



# Purchase of Properties Outside Hong Kong

## A Study on Enhancing Consumer Protection



# Outline

1. Background
2. Market Overview and Current Regulatory Framework
3. Consumer Complaints and Issues
4. Trade Practices on Marketing and Advertisements
5. Findings from the Mystery Visits
6. Regulatory Regimes in Other Jurisdictions
7. Areas of Concern
8. Recommendations and Conclusion



# Advertisements for Selling POH in Hong Kong

UPCOMING  
EVENTS  
23 August 2023  
FIND OUT MORE

Hanoi - Bangkok - Chiang Mai - Hua Hin - Phnom Penh  
Brisbane - London - Manchester - New York

馬來西亞  
指定代理  
12年保証・年收租7厘回報  
透全屋傢俬電器

London  
「下樓即」  
坐擁世界文化遺產 Royal Botanic Gardens  
28/8 - 29/8  
樓價僅£42萬起  
展銷會時間：11AM - 7PM

大阪全新 民宿物業  
包租兩年回報6%  
低水入場大阪潛力地段！  
高水穩袋遊客租金收入  
交通優勢  
難波 動物園 心齋橋 梅田  
車4分 車5分 車6分 車13分

「直播睇樓」  
旺角·葵蔭展廳「睇樓團」  
「睇大世紀夢幻城」影片  
睽「迪士尼」物業  
高爾夫景「精裝現樓」  
總價20萬！首期5萬！

「睇大世紀夢幻城」  
睽價600元up

2022年Q4完工！  
物業：約AUD \$465,000  
首期只需港幣 \$27.9萬起

Featured properties  
GBP 139,990  
GBP 196,000  
GBP 110,000

西貢啟  
名校+公園+豪宅+活化  
四合一靚區  
坐擁世界文化遺產 Royal Botanic Gardens  
樓價僅£42萬起  
展銷會時間：11AM - 7PM

最新項目



# News Reports Relating to the Purchases of POH from 2017 - 2021



80 people fell victim to an investment scam involving the purchase of Malaysian properties resulting in a loss of HK\$24M. Police arrested 10 men and women



Sudden failure of an uncompleted project in Thailand. Over 200 purchasers facing loss of deposits in the sum of nearly HK\$50M



Over 100 owners of commercial units in Zhuhai protested at the sales office due to failure to receive the rental guarantee under the contract for two months



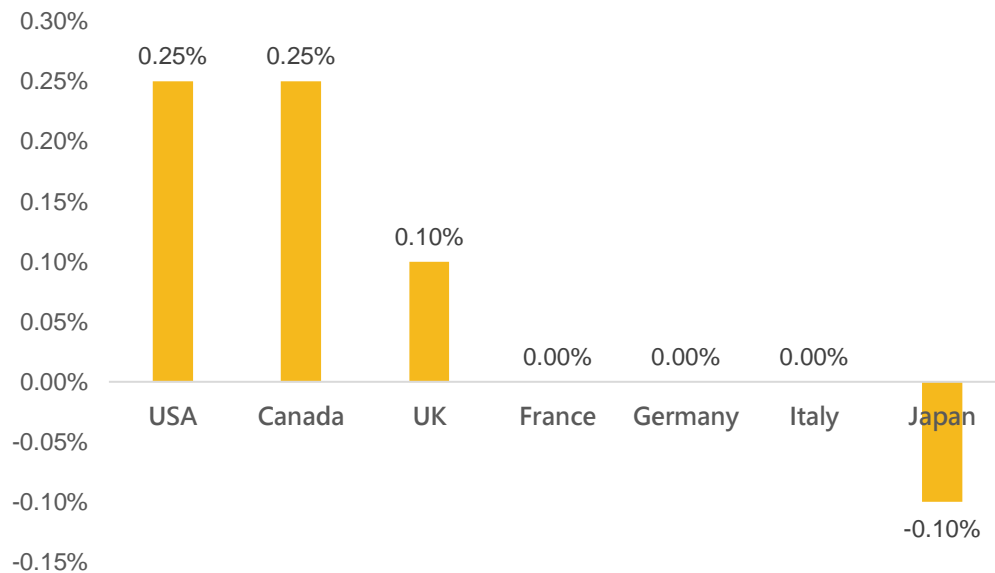
Failure of an UK project with 200 purchasers suspected to be cheated for HK\$300M



# Growing Demand in Purchasing POH

- Free flow of capital
- Low interest rate worldwide

G7 Central Bank Interest Rate



- National Policy to Support GBA Development
  - 24 policies were introduced and promulgated after the meetings of the Leading Group for the Development of GBA in 2019 convened by the Vice Premier of the State Council, Mr Han Zheng (韓正副總理). These policies facilitated HK residents to study, work and reside in the Mainland
  - One of the key policies is to treat HK residents as local residents in purchasing properties in mainland GBA cities through exempting them from:-
    - (1) providing evidence of their duration of residence, study or employment and
    - (2) meeting conditions on the payment of individual income tax and social security



# Study Objectives

## To enhance consumer protection for purchase of POH in Hong Kong

- Understand purchasers' experience, and the problems and risks associated with the purchase of POH;
- Examine the advertisements placed by licensed and unlicensed estate agents/salespersons and their marketing practices, to identify any undesirable business practices and their impact on consumer interests;
- Review the current laws and regulations in Hong Kong and benchmark with the regulatory regimes in other jurisdictions/regions; and
- Propose appropriate recommendations for strengthening consumer protection



# Scope of Work

## Desktop research

- Current Hong Kong laws & regulations
- Review of local & international journals

## Review of Advertising and Sales Practices

- Print ads
- Online ads
- TV ads

## Benchmarking of Regulatory Regimes in different Jurisdictions

- Australia (New South Wales)
- Canada (British Columbia)
- Mainland China
- Malaysia
- Singapore
- Taiwan, China
- UK (England & Wales)

## Collection & Analysis of Complaint Cases concerning POH

- Police – 14 cases (2018-2020)
- C&ED – 95 cases (2017-2020)
- EAA – 98 cases (2017-2020)
- SFC – 81 cases (2017-2020)
- Consumer Council – 261 cases (2017- Aug 2021)

## Mystery visits

- Mystery shoppers visited 20 traders (19 agencies and 1 developer), 36 projects involved

## Engagement with Key Stakeholders

- Transport and Housing Bureau (“THB”)
- Estate Agents Authority (“EAA”)
- Securities and Futures Commission (“SFC”)
- Centaline Property
- Midland Global



# Development of the Current Regulatory Regime

## 1990's

- Complaints mainly related to project failures in the Mainland
- Consumer Council advocated for the regulation of estate agents through a licensing regime
- Working group set up by the then Planning, Environment and Lands Bureau to look into the subject
- Estate Agents Ordinance (“**EAO**”) enacted (May 1997)
- LRC Report published (Sep 1997), main recommendations:
  - All sales of non-local uncompleted residential properties to be handled by licensed estate agents only
  - Curb misleading advertisements
- EAA established (Nov 1997)
- 2 Subsidiary legislations enacted (Late 1998)
  - Estate Agents (Licensing) Regulation
  - Estate Agents (Exemption from Licensing) Order (“**Exemption Order**”)

