

**SECOND PUBLIC CONSULTATION PAPER
TO SEEK FEEDBACK
ON THE PROPOSED MEASURES
TO SAFEGUARD CONVEYANCING MONEYS**

18 JANUARY – 12 FEBRUARY 2010

I. INTRODUCTION

1. In August 2009, the Ministry of Law sought feedback (First Consultation) on the proposed measures to safeguard conveyancing moneys.
2. A copy of the First Consultation Paper and our responses to the feedback from the First Consultation can be found at <http://app2.mlaw.gov.sg/News/tabid/204/currentpage/3/Default.aspx?Itemid=413>.
3. Arising from the useful feedback from the First Consultation and further dialogue sessions with stakeholders, we have made revisions to the proposed measures.
4. The Ministry of Law would like to seek feedback on these revised measures, including the supporting legislation that will be introduced.
5. The Second Public Consultation will close on 12 February 2010.

II. RECAP OF CURRENT SITUATION

Lawyers acting in different capacities and types of conveyancing moneys

6. To re-cap, traditionally, lawyers have been holding clients' moneys as part of the conveyancing process. This could occur in both private property and Housing and Development Board (HDB) transactions. The lawyers could be holding these moneys as:
 - (a) a buyer's lawyer,
 - (b) a seller's lawyer;
 - (c) the Central Provident Fund Board (CPF Board)'s lawyer (for release of a buyer's CPF moneys).
7. A lawyer acting for a buyer may be holding conveyancing moneys that his client has paid to him to:
 - (a) pay to the seller's lawyer in exercise of an Option to Purchase;
 - (b) pay to the Inland Revenue Authority of Singapore (IRAS) for stamp fees, or
 - (c) complete the purchase of the property.

8. A lawyer acting for a seller may be holding moneys he has received from:

- (a) the buyer as deposit for the purchase of the property, and
- (b) sales proceeds that the seller has authorised his law firm to receive.

9. A lawyer who has been appointed by CPF B to act in the release of moneys for the buyer's use will be in receipt of such CPF moneys.

Two ways in which purchase of property transactions are commonly entered into

10. Option to Purchase Method:

- (a) This is the more common method where a buyer is given an Option to Purchase upon paying the seller one per cent of the purchase price as option fee.
- (b) The Option to Purchase Form will typically give the buyer 14 days to exercise his Option to Purchase.
- (c) The buyer exercises the Option to Purchase by signing an acceptance copy of the Option to Purchase Form together with a deposit of four or nine per cent of the purchase price (depending on the amount stipulated by the seller in the Option to Purchase) paid to the seller's lawyer.
- (d) The seller's lawyer will then hold on to this deposit in his regular client account until such time when it should be released.
- (e) Some sellers' lawyers make use of this deposit to sort out minor adjustments of accounts on the completion day.

11. Sale & Purchase Method:

- (a) This method is less common.
- (b) The buyer will typically pay a certain percentage of the purchase price directly to the seller, and the balance would be paid over on legal completion.
- (c) This method may have more variables, and there may be some terms in the agreement specifying whether the initial payment should be held by a stakeholder, who should be the stakeholder, etc.

III. REVISED PROPOSED MEASURES

12. The proposed measures to safeguard conveyancing moneys in conveyancing transactions will be supported by a legislative framework, which includes:

- (a) the Conveyancing (Miscellaneous Amendments) Bill¹;
- (b) a new set of Conveyancing and Law of Property (Conveyancing) Rules 2010 (CLPR); and
- (c) amendments to the Singapore Academy of Law (Stakeholding) Rules.

13. Under the proposed measures, a person shall not, in the course of his employment or in the course of carrying on his trade, business, profession or vocation, receive or hold any conveyancing money on behalf of another person². A breach of this prohibition may attract a penalty of up to three years' imprisonment or a fine up to \$50,000³.

14. With this general prohibition, lawyers will no longer be permitted to hold the various types of conveyancing moneys in their regular client account. Instead, they will only be able to receive and hold such conveyancing moneys for their clients if these moneys are deposited in one of these accounts:

- (a) in a new type of account called a “conveyancing account”⁴ that they open with banks that are approved (Approved Banks) to provide such a service by the Minister for Law or;
- (b) in an escrow account⁵ pursuant to an escrow agreement between the lawyers to the conveyancing transaction⁶;

¹ The main amendment in this Bill is to empower the Minister for Law to make Rules to regulate conveyancing transactions and the receipt, holding and distribution of conveyancing money.

² Rule 4(1) of CLPR.

³ Rule 4(2) of CLPR.

⁴ Rules 2(2) and 5(1)(b) of CLPR.

