

List of Frequently Asked Questions in relation to PAPT for S&P

Note: The capitalised terms in this list have the meanings given to them in the draft proposal document entitled “Payment Arrangements for Property Transactions (the “PAPT”) – Sale & Purchase Scenario (“PAPT for S&P”)”

A. Agreement to adopt PAPT for S&P and documentation requirements

1. Q: If the Purchaser’s book loan letter has not been delivered to the PMI by Dday-5, does it mean that the transaction is no longer eligible for PAPT for S&P and the parties should adopt conventional settlement methods?

A: The Proposal recommends that the Purchaser’s book loan letter be delivered to the PMI no later than Dday-5 (i.e. five (5) business days prior to the completion date). However, this is an “indicative” time, which means that failure to deliver the book loan letter by such time does not automatically exclude a transaction from adopting PAPT for S&P.

However, it should be noted that individual banks acting in the capacity of the PMI may have their own requirements as to the timing for delivery of the book loan letter, as with current conveyancing practice. This is because the PMI will need to process the information contained in the book loan letter and in accordance with its internal protocols in order to arrange for disbursement of the mortgage loan.

2. Q: When is the deadline for the Purchaser and/or the Vendor to opt out of PAPT for S&P (despite having previously agreed to adopt it under the FSPA and other documents)?

A: The time limit for the Purchaser and/or the Vendor to opt out of PAPT for S&P is Dday-8 (i.e. eight (8) business days prior to the completion date).

3. Q: If a transaction previously assessed to be within the scope of PAPT for S&P is found to be out-of-scope after the “opt-out” deadline for PAPT for S&P, can PAPT for S&P continue to be adopted? What should the parties do?

A: If a transaction has become out-of-scope, the Purchaser and the Vendor will not be able to adopt PAPT for S&P for the transaction. The sample clauses of the FSPA contemplate that, if PAPT for S&P is not adopted, the Purchaser and the Vendor shall use a conventional settlement method. The PMI and the VMI/VAM will be expected to notify all relevant parties as soon as possible. Similarly, the PMI and the VMI/VAM will be expected to exercise their discretion where appropriate and to consider the appropriate course of action in handling exceptional cases to enable the parties to switch back to conventional settlement method(s).

4. Q: For a transaction to be eligible for PAPT for S&P, is it possible for the parties to sign a PSPA (adopting the

relevant sample clauses for PSPA) only, without signing an FSPA adopting the relevant sample clauses?

A: No, for a transaction to be eligible for PAPT for S&P, the Purchaser and the Vendor must have signed an FSPA adopting the relevant sample clauses.

5. Q: How will the Purchaser Solicitor be able to ascertain that the PMI/Buy-side Contract has been signed? Similarly, how will the Vendor Solicitor be able to ascertain that the Appointee Bank/Sell-side Contract has been signed?

A: The Proposal provides that the PMI/Buy-side Contract can be signed at the PMI branch or through the Purchaser Solicitor. Similarly, the Appointee Bank/Sell-side Contract can be signed at the VMI/VAM branch or through the Vendor Solicitor. The choice between such locations for signing the contracts may depend on a number of factors, including the practice of individual banks and any specific arrangements between the banks and the Purchaser Solicitor/Vendor Solicitor (as applicable).

If the PMI/Buy-side Contract or the Appointee Bank/Sell-side Contract is signed at the branch of the relevant mortgage institution, the Purchaser Solicitor or the Vendor Solicitor (as applicable) can request a copy of the contract signed by its respective client to ascertain that the contract has been signed.

B. Completion

1. Q: What are the permissible methods of delivery of CHATS Advice to the VMI/VAM?

A: CHATS Advice can be delivered from the PMI to the VMI/VAM (via the Purchaser Solicitor and Vendor Solicitor) either electronically (including email or fax) or physically (as printed out by the PMI).