## 2000 to now

- In view of the decrease in POH complaints and other reasons, THB maintained the Exemption Order but scaled up public education to raise awareness of the risks of purchasing POH (2013)
- There was a rising trend of HK people buying POH. EAA issued a Practice Circular to provide mandatory guidelines governing the sales and promotional activities of UPOH (2017)





# Current Regulatory Regime

1

The Estate Agents Ordinance (Cap 511) (EAO) and the Exemption Order (Cap 511B)

## The Exemption Order

### Section 2 provides that if a person

- a) does estate agency work exclusively in relation to POH, and
- b) states in all his letters, accounts, receipts, pamphlets, brochures and other documents and in any advertisement that he is not licensed to deal with any property situated in Hong Kong, (refers as unlicensed estate agents/salespersons in this report)

he shall be exempted from the requirement for obtaining an estate agent's licence or a salesperson's licence from EAA

2

Practice Circular No. 17-03 (CR) issued by the EAA

## The Practice Circular

### Major requirements:

1. To carry out due diligence on vendor and UPOH
2. To obtain legal opinion on material information
3. Regulation of advertisement and promotional materials
4. Provision of sales documents and information for purchasers
5. Information on taxation, payment/financing arrangements
6. Information on deposit arrangement and cooling-off period



# Current Regulatory Regime (Cont'd)

## 3 The Securities and Futures Ordinance (Cap 571) (“SFO”) involving Collective Investment Scheme (“CIS”)

- If the sale of POH constitutes a sale of interests in a CIS as defined under Schedule 1 to the SFO, this requires prior authorisation from the Securities and Futures Commission (“SFC”)
- It is an offence to issue an invitation which includes any marketing materials containing an offer to the public to acquire an interest or participate in a CIS, unless it has been authorised by the SFC or an exemption applies (e.g. the offer is made only to professional investors)
- The promotion of a CIS may also constitute conducting a business in a regulated activity which requires a licence from the SFC

## 4 The Trade Descriptions Ordinance (Cap 362) (“TDO”)

- The TDO prohibits unfair trade practices such as false trade descriptions and misleading or incomplete information. It has limited application to POH sales
- TDO does not apply to immovable property as it is not a “goods” as defined under the TDO. However, a service supplied in relation to immovable property may be a “product” which could be regulated under the TDO
- However, the TDO also does not apply to commercial practices engaged by an exempt person acting in the capacity of a professional (e.g. a licensed estate agent or salesperson). Therefore, licensed estate agents are not caught under the TDO but unlicensed estate agents providing estate agency services are



# What is the Effect of the Exemption Order?

## Under the EAO:

- Estate agents and salespersons must be licensed to do estate agency work
- Estate agency work includes sales of POH

## Under the Exemption Order:

- Estate agents or salespersons who deal exclusively with POH can be exempted (unlicensed agents or salespersons)

## Effect of the Exemption Order:

- Both licensed and unlicensed estate agents can offer POH services to consumers
- Licensed estate agents can hire unlicensed salespersons to promote and sell POH to consumers

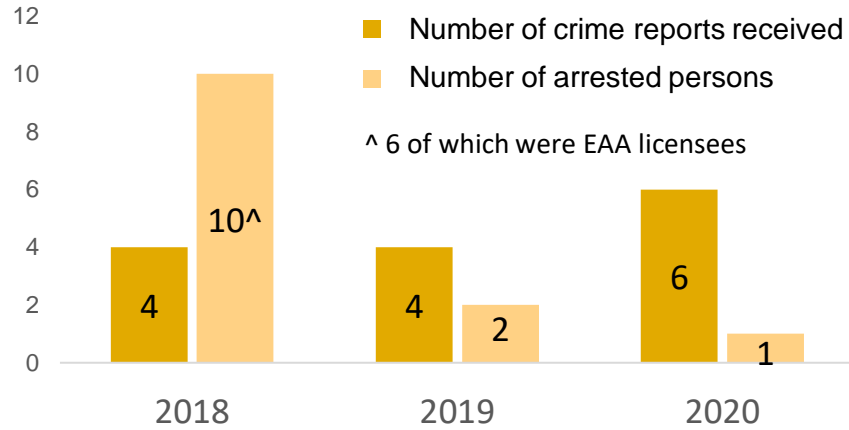
## Impact on Consumers:

- If the disclaimer does not clearly describe the licensing status of the estate agent/salesperson, it is difficult for consumers to know if the estate agent/salesperson they entrust is licensed or not, causing confusion.
- Unlicensed estate agents/salespersons can use disclaimer to escape liability under EAO, undermining consumer protection

