

THE ESTATE AGENTS (AMENDMENT) BILL (5 MAY 2020)

2ND READING SPEECH BY MR ZAQY MOHAMAD, MINISTER OF STATE FOR NATIONAL DEVELOPMENT AND MANPOWER

1. Mr Speaker, on behalf of the Minister for National Development, I beg to move, “That the Bill be now read a Second time.”

Introduction

2. The Estate Agents Act establishes the Council for Estate Agencies (CEA), which administers the legislative and regulatory framework for estate agents and salespersons.
 - a. An “estate agent” is a person or business entity that does estate agency work, and is commonly known as the estate agency or property agency.
 - b. A “salesperson” is, among other things, an individual who in the course of the individual’s employment or engagement by an estate agent, does estate agency work, and is commonly known as a property agent.
3. The real estate agency industry plays an important role in facilitating property transactions in Singapore.
 - a. Buying or selling property is a major decision for many Singaporeans, and is one of the single largest investments that they will make. Therefore, it is important that they receive the best advice before making such a transaction.
 - b. Many Singaporeans rely on estate agents and salespersons for property-related advice. It is essential that they do their work professionally, ethically, and give their clients accurate advice that is in their clients’ best interest.

4. With this in mind, the Estate Agents Act was enacted in 2010, to better protect consumer interest and raise the professionalism of the real estate agency industry. A three-pronged approach was adopted:

- a. First, strong government regulation.

- i. All estate agents must be licensed and salespersons registered with the CEA.
- ii. In addition, estate agents and salespersons have statutory duties to ensure professional and ethical practices.

To ensure compliance, CEA has investigative powers and disciplinary levers to identify and punish errant estate agents and salespersons. CEA also has powers to take prosecution action in Court for criminal offences under the Estate Agents Act.

- b. Second, greater industry accountability. Each salesperson must be registered through a licensed estate agent, who is primarily responsible and accountable for the supervision and management of the salesperson.

- c. Third, better consumer education. Public education is a key part of CEA's work. A public register was set up to allow the public to access information about estate agents and salespersons before engaging their services, including records of any offences committed and disciplinary penalties.

5. Almost ten years on, the number of complaints against estate agents and salespersons received by CEA has dropped by 34%, from 1,170 complaints in 2011 to 777 in 2019. In particular, the number of complaints which led to prosecution or disciplinary action, has also dropped:

- a. the number of concluded cases involving misrepresentation of property-related information to clients has declined by 98%, from 404 cases in 2011 to 10 cases just in 2019; and
 - b. the number of concluded cases involving dual representation, which is a serious offence, has seen a 97% decline, from 59 cases in 2011 to 2 cases in 2019.
- 6. I thank the real estate agency industry for improving our service standards and governance this past decade.
- 7. While the number of complaints has gone down, there remains scope for improvement in three areas:
 - a. First, to strengthen Singapore's levers against money laundering and terrorism financing in the real estate agency industry.
 - b. Second, to strengthen CEA's disciplinary levers to better deter and punish errant estate agents and salespersons.
 - c. Last, but not least, to enhance CEA's investigative powers to better enable CEA to identify and take action against errant estate agents and salespersons.
 - d. These stronger levers will ensure that estate agents and salespersons conduct their business professionally and ethically, so that we can protect the interest of consumers.
- 8. Let me go through these areas in turn.

AML/CFT duties

- 9. First, the Bill gives effect to the Financial Action Taskforce (FATF) Recommendations on the preventive measures in the real estate agency industry

to strengthen Singapore's levers against money laundering and terrorism financing.

- a. FATF is an inter-governmental body established in 1989 to set out national and international standards to promote the effective implementation of measures to combat money laundering and terrorism financing.
- b. The FATF Recommendations form part of the broader international financial sector standards. They are recognised and used by the International Monetary Fund (IMF) and the World Bank in their assessment of a country's financial sector.
- c. Since 1992, Singapore has been a member of FATF and has put in place a very strong legislative and regulatory framework to detect, to deter, and to take action against money laundering and terrorism financing. Singapore has committed to periodic peer assessments to ensure compliance with FATF Recommendations.

