

October 2021 e-Quiz

Notes to candidates:

- (1) Most of the contents of this e-Quiz are adopted from October 2019 e-Quiz.*
- (2) Please read the scenario and annex (if any) before attempting the questions. The subject matter and names of parties are fictitious.*
- (3) Clause 5.2 of the CPD Scheme Guidelines provides that, for the purpose of the award of the Certificate of Attainment, the following limitation applies in calculating CPD points:*

To encourage practitioners to diversify their modes of learning, certain modes may be capped. For example, the cap for EAA e-Quiz is four CPD points per a 12-month CPD period. Therefore, even if a participant completes more than four e-Quizzes (one CPD point each) during a 12-month CPD period, only four CPD points can be earned.

Pass Mark: You will have 10 questions in this e-Quiz. You will earn one CPD point if you can score not less than 5 correct answers.

Remarks: In the following questions, the following words have the following corresponding meanings:
“the Authority” means the Estate Agents Authority;
“the Ordinance” means the Estate Agents Ordinance;
“the Practice Regulation” means the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation;
“the Licensing Regulation” means the Estate Agents (Licensing) Regulation;
“the Code of Ethics” means the Code of Ethics issued by the Estate Agents Authority; and
“the Practice Circular” means the practice circulars issued by the Estate Agents Authority.

Case

Mr. Boss is a licensed estate agent and the beneficial owner of all the shares in EA Company Limited (“the Company”). The Company is a licensed estate agent which carries on estate agency business under the name of “EA Residential” in a shop opposite Composite Building. Composite Building is a 40-year old composite commercial and residential building consisting of, according to its Occupation Permit, shops on the ground floor, car parks on the 1st and 2nd floors, offices on the 3rd to 5th floors, and residential units on the upper floors.

Recently, Mr. Boss wants to expand his agency business to commercial properties. To highlight the commercial side of his business, Mr. Boss would like to run his business under the additional name of “EA Commercial”. He wonders if he has to make some kind of application for the use of such additional name.

Apart from assuming an additional name, Mr. Boss also intends to open a new branch office in the neighbourhood. Again Mr. Boss wonders if he has to comply with certain legal requirements for opening a new branch office.

Mr. Restaurateur carries on the business of a restaurant in the shops on the ground floor of Composite Building. He holds the shops under a lease, which contains the usual provision prohibiting transfer and subletting, for 5 years from the landlord, of which 3 years are still remaining. Business has not been satisfactory and so Mr. Restaurateur wants to sell his restaurant business together with the remaining term of the tenancy, and he puts it on the market through Mr. Boss.

Miss Transferee is interested in acquiring Mr. Restaurateur's business and tenancy. She appoints Mr. Boss to be her agent, and asks him what advice he would give her for such transfer of business and tenancy. Mr. Boss says he will reply to her later.

Mr. Investor has recently bought all the car parks on the 1st and 2nd floors of Composite Building for investment. To achieve a higher rate of return on his investment, Mr. Investor has converted the car parks into shops. Mr. Investor does not intend to apply for government approval for such conversion, and he asks Mr. Boss to put the property on the market for rental for him. Mr. Investor has experience in dealing with residential properties but not commercial properties; he asks Mr. Boss how a commercial tenancy is different from a residential tenancy. Mr. Boss says he will check the matter and reply to him later.

Miss Businesswoman is looking for a "commercial and residential" ("商住") unit to run a beauty parlour business, and she appoints Mr. Boss to be her agent. Mr. Boss introduces her to a unit at 8th floor of Composite Building. He highly recommends this property because of its "commercial and residential" ("商住") nature. Miss Businesswoman asks if there is anything she should pay attention to in renting such a unit. Mr. Boss says he will find out for her and reply to her later.

Mr. Boss has been doing such good business that he has to recruit additional staff. In the last few days, he has recruited an accountant, who is not a licensed estate agent or salesperson, to be the Company's director; a licensed estate agent to be the Manager of the new branch office under Section 38 of the Ordinance; a licensed salesperson to help him in his estate agency business; and a secretary, who is not a licensed estate agent or salesperson, to perform secretarial duties for the Company, and to be the Company's secretary. He has a vague recollection that he must notify the Estate Agents Authority of certain appointments and employments within 31 days, and that there are certain licensing requirements in relation to the directors of a company, but he is uncertain about the details.

