

**(DRAFT) Industry Proposal for Payment Arrangements for Property Transactions (the "PAPT Proposal")**

**1. INTRODUCTION**

- 1.1 Conveyancing in Hong Kong is underscored by a robust system of professional undertakings exchanged among solicitors. Under the current system, the bulk of or all of the purchase monies are paid through solicitors' accounts. In the event that the practices of law firms are intervened, the firms' funds are frozen and the property transactions handled by such firms are seriously interrupted. Clients of such firms are significantly prejudiced in the circumstances, as they had to seek court approval before they could retrieve their funds and may risk failing to complete the transaction.
- 1.2 The PAPT Proposal is intended to allow parties to property transactions to settle sizable funds without routing through the accounts of law firms, thereby minimising any impact on banks and clients in the event of serious disruption in the operation of a law firm. The bulk of the purchase monies are to be paid with (i) electronic funds transfer via CHATS from the Buyer Mortgage Institution to the Seller Mortgage Institution and/or the Seller; and/or (ii) the Buyer's CO (as defined below).
- 1.3 A key feature of the PAPT Proposal is to substitute the solicitors' cheque or CO procured by the solicitor payable on completion with a document issued by the Buyer Mortgage Institution, i.e. the Buyer Mortgage Institution Confirmation, confirming that the Buyer's Loan Amount borrowed by the Buyer under the Buyer's Mortgage will be transferred by Buyer Mortgage Institution via CHATS according to the payment details set out therein on the completion date. The PAPT Proposal is not intended to change the respective rights of the Buyer and the Seller under the existing regime; the existing practice for completing a property transaction is to be preserved as far as possible.
- 1.4 In support of the PAPT Proposal, the following draft documents and sample clauses will be prepared:
- (a) sample clauses for provisional sale and purchase agreement;
  - (b) sample clauses for formal sale and purchase agreement;
  - (c) Buyer Mortgage Institution Confirmation;
  - (d) sample clauses for facility agreement to be entered into between the Buyer Mortgage Institution and the Buyer/Borrower; and
  - (e) inter-bank agreement.
- 1.5 It is intended that the PAPT Proposal will be implemented by phases, so as to provide the parties involved and the general public abundant time to get used to this new mode of payment. In general, Phase 1 will cover the relatively straightforward transactions in the secondary market. The experiences learnt from Phase 1 will form the basis for any adjustment or modification that may be required for Phase 2 (and subsequent phase(s), if

applicable). After the banks, the solicitors and real estate agents have familiarized with the application of the PAPT Proposal in Phase 1, the industry would be better equipped to implement the application of the PAPT Proposal in more complicated scenarios in Phase 2 (and subsequent phase(s), if applicable).

## 2. DEFINITIONS

**"Account Details"** means account holder's name and account number.

**"Authorized Institution(s)"** or **"AI(s)"** means a Bank, a restricted licence bank or a deposit-taking company as defined in the Banking Ordinance (Cap. 155).

**"Bank(s)"** means a company which holds a valid banking licence, as defined in the Banking Ordinance (Cap. 155).

**"Balance"** means the balance of the purchase price after deducting the Initial Deposit and Further Deposit.

**"Borrower"** means a natural person or a body corporate which, borrowed the loan under the facility agreement with the Buyer Mortgage Institution or under the facility agreement with the Seller Mortgage Institution.

**"Buyer(s)"** means a natural person or a body corporate, which is the buyer(s) of the property in a transaction.

**"Buyer's CO"** means CO issued by a Bank as arranged by the Buyer or any third party (other than Buyer's Solicitor) paying on Buyer's behalf.

**"Buyer's Loan Amount"** means the loan amount drawn down by the Borrower under the Buyer's Mortgage.

**"Buyer's Mortgage"** means the mortgage entered into between the Buyer/Borrower and the Buyer Mortgage Institution, pursuant to which the Buyer's property is charged as security.

**"Buyer Mortgage Institution"** or **"BMI"** means a Mortgage Institution that has granted bank facility to the Buyer/Borrower (with the Buyer's property being charged as security) to finance the purchase of the property by the Buyer.<sup>1</sup>

**"Buyer Mortgage Institution Confirmation"** or **"BMIC"** means a document issued by the Buyer Mortgage Institution confirming that the Buyer's Loan Amount will be transferred by Buyer Mortgage Institution via CHATS according to the payment details set out therein on Dday.

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<sup>1</sup> Definition of "Mortgage Institution" already sets out that references to BMI / SMI include 1st/2nd/3rd etc mortgagees.

**"Buyer Mortgage Institution's Solicitor"** or **"BMI's Solicitor"** means the solicitor engaged by the Buyer Mortgage Institution.

**"Buyer's Solicitor"** means the solicitor engaged by the Buyer in the property transaction.

**"CHATS"** means Hong Kong dollar Clearing House Automated Transfer System.

**"CO"** means cashier order.

**"Dday"** means completion date (which falls on a business day); all references to Dday plus or minus any number of days means business day i.e. Monday to Friday excluding Saturday, Sunday and public holiday.

**"DTC"** means deposit-taking company.

**"Exclusion"** has the meaning given to that term in paragraph 3.5.

**"Fees and Expenses"** means the amount of fees and any other expenses payable by the Buyer to Seller's Solicitor such as the apportionment account.

**"FSPA"** means Formal Sale and Purchase Agreement.

**"Further Deposit"** means the deposit and part payment of the purchase price payable by the Buyer upon the signing of the FSPA or on a specific date.

**"Initial Deposit"** means the deposit and part payment of the purchase price payable by the Buyer upon the signing of the PSPA.

