



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

### **Questions and Answers (Q&As)**

Notes:

1. All references to:
  - a. “EAA” shall mean the Estate Agents Authority.
  - b. “EAO” shall mean the Estate Agents Ordinance.
  - c. “Practice Circular” shall mean Circular No. 17-02 (CR) issued by the EAA on Sale and Purchase or Leasing of Non-residential Properties.
  - d. “Practice Regulation” shall mean the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation.

The words and expressions used in these Q&As shall have, unless the context otherwise requires, the same meaning as those words and expressions have in the Practice Circular.

2. These Q&As are for general reference only. The answers/solutions suggested in the Q&As are not exhaustive and they do not constitute legal or professional advice. In considering whether a licensee has breached the Practice Circular, the EAA will consider each case on its own merits. You should seek legal or professional advice as and when necessary, especially on the interpretation of relevant legal provisions and specific advice on any individual case. The EAA makes no warranty as to the completeness of the information set out in these Q&As, or the appropriateness for its use in any particular circumstances. The EAA will not accept any liability or responsibility whatsoever for any loss or damage caused to any person howsoever arising from any use, misuse of, or reliance on the contents of these Q&As.



Q&As

**Q1. Are the guidelines set out in the Practice Circular applicable to the sale and purchase or leasing of second-hand non-residential properties only?**

Answer: No.

Unless otherwise specified or the context does not permit, the guidelines set out in the Practice Circular are applicable to the sale and purchase or leasing of both first-hand and second-hand non-residential properties.

**Q2. Apart from the Practice Circular, are there any other guidelines which licensees must follow when they handle the sale and purchase or leasing of non-residential properties?**

Answer: Yes.

Save and except those circulars issued by the EAA which are applicable to residential properties only, licensees, when handling the sale and purchase or leasing of non-residential properties, are required to follow the guidelines set out in all other circulars issued by the EAA, in so far as the guidelines are not specifically referable to residential properties only and/or to the provisions of the Practice Regulation which are applicable to residential properties only.

Please refer to Circular No. 17-01(CR) on Application of Circulars – Non-residential Properties.



**Q3. Referring to paragraph 8(a) of the Practice Circular, will it be necessary for a licensee to obtain all the documents listed therein (i.e. surveyor’s report, sales brochure prepared by the developer, approved building plans, the first agreement for sale and purchase and the first assignment of the non-residential property) before he can provide the floor area information of a non-residential property in an advertisement?**

Answer: No.

The documents listed in paragraph 8(a) are examples of “reasonable source” or “proper basis” only and they are not exhaustive. A licensee will be considered as having complied with paragraph 8(a) if he is able to, upon the EAA’s request, produce one piece of evidence to substantiate that the floor area information was obtained from a reasonable source or there was a proper basis upon which he could rely for providing such information.

In the event that the licensee does not have the evidence mentioned in paragraph 8(a) of the practice circular, he may still provide the floor area information of the non-residential property in an advertisement if he has clearly stated in the advertisement that the floor area information has not been verified.

**Q4. Referring to paragraphs 8(a) and 9(a) of the Practice Circular, will the floor area information provided by the vendor be regarded as a “reasonable source” or “proper basis” upon which a licensee could rely for providing the floor area information of the non-residential property concerned? If the answer is “No”, what if the floor area information provided by the vendor is from an old sales brochure that the vendor has kept for**



**reference?**

Answer: No.

In general, save with very exceptional justifications (e.g. the vendor is a surveyor and he is able to certify professionally the accuracy of the floor area information of the non-residential property concerned), the floor area information provided by a vendor will not be regarded by the EAA as information obtained from a reasonable source or a proper basis upon which a licensee could rely for providing the floor area information.

In such a case, the licensee should take all reasonable steps and exercise all due diligence to verify the accuracy of the floor area information provided by the vendor first, or he should follow the guidelines set out in paragraph 8(b) or 10 (as the case may be) if he wishes to provide the floor area information of the property concerned in advertisements or other situations.

