

Practical Issues of PAPT for S&P

A. Background

- (1) Under PAPT for S&P, the bulk/part of the purchase monies will be settled via Hong Kong Dollar Clearing House Automated Transfer System (“CHATS”), as operated by Hong Kong Interbank Clearing Limited (“HKICL”), from a Purchaser Mortgage Institution (“PMI”) to a Vendor Mortgage Institution (“VMI”) or (in case the property that is the subject of S&P is free from any mortgage and not enquired to be discharged from an existing mortgage by the vender) Vender Account Maintainer (“VAM”) by way of mortgage loan proceeds. Any completion money not covered by the mortgage loan proceeds as well as the settlement of apportionment account will be provided by the Purchaser’s own funds and primarily settled by solicitors’ cheque(s) and/or cashier’s order(s) from the Purchaser.
- (2) 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 VMI receives payment from the PMI via CHATS. The CHATS Advice is only retrievable by the PMI. 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.
- (3) Members should pay attention to the following practical issues when advising their clients whether to adopt the new PAPT for S&P.

B. Delivery of CHATS Advice from Vendor Solicitor/VMI Solicitor to VMI

- (4) Under the current practice, if the completion time is 5:00 pm or earlier (“Dday”) but payment comes in after the bank's hours for accepting payments, the Vendor Solicitor will be permitted to make loan payment on the following business day (i.e. Dday+1) by paying an extra day’s interest. However, under PAPT for S&P, if the CHATS Advice cannot be delivered to the VMI by 5:30 pm, the Remittance Amount will be refunded to the PMI, resulting in falling through of the transaction. Members are reminded to exercise caution and consider the risks and potential consequences that may arise if a transaction falls through in such circumstances.

C. Circulation of CHATS Advice by PMI to the Purchaser Solicitor

- (5) Paragraphs 7.28 and 9.22 of the Updated Proposal state that the PMI will use its “reasonable endeavours” to circulate the CHATS Advice to the PMI Solicitor before 12 noon on Dday.

- (6) The prevailing practice of the banks in Hong Kong is to impose a cutoff time of around 3 pm to 3:30 pm for the delivery of redemption money. Concerns have been raised as to whether the requirement for PMI to use “reasonable endeavours” to deliver the CHATS Advice before 12 noon on Dday allows adequate time for the PMI Solicitor/Purchase Solicitor to deliver the CHATS Advice to the Vendor Solicitor and for the Vendor Solicitor to deliver the CHATS Advice to the VMI/VAM by 5:30 p.m. on Dday. Members are reminded to consider risks in this regard as well as the implications of any late delivery of the CHATS Advice to the VMI/VAM by 5:30 p.m. on Dday.

D. Automatic Postponement

- (7) As provided in the Updated Proposal, in the event of (i) failure to effect CHATS Payment, (ii) payment to the wrong recipient of the Remittance Amount or (iii) payment of the wrong amount of Remittance Amount being via CHATS, PMI shall re-effect the payment of the Remittance Amount via CHATS “as promptly as possible”. Concerns have been raised as to whether the PMI will/can remit again the Remittance Amount soon enough to enable the Purchaser Solicitor to confirm payment with the Vendor Solicitor and complete the sale and purchase before Transaction Closing Time.
- (8) Completion will not be automatically postponed to the next business day in such situations. The parties should adopt the handling procedures described in paragraphs 10.3 to 10.9 of the Updated Proposal with an aim to proceed with completion on the same day using PAPT for S&P. If the handling procedures have been adopted but have not been successful in rectifying the relevant failure/error, the PAPT for S&P system currently does not provide a contingency plan in such a case, and the Purchaser and the Vendor would need to (in consultation with the PMI and the VMI (or VAM)) mutually agree on the applicable handling procedures. Such procedures may include reverting to a conventional approach for completion of the transaction. Members are reminded to exercise caution and consider the risks and potential consequences that may arise if a transaction is delayed or remains in limbo in such circumstances.
- (9) Automatic postponement of completion in the Formal Sale and Purchase Agreement (“FSPA”) cannot contradict the sample clauses for PAPT for S&P adopted in the FSPA. Therefore, provisions for automatic postponement of completion in situations described in paragraph (7) above is not allowed.

E. Distribution of Surplus Arrangement where there are Joint/Multiple Vendors

- (10) In the case of joint/multiple vendors, if the vendors cannot agree on which single account should be used to distribute the fund, HKAB has confirmed that the current PAPT for S&P would not cater to such circumstances and thus it would become out of scope and conventional approach should be adopted.

F. Timing for opting out of PAPT for S&P

- (11) Parties to a S&P who have adopted PAPT for S&P may only opt out of PAPT for S&P by Dday-8 (i.e. eight (8) business days prior to the completion date). Therefore, if a transaction is anticipated to be complex such as there are outstanding title issues or requisitions, where last minute change of completion date is likely, or when the parties cannot agree on the terms of the FSPA but the Purchaser has signed the PMI/Buy-Side Contract, it is questionable whether PAPT for S&P should be adopted, and if necessary op-out should be made as soon as possible.

**The Law Society of Hong Kong
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