**"Mortgage Institution"** refers to an AI, a money lender as defined in the Money Lenders Ordinance (Cap. 163) or other companies offering property mortgage lending, regardless of whether it is a HKD Clearing Member of the CHATS or not; all references to Buyer Mortgage Institution/Seller Mortgage Institution below include 1<sup>st</sup>/2<sup>nd</sup>/3<sup>rd</sup> etc mortgagees, unless otherwise indicated.

**"Property Holding Company"** means a body corporate:

- (a) which is established for the sole purpose of property holding and investment in the property in question;
- (b) whose ultimate shareholder is a natural person; and
- (c) whose direct and indirect shareholder(s) do not have any operating business.<sup>2</sup>

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<sup>2</sup> All conditions (a) to (c) shall be satisfied for a company to qualify as a Property Holding Company. If any of these conditions is not satisfied, a property transaction involving a non-qualifying company will fall outside the scope of PAPT Phase 1. The residential property held by a trading company is not covered. A trading company may use the banking facility to support its other businesses and therefore, involving the trading company is likely to complicate the process.

"**PSPA**" means Provisional Sale and Purchase Agreement.

"**Redemption Amount**" the amount of loan outstanding under the Seller's Mortgage as of Dday.

"**RLB**" means restricted licence bank.

"**Seller(s)**" means a natural person or a body corporate, which is the seller(s) of the property in the transaction.

"**Seller's Account**" means Seller's bank account in Hong Kong or Seller's designated bank account in Hong Kong.

"**Seller's Bank**" means a Bank (other than the Seller Mortgage Institution) in which the Seller's Account is held.

"**Seller's Mortgage**" means the mortgage entered into between the Seller/Borrower and the Seller Mortgage Institution, pursuant to which the Seller's property is charged as security.

"**Seller Mortgage Institution**" or "**SMI**" means a Mortgage Institution that has granted bank facilities to the Seller/Borrower (with the Seller's property being charged as security).<sup>1</sup>

"**Seller Mortgage Institution's Solicitor**" or "**SMI's Solicitor**" means the solicitor engaged by the Seller Mortgage Institution.

"**Seller's 1<sup>st</sup> Mortgagee**" means the Seller's Mortgage Institution which holds the 1<sup>st</sup> mortgage over the Seller's property.

"**Split Payment Letter**" means the letter to be sent by Seller's Solicitor to Buyer's Solicitor on Dday-2 as referred to in paragraph 6.15 or paragraph 8.11 below.

"**Seller's Solicitor**" means the solicitor engaged by the Seller in the property transaction.

"**Surplus**" means the sum that equals to the Buyer's Loan Amount minus the Redemption Amount.

### 3. **SCOPE – PHASE 1 AND PHASE 2**

#### **Phase 1**

3.1 The CHATS payment method only applies to

- (a) property transactions in secondary market where:
  - (i) there is a transfer of a residential property (including transfer of car parking space in a residential building whether independently or together with a

residential unit) in Hong Kong by way of an asset sale<sup>3</sup> of the property in question between natural persons and/or Property Holding Companies;

- (ii) the Buyer(s) has a mortgage with a Bank in Hong Kong under which the loan is denominated in HKD;
  - (iii) the Seller(s) has a bank account in Hong Kong or has a designated bank account in Hong Kong;
  - (iv) if there is any existing Seller's Mortgage over the property, there is only one Seller's Mortgage<sup>4</sup> (which is a Bank in Hong Kong);
  - (v) only one mortgage will be taken out by the Buyer (with a Bank in Hong Kong) to finance the purchase of the property; and
  - (vi) the completion of the transfer is by way of solicitors' undertakings.
- (b) refinancing transaction of a residential property (including car parking space in a residential building whether independently or together with a residential unit) where there is one existing mortgage and both the existing Mortgage Institution and the Mortgage Institution providing refinancing are Banks in Hong Kong.

Note: Scenario 1A is applicable to refinancing transaction *mutatis mutandis*. An additional scenario specifically dealing with refinancing transaction will be set out in due course for more clarity.

3.2 For the avoidance of doubt, transactions are covered by Phase 1 regardless of whether:

- (a) there is a single Buyer/Seller or multiple Buyers/Sellers (such as joint tenants or tenants in common);
- (b) there exists a two-party Buyer's Mortgage/Seller's Mortgage or a three-party Buyer's Mortgage/Seller's Mortgage;<sup>5</sup>
- (c) the Seller has a Seller's Mortgage over the property or not;
- (d) the Buyer Mortgage Institution's Solicitor is the same as or different from Buyer's Solicitor;

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<sup>3</sup> After further deliberation by HKAB, given in practice banks would not grant mortgage to finance share transfer of Hong Kong or foreign incorporated Property Holding Companies, share sale of shares in a Property Holding Company is now carved out from PAPT.

<sup>4</sup> Even if subsequent mortgages / further charges are entered with the same mortgagee as the Seller's 1st Mortgagee, this is still outside the scope of PAPT Phase 1.

<sup>5</sup> This is where either (i) Buyer is different from Borrower in a Buyer's Mortgage or (ii) Seller is different from Borrower in a Seller's Mortgage.

- (e) the Seller Mortgage Institution's Solicitor is the same as or different from Seller's Solicitor;
- (f) those transactions are entered into through liquidators, receivers (including the Official Receiver<sup>6</sup>), trustees in bankruptcy or mortgagee-in-possession;
- (g) those transactions involve mortgages under the Housing Authority / Housing Society / Urban Renewal Authority or similar subsidized housing schemes, **provided that** at the time of signing the PSPA the restriction on alienation clause has been uplifted<sup>7</sup>; or
- (h) those transactions involve mortgage insurance arrangement (such as the Mortgage Insurance Programme operated by HKMC Insurance Limited).

