

**(DRAFT) Payment Arrangements for Property Transactions (the "PAPT") -
Sale & Purchase Scenario ("PAPT for S&P")**

1. INTRODUCTION

- 1.1 Following the implementation of PAPT for Refinancing involving property refinancing, the roll-out of PAPT for S&P aims to cover wholly cash-based transactions for the sale and purchase of residential properties in Hong Kong's secondary market, including car parking spaces in residential building whether independently or together with residential units. Buyers and sellers proposed to be covered by PAPT for S&P will be either individuals or entities incorporated for the sole purpose of property-holding.
- 1.2 Both the PAPT for Refinancing and PAPT for S&P mechanisms are made possible by the convenience, accessibility and clarity brought by electronic transfer of funds. As a further development of the conceptual framework of PAPT and an enhancement of the PAPT for Refinancing mechanism, the PAPT for S&P mechanism is designed to facilitate the completion of a sale and purchase transaction on a secure and safe platform by enabling funds to flow directly from bank to bank. A more detailed comparison between PAPT for Refinancing and PAPT for S&P is set out below.
- 1.3 Under PAPT for S&P, the bulk / part of the purchase monies will be settled via HKD CHATS from a Buyer Mortgage Institution to a Seller Mortgage Institution (or a Seller's Account Maintainer if there is no existing Seller's Mortgage) by way of mortgage loan proceeds. CHATS, as operated by Hong Kong Interbank Clearing Limited ("**HKICL**"), has a proven record of providing prompt and secure settlement of inter-bank transfers. CHATS settlements are irrevocable and enjoy immediate finality with the statutory backing of the Payment Systems and Stored Value Facilities Ordinance (Cap. 584). Any completion money not covered by the mortgage loan proceeds will be provided by the Buyer's own funds and primarily settled by cashier's order(s) from the Buyer. The apportionment account will continue to be handled by the solicitors firms involved in the sale and purchase transaction and can be settled by solicitor's cheques.
- 1.4 A definitive feature of PAPT for S&P is the usage of a CHATS Advice as evidence of settlement for an inter-bank transfer of funds. A CHATS Advice is issued automatically by HKICL on the CHATS interface immediately after the Seller Mortgage Institution (or a Seller's Account Maintainer) receives payment from the Buyer Mortgage Institution via CHATS. It is envisaged that the CHATS Advice, being payment evidence automatically issued by HKICL as an established third party, will bring confidence to potential PAPT users.
- 1.5 For transactions where there is an intra-bank transfer of funds instead of an inter-bank transfer of funds through CHATS, a Bank Advice will be used to evidence successful settlement of funds instead of a CHATS Advice.

2. DEFINITIONS FOR THE CONVEYANCING SCENARIO

2.1 Definitions

"Account Details" means account holder's name and account number.

"Appointee Bank-Seller Contract" means an agreement in respect of a property sale and purchase transaction adopting PAPT for S&P as signed by the Seller and addressed to the SMI/the Seller's Account Maintainer, which incorporates the terms of the T&C.¹

"Authorized Institution" or **"AI"** means a Bank, a restricted licence bank or a deposit-taking company as defined in the Banking Ordinance (Cap. 155).

"Bank(s)" means a company which holds a valid banking licence, as defined in the Banking Ordinance (Cap. 155).

"Bank Advice" means a document issued by a Bank in respect of the completion of an internal fund transfer, a sample of which is appended as Appendix 3.

"Balance" means the balance of the purchase price after deducting the Initial Deposit and Further Deposit.

"Borrower" means the borrower under the bank facilities.

"BMI Borrower" means the Borrower under the bank facilities granted by the Buyer Mortgage Institution, which are secured by the Buyer's Mortgage, **provided that** if the BMI Borrower is the Buyer, references to "BMI Borrower" shall be construed to refer to the Buyer.

"BMI-Buyer Contract" means an agreement in respect of a property sale and purchase transaction adopting PAPT for S&P as signed by the Buyer and addressed to the BMI, which incorporates the terms of the T&C.²

"Buyer(s)" means a natural person or a Property Holding Company, which is the buyer(s) of the property in a sale and purchase transaction.

"Buyer's CO" means CO issued by a Bank as arranged by the Buyer or any third party (other than Buyer's Solicitor) paying on Buyer's behalf.³

"Buyer's Loan Amount" means the loan amount drawn down by the BMI Borrower under the Buyer's Mortgage.⁴

¹ A document to be used for the Appointee Bank-Seller Contract is the letter of authorisation signed by the Seller and delivered to the SMI in respect of the loan of title deeds pending discharge of the existing mortgage.

² A document to be used for the BMI-Buyer Contract is the facility offer letter as one of the bank documents to be signed by the Buyer and returned to the BMI.

³ The use of CO should be adopted as the means of payment where applicable, and in particular the Further Deposit and the Buyer's Top-up Portion, while reserving the use of solicitors' cheque primarily for settlement of the apportionment account and the other Fees and Expenses is acceptable.

⁴ If the BMI Borrower takes out a mortgage insurance product in respect of the Buyer's Mortgage, the mortgage insurance premium amount may form part of the Buyer's Loan Amount. Such mortgage insurance premium will not however be remitted to the SMI or the Seller's Bank on Dday and hence is excluded from the "Remittance Amount".

"Buyer's Mortgage" means the mortgage over a property for securing the bank facilities granted to a Borrower by the Buyer Mortgage Institution, with such property being the subject matter of the PSPA and/or FSPA and it is either (i) a mortgage-free property or (ii) a property originally charged under the Seller's Mortgage (which will be fully discharged from the Seller's Mortgage on completion of the sale and purchase transaction).

"Buyer Mortgage Institution" or "BMI" means the Mortgage Institution that has granted bank facilities to a Borrower, which is a participating institution of CHATS, with such bank facilities being (i) applied towards financing the purchase of a property by the Buyer and (ii) secured by the Buyer's Mortgage.

"Buyer Mortgage Institution's Solicitor" or "BMI's Solicitor" means the solicitor engaged by the Buyer Mortgage Institution.

"Buyer's Solicitor" means the solicitor engaged by the Buyer in the property transaction.

"Buyer's Top-Up Portion" has the meaning set out in paragraph 7.15.

"CHATS" means Hong Kong Dollar Clearing House Automated Transfer System.

"CHATS Advice" means a document issued automatically and provided in printable-by-BMI-only format by HKICL to BMI on the CHATS interface immediately after a SMI or a Seller's Account Maintainer receives payment from a BMI via CHATS, a sample of which is appended as Appendix 1. Only the BMI can generate the CHATS Advice from its terminal system connected to the computer system of HKICL. The SMI or the Seller's Account Maintainer on the receiving end cannot print such CHATS Advice even though the transfer of funds has completed.

"CHATS Advice Correction Notice" has the meaning set out in paragraph 10.6, a sample of which is appended as Appendix 2.

"CO" means cashier's order.

"Completion Deck" has the meaning set out in paragraph 7.28.

"Dday" means the completion date of the sale by the Seller and the purchase by the Buyer of the Property (which falls on a business day); all references to Dday plus or minus any number of days means Dday plus or minus such number of business days i.e. Monday to Friday excluding Saturdays, Sundays and general holidays as defined in the General Holidays Ordinance (Cap. 149).

"Dday Cut-off Time" means 5:30 pm on Dday.⁵

"DTC" means a deposit-taking company as defined in the Banking Ordinance (Cap. 155).

⁵ Dday Cut-off Time refers to the latest time for the SMI to receive the CHATS Advice from the SMI's Solicitors. It should be distinguished from the Transaction Closing Time, which is the latest time by which the CHATS Advice must be delivered to the SMI's Solicitors. See the final bullet point in paragraph 6.2(d).

“End of Dday” means 11:59 pm on Dday, which is the latest time by which the SMI must have distributed the Remittance Amount.

"Exclusion" has the meaning set out in paragraph 4.

"Fees and Expenses" means the amount of fees and any other expenses payable by the Buyer, such as the apportionment account.⁶

"FSPA" means Formal Sale and Purchase Agreement.

"Further Deposit" means the deposit and part payment of the purchase price payable by the Buyer upon the signing of the FSPA or on a specified date.

"Initial Deposit" means the deposit and part payment of the purchase price payable by the Buyer upon the signing of the PSPA or on a specified date.

"Key Information" means the following information in a CHATS Advice:

- (a) names of the sender's bank and the receiver's bank;
- (b) Remittance Amount and currency; and
- (c) settlement date and time.

