

5.2 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

監管局主要通過日常巡查及調查投訴個案進行監管和執法。

在2007/08年度，監管局就622宗投訴個案展開調查。這些個案包括由公眾人士提出或由其他執法機構轉介的個案，也包括監管局於巡查期間主動展開調查的個案。同時，監管局在本年度完成了714宗個案的調查工作，其中204宗的指稱成立。監管局承諾專業、公平和有效率地處理所有個案。

對從業員的違規指稱涉及不同的事項，主要包括發出虛假或誤導性廣告、在處理涉及違例建築工程或須要進行修葺的物業時沒有保障客戶的利益、沒有跟客戶簽訂地產代理協議、沒有在緊接訂立買賣合約前進行土地查冊，以及安排未獲適當授權人士代替缺席的合約方簽署合約等。

監管局為更有效處理複雜和嚴重的個案，聘請了總調查經理，根據《地產代理條例》第28條賦予的權力，執行調查工作。監管局第28條調查委員會如有合理理由相信地產代理從業員涉嫌違反《地產代理條例》或其附屬法例，總調查經理及其調查員可以要求從業員或任何持有與調查有關資料的人士交出該等資料，並提供協助。任何人士倘若沒有按照調查員的要求交出有關資料或提供協助，又不能提供合理解釋，便屬違法。

本年度，監管局共執行1,681次巡查，其中754次是巡查一手物業銷售處，其餘的927次則是巡查地產代理商舖。監管局在巡查商舖時，亦會檢查地產代理商有否採取措施，防止洗黑錢活動。在過往的巡查中發現超過90%的商舖均有採取有關措施。

Law enforcement and complaint handling

The EAA performs its regulatory and enforcement functions primarily through compliance checks and complaint investigations.

In 2007/08, the EAA instigated investigations into 622 complaints, including complaints received from the general public, referrals by other law-enforcement agencies, and self-initiated investigations arising from compliance inspections. During the same period, the EAA completed investigations into 714 complaints, of which 204 were found to be substantiated. The EAA pledges to deal with all complaints in a professional, fair and timely manner.

The major allegations against licensees included issuing advertisements with false or misleading information, failing to protect a client's interest when dealing with properties with unauthorised building works or subject to building maintenance works, failing to enter into an estate agency agreement with a client, failing to conduct a land search before an agreement for sale and purchase was entered into, and arranging for a person without proper authorisation to sign an agreement on behalf of an absent contracting party.

To effectively deal with more complex and serious cases, a Chief Investigation Manager was appointed to carry out investigations with the power given under section 28 of the EAO. When there is reasonable suspicion by the EAA Section 28 Investigation Committee that a licensee may have breached the EAO or its subsidiary legislation, the Chief Investigation Manager and his investigators may require the licensee or any other persons who are in possession of documents containing information relevant to the investigation to produce the documents and assist in the investigation. Anyone who fails, without reasonable excuse, to comply with the investigators' request for the provision of documents and assistance commits an offence.

The EAA conducted a total of 1,681 compliance inspections over the year, of which 754 were visits to first-sale sites and 927 to agency shops. Estate agencies' compliance with anti-money laundering measures was also checked during agency shop inspections, with the compliance rate exceeding 90%.

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監管局處理公眾人士的投訴和查詢。(模擬照片)

The EAA handles complaints and enquiries from members of the public. (simulated photos)



過往一年，監管局也加強了和其他執法機構的聯絡和合作。監管局和這些機構舉行了聯絡會議，增加了聯絡渠道，以便更快捷有效地交換各類投訴或執法個案的資料。

During the year, the EAA strengthened its liaison and co-operation with other law-enforcement agencies. Liaison meetings were held and channels established so that relevant information regarding complaints or enforcement cases can be exchanged in a timely and effective manner.

