

有關良好及有效競爭做法的 新執業通告將於2024年11月1日生效

New Practice Circular on good and effective competition practices will be effective on 1 November 2024



鑑於有數間地產代理公司涉嫌協議訂定**並**在銷售一手住宅物業時所賺取的最低實收佣金率，引起與反競爭有關的關注，為提高業界的專業水平及加強公平競爭，地產代理監管局（「監管局」）於2024年8月5日發出一份新執業通告（編號24-01(CR)）（下稱「通告」）。

該通告就持牌人在(a)所有物業買賣及租賃交易收取佣金；及(b)銷售香港一手住宅物業時向買方¹提供優惠這兩方面採取良好及有效的競爭做法提供進一步指引，該通告將於2024年11月1日生效。

監管局強調，在自由市場經濟中，競爭是不爭的事實，競爭促進創新，以更優惠的價格提

In light of the anti-competition concern arisen from the suspected agreement between several estate agency companies to fix the minimum level of net commission rate that they would like to earn for the sales of first-hand residential properties, the Estate Agents Authority (“EAA”), with a view to raising the trade’s professionalism and enhancing fair play, issued a new Practice Circular (No.24-01(CR)) (“Circular”) on 5 August 2024.

The Circular provides further guidance on good and effective competition practices to be adopted by licensees in relation to (a) charging of commission in respect of all transactions of sale and purchase and letting of properties; and (b) offering of incentives to purchasers¹ in the sales of first-hand residential properties in Hong Kong. The Circular shall take effect on 1 November 2024.

The EAA emphasizes that competition in a free market economy is a fact of life and competition spurs innovation and generates more choices and

¹「買方」包括準買家

“Purchaser” include a prospective purchaser.

供更多選擇、更優質的產品及服務，從而令消費者得益。此外，收取佣金是地產代理公司與其客戶達成的一項商業決定，監管局不會訂定佣金率或制定強制性的佣金指引。通告的指引是補充通告（編號16-01(CR)）及通告（編號13-04(CR)）載列關於釐訂佣金及提供優惠的相關指引。

在今期的《專業天地》中，我們將介紹該通告的重點內容，以提醒所有持牌人於該通告生效後須遵從新指引。此外，我們強烈建議持牌人瀏覽監管局網站，以了解該通告的詳情。

該通告的重點如下：

(a) 在所有物業買賣及租賃交易收取佣金

為展現專業水平及加強公平競爭，監管局鼓勵地產代理公司：

- 制定書面佣金政策。
- 在訂立任何臨時買賣協議或租賃協議之前，向客戶提供載有以下內容的信函：
 - (a) 收取的佣金金額或佣金率；
 - (b) 將履行的特定工作及服務；
 - (c) 所提供服務的期限；及
 - (d) 促成交易的持牌員工及其主管的姓名。
- 就佣金政策向員工發出清晰指引及提供足夠的培訓。

(b) 銷售香港一手住宅物業時向買方提供優惠

地產代理公司如有提供優惠：

- 不得透過所提供的那些優惠限制或妨礙買方在作出購買決定時全面考慮其決定。
- 此外，具有相當程度市場權勢的地產代理公司在提供其優惠時，不得濫用其市場權勢。
- 在為買方提交相關投標書/要約/購樓意向登記或訂立任何與購樓有關的協議或支付任何與購樓有關的款項（以最早者為準）之前，以書面形式在指定優惠書中告知買方其所提供的優惠，並遵守相關要求（包括倘優惠採用的是貨幣形式，持牌人必須在優惠書中述明優惠的實際數額或顯示如何計算優惠金額的公式）。

better quality of products and services at better prices for the benefit of consumers. Also, charging of commission is a business decision to be agreed between estate agency companies and their clients. The EAA will not fix commission rates or stipulate mandatory commission guidelines. The guidelines in the Circular are supplemental to the guidelines relating to the determination of commission and offering of incentives set out in Circular No. 16-01 (CR) and Circular No. 13-04 (CR).

In this issue of *Horizons*, we will highlight the key points of the Circular to remind all licensees to comply with the new guidelines after the Circular has come into effect. In addition, licensees are strongly advised to visit the EAA's website for details of the Circular.