"Mortgage Institution" refers to an AI, a money lender as defined in the Money Lenders Ordinance (Cap. 163) or other companies offering property mortgage lending, regardless of whether it is a HKD Clearing Member of the CHATS or not.

"Original Mortgage Institution" or **"OMI"** has the meaning set out in paragraph 11.2(a).

"PAPT Dedicated Account" means the account of the SMI, the Seller's Account Maintainer or the BMI (as the case may be) dedicated for PAPT for S&P participation.

"Payment Confirmation Letter" means a letter addressed to the Buyer and the Seller by the Seller's Account Maintainer, which confirms the CHATS information (or internal bank transfer details) applicable to a property sale and purchase transaction adopting PAPT for S&P.

"Property" means the property which is the subject matter of a PSPA and FSPA.

"Property Holding Company" means a body corporate:

⁶ **"Fees and Expenses"** include those fees and expenses agreed to be settled between the Buyer and the Seller such as the rental deposit, utilities deposit, management fee, or stakeholders' money involving renovation money. Legal fees and agency commission are Fees and Expenses. These fees should be settled directly by the Buyer with the relevant parties. See paragraphs 7.18 and 9.13.

- (a) which is established for the sole purpose of holding and investing in real properties, including but not limited to the Property;
- (b) whose ultimate shareholder(s) is/are natural person(s); and
- (c) whose direct and indirect corporate shareholder(s) (other than the ultimate shareholder(s)) do not have any operating business.⁷

"PSPA" means Provisional Sale and Purchase Agreement.

"Redemption Amount" means the outstanding amount of loan (including principal and interest) secured by the existing Seller's Mortgage as of the intended date of redemption.

"Redemption Quotation Letter" means a letter addressed to the Buyer and the Seller by the SMI, which confirms the Redemption Reference and Redemption Amount applicable to a property sale and purchase transaction adopting PAPT for S&P.

"Redemption Reference" means the unique identifier assigned by the SMI or the Seller's Account Maintainer to a transaction which appears as part of the "Payment Detail" code on a CHATS advice.

"Refinancing Mortgage Institution" or **"RMI"** has the meaning set out in paragraph 11.2(a).

"Refinancing Mortgage Institution Confirmation" or **"RMIC"** has the meaning set out in paragraph 11.3.

"Relevant Checks" means all customary screening in compliance with the internal policy of the SMI (or the Seller's Account Maintainer, as the case may be) and all applicable laws and regulations.

"Remittance Amount" means:

- (a) the Buyer's Loan Amount; minus
- (b) any fees in connection with the Buyer's Mortgage funded by the proceeds of the Buyer's Loan Amount, including any mortgage insurance premium or fire insurance premium payable by the BMI Borrower (if applicable).

"RLB" means restricted licence bank as defined in the Banking Ordinance (Cap. 155).

⁷ All conditions (a) to (c) have to be satisfied for a company to qualify as a Property Holding Company. If any of these conditions is not satisfied, a property sale and purchase transaction involving a non-qualifying company will fall outside the scope of the PAPT. For the sake of clarity, residential property held by a trading company is not covered by reason that a trading company may use the banking facility to support its other businesses and may, therefore, complicate the process. For the avoidance of doubt, it should be for the BMI to decide whether a party is a "Property Holding Company" which satisfies such conditions.

"Seller(s)" means the seller(s) of the Property in a sale and purchase transaction.

"Seller's Account" means a bank account in Hong Kong in the name of the Seller.

"Seller's Account Maintainer" has the meaning set out in paragraph 6.3.

"Seller's Bank" means a Bank (other than the Seller Mortgage Institution) in which the Seller's Account is held.

"Seller's Mortgage" means the mortgage over the Property securing the bank facilities granted to the SMI Borrower by the Seller Mortgage Institution with such property being the subject matter of the PSPA and FSPA; such mortgage is to be discharged in full⁸ by (i) the Remittance Amount and (ii) (if applicable) the Buyer's and/or Seller's own funds.

"Seller Mortgage Institution" or "SMI" means a Mortgage Institution that has granted bank facilities to a Borrower, such bank facilities being secured by the Seller's Mortgage, which is a participating institution of CHATS.

"Seller Mortgage Institution's Solicitor" or "SMI's Solicitor" means the solicitor engaged by the Seller Mortgage Institution.

"Seller's Solicitor" means the solicitor engaged by the Seller in the property sale and purchase transaction.

"SMI Borrower" means the Borrower under the bank facilities granted by the Seller Mortgage Institution, which are secured by the Seller's Mortgage, **provided that** if the SMI Borrower is the Seller, references to "SMI Borrower" shall be construed to refer to the Seller.

"Split Payment Letter" means the letter to be sent by Seller's Solicitor to Buyer's Solicitor as referred to in paragraph 7.18 or paragraph 9.13 below.

"Surplus" means the amount by which Remittance Amount exceeds the Redemption Amount.

"T&C" means the ["Terms and Conditions in relation to the operation of PAPT"] as published on the website of the Hong Kong Association of Banks ([insert link]) as amended and supplemented from time to time.

"Transaction Closing Time" means 5 pm on Dday or such other agreed time between the Seller and the Buyer which is earlier than 5 pm on Dday, whereby completion of the property sale and purchase transaction will take place by solicitors' undertaking.

2.2 Construction

⁸ PAPT for S&P is not applicable where an existing mortgage is not discharged in full upon completion of the relevant S&P transaction.

- (a) Any reference to the singular form of "Borrower", "BMI Borrower", "Buyer", "Seller" and "SMI Borrower" shall include its plural form and vice versa.
- (b) If, in relation to a property sale and purchase transaction, the SMI's Solicitor is not the same law firm as the Seller's Solicitor, all the steps and communications which are to take place between the Seller's Solicitor and the SMI under Conveyancing Scenario 1A (as described in paragraph 7 below) and Conveyancing Scenario 1B (as described and incorporated by reference in paragraph 8 below) shall be construed as steps and communications which are to take place between the Seller's Solicitors and the SMI's Solicitors (for and on behalf of the SMI).
- (c) If, in relation to a property sale and purchase transaction, the BMI's Solicitor is not the same law firm as the Buyer's Solicitor, all the steps and communications which are to take place between the Buyer's Solicitor and the BMI under Conveyancing Scenario 1A (as described in paragraph 7 below), Conveyancing Scenario 1B (as described and incorporated by reference in paragraph 8 below) and Conveyancing Scenario 2 (as described in paragraph 9 below) shall be construed as steps and communications which are to take place between the Buyer's Solicitors and the BMI's Solicitors (for and on behalf of the BMI).

3. SCOPE OF THE CONVEYANCING SCENARIO

- 3.1 As a starting point, it is envisaged that PAPT for S&P will cover conveyancing scenarios involving the following situations:
 - (a) Completion of the conveyancing by way of solicitors' undertaking;
 - (b) The Buyer has obtained a mortgage loan with a Bank in Hong Kong⁹.
 - (c) The Seller either has or does not have an existing mortgage over the Property. If yes, there is only one existing mortgage over the Property; and
 - (d) The Seller has a HKD bank account in Hong Kong, as proof of the Seller's fulfilment of customer due diligence or KYC requirements;
- 3.2 For the sake of clarity, the following situations are covered by PAPT as well:
 - (a) The Buyer or Seller can be a single Buyer or Seller or multiple Buyers or Sellers (such as joint tenants or tenants in common);
 - (b) The Buyer's Mortgage and/or existing Seller's Mortgage can be a two-party mortgage or a three-party mortgage;

⁹ Virtual banks are classified as licensed banks and are technically included within the scope of PAPT for S&P.

- (c) Conveyancing of property under the Housing Authority, Housing Society, Urban Renewal Authority or similar subsidised housing schemes where any restriction on alienation is lifted by the relevant authority at the time of signing the facility letter; and
- (d) Conveyancing involving mortgage insurance arrangements.