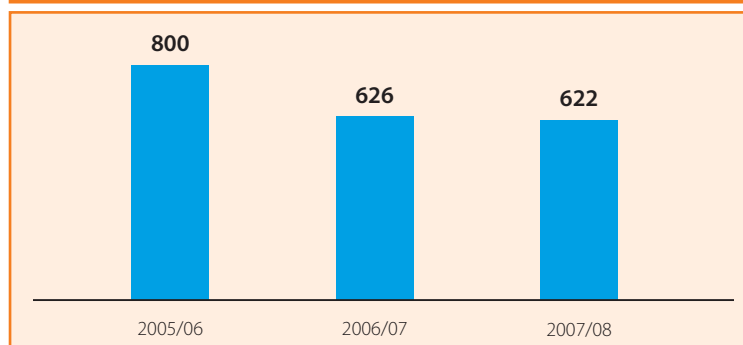
查詢

監管局亦有處理公眾和從業員有關地產代理法律和執業實務的查詢。在2007/08年度，監管局共處理了7,411宗這類查詢。

Enquiries

The EAA also deals with enquiries on the law and practice of the trade from both the public and estate agents. In 2007/08, the EAA handled a total of 7,411 such enquiries.

接獲的投訴個案 Number of complaint cases received

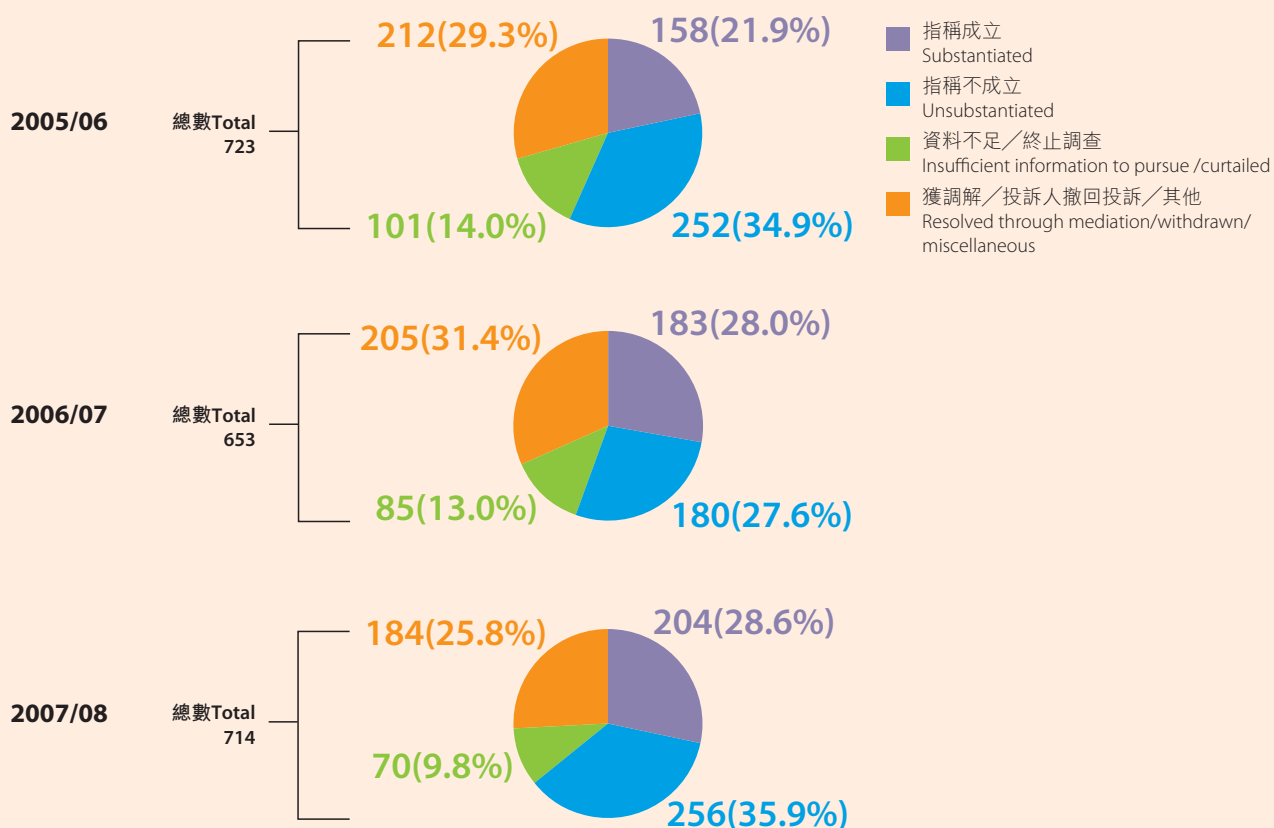


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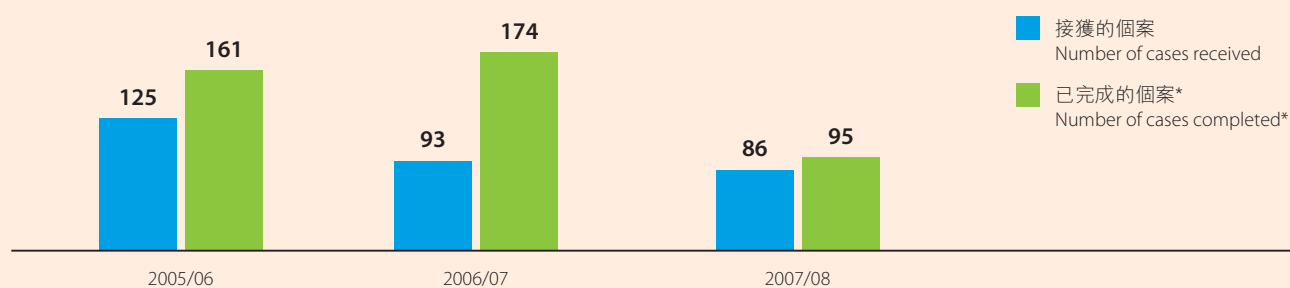
已完成的投訴個案*

Results of complaint cases completed*



破產個案

Bankruptcy cases

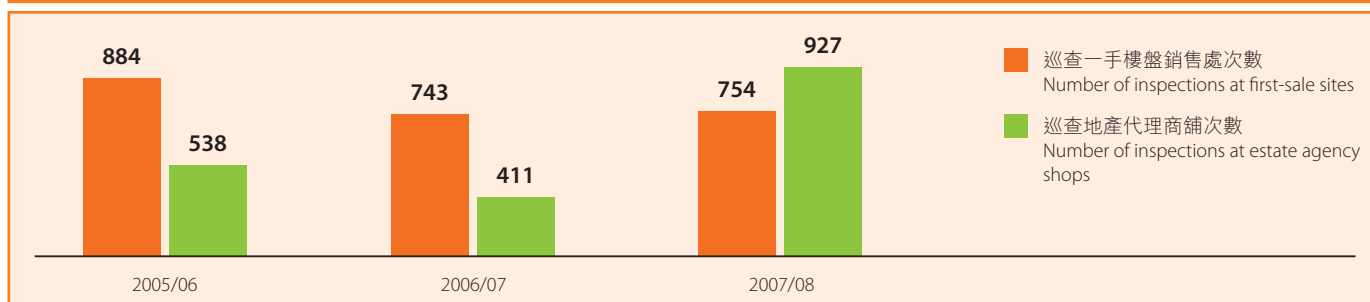


* 部分是往年接獲的個案。

* Some cases completed in a year were received in previous years.