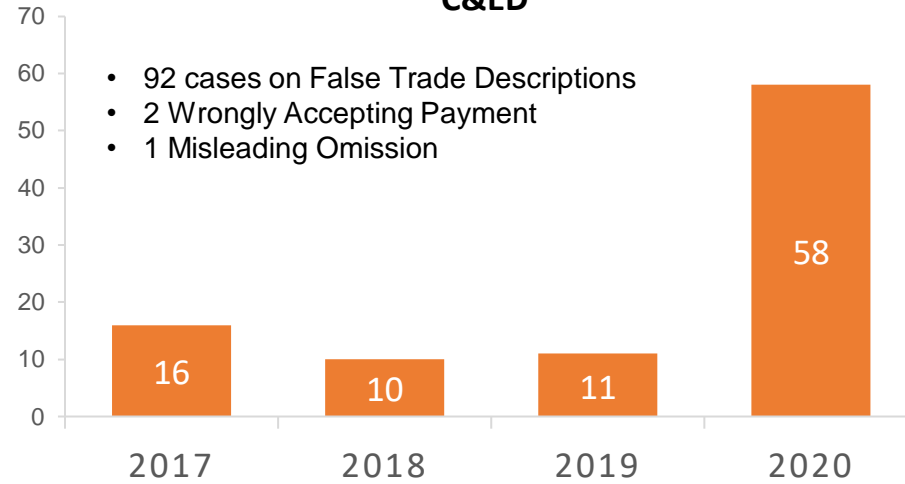


# Complaints to Authorities

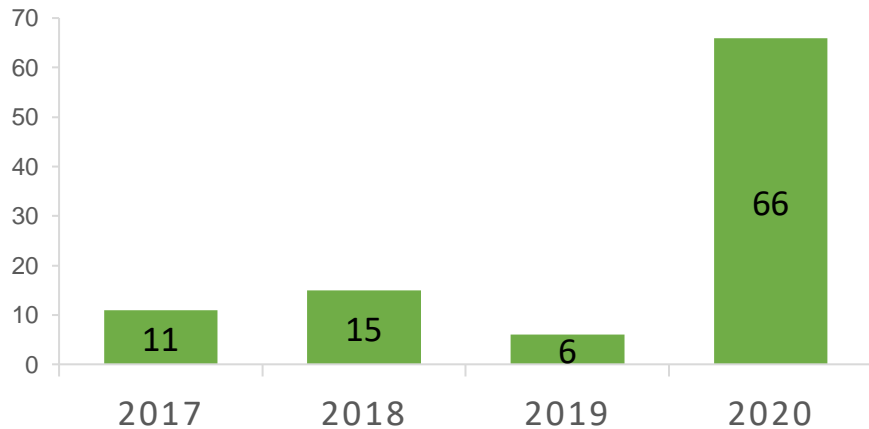
## Police



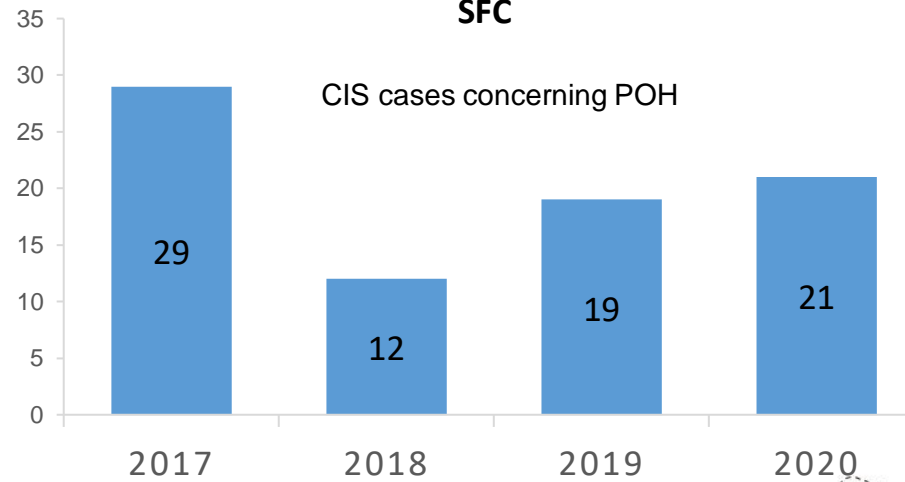
## C&ED



## EAA



## SFC



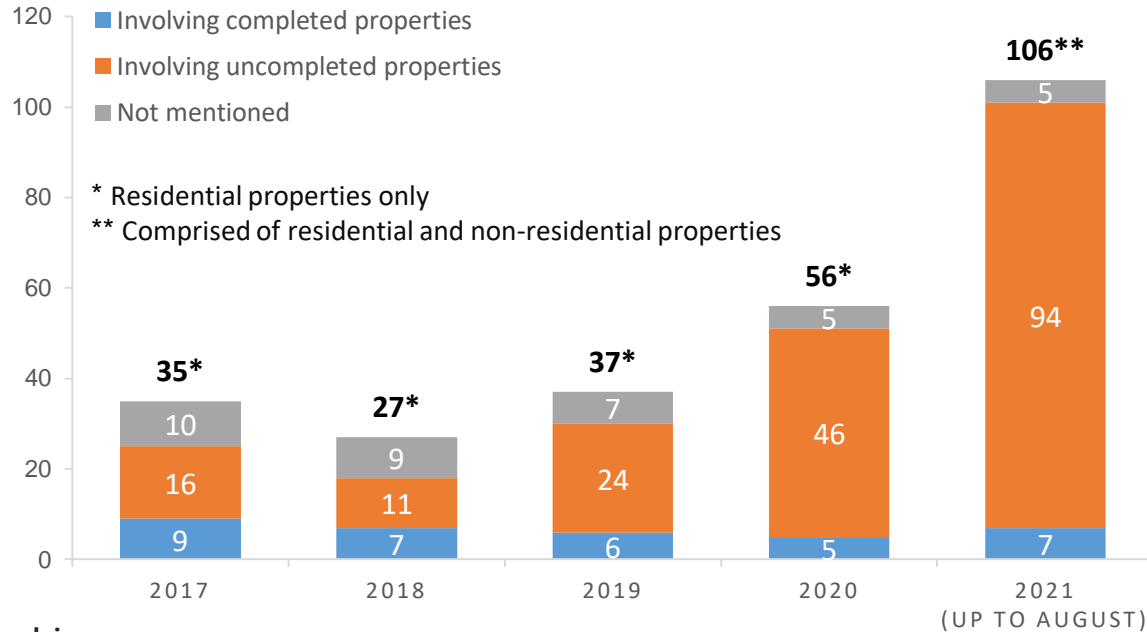
## Countries / Regions

- Thailand (85)
- Mainland China (57)
- UK (33)
- Australia (13)
- Others (19)



# Complaint Statistics - The Council

**Complaint statistics of the Council regarding sales of POH between 2017 and 2021 (according to nature of properties)**



\* Residential properties only

\*\* Comprised of residential and non-residential properties

Involving Sales Practice	2017	2018	2019	2020	2021 (UP TO AUGUST)
	15	8	15	48	92

Countries / Regions	No. of cases
Thailand	55
Mainland China	127
UK	33
Australia	21
Others	25

- Average loss for Hong Kong consumers – HK\$368,000
- Average value of the property involved – ~HK\$1.8 million
- 90% of complaint cases involve estate agencies, 63% involve unlicensed agencies
- 93% having transactions in Hong Kong
- 75% learnt about the subject POH from local newspaper advertisements
- 70% attended the sales exhibition or talks organised by agents

## Types of complaints:

- Mistake/misrepresentation - wrong address; misrepresentation on material information; discrepancy in the sales documents relating to the identity of the developer
- Over-inflated purchase price leading to inability to obtain necessary mortgage
- Misleading omission relating to details of the refund mechanism of the reservation fees paid
- Using attractive rental guarantee as bait to attract consumers
- Project delay or failure



# Scope of Advertisement Survey

Advertisements of developers, agencies or agents collected over several consecutive weeks (mid-Nov – mid-Dec 2020) from the 3 main advertising platforms