4. **EXCLUSIONS OF THE CONVEYANCING SCENARIO**

PAPT for S&P aims to address the most common conveyancing scenarios in order to ensure simplicity and ease of usage. As such, the following scenarios are excluded from the initial stage of PAPT for S&P (each an "**Exclusion**"):

- (a) Completion of conveyancing by way of formal completion;
- (b) Conveyancing of a property that is subject to charging order(s);
- (c) Conveyancing involving a mortgagee sale, a sale in liquidation or in receivership or a sale in bankruptcy;
- (d) Conveyancing where the Buyer and/or the Seller is a body corporate incorporated outside Hong Kong;
- (e) Conveyancing involving any element of non-cash consideration, including but not limited to transfer pursuant to court order, transfer among family members or related companies¹⁰, transfer by gift, assent or donation, payment of purchase price by way of promissory notes, transfer by property exchange, and mortgage involving share charge or other forms of securities with the exception of personal guarantee(s);
- (f) Confirmor sale involving sub-sale and sub-purchase of a property;
- (g) Purchase of a property by the personal representative of the estate of the deceased, save and except where such purchase was entered into by the Buyer prior to him becoming incapacitated in the interim period pending completion, in which case PAPT may still apply if all other conditions still allow for completion (for the avoidance of doubt, sale of a property by the personal representative of the estate of the deceased or by a personal representative of a Seller who became incapacitated is covered by PAPT for S&P provided that all other criteria are satisfied);
- (h) Conveyancing where the BMI and/or the SMI is a RLB, a DTC, a money lender as defined in the Money Lenders Ordinance or other companies offering property mortgage lending;

¹⁰ Intra-group transfer which involves cash consideration only will not be excluded by way of 4(e).

- (i) Conveyancing where the SMI is a foreign bank without a local branch in Hong Kong;¹¹
- (j) Collective sale by various sellers of properties within the same building or development to a single developer or its nominee(s);
- (k) Conditional sale whether subject to conditions precedent or conditions subsequent and sale involving deferred payment arrangements;
- (l) All primary market sale and purchase transactions involving Housing Authority subsidised schemes and primary market sale and purchase transactions involving uncompleted development or uncompleted phase of a development, regardless of whether the transaction is under the consent scheme or non-consent scheme¹²;
- (m) Sale under a compulsory sale order pursuant to the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545); and
- (n) Conveyancing of a property that is under the Housing Authority, Housing Society or Urban Renewal Authority, or similar subsidised housing schemes, where the restriction on alienation has **not** been lifted by the relevant authority.

Without prejudice to the above, it should be noted that the BMI and the SMI will have ultimate discretion to determine whether a transaction will be excluded from PAPT for S&P.

5. **DOCUMENTS AND SAMPLE CLAUSES PREPARED IN RESPECT OF THE CONVEYANCING SCENARIO**

As part of the PAPT for S&P Proposal, the following document templates and sample clauses will be provided:

- (a) CHATS Advice;
- (b) Bank Advice;
- (c) CHATS Advice Correction Notice;
- (d) sample clauses for PSPA and FSPA
- (e) sample clauses for the facility letter to be entered into between the BMI and the BMI Borrower;

¹¹ A foreign bank which has a branch office in Hong Kong and is able to set up a PAPT Dedicated Account will not be excluded by way of 4(i).

¹² For the sake of clarity, primary market sale and purchase transactions involving Housing Authority subsidised schemes mortgage loan, drawdown and settlement should follow the prevailing procedure whereby a BMI CO is made payable to the Housing Authority and will not be covered by PAPT.

- (f) inter-bank protocol;
- (g) solicitors' undertakings;
- (h) mandatory clauses for incorporation of the T&C into the BMI-Buyer Contract and the Appointee Bank-Seller Contract; and
- (i) T&C.

6. GENERAL PRINCIPLES

6.1 The following principles will apply to each of the following conveyancing scenarios¹³:

- ❖ **Conveyancing Scenario 1A** – Where the Buyer will obtain a mortgage and the Seller has an existing mortgage over the Property, with Buyer's Mortgage and Seller's Mortgage at **different** Mortgage Institutions;
 - ❖ **Conveyancing Scenario 1B** – Where the Buyer will obtain a mortgage and the Seller has an existing mortgage over the Property, with both Buyer's Mortgage and Seller's Mortgage at the **same** Mortgage Institution; and
 - ❖ **Conveyancing Scenario 2** – Where the Buyer will obtain a mortgage and the Seller does not have an existing Seller's Mortgage over the Property.
- (a) ***Indicative timeline:*** The timeline set out in each of the scenarios is designed to enable the parties and their legal advisors to have reasonably sufficient time to perform the relevant steps and proceed smoothly to completion. Accordingly, the anticipation is that the timeline should be followed to the extent possible (except for the mandatory time limits in respect of Transaction Closing Time, Dday Cut-off Time and End of Dday and any time limits stipulated in the T&C). However, in practice, if exceptional circumstances arise or if parties have different transaction-specific requirements on timing (which deviate from the indicative timeline), parties will communicate with one another in advance with a view to agreeing a suitable timeline which is to be adopted for specific transactions. It is not the intention that the timelines set out are to be followed rigidly with no exception.
- (b) ***Exceptional circumstances:*** Where exceptional circumstances or last-minute issues arise, these are to be resolved on a case-by-case basis between the parties (as the parties do under the current practice) taking into account parties' respective commercial and business needs. The Buyer, the Seller, the BMI and the SMI may agree to effect payment and process settlement by means other than CHATS, and the parties may also agree on bespoke modifications to the PAPT payments mechanics, to address such circumstances or issues.

¹³ PAPT does not cover the scenario where the Buyer of the Property does not require a Buyer's Mortgage for completion of a sale and purchase transaction.

- (c) ***Becoming out of scope:*** Where an in-scope property transaction becomes an out-of-scope property transaction on or before Dday because one of the Exclusions becomes applicable (e.g. a charging order being entered into against the Property), the parties may dis-apply the PAPT and agree an alternative payment method if they wish, taking into account the then circumstances. The parties may also agree on bespoke modifications to the PAPT payments and process settlement mechanics to suit their needs. The Buyer, the Seller, the BMI and the SMI may agree to effect payment by means other than CHATS.
- (d) ***Other means of payment permissible:*** PAPT through CHATS only applies subject to assessment by the BMI and the SMI, and is not intended to be the only payment mechanism permitted under the PSPA or FSPA. As an additional requirement for PAPT through CHATS to apply, the Buyer and the Seller will need to agree to the adoption of PAPT by signing a BMI-Buyer Contract and an Appointee Bank-Seller Contract respectively, through which each of the Buyer and Seller agrees to the appointment and authorisation of the SMI or the Seller's Account Maintainer (as applicable) for the purpose of holding and operating the funds to be transferred by the BMI to the SMI or the Seller's Account Maintainer in relation to the completion of the transaction in accordance with the T&C. If either of the BMI-Buyer Contract or the Appointee Bank-Seller Contract has not been signed, or if either of the Buyer or the Seller has withdrawn its agreement to the adoption of PAPT pursuant to the BMI-Buyer Contract or the Appointee Bank-Seller Contract (as applicable) on or before Dday-5, PAPT for S&P will not apply to the property sale and purchase transaction and conventional approach for completion of the transaction will be followed.
- (e) ***Role of Solicitors:*** If, in relation to a property sale and purchase transaction, the same law firm acts for each of the BMI and the SMI, the law firm shall act in separate capacities as the BMI's Solicitor and the SMI's Solicitor.

6.2 As touched upon in the above, the usage of CHATS Advice plays an important role in PAPT for S&P under which only inter-bank payments will be made. Some features of a CHATS Advice are set out as follows:

- (a) A CHATS Advice is issued by and in the name of HKICL, and is automatically sent to the BMI after funds have been successfully credited to SMI's settlement account in accordance with the transfer instruction issued by the BMI. The funds will then be transferred from the SMI's settlement account to the SMI's PAPT Dedicated Account.
- (b) A CHATS Advice provides sufficient information for easy tracing, including a "Payment Detail" code in the format of "PAPT + Redemption Reference", which is a unique and key identifier to enable the BMI, SMI and their respective solicitors to identify the payment. (A Bank Advice in the case where there is no existing

Seller's Mortgage will similarly provide a "Payment Detail" code¹⁴ to enable the BMI, the Seller's Account Maintainer and the solicitors to identify the payment.)

