

***PRACTICE
GUIDELINES
FOR ESTATE
AGENTS AND
SALESPERSONS
MARKETING
FOREIGN
PROPERTIES***

PG 01/2018

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1	1	14 March 2014
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INTRODUCTION

1 The purchase of foreign properties carries additional risks not associated with local property transactions. Estate agents may be engaged by vendors¹ to market foreign properties to consumers in Singapore. Estate agents and salespersons play an important role in carrying out due diligence and advising consumers on the risks involved in purchasing foreign properties.

2 The Estate Agents Act (Cap. 95A) applies to estate agency work conducted in Singapore for properties located both in Singapore and outside Singapore. Estate agents and salespersons marketing foreign properties shall comply with the Estate Agents Act and its Regulations, as well as the policies, practice circulars and guidelines of the Council for Estate Agencies (CEA) in performing estate agency work. This includes not facilitating the marketing of foreign properties by unlicensed estate agents or unregistered salespersons.

3 This set of Practice Guidelines (PG 1/2018) supersedes the previous set of Practice Guidelines (PG 1/2014) on marketing foreign properties, following review by CEA and consultation with the industry. This Practice Guidelines (PG) takes effect from 1st December 2018.

OBJECTIVE

4 The sale and purchase of a foreign property is subject to the laws of the country where the property is located, with differing legal processes and financing practices. This PG highlights the professional practices to be adopted in the marketing and sale of foreign properties to consumers. In this PG, foreign properties refer to properties located outside Singapore, regardless of whether they are developed by foreign developers or Singapore developers, or whether they are owned by foreigners or Singaporeans.

PRE-MARKETING PHASE

Due Diligence Checks by Estate Agents

5 Estate agents shall perform due diligence and reasonable verification of facts before marketing any foreign property. This is to ensure that information, facts and claims about the vendors and foreign properties are not misrepresented to consumers. The following due diligence shall be performed, including but not limited to:

a. Due Diligence on Vendor

(i) To assess that the vendor is of sound financial standing and has a proven track record, such as by checking the vendor's financial statements, record of completed developments/projects, etc. Estate agents and salespersons shall take reasonable care to ensure that the information relied upon is reliable.

¹ In this Practice Guidelines, "vendor" refers to any person by whom a property is or is to be disposed of. It is defined by ownership of the foreign property, and typically refers to the developer of the foreign property. It may also include underwriters who own and sell the foreign property (purchased from the developer or otherwise).

(ii) To assess that the vendor is the legal owner of the foreign property, such as by verifying against the foreign land registry, checking on land title deeds, etc., and that the vendor is legally entitled to develop and market the foreign property.

(iii) To assess that payment arrangements stipulated by the vendor, including payment schedules and the parties that receive payment, are appropriate for the foreign property purchase. E.g. if there is a representation that monies paid into a certain bank account would be kept safe for the construction of a foreign property and would not be used for any other purpose, the estate agent shall take reasonable care to verify this, including sighting the documents that provide for such effect.

b. Due Diligence on Vendor's Claims

To assess claims made by the vendor in relation to the foreign property, such as the guaranteed rate of return, rental returns or yields. Estate agents shall also confirm that any guarantees made in advertisements or marketing materials are binding on the vendor and shall sight the contractual documents providing for such guarantees. If there is data indicated in the advertisement that is not current data, the applicable date and time of the data must be stated in the advertisement.

c. Due Diligence on the Foreign Property

To assess that information on the nature of the foreign property and facts on the foreign property are adequate and accurate. E.g. estate agents shall understand and be familiar with the nature of the foreign property and its surroundings, such as by visiting the site or engaging a local representative in the country where the foreign property is located. Checks shall be done to verify the specifications and other material information relating to the foreign property, such as property title, tenure, location, size, features, amenities, etc.

d. Due Diligence on Other Possible Adverse Interest

To assess if there is information about the vendor or the foreign property that is adverse or potentially adverse to the interests of consumers, by taking reasonable steps such as screening for news about the vendor and foreign property through traditional or social media.

