



## **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. 23-02 (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, “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.



Licencees must observe and comply with the guidelines set out in the Practice Circular when they participate in the sale of these properties.

**Q3. Are licencees 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.

The conduct and practices of all licencees, 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. Licencees must observe and comply with all applicable guidelines issued by the EAA from time to time including the guidelines set out in the Practice Circular when participating in the sale of UPOH.

If a licensee cannot comply with the requirements under the Practice Circular (e.g. unable to provide sales documents including the legal opinion to the purchasers), the licensee must not engage in estate agency work relating to UPOH, including distribution of brochures or other promotional materials.

Please refer to paragraph (2)(c) and footnote 3 of the Practice Circular.

**Q4. Regarding the legal opinion on material information mentioned in the Practice Circular, when must licencees obtain it in respect of the UPOH offered for**



**sale?**

Answer: Licensees must obtain a legal opinion mentioned in paragraph (4) of the Practice Circular before they participate in the sale or the promotional activities for the UPOH.

Estate agency companies must ensure that the legal opinion must cover information mentioned in paragraphs (5) and (6) of the Practice Circular.

Please refer to paragraphs (4) to (8) of the Practice Circular.

- Q5. (a) Must licensees instruct their own foreign lawyer to issue 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 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 legal opinion. For the purposes of paragraph (4) of the Practice Circular, licensees may procure the vendor to provide them with the required legal opinion.

However, if the legal opinion is issued by a lawyer engaged by the vendor in the sale of the UPOH, licensees must, when providing copies of the 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 legal opinion.

Please refer to paragraph (21) of the Practice Circular.

**Q6. Paragraphs (15)(c) and (d) of the Practice Circular require the inclusion of the Company Licence or SPOB Number and a Caution Statement in any advertisements or promotional materials to be prepared, issued or distributed by estate agency companies. Is there a requirement on the placement and size of the words to be used for the said number and statement with respect to printable advertisements and promotional materials of UPOH?**

Answer: Yes.

With respect to printable advertisement or promotional material, the Company Licence or SPOB Number and the bilingual Caution Statement must be legibly displayed at the top of the advertisement or promotional material.

If the size of the printable advertisement or promotional material is not larger than A4, the size of the letters or numbers with respect to the Company Licence or SPOB Number and the Caution Statement must not be smaller than the size of the same letters or numbers set in 12 point.

If the size of the printable advertisement or promotional material is larger than A4, the Company Licence or SPOB Number and the Caution Statement must occupy at least 5% of the whole area of the advertisement or promotional material.



Please refer to paragraphs 1 to 3 in Annex 1 to the Practice Circular.

**Q7. Referring to Q6 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 (15) 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 (15) of the Practice Circular.

In the scenario mentioned in the question, licensees should inform the vendor of the EAA's relevant requirements.

**Q8. Referring to paragraph (20)(c) 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.

**Q9. Referring to Q8 above, can licensees omit a specific**



**item (mentioned in Annex 3 to the Practice Circular) from the sales information sheet if the answer to that item (mentioned in Annex 3 to the Practice Circular) is “No”?**

Answer: No.

All required information as set out in Annex 3 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 Annex 3 is “No”, “None” or “Nil”, licensees must state so in the relevant sales information sheet and must not omit the said item from the sales information sheet of the UPOH.

Please refer to paragraph (24) of the Practice Circular.

**Q10. 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 July 2024?**

Answer: Yes.

The Practice Circular will supersede the previous circular issued by the EAA on UPOH (No. 17-03 (CR)) at the same time when it takes effect on 1 July 2024. If the sale of UPOH had commenced prior to 1 July 2024 and are still available for sale after the Practice Circular comes into operation, licensees are required to adjust their relevant work to ensure compliance with all the applicable guidelines set out in the Practice Circular from 1 July 2024.



For the sake of clarity, sale of UPOH includes promotional or marketing activities in relation to such sale. Therefore, if promotional or marketing activities in relation to the sale of UPOH had commenced prior to 1 July 2024 and so long as any such promotional or marketing activities will continue on or after 1 July 2024, licensees are required to comply with all the guidelines set out in the Practice Circular, where applicable.

