paragraph 26 of Part 2 of this guide), a partnership in the business of estate agency work can commence business on obtaining a business registration certificate.
 - A partnership is not a corporate body. It has no legal identity separate from its partners. The partnership and its partners are in fact one and the same, and a reference to a partnership is a reference to all of the partners of the partnership.
 - The main drawback of a partnership is a partner is liable for the debts of the partnership without limit. Under Section 11 of the PO, every partner is liable jointly with all other partners for all debts of the partnership.
 - Under Section 7 of the PO, every partner is an agent of the partnership and his co-partners for the purpose of the business of the partnership. This means that every contract made by a partner is binding on the partnership so long as he acts within his authority.
 - In regard to management, under Section 26 of the PO, unless the partners agree otherwise, every partner may take part in the management of the business; no partner should be entitled to a salary; no partner may be introduced without the

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consent of all partners; ordinary matters may be decided by a simple majority of the partners, but no change in the nature of the partnership business may be made without the consent of all partners.

- Partnership disputes are quite common and prospective partners should enter into a detailed partnership agreement in writing to define their rights and obligations in the partnership.

EO

32. Estate agencies should ensure their contracts of employment with employees comply with the provisions of the EO⁶. Some of the more important provisions of the EO are:

Employment and Wages Record

33. Every employer must at all times keep a record of the wages and employment history of each employee for the preceding twelve (12) months.
34. An employer is also required to keep the total number of hours worked by an employee in a wage period, if applicable.

Payment of Wages

35. An employer should pay wages to an employee as soon as practicable but in any case not later than seven days after the end of the wage period.

Minimum Wage

36. The Minimum Wage Ordinance, which came into effect on 1 May 2011, provides that with certain exceptions such as domestic workers and apprentices, an employee will receive the statutory minimum wage for the hours worked.

Holidays

37. An employee is entitled to rest days, statutory holidays and annual leave in accordance with the provisions of the EO.

⁶ For further details, see the Labour Department's *A Concise Guide to the Employment Ordinance*, February 2013.

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Rest Days

38. An employee employed under a continuous contract is entitled to not less than one rest day in every period of seven days. An employee who has been employed continuously by the same employer for four weeks or more, with at least 18 hours worked in each week is regarded as being employed under a continuous contract. A rest day is a continuous period of not less than 24 hours during which an employee is entitled to abstain from working for his employer.

Whether wages are payable in respect of a rest day is subject to agreement between the employer and the employee.

Statutory Holidays

39. An employee shall be granted a statutory holiday by his employer on the following days:
- the first day of January
 - Lunar New Year's Day
 - the second day of Lunar New Year
 - the third day of Lunar New Year
 - Ching Ming Festival
 - Labour Day, being the first day of May
 - Tuen Ng Festival
 - Hong Kong Special Administrative Region Establishment Day, being the first day of July
 - the day following the Chinese Mid-Autumn Festival
 - the Chung Yeung Festival
 - National Day, being the first day of October
 - the Chinese Winter Solstice Festival or Christmas Day (at the option of the employer).
40. If the employer requires the employee to work on a statutory holiday, the employer should make an arrangement for an alternative holiday with the employee in accordance with the provisions of the EO.
41. If an employee has been employed under a continuous contract for not less than three months immediately preceding a statutory holiday, he is entitled to holiday pay. The daily rate of holiday pay is a sum equivalent to the average daily wages earned by an employee in the 12-month period preceding the day of the statutory holiday or first day of the holidays. If an employee has been employed for less than 12 months, the calculation shall be based on the shorter period.

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42. Regardless of whether an employee is entitled to holiday pay, an employer should grant his employee a statutory holiday, or arrange an “alternative holiday” or “substituted holiday”. An employer must not make any form of payment to the employee in lieu of granting a holiday.

Annual Leave

43. An employee is entitled to annual leave which ranges according to his length of service from seven days after one year of employment, to a maximum of 14 days after nine years or more of employment, for every 12 months of employment. He is also entitled to annual leave pay, which is a sum equivalent to the average daily wages earned by an employee in the 12-month period preceding the day of the annual leave or the first day of the annual leave. If an employee has been employed for less than 12 months, the calculation shall be based on the shorter period.

Maternity Leave

44. A female employee employed under a continuous contract is entitled to the following periods of maternity leave:
- a continuous period of 10 weeks;
 - if delivery of the child occurs later than the expected date, a further period equal to the number of days from the day after the expected date of delivery to the actual date of delivery; and
 - an additional period of leave of not more than four weeks on grounds of illness or disability arising out of the pregnancy or delivery.
45. An employee is also eligible for maternity leave pay if:
- she has been employed under a continuous contract for not less than 40 weeks immediately before the commencement of scheduled maternity leave;
 - she has given notice of pregnancy and her intention to take maternity leave to her employer; and
 - she has produced a medical certificate specifying the expected date of delivery if so required by her employer.