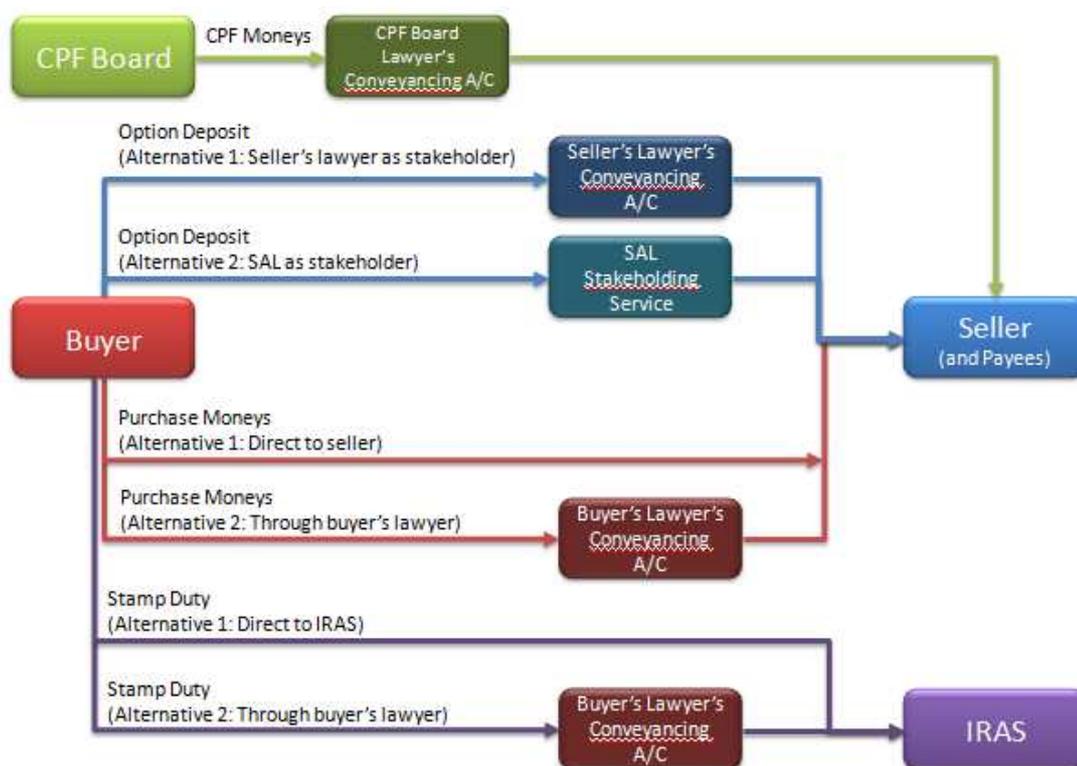
⁵ An “escrow account” means an account with a bank, or with a finance company registered under the Finance Companies Act (Cap. 108), maintained jointly by 2 or more lawyers, each of whom acts for a party to a conveyancing transaction, for the purpose of depositing conveyancing money for or in connection with the transaction - Rules 2(2) and 5(1)(a) of CLPR.

⁶ These measures are not intended to prevent buyers, sellers and their lawyers from negotiating separate escrow agreements, where moneys are held in escrow accounts with terms and conditions governing how moneys can be jointly deposited and withdrawn. In some complex deals such as collective sales (en bloc sales) transactions and large commercial deals, it is envisaged that some clients and their lawyers may prefer to have an escrow agreement - Rules 2(2) and 4(1)(a) of CLPR.

15. Where both the buyers and sellers have agreed that a certain sum of conveyancing moneys, for example, the option deposit, be held by a stakeholder pending legal completion of the transaction, the parties can choose to:

- (a) appoint one of the lawyers as a stakeholder and place these moneys in the lawyer's conveyancing account as the conveyancing account can be used to hold all types of conveyancing moneys;
- (b) instruct their lawyers to appoint the Singapore Academy of Law (SAL) to serve as a stakeholder and to place these moneys with SAL. SAL will be an approved entity appointed by the Minister for Law to hold conveyancing moneys⁷;
- (c) appoint both the lawyers to jointly hold the moneys as stakeholders pursuant to an escrow agreement.

16. The flow of conveyancing moneys under the proposed measures is depicted in Diagram 1 below.



⁷ Rules 4(1)(b) and 5(1)(c) of CLPR.

A. Scope

17. These proposed measures would apply to these conveyancing transactions⁸:

- (a) the sale, purchase or assignment of any land;
- (b) the grant of a lease, licence or tenancy in respect of land; or,
- (c) the grant of a mortgage of, or charge on land, or the redemption or discharge thereof.

18. Conveyancing moneys in the above-mentioned conveyancing transactions will include moneys in the form of⁹:

- (a) conveyancing option deposits;
- (b) purchase moneys;
- (c) balance sales proceeds payable upon completion;
- (d) goods and services tax due;
- (e) stamp duty payable on sales and purchase, and transfers by way of gift, and
- (f) Central Provident Fund moneys (CPF moneys).

19. To ensure that lawyers have access to a sum of client moneys to meet disbursements and last minute payments that are typically incurred in a conveyancing transaction, as well as to account for minor variations in the amounts to be paid on completion day, lawyers will be permitted to request from their clients and to hold in their client account, a sum of up to \$5,000¹⁰. This amount will have to be refunded to the client if it was paid to the lawyer and not utilised.

20. For collective sale (en bloc sales)¹¹, it is envisaged that some objecting minority sellers may not cooperate with the lawyers to provide the \$5,000 referred to in paragraph 19. As such, the proposal is for the lawyers to be permitted to receive and hold a sum of \$2,000 per unit (subject to a cap of \$200,000 for the collective sale out of the option deposit, to be placed in their regular client account, to meet such disbursements and last minute payments or adjustments¹².

⁸ Rule 2(2) of CLPR.