- (c) A sample CHATS Advice is appended as Appendix 1 of this Proposal for reference. All figures and identification details are for illustration purposes only.
- (d) The contemplated procedure concerning a CHATS Advice is as follows, as would also be discussed in the workflows for the different scenarios below:
 - ❖ On or before Dday-7, if there is an existing Seller's Mortgage, the SMI will issue a Redemption Quotation Letter to the SMI's Solicitor; if there is no existing Seller's Mortgage, the Seller's Account Maintainer will issue a Payment Confirmation Letter to the Seller's Solicitor.
 - ❖ On or before Dday-6, the BMI's Solicitor will receive the Redemption Reference and Redemption Amount (if there is an existing Seller's Mortgage) from the SMI's Solicitor, for the purpose of preparing the "Payment Detail" code which will appear on the CHATS Advice.
 - ❖ On Dday before 12 noon, the BMI will circulate the CHATS Advice to the BMI's Solicitor. The Advice would be automatically sent to the BMI after funds have been successfully credited to the SMI's settlement account in accordance with the transfer instruction issued by the BMI.¹⁵
 - ❖ After the BMI's Solicitor (or, if the BMI engages a separate law firm, the Buyer's Solicitor) receives the CHATS Advice, they would pass the same and also other legal documents to the SMI's Solicitor by Transaction Closing Time. If the SMI engages a different law firm, the BMI's Solicitor (or, if the BMI engages a separate law firm, the Buyer's Solicitor) shall pass these deliverables by such time as agreed with the Seller's Solicitor to enable the Seller's Solicitors to deliver relevant deliverables to the SMI's Solicitor by Transaction Closing Time. Upon the passing of the CHATS Advice and other deliverables from the BMI's Solicitor/the Buyer's Solicitor (as the case may be) to the SMI's Solicitor/the Seller's Solicitor (as the case may be), the Buyer's payment obligation of the purchase price is fulfilled, unless the contrary is proved.

The SMI's Solicitor then proceeds to send the CHATS Advice received to the SMI by Dday Cut-off Time together with other business as usual legal documents and followed by their originals.

¹⁴ The format of "Payment Detail" in the case of a Bank Advice is the same as in a CHATS Advice.

¹⁵ One important feature proposed for PAPT for S&P is that the SMI would not be able to print out the CHATS Advice, as it is an evidence that the BMI has fulfilled its end of the transaction. It has been agreed with HKICL that generation of the CHATS Advice will be restricted and will only be available to the BMI.

The Seller's Solicitor should have in its possession the transaction documents (e.g. the assignment deed) duly executed (and held in escrow pending completion) by the Seller (and, if applicable, CO(s) making up the full Redemption Amount) before it proceeds to pass on the CHATS Advice to the SMI (or the SMI's Solicitor if the SMI engages a separate law firm), thereby notifying the SMI (or the SMI's Solicitor) that completion of the sale and purchase transaction has taken place.

- ❖ Upon receiving the CHATS Advice and other legal documents from its solicitor by Dday Cut-off Time, the SMI will proceed with loan redemption using the funds transferred to its PAPT Dedicated Account and hold the Surplus. Any surplus funds remaining after loan redemption will be credited to the Seller's account by End of Dday (but the actual date of the Seller receiving cleared funds will be subject always to the completion of the Relevant Checks.)

6.3 In respect of Conveyancing Scenario 2, the workflow will be set out in further details below. As there is no existing Seller's Mortgage, the main feature is that the Seller may designate a HKD Seller's Account with a Bank which provides mortgage services for the purpose of receiving the funds and is a participating institution of CHATS (the "**Seller's Account Maintainer**").

- (a) The rationale behind this requirement is that a Bank which provides mortgage services has a PAPT Dedicated Account and therefore has a sub-BIC code for mortgage services.
- (b) Where the Seller's Account Maintainer is not the same institution as the BMI, the Remittance Amount will be transferred from the BMI to the Seller's Account Maintainer via CHATS. The Seller should provide information of the conveyancing transaction to its designated Seller's Account Maintainer in order to facilitate CHATS payment to and receipt by the Seller's Account Maintainer.
- (c) Where the Seller's Account Maintainer is the same institution as the BMI, the Remittance Amount will be effected via internal fund transfer from the BMI to the separate account, to be held by the BMI as the Seller's Account Maintainer.
- (d) The Seller's Account Maintainer should nonetheless hold the Remittance Amount received from the BMI in its PAPT Dedicated Account. Upon notification by the Seller's Solicitor of the successful completion of the sale and purchase transaction by Dday Cut-off Time, the Seller's Account Maintainer will credit the Remittance Amount to the Seller's Account by End of Dday (but the actual date of the Seller receiving cleared funds will be subject always to the Relevant Checks). Similar to the operation as described in paragraph 6.2(d) above, the Seller's Solicitor should have in its possession the transaction documents (e.g. the assignment deed) duly executed (and held in escrow pending completion) by the Seller before it proceeds to pass on the CHATS Advice to the Seller's Account Maintainer, thereby notifying the Seller's Account Maintainer that completion of the sale and purchase

transaction has taken place. This is to prevent the situation where the Seller receives the Remittance Amount without fully executing the legal documents relating to the sale and purchase transaction.

7. CONVEYANCING SCENARIO 1A

- 7.1 This is the scenario where the Buyer takes out a mortgage with a Mortgage Institution and the Seller has an existing mortgage with a different Mortgage Institution.

Preliminary process

- 7.2 The decision as to whether the PAPT applies to a particular property sale and purchase transaction is to be made by the BMI, subject to written agreements of the Buyer and the Seller to implement the PAPT.
- 7.3 When the Buyer (and if applicable, the BMI Borrower) applies for the mortgage loan, the BMI will further assess and confirm whether the PAPT is applicable to the property sale and purchase transaction. The BMI will (*through the BMI's Solicitor, if the BMI engages a separate law firm*) provide its assessment result to Buyer's Solicitor, who will communicate such assessment result to the Seller's Solicitor.
- (a) If the BMI's assessment result is that the PAPT will not apply, such assessment result will be conclusive and the PAPT will not apply to the property sale and purchase transaction.¹⁶
 - (b) If the BMI's assessment result is that the PAPT may apply, the Seller's Solicitor will (after consultation with the SMI and the Seller and the SMI Borrower, if necessary to ascertain whether there exists any Exclusion which precludes the application of the PAPT) notify Buyer's Solicitor of the result of the SMI's assessment. The SMI will assess whether PAPT is applicable to the sale and purchase transaction and give its consent by its provision of the items in paragraph 7.4 to hold the Surplus in a separate account.
- 7.4 The SMI will confirm/provide the applicable form of the Appointee Bank-Seller Contract to the Seller, which the Seller will sign and deliver to the SMI. The SMI's Solicitor will seek to obtain from the SMI (i) a quotation of the Redemption Amount and (ii) the CHATS information of the SMI including the Redemption Reference as available then. The SMI's Solicitor will in turn provide to the BMI's Solicitor a written confirmation of the aforementioned information.
- 7.5 The BMI will arrange with the Buyer (and/or the BMI Borrower as the case may be) for the signing of the facility letter and other relevant bank documents, either at the BMI branch or through the BMI's Solicitor and/or the Buyer's Solicitor (as the case may be). The BMI

¹⁶ There may be cases where the parties elected to use the PAPT and signed a PAPT-applicable PSPA, but the BMI later is of the view that the PAPT is not applicable.

will confirm/provide the applicable form of the BMI-Buyer Contract to the Buyer, which the Buyer will sign and return to the BMI together with other bank documents.

By 10 days before Drawdown (Dday-10)

- 7.6 The Seller's Solicitor will ask the SMI for an update of the Redemption Amount and Redemption Reference.

By 7 days before Drawdown (Dday-7)

- 7.7 The SMI will issue a Redemption Quotation Letter to the SMI's Solicitor. If the Seller has engaged a separate law firm from the SMI, the SMI's Solicitor will forward the Redemption Quotation Letter to the Seller's Solicitor.
- 7.8 If the Redemption Amount so notified under paragraph 7.7 above is subsequently varied, see the workflow on Dday-2 in paragraph 7.17 below.

By 6 days before Drawdown (Dday-6)

- 7.9 The SMI's Solicitor will notify the BMI's Solicitor in a written letter of the updated Redemption Amount and the Redemption Reference, together with a copy of the Redemption Quotation Letter.
- 7.10 If the name of the Seller (or the SMI Borrower, if applicable) is different from the name(s) shown on the Seller's Mortgage document(s) as registered at the Land Registry, the Seller's Solicitor will also provide satisfactory documentary evidence to evidence the change of name (e.g. deed poll or certificate of change of name) to the SMI and Buyer's Solicitor.

By 5 days before Drawdown (Dday-5)

- 7.11 The Buyer's Solicitor will enable the BMI's Solicitor to send a book loan letter to the BMI which includes:
- (a) the facility letter signed by the Buyer (if not already provided at an earlier stage);
 - (b) drawdown details (drawdown date, loan amount, etc.);
 - (c) the Remittance Amount;
 - (d) the Buyer's name and the BMI Borrower's name;
 - (e) the Seller's name and the SMI Borrower's name, together with relevant documentary evidence provided by Seller's Solicitor to evidence the change of name (if any);
 - (f) the SMI's name;
 - (g) the Redemption Reference;

- (h) title confirmation by BMI's Solicitor together with the updated land searches;
- (i) the BMI-Buyer Contract signed by the Buyer (if not already provided at an earlier stage); and
- (j) other documents or information as may be required by the BMI under the relevant facility letter and instructions letter to BMI's Solicitor, such as confirmation that the Buyer's Mortgage has been executed in escrow.

