

**PAYMENT ARRANGEMENTS FOR PROPERTY TRANSACTIONS (“PAPT”) – SALE &  
PURCHASE SCENARIO (“PAPT for S&P”)**

**TABLE 1: RESPONSES TO THE COMMENTS ON HKAB’S PROPOSAL OF 15 DECEMBER 2023**

**Note:** The following are the preliminary comments by the Property Committee of the Law Society on the PAPT proposal it received from the HKAB on 15 December 2023. Unless otherwise specified, the paragraph numbering in the table below refers to the same paragraph in the PAPT Proposal enclosed with the above letter.

Para.	PAPT Proposal (as per the HKAB’s letter dated 15 December 2023)	Law Society’s questions/comments	Responses to the Law Society dated 9 July 2024
<b>1. INTRODUCTION</b>			
1.3	Under PAPT for S&P, the bulk/part of the purchase monies will be settled via HKD CHATS... 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).	<p>Irrespective of how slim the chance that CHATS may go wrong, if CHATS fails to effect payment at around or before 12 noon or SMI is unable to identify the funds notwithstanding that payment has been effected but CHATS Advice cannot be issued on the Dday (as stated in <i>clause 10 of the PAPT Proposal</i>), and no alternative can assist in the completion of the transaction, and the parties cannot mutually agree on any applicable handling procedures (in <i>clause 10.10 of the PAPT Proposal</i>), what will be the remedies to the parties if the Seller or the Buyer decides to call off the deal?</p> <p>Notably, HKICL is an established third party (<i>clause 1.4 of the PAPT Proposal</i>), which means HKICL would have <b>no</b> contractual relationship with either the Seller, the Seller’s</p>	<p>The chance of a system failure of the CHATS is, as observed by the Law Society, slim. Its implication is no less in scale than a territory-wide power outage. If such a “doomsday scenario” is to occur, not only PAPT transactions will be affected, but also most other types of banking and commercial transactions in Hong Kong.</p> <p>Nonetheless, to address the concerns raised, the draft Proposal as well as the template PSPA and FSPA clauses have been updated to include provisions on the postponement of completion by Dday+1 in the event of HKICL system error. In the event that the parties are unable to complete the transaction on Dday due to a system failure of the CHATS, completion shall be automatically postponed to Dday+1, on which day the parties shall complete the transaction using PAPT arrangement as planned, provided that where the CHATS continues to be in failure, completion shall automatically be postponed to the next day and this shall repeat until transaction is completed.</p> <p>HKAB will defer to the Law Society and individual law firms to form their own views in respect of the potential liabilities and remedies as the analysis is fact-sensitive.</p>

		<p>Bank, the SMI, the SMI's Solicitor, the Seller's Solicitor, the Buyer, the Buyer's Solicitor, the BMI, the BMI's Solicitor, etc.</p> <p>The matter is more complicated since the template CHATS Advice for PAPT has an IMPORTANT note which states that</p> <p><i>"... 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. 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. This Advice will be stored for [two] working days within the CHATS system after which it will be removed from online access."</i></p>	<p>In respect of the disclaimer language on the CHATS Advice, while the CHATS Advice serves as an important tool in the PAPT arrangement, it is not intended that any additional legal relationship or reliance on HKICL by the Seller and the Buyer will be created. Rather than "relying" on the CHATS Advice, customers should treat the CHATS Advice as a payment record rather than a payment instrument. We will amend the draft CHATS Advice to be addressed to the SMI and the BMI only instead of <i>"To Whom It May Concern"</i> to reinforce the point that it is not intended to be relied on by Sellers and Buyers.</p> <p>In respect of the second part of the disclaimer (<i>"This Advice will be stored for [two] working days within the CHATS system after which it will be removed from online access."</i>), the parties to the transaction should have their own copy of the CHATS Advice for their own record and reference.</p>
1.4	<p>...CHAT'S Advice, being payment evidence automatically issued by HKICL as an established third party, will bring confidence to potential PAPT users."</p>	<p>The above disclaimer seemingly takes away the rights of the Seller and the Buyer when they are to rely on the CHATS Advice. The Committee is not readily convinced that there are sufficient protections for the parties when they and their legal representatives are not at fault. The Committee asks if, e.g. the Consumer Council has been consulted on the proposal. It is important to clarify how the interests of the Seller and the Buyer can be protected.</p>	<p>See above.</p> <p>-</p>
2.1	<p><b>"Bank(s)"</b> means a company which holds a valid banking licence, as defined in the Banking Ordinance (Cap. 155).</p>	<p>How would one know whether a bank is participating in PAPT?</p>	<p>Based on our instructions and as provided in the draft proposal, all "Authorized Institutions" ("AIs"), i.e. a Bank, restricted licence bank or deposit-taking company as defined in the Banking Ordinance, which basically covers all local banks (but excluding RLB, DTC, money lender or other companies offering property mortgage lending), participate in PAPT. An official list of participating banks will be posted on HKAB website for public viewing in due course.</p>

