

Part 1: The Real Estate Agency Trade in Hong Kong

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THE REAL ESTATE TRADE AND ITS SOCIO-ECONOMIC DEVELOPMENT

1. The more relevant stages in the development of the real estate trade in Hong Kong commenced at the end of World War II:

1945-1952

During the Japanese occupation of Hong Kong (December 1941-August 1945), thousands of people fled to Mainland China and the city's population fell from 1.6 million to 500,000. After 1945, many of these refugees returned to Hong Kong. In addition, people from the Mainland flooded to Hong Kong. By 1947, Hong Kong's population had reached 1.8 million, increasing to two million by 1950. Mainland immigrants brought with them considerable capital and professional skills which helped Hong Kong's sustained and extraordinary growth in the following years.

The increase in population set the property market on an upward trend. Previously, occupiers of multi-storey buildings had been tenants of the owner of the land. Gradually from 1947 onwards, it became common for individual units in these buildings to be sold. In some cases, the existing building was demolished. As most tenants of residential premises had security of tenure, compensation had to be paid to them under the Demolished Buildings (Re-development of Sites) Ordinance.

The practice of pre-selling units in an uncompleted building slowly began. Purchasers paid the purchase price in instalments.

In 1952, the Korean War started. Soon after, the United Nations imposed an embargo on China trade to halt entrepot trade between Hong Kong and the Mainland. Hong Kong observed the embargo. The economy suffered as a result, and this carried through to the real estate market.

1953-1970

From the end of the Korean War, Hong Kong became a manufacturing centre and various industries, including textiles, electronics, plastics and toys, were set up. Immigration from the Mainland continued and investments were made by Chinese people living in various parts of South-East Asia.

There were housing shortages and the real estate trade enjoyed a boom from 1954 to 1957. Numerous properties were completed but purchasing power could not match the high supply. In 1957, the Government enacted a law governing the sale of uncompleted residential units. Sales of uncompleted residential units stagnated and a general slump in the real estate market. Another market boom occurred from 1959 to 1968.

In 1966, units in the then largest housing estate in Hong Kong, Mei Foo Sun Chuen, were sold. This was the start of multi-storey residential buildings in large estates.

1971-1984

At the beginning of the 1970s, the property and stock markets continued to expand. In 1973, there was a stock market crash, followed by a property market slump. Various external factors, such as the Middle East oil crisis, also affected local markets. From 1976, the markets recovered. In 1979, the Mainland adopted an open-door policy. Hong Kong benefited from this and some Hong Kong industries were relocated to the Pearl River Delta and Guangdong province. These industrial developments also assisted the growth of the property market.

By 1981, property prices were at a record high due to the strong demand for housing and speculation. Subsequently, the increase in interest rates and political uncertainty contributed to the lowering of prices.

1985-1997

Following the Sino-British Joint Declaration, investors' confidence was gradually restored. From 1987, the property market expanded and great profits were made, although there were some setbacks in the interim due to adverse external factors.

1998-2005

The Asian financial crisis of 1997-8 reduced property prices by up to 60% over the next few years. Various other factors including economic restructuring, deflation, high rates of unemployment and bankruptcy, and the SARS outbreak, also had a negative effect on property prices. Problems with negative equity, and mortgagee sales characterised the property market. However, towards the end of 2003, property prices resumed their upward trend with prices for luxury flats surpassing those reached in 1997. This recovery continued in 2004 and into the early part of 2005.

By the end of 2005, successive interest rate increases had dampened sentiments in the market and prices softened.

DEVELOPMENT OF REAL ESTATE AGENCY PRACTICE IN HONG KONG

2. In the 1950s and 1960s, most estate agents were one-person firms which had no staff or office. Business was mainly carried out in restaurants in Central, Wanchai and Mongkok where agents met to exchange information and negotiate property transactions. Many of the agreements they drafted were contradictory and inadequate. Clients were referred to solicitors to prepare the formal documentation necessary for the sale and purchase of land. Most sales were for building sites and buildings rather than units.
3. In 1966, the building of Mei Foo Sun Chuen, the first major housing estate in Hong Kong, changed the picture. Small estate agency companies began to emerge in Mei Foo, specialising in the sale of uncompleted units in this housing estate.
4. Estate agents flourished in the 1970s with the increase in housing estates and the development of new towns in the New Territories. Agents set up retail shops and several firms opened branch offices.

The 1980s saw many more estate agency companies set up. The commission system was introduced in the early 1980s giving staff a share of the commission derived from the transactions they handled. There were a few large companies, each of which had more than 10 branches. They dealt with all parts of the market, comprising retail, commercial, industrial, and residential properties. Towards the end of the 1980s, agencies began to computerise their operations.