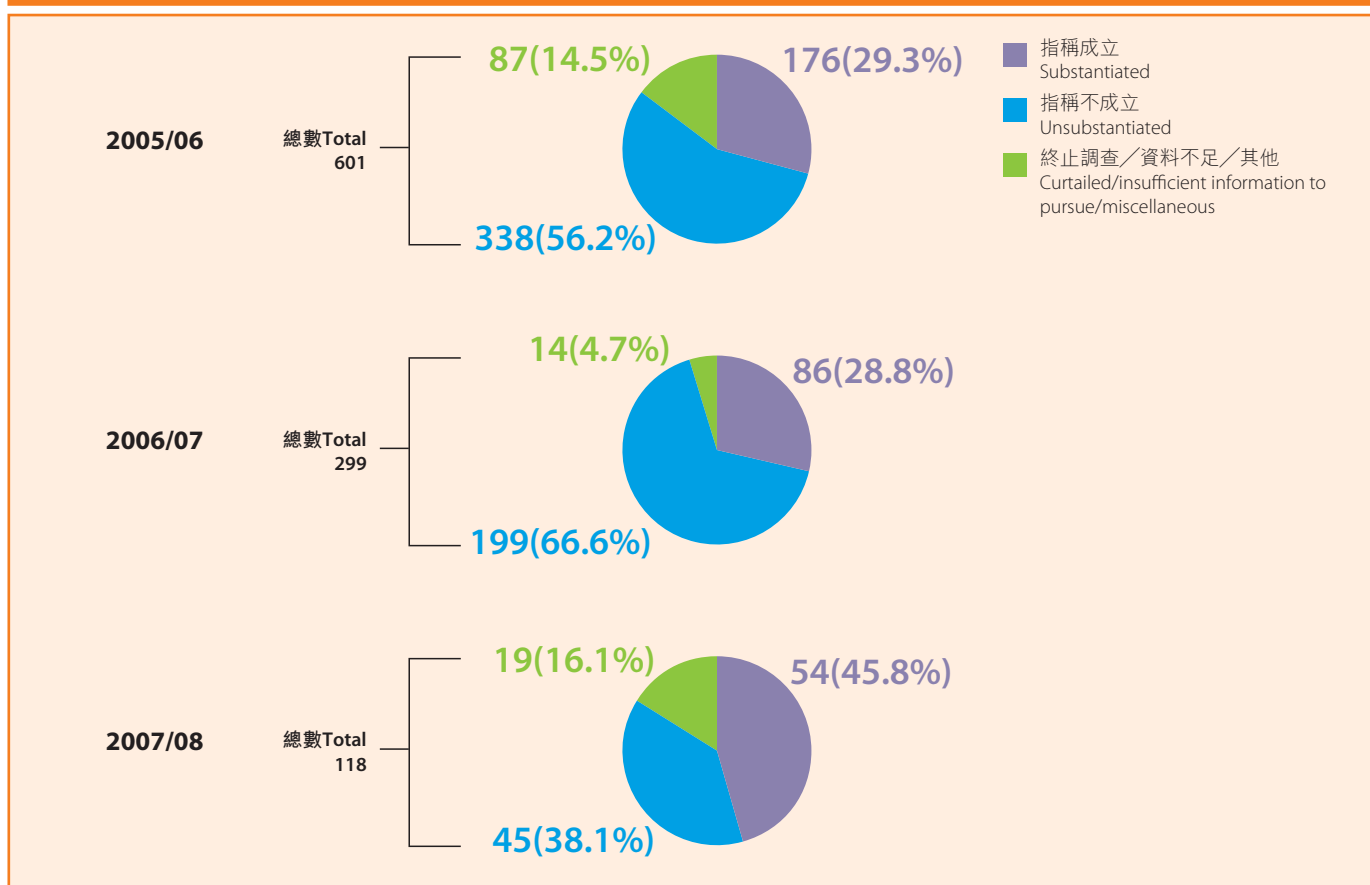
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巡查
Compliance inspections

已完成的個案*

Results of the cases completed*



* 部分是往年展開調查的個案。

* Some cases completed in a year were brought forward from previous years.

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紀律研訊

紀律委員會就持牌人違規的個案進行紀律研訊。在2007/08年度，紀律委員會就173宗個案進行了研訊。

紀律委員會亦就涉及觸犯刑事罪行、被頒令破產或剛獲解除破產令的持牌人是否適合繼續持牌的個案進行研訊。

監管局或紀律委員會可施行的紀律處分包括：訓誡、譴責、在牌照上附加指定的條件、更改已附加在牌照上的條件、暫時吊銷牌照（不超過兩年）、撤銷牌照及罰款（最高30萬元）。

Inquiry hearings

The Disciplinary Committee conducts inquiry hearings into cases of non-compliance by licensees. In 2007/08, the Disciplinary Committee conducted inquiry hearings into 173 cases.

The Disciplinary Committee also inquires into the eligibility of licensees who have committed criminal offences, or are bankrupts or recently discharged bankrupts to continue to hold licences.

Disciplinary powers that may be exercised by the EAA or the Disciplinary Committee include admonishment, reprimand, attachment of specified conditions to a licence, varying conditions already attached to a licence, suspending a licence for up to two years, revoking a licence, and imposing a fine of up to \$300,000.

紀律委員會施行的紀律處分

Disciplinary powers exercised by the Disciplinary Committee

紀律處分性質 ¹ Type of sanction ¹	2005/06	2006/07	2007/08
訓誡或譴責 Admonishment/reprimand	42 ²	109	155
罰款 Fine	15	22	41
附加條件 ³ Attachment of conditions to licence ³	53	76	99
暫時吊銷牌照 Suspension of licence	43	42	30
撤銷牌照 Revocation of licence	5	2	1

1 在部分個案中，同一持牌人在一宗個案中受到超過一項紀律處分。

2 包括14項警告

3 除紀律委員會在牌照上附加條件外，監管局亦根據《地產代理條例》第17(3)條訂明的權力，在2005/06年度在95名破產持牌人的牌照上附加條件，2006/07年度則在105名破產持牌人的牌照上附加條件，2007/08年度在73名破產持牌人的牌照上附加條件。

1 In some cases, more than one disciplinary sanction was imposed on the same licensee.

2 Includes 14 warnings

3 Apart from the attachment of conditions by the Disciplinary Committee, the EAA also attached conditions to the licence of 95 bankrupt licensees in 2005/06, 105 in 2006/07 and 73 in 2007/08, pursuant to section 17(3) of the EAO.

