

36 工作報告：執法與紀律制裁

The Year in Review: Law Enforcement and Disciplinary Sanctions



執法及投訴處理

作為香港持牌地產代理的法定規管機構，監管局主要通過日常巡查及調查投訴個案，以履行《地產代理條例》（條例）所賦予的監管及執法職能。

監管局經常派員到地產代理商舖和新樓盤巡查，留意持牌人的執業情況。若有需要，會將持牌人涉嫌及/或已被證實違反或未能遵守條例（包括其附屬法例及相關操守守則）的個案，提交監管局或紀律委員會審議及/或作出處分，或交由其他政府或監管機構（如警方）處理。

為保障消費者的權益，監管局亦會處理及在有需要時調查對涉嫌違反條例及有關規定的持牌人作出的投訴。此外，監管局亦可能會就持牌人是否持牌之「適當人選」而進行調查，以界定他們在未被解除破產令或在有涉及不誠實或欺詐罪行的案底等情況下，是否仍適合持有牌照。

Law enforcement and complaint handling

As Hong Kong's statutory regulator of the local licensed estate agency trade, EAA primarily performs the regulatory and enforcement functions entrusted to it by the Estate Agents Ordinance (the Ordinance) through compliance checks and complaint investigations.

EAA monitors the business practice of licensees by conducting compliance checks at estate agency premises and first-sale sites. Where appropriate, cases concerning licensees who appear and/or are found to have breached or failed to comply with the Ordinance, the related subsidiary legislation and the Code of Ethics, may either be referred to EAA or its Disciplinary Committee for consideration and/or possible imposition of sanctions, or to other government or regulatory bodies, such as the police, to be dealt with accordingly.

To safeguard consumers' interests, EAA is also empowered to deal with and investigate, where necessary, complaints against licensees for alleged breaches of the Ordinance and related provisions as mentioned above. Besides, EAA may conduct "fit and proper" investigations into an individual licensee's suitability to remain a licence-holder on grounds such as undischarged bankruptcy or criminal convictions involving dishonesty or fraud.

除日常巡查工作和投訴調查外，監管局亦經常解答公眾及業界日常對地產代理工作及條例的許多電話或親自查詢。監管局會盡可能給予查詢者初步回應及意見，以協助對方用平和的方式解決較輕微的爭議。監管局亦可能會建議查詢者就可能發生的合約爭議或有關服務水準的投訴，尋求適當的專業協助或轉介有關的地產代理公司跟進。

查詢

本年度，監管局共處理10,283個公眾及業界的查詢。

In addition to investigation of complaints received and compliance visits, EAA attends to daily enquiries from both the public and the trade on issues relating to estate agency practices and the Ordinance via the telephone or in person. Where possible, a preliminary response and advice will be given to enquirers with a view to resolving minor disputes amicably. Enquirers may also be advised to seek appropriate professional assistance on potential contractual disputes or refer the matters to the appropriate estate agencies regarding complaints on standard of services.

Enquiries

EAA handled 10,283 enquiries raised by the public and the estate agency trade.

投訴個案/破產個案

Complaint cases / bankruptcy cases

本年度，監管局共接獲925宗投訴及破產個案，分類如下：

During the year, EAA received 925 complaint and bankruptcy cases classified as follows:

類別 Category	數目 Number		
投訴個案 Complaint cases	800		
破產個案 Bankruptcy cases	125	總數 Total	925

本年度，監管局共處理了1,617宗投訴及破產個案（包括過往接獲的692宗個案）。詳情如下：

During the year, EAA handled 1,617 complaint and bankruptcy cases (including 692 cases brought forward from previous years). Details are as follows:

處理進度 Progress	數目 Number	
已完成投訴個案 Completed complaint cases	723	
已完成破產個案 Completed bankruptcy cases	161	
正在調查中個案 Investigation in process	684	
等待法庭裁決或轉介其他機構調查 Pending court decision or referred to other bodies for investigation	49	總數 Total 1,617

723宗已完成處理的投訴個案分類如下：

The 723 completed complaint cases are classified as follows:

結果 Result	數目 Number	
證實指稱成立 Substantiated	158	
證實指稱不成立 Unsubstantiated	252	
資料不足而終止調查 Curtailed due to insufficient information to pursue	101	
獲調解/投訴人撤回投訴/其他 Mediated / withdrawn / miscellaneous	212	總數 Total 723

巡查 Compliance inspections		
	數目 Number	
巡查新樓盤銷售處 Inspections at first-sale sites	884	
巡查地產代理商舖 Inspections at estate agency shops	538	總數 Total 1,422
已完成個案 Cases completed	601	
調查中個案 Investigation in progress	88	
等候法庭裁決或 轉介其他機構調查 Pending court decision or referred to other bodies for investigation	7	總數 Total 696*

*包括125宗過往未完成的個案
include 125 cases brought forward from previous years

601宗已完成處理的個案分類如下： The 601 completed cases are classified as follows:		
結果 Result	數目 Number	
證實指稱成立 Substantiated	176	
證實指稱不成立 Unsubstantiated	338	
資料不足而終止調查 Curtailed due to insufficient information to pursue	87	總數 Total 601



紀律研訊

監管局或其紀律委員會會就涉嫌違反紀律的個案，進行紀律研訊。

在2005/06年度，紀律委員會進行了92次紀律研訊，主要涉及以下事項：確定被判刑事罪行或未解除破產令的持牌人是否適合繼續持牌；無牌執業；打架；提供錯誤物業資料；沒有進行土地查冊；經營地產代理業務時並未持有營業詳情說明書。

監管局及紀律委員會可實施的紀律處分包括：訓誡或譴責、在牌照上附加條件、更改牌照上的條件、暫時吊銷牌照（最多兩年）、撤銷牌照及罰款（最高30萬元）。

Inquiry hearings

EAA or its Disciplinary Committee conducts inquiry hearings on complaints against licensees on suspected non-compliance cases.