Highlights of the Circular:

(a) Charging of commission in respect of all transactions of sale and purchase and letting of properties

To demonstrate professionalism and enhance fair play, state agency companies are encouraged to:

- Formulate written commission policy.
- Before entering into any preliminary agreement for sale and purchase or tenancy agreement, provide letter to clients containing:
 - (a) the amount or rate of commission to charge;
 - (b) the specific tasks and services to be performed;
 - (c) the duration of the services to be offered; and
 - (d) the names of licensed staff and his/her supervisor(s) for concluding the transaction.
- Issue clear guidelines to, and provide sufficient training for staff on the commission policy.

(b) Offering of incentives to purchasers in the sales of first-hand residential properties in Hong Kong

If incentives are offered by an estate agency company:

- Such incentives offered must not restrict or prevent purchasers from giving a holistic consideration when making a purchase decision.
- Also, incentives offered by an estate agency company with a substantial degree of market power must not be abusive.
- Before submission of the relevant tender/offer/registration of intent for the purchaser or entering into any agreement in connection with the purchase or making any payment in relation to the purchase, (whichever is the earliest), inform the purchaser in writing of the incentives in a specified pro-forma incentive letter and comply with relevant requirements (including if the incentives are in monetary term, licensees must state in the incentive letter the absolute amount or a formula showing how the amount of incentive would be calculated).

- 就提供的優惠向員工發出清晰指引。
- 就提供的優惠保持密切監督及訂立適當程序。
- 保存文件及紀錄作為遵守規定的證據，並應監管局的要求立即出示該證據。

(c) 與指定優惠書有關的規定

如地產代理公司提供優惠，其必須提供及確保其員工使用公司的指定優惠書，而該優惠書必須註明日期及載有以下資料：

- 地產代理公司的相關營業詳情說明書內所述的營業名稱；
- 一個按順序及專屬的序號，使地產代理公司能夠追蹤其僱員代表地產代理公司提供的優惠；
- 發展項目的名稱，以及若發展項目以分期形式出售，該發展項目的相關期數；以及若已知悉物業的具體地址，該物業的相關地址；
- 所提供優惠的條款及形式（包括付款時間及方式）；及
- 地產代理公司一名管理層負責人的聯絡詳情（例如：該人的姓名、職位、地址、傳真號碼、電話號碼及電郵地址等），以便買方可就與優惠書有關的任何跟進事宜聯絡該名人士。
- 若優惠採用的是貨幣形式（如現金回贈），持牌人必須在優惠書中述明：
 - 回贈的實際數額；或
 - 顯示如何計算回贈金額的公式，該公式只可以買方擬購買物業的臨時買賣協議中所述購買價的一個明確百分比表述。

持牌人應仔細閱讀該通告內容，並就其相關工作作出修訂，以確保在該通告生效後符合相關的要求。持牌人如未有遵守監管局指引，將有機會被紀律處分。

為協助業界了解新指引，監管局已上載一套相關「問與答」到監管局網站以供業界參考，並為持牌人安排相關的持續專業進修講座。

- Issue clear guidelines to staff with respect to offering of incentives.
- Maintain close supervision and establish proper procedures with respect to the incentives offered.
- Keep documents and records as evidence of compliance and forthwith produce such evidence upon the EAA's request.

(c) Requirements in relation to the pro-forma incentive letter

If incentives are offered by an estate agency company, it must provide and ensure that its staff will use its pro-forma incentive letter, which must be dated and contain the following information:

- the business name as stated in the relevant statement of particulars of business of the estate agency company;
- a unique serial number in sequence which could enable the estate agency company to track the incentives offered by its employees on the estate agency company's behalf;
- the name of the development, and where the development is to be sold in phases, the relevant phase of the development; and where the specific address of the property is known, the relevant address of the property;
- the terms and modes of the incentives so offered (including the time and manner of payment); and
- the contact details of a responsible person at managerial rank from the estate agency company (such as his/her name, position, address, fax number, phone number and email address, etc.) whom the purchaser may contact in case there is any follow-up issue with respect to the incentive letter.
- Where an incentive is in monetary term, such as a cash rebate, licensees must state in the incentive letter:
 - the absolute amount of the rebate; or
 - a formula showing how the amount of the rebate would be calculated, which may only be expressed as an explicit percentage of the purchase price as stated in the preliminary agreement for sale and purchase of the property to be acquired by the purchaser.

Licensees should read the contents of the Circular in detail and adjust their relevant work to ensure compliance with the Circular from the effective date. Licensees who fail to comply with the EAA's guidelines may be subject to disciplinary action.

To assist the trade to understand the new guidelines, the EAA has uploaded a set of related Questions and Answers to the EAA's website for the trade's reference and arranged the related CPD training activities for licensees.