



The EAA Issues a Practice Circular on the Sale of Uncompleted Properties Situated Outside Hong Kong

(28 December 2017) In light of increasing public concern about Hong Kong people buying properties outside Hong Kong and licensed estate agents participating in the related sale, the Estate Agents Authority (“EAA”) today issued a practice circular on the sale of uncompleted properties situated outside Hong Kong (“UPOH”). It sets out a series of guidelines for licensed estate agents participating in the sale of UPOH, with a view to enhancing the professional standard of the trade so as to provide consumers with better protection.

According to the Estate Agents Ordinance, 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 hence, his conduct is not regulated by the EAA. However, licensed estate agents in Hong Kong are regulated by the EAA and they must observe and comply with the relevant provisions in the Estate Agents Ordinance and its subsidiary legislation, the *Code of Ethics* and all applicable guidelines issued by the EAA when they participate in the sale of UPOH. In the first eleven months of 2017, the EAA received a total of 11 complaints about the sale of properties situated outside Hong Kong by licensed estate agents. These cases mainly concerned uncompleted properties that failed to complete and misrepresentation of property information by estate agents.

In a bid to enhance the professionalism of the estate agency trade, last week the EAA’s Practice and Examinations Committee endorsed the issuance of a new practice circular (No. 17-03 (CR)) to provide guidelines to licensees on the proper practice and measures in the sale of UPOH. The guidelines are extensive and include requirements for licensees to obtain a



due diligence report on the vendor and the related UPOH; to obtain legal opinion issued by a lawyer practising in the place where the UPOH are situated; and there are also requirements on the licensee's issuance of advertisements and sales information sheets. The key points of the practice circular are listed in the **Annex** to this press release. The full set of the practice circular has already been posted on the EAA website.

To allow sufficient time for licensees to prepare for the implementation of the requirements, the EAA has set the practice circular to take effect on 1 April 2018. If licensees are found to have failed to comply with the requirements, they may be subject to EAA disciplinary action. The sanctions include admonishment, reprimand, fine, attaching conditions to a licence, licence suspension and revocation.

The Honourable Horace Cheung Kwok-kwan, JP, Chairman of the EAA Practice and Examination Committee, said: "Licensed estate agents must act cautiously when it comes to the sale of UPOH and should not advise clients hastily in case of any uncertainties. Consumers are also advised to obtain more information about the UPOH by, such as, visiting the place where the property is situated, seeking professional advice, learning more about the regulations of the place where the property is situated regarding the purchase or leasing of properties by foreign buyers and its taxation systems etc, before making any purchase decision."

He also reiterated, "The EAA's practice circular is not a panacea for all problems that may arise from purchasing UPOH. Overseas estate agents and property developers are not under the EAA's purview. That said, licensed estate agents are regulated by the EAA and they must comply with the guidelines issued by us. Their conduct and professional standard must be up to a certain level."



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The EAA will organise relevant continuing professional development seminars later to provide practitioners with a detailed explanation of the practice circular to help them meet the requirements of the circular. In addition, the EAA will also organise a large-scale public seminar in March 2018 to explain to the public the points-to-note in purchasing UPOH.



Chairman of the Practice and Examination Committee of the EAA, the Honourable Horace Cheung Kwok-kwan, JP (right) and EAA Chief Executive Officer Ms Ruby Hon Yuen-ping brief the press on the new practice circular on the sale of uncompleted properties situated outside Hong Kong by licensed estate agents.



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Chairman of the Practice and Examination Committee of the EAA, the Honourable Horace Cheung Kwok-kwan, JP (left) and EAA Chief Executive Officer Ms Ruby Hon Yuen-ping introduce the requirements of the new circular.

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**Key Points of the Practice Circular on the Sale of
Uncompleted Properties Situated Outside Hong Kong
(No. 17-03(CR)) Issued by the EAA**

Licensees participating in the sale of uncompleted properties situated outside Hong Kong (“UPOH”) are required to:

1. Conduct Due Diligence on Vendor and UPOH

- Obtain a report(s) issued by a professional person, financial institution and/or government authority confirming:
 - (a) that the vendor is in existence and legally entitled to develop and sell the UPOH;
 - (b) the vendor’s source of funds/financial arrangement with regard to the completion of the UPOH; and
 - (c) the key information of the development of which the UPOH form part.

2. Obtain Legal Opinion on Material Information

- Obtain a legal opinion on whether there is any form of restriction(s) for foreign purchasers to purchase, resell, lease or mortgage the UPOH according to the laws of the place where the UPOH are situated, and if so, the nature of such restriction(s).



3. About Advertisements and Promotional Materials

- Obtain the vendor's express endorsement in writing of the accuracy and completeness of the information contained in advertisements and promotional materials.
- Must include a prominent warning statement in advertisements and promotional materials reminding purchasers that purchasing UPOH is complicated and contains risk.
- Must not include in advertisements or promotional materials prepared or distributed by them words which 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.

4. About Providing Sales Documents for Purchasers

- Provide the following documents to purchasers before they enter into any agreement or make any payment in relation to the purchase of the UPOH (whichever is the earlier):
 - (a) a copy of the due diligence report(s) regarding the vendor and the UPOH;
 - (b) a copy of the legal opinion on the material information;
 - (c) a written warning statement; and
 - (d) a sales information sheet that contains all the necessary information required by the EAA.



5. About Taxation and Payment/Financing Arrangements

- Advise 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.
- Provide information on payment arrangements based solely on the information provided by the vendor.
- Do not make any assurance on mortgage terms.