It is noted that, even if the Buyer's Solicitor is the same person as the BMI's Solicitor, the book loan letter and title confirmation should be clearly stated to be issued by the BMI's solicitor, not the Buyer's Solicitor.

- 7.12 The Buyer's Solicitor and the BMI's Solicitor (*if BMI engages a separate law firm*) should ensure the names of the Seller, the SMI Borrower and SMI as shown on the book loan letter match the names shown on the Seller's Mortgage document(s) as registered at the Land Registry or the documentary evidence provided by Seller's Solicitor to evidence the change of name of the Seller or the SMI Borrower.
- 7.13 The BMI will validate the details of the instruction in the book loan letter and relevant documents, including checking the names of the Seller, the SMI Borrower and the SMI as shown on the physical book loan letter against the land search (optional) and all related documents for the purposes of drawdown preparation.
- 7.14 The BMI starts drawdown preparation.
- 7.15 If the Remittance Amount is insufficient to cover the Balance, the Buyer's Solicitor will advise the Buyer such shortfall (the "**Buyer's Top-Up Portion**") and advise the Buyer of the need to prepare CO(s) in respect of such shortfall¹⁷. The Buyer (and the Buyer's Solicitor) should note that there may be subsequent variation to the amount of Redemption Amount (see paragraphs 7.17 to 7.20 below) and should aim to prepare the CO(s) as close to Dday as possible.
- 7.16 The Buyer's Solicitor will inform Seller's Solicitor of the Remittance Amount¹⁸ and the Buyer's Top-Up Portion.

2 days before Drawdown (Dday-2)

- 7.17 If the SMI discovers that the Redemption Amount has increased since it last notified Seller's Solicitor of the same, the SMI will inform Seller's Solicitor of such change [before 10 am] on Dday-2.

¹⁷ It may be the case that the Remittance Amount may not be sufficient to discharge the existing mortgage. If this is the case, the Buyer may have to split payment of the Buyer's Top-Up Portion and pay the SMI and Seller respectively.

¹⁸ This is for purposes of enabling the Seller's Solicitor to give instructions to SMI for distributing the Surplus into the Seller's Account, as well as giving split payment instructions to the Buyer's Solicitor in respect of that part of the Balance to be paid with the Buyer's own funds.

- 7.18 The Seller's Solicitor will send to Buyer's Solicitor a Split Payment Letter [by 2:00 pm] on Dday-2 setting out:
- (a) the latest Redemption Amount; and
 - (b) the split payments instruction in respect of the Buyer's Top-Up Portion, such as (i) the amount to be paid to the Seller, (ii) if the Remittance Amount is less than the Redemption Amount, the amount to be paid to the SMI and (iii) the amount of Fees and Expenses (if applicable) to be paid via the Seller's Solicitor¹⁹.
- 7.19 If Redemption Amount is increased or any other payment arrangement is changed, the Buyer's Solicitor will send or enable the BMI's Solicitor (*if BMI engages a separate law firm*) to send such updated information to the BMI by 5:00 pm on Dday-2. The BMI will acknowledge the receipt of such information.
- 7.20 Where the Remittance Amount is less than the Redemption Amount, the Buyer's Solicitors will also advise the Buyer to prepare CO(s) in respect of the Buyer's Top-Up Portion in accordance with the Split Payment Letter. The Buyer will prepare the following Buyer's CO(s) payable to the Seller and the SMI and make the same available to Buyer's Solicitor by Dday-1:
- (a) one Buyer's CO payable to the SMI in the amount equal to the amount by which the Redemption Amount exceeds the Remittance Amount;²⁰ and
 - (b) Buyer's CO(s) payable to the Seller(s) according to the split payment instructions in the Split Payment Letter sent by Seller's Solicitor.
- 7.21 The Seller's Solicitor will send to the SMI by encrypted email (or other channels as agreed by the SMI) the following information:
- (a) the payment instructions for distributing the Surplus to the Seller's Account including (i) the amount to be distributed to (or for the benefit of) the Seller and (ii) the Account Details of the Seller's Account²¹, **provided that** there should be no more than one Seller's Account for the Seller; and
 - (b) (in the case of joint Sellers, if the bank account designated by the Sellers is under the name of one of the Sellers only) the authorisation instructions (which may be original or copy depending on individual bank's protocol) to the SMI from the

¹⁹ Fees and Expenses will be paid by the Buyer directly to the relevant parties and hence will not form part of the Buyer's Top-Up Portion.

²⁰ If the Redemption Amount is varied last minute but that the Buyer has already procured the Buyer's CO payable to the SMI prior to such variation, and such CO is no longer sufficient to cover the balance of the Redemption Amount / exceeds the balance of the Redemption Amount, the shortfall / surplus in the Redemption Amount will be settled between the SMI and the SMI Borrower without the Buyer having to procure new CO(s) prior to completion.

²¹ The Seller may choose to designate his repayment account with the SMI or his personal bank account for receiving the Surplus.

Seller(s) who are not holders of the account and witnessed/attested by the solicitors of such Seller(s).

1 day before Drawdown (Dday-1)

- 7.22 Where applicable, the BMI's Solicitor will collect from the Buyer (or from the Buyer's Solicitor where applicable) the Buyer's CO(s) as described in paragraph 7.20 above.
- 7.23 Where the Balance from the BMI and/or the Buyer is insufficient to discharge the Seller's Mortgage, the SMI's Solicitor will collect from the Seller (through the Seller's Solicitor, where appropriate) a CO for the outstanding loan balance for redemption of the Seller's Mortgage.
- 7.24 The BMI will start preparing inputs for effecting CHATS payment on Dday.

Drawdown (Dday)

- 7.25 The BMI's Solicitor will perform business as usual buyer process and promptly inform the BMI of any adverse entries / encumbrances or restrictions which may affect the BMI's interest as first mortgagee under the Buyer's Mortgage as soon as practicable.
- 7.26 The BMI will effect payment via CHATS before 12 noon. After effecting payment, the BMI will send drawdown confirmation to the Buyer and the Buyer's Solicitor via the usual mode of communication (e.g. SMS/e-mail/letter).
- 7.27 As soon as practicable upon receipt of the CHATS Advice on Dday, the BMI will circulate it to the BMI's Solicitor.
- 7.28 The BMI's Solicitor (or, if the BMI engages a separate law firm, the Buyer's Solicitor) will then deliver to the Seller's Solicitor by Transaction Closing Time (i) the CHATS Advice, (ii) the Buyer's CO(s) and solicitors' cheque(s) (if any), (iii) a written confirmation of the Buyer's Solicitor for reference by the SMI that the BMI-Buyer Contract incorporating the mandatory clauses of the T&C has been duly signed by the Buyer and sent to the BMI and that a copy of the BMI-Buyer Contract (which may be redacted as appropriate) showing that the mandatory terms of the T&C have been incorporated will be available to the SMI upon request and (iv) relevant legal documents (the "**Completion Deck**") whereby completion of the property sale and purchase transaction will take place by solicitors' undertakings, which include (among others) the Seller's Solicitor's undertaking that it will provide a copy of the Appointee Bank-Seller Contract (or an extract thereof) to the Buyer's Solicitor upon its demand. Provided that it has in its possession the transaction documents (e.g. the assignment deed) duly executed (and held in escrow pending completion) by the Seller, the Seller's Solicitor will in turn confirm to the SMI that completion of the property sale and purchase transaction has taken place and deliver the relevant deliverables of the Completion Deck (where applicable) to the SMI by Dday Cut-off Time. If the SMI engages a separate law firm, the BMI's Solicitor (or, if the BMI engages a separate law firm, the Buyer's Solicitor) shall deliver the Completion Deck to the Seller's Solicitor by such time as agreed with the Seller's Solicitor to enable the Seller's Solicitors to then (provided that the Seller's Solicitor has in its possession the transaction documents duly executed (and

held in escrow pending completion) by the Seller) deliver the relevant deliverables of the Completion Deck to the SMI's Solicitor by Transaction Closing Time for onward transmission to the SMI by Dday Cut-off Time.