## 1. Print media covering newspapers and weekly magazines



## 2. Online platform covering search engines and social media



## 3. Television (TV) covering free TV and paid TV channels



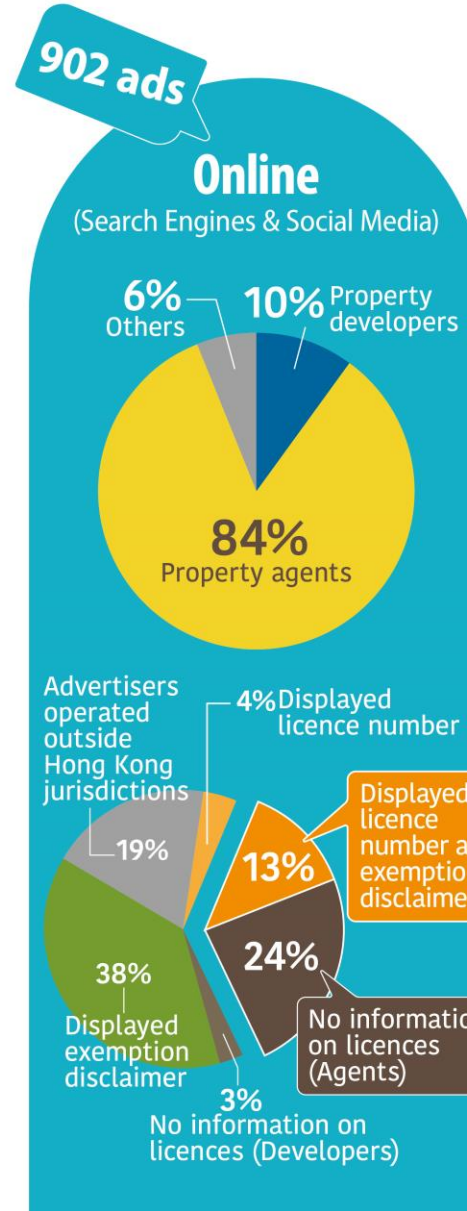
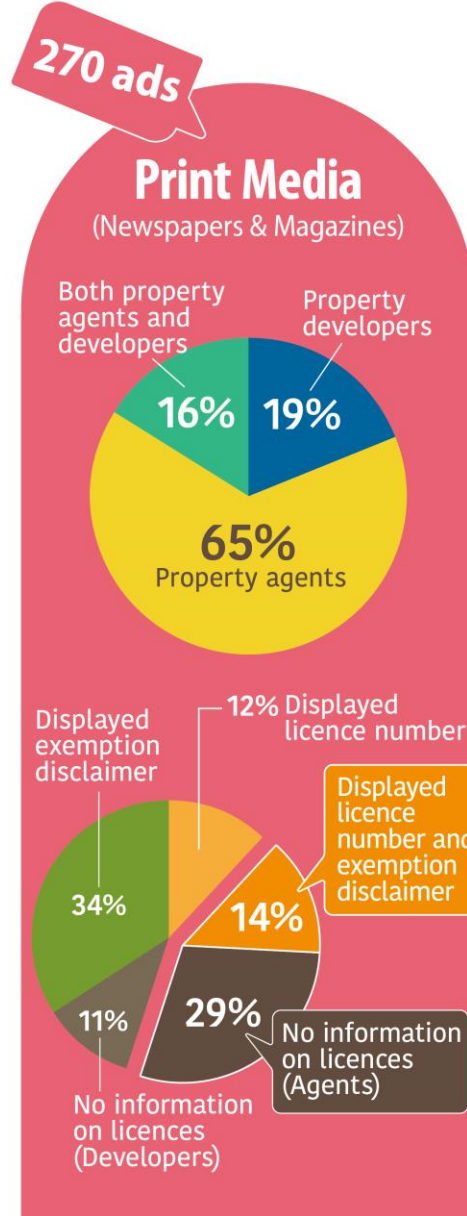
# Review of Print Advertisement

- Estate agents accounted for the majority of print and online advertisements (Over 80%)

- Most of the agents placing print and online advertisements were unlicensed or involved unlicensed salespersons (Over 70%)

Nature of Advertisers

Licence and Disclaimer Disclosure



# Example of Clear Descriptions of Exemption Disclaimer / Licence Number

**澳洲各大學區** 現樓及樓花巡禮  
悉尼 | 墨爾本 | 布里斯本 | 阿德萊德 | 珀斯

首期低至 **\$23萬港幣起\***

部分項目提供高達**6厘**租保計劃\* 有機會獲樓價折扣、送全屋傢俬等優惠\*

墨爾本大學區 **五星精緻居庭** 悉尼UNSW大學區 **大型綜合住宅**

市中心一角 毗鄰FLAGSTAFF公園 超高淨值人士追捧RANDWICK區

布里斯本 **昆士蘭大學區** 南澳阿德萊德大學區 **珍罕聯排別墅** 澳洲珀斯 **CURTIN大學區**

步行直達 TOOWONG購物中心 限量最後7套搶購 坐落頂級富人區 APPECROSS

想租更多大學區筭盤? 全澳任何城市、任何學區, 一定幫到你!

澳洲樓市秘笈 「以房養學」實現零成本留學講座  
「黃金時機」X「黃金地段」 Monash大學舊生主席親身分享  
澳洲大學區物業及留學講座 時間: 下午1點 時間: 下午4點

展銷會費用全免 歡迎致電查詢及預約 與我們的專家聯絡

澳洲各大學區現樓及樓花巡禮  
日期: 11月21至22日 (週六至日) 上午11時至下午7時

Stephen Eric Kingsley  
澳洲地產 110年歷史 澳洲最大地產代理 逾億超過一千萬分宗買賣、管理、按揭

**新加坡烏節路商圈 獨家代理**  
步行2分鐘到烏節路和多美歌地鐵轉換站  
將於11月21-22日舉辦 on Handy展銷會

旅遊氣泡·即將推出  
帶動港人去當地睇樓熱潮  
有望掀起新一輪牛市

呎價由 **HKD15,618** 起  
價格比香港同類型樓盤低**36.1%**\*

區內上車首選·只需新幣**130**餘萬起

**新加坡第9區 展銷會**  
2020年11月21-22日 週六、日  
開放時間: 中午12時-下午6時  
地址: (銅鑼灣地鐵站D1出口)  
講座時間: 每日下午2時  
講座主題: 新加坡明年樓市展望及預測  
展銷會實施人流管制, 敬請預約  
查詢及報名: 8986

1至3臥室 雙層豪華單位  
空中花園 可享維多利亞灣和濱海灣景觀

**投資新加坡物業 你的最好穩健投資 不設遺產稅和資產增值稅**

- 新加坡9月新樓銷量升5.6%, 單月成交量創下2年來的最高水平
- 步行2分鐘至多美歌地鐵站, 乘3線匯聚大型鐵路轉接站
- 與新加坡總統府為鄰, 盡顯住戶身份地位和品味
- 坐擁中小學、大學名校網, 包括新加坡聖瑪格烈小學、英華小學和新加坡管理大學等
- 由1-3房雙層豪華單位, 實用面積由420-1,141平方呎, 間隔實用, 市場認受性高
- 逾百年歷史洋房會所, 4大主題園區, 30多項休閒設施, 一應俱全

Clear descriptions of exemption disclaimer / licence number





# Review of Print Advertisement

Interest-free instalment loans

**特享20個月免息分期**

包2年12%租金回報

Rental guarantee

送三年定期高息戶口

Free "gifts"

Low entry price point without details

港幣20萬輕鬆入場

Immigration advantages

黃金簽證簡介

購買價值超過35萬或50萬歐元的房產，就有資格申請黃金居留許可簽證

- 只要持有黃金居留許可簽證滿五年，就可以申請永久居留身份；滿六年，即可申請成為葡萄牙公民及入籍歐盟
- 不用坐移民監，每年只要住滿7天便可，一人申請，配偶和子女，即全家，也可以一齊移民

## 1 Questionable Claims as Bait

## 3 Problems in Licence and Liability/Exemption Disclaimer Disclosure



- licence information missing
- exemption disclaimer missing
- disclaimer font size too small or too blurred
- online advertisement disclaimer set out at bottom of web page, need to scroll down multiple pages to read, easy to miss

**英國自住投資全攻略**

£20萬以下由南部揀到北部

最大化現金流

英鎊低水

confusing currency display

送感恩節大禮包 價值港幣15萬

## 2 Confusing Information

墨爾本東面高端華人區

**別墅連地皮大型屋苑**

坐落DEAKIN大學區 | 呎價僅需\$2,200起

No clear statement whether the property is completed or uncompleted

in the same advertisement

only an approximate location as property description

日本物業投資

根據日本国土交通省最新公布，二世古(ニセコ/NISEKO)連續3年成為全日本地價升幅最犀利地方，足足有58%升幅，東臨有羊蹄山，北望安努普里山脈，更有不少世界知名的滑雪場，以及眾多富含各種礦物質的溫泉，吸引了世界各地而來的觀光客前來。近日更有消息指著華酒店品牌及集團亦將拓展版圖至北海道二世古，開發度假村項目，可見該區之投資潛力。

現全新二世古度假村正式登場，鄰近二世古 Grand Hirafu 滑雪場，及李氏集團 The Park Hyatt Niseko，位置優越！鄰近超市、餐廳、酒吧及大型溫泉。

最新一期 低密度公寓 在港首賣極搶手!