2. Q: How is CHATS Advice generated? How is it retrieved by the PMI?

A: When an interbank payment is made via the Hong Kong Dollar Clearing House Automated Transfer System (CHATS), the operator of the system (i.e. Hong Kong Interbank Clearing Limited) automatically generates a receipt (i.e. the CHATS Advice) which is only retrievable by the party initiating the transfer. In the case of a PMI transferring the mortgage loan proceeds to the VMI/VAM, the PMI will be able to log on to the CHATS interface and retrieve a copy of the automated CHATS Advice.

3. Q: Are there timelines for getting the CHATS Advice?

A: The PMI is the only party that is able to, and is responsible for, retrieving the CHATS Advice from the CHATS interface. Provided that the PMI has received the book loan letter and transfer instructions on or before

Dday and has already successfully completed the transfer of the PMI Funds before 12 noon on Dday, the PMI will use reasonable endeavours to retrieve the CHATS Advice from the CHATS interface and circulate it to the PMI Solicitor/Purchaser Solicitor by 12 noon on Dday.

4. Q: How does fund transfer under PAPT for S&P differ from the conventional settlement methods?

A: Under PAPT for S&P, the PMI will transfer the mortgage loan proceeds to the VMI/VAM via CHATS (or, if the PMI and the VMI/VAM are the same entity, by way of internal bank transfer). In particular, CHATS has long been used as an electronic system of interbank transfer in Hong Kong. Settlement of monies via CHATS is immediate and final. The VMI/VAM will hold such monies in a dedicated suspense account pending completion.

As for any completion monies that are not covered by the mortgage loan proceeds, it will be settled by way of the conventional settlement methods.

5. Q: If there is an error in sending or receiving the CHATS Advice via electronic means, is it possible for the CHATS Advice to be re-sent by the PMI?

A: Yes, the PMI can re-send the CHATS Advice to the PMI Solicitor/Purchaser Solicitor.

6. Q: Under what circumstances will the completion date of a conveyancing transaction adopting PAPT for S&P be postponed?

A: Pursuant to the sample clauses of the FSPA (relating to PAPT for S&P), if there is a systematic failure of CHATS at any time before 12 noon on the completion date (Dday), the completion date will be automatically postponed to the next business day on which no such systematic failure has occurred at any time before 12 noon.

It should also be noted that the FSPA may contain other provisions relating to postponement of completion date. Such provisions will be operative as long as they do not contradict the sample clauses relating to PAPT for S&P – the sample clauses are expressed to prevail over any other provisions in the event of inconsistency. For example, it is a common provision in sale and purchase agreements that, if an extreme weather signal (e.g. Typhoon No. 8) is hoisted at any time between 9:00 am and 5:00 pm on the completion date, the completion date will be postponed to the next business day.

7. Q: What happens if the Purchaser and the Vendor are only ready to complete after 5:00pm and will thus miss Dday Cut-off Time?

A: It is mandatory for a conveyancing transaction adopting PAPT for S&P to complete by 5:00 pm on Dday.

8. Q: If the time for withdrawing their agreement to adopt PAPT has passed, will the Purchaser or the Vendor still be able to withdraw from adopting PAPT?

A: Generally speaking, the Purchaser and the Vendor will only be able to withdraw their agreement to adopt PAPT for S&P pursuant to the timeline set out in Q-A2 above (i.e. no later than Dday-8).

However, if there are issues with the operation of PAPT for S&P on Dday (other than systemic failure of CHATS) which are not remediable by the special handling procedures set out in the Proposal (or not relevant to the special handling scenarios listed therein), the Purchaser and the Vendor may communicate with the PMI and the VMI/VAM to agree on the appropriate handling procedures to adopt, which may include using a conventional settlement method with an aim to proceeding with completion on the same day.

C. Loan Redemption and Distribution to Vendor

1. Q: When will the VMI deposit the Surplus with the Vendor Account? Will the Surplus be deposited by way of CHATS?

A: The VMI will be transferring the Surplus (if any) from its internal account (a dedicated suspense account for holding PMI Funds) to the Vendor Account by way of internal bank transfer.

