



Practice Circular on Sale of Uncompleted Properties Situated Outside Hong Kong

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. “Exemption Order” shall mean Estate Agents (Exemption from Licensing) Order.
 - d. “Practice Circular” shall mean Circular No. 17-03 (CR) issued by the EAA on Sale of Uncompleted Properties Situated Outside Hong Kong.

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 of uncompleted commercial properties situated outside Hong Kong?

Answer: Yes.

For the purposes of the Practice Circular, “overseas uncompleted properties” includes properties under construction or not yet constructed; and properties in an uncompleted building or development, whether the uncompleted works relate to the properties, the building and/or the development.

The guidelines set out in the Practice Circular are applicable to the sales of all uncompleted properties situated outside Hong Kong, regardless of the intended use of the properties.

Please refer to footnote 1 of the Practice Circular.

Q2. Referring to Q1 above, if the building has been constructed but there are still refurbishment or fitting out works to be done in the properties and/or the building of which the properties form part, are the guidelines set out in the Practice Circular applicable?

Answer: Yes.

For the purposes of the Practice Circular, if there are uncompleted works in the properties, the building and/or the development of which the properties form part, the properties will not be regarded as “completed” and neither will the building or the development concerned. Licensees must observe and comply with the guidelines



set out in the Practice Circular when they participate in the sale of these properties.

Q3. Are licensees who only engage in estate agency work relating to properties outside Hong Kong (but not to properties within Hong Kong) required to comply with the guidelines set out in the Practice Circular when participating in the sale of UPOH?

Answer: Yes.

All licensees, regardless of whether they are only engaged in estate agency work relating to properties outside Hong Kong or to properties both within and outside Hong Kong, are regulated by the EAA. Licensees must observe and comply with the guidelines set out in the Practice Circular when participating in the sale of UPOH.

Please refer to paragraph (4) and footnote 3 of the Practice Circular.

Q4. Regarding the due diligence reports and legal opinion mentioned in paragraphs (10) and (12) of the Practice Circular, when should licensees obtain them in respect of the UPOH offered for sale?

Answer: Licensees should obtain the due diligence reports and legal opinion mentioned in paragraphs (10) and (12) of the Practice Circular before they participate in the sale or the promotional activities for the UPOH.

Please refer to paragraphs (9) and (11) of the Practice Circular.



- Q5. (a) Referring to paragraphs (10) and (12) of the Practice Circular, must licensees instruct their own foreign lawyer to issue the due diligence reports and the legal opinion?**
- (b) If the answer to question (a) above is “No”, can licensees procure the vendor to obtain and provide them with the required due diligence reports and legal opinion?**

Answer: “No” to the first question (a); and “yes” to the second question (b).

There is no requirement in the Practice Circular that licensees must instruct their own foreign lawyer to issue the due diligence reports and legal opinion. For the purposes of paragraphs (10) and (12) of the Practice Circular, licensees may also procure the vendor to provide them with the required due diligence reports and legal opinion.

However, if the due diligence report(s) and/or the legal opinion is/are issued by a person(s) who is acting for the vendor in the sale of the UPOH, licensees must, when providing copies of the due diligence report(s) or legal opinion to purchasers, draw the purchasers’ attention to such fact and advise the purchasers to consider seeking independent legal and/or professional advice relating to the matters mentioned in the due diligence report(s) and/or legal opinion.

Please refer to paragraph (19) of the Practice Circular.

- Q6. Referring to Q5 above, must licensees obtain two due diligence reports respectively on (a) the vendor; and (b) the UPOH, and a separate document regarding the legal opinion?**



Answer: No.

There is no requirement in the Practice Circular that the due diligence reports and legal opinion must be contained in separate documents. For the purposes of paragraphs (10) and (12) of the Practice Circular, licensees may obtain one or more than one document issued by a foreign lawyer practising in the place where the UPOH are situated to cover the matters required in paragraphs (10) and (12) of the Practice Circular.

Q7. Paragraph 14(c) of the Practice Circular requires the inclusion of a prominent statement in the advertisements or promotional materials to be prepared or distributed by licensees. Is there a requirement on the size of the words to be used for the said statement?

Answer: The Practice Circular does not prescribe the size of the words to be used for the statement. This is because whether the statement is prominent in an advertisement or promotional material will need to be considered in the light of all the relevant circumstances of each case. Relevant factors may include the size of the advertisement or promotional material, the size and colour of the words used for the statement when compared with those of other words appearing in the advertisement or promotional material etc. And the question to ask is whether the statement in the advertisement or promotional materials is easily readable by a person with normal eyesight.

Q8. Referring to Q7 above, what should licensees do if the vendor requests licensees to distribute the promotional materials for the sale of the UPOH but the promotional materials prepared by the vendor do



not contain the information as required in paragraph (14) of the Practice Circular?

Answer: Licensees should not distribute promotional materials of UPOH (whether they are prepared by the licensees themselves, the vendor or other persons) if such promotional materials do not contain the information as required in paragraph (14) of the Practice Circular.