## **Phase 2**

3.3 The workflow for Phase 2 will be further deliberated.

3.4 The following property transactions are intended to be covered under Phase 2:

- (a) where any of the Buyer's Mortgage or Seller's Mortgage is granted by a DTC, RLB or a non-AI;
- (b) where there is more than one Seller's Mortgage;
- (c) where the Buyer takes out more than one Buyer's Mortgage to finance the purchase of the property;
- (d) transactions in the primary market which are subject to the stakeholder account requirements (e.g. Seller's Solicitor's stakeholder account);
- (e) transactions in the primary market which are not subject to stakeholder account requirements;
- (f) transactions involving mortgages under Housing Society subsidized housing schemes from the primary market; and

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<sup>6</sup> The Official Receiver's Office noted that when the Official Receiver / private insolvency practitioners sell or liquidate properties, they may have to follow different processes depending on the nature of the properties under sale, which may cause some confusion, especially in early implementation stage of PAPT when the industry is adapting to the new system. In this regard, transitional arrangements will be put in place at the launch of PAPT to cater to scenarios such as these. Please see paragraph 5.1(d) below.

<sup>7</sup> Transactions involving mortgages under Housing Authority / Housing Society / Urban Renewal Authority or other similar subsidized housing schemes from the secondary market where at the time of signing of the PSPA the land premium of the property has not been fully paid to Housing Authority / Housing Society / Urban Renewal Authority or other relevant authority to uplift the restriction on alienation clause fall outside of Phase 1, but are under Phase 2. See paragraph 3.4(g).

- (g) transactions involving mortgages under Housing Authority / Housing Society subsidized housing schemes from the secondary market where at the time of signing the PSPA the restriction on alienation clause has not been uplifted.

### **Exclusions**

3.5 The following property transactions are excluded (each an "**Exclusion**"):

- (a) primary market transactions involving mortgages under Housing Authority subsidized schemes, mortgage drawdown and settlement should follow prevailing procedure involving Buyer Mortgage Institution's CO payable to Housing Authority;
- (b) collective sale, which refers to a sale of a number of property units by different Seller(s) to a single developer or its nominees;
- (c) where the Seller Mortgage Institution is a foreign bank which is not in Hong Kong and does not have an account in Hong Kong to receive the fund;
- (d) where the Seller does not have a bank account in Hong Kong and has not designated a bank account in Hong Kong;
- (e) where the property transfer does not involve payment of any consideration in cash (including transfer pursuant to Court order, transfer without consideration, transfer by gift, assent or donation, payment of purchase price by way of promissory notes);
- (f) where there is a compulsory sale under the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545);
- (g) completion of transfer by way of formal completion;
- (h) where the entire purchase price is paid with Buyer's own funds – Buyer is encouraged to use CO for the payment of the Balance to the Seller Mortgage Institution and / or the Seller;
- (i) where the lender is a natural person or private company (which is not an AI, or licensed or exempted to carry on the business as a money lender); or
- (j) where the property is subject to any charging order.

### **4. STANDARD CLAUSES IN PROVISIONAL AND FORMAL SALE AND PURCHASE AGREEMENT (PHASE 1)**

***[The draft standard clauses for the PSPA and FSPA will follow]***

### **5. GENERAL PRINCIPLES**

5.1 The following principles shall apply to each of the scenarios set out below:

- ❖ **Scenario 1A:** Both Buyer and Seller with mortgage (different Mortgage Institutions)
  - ❖ **Scenario 1B:** Both Buyer and Seller with mortgage (same Mortgage Institution - the use of direct transfer for payment is applicable to this scenario where the SMI is the same as the BMI)
  - ❖ **Scenario 2:** Buyer with mortgage and Seller without mortgage
- (a) **Indicative timeline:** The timeline set out in each of the scenarios is indicative only which is aimed at prompting the relevant parties to take all necessary steps identified in the scenarios as early as possible and provide sufficient time for different parties to remedy any delay. The relevant parties are free to agree specific completion time and adapt the indicative timeline to the agreed completion time.
- (b) **Exceptional circumstances:** Where exceptional circumstances or last-minute issues arise, these are to be resolved on a case-by-case basis between the parties (as the parties do under the existing system) taking into account parties' respective commercial and business needs. BMI has the discretion to effect payment by means other than CHATS.
- (c) **Becoming out of scope:** Where an in-scope property transaction becomes an out-of-scope property transaction on or before Dday because one of the Exclusions becomes applicable (e.g. a charging order being entered into against the property), the parties may disapply the PAPT and agree an alternative payment method if they wish, taking into account the then circumstances. The parties may also agree on bespoke modifications to the PAPT payments mechanics to suit their needs. BMI has the discretion to effect payment by means other than CHATS.
- (d) **Initial launch:** Appropriate transitional arrangements will be put into place at the initial launch of PAPT while the market is familiarising with PAPT. For example, in circumstances where:
- (i) parties have signed binding documents which do not provide for the adoption of PAPT and do not agree to its adoption in the FSPA; or
  - (ii) a PSPA (without providing for the adoption of the PAPT) has been signed by the Buyer and Seller prior to PAPT launch with completion taking place after PAPT launch,
- Banks will have discretion to consider the specific circumstances on a case-by-case basis, taking into account the Banks' risk appetite, in order to come to a view whether PAPT may be disappplied on an exceptional basis during the transitional period.
- (e) **Default position post-initial launch:** Beyond the initial launch and transition phase, mortgages on "in-scope" transactions will only be granted by Banks on the basis that PAPT is adopted.



## 6. SCENARIO 1A

This is the scenario where both Buyer and Seller have mortgage but with different Mortgage Institutions.

