

**MINLAW'S RESPONSES TO FEEDBACK
RECEIVED FROM THE SECOND PUBLIC CONSULTATION ON
SAFEGUARDING CONVEYANCING MONEY**

1 Alternatives to the proposed measures

1.1 Clients to make payments directly

Feedback

1.1.1 There were suggestions that buyers issue cheques directly to the seller (and other parties involved such as the mortgagee bank, real estate agent, etc.) instead of transferring conveyancing money to the lawyer to arrange for such payments.

Response

1.1.2 Under the current practice, buyers/sellers can already choose to issue cheques or Cashier's Orders directly to the appropriate payees and this is not affected by the proposed measures. However, this may not always be possible for some buyers/sellers who are overseas. There could also be buyers/sellers who prefer to leave the process of payment to their lawyers. As such, we are proposing measures that still permit law firms to hold conveyancing money, but only with appointed banks and with strict withdrawal controls. Alternatively, buyers/sellers can place the conveyancing money with the Singapore Academy of Law with similar withdrawal controls.

1.2 Banks to hold all conveyancing money

Feedback

1.2.1 It was proposed that banks pay out according to the relevant lawyer's instructions. If fraud occurs, the bank should compensate the buyer/seller appropriately and then seek to recover its own losses from the party responsible. Banks may wish to charge a fee for assuming this risk, which can in turn be billed to the buyer/seller. In so doing, this service provided by the banks would be a form of insurance.

Response

1.2.2 The banks on their own would not be in a position to ascertain whether the intended payees are rightfully entitled to the conveyancing money, as they would not have sufficient knowledge of each transaction. With the proposed measures, appointed banks will only pay out on instructions of the account holder law firm after the instructions have been verified and counter-signed by a counter-signatory who has knowledge of the transaction.

1.3 Singapore Academy of Law (SAL) to hold all conveyancing money

Feedback

1.3.1 It was suggested that SAL hold conveyancing money for both buyers and sellers and pay out according to the lawyers' unilateral instructions after checking the relevant documents and charge a fee for this service.

Response

1.3.2 SAL will not be in a position to verify whether the intended payees are rightfully entitled to the conveyancing money, as it would not have sufficient knowledge of each transaction. With the proposed measures, SAL will only pay out on the joint instructions of both lawyers acting for the two parties.

2. Feedback on the proposed measures

2.1 Measures not effective if same lawyer acting for both buyer and seller

Feedback

2.1.1 A drawback for the proposed measures is that the same lawyer may be acting for both the buyer and seller.

Response

2.1.2 Our objective is to ensure that conveyancing money in a conveyancing account can only be withdrawn under a two-party signatory system. If a lawyer acts for both parties and holds the conveyancing money of one of the parties or both of them, he will not be able to withdraw this money because there is no counter-signatory. As such, lawyers should only act for one party.

2.2 Definition of conveyancing transaction under the measures

Feedback

2.2.1 It was queried if the definition of 'conveyancing transaction' should be amended to provide greater clarity as to whether and to what extent it is intended to include corporate transactions involving a sale of mixed assets.

Response

2.2.2 It is not necessary to amend the definition, as any money attributable to the transfer or sale of real property and identified as such in the conveyancing transaction will be treated as conveyancing money. For complex transactions involving mixed assets, lawyers may wish to consider opening an escrow account instead.

2.3 Advance sum of \$5,000 to lawyer to be deducted from option deposit

Feedback

2.3.1 Instead of the lawyer having to request for a separate sum of \$5,000 from his client to meet disbursements and last-minute payments, it was suggested that this sum be taken from the option deposit held by the law firm as stakeholder (when the law firm is acting for seller).

Response

2.3.2 This sum of up to \$5,000 is intended to assist law firms in the payment of any last-minute adjustments to the final amount payable upon legal completion, for instance, rental computation and tax payments. It is the client's decision if he wishes to provide this sum to his lawyer, and not all lawyers will require the money.

It is also inappropriate for the lawyer to withdraw this sum from the option deposit, as he is holding the latter in his capacity as a stakeholder on behalf of both the buyer and seller. As such, the option deposit should only be released on the day of legal completion and not earlier.

