

**Public Consultation on
New Regulatory Framework for Real Estate Industry**

Aim

The Ministry of National Development (MND) is seeking feedback from the public for the key features of the proposed new regulatory framework of the real estate industry.

Background

2. Today, there are about 1,700 real estate agencies licensed by the Inland Revenue Authority of Singapore (IRAS). There are an estimated 25,000 to 30,000 real estate agents in the market with varying degrees of training and professional standards. There have been a rising number of complaints against real estate agents in recent years, with over 1,400 complaints in 2008. Minister for National Development, Mr Mah Bow Tan, commented in March this year that the status quo was “not tenable”, and that the whole system was “not satisfactory”. Minister Mah also said that MND would be reviewing the framework for the real estate industry.

3. Over the past months, MND and other relevant agencies have been studying ways to strengthen the regulatory framework. In particular, requiring real estate agencies to take greater responsibility for the actions of their agents will be a key feature of the new framework.

4. At the same time, consumers will also have a key role to play in minimising disputes in property transactions. Even with a strengthened regulatory framework, consumers need to exercise vigilance and safeguard their own interests. It is common for disputes to arise because of mismatched expectations or consumers changing their minds. To this end, designing a sustained public education strategy to educate consumers on their responsibilities, rights and expectations will form part of our focus in this review.

Objectives

5. The new regulatory framework seeks to achieve two objectives: one, to enable consumers to better safeguard their interests through public education and robust regulations, and two, to increase the professionalism of the real estate industry.

6. The framework is likely to focus on residential property transactions as a start, given that the bulk of the complaints in this industry relate to purchase of residential properties by individuals, particularly in the HDB resale market. On the other hand, parties in commercial and industrial property transactions tend to be corporate entities, and are thus generally better equipped to safeguard their interests. If the need arises subsequently, the framework may be broadened to cover other real estate transactions.

7. MND proposes that the new regulatory framework comprise three major components, namely (i) government's enhanced regulatory powers, (ii) industry-led accreditation and (iii) an improved dispute resolution mechanism.

(I) Enhanced Regulatory Powers

8. As is the current practice today, real estate agencies will continue to require a licence from the government in order to operate. This single-tier licensing regime will be augmented by mandatory accreditation from a recognised accreditation body (AB) to raise professional standards.

9. It is also important that agencies take greater responsibility for the action of their agents. This may not always be possible today, because of the lack of a formal contractual relationship between agencies and their agents. In fact, some agents may not be associated with any agency or may be associated with multiple agencies at the same time. Hence, there may be a need to empower the agencies to exercise control over their agents. One key initiative in this regard is a public central registry maintained by the AB to allow agencies to assess the background and profile of the agents they wish to hire. This will be elaborated on in the next section. Additionally,

the following changes to the relationship between agencies and their agents could be required:

- Agents are only allowed to represent one accredited agency;
- Agents must be contracted with an accredited agency via a standard associate agreement in order to practice; and
- Agents must pass an industry examination and be accredited by the AB before they can practice.

10. To ensure that the new framework is effective, the government will also increase levels of monitoring and enforcement. These enhanced regulatory powers will reside in an appropriate regulatory authority.

11. The regulatory authority will also work with the AB to establish a disciplinary framework to take action against non-compliance with legislative requirements or infringement of accreditation requirements. After due investigation, if agencies and/or agents are found to be errant, they will face disciplinary actions in the form of demerit points together with a tiered penalty system calibrated to severity of the offence, including warnings, fines, suspension and expulsion. Agencies that prove to be unable to exercise adequate control over their agents may be subject to punitive measures such as restriction on recruiting more agents.

12. Today, many disputes arise out of the situation where the same agent represents both buyer and seller in the same transaction. This is a prevalent practice in the HDB resale market, with sellers' agents often collecting a commission from the buyer or refusing to sell to a particular buyer if there is no commission. This practice presents a clear conflict of interest – sellers naturally want the highest price for their property and buyers would want to pay the lowest. The same agent cannot possibly discharge his professional duties to both equally and represent both their interests fully.

13. MND has received suggestions for this practice to be disallowed. This will ensure that agents are not in a conflict of interest position, and align practices in the

HDB market to the private residential market. However, MND recognises that there is administrative work needed on the part of the buyer for HDB flats (e.g. checking on eligibility, loan quantum that HDB will offer etc). For flat buyers who need help in this, one way is to allow the seller's agent to collect a fixed administrative fee to help the buyer to process the transaction. Otherwise, buyers can engage their own agents, or handle the transactions themselves. In fact, HDB encourages buyers who are familiar with HDB's rules and regulations to process the transaction without the help of an agent.

14. To do this, buyers will need to be properly informed. Thus, consumer education will be a major area of focus for the new regulatory authority and the AB. Individual consumers also need to understand their rights and responsibilities, as well as those of their agents.

