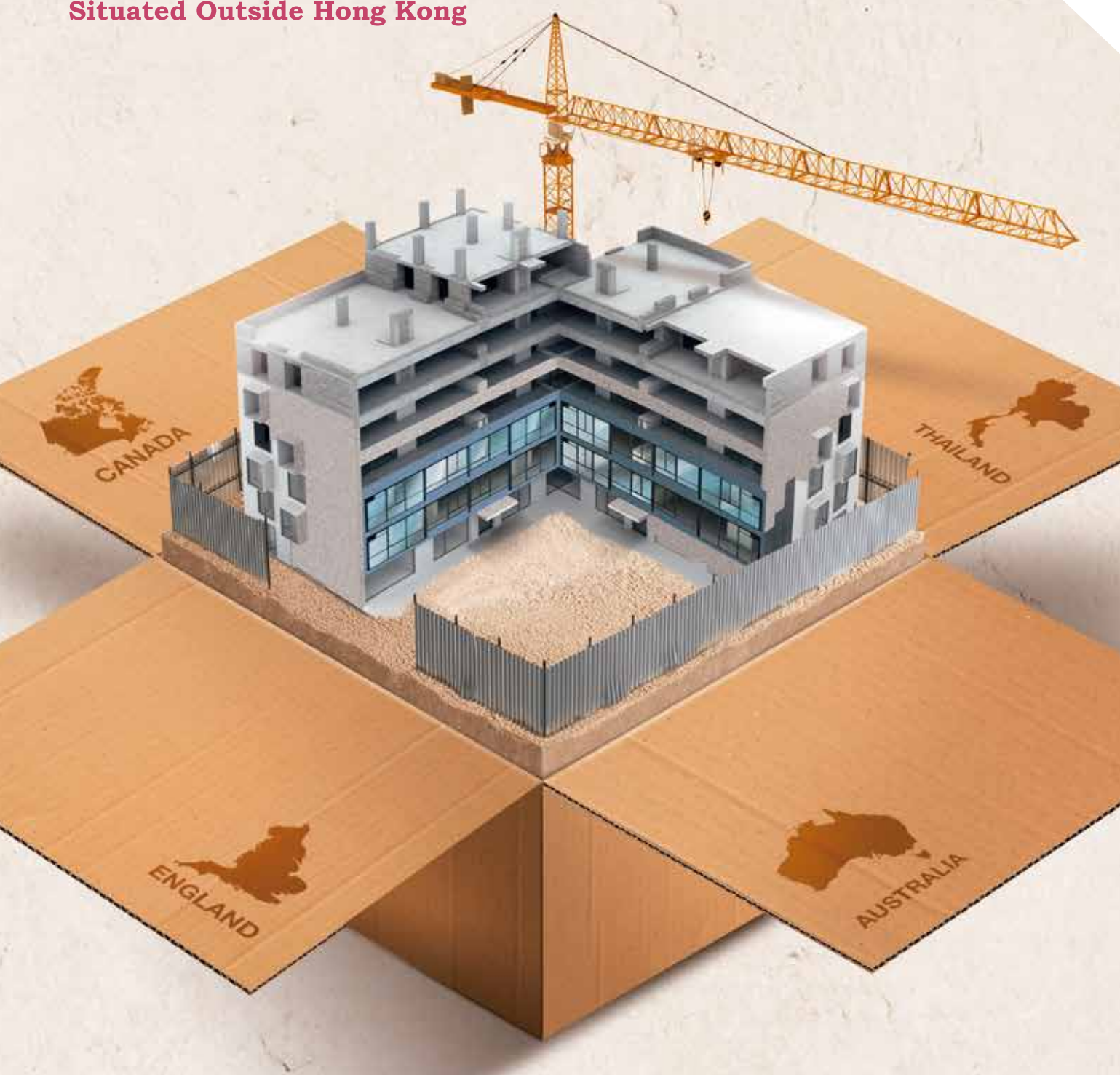


銷售香港境外 未建成物業的新指引

**New Guidelines on the Sale of Uncompleted Properties
Situated Outside Hong Kong**



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韓婉萍
Ruby Hon Yuen-ping

行政總裁
Chief Executive Officer

“這兩份通告的內容較為複雜，但正正反映這兩個議題的重要性，因此持牌人應盡量仔細閱讀，尤其是已上載到監管局網站的相關「問與答」。”

“Both circulars are quite complicated as both topics are important. Hence, licensees are advised to read them in detail, especially the sets of Questions & Answers which have already been uploaded to the EAA's website.”

監管局最近發出的兩份新指引 ABOUT TWO NEW PRACTICE CIRCULARS THAT THE EAA RECENTLY ISSUED

最近，監管局推出了兩份新的執業指引，包括有關遵守反洗錢及恐怖分子資金籌集規定的新執業通告(編號18-01(CR))，以及有關處理香港境外未建成物業的執業通告(編號17-03(CR))。兩份通告分別於2018年3月1日及4月1日生效。

其實，就物業交易涉及的洗錢或恐怖分子資金籌集的風險而言，香港地產代理在物業交易所扮演的角色有限，與其他司法地區的地產代理不同，香港地產代理並非代表客戶收取訂金或樓款的託管代理，而只是擔當買方與賣方的中間人，安排物業視察及簽署臨時買賣合約。然而，鑑於《打擊洗錢及恐怖分子資金籌集條例》已將本港地產代理行業納入規管範圍內，加上財務特別行動組織即將於年內來港，以評估不同界別就反洗錢議題上所執行的措施是否符合國際標準，監管局遂發出指引，希望地產代理能與其他專業界別和其他國家的地產代理一樣，達到國際專業標準。

至於另一份有關處理香港境外未建成物業的執業通告(編號17-03(CR))，筆者已不下一向向業界提醒，境外物業交易極為複雜，希望持牌人留意，作為持牌地產代理，應詳盡了解新通告的要求，包括就賣方及有關物業進行盡職審查、取得由物業所在地的執業律師所發出的法律意見、賣方就廣告及宣傳物品所載資料的準確性及完整性的明確書面批署等等，亦要留意廣告當中不可使用一些令人認為購買境外未建成物業是「安全」、「低風險」或「無風險」等字眼。持牌人可細閱今期的「焦點話題」內更詳盡的介紹。

監管局將會加強消費者教育，並建議消費者如要購買境外未建成物業，最好委託持牌地產代理。

筆者明白，上述這兩份通告的內容較為複雜，但正正反映這兩個議題的重要性，因此持牌人應盡量仔細閱讀，尤其是已上載到監管局網站的相關「問與答」。局方除了會舉辦更多相關的持續專業進修講座外，也會製作海報及單張，以教育持牌人及普羅大眾。

The EAA issued two new practice circulars recently about the guidelines on Compliance of Anti-Money Laundering and Counter-Terrorist Financing Requirements (No. 18-01 (CR)) and the Sale of Uncompleted Properties Situated outside Hong Kong (No. 17-03 (CR)), which was effective on 1 March 2018 and will be effective on 1 April 2018 respectively.

