

SECOND PUBLIC CONSULTATION TO SEEK FEEDBACK ON REVISED MEASURES TO SAFEGUARD CONVEYANCING MONEYS

In August 2009, the Ministry of Law sought feedback on the proposed measures to safeguard conveyancing moneys (First Public Consultation). Arising from the feedback received during the First Public Consultation and dialogue sessions with industry, the Ministry has modified these measures and now seeks a new round of feedback on the revised measures and supporting legislation that will be introduced.

Background

2 A home is often a person's most substantial asset. The money intended for its purchase or arising from its sale should be properly protected. The law currently does not prohibit lawyers from holding clients' conveyancing moneys. There has also been a slew of lawyers absconding with clients' conveyancing moneys in recent years.

3 While amendments had been made to legislative rules over the years, the tightened measures could not prevent desperate or crooked lawyers from running away with the moneys. These lawyers' criminal acts not only harm the reputation of the legal profession, but also leave an indelible impact on victims.

First Public Consultation

4 To re-cap, the proposed measures announced in the First Public Consultation in August were:

- (a) Lawyers will be prohibited from receiving conveyancing moneys into their regular client account to which they have free access, preventing the potential for criminal breach of trust;
- (b) Breach of this prohibition will subject the lawyer to disciplinary proceedings;
- (c) Conveyancing moneys held by a seller's lawyer in his regular client account (for example, the option deposit of four or nine per cent of the purchase price which a buyer passes to the seller's lawyer upon exercise of option) will have to be held by entities approved and appointed by the Minister for Law;
- (d) The Singapore Academy of Law (SAL) will be the main entity appointed to hold such conveyancing moneys. The Ministry of Law is also in ongoing discussion with potential participating banks to explore the provision of a service to hold the option deposit, and

- (e) To prevent manipulation of names of payees, the appointed entities will only release the conveyancing moneys that they hold to approved categories of payees, for example, sellers, mortgagee banks, buyers, CPF, HDB and IRAS.

Revised proposed measures

5 We have received useful feedback from the First Public Consultation and dialogue sessions with industry. Some respondents have expressed the need for the new regime to be flexible so as to enable conveyancing transactions to complete on schedule, with the timely release of conveyancing moneys by approved entities. Others have suggested that banks play an active role in providing a similar service by being an approved entity. The Ministry has made revisions to the proposed measures arising from the feedback. Under the revised proposed measures, buyers and sellers of properties would be able to place conveyancing moneys with their lawyers in their conveyancing accounts with approved banks, or with the Singapore Academy of Law (SAL), to stakehold conveyancing moneys. The main features of the new workflow include:

- (a) Law firms to open a new type of conveyancing account to clearly differentiate this account from law firms' regular client accounts. The new account will also adopt a stipulated naming convention;
- (b) A two-party signatory system for such conveyancing accounts for the withdrawal of conveyancing moneys to provide improved security;
- (c) The counter-signatory would typically be the lawyer representing the other party in the conveyancing transaction;
- (d) Approved banks will maintain a list of conveyancing account names of law firms and account numbers on their websites, which enables property buyers to verify these conveyancing accounts;
- (e) Use of pay-in and pay-out forms with prescribed formats to effect the deposit and release of moneys;
- (f) Separate representation by lawyers for the buyer and seller in a single transaction to ensure for the security of the two-party signatory system; and
- (g) A Central Signature Repository to be established by a party appointed by the Minister for Law to enable approved banks and SAL to validate the counter-signatures against those deposited with the Repository.

6 The key distinctions between the workflows involving the banks and SAL are:

- SAL's role is confined to holding conveyancing moneys that are traditionally stakeheld by a seller's lawyer on behalf of the buyers and sellers, that is, the option deposit. SAL will release these moneys only upon receiving a prescribed pay-out form that is duly signed by the lawyers.

- The approved banks are banks with which conveyancing law firms can open conveyancing accounts. All forms of conveyancing moneys can be kept in these accounts, and they can only be withdrawn if the law firm uses a prescribed pay-out form that is duly countersigned by another party in the conveyancing transaction. The approved banks will review and process these pay-out forms once they are satisfied with the validity of the payment instructions and signatures.

Views sought on proposed measures

7 The Ministry of Law invites interested parties to provide their feedback on the proposed measures to safeguard conveyancing moneys. The consultation period is from 18 January to 12 February 2010. The public can view the consultation paper at www.minlaw.gov.sg and <http://app.reach.gov.sg/olcp/asp/ocp/ocp01a.asp>. The feedback may be sent in electronic or hard copy form to:

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