The VMI will aim to deposit the Surplus with the Vendor Account by the end of Dday (i.e. 11:59 pm on Dday), although the actual timing is subject to (i) completion of customary screening in compliance with the internal policy of the VMI and all applicable laws and regulations and (ii) receipt of all requisite documents which the VMI may require for loan redemption purposes.

2. Q: Will the Vendor and the Vendor Solicitor receive any notification upon deposit of the Surplus into the Vendor Account?

A: Similar to current conveyancing practice, if there is an existing mortgage, the VMI will send redemption confirmation to the Vendor. If there is no existing mortgage, the VAM will send remittance confirmation to the Vendor. Such information will be sent via the usual modes of communication (e.g. SMS/email/letter).

3. Q: Can cashier's order for the Purchaser Top-Up Portion and other settlement / release documents be delivered to the VMI on Dday+1 if CHATS Advice has been provided to the VMI before Dday Cut-off Time?

A: For the purpose of PAPT for S&P, CHATS Advice is the only item which must be delivered to the VMI/VAM by 5:30 pm on Dday. PAPT for S&P does not mandate the timing for delivery of cashier's order and other

settlement / release documents.

However, as with current conveyancing practice, this is subject to any specific requirements of individual banks and any specific arrangements between the Vendor/Vendor Solicitor and the VMI/VAM.

4. Q: What are the consequences of the Vendor Solicitor failing to deliver the requisite document(s) and item(s) to the VMI (or, if there is no existing Vendor Mortgage, the VAM) by the relevant deadline in the Proposal?

A: As mentioned in Q-C3 above, the Proposal only stipulates a deadline for the Vendor Solicitor to deliver CHATS Advice to the VMI/VAM by 5:30 pm on Dday. If the VMI/VAM does not receive the CHATS Advice by such time, the VMI/VAM will refund the PMI Funds to the PMI.

D. Special Handling Scenarios

1. Q: If there is extreme weather on Dday (e.g. Typhoon Signal No. 8 (“T8”)) after the PMI has successfully transferred the PMI Funds via CHATS to the VMI/VAM, how will the VMI/VAM handle the PMI Funds on receipt of such funds when T8 is in force on Dday?

A: This will depend on the factual circumstances of each transaction.

Generally speaking, it is a common provision in sale and purchase agreements that, if an extreme weather signal (e.g. Typhoon No. 8) is hoisted at any time between 9:00 am and 5:00 pm on the completion date, the completion date will be postponed to the next business day. This is an optional commercial term to be negotiated by the parties and is not specific to PAPT for S&P.

2. [Q: What if the PMI is unable to effect CHATS payment by 12:00 noon on Dday? Could this adversely affect the subsequent steps required to complete the transaction?

A: If the PMI is unable to effect CHATS payment by 12:00 noon on Dday, and such delay is not attributable to systemic failure of the CHATS system, the PMI and its solicitor (Purchaser Solicitor) will as soon as practicable work together with a view to finding appropriate handling procedures to address the issue(s) of the delay in effecting CHATS payment.

The HKMA will monitor PMIs’ performance in this regard to ensure that PMIs exercise their best endeavours to effect CHATS payment by 12:00 noon on Dday]

E. Vendor Account Maintainer Arrangements

1. Q: How does a Vendor appoint a VAM if his property is not subject to an existing mortgage?

A: A bank that is offering the service of acting as a VAM will provide a form for the Vendor to sign and appoint it as the VAM for a sale and purchase transaction. The Vendor will sign the appointment form at a branch of the VAM or at the office of the Vendor Solicitor (whom will subsequently send the signed appointment form to the VAM).

2. Q: Will a Vendor be able to change his choice of VAM and/or Vendor Account?

A: It is possible for the Vendor to change the VAM and use the bank account of the replacement VAM as the Vendor Account, provided that the Vendor has signed the Appointee Bank/Sell-side Contract with the replacement VAM no later than eight (8) business days prior to Dday.