In so far as money-laundering or terrorist-financing risks in property transactions are concerned, the role played by estate agents in property transactions is limited. Unlike estate agents in other jurisdictions, estate agents in Hong Kong do not act as escrow agents for receiving deposits or proceeds on behalf of clients but simply as a middleman between purchasers and vendors in arranging property inspections and the signing of provisional agreements for sale and purchase. However, as the Anti-Money Laundering and Counter-Terrorist Financing Ordinance has already been extended to the estate agency trade of Hong Kong, and considering that the Financial Action Task Force will be coming to Hong Kong this year to evaluate the standard on combating money laundering of different sectors, the EAA issued guidelines for the trade to follow in regard to meeting the international standard of estate agents of other countries.

With regard to the other practice circular on the Sale of Uncompleted Properties Situated outside Hong Kong (No. 17-03 (CR)), I have been continuously reminding the trade that the transaction of overseas properties is very complicated. I hope licensees will read the requirements of this new circular thoroughly, including the requirement to perform due diligence on the vendor and the relevant properties; to seek legal opinion issued by a lawyer practising in the place where the properties are situated in; to obtain the vendor's express endorsement in writing of the accuracy and completeness of the advertisements and promotional materials; and not to include in advertisements words which give the impression that purchasing overseas properties is "safe", "low-risk" or "risk-free". Licensees can read more in detail from our "In Focus" story of this issue.

The EAA will increase its effort on consumer education and suggests that consumers appoint licensed estate agents when purchasing uncompleted properties situated outside Hong Kong.

I understand that the above circulars are quite complicated as both topics are important. Hence, licensees are advised to read them in detail, especially the sets of Questions & Answers which have already been uploaded to the EAA's website. The EAA will continue to organise more related Continuing Professional Development seminars and publish posters and leaflets to educate licensees and the public.

有關反洗錢及反恐怖分子資金籌集規定的新指引 NEW GUIDELINES ON COMPLIANCE OF ANTI-MONEY LAUNDERING AND COUNTER-TERRORIST FINANCING REQUIREMENTS

鑑於立法會通過《2018年打擊洗錢及恐怖分子資金籌集(金融機構)(修訂)條例》，監管局發出一份新執業通告(編號18-01(CR))，就《打擊洗錢及恐怖分子資金籌集條例》(下稱「《打擊洗錢條例》」)第7條的規定為業界提供相關的導引。此執業通告已於2018年3月1日生效。

新通告為業界提供實務指引，協助地產代理及其高級管理層制訂並實施各項政策、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，以符合《打擊洗錢條例》的相關規定。

當中，以進行盡職審查及備存紀錄至為重要。所謂盡職審查措施，即規定地產代理要識別及核實客戶身分。如就客戶而言有一名實益擁有人，則要識別該實益擁有人；及採取合理措施核實該實益擁有人的身分。

就備存紀錄而言，根據《打擊洗錢條例》，在識別及核實客戶或客戶任何實益擁有人的身分時，要取得文件的正本或副本，以及相關數據及資料的紀錄。

Owing to the passing of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Ordinance 2018 at the Legislative Council, the EAA issued a relevant new practice circular (No. 18-01(CR)) to provide guidelines to the trade on the requirements in accordance with section 7 of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance ("AMLO"). This new circular has taken effect on 1 March 2018.

The new circular provides practical guidelines to assist estate agencies and their senior management to establish and execute policies, procedures and monitoring measures, including risk assessment, customer due diligence measures, continuous monitoring of customers, suspicious transactions reporting, record-keeping and staff training in order to fulfill their responsibilities under the AMLO.

Among the above, carrying out customer due diligence and record-keeping are the most important. Customer due diligence requires estate agents to identify the customer and verify the customer's identity. If there is a beneficial owner in relation to the customer, estate agents also need to identify the beneficial owner and verify the beneficial owner's identity by taking reasonable measures.

As for record-keeping, according to the AMLO, when identifying and verifying the identity of a customer or beneficial owner in relation to the customer, the original or a copy of the documents and a record of the data and information obtained should be kept.

上述的執業通告、一套詳盡「問與答」、持牌人的清單及身分核實表格範例已上載於監管局網站。相關的持續專業進修講座已於3月29日舉行，持牌人可瀏覽本局網站以了解更多詳情。

The full practice circular, a set of detailed “Questions and Answers”, a checklist for licensees and sample identity verification forms have already been posted on the EAA’s website. Related Continuing Professional Development seminars were held on 29 March 2018. Licensees are advised to check the EAA’s website for more information.

聯合國安全理事會制裁名單 及恐怖分子或與恐怖分子有聯繫者的更新名單 UNITED NATIONS SECURITY COUNCIL SANCTIONS LIST AND UPDATED LIST OF TERRORISTS AND TERRORIST ASSOCIATES

監管局不時接獲保安局通知，有關聯合國安全理事會委員會不時更新的制裁名單及恐怖分子或與恐怖分子有聯繫者的更新名單。為執行對客戶之盡職審查，持牌人應留意更新名單。

The EAA is notified by the Security Bureau regularly on the updates of the sanctions list and the list of terrorists and terrorist associates from the United Nations Security Council. In order to carry out customers due diligence, licensees should pay attention to the updated list.

有關制裁名單可參閱聯合國安全理事會網頁
Please refer to the webpage of the United Nations Security Council for the sanctions lists

www.un.org/sc/suborg/zh/sanctions/un-sc-consolidated-list (中文)
www.un.org/sc/suborg/en/sanctions/un-sc-consolidated-list (English)

有關恐怖分子名單則可參閱聯合財富情報組網頁
As to the list of terrorists, please refer to the webpage of the Joint Financial Intelligence Unit

www.jfiu.gov.hk/tc/news_terrorist_list.html (中文)
www.jfiu.gov.hk/en/news_terrorist_list.html (English)

監管局再次提醒所有持牌人，如發現任何懷疑洗黑錢個案，應向政府的聯合財富情報組舉報。

The EAA would like to remind all licensees again that any suspicious cases of money laundering should be reported to the Government’s Joint Financial Intelligence Unit.



