



有關銷售香港境外未建成物業的新執業通告

New Practice Circular on the Sale of Uncompleted Properties Situated Outside Hong Kong

與已建成發展項目的物業可供視察的情況不同，購買香港境外的未建成物業存在更多風險和不確定因素。因此，監管局於2017年12月發出一份有關銷售香港境外未建成物業的執業通告（下稱「2017年通告」），為參與境外未建成物業銷售的持牌地產代理提供一系列指引，以提高業界的專業水平，為消費者提供最佳的保障。

由於對港人購買香港境外物業的關注持續，而部分在香港出售的境外未建成物業由持牌人處理，監管局為了在其規管範圍內加強對消費者的保障，及增強他們在委託持牌人處理境外未建成物業時的信心，監管局認為有

Unlike completed properties where property inspection may be feasible, there are more risks and uncertainties with respect to the purchase of uncompleted properties situated outside Hong Kong (“UPOH”). Therefore, in December 2017, the EAA issued a practice circular on UPOH (No. 17-03 (CR)) (“2017 Circular”) which set 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.

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 licensees, in order to strengthen consumer protection within the EAA’s purview and enhance consumers’ confidence in engaging licensees for handling UPOH, the EAA considers it necessary to draw to the consumers’ attention the differences between the sale of UPOH by licensees and

必要提醒消費者留意由持牌人與非持牌人處理境外未建成物業銷售的區別，以及優化2017年通告的要求，以進一步提高持牌人的專業水平。

基於上述種種，監管局剛於2023年12月28日發出一份新的執業通告（編號23-02(CR)）（下稱「新通告」），就持牌人在處理境外未建成物業銷售時的適當執業方式及措施列出更優化的指引，以供他們採用。新通告將於2024年7月1日起生效並屆時取代2017年通告。

新通告現已上載於監管局網站，而一套相關的問與答，以提供更多資料及如何遵循新通告的例子則會於2024年首季載於監管局網站。持牌人應仔細閱讀新通告內容，並於新通告生效前盡快就其相關工作作出修訂，以符合新通告的要求。為協助業界理解新的指引，監管局稍後會為持牌人推出持續專業進修培訓。同樣地，監管局亦會在新通告生效之前，推出宣傳推廣計劃，向消費者強調聘用持牌人購買境外未建成物業的好處。

新通告的重點如下：

取得重要資料的法律意見

- 取得由境外未建成物業所在地的執業律師發出的法律意見，內容涵蓋：
 - (a) 賣方及境外未建成物業的盡職審查，確認：
 - 賣方(i)確實存在、(ii)在法律上有權發展該境外未建成物業；及(iii)在法律上有權出售該境外未建成物業；
 - 賣方為完成興建該境外未建成物業的資金來源或財務安排；
 - 如賣方與發展商並非同一人／實體，他們之間的關係；及
 - 該境外未建成物業所屬的發展項目的關鍵資料；
 - (b) 根據該境外未建成物業所在地的法律，境外買方(i)購買；(ii)轉售；(iii)出租；及(iv)按揭該境外未建成物業是否有任何形式的限制；以及如有的話，該等限制的性質；及

non-licensees; and to further promote the professionalism of licensees by making improvements to the requirements in the 2017 Circular.

Based on the above considerations, the EAA has issued a new practice circular (No. 23-02 (CR)) (“New Circular”) on 28 December 2023 to set out the improved guidelines on the appropriate practices and measures for adoption by licensees in their handling of UPOH sales. The New Circular will supersede the 2017 Circular at the same time as it takes effect on 1 July 2024.

The New Circular has been uploaded to the EAA website and 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. Licensees should read the contents of the New Circular in detail and adjust their relevant work to ensure compliance with the New Circular from the effective date. To assist the trade to understand the new guidelines, the EAA will launch CPD training for licensees in due course. Similarly, publicity and promotion 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 are as follows:

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:
 - that the vendor is: (i) in existence; (ii) legally entitled to develop the UPOH; and (iii) legally entitled to sell the UPOH;
 - the vendor’s source of funds or financial arrangement with regard to the completion of the UPOH;
 - the relationship between the vendor and the developer, if they are not the same person/entity; and
 - the key information of the development of which the UPOH forms part;



(c) 根據(i)該境外未建成物業所在地的法律；及(ii)有關買賣協議的條款（該條款不得與該境外未建成物業所在地的法律相抵觸）（如有），是否有任何機制保障買方所支付的訂金或部分付款；以及如有的話，該機制的詳情，以及在完成購買前如何處理訂金或部分付款。

有關廣告及宣傳物品的要求

- 不得發出任何全部或部分與其地產代理業務有關（亦涵蓋賣方及境外未建成物業的資料）並載有在要項上屬虛假或具誤導性的任何陳述或詳情的廣告或任何宣傳物品。
- 取得賣方就廣告及宣傳物品所載資料的準確性和完整性的明確書面批署。
- 境外未建成物業的廣告及宣傳物品中必須包含一些資料，而該些資料必須以指定方式呈示或展示。當中包括監管局向消費者發出的雙語警告：「**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！**」。

向買方提供的銷售文件

- 在買方就購買境外未建成物業訂立任何協議或支付任何款項（以較早者為準）之前，向買方提供以下文件：
 - (a) 重要資料的法律意見副本；
 - (b) 獨立的書面警告聲明；及
 - (c) 銷售資料單張。

有關稅項、付款及財務安排

- 建議買方就其本身的情況而須繳納的稅項或徵費的類別及數額尋求獨立專業意見。
- 僅根據賣方所提供之資料提供有關付款安排的資料。
- 不得作出任何按揭條款的保證。
- 在買方支付任何款項之前，以書面方式告知買方款項是向誰繳付、付款的目的及款項是否可退還。

(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.