10. This Bill continues our ongoing efforts to combat money laundering and terrorism financing.

- a. The use of real estate to launder large amounts of illegal funds is a known method for money laundering. It opens Singapore's non-financial and financial sectors to criminal abuse.
Safeguards are essential to detect illegal sources of funding for properties early, so that such transactions can be identified and blocked upstream.
- b. As intermediaries of property transactions, estate agents and salespersons have a part to play to counter these threats. FATF has identified the real estate agency sector as crucial gatekeepers against money laundering and terrorism financing.

- c. One example of money laundering occurred in 2016, where the Singapore Police Force (SPF) seized more than S\$27 million in criminal proceeds from one of China's biggest Ponzi scams. The monies were transferred to Singapore to purchase a S\$23.8 million Sentosa Cove bungalow, with the purchase falling through when one of the Ponzi scheme's key accomplices was arrested in China.

While investigations did not reveal any local parties being involved, the Police successfully prosecuted the real estate salesperson and conveyancing lawyer involved in the planned property purchase.

Both of them knew that their client, the bungalow buyer, had been arrested in China for involvement in a Ponzi scheme. But clearly, both did not fulfil their obligations to lodge Suspicious Transaction Reports with the Police.

- 11. Currently, under CEA's practice guidelines, estate agents and salespersons are required to fulfil specific duties to counter potential money laundering and terrorism financing. Failure to comply with CEA's guidelines may result in disciplinary action under the Estate Agents Act.

- a. However, FATF Recommendations require such duties and the penalties for non-compliance to be provided in '*any legislation approved through a Parliamentary process*'.

The FATF interprets this to mean that the duties must be set out in primary legislation. On this basis, setting out the duties to counter potential money laundering and terrorism financing in CEA's practice guidelines does not meet FATF's standards for preventive measures, as the duties and penalties must be spelt out expressly in the Estate Agents Act.

12. Hence, to comply with FATF Recommendations, Clause 8 will introduce a new Part IVA in the Estate Agents Act on the prevention of money laundering and terrorism financing.
13. First, the new Sections 44A-44D of the new part IVA set out the duties of estate agents and salespersons on prevention of money laundering and terrorism financing in the Estate Agents Act.
 - a. It requires them to conduct customer due diligence checks, and report any suspicious transactions to SPF's Suspicious Transaction Reporting Office (STRO).
 - b. For real estate agents, they must also keep records of the due diligence checks that are conducted, which CEA may inspect.
 - c. Details of the duties will be prescribed in subsidiary legislation.
14. Second, the new Section 44E of the new part IVA will provide that disciplinary action can be taken for non-compliance of the requirements under Part IVA. I will elaborate more on CEA's disciplinary levers in the second area of the Bill.
15. To be clear, these duties are not new to the real estate agency industry, and are already provided for under CEA's practice guidelines today. Disciplinary action can also be taken against estate agents and salespersons who do not comply with these practice guidelines. The Bill takes the relevant obligations to counter money laundering and financing of terrorism from the practice guidelines, and inserts them as express provisions in the Act, in order to comply with FATF Recommendations.

Strengthen disciplinary levers

16. Let me move on to the second key area of the Bill – strengthening CEA's disciplinary levers.

17. Currently, CEA has two disciplinary levers to punish errant estate agents and salespersons.

a. First, CEA can refer the case to a Disciplinary Committee, nominated from CEA's Disciplinary Panel comprising practising solicitors, academics, professionals from the real estate industry and members from other professions.

b. The Disciplinary Committee has the power to impose a financial penalty, and revoke, suspend or impose conditions on an estate agent's licence or a salesperson's registration.