結合全球首個14萬呎 六星環保商場

免費投資講座

主題：墨爾本各大華人區全面大比拼 自住投資精選區

BURWOOD EAST | BOX HILL | DONCASTER | GLEN WAVERLEY

11月28至29日 (周六至日) 墨爾本 主辦人：李氏集團



# Problematic Advertisements - Questionable representations as Bait

## Interest-free installment?

**葡萄牙里斯本現樓物業35萬歐元起  
特享20個月免息分期 輕鬆做業主**

首期樓價40%約15萬歐元  
餘下樓款免息分期20個月

Free GIFT

- 百2名買家送全屋家電
- 6年會計諮詢服務總值約7,800歐元

**葡萄牙黃金簽證簡介**

- 購買價值超過35萬或50萬歐元的房產，就有資格申請黃金居留許可簽證
- 只要持有黃金居留許可簽證滿五年，就可以申請永久居留身份，滿六年，即可申請成為葡萄牙公民及入籍歐盟
- 不用坐移民監，每年只要住滿7天便可，一人申請，配偶和子女，即全家，也可以一齊移民

**PORTUGAL 葡萄牙黃金簽證及投資物業簡介會**

活動日期：2020年11月21日(週六)及2020年11月28日(週六)

活動時間：上午11時 - 下午4時

查詢電話：羅先生 9355

地點：[ ] 室

## Rental Guarantee?

**溫哥華富人區  
大型商業及住宅項目**

特享有限期獨家特權位內部認購

**投資溫西寫字樓  
年回報逾30%**

10餘萬起加幣 首期做業主

免20%海外買家稅

加拿大大型發展商  
打造溫哥華百億大型項目

最新加拿大移民政策放寬  
VS  
溫哥華寫字樓投資  
分享機會

投資心得生活經驗

展銷會  
11月21-22日(六、日)  
上午11時 - 下午6時

11月21日(六)  
7-9:30 加拿大最新移民政策放寬  
7-9:30 溫哥華寫字樓投資與回報詳情分享  
7-9:40 買家見面會(特別場)

11月22日(日)  
7-9:30 最新加拿大移民政策放寬及投資機會

專家教路收租必賺秘笈

按揭貸款 專業按揭服務

6664 賈小姐  
6663 李小姐

**AIRBNB 擬上市!**  
民宿收成期

休憩區  
共享花園式

首期港幣 \$21萬起  
承接按揭 30%

包2年12%租金回報

大阪 · 全新獨立屋發售

預售反應熱烈!

尚餘少量單位

日本物業展銷會  
11月21-22日  
週六、日 (11am - 7pm)

第一場 2:30pm  
第二場 4:30pm

酒店26樓  
展覽廳

6381

專營買賣 全新及二手物業

**東南亞 移居投資**

港幣20萬 輕鬆入場

幫你千挑萬選

專業投資者策略分享

如何把握機會趁低入市

如何在疫況申請入境泰國

如何穩收租金回報 6%

東南亞專場 12:00pm / 2:00pm / 4:00pm

登記留位 9499 (Mandy)

全日皆可安排 一對一現場諮詢



# Problematic Advertisements – Exaggerated or Confusing Information

Accuracy of saleable area in doubt

Different presentation of material information in the same advertisement can be confusing



# Problematic Advertisements – Absence of / Unclear Exemption Disclaimer

Disclaimer with small font size/ blurred disclaimer, barely legible

Lack of disclaimer

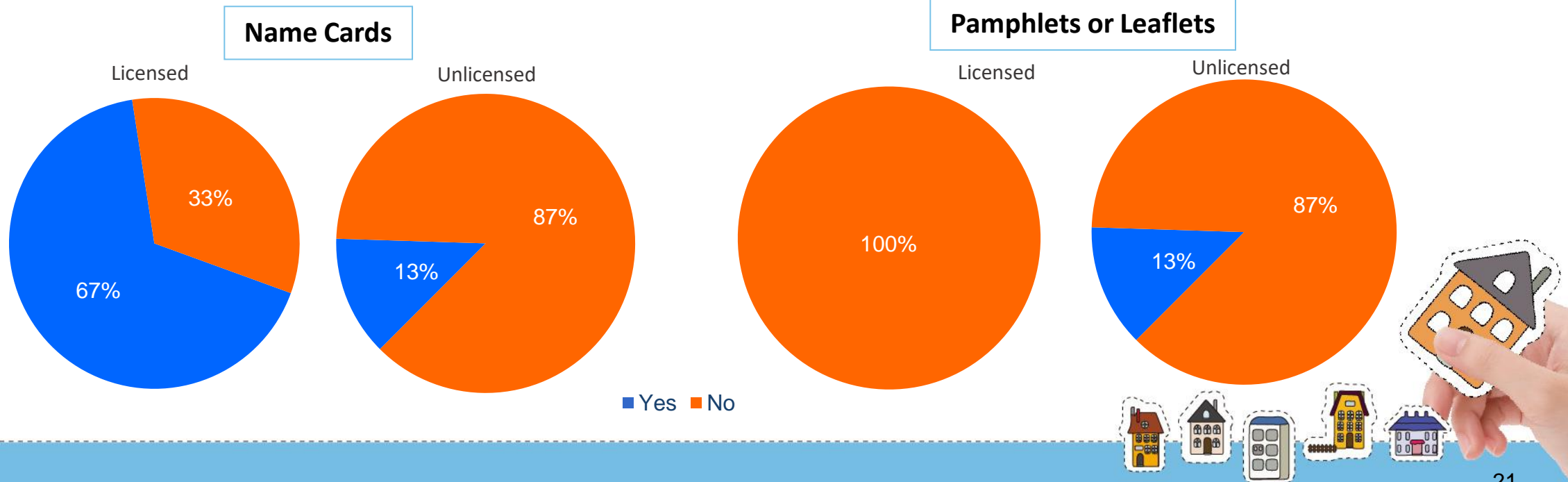
- Disclaimer with small font size (around 4.5 point) / blurred disclaimer
- Licence number is barely legible



