



A better regulator, a better home

有效規管 利民安居樂業

工作報告：作為規管者

Operations review: As a regulator

“法例要通過執行才能發揮效用。監管局作為規管機構，必須有效和公平地執法，同時讓公眾知悉其執法工作。”

法例要通過執行才能發揮效用。監管局作為規管機構，必須有效和公平地執法，同時讓公眾知悉其執法工作。

監管局透過調查投訴、日常巡查和處分違規的地產代理從業員，促進公平和透明的物業交易，推動業界守法循規。

監管局因應市場變化，檢討業界的執業手法和發出新的執業通告，為從業員提供執業指引。

執法行動

投訴、巡查和查詢數目

2009/10年度，監管局共接獲638⁵宗投訴個案。這些個案大部分關於二手物業，當中只有29宗(佔5%)涉及一手樓盤。

監管局在同年度完成了663宗投訴個案的調查工作，其中204宗(佔31%)的指稱成立。指稱成立的個案當中，只有9宗與一手物業有關。該204宗個案的主要指稱包括沒有與客戶簽署或解釋地產代理協議、不當處理涉及大廈維修或屋宇改建的資訊，以及沒有進行土地查冊或沒有向客戶提供查冊文本。



2009/10年度，監管局巡查地產代理商舖超過900次。

In 2009/10, the EAA conducted more than 900 compliance inspections at estate agency shops.

⁵ 包括由其他執法機構轉介的個案

Laws are only as effective as their enforcement. As a regulator, the EAA must not only enforce the law effectively and fairly, but also be seen to do so.

Through investigating complaints, conducting compliance inspections and disciplining non-compliant estate agency practitioners, the EAA seeks to facilitate fair and open property transactions and raise the level of compliance among practitioners.

In view of the changing market, the EAA also reviews the practices of the trade and draws up new practice circulars from time to time to provide new guidelines and directives for the trade to follow.

Law enforcement

Number of complaints, inspections and enquiries

In 2009/10, the EAA received 638⁵ complaints. The majority of them were related to second-hand properties, with only 29 cases, or 5%, were related to first-hand properties.

During the same period, the EAA completed investigations into 663 complaints, of which 204 or 31%, were found to be substantiated. Only nine of the substantiated cases concerned first-hand properties. Key allegations of the substantiated cases were: failure to sign an estate agency agreement with clients or to explain the agreement to clients; improper handling of information on building maintenance or alterations; and failure to conduct a land search or provide clients with a copy of the search results.

“Laws are only as effective as their enforcement. As a regulator, the EAA must not only enforce the law effectively and fairly, but also be seen to do so.”