有關香港境外未建成物業的新執業通告 NEW PRACTICE CIRCULAR ON UNCOMPLETED PROPERTIES SITUATED OUTSIDE HONG KONG

監管局於2017年12月28日舉行新聞發布會，公布局方發出題為「銷售香港境外的未建成物業」的新執業通告(編號17-03 (CR))，就處理境外未建成物業銷售時的妥善執業方式及措施向持牌人提供指引。新通告將於2018年4月1日生效。

監管局執業及考試委員會主席張國鈞議員太平紳士表示：「參與銷售境外未建成物業而未有領取監管局牌照的人士，他們有別於持牌地產代理，並不受局方規管，故無須遵守這些指引。因此，消費者委託持牌地產代理處理境外未建成物業的交易較為有保障。」

有關執業通告的詳情，請參閱本期《專業天地》的「焦點話題」文章，及於監管局網站參閱整份通告。相關的「問與答」亦已上載至本局網站供業界參考。監管局會繼續就此議題教育業界及公眾。

監管局提醒持牌人應細閱執業通告的內容，以了解清楚指引要求。倘若遇到任何不確定的地方，不應隨便建議客戶。

A press conference was held on 28 December 2017 to announce the issuance of a new practice circular (No. 17-03 (CR)) titled “Sale of Uncompleted Properties Situated Outside Hong Kong” by the EAA. It provides guidelines for licensees on the proper practice and measures in the sale of uncompleted properties situated outside Hong Kong (“UPOH”). The new practice circular will take effect on 1 April 2018.

The Honourable Horace Cheung Kwok-kwan, JP, Chairman of the EAA Practice and Examination Committee, said “Non-licensees who handle the sale of UPOH, unlike licensed estate agents, are not regulated by the EAA and they are not required to comply with these guidelines. Hence, consumers would have greater protection by engaging licensed estate agents to handle the transactions of UPOH”.

For details of the practice circular, please read the article of “In Focus” in this issue of *Horizons* and read the circular in full at the EAA's website. A set of relevant “Questions and Answers” was uploaded to the website for the trade's reference as well. The EAA will continue to educate the trade and the public on the subject.

The EAA reminds licensees that they should read the practice circular carefully for a better understanding of the requirements and should not advise clients hastily in case of any uncertainties.



監管局執業及考試委員會主席張國鈞議員太平紳士及行政總裁韓婉萍女士向傳媒簡介有關持牌地產代理銷售香港境外未建成物業的新執業通告。

Chairman of the Practice and Examination Committee of the EAA, the Honourable Horace Cheung, JP and EAA Chief Executive Officer Ms Ruby Hon brief the press on the new practice circular on the sale of uncompleted properties situated outside Hong Kong by licensed estate agents.

監管局回顧2017年工作及簡介2018年工作重點 THE EAA REVIEWS ITS WORK IN 2017 AND INTRODUCES ITS INITIATIVES FOR 2018

監管局於2018年1月23日舉行新聞發布會，由主席梁永祥博士SBS太平紳士及行政總裁韓婉萍女士回顧局方在2017年的工作，及簡介2018年的工作重點。

梁博士指出，監管局在2017年共接獲427宗投訴個案，較2016年輕微減少10%。最常見的投訴性質包括「不妥善地處理臨時買賣合約(或臨時租約)」、「提供不準確或具誤導性的物業資料」及「發出違規廣告」。

踏入2018年，監管局會繼續密切監察市況、政府政策及適時向業界發出指引。此外，局方亦會致力透過不同渠道教育業界及加強消費者教育的工作。

有關新聞發布會的詳情，請參閱監管局網站內的相關新聞稿。

The EAA held a press conference on 23 January 2018 at which its Chairman, Dr William Leung Wing-cheung, SBS, JP, and Chief Executive Officer, Ms Ruby Hon Yuen-ping, reviewed the EAA's work in 2017 and introduced its initiatives for 2018.

Dr Leung pointed out that the EAA received a total of 427 complaints in 2017, a slight decrease of 10% compared to 2016. The most common complaint categories included mishandling the provisional agreement for sale and purchase (or provisional tenancy agreement), providing inaccurate or misleading property information and issuing non-compliant advertisement.

Stepping into 2018, the EAA will continue to review the market situation and government policies and issue guidelines to the trade as appropriate. In addition, the EAA will spare no effort in educating the trade on various fronts and strengthening consumer education.

For more details of the press conference, please read the related press release at the EAA's website.



監管局主席梁永祥博士及行政總裁韓婉萍女士於新聞發布會上回顧局方在2017年的工作及簡介2018年的工作重點。

At the press conference, the EAA's Chairman Dr William Leung and Chief Executive Officer Ms Ruby Hon review the EAA's work in 2017 and introduce its initiatives for 2018.

監管局舉辦「海外置業多面睇」公開講座 PUBLIC SEMINAR ON “POINTS TO NOTE ON PURCHASING PROPERTIES SITUATED OUTSIDE HONG KONG”

監管局向來重視消費者教育，定期舉辦不同活動教育公眾有關物業交易的注意事項。鑑於過去舉辦的公開講座均反應熱烈，監管局於2018年3月10日舉辦了另一場名為「海外置業多面睇」的公開講座，吸引了逾300位公眾人士出席。

講座由資深傳媒人胡國威先生擔任主持，邀請了四位不同界別的講者，包括冠域商業及經濟研究中心主任關焯照博士、安泓投資有限公司投資總監楊書健先生、投資者教育中心傳訊及教育資源經理王錦邦先生，以及監管局投訴及行動部主管陳汝儆律師。席上講者分享他們對不同國家物業市場前景的見解及購買海外物業時應留意的事項。另外，講者也向觀眾介紹了監管局就持牌人處理銷售香港境外未建成物業的新執業通告。

是次講座以問答環節作結，觀眾踴躍提問。監管局未來會繼續就其他議題舉辦更多公開講座。

The EAA attaches great importance to consumer education and organises different kinds of events regularly to educate the public of the important points to note during property transactions. Following the positive feedback from the EAA's previous public seminars, a seminar titled “Points to Note on Purchasing Properties Situated outside Hong Kong” was held on 10 March 2018 with public audience of over 300.

The seminar, hosted by veteran journalist Mr Kwok-wai Wu, had invited four speakers from different professions, including Dr Andy Kwan, Director of ACE Centre for Business and Economic Research; Mr Victor Yeung, Chief Investment Officer of Admiral Investment Limited; Mr Kam-pong Wong, Manager (Communications and Resources) of Investor Education Centre and Mr U-keng Chan, Head of Complaints and Enforcement Section of the EAA. The speakers shared their views on the outlook of the property markets in different countries and talked about the important points to note when purchasing overseas properties. The EAA's new practice circular for licensees on the guidelines of participating in the sale of uncompleted properties outside Hong Kong was also introduced to the audience.

