

PRACTICE GUIDELINES ON MARKETING OF FOREIGN PROPERTIES (PGMFP)

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INTRODUCTION

1. These guidelines set out the professional practices to be adopted by estate agents (EAs) and real estate salespersons (RESs) in the marketing and sale of a foreign property to consumers.
2. The purchase of a foreign property carries additional risks not associated with local property transactions. It is subject to the laws of the country where the property is located, with differing legal processes and financing practices. The EA may be engaged by vendors¹ to market foreign properties to consumers in Singapore. The EA and RES play an important role in carrying out due diligence checks and advising consumers on the risks involved in purchasing a foreign property, to reduce any potential risk to all parties involved (namely, consumer, RES and EA). In the event of any dispute, all parties will also clearly know their rights and liabilities.
3. The Estate Agents Act 2010 applies to estate agency work conducted in Singapore for properties located in and outside Singapore. EAs and RESs marketing foreign properties must comply with the Estate Agents Act 2010 and its subsidiary legislation, as well as the policies and practice guidelines of the Council for Estate Agencies (CEA) in performing estate agency work. This includes not facilitating the marketing of foreign properties by unlicensed EAs or unregistered RESs.
4. In these guidelines, 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.
5. These guidelines supersede the former Practice Guidelines for Estate Agents and Salespersons Marketing Foreign Properties (PG 01/2018, version 2, issued on 30 August 2018), with effect from 24 March 2023. Non-compliance with these guidelines may result in enforcement actions by CEA.

I. PRE-MARKETING PHASE

Due Diligence Checks by the EA

6. The EA must 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 the foreign property are adequate, accurate and not misrepresented to consumers. The following due diligence checks must be

¹A vendor refers to any person by whom a property is or is to be disposed of. In the context of a purchase, 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).

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 performing checks on the vendor's business profile and registration status, its financial statements or its record of other developments/projects that were sold/completed. The EA must take reasonable care to ensure that the information that is relied upon is accurate and reliable.
- (ii) To verify that the vendor is the legal owner of the foreign property, such as by checking the foreign land registry or the land title deeds, to confirm that the vendor is legally entitled to develop, market and sell the foreign property.

(b) Due Diligence on Vendor's Claims and Payment Arrangements

- (i) To assess and verify claims made by the vendor in relation to the foreign property, such as the guaranteed rate of return, rental return or yields. The EA must assess the statistics and reports that support such claims. The EA must also verify that any guarantees made by the vendor in its advertisements or marketing materials are binding on the vendor and sight the contractual documents providing for such guarantees. If there are data in the advertisement that are not current, the applicable date and time of the data must be stated in the advertisement.
- (ii) To assess that payment arrangements stipulated by the vendor, including payment schedules and the parties that receive payment, are legitimate and appropriate. This includes verifying any representations made in relation to such payment arrangements. To illustrate, if there is a representation that monies paid into a certain bank account would be kept safe for the construction of the foreign property and not be used for any other purpose, the EA must take reasonable care in such a situation to verify this representation, including sighting the documents that provide for such effect.

(c) Due Diligence on the Foreign Property

To ensure that information on the nature of the foreign property and facts on the foreign property are accurate, such as by understanding and being familiar with the nature of the foreign property and its surroundings, which may include visiting the site or engaging a local representative in the country where the foreign property is located. Checks must be done to verify the specifications and other material information relating to the foreign property, such as the property title, tenure, location, size, site plan, floor plans, features and amenities, land use controls, building and regulatory approvals (such as building permits, development approvals) or construction schedules.

(d) Due Diligence on Possible Adverse Interests

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 the foreign property through traditional or digital media.

7. The EA is required to perform the above due diligence checks to its best ability. If the EA is unable to perform/complete any of the checks despite its best efforts (such as failing to obtain any documents to verify an aspect), the EA must document these failings as part of its material findings for the foreign property in **Annex A**.

Engagement of Third Party to Conduct Due Diligence

8. Where the EA engages or depends on a third party to perform the due diligence checks set out in paragraphs 6 and 7 (such as a company that provides compliance/accounting services, a foreign EA or a local representative in the country where the foreign property is located), the EA must verify and ensure that the third party is reasonably qualified and able to perform the due diligence checks required. The EA must determine the scope of due diligence to be performed by the third party and assess the results delivered accordingly.

Informing Consumers of Material Findings

9. The EA must assess if there are material findings that ought to be highlighted to consumers, in particular, if there are no findings that can be made on any due diligence aspect or findings that are adverse or potentially adverse to the interests of consumers. The EA must ensure that such material 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**.
 - (a) Where such findings arise during the pre-marketing or marketing phase, the EA must obtain a written acknowledgement from the purchasers of the foreign property that they have been informed of such findings before proceeding with the transaction. The written acknowledgement must be provided in the format set out in **Annex A**.
 - (b) Where such findings arise after the sale of the foreign property is made (but before completion), the EA must 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)

10. The EA must ensure that it possesses the necessary and adequate PII for the conduct of estate agency work to market foreign properties.