# Results of Mystery Visits (June – July 2021)

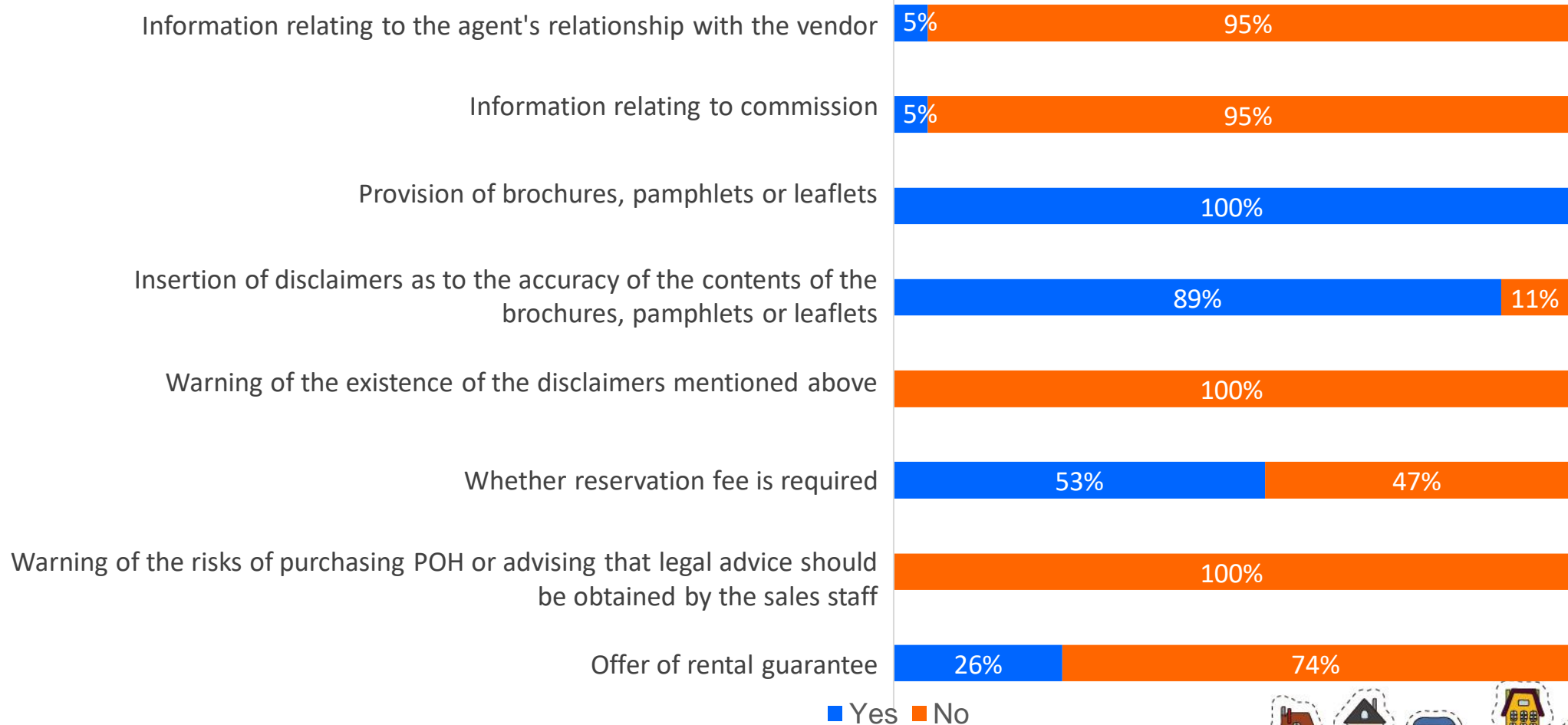
- 20 traders (involving 36 projects) visited, 19 agencies and 1 developer
- Of the 19 agencies, 4 were licensed and 15 were unlicensed
- 8 Jurisdictions – Australia, Canada, Mainland China (GBA), Malaysia, Japan, Singapore, Thailand and the UK
- Of the 4 licensed agents, 3 of them employed unlicensed salespersons
- The Exemption Order allows (a) unlicensed estate agents and (b) licensed agents to employ unlicensed salespersons, to deal exclusively with the sales of POH, provided that the exemption disclaimer is stated in relevant documents including advertisements and business cards of the unlicensed staff

## Disclosure under the Exemption Order



# Results of Mystery Visits – Disclosure of Information by Agents

**Lack of disclosure regarding material information including agent's relationship with the vendor, existence of the liability disclaimer and warning of risks of purchasing POH**



# Major Unscrupulous Sales Practices Discovered

- **Lack of adequate or voluntary disclosure regarding the relationship between the estate agent and the vendor and commission payment**
- **Lack of accurate or sufficient information contained in the sales materials of unlicensed agents**
  - Outdated brochures were provided
  - Marketing materials were found not translated into English or Chinese
  - Sales staff not proficient in Japanese explained information in the sales brochures and leaflets provided and written in Japanese
  - Agents misstated the state of completion, location and the transport facilities nearby
- **Failure to draw customers' attention to the liability disclaimers**
- **Failure to give any warning that the purchase of POH carried risks and the need to seek independent advice**
  - Indirectly hinting to the prospective purchaser that he could pay less tax



# Overview of Regulatory Framework for Sale of Overseas or Non-Local Properties in Other Jurisdictions

Jurisdictions	Australia (New South Wales)	Canada (British Columbia)	Mainland China	Malaysia	Singapore	Taiwan, China	UK (England & Wales)
Licensing of Estate Agents	✗	✓	✗	✓	✓	✓	✗
Due Diligence	✗	✓	✗	✓	✓	✓	✗
Advertising	✓	✓	✓	✓	✓	✓	✓
Cooling-off	✗	✓	✗	✗	✗	✓	✗
	For local properties: 10 and 5 business days (for uncompleted and completed properties respectively) with 0.25% of the purchase price forfeited	For local and Non-local completed properties: 7 days	Voluntary cooling off within 2 days for properties in Dongguan city in Guangzhou Province	✗	✗	Cooling off period only applicable to viewing tours conducted outside Taiwan whereby reservation fee is refundable	Consumers can cancel any service agreements in connection with CCR <sup>1</sup>
Deposit protection	✗	✓	✗	✗	✗	✓	✗

<sup>1</sup> CCR: Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013





# 5 Areas of Concern

1. Lack of licensing requirements for certain estate agents and vendors
  - Currently there is a loophole enabling unlicensed agents to take advantage of the Exemption Order and the non-applicability of the Code of Ethics and Practice Circulars of EAA to evade regulation
  - Licensed agencies can employ unlicensed salesperson to market POH, causing much confusion to consumers
  - Vendors can carry on their marketing and sales activities without any regulatory oversight
2. Unregulated sales solicitation from both online and traditional advertisements from outside of Hong Kong. They usually involve a Hong Kong element, e.g. a local contact or exhibition to engage prospective purchasers physically
3. No cooling-off period or deposit protection mechanisms for deposits and reservation fees
  - Lack of uniformity in the treatment of refund of reservation fees and the variety of the terms from different agencies could confuse consumers



# 5 Areas of Concern (Cont'd)

## 4. Insufficient regulation of advertisements

- Practice Circular only regulates licensed estate agents selling UPOH
- Misleading advertisements – agents use doubtful claims to bait consumers; information provided can be exaggerated or confusing
- Exemption and liability disclaimers – Irregular font size making it difficult to read, lack of uniform way of presentation and placed in a position not easily noticeable

## 5. Other Trade Practices requiring more control

- Lack of warning statement on the risks of purchasing POH
- Unsubstantiated/misleading claims of rental guarantee
- Lack of sufficiency and accuracy of information in sales brochures, pamphlets or leaflets



# Stakeholders Views

The Council held stakeholders' engagement meetings with the following parties:

## ***Relevant Authorities***

- Transport and Housing Bureau
- Estate Agents Authority
- Securities and Futures Commission