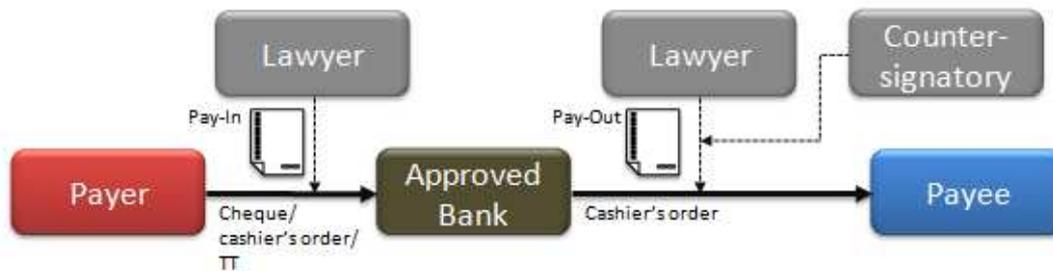
⁹ Rule 2(2) of CLPR.

¹⁰ Rule 5(3) of CLPR.

¹¹ Rule 5(9) of CLPR.

¹² Rule 5(4) of CLPR.

B. Law firms' conveyancing accounts and Approved Banks



21. Currently, law firms receive and hold all types of client moneys, in their regular client accounts. In order for these client accounts to also hold conveyancing moneys, the existing law requires that the law firm have two signatories to the client account. Withdrawal of moneys must be by cheque or cashier's order, and law firms cannot withdraw moneys from these client accounts using automated teller machines, telephone banking services or online banking services.

22. Under the proposed measures, law firms that wish to continue to receive and hold conveyancing moneys will have to open a new type of account, called a "conveyancing account", with an Approved Bank¹³. These conveyancing accounts play roles that are similar to the regular client accounts in many respects, except that there are measures in place to safeguard the withdrawal of these conveyancing moneys out of the conveyancing account, as explained further below.

23. The conveyancing account can be used by a law firm to receive the various types of conveyancing moneys referred to in paragraph 18(a) to (e). A seller can require a buyer to place the option deposit with the seller's lawyer's conveyancing account, to be held by the seller's lawyer as a stakeholder. A buyer may also choose to deposit purchase moneys and moneys used to pay stamp duties with his lawyer, who would also need to have a conveyancing account with an Approved Bank in order to receive the moneys.

24. Lawyers acting for CPF would be required by CPF to have separate conveyancing (CPF) accounts, solely to receive and hold CPF moneys in place of their existing client account¹⁴.

25. Where a conveyancing account is used, purchaser and vendor will require separate representation, as withdrawal of money from the account requires two signatories from separate parties¹⁵.

¹³ Rules 2(2), 4(1)(e), and 5(1)(b) of CLPR.

¹⁴ Rules 2(2) and 5(2) of CLPR.

26. Some consequential changes will need to be made to the Legal Profession (Solicitors' Accounts) Rules (SAR) to provide for conveyancing accounts, and the proposed amendments are currently being considered by the Law Society.

Two-party signatory system

27. The distinguishing characteristic of a conveyancing account from a regular client account is the use of a two-party signatory system for the withdrawal of conveyancing moneys.

28. In order to withdraw money from a conveyancing account, the law firm, from whose conveyancing account it is seeking to withdraw conveyancing moneys, will need to complete a prescribed Pay-Out Form and have it counter-signed by the other party in the conveyancing transaction. The diagram above illustrates that any payment instruction to the Approved Bank would need to be accompanied by a counter-signature by another lawyer acting for the other party. For example, in preparation for legal completion, the seller's lawyer would seek to withdraw the option deposit that is being held in his conveyancing account, and this request would also have to be endorsed by the buyer's lawyer. Where the buyer or seller is not legally represented, then he himself will be the counter-signing party before the Approved Bank.

Basic features of conveyancing accounts

29. Only Approved Banks will be permitted to open conveyancing accounts for law firms¹⁵.

30. All conveyancing accounts will adopt the naming convention – "<Name of law firm> - Conveyancing". This is to make it clear that such accounts are to be used solely for the receipt and holding of conveyancing moneys, and cheques and cashier's orders for conveyancing moneys made payable to the law firm should be drawn in the above payee format.

31. Approved Banks will maintain a list of law firms with conveyancing accounts and their corresponding account numbers on their website.

¹⁵ Rule 5(7) and (8) of CLPR.

¹⁶ Rule 2(2) of CLPR. A conveyancing account opened with an Approved Bank will have to be linked to a separate operating account. This operating account would be used by the Approved Bank to debit any transaction fees or other administrative fees that accrue from the law firm's use of the conveyancing account.

This allows buyers who are remitting conveyancing moneys by telegraphic transfer (TT) to their law firms to verify that the payee's account is a conveyancing account, and not any other account of the law firm.

Pay-in procedure

32. Moneys may only be paid into a conveyancing account using cheque, cashier's order, bank draft or TT. Payment in by cash will not be accepted by the banks¹⁷.