5. The early 1990s saw phenomenal growth in the trade, with the largest firms having branches in almost every housing estate in Hong Kong. Of these, the two largest had more than 200 branches each. One of these firms was listed on the Stock Exchange of Hong Kong Limited in 1995.
6. The financial crisis of 1997-8 resulted in consolidation of the trade and the closure of less efficient companies. The trade was largely sustained by the sale of uncompleted units by

developers, who engaged estate agents to market and procure buyers for their properties. They paid commission for agents' services.

7. Also in 1997, the Estate Agents Ordinance was enacted and the Estate Agents Authority established. This brought the first formal regulation of the trade, administered by a statutory body. Changes in the trade produced by the legislation included the requirements that a practitioner must:
 - obtain a licence before he/she can practise in the trade;
 - use certain prescribed forms when acting in the sale of residential property;
 - comply with the provisions of the Estate Agents Ordinance and subsidiary legislation made under the Estate Agents Ordinance; and
 - be subject to disciplinary action in the event of breach of, or non-compliance with, these provisions.

These measures have gradually led to professionalisation of the estate agency trade.

8. The recovery of the property market at the end of 2003 has meant that the estate agency trade is flourishing again. At the end of June 2007, there were 21,198 individual licensees.

THE RELATIONSHIP BETWEEN THE REAL ESTATE AGENCY TRADE AND OTHER PROFESSIONS AND SECTORS

Government

9. Much of the relevant information required for a property transaction can be found by undertaking a search of the title to the land registered in the Land Registry. It is possible to conduct the land search and to obtain copies of documents relating to the search via the internet. The search will show the ownership of the land, registered incumbrances and any dealings such as leases for a term in excess of three years. A land registry search is thus the starting point and also the prime source of information.
10. Other information can be obtained from the Rating and Valuation Department, which collects government rent and rates. Form CR 109 (see also Part 7, paragraph 16), which gives details of tenancy agreements for domestic tenancies, is also lodged with this Department.
11. Copies of occupation permits can be obtained from the Buildings Department.
12. Information about land auctions, tenders and other disposals of properties by the Government can be obtained from the Lands Department.
13. The removal of alienation restrictions for the transfer of units under the Home Ownership Scheme (HOS) and the Tenants Purchase Scheme (TPS) is administered by the Housing Department.
14. Information about limited companies can be obtained from the Companies Registry.
15. Practitioners may from time to time have to attend to stamping of tenancy agreements, agreements for sale and purchase as well as assignments for their clients at the Stamp Office of the Inland Revenue Department.
16. The Estate Agents Authority, a statutory body and the regulatory body for the estate

agency trade, is looked at further in Part 2.

Solicitors

17. The formal sale and purchase agreement (SPA), assignment, and mortgage are generally prepared by solicitors acting for each party to a conveyancing transaction. Practitioners should also advise their clients to seek legal advice from solicitors. This may mean that a practitioner will have to liaise with solicitors at various stages of a property transaction.

Banks

18. Most purchasers will require mortgage finance for the purchase of a property. The majority of loans are provided by banks. Practitioners play an important role in disseminating information relating to mortgages to their clients and introducing them to banks for mortgages.

Developers

19. Prior to the financial crisis of the late 1990s, developers usually looked after the sale of their own properties. After the financial crisis, it became common practice for developers to appoint estate agents to market uncompleted units, paying substantial commission (sometimes equivalent to more than 2% of the sale price) for their services. This made developers important clients for estate agents.

Building and construction sector

20. Builders and contractors build properties; practitioners sell them. They all rely heavily on the healthy development of the property market. In this way, it could be said that they are inter-dependent in many ways.

Property management sector

21. The building manager of a property can give information relating to arrears of management fees, costs of renovation work for a building, the existence of any building order affecting a building, and other relevant matters. The quality of property management affects the value of properties, and therefore purchasers generally look for properties with good management. For these and other reasons, property management and the personnel involved in property management are relevant to the estate agency trade.

STATISTICS ON SUPPLY AND DEMAND IN THE PROPERTY MARKET

22. Each year the Rating and Valuation Department publishes the *Hong Kong Property Review*, which reviews the property market for the previous year. The book contains substantial information and statistics on completion, take-up, vacancies, prices and rents. It also contains forecast statistics on properties scheduled for completion, based on information obtained from developers and project architects, and verified by development progress inspections as well as enquiries made at the beginning of the forecast period. From these materials and the information available on the Rating and Valuation Department website, practitioners can ascertain the annual statistics relating to property market supply and take-up.
23. The following charts, reproduced from the *Hong Kong Property Review 2007* by the Rating and Valuation Department, show the completion, take-up and vacancy statistics for the various sectors of the property market from 2002-2006, with statistics on forecast completion of properties for 2007 and 2008. Permission for their insertion is given through the reference in the Foreword of the *Review*.

