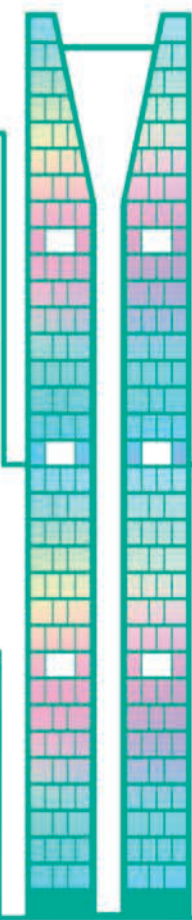


積極執法

Proactive in
Law Enforcement





操守與規例

規例簡介

根據《地產代理條例》成立的監管局，獲賦予的權力包括規管與管制地產代理及營業員的執業，及採取其認為適當或需要的行動，以促使地產代理及營業員行事持正及稱職，或維持或提升他們的地位。從事地產代理工作之地產代理及營業員必須遵從所有《地產代理條例》及其附屬法例、由監管局發出的《操守守則》及執業通告內的所有適用指引。

發出執業通告

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，使持牌人能夠遵從他們在法律下的責任。

由於現有執業通告所載列的指引足以涵蓋於2022/23年度出現之執業問題，局方於年內並無發出新的執業通告。

發出致持牌人函件

為提醒持牌人在從事地產代理工作時需遵守相關法律及規例，以及提醒他們留意與其執業相關的最新政府措施及／或文件，監管局在年內向持牌人共發出了六封致持牌人函件，其中一些例子如下列所述。

因應行政長官在2022年施政報告中宣布，向合資格外來人才退還印花稅，監管局發出致持牌人函件，提醒持牌人有關事宜以及建議他們參考稅務局提供的常見問題和說明例子。

考慮到財務行動特別組織（「特別組織」）發表的一份有關呼籲各方對高風險司法管轄區採取行動的聲明，監管局發出致持牌人函件，提醒持牌人特別組織決定呼籲其成員和其他司法管轄區因應緬甸所帶來的風險對其採取與風險相稱的更嚴格盡職審查措施。

Ethics and Regulations

Introduction of regulations

The EAA established under the Estate Agents Ordinance (“EAO”) is tasked to, inter alia, regulate and control the practice of estate agents and salespersons and to take such actions as the EAA considers appropriate or necessary to promote the integrity and competence amongst, or maintain or enhance the status of, estate agents and salespersons. Estate agents and salespersons must observe and comply with all the relevant provisions in the EAO and its subsidiary legislation, the *Code of Ethics* and all the applicable guidelines set out in the practice circulars issued by the EAA when they carry out estate agency work.

Issuance of practice circulars

The EAA reviews the practices of the trade and issues practice circulars to provide guidelines on estate agency practice from time to time, to enable licensees to comply with their duties under the law.

As the guidelines set out in existing practice circulars were sufficient to cover issues that arose in 2022/23, no new practice circulars were issued by the EAA during the year.

Issuance of Letters to Licensees

With a view to reminding licensees of the requirements under the relevant laws and regulations when carrying out estate agency work and to draw their attention to the updates on certain Government measures and/or documentation which may be relevant to their practices, the EAA issued six Letters to Licensees during the year, of which some are highlighted below.

In view of the announcement by the Chief Executive in his 2022 Policy Address on the stamp duty refund for eligible incoming talents, the EAA issued a Letter to Licensees to draw their attention to the subject matter and referred them to the related FAQs and illustrative examples provided by the Inland Revenue Department.

In consideration of the statement on High-Risk Jurisdictions subject to a Call for Action issued by the Financial Action Task Force (“FATF”), the EAA issued a Letter to Licensees to draw their attention to the FATF’s decision to call on its members and other jurisdictions to apply enhanced due diligence measures proportionate to the risk arising from Myanmar.

