

積極參與執法

Proactive in  
Law Enforcement





AGENCY

# 積極參與執法

## Proactive in Law Enforcement

### 操守與守則

#### 守則簡介

監管局不時檢視業界的執業手法及發出執業通告，並提供指引予業界依循，使持牌人能夠遵從法律規定的責任。年內，監管局共發出了四份執業通告。

為向持牌人提供更多處理非住宅物業的指引，監管局就有關處理非住宅物業買賣或租賃的若干重要事項的妥善執業方式及措施，發出了一份執業通告。指引涵蓋的範圍包括樓面面積資料、許可用途，提供物業資料、閣仔及閣樓，以及未建成樓宇內的非住宅物業或樓宇內未完成分間的非住宅物業等。另外，監管局亦發出一份題為「通告的適用範圍 — 非住宅物業」的執業通告，以述明某些已發出的執業通告之適用範圍。

#### 發出執業通告

雖然香港境外物業之銷售不在監管局的規管範疇，但鑑於公眾的高度關注，局方為參與香港境外未建成物業銷售的持牌人發出相關執業通告，提供一系列指引讓業界遵循，從而提升業界的專業水平，為消費者提供最佳的保障。指引包括要求持牌地產代理就賣方及有關物業取得盡職審查報告；並須就有關海外買家的重要資料取得由物業所在地執業律師發出的法律意見；就廣告及宣傳物品所載資料的準確性及完整性取得賣方的明確書面批署；以及向買家提供盡職審查報告及法律意見的副本、書面警告聲明及包含監管局所有要求資料的銷售資料單張。

### Ethics and Regulations

#### Introduction of regulations

The Estate Agents Authority (“EAA”) reviews the practices of the trade and issues practice circulars to provide guidelines and directives on estate agency practice from time to time, to enable licensees to comply with their duties under the law. In the year, four circulars were issued.

With a view to providing further guidance for licensees handling non-residential properties, the EAA issued a practice circular setting out detailed guidelines on certain important issues pertaining to the proper practice and measures in handling the sale and purchase or leasing of non-residential properties. It covers such areas like floor area information, permitted use, provision of information relating to property, cocklofts and mezzanine floors, and uncompleted building or uncompleted subdivision of any part of a building. Separately, the EAA also issued a practice circular on “Application of Circulars — Non-residential Properties” to clarify the scope of application of certain circulars already issued by the EAA.

#### Issuance of practice circulars

In light of increasing public concern about purchasing properties outside Hong Kong which is not within the regulatory regime of the EAA, a practice circular for licensees participating in the sale of uncompleted properties outside Hong Kong (“UPOH”) was issued. It sets out a series of guidelines for compliance by licensees participating in the sale of UPOH, with a view to enhancing the professional standard of the trade so as to provide consumers with greater protection. The guidelines include requirements for licensees to obtain a due diligence report on the vendor and the related UPOH; to obtain a legal opinion on material information for foreign purchasers according to the laws of the place where the UPOH are situated; to obtain the vendor’s express endorsement in writing of the accuracy and completeness of the information contained in advertisements and promotional materials; and to provide purchasers with a copy of the due diligence report and legal opinion, a written warning statement and a sales information sheet that contains all the necessary information required by the EAA.

就立法會通過《2018年打擊洗錢及恐怖分子資金籌集(金融機構)(修訂)條例》(主體條例改稱《打擊洗錢及恐怖分子資金籌集條例》)，將指定交易下的法定盡職審查及備存記錄規定擴展至指定非金融行業(包括地產代理)，監管局發出一份相關的執業通告，為持牌人在香港參與涉及為客戶買賣地產交易時提供導引。根據這份執業通告，地產代理必須採取所有合理措施以減低洗錢及恐怖分子籌集資金的風險，並確保已有適當的預防措施。為符合《打擊洗錢及恐怖分子資金籌集條例》的相關規定，地產代理公司及其高級管理層應制定並實施各項政策、程序及管控措施，包括風險評估、盡職審查措施、持續監察客戶、舉報可疑交易、備存紀錄及職員培訓。此執業通告亦刊登於憲報中。為協助業界更了解及遵守該執業通告的規定及《打擊洗錢及恐怖分子資金籌集條例》的相關條文，監管局網站提供了一套「問與答」、「身分核實表格範例」及「持牌人的清單」供業界參考。

