

## Circular

Circular No. 17-02 (CR)

### *Floor Area Information*

- May be provided if the floor area information was obtained from a reasonable source or there was a proper basis to rely on for providing such information.
- State in the advertisement or inform the person(s) concerned (as the case may be) that such information has not been verified.
- Inform the person(s) concerned that there is no standardised or commonly adopted definition of any description of floor area.
- Advise the person(s) concerned to inspect the property and take the measurements themselves and/or seek legal and/or professional advice.

### *Permitted Use*

- Where the occupation permit (“OP”) relating to the property has been issued:
  - (a) give information on the permitted use as stated on the OP;
  - (b) state that such information was given as at the date of the issuance of the OP;
  - (c) inform the person(s) concerned that the relevant Government Grant and/or the Deed of Mutual Covenant may also contain user restrictions; and
  - (d) advise the person(s) concerned to seek legal and/or professional advice in relation to their intended specific use of the property.
- Where the OP relating to the property has not been issued:
  - (a) inform the person(s) concerned that the permitted use of the property cannot be verified; and

- (b) advise the person(s) concerned to seek legal and/or professional advice thereon.

***Cockloft and Mezzanine Floors***

- Check whether the cockloft or mezzanine floor is stated on the OP.
- If the relevant OP does not reveal that there is such a cockloft or mezzanine floor, advise clients of the following:
  - (a) the relevant OP does not reveal the existence of such a cockloft or mezzanine floor;
  - (b) the legality of the cockloft or mezzanine floor cannot be verified;
  - (c) the risks of purchasing or renting properties having unauthorised building works; and
  - (d) the need to seek legal and/or professional advice thereon.

***Additional Guidelines for Non-residential Properties in an Uncompleted Building or Uncompleted Subdivision of Any Part of a Building***

- *Sales Brochures, Floor Plans and Price Lists*
  - Provide to purchasers copies of the sales brochures, floor plans and/or price lists prepared by the vendor.
- *Vendor's Endorsement on Promotional Materials and Advertisements*
  - Obtain the vendor's express endorsement in writing of the accuracy and completeness of information contained in promotional materials and advertisements.
- *Mortgage Plans and Financing Schemes*
  - Do not make any statement that purchasers will successfully obtain a mortgage loan or the desired mortgage terms to finance their purchase.

## **Sale and Purchase or Leasing of Non-residential Properties**

Over the years, the Estate Agents Authority (“EAA”) has issued a number of Circulars to provide guidelines specifying any conduct or practice which the EAA considers is a professional standard that ought to be followed by licensees in the course of their practice. In respect of non-residential properties, licensees are required to follow the applicable guidelines set out in these Circulars with a few exceptions<sup>1</sup>. With a view to providing further guidance for licensees handling non-residential properties, the EAA issues this Circular to set out guidelines on certain important issues pertaining to the proper practice and measures in handling the sale and purchase or leasing of non-residential properties<sup>2</sup>. This Circular shall take effect on 1 October 2017.

### **General**

(2) Licensees are reminded that when they handle the sale and purchase or leasing of non-residential properties, they are required to observe and comply with the relevant provisions in the Estate Agents Ordinance (“EAO”) and its subsidiary legislation, the Code of Ethics and all applicable guidelines issued by the EAA.

(3) Licensees are further reminded that, pursuant to paragraph 3.4.1 of the Code of Ethics, they should protect and promote the interests of their clients. Moreover, pursuant to paragraph 3.5.1 of the Code of Ethics, licensees shall, in fulfilling their duties, exercise due care and due diligence.

(4) In particular, licensees must not make any representation that may

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<sup>1</sup> Circular No. 17-01(CR) refers.

<sup>2</sup> For other guidelines applicable to the handling of the sale and purchase or leasing of non-residential properties, licensees should refer to the relevant circulars issued by the EAA.

mislead vendors<sup>3</sup>, purchasers<sup>4</sup> or tenants<sup>5</sup> when they handle the sale and purchase or leasing of non-residential properties. For example, they must not hastily provide information related to the floor area, permitted use or profit yield etc. of a non-residential property to the person(s) concerned without taking all reasonable steps and exercising all due diligence to verify the information.