由於有四間地產代理公司發出內部指引要求其持牌員工於一手物業銷售中須遵守公司收取淨佣金不少於2%的指示，而引起與競爭有關的關注，監管局發出致持牌人函件，提醒持牌人不得訂立任何協議或經協調做法以達致妨礙、限制或扭曲競爭的目的或效果。

投訴與巡查

處理投訴與查詢

於2022/23年度，監管局共接獲254宗投訴，較2021/22年度的285宗投訴減少11%。年內，局方接獲的254宗投訴的指稱主要涉及發出違規廣告、不妥善地處理臨時買賣合約（或臨時租約），以及提供虛假或具誤導性的租金回報資料。

總體而言，大多數的投訴類別均有所減少，包括發出違規廣告的投訴宗數由2021/22年度的96宗減少至2022/23年度的59宗。網上廣告投訴由2021/22年度的87宗減少至2022/23年度的52宗，佔2022/23年度59宗廣告投訴的88%。目前，網上廣告仍然是物業市場的主流，監管局已持續加大執法行動力度，透過資訊科技的協助，對網上物業平台及社交媒體進行合規檢查及網絡監察，以抽查及監察網上廣告。

2023年第一季度，由於2019冠狀病毒病疫情轉趨緩和，一手住宅物業市場變得更加活躍。儘管如此，與銷售一手住宅物業相關的投訴由2021/22年度的47宗減少至2022/23年度的25宗，減幅達47%。投訴指稱主要為發出違規廣告、未有履行回贈承諾及提供具誤導性的按揭資料。

Due to competition concern arisen from internal memos issued by four estate agency companies directing their licensed employees to observe a minimum net commission of 2% in the first-hand property transactions, the EAA issued a Letter to Licensees reminding them not to enter into any agreement or engage in any concerted practices which have the object or effect of preventing, restricting or distorting competition.

Complaints and Inspections

Complaints and enquiries handling

In 2022/23, the EAA received 254 complaints, a decrease of 11% from 285 complaints in 2021/22. Among the 254 complaints received in the year, key allegations included issuing non-compliant advertisements, mishandling of provisional agreements for sale and purchase (or provisional tenancy agreements), and providing false or misleading information on rental return.

In general, there was a decrease in most types of complaints, including issuing non-compliant advertisements, from 96 in 2021/22 to 59 in 2022/23. The online advertisements complaints, which constituted 88% of the 59 advertisement complaints in 2022/23, decreased from 87 in 2021/22 to 52 in 2022/23. Currently, advertising online remains the mainstream in the property market, the EAA has and will continue to step up its enforcement actions to spot-check and monitor online advertisements, by way of both compliance checks and cyber patrols on property online platforms and social media with the aid of IT technology.

Due to the easing of the COVID-19 pandemic in the first quarter of 2023, the first-hand residential property market has become more active. Notwithstanding, the complaints concerning the sale of first-hand residential properties decreased from 47 in 2021/22 to 25 in 2022/23, a drop of 47%. Key allegations of those complaints were issuing non-compliant advertisements, failing to honour rebate promises, and provision of misleading mortgage information.



監管局於2022/23年度共接獲254宗投訴，較2021/22年度的285宗減少了11%。

In 2022/23, the EAA received 254 complaints, a decrease of 11% from 285 complaints in 2021/22.

積極執法 Proactive in Law Enforcement

年內，監管局亦收到4,899宗有關地產代理執業手法的查詢，並就1,282宗查詢採取相關的跟進行動。

In the year, the EAA also received 4,899 enquiries on estate agency practices, and in response to those enquiries, the EAA took follow-up actions on 1,282 enquiries.

投訴個案

Complaint Cases

個案數目 Number of Cases	2020/21	2021/22	2022/23
開立的個案 Opened	380	285	254
已完成的個案* Completed*	215	278	217

* 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，以及由投訴部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*	2020/21	2021/22	2022/23
指稱成立 [△] Substantiated [△]	71	111	131
指稱不成立 Unsubstantiated	87	95	36
資料不足 Insufficient information to pursue	22	19	13
其他 [#] Others [#]	35	53	37
總數 Total	215	278	217

* 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，以及由投訴部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.