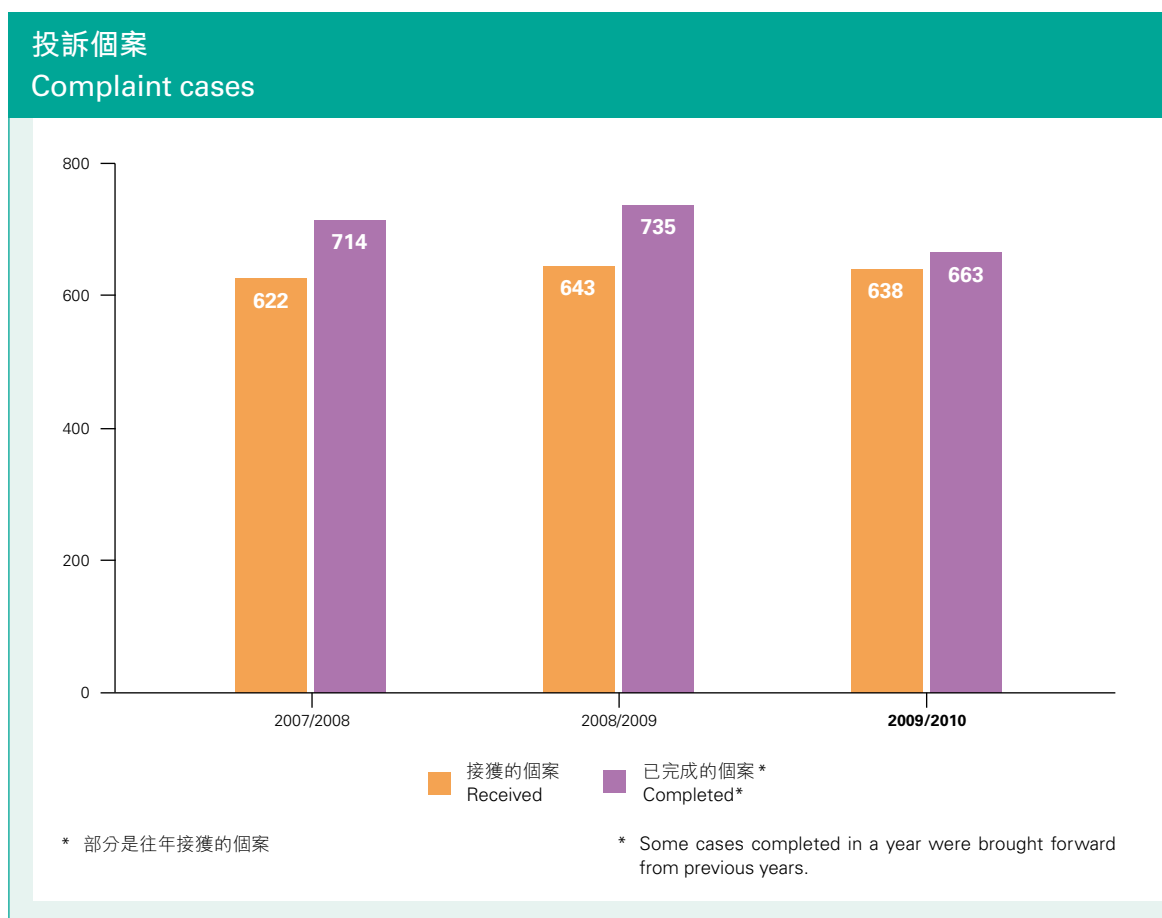
⁵ includes cases referred to the EAA by other law-enforcement agencies

本年度，監管局共進行了2,042次巡查，當中1,129次是巡查一手樓盤⁶，其餘的913次是巡查地產代理商舖。此外，監管局就網上物業廣告進行了538次抽查。在巡查過程中，監管局提醒從業員遵守相關法例規定，並要求他們糾正不足之處。監管局進行巡查後，就36宗涉嫌違規個案主動展開調查。