In the scenario mentioned in the question (i.e. the floor area information provided by the vendor is from an old sales brochure that the vendor has kept for reference), if the licensee concerned could produce a copy of the sales brochure which the vendor has kept as supporting evidence, the EAA will regard such floor area information as having been obtained from a reasonable source. For the avoidance of doubt, it should be noted that in order to comply with paragraph 8(a) and 9(a) of the Practice Circular, the licensee concerned should not rely on the mere vendor's verbal representation (that the floor area information was from an old sales brochure that has been kept by the vendor) without production of the sales brochure concerned.



**Q5. Regarding the provision of floor area information in situations other than advertising and to comply with paragraph 9(b) or 10 of the Practice Circular, must licensees inform or advise the person(s) concerned in writing of the matters mentioned in the relevant paragraph?**

Answer: No.

There is no requirement that licensees must inform or advise the person(s) concerned in writing of the matters mentioned in the paragraph 9(b) or 10 of the Practice Circular. However, as a matter of good practice, it is desirable for licensees to do so in writing, where possible.

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

Please refer to paragraph 11 of the Practice Circular.

**Q6. To comply with paragraph 14(a)(iii) of the Practice Circular, are licensees required to read through the relevant Government Grant and/or the Deed of Mutual Covenant to ascertain whether there are any provisions restricting the use of the non-residential property concerned for specific purpose(s)?**

Answer: No.



Licenses are not required to read through the Government Grant and/or the Deed of Mutual Covenant to ascertain whether there is any provision restricting the use of the non-residential property concerned for specific purpose(s). However, licenses who are capable of understanding the Government Grant and/or the Deed of Mutual Covenant may do so themselves.

- Q7. Are the additional guidelines (“additional guidelines”) for non-residential properties in an uncompleted building or uncompleted subdivision of any part of a building (i.e. paragraphs 21 to 27 of the Practice Circular) applicable to a sub-sale of a non-residential unit in an uncompleted building or an uncompleted subdivision of a part of a building?**

Answer: Yes.

Unless the context does not permit, the additional guidelines are applicable to the sale of non-residential properties in an uncompleted building (e.g. sale of office units in a commercial building which is still under construction) or uncompleted subdivision of any part of a building (e.g. sale of shop units in the shopping arcade of a building when the subdivision of shops has not yet been completed), irrespective of whether it is a first-sale, sub-sale or a subsequent sale of the non-residential property concerned.

- Q8. Regarding the sale of non-residential properties in an uncompleted building or uncompleted subdivision of any part of a building, how should licenses reply to purchasers’ enquiries on whether they will be able to obtain sufficient mortgage loan to finance their**



**purchase of the properties?**

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

Please refer to paragraphs 26 and 27 of the Practice Circular.

**Q9. If a licensee does not comply with the Practice Circular, e.g. providing inaccurate information on the floor area of the non-residential property to client and in advertisements, who will be punished? The licensee concerned or its employer, the estate agency company?**

Answer: The Practice Circular applies to all EAA licensees, including the holders of estate agent's licence (individual), salesperson's licence and estate agent's licence (company). Non-compliance will be subject to EAA's disciplinary actions and the severest penalty is licence revocation.

Generally speaking, an estate agency company is responsible for ensuring that the advertisements issued by it do not include any false or misleading information. In the event that the false or misleading advertisement is issued by its staff, the EAA will also look into whether the estate agency company has put in place an effective system to prevent the breach in question.

In any event, all licensees should ensure the floor area information they provide to clients is accurate.



**Q10. Will there be a transitional period after the Practice Circular becomes effective, i.e. will there be any discretion in enforcing the Practice Circular and related disciplinary actions?**

Answer: The Practice Circular will come into operation on 1 October 2017. The trade has nearly three months to prepare for the change since the promulgation of the Circular. Meanwhile, the EAA will educate the trade and consumers in this period. From 1 October 2017 onwards, the Practice Circular will come into effect and the EAA will handle related complaints and take enforcement action in an impartial manner.