The proceedings before a Disciplinary Committee can be a resource-intensive process. CEA generally refers more serious cases, such as cases which involve dishonesty or financial losses to the client, to the Disciplinary Committee.

c. The second disciplinary lever for CEA is to issue a "letter of advice". However, this has limited deterrent and punitive effect as the fact that a "letter of advice" has been issued cannot be published in CEA's public register under the Estate Agents Act. The "letter of advice" also does not provide for an accompanying penalty.

18. Hence, the Bill will amend the Act to provide CEA with more options to deal with errant estate agents and salespersons without having to refer cases to the Disciplinary Committee.

a. Clauses 6 and 11 amend sections 36 and 49 of the Act respectively, to allow CEA to censure errant estate agents and salespersons, and publish the censure on the public register. It also allows CEA to impose a maximum financial penalty of \$5,000 per case.

b. This provides better deterrence against repeated and less serious breaches that do not warrant action by the Disciplinary Committee, but are serious enough to merit punishment. As a safeguard, CEA will have

to first give notice of its intent to censure or issue a financial penalty, and allow the estate agent or salesperson to make representations before deciding on the penalty to impose.

- c. Overall, the new powers to censure and impose a financial penalty provide more calibrated levers against errant estate agents and salespersons.

19. In addition, to better deter serious breaches, Clause 13 of the Bill will amend section 52 to increase the maximum financial penalty the Disciplinary Committee can impose to \$200,000 per case for estate agents, and \$100,000 per case for salespersons, up from \$75,000 today.

- a. A tiered structure distinguishing the maximum financial penalty for estate agents and salespersons is not unique, and can be found in other regimes that regulate professions such as accountancy, where different limits apply to accountants and the accounting corporations.
- b. All cases undergo a disciplinary process, where both CEA and the respondent have the opportunity to present their case to the Disciplinary Committee, before the Disciplinary Committee decides on the penalty.

20. For estate agents, the new maximum financial penalty of \$200,000 per case will better match the higher commissions estate agents can potentially earn, compared to individual salespersons.

- a. The higher financial penalty limit will therefore give the Disciplinary Committee more flexibility to impose adequate punishment on estate agents, depending on the facts of each case.

21. Similarly for salespersons, the new maximum financial penalty of \$100,000 per case will better match the commissions received by salespersons, which are generally lower than that of estate agents, but can also be quite high. It will strengthen the deterrence against serious breaches.

Enhance investigative powers

22. Mr Speaker, I will touch on the third key area of the Bill, which is to enhance CEA's investigative powers.
23. The Estate Agents Act provides CEA with powers to investigate disciplinary breaches, and additional powers to investigate criminal offences, such as acting as a salesperson without being registered, and holding property transaction monies.
24. To better enable CEA to identify and take action against disciplinary breaches and criminal offences, Clauses 9, 10 and 17 of the Bill amend the Act to clarify and enhance CEA's investigative powers on two fronts.
25. First, Clause 10 will repeal sections 46, 47 and 48 of the Act and re-enact sections 46 and 47 to clarify and enhance CEA's powers to collect evidence in investigations under the Act, including investigations of disciplinary breaches.
 - a. Under the re-enacted section 46, CEA inspectors may, among other things, require any person to attend before an inspector, give statements, and provide documents to be inspected, copied or extracted.
 - b. This is for the purpose of ascertaining whether the Act has been or is being complied with or for the purpose of any investigations under the Act.
 - c. Clause 17 amends section 64 of the Act to make it an offence if the person, without reasonable excuse, does not comply with such requirements, or provides false or misleading information.
 - d. These changes will better enable CEA to obtain the necessary evidence from salespersons, estate agents and witnesses for disciplinary breaches.