年內，監管局也就147名持牌人立案調查。他們涉嫌在申請牌照時作出虛假聲明或提供虛假文件，以及未能符合法定的「適當人選」要求。

同期，監管局完成調查106宗主動展開調查的個案，其中74宗的指稱成立。該74宗個案當中，20宗有關一手物業。

監管局亦有處理大眾和業界的查詢。這些查詢涉及地產代理法例、操守和執業等事宜。2009/10年度，監管局共處理了9,102宗這類查詢。



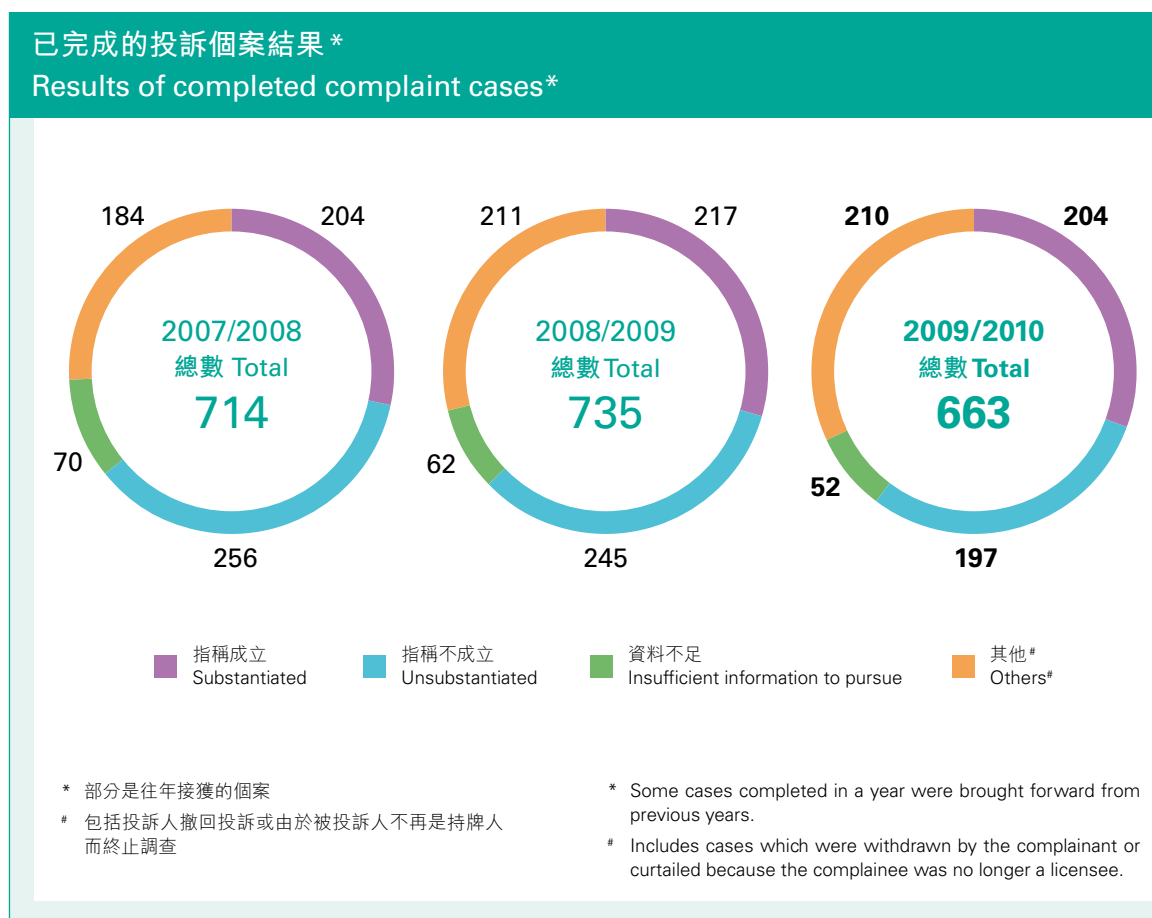
⁶ 包括樓盤所在處、樓盤銷售處及其附近

In the year, the EAA conducted 2,042 compliance inspections – 1,129⁶ at first-sale sites and 913 at estate agency shops. The EAA also carried out 538 inspections of online advertisements posted by estate agencies. During the inspections, EAA staff briefed practitioners on the various legislative requirements and gave on-the-spot advice to rectify shortcomings. As a result of these inspections, the EAA instigated investigations into 36 suspected non-compliant cases.

The EAA also launched investigations into 147 licensees who had allegedly either made false declarations or provided false documents when applying for a licence, or who were suspected to have failed to meet the statutory requirement of being “fit and proper” persons.

A total of 106 self-initiated investigations were completed in the year, among which 74 cases were substantiated. Of the 74 cases, 20 were related to first-sale properties.