[△] 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」。

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

[#] 包括擱置調查、取消投訴或因其他原因而終止調查的個案。

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

合規巡查及調查

地產代理的銷售活動在2022年持續受到2019冠狀病毒病疫情影響。在2022/23年度，監管局在一手樓盤銷售地點進行的巡查次數較2021/22年度的1,280次減少約9.8%至1,155次。此外，監管局在地產代理商舖進行了916次合規巡查，及針對反洗錢及反恐怖分子資金籌集規定進行了1,305次合規檢查。

Compliance inspections and investigations

Estate agents' sales activities continued to be affected by the COVID-19 pandemic in 2022. Compared with that in 2021/22, the number of inspections conducted for first-sale sites decreased by approximately 9.8% from 1,280 to 1,155 in 2022/23. In addition, the EAA conducted 916 compliance inspections at agency shops and 1,305 compliance checks for Anti-Money Laundering ("AML")/Counter-Terrorist Financing ("CTF") requirements.

另一方面，透過網上廣告進行物業推廣依然非常普遍。監管局加大力度監察網上物業平台及廣告，以便及時發現違規做法並採取執法行動。因此，在2022/23年度，巡查的網上廣告數目較2021/22年度的1,101個增加約36%至1,499個。

On the other hand, promotion through online advertisements has remained very popular. The EAA increased its effort on patrolling online property portals and advertisements in cyberspace so as to timely identify non-compliances and take enforcement actions. Compared with that in 2021/22, the number of online advertisements inspected therefore increased by approximately 36% from 1,101 to 1,499 in 2022/23.

合規巡查／抽查

Compliance Inspections/Spot Checks

巡查／抽查次數 Number of Inspections/Spot Checks	2020/21	2021/22	2022/23
一手樓盤銷售地點* First-sale sites*	648	1,280	1,155
地產代理商舖 Agency shops	880	766	916
有關反洗錢及反恐怖分子資金籌集規定 About AML/CTF requirements	1,193	1,311	1,305
網上廣告 Online advertisements	1,319	1,101	1,499

* 包括樓盤所在處、樓盤銷售處及毗鄰區域。

* Include development sites, sales offices and vicinity areas.

從巡查和抽查當中，監管局共開立了110宗可疑違規個案，以供進一步調查，同期完成了161宗個案。

Subsequent to inspections and spot checks, 110 suspected non-compliant cases were opened for further investigation, while in the same period 161 cases were completed.

巡查／抽查發現的違規個案

Non-compliant Cases Arising from Inspections/Spot Checks

個案數目 Number of Cases	2020/21	2021/22	2022/23
開立的個案 Opened	210	160	110
已完成的個案* Completed*	126	169	161

* 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，以及由投訴部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.

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2022/23年度，監管局調查了52宗有關涉嫌在申請牌照或續牌時作出虛假聲明或提供虛假資料（根據《地產代理條例》構成犯罪）的個案。年內，監管局向警方轉介了21宗可疑個案，以進行刑事調查。

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

In 2022/23, the EAA also conducted investigations into 52 licence applications in which the applicants were suspected of making false statements or furnishing false information in their licence application or licence renewal process, which is an offence under the Estate Agents Ordinance. In the year, the EAA referred 21 suspicious cases to the Police for criminal investigations.

個案數目 Number of Cases	2020/21	2021/22	2022/23
開立的個案 Opened	42	37	52
已完成的個案 * Completed*	62	49	49

* 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.

打擊物業交易中洗錢及恐怖分子資金籌集的風險

監管局持續以風險為本的監督方法，致力監察地產代理業界有否遵守反洗錢及反恐怖分子資金籌集的規定。監管局巡查的監察力度和頻率，會視乎地產代理公司所面對的威脅和風險程度而定，而地產代理公司會被分類為不同的反洗錢及反恐怖分子資金籌集的風險級別。在監察過程中，局方會審查地產代理機構的政策、程序及監管制度，以評估他們就反洗錢及反恐怖分子資金籌集所面對的風險，以及他們採取的紓緩風險管理措施，從而採取相應的監察工作。

Combatting money laundering and terrorist financing risks in property transactions

The EAA continued its efforts on supervision of the estate agency trade practitioners' compliance with the Anti-Money Laundering ("AML") and Counter-Terrorist Financing ("CTF") requirements. The intensity of supervision and frequency of inspections by the EAA were based on the level of threats and vulnerability of the estate agency companies, which were classified under different AML/CTF risk categories. Throughout the supervision, the EAA examined estate agencies' policies, procedures and control systems to assess their AML/CTF risks and the mitigation measures taken by them for the EAA's continuous monitoring.