2.4 Last-day payment instructions

Feedback

2.4.1 Whereas the completion account may be rendered early, there are often last-minute adjustments to the redemption amount on completion day. This is because such mortgages are often linked to overdraft or other loan facilities, and the amount outstanding and interest rates continue to fluctuate. However, pay-out forms need to be lodged with the appointed bank two to three working days ahead of legal completion so that the appointed bank has sufficient lead time to prepare the necessary Cashier's Orders for collection. If there are last-minute adjustments, whether appointed entities can process payment in time.

Response

2.4.2 Law firms should generally give the appointed entities sufficient lead time to process payment instructions.

In urgent cases requiring same-day turnaround, appointed banks and SAL are prepared to process the pay-out instructions if they are received by a certain cut-off time on that same day.

To facilitate an efficient and secure execution of payment instructions, the Singapore Land Authority (SLA) leveraged on existing IT infrastructure which links lawyers up with SLA to create an electronic Payment Instructions system (ePI) to allow law firms to lodge and digitally sign/counter-sign pay-out forms before they are routed electronically to the banks/SAL for processing. As such, there is minimal risk of late

completion, unless lawyers delay the preparing of pay-out forms or are uncooperative in the counter-signing of the pay-out forms.

2.5 Difficulty in obtaining counter-signing may lead to delay

Feedback

2.5.1 There was concern that the difficulty in obtaining counter-signing may lead to delay.

Response

2.5.2 The two-party signatory system requires lawyers to work together to ensure that conveyancing transactions are processed smoothly. The measures are not intended to complicate matters, but to give clients assurance that their money can only be withdrawn under strict controls. Lawyers need to understand the new measures, make changes to internal procedures and be cognisant of the timelines for the various procedures. They should also familiarise themselves with their role as a counter-signing lawyer. The Law Society will be providing a set of guidelines on counter-signing. An Adjudication Scheme will be introduced to expeditiously adjudicate situations where a counter-signing lawyer withholds his counter-signing.

2.6 Extent of checks by counter-signing lawyers

Feedback

2.6.1 The draft Rules empower the counter-signing party to request for the necessary information and documents to verify the payment details. It was queried what the extent of the checks were.

Response

2.6.2 The extent of verification differs depending upon the type of payees. Payees are divided into Categories A, B and C.

Category A payees include the Commissioner of Stamp Duties, Commissioner of Lands, Comptroller of Income Tax, Jurong Town Corporation, etc. Category A payees can be paid with no counter-signing.

Category B payees include the seller or his receiver, buyer, mortgagee, CPF Board, HDB, Town Council, MCST, Comptroller of Property Tax, etc. As these payees are closely connected to the conveyancing transaction, the counter-signing party only needs to check that the identity of the payee is correct. The counter-signing party is also entitled to request that the other lawyer provide him with the necessary information and documents to verify that the the identity of the payee is correct.

Category C refers to all other payees, such as real estate agencies for their commission and lawyers for their legal costs. The counter-signing party will have to

check that the identity of the payee as well as amount are correct. The counter-signing lawyer is entitled to require the other party's lawyer to provide a statutory declaration or any other signed written direction by the party (who provided the conveyancing money that was deposited into that lawyer's conveyancing account) indicating that the payment is to be made accordingly.

The Law Society will be coming up with a set of guidelines for lawyers' reference.

2.7 Concern over release of confidential information requested by counter-signing lawyer

Feedback

2.7.1 There was concern that the information required by the counter-signing lawyer may be confidential in nature.

Response

2.7.2. As payees are divided into Categories A, B and C (see paragraph 2.6.2 above), the types of supporting documents required are closely connected to the conveyancing transaction. If a lawyer finds that the information required by the counter-signing lawyer is confidential in nature, he can advise his client if the information should be released. The Law Society will be coming up with a set of guidelines for lawyers' reference.

2.8 Continuing involvement of lawyer in conveyancing transactions

Feedback

2.8.1 It may be inappropriate to oblige a lawyer who has been discharged to continue verifying the contents of any pay-out form or variation form.

Response

2.8.2 Arising from this feedback received, the relevant provision in the draft Rules has been deleted. A lawyer who has been discharged will not be obliged to continue to be a counter-signatory.

2.9 Manual nature of proposed measures and inconsistency with general move towards electronic transactions

Feedback

2.9.1 There was some concern that the proposed measures may be cumbersome and unworkable. Difficulty in obtaining counter-signatures can also result in delay. The process is highly manual and inconsistent with the general move towards electronic transactions.