### *Facility Letter Signing*

- 6.1 The decision as to whether PAPT applies to a particular property transaction is to be made by BMI. When Buyer / Borrower applies for the mortgage loan, BMI shall, prior to the signing of the facility letter, assess whether PAPT is applicable to the property transaction. BMI shall (through BMI's Solicitor, if BMI appoints a separate law firm) provide its assessment result to Buyer's Solicitor, who shall forthwith communicate such assessment result to Seller's Solicitor.
- (a) If BMI's assessment result is that PAPT shall not apply, such assessment result shall be conclusive and PAPT shall not apply to the property transaction.
  - (b) If BMI's assessment result is that PAPT may apply, Seller's Solicitor shall (after consultation with SMI and Sellers, if necessary) make an assessment as to whether there exists any Exclusions which may preclude the application of PAPT and notify Buyer's Solicitor. Buyer's Solicitor shall in turn inform BMI (through BMI's Solicitor, if BMI appoints a separate law firm) of the same. BMI shall determine if PAPT shall apply to the property transaction (taking into account Seller's Solicitor's notification) and such determination of BMI shall be conclusive.
- 6.2 Buyer's Solicitor shall obtain the Buyer's express written consent in disclosing the Buyer's Loan Amount to the Seller, Seller's Solicitor, SMI, and SMI's Solicitor, for purposes of PAPT before the signing of the facility letter.<sup>8</sup> The relevant consent would be recorded in the facility letter, which would set out that the consent can be withdrawn any time up to Dday-5.
- 6.3 Buyer (via BMI's staff / Buyer's Solicitor) indicates the drawdown date<sup>9</sup> when signing the facility letter.

### *Release of Title Deeds*

- 6.4 Seller (through Seller's Solicitor) shall provide the necessary authorization to SMI for it to release the relevant title deeds to Seller's Solicitor. The authorisation letter issued by Seller (through Seller's Solicitor) to SMI for the release of the relevant title deeds to Seller's

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<sup>8</sup> As explained at paragraphs 6.13 and 8.8, disclosure of the Buyer's Loan Amount is necessary under PAPT – the BMIC will set out the Buyer's Loan Amount which would be remitted to the SMI, and Seller's Solicitor will need to know the Buyer's Loan Amount for giving instructions to the SMI to distribute the Surplus and the Buyer for preparing CO(s) for the part of the Balance to be paid with Buyer's own funds.

<sup>9</sup> As is the case under the existing system, the drawdown date may be changed by the parties subsequently. This will be dealt with by the parties on a case-by-case basis.

Solicitor on loan shall set out the appointment of SMI as the Seller's agent to receive the Buyer's Loan Amount and distribute the Surplus to the Seller's Account.<sup>10</sup>

- 6.5 SMI shall provide to Seller's Solicitor the relevant title deeds as soon as reasonably practicable, and in any event, unless SMI encounters any practical difficulties, within 21 days of receipt of the authorization letter from Seller's Solicitor. Seller's Solicitor shall then provide the relevant title deeds to Buyer's Solicitor (who will pass to the BMI's Solicitor subject to the usual undertaking if BMI appoints a separate law firm) as soon as reasonably practicable.<sup>11</sup>

***10 days before Drawdown (Dday-10)***

- 6.6 Seller's Solicitor to ask SMI or SMI's Solicitor (*if SMI appoints a separate law firm*) for the Redemption Amount.

***10 days to 7 days before Drawdown (Dday-10 to Dday-7)***

- 6.7 SMI (or SMI's Solicitor, if different from Seller's Solicitor) shall notify Seller's Solicitor by letter/email/fax of the Redemption Amount.<sup>12</sup>
- 6.8 If the Redemption Amount is subsequently varied, see the workflow on Dday-2 in paragraph 6.14 below.

***6 days before Drawdown (Dday-6)***

- 6.9 Seller's Solicitor shall notify Buyer's Solicitor in a written letter of the Redemption Amount payable to SMI, together with a copy of the letter or email from SMI confirming such information. If the names of the Seller or Borrower (*if different from Seller*) are different from the names shown on the Seller's Mortgage document(s) as registered at the Land Registry, Seller's Solicitor shall also provide copies of the relevant document to evidence the change of name (e.g. deed poll or certificate of change of name).

***5 days before Drawdown (Dday-5)***

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<sup>10</sup> The Facility Letter / Mortgage may also include a standard clause that SMI is the Seller's agent for the purposes of receiving the sale proceeds payable to the Seller and any Surplus will subsequently be passed to the Seller.

<sup>11</sup> In relation to the provision of title deeds for title confirmation, under paragraph 25.13 of the Code of Banking Practice (Code) jointly issued by the Hong Kong Association of Banks and the DTC Association, on receipt of a request from customers for discharge of a mortgage, institutions should as soon as reasonably practicable release title deeds and any relevant documents to the solicitor representing the customer. Unless institutions encounter any practical difficulties, this process should normally be completed within 21 days. All banks are expected to observe the Code.

<sup>12</sup> References to the SMI's Account Details (being the General Ledger Account of the SMI set up solely for PAPT transactions) have been removed in this draft of the Proposal. A BIC code list of banks participating in PAPT will be published by HKAB, meaning that Banks would have the information handy and the parties would not need to concern themselves with the SMI's Account Details, and the BMIC would no longer contain SMI's Account Details. In so doing, it is hoped to reduce the information on the BMIC to the absolute minimum to reduce possibility of mistakes made on the BMIC which may impact on completion.