Mr. Boss also intends to set up a new company in Hong Kong for doing estate agency business in respect of properties in Mainland China. He vaguely remembers that a certain kind of estate agent is exempted from the requirement to hold an estate agent's licence, but again he is uncertain about the details.

Mr. Boss now asks you to answer his queries and the queries from his clients.

Answer Guide for e-Quiz – October 2021

Note :

1. This answer guide is prepared by the Estate Agents Authority and provides the correct answers to the questions of the October 2021 e-Quiz.
2. In this answer guide, the following words have the following corresponding meanings:

“the Authority” means the Estate Agents Authority;

“the Ordinance” means the Estate Agents Ordinance;

“the Practice Regulation” means the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation;

“the Licensing Regulation” means the Estate Agents (Licensing) Regulation;

“the Code of Ethics” means the Code of Ethics issued by the Estate Agents Authority; and

“the Practice Circular” means the practice circulars issued by the Estate Agents Authority.

3. The copyright of the e-Quiz, this answer guide and all supporting materials (collectively “the materials”) belongs to the Authority, and the materials may be reproduced by candidates for the purpose of attempting the questions only. No reproduction of the materials for any other purpose is allowed without the prior written consent of the Authority.

Question 1

To carry on the Company's business under the additional business name of "EA Commercial", what must Mr. Boss do under the Licensing Regulation?

- A. Apply for a replacement of the Company's estate agent's licence
- B. Apply for an additional statement of particulars of business for the Company**
- C. Apply for a replacement of the Company's statement of particulars of business
- D. Apply for an amendment of the particulars of the Company's estate agent's licence
- E. Apply for an amendment of the particulars of the Company's statement of particulars of business

Answer to Q.1 :

S.10(1) of the Licensing Regulation provides: "A licensed estate agent shall, before carrying on estate agency business at any place under a particular business name, apply to the Authority for the grant of a statement of particulars of business for that place and name and shall pay to the Authority the relevant portion of the licence fee in respect of such business."

In other words, one statement of particulars of business (SPOB) is required for one place of business under one business name. Therefore before opening any new branch or assuming any new business name, it is necessary to apply for an additional SPOB. An amendment of the Company's existing SPOB or estate agent's licence is not appropriate, since the Company is assuming an additional name, not changing its name. A replacement of the Company's existing SPOB or estate agent's licence is also not appropriate, since replacement is only applicable if such document has been lost, stolen, damaged or destroyed: Section 11 of the Licensing Regulation.

S.11 of the Licensing Regulation: On payment of the prescribed fee, the Authority may issue a replacement of a licence or a statement of particulars of business to a licensee if the Authority is satisfied that the licence or the statement of particulars of business, as the case may be, has been lost, stolen, damaged or destroyed.

Answer is B.

Question 2

Before the Company could open a new branch office, what must Mr. Boss do for the Company under the Ordinance and the Licensing Regulation?

- (i) appoint a new director
- (ii) appoint a new manager (for the effective and separate control of the business of the new branch office in compliance with the Ordinance)
- (iii) apply for an additional statement of particulars of business
- (iv) apply for an additional estate agent's licence

- A. (ii) and (iii) only**
- B. (i), (ii) and (iii) only
- C. (i), (iii) and (iv) only
- D. (ii), (iii) and (iv) only
- E. (i), (ii), (iii) and (iv)

Answer to Q.2 :

Under S.38(1)(a) of the Estate Agents Ordinance, an estate agent should ensure that every office is under the effective and separate control of a manager who should be an individual and the holder of an estate agent's licence.

S.10(1) of the Licensing Regulation, as mentioned in Q.1, requires an additional SPOB to be applied for in respect of each new place of business or new business name.

Therefore, when EA opens a new branch office, it is necessary to (1) appoint a new manager (for the effective and separate control of the business of the new branch office in compliance with the Ordinance) and (2) apply for another SPOB.

Options (ii) and (iii) are correct. Answer is A.

Question 3

What advice should Mr. Boss give to Miss Transferee on the transfer of business and tenancy from Mr. Restaurateur to her?