33. The law firm operating the conveyancing account must complete and submit a prescribed Pay-In Form to accompany each deposit¹⁸. This allows the bank to earmark and ring-fence the moneys to the subject property transaction, and prevents co-mingling of moneys between properties. Where the pay-in is made by cheque, cashier's order or bank draft, the law firm in whose conveyancing account these funds will be deposited will have to ensure that the pay-in is accompanied by a duly completed Pay-In Form. If the pay-in is made by TT, the payor will have to notify the law firm, in whose conveyancing account the funds have been deposited, of the TT. The law firm can then perform an account enquiry (for instance, using Internet banking) to verify that the funds are in. Thereafter, the law firm shall follow up by completing a Pay-In Form and submitting it to its Approved Bank.

Pay-out procedure

34. In order to effect payment out from a conveyancing account or conveyancing (CPF) account, the law firm operating the account will have to endorse a Pay-Out Form following a prescribed format¹⁹. For example, for option deposits held in the seller's lawyer's conveyancing account, the seller's lawyer will fill out the Pay-Out Form and present it for the buyer's lawyer's endorsement, before submitting it to the Approved Bank. The Pay-Out Form will specify the names and amount due to each payee on a list. The Approved Bank will then proceed to process the payment instruction and prepare cashier's orders²⁰.

35. Subject to terms and conditions of the conveyancing accounts, this will have to be done at least three working days before completion.

¹⁷ Rule 6(1) of CLPR.

¹⁸ Rule 6(3) of CLPR. A sample of the Pay-In Form can be found in the First Schedule of CLPR.

¹⁹ Rule 7(1)(a) of CLPR. A sample of the Pay-Out Form can be found in the Second Schedule of CLPR.

²⁰ Rule 7 of CLPR.

Changes in pay-out

36. Should a change to the completion accounts occur, Approved Banks can accommodate same-day alteration of cashier's orders, as long as the bank is notified and a revised Pay-Out Form submitted before a specified cut-off time. The cut-off time and any premium leviable by the Approved Bank will be subject to terms and conditions for operating the conveyancing account as between the law firm and its Approved Bank.

Roles of counter-signatory

37. As the role of the counter-signatory is to provide an additional safeguard in the conveyancing process, counter-signatories are expected to verify that the payees and the amounts payable are not inconsistent with the known facts of the conveyancing transaction.

38. Notwithstanding any contractual provisions, the counter-signatories will be entitled to ask for supporting documentation from the other lawyer to support the inclusion of payees in the list of payees²¹.

39. In order to ensure the smooth flow of conveyancing moneys, there is a continuing obligation on lawyers to sign the Pay-Out form accordingly. This obligation will continue to be in effect even after the transaction has completed, or in cases where the lawyer has been discharged by that party²².

40. In the event that a lawyer unreasonably refuses to sign or counter-sign any Pay-Out Form, the Law Society may, in appropriate cases, issue a direction to the lawyer to perform his role²³.

Other counter-signatories

41. In most cases, the authorised counter-signatory will be a lawyer acting for either the buyer or seller.²⁴

²¹ Rule 7(7) of CLPR.

²² Rule 10 of CLPR.

²³ Clause 4(b) of the Conveyancing (Miscellaneous Amendments) Bill.

²⁴ Should a buyer or seller wish to represent himself in a conveyancing transaction, he will have to counter-sign the Pay-Out Form before the Approved Bank used by the other party for identity and signature verification – Rule 7(2) of CLPR.

42. However, when one party is represented by Housing Development Board (HDB) (such as when a HDB property is being transferred), HDB and its officers may be designated as authorised counter-signatories²⁵.

43. Where a property owner wishes to refinance his property using CPF moneys, there may only be one lawyer involved. In such cases, it is also possible to designate CPF Board and its officers as authorised counter-signatories²⁶.

One-key authorisation for payment to certain payees

44. Payment of conveyancing moneys to the Commissioner of Lands and payment of stamp duties to the Commissioner of Stamp Duties, using moneys in a conveyancing account, will not require the endorsement of a counter-signatory. In such cases, the Pay-Out Form submitted to the Approved Bank will only need the buyer's lawyer's endorsement²⁷.

Unclaimed, excess or disputed moneys

45. When a withdrawal of moneys from a conveyancing account is made in anticipation of completion, lawyers will have to indicate this accordingly so that Approved Banks can take steps to ensure that no balance is left in the conveyancing account for that property transaction, such as paying-out any remaining balance to a designated payee agreed upon by both signatories²⁸.

46. Should there be a dispute between the parties to a conveyancing transaction, or in cases where a conveyancing transaction is aborted, the Approved Bank shall not pay any money from the conveyancing account, until the parties come to an agreement or a court order is served on the Approved Bank requiring a release of the moneys to the rightful party²⁹.

²⁵ Third Schedule of CLPR.

²⁶ Third Schedule of CLPR.

²⁷ Rule 8 of CLPR.

²⁸ Rule 13 of CLPR.

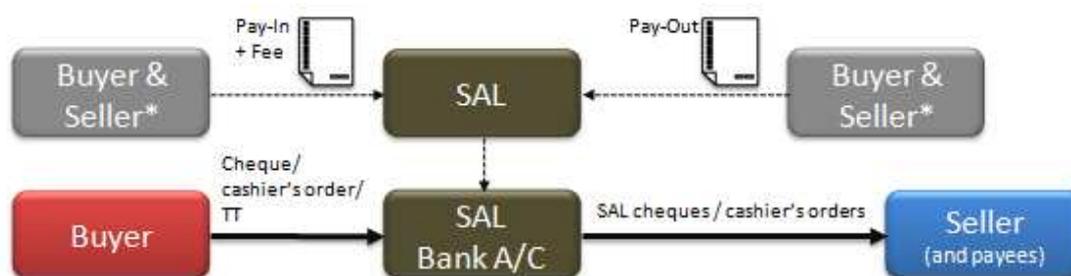
²⁹ Rule 12 of CLPR.