- 6.10 Buyer's Solicitor sends or enables BMI's Solicitor (*if BMI engages a separate law firm*) to send physical book loan letter to BMI with:
- (a) drawdown details (drawdown date, loan amount, etc.);
  - (b) Seller's name (and Borrower's name in case the Borrower is different from the Seller), together with relevant documentary evidence provided by Seller's Solicitor to evidence the change of name (if any);
  - (c) SMI's name;
  - (d) title confirmation by Buyer's Solicitor (or by BMI's Solicitor if BMI engages a separate law firm); and
  - (e) other documents or information as may be required by BMI under the facility letter, such as confirmation that the Buyer's Mortgage has been executed in escrow.
- 6.11 Buyer's Solicitor and BMI's Solicitor (if BMI appoints a separate law firm) should ensure the names of Seller, Borrower (*if different from Seller*) and SMI as shown on the physical book loan letter match the names shown on the memorial form of the Seller's Mortgage document(s) as registered at the Land Registry or the documents provided by Seller's Solicitor to evidence the change of name of the Seller or the Borrower.
- 6.12 BMI checks the names of Seller (*and Borrower's name in case the Borrower is different from the Seller*) and SMI as shown on the physical book loan letter against the land search (optional) and all related documents are in order for drawdown preparation.
- 6.13 Buyer's Solicitor shall inform Seller's Solicitor of the Buyer's Loan Amount under the Buyer's Mortgage.<sup>13</sup>

***2 days before Drawdown (Dday-2)***

- 6.14 If Seller's Solicitor confirms the Dday with SMI and requests that SMI provides an updated Redemption Amount, SMI (or through SMI's Solicitor if SMI engages a separate law firm) shall inform Seller's Solicitor of any increase in the Redemption Amount [by 10am] on Dday-2 and has the discretion to decide whether to inform Seller's Solicitor of any decrease in the Redemption Amount; if SMI elects to inform Seller's Solicitor of such decrease, it (or SMI's Solicitor if SMI engages a separate law firm) shall do so [by 10am] on Dday-2.
- 6.15 Seller's Solicitor shall send to Buyer's Solicitor a Split Payment Letter [before 12 noon] on Dday-2 setting out:
- (a) the amount of Fees and Expenses (if applicable) to be paid via Seller's Solicitor;

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<sup>13</sup> This is for purposes of enabling Seller's Solicitor to give instructions to SMI for distributing the Surplus into the Seller's Account, as well as split payment instructions to Buyer's Solicitor in respect of the part of the Balance to be paid with the Buyer's own funds.

- (b) if the Redemption Amount has been varied, the revised Redemption Amount payable to SMI; and
  - (c) in respect of the part of the Balance to be paid with the Buyer's own funds, the amount to be paid to each Seller (*if there is more than one Seller*) and/or SMI (if the Buyer's Loan Amount is less than the Redemption Amount) respectively by way of Buyer's CO(s).
- 6.16 Seller's Solicitor shall send to SMI or SMI's Solicitor (*if SMI appoints a separate law firm*) by encrypted email (or other channels as agreed by SMI) the following information:
- (a) the payment instructions for distributing the Surplus to each Seller's Account including (i) the amount to be distributed to (or for the benefit of) each Seller and (ii) the Account Details of each Seller's Account, **provided that** there should be no more than one bank account<sup>14</sup> for each Seller; and
  - (b) (if the bank account designated by a Seller is not under that Seller's name) the authorisation instructions to SMI from that Seller to transfer the part of the Surplus to which that Seller is entitled to such bank account.

***1 day before Drawdown (Dday-1)***

- 6.17 If the Balance is paid partly with the Buyer's Loan Amount and partly with the Buyer's own funds, the Buyer shall prepare Buyer's CO(s) payable to each Seller(s) and (if applicable) SMI and make the same available to Buyer's Solicitor by Dday-1 (or any other time on or before Dday as may be agreed between the Buyer and Buyer's Solicitor):<sup>15 16</sup>
- (a) (in the case where the Buyer's Loan Amount is equal to or exceeds the Redemption Amount), the Buyer shall procure Buyer's CO(s) payable to the Seller(s) according

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<sup>14</sup> Under the current scheme, if a solicitor's cheque/CO is addressed to the Seller, the Seller still has to cash the cheque/CO into his own account before he can withdraw money to pay his other indebtedness. The PAPT would not cause more delay than the existing system.

<sup>15</sup> As will be set out in the facility letter, it will be a condition to meet for the loan drawdown that the Borrower shall ensure that the Buyer deliver CO(s) addressed to the Seller and/or the SMI for that part of the Balance to be paid by the Buyer's own funds (except with the consent of BMI and such consent will only be granted on exceptional circumstances).

<sup>16</sup> If, at the time of the property transaction, the property is in negative equity value, the Seller shall prepare a CO addressed to the SMI and deliver the same to Seller's Solicitor at Dday-1 (or any other time on or before Dday as may be agreed between the Seller and Seller's Solicitor) to settle the negative equity with the SMI. In the SMI's instruction letter to its solicitor, it shall be set out that BMIC and COs (or any other means acceptable to SMI) are the only permissible methods of payment for discharging the Seller's Mortgage, including any amount representing negative equity in the property (except with the consent of SMI and such consent will only be granted on exceptional circumstances, for example under those circumstances set out in paragraph 6.17(d) (*mutatis mutandis*)). It is acknowledged that such requirement to pay the negative equity by CO procured by the Seller may not have been set out in the facility letter between the Seller and the SMI. Accordingly, as far as existing Seller's Mortgages are concerned, it may not be possible to compel the Seller to pay any negative equity by way of CO. In the long run, the standard terms to be included in the facility letter would include a term to the effect that should the property be in negative equity, the Borrower agrees to pay the sum representing the negative equity by way of CO procured by the Seller.

to the split payment instructions in the Split Payment Letter sent by Seller's Solicitor;