The seminar ended with a “Questions and Answers” session which the audience actively participated in. The EAA will continue to hold public seminars on other topics in the near future.



監管局行政總裁韓婉萍女士與講座講者及主持合照。(左起：陳汝儆律師、胡國威先生、關焯照博士、韓婉萍女士、王錦邦先生及楊書健先生)
EAA Chief Executive Officer Ms Ruby Hon with the speakers and host of the seminar. (From left to right: Mr U-keng Chan, Mr Kwok-wai Wu, Dr Andy Kwan, Ms Ruby Hon, Mr Kam-pong Wong and Mr Victor Yeung)



銷售香港境外未建成物業的新指引 NEW GUIDELINES ON THE SALE OF UNCOMPLETED PROPERTIES SITUATED OUTSIDE HONG KONG

近年，越來越多香港人有興趣投資境外物業，吸引不少海外發展商來港推銷，而參與境外物業銷售的持牌地產代理亦日益俱增。

然而，消費者一般對物業所在地就境外買家購買或出租物業的規管架構以至稅制等問題認識不多，容易引起誤會。倘若是購買境外未建成的物業，買家不但沒有機會視察物業，對發展商的背景及財政狀況又了解不足的話，涉及的風險可能更高，引發投訴的機會愈大。

有見及此，監管局去年底發出一份有關銷售香港境外未建成物業的執業通告（編號17-03(CR)），為業界提供指引，新通告於今年4月1日生效。

委託持牌代理較有保障

這份通告，只適用於持牌地產代理，非持牌人士（例如海外物業發展商或當地中介機構）不在監管局規管範圍之內。因為根據《地產代理（豁免領牌）令》，任何人士倘若純粹處理香港以

As the interest of Hong Kong people in purchasing properties situated outside Hong Kong has been on the rise in recent years, more overseas developers are attracted to promote their developments in Hong Kong. At the same time, there has also been an increase in the number of licensed estate agents in Hong Kong participating in the sale of properties situated outside Hong Kong.

However, as most consumers may have limited knowledge of the regulatory regimes for purchasing or leasing properties and the taxation systems of the jurisdictions where the properties are located, misunderstandings can easily arise. Purchasing an uncompleted property situated outside Hong Kong carries a higher risk as purchasers not only do not have the opportunity to inspect the property, they may also have limited knowledge of the background and financial standing of the developers. Hence, there is a higher chance of complications leading to complaints.

In view of the above, the EAA issued a new practice circular (No. 17-03(CR)) on handling the sale of uncompleted properties

situated outside Hong Kong (“UPOH”) last December to provide guidelines to the trade. The new circular will take effect on 1 April 2018.



外地方的物業，並在其所有信件、賬目、收據、單張、小冊子及其他所有文件及廣告中，清楚述明其本人並無持有或取得處理香港物業的牌照，可獲豁免領取由監管局發出的牌照。

因此，正如局方不斷提醒消費者要留意，由於持牌地產代理受到監管局規管，須遵守《地產代理條例》及其附屬法例，以及監管局發出的《操守守則》及所有適用的指引行事，其行為操守有一定的要求，亦擁有一定的專業水平，故若想購買境外物業，最好委託持牌代理，保障較大。

深入了解 減低風險

作為持牌地產代理，則應詳盡了解新通告的要求。首先，持牌地產代理在參與境外未建成物業的銷售或推廣活動之前，必須要就賣方及有關物業進行盡職審查，即需要先取得物業所在地的專業人士、金融機構或政府當局發出的報告以確認賣方是否確實存在，其資金來源或財務安排，以至有關項目的關鍵資料等。

此外，持牌代理要就着一些重要資料取得由物業所在地的執業律師所發出的法律意見。當中包括：根據該境外未建成物業所在地的法律，境外買家購買、轉售、出租或按揭該未建成物業是否有任何形式的限制；以及如有的話，該等限制的性質的法律意見。

廣告及宣傳方面，地產代理在發出廣告及宣傳物品之前，需要取得賣方就廣告及宣傳物品所載資料的準確性及完整性的明確書面批署，而該些廣告及宣傳物品中需包含提醒準買家購買境外未建成

APPOINTING LICENSED ESTATE AGENTS FOR GREATER PROTECTION

This circular only applies to EAA licensees, as non-licensees (such as overseas property developers or overseas estate agencies) are not under the EAA's purview. According to the Estate Agents (Exemption from Licensing) Order, if a person engages in estate agency work exclusively in relation to properties outside Hong Kong, and states in all his/her letters, accounts, receipts, pamphlets, brochures and other documents and in any advertisement that he/she is not licensed to deal with any property situated in Hong Kong, he/she shall be exempted from obtaining a licence issued by the EAA.



Therefore, the EAA has been continuously reminding consumers that as licensed estate agents are regulated by the EAA and must comply with the Estate Agents Ordinance and its subsidiary legislation, the *Code of Ethics* and all the applicable guidelines issued by the EAA, their conduct and professionalism is up to a certain standard. Purchasers would have greater protection if they appoint licensed estate agents when purchasing properties situated outside Hong Kong.

THE MORE YOU KNOW, THE LOWER THE RISK

Licensees should understand the requirements of the new circular in detail. Firstly, licensees must perform due diligence on the vendor and the UPOH before they participate in the sale or the promotional activities for such properties. They are required to obtain a due diligence report(s) issued by a professional person, financial institution and/or government authority in the place where the UPOH are situated, confirming the existence of the vendor, the source of funds or financial arrangement of the vendor and the key information of the development etc.

In addition, licensees are required to obtain a written opinion issued by a lawyer practising in the place where the UPOH are situated with information on whether there are any restriction(s) on foreign purchasers to purchase, resell, lease or mortgage the properties according to the laws and regulations of the place where the UPOH are situated and the nature of such restrictions(s), if any.