Requirement by CPF Board for its panel of law firms to open conveyancing accounts for CPF moneys with Approved Banks

47. If a buyer requires CPF moneys to complete the purchase of properties and is represented by a lawyer, CPF Board will assign a lawyer from its panel of designated law firms to act on its behalf. This CPF Board lawyer will liaise with the buyer's lawyer to arrange for the payment and disbursement of CPF moneys, which would form part of the purchase moneys in the transaction.

48. All CPF-assigned law firms will have to open a "Conveyancing (CPF) account" with an Approved Bank specifically for holding of CPF moneys. The workflows for CPF moneys deposited in and withdrawn from an Approved Bank would differ slightly from that for conveyancing accounts, although the fundamental concept of a two-party signatory system providing the necessary safeguards would be common to both types of conveyancing accounts.

C. SAL stakeholding service



*Represented by their respective lawyers, if authorised.

49. As an alternative to lawyers holding conveyancing moneys, such as option deposits, in their conveyancing accounts as stakeholders, buyers and sellers may choose to utilise the conveyancing moneys stakeholding service provided by SAL to hold these option deposits in private property or HDB industrial/commercial property transactions.

50. The role of SAL is to serve as an independent stakeholder and service provider to both buyer and seller. Moneys paid to SAL will be stakeheld on behalf of both parties until one party discharges SAL from the arrangement.

51. To allow SAL to provide its conveyancing moneys stakeholding service, the Minister for Law intends to appoint SAL as an approved entity to hold conveyancing moneys directly.

52. SAL will hold the stakeholding money as a stakeholder for both the buyer and seller, rather than for the lawyers. Diagram 2 (above) demonstrates this arrangement, whereby both the buyer and seller are represented by their lawyers.

53. Option deposits that are entrusted to SAL to stakehold can only be paid out with 2-signature authorisation from the buyer and seller, or their respective lawyers if they are appointed in writing.

Pay-in procedure

54. The pay-in to SAL of stakeholding moneys can be by way of cheque or cashier's order made in favour of SAL, or via TT to SAL's designated bank account. Where the pay-in is by TT, the buyer's lawyer's file reference should be indicated to ease the matching of moneys paid in with the correct property unit.

55. In order to deposit the stakeholding moneys with SAL, the parties will have to complete a prescribed Pay-In Form.

56. The buyer's lawyer will handover the cheque/cashier's order, duly signed Option Form, and duly signed Pay-In Form (signed either by buyer or his lawyer if the latter is appointed in writing) to the seller's lawyer. If the deposit was made by TT, the buyer's lawyer will extend a copy of the proof of TT to the seller's lawyer. If the buyer's lawyer is appointed to sign the Pay-In Form, the written appointment must be appended to the Pay-In Form.

57. Upon receipt of the Pay-In Form, the seller or his lawyer (if the lawyer is appointed in writing) will counter-sign and submit it to SAL together with a separate cheque for the stakeholding fee. The seller's lawyer will also separately deposit the cheque/cashier's order for the stakeholding money directly into SAL's designated bank account.

58. Stakeholding money must be paid in at least 14 days before any payment out can be effected, so as to allow sufficient time for SAL to ensure that the money paid in is traced to the right property unit.

Pay-out procedure

59. In order for SAL to prepare payment, the seller or his lawyer shall complete a prescribed Pay-Out Form and have it duly endorsed by both the buyer or his lawyer, and the seller or his lawyer. The Pay-Out Form shall specify the names and amounts due to each authorised payee,

and must be submitted at least three working days before the moneys are to be withdrawn.

60. SAL will only issue payment if the payees specified on the joint instruction are on a designated schedule of authorised payees. These payees include:

- (a) the seller (or if the seller is in receivership, the seller's receiver);
- (b) the seller's mortgagee;
- (c) the CPF Board for the account of the seller;
- (d) the management corporation constituted under the Land Titles (Strata) Act (Cap 158) of that property;
- (e) where the property is a commercial/industrial property under the Housing And Development Board Act (Cap 129), the HDB;
- (f) the IRAS for property or other taxes relating to that property;
- (g) the Official Assignee, the Official Receiver, or the liquidator where the seller is a bankrupt or is in liquidation; and
- (h) any party authorised in writing by the seller (and subject to other formal requirements of the SAL being met) to receive the payment or any part thereof.

61. Moneys withdrawn from SAL's conveyancing moneys stakeholding service will be in the form of cheques drawn against SAL's bank accounts. For an additional fee, SAL can also issue cashier's orders, only if required by the sellers' mortgagee bank.

