



Practice Circular on First Sale of Residential Properties Order at First-sale Sites

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. 18-03 (CR) issued by the EAA on First Sale of Residential Properties - Order at First-sale Sites.

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. Will an estate agency company or its management (e.g. directors or partners) be liable under the EAO if its non-licensed staff is engaged in unlicensed estate agency work at the first-sale sites?

Answer: Yes.

Under the EAO, engaging in estate agency work without a licence and employing unlicensed persons to carry out such work constitute criminal offences¹.

Moreover, according to the guidelines set out in the Practice Circular, estate agency companies must not deploy non-licensed staff to the first-sale sites for conducting any form of promotional activities, regardless of whether such arrangement is allowed by the vendors of the development or not.

Estate agency companies are reminded that under section 39 of the EAO, a licensed estate agent who employs or continues to employ as a salesperson, any person who for the time being is not the holder of an estate agent's or salesperson's licence, may commit an offence. The maximum penalty is a fine at level 6 (i.e. \$100,000) and six months' imprisonment.

Further, under section 42, the director or other officer concerned in the management of the licensed estate agent may also be guilty of the same offence if it is proved that the offence was committed with the consent or connivance of such director or officer. The maximum penalty is a fine at level 6 (i.e. \$100,000) and six months' imprisonment.

¹ Please refer to sections 15(1), 16(1) and 39(1) of the EAO.



Please refer to paragraphs 15 to 17 of the Practice Circular.

Q2. Referring to paragraph 10 of the Practice Circular, must a Commander-in-Chief (“CIC”) appoint other supervisory staff to share his responsibilities at the first-sale site?

Answer: According to the guidelines set out in the Practice Circular, the CIC shall be responsible for maintaining overall good order at the first-sale sites, and ensuring that all staff so deployed to the first-sale sites comply with the law and the EAA guidelines set out in the Practice Circular and do not engage in any misconduct; and he shall consider whether he has sufficient manpower to effectively manage the staff so deployed.

In this regard, the CIC, acting on behalf of himself and his estate agency company, shall be responsible to ensure that there are sufficient supervising staff, who must be licensees, at the first-sale sites (“Supervisor(s)”) working under him to help monitor and control the order and conduct of their staff so deployed to these sites. Estate agency company and/or CICs must also ensure that the number of staff deployed to the sale site is commensurate with their ability to effectively manage the staff so deployed.

Hence, while the appointment of Supervisor(s) by the CIC is not itself a mandatory requirement under the Practice Circular, the CIC should consider whether he would be able to effectively perform his duty in compliance with the requirements of the Practice Circular by himself alone, should he or his estate agency company decide not to engage any Supervisor(s) to help the CIC.



Please refer to paragraphs 6, 9 and 10 of the Practice Circular.

Q3. To comply with the guidelines set out in the Practice Circular, what documents are required to be provided by the estate agency companies to the EAA at least one day before the launch of the sale of each development?

Answer: Estate agency companies and/or the CIC must, for each development, compile and provide the EAA, at least one day before the launch of the sale of that development, (a) a list of all staff to be deployed to the first-sale sites; (b) a chain of command chart showing the reporting lines from the senior management of the estate agency company down to the CIC and ultimately to the frontline staff deployed to the first-sale sites; and (c) an internal policy on staff deployment and how they would manage their staff's conduct for maintaining good order at the first-sale sites through the CIC. Please refer to paragraphs 18 to 19 of the Practice Circular for more details.

In this connection, estate agency companies and the CIC are reminded that they must also keep (a) a daily register of all staff who had reported for duty at the first-sale sites (paragraph 20 of the Practice Circular refers); and (b) proper records of the pre-sale briefing(s) to staff to be involved in promotional activities for each relevant development (paragraphs 4 to 7 of Circular No. 13-04(CR) refer); and they must forthwith provide the EAA with copies of the daily register and records of such briefings upon request.