2.1	<p><b>“Borrower”</b> means a natural person or a Property Holding Company, which is the borrower under the bank facilities.</p>	<p>Could any corporate entity not being a Property Holding Company be a borrower too? It seems so under clause 3.2(b) of the PAPT Proposal. Hence this definition should be elaborated to include such corporate entity as well.</p>	<p><u>We will amend the definition of the Borrower to simply be “<b>Borrower</b>” means the borrower under the bank facilities”.</u></p> <p><u>Where the Borrower is the same entity as the Buyer, by application of the definition of the Buyer, the Borrower (which is the Buyer) will need to be a natural person or a Property Holding Company. Where it is a three-party mortgage for a property sale and purchase transaction, in practice, any Borrower (or co-Borrower) which is not the Buyer will only be a natural person.</u></p>
2.1	<p><b>“Buyer’s Mortgage”</b> 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 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).</p>	<p>Not all sale and purchase transactions involve a PSPA, and it is not uncommon that the parties to a transaction only enter into a FSPA. The Committee suggests changing “the PSPA and FSPA” to “the PSPA and/or the FSPA”.</p>	<p>We will update the draft Proposal accordingly.</p>
2.1	<p><b>“Buyer’s Top-Up Portion”</b> has the meaning as set out in para 7.16.</p>	<p>The correct reference is para 7.15.</p>	<p>We will update the cross-references in the draft Proposal accordingly where appropriate.</p>

2.1	<p><b>“CHATS Advice”</b> means a document issued automatically and provided in printable-by-BMI-only format by HKICL to BMI on the CHATS interface immediately after a payee receives payment from a payer 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 on the receiving end cannot print such CHATS Advice even though the transfer of funds has completed.</p>	<p>The payer of the Remittance Amount must be a BMI for PAPT to apply. Therefore, the expression “a payer” in the first sentence should be replaced by “BMI”. Conversely, the receiving party of the Remittance Amount can either be a SMI or the Seller’s Account Maintainer, and therefore, the expression “SMI” in the last sentence should be replaced by “SMI or payee”.</p>	<p>To address the concern as raised by the Law Society, we will amend the definition as follows:</p> <p><i>“a document issued automatically and provided in printable-by-BMI-only format by HKICL to BMI on the CHATS interface immediately after <del>a payee</del> <u>a SMI or a Seller’s Account Maintainer</u> receives payment from <del>a payer</del> <u>a BMI</u> 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 <u>or the Seller’s Account Maintainer</u> on the receiving end cannot print such CHATS Advice even though the transfer of funds has completed”.</i></p>
2.1	<p><b>“Fees and Expenses”</b> means the amount of fees and any other expenses payable by the Buyer, such as apportionment account.<sup>3</sup></p> <p><sup>3</sup> <b>“Fees and Expenses”</b> 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 7.19 and 9.12.</p>	<p>Please refer to Note 3 of the PAPT Proposal. It should read “See Paragraphs <b>7.18</b> and <b>9.11</b>”.</p>	<p>We will update the draft Proposal accordingly.</p>

2.1	<p><b>“Property Holding Company”</b> means a body corporate:</p> <p>which is established for the sole purpose of holding and investing in the Property;</p> <p>whose ultimate shareholder(s) is/are natural person(s); and</p> <p>whose direct and indirect corporate shareholder(s) (other than the ultimate shareholder(s) do not have any operating business.<sup>4</sup></p> <p>In <b>footnote 4</b>, it states that “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 business and may, therefore complicate the process...”</p>	<p>If a property is held by a Property Holding Company, and the property is mortgaged for loans to be extended to a few borrowers using the property to secure funds for the operations of their companies, the situation would be complicated for the application of PAPT.</p> <p>As referred to Footnote 4 of the PAPT Proposal, is it the case that if one or more of the borrowers is a trading company, PAPT should not apply?</p> <p>The Committee raises concerns and suggests further discussions on the scenario raised above.</p>	<p>Please see response above in respect of the definition of “Buyer”. Further, for the avoidance of doubt, PAPT is applicable where the Buyer is a Property Holding Company that holds other property in addition to the Property to be acquired. The definition has been updated to reflect this.</p>
2.1	<p><b>“Seller’s Mortgage”</b> 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 full by (i) the Remittance Amount and (ii) (if applicable) the Buyer’s and/or Seller’s own funds.</p>	<p>Would PAPT apply where (i) the Property that is the subject matter of the PSPA and the FSPA is only one of the properties charged under the existing mortgage; and (ii) the amount secured by the existing mortgage will only be repaid on completion of the sale and purchase of the Property partially instead of in full?</p>	<p>Given the phrase “in full” is used in the definition, PAPT will not be applicable if all securities under the existing mortgage are not fully discharged upon the completion of the relevant S&amp;P transaction. We will update the draft Proposal to supplement this point for clarity.</p>

