



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

(28 December 2023) The Estate Agents Authority (“EAA”) today issued a new practice circular (No. 23-02 (CR)) (“new circular”) on the sale of uncompleted properties situated outside Hong Kong (“UPOH”) for licensed estate agents to follow which will supersede the relevant old circular (No. 17-03 CR)) issued in 2017 (“old circular”) when the new circular takes effect on 1 July 2024.

Unlike completed properties where property inspection may be feasible, there are much more risks and uncertainties with respect to the purchase of UPOH. Therefore, in December 2017, the EAA issued the old circular which set out a series of guidelines for licensed estate agents participating in the sale of UPOH to follow, with a view to enhancing the professional standard of the trade so as to provide consumers with better protection.

The Chief Executive Officer of the EAA Ms Ruby HON said: “As the concern about Hong Kong people buying properties outside Hong Kong continues and some UPOH offered for sale in Hong Kong are handled by licensed estate agents, to strengthen consumer protection within the EAA’s purview and enhance consumers’ confidence in engaging licensees in their purchase of UPOH, the EAA considers it necessary to draw to consumers’ attention the differences between the handling of UPOH by licensees and non-licensees; and to further promote the professionalism of licensees by making improvements to the requirements in the old circular.”

Therefore, the EAA issues the new circular to set out the improved guidelines on the appropriate practices and measures for adoption by licensed estate agents in their handling of UPOH sales. Comparing to the



old circular, the new circular is more comprehensible and introduces some new requirements. For example, licensed estate agents must now obtain a legal opinion issued by a lawyer (as opposed to other persons) practising in the place where the UPOH is situated, covering due diligence on the vendor and the UPOH and certain key information, such as the permitted user and user restrictions of the UPOH; and whether there is any mechanism in place to safeguard the deposits or part payments made by the purchasers etc.. In addition, the UPOH advertisements and promotional materials must include certain information which must also be presented or displayed in a specified manner. Such information includes the EAA's bilingual caution to consumers: **“To buy or not to buy non-local off-plan properties? Assess the risks before you buy! 境外樓花買唔買？計過風險先好買！”**. Highlights of the new circular are listed in the **Annex** to this press release. The full set of the new circular has already been posted on the EAA website.

To allow sufficient time for licensees to prepare for the implementation of the new requirements, the EAA has set the new circular to take effect on 1 July 2024. Licensees should read the contents of the new circular in detail and make adjustments to their relevant work to ensure compliance with the new requirements from the effective date. Licensees who fail to comply with the new circular may be disciplined by the EAA. The sanctions include admonishment, reprimand, fine, attaching conditions to a licence, licence suspension and revocation.

A set of related Questions and Answers for providing more information and examples on how to comply with the new circular will be available on the EAA website in the first quarter of 2024. To assist the trade to understand the new guidelines, the EAA will launch Continuing Professional Development training for licensees in due course. Similarly,



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publicity and promotional initiatives will be launched before the new circular comes into effect to emphasise to consumers the benefits of buying UPOH through licensees.



Highlights of the New Circular (No. 23-02 (CR))

Obtain Legal Opinion on Material Information

- Obtain a legal opinion issued by a lawyer practising in the place where the UPOH is situated covering:
 - (a) due diligence on the vendor and the UPOH confirming:
 - (i) that the vendor is: (aa) in existence; (bb) legally entitled to develop the UPOH; and (cc) legally entitled to sell the UPOH;
 - (ii) the vendor's source of funds or financial arrangement with regard to the completion of the UPOH;
 - (iii) the relationship between the vendor and the developer, if they are not the same person/entity; and
 - (iv) the key information of the development of which the UPOH forms part;
 - (b) whether there is any form of restriction(s) for foreign purchasers to (i) purchase; (ii) resell; (iii) lease; and (iv) mortgage the UPOH according to the laws of the place where the UPOH is situated; and if so, the nature of such restriction(s); and
 - (c) whether there is any mechanism in place to safeguard the deposits or part payments made by the purchaser according to (i) the laws of the place where the UPOH is situated; and (ii) the terms of the relevant sale and purchase agreement (if any) which shall not be in conflict with the laws of the place where the UPOH is situated; and if so, the particulars of such mechanism and how the deposits or part payments will be dealt with



pending completion of the purchase.

Requirements on Advertisements and Promotional Materials

- Must not issue an advertisement or any promotional material wholly or partly relating to their estate agency business (covering also information on the vendor and the UPOH) which includes any statement or particular that is false or misleading in a material particular.
- Obtain the vendor's express endorsement in writing of the accuracy and completeness of the information contained in advertisements and promotional materials.
- Must include certain information in the UPOH advertisements and promotional materials, which must also be presented or displayed in a specified manner. Such information includes the EAA's bilingual caution to consumers: **“To buy or not to buy non-local off-plan properties? Assess the risks before you buy! 境外樓花買唔買？計過風險先好買！”**.

Sales Documents to be Provided to 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 legal opinion on material information;
 - (b) a separate written warning statement; and
 - (c) a sales information sheet.



About Taxation, Payment and 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.
- Inform purchasers in writing (before they make any payment of moneys) to whom the payment will go, its purpose, and whether it is refundable.

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