## 投訴與巡查

### 處理投訴與查詢

監管局於2017/18年度接獲425宗投訴，較2016/17年度的477宗減少了11%。然而，有關一手住宅物業銷售的投訴較2016/17年度的74宗，輕微上升至2017/18年度的80宗。425宗的投訴指稱主要涉及不妥善處理臨時買賣合約(或臨時租約)、提供不準確或具誤導性的物業資料，以及發出違規廣告。至於涉及一手住宅物業銷售最常見的投訴則包括：未有履行回贈承諾、發出違規廣告及提供具誤導性按揭資料。



Subsequent to the passing of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Ordinance 2018 (with the principal ordinance renamed as the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (“AMLO”)) at the Legislative Council, which extends the statutory customer due diligence and record-keeping requirements in specified transactions to designated non-financial businesses and professions (including estate agents), the EAA issued a relevant practice circular to provide guidance for licensees when they are involved, in Hong Kong, in a transaction concerning the buying or selling of real estate for a client. According to the practice circular, estate agents must take all reasonable steps to mitigate the risk of money-laundering and terrorist financing as well as to ensure appropriate preventive measures are in place. To fulfill the relevant requirements in the AMLO, estate agency companies and their senior management should establish and implement various policies, procedures and monitoring measures, including risk assessment, customer due diligence measures, continuous monitoring of customers, suspicious transactions reporting, record-keeping and staff training. The practice circular was also published in the *Gazette*. To assist the trade to better understand and comply with the requirements of the practice circular and the relevant provisions of the AMLO, a set of related “Questions and Answers”, “Sample Identity Verification Forms” and a “Checklist for Licensees” were provided at the EAA website for the trade’ reference.

## Complaints and Inspections

### Complaints and enquiries handling

In 2017/18, the EAA received 425 complaints, a decrease of 11% from 477 complaints in 2016/17. However, the complaints concerning the sale of first-hand residential properties had a slight increase from 74 cases in 2016/17 to 80 cases in 2017/18. Key allegations of the 425 complaints included mishandling the provisional agreement for sale and purchase (or the provisional tenancy agreement), providing inaccurate or misleading property information and issuing non-compliant advertisement. The most common complaints related to first-hand residential properties included failure to honour rebate promises, issuance of non-compliant advertisements, and provision of misleading mortgage information.

監管局於2017/18年度接獲425宗投訴，較2016/17年度的477宗減少了11%。

In 2017/18, the EAA received 425 complaints, a decrease of 11% from 477 complaints in 2016/17.

## 積極參與執法 Proactive in Law Enforcement

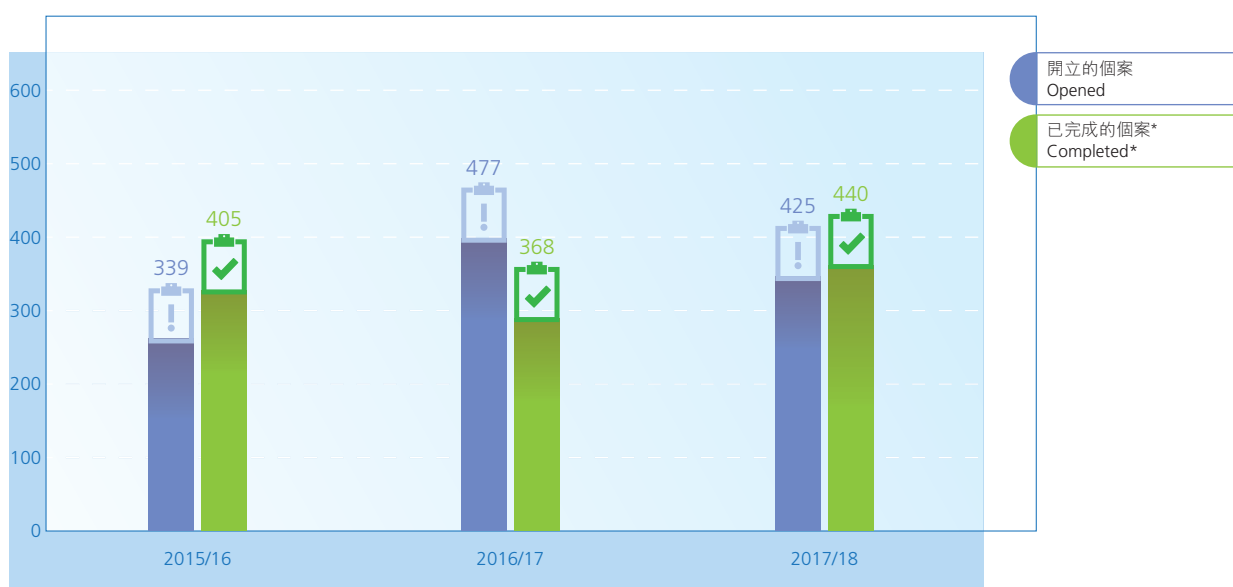
為進一步加強處理投訴的工作成效，以及改善公眾與持份者對監管局在處理投訴上的服務承諾的認知，局方已就合併調查和紀律研訊所需時間的服務承諾進行檢討研究。在2018年7月，監管局將會就整個投訴處理程序推出全新的服務承諾，以涵蓋由展開投訴調查至舉行首次紀律研訊的整個過程。在新的服務承諾下，當有關的個案會轉介予紀律研訊部作紀律研訊，若屬快速個案，將會從展開調查起計六個月內進行首次紀律研訊；若屬一般個案，將為10個月內；而屬複雜個案的，則為13個月內。由於經修訂的全新服務承諾運作簡單，公眾及持份者將更易於理解。