Private Domestic (Overall)

24. The Review notes:

This sector comprises independent domestic units with an exclusive cooking area, bathroom and toilet, but does not include village houses, quarters held by the People's Liberation Army, quarters attached to premises of utility companies, dormitories (including student dormitories in educational institutes), quarters held by the Hospital Authority, hotels and hostels. It should be noted that figures in 2001 and before include village houses. At the end of 2006, the overall stock was 1,069,000 units.

No. of units	2002	2003	2004	2005	2006	2007	2008
 落成量 Completions	31 050	26 400	26 040 [^]	17 320	16 580	12 740 [#]	16 010 [#]
 入住量 Take-up	18 240	22 490	31 400 [^]	17 450	16 400		
 空置量 Vacancy	65 270	68 780	64 250	63 540	62 670		
% ⁺	6.6	6.8	6.2	6.0	5.9		
<p>[^] 包括在年內由資助出售房屋轉為私人住宅的單位。 Including those private flats converted from subsidised sale flats during the year.</p> <p>⁺ 年底空置量佔總存量的百分率。 Vacancy at the end of the year as a percentage of stock.</p> <p>[#] 預測數字 Forecast figures</p>							

Private Office (Overall)

25. The Review notes:

The total stock of private offices at the end of 2006 stood at 9,812,800 m², comprising 59% Grade A, 25% Grade B and 16% Grade C offices.

Floor area ('000 m ²)	2002	2003	2004	2005	2006	2007	2008
落成量 Completions	166	299	279	34	108	249 [#]	342 [#]
使用量 Take-up	0.2	118 [^]	373	420	167 [^]		
空置量 Vacancy	1 175	1 334	1 240	854	753		
% ⁺	12.6	14.0	12.7	8.7	7.7		
<p>[^] 使用量數字是經過調整，以反映在年內樓宇的改建或總存量因落成量以外因素的增加。 The take-up figures had been adjusted to reflect building conversions or additional stock other than arising from new completions.</p> <p>⁺ 年底空置量佔總存量的百分率。 Vacancy at the end of the year as a percentage of stock.</p> <p>[#] 預測數字 Forecast figures</p>							

Private Commercial

26. The Review notes:

This sector comprises retail premises and other premises designed or adapted for commercial use, with the exception of purpose-built offices.

Stock in this sector at the end of 2006 was 10,395,500 m², with 30% of the total space in Hong Kong Island, 41% in Kowloon and 29% in the New Territories.

Floor area ('000 m ²)	2002	2003	2004	2005	2006	2007	2008
落成量 Completions	138	118	91	111	183	52 [#]	125 [#]
使用量 Take-up	-110	54 [^]	66	139	176 [*]		
空置量 Vacancy	991	1 002	1 019	980	1023		
% ⁺	10.7	10.8	10.8	10.3	9.8		
<p>數字從2006年開始包括領匯房地產投資信託基金的物業。 Figures from 2006 onwards include properties owned by The Link REIT.</p> <p>[^] 在年內因樓宇改建關係而調整使用量數字以反映此項改變。 The take-up figure had been adjusted to reflect building conversions which took place during the year.</p> <p>[*] 2006年的使用量數字是經過調整，包括「領匯」物業。 The take-up figure in 2006 has been adjusted to include that attributed to The Link REIT properties.</p> <p>⁺ 年底空置量佔總存量的百分率。 Vacancy at the end of the year as a percentage of stock.</p> <p>[#] 預測數字 Forecast figures</p>							

Private Flatted Factories

27. The Review notes:

This category comprises flatted factories and ancillary office accommodation.

Stock in this sector at the end of 2006 was 17,396,500 m², and was distributed evenly between the urban areas and the New Territories.

Floor area ('000 m ²)	2002	2003	2004	2005	2006	2007	2008
 落成量 Completions	3	0	1	0	0	16 [#]	73 [#]
 使用量 Take-up	82	-107	329	219	-42		
 空置量 Vacancy	1 840	1 844	1 512	1 273	1 250		
% ⁺	10.5	10.6	8.7	7.3	7.2		
<p>+ 年底空置量佔總存量的百分率。 Vacancy at the end of the year as a percentage of stock.</p> <p># 預測數字 Forecast figures</p>							

Private Industrial/Office

28. The Review notes

This category comprises floor space in developments designed for industrial/office use, and certified for occupation as such.

The 2006 year-end stock stood at 612,800 m², widely distributed throughout the territory. The districts of Sham Shui Po, Kwun Tong and Kwai Tsing accounted for more than 70% of the total space.