62. The Pay-Out Form shall indicate whether a final settlement and completion between the buyer and seller has been reached concerning the conveyancing transaction. Where there is completion but there are still stakeholding moneys held by SAL, the buyer can decide whether SAL may be discharged from stakeholding the money on his behalf. If the Pay-Out Form indicates that the transaction is aborted, but there are still stakeholding moneys held by SAL, then either the buyer or the seller can decide whether SAL may be discharged from stakeholding the money on that parties' behalf.

63. Henceforth, any withdrawal can be unilaterally authorised by the sole remaining party to the stakeholding arrangement.

Changes in pay-out

64. As SAL requires three working days to respond to payment out instructions, last minute adjustments required to the completion account will have to be made separately by the buyer or the seller.

Disputed amounts

65. Where there is a dispute, either the buyer or seller may stop the payment out of stakeholding moneys by serving a notice, stating the disputed amount, on SAL, in such form and before such time as may be determined by SAL, on the due date of payment. A copy of that notice must also be served on the other party³⁰.

66. Upon receipt of the form, SAL will retain the disputed amount of stakeholding moneys pending receipt of a new Pay-Out Form or a court order³¹. If cashier's orders were issued, a cancellation charge would be applicable.

D. Cost of service

67. During the pilot trial (please see Part G below on pilot trial), SAL and the three banks involved in the pilot trial will not be charging any transaction fee.

68. When the new measures are implemented, it is anticipated that some approved entities may decide to charge a transaction fee, as infrastructure and administrative expenses will be incurred by them in providing this enhanced service to accord greater protection to buyers and sellers. At the same time, it will be open to other banks to provide the service, and consumers will not be limited to the three pilot banks. The fee, or packages offered by banks within which the fee will be incorporated, will therefore necessarily be competitive.

E. Other aspects of proposed measures

Central Signature Repository

69. To facilitate the verification of counter-signatures, a Central Signature Repository (CSR) will be established by a party appointed by

³⁰ Rule 14(1) of SAL Rules.

³¹ Rule 14(2) and (4) of SAL Rules.

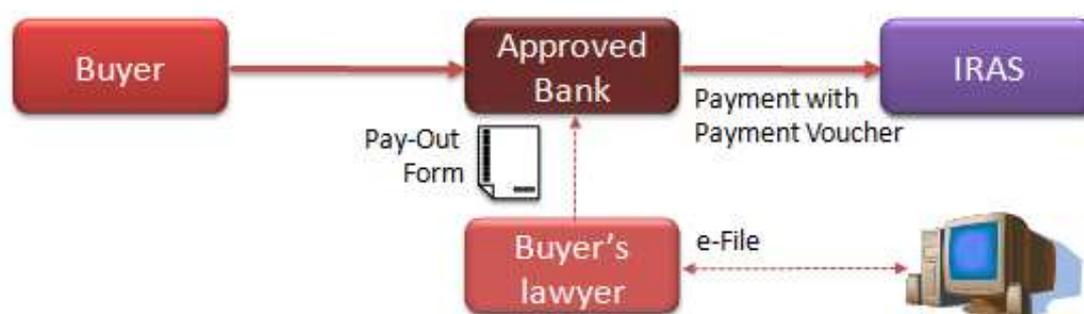
the Minister for Law. The CSR will enable the storage and retrieval of the image of the signature of every authorised counter-signatory for reference by any approved entity³².

70. Conveyancing law firms will have to maintain a list of authorised signatures for counter-signing purposes with the CSR. These signatures need not be the same as the law firm's signing mandate with the Approved Bank(s) maintaining its conveyancing account(s), as it is envisaged that there may be several conveyancing lawyers within a law firm.

71. Other potential counter-signatories like CPF and HDB will also have to deposit signatures with the CSR.

72. Approved entities (both Approved Banks and SAL) will be provided access to the CSR to view the signatures therein.

Payment of stamp duties



73. Currently, the buyer's lawyer typically pays stamp duties on behalf of their client via the e-Stamping system, and authorises an inter-bank GIRO transfer of moneys from the law firm's client account to IRAS.

74. Under the new Rules, lawyers will e-stamp the document using the e-Stamping system and generate a payment voucher. With the payment voucher, the lawyer can unilaterally give Pay-Out instructions to its Approved Bank to make electronic payment to IRAS or to prepare a cashier's order to IRAS from the stamp duty moneys deposited in the conveyancing account. Alternatively, the buyer can pay the stamp duty using a cheque or cashier's order, together with the payment voucher.

³² Rules 3 and 7(8) of CLPR.

Withholding tax

75. Currently, the buyer or his lawyer is obliged under the Income Tax Act to withhold tax at the rate of 15 per cent on the payment made to the seller of the real property if the latter is a non-resident property trader. Following the proposed measures, an amendment will be made to the Income Tax Act to remove the obligation on lawyers acting for the buyer to withhold tax on any real property sale made by a seller who may be a non-resident property trader³³. However, as part of their professional duty, they should still advise their clients to withhold tax if there are reasons to believe that the seller of the real property may be a non-resident trader.

Proposed measures will not apply to government agencies and statutory boards

76. The proposed measures will not apply to government agencies or statutory boards that in the course of performing their functions, have to receive and hold conveyancing moneys.