With a view to further enhancing the work on complaint handling and the perception of the public and stakeholders on the EAA's performance pledge on complaint processing time, a study had been done to review the attainment profile of combining the time taken under the investigation pledge and the disciplinary proceedings pledge. In July 2018, the EAA will launch a new single performance pledge on complaint handling process from the start of a complaint investigation to the conduct of the first inquiry hearing proceedings. Under the new performance pledge, from the time of commencement of investigation to the first disciplinary inquiry hearing will be within six months for Fast Track Cases, within 10 months for Normal Cases, and within 13 months for Complex Cases respectively, where the case is referred to the Disciplinary Proceedings Section for conducting inquiry hearing. The new revised performance pledge will present a clearer picture to the public and stakeholders as the pledge is based on a simple approach.

除了處理投訴，監管局亦在2017/18年度處理了6,064宗有關地產代理執業手法的查詢，並根據查詢採取相關的跟進行動。

Apart from complaints, the EAA also handled 6,064 enquiries on estate agency practices in 2017/18 and took follow-up actions in response to those enquiries.

### 投訴個案 Complaint Cases

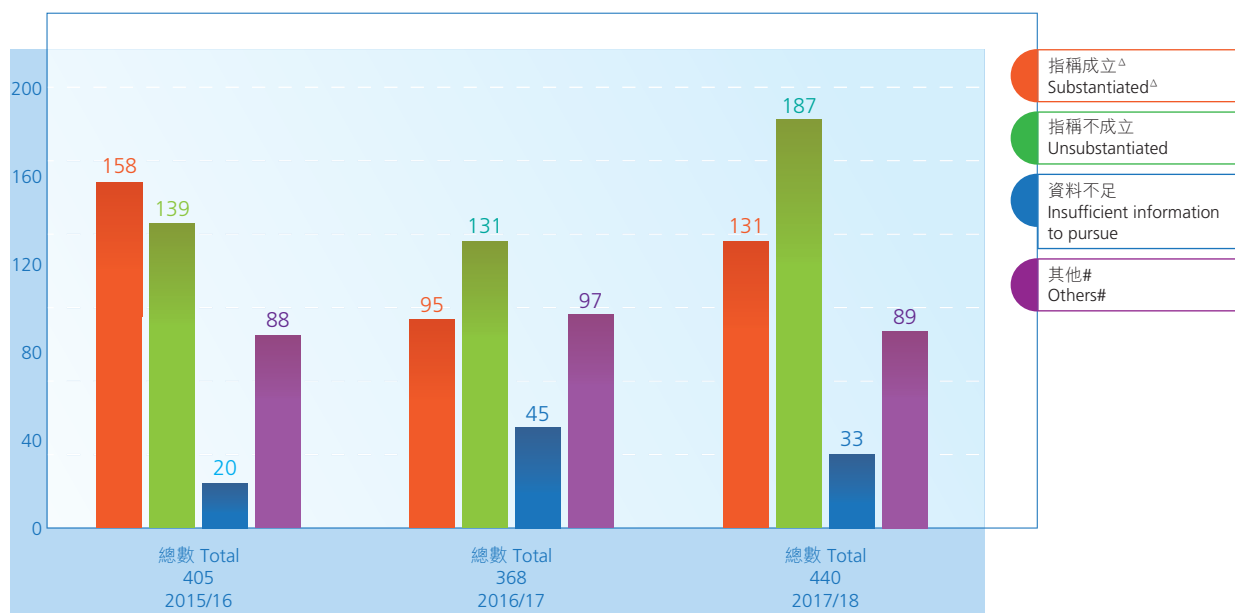


\* 年內完成的個案部分為往年接獲的個案，當中包括表面證據成立並轉介予紀律委員會處理的個案，以及由投訴及行動部處理的表面證據不成立的個案。

\* Some cases completed in a year were brought forward from previous years. The figures include prima facie cases referred to and dealt with by the Disciplinary Committee and non-prima facie cases disposed of by the Complaints and Enforcement Sections.

## 已完成的個案結果\*

## Results of Cases Completed\*



\* 年內完成的個案部分為往年接獲的個案，當中包括表面證據成立並轉介予紀律委員會處理的個案，以及由投訴及行動部處理的表面證據不成立的個案。

△ 如個案中所涉及任何一項指稱被分類為「指稱成立」，該已完成處理的個案即會被歸類為「指稱成立」。