- (b) (in the case where the Buyer's Loan Amount is less than the Redemption Amount), the Buyer shall procure:
  - (i) one Buyer's CO payable to SMI in the amount equal to the amount by which the Redemption Amount exceeds the Buyer's Loan Amount;<sup>17</sup> and
  - (ii) Buyer's CO(s) payable to the Seller(s) according to the split payment instructions in the Split Payment Letter sent by Seller's Solicitor.
- (c) Where the Buyer has practical difficulties in procuring CO(s) to pay such part of the Balance which is to be paid with his own funds, the Buyer may only use other means (other than CO(s)) to pay such part of the Balance with the prior approval of BMI:
  - (i) Buyer's Solicitor should advise the Buyer that he may pay by way of solicitor's cheque / CO procured by the solicitor [or other means] only with the approval of BMI;
  - (ii) Buyer's Solicitor shall write to BMI informing BMI of the Buyer's request to pay such part of the Balance which is to be paid with his own funds other than by way of Buyer's CO and the basis of such request, together with supporting document (if available); and
  - (iii) BMI will confirm (verbally or in writing, or first verbally, then supplemented in writing afterwards) with Buyer's Solicitor if the request is accepted.
- (d) The bases upon which a request under paragraph 6.17(c) may be made include:
  - (i) where there exists any law or regulation, any instructions, directives or orders of any regulator or law enforcement agent in any jurisdiction preventing the Buyer from taking any step necessary for issuance of the CO sufficiently in advance of the due date of the payment;
  - (ii) the Buyer is unable to go to a bank in person by reason of debilitating health condition;
  - (iii) the Buyer is residing or travelling outside of Hong Kong; or

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<sup>17</sup> If the Redemption Amount is varied last minute but that the Buyer has already procured the Buyer's CO payable to the SMI prior to such variation, and such CO is no longer sufficient to cover the balance of the Redemption Amount / exceeds the balance of the Redemption Amount, the shortfall / surplus in the Redemption Amount shall be settled between the SMI and the Seller without the Buyer having to procure new CO(s) prior to completion.

- (iv) other circumstances (with particulars to be elaborated by the Buyer) that are beyond the control of Buyer which prevents the Buyer from taking any step necessary for the issuance of the CO sufficiently in advance of the due date of the payment.<sup>18</sup>

- 6.18 As for the Fees and Expenses (if applicable), the Buyer shall make such payment using his/her own funds and make the payment available to Buyer's Solicitor by Dday-1 (or any other time on or before Dday as may be agreed between the Buyer and Buyer's Solicitor) by way of (a) Buyer's CO; or (b) payment to Buyer's Solicitor's client account for Buyer's Solicitor to issue corresponding solicitor's cheque on Dday.
- 6.19 BMI starts preparing the BMIC to be sent by encrypted email (or other channels as agreed with Buyer's Solicitor) (via BMI's Solicitor if BMI engages a separate law firm) to Buyer's Solicitor before 12 noon on Dday.
- 6.20 BMI starts preparing inputs for the payment details in payment system (CHATS) with narrative but the payment will not be sent until Dday.

***Drawdown (Dday)***

- 6.21 BMI issues the BMIC and sends the same (or procures BMI's Solicitor to send the same) by encrypted email<sup>19</sup> (and any other channels as agreed with Buyer's Solicitor) to Buyer's Solicitor before 12 noon on Dday. The BMIC shall be in the prescribed form, which contains, among others, the following information:
  - (a) Seller's name (and Borrower's name in case the Borrower is different from the Seller);
  - (b) Property address;<sup>20</sup>
  - (c) SMI's name; and
  - (d) the Buyer's Loan Amount to be remitted to SMI,((a) to (d) together, the "**Key Information**") and Buyer's Solicitor shall upon receipt verify the information contained in the BMIC and promptly inform (via BMI's Solicitor, where applicable) BMI if Buyer's Solicitor is aware of any incorrect information therein.
- 6.22 After the issuance of the BMIC but before the delivery of the same to Seller's Solicitor by Buyer's Solicitor:

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<sup>18</sup> As noted above, last minute changes to the Redemption Amount are to be settled between the Seller and the SMI. Accordingly, it is not one of the situations on the basis of which the Buyer can make a request to pay other than by way of Buyer's CO(s).

<sup>19</sup> It is up to BMI and Buyer's Solicitor to agree on the number of e-mail addresses for the BMIC to be sent to.

<sup>20</sup> To minimize chances of clerical error, it is sufficient to set out the address of the property. There is no need to set out the full legal description of the property.

- (a) if any of the information in the issued BMIC is incorrect and:
  - (i) if the incorrect information in the BMIC is due to a mistake made by BMI, BMI shall correct the information in the BMIC or reissue a new BMIC before the completion time; or
  - (ii) if the incorrect information in the BMIC is due to a mistake made by any party (other than BMI), BMI shall use its reasonable endeavours to correct the information in the BMIC or reissue a new BMIC before the completion time,

and, in either case, if BMI has already effected the payment via CHATS (based on the incorrect information in the BMIC), BMI is entitled to receive a refund from SMI under the inter-bank agreement in respect of the relevant incorrect BMIC; or

- (b) if (i) Buyer's Solicitor informs BMI in writing that the Buyer would not complete the transaction by the completion time or that the completion time has been extended and (ii) BMI has already effected the payment via CHATS, BMI is entitled to receive a refund from SMI under the inter-bank agreement.