Response

2.9.2 Feedback from the two pilot trials showed that the new measures and workflow did not cause undue delay.

An e-payment system has also been instituted to facilitate the efficient and secure execution of payment instructions. SLA leveraged on existing IT infrastructure which links lawyers up with SLA to create the ePI. This system allows law firms to lodge and digitally sign/counter-sign pay-out forms before they are routed electronically to the banks/SAL for processing.

2.10 Proposed legislation voids contractual term

Feedback

2.10.1 The draft legislation states that any contractual term in a conveyancing agreement that is inconsistent with the legislation shall, to the extent of the inconsistency, not have effect. Clarification was sought on whether this automatically voids all contractual clauses on stakeholding.

Response

2.10.2 The objective of this provision is to ensure that the counter-signing lawyer is not obliged to endorse the payees indicated by the account holder law firm because of contractual clauses that requires the buyer to pay as directed by the seller without further question. The counter-signing lawyer is entitled to ask for supporting documents or decline to counter-sign if he is not satisfied. This provision has no bearing on a lawyer's stakeholding role.

2.11 Ignorant buyers/sellers who are unaware of the measures

Feedback

2.11.1 Ill-informed (or misinformed) clients may still make cheques payable to the law firm, which could be banked into accounts excluded from the proposed measures. Such money will be devoid of protection.

Response

2.11.2 We have planned an outreach programme to familiarise buyers/sellers with the new measures.

2.12 Concern about higher costs

Feedback

2.12.1 Concern has been expressed that the new measures will lead to higher costs.

Response

2.12.2 When the new measures are implemented, it is anticipated that some of the service providers may charge a transaction fee to cover infrastructure and administrative expenses. Such fees will be subject to competitive market forces and should not be excessive. While there will be higher costs, the benefit the new system brings to the public is greater assurance and security of their conveyancing money.

2.13 Concern that cheques may be forged

Feedback

2.13.1 Concern was raised that notwithstanding the two-party signatory system, cheques could still be forged.

Response

2.13.2 Under the new measures, law firms that have conveyancing accounts do not have chequeing facilities. Payments out of the account are made by way of Cashier's Orders issued by the appointed banks. Similarly, payments out of SAL are made by way of Cashier's Orders or cheques issued by SAL.

2.14 Client to act as counter-signatory to his lawyer

Feedback

2.14.1 Feedback was given that a client can serve as a counter-signatory to his lawyer.

Response

2.14.2 Clients may not always be familiar with conveyancing transactions and may end up counter-signing simply on the advice of their lawyers and this would defeat the objective of the proposed measures.

2.15 Amendment to Pay-Out Form

Feedback

2.15.1 Suggestion was made for the Pay-Out Form not to require a specified person to be named to collect the Cashier's Order and to instead allow for contingencies in despatch arrangements by appointed banks having a standing list of such authorised persons and that to facilitate preparation and collection of Cashier's Orders, to provide for the indicating of date and time of collection.

Response

2.15.2 Pursuant to the above feedback as well as feedback from law firms in the pilot trials, the Pay-Out Form will be amended to delete the requirement for the person collecting the Cashier's Order to be named. Provision is also made for the account holder law firm to indicate the date it wishes to collect the Cashier's Order.

2.16 Section 136 of the Legal Profession Act

Feedback

2.16.1 Clarification was sought on whether Section 136 of the Legal Profession Act which currently provides banks with some relief in the context of client accounts, the contents of which are the responsibility of law firms, would apply to conveyancing money.

Response

2.16.2 The answer is yes as conveyancing money is a form of client money.

2.17 Whether conveyancing accounts are subject to court orders

Feedback

2.17.1 A bank has suggested to state explicitly that conveyancing accounts are not subject to garnishee orders, injunctions and other court orders attaching the money in the account, that are served on the banks in respect of law firms and in the event of notice of death, bankruptcy and winding-up etc, to provide for the procedures that should be followed.

Response

2.17.2 A conveyancing account simply has greater safeguards in respect of money being taken out: the legal context vis a vis issues of garnishing, injunctions, court orders, death, bankruptcy and winding up is similar to other client accounts. There is no necessity to amend the law to provide specifically for these scenarios.