# 包括擱置調查、取消投訴或因其他原因而終止調查的個案。

\* Some cases completed in a year were brought forward from previous years. The figures include prima facie cases referred to and dealt with by the Disciplinary Committee and non-prima facie cases disposed of by the Complaints and Enforcement Sections.

△ A completed case will be classified as "Substantiated" if any of the allegations involved therein has been concluded as "Substantiated".

# Include cases which were curtailed, withdrawn or closed due to other reasons.

## 巡查及調查

年內，監管局繼續於地產代理商舖及一手物業銷售地點維持執法。巡查期間，行動部定期提醒前線從業員要遵守新執業通告的要求，以提高其專業和操守水平，並同時確保他們嚴格遵守規定。局方亦監察從業員所刊登的網上及印刷廣告。監管局透過適時巡查網上物業平台及相關廣告，讓局方能迅速地發現違規的個案，繼而採取適時的執法行動。

由於公眾對購買境外物業的興趣日增，監管局定期進行巡查，了解持牌人是否有遵守境外物業銷售的執業指引。局方亦積極視察境外物業的宣傳地點，了解持牌地產代理所採用的各種銷售策略，在有需要時透過「放蛇」行動，以暗中偵查有否任何不當行為，例如在宣傳這些物業時作出誤導陳述。

## Compliance inspections and investigations

During the year, the EAA continued to maintain its enforcement effort on places of estate agency business and promotion sites of first sale property developments. During the compliance visits, the Enforcement Team regularly reminded the frontline practitioners to observe and comply with the requirements of the newly issued practice circulars in a bid to raise their professional and ethical standards, while at the same time, to ensure a high level of compliance. We also monitored online and printed advertisements issued by practitioners. Appropriate cyber patrols on property online portals and related advertisements enabled us to promptly identify breaches of the regulations and guidelines and take timely enforcement actions.

With the public's increasing interests on buying overseas properties, the EAA regularly conducts inspections to see if licensees abide by the practice guidelines on marketing overseas properties. We also proactively visit overseas properties promotional venues to understand the various sales tactics used by the licensed estate agents, and use covert techniques if and when necessary to detect any malpractice such as misrepresentation when promoting these properties.