## ***Major industry players***

- Centaline Group
- Midland Realty (Global) Limited



# Stakeholders Views (Cont'd)

## Views of the THB and the EAA

1. Attempts to restrict the sales of POH in Hong Kong through licensed estate agents only may act contrary to the principle of free trade
2. Any proposed measures targeting the estate agents (e.g. requiring licensing of POH estate agents) cannot resolve issues which concern the vendors/developers or the projects themselves. To do so would be to shift the responsibility of the vendors/developers in relation to POH to estate agents, and this is not reasonable
3. As Hong Kong has no control over what regulatory regimes other jurisdictions have, simply regulating estate agents engaging in sale of POH situated in these jurisdictions cannot effectively minimise the risks that the buyer or potential buyer faces
4. The laws and regimes governing landed properties differ from one jurisdiction to another so the application of one set of Hong Kong's requirements on the sale of POH is inappropriate, nor is it practicable to tailor make requirements for different jurisdictions
5. Estate agents cannot be expected to possess the expertise to fully understand the relevant regulations and requirements in different jurisdictions concerning the sale of properties so it is not reasonable for them to be able to conduct any DD
6. Vendors and regulatory authorities in other jurisdictions are unwilling to co-operate or assist and this may amount to the EAA not being able to fully understand the regulations of the various jurisdictions and gather sufficient information to handle the relevant complaints satisfactorily



# Stakeholders Views (Cont'd)

## Views of the SFC

The SFC is of the view that consumers could be better protected through taking the following steps:

- 1) Step up regulation of estate agents and salespersons, and
- 2) Impose more stringent requirements on information provision and regulation of advertisements

The SFC is also supportive of the proposal to license agents who carry out sales of POH

## Views of Centaline and Midland Global

Both these stakeholders support the proposal to license agents who carry out sales of POH

In addition, they believe that more stringent regulation should be put in place for:

- 1) advertisements, especially those which mention rental guarantees and returns;
- 2) the imposition of more stringent information disclosure obligations; and
- 3) a mandatory cooling-off period to be imposed for the payment of reservation fees subject to a deduction of a reasonable amount of administrative fee if the consumer decides not to proceed with the purchase



# Recommendations

Consumer education is important to alert consumers to the risks of purchasing POH. However, for such a complex transaction involving significant value, it cannot be the only tool to safeguard the consumer interests

A balanced framework of regulations, industry discipline and consumer education is required to strengthen consumer safeguards and build Hong Kong into a well-trusted market for selling POH, which will ultimately bring economic benefits for Hong Kong



# Recommendation 1

## 1. To require all estate agents who engage in the sale of first-hand residential POH to be licensed under the EAO

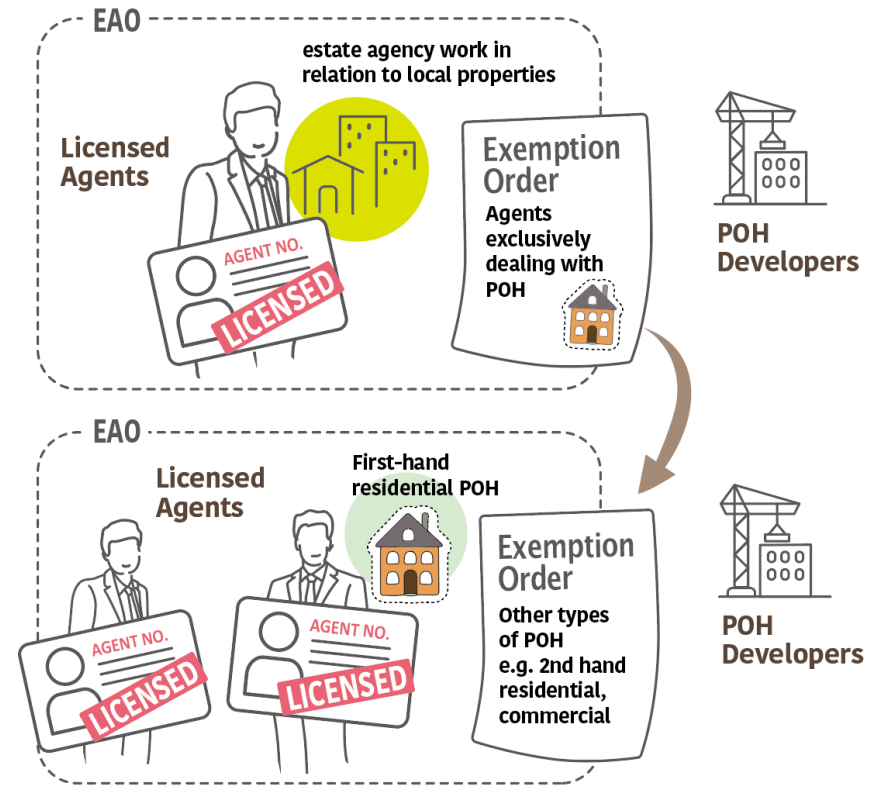
- Narrowing the scope of the current Exemption Order
- Estate agent or salesperson dealing with first-hand residential POH must obtain a license irrespective of whether he does so exclusively or not

### Why not second-hand POH?

- Most of the identified issues relate to first-hand residential POH
- First-hand development involves a relatively larger number of consumers, therefore, consumer interest is higher
- Most of the vendors of second-hand POH are individual entities, not a developer; the condition of POH would be unique and potential risks involved are case specific

### Why not commercial POH?

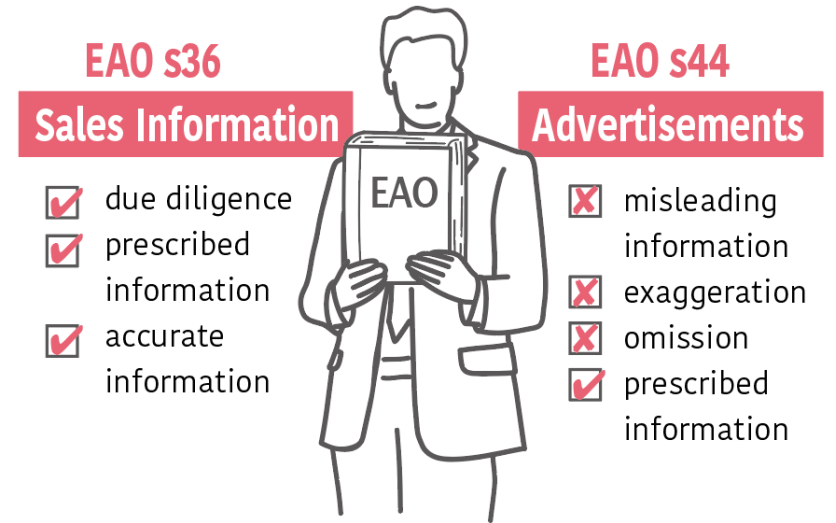
- Purchasers of non-residential/commercial POH are usually investors – likely to be more experienced and sophisticated
- For non-residential/commercial POH (hotels and shopping malls), issues identified mainly concerned rental returns or guarantees and need to be managed on behalf of investors
- These cases would more likely fall within the ambit of CIS and would be subject to the regulation of the SFC