(5) Estate agency companies<sup>6</sup> are required to establish proper and effective procedures and systems to ensure that their employees or other persons under their control comply with the provisions of the EAO and its subsidiary legislation, the Code of Ethics and the relevant guidelines issued by the EAA when such employees or other persons are engaged in activities pertaining to the sale and purchase or leasing of non-residential properties.

## **Specifics**

### **Floor Area Information**

(6) To most, if not all, purchasers or tenants, the size of a property is a crucial factor to be taken into account when making a purchase or rental decision. However, there are various ways to describe a non-residential property in terms of its floor area (e.g. “saleable area”, “gross floor area” (GFA), “lettable area”, “internal floor area”) in the market.

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<sup>3</sup> For the purpose of this circular, the term “vendor” or “vendors” includes, where applicable, prospective landlords.

<sup>4</sup> For the purpose of this circular, the term “purchaser” or “purchasers” includes, where applicable, prospective purchasers and property viewers.

<sup>5</sup> For the purpose of this circular, the term “tenant” or “tenants” includes, where applicable, prospective tenants and property viewers.

<sup>6</sup> The term “estate agency company” or “estate agency companies” refers to those firms or companies which are licensed estate agents under the Estate Agents Ordinance.

(7) While “saleable area” and GFA are most frequently used in describing the size of non-residential properties, licensees should note that the standardised definition on “saleable area” applies only to residential properties. There is also no standardised or commonly adopted definition for GFA, “lettable area”, “internal floor area” or other description of floor area for non-residential properties, and the basis of working out or calculating these areas is not consistent among developers.

### *Advertising*

(8) In view of the above and to enable purchasers or tenants to have better information on the floor area of non-residential properties, licensees may provide the floor area information of a non-residential property in an advertisement<sup>7</sup> if:

- (a) the floor area information was obtained from a reasonable source or there was a proper basis upon which they could rely for providing such information (e.g. a surveyor’s report, sales brochure prepared by the developer, approved building plans, the first agreement for sale and purchase or the first assignment of the non-residential property)<sup>8</sup>, and the licensee concerned is able to, upon the EAA’s request, produce evidence to substantiate the aforesaid; or
- (b) (in the event that the licensee concerned does not have the evidence mentioned in sub-paragraph (a) above) the licensee concerned clearly states in the advertisement that the floor area information has not been verified (e.g. area: 980 square feet [not verified]).

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<sup>7</sup> For the interpretation of “advertisement”, please refer to section 2(1) of the EAO.

<sup>8</sup> In general, save with very exceptional justifications, floor area information provided by a vendor will not be regarded by the EAA as information obtained from a reasonable source or proper basis.

*Provision of floor area information in other situations*

(9) In situations other than advertising (such as when replying to vendors' enquiries or introducing the non-residential property to purchasers or tenants), licensees may provide the floor area information of a non-residential property to vendors, purchasers or tenants provided that:

- (a) the floor area information was obtained from a reasonable source or there was a proper basis upon which they could rely for providing such information<sup>9</sup>, and the licensee concerned is able to, upon the EAA's request, produce evidence to substantiate the aforesaid; and
- (b) he has clearly informed the person(s) concerned that there is no standardised or commonly adopted definition of any description of floor area in the market for non-residential properties.

(10) In the event that the licensee concerned does not have the evidence as mentioned in paragraph (9)(a) above, he shall not provide the floor area information of the non-residential property to vendors, purchasers or tenants unless he (in addition to the information mentioned in paragraphs (9)(b) above) also:

- (a) clearly states that such floor area information has not been verified by the licensee concerned; and
- (b) advises the person(s) concerned that they should inspect the property and take measurements themselves (where applicable) and/or seek legal and/or professional advice regarding the floor area information of the non-residential property, if necessary.