## 積極參與執法 Proactive in Law Enforcement

香港作為國際財務特別行動組織的成員，有責任實施組織所建議的措施，包括打擊洗錢及恐怖分子資金籌集。地產代理業被視為打擊洗錢及恐怖分子資金籌集威脅的重要把關者，這些措施亦適用於這個行業。

自2018年3月起，監管局一直與地產代理業界在實施反洗錢及恐怖分子資金籌集上緊密合作。至今，行動部已巡視地產代理商舖25次，以了解他們有否遵從反洗錢及恐怖分子資金籌集執業通告的規定。另外，監管局亦會進行跟進的監察和審慎的巡視工作，讓地產代理業界更進一步認識和了解洗錢和為恐怖分子籌集資金所帶來的威脅。

年內，監管局共進行了3,048次巡查，當中1,423次是巡查一手樓盤銷售點，其餘1,625次則是巡查地產代理商舖。期內，局方亦就網上廣告進行了672次抽查，並就網上物業平台進行了396次抽查。

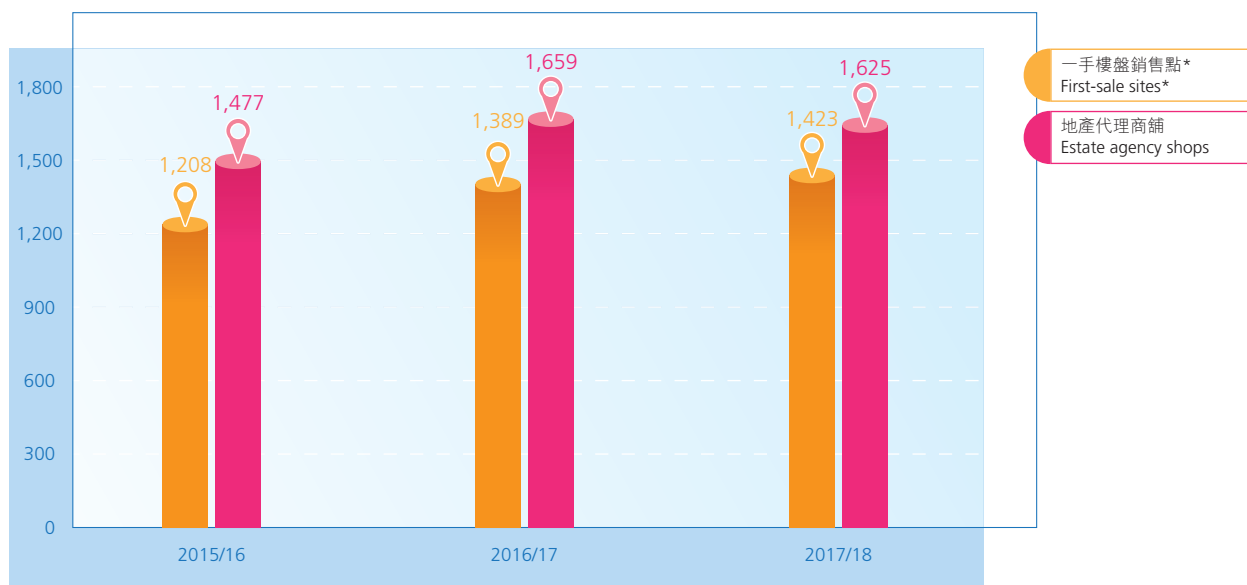
As a member of the Financial Action Task Force, Hong Kong has an obligation to implement the recommendations of the task force, including measures to counter money laundering and terrorism financing. These measures are applicable to the estate agency sector, which is one of the industries identified as an important gatekeeper to counter money laundering and terrorist financing threats.

Since March 2018, the EAA has been working closely with the estate agency trade on the implementation of measures to prevent money laundering and terrorist financing. The Enforcement Team has conducted 25 inspections so far on estate agency shops to see if they are complying with the practice circular on Anti-Money Laundering and Counter-Terrorist Financing Requirement. Follow-up off-site monitoring and prudential visits will be conducted to further enhance the estate agency trade's awareness and understanding of the money laundering and terrorist financing threats.

During the year, the EAA conducted a total of 3,048 compliance inspections, of which 1,423 were at first-sale sites and 1,625 at estate agency shops. Some 672 spot checks on online advertisements and 396 on online property portals were also carried out during the period.

### 巡查行動

#### Compliance Inspections



\* 包括樓盤所在處、樓盤銷售處及其附近。

\* Include development sites, sales offices and vicinity areas.