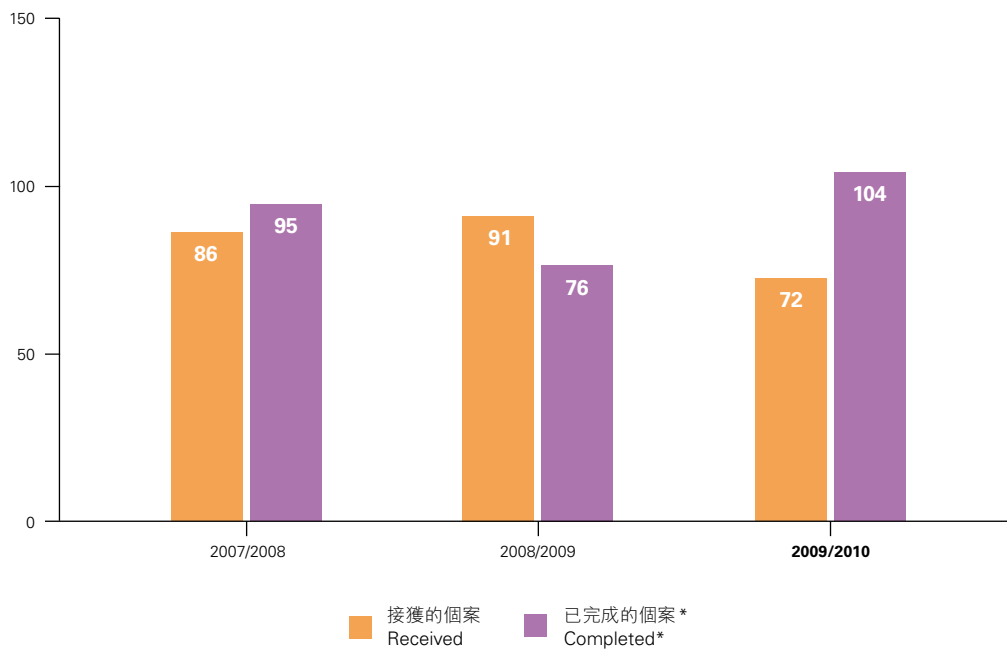
The EAA also handled enquiries from both the public and the trade on estate agency-related legal issues, conduct and practices. In 2009/10, 9,102 such enquiries were handled.



⁶ includes the development sites, sales offices and vicinity

破產個案

Bankruptcy cases



* 部分是往年接獲的個案

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

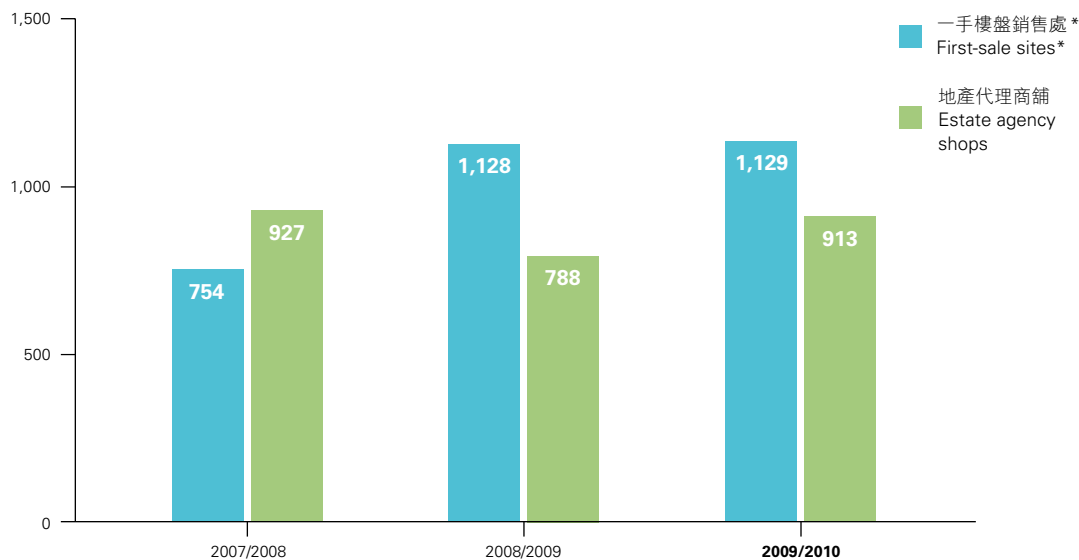


監管局處理公眾和業界對於地產代理法例和執業事宜的查詢。(模擬照片)

The EAA handles enquiries from the public and the trade on estate agency laws and practice. (simulated photo)