6.23 Buyer's Solicitor sends to Seller's Solicitor by 5pm (or such other completion time as agreed between the Seller and Buyer) on Dday the following:

- (a) the BMIC (which may be sent physically or by encrypted email or other channels as agreed between the parties);
- (b) the signed assignment and other related document;
- (c) Buyer's CO or Buyer's Solicitor's cheque for Fees and Expenses (if applicable);
- (d) (if part of the Balance is paid with the Buyer's own funds) Buyer's CO(s) in respect of the Buyer's own funds payable to the Seller and (if applicable) SMI (as described in paragraph 6.17 above).<sup>21</sup>

6.24 Once the BMIC is delivered to Seller's Solicitor by Buyer's Solicitor, it is irrevocable and the payment under the relevant BMIC shall be transferred by BMI to SMI, except in the circumstances where:

- (a) any of the Key Information on the BMIC is incorrect; or

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<sup>21</sup> Completion takes place on Dday. Under the existing scheme, completion takes place when the solicitor's cheque is delivered on Dday to Seller's Solicitor. For example, if the completion time is set at 5pm, the money would not have reached the Seller's account on Dday. Seller's Solicitor would be expected to hand over the key upon receiving the solicitor's cheque, instead of after confirming that the cheque could be cashed and the money is in the Seller's account. However, if the cheque is subsequently dishonoured after Dday, the Seller is nevertheless entitled to rescind the contract. See for example *Chua Ming Yuen & Another v Hentron Investments Ltd & Others* [2006] HKEC 263. Under the PAPT, the delivery of the BMIC on Dday is to have the same effect as the delivery of the solicitors' cheque under the existing scheme.

- (b) there is a mutual agreement between the Buyer and Seller to cancel, not to proceed with or to defer the transaction and that Buyer's Solicitor and Seller's Solicitor jointly inform BMI and SMI such mutual agreement in writing,

in which case BMI is not obliged to effect the payment via CHATS, and if BMI has already effected the payment via CHATS, it shall notify SMI by 9am on Dday+1 and provided that such notification is made it is entitled to receive a refund from SMI under the inter-bank agreement.

- 6.25 In the case of paragraph 6.24(a) above, any deemed payment of the Buyer's Loan Amount by the Buyer on Dday by virtue of the delivery of the BMIC shall be deemed to have failed, **provided that** nothing herein will preclude the Buyer(s) and Seller(s) from reaching mutual agreement in their own discretion as to whether or not to arrange for a revised BMIC (containing the correct Key Information) to be issued by BMI and/or to defer the transaction.
- 6.26 BMI checks payment details against the related documents (including the BMIC) and effect the payment via CHATS. It is noted that depending on the internal arrangement of BMI, the CHATS may be sent before or after the delivery of the BMIC by Buyer's Solicitor to Seller's Solicitor.
- 6.27 BMI shall send notification to the Borrower under the Buyer's Mortgage on the completion of payment via suitable channels (SMS, e-mail or letter). It is expected that BMI will explore the possibility of same day electronic notification.
- 6.28 Seller's Solicitor, on being satisfied that Seller has duly executed the assignment,<sup>22</sup> shall send a copy of the BMIC to SMI or SMI's Solicitor (if SMI appoints a separate law firm) by encrypted email (or other channels as agreed with SMI) on Dday before cut-off time agreed between Seller's Solicitor and SMI.
- 6.29 Buyer's Solicitor performs the usual steps to prepare for the completion.
- 6.30 Seller's Solicitor performs completion with the Seller. Seller shall attend the office of Seller's Solicitor on or before Dday to execute the assignment in escrow. To avoid the situation where the Surplus is distributed to the Seller(s) before the Seller(s) execute the assignment, this step shall be completed on or before Dday.<sup>23</sup>

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<sup>22</sup> Where the Seller has not executed the assignment, Seller's Solicitor should not deliver the BMIC to the SMI, to avoid the situation where funds are distributed to the Seller and yet the Seller has not executed the assignment.

<sup>23</sup> The Seller will need to attend the office of Seller's Solicitor on or before Dday to execute the assignment in escrow. Law firms under the existing system will allow the Seller to attend to the execution of the assignment post Dday because Seller's Solicitor will have the cheque for the Surplus to hand over to the Seller (in other words, no money would be released to the Seller unless the assignment had been executed by the Seller). However, under PAPT, provided the BMIC is received by the SMI, the Surplus will be released by SMI automatically upon completion of AML checks, and this creates the risk that the Surplus had been distributed to the Seller and yet the Seller has not yet executed the assignment. If the Seller has not executed the assignment, Seller's Solicitor should not release the BMIC to the SMI.



- 6.31 If any part of the Redemption Amount outstanding under the Seller's Mortgage is paid with the Buyer's own funds, Seller's Solicitor passes to SMI the Buyer's CO for settling such part of the Redemption Amount. If any part of the Balance payable to the Seller(s) is paid with the Buyer's own funds, Seller's Solicitor passes to the Seller(s) the Buyer's CO(s) for settling such part of the Balance. If the completion time is such that there is insufficient time to complete this step on Dday, then, in line with current practice, this step shall be performed by Dday+1.
- 6.32 SMI checks its General Ledger account (being a suspense account) on Dday. After confirming that the BMIC and the full Redemption Amount have been received, SMI settles the loan under the Seller's Mortgage.
- 6.33 SMI shall arrange for payment of the Surplus (if any) to the Seller by crediting the Seller's Account (*in the event that the Seller's Account is held with SMI*) or by transfer to the Seller's Bank (*in the event that the Seller's Account is not held with SMI*) not later than Dday+1 (but the actual date of receiving cleared funds will be subject to the usual AML controls).
- 6.34 If the entire Redemption Amount is not received by the cut-off time on Dday as agreed with the SMI, settlement of the loan under the Seller's Mortgage would take place on Dday+1, whereupon any Surplus would be distributed in accordance with paragraph 6.33 above.
- 6.35 If Seller's Solicitor does not receive the BMIC by the completion time on Dday, it shall notify SMI or SMI's Solicitor in writing. After receiving such notification, SMI shall arrange for any payment received via CHATS to be refunded<sup>24</sup> to BMI under the inter-bank agreement.
- 6.36 If the property transaction has fallen through, Seller's Solicitor shall notify SMI or SMI's Solicitor in writing, whereupon SMI shall arrange for any payment received via CHATS to be refunded to BMI under the inter-bank agreement.