在進行有關巡查和抽查後，監管局共開立了79宗個案進行調查，當中有33宗在巡查一手樓盤銷售地點時發現，15宗在巡查地產代理商舖時發現，21宗則為網上及報章抽查個案，另有10宗涉及其他性質。在巡查期間發現涉及違反《地產代理條例》及其附屬法例的常見違規事項包括：發出違規廣告、未有於一手樓盤銷售點佩戴用作識別身份的地產代理證及／或職員證，以及沒有管有物業資料。

Subsequent to these inspections and spot checks, 79 enforcement cases were opened, of which 33 cases arose from first-sale inspections, 15 from estate agency shop visits, 21 cases from online and newspaper patrols and 10 cases of a miscellaneous nature. Compliance failures, which constitute violations of EAO and its subsidiary legislations, commonly revealed during the inspection process include issuing non-compliant advertisements, failing to wear Estate Agent card and/or staff card for identification purpose at first-sale sites, and failing to possess property information.

## 執行個案

## Enforcement Cases

個案數目 Number of Cases	2015/16	2016/17	2017/18
開立的個案 Opened	78	71	79
已完成的個案 Completed*	50	75	77

\* 年內完成的個案部分為往年接獲的個案，當中包括表面證據成立並轉介予紀律委員會處理的個案，以及由投訴及行動部處理的表面證據不成立的個案。

\* Some cases completed in a year were brought forward from previous years. The figures include prima facie cases referred to and dealt with by the Disciplinary Committee and non-prima facie cases disposed of by the Complaints and Enforcement Section.

### 對涉嫌向監管局作出虛假聲明或提供虛假資料的持牌人／牌照申請人的調查

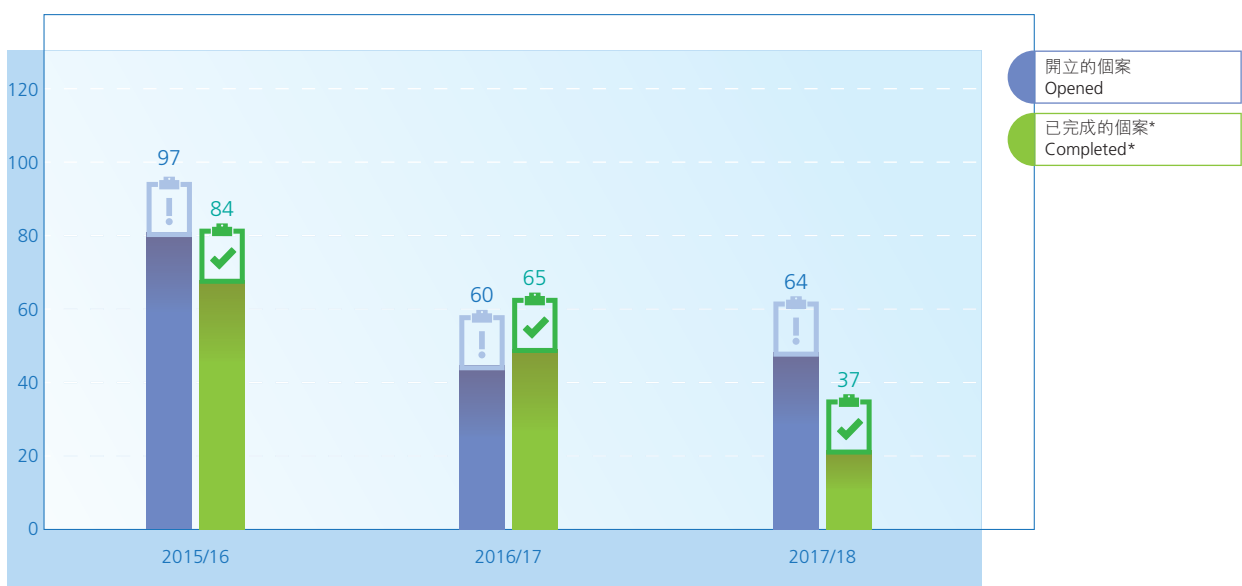
在申請牌照或續牌時，倘若作出虛假或誤導性的聲明或提供虛假或具誤導性的資料，均屬違法行為。在2017/18年度，監管局調查了64宗涉嫌在申請牌照或續牌時作出虛假聲明或提供虛假資料的個案。

### Investigations into licensees/licence applicants suspected of making false statements or furnishing false information to the EAA

It is an offence to make a false or misleading statement or furnish false or misleading information when making applications for the grant or renewal of licences. In 2017/18, investigations were conducted into 64 licence applications in which the applicants were suspected of making false statements or furnishing false information in their licence application or licence renewal process.