巡查次數

Number of inspections

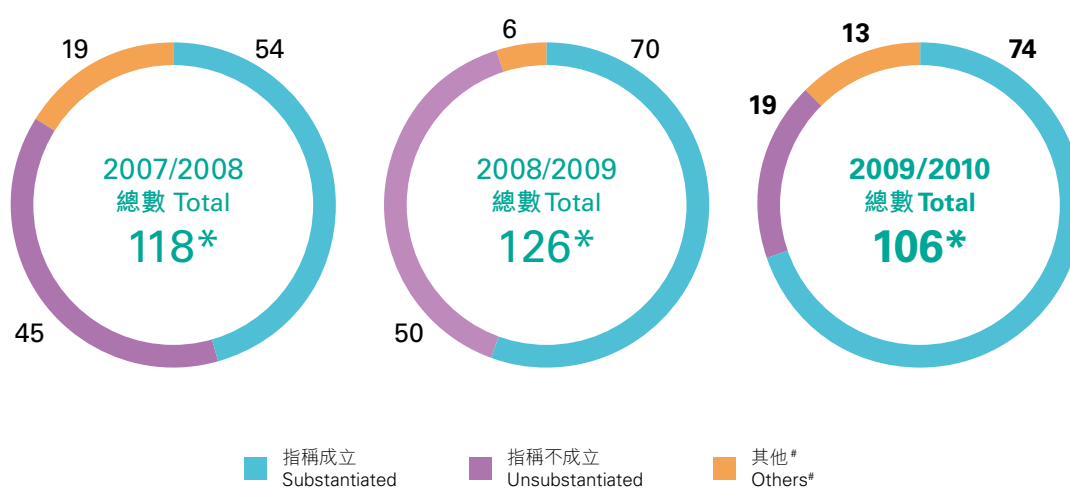


* 包括樓盤所在處、樓盤銷售處及其附近

* Includes the development sites, sales offices and vicinity

主動調查的個案結果

Results of completed self-initiated investigation cases



* 部分是往年展開調查的個案

包括由於被投訴人不再是持牌人而終止調查或資料不足

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

Includes cases which were curtailed because the complainee was no longer a licensee and those that were not pursued because of insufficient information

移民顧問公司和地產代理工作

監管局不時因應新的市場狀況和社會大眾的需要，擴闊執法的範圍。

愈來愈多內地人士投資香港的物業，不少移民顧問公司安排他們來港參觀樓盤。監管局認為有關工作可能屬於地產代理工作範圍，因此於 2009 年 12 月就有關課題舉行研討會。

出席研討會的人士逾 30 位，包括多間移民顧問公司和各大地產代理公司的代表。在研討會上，監管局、消費者委員會、入境事務處和聯合財富情報組的代表向與會人士介紹了安排內地人士來港參觀樓盤時應遵守的法規和注意事項。監管局特別提醒與會者，倘若他們進行地產代理工作，須申領地產代理牌照。講者也闡釋了訪港旅客（包括以訪客身分來港的移民顧問公司內地僱員）須要遵守的逗留條件，以及防止洗黑錢的措施。

根據法例，地產代理工作的定義廣泛，因此其他行業的人士也有可能進行地產代理工作而誤墮法網。為此，監管局主動去信多間公司，向他們解釋《地產代理條例》訂明的法定要求。這些公司來自多個行業，包括物業管理、銀行和旅遊業。

地產代理參與收購舊樓

本年度，政府降低舊樓強制拍賣門檻的政策，引起社會各界的熱烈討論，而地產代理協助發展商收購舊樓的執業手法，也備受關注。為此，監管局於 2010 年 3 月主動約見一家參與收購舊樓的地產代理公司，提醒該公司的管理層有關法例和守則，並要求有關公司設立妥善的制度管理前線從業員。

監管局認為有需要約見其他參與收購舊樓的地產代理，讓業界清楚了解相關的法規。2010 年 3 月底，監管局計劃就從業員參與收購舊樓時的執業手法舉行研討會。監管局也會就有關課題發出執業通告，為從業員代客戶收購舊樓時應有的專業水平提供指引。