2.1	" <b>Transaction Closing Time</b> " 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.	The Committee suggests deleting the word "earlier" since the Seller parties should have the freedom to complete at any time after 5 p.m. on the Dday. The parties should have the right to opt out from adopting PAPT if they agree to complete at any time after 5 pm on Dday.	This definition is only relevant in respect of a transaction where PAPT is adopted and in such case the Transaction Closing Time needs to be no later than 5 p.m. (also see paragraph 6.1(a) of the draft Proposal) for operational reasons. Further, from the experience of the three chairman banks in operating PAPT for refinancing transactions, as of the date of this response, there have not been cases where parties requested for an extension of the completion time past the operating hours of the banks.
<b>3. SCOPE OF THE CONVEYANCING SCENARIO</b>			
3.2 (b)	For the sake of clarity, the following situations are covered by PAPT as well:  (b) The Buyer's Mortgage and/or existing Seller's Mortgage can be a two-party mortgage or a three-party mortgage; ...	The Committee refers to the above questions/comments on " <b>Property Holding Company</b> ".	Please see response above in respect of the definition of "Buyer" and "Property Holding Company".
<b>4. EXCLUSIONS OF THE CONVEYANCING SCENARIO</b>			
4.	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"):"	Would the following conveyancing scenarios be considered not the normal mass market property sale scenarios and thus excluded from PAPT application? <ul style="list-style-type: none"> <li>• Confirmor sale involving sub-sale and sub-purchase of a residential property whether completed or uncompleted; and</li> <li>• Sale and purchase of a property by the personal representative of the estate of the deceased.</li> </ul> Please refer to clause 4(c) of the PAPT Proposal. A sale in bankruptcy should also be excluded.	<p>Confirmor sale will be excluded.</p> <p>Where a seller or a buyer becomes incapacitated during the period pending completion, if all other conditions still allow for completion, PAPT may still be adopted.</p> <p>In respect of sale and purchase entered into by personal representative of the estate after a party becomes incapacitated, such a sale is not too different from a normal sale and purchase in terms of the completion mechanism and therefore PAPT may be used for such transactions. However, purchase of a property by the personal representative of the estate is uncommon and will not be covered by PAPT.</p> <p>A sale in bankruptcy will also be excluded.</p> <p>We will update the draft Proposal to clarify the above points.</p>

		Please also confirm the usual obligation of the Seller to prove and give a good title to the Property does not exclude the sale and purchase from PAPT for such obligations of the Seller are strictly speaking also conditions precedent.	The obligations and process for proving and giving titles apply invariably to both PAPT and conventional transactions.
<b>6. GENERAL PRINCIPALS</b>			
6.1(c)	<b><i>Becoming out of scope:</i></b> 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.	When an in-scope property transaction becomes an out-of scope transaction, please advise whether BMI and SMI will assign specific approachable persons to each transaction to achieve efficiency.	We do not consider there to be a need to expressly state in the Proposal that BMIs and SMIs need to assign specific persons for this purpose. This is more of a logistic and administrative issue for each bank to consider and decide upon on their own.
6.3 (d)	The Seller's Account Maintainer should nonetheless hold the Remittance Amount received from the BMI in its separate account dedicated for PAPT participation. Upon notification by the Seller's Solicitor of the successful	Please clarify whether the Seller is obligated to execute the legal documents relating to the sale and purchase transaction by Dday Cut-off Time. If the Seller is not prepared to execute such documents in escrow before receipt of the CHATS Advice/Bank Advice or such legal documents executed by the Seller are not yet available by Dday Cut-off Time, what will be	Having considered the comments by the Law Society, we will update the draft Proposal to make it clear that the Seller's Solicitors should make sure that they have in their 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 they proceed to notify the Seller's Account Maintainer (or the SMI as the case may be) that completion of the sale and purchase transaction has taken place. The rationale is as follows.

	<p>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 own account by End of Dday (but the actual date of the Seller receiving cleared funds will be subject always to the Relevant Checks). 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.</p>	<p>the consequence/ arrangement?</p>	<p>When the BMI's Solicitor delivers the balance purchase price (which is represented by the CHATS Advice in the context of a PAPT transaction) to the Seller's Solicitor by Transaction Closing Time, it is usually subject to the usual solicitors' undertaking that duly executed documents by the Seller (such as the assignment deed) will only be provided to the Buyer's Solicitor by the Seller's Solicitor within a certain number of business days from Dday. On the face of it, it would seem as though the Seller's Solicitor need not have the documents to be executed by the Seller available upon completion. However, as the Seller's Solicitor will need to confirm to the Seller's Account Maintainer by Dday Cut-off Time whether completion has taken place and also as the Seller's Solicitor will need to ensure that it can satisfy its own solicitors' undertaking, the Seller's Solicitor should in any event make sure that they have in their possession all the documents that require the Seller's execution and hold such signature in escrow pending completion. The same analysis applies to Conveyancing Scenario 1A and 1B. This is not different from the conventional approach where undertaking should not be given if the Seller's Solicitor is unsure if it can satisfy such undertaking.</p> <p>Further, the definition of Dday Cut-off Time has been updated to refer to 5:30 p.m. on Dday.</p>
<b>7. CONVEYANCING SCENARIO 1A</b>			
7.3	<p>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 (<i>through the BMI's Solicitor, if the BMI engages a separate law firm</i>) provide its assessment result to Buyer's Solicitor, who will communicate such assessment result to the Seller's Solicitor.</p>	<p>Given PAPT will only apply to mass market residential property transaction, please provide an indicative timeline how long a BMI would take in the assessment.</p>	<p>The exact timing needed by a BMI for making the relevant assessment differs from bank to bank. Generally speaking, the assessment result will be ready upon the approval of the loan application and the issuance of the facility letter by the BMI.</p>