Samples of “Record of Pre-sale Briefing for First-sale of Residential Properties” and “Staff Attendance Record of Pre-sale Briefing for First Sale of Residential Properties



and List of Licensed Staff to be Deployed” are attached for reference.

Q4: According to paragraph 7(b)(i) of the Practice Circular, the CIC must be a holder of an estate agent’s licence (individual) for a period of at least 10 years and has been in a managerial role for at least five years immediately prior to his appointment as the CIC for the development. Must the aforesaid 10 years / 5 years requirement be consecutive?

Answer: “No” to the 10 years requirement and “Yes” to the 5 years requirement.

In other words, while the relevant licensee needs not be a holder of an estate agent’s licence (individual) for a consecutive period of at least 10 years before appointment, the said licensee, in terms of managerial experience, must have been in a managerial role for a consecutive period of at least 5 years immediately prior to his appointment as the CIC in order to fulfill the criterion mentioned in paragraph 7(b)(i).

Q5: Referring to Q4 above, will a person who has been holding an estate agent’s licence (individual) for less than 10 years and/or has been in a managerial role for less than five years unable to fulfill the criterion mentioned in paragraph 7(b) for being a CIC?

Answer: Not necessarily.

A person who has been holding an estate agent’s licence (individual) for less than 10 years and/or has been in a managerial role for less than five years may still fulfill the



criterion set out in paragraph 7(b) of the Practice Circular if he is a sole proprietor/partner/director of the estate agency company concerned.

However, estate agency companies should note that the word “director” in the Practice Circular, refers to a current director of an estate agency company whose particulars are filed at the Companies Registry.

Hence, a person who merely holds the business title of “director” (e.g. regional director; senior sales director) within the structure of an estate agency company will not satisfy the above criterion, unless he is also the current director of the estate agency company concerned whose particulars are filed at the Companies Registry.

Please refer to meaning of “director” in footnote 3 of the Practice Circular.

Q6: How may an estate agency company verify whether a licensee has been a holder of an estate agent’s licence (individual) for a period of at least 10 years and/or whether he has been subject to any disciplinary action by the EAA within the last three years prior to his appointment as CIC? Is such information available from the EAA website?

Answer: Under the current system, any person may conduct, for free, a search on the EAA website under “Licence List” to ascertain whether a relevant person is licensed, the period of his licence, and whether any disciplinary action has been taken by the EAA against him/her in the past two years.

The EAA also maintains a register (“the Register”) under section 13 of the EAO. Any person may inspect, for free,



the Register at the EAA office and search for information of current licences / expired licences. The Register contains the following information:

- the name of those to whom a licence is / had been granted;
- the licence number;
- the period(s) for which the licence is / was granted and/or renewed;
- if the licence is / had been suspended, the period during which it is / had been suspended;
- if the licence is / had been revoked, the date of revocation;
- for current licensees, the registered address; and
- other information prescribed by the EAO.

Where a certification of a copy of or extract from any entry in the Register is applied for, a prescribed fee (at \$150 per licence record) is payable to the EAA.

As the current Licence List contains only disciplinary records of licensees in the past two years, with regard to the criterion set out in paragraph 7(c) of the Practice circular, an estate agency company may, if necessary, make an enquiry in writing to the EAA to ascertain whether a licensee has been subject to any disciplinary action by the EAA within the last three years. The enquiry letter must include a written consent signed by the licensee consenting to his/her employer obtaining such information from EAA and stating the name(s) of the development(s) which the estate agency company intends to appoint such licensee as the CIC.

Q7. Are the guidelines set out in the Practice Circular applicable to first-hand residential developments which



地 產 代 理 監 管 局
ESTATE AGENTS AUTHORITY

have been launched for sale prior to 1st December 2018?

Answer: The Practice Circular shall take effect on 1st December 2018 (“effective date”). All estate agency companies, CIC and licensees must comply with the applicable guidelines set out in the Practice Circular when participating in any promotional activities for sale of any first-hand residential development (whether or not the relevant development has been launched for sale prior to 1st December 2018) starting from the effective date.

7 December 2018