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紀律委員會成員(左起)王羅桂華女士、馬豪輝先生及黃為山先生正進行紀律研訊。(模擬照片)

Members of the Disciplinary Committee (from left) Mrs Karen Wong, Mr Ma Ho-fai and Mr Wilson Wong conduct an inquiry hearing. (simulated photo)

常見違規事項*

Common types of non-compliance*

數目

Number

沒有與客戶簽訂地產代理協議； 沒有填妥指定表格／管有或提供訂明資料 Failure to enter into an estate agency agreement; failure to complete a prescribed form/supply or possess prescribed information	54
沒有進行土地查冊／向買方或租客提供土地查冊的結果文本 Failure to conduct a land search/supply the land search result to the purchaser/tenant	38
虛假或誤導性廣告；未取得賣方書面同意而發出廣告 或廣告內容與賣方客戶指示不同 False or misleading advertisement; advertising without the vendor's prior consent or on terms different from those instructed by the vendor	30
有刑事紀錄的持牌人是否適合繼續持牌 Eligibility to continue to hold a licence in conviction cases	15
提供錯誤的物業／市場資訊 Giving wrong property/market information	11
持牌人發出的文件沒有清楚顯示牌照號碼／營業詳情說明書號碼／營業名稱； 在營業詳情說明書指明的地點以外的地點經營地產代理業務 Failure to state clearly and conspicuously on any document issued by an estate agent a licence number/SPOB number/business name; doing business at a place other than that specified in the SPOB	11
沒有確定簽署合約的人士是註冊業主／已獲業主授權代為簽署； 沒有安排所有聯名業主簽署 Failure to verify whether the signatory was the registered owner or duly authorised by the owner or landlord to sign; failure to get all joint owners to sign	10
沒有披露利益或沒有避免利益衝突 Failure to disclose interests or avoid conflict of interest	9

* 部分紀律研訊個案涉及超過一項違規事宜。

* There was more than one type of non-compliance in some inquiry hearing cases.

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法律事務

監管局於2007/08年度發布了九份執業通告，就地產代理業實務的不同範疇提供指引：

Legal services

In 2007/08, the EAA issued nine practice circulars, providing guidelines and directives on various aspects of estate agency practice:

名稱 Title	編號 Number
《防止賄賂條例》第9條 Section 9 of the Prevention of Bribery Ordinance	07-01 (CR)
不道德地／非法轉移客戶或放盤資料 Unethical/Unlawful transfer of clientele or listings	07-02 (CR)
土地註冊處實施五天工作周 Implementation of five-day week in the Land Registry	07-03 (CR)
居者有其屋計劃單位的補價新安排 New premium payment arrangement for Home Ownership Scheme flats	07-04 (CR)
違例建築工程 Unauthorised building works	07-05 (CR)
一手住宅樓盤銷售的秩序問題 Order during first sales of residential properties	07-06 (CR)
放盤記錄、地產代理協議及帳目 Listing records, estate agency agreements and accounts	08-01 (CR)
資訊保安以妥善儲存資料 Information security for privacy protection	08-02 (CR)
代理須披露利益 Disclosure of interests by agent	08-03 (CR)

在一手物業的銷售說明中「實用面積」的定義和披露是本年度公眾關注的議題。監管局一直和政府、消費者委員會、香港地產建設商會和其他專業團體緊密合作，探討如何增加一手住宅物業市場資訊的透明度。監管局代表亦曾出席立法會房屋事務委員會會議，與議員就該議題進行討論。

The definition of “saleable area” and its disclosure in sales description for first-hand properties remained an issue of public concern throughout the year. The EAA worked closely with the government, the Consumer Council, The Real Estate Developers Association of Hong Kong and other professional bodies on ways to enhance the transparency of such information in the primary residential property market. The EAA also attended meetings of the Legislative Council’s Panel on Housing to address legislators’ concerns on the subject.