In the scenario mentioned in the question, licensees should inform the vendor of the EAA's relevant requirements. With a view to resolving the issue, licensees may invite the vendor to incorporate an addendum (containing the information required in paragraph (14) of the Practice Circular) to the promotional materials for distribution by the licensees.

Q9. Referring to paragraph 18(d) of the Practice Circular, can licensees prepare the sales information sheet related to the UPOH for the vendor and provide the same to purchasers?

Answer: Yes.

Licensees may prepare the sales information sheet related to the UPOH for the vendor but the information contained therein must be approved by the vendor before the same is provided to purchasers.

Q10. Referring to the Q9 above, can licensees omit a specific item (mentioned in the Annex to the Practice Circular) from the sales information sheet if the answer to that item (mentioned in the Annex to the Practice Circular) is “No”?

Answer: No.



All required information as set out in the Annex to the Practice Circular must be provided in the sales information sheet regarding the UPOH. If the answer to a specific item (e.g. whether there is any cooling off period) as mentioned in the Annex is “No”, licensees must state so in the relevant sales information sheet and they must not omit the said item from the sales information sheet of the UPOH.

Q11. Does the Practice Circular apply to the UPOH which the sale had commenced before the Practice Circular comes into operation but are still available for sale on or after 1 April 2018?

Answer: Yes.

Licensees are required to comply with the guidelines set out in the Practice Circular in respect of the UPOH which have commenced for sale prior to 1 April 2018 but are still available for sale after the Circular comes into operation on 1 April 2018.

Q12. 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: No.

The Practice Circular will come into operation on 1 April 2018. The trade has about 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 April 2018 onwards, the Practice Circular will come into effect and the EAA will handle related complaints and take enforcement



action in an impartial manner.

Q13. According to the Exemption Order, a person who engages in estate agency work exclusively in relation to properties outside Hong Kong is not required to obtain a licence issued by the EAA and therefore, his/her conduct is not regulated by the EAA. Hence, as the Practice Circular is only applicable to licensees, would this in a way encourage more non-licensees to engage in the sale of UPOH?

Answer: While the EAA can only regulate its licensees, with the implementation of the Practice Circular which provides a standard on the appropriate practices and measures to be adopted by licensed practitioners when handling the sale of UPOH, the estate agency trade's professionalism and hence protection to the consumers would be enhanced.

The EAA will strengthen consumer education to remind the public that non-licensees who handle the sale of UPOH are not regulated by the EAA. They are not required to comply with the EAO, the Code of Ethics and any guideline issued by the EAA, including these guidelines on the appropriate practices and measures to be adopted when handling the sale of UPOH.

On the other hand, licensees must comply with the EAO, the Code of Ethics and the EAA's guidelines when handling the sale of UPOH and failure to do so may be disciplined by the EAA. In this regard, consumers would have greater protection by engaging licensed estate agents to deal with the transactions of UPOH.

Q14. (a) In light of the Exemption Order, can estate agency companies employ non-licensees to deal



exclusively with the sale of properties outside Hong Kong?

(b) If the answer to question (a) above is “Yes”, are these non-licensed employees required to state in their business cards and other documents that they are not licensed to deal with any property situated in Hong Kong?

Answer: “Yes” to both questions (a) and (b).

Section 2 of the Exemption Order provides exemption to a person from the requirement for obtaining an estate agent’s licence or a salesperson’s licence from the EAA if he (a) engages in estate agency work exclusively in relation to properties outside Hong Kong; and (b) states in all his letters, accounts, receipts, pamphlets, brochures and other documents and in any advertisements that he is not licensed to deal with any property situated in Hong Kong.

As such, if estate agency companies are desirous of employing non-licensees to deal exclusively with the sale of properties outside Hong Kong, they may do so but their non-licensed staff must comply with section 2 of the Exemption Order. In this regard, the business cards and other documents of these non-licensed staff must state that they are not licensed to deal with any property situated in Hong Kong.

Q15. Referring to the answer to Q14 above, will the non-licensed staff who carry out estate agency work and/or the estate agency company employing them be liable for a breach of the EAO if the business cards and other documents of these non-licensed staff fail to state that they are not licensed to deal with any property situated in Hong Kong?



Answer: Yes.

Under the EAO, engaging in estate agency work without a licence and employing unlicensed persons to carry out such work constitute criminal offences.

In the scenario mentioned in the question, the non-licensed staff who are not exempted from the requirement for obtaining a licence from the EAA will be liable for a breach of sections 15(1) or 16(1) of the EAO and the maximum penalty on conviction is a fine of \$500,000 and imprisonment for 2 years; and the estate agency company concerned will be liable for a breach of section 39(1) of the EAO.

Moreover, under section 42 of the EAO, if it is proved that the above offence was committed with the consent or connivance of a director or other officer concerned in the management of the estate agency company, the director or other officer concerned in the management may also be guilty of the like offence. The maximum penalty for committing an offence under sections 39(1) and 42 are both a fine of \$100,000 and imprisonment for 6 months.

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