

**Chandrawat
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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 units. Sales of uncompleted residential units stagnated and a general slump in the real estate market took place. 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 set-backs in the interim due to adverse external factors.

Post 1997

As an international financial centre, Hong Kong's economic condition and property market are highly sensitive to internal as well as external environmental changes. Since 1998, the real estate market has experienced ups and downs.

External factors include the economic and political conditions around the world. The globalization of international trade has tightened the economic ties between countries. Nowadays, economic and monetary policies in major developed countries directly affect other countries. Hong Kong is no exception. For example, after the world-wide financial tsunami in 2008, the American government launched various monetary policies, including the quantitative easing policy, to boost the American economy. As a result, global financial markets are filled with large amounts of hot money. To resist inflation, many investors put their money into the property market of Hong Kong, thus causing property prices to rise rapidly and continuously. Moreover, due to the economic boom in China, many Mainland citizens have actively invested in Hong Kong's property market recently and the impact brought about by such activities should not be neglected.

Internal factors include Hong Kong's economic cycles, and the housing policies and property market measures launched by the HKSAR government, etc. Most of the property market measures adopted are intended to control property prices or suppress speculation activities. For example, the special stamp duty, buyer's stamp duty, and double stamp duty introduced by the Government in 2010 and 2013 respectively were introduced in an attempt to manage demand and cool down the overheated property market. On other occasions, the outbreak of epidemic diseases has also had significant impacts on the economy and the real estate market of Hong Kong. A typical example is the SARS outbreak in 2003 which caused an economic downturn of the territory and property prices dropped substantially.

DEVELOPMENT OF REAL ESTATE AGENCY PRACTICE IN HONG KONG

1950s – 1960s

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.

1970s

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.

1980s

5. 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 commissions 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.

1990s

6. 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.

7. 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.

8. Also in 1997, the EAO was enacted and the 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 licensee must:

- obtain a license before he/she can practice the trade;
- use certain prescribed forms when acting in the sale of residential property;
- comply with the provisions of the EAO and subsidiary legislation made under the EAO; and
- be subject to disciplinary action in the event of breach of, or non-compliance with, these provisions.

Post 1997

9. Since the introduction of the regulatory and licensing regime in 1997 and 1999 respectively, the practice of the estate agency trade is being regulated and the standard of licensees has improved gradually. In 2005, the Authority launched a voluntary continuing professional development scheme encouraging licensees to enhance their professional knowledge and competence through continuous learning.

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

Government

10. 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 online through the Land Registry's Integrated Registration Information System Online Services. 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.

11. Other property information (e.g. saleable area of residential properties, user and completion year of properties) can be obtained online from the Rating and Valuation Department, a government department responsible for collecting government rent and rates, through the Property Information Online system. Form CR 109 (see also Part 7, paragraph 16), which gives details of tenancy agreements of domestic tenancies, is also lodged with this Department.

12. Copies of occupation permits can be obtained from the Buildings Department.

13. Information about land auctions, tenders and other disposals of properties by the Government can be obtained from the Lands Department.

14. The removal of alienation restrictions for the transfer of units under the HOS and the TPS is administered by the Housing Department.

15. Information about limited companies can be obtained from the Companies Registry.

16. Licensees 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.

17. The Authority, a statutory body and the regulatory body for the agency trade is looked at further in Part 2.

Solicitors

18. The SPA, assignment, and mortgage are generally prepared by solicitors acting for each party to a conveyancing transaction. Licensees should also advise their clients to seek legal advice from solicitors. This may mean that a licensee will have to liaise with solicitors at various stages of a property transaction.

Banks

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

Developers

20. 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.

Building and Construction Sector

21. Builders and contractors build properties; licensees 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

22. 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.

SRPA

23. To further enhance the transparency and fairness of the sales arrangement and transactions of first-hand residential properties, the RPFSSO came into full effect on 29 April 2013. The objectives of the RPFSSO are to create a clear, fair, balanced, practical and efficient mechanism to regulate the sales of first-hand residential properties, and to protect the interest of residential property buyers through enhancing transparency and making contravention of the mandatory requirements criminal offences.

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STATISTICS ON SUPPLY
AND DEMAND IN THE
PROPERTY MARKET
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24. 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, licensees can ascertain the annual statistics relating to property market supply and take-up.

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ROLE AND FUNCTIONS OF ESTATE AGENTS

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25. The services performed by licensees 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 PASP.

26. 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 licensee but who is interested in the unit having seen the developer’s advertisements. The purchaser may 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. In most transactions of these new units, licensees act for the developer only. However, if licensees act for both the developer and the purchaser, they will be performing the full services of estate agents as in the secondary market.

27. Under the RPFSSO, some of its provisions not only apply to developers, but also to other persons, including estate agents. Licensees are therefore required to observe the RPFSSO, in particular, on the conduct of promotional activities and the provision of property information for the first sale of residential properties, in addition to the EAO, its subsidiary legislation and other guidelines launched by the Authority.

28. In the secondary market, licensees 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 negotiation between the parties; and
- drafts and arranges the signing of PASPs or preliminary tenancy agreement.

ESTATE AGENT'S ORDINANCE (EAO)

29. 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.

30. 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 confirmers 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.

31. 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.

32. 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 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

33. Buying 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:

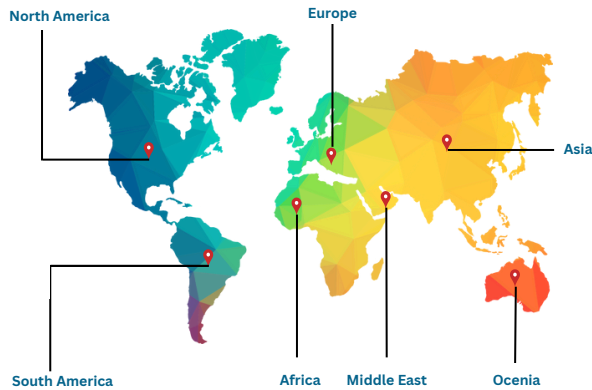
- to have sufficient knowledge of the law, and other relevant matters relating to property transactions;
- to supply clients with correct and accurate property information;
- to protect the interests of clients in carrying out their instructions with due care and due diligence; and
- not to exert undue 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.

34. 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:

- a licensee 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, a licensee 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;
- a licensee 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;
- a licensee in breach of the provisions of the EAO or its subsidiary legislation, is subject to disciplinary action; and
- from May 2005, licensees have been encouraged to participate in the voluntary Continuing Professional Development (CPD) Scheme introduced by the Authority.

35. To meet the changing demands of clients and society and for the long-term professional development of the estate agency trade, the voluntary CPD scheme may have to be made mandatory in the long run. The Authority will study the feasibility of such a conversion, conduct wide and extensive consultations with various stakeholders, and garner the trade's support for the change before its implementation.

SERVING CLIENTS WORLDWIDE



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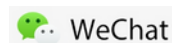
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