- 7.29 Upon receiving the CHATS Advice by Dday Cut-off Time, the SMI will (i) proceed to loan redemption of the Seller's Mortgage and (ii) where applicable, arrange for payment of the Surplus (if any) to the Seller by crediting the Seller's Account (*if the Seller's Account is held with SMI*) or by transfer to the Seller's Bank (*if the Seller's Account is not held with SMI*) by End of Dday (but the actual date of the Seller receiving cleared funds will be subject always to the Relevant Checks). The SMI will also send redemption confirmation to the Seller via the usual mode of communication (e.g. SMS/e-mail/letter).

8. CONVEYANCING SCENARIO 1B

- 8.1 This is the scenario where the Buyer takes out a mortgage with a Mortgage Institution and the Seller has an existing mortgage with the same Mortgage Institution.

- 8.2 The steps in Conveyancing Scenario 1A apply *mutatis mutandis* to Conveyancing Scenario 1B, except for the following.

- (a) Paragraph 7.4 will be replaced by the following under Conveyancing Scenario 1B:

"The SMI will confirm/provide the applicable form of the Appointee Bank-Seller Contract to the Seller, which the Seller will sign and deliver to the SMI. The SMI's Solicitor will seek to obtain from the SMI (i) a quotation of the Redemption Amount and (ii) the account details of the SMI. The SMI's Solicitor will in turn provide to the BMI's Solicitor a written confirmation of the aforementioned information".

- (b) Paragraph 7.7 will be replaced by the following under Conveyancing Scenario 1B:

"The SMI will notify Seller's Solicitor in an original letter of the updated Redemption Amount and the account details of the SMI for internal transfer of fund".

- (c) Paragraph 7.24 will be replaced by the following under Conveyancing Scenario 1B:

"The BMI will start preparing inputs for effecting loan drawdown via internal fund transfer".

- (d) References to "CHATS" in paragraph 7 will be replaced by "internal fund transfer".

- (e) References to "CHATS Advice" in paragraph 7 will be replaced by "Bank Advice".

- (f) References to "BMI" and "SMI" will be retained, despite the fact that the BMI and SMI will refer to the same Bank but under different capacities.

9. CONVEYANCING SCENARIO 2

- 9.1 This is the scenario where the Buyer takes out a mortgage with a Mortgage Institution and the Seller has no existing mortgage.

Preliminary process

- 9.2 The decision as to whether the PAPT applies to a particular property sale and purchase transaction needs to be firstly mutually agreed by the Buyer and the Seller, then to be further assessed by the BMI.
- 9.3 When the Buyer (and if applicable, the BMI Borrower) applies for the mortgage loan, the BMI will further assess and confirm whether the PAPT is applicable to the property sale and purchase transaction. The BMI will (*through the BMI's Solicitor, if the BMI engages a separate law firm*) provide its assessment result to Buyer's Solicitor, who will communicate such assessment result to the Seller's Solicitor.
- (a) If the BMI's assessment result is that the PAPT will not apply, such assessment result will be conclusive and the PAPT will not apply to the property sale and purchase transaction.
 - (b) If the BMI's assessment result is that the PAPT may apply, the Seller's Solicitor will (after consultation with the Seller and the Seller's Account Maintainer, if necessary to ascertain whether there exists any Exclusion which precludes the application of the PAPT) notify Buyer's Solicitor of the result of the assessment of the Seller's Account Maintainer. The Seller's Account Maintainer will assess whether PAPT is applicable to the sale and purchase transaction and give its consent to hold the Remittance Amount in a separate account by its provision of the CHATS information to the Seller's Solicitor.
- 9.4 The BMI will arrange with the Buyer (and/or the BMI Borrower as the case may be) for the signing of the facility letter and other relevant bank documents, either at the BMI branch or through the BMI's Solicitor and/or the Buyer's Solicitor (as the case may be). The BMI will confirm/provide the applicable form of the BMI-Buyer Contract to the Buyer, which the Buyer will sign and return to the BMI together with other bank documents.
- 9.5 The Seller's Account Maintainer will confirm/provide the applicable form of the Appointee Bank-Seller Contract to the Seller, which the Seller will sign and deliver to the Seller's Account Maintainer.

By 7 days before Drawdown (Dday-7)

- 9.6 On or before Dday-7, the Seller's Account Maintainer will issue a Payment Confirmation Letter to the Seller's Solicitor.

By 6 days before Drawdown (Dday-6)

- 9.7 The Seller's Solicitor will then notify the Buyer's Solicitor in a written letter of the CHATS information of the Seller's Account Maintainer, together with a copy of the Payment Confirmation Letter.

By 5 days before Drawdown (Dday-5)

- 9.8 The Buyer's Solicitor will enable the BMI's Solicitor to send a book loan letter to the BMI which includes:
- (a) the facility letter signed by the Buyer (if not already provided at an earlier stage);
 - (b) drawdown details (drawdown date, loan amount, etc.);
 - (c) the Remittance Amount;
 - (d) the Buyer's name and the BMI Borrower's name;
 - (e) the Seller's name, together with relevant documentary evidence provided by Seller's Solicitor to evidence the change of name (if any);
 - (f) the name of the Seller's Account Maintainer;
 - (g) CHATS information of the Seller's Account Maintainer or (in the event that the Seller's Account Maintainer and the BMI are the same) account details of the Seller's Account Maintainer for internal transfer of funds;
 - (h) title confirmation by BMI's Solicitor together with the updated land searches;
 - (i) the BMI-Buyer Contract signed by the Buyer (if not already provided at an earlier stage); and
 - (j) other documents or information as may be required by the BMI under the relevant facility letter and instructions letter to BMI's Solicitor, such as confirmation that the Buyer's Mortgage has been executed in escrow.

It is noted that, even if the Buyer's Solicitor is the same person as the BMI's Solicitor, the book loan letter and title confirmation should be clearly stated to be issued by the BMI's solicitor, not the Buyer's Solicitor.

- 9.9 Buyer's Solicitor and BMI's Solicitor (*if BMI engages a separate law firm*) should ensure the name of the Seller as shown on the book loan letter matches the name shown on the documents as registered at the Land Registry or the documentary evidence provided by Seller's Solicitor to evidence the change of name of the Seller.
- 9.10 The BMI will validate the details of the instruction in the book loan letter and relevant documents, including checking the name of the Seller as shown on the physical book loan letter against the land search (optional) and all related documents for the purposes of drawdown preparation.
- 9.11 The BMI starts drawdown preparation.
- 9.12 The Buyer's Solicitor will advise the Buyer of the Buyer's Top-Up Portion (if any) and the Buyer will prepare the fund with a CO.

By 2 days before Drawdown (Dday-2)

- 9.13 The Seller's Solicitor will send to Buyer's Solicitor a Split Payment Letter [by 2:00 pm] on Dday-2 setting out:
- (a) the split payments instruction in respect of (i) the Buyer's Top-Up Portion for paying to the Seller the Balance after deduction of the Remittance Amount and (ii) the amount of Fees and Expenses (if applicable) to be paid via the Seller's Solicitor; and
 - (b) any change to the payment arrangements as last notified to the Buyer's Solicitor.
- 9.14 If any payment arrangement is changed, the Buyer's Solicitor will send or enable the BMI's Solicitor (*if BMI engages a separate law firm*) to send such updated information to the BMI by 5:00 pm on Dday-2.
- 9.15 Where applicable, the Buyer's Solicitors will also advise the Buyer to prepare Buyer's CO(s) in respect of the Buyer's Top-Up Portion in accordance with the Split Payment Letter and to make the same available to Buyer's Solicitor by Dday-1.

1 day before Drawdown (Dday-1)

- 9.16 Where applicable, the BMI's Solicitor will collect from the Buyer (or from the Buyer's Solicitor where applicable) the Buyer's CO(s) as described in paragraph 9.15 above.
- 9.17 The BMI will start preparing inputs for (i) effecting CHATS payment on Dday (*in the event that the Seller's Account Maintainer and BMI are not the same bank*), or (ii) effecting loan drawdown via internal fund transfer on Dday (*in the event that the Seller's Account Maintainer and BMI are the same bank*).