7.3 (b)	<p>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 such assessment.</p> <p>For reference:</p> <p>Your response to the Law Society on the definition of "Property Holding Company" (para. 1 of the table annexed to your letter of 15 December 2023) stated as follows: "The intention is to include 'Property Holding Company' in the scope of PAPT for S&amp;P in situations where the Seller in effect is a natural person or natural persons. In accordance with 6.1(d) of the Proposal, it is for the BMI and the SMI to decide whether PAPT for S&amp;P applies. It should also be for the BMI to decide whether a mortgagor is a "Property Holding Company" for the purpose of PAPT. The solicitor does not have a role in deciding whether a mortgagor is a 'Property Holding Company' in the context of PAPT."</p>	<p>In HKAB's response to the Committee's queries on the definition of "<b>Property Holding Company</b>" (para. 1 of the table annexed to HKAB's letter of 15 December 2023), HKAB suggests that it is for the BMI and the SMI to decide whether PAPT for S&amp;P applies in a transaction. The Seller's Solicitor does not seem to have any role in the assessment process. This response seems to contradict with clause 7.3(b) of the PAPT Proposal whereby the Seller's Solicitor is to ascertain whether there exists any Exclusion which precludes the application of the PAPT, after consultation with the SMI, the Seller and the SMI Borrower, and has to notify the Buyer's Solicitor of the result of the assessment. The Exclusion set out in clause 4(a) to (l) of the PAPT Proposal does not include Non-"Property Holding Company". Please clarify and in particular, whether the Seller's Solicitors are required to assess whether the mortgagor is a "Property Holding Company". The Exclusion should expressly mention that PAPT does not apply if any of the Borrower/Buyer/Seller is a Non-"Property Holding Company".</p> <p>Isn't it that it is up to the SMI to confirm whether the SMI Borrower (whether a Seller or not) is a Property Holding Company?</p>	<p>The BMI or the SMI (as the case may be) will be the one to determine whether the BMI Borrower or the SMI Borrower is a Property Holding Company. Paragraph 7.3(b) of the draft Proposal provides that "<i>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</i>". This does not impose the responsibility of assessment on the Seller's Solicitor. The Seller's Solicitor's role lies in communication to the Buyer's Solicitor of the assessment made by the SMI. In fact, the next sentence of paragraph 7.3(b) of the draft Proposal provides that "<i>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</i>". There is no contradiction.</p>
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7.7	The SMI will notify the Seller's Solicitor by letter of the updated Redemption Amount and the Redemption Reference.	The SMI should also notify the Seller's Solicitor the name(s) shown on the Seller's Mortgage document(s) as registered in the Land Registry. This is to enable the Seller's Solicitor to comply with clause 7.10 of the PAPT Proposal i.e. to provide satisfactory evidence to evidence the Seller's change of name...to the SMI and Buyer's Solicitor.	As a good industry practice, the Seller's Solicitor will indiscriminately conduct land search and identify the name(s) shown on the Seller's Mortgage document(s) as registered in the Land Registry. It should not be for the SMI to notify such name(s) to the Seller's Solicitor. Could the Law Society further clarify its comments or concern (if any)?
7.11	<p><b><i>By 5 days before Drawdown (Dday -5)</i></b></p> <p>The Buyer's Solicitor will enable the BMI's Solicitor (to send a book loan letter to the BMI which includes: the facility letter signed by the Buyer (if not already provided at an earlier stage); the drawdown details (drawdown date, loan amount, etc.) the Remittance Amount; the Buyer's name and the BMI Borrower's name; 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); the SMI's name; the Redemption Reference; title confirmation by BMI's Solicitor together with the updated land searches; other documents or information as may be required by the BMI under the relevant facility letter and instructions</p>	<p>The Committee notes from para. 7.11(h) of the table annexed to HKAB's letter of 15 December 2023 that: -</p> <p>"The timeline for PAPT for S&amp;P, as a whole, should remain indicative in nature given the fact-sensitive nature of conveyancing transactions. It will be for the law firms to advise their clients on conveyancing aspects of the timeline.</p> <p>As part of the business-as-usual practice of member banks, member banks generally require Buyers to confirm title five days before drawdown."</p> <p>Since the timeline (other than the Transaction Closing Time and End of Dday) is indicative in nature, the Committee suggests that this "indicative" deadline be amended to "By 1 day before Drawdown (Dday-1)". The Buyer's Solicitor will enable the BMI's Solicitor to send a book loan letter to the BMI if the letter comprising 7.11(a) to (i) is available before Dday-1.</p>	<p>Under conventional approach, most market practice requires the BMI's Solicitor to send to the BMI the book loan letter on or before Dday-5.</p> <p>Given the indicative and non-binding nature of the timeline, its purpose is to set out what is the most appropriate timeframe that parties should endeavour to work towards under normal circumstances. In this case, it is reasonable and desirable to have more buffer time between the issuance of the book loan letter and Dday, so that the parties have more time and flexibility to prepare for completion. If the book loan letter is only made available to the BMI on Dday-1, the banks will find it difficult to process all submitted documents and meet the drawdown request.</p> <p>May we understand more about the reasoning behind the Law Society's view that the tighter timeframe of Dday-1 is a more appropriate than the longer timeframe of Dday-5? We wonder if the Law Society's concern may be that title report may not be available by Dday-5. If so, this is also a concern under conventional regime. Most banks generally are willing to accommodate the request for extending the time requirement if there exist reasonable grounds on Dday-5 and allow for them to be submitted at a later time if needed.</p>