F. Example of new workflow

77. This section describes the steps in a typical conveyancing transaction if the proposed measures are in place.

Option exercise

1. Buyer pays seller a non-refundable one per cent deposit; in exchange, seller grants buyer an Option to Purchase form.
2. Seller will stipulate in the Option Form whether the Option Deposit is to be paid to the seller's lawyer's conveyancing account for the lawyer to hold as stakeholder, or to be paid to SAL as stakeholder. Both options are presented below:
 - a. Option deposit into conveyancing account. The buyer exercises the option by completing the Option form and arranging for the option deposit of four or nine per cent to be paid to the seller's lawyer via cheque or cashier's order (made out to "- <Name of seller's lawyer's firm> - Conveyancing"), or via TT directly into the seller's lawyer's conveyancing account (after verifying that the account

³³ Clause 3 of the Conveyancing (Miscellaneous Amendments) Bill.

number corresponds to the seller's lawyer's conveyancing account published on the bank's website). Duly signed Option Form and payment, or proof of payment, are submitted to the seller's lawyer either directly, or through the buyer's lawyer.

The seller's lawyer completes and endorses a Pay-In Form and deposits the cheque or cashier's order into the conveyancing account. If the option deposit is paid by TT, he submits the hardcopy Pay-In Form after performing an account enquiry (for example, via Internet banking) to establish receipt of the funds.

b. Option deposit stakeheld by SAL. The buyer exercises the option by completing the Option form and arranging for the option deposit of four or nine per cent to be paid via cheque, cashier's order made in favour of SAL or via TT. The Pay-In Form is completed and endorsed by the buyer or his lawyer (if his lawyer is appointed in writing). The Option form, cheque/cashier's order and the Pay-In Form (with written appointment appended if the buyer's lawyer is appointed) are submitted to the seller's lawyer.

The seller's lawyer then counter-signs and delivers the following to SAL:

- (i) Covering letter + Pay-In Form.
- (ii) Written appointment from buyer and/or seller if the buyer and/or seller are appointing their lawyers to sign the Pay-In Form.
- (iii) A separate cheque for the stakeholding fee.

c. A copy of the Pay-In Form is to be copied to the buyer or the buyer's lawyer.

d. The cheque/cashier's order for the stakeholding money is to be deposited by the seller or the seller's lawyer directly into SAL's bank account.

3. The seller's lawyer notifies the seller that the buyer has exercised the option to purchase.

Purchase moneys and/or stamp duties

1. The buyer may choose to park purchase moneys (90% / 95 per cent + stamp duties) in the buyer's lawyer's conveyancing account:

Purchase moneys and stamp duties moneys. – The buyer either gives his lawyer a cheque or cashier's order (in favour of “<Name of buyer's lawyer's firm> - Conveyancing”) for purchase moneys and/or stamp duties to deposit into conveyancing account, or remits the money via TT (after verifying that the account number corresponds to the buyer's lawyer's conveyancing account published on the bank's website).

The buyer's lawyer completes and endorses a Pay-In Form and deposits the cheque or cashier's order into the conveyancing account. If the moneys are paid by TT, he submits the Pay-In Form after performing an account enquiry to establish receipt of the funds.

Note: The buyer's lawyer may also ask the buyer for a separate sum of up to \$5,000 to facilitate disbursements and adjustments to completion accounts. This sum can be paid into the law firm's regular client account.

Payment of stamp duties

1. The buyer's lawyer logs on to the IRAS e-Stamping website to e-stamp the conveyancing document. The mode of payment depends on the type of document being stamped:
 - a. Sales & Purchase or Transfer by Way of Gift. - After e-Stamping, the buyer's lawyer will generate a payment voucher from the IRAS website. The buyer can then pay the stamp duty by cheque or cashier's order together with the payment voucher directly to IRAS. Alternatively, if stamp duties are held in buyer's lawyer's conveyancing account, the buyer's lawyer can fill out a Pay-Out Form and endorse it, and present it to the bank to make electronic payment to IRAS or to withdraw a cashier's order to make payment to IRAS with the payment voucher attached.
 - b. Other types of documents – The buyer's lawyer will authorise inter-bank GIRO deduction of the stamp duties payable from the buyer's lawyer's client account.

Preparation of CPF moneys

1. The buyer's lawyer submits an application on the buyer's behalf, to use CPF moneys for the property transaction, to CPF Board.
2. CPF Board issues a letter of approval/acceptance to buyer, and appoints a CPF Board panel lawyer to liaise with the buyer's lawyer.

Pre-completion

1. At least three clear working days before completion, the seller's lawyer is to provide the buyer's lawyer with a completion statement indicating schedule and mode of payment. If the buyer's lawyer has no objection to the payment schedule, one or more of the following will be performed:

- a. Option deposit kept in conveyancing account.- The seller's lawyer will complete a Pay-Out Form and endorse it before seeking the buyer's lawyer's counter-signature. Pay-Out Form will then be transmitted to the seller's lawyer's Approved Bank to facilitate preparation of cashier's orders out of the option deposit.
- b. Purchase moneys. - Upon receipt of completion statement, the buyer's lawyer will complete a Pay-Out Form and endorse it before seeking the seller's lawyer's counter-signature. Pay-Out Form will then be transmitted to the buyer's lawyer's Approved Bank to facilitate preparation of cashier's orders out of the purchase moneys.
- c. CPF moneys. - Upon receipt of completion statement, the buyer's lawyer will inform CPF Board of the amount to request from the buyer's CPF account, through CPF Board's lawyer. This amount is credited to CPF Board's lawyer's conveyancing (CPF) account.