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46. The daily rate of maternity leave pay is a sum equivalent to four-fifths of the daily average daily wages earned by the female employee during the period of 12 months preceding the first day of her maternity leave. If an employee has been employed for less than 12 months, the calculation shall be based on the shorter period.

End of Year Payment

47. An employee is entitled to an end of year payment if he has been employed under a continuous contract for a whole payment period. The payment period is the period specified in the employment contract, or a lunar year if it is not specified.

End of year payment means any annual payment, whether it is described as “double pay”, “13th month payment”, “end of year bonus” or otherwise of a contractual nature. It does not include any payment which is of a gratuitous nature or which is payable at the discretion of the employer.

48. Under Section 11AA of the EO, it is presumed, however, that an annual payment or annual bonus is not of a gratuitous nature and is not payable only at the discretion of the employer unless there is a written term or condition in the contract to the contrary. Therefore, employers should always state expressly in writing in contracts of employment that end of year payments are gratuitous or discretionary, if such is their intention, so as to rebut the statutory presumption.

The amount of end of year payment is as specified in the employment contract, or if it is not so specified, a sum equivalent to the average monthly wages earned by an employee in the 12-month period preceding the day on which it becomes due. If an employee is employed for less than 12 months, the calculation shall be based on the shorter period.

Termination of an Employment Contract

49. Either the employer or the employee may at any time terminate a contract of employment by giving notice or wages in lieu of notice.
50. During probation, the contract may be terminated in the first month without notice by either party, and after the first month by giving at least seven days' notice. After probation is completed, or if there is no probation, either party may terminate the contract by giving one month's notice to the other, but if the parties have agreed on the length of notice required to terminate the contract, the length of notice shall be the agreed period, but not less than seven days.

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51. Either party to a contract of employment may terminate the contract at any time without notice by agreeing to pay the other the amount of wages that would have been paid to the employee during the required period of notice.
52. An employer may terminate a contract of employment without notice or payment in lieu if an employee, in relation to his employment:
- wilfully disobeys a lawful and reasonable order; or
 - misconducts himself; or
 - is guilty of fraud or dishonesty; or
 - is habitually neglectful in his duties.

An employer may also terminate a contract of employment on any other ground on which he would be entitled to terminate the contract without notice at common law.

53. An employee may terminate his contract of employment without notice or payment in lieu:
- if he reasonably fears physical danger by violence or disease;
 - if he has been employed for not less than five years and is certified by a registered medical practitioner or a registered Chinese medicine practitioner as being permanently unfit for the type of work under the contract;
 - if he is subject to ill-treatment by the employer; or
 - on any other ground on which he would be entitled to terminate the contract without notice at common law.

54. There are four ordinances that aim specifically to provide for equal opportunity in the employment and other fields, namely, the DDO, Sex Discrimination Ordinance, FSDO, and Race Discrimination Ordinance.

DDO

55. Under the DDO, “disability” means:
- total or partial loss of a person’s bodily or mental functions or a part of a person’s body;

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- the presence in the body of organisms causing or capable of causing disease or illness;
- the malfunction, malformation or disfigurement of a part of a person's body;
- a disorder or malfunction that results in a person learning differently from a person without the disorder or malfunction; or
- a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour.

56. Disability includes a disability that:

- presently exists;
- previously existed but no longer exists;
- may exist in the future; or
- is imputed to a person.

57. Discrimination may be direct or indirect.

Direct discrimination arises when a person treats another person with a disability less favourably than he treats or would treat a person without a disability.

Indirect discrimination may arise from applying the same requirement or condition to persons with a disability and persons without a disability, which requirement or condition is in practice discriminatory against persons with a disability.

58. Disability discrimination against a person includes discrimination against him on the ground of the disability of his "associate". Associate means a person's spouse, relative, carer, or another person who is living with the person on a genuine domestic basis or who is in a business, sporting or recreational relationship with the person.

59. Under the DDO, discrimination includes discrimination by way of victimisation. Victimisation arises where a person (the discriminator) treats another person (the person victimised) less favourably than other persons in comparable circumstances because the person victimised or a third person has done or intends to do, or is suspected to have done or to have intended to do, the following:

- bringing proceedings against the discriminator or any other person under the DDO;

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- giving evidence or information in connection with proceedings brought by any person against the discriminator or any other person under the DDO;
- otherwise doing anything under or by reference to the DDO in relation to the discriminator or any other person; or
- alleging that the discriminator or any other person has committed an act which is a contravention of the DDO.