	<p>letter to BMI's Solicitor, such as confirmation that the Buyer's Mortgage has been executed in escrow.</p> <p>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.</p>		
7.15	<p>If the Remittance Amount is insufficient to cover the Balance, the Buyer's Solicitor will advise the Buyer such shortfall (the "<b>Buyer's Top-Up Portion</b>") and advise the Buyer to prepare CO(s) in respect of the shortfall.<sup>13</sup></p> <p><sup>13</sup> 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.</p>	<p>In view of clause 7.17 of the PAPT Proposal, pragmatically, the Buyer Top Up Portion should, in case there is an existing mortgage, be payable to the SMI to cater for possible last minute redemption amount changes. Please consider and also refer to our letter in response to the letter dated 15 December 2023 from HKAB.</p>	<p>According to the indicative timeline under the draft Proposal, the Split Payment Letter is to be sent to the Buyer's Solicitor on Dday-2 (see paragraph 7.18). Upon the receipt of the Split Payment Letter, the Buyer shall then prepare the Buyer's CO(s) if needed. The Redemption Amount and the split payment arrangement should be confirmed by then. Further, last-minute fluctuation in the Redemption Amount is not an issue specific to PAPT arrangement, but may also happen under conventional approach.</p> <p>We will update paragraph 7.15 of the draft Proposal to clarify that, in light of the possibility of subsequent change to the splitting of the Buyer's Top-Up Portion, the Buyer should not prepare the Buyer's CO(s) too early.</p>
7.17	<p>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.</p>	<p>In clauses 7.17 and 7.18 of the PAPT Proposal, there are only four (4) hours in between for the Seller's Solicitor to send to the Buyer's Solicitor a Split Payment Letter on Dday-2, time allowed for this is not realistic since it involves many internal arrangements in a law firm including calculation of the amount, internal liaison with the accounts, drafting of</p>	<p>In respect of the consent of the Buyer and the Seller, we will update paragraph 6.1(d) of the draft Proposal to further elaborate that the agreement of both the Buyer and the Seller is required for PAPT to apply and that they may opt out from the application of PAPT by withdrawing the agreement previously given. We also note that the template clauses for the facility letter between BMI and Buyer have included provisions allowing for the withdrawal of the agreement to use PAPT by the Buyer. Further, we have now prepared (i) a set of terms and conditions in relation</p>

7.18	<p>The Seller’s Solicitor will send to Buyer’s Solicitor a Split Payment Letter [by 2:00 p.m.] on Dday-2 setting out: the latest Redemption Amount; 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 Solicitor<sup>15</sup>.</p> <p><sup>15</sup> 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.</p>	<p>the payment letter, and a law clerk is not attending one single transaction at a time. Although the timeline is indicative only, if the timeline cannot be adhered to, and the borrower cannot withdraw the PAPT consent under the facility letter, can the borrower revert to conventional method of payment?</p> <p>Certain items of Fees and Expenses (as defined in Footnote 3 of the PAPT Proposal) (see para. 2.1 above) may be payable by the Buyer to the Seller and vice versa. In the event, the net Fees and Expenses are payable by the Seller to the Buyer; and the Remittance Amount is equivalent to the balance of purchase price payable on completion, i.e., there is no Buyer’s Top-Up Portion, please advise whether the Seller’s Solicitor can give split payments instruction to pay portion of the Remittance Amount to the Buyer.</p> <p>Same comments applicable to clause 9.11 of the PAPT Proposal.</p>	<p>to the handling of funds by the SMI or the Seller’s Account Maintainer (the “<b>T&amp;C</b>”) and (ii) an agreement to be signed by the Seller and addressed to the SMI or the Seller’s Account Maintainer, which incorporates the terms of the T&amp;C (the “<b>Appointee Bank-Seller Contract</b>”) and (iii) an agreement to be signed by the Buyer and addressed to the BMI, which incorporates the terms of the T&amp;C (the “<b>BMI-Buyer Contract</b>”). The agreement of the Seller and the Buyer to adopt PAPT is therefore captured under the Appointee Bank-Seller Contract and the BMI-Buyer Contract (as applicable). The draft Proposal is also updated in this respect.</p> <p>In respect of the Law Society’s concern that there are only 4 hours for the Seller’s Solicitor to prepare and issue the Split Payment Letter, under the indicative timeline, the Seller’s Solicitor will notify the Buyer’s Solicitor in a written letter of the updated Redemption Amount and the Redemption Reference on Dday-6. It is only under unusual circumstances where the Redemption Amount will be subsequently varied and in such cases the SMI should notify the Seller’s Solicitor as soon as possible and before 10 a.m. on Dday-2. Accordingly, under normal circumstances, the Buyer’s Solicitor should have ample time to prepare the Split Payment Letter from Dday-6 onwards. We also note that under the conventional approach, law firms will seek to confirm the updated Redemption Amount with the SMI as close to completion as possible. The draft Proposal is simply trying to capture this current practice.</p> <p>In respect of the Law Society’s suggestion as to whether the Borrower should revert to conventional method of payment if the indicative timeline cannot be adhered to, reverting last-minute to the conventional approach is not necessarily more efficient.</p> <p>In respect of the Law Society’s question as to whether the Seller’s Solicitor can give split payments instruction to pay portion of the Remittance Amount to the Buyer, the Split Payment Letter is only in respect of the Buyer’s Top-Up Portion. The Remittance Amount will be paid through CHATS system in full by the BMI to the SMI and will not be split or changed. The Remittance Amount is set out in the relevant facility agreement and if the Remittance Amount needs to be changed, the facility agreement has to be re-executed, which is not practicable. If</p>
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			there is any Fees and Expenses payable by the Seller to the Buyer, this should be done separately.
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 ( <i>if BMI engages a separate law firm</i> ) to send such updated information to the BMI by 5:00 p.m. on Dday-2. The BMI will acknowledge the receipt of such information.	In clauses 7.18 and 7.19 of the PAPT Proposal, there are only 3 hours in between for the Buyer's Solicitor to send or enable the BMI's Solicitor to send the updated information to the BMI on 5:00 p.m. on Dday-2, the time is unreasonably tight even if the timeline is indicative.	<p>Please see our response above. Under the indicative timeline, the Seller's Solicitor will notify the Buyer's Solicitor in a written letter of the updated Redemption Amount and the Redemption Reference on Dday-6. It is only in unusual circumstances where the Redemption Amount will be subsequently varied. Your concern relates to a last-minute change to the Redemption Amount and this is not an issue that arises out of PAPT arrangement. Such risk is present in conventional regime as well.</p> <p>Does the Law Society have any proposed time as to what may be a more appropriate indicative timeframe?</p>
7.20	<p>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:</p> <p>one Buyer's CO payable to the SMI in the amount equal to the amount by which the Redemption Amount exceeds the Remittance Amount;<sup>16</sup> and</p> <p>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.</p>	Such direct settlement of any surplus in the Redemption Amount would be fine but in case there is any shortfall in the Redemption Amount, such direct settlement would create problems for the solicitors' undertaking given by the Seller's Solicitor or the SMI's Solicitor (if SMI engages a separate law firm) to the Buyer's Solicitor to deliver the release or receipt on discharge of the existing mortgage within an agreed period after completion. We suppose Note 16 is intended to apply when (a) the Remittance Amount was thought to cover in full the Redemption Amount or (b) the total amount of the Remittance Amount plus the Buyer's CO payable to the SMI was thought to cover in full the Redemption Amount, but is found to be less than the Redemption Amount last minute. In such circumstances, whether the Seller or the SMI Borrower would pay the shortfall to the SMI is not certain, and the Seller's Solicitor or the SMI's Solicitor would be in breach of the undertaking given in case the SMI does not execute the release or receipt	<p>There is no change to the usual conveyancing practice. Footnote 16 only means that the shortfall can be settled by means other than cashier's orders, such as a cheque or cash if the difference is minimal. The mechanism of solicitor's undertakings still applies as usual.</p> <p>Whether the transaction is conducted by the conventional approach or by PAPT arrangement, if the Seller is unable to pay up the shortfall of the Redemption Amount, the Seller will not be able to redeem the mortgage. The Redemption Amount should be known before completion and the Seller's Solicitor should have been aware of it. If the Seller's Solicitor still chooses to give an undertaking without knowing whether the shortfall will be paid, this may be the Seller's Solicitor's problem.</p>