Engagement of a Third Party to Conduct Due Diligence

6 Where an estate agent engages or depends on a third party (e.g. a company that provides compliance/accounting services, a foreign estate agent or a local representative in the country where the foreign property is located) to perform due diligence checks, the estate agent shall verify and ensure that the third party is qualified and appropriate to perform the due diligence. Estate agents shall determine the scope of due diligence to be performed by the third party and shall assess the results delivered accordingly.

Salespersons Intending to Represent a Vendor or Purchaser in a Foreign Property Transaction

7 If a salesperson intends to represent a vendor or purchaser in a foreign property transaction, he shall seek approval from his estate agent to do so. The estate agent of the salesperson shall perform the due diligence stated in paragraphs 5 and 6 before

allowing the salesperson to market the foreign property. Estate agents shall ensure that only salespersons with the required prior approval market a foreign property and they are aware of any marketing activity in relation to a foreign property by their salespersons. This is necessary as the salesperson is acting in the name of the estate agent, and the estate agent will be liable for any lapses during the marketing and sale of the foreign property. The salesperson shall not market the foreign property if his estate agent does not give him approval to do so. If the estate agent allows the salesperson to represent the vendor or the purchaser, the estate agent shall also be accountable for the marketing of the foreign property and shall comply with all the provisions in this PG.

Informing Consumers of Adverse Findings

8 Estate agents who market foreign properties shall ensure that the due diligence checks performed (e.g. on the vendors, foreign properties and claims made in relation to the foreign properties) are accurate and adequate. They shall assess if there are findings that are adverse or potentially adverse to the interests of consumers. If there are adverse or potentially adverse findings, estate agents shall ensure that such findings are made known in writing to consumers, including the relevant facts and basis for such findings. Examples of such findings may be found in **Annex A**. Where such findings arise during the pre-marketing or marketing phase, estate agents shall obtain a written acknowledgement from purchasers of the foreign property that they have been informed of such findings before proceeding with the transaction. The written acknowledgement shall be made in the format and manner set out in **Annex A**. Where such findings arise after the sale of the foreign property is made (but before completion), estate agents shall ensure that such findings are made known in writing to purchasers as soon as practicable, including the relevant facts and basis for such findings².

Professional Indemnity Insurance (PII)

9 Estate agents shall ensure that they possess the necessary and adequate professional indemnity insurance for the conduct of estate agency work to market foreign properties.

Selection and Training of Salespersons

10 When estate agents decide to market a foreign property, they shall select and train the salespersons to be involved in marketing the foreign property. The selected salespersons are required to be conversant with the requirements of marketing the foreign property, including knowledge of this PG. The selected salespersons are to undergo project-specific training to ensure they are knowledgeable and competent to sell the foreign property. The training should include a fact sheet with information and details on the foreign property, the processes and guidelines relating to the payment and financing packages/arrangements, the law governing the transaction, the applicable dispute resolution mechanism and a set of Frequently Asked Questions relating to the sale and marketing of the foreign property.

11 Salespersons who have undergone training should be able to:

² The duty to inform consumers of such findings shall cease upon completion of sale.

- (a) Offer relevant advice and attend to queries and requests for details and information on the foreign property from consumers; and
- (b) Clearly explain all relevant processes, forms and documents for the transaction to consumers, prior to consumers entering into binding agreements to purchase the foreign property. Salespersons shall advise consumers to seek legal advice on the terms and conditions of key transaction documents before they sign the documents, e.g. Sale and Purchase Agreements.

12 Estate agents intending to market foreign properties shall refer to the Checklist in **Annex B** on the areas to cover during the pre-marketing phase.

MARKETING PHASE

Representation

13 When marketing foreign properties, estate agents and salespersons shall inform consumers whether they are representing them or the vendor. Salespersons who are marketing on behalf of the vendor cannot represent consumers in the same transaction.

Advisory Message

14 Estate agents marketing foreign properties shall also provide a written advisory message to consumers intending to purchase a foreign property, drawing their attention that risks are involved for the purchase of foreign properties and the transaction is subject to foreign laws and to changes in the policies and rules of the country where the foreign property is located. Consumers are therefore advised to also conduct their own due diligence and proceed at their own risk. The written advisory message shall be in the format and manner set out in **Annex A**. The written advisory message shall be given to consumers before they make any commitment/decision to purchase the foreign property and/or before they sign any documents or agreements relating to the purchase or reservation of the foreign property. The salesperson representing the purchaser shall be a witness to and obtain the purchaser's written acknowledgement of receipt for the written advisory message provided. If there is no salesperson representing the purchaser, the salesperson marketing the foreign property to the purchaser shall witness and obtain this written acknowledgment from the purchaser.