- (i) such a transfer of business and tenancy can be effected without reference to the landlord
 - (ii) such a transfer of business and tenancy may involve the surrender of the existing tenancy of Mr. Restaurateur to the landlord and the grant of a new tenancy by the landlord to Miss Transferee
 - (iii) such a transfer of business and tenancy may involve many things which are beyond the scope of duties of an estate agent
 - (iv) the parties should seek legal advice as soon as possible and instruct solicitors for the legal documents
- A. (i) only
- B. (ii) and (iii) only
- C. (ii) and (iv) only
- D. (i), (iii) and (iv) only
- E. (ii), (iii) and (iv) only**

Answer to Q.3 :

As Mr. Restaurateur's lease contains the usual provision prohibiting transfer and subletting, Mr. Restaurateur would not be able to transfer his tenancy or sublet the shops to Miss Transferee without the landlord's consent. Therefore option (i) is clearly wrong. Options (ii) (iii) and (iv) can be referred to the Practice Circular – Circular No. 05-02 (CR) on “Takeover of Tenancy /Business” issued by the Authority.

A transfer of tenancy and business (e.g., a restaurant, as in this case) usually involves many complex and difficult legal and practical matters and considerations, e.g. the appropriate mode of transfer, how the existing liabilities of the business are to be dealt with, whether any staff have to be laid off, the matters to pay attention to in transferring a restaurant licence and a liquor licence, how to provide sufficient protection to the parties especially to the transferee, etc. These matters are all beyond the knowledge and competence and scope of duties of an estate agent. The important thing to remember in such a case is always to advise the parties to seek legal advice and to instruct solicitors for the legal documents. Practitioners should refrain from drawing up any provisional agreement or any other agreement for signing by the parties.

Practitioners are reminded that under the last paragraph of Circular No. 05-02(CR):
“If a practitioner is found to have arranged for a takeover of tenancy or business without advising his client to obtain legal advice, which arrangement resulted in a loss suffered by the client, this may affect his being a fit and proper person to hold a licence. Consequently, he may be subject to disciplinary action by the Authority and if the case is serious, his licence may be revoked.”

Answer is E.

Question 4

To answer Mr. Investor's question of how a commercial tenancy is different from a domestic tenancy, which of the following advice may Mr. Boss give to Mr. Investor?

- (i) Form CR109 is necessary for a domestic tenancy but not for a commercial tenancy
- (ii) Unlike a domestic tenant, a commercial tenant is entitled to a notice of termination of 6 months if the tenancy is for less than 3 years
- (iii) There is no rent control for domestic tenancy but there is rent control for commercial tenancy
- (iv) Stamp duty is charged at a higher rate for commercial tenancy than for domestic tenancy

- A. (i) only
- B. (i) and (ii) only
- C. (ii) and (iii) only
- D. (i), (iii) and (iv) only
- E. (i), (ii), (iii) and (iv)

Answer to Q.4 :

After the amendments to the Landlord and Tenant (Consolidation) Ordinance on 9 July 2004, many of the differences between domestic and commercial tenancies have been removed. As from 9 July 2004, domestic tenancies in Hong Kong no longer enjoy security of tenure. As from that date also the requirement for a statutory notice of termination (of 6 months by the landlord and 1 month by the tenant) to terminate a non-domestic tenancy was also abolished.

All tenancies created on or after 9 July 2004, whether domestic or non-domestic, may be terminated in accordance with the terms of the tenancy or as agreed between the parties. In the absence of a contractual notice requirement or mutual agreement, a fixed term tenancy will end upon expiry of the term, and a periodic tenancy (for example a monthly tenancy) may be terminated by a notice to quit of the notice period as required by common law.

Only option (i) is correct, and options (ii), (iii) and (iv) are all wrong. Answer is A.

Question 5

What will be some of the consequences if, without informing the tenant of the permitted user of the car parks in the Occupation Permit of Composite Building, Mr. Boss as a dual agent were to put through a tenancy agreement for a car park on the 1st floor of Composite Building to be used as a shop?

- (i) Mr. Boss may be in breach of the Code of Ethics
 - (ii) Mr. Boss may be in breach of the Practice Regulation
 - (iii) Mr. Boss may be liable to the tenant for breach of an agent's duties under common law
- A. (i) only
- B. (ii) only
- C. (iii) only
- D. (i) and (iii) only**
- E. (ii) and (iii) only

Answer to Q.5 :

3.3.1 of Code of Ethics

Estate agents and salespersons shall, in the course of business, provide services to clients with honesty, fidelity and integrity. They should protect their clients against fraud, misrepresentation or any unethical practices in connection with real estate transactions.

3.4.1 of Code of Ethics

Estate agents and salespersons, in engaging and accepting an appointment as an agent, should protect and promote the interests of their clients, carry out the instructions of their clients in accordance with the estate agency agreement and act in an impartial and just manner to all parties involved in the transaction.