Drawdown (Dday)

- 9.18 The BMI's Solicitor will perform business as usual buyer process and promptly inform the BMI of any adverse entries/ encumbrances or restrictions which may affect the BMI's interest as first mortgagee under the Buyer's Mortgage as soon as practicable.
- 9.19 The BMI will effect payment before 12 noon via (i) CHATS (*in the event that the Seller's Account Maintainer and BMI are not the same bank*) or (ii) internal fund transfer (*in the event that the Seller's Account Maintainer and BMI are the same bank*). After effecting payment, the BMI will send drawdown confirmation to the Buyer via the usual mode of communication (e.g. SMS/e-mail/letter).
- 9.20 As soon as practicable upon receipt of the CHATS Advice or the Bank Advice (as the case may be) on Dday, the BMI will circulate it to the BMI's Solicitor.
- 9.21 The BMI's Solicitor (or, if the BMI engages a separate law firm, the Buyer's Solicitor) will then deliver to the Seller's Solicitor by Transaction Closing Time (i) the CHATS Advice or the Bank Advice (as the case may be), (ii) the Buyer's CO(s) or solicitors' cheque(s) (if

any), (iii) a written confirmation of the Buyer's Solicitor for reference by the Seller's Account Maintainer that the BMI-Buyer Contract incorporating the mandatory clauses of the T&C has been duly signed by the Buyer and sent to the BMI and that a copy of the BMI-Buyer Contract (which may be redacted as appropriate) showing that the mandatory terms of the T&C have been incorporated will be available to the Seller's Account Maintainer upon request and (iv) relevant legal documents whereby completion of the property sale and purchase transaction will take place by solicitors' undertakings, which include (among others) the Seller's Solicitor's undertaking that it will provide a copy of the Appointee Bank-Seller Contract (or an extract thereof) to the Buyer's Solicitor upon its demand. Provided that it has in its possession the transaction documents (e.g. the assignment deed) duly executed (and held in escrow pending completion) by the Seller, the Seller's Solicitor will in turn confirm to the Seller's Account Maintainer that completion of the property sale and purchase transaction has taken place and provide the Seller's Account Maintainer with the CHATS Advice or the Bank Advice (as the case may be).

- 9.22 Upon receiving the CHATS Advice or the Bank Advice (as the case may be) by Dday Cut-off Time, the Seller's Account Maintainer will credit the Remittance Amount to the account of the Seller by End of Dday (but the actual date of the Seller receiving cleared funds will be subject always to the Relevant Checks). The Seller's Account Maintainer will also send remittance confirmation to the Seller via the usual mode of communication (e.g. SMS/e-mail/letter).

10. SPECIAL HANDLING ON DDAY

- 10.1 This section relates to special situations that may arise in relation to the CHATS system on Dday and is applicable to Conveyancing Scenario 1A and Conveyancing Scenario 2 where CHATS payment is involved.

Transaction fallen through or no CHATS Advice received by Dday Cut-off Time

- 10.2 If the conveyancing transaction had fallen through after CHATS payment settlement, the SMI's Solicitor or the Seller's Solicitor should notify the SMI or the Seller's Account Maintainer (whichever applicable) in writing that the property sale and purchase transaction has not taken place as soon as possible, but in any case no later than Dday Cut-off Time, via email, mail or fax, in order to arrange for the return of funds. After receiving such notification from the SMI's Solicitor or the Seller's Solicitor, the SMI or the Seller's Account Maintainer should arrange for refund to the BMI via CHATS or internal fund transfer by End of Dday pursuant to the inter-bank protocol. For the avoidance of doubt, even if no such notification is received from the SMI's Solicitor or the Seller's Solicitor, if the SMI or the Seller's Account Maintainer does not receive the CHATS Advice or the Bank Advice by Dday Cut-off Time, it should also arrange for refund to the BMI by End of Dday.

Missing CHATS Advice

- 10.3 If the BMI does not receive the CHATS Advice after initiating payment to the SMI (or the Seller's Account Maintainer, whichever applicable), the BMI should promptly contact the

HKICL to check for any technical problems. If the CHATS settlement is in fact successful, the system can re-issue a CHATS Advice to the BMI to evidence payment, such that no refund is required under the inter-bank protocol and re-initiating a new CHATS payment is not necessary.

- 10.4 In the event that the CHATS Advice cannot be issued to the BMI in the manner described in paragraph 10.3 above, the BMI will promptly request the SMI or the Seller's Account Maintainer to confirm whether it has in fact received the relevant funds in its settlement account for receiving CHATS payment. Upon receipt of the BMI's request, if the SMI or the Seller's Account Maintainer is able to identify such funds, the SMI or the Seller's Account Maintainer will promptly issue a certificate to the BMI confirming receipt of such funds.²² In such circumstances, CHATS Advice will be replaced by such certificate for completion of the sale and purchase transaction. If the SMI or the Seller's Account Maintainer is unable to identify such funds, the SMI or the Seller's Account Maintainer will promptly issue a written notification to the BMI confirming the same.
- 10.5 As a general note, as all payments submitted to CHATS will go through a validation process, payment instructions with input errors will be automatically rejected.

Incorrect payment detail in CHATS Advice

- 10.6 The BMI should check that all details contained in the CHATS Advice are correct upon receipt. If it discovers any errors in relation to any information in the CHATS Advice other than the Key Information,²³ the BMI should contact the BMI's Solicitor immediately, who will directly liaise with the SMI (or the Seller's Account Maintainer, whichever applicable) on the correct information required. To the extent that the Redemption Reference is incorrect, the BMI will then issue a "**CHATS Advice Correction Notice**" to the SMI or the Seller's Account Maintainer with a copy provided to the BMI's Solicitor and SMI's Solicitor (or the Seller's Solicitor, whichever applicable) (a sample of which is appended to this Proposal at Appendix 2), stating the correct information.

Wrong amount of payment effected

- 10.7 If the BMI wrongly effects a payment to the SMI (or the Seller's Account Maintainer) via CHATS for a wrong amount different from the Remittance Amount, upon discovering the issue, the BMI shall promptly notify the SMI (or the Seller's Account Maintainer).
- 10.8 If the wrong amount is smaller than Remittance Amount, resulting in a shortfall, the BMI shall effect a further payment in the amount of the shortfall to the SMI (or the Seller's

²² The obligations of BMI, SMI and Seller's Account Maintainer under this paragraph 10.4 will be reflected in the inter-bank protocol.

²³ The paragraph only deals with incorrect details in respect of information in the CHATS Advice other than the Key Information since any incorrect input of Key Information would result in (i) a failure to effect the CHATS payment (and so, no CHATS Advice will be issued), (ii) wrong recipient of the Remittance Amount, or (iii) wrong amount of Remittance Amount being paid via CHATS. For scenarios (i) and (ii), the BMI shall re-effect payment of the Remittance Amount via CHATS, instead of using a CHATS Advice Correction Notice as described in paragraph 10.6. Further, for scenario (ii), the inter-bank protocol contains provisions on the obligations of the unintended recipient bank. For scenario (iii), please refer to paragraphs 10.7 to 10.9 below.

Account Maintainer) via CHATS. The BMI shall circulate both the CHATS Advices in respect of the wrong amount and the shortfall to the BMI's solicitors. The CHATS Advice in respect of the wrong amount and the CHATS Advice in respect of the shortfall shall, collectively, function as the CHATS Advice for the Remittance Amount for the purpose of the BMI and SMI (or the Seller's Account Maintainer) shall proceed as usual in accordance with this Proposal.

- 10.9 If the wrong amount is larger than the Remittance Amount, resulting in an excess, the CHATS Advice in respect of the wrong amount shall function as the CHATS Advice for the Remittance Amount for the purpose of the arrangement under this Proposal. The BMI and SMI (or the Seller's Account Maintainer) shall proceed as usual in accordance with this Proposal and the SMI (or the Seller's Account Maintainer) shall effect a payment in the amount of the excess to the PAPT Dedicated Account of the BMI via CHATS by End of Dday (or such other time as agreed between the SMI (or the Seller's Account Maintainer) and the BMI).

Failure of CHATS system

- 10.10 If there is a system failure of CHATS which prevents the BMI from making remittance or transfer to the SMI or the Seller's Account Maintainer via CHATS (a "**CHATS Failure**") between 9:00 am and [11:00 am] on Dday, completion shall automatically be postponed to the next business day on which no CHATS Failure has occurred between 9:00 am and [11:00 am]
- 10.11 On such next business day to which the completion has been postponed, the Buyer and the Seller shall continue to use PAPT for S&P as the method of settlement.

Others

- 10.12 For other exceptional circumstances not covered above, the parties should mutually agree on the applicable handling procedures.