Regarding advertisements and promotional materials, licensees must obtain the vendor's express endorsement in writing of the

物業是複雜及有風險的顯眼警告聲明。亦要留意廣告當中不可使用一些令人認為購買境外未建成物業是「安全」、「低風險」或「無風險」，又或者能夠在極少或零風險的情況下獲得「快速」、「輕鬆」或「高」收益或回報等印象的字眼。

最後，地產代理在買方就購買境外未建成物業訂立任何協議或支付任何款項之前，除了須向買方提供關於賣方及境外未建成物業的盡職審查報告副本和重要資料的法律意見副本外，還須提供獨立的書面警告聲明及一份包含監管局所有要求資料的銷售資料單張。

資料未核實 勿向客戶建議

同時，地產代理向客戶提供有關稅務及付款或財務安排的資料時，地產代理須建議買方就其本身的情況而須繳納的稅項或徵費的類別及數額尋求獨立專業意見，並應僅根據賣方所提供之資料向買方提供有關付款安排的資料，及不得向客人作出任何按揭條款的保證。

總括而言，境外物業交易比起本地物業交易複雜得多。持牌人在決定參與推銷境外物業前，必須先了解清楚此執業通告的要求，衡量自己能否達到通告的要求。監管局會繼續進行消費者教育，希望減少產生誤會或投訴的機會。

accuracy and completeness of the information contained therein before issuing the advertisements and promotional materials. Furthermore, a prominent statement should be stated in those advertisements and promotional materials to remind purchasers that purchasing uncompleted properties situated outside Hong Kong is complicated and contains risk. Also, wording which will give the impression that purchasing UPOH is “safe”, “low-risk” or “risk-free”, or able to obtain “fast”, “easy”, or “high” yields or returns with little or no risk must not be included in such advertisements.

Finally, in addition to the copies of the due diligence report(s) regarding the vendor and the UPOH, and the legal opinion, licensees must provide purchasers with a separate written warning statement and a sales information sheet containing information required by the EAA before they enter into any agreement in connection with the purchase or make any payment in relation to the purchase of UPOH.

VERIFY INFORMATION BEFORE ADVISING CLIENTS

At the same time, when providing information on taxation, payment or financing arrangements to clients, licensees should advise the purchasers of the need to seek independent professional advice on the types and amounts of taxes or levies that they may be liable to pay in respect of their own case. Licensees should only provide information to purchasers on payment arrangements based solely on the information provided by the vendor and must not make any assurance on the terms of mortgage.

To conclude, compared with the transactions of properties located in Hong Kong, purchasing properties situated outside Hong Kong is much more complicated. Licensees must familiarise themselves with the requirements of this circular and consider carefully if they could fulfill those requirements before participating in the sales of UPOH. The EAA will continue to educate consumers, hoping to reduce the possibility of misunderstandings or complaints.





謝順禮先生

Mr Calvin TSE Shun-lai

- 嘉威物業代理有限公司行政總裁
CEO, Ka Wai Property Agency Co. Ltd.
- 嘉興地產有限公司行政總裁
CEO, Ka Hing Properties Co. Ltd.
- 香港地產代理商總會主席
Chairman, Hong Kong Real Estate Agencies General Association
- 職業安全健康局文職及專業服務業安全及健康委員會委員
Member, Sedentary and Professional Services Safety and Health Committee, Occupational Safety and Health Council

專訪監管局成員謝順禮先生

INTERVIEW WITH MR CALVIN TSE SHUN-LAI, MEMBER OF THE EAA

本期《專業天地》專訪了監管局成員謝順禮先生，了解一下他對監管局工作的看法及他作為業界代表如何看業界的表現。

In this issue of *Horizons* we interview Mr Calvin Tse Shun-lai, member of the EAA, about his feelings on the EAA's work and his views on the performance of the trade from the perspective as a trade's representative.

問：你自2014年起成為監管局成員，並加入不同委員會工作，數年來對監管局的工作有何觀感？

Q : You have been a member of the EAA since 2014 and become a member of various EAA Committees. What is your perception of the work of the EAA over the past few years?

答：作為業界的代表，我想先與大家分享一下從一個業界的角度如何看監管局的工作。在監管局多年前成立初期，業界受到規管，難免對局方有不少抗拒，但隨着日子過去，經過不斷溝通，業界對監管局的抗拒感已漸漸消除。至於我在加入監管局董事局之後，確實對監管局認識多了。透過我在監管局紀律委員會、牌照委員會和執業及考試委員會的不同工作，我明白到監管局在制定措施和進行決定時，其實是客觀和持平的，並沒有針對業界。同時，我亦見到監管局很樂意與業界溝通及聽取業界意見。例如，業界有意見表示希望監管局能恢復電腦化營業員資格考試，局方

A : As a representative of the trade, I would like to share with you first what I think about the work of the EAA from a trade's perspective. After the establishment of the EAA, the trade was regulated and it was inevitable that there was some resistance to the EAA in the early years. However, after time and through continuous communication, the trade's resistance was gradually eliminated. After I joined the EAA's Board, I had more understanding about the EAA. Through my varied work in the EAA's Disciplinary Committee, Licensing Committee and the Practice and Examination Committee, I found that the EAA is actually objective and fair when formulating measures and making decisions and is not against the trade. In addition, I also see that the EAA is very willing to communicate with the trade and listen to their views. For example, the trade had expressed that they hoped the EAA would resume the computerised salesperson qualification examination. The EAA responded positively and carried out a feasibility study and will implement

反應積極，進行可行性研究並稍後會付諸實行。我對監管局印象是，監管局擁有一支專業的團隊，多年來做了很多提升業界專業和水平的工作。

問：你身為業界商會代表，同時又擔任監管局董事局成員，如何最得當中的平衡？

答：作為監管局董事局成員之一，我有責任參與制定及通過有關業界執業及操守的指引和守則。由於我同時也是個業界代表，因此我亦有責任確保相關指引和守則並非不設實際，而是在實際上能夠執行，也不會令到業界構上不必要負擔。例如最近有關反洗錢的指引，我見到監管局一方面既有充分聽取業界意見，另一方面也有向相關政府部門反映業界的看法；結果，在制定相關指引時，成功做出一份既可符合政府及相關法例要求，而又不會令業界難以執行的執業通告。

問：作為一名資深的業界人士，你覺得近年業界的表現如何？

答：經過多年來監管局的努力和業界商會的配合，雙管齊下，業界的專業水平已比以前大有提升，作為業界一分子也感到鼓舞。例如，參與監管局持續專業進修計劃的從業員有所增加，即使該計劃並非強制性，但仍有不少從業員自願參加計劃，在百忙中抽空上課，而商會亦積極為會員舉辦持續專業進修講座。另外，我知道監管局收到的投訴數字以及被紀律處分的持牌人數字均有所減少，這種種都能反映業界的水平有所改善。

the computerised examination later. My impression of the EAA is that it has a professional team and has done a lot of work to enhance the professionalism and standard of the trade over the years.

Q : As a representative of the trade and a member of the EAA's Board at the same time, how do you strike a balance?