CPF Board's lawyer then completes a Pay-Out Form and endorses it before seeking the buyer's lawyer's counter-signature (if the buyer's lawyer is also CPF Board's lawyer, then the seller's lawyer will counter-sign). The Pay-Out Form will then be transmitted to CPF Board's lawyer's Approved Bank to facilitate preparation of cashier's orders out of the CPF moneys.

- d. Option deposit stakeheld by SAL. – The seller's lawyer will complete a Pay-Out Form prescribed by SAL and endorse it before seeking the buyer's lawyer's endorsement. The Pay-Out Form and a covering letter will then be submitted to SAL to facilitate preparation of SAL cheques/cashier's orders for payment out of the stakeheld money. If there is a request for a cashier's order, a cheque or cash for the additional fees for the cashier's order will have to be submitted together with the Pay-Out Form
2. Approved Bank. On receiving Pay-Out Forms, the Approved Bank will check that the account balance under each file reference is sufficient to meet payment. The Approved Bank will validate the signature of the law firm operating the conveyancing account against the Approved Bank's internal records of the law firm's signing mandate. The Approved Bank will also validate the signature of the counter-signing lawyer or authority against the corresponding signature lodged with the CSR.
3. If both lawyers have indicated on the Pay-Out Form that no further withdrawals are expected, the Approved Bank will take steps to close the sub-account and pay out all residual moneys.
4. The Approved Bank will prepare cashier's orders as requested.
5. SAL. - On receiving a Pay-Out Form, SAL will check if the payees specified on the joint instruction are on the designated schedule of authorised payees. Where cashier's orders instead of cheques are requested, SAL will liaise with its bank to obtain the cashier's orders for a fee.

If there are any remaining moneys post-completion, the buyer may discharge SAL from stakeholding the money on his behalf. Subsequent pay-out requests can be made unilaterally by the sole remaining party.

Completion

1. Lawyers will arrange to pick up cheques/cashier's orders from the Approved Banks in exchange for originals of the Pay-Out Forms (Approved Banks' fees will then be debited from the lawyer's non-conveyancing current account).

2. Legal completion of the sales transaction takes place. Lawyers exchange legal documents with cashier's orders/cheques.

G. Pilot Trial

78. The Ministry of Law intends to conduct a pilot trial of the proposed measures and accompanying workflow with selected law firms, SAL and three pilot banks³⁴ (as Approved Banks) on these types of conveyancing transactions:

- (i) Sale & Purchase
- (ii) Gift, that is, no cash consideration
- (iii) Refinancing
- (iv) Mortgage and CPF discharges

79. Pilot law firms will be asked to carry out the legal work on some of the new conveyancing cases that their firms handle in April and May 2010 using the framework provided under the proposed measures. As the legal completion for these cases will take place in June to August 2010, the pilot trial on these pilot cases will run until August 2010 whereupon refinements, if any, will then be made to the proposed measures.

80. To facilitate this pilot trial, the three pilot banks had earlier committed to the Ministry and worked closely with the Ministry to develop suitable workflows vis-à-vis the operation of the conveyancing accounts that pilot law firms open with them.

81. The Ministry of Law intends to permit other banks to provide a service as approved banks when the workflows under the proposed measures are finalised and implemented as law, at a date to be announced.

³⁴ When the Ministry of Law first explored the possibility of involving the banks to safeguard conveyancing moneys, we approached both local and foreign banks through the Monetary Authority of Singapore (MAS) and the Association of Banks in Singapore (ABS). Only DBS, UOB and OCBC expressed interest and commitment, and have been working with the Ministry from an early stage on the workflows that will be tested during the pilot trial period. As the objective of the pilot trial is only to test the workflows on a small number of cases with a small number of pilot law firms, the Ministry of Law will continue to work closely with these three banks to test out and finetune the workflows.

H. Conclusion

82. The abovementioned proposed measures are proposed pursuant to extensive consultation with the industry.

83. These measures are intended to primarily address situations where clients wish to continue having their lawyers receive and hold conveyancing moneys. In this regard, we have proposed enhancing the current regime by requiring lawyers to open conveyancing accounts with Approved Banks, and for the counter-signatory and the Approved Banks to serve as a check against unauthorised withdrawal of conveyancing moneys from such accounts.

84. As some conveyancing transactions may be complex and require flexibility in the management of conveyancing moneys, provisions are proposed to enable lawyers representing the respective parties to the transactions to enter into escrow agreements, whereby they can jointly agree to manage the deposits and withdrawal of the conveyancing moneys.

85. For clients that prefer to have another entity – other than their lawyer – hold conveyancing moneys that are typically stakeheld, for example, option deposits, SAL will be able to provide a stakeholding service.

86. Where clients prefer to personally handle the payment of conveyancing moneys – an alternative that currently exists, clients can inform their lawyers accordingly and prepare the necessary payments (e.g. payment of balance purchase price, or stamp duties, etc.) by cheque/cashier's orders to the payees, as and when instructed by their lawyers.

87. The object of these enhanced measures is to better protect buyers and sellers within the community. The Ministry of Law welcomes feedback on these proposals.

--- End ---