一手樓盤銷售

一直以來，監管局關注從業員推銷一手物業時的秩序和銷售手法。本年度，監管局堅決打擊地產代理在一手樓盤銷售處的違反秩序行為，尤其是在馬路上截車招客的危險行為。監管局不再只就這類違規行為發出口頭警告，而會即時立案調查每一宗個案。2009/10 年度，共有 10 名從業員因此被罰款和暫時吊銷牌照。

持牌地產代理公司的管理層有法定責任設立妥善的制度，管理前線從業員，確保他們遵守《地產代理條例》的規定。因此，監管局除了調查涉嫌違規的從業員外，也會嚴正調查有關管理層是否也應負上責任。

Immigration consultants and estate agency work

The EAA widens the scope of its enforcement work from time to time to respond to new market conditions and the needs of the community.

There were a growing number of Mainlanders investing in properties in Hong Kong, as well as immigration consultants' arranging for them to view properties here. Considering that such work might fall within the scope of estate agency work, the EAA organised a forum on the subject in December 2009.

The forum was attended by some 30 participants, including representatives from immigration consultants and major estate agency companies. They were briefed by representatives from the EAA, Consumer Council, Immigration Department and Joint Financial Intelligence Unit on the relevant regulations and points to note when making such arrangements. In particular, they were advised to apply for an estate agent's licence if they intended to carry out estate agency work, on the conditions of stay for visitors (including Mainland staff of immigration consultant companies) and measures to prevent money laundering.

As estate agency work has a wide meaning under the law, people in other sectors might have conducted estate agency work and breached the law inadvertently. As a preventive measure, the EAA sent out advisory letters to a number of companies in the property management, banking and travel industries, advising them on the statutory requirements under the EAO.

Buying up old properties

The year saw heated debate in the community over the lowering of the threshold for the compulsory sale of old buildings and growing concerns over the practices of estate agency practitioners who assisted developers in buying up old buildings. The EAA acted preemptively, and in March 2010, met an estate agency company which specialises in acquiring old buildings. At the meeting, the EAA reminded the agency company of the relevant laws and regulations, and of the need to establish proper systems to supervise its frontline practitioners.

We considered it essential to extend the EAA's reach to other estate agents specialising in the acquisition of old buildings in a bid to enhance the trade's understanding of the relevant legislative requirements and rules. A forum on the subject was, therefore, being planned at the end of March 2010. The EAA will also issue a practice circular to highlight the professional standards expected of estate agents when they acquire old buildings for clients.

First sales

The focus of the EAA's enforcement priorities is on practitioners' order and sales practices at first-sale sites. In the year, the EAA took firm action against disorderly behaviour at first-sale sites, in particular the dangerous act of intercepting vehicles to tout for business. Instead of merely administering warnings, the EAA launched full investigations into each incident, which resulted in ten practitioners being fined and having their licences suspended.

網上抽查

本年度，監管局加強抽查網上物業廣告，由2008/09年的221次增加至2009/10年度的538次。

由於監管局在2009年3月舉行的網上物業廣告研討會十分成功，因此局方於同年7月再次就有關課題舉辦研討會，讓地產代理公司加深了解發布網上物業廣告須要遵守的法規。

紀律研訊

紀律委員會就持牌人的違規個案舉行紀律研訊。此外，委員會也就曾觸犯刑事罪行和被頒令破產的持牌人是否適合繼續持牌，進行研訊。

2009/10年度，紀律委員會就186宗個案進行了研訊。這些個案當中，173宗(93%)指稱成立。

年內，紀律委員會處分了188名持牌人或公司，當中133名為個人⁷，55間是公司⁸。

同年度，紀律委員會沒有撤銷任何牌照。然而，紀律委員會暫時吊銷了34個牌照，吊銷期由一天至兩個月不等。這些個案當中，部分持牌人因作出欺詐性、舞弊或不誠實的作為而被定罪。部分個案則涉及持牌人作出違反專業操守的行為，例如作出誤導性陳述、未有保障和促進客戶的利益，以及沒有盡量小心和盡一切應盡的努力。

共有50名持牌人或公司被罰款，金額由1,000元至80,000元不等。



模擬紀律研訊照片

A staged inquiry hearing

⁷ 包括以獨資／合夥方式經營地產代理業務的獨資經營者／合夥人

⁸ 有限公司

The management of a licensed estate agency has the statutory duty to establish proper systems to supervise frontline practitioners to ensure their compliance with the provisions of the EAO. Therefore, apart from investigating contraventions by frontline practitioners, the accountability of managers and senior management in the cases concerned was also seriously examined.