(II) Industry-led Accreditation

15. Greater government involvement will help to address some of the problems that are rampant in the industry today. At the same time, industry players are expected to play an important role and take greater ownership of efforts to improve the professionalism of agents and agencies. One key aspect of such efforts is a mandatory industry-led accreditation scheme for both agencies and agents. Possible proposals to be included in the accreditation scheme are in the following paragraphs.

(A) Proposals to increase professionalism in the industry:

- Agencies to adopt minimum service standards that need to be made known to their clients upfront;
- Agencies to provide for compulsory continuous professional training and upgrading of their agents as part of the accreditation requirement;

- Individual agents to adhere to a code of conduct covering matters such as professionalism, ethics, clients' confidentiality, marketing, public communications etc; and
- Individual agents to be qualified through an industry entrance examination covering both ethics and practical knowledge before they can practice.

(B) *Proposals to safeguard consumers' interests:*

- The AB can maintain a public central registry listing all accredited agents so that consumers are able to ascertain that the agent they engage is qualified. This will also allow agencies to assess the background and profile of the agents they wish to hire. The public central registry could list agents' qualifications, track record, employment history as well as indication of past offences, so that consumers and agencies alike are able to make more informed decisions;
- Agencies to adopt a standard contract between their agents and clients, spelling out the rights and obligations of the agents before any service is rendered. In particular, given that these are common sources of disputes, commission rates and co-broking should be explicitly specified and agreed upfront;
- Agencies to put in place complaints-handling processes, including a mediation platform at the agency level in the event of a dispute; and
- Individual agents to have professional indemnity insurance to cover any negligent acts or omissions or breaches of professional duty.

16. MND is also considering whether it is necessary for breaches of some of these proposed new accreditation requirements to come under the enforcement and sanction of the regulatory authority. For example, there has been feedback that the lack of ethics rather than knowledge is a key source of the problem among errant housing agents. Thus, a code of conduct would be vital to the proper functioning of the industry, and breaches of such a code may warrant punitive measures meted out

by the regulatory authority. Agents practising without the requisite qualifications may be another area that the regulatory authority will have to address.

17. In addition to running the accreditation scheme, the AB may be expected to endorse a list of approved training courses for the professional development for agents. Maintaining the rigour and relevance of the industry entrance examination through regular syllabus reviews would also be a key function of the AB.

18. In order for the accreditation scheme to be successful, it is important to ensure that the requirements are coordinated holistically and applied consistently. This will minimise confusion for agencies and agents – a common complaint under the existing regime – and increase public confidence in the scheme. As such, MND proposes to work with a single AB to administer the mandatory accreditation scheme.

19. To achieve the aim of improving professionalism, the accreditation scheme must be robust and address the needs of the industry. As such, the AB must be able to enjoy the participation and support of the different industry players in administering the accreditation scheme. The AB should also work closely with government to ensure that the regulatory objectives are met.

(III) Improved Dispute Resolution Mechanism

20. A key impetus for this review is the high number of complaints in recent years. Thus, dispute resolution is a main component of the proposed changes to the regulatory framework. One important aspect is that the agency should take on greater responsibility for resolving disputes with clients. To this end, it may be necessary for all agencies to institute proper complaints handling processes within the firm. If this does not resolve the matter satisfactorily, the consumer has recourse to additional avenues of dispute resolution such the Consumer Association of Singapore, Singapore Mediation Centre, Small Claims Tribunal and the courts.

21. Buying a home or investing in real estate is often the most major and complex financial transaction for many people. This raises the question of whether there is

scope for industry to work with government to set up an independent tribunal to specialise in real estate disputes. Such a set-up would send a strong signal on the industry's commitment to enhance fair dealing and raise professional standards.

22. Possible features of such a tribunal could include administration by appointed neutral third parties, mediation services, and binding adjudication. In line with the principle that real estate agencies should take greater responsibility to resolve disputes, certain legislative provisions could be put in place, for instance, an agency may be required to participate in a dispute resolution procedure in the event that a dispute between its agent and the consumer is not resolved. The fee structure could be weighted in favour of the consumer so that the agency has stronger incentive to resolve differences before they reach the dispute resolution tribunal.

23. The government can assist to set up the independent tribunal at the initial stage, including providing start-up funding if necessary. For greater ownership however, the operation of such a tribunal should eventually rest with the industry. Both the AB and the agencies could fund the operating costs of the tribunal – the AB could commit a fixed percentage of its revenue to the tribunal, while a component of the agencies' accreditation fees could include an annual subscription fee to the tribunal.

Transition to New Framework

24. The industry and public consultation phases have commenced in September and October respectively. Key elements of the new framework are expected to be announced in December 2009 to January 2010. Legislative enactments are expected by the second half of 2010.

25. MND will also study the steps needed to implement the new framework and consult with industry on the appropriate transitional arrangements. MND intends to adopt a pragmatic approach in the transition, taking into account the experience and certifications of existing agents. It is expected that transition to the new framework should take place within a year from the legislative enactments in 2010.

Public Consultation

26. MND hereby invites members of the public to provide views on the proposed framework outlined above. Thank you.