A : As a member of the EAA's Board, it is my duty to participate in formulating and endorsing the guidelines and codes for the trade's practice and conduct. Since I am also a trade representative at the same time, I am also responsible to ensure that the relevant guidelines and codes are not impracticable but can in reality be carried out by the trade, and not imposing unnecessary burden on the trade. For example, regarding the latest guidelines on anti-money laundering, I noticed that on one hand the EAA has thoroughly listened to the views of the trade, while on the other hand it has reflected the trade's views to the relevant Government department. As a result, in the course of formulating the relevant guidelines, the EAA has successfully formulated a practice circular that can comply with the relevant legal requirements, while not being overly difficult for the trade to comply with at the same time.

Q : As a well-experienced trade practitioner, what do you think of the trade's performance in recent years?

A : After years of effort by the EAA and the cooperation of the trade associations, the professionalism of the trade has been greatly enhanced compared with the early years. I am also grateful to be part of the trade. For example, there has been an increase in the number of practitioners participating in the EAA's Continuing Professional Development ("CPD") Scheme. Even though the Scheme is not a mandatory one, many practitioners are willing to participate in the Scheme and make time for classes from their busy schedules. Trade associations are also proactive in organising CPD seminars for their members. Besides, according to my understanding, both the number of complaints received by the EAA and the number of licensees having disciplinary sanctions imposed on them have decreased. This shows that the trade's standard has improved.



紀律研訊個案： 向客戶發出辱罵的訊息 DISCIPLINARY HEARING CASE: SENDING MESSAGES CONTAINING ABUSIVE CONTENT TO CLIENTS



引言

地產代理不得向客戶發出含有辱罵或粗言穢語的訊息。否則，地產代理有可能被監管局紀律處分。

INTRODUCTION

Licensees must not send any messages containing abusive content or foul language to their clients. Otherwise, they may be subject to disciplinary action by the EAA.

事件經過

一名準買家及其太太前往某一手樓盤的展銷廳參觀，並由兩名地產代理營業員陪同。一星期後，該名準買家向那兩名營業員表示不需要由他們兩人的公司提供地產代理服務。其後，該名準買家便不斷收到由那兩名營業員及不同電話號碼發出的包含粗言穢語的手機訊息。經查證後，那些不知名的電話號碼原來是屬於該兩名營業員的其他同事。其中一名營業員更在獲悉該準買家不會使用其服務後，與他面對面發生口角。該名準買家最終報警求助，並向監管局作出投訴。

INCIDENT

A prospective purchaser and his wife visited the showroom of a first-sale site of a development and two salespersons accompanied them. A week later, the prospective purchaser informed the two salespersons that he was not going to use the estate agency service provided by their company. The prospective purchaser then received different mobile messages containing foul language from the two salespersons and from other unknown numbers, which were later found to be from the salespersons' colleagues. One of the salespersons even had a face-to-face quarrel with the prospective purchaser after finding out that he was not going to use their service. The prospective purchaser finally called the police to settle the quarrel incident and he also lodged a complaint with the EAA.

研訊結果

監管局紀律委員會認為，該兩名地產代理營業員及其同事向客戶發出含有辱罵或粗言穢語的訊息，違反了《操守守則》第3.7.2段：「地產代理和營業員應避免做出可能令地產代理行業信譽及/或名聲受損的行為」。

RESULT

The EAA Disciplinary Committee was of the view that by sending mobile messages with foul language and abusive content to the prospective purchaser, the two salespersons and their colleagues had failed to comply with paragraph 3.7.2 of the *Code of Ethics*: "estate agents and salespersons should avoid any practice which may bring discredit and/or disrepute to the estate agency trade".

考慮到個案的性質、同類個案的罰則、該兩名營業員及其同事的違規紀錄，紀律委員會決定譴責他們，並暫時吊銷他們的牌照21天。

Having considered the nature and gravity of the case, the sanctions for similar cases and the disciplinary record of the two salespersons and their colleagues, the Committee reprimanded them and suspended all their licences for 21 days.



地產代理管理協會會長
黃漢成先生
Mr Daniel Wong
President of Estate Agents
Management Association

業界回應 COMMENT FROM TRADE

地產代理作為服務性行業，有必要為每位客戶提供周全服務，即使對方最終未有購入任何物業，都不能惡語相向，損害整個業界的專業形象。本人冀每位業內人士堅持以誠待客、專業高效的服務態度，為業界樹立正確操守，提升整體服務質素。

Being a service industry, it is essential that estate agents provide a high-quality service to every client. Even if a client does not purchase a property, estate agents should never be rude or use any foul language as it will ruin the professional image of the trade. I truly hope that practitioners will always be sincere when serving clients while building trust so that the overall standard of the trade will be enhanced.

紀律研訊個案：誤導客戶有關銀行估價及按揭資料 DISCIPLINARY HEARING CASE: MISREPRESENTATION ON BANK'S VALUATION OF A PROPERTY AND MORTGAGE OFFER

引言

持牌人不應就物業的銀行估價向準買家作出任何誤導性陳述，也不應就按揭條款作出任何保證，否則有可能被監管局紀律處分。

INTRODUCTION

Licensees should not make any misrepresentation to prospective purchasers on the valuation of properties or make any promise on the mortgage terms. Otherwise, they may be subject to disciplinary action by the EAA.

事件經過

一名地產代理安排一對準買家夫婦視察一個住宅物業，並以成交價\$3,960,000為其訂立臨時買賣協議。訂立臨約前，該地產代理向他們表示銀行估價為\$4,100,000，同時他們可獲得相等於樓價八成的按揭貸款。

然而，結果數間銀行對該物業的估值僅介乎於\$3,350,000至\$3,420,000，

INCIDENT

An estate agent arranged for a prospective purchaser couple to inspect a property and enter into a provisional agreement for sale and purchase ("PASP") with \$3,960,000 as the purchase price. Before entering into the PASP, the estate agent told the couple that the valuation of the bank was \$4,100,000 and they could obtain an 80% mortgage loan.

However, it turned out that several banks valued the property within the range of \$3,350,000 to 3,420,000 only. Moreover, the

誠信與你 INTEGRITY IN FOCUS

因買家購買該物業是作收租之用，故提供予他們的按揭貸款亦僅為樓價的五成而已。

因此，該對買家夫婦最終取消交易，同時向監管局作出投訴。

mortgage loan amount they were offered was just up to 50% of the property price because the property was not intended for self-use purpose.

Hence, the couple cancelled the transaction and lodged a complaint with the EAA.