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

RES Intending to Represent a Vendor or Purchaser

11. If an RES intends to represent a vendor or purchaser in a foreign property transaction, he must seek approval from his EA to do so. Without the EA's approval, the RES must not market the foreign property. Before allowing the RES to market the foreign property, the EA must perform the due diligence checks set out in paragraphs 6 and 7, and ensure that the RES has undergone the required training set out in paragraphs 13 and 14.
12. The EA must ensure that only RESs with the required prior approval can market a foreign property and that they are aware of any marketing activity in relation to a foreign property by their RESs. This is necessary as the RES acts in the name of the EA, and the EA will be liable for any lapses during the marketing and sale of a foreign property. If the EA allows the RES to represent the vendor or the purchaser, the EA is also accountable for the marketing of the foreign property and must comply with all the provisions in these guidelines.

Selection and Training of RESs

13. When the EA decides to market a foreign property, it must select and train the RESs involved in the marketing of the foreign property. The selected RES must be conversant with the requirements of marketing the foreign property, including the requirements set out in these guidelines. The selected RES must undergo detailed project-specific training to ensure that he is knowledgeable and competent to sell the foreign property. The training and the training materials must include, amongst others, the following:
 - (a) A fact sheet with information and details on the foreign property, including the vendor, contractor, development features and facilities;
 - (b) Information on the processes and guidelines relating to the sale and marketing of the foreign property, including the EA's issuance of the written advisory message in **Annex A**;
 - (c) Information on the procedures and guidelines on purchasing a foreign property in the country that the foreign property is located in;
 - (d) Information on the payment and financing arrangements involved, including any payment schedules, financing arrangements, stamp duty and other taxation requirements;
 - (e) Information on the transaction documents involved, the jurisdiction and laws governing the transaction, and the applicable dispute resolution mechanism; and
 - (f) A set of Frequently Asked Questions relating to the sale and marketing of the foreign property.

14. The RES who has undergone training in the marketing of a foreign property must be able to:
- (a) Offer accurate, proper and relevant advice in relation to the foreign property;
 - (b) Respond to queries and requests for details and information on the foreign property from consumers;
 - (c) 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; and
 - (d) Advise consumers to seek legal advice on the terms and conditions of key transaction documents before they sign the documents, such as the Sale and Purchase Agreement.

Marketing Materials

15. If the EA intends to use any marketing collaterals or materials that are not in English (such as brochures prepared by the developer that are in a foreign language), the EA must obtain their English translation from reasonably qualified translators and provide them to consumers when they market the foreign property.

II. MARKETING PHASE

Representation

16. When marketing a foreign property, the EA and RES must inform consumers whether they are representing the consumers or the vendor. The EA and RES who represent the vendor and market the property on its behalf cannot represent consumers in the same transaction.

The Foreign Property and Ownership

17. The EA and RES must inform consumers about any material information relating to the foreign property and its ownership, including but not limited to the following:
- (a) Details of the foreign property, such as the property tenure, area, address, title deed, property features, amenities, building type, built-in area or furnishings. The tenure in Singapore is commonly defined as 99-year leasehold or freehold. However, some countries may define the tenure differently from Singapore.
 - (b) Building and other regulatory approvals – Information on the building and regulatory approvals obtained by the vendor in the country where the

foreign property is located, such as the approved building plan.

- (c) Rules and restrictions on foreign ownership of property – some countries may impose restrictions on the purchase of properties by foreigners, such as the types of properties, minimum property price or location of the property. Some countries may also impose restrictions on resale in the secondary market, such as to allow resale only to citizens of the country where the foreign property is located.

Payment, Financing and Taxation

18. The EA and RES must highlight the relevant payments and financing arrangements to consumers in writing. The EA and RES must 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 (such as for loans to be secured from certain sources only). If loans are provided through financial institutions (in Singapore or elsewhere), the EA and RES must inform the consumer that such loans will be subject to all relevant and applicable rules and restrictions (such as the Total Debt Servicing Ratio (TDSR) framework). The EA and RES must also highlight to consumers the foreign currency exchange requirements and impact of exchange rate fluctuations on their financial commitment.
19. 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, must be made known to consumers. In particular, the EA and RES must explain the payment schedule and refund policy to consumers before they commit to the purchase of the foreign property, and to highlight any non-refundable payments. If there are payments made by consumers that do not go directly to the vendor (such as to a trust account), the EA and RES must explain to consumers about the payment arrangements in place, such as who the payments will be made to and why the payments will not be made directly to the vendor.
20. There could be other associated costs for the purchase of a foreign property, such as property management fees, security arrangements, insurance (during the acquisition and disposal process), which are important considerations for consumers in deciding whether to purchase the foreign property. The EA and RES must inform consumers of all such known additional and/or associated costs relating to the foreign property.
21. Some countries may levy taxes on foreigners in relation to the purchase, lease and/or sale of properties. The EA and RES must explain to consumers the various categories of taxes (such as stamp duty, capital gain tax, withholding tax or estate duty) that may be imposed on the foreign property that the consumers are purchasing.