此外，監管局於2021年推出了外展教育計劃，向風險較低的經營者（通常是資源較少的小型公司）面授有關遵守反洗錢及反恐怖分子資金籌集規定的指引，截至目前，計劃有成效。業界對計劃反應良好。監管局將繼續協助這些經營者建立合規文化。

In addition, the outreach educational programme (launched in 2021) which provides face-to-face guidance on AML/CTF compliance requirements to the lower-risk operators who are usually small size agencies with less resources, has so far been effective. Positive feedback has also been received from the trade. The EAA will continue to help these operators to develop their compliance culture.

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，行政總裁可向監管局紀律委員會提出呈述，以決定是否就該個案進行研訊。

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，當中包括訓誡或譴責有關持牌人、將條件附加於有關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。



模擬紀律研訊圖片。
A staged inquiry hearing.

儘管本地防疫抗疫措施於2022/23年度大部分時間仍然持續，監管局的大部分紀律研訊均能如期舉行。紀律委員會在2022/23年度內共判決了299宗個案。

2022/23年度判決的299宗個案中，298宗（即佔99.67%）的指稱成立。結果，共有311名持牌人被紀律處分，其中134名為個人持牌人¹，177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/her licence, the CEO shall make a submission to the EAA’s 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/her licence, suspending/revoking his/her licence, imposing a fine and making a costs order.

Despite the continuance of the local anti-epidemic measures throughout most of 2022/23, the EAA managed to conduct most inquiry hearings as scheduled. The Disciplinary Committee adjudicated 299 cases in 2022/23.

Out of the 299 adjudicated cases in 2022/23, 298 were substantiated (i.e. 99.67%). As a result, a total of 311 licensees were disciplined, among which 134 were individual licensees¹ and 177 were company licensees.

¹ 包括地產代理公司的獨資經營者及合夥人。

¹ Including sole-proprietors and partners of estate agency firms.

同期，紀律委員會暫時吊銷了13個牌照，吊銷期由一星期至兩個月不等。這些被處分的持牌人涉及作出違反專業操守的行為，例如履行職務時作出誤導性陳述或未有保障和促進客戶的利益。

在2022/23年度內，共有253名持牌人被罰款，金額由500元至286,000元不等。

公布研訊的裁決理由

監管局在其「近期的紀律研訊結果」網頁上公布最近的紀律研訊的裁決結果。在三年後，監管局會將所有在「近期的紀律研訊結果」中指稱成立的面晤紀律研訊個案及其裁決理由，移至標題為「過往的紀律研訊案件的裁決理由」的網頁，為期五年。

上述公布不但提高了監管局工作的透明度，亦能讓地產代理業界更了解監管局的紀律裁決及如何遵從《地產代理條例》，以減低日後出現類似違規行為的風險。長遠來說，期望這項措施將會協助提升業界的專業水平。

同時，公布紀律研訊裁決理由亦能讓公眾明白監管局的紀律裁決，讓他們在使用持牌人服務時能作出明智的選擇。

During the same period, 13 licences were suspended by the Disciplinary Committee for periods that ranged from one week to two months. Licensees disciplined were found to have been engaged in unprofessional conduct, such as misrepresentations or failure to protect and promote the interests of their clients when carrying out their duties.

In 2022/23, a total of 253 licensees were fined, with fines that ranged from \$500 to \$286,000.

Publication of reasons for the decisions of inquiry hearings

The EAA publishes results of recent inquiry hearings on its webpage titled "Recent Inquiry Hearing Results". After a period of three years, the EAA will move all the substantiated full inquiry hearing cases and their reasons for decisions under "Recent Inquiry Hearing Results" to its webpage titled "Reasons for Decisions of Past Inquiry Hearing Cases" for a period of five years.

The aforesaid publication not only enhances the transparency of the EAA's work, it also enables the estate agency trade to have a better understanding of the EAA's disciplinary decisions and learn how to comply with the EAO, which helps reduce the risks of similar non-compliances in the future. In the long run, it is hoped that such publication will contribute to the improvement of the professional standard of the trade.

Publication of the reasons for disciplinary decisions also provides a way for the public to understand the EAA's disciplinary decisions and enables consumers to make informed choices when they engage the services of licensees.