研訊結果

監管局紀律委員會認為，該名地產代理就物業的銀行估價對其客戶作出誤導性陳述，違反了《操守守則》第3.4.1段：「地產代理和營業員應保障和促進客戶的利益。」

此外，他在沒有掌握按揭成數上限的情況下，告訴客戶他們將可獲得的按揭貸款額，因而違反了《操守守則》第3.2.2段：「地產代理和營業員應掌握有關的一切法律、政府規例，及地產市場的重要事實和發展。」

考慮到個案的性質及該地產代理的違規紀錄，委員會決定譴責該名地產代理，罰款4,000元，並在其牌照上附加條件，要求他在24個月內取得持續專業進修計劃下的24個學分。

RESULT

The EAA Disciplinary Committee found that the estate agent had made a misrepresentation to his clients on the valuation of the property. Thus, he was in breach of paragraph 3.4.1 of the *Code of Ethics* issued by the EAA, which stipulates: “Estate agents and salespersons should protect and promote the interests of their clients”.

In addition, he also failed to keep himself informed of the maximum loan-to-value ratio before advising his clients on the amount of mortgage loan they would be offered. Hence he was also in breach of paragraph 3.2.2 of the *Code of Ethics* which stipulates: “Estate agents and salespersons should keep themselves informed of any laws, government regulations, essential facts and developments in the real estate market”.

Having considered the nature and gravity of the case, and the disciplinary record of the estate agent, the Committee decided to reprimand the estate agent, fine him \$4,000 and attach conditions to his licence requiring him to obtain 24 points under the EAA's Continuing Professional Development Scheme in 24 months.



業界回應 COMMENT FROM TRADE

地產代理不應隨便向買家作出有關估價或按揭成數的承諾，或向他們提供這方面的誤導性資訊。未經查證的資料有可能導致準買家蒙受巨大的金錢損失，從業員應該建議客戶直接向銀行或金融機構查詢。

Estate agents should not make any assurance to prospective purchaser on the valuation of the property or the amount of mortgage loan obtained and should not provide any misleading information to clients. Unverified information may cause huge money loss to purchaser. Practitioners should advise their clients to check directly with banks or financial institutions.

香港新界地產代理商聯會永遠榮譽主席
廖志明先生

Mr Liu Chi-ming

Life-long President of H.K.N.T. Estate Agents & Merchants Association

持續專業進修講座 CPD SEMINAR

新執業通告 — 銷售香港境外的未建成物業

NEW PRACTICE CIRCULAR - SALE OF UNCOMPLETED PROPERTIES SITUATED OUTSIDE HONG KONG

隨着社會越來越關注持牌人於銷售香港境外的未建成物業時的操守和行為，監管局發出一份新執業通告：通告編號17-03(CR) —— 「銷售香港境外的未建成物業」，就有關參與境外未建成物業銷售的妥善執業方式和措施為持牌人提供指引。

為加深持牌人對新執業通告的認識，監管局於2018年1月29日及1月30日舉辦了兩場分別以英語及廣東話授課的講座，合共有226名持牌人出席。席間，監管局代表向持牌人詳細講解局方就銷售香港境外的未建成物業的指引，以協助持牌人符合通告的要求，藉以提高業界的專業水平。

In light of the rising concern of the community on the conduct and behaviour of licensees during the sale of uncompleted properties situated outside Hong Kong, the EAA issued a new practice circular, "Circular No. 17-03 (CR) – Sale of Uncompleted Properties Situated Outside Hong Kong", to set out guidelines for the licensees on the appropriate practice and measures to be adopted when handling the sale of these properties.

To enhance licensees' understanding of the new circular as well as their professionalism, the EAA organised two CPD seminars on 29 January and 30 January 2018 in English and Chinese respectively. At the seminars, the EAA's representative explained in detail the EAA's guidelines on sale of uncompleted properties situated outside Hong Kong. These seminars attracted 226 enrolments in total.



執業問與答

PRACTICE Q&A

在《專業天地》內，我們會解答與持牌人執業息息相關的一些常見提問。

In Horizons, we will answer selected enquiries commonly raised by licensees concerning estate agency practice.

問： 在發出廣告宣傳某住宅物業的銷售或租賃前，我是否必須與該賣方或業主訂立地產代理協議？

Q： Must I enter into an estate agency agreement with the vendor or landlord before issuing any advertisement for the sale or leasing of a residential property?

答： 根據《地產代理條例》及《地產代理常規(一般責任及香港住宅物業)規例》(《常規規例》)，持牌地產代理在被委託處理香港住宅物業的出售、購買或租賃時，必須與客戶訂立並妥為簽立訂明地產代理協議。

根據《常規規例》第6(1)條，為賣方或業主行事的持牌地產代理須在以下時間與其訂立訂明地產代理協議(三者中以最早者為準)：

- (a) 在接受出售或出租有關住宅物業的指示後七個工作天內；
- (b) 就該物業的出售或出租而作廣告宣傳之前；或
- (c) 就該物業簽署買賣協議或租契之前。



A： Under the Estate Agents Ordinance and the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation ("Practice Regulation"), licensed estate agents are required to enter into and properly execute a prescribed estate agency agreement with their clients when being appointed to handle the sale, purchase or leasing of residential properties in Hong Kong.

According to section 6(1) of the Practice Regulation, a licensed estate agent who acts for a vendor or landlord shall enter into a prescribed estate agency agreement with him on the happening of one of the following events (whichever is the earliest):

- (a) within seven working days after accepting an instruction to sell or lease a residential property;
- (b) prior to advertising the property for sale or lease; or
- (c) prior to the signing of an agreement for sale and purchase or a lease of the property.



何謂「訂金託管」？

“S” FOR “STAKEHOLDING OF DEPOSITS”



按照現行物業轉易的慣例，買方在訂立臨時買賣合約（「臨約」）時，須支付一筆臨時訂金。該筆臨時訂金一般介乎買入價的3%至5%。

為減低物業交易中在賣方身分方面有具欺詐成分的失實陳述及賣方在收取訂金後失蹤的風險，尤其是附有未解除按揭的物業交易，地產代理（不論是代表買賣雙方的雙邊代理或只代表買方的單邊代理）須在安排買賣雙方訂立物業的臨約前，以書面形式建議買方客戶安排由律師行託管所有訂金（包括臨時訂金及加付訂金），及告知該客戶不託管訂金的風險。

倘若買賣雙方在得悉地產代理作出上述建議後仍決定不安排託管訂金而繼續進行交易，地產代理須採取額外步驟以核實賣方的身分。有關詳情，請瀏覽核實賣方的身分的執業通告（編號16-03（CR））。

It is current conveyancing practice that upon the signing of a Provisional Agreement for Sale and Purchase (“PASP”), an initial deposit is invariably payable by the purchaser. Such initial deposit usually ranges from 3% to 5% of the purchase price.