Chapter 5(5) of Monograph on Agency Law

5. Duty to use care and skill

- (a) Common law requires an agent to act with due care and skill in performing his duties. Agents who fail to meet this standard are prima facie negligent.
- (b) Generally speaking, an agent in a certain profession, trade or calling who performs his duty with the degree of care and skill expected of a reasonable, average member of the relevant profession, trade or calling meets the requisite standard.

As the tenant's agent, Mr. Boss should disclose to the tenant the permitted user of the car parks in the Occupation Permit of Composite Building. If Mr. Boss does not

make such a disclosure, he may have failed to “protect and promote” the interests of his client as required by paragraph 3.4.1 of the Code of Ethics. There may be misrepresentation as to user and Mr. Boss may have failed to “protect his clients against misrepresentation” as required by paragraph 3.3.1 of the Code of Ethics. He may also be in breach of an agent’s duty to use care and skill under common law. He is not, however, in breach of the Practice Regulation.

Answer is D.

Question 6

As a matter of law, which of the following statements about a “commercial and residential” (“商住”) unit is/are correct?

- (i) The unit can be used for either commercial or residential purpose at the option of the tenant
 - (ii) The unit can be used for both commercial and residential purposes at the same time
 - (iii) The unit can be used for such purpose as is stated in the occupation permit of the building
- A. (i) only
- B. (ii) only
- C. (iii) only**
- D. (i) and (ii) only
- E. (i), (ii) and (iii)

Answer to Q.6 :

The user of a property is specified in the Occupation Permit of the building in which it locates. The Occupation Permit is issued by the Building Authority under the Buildings Ordinance. If an occupation permit states the user of a property as residential, then it should be used for residential purpose only. What sometimes happens is, in some old composite commercial and residential buildings consisting of shops and offices on the lower floors and residential flats on the upper floors, the occupiers of the upper floors use such residential flats for commercial purpose, and they call such flats “commercial and residential”(“商住”) units. The use of such residential flats for commercial purposes, contravenes the Occupation Permits and the Deeds of Mutual Covenant of the buildings, although such contravention is usually condoned by the managers of these old buildings. Faced with a client’s request to seek a “commercial and residential”(“商住”) unit in such a building for rental for commercial use, an agent should advise him of the possible risks involved in such a tenancy, e.g. possible breach of the Buildings Ordinance for contravention of the Occupation Permit of the building, and possible intervention by the building manager for contravention of the Deed of Mutual Covenant of the building.

Options (i) and (ii) are wrong. Answer is C.

Question 7

If Mr. Boss, as estate agent for Miss Businesswoman, were to put through for her a tenancy agreement for a unit at 8th floor of Composite Building for her beauty parlour business, with the user of the unit stated as “commercial and residential” (“商住”) in such tenancy agreement, and without disclosing to her the permitted user of the unit in the Occupation Permit of Composite Building, what are some of the consequences which will follow?

- (i) The parties to the tenancy agreement will have to pay stamp duty at twice the usual rate
 - (ii) Mr. Boss may be in breach of the Code of Ethics
 - (iii) Mr. Boss may be liable to Miss Businesswoman for breach of an agent’s duties under common law
- A. (i) only
- B. (ii) only
- C. (i) and (ii) only
- D. (ii) and (iii) only**
- E. (i), (ii) and (iii)

Answer to Q.7:

3.3.1 of Code of Ethics

Estate agents and salespersons shall, in the course of business, provide services to clients with honesty, fidelity and integrity. They should protect their clients against fraud, misrepresentation or any unethical practices in connection with real estate transactions.

3.4.1 of Code of Ethics

Estate agents and salespersons, in engaging and accepting an appointment as an agent, should protect and promote the interests of their clients, carry out the instructions of their clients in accordance with the estate agency agreement and act in an impartial and just manner to all parties involved in the transaction.

Chapter 5(5) of Monograph on Agency Law

5. Duty to use care and skill

- (a) Common law requires an agent to act with due care and skill in performing his duties. Agents who fail to meet this standard are prima facie negligent.
- (b) Generally speaking, an agent in a certain profession, trade or calling who performs his duty with the degree of care and skill expected of a reasonable, average member of the relevant profession, trade or calling meets the requisite standard.

