



## Circular

Circular No. 24-01 (CR)

**Good and effective competition practices (with the relevant paragraph numbers in brackets):**

**(A) Charging of Commission (9)**

- **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 (12 – 20)**

- **Incentives offered by estate agency companies 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).**
- **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.**

**Good and Effective Competition Practices (1) –  
Charging of Commission and Offering of Incentives**

The estate agency industry in Hong Kong is typically a commission-based business where payment of commission depends on the successful conclusion of a transaction. As with most businesses, the running of an estate agency business involves substantial investment of time, effort and overhead costs such as rent, wages, administrative expenditure and advertising fees. For a business to sustain and for the livelihood of those employed in the industry, it is justifiable for estate agency companies<sup>1</sup> to charge a reasonable service fee or commission that is commensurate with the breadth, depth and quality of services they provide, as well as the value and complexity of a property transaction.

(2) Similarly, in the handling of the sales of first-hand residential properties where commission is usually paid by the vendors or the developers, it is reasonable for estate agency companies and their employees to earn a decent living out of the services they provide.

(3) At the same time, competition in a free market economy is a fact of life. It spurs innovation and generates more choices and better quality of products and services at better prices for the benefit of consumers. The Estate Agents Authority (“EAA”) has thus previously issued guidelines on compliance with the Competition Ordinance (Cap. 619) and offering of incentives in the first sale of residential properties<sup>2</sup>.

(4) In light of recent anti-competition concerns 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

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<sup>1</sup> The term “estate agency company” refers to a business entity (whether a company, partnership or sole proprietorship) which is a licensed estate agent under the Estate Agents Ordinance (Cap. 511).

<sup>2</sup> Previously issued guidelines are Circular No. 16-01 (CR) and Circular No. 13-04 (CR).

sales of first-hand residential properties, the EAA, with a view to raising the trade's professionalism and enhancing fair play, issues this Circular to provide 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 purchasers<sup>3</sup> in the sales of first-hand residential properties in Hong Kong. For the avoidance of doubt, the guidelines in this Circular are supplemental to (and not in substitution of) 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).

(5) This Circular No. 24-01 (CR) shall take effect on 1 November 2024.

## **Charging of Commission**

### ***Basic Principles***

(6) Estate agency companies are required to make their own business decisions or negotiate individually with their customers on the amount or rate of commission that they would charge, and not adopt or follow any customary or standard rate among the industry or any rate that is set collectively in any way<sup>4</sup>.

(7) Estate agency companies must not agree or enter into any arrangements with their competitors on the amount or rate of commission to charge or a formula to calculate commission or elements of commission, which have the object or effect of preventing, restricting or distorting competition in Hong Kong, as this could amount to anti-competitive conduct in the form of price fixing, which is in contravention of the First Conduct Rule of the Competition Ordinance.

(8) Estate agency companies must further not discuss or exchange with

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<sup>3</sup> "Purchaser" include a prospective purchaser.

<sup>4</sup> See paragraph (5) of Circular No. 16-01 (CR).

or disclose to their competitors competitively sensitive information such as breakdown as to how their commission rate was formulated and information relating to price strategies, sales and marketing plans, etc.

*Good and Effective Competition Practices in relation to Commission*

(9) To demonstrate professionalism and enhance fair play, estate agency companies are encouraged to:

(a) **formulate in writing** their own **commission policy** based on the considerations that they have taken into account. Some of the key considerations when determining whether it is appropriate to charge a particular amount or rate of commission may include:

- (i) the purchase price or rental of a property;
- (ii) the complexity of a transaction;
- (iii) the seniority and expertise of licensed members of the estate agency company and of their supervisor(s) (if any) providing the specific service to the client; and
- (iv) the quality, detailed scope and duration of services and/or duties to be covered by that amount or rate of commission;

(b) **provide** clients with a **letter** issued by the estate agency company under its letterhead, containing clear provisions defining the detailed scope and duration of services and/or duties to be covered by the stated or agreed commission; and the names of the individual licensee and his/her supervisor(s) (if any) providing the specific service to the clients, any time **before** entering into any preliminary agreement for sale and purchase or tenancy agreement, including:

- (i) the amount or rate of commission to charge, which

should either be an absolute sum or an explicit percentage of the purchase price or rental of the property concerned, for clarity and avoidance of dispute;

- (ii) the specific tasks and services<sup>5</sup> that will be performed for their clients at the stated or agreed commission;
  - (iii) the duration of the services to be offered at the stated or agreed commission; and
  - (iv) the names of the licensed staff and his/her supervisor(s) responsible for concluding the transaction;
- (c) **issue clear guidelines** to staff members on the estate agency company's policy regarding the amount or rate of commission to charge and the scope of services and/or duties to be provided to their clients; and
- (d) **provide sufficient training** for staff members on how they should properly explain to clients and respond to their enquiries on the subject matter.

## **Offering of Incentives**

### ***Basic Principles***

(10) Where estate agency companies offer incentives (including any gifts, discounts, cash rebates or benefit which has a monetary value) to prospective purchasers to facilitate the conclusion of a property transaction particularly in the first-hand residential market, it is the estate agency companies' own commercial decision (which shall not be discussed with other estate agency companies) and not a must for them to do so.

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<sup>5</sup> The tasks and services to be performed should include at least those duties as set out in Schedule 1 (for Form 3 and Form 5) or Schedule 2 (for Form 4 and Form 6) of the prescribed estate agency agreement under the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (Cap. 511C), where applicable.

(11) Should incentives be offered by estate agency companies, licensees are required to inform prospective purchasers and set out in writing the incentives that are offered to them. Estate agency companies must also issue clear guidelines on their offer of incentives, maintain close supervision of their staff to ensure adherence to the guidelines, and establish proper procedures to fulfill the incentives offered. For details on the maintenance of close supervision of staff and establishment of proper procedures, please refer to paragraph (19) below.