	<p><sup>16</sup>. 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.</p>	<p>on discharge in respect of the existing mortgage because the shortfall is not paid by the Seller or the SMI Borrower.</p>	
7.21	<p>The Seller's Solicitor will send to the SMI by encrypted email (or other channels as agreed by the SMI) the following information:</p> <p>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 Account<sup>17</sup>, <b>provided that</b> there should be no more than one Seller's Account for the Seller; and</p> <p>(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 authorization instructions to the SMI from the Seller(s) who are not holders of the account</p>	<p>Please clarify in the case of joint Sellers, if only one of the Sellers has a designated bank account, whether any original authorization instructions would need to be sent by the other Seller to the SMI whose name is not under the designated bank account, or whether a copy of the authorization is sufficient.</p> <p>Kindly also clarify if Seller under exceptional circumstances cannot open a Seller Maintainer Account, will authorization instructions suffice?</p> <p>Please clarify whether "authorization instructions" have to be provided by both (i) the Seller whose name is not under the Seller's designated bank account; and (ii) the solicitors of such Seller, and why authorization instructions need to come from "solicitors of such Seller(s)".</p> <p>For 7.21(a), it is not correct to assume that where there are more than one Seller, all of them must be related and so there would not be any problem to require all Sellers to authorize one of them to collect the Surplus or (where</p>	<p>The intention is that, even where there are joint Sellers, under the PAPT arrangement, there should be only one Seller's Account for the distribution of the Surplus. If the Sellers are unable to agree on this arrangement, then they should opt out from PAPT.</p> <p>We will update paragraph 7.21 of the draft Proposal to provide that the authorization instructions (which may be original or copy depending on individual bank's protocol) shall be from the Seller(s) who are not holders of the account and properly attested / witnessed by the solicitors of such Seller(s).</p>