## 個案數目

## Number of Cases



\* 年內完成的個案部分為往年接獲的個案。

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



## 積極參與執法 Proactive in Law Enforcement

### 紀律行動

#### 紀律研訊

倘若監管局行政總裁有理由相信任何持牌人沒有遵守《地產代理條例》及／或其附屬法例；或沒有資格持有或繼續持有牌照；或沒有遵守附加於其牌照上的任何指明的條件，行政總裁可向紀律委員會提出呈述，以決定是否就有關個案進行研訊。

紀律委員會是一個根據《地產代理條例》成立的常設委員會，負責接受、考慮及查究投訴以及行政總裁所呈述的個案。倘若紀律委員會在紀律研訊後認為有關的投訴或呈述成立，可行使紀律制裁權力，當中包括訓誡或譴責有關持牌人，將條件附加於其牌照上或更改附加於其牌照上的條件，暫時吊銷或撤銷其牌照，判處罰款以及作出支付費用的命令。

在2017/18年度，紀律委員會共判決了229宗個案，其中226宗(佔98.7%)的指稱成立。結果，共有232名持牌人被紀律處分，其中153名為個人持牌人<sup>1</sup>，79名為公司持牌人。

### Disciplinary Actions

#### Inquiry hearings

If the Chief Executive Officer (“CEO”) of the EAA has reasons to believe that a licensee has failed to comply with the EAO and/or its subsidiary legislation; or is not eligible to hold or continue to hold a licence; or has failed to comply with a specified condition attached to his licence, the CEO shall make a submission to the Disciplinary Committee for consideration if an inquiry hearing should be conducted.

The Disciplinary Committee, a standing committee established under the EAO, receives, considers and conducts inquiries into complaints and submissions by the CEO. If the Disciplinary Committee, after conducting an inquiry hearing, is satisfied that the complaint or submission is well-founded, it may exercise disciplinary powers including admonishing or reprimanding the licensee concerned, attaching/varying specified conditions attached to his licence, suspending/revoking his licence, imposing a fine and making a costs order.

In 2017/18, the Disciplinary Committee adjudicated 229 cases, of which 226 were substantiated (i.e. 98.7%). As a result, a total of 232 licensees were disciplined, among whom 153 were individual licensees<sup>1</sup> and 79 company licensees.



模擬紀律研訊圖片。

A staged inquiry hearing.

<sup>1</sup> 包括地產代理公司的獨資經營者／合夥人。

<sup>1</sup> Including sole-proprietors and partners of estate agency firms.

同期，紀律委員會暫時吊銷了30個牌照，吊銷期由七天至兩個月不等。被處分的持牌人涉及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，以及為客戶提供服務時沒有盡量小心和盡一切應盡的努力。

共有168名持牌人被罰款，金額由500元至120,000元不等。

### 公布研訊的裁決理由

為提高透明度，監管局自2017年2月起在其網站上公布紀律委員會所進行的研訊的裁決理由。

公布裁決理由不僅讓地產代理業界進一步了解監管局的紀律裁決，還讓持牌人對如何遵守《地產代理條例》及／或其附屬法例有更深入的理解，以避免日後出現類似的投訴。此外，公布監管局的規管行動及其背後的原因，亦有助維持公眾對監管局擔任規管角色的信心。

During the same period, 30 licences were suspended for periods ranging from seven days to two months. Licensees disciplined were found to have been engaged in unprofessional conduct such as making misrepresentations, failing to protect and promote the interests of their clients, or failing to exercise due care and due diligence.

A total of 168 licensees were fined, with the fines ranging from \$500 to \$120,000.

### Publication of reasons for the decisions of inquiry hearings

For achieving greater transparency, the EAA has since February 2017 published on its website the reasons for the decisions of the inquiry hearings conducted by the Disciplinary Committee.

The publication of the reasons for the decisions enables the estate agency trade to have a better understanding of the EAA's disciplinary decisions. It also gives licensees an opportunity to learn about how to comply with the EAO and/or its subsidiary legislation so that similar complaints may be prevented in the future. Moreover, by demonstrating what regulatory action is being or has been taken and the reasons behind, public confidence in the regulatory role of the EAA can also be maintained.