# Recommendation 2

## 2. To impose the existing statutory duties concerning the provision of information to purchasers and advertising under the EAO on estate agents who engage in the sale of first-hand residential POH

- 2 provisions in Part V stipulating “Estate Agent’s duties, Liability and Advertising” (ss36 & 44 EAO)
- s36 deals with information disclosure, s44 deals with regulation of advertising
- As drafted currently, they can be used for POH, but they are partially commenced and applicable to local residential properties only
- To ensure that these statutory duties apply to estate agents who deal with first-hand POH, operation of ss36 & 44 should be extended and commenced to include first-hand residential POH

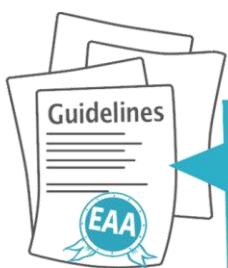




# Recommendation 3

## 3. By binding EAA guidelines, prescribe the information to be provided to the purchasers, and control the content of advertisements for first-hand residential POH

DD Report	Legal Opinion	Warning Statement	Sales Information Sheet
<ul style="list-style-type: none"> <li>Name</li> <li>Authority</li> <li>Professional qualifications</li> <li>DD report date</li> <li>Information cut off date to be confirmed to ensure the report will be reasonably up to date</li> <li>The estate agents to highlight adverse, or potentially adverse, findings in a separate document</li> </ul>	<ul style="list-style-type: none"> <li>Extended to state any mechanism to safeguard the deposits or part payments in accordance with the local laws and regulations</li> <li>Clearly state if there is any restriction on non-local purchasers to obtain finance locally</li> </ul>	<ul style="list-style-type: none"> <li>Sufficiency in financial resources of the purchasers in completing transaction and the loan facilities</li> <li>Risks in exchange rate fluctuations</li> <li>Inability of the vendor to honor any guarantees or rental yields</li> <li>Delay in property delivery and restrictions for non-local purchasers</li> <li>Information received during the sales stage may not be legally binding</li> <li>Possible legal or other actions when failing to complete the transaction</li> </ul>	<ul style="list-style-type: none"> <li>A map or plan drawn to scale showing the location of the POH</li> <li>A standard definition used to measure the area of the POH, the date of completion and the definition of “completion” in the place where the development is situated (if the construction of the POH has already been completed)”</li> <li>the condition of the property upon handover</li> <li>For the POH uncompleted projects - grounds on extension of final handover deadline &amp; maximum length of such extension (if any)</li> <li>rights of way to the POH and their restrictions</li> <li>mechanism to safeguard the deposits according to the laws and regulation of the place where the POH is situated</li> <li>Web link to the relevant legislation/ regulatory authority governing the POH</li> </ul>



- **DD Report** to include issuer's name, authority and professional qualifications.
- **Legal Opinion** to state if any deposit protection mechanism in the place where POH is situated.
- **Warning Statements** to include risks of exchange rate fluctuations, rental guarantee may not be honoured, delay etc.
- **Sales and Marketing Materials** to include prescribed information.



## Recommendation 3 (Cont'd)

### 3. By binding EAA guidelines, prescribe the information to be provided to the purchasers, and control the content of advertisements for first-hand residential POH

In **addition** to what is currently required:

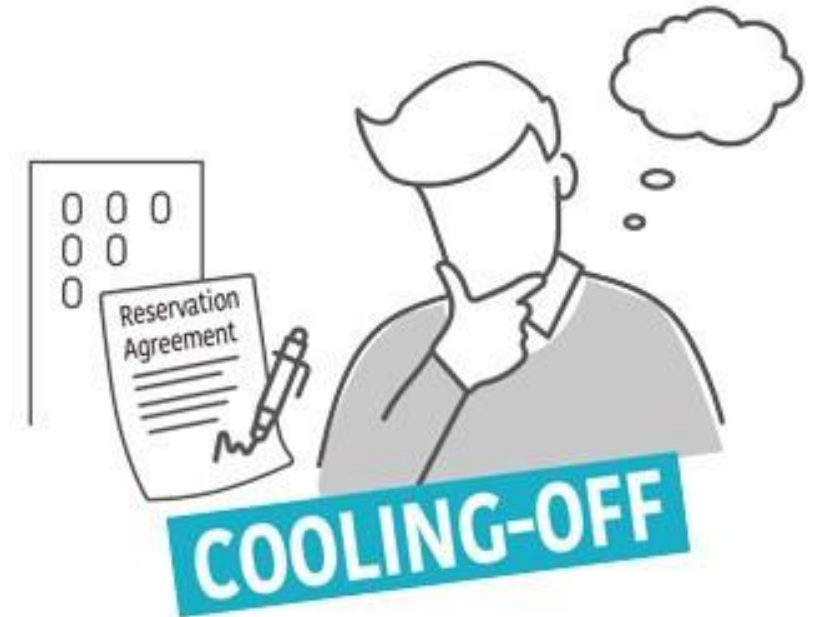
- Advertisements should **clearly and legibly state** certain **essential information** (e.g. a statement that purchasers should refer to the sales information sheet for further details, qualification of speaker of any exhibitions etc.)
- Advertisements **must not exaggerate or mislead** on the financial position of the developer or legal rights pertaining to the units, actual location and price etc.
- There should be **font size regulation** of print advertisements and period of exposure for digital advertisements



# Recommendation 4

## 4. Introduction of a mandatory cooling-off period for reservation fees

- Purchase of POH is complicated and risky involving jurisdictional and financial issues and consumers need time to research and make relevant enquiries before making such a major commitment
- There should be a balance of interests between being able to charge for work carried out vs enjoyment of exclusive opportunity to buy the particular property
- A cooling-off period of not less than 7 days
- Allow an administrative charge which is of a reasonable but not excessive amount to be deducted from the reservation fee



# Recommendation 5

## 5. To make it mandatory that all sales of first-hand residential POH must be conducted through licensed estate agents/salespersons

### Currently

- Advertisements show that the sales of most POH are conducted through local estate agents
- In line with the philosophy of free market, there is no legal requirement for sales of properties in HK to be conducted through estate agents only

### Therefore

- After implementation of recommendations 1-4, coupled with effective public education to
  - i) encourage consumers to purchase first-hand residential POH through Hong Kong estate agents; and
  - ii) warn them of the risks of not doing so,

the situation should be reviewed only when needed and to consider the implementation of recommendation 5



# Way Forward

With the growing trend for Hong Kong people to purchase POH, whether in the GBA or in other markets, consumers deserve to have better protection, considering the value of these purchases and the complexities involved

To ensure enhanced protection for consumers, it is time to require all estate agents who engage in the sale of first-hand residential POH to be licensed under the EAO; extend the statutory duties relating to information disclosure and regulation of advertisements to these estate agents; prescribe what information needs to be disclosed and impose more regulatory oversight over POH advertisements in Hong Kong. In addition, a cooling-off period should be introduced for the payment of reservation fees. Should these recommendations once implemented be insufficient, an incremental approach could be adopted to mandate all sale of first-hand residential POH be conducted through licensed estate agents only

The Council hopes that the above recommendations will stimulate an informed and constructive discussion in the community so that there will be a sustainable development of the Hong Kong POH market, bringing a win-win situation for both the industry and the consumers.





# Thank you