**Q11. Referring to Q10 above, if licensees continue with the sale of UPOH on or after 1 July 2024, is it necessary for them to reprint the printable UPOH advertisements and promotional materials for issuance or distribution during the promotional or marketing activities on or after 1 July 2024 in order to comply with the requirements under the Practice Circular?**

**Answer:** It depends on the particular circumstances of the case. If the printable advertisements or promotional materials have sufficient space for inclusion of all the requisite information under paragraph (15) of the Practice Circular, licensees may consider adding such information to the existing advertisements or promotional materials in the form of sticker(s) instead of reprinting the relevant advertisements or promotional materials, provided that all the applicable requirements set out in the Practice Circular (including those in paragraphs 1 to 3 to Annex 1) have been complied with.

**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 July 2024. The trade has about six months to prepare for the change since the promulgation of the Practice Circular. Meanwhile, the EAA will educate the trade and consumers in this period. From 1 July 2024 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 and confidence in 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 the guidelines on the appropriate practices and measures to

be adopted when handling the sale of UPOH; and hence engaging their service may involve risks.

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 or engage other persons under their control 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 or other persons 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 or engaging other persons under their control to deal exclusively with the sale of



properties outside Hong Kong, they may do so but their non-licensed employees or other persons under their control must comply with section 2 of the Exemption Order. In this regard, the business cards and other documents of these non-licensed employees or other persons must state that they are not licensed to deal with any property situated in Hong Kong.

Estate agency companies should note that advertisements or promotional materials prepared, issued or distributed by such non-licensed employees or other persons under their control are (i) assets of the estate agency company that hired them; and (ii) deemed to be prepared, issued or distributed by the said estate agency company. As such, estate agency companies should ensure that all advertisements and promotional materials of UPOH issued by such non-licensed employees or other persons under their control comply with all relevant guidelines issued by the EAA.

Also, estate agency companies should note that they are primarily liable for any misleading or inaccurate property advertisements or promotional materials issued by them or their employees or other persons under their control and they may also be held responsible for the wrongful acts of such employees or other persons when such employees or other persons, in the course of carrying out their work, prepare, issue or distribute such advertisements or promotional materials for UPOH.

For the avoidance of doubt, since the conduct and practices of licensed estate agency companies are regulated by the EAA, with respect to any wrongful acts of non-licensed employees or other persons under their control in relation to the sale of UPOH (e.g. misrepresentation made by such employees or other



persons under their control), the EAA will look into whether those wrongful acts could be attributed to the lack of proper system, procedures, supervision or control of the non-licensed employees or other persons to prevent or detect the happening of such acts, and if so, the estate agency companies may be liable for a breach of section 15 of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation for failing to establish a proper system to manage their businesses.

Please refer to paragraphs (9) and (10) of the Practice Circular.

**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 section 15(1) or section 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, i.e. section 39(1) of the EAO.

The maximum penalty for committing an offence under section 39(1) of the EAO is a fine of \$100,000 and imprisonment for 6 months.

**Q16.**

- (a) With respect to information which must be contained in the UPOH advertisements and promotional materials, is it sufficient to just include the information mentioned in paragraph (15) of the Practice Circular?**
- (b) If the answer to question (a) above is “No”, what other information must be stated or displayed in the UPOH advertisements and promotional materials prepared, issued or distributed by estate agency companies?**

**Answer:** “No” to question (a).

With respect to question (b), apart from the information mentioned in paragraph (15) of the Practice Circular (i.e. the estimated completion date of the development, the business name of the estate agency company, the Company Licence or SPOB Number and the Caution Statement), estate agency companies are also required to include other information as may be necessary in the UPOH advertisements and promotional materials

prepared, issued or distributed by them in order to comply with the EAO and all applicable guidelines issued by the EAA from time to time in relation to property advertisements. Such other information includes the following:

1. a unique identification number to each of the UPOH to be advertised; and
2. the date on which the advertisement is issued or updated (“Advertisement Date”).

With regard to newspaper advertisements or promotional materials, estate agency companies may choose not to state the Advertisement Date in the advertisements or promotional materials published in the newspaper in which case, the date of the newspaper shall be deemed to be the Advertisement Date for the UPOH concerned. For details, please refer to Practice Circular No. 18-02 (CR).