Cyber patrols

In the year, the EAA stepped up its cyberspace patrols to spot check online property listings posted by estate agencies. The number of inspections increased from 221 in 2008/09 to 538 in 2009/10.

Following the success of the first forum on online advertising in March 2009, another forum was held in July to promote awareness of the relevant legislative requirements among estate agencies.

Inquiry hearings

The Disciplinary Committee conducts inquiry hearings into cases of non-compliance by licensees. It also inquires into whether licensees who have committed criminal offences or are undischarged bankrupts are eligible to continue to hold licences.

In 2009/10, the Disciplinary Committee conducted inquiry hearings into 186 cases and substantiated 173 of them (i.e. 93%).

As a result, a total of 188 licensees were disciplined, among which 133 were individual licensees⁷ and 55 company licensees⁸.

During the period, there was no revocation of licences but 34 licences were suspended for periods ranging from one day to two months. These licensees were found to have been convicted of offences involving fraudulent, corrupt or dishonest acts, or to have engaged in unprofessional conduct such as making misleading representations, failing to protect and promote the interests of their clients, or failing to exercise due care and due diligence.

Fifty licensees were fined, with the amount of the fine ranging from \$1,000 to \$80,000.

⁷ Including sole-proprietors and partners of estate agency firms

⁸ Limited companies

常見違規事項*		數目 Number
Common types of non-compliance*		
1.	沒有進行土地查冊／向買方或租客提供土地查冊結果的文本 Failure to conduct a land search/supply the land search result to the purchaser/tenant	37
2.	沒有與客戶簽訂地產代理協議 Failure to enter into an estate agency agreement with a client	23
3.	發出虛假和誤導性廣告：沒有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 Placing a false or misleading advertisement; advertising without the vendor's prior consent; or advertising in contravention of vendor's instruction	21
4.	因有刑事紀錄而不適合持牌或繼續持牌 Not eligible to hold or continue to hold a licence due to a conviction	20
5.	沒有管有訂明的物業資料 Failure to possess prescribed property information	12
6.	沒有確定簽署臨時買賣合約或臨時租約的人士已獲業主授權代為 簽署；或沒有安排所有聯名業主簽署 Failure to verify whether the signatory was duly authorised by the owner or landlord to sign the Provisional Agreement for Sale and Purchase/Provisional Tenancy Agreement; or failure to procure the signatures of all joint owners	10
7.	推銷一手樓盤時截車招攬生意而造成混亂 Creating disorder by intercepting vehicles when promoting first-sale properties	10
8.	沒有在委任經理／成為或終止成為合夥人後的31天內，以書面通知 監管局 Failure to notify the EAA in writing within 31 days of the appointment of managers/becoming or ceasing to be a member of partnership	9
9.	沒有披露利益／利益衝突 Failure to disclose interest/conflict of interest	7
10.	破產 Bankruptcy	7

* 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.

紀律委員會施行的紀律處分

Disciplinary powers exercised by the Disciplinary Committee

	2007/2008	2008/2009	2009/2010
紀律研訊次數 Number of hearings	173	208	186
被處分的持牌人或公司數目 Number of licensees disciplined	191	226	188
紀律處分性質 ⁹ Type of sanction ⁹			
訓誡或譴責 Admonishment/reprimand	155	191	148
罰款 Fine	41	71	50
在牌照上附加條件 ¹⁰ Attachment of conditions to licence ¹⁰	99	100	87
暫時吊銷牌照 Suspension of licence	30	26	34
撤銷牌照 Revocation of licence	1	1	0

⁹ 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。

¹⁰ 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2007/08年度在73名破產持牌人的牌照上附加條件；2008/09年度在40名破產持牌人的牌照上附加條件；2009/10年度在72名破產持牌人的牌照上附加條件。

⁹ In some cases, more than one disciplinary sanction was imposed on the same licensee.