### *Good and Effective Competition Practices in relation to Incentives*

(12) While offering incentives is a means to attract business and increase potential purchasers' interest in buying first-hand residential properties, as estate agents are required to act in an impartial and just manner to all parties involved in the transaction<sup>6</sup>, the incentives (including cash rebates) offered by an estate agency company must not restrict or prevent purchasers from giving a holistic consideration when making a purchase decision (e.g. seeking to divert the purchaser's attention so that they fail to take into account all the relevant considerations when making a purchase decision), as this may lead to conflict or potential conflict of interest between the estate agency company and the purchaser.

(13) Also, the incentives (including cash rebates) offered by an estate agency company with a substantial degree of market power must not be abusive, for example, adopting a predatory strategy to drive out competitors which would ultimately shrink the options available to consumers<sup>7</sup>.

(14) Where incentives (including any discounts on the price, gifts,

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<sup>6</sup> See paragraph 3.4.1 of the Code of Ethics issued by the EAA.

<sup>7</sup> To understand more about the meaning of "substantial degree of market power" and for more examples of conduct that may constitute an abuse, please refer to the Guideline on the Second Conduct Rule published by the Competition Commission ([https://www.compcomm.hk/en/legislation\\_guidance/guidance/second\\_conduct\\_rule/files/Guideline\\_The\\_Second\\_Conduct\\_Rule\\_Eng.pdf](https://www.compcomm.hk/en/legislation_guidance/guidance/second_conduct_rule/files/Guideline_The_Second_Conduct_Rule_Eng.pdf)).

financial advantage or benefit) are offered by the vendor, under the Residential Properties (First-hand Sales) Ordinance (Cap. 621) (“SRPO”), the vendor must provide information pertaining to the relevant incentives in the relevant price lists<sup>8</sup>. As such, licensees must advise the purchasers to consult the latest price lists for such information.

(15) If incentives (including any gifts, discounts, rebates or benefit which has monetary value) are offered by an estate agency company, licensees **must** **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 by the purchaser (whichever is the earliest), take the following steps to **inform** the **purchaser** in writing of the **incentives** so offered:

- (a) **use** the **pro-forma incentive letter** issued by the estate agency company under its letterhead as mentioned in paragraph (16) below to set out details of the incentives;
- (b) **comply** with the **requirements** in paragraph (17) below, where applicable; and
- (c) **provide** the purchaser with **the original** of the **incentive letter**, which contains the terms that the estate agency company must abide by, regardless of whether it has been duly signed by an authorised signatory of the estate agency company or not.

### ***Requirements in relation to the Pro-Forma Incentive Letter***

(16) An estate agency company must provide and ensure that its staff will use its **pro-forma incentive letter**, which must be **dated** and **contain** the following information:

- (a) the **business name** as stated in the relevant statement of particulars of business of the estate agency company;
- (b) a **unique serial number** in sequence which could enable the

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<sup>8</sup> Section 31(5) of the SRPO refers.

estate agency company to track the incentives offered by its employees on the estate agency company's behalf;

- (c) 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;
- (d) the **terms and modes** of the **incentives** so offered (including the **time and manner of payment**); and
- (e) 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.

(17) Where an incentive is in monetary term, such as a cash rebate, licensees must state in the incentive letter:

- (a) the **absolute amount** of the rebate; or
- (b) 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<sup>9</sup>.

### ***Others***

(18) An estate agency company and its management must **issue clear guidelines** to its staff with respect to offering of incentives, including information on whether or not any incentives would be offered by the estate agency company to purchasers, and if so, the requirements and necessary procedures to be followed by its staff.

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<sup>9</sup> With respect to the property to be acquired by the purchaser, the purchase price of the property is the price as stipulated in the relevant preliminary agreement for sale and purchase to be entered into between the vendor and the purchaser.



(19) An estate agency company and its management must **maintain close supervision** of its staff to ensure adherence to the guidelines and **establish proper procedures** to ensure that:

- (a) any promise of incentives is duly relayed to the management of the estate agency company;
- (b) copies of all incentive letters issued by the estate agency company are properly kept and filed;
- (c) there is no miscommunication between the frontline licensee(s) and the management of the estate agency company on fulfilling the incentives offered to a purchaser;
- (d) the estate agency company will honour the incentives in accordance with the incentive letter; and
- (e) the estate agency company will promptly follow up with its employees on any problematic incentive letters issued or any missing incentive letters.

(20) Licensees are required to keep documents and records as evidence of their compliance with the requirements of this Circular, and shall upon the EAA's request, forthwith produce such evidence to substantiate the aforesaid.

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(21) Since charging of commission is a business decision to be agreed between estate agency companies and their clients, it is not appropriate for the EAA to fix commission rates or stipulate mandatory commission guidelines in order to permit market forces to drive competitive pricing in the trade. Licensees are thus encouraged to follow the good and effective competition practices in relation to commission set out in paragraph (9) above for better transparency of their fees vis-à-vis the level of services they provide. On the other hand, in view of the different arrangements on

offering of incentives by estate agency companies, which have caused numerous disputes over the years, licensees must comply with the good and effective competition practices in relation to incentives set out in paragraphs (12) to (20) above.

(22) Save as otherwise mentioned in the above paragraph, licensees who fail to comply with the requirements in this Circular may be disciplined by the EAA. Estate agency companies, their management, and the controller<sup>10</sup> may also be disciplined for failing to establish a proper system to manage their business.

August 2024

Holders of Statements of Particulars of Business  
 should bring this Circular to the attention of all staff  
 engaged in estate agency work

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<sup>10</sup> As referred to in Circular No. 13-04 (CR).