- Q17.**
- (a) As the laws, regulations and customary practices differ from one jurisdiction to another, if there is no mechanism in place to safeguard the deposits or part payments made by the purchaser according to the laws of the place where the UPOH is situated, does it mean that the lawyer can just omit to cover such information in the legal opinion?**
  - (b) If the answer to question (a) above is “No”, what information should be provided in the legal opinion in order to comply with the requirement in the Practice Circular?**

**Answer:** “No” to question (a).

With respect to question (b), if the lawyer could not



provide any of the information in the legal opinion as required in paragraphs (5) and (6) of the Practice Circular, he/she must not omit such information or simply state that he/she does not know the particular item. Instead, the lawyer must provide an explanation in the legal opinion as to why such information is not available.

**Q18. With respect to two-sided printable advertisements promoting UPOHs in two different jurisdictions (e.g. flyer promoting UPOHs in Canada on the one side and UPOHs in Japan on the other side), can the Company Licence or SPOB Number and the Caution Statement be displayed on one side only?**

Answer: No.

As the Company Licence or SPOB Number will help consumers distinguish between licensees and non-licensees and the Caution Statement will serve as an important warning to consumers to assess their risks before engaging in the purchase of UPOHs, such information must be legibly displayed on both sides and at the top of each side of the UPOH advertisement.

For the avoidance of doubt, with respect to promotion of two or more UPOHs, whether in the same or different jurisdictions, on the same side of a printable UPOH advertisement, the Company Licence or SPOB Number and the Caution Statement could be displayed once provided they must be legibly displayed on that particular side and at the top of the advertisement on that side.

For the sake of clarity, the presentation requirements set



out in paragraphs 2 and 3 in Annex 1 of the Practice Circular must also be complied with, where applicable.

**Q19. What if the two-sided printable advertisement relates to one UPOH in the same jurisdiction, must the Company Licence or SPOB Number and the Caution Statement be displayed on both sides of the advertisement?**

Answer: No.

Where only one UPOH is promoted on the two-sided printable advertisement, the Company Licence or SPOB Number and the Caution Statement can be displayed on one side only.

**Q20. With respect to promoting UPOHs by placing visual advertisements that does not contain any audio on third-party websites or official websites of estate agency companies, how should the Company Licence or SPOB Number and the Caution Statement be displayed?**

Answer: The Company Licence or SPOB Number and the Caution Statement should be displayed in the same manner regardless of whether the advertisements for promoting UPOHs are placed on third-party websites or official websites of estate agency companies. In the case of a visual advertisement that does not contain any audio, the estate agency company concerned must ensure that its Company Licence or SPOB Number must be displayed for the entire time and the Caution Statement must be prominently displayed at the end.





Where the visual advertisement also contains audio, the estate agency company concerned must ensure that its Company Licence or SPOB Number must be displayed for the entire time and the Caution Statement must be prominently displayed at the end **and** audibly and clearly read out in a voice-over at the end.

Please refer to paragraph 4(b) in Annex 1 of the Practice Circular.

**Q21. Can individual licensees issue UPOH advertisements or promotional materials in their own capacity?**

**Answer:** All advertisements and promotional materials in relation to UPOH are assets of the estate agency companies. Individual licensees must not issue UPOH advertisements or promotional materials in their own capacity.

Should it happen that the UPOH advertisements or promotional materials are issued by employees or other persons under the control of the estate agency company, they are deemed to be issued (i) for and on behalf of or in the interest of the estate agency company; and (ii) by the estate agency company.

If the UPOH advertisement or promotional material was issued by an individual licensee in his own capacity (such as in the name of the individual licensee only without the name of the estate agency company) in breach of paragraph (9) of the Practice Circular, disciplinary action may also be taken against the individual licensee.



**Q22. What should estate agency companies do if the vendor wants to include a picture, image, drawing or sketch showing an artist's impression of the UPOH or its surrounding area which is not real in the advertisements or promotional materials?**

**Answer:** If the vendor wants to include a picture, image, drawing or sketch showing an artist's impression of the UPOH or its surrounding area which is not real in the advertisements or promotional materials, the estate agency companies should state so clearly in the advertisements or promotional materials and such statement should be easily readable by a person with normal eyesight.

According to paragraph (12) of the Practice Circular, estate agency companies 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.

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