	and the solicitors of such Seller(s). The Seller may choose to designate his repayment account with the SMI or his personal bank account for receiving the Surplus.	the Seller does not have any existing mortgage) the Remittance Amount for all of them.	
7.27	Upon receipt of the CHATS Advice, the BMI will circulate it to the BMI's Solicitor.	In view of the time constraint, please indicate the latest time by which the BMI's Solicitor will receive the CHATS Advice from the BMI.  The Committee suggest adding at the end before the full stop "and (if a separate law firm is engaged by the BMI) the BMI's Solicitor will in turn circulate it to the Buyer's Solicitor".	We will update paragraph 7.27 of the draft Proposal to provide that " <i>As soon as practicable upon receipt of the CHATS Advice on Dday, the BMI will circulate it to the BMI's Solicitor</i> ".  Please note paragraph 2.2(c) which already provides that if 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 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).
7.28 and 7.29	7.28 The BMI's Solicitor will then deliver to the SMI's Solicitor by Transaction Closing Time (i) the CHATS Advice, (ii) the Buyer's CO(s) (if any) and (iii) relevant legal documents whereby completion of the property sale and purchase transaction will take place by solicitors' undertakings. The SMI's Solicitor will in turn deliver these items to the SMI by such cut-off time as agreed with the SMI.  7.29 Upon receiving the CHATS Advice by Dday Cut-off Time, the SMI will (i)	Would the CHATS Advice and the Buyer's Top-Up Portion (if applicable) reaching SMI's Solicitor be deemed to have reached SMI for PAPT redemption purpose or would they need to reach SMI?  In clause 7.28 of the PAPT Proposal, it is possible that the BMI, the Buyer, the Seller and the SMI are each represented by a different law firm. Reasonable time must be allowed for the law firms to go through the proposed procedure.  In the interest of the Seller, the Seller's Solicitor should ensure that the SMI is in receipt of the funds before delivering the keys of the Property to the Buyer's Solicitor. Therefore the SMI should also send redemption confirmation to the Seller's Solicitor. The	When the CHATS Advice (and if applicable, the Buyer's Top-Up Portion) reaches the Seller's Solicitor by Transaction Closing Time, then the Buyer's payment obligation under the property sale and purchase transaction is complied with. The concept of "deeming receipt" by the SMI is not necessary nor applicable in this context as deemed receipt will preclude the Seller from changing his mind as to whether to proceed with completion of the sale and purchase. We will update the draft Proposal to add that the Buyer's payment obligation of the purchase price is fulfilled when the CHATS Advice (and if applicable, the Buyer's Top-Up Portion) reach the Seller's Solicitor by Transaction Closing Time <b><i>unless the contrary is proved.</i></b>  We note the Law Society's observation that the BMI, the Buyer, the Seller and the SMI may each be represented by a different law firm. This is similar to traditional conveyancing practice and in any event the CHATS Advice (and if applicable, the Buyer's Top-Up Portion) need to reach the SMI's Solicitor by the agreed Transaction Closing Time.  The presentation of the CHATS Advice is evidence that the Remittance

	<p>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 (<i>if the Seller's Account is held with SMI</i>) or by transfer to the Seller's Bank (<i>if the Seller's Account is not held with SMI</i>) 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).</p>	<p>Committee considers whether the template of the Solicitors' Undertaking should be modified to the extent that the Seller's Solicitor will not give the undertakings if the Seller's Solicitor does not receive the Redemption Confirmation from the SMI by a certain time on Dday.</p> <p>The Committee suggests that the obligation to make the delivery to the SMI's Solicitor in clause 7.28 of the PAPT Proposal should be clarified to cover "The BMI's Solicitor or (if the BMI engages a separate law firm) the Buyer's Solicitor".</p> <p>Not all items delivered to the SMI's Solicitor need to be delivered to the SMI. Examples are the assignment of the Property executed by the Buyer and the Buyer's COs that are split to the Seller. The last sentence of clause 7.28 of the PAPT Proposal needs to be revised.</p>	<p>Amount has been received by the SMI. This is not dissimilar to the presentation of a cashier's order under traditional conveyancing practice in obtaining the undertakings from the Seller's Solicitor. We do not see a need to amend the solicitors' undertakings.</p> <p>We will update paragraph 7.28 as follows:</p> <p><i>"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&amp;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&amp;C have been incorporated will be available to the SMI upon request and (iv) relevant legal documents (the "<b>Completion Deck</b>") 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."</i></p>
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9.11	<p>The Seller's Solicitor will send to Buyer's Solicitor a Split Payment Letter [by 2:00 pm] on Dday-2 setting out:</p> <p>the split payments instruction in respect of the Buyer's Top-Up Portion, such as (i) the amount to be paid to the Seller and (ii) the amount of Fees and Expenses (if applicable) to be paid via the Seller's Solicitor; and</p> <p>any change to the payment arrangements as last notified to the Buyer's Solicitor.</p>	Please refer to the comments in the above para 7.18.	Please see above.
9.18	<p>Upon receipt of the CHATS Advice or the Bank Advice (as the case may be), the BMI will circulate it to the BMI's Solicitor</p>	<p>To increase certainty, the BMI Solicitor is suggested to inform the Seller's Solicitors of the receipt of the CHATS Advice or the Bank Advice by 1:00 p.m. of the Drawdown Date although the BMI Solicitor is required to deliver the Advice to the Seller's Solicitors by 5 p.m. on Dday (so as to have room to deal with missing/incorrect CHATS Advice or Bank Advice (if required)).</p> <p>Please advise whether the "Interbank Protocol – For PAPT for S&amp;P" and the "Undertaking Letter for PAPT for S&amp;P" need to include any reference to "Bank Advice".</p>	<p>Similar to the discussion on paragraph 7.27 above, we will update paragraph 9.18 (now paragraph 9.20) to provide that "<i>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</i>".</p> <p>The Law Society's suggestion of informing the Seller's Solicitor of the receipt of the CHATS Advice or the Bank Advice by 1:00 p.m. of the Dday may have the unintentional effect of bringing forward completion time to 1:00 p.m. if mishandled. Under conventional practice and our draft Proposal, the Buyer's/BMI's Solicitor is only required to provide the CHATS Advice to the Seller's Solicitor by Transaction Closing Time.</p>