**Q11. Are the guidelines set out in the Practice Circular applicable to the sale and purchase or leasing of agricultural land?**

Answer: Yes.

Unless otherwise specified or the context does not permit, the guidelines set out in the Practice Circular are applicable to the sale and purchase or leasing of agricultural land.

Please refer to footnote 11 of the Practice Circular.

**Q12. Referring to paragraphs 8(a) and 9(a) of the Practice Circular, will the floor area information printed on the price list of the non-residential properties and prepared by the developer be regarded as a “reasonable source” or “proper basis” upon which a licensee could rely for providing the floor area information of the non-residential properties concerned?**





Answer: Yes.

The documents listed in paragraph 8(a) are examples of “reasonable source” or “proper basis” only and they are not exhaustive. Apart from the sales brochures, the floor area information printed on the price list and prepared by the developer will also be regarded by the EAA as information obtained from a reasonable source or a proper basis upon which a licensee could rely for providing the floor area information of the non-residential properties concerned.

**Q13. Referring to Q12 above, what if the floor area information of the non-residential properties is provided by an estate agent appointed by the developer in the sale of those properties, such as a sales brochure prepared by the appointed estate agent?**

Answer: No.

In general, the floor area information provided by an appointed estate agent of the developer (irrespective of whether the appointed estate agent is a member of the same group of companies of the developer or otherwise) will not be regarded by the EAA as information obtained from a reasonable source or a proper basis upon which a licensee could rely for providing the floor area information, unless written confirmation from the developer regarding the accuracy of the relevant floor area information is obtained.

In the scenario mentioned in the question, the licensee who wishes to rely on the floor area information stated on the sales brochure prepared by the appointed estate agent of the developer should take all reasonable steps and exercise all due diligence to verify the accuracy of the floor area information shown on the sales brochure first (e.g. by



requesting for and obtaining a written confirmation from the developer regarding the accuracy of the relevant floor area information contained in the sales brochure prepared by the appointed estate agent), or he should follow the guidelines set out in paragraph 8(b) or 10 (as the case may be) if he wishes to provide the floor area information of the properties concerned in advertisements or other situations.

**Q14. Referring to paragraph 8(a) and 9(a) of the Practice Circular, will the floor area information provided by the vendor of a completed or uncompleted subdivision of a part of a building (e.g. the owner of a whole floor of a building who has divided or will divide the floor into smaller units for sale) be regarded as a “reasonable source” or “proper basis” upon which a licensee could rely for providing the floor area information of the subdivided units or the units to be subdivided?**

Answer: In general, save with very exceptional justifications, the floor area information provided by a vendor will not be regarded by the EAA as information obtained from a reasonable source or a proper basis upon which a licensee could rely for providing the floor area information.

However, taking into consideration that the vendor who subdivides a property into smaller units (irrespective of whether the subdivision involves the whole floor of a building or a part of it only) for sale should be in a position to provide first-hand information on the floor area of the subdivided units or the units to be subdivided in the sale of those smaller units, the EAA will regard the information provided by the vendor who subdivides the property into smaller units for sale as a reasonable source or a proper basis upon which a licensee could rely for providing the floor area information of the relevant subdivided units or



the units to be subdivided.

For the avoidance of doubt, the information on the floor area provided by a subsequent vendor (including a confirmor), which was not obtained from a reasonable source or a proper basis (e.g. a sales brochure prepared by the vendor who subdivides the property into smaller units), in the sale of the subdivided units or the units to be subdivided will not be regarded by the EAA as information obtained from a reasonable source or a proper basis upon which a licensee could rely for providing the floor area information.

**Q15. How may a licensee provide the floor area information of an office unit in an advertisement if all the office units in the building concerned were still owned by the developer but the developer has not provided the floor area information of the individual office units in its sales brochure, price list or other promotional materials?**

Answer: According to paragraph 8 of the Practice Circular, a licensee may provide the floor area information of an office unit in an advertisement if such floor area information was obtained from a reasonable source or there was a proper basis upon which he could rely for providing such information, and he is able to, upon the EAA's request, produce evidence to substantiate the aforesaid. In the event that the licensee does not have such evidence, the licensee may still provide the floor area information of the office unit in an advertisement if he clearly states in the advertisement that the floor area information has not been verified.

