

**CONVEYANCING
(MISCELLANEOUS AMENDMENTS) BILL:
WRAP-UP SPEECH IN RESPONSE TO MPs LIM BIOW CHUAN AND AP
PAULIN STRAUGHAN'S QUERIES**

Sir, I thank the two Members for their support of the Bill.

I will first respond to Associate Professor Straughan's question about the added administrative costs. She is correct that there are costs associated with the enhanced protection. These new conveyancing accounts are special accounts that require banks and lawyers to do more to protect the public. The enhanced infrastructure will come at a cost, for example, IT systems of the banks have to be enhanced. Appointed banks and the Singapore Academy of Law may charge a fee for their services. This fee will, however, be very small compared to the size of the transaction and the value of the protection.

With at least four banks slated to be appointed to provide the service, together with the Singapore Academy of Law, we expect competitive forces to keep the costs in check. Once the system is functioning smoothly, banks may well choose to provide this service as part of a package of services. The parties who wish to use the service are likely to be the one who, in the first place, have to pay for that service.

I turn now to Mr Lim Biow Chuan's queries – stamp duties issues. Let me first deal quickly with Mr Lim's query about stamp duties for tenancy agreements.

Not all forms of stamp duties are governed by the new measures. If the amount of duty in question for licences, leases and tenancies, is \$5,000 or more, then the stamp duty must be paid through the new accounts. For stamp duties below \$5,000, which is the case for the small value tenancies which Mr Lim mentioned, these are at present often dealt with by estate agents or the landlords or tenants themselves, rather than with or through the assistance of lawyers, and that practice of direct payment will continue.

Next, Mr Lim asked a series of questions about the effect of measures on lawyers. The most important of these is the need for an offence under the new section 73D(2)(h). He rightly pointed out where the conduct is serious, there are other offences applicable, such as fraud or breach of trust. He asked if the Attorney-General would charge lawyers for minor or technical breaches of the law due to carelessness or inadvertence.

The new offence envisaged under the Rules makes the new conveyancing accounts a mandatory method of holding conveyancing money. As such, it is crucial to the structure of the new framework and ensures its effectiveness. Plainly, as Mr Lim pointed out, there will be different degrees of culpability in the spectrum of misconduct. For the most egregious cases, prosecution under the Penal Code will be available additionally. The Public Prosecutor will take into consideration the facts and the circumstances of each case in deciding whether to charge a person. That a breach occurred through

inadvertence or was *de minimis*, would be relevant to the exercise of that discretion. The Public Prosecutor is also empowered to compound the offence under the new section 73D(5) for minor and technical breaches of the Rules.

Secondly, Mr Lim asked about the role of the lawyer if he had to be named as a counter-signing party under the proposed rules when the payee is a Category C payee.

Let me give the House a little background. Under the proposed rules, conveyancing money may be withdrawn from a conveyancing account only with the use of the prescribed payout forms which would identify the types of payees. Payees are divided into categories A, B and C. Category A payees are bodies such as the Commissioner for Stamp Duties, Commissioner of Lands, Comptroller of Income Tax. The lawyer acting for the other party need not counter-sign. Category B payees include the seller, buyer, mortgagee, other bodies closely associated or connected to the conveyancing transaction. Here, the counter-signing lawyer need only check if the identity of the payee is correct.

Category C payees are all other payees, other than those in Categories A and B. Such payees are not unusual in many conveyancing transactions, for example, a vendor might at the same time be purchasing another property with the proceeds of sale and require the proceeds to be paid onward. For this category, the counter-signing lawyer must check if the identity of the payee and the amount to be paid are correct. Understandably, lawyers may have some anxiety regarding counter-signing for Category C payees.

The role of the counter-signing lawyer when dealing with Category C payees is merely to ascertain the veracity of the seller's instruction. Thus, he needs only be sure that the seller wants to pay that particular Category C payee in the amount specified in the payout form. He does not need to enquire into the 'why' of the seller's instruction. Unless the counter-signing lawyer has reason to be suspicious of the statutory declaration or any other supporting documents tendered by the seller, he is not required to question the relationship between the seller and the Category C payees or the amount to be paid.

The Law Society will be issuing guidelines to assist counter-signing lawyers in performing this role. Lawyers are also advised to attend one of the many training sessions which the Law Society will be organising together with my Ministry from June, in the run-up to implementation on 1 August.

Lastly, Mr Lim also asked who, during the initial period where parties' area of responsibilities are not clearly set out, should bear the additional charges and interest payable during the period of any delay whilst parties seek adjudication. He was concerned that it would not be fair for a party who simply sought clarity through adjudication to be held responsible for the delay.

I have explained earlier about the Law Society's guidelines to assist counter-signing lawyers, and training sessions to educate lawyers in general. After several dialogue sessions with practitioners and the two pilot trials I spoke about earlier, involving more than 110 law firms and more than 700 transactions, we have worked through numerous scenarios which will be distilled into guidance, on websites, publications and so forth.

In the event that there are costs occasioned by a delay on the part of one party, the issue of who is responsible will have to be dealt with by the adjudicator, who will have the power to make orders relating to interests and costs. The Law Society is in the process of forming a panel of adjudicators.

Sir, I thank the two Members for their comments. My Ministry will continue to work with the public and key stakeholders to refine and enhance the new conveyancing processes.

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