11. COMPARISON WITH PAPT FOR REFINANCING

- 11.1 As mentioned in the "Introduction" section above, PAPT for Refinancing addresses PAPT for property refinancing transactions. While PAPT for Refinancing deals with financing scenarios and PAPT for S&P covers conveyancing scenarios, the two phases are largely similar in terms of their applicable scope. They both cover residential properties and car parking spaces in residential buildings, whether or not there is single or multiple Borrowers (in the case of PAPT for Refinancing) or Sellers/Buyers (in the case of PAPT for S&P), whether or not there is an existing mortgage and whether or not the mortgage(s) involved is two-party or three-party.
- 11.2 Similar to this proposal for PAPT for S&P, a few scenarios are covered and discussed in PAPT for Refinancing and they are compared against the conveyancing scenarios of PAPT for S&P as follows.

- (a) Under Refinancing Scenario A of PAPT for Refinancing, a Borrower seeks a refinancing loan from a Mortgage Institution (the "**Refinancing Mortgage Institution**" or "**RMI**") which is **different** from the Mortgage Institution which has granted the Borrower the existing mortgage (the "**Original Mortgage Institution**" or "**OMI**"), whether or not the Borrower under the existing mortgage is same as the borrower under the refinancing mortgage. This scenario is comparable to Conveyancing Scenario 1A of PAPT for S&P. Two different Mortgage Institutions are involved (the RMI and OMI in PAPT for Refinancing and the SMI and BMI in PAPT for S&P). The RMI Borrower's position corresponds to that of the Buyer as they are both obtaining a fresh amount of monies under a new mortgage, whereas the OMI Borrower's position corresponds to that of the Seller as they both have an existing mortgage to be discharged.
- (b) Under Refinancing Scenario B of PAPT for Refinancing, the refinancing loan is provided by the OMI (in other words, the OMI and the RMI are the same Mortgage Institution) but a new Borrower replaces the existing Borrower under the refinancing loan. This is analogous to Conveyancing Scenario 1B of PAPT for S&P, where there is also only one Mortgage Institution (as the SMI and BMI are the same) but two different Borrowers (being the Seller and the Buyer).
- (c) There are two different situations under Refinancing Scenario C of PAPT for Refinancing. The first one is where the refinancing loan is provided by the OMI (which is also the RMI) to the same Borrower but the existing mortgage deed needs to be discharged and a new mortgage deed needs to be executed. There is no apparent comparable scenario in PAPT for S&P. The second situation of Refinancing Scenario C of PAPT for Refinancing is where a loan is provided by a Mortgage Institution to a Borrower, which is secured by a mortgage-free property. This is arguably comparable to Scenario 2 of PAPT for S&P which also deals with a property with no existing mortgage. A difference however is that there are two parties, the Seller and the Buyer, for Scenario 2 of PAPT for S&P whereas there is only one Borrower for Refinancing Scenario C of PAPT for Refinancing.

11.3 The biggest difference of the mechanisms of PAPT for Refinancing and PAPT for S&P is the usage of a "**Refinancing Mortgage Institution Confirmation**" or "**RMIC**" in PAPT for Refinancing as contrasted with the usage of a CHATS Advice in PAPT for S&P.

- (a) A "**Refinancing Mortgage Institution Confirmation**" or "**RMIC**" is a document issued by the RMI confirming that the Redemption Amount (or such part thereof) will be transferred by the RMI via CHATS according to the payment details set out therein on Dday.
- (b) Under PAPT for Refinancing, where there are two Mortgage Institutions involved (i.e. Refinancing Scenario A), a RMIC will be used on Dday and its passage is briefly summarised as follows: -
 - (i) The RMI issues the RMIC and sends it by encrypted email to its solicitors before 12 noon.

- (ii) The RMI's solicitors will then verify the information stated in the RMIC. If in order, the RMI's solicitors will send the RMIC to the OMI's solicitors by 5:00 pm.
- (iii) Upon the delivery of the RMIC by the RMI's solicitors to the OMI's solicitors, it is irrevocable and the Remittance Amount payable from the RMI to the OMI will be transferred by the RMI to the OMI save for exceptional circumstances.
- (c) Accordingly, the issuance of a RMIC is not an automated process but it needs to be actively generated by the RMI to kick-start the payment process and RMI will subsequently further effect payment after the RMIC is verified by the solicitors of OMI and RMI respectively, provided other conditions to completion of refinancing are satisfied.
- (d) By contrast, under PAPT for S&P, a CHATS Advice is generated and issued automatically in the name of HKICL as a third-party evidence that CHATS payment has been completed after the BMI effects payment on Dday.

12. **DISCLAIMER**

- 12.1 This Proposal does not constitute legal advice and shall not be used, relied on or referred to in any manner by any party for such purpose. It is recommended that independent legal advice be obtained for the purpose of participation in a property sale and purchase transaction adopting PAPT for S&P.
- 12.2 The Hong Kong Association of Banks does not assume any duty or liability to any person to whom this Proposal has been disclosed or otherwise provided.

Appendix 1 – Template CHATS Advice

[The content of this draft payment advice is subject to further changes]

**CHATS ("CLEARING HOUSE AUTOMATED TRANSFER SYSTEM") ADVICE FOR
PAYMENT ARRANGEMENTS FOR PROPERTY TRANSACTIONS ("PAPT")**

To: [NAME OF SENDER BANK];

To: [NAME OF RECEIVER BANK]

This Advice is to confirm that the credit transfer payment pertaining to details as stipulated below has been settled through CHATS*:

SETTLEMENT DATE & TIME:	YYYY/MM/DD HH:MM:SS
HKICL REFERENCE NUMBER:	H01234567
INSTRUCTION IDENTIFIER:	99999999999999999999
SENDER BANK:	BANK OF CHINA (HONG KONG) LIMITED
SENDER SWIFT CODE:	BKCHHKHHAXXX
RECEIVER BANK:	THE HONG KONG AND SHANGHAI BANKING CORPORATION LIMITED
RECEIVER SWIFT CODE:	HSBCHKHHHKH
REMIT CURRENCY:	HKD
REMIT AMOUNT:	9,999,999.99
BENEFICIARY CUSTOMER:	HSBCHKHHMTG
PAYMENT DETAIL:	PAPTXXXXXXXXXX

Yours faithfully,
Hong Kong Interbank Clearing Limited

(This is a computer-generated letter and no signature is required)

IMPORTANT: This is an automated Advice message for the Sender's Bank and the Receiver's Bank's information only and should not be relied upon by any person as, or treated as a substitute for, specific advice from the Receiver's Bank. Hong Kong Interbank Clearing Limited accepts no responsibility for any loss which may arise from reliance on any of the information contained in this Advice by any person other than the Sender's Bank and the Receiver's Bank. No representation or warranty, express or implied, is given as to the accuracy, validity, timeliness or completeness of any such information. All proprietary rights in relation to the contents herein are hereby fully reserved. A copy of this Advice will be stored for [two] working days within the CHATS system by Hong Kong Interbank Clearing Limited, after which it will be removed from CHATS system.

* For any enquiry related to subject CHATS payment, please directly contact the respective bank(s).

Appendix 2 – Template CHATS Advice Correction Notice

[DRAFT]

[Bank Header] (i.e. BMI)

Our Ref : [Sender Bank Reference]

Your Ref: [Receiver Bank Reference (if known by sender)]

Date :

[Receiver Bank] (i.e. SMI)

Dear Sirs,

Re: HKICL Reference Number:

Property:

(Note: Borrower/Buyer/Seller name is not recommended as privacy issue)

We refer to the CHATS payment and the CHATS advice sending to or already received by you today under HKICL reference number stated as above. We hereby confirm that the Payment Detail of the said CHATS payment shall be as follows:

[Payment Detail]

We also confirm that all other information of the CHATS payment remains unchanged, and refund or re-issue of the payment is not needed.

If you have any queries, please do feel free to contact our Mr./Ms.[Contact Person] of [Department] at Tel No.: [Tel no.] or Fax No.: [Fax No.].

Yours faithfully,

For and on behalf of

[Sender Bank] (i.e. BMI)

Authorised Signature(s)

c.c. [BMI's Solicitor and Seller's Solicitor]

Appendix 3 – Template Bank Advice

[DRAFT]

**NOTIFICATION OF LOAN DRAWDOWN COMPLETION FOR PAYMENT
ARRANGEMENTS FOR PROPERTY TRANSACTIONS ("PAPT")**

DATE: YYYY/MM/DD

To: [NAME OF RECEIVER BANK]

This notice is to confirm that drawdown of the loan facility has been completed and the net loan proceeds amount have been transferred to the designated account for PAPT.

Please find the details of the payment below:

Property	XXXXXXXXXXXX
Payment Detail	PAPTXXXXXXXXXXXX
Transfer Amount	HKD[●]

[SENDER BANK]

THIS COMPUTER PRINTOUT DOES NOT REQUIRE A SIGNATURE