60. Disability discrimination in the employment field is unlawful and arises in the following cases:

- discriminating against a job applicant or an employee;
- (in a firm consisting of not less than six partners) discriminating against a person seeking to be a partner or an existing partner;
- discriminating against a person seeking to be a member or an existing member of an organisation of workers or employers or professionals;
- discriminating against a person seeking from an authority or body an authorisation or qualification which is needed for a particular profession or trade;
- discriminating against a person seeking or undergoing training which would help fit him for any employment;
- discriminating against a person in relation to services offered by an employment agency; and
- discriminating against a person who is a contract worker or a commission agent.

61. Under the DDO, harassment in the employment field is also unlawful.

A person harasses another person if he engages in unwelcome conduct on account of the harassed person's disability, or on account of the disability of an associate of the harassed person, in circumstances in which a reasonable person would have anticipated that the harassed person would be offended, humiliated or intimidated by that conduct.

62. Under the DDO, harassment in the employment field arises in the following situations:

- an employer harassing a person employed or seeking to be employed by him;

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- an employee harassing another employee;
- a principal harassing a contract worker or a commission agent;
- a fellow contract worker or commission agent harassing another fellow contract worker or commission agent;
- an employee harassing an employer or potential employer;
- a partner harassing a person who is a partner or is seeking partnership. This harassment also applies to persons proposing to form themselves into a partnership;
- a person residing in any premises harassing a person who is employed by another person and whose employment requires him to carry out his duties in those premises;
- a member of an organisation of workers or employers or professionals harassing another member or person seeking to be a member of such organisation;
- a person seeking from an authority or body an authorisation or qualification which is needed for a particular profession or trade or a member of such organisation or body being harassed by another member of such organisation or body;
- a person seeking or undergoing training which would help fit the person for employment being harassed by the person who provides facilities for such training; and
- a person who operates an employment agency or any staff member of such agency harassing a person in providing the agency's services to him.

Sex Discrimination Ordinance

63. The Sex Discrimination Ordinance aims to eliminate discrimination on the grounds of sex, marital status and pregnancy, and sexual harassment in the employment and other fields, and to promote equal opportunities between men and women.
64. Discrimination on the grounds of sex, marital status, and pregnancy in the employment field under the Sex Discrimination Ordinance arise in similar cases as under the DDO.

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65. Under the Sex Discrimination Ordinance, a person (the person) sexually harasses another (the harassed person) if:
- the person (A) makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the harassed person or (B) engages in other unwelcome conduct of a sexual nature in relation to the harassed person;
 - in circumstances in which a reasonable person would have anticipated that the harassed person would be offended, humiliated or intimidated; or
 - the person, alone or together with other persons, engages in conduct of a sexual nature which creates a sexually hostile or intimidating work environment for the harassed person.
66. Under the Sex Discrimination Ordinance, sexual harassment also arises in similar cases as under the DDO.

FSDO

67. The FSDO aims to eliminate discrimination on the ground of family status and stipulates protection for persons with family status. Under the FSDO, family status means the status of having responsibility for the care of an immediate family member. An immediate family member is a person who is related by blood, marriage, adoption or affinity.
68. Discrimination on the ground of family status in the employment field under the FSDO arises in similar cases as under the DDO.

RDO

69. The RDO is an anti-discrimination law enacted in July 2008 to protect people against discrimination, harassment and vilification on the ground of their race. Under the RDO, it is unlawful to discriminate, harass or vilify a person on the ground of the person's race. The RDO has come into operation since 10 July 2009.
70. In general terms, racial discrimination is about treating people less favourably on the basis of their race.
71. If a person engages in an unwelcome, abusive, insulting or offensive behaviour because of another person's or his near relative's race, which makes him feel threatened, humiliated or embarrassed, then it is racial harassment.

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72. Racial vilification is an activity in public which incites hatred, serious contempt for, or severe ridicule of a person because of his race.⁷

MANAGEMENT OF PROPERTY INFORMATION

Gathering, Updating and Validating

73. Section 36 of the EAO requires the licensed estate agent, as regards a residential property in relation to which he has entered into an estate agency agreement, to have in his possession property information prescribed in Forms 1 and 2 of the Schedule to the Practice Regulation, and to be reasonably satisfied as regards the accuracy of such information. The prescribed sources of the information required in Part B of both Forms are:

Form 1	Form 1
<ul style="list-style-type: none">• The Land Registry• The Rating and Valuation Department• The Buildings Department	<ul style="list-style-type: none">• The Land Registry• The Rating and Valuation Department• The Hong Kong Housing Society• The Housing Department• The Buildings Department

74. Licensees should ensure that the required information in Part B is obtained from the above sources. This is because in the case of failure to comply with the above requirement of accuracy of information, the licensed estate agent will have the defence of “all reasonable steps” and “due diligence” if he relied on information from a prescribed source.
75. Information obtained from the Land Registry can be updated by updating the land search in question. Under Regulation 13(4) of the Practice Regulation, immediately before an agreement for sale and purchase or a lease of a residential property is entered into, a licensee acting for a vendor or landlord should cause to be carried out a land search of the property and supply a copy of such land search to the purchaser or tenant.