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<sup>9</sup> As to examples of "reasonable source" or "proper basis", please refer to paragraph 8(a) above.

(11) Where the licensee concerned has provided the floor area information after complying with paragraph (10)(a) and (b) above, the licensee concerned, in order to protect his own interests in case of disputes, is advised to obtain a written acknowledgement from the vendor, purchaser or tenant clients stating that they are aware of the matters mentioned in paragraph (10) above (where applicable) before they enter into any agreement for sale and purchase or tenancy agreement of the non-residential property.

### **Permitted Use**

(12) When a building is completed, the Building Authority (“BA”) will issue an “Occupation Permit” (“OP”) which briefly describes the building and the permitted uses of its different parts as shown on the approved building plans kept by the Buildings Department. Examples of such uses in a non-residential building may include offices, shops, factories, warehouses etc. An owner who wishes to change the use of certain parts of the building after completion of the building may need to apply to the BA for the change. An unauthorised change of user without the approval of the BA may render the title of the property defective and subject to re-entry by the Government.

(13) Licensees should be aware that purchasers or tenants may rely heavily on the information provided by licensees regarding the permitted use of the non-residential properties when making a purchase or rental decision. Hence, licensees must ensure that the information provided by them to the purchasers or tenants is accurate and that the purchasers or tenants are properly informed if such information has not been verified by the licensee concerned.

(14) In view of the above, when licensees provide information on the permitted use of a non-residential property to vendors, purchasers or tenants, they:

(a) *In the case where the OP of the building of which the*

*non-residential property forms part has been issued:*

- (i) may only do so by giving such information as stated on the relevant OP;
- (ii) must clearly state that such information relates to the permitted use of the non-residential property as at the date of the issuance of the OP;
- (iii) must inform the person(s) concerned that apart from the OP, the Government Grant of the land on which the building was erected and/or the Deed of Mutual Covenant<sup>10</sup> of the building concerned may contain provisions restricting the use of the non-residential property for specific purpose(s); and
- (iv) must advise the person(s) concerned to seek legal and/or professional advice in relation to their intended specific use (e.g. restaurant, food factory) of the non-residential property (if any), if necessary.

(b) *In the case where no OP is issued in respect of the non-residential property<sup>11</sup> or the OP of the building of which the relevant non-residential property forms part has yet to be issued<sup>12</sup>:*

- (i) must inform the person(s) concerned that the permitted use of the non-residential property cannot be verified by the licensee concerned; and

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<sup>10</sup> “Deed of Mutual Covenant” includes any document (whether described as “deed of mutual covenant”, “deed of covenant”, “deed of mutual covenant and management agreement” or by similar names) which sets out the rights, interests and obligations of the owners, occupiers, tenants and property management agents in respect of the control, administration, maintenance and management of the building.

<sup>11</sup> e.g. agricultural land

<sup>12</sup> e.g. the building is still in the course of construction



- (ii) must advise the person(s) concerned to seek legal and/or professional advice related to the permitted use of the non-residential property, if necessary.

(15) The licensee concerned, in order to protect his own interests in case of disputes, is advised to obtain a written acknowledgement from the vendor, purchaser or tenant clients that they are aware of the matters mentioned in paragraph (14)(a) or (b) above (as the case may be) before they enter into any agreement for sale and purchase or tenancy agreement of the non-residential property.

### **Property Information**

(16) If licensees provide information, which may include, for example, the location, floor plans, fittings and finishes, environment, management and details of the facilities etc., to person(s) concerned, they must do so only after they have taken all reasonable steps and exercise all due diligence to verify the information.

(17) Where inspection of the non-residential property is feasible, licensees must advise purchasers or tenants to inspect the non-residential property before they make a purchase or leasing decision.

### **Cocklofts and Mezzanine Floors**

(18) In respect of a non-residential property which has a cockloft or mezzanine floor and where the OP in respect of the building of which the non-residential property forms part has been issued, licensees should check the relevant OP to see whether the cockloft or mezzanine floor is stated on the OP.