Transaction Documents

22. If any transaction documents are not in English, the EA must obtain their English translation from reasonably qualified translators and provide them to consumers before they sign the transaction documents.
23. Prior to consumers signing any transaction documents, the EA and RES must advise consumers to seek independent legal advice to understand the terms and conditions of the transaction documents. The EA and RES must advise the consumer on whether there is legal advice arranged by the vendor or whether this has to be independently obtained by the consumer. If legal advice is arranged by the vendor, the EA and RES must provide consumers with details of the lawyers and whether they are representing the consumer and acting in the consumers' interests. Otherwise, the EA and RES must advise consumers to engage a lawyer to explain the terms and conditions of the transaction documents.
24. The EA and RES must also explain to consumers the arrangements in place for the signing of the transaction documents (such as the Sale and Purchase Agreement) and facilitate or arrange for such signing with the vendor.

Governing Law, Jurisdiction & Dispute Resolution Mechanism

25. The EA and RES must explain the following to consumers before they make any commitment or decision to purchase the foreign property:
 - (a) The available avenue(s) to seek recourse in the event there is a dispute relating to the purchase, and the dispute resolution mechanism that will apply;
 - (b) The applicable jurisdiction for the resolution of any dispute; and
 - (c) The governing law³ of the Sale and Purchase Agreement (or equivalent contract).

Written Advisory Message

26. The EA marketing the foreign property must provide a written advisory message to consumers intending to purchase a foreign property, highlighting that risks are involved in 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. The written advisory message by the EA must be in the format set out in **Annex A**.
27. The EA must provide the written advisory message to consumers before they make any commitment or decision to purchase the foreign property, such as before they make any payment to purchase or reserve the foreign property, or

³This refers to the law which governs the contract. The EA and RES must inform consumers about it.

before they sign any documents or agreements relating to the purchase or reservation of the foreign property.

28. The RES representing the purchaser must obtain the purchaser's written acknowledgement of receipt for the written advisory message provided. The RES must also witness such acknowledgement and document it in the format set out in **Annex A**. If there is no RES representing the purchaser, the RES marketing the foreign property to the purchaser must witness and obtain this written acknowledgment from the purchaser.

III. RECORD KEEPING

29. The EA must keep the following for each foreign property marketed:
 - (a) All material transaction records and documents, such as the Sale & Purchase Agreement, Option to Purchase, commission records and/or all other material documents and contracts;
 - (b) Payment records for all payments made by consumers to or through them, such as booking fees;
 - (c) The training materials used for the training of RESs to market the foreign property;
 - (d) The list of RESs trained to market the foreign property;
 - (e) The marketing materials used by the EA and RES to market the foreign property; and
 - (f) All documents and records that show the EA's compliance with the due diligence requirements and other requirements set out in these guidelines.
30. The EA must keep the documents and records set out in paragraph 29 above in accordance with paragraph 7 of the Code of Practice for Estate Agents, for a period of at least 5 years. Such retention may be made in electronic form.

WRITTEN ADVISORY TO BE GIVEN BY EA TO CONSUMER

[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 wish 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 (such as the Sale and Purchase Agreement).
4. We also wish to draw your attention to the following material 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), which include any non-findings or adverse/potentially adverse findings:

Material Findings

[The Estate Agent must set out any material findings that arose in the course of the due diligence checks performed pursuant to the CEA Practice Guidelines on Marketing of Foreign Properties, in particular, if there were no findings that could be made on any aspect, or if there were any adverse or potentially adverse findings. Examples of such findings are provided below.]

1. (Example: We were unable to obtain and review the financial standing and proven track record of the vendor in its sale of other properties).
2. (Example: A review of the Profit and Loss statements of the vendor show that it made losses from the period [xxx] to [yyy]).
3. (Example: 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. (Example: The vendor of the Property is (xxx), not the developer (yyy) – due diligence has only been performed on the vendor).

[Signed 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:

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

CEA Registration Number: _____

Name of Estate Agent: _____

CEA Licence Number: _____

Date: _____

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