

有關銷售香港境外未建成物業的執業通告經已生效

Practice Circular on the sale of uncompleted properties situated outside Hong Kong has come into effect

由於對港人購買香港境外未建成物業（「境外未建成物業」）持續關注，而部分在香港出售的境外未建成物業由持牌地產代理處理，監管局在去年12月就銷售境外未建成物業發出新的執業通告（編號23-02（CR））（「該通告」），並已於2024年7月1日生效。該通告旨在於監管局的職權範圍內加強對消費者的保障，並優化舊指引的要求讓持牌人在處理境外未建成物業銷售時採取更好的做法和措施。

今期《專業天地》將會列出該通告的重點內容以提醒各持牌人遵從新指引。此外，局方強烈建議持牌人瀏覽監管局網站，以了解該通告的詳情、相關問與答及摘要清單作為參考。

該通告內容重點

有關廣告和宣傳物品的要求

- 地產代理公司¹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陳述或詳情的廣告或任何宣傳物品。
- 地產代理公司須在發出廣告及宣傳物品之前，取得賣方就該等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。
- 地產代理公司須將特定資料包含在境外未建成物業的廣告及宣傳物品中，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！」。

As the concern about Hong Kong people buying uncompleted properties situated outside Hong Kong (“UPOH”) continues and some UPOH offered for sale in Hong Kong are handled by licensees, the EAA issued a new Practice Circular on the sale of UPOH (No. 23-02 (CR)) (“Circular”) last December and the Circular has come into effect on 1 July 2024. The Circular aims to strengthen consumer protection within the EAA’s purview and improve the requirements in the old guidelines to provide better practices and measures for adoption by licensees in their handling of the sale of UPOH.

In this issue of *Horizons*, we will highlight the key points of the Circular to remind all licensees to comply with the new guidelines. In addition, licensees are strongly advised to visit the EAA’s website for details of the Circular, the related Q&As and the summary checklist for reference.

Highlights of the Circular

Requirements on advertisements and promotional materials

- Estate agency companies¹ must not issue an advertisement or any promotional material wholly or partly relating to their estate agency business (also covering information on the vendor and the UPOH) which includes any statement or particular that is false or misleading in a material particular.
- Estate agency companies must, before issuance of advertisements and promotional materials, obtain the vendor’s express endorsement in writing of the accuracy and completeness of the information contained in such advertisements and promotional materials.
- Estate agency companies 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！”。

取得重要資料的法律意見

- 持牌人須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
 - (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。

向買方提供的銷售文件

- 持牌人須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及相關律師的有效執業證書副本，包括其英文或中文譯本（如適用）；
 - (b) 獨立的書面警告聲明；及
 - (c) 銷售資料單張。

Legal opinion on material information

- Licensees must 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;
 - (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.

Sales documents to be provided to purchasers

- Licensees must 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 and the valid practising certificate of the issuing lawyer including their English or Chinese translation, if applicable;
 - (b) a separate written warning statement; and
 - (c) a sales information sheet.

Arrangements on taxation, payment and financing

- Licensees should 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.

¹ 「地產代理公司」指《地產代理條例》下的持牌地產代理的商號或公司。

"Estate agency companies" refers to those firms or companies which are licensed estate agents under the Estate Agents Ordinance.

稅項、付款及財務安排

- 持牌人應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。
- 持牌人只可根據賣方所提供之資料提供有關付款安排及詳情的資料。
- 持牌人不得作出任何按揭條款的保證。
- 持牌人須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。

- Licensees should only provide information on payment arrangements and details based solely on the information provided by the vendor.
- Licensees must not make any assurance on mortgage terms.
- Licensees must inform purchasers in writing (before they make any payment of moneys) to whom the payment will go, its purpose, and whether it is refundable.

Enhance public awareness of the risks involved

In order to enhance public awareness of the risks associated with purchasing UPOH and the importance of appointing a licensed estate agent, the EAA has, in the last few months, put up advertisements in different places including on the internet, on outdoor billboards as well as on public buses of KMB, LWB, and Citybus by way of stickers behind the seats.



提升大眾對相關風險的認識

監管局過去數月在不同地方作廣告宣傳，包括在網上、戶外廣告牌，以及在九巴、龍運及城巴的椅背上張貼廣告貼紙，以提升大眾對購買境外未建成物業風險的關注，及提醒消費者委託持牌地產代理的重要性。