### 已舉行並作出裁決的紀律研訊次數

#### Number of Inquiry Hearings with Decision Handed Down

年度 Year	2015/16	2016/17	2017/18
研訊次數 Number of hearings	186	187	229

## 積極參與執法 Proactive in Law Enforcement

2017/18 年度常見違規事項 * Common Types of Non-compliance in 2017/18*	指稱宗數 Number of Allegations
1. 發出虛假或誤導性廣告；未獲賣方事先書面同意而發出廣告；發出違反賣方指示的廣告 Issuing a false or misleading advertisement; advertising without vendor's prior written consent; advertising in contravention of vendor's instruction	50
2. 持牌人以個人而非地產代理公司的身份，發出有關一手住宅樓盤的廣告 Issuing an advertisement concerning a first-hand residential development in the licensee's personal capacity instead of in the capacity of an estate agency company	48
3. 提供／提出提供貸款予一手樓盤的準買家 Offering/making a loan to a prospective purchaser of a first-hand property	22
4. 向客戶提供錯誤的物業或交易資料；未有查核提供予客戶的物業或交易資料的準確性 Providing wrong property or transaction information to clients; failure to verify the accuracy of property or transaction information provided to clients	20
5. 在推銷一手樓盤時，沒有佩戴地產代理證及／或職員證 Failure to wear Estate Agent card and/or staff card when promoting the sale of first-hand properties	19
6. 在廣告提供物業的實用面積時未有遵守監管局所發出的指引 Failure to comply with the guidelines issued by the EAA when providing the saleable area of the property concerned in the advertisement	18
7. 未有在安排租賃前核實業主的身份；未有確保代表簽署臨時買賣協議／租約／臨時租約／地產代理協議的人士已獲賣方／出租方或買方／租客正式授權 Failure to ascertain the ownership of the property before arranging it for rent; failure to ensure that the signatory was duly authorised by the vendor/lessor or purchaser/tenant to sign the provisional agreement for sale and purchase/tenancy agreement/provisional tenancy agreement/ estate agency agreement	17
8. 未有按照訂明表格的指示填寫該表格，或未有將已填妥的訂明表格交予有關人士，或訂明表格未有附上該表格內所指明或訂明的文件；未有在地產代理協議中訂明有效期條款 Failure to complete a prescribed form in accordance with the directions specified in the form or supply a completed prescribed form to a person or attach to a prescribed form such documents as directed or specified in the form; failure to stipulate the term of validity period in the estate agency agreement	16
9. 未有與客戶訂立地產代理協議 Failure to enter into an estate agency agreement with clients	15
10. 未有履行向客戶作出的現金回贈承諾及／或以書面形式列明有關承諾 Failure to give and/or set out in writing the cash rebate as promised to clients	9

\* 部分紀律研訊個案或涉及超過一項違規事宜。

\* There could be more than one type of non-compliances in some inquiry hearing cases.

向持牌人或前持牌人採取的行動 * Actions Taken Against Licensees or Former Licensees*	2015/16	2016/17	2017/18
有關的持牌人或前持牌人人數 Number of licensees or former licensees involved	368	324	359
行動性質 <sup>1</sup> Type of actions <sup>1</sup>			
訓誡／譴責 Admonishment/reprimand	193	192	233
罰款 Fine	123	132	168
在牌照上附加條件 <sup>2</sup> Attachment of conditions to licence <sup>2</sup>	223	177	170
暫時吊銷牌照 Suspension of licence	22	25	31
撤銷牌照 Revocation of licence	56 <sup>△</sup>	29 <sup>△</sup>	30 <sup>△</sup>

\* 《地產代理條例》的權力而作出的判決。當中有部份可能不屬於紀律性質。部份是往年展開調查的個案。

\* These actions were taken pursuant to powers under the EAO. Some actions may be disciplinary in nature and others not. Some cases were carried over from previous years.

<sup>1</sup> 在部分個案中，會對同一持牌人或前持牌人採取超過一項行動。

<sup>1</sup> In some cases more than one action was imposed on the same licensee or former licensee.

<sup>2</sup> 部分條件於批出牌照時附加，其餘則隨後附加。

<sup>2</sup> Some conditions were attached upon the granting of licences and others attached thereafter.

<sup>△</sup> 這些撤銷牌照的個案均由牌照委員會裁定，理由是持牌人不再符合相關的發牌條件。

<sup>△</sup> These cases were decided by the Licensing Committee on the ground that the licensees concerned no longer met the relevant licensing requirements.