



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.



焦點話題 IN FOCUS

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 restriction(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.