⁷ The Equal Opportunities Commission has published “What You Should Know as a Real Estate Agent, Landlord, Tenant, or Home Buyer under Hong Kong’s Anti-Discrimination Ordinances”. For details, visit www.eoc.org.hk/eoc.

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76. For information on the Land Registry, the Rating and Valuation Department, and the Buildings Department, see Parts 4 and 5.

Property Information

77. Information about the properties and the transactions handled by a licensee should be adequately protected. Estate agency companies should establish and maintain full and accurate records, including all relevant documents, in relation to the properties and the transactions handled. An estate agency company should establish procedures to ensure that such records will not be stealthily removed by ex-employees and other unauthorised persons. A backup set of such records should be maintained. Property information is to be disseminated in accordance with the provisions in Forms 1, 2, 3, 4, 5 and 6.
78. Under Form 1, a licensed estate agent is required to provide to the vendor the original or a copy of the completed form either (i) before entering into an estate agency agreement with the vendor or (ii) before entering into an agreement for sale and purchase between the vendor and a purchaser in respect of the property, at the option of the vendor. A licensed estate agent is required to provide to a purchaser the original or a copy of the completed form unless the purchaser specifically waives his right to receive it.
79. Under Form 2, a licensed estate agent is required to provide to the landlord of the property the original or a copy of the completed form (i) either before entering into an estate agency agreement with the landlord or (ii) before entering into a lease between the landlord and the tenant in respect of the property, at the option of the landlord. A licensed estate agent is required to provide to the tenant the original or a copy of the completed form unless the tenant specifically waives his right to receive it.
80. From 1 January 2013 onwards, licensees are required to provide the saleable area information to clients when handling sale or lease of second-hand residential properties. If the floor area information of a property is included in an advertisement and the saleable area of the property can be obtained from either the Rating and Valuation Department or the agreement for sale and purchase of the first assignment of the property registered in the Land Registry (“first agreement”), then the licensees must provide the saleable area of the property (obtained from the Rating and Valuation Department or the first agreement, as the case may be) in the advertisement and clearly state in the advertisement that the floor area provided is the saleable area of the property. In situations other than advertising, if the saleable area of the property can be obtained from either the Rating and Valuation Department or the first agreement, licensees must, before providing any other floor area information of the property, provide the saleable area of the property and clearly state that the floor area so provided is the saleable area of the property.⁸

⁸ For details, refer to the Practice Circular No. 12-02(CR) and the Questions and Answers posted on the Authority's website www.eaa.org.hk.

HANDLING OF COMPLAINTS AND DISPUTES

81. Estate agency companies should always take complaints from clients seriously. Clients are likely to take their complaints to other venues if they think their estate agent has not dealt with complaints to their satisfaction.
82. Estate agency companies should devise a comprehensive and satisfactory system for handling complaints under which (i) a complaint will be acknowledged and accepted and investigated into and (ii) after which a reply advising the client of the result of the investigation and the actions (if any) which the company intends to take will be made to the client, all within a reasonable time.
83. Estate agency companies should assume the positive attitude that complaints satisfactorily handled will improve the image and goodwill of the company and will also save the company considerable expense in defending it in the other venues mentioned above or in legal proceedings.
84. Where a licensee intends to engage a debt collection company to collect a commission, he should fulfil the Authority's many requirements as stated in Practice Circular 08-04(CR). One of the requirements is that before instructing a debt-collection company to carry out debt-collecting activities on a defaulting client, he should consider seeking legal advice to ascertain that his claim for the amount due is still valid and subsisting. Licensees should be aware that since the relationship between an estate agent and the debt-collection company is one of principal and agent and under the general principles of agency law, estate agents may be held liable for tortious acts committed by the debt-collection companies acting within the scope of their authority. Besides, a creditor owes a debtor a common law duty to exercise reasonable care in the selection and appointment of a debt-collection company. Licensees should therefore have proper procedures in place for the selection of debt-collection companies and the supervision of their conduct.