Payment and Financing Arrangements

15 Estate agents and salespersons shall explain clearly to consumers what the payment and financing arrangements are, including payment milestones, amounts involved and whether there are any restrictions imposed on loans (e.g. loan to be secured from certain sources only). If loans are provided through financial institutions (in Singapore or elsewhere), estate agents and salespersons shall inform the consumer that such loans will be subject to relevant and applicable rules and restrictions (e.g. Total Debt Servicing Ratio (TDSR) frameworks). Estate agents and salespersons shall also highlight to consumers the foreign currency exchange requirements and impact of exchange rate fluctuations on their financial commitment. If there are payments made by consumers that do not go directly to the vendor (e.g.

to a trust account), estate agents and salespersons shall explain to consumers who the payments will be made to and why payments will not be made directly to the vendor. Estate agents and salespersons shall highlight the relevant payments and financing arrangements to consumers in writing.

Entering into Binding Agreements

16 Estate agents and salespersons shall explain to consumers the arrangements for the signing of transaction documents (e.g. Sale and Purchase Agreements) and advise them to seek independent legal advice to explain the terms and conditions of the documents before they sign them. Salespersons are to facilitate or arrange for the signing of the Sale and Purchase Agreement (or the equivalent contract) with the vendor. If any transaction documents are not in English, estate agents shall obtain their English translation from reasonably qualified translators and provide them to consumers before they sign the documents.

Governing Law, Jurisdiction & Dispute Resolution Mechanism

17 Estate agents and salespersons shall explain to consumers the dispute resolution mechanism that will apply in the event of a dispute relating to the purchase. They shall also inform consumers about the applicable jurisdiction where a dispute will be resolved, as well as the governing law³ of the Sale and Purchase Agreement (or equivalent contract).

Information for Consumers

18 Estate agents and salespersons are to inform consumers about the information set out in ***Annex C***.

RECORD KEEPING

19 Estate agents shall keep all documents and records that provide evidence of their compliance with the due diligence requirements and other requirements of this PG.

20 Estate agents shall keep all material transaction records, e.g. Sale & Purchase Agreements, Options to Purchase, commission records and/or all other relevant documents and contracts for each foreign property marketed. In addition, they shall keep payment records for all payments made by consumers to or through them, e.g. booking fees.

21 The training materials used for the training of salespersons to market foreign properties and the list of salespersons trained to market each foreign property are to be kept by the estate agent. The marketing materials used by the estate agent and salespersons in the marketing of all foreign properties are also to be kept by the estate agent.

22 The documents and records shall be kept in accordance with paragraph 7 of the Code of Practice for Estate Agents.

³ This refers to the law which governs the contract. Estate agents and salespersons have to inform consumers about it.

CONCLUSION

23 The purchase of foreign properties is not without risk. However, if estate agents and salespersons do their work with due diligence and conduct themselves professionally throughout the entire transaction when they market foreign properties, the potential risks to all parties involved (estate agents, salespersons and consumers) will be reduced. In the event of any dispute, estate agents and salespersons will also know their rights and liabilities clearly.

ANNEX A

[On the letterhead of the Estate Agent]

IMPORTANT NOTICE TO PURCHASERS

Written Advisory on the Purchase of Foreign Properties

1. We, <name of estate agent>, are the estate agent responsible for the marketing of the foreign property known as <name>, located at <address of the foreign property> (the “**Property**”).
2. Thank you for your interest in purchasing the Property through us.
3. Before purchasing the Property, we would like to highlight to you that there are risks involved with the purchase of foreign properties, and the transaction is subject to foreign laws and changes in the policies and rules of the country where the Property is located. As such, you are advised to conduct your own due diligence as well before committing to the purchase of the Property, such as on the vendor, the Property and claims made in relation to the Property. You are also advised to seek your own independent legal advice if in doubt about any aspect relating to the purchase of the Property, including the terms and conditions of the transaction documents (e.g. Sale and Purchase Agreement).
4. We would also like to draw your attention to the following adverse or potentially adverse findings that arose in the course of our due diligence checks performed, against the vendor/ the Property/ claims made in relation to the Property (where applicable):