Mr. Boss in this situation, as in the situation in Q.5, may be in breach of paragraphs 3.3.1 and 3.4.1 of the Code of Ethics, and of an agent's duties under common law to use care and skill. Option (i) is wrong because the rate of stamp duty for a "commercial and residential" tenancy agreement is the same as for other tenancy agreements; the user stated in a tenancy agreement has no relevance to the amount of stamp duty payable on it.

Only options (ii) and (iii) are correct. Answer is D.

Question 8

Under the Ordinance, which of Mr. Boss's following appointments and employment should be notified to the Estate Agents Authority within 31 days from the dates of such appointments and employment?

- (i) appointment of the director
 - (ii) appointment of the manager (for the effective and separate control of the business of the new branch office in compliance with the Ordinance)
 - (iii) employment of the licensed salesperson
 - (iv) appointment of the secretary
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- A. (i) and (ii) only
 - B. (ii) and (iii) only
 - C. (i), (ii) and (iii) only**
 - D. (ii), (iii) and (iv) only
 - E. (i), (ii), (iii) and (iv)

Answer to Q.8:

S.40 of the Estate Agents Ordinance requires a licensed estate agent to notify the Estate Agents Authority of certain events about his personnel. A licensed estate agent shall:

- (1) give notice of employment, or termination of employment, of a salesperson to the Authority within 31 days of the event,
- (2) give notice of appointment, or termination of appointment, of a manager (for the purpose of the Estate Agents Ordinance) to the Authority within 31 days of the event,
- (3) notify the Authority within 31 days of the appointment of a person as its director, or of such person ceasing to be its director,
- (4) notify the Authority within 31 days of his becoming or ceasing to be a partner of a partnership engaged in estate agency work.

A licensed estate agent or salesperson shall also notify the Authority within 31 days of his ceasing to be engaged in estate agency work. The appointment of a secretary need not notify the Authority.

Answer is C.

Question 9

Under the Estate Agents Ordinance and the Licensing Regulation, which of the following statement(s) is/are correct in regard to the licensing requirements of the director(s) of the Company ?

- (i) all directors of the Company should be licensed estate agents
 - (ii) all executive directors of the Company should be licensed estate agents
 - (iii) the Company should have at least one director who is a licensed estate agent
 - (iv) each of the Company's directors who is for the time being engaged in its business as an estate agent should be a licensed estate agent
- A. (i) and (ii) only
- B. (ii) and (iii) only
- C. (iii) and (iv) only**
- D. (i), (ii) and (iii) only
- E. (ii), (iii) and (iv) only

Answer to Q.9:

EAO S.20(1)(a)

(1) A company shall not be eligible to be granted or to hold or continue to hold an estate agent's licence unless-

- (a) not less than a prescribed number or proportion of the company's directors are, and each of its directors who is engaged in its business as an estate agent is, a licensed estate agent;

Licensing Regulation S.8

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.

Under S.20(1)(a) of the Estate Agents Ordinance and S.8 of the Licensing Regulation, a company should have at least one director who is a licensed estate agent, and each of its directors who is for the time being engaged in its business as an estate agent should be a licensed estate agent.

Answer is C.

Question 10

Under the Estate Agents (Exemption from Licensing) Order, a person doing estate agency work is exempted from the requirement for obtaining an estate agent's licence or a salesperson's licence if he/she :

- (i) does estate agency work partly in relation to properties within Hong Kong but principally in relation to properties outside Hong Kong
- (ii) does estate agency work exclusively in relation to properties outside Hong Kong
- (iii) states in all his / her letters, accounts, receipts, pamphlets, brochures and other documents and in any advertisement that he/she is not licensed to deal with any property situated in Hong Kong
- (iv) pays an annual exemption fee

- A. (ii) only
- B. (iv) only
- C. (ii) and (iii) only**
- D. (ii) and (iv) only
- E. (ii), (iii) and (iv) only

Answer to Q.10:

S.2 Estate Agents (Exemption from Licensing) Order – 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.

Under the Estate Agents (Exemption from Licensing) Order, a person doing estate agency work is exempted from the requirement for obtaining an estate agent's licence or a salesperson's licence if he/she :

- (i) does estate agency work exclusively in relation to properties outside Hong Kong; and
- (ii) states in all his / her letters, accounts, receipts, pamphlets, brochures and

other documents and in any advertisement that he/she is not licensed to deal with any property situated in Hong Kong.

Answer is C.