During 2005/06, the Disciplinary Committee conducted a total of 92 inquiry hearings. These hearings mainly concerned: determination of eligibility of licensees who had criminal convictions or were undischarged bankrupts to continue to hold licences; unlicensed practice; fighting; giving wrong property information; failure to conduct land searches; and carrying out estate agency business without a Statement of Particulars of Business.

Disciplinary sanctions that may be imposed by EAA or its Disciplinary Committee include admonishment or reprimand, attachment of conditions to licences, variation of conditions attached to licences, suspension of licence for up to two years, revocation of licence and fines up to \$300,000.

紀律處分 Disciplinary sanctions

本年度提交紀律研訊的涉嫌違規事項：
Breakdown of alleged breaches brought before the 92 inquiry hearings during the year:

違規性質 Nature of breaches	數目 Number
1. 破產 Bankruptcy	36
2. 刑事紀錄（不涉及無牌執業及打架等） Conviction (unrelated to unlicensed practice, fighting etc.)	14
3. 沒有進行土地查冊及/或向買方客戶提供土地查冊的結果文本 Failure to conduct land search and / or supply land search result to purchaser client	12
4. 無牌執業或經營地產代理業務時沒有營業詳情說明書 Unlicensed practice / carrying out estate agency business without a Statement of Particulars of Business	10
5. 提供錯誤物業資料/市場訊息或沒有向客戶提供物業資料 Giving wrong property / market information or failure to supply property information to client	7
6. 沒有管有準確物業資料 Failure to possess accurate property information	6
7. 打架/襲擊/口角 Fighting / assault / verbal dispute	6
8. 虛假或誤導性廣告；未取得賣方書面同意前發出廣告 False or misleading advertisement; advertising without vendor's written consent	7
9. 欠缺專業能力（在安排承接租約/轉售/託管按金事宜中，未向客戶提供意見） Professional incompetency (failure to advise client on lease take-over / subsale / stakeholding arrangement)	3
10. 其他 Others	8

備註：每宗紀律研訊個案可能涉及超過一項違規事項。
Note: Each inquiry hearing case may involve more than one breach.

紀律委員會施行的紀律處分：

Disciplinary sanctions meted out by Disciplinary Committee:

紀律處分性質 Nature of disciplinary sanctions	受處分的持牌人數目 Number of licensees sanctioned
訓誡或譴責 Admonishment or reprimand	42*
罰款 Fine	15
附加條件 Condition(s) attached to licence	53
暫時吊銷牌照 Suspension	43
撤銷牌照 Revocation	5

備註：同一持牌人可能就同一個案受到超過一項紀律處分。

Note: A licensee may receive more than one type of disciplinary sanction in a case.

* 包括14項警告

include 14 warnings

此外，監管局曾就投訴個案採取以下的非紀律制裁行動：

Besides, EAA has taken the following non-disciplinary actions in complaint cases:

轉交其他機構處理 Referred to other bodies	25
發出指導函 Issued reminder of good practice	193

監管局曾就巡查個案採取以下的非紀律制裁行動：

EAA has also taken the following non-disciplinary actions in cases initiated from inspections:

口頭勸喻 Issued reminder of good practice (verbal)	5,844
發出指導函 Issued reminder of good practice (written)	740

法律事務

監管局經常留意業界的執業情況並發布執業通告，向從業員提供指引。於2005/06年度發布的通告如下：

Legal services

EAA reviews practices of the trade and prepares Practice Circulars to provide guidelines and directives on estate agency practice from time to time. In 2005/06, the following circulars were issued:

名稱 Title	編號 Number
物業租用權/經營業務的轉讓 Takeover of tenancy / business	05-02 (CR)
在新樓盤辨識從業員身分 Identification of personnel at first-sales site	05-03 (CR)
一手住宅樓盤的資料提供 Provision of information on first-hand residential properties	05-04 (CR)
處於轉讓限制期第3至第5年內居者有其屋計劃/租者置其屋計劃單位在公開市場轉讓的安排 Disposition of Home Ownership Scheme / Tenants Purchase Scheme flats within the 3rd to 5th year of the alienation restriction period in the open market	05-05 (CR)
發出廣告之前須取得賣方的書面同意 Obtaining of vendor's written consent prior to the issue of advertisement	05-06 (CR)
訂金託管 Stakeholding of deposits	05-07 (CR)
以轉讓股權形式買賣物業 Sale and purchase of property by way of transfer of shares	05-08 (CR)
土地查冊 Land search	06-01 (CR)
缺席的簽約方作出妥當的授權 Proper authorisation by absent contracting party	06-02 (CR)

本年度，監管局亦曾經就反洗黑錢措施及根據《建築物條例》（第123章）發出的入伙紙的修訂等議題向有關當局提供意見。

During the year under review, EAA also gave views to government bureaux and departments concerned on a number of issues in relation to anti-money laundering measures and amendments to occupation permits issued under the Buildings Ordinance (Cap.123).