Adverse/Potentially Adverse Findings

1. (E.g.: We were unable to obtain and review the financial standing and proven track record of the vendor in its sale of other properties).
2. (E.g.: A review of the Profit and Loss statements of the vendor show that it made losses from the period [xxx] to [yyy]).

3. (E.g.: The vendor's claim in the advertisement for the Property, that there is a guaranteed 5% rental yield, is without any verifiable basis/not binding on the vendor).
4. (E.g.: The vendor of the Property is (xxx), not the developer (yyy) – due diligence has only been performed on the vendor).

[Sign-off by KEO of Estate Agent]

ACKNOWLEDGEMENT BY PURCHASER(S)

I/We hereby acknowledge receipt of the above written advisory in relation to the purchase of the Property.

Signed by: _____

Purchaser 1: _____

NRIC/ FIN/ Passport Number: _____

Date: _____

Signed by: _____

Purchaser 2: _____

NRIC/ FIN / Passport Number: _____

Date: _____

Witnessed by:

Salesperson
(representing Vendor⁴/Purchaser – please circle accordingly) :

CEA Registration Number: _____

Name of Estate Agent _____

CEA Licence Number _____

Date: _____

⁴ Where the purchaser is not represented by any salesperson, the salesperson who represents the vendor shall be the witness for the purchaser for purposes of this acknowledgement.

ANNEX B

Pre-Marketing Checklist for Estate Agents

This checklist is not exhaustive and could vary depending on the applicable foreign jurisdiction for the Property.

	<u>The Development/Site</u>
1.	Address and location map
2.	Site plan and floor plan
3.	Land or property tenure
4.	Land use controls and ownership eligibility
5.	Type of title, building permits/plan number and development permissions
6.	Construction schedule
7.	Building quality
8.	Marketability study of development/project
9.	Statistics and reports to support Vendor's claims (e.g. trend of rental yield in a particular area)
10.	On-site inspection (to be familiar with the foreign property and its surroundings)
11.	Features and amenities of the foreign property
	<u>The Vendor</u>
12.	Verify against the official foreign land registry and ensure that the Vendor is the legal owner of the foreign property and is legally entitled to develop, market and sell the foreign property
13.	Business registration certificates and licence numbers, and their validity period (if any)
14.	Proven track records/Other properties completed and/or sold
15.	Background checks on directors and shareholders
16.	Financial standing and supporting documents
17.	Credibility of architects, designers and contractors
18.	Marketing budget and schedule
19.	Transaction documents (e.g. Sale & Purchase Agreements/Options to Purchase/Lease Agreements)
20.	Agreement for any rates of return (e.g. Lease agreement that states rental yield, capital gains, etc.)
	<u>Professional Indemnity Insurance (PII)</u>

21.	Estate agent must possess the necessary and adequate professional indemnity insurance for the conduct of estate agency work to market foreign properties
	<u>Project-Specific Training to Salespersons</u>
22.	Detailed training on the foreign property to be sold and marketed must be provided to all salespersons selected to market the foreign property, including but not limited to: name of vendor, address and location of foreign property, description of location, architect, development features and facilities, payment schedule, financing package, briefing by bankers, contract briefing by Vendor/Vendor's lawyers, Sale and Purchase Agreement, stamp duty calculations, taxation requirements, etc.
23.	Procedures and guidelines on how to purchase foreign property in the country that the foreign property is located in
24.	Sale and Marketing Dos and Don'ts that are in compliance with the Estate Agents Act and its Regulations, and the policies, practice circulars and guidelines of the Council For Estate Agencies
25.	The applicable dispute resolution mechanism, jurisdiction and governing law under the Sale and Purchase Agreement or equivalent contract
	<u>Others</u>
26.	Marketing collaterals and advertisements that comply with the Estate Agents Act, its Regulations and the Practice Guidelines on Ethical Advertising
27.	Useful information on property market trends that are related to the foreign property being marketed
28.	Details of Vendor's lawyers
29.	Detailed payment schedule and financing packages