已舉行並作出裁決的紀律研訊次數

Number of Inquiry Hearings Held with Decision Handed Down

年份 Year	2020/21	2021/22	2022/23
研訊次數 Number of hearings	167	318	299

2022/23 年度常見違規事項* Common Types of Non-compliance in 2022/23*	指稱宗數 Number of Allegations
1. 發出包含在要項上屬虛假或具誤導性資訊的廣告／提供與發放廣告相關的虛假或具誤導性的資訊；未獲賣方／業主事先書面同意下發放廣告或發出違反賣方／業主指示的廣告 Issuing an advertisement with false or misleading information in a material particular; providing false or misleading information in relation to publication of an advertisement; advertising without the vendor/landlord's prior written consent or in contravention of their instruction	152
2. 沒有在物業的廣告內清楚及可閱地和準確地述明相關物業編號及／或該廣告的發放／更新的日期 Failing to state clearly, legibly and accurately in a property advertisement the property number concerned and/or the date on which the advertisement was issued/updated	64
3. 在廣告內提供住宅物業的樓面面積時未有遵守監管局所發出的指引 Failing to comply with the guidelines issued by the EAA when providing the floor area information of a residential property in an advertisement	53
4. 未有遵守監管局所發出的有關遵守反洗錢及反恐怖分子資金籌集規定的指引 Failing to comply with the guidelines issued by the EAA in respect of compliance of anti-money laundering and counter-terrorist financing requirements	48
5. 未有按照訂明表格中所列明的指示和指引填寫該表格；未有在地產代理協議中清楚列明該協議有效期的屆滿日 Failing to complete a prescribed form in accordance with the directions and instructions specified in the form; failing to state clearly in an estate agency agreement the expiry date of its validity period	48
6. 於公共場所張貼／放置或管控廣告牌／海報／摺合式桌／椅／遮陽篷或易拉架廣告；或促使或許可員工作出以上事項 Affixing/placing or being in possession and having control of an advertisement board/a poster/folding table/chair/sun shade or pull-up banner in a public area, or causing or permitting staff to do so	28

積極執法

Proactive in Law Enforcement



2022/23 年度常見違規事項* Common Types of Non-compliance in 2022/23*	指稱宗數 Number of Allegations
7. 未有為對其員工／下屬施加有效的管控設立妥善的程序或制度，以監督和管理其地產代理工作的業務 Failing to exercise effective control on employee(s)/subordinate(s) by establishing proper procedures or systems to supervise and manage the estate agency business	27
8. 未有與客戶訂立地產代理協議 Failing to enter into an estate agency agreement with clients	23
9. 以持牌人的個人名義而非地產代理公司的名義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	21
10. 未管有訂明的物業資料或未能確保持牌人管有的訂明物業資料準確無誤 Failing to possess prescribed property information or ensure that the prescribed property information in the licensee's possession was accurate	19

* 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*	2020/21	2021/22	2022/23
有關的持牌人或前持牌人數目 Number of licensees or former licensees involved	252	432	311
行動性質 ¹ Type of actions ¹			
訓誡／譴責 Admonishment/reprimand	163	313	312
罰款 Fine	141	265	253
在牌照上附加條件 ² Attachment of conditions to licence ²	102	206	182
暫時吊銷牌照 Suspension of licence	13	18	14
撤銷牌照 Revocation of licence	36 ^Δ	32 ^Δ	41 ^Δ

* 這些行動是根據《地產代理條例》所賦予的權力而採取的。當中部分行動屬紀律性質，其他則是由牌照委員會裁定的。部分個案是從往年延續下來的個案。

¹ 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。

² 部分條件於批出牌照時附加，其餘則隨後附加。

^Δ 這些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。

* These actions were taken pursuant to powers under the EAO. Some actions were disciplinary in nature whereas others were decided by the Licensing Committee. Some cases were carried over from previous years.

¹ In some cases, more than one action was imposed on the same licensee or former licensee.

² Some conditions were attached upon the granting of licences while others were attached subsequently.

^Δ These cases were decided by the Licensing Committee on the ground that the licensees concerned no longer met the relevant licensing requirements.