As for whether a Vendor is able to use a different account with the same VAM as the Vendor Account, this will depend on the practice of individual banks acting in the capacity of the VAM.

F. Miscellaneous

1. Q: What will be the handling procedure if the amount of the down payment plus mortgage loan is greater than the property purchase price, such that part of the monies has to be refunded to the Purchaser?

A: This will depend on when the PMI is notified of the fact that the sum of the mortgage loan and the deposit is greater than the property purchase price. The indicative timeline in the Proposal is that, if there are any changes in payment arrangement, the Purchaser Solicitor will send the updated information to the PMI no later than 5:00 pm on Dday-2. In some circumstances, with sufficient prior notice, it may be possible for the PMI to adjust the amount of the PMI Funds to be transferred (i.e. adjust the amount of the mortgage loan) ahead of completion such that there is no surplus, which means that no refund to the Purchaser will be required.

On the other hand, if the PMI is unable to adjust the amount of the PMI Funds, the Purchaser Solicitor and the Vendor Solicitor will be expected to coordinate and arrange for the surplus to be returned to the Purchaser by conventional settlement method(s) in a manner similar to current conveyancing practice. For example, at completion, the Vendor may provide a cashier's order in the amount of the over-payment to the Purchaser.

For the avoidance of doubt, the Proposal does not contemplate any refund payments to be made via CHATS from the VMI/VAM to the PMI, except for automatic refund of the whole of the PMI Funds if completion has not taken place (or the VMI/VAM has not received CHATS Advice by 5:30 pm on Dday).

2. Q: Any sample / template for authorization letter for Surplus arrangement?

A: Yes, the Vendor Solicitor can request a sample authorization letter from the VMI/VAM. The Vendor Solicitor can also choose to draft its own letter.

3. Q: Can the PMI or the VMI split the payment and deposit monies with various Vendors / property agent for payment of commission / law firm for payment of legal fees?

A: No. Under PAPT for S&P, neither the PMI nor the VMI may split the mortgage loan proceeds (i.e. the PMI Funds) for the purpose of payment of monies to different Vendors, property agents or law firms. The PMI may only transfer the whole amount of the PMI Funds to the VMI/VAM, and the VMI/VAM may only transfer the relevant funds to one Vendor Account only.

For the avoidance of doubt, in the event that the property is sold by joint-Vendors, the VMI/VAM shall transfer the relevant funds to one bank account only, which shall be maintained in the name of at least one of the joint-Vendors.

However, similar to current conveyancing practice, the Purchaser Solicitor can provide split cheque instructions for payment of part of the purchase monies to property agents and law firms as appropriate. These payments will be made by conventional method(s) (solicitor's cheque and/or cashier's order) and not via CHATS.

4. Q: What are the major differences in process and scope between PAPT for Refinancing and PAPT for S&P?

A: In terms of scope, PAPT for Refinancing applies to the refinancing of a mortgage loan secured by a residential property, whereas PAPT for S&P applies to the sale and purchase of a residential property in the secondary market (and part of the purchase price will be covered by a mortgage loan subject to a purchaser's mortgage).

In terms of process, both arrangements will involve the electronic transfer of mortgage proceeds via CHATS. The key distinction is that PAPT for S&P involves the use of CHATS Advice, which is issued by Hong Kong Interbank Clearing Limited, as third-party evidence that CHATS payment has been completed; whereas PAPT for Refinancing involves the use of a "refinancing mortgage institution confirmation" (RMIC) as evidence of payment, which is issued by the refinancing mortgage institution, i.e. the bank that has made the CHATS payment. The issuance process of CHATS Advice is automatic whereas the issuance of RMIC is manual and requires active input from the refinancing mortgage institution.

HKAB intends to conduct a further consultation with the relevant stakeholders to consider the use of "CHATS Advice" in lieu of "RMIC" in the next phase of PAPT for Refinancing.

5. Q: How could legal professionals understand more about PAPT for S&P?

A: Details of PAPT for S&P will be published on the website of HKAB for reference by legal professionals as needed.