ANNEX C**Information to be provided to Consumers**

1. **Representation**
Inform the consumers whether the estate agent and salesperson represent the consumers or the vendor.
2. **Building & other Regulatory Approvals**
Information on the building and other regulatory approvals obtained by the vendor in the country where the foreign property is located, such as the approved building plan.
3. **Details of Foreign Property**
Details such as the property tenure, area, address, title deed, property features, amenities, transportation, building type, built-in area, furnishing, etc. The tenure in Singapore is commonly defined as 99-year leasehold or freehold. However, some countries may define the tenure differently from Singapore.
4. **Rules and Restrictions on Foreign Ownership**
Some countries may impose restrictions on the purchase of properties by foreigners, e.g. the types of properties, minimum property price or location of the property. Some countries may also impose restrictions on reselling in the secondary market, e.g. to resell only to citizens of the country where the foreign property is located.
5. **Written Advisory Message**
Advise consumers that there are risks involved in the purchase of foreign properties and that the transaction is subject to foreign laws and changes in the policies and rules of the country where the foreign property is located.
6. **Adverse/Potentially Adverse Findings**
Draw consumers' attention to any adverse or potentially adverse findings that arose in the course of the estate agent's performance of due diligence checks, on the vendor, the foreign property and the claims made in relation to the foreign property, as well as any adverse or potentially adverse findings that arise after the sale of the foreign property is made (but before completion of sale).
7. **Financing and payments**
 - a) **Financing**
Advise consumers on whether there are any restrictions imposed on loans relating to the purchase of the foreign property, e.g. loans have to be secured from certain sources only. If loans are provided through financial institutions in Singapore or elsewhere, estate agents and salespersons shall inform the consumer that such loans will be subject to the relevant and applicable rules and restrictions, (e.g. the current applicable Total Debt Servicing Ratio (TDSR) framework). Foreign

currency exchange requirements and fluctuations that have an impact on financial commitments shall be highlighted to consumers. The estate agent and salespersons shall highlight the relevant payment and financing arrangements to consumers in writing.

b) Payment stages and amounts

The typical payment stages include deposit, down-payment, total payment and progressive payments. Details such as the payment milestones, the party to which payment is to be made to and in what currency, and whether payment is made by progressive payments or upon completion, should also be made known to consumers. In particular, estate agents and salespersons have to explain the payment schedule and refund policy to consumers before they commit to the purchase of the foreign property.

If there are payments made by consumers that do not go directly to the vendor (e.g. to a trust account), estate agents and salespersons shall explain to consumers who the payments will be made to, and why payment will not be made directly to the vendor.

c) Taxation

Some countries may levy taxes on foreigners in relation to the purchase, lease and/or sale of properties. Estate agents and salespersons should explain to consumers the various categories of taxes (e.g. stamp duty, capital gain tax, withholding tax, estate duty etc.) that may be imposed on the foreign property they are purchasing.

d) Any other payments, fees and costs

There could be other associated costs, e.g. property management fees, security arrangements, insurance (during the acquisition and disposal process) etc., which are important considerations for consumers in deciding whether to purchase the foreign property. Estate agents and salespersons must inform consumers of all such known additional and/or associated costs relating to the foreign property.

8. Legal Advice

Prior to signing any agreement or document, the consumer should be advised on whether legal advice is arranged by the vendor or has to be sourced for and paid by the consumer. If legal advice is arranged, the consumer should be provided with details of the lawyer and whether the lawyer is representing the consumer and acting in the consumer's interests. In the alternative, information on engaging a lawyer to explain the terms and conditions of the transaction documents should be made known to the consumer before they enter into or sign any agreement to purchase a foreign property.

9. Dispute Resolution Mechanism, Jurisdiction and Governing Law

Advise consumers on the avenue(s) to seek recourse in the event there is a dispute relating to the purchase of the foreign property, as well as the

applicable jurisdiction and governing law under the Sale and Purchase Agreement (or equivalent contract).