9.20	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).	In the interest of the Seller, the Seller's Solicitor should ensure that the Seller's Account Maintainer is in receipt of the funds before delivering the keys of the Property to the Buyer's Solicitor. Therefore the Seller's Account Maintainer should also send remittance confirmation to the Seller's Solicitor. The Committee considers whether the template of the Solicitors' Undertaking should be modified to the extent that the Seller's Solicitor will not give the undertakings if the Seller's Solicitor does not receive the Remittance Confirmation from the Seller's Account Maintainer by a certain time on Dday.	Please see above.
<b>10. SPECIAL HANDLING ON DDAY</b>			
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 by End of	The PAPT Proposal should also cover the situation where the transaction falls through after an internal transfer has been effected by the BMI to the SMI (where they are the same financial institution) or by the BMI to the Seller Account Maintainer (where there is no existing mortgage but the Seller also maintains his account with the BMI). Please revise this paragraph to require reversal of the internal transfer in case the transaction falls through or the Seller Account Maintainer does not receive confirmation of completion by Dday Cut-off Time.	We will update paragraph 10.2 of the draft Proposal to also cover scenarios where the BMI and the SMI (or the Seller's Account Maintainer) are the same institution and the payment of the Remittance Amount is done by internal fund transfer.

	<p>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 by Dday Cut-off Time, it should also arrange for refund to the BMI by End of Dday.</p>		
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10.4	<p>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.</p> <p>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. In such circumstances, CHATS Advice will be replaced by such certificate for completion of the sale and purchase transaction. If the SMI 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.</p>	<p>When the CHATS Advice cannot be issued, the proposal is for immediate communication between the BMI, SMI or the Seller's Account Maintainer to confirm whether funds have been transferred, and if funds have been transferred, the SMI or the Seller's Account Maintainer will issue a certificate to the BMI confirming receipt of such funds.</p> <p>Please advise when and how BMI, SMI, Seller's Solicitor and Buyer's Solicitor will be advised of the special handling on Dday. In the absence of any prerequisite communication and contact from SMI or the Seller's Account Maintainer with the Seller's Solicitor and the Buyer's Solicitor on the special handling arrangement, all the above-mentioned solicitors would not be able to know whether/when funds have been transferred and whether/when keys of the properties under sale can be released to the Buyer for completion. What if the CHATS Advice cannot be issued, funds effected but SMI or the Seller's Account Maintainer is unable to identify the funds, who will be responsible? Would the BMI transfer the Remittance Amount again by CHATS?</p> <p>Please add "or the Seller's Account Maintainer" after the expression "SMI" where it first appears in the last sentence of clause 10.4 of the PAPT Proposal.</p>	<p>The BMI needs to circulate the CHATS Advice to the BMI's Solicitor after initiating the CHATS payment (see paragraph 7.27). Further, according to the discussion in respect of paragraph 7.27 above, the BMI should do so as soon as practicable upon the receipt of the CHATS Advice on Dday. Therefore, if there is any problem with the issuance with the CHATS Advice, the BMI should discover it soon after it initiates payment. To allow flexibility between the parties to solve the issue, it is preferred not to be for a specific way or sequence of communication on the matter.</p> <p>Under conventional approach, if there is any issue with a cashier's order (or cheques), solicitors and all parties will handle the issues amongst themselves by making calls. Similar approach can be taken here.</p> <p>We will update paragraph 10.4 to add "or the Seller's Account Maintainer" as pointed out by the Law Society.</p>
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10.6	<p>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, 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 "<b>CHATS Advice Correction Notice</b>" 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.</p>	<p>It is said that if the details on the CHATS Advice other than the Key Information are wrong, the amendments can be cured by the <i>CHATS Advice Correction Notice</i>. Please clarify how corrections could be made if there are mistakes as to the Key Information. What will be the consequence if the Key Information cannot be corrected?</p> <p>If a <i>CHATS Advice Correction Notice</i> is to be issued, please advise how long it takes for the HKICL to issue such notice. If it takes too long to issue the notice, and for instance, the notice can only be issued after the completion time, then who will be responsible for the loss incurred?</p> <p>Please define "<b>Key Information</b>" in paragraph clause 2.1 of the PAPT Proposal.</p>	<p>For clarity and comprehensiveness, we will add a footnote to paragraph 10.6 to briefly explain why the paragraph only applies to when there is a mistake as to information other than the Key Information and what happens if there is a mistake as to the Key Information. We will also move the definition of Key Information to the definition section.</p> <p>In respect of the Law Society's question of "<i>If a CHATS Advice Correction Notice is to be issued, please advise how long it takes for the HKICL to issue such notice</i>", please note that the CHATS Advice Correction Notice is to be issued by BMI (not HKICL). The BMI should arrange for the CHATS Advice Correction Notice to be issued as soon as practicable if it discovers that there is any error in relation to any information in the CHATS Advice other than the Key Information.</p>
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10.8	<p>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 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) otherwise proceeding as usual in accordance with this Proposal.</p>	<p>If the Borrower and Buyer are two different persons with separate legal representation, please advise when and how the Buyer's Solicitor will be advised of any shortfall, and whether there is any risk that the Buyer's deposit would be forfeited if there is a shortfall and the Buyer does not know and cannot take any action to remedy the problem in time.</p>	<p>Paragraph 10.8 deals with the special handling procedure that should follow in the event the BMI inadvertently makes a CHATS payment that is in a wrong amount smaller than the Remittance Amount.</p> <p>Following the special handling procedure, the Buyer needs not be actively involved.</p> <p>Whether the BMI Borrower and the Buyer are different persons or not should not make any difference to the scenario and the special handling procedure here. The level of protection available to the BMI Borrower and the Buyer should be similar under a three-party mortgage.</p>
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