In the scenario mentioned in the question, the licensee may



ascertain whether the floor area information of the office unit concerned can be obtained from other reasonable sources or whether there is a proper basis upon which he could rely for providing the floor area information (such as the first agreement for sale and purchase or the first assignment of the office unit or the approved building plans) and whether he is able to, upon EAA's request, produce such evidence to prove the aforesaid. In the event that he does not have such evidence, he may still provide the floor area information of the office unit concerned if he clearly states in the advertisement that the floor area information has not been verified.

**Q16. Referring to paragraph 19 of the Practice Circular, how should a licensee advise his purchaser or tenant client if the sales brochure prepared by the developer states that the shop on the ground floor has a cockloft but the occupation permit (OP) of the building of which the shop forms part does not reveal that there is such a cockloft?**

**Answer:** Licensees should note that purchasers or tenants may rely heavily on the information provided by licensees regarding the condition of the property 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 of all the relevant facts before they make the decision.

In the scenario mentioned in the question, the licensee should, before arranging for his purchaser or tenant client to enter into any agreement for sale and purchase or tenancy agreement of the shop, advise his client of the



following:

- (a) although the sales brochure prepared by the developer states that the shop has a cockloft, the relevant OP does not reveal the existence of such a cockloft;
- (b) the legality of the cockloft pertaining to the shop cannot be verified by the licensee concerned;
- (c) the risks of purchasing or renting the shop where the cockloft is unauthorised building works; and
- (d) the need to seek legal and/or professional advice on the legality of the cockloft before making any purchase or leasing decision.

**Q17. Referring to paragraph 20(a) of the Practice Circular, can a licensee include the area of the cockloft or mezzanine floor when providing the floor area of the non-residential property concerned to the purchaser or tenant client if the relevant occupation permit reveals that there is such a cockloft or mezzanine floor?**

Answer: In such a case, while the licensee concerned may include the area of the cockloft or mezzanine floor when calculating the total floor area of the non-residential property concerned, the licensee concerned should, for the sake of clarity and to avoid any possibility of misunderstanding, provide information on the area of the cockloft or mezzanine floor and the floor area of non-residential property concerned (exclusive of the cockloft or mezzanine floor) separately to his purchaser or tenant client.



**Q18. How should a licensee provide the floor area information of a property in advertisements or to his purchaser clients if the property is now being used as a shop but the relevant occupation permit states that the property concerned is for residential use?**

**Answer:** In general, if the relevant occupation permit states that the property is permitted for residential use, licensees would be required, when handling the sale and purchase or leasing of the property, to observe and comply with the relevant provisions in the EAO and its subsidiary legislation and all the guidelines issued by the EAA which are applicable to residential properties.

In the scenario mentioned in the question, the licensee should follow the guidelines set out in Circular No. 12-02 (CR) titled “Provision of floor area information for second-hand residential properties” when providing the floor area information of the property in advertisements or to his purchaser clients i.e. if the floor area information is to be included in an advertisement or provided to his clients, he must provide the saleable area of the property if such information can be obtained from the Rating and Valuation Department (RVD) or the first agreement of the property (first agreement). However, he may provide other floor area information (e.g. gross floor area) of the property if the saleable area information cannot be obtained from the RVD or the first agreement and he is able to, upon the EAA’s request, produce evidence to substantiate that such other floor area information was obtained from a reasonable source or there was a proper basis upon which he could rely for supplying such information.

Moreover, as the current use of the property is different from the permitted use of the property as stated on the occupation permit, the licensee concerned must also inform



his purchaser clients of such a discrepancy, advise clients of the risks of an unauthorised change of user without the approval of the Building Authority (e.g. the title of the property may be rendered defective and the property may be subject to re-entry by the Government) and the need to seek legal and/or professional advice before making any purchase decision.

6 September 2017