(19) In the event that the relevant OP does not reveal that there is such a cockloft or mezzanine floor, licensees should, **before** arranging for their purchaser or tenant clients to enter into any agreement for sale and purchase or tenancy agreement of the non-residential property, advise

their clients of the following:

- (a) the relevant OP does not reveal that the non-residential property has a cockloft or mezzanine floor;
- (b) the legality of the cockloft or mezzanine floor pertaining to the non-residential property cannot be verified by the licensee concerned;
- (c) the risks of purchasing or renting the non-residential property where the cockloft or mezzanine floor is unauthorised building works (e.g. the Government's exercising its right of re-entry, safety problems in the non-residential property, closure of the non-residential property<sup>13</sup> and bank's refusal to finance the purchase of the non-residential property); and
- (d) the need to seek legal and/or professional advice on the legality of the cockloft or mezzanine floor before making any purchase or leasing decision.

(20) In the case mentioned in paragraph (19) above, the licensee concerned:

- (a) must not include the area of the cockloft or mezzanine floor when providing the floor area information of the non-residential property concerned to the purchaser or tenant clients; and
- (b) in order to protect his own interests in case of disputes, is advised to obtain a written acknowledgement from the purchaser or tenant clients that they are aware of the matters mentioned in paragraph (19) above before making the purchase or leasing decision.

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<sup>13</sup> Please refer to Circular No. 10-01 (CR) and 07-05 (CR) for the details.

## **Additional Guidelines for Non-residential Properties in an Uncompleted Building or Uncompleted Subdivision of Any Part of a Building**

(21) People buying non-residential properties in an uncompleted building or an uncompleted subdivision of any part of a building for investment is quite common nowadays. In most cases, the purchasers do not have the opportunity to view the non-residential property or the sub-divided non-residential property concerned before they enter into the agreement for sale and purchase with the vendor or in certain cases even upon the payment of the balance of purchase price to the vendor. Hence, it is important to provide clear and accurate property information to purchasers to enable them to make an informed decision.

### *Sales Brochures, Floor Plans and Price Lists Prepared by Vendors*

(22) If licensees have been provided with copies of the sales brochures, floor plans and/or price lists prepared by the vendor, they must provide them to purchasers without any charge, restrictions or conditions.

(23) Licensees must ensure that copies of the sales brochures, floor plans and/or price lists they provide to the purchasers are the latest version prepared by the vendor.

(24) Licensees must advise the purchasers to obtain and read the sales brochures, floor plans and/or price lists (if the same are provided by the vendor) before they make a purchase decision.

### *Vendor's Endorsement on Promotional Materials and Advertisements Prepared by Licensees*

(25) When preparing their own promotional materials or advertisements to assist vendors to promote a sale of properties in an uncompleted building or uncompleted subdivision of any part of a building, licensees must take all reasonable steps to verify the accuracy

and completeness of the information contained in such materials or advertisements, and before issuance, obtain the vendor's express endorsement in writing of the accuracy and completeness of the particulars contained therein.

*Mortgage Plans and Financing Schemes*

(26) Licensees are not obliged to explain information about mortgage plans and financing schemes to purchasers. If, however, licensees take the initiative to do so, the explanation must be based solely on the information provided by banks and finance companies, or the vendor concerned (if financing schemes are provided by the vendor concerned to the purchasers).

(27) Licensees must not make any statement to purchasers that they will successfully obtain a mortgage loan or the desired mortgage terms to finance their purchase. They should advise the purchasers to make enquiries directly with the banks and finance companies, or the vendor concerned (if financing schemes are provided by the vendor concerned to the purchasers).

Licensees who fail to comply with the above guidelines may be disciplined by the EAA. Estate agency companies and their management may also be disciplined for failing to establish a proper system to manage their business.

July 2017

Holders of Statements of Particulars of Business  
 should bring this Circular to the attention of all staff  
 engaged in estate agency work