26. Second, in view of technology adoption in the industry, the Bill will allow CEA inspectors to require any person to provide, among other things, any document, computer or computer output to be inspected, copied or extracted. CEA inspectors can require this for the purpose of ascertaining whether the Act has been or is being complied with, or for any investigation under the Act, whether of disciplinary breaches or criminal offences.
- a. Clause 9 inserts a new section 44F in the Act to define, among other terms, the terms “computer”, “computer output” and “document”. “Computers” include electronic devices, and “computer output” and “document” include the content and output from such electronic devices, such as whatsapp chat logs or emails.
 - b. Clause 10 repeals and re-enacts section 46 to allow CEA inspectors to specify the form and manner in which, among other things, information, document, computer or computer output is to be provided to the inspector. This will allow inspections to be conducted electronically or at CEA’s premises under CEA’s control, instead of only at the estate agent’s premises.
27. The re-enacted sections 46 and 47 provide that, in the investigation of disciplinary breaches, CEA inspectors may take possession of any document, computer, computer program, computer software or computer output when they enter into the premises of an estate agent, if certain criteria are satisfied. For the investigation of criminal offences, CEA inspectors may exercise similar powers in any premises, whether or not in the possession or control of an estate agent.
- a. As a safeguard, the Bill will provide that these powers of taking possession in the re-enacted sections 46 and 47 will only be allowed under specific conditions, namely:

- b. Where the inspection, copying of or extraction of content from the document or electronic device cannot be performed reasonably without taking possession; or
 - c. Where the document, electronic device or its content may be interfered with or destroyed; or
 - d. Where the document, electronic device or its content are required as evidence for proceedings under the Act.
- 28. These enhancements to CEA's investigative powers will better enable CEA to identify and take action against errant estate agents and salespersons. To prevent such estate agents and salespersons from trying to evade punishment by leaving the industry, Clauses 5 and 16 complement the amendments by making clear that, after disciplinary proceedings have commenced, even if the estate agent's licence or salesperson's registration are not renewed, investigations may continue and disciplinary action can still be taken against them.

Others

- 29. The Bill will also make other changes to improve and clarify the regulatory framework and to facilitate CEA's operations.
- 30. It makes clear that CEA can collect and publish transaction records of estate agents and salespersons on the public register, to help consumers make more informed decisions.
 - a. Clause 7 inserts a new section 43A, which requires estate agents and salespersons to submit transactions records to CEA, and provides that non-compliance without reasonable excuse or the submission of false information knowingly is an offence.

- b. Clause 6 amends section 36 to, among other things, make it clear that CEA can publish the transaction records.
 - c. Clause 3 amends section 15 to provide, among other things, that where information is supplied to the public pursuant to any written law, including these published transaction records, CEA is protected from liability for any loss or damage suffered by any member of the public if the supply of the information is made in good faith, with reasonable care and in the ordinary course of the discharge of the duties of CEA.
 - d. Clause 18 amends section 70 to allow service of documents by electronic means, including email, to bring convenience to both the industry and CEA. This will also update the Act in view of technology adoption and enhance CEA's operational efficiency.
31. Clauses 2, 4 and 19 amend provisions of the Act to allow CEA to accredit Continuing Professional Development (CPD) courses.
- a. CPD courses are a renewal requirement for licences and registrations, to ensure that estate agents and salespersons possess the necessary knowledge to provide professional service to their clients.
 - b. The rationale for this change is for CEA to ensure that the courses meet CEA's guidelines.
32. Lastly, Clause 12 will amend section 51(1) to allow CEA to determine the size of the Disciplinary Panel. This provides CEA the flexibility to increase the size of the Panel beyond the current limit of 20, should the caseload increase in future.

Conclusion

33. Mr Speaker, this Bill is important as it ensures our compliance with the FATF Recommendations and signals our commitment to be a responsible member of

the international community. It also better enables CEA to protect consumer interest, punish errant agents and salespersons, and operate more efficiently.

34. CEA conducted industry consultation on the key changes. The respondents, comprising estate agents, salespersons and industry associations, were supportive, or neutral to the changes.

a. The amendments are largely targeted at CEA's enforcement against errant estate agents and salespersons. For the majority of the real estate agency industry, who have been following the requirements and providing professional and ethical services to their clients, we thank you for your cooperation and efforts.

35. Mr Speaker sir, I beg to move.