¹⁰ Apart from the attachment of conditions by the Disciplinary Committee, the EAA also attached conditions to the licence of 73 bankrupt licensees in 2007/08, 40 in 2008/09 and 72 in 2009/10, pursuant to section 17(3) of the EAO.

法律事務

由於社會大眾愈來愈關注資訊保安，加上地產代理從業員經常須要處理客戶的個人資料，監管局委託顧問公司擬訂了一套資訊保安政策和指引。2009年12月，監管局發出了政策和指引，進一步向業界提供有關保障個人資料私隱的指引。

該份名為《地產代理資訊保安及私隱保護政策與指引》的文件為業界設定保障個人資料私隱的最低標準。雖然有關政策適用於不同規模的地產代理公司，但監管局也分別為小型和中大型公司制訂了兩份不同的指引。

除了有關資訊保安的指引外，監管局也就六個課題發出了新的執業通告，包括「網上廣告」、「核實賣方的身分」，以及「有限公司簽署臨時買賣合約／臨時租約」。

於2010年3月底，監管局正計劃就從業員處理附有違例建築工程的物業的租賃事宜發出新的通告，以及整合和更新有關一手住宅樓盤銷售的通告。

此外，監管局於2009年11月就檢討《個人資料(私隱)條例》的諮詢文件提出意見。局方同意當中的多項建議，包括直接規管資料處理者、推行自願性通報機制，以及將未經授權取得個人資料並將之披露和出售訂為罪行。

年內，監管局發出了以下執業通告：

執業通告題目	編號
於空置店舖外及公眾場所張貼廣告	09-04 (CR)
網上廣告	09-05 (CR)
有限公司簽署臨時買賣合約／臨時租約	09-06 (CR)
《種族歧視條例》	09-07 (CR)
核實賣方的身分	09-08 (CR)
「物業資料表格」(表格1)及「出租資料表格」(表格2)的修訂	09-09 (CR)
資訊保安及私隱保護	09-10 (CR)

Legal services

With mounting public concern about data security and given that estate agency practitioners often need to handle the personal data of their clients, the EAA commissioned a consultant to draw up an information security policy and guidelines for estate agencies. In December 2009, the EAA issued an information security policy and guidelines to provide further guidance to the estate agency trade on the protection of personal data privacy.

The *Information Security and Privacy Protection Policy and Guidelines for Estate Agents* lays down the minimum requirements for the trade, with regard to the protection of personal data privacy. While the policy is applicable to estate agency firms of all sizes, two different sets of guidelines were formulated, one set for small agencies and the other for medium and large agencies.

The EAA also issued new practice circulars on six other topics, including online advertising, verifying the identity of vendors, and the signing of provisional agreements for sale and purchase or tenancy agreements by limited companies.

At the end of March 2010, the EAA was preparing a new practice circular on the leasing of old properties with unauthorised building works, as well as consolidating and updating the practice circulars on the sale of first-hand residential properties.

Separately, in November 2009, the EAA expressed views on the Consultation Document on Review of the Personal Data (Privacy) Ordinance. The EAA supported the proposals of, among others, directly regulating data processors, instituting a voluntary breach notification system and making it an offence to obtain, disclose or sell personal data without authorisation.

In the year under review, the EAA issued the following practice circulars:

Titles of Practice Circulars	Number
Advertisements posted outside vacant shops and in public places	09-04 (CR)
Online Advertising	09-05 (CR)
Signing of Provisional Agreement for Sale and Purchase/ Provisional Tenancy Agreement by a limited company	09-06 (CR)
Race Discrimination Ordinance	09-07 (CR)
Verifying the Identity of Vendors	09-08 (CR)
Amendments of Property Information Form (Form 1) and Leasing Information Form (Form 2)	09-09 (CR)
Information Security and Privacy Protection	09-10 (CR)