To minimise the risk of fraudulent misrepresentation of the identity of the vendor in a property transaction and the disappearance of the vendor after receiving the deposit(s), especially for transactions involving undischarged mortgages, estate agents (whether acting as a dual agent for the parties or as a single agent for the purchaser) are required to, before arranging for the parties to enter into the PASP of the property, advise their client(s) in writing to arrange for the stakeholding of all deposits (both the initial and further deposits) by a firm of solicitors, and the risk of not doing so.

If, despite the advice of the estate agents, the parties nonetheless decide to proceed with the transaction without arranging for the stakeholding of the deposit, estate agents are required to carry out additional steps to verify the identity of the vendors. For details, please refer to the practice circular (No. 16-03(CR)) on Verifying the Identity of Vendors.

活動紀要

EVENTS AND ACTIVITIES

2018-01-17

監管局管理層與物業管理業監管局的成員會面，分享局方在制定及實施發牌制度的經驗。

The EAA management holds a meeting with members of the Property Management Services Authority to share its experience on the licensing regime of the EAA.



2018-01-26

監管局主席梁永祥博士（右）接受新城財經台訪問，回顧局方2017年的工作，並談及2018年的新動向。

EAA Chairman Dr William Leung Wing-cheung (right) attends an interview by Metro Finance Radio, reviewing the EAA's work in 2017 and introducing its initiatives in 2018.



2018-02-02



監管局接待來自中國房地產估價師與房地產經紀人學會的代表團，與及住房城鄉建設部房地產市場監管司副司長楊佳燕女士(左六)。

The EAA receives a delegation from the China Institute of Real Estate Appraisers and Agents and Ms Yang Jiayan, Deputy Director-General of the Department of Real Estate Market Supervision and Regulation Ministry of Housing and Urban-Rural Development (sixth from the left).

2018-02-27

監管局舉行春茗，主席梁永祥博士(右二)、行政總裁韓婉萍女士(左二)、規管及法律總監梁德麗女士(右一)及服務總監王頌恩先生(左一)向傳媒朋友拜年。

The EAA holds a luncheon to celebrate Chinese New Year with journalists. Chairman Dr William Leung (second from right), Chief Executive Officer Ms Ruby Hon (second from left), Director of Regulatory Affairs and General Counsel Ms Juliet Leung (first from right) and Director of Services Mr Ivan Wong (first from left) wish the press a happy new year of the Dog.



統計數字

STATISTICS

考試 EXAMINATIONS

地產代理資格考試 ESTATE AGENTS QUALIFYING EXAMINATION

考試日期
Examination date
29/12/2017

應考人數
No. of candidates
1,481

合格率
Pass rate
33.5%

營業員資格考試 SALESPERSONS QUALIFYING EXAMINATION

考試日期
Examination date
9/2/2018

應考人數
No. of candidates
940

合格率
Pass rate
35.5%

牌照數目 (截至2018年2月28日)

NUMBER OF LICENCES (AS AT 28/2/2018)



營業員牌照
Salesperson's Licence
20,852



地產代理(個人)牌照
Estate Agent's Licence (Individual)
17,687

個人牌照總和
Total no. of individual licences

38,539

地產代理(公司)牌照
Estate Agent's Licence (Company)

3,613

營業詳情說明書 (截至2018年2月28日)

NUMBER OF STATEMENTS OF PARTICULARS OF BUSINESS (AS AT 28/2/2018)



合夥經營
Partnerships
204



獨資經營
Sole proprietorships
1,625



有限公司
Limited companies
5,022



總數 Total
6,851

開立的投訴

(2018年1月至2月)

NUMBER OF COMPLAINT CASES OPENED

(JANUARY TO FEBRUARY 2018)

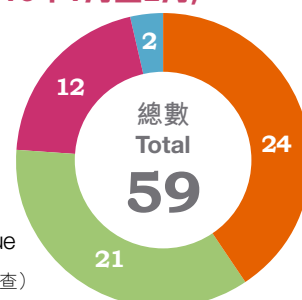
55

已處理的投訴個案結果* (2018年1月至2月)

RESULTS OF COMPLETED COMPLAINT CASES*

(JANUARY TO FEBRUARY 2018)

- 指稱成立 Substantiated
- 指稱不成立 Unsubstantiated
- 資料不足 Insufficient information to pursue
- 其他(例如投訴人撤回投訴或因其他原因而終止調查)
Others (include cases withdrawn or closed because of other reasons)



* 部分是往年接獲的個案 some cases were carried over from previous years

巡查次數 (2018年1月至2月)

NUMBER OF COMPLIANCE INSPECTIONS (JANUARY TO FEBRUARY 2018)



巡查發現主動調查的個案 (2018年1月至2月)

NUMBER OF CASES ARISING FROM SELF-INITIATED INVESTIGATIONS DURING INSPECTIONS (JANUARY TO FEBRUARY 2018)

11 主動調查的個案
Cases arising from self-initiated investigations

19 主動調查而指稱成立的個案*
Cases completed from self-initiated investigations and were substantiated*

* 部分是往年展開調查的個案 some cases were carried over from previous years

向持牌人或前持牌人採取的行動* (2018年1月至2月)

ACTIONS TAKEN AGAINST LICENSEES OR EX-LICENSEES* (JANUARY TO FEBRUARY 2018)

有關的持牌人或前持牌人人數
No of licensees or ex-licensees



行動

ACTIONS TAKEN

訓誡/譴責
Admonishment/
reprimand
30

罰款
Fine
20

於牌照附加/更改條件
Attachment/ alteration of
conditions to licence
24

暫時吊銷牌照
Suspension
4

撤銷牌照
Revocation
6[#]

* 向持牌人或前持牌人作出的行動是根據《地產代理條例》而作出的判決，當中有部份可能屬於紀律性質，包括在發牌時或在其他情況下於牌照上附加條件。
These actions were taken pursuant to powers under the Estate Agents Ordinance. Some actions may be disciplinary in nature and others not, and they include the attachment of conditions to licences whether upon issuance or otherwise.

這些個案由牌照委員會裁定。理由是持牌人不再符合相關發牌條件。

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



地產代理監管局 Estate Agents Authority

香港灣仔皇后大道東183號合和中心48樓
48/F, Hopewell Centre, 183 Queen's Road East, Wanchai, Hong Kong

☎ (852) 2111 2777

💻 www.eaa.org.hk