Floor area ('000 m ²)	2002	2003	2004	2005	2006	2007	2008
 落成量 Completions	0	15	0	4	0	0 [#]	4 [#]
 使用量 Take-up	15	-2	23	11	18		
 空置量 Vacancy	75	91	68	61	42		
% ⁺	12.5	14.8	11.1	9.8	6.9		
<p>+ 年底空置量佔總存量的百分率。 Vacancy at the end of the year as a percentage of stock.</p> <p># 預測數字 Forecast figures</p>							

ROLE AND FUNCTIONS OF REAL ESTATE AGENTS

29. The services performed by practitioners include:
- marketing a property;
 - introducing a property to a client;
 - introducing to a client persons who wish to buy or sell or let a property;
 - arranging viewing and inspection of a property;
 - obtaining and supplying information about a property to a client;
 - negotiating the terms of sale or purchase and tenancy; and
 - drafting and arranging the signing of a preliminary agreement for sale and purchase or a preliminary tenancy agreement.
30. In the case of newly built units, the usual sale is to a “walk-in” client who has not been introduced to the unit by a practitioner but who is interested in the unit having seen the developer’s advertisements. The purchaser may only view the show flat, having received property information, usually supplied by the developer, and which is the same for all units in the development. There is little or no room for negotiation of the terms of sale, and usually the SPA cannot be amended, in particular, developments within the Consent Scheme for residential properties. However, if practitioners act for both the developer and the purchaser, they will be performing the full services of estate agents as in the secondary market.
31. In the secondary market, practitioners perform all the usual services of estate agents. After receiving instructions from vendor-clients and landlord-clients, the agent has to market and procure purchasers and tenants for the properties. The agent then:
- has to choose suitable properties for consideration by a purchaser-client and a tenant-client;
 - arranges for viewing and inspection;
 - obtains and supplies information about the properties to both vendor and purchaser or landlord and tenant;
 - relays the proposed terms of sale and purchase and letting to the parties in the course of negotiations between the parties; and
 - drafts and arranges the signing of preliminary agreements for sale and purchase or preliminary tenancy agreement.

THE ESTATE AGENTS ORDINANCE (EAO)

32. Prior to the enactment of the EAO in 1997, there was no legislation regulating the operation of estate agents. A person could operate an estate agency merely by obtaining a business registration certificate.
33. By the early 1990s, the unethical and unlawful conduct and practices of many estate agents led to many complaints being made to the Consumer Council. These included estate agents:

- acting for both parties without their clients' consent;
 - acting for both parties without informing either of the amount of commission received from the other;
 - selling properties as confirmors to clients without disclosing the agents' interest in the transaction;
 - misrepresenting details of information about the property;
 - failing to protect clients' interests;
 - not carrying out instructions;
 - requiring clients to enter into unfair estate agency agreements; and
 - generally offering services of low quality.
34. In response to the community's growing concern, the Government appointed a Working Group on the Regulation of Estate Agents in November 1993 to examine the trade and its practices.
35. The Working Group produced a report in August 1994 recommending, among other things, the introduction of a licensing system to regulate the trade and the establishment of an independent, statutory body, the Estate Agents Authority ("the Authority"), to oversee and implement the regulatory/licensing system. The recommendations received wide support from the community and the Government decided to introduce the appropriate legislation to effect the proposal. After a series of legislative efforts, the EAO was passed by the Legislative Council on 21 May 1997, and the Authority established on 1 November 1997.

PROFESSIONALISM OF ESTATE AGENCY TRADE – COMMUNITY EXPECTATIONS

36. Buying a property invariably involves a large amount of money and is likely to be one of the most important purchases made by any individual in Hong Kong. For these reasons, consumers' interests require protection. Both the vendor and the purchaser would expect an estate agent:
- to have sufficient knowledge of the law, and other relevant matters relating to property transactions;
 - to supply clients with correct and accurate property information;
 - to protect the interests of clients in carrying out their instructions with due care and due diligence; and
 - not to exert undue influence or coercion, and to give clients sufficient time and freedom to make decisions about a purchase.

In addition, a client would expect to have a right to be heard, to complain, and to seek redress in the event of unsatisfactory service being provided.

37. Many of these expectations are satisfied by the increasing professionalism in real estate agency practices. This is due to the EAO and the establishment of the Authority, which have resulted in a regulatory system. Relevant factors include:

- an estate agent is required to pass a qualifying examination, obtain certain educational qualifications, and be “fit and proper” before being eligible to apply for a licence;
- when dealing with residential properties, an estate agent is required to supply clients with property information through a prescribed form, and to enter into an estate agency agreement, also through a prescribed form;
- an estate agent is required to comply with the provisions of the EAO and its subsidiary legislation, the Code of Ethics, and other laws in the performance of his duties;
- an estate agent in breach of the provisions of the EAO or its subsidiary legislation is subject to disciplinary action; and
- from May 2005, estate agents have been encouraged to participate in the voluntary Continuing Professional Development Scheme introduced by the Authority.

REFERENCE

馮邦彥(2001) *A Century of Hong Kong Real Estate Development* (《香港地產業百年》) . Hong Kong: Joint Publishing.