***1 day after Drawdown (By Dday + 1)***

- 6.37 In the event that funds transferred via CHATS have not reached SMI on Dday, SMI checks its General Ledger account (being a suspense account) again before 9am on Dday+1 to see if funds have arrived. In the event that funds are not received by SMI by 9am on Dday + 1, it shall be considered that payment of the Buyer's Loan Amount had failed.
- 6.38 Seller's Solicitor uses the Buyer's CO or Buyer's Solicitor's cheque to settle any Fees and Expenses (if applicable).
- 6.39 SMI notifies each of the Seller(s) and its Borrower(s) (if the Seller(s) and its Borrower(s) are not the same person) on the repayment of loan and discharge of Seller's Mortgage via

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<sup>24</sup> The refund mechanism here is to address the situation where Seller's Solicitor does not receive the BMIC but the CHATS payment is made. As BMI has no visibility as to when exactly the BMIC is delivered and it may effect the CHATS payment before the actual delivery of the BMIC, such refund mechanism is necessary.

suitable channels (SMS, e-mail or letter). It is expected that SMI will explore the possibility of same day electronic notification.

- 6.40 Seller's Solicitor sends the release document to SMI or to SMI's Solicitor (*if SMI appoints a separate law firm*) on or before Dday+1 for SMI's execution.

7. **SCENARIO 1B**

This is the scenario where both Buyer and Seller with mortgage (same Mortgage Institution - the use of direct transfer for payment is applicable to this scenario where SMI is the same as BMI)

7.1 The steps in Scenario 1A apply to Scenario 1B, except for the following.

- (a) Paragraph 6.20 shall be replaced by the following under Scenario 1B – "BMI inputs the transaction details in the core banking system with narrative but the payment will not be sent until Dday".
- (b) References to "CHATS" in paragraphs 6.22, 6.24, 6.26, 6.35 and 6.36 shall be replaced by "direct transfer".

## 8. SCENARIO 2

This is the scenario where Buyer has mortgage and Seller does not have mortgage

### *Facility Letter Signing*

8.1 The decision as to whether PAPT applies to a particular property transaction is to be made by BMI. When Buyer / Borrower applies for the mortgage loan, BMI shall, prior to the signing of the facility letter, assess whether PAPT is applicable to the property transaction. BMI shall (through BMI's Solicitor, if BMI appoints a separate law firm) provide its assessment result to Buyer's Solicitor, who shall forthwith communicate such assessment result to Seller's Solicitor.

- (a) If BMI's assessment result is that PAPT shall not apply, such assessment result shall be conclusive and PAPT shall not apply to the property transaction.
- (b) If BMI's assessment result is that PAPT may apply, Seller's Solicitor shall (after consultation with Seller, if necessary) make an assessment as to whether there exists any Exclusions which may preclude the application of PAPT and notify the Buyer's Solicitor.

Buyer's Solicitor shall in turn inform BMI (through BMI's Solicitor, if BMI appoints a separate law firm) of the same. BMI shall determine if PAPT shall apply to the property transaction (taking into account Seller's Solicitor's notification) and such determination of BMI shall be conclusive.

8.2 Buyer's Solicitor shall obtain the Buyer's express written consent in disclosing the Buyer's Loan Amount to the Seller and Seller's Solicitor for purposes of PAPT before the signing of the facility letter.<sup>25</sup> The relevant consent would be recorded in the facility letter, which would set out that the consent can be withdrawn any time up to Dday-5.

8.3 Buyer (via BMI's staff / Buyer's Solicitor) indicates the drawdown date when signing the facility letter.

### *6 days before Drawdown (Dday-6)*

8.4 Seller's Solicitor shall notify Buyer's Solicitor in a written letter of the name of the Seller's Bank<sup>26</sup> for receiving the Balance. If the name(s) of the Seller(s) is different from the name(s) shown on the document(s) as registered at the Land Registry, Seller's Solicitor

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<sup>25</sup> As explained at paragraphs 6.13 and 8.8, disclosure of the Buyer's Loan Amount is necessary under PAPT – the BMIC will set out the Buyer's Loan Amount which would be remitted to the Seller's Bank, and Seller's Solicitor will need to know the Buyer's Loan Amount for giving instructions to the Buyer for preparing CO(s) for the part of the Balance to be paid with Buyer's own funds.

<sup>26</sup> As noted above, a BIC code list of banks participating in PAPT will be published by HKAB, meaning that Banks would have the information handy and the parties would not need to concern themselves with the Seller's Bank's Account Details, and the BMIC would no longer contain Seller's Bank's Account Details.

shall also provide copies of the relevant document to evidence the change of name (e.g. deed poll or certificate of change of name).

***5 days before Drawdown (Dday-5)***

- 8.5 Buyer's Solicitor sends or enables BMI's Solicitor (*if BMI engages a separate law firm*) to send physical book loan letter to BMI with:
- (a) drawdown details (drawdown date, loan amount, etc.);
  - (b) Seller's name, together with relevant documentary evidence provided by Seller's Solicitor to evidence the change of name (if any);
  - (c) Seller's Bank's name;
  - (d) title confirmation by Buyer's Solicitor (or by BMI's Solicitor if BMI engages a separate law firm); and
  - (e) other documents or information as may be required by BMI under the facility letter, such as confirmation that the Buyer's Mortgage has been executed in escrow.
- 8.6 Buyer's Solicitor and BMI's Solicitor (if BMI appoints a separate law firm) should ensure the name(s) of Seller(s) as shown on the physical book loan letter match the names shown on the documents as registered at the Land Registry or the documents provided by Seller's Solicitor to evidence the change of name of the Seller.
- 8.7 BMI checks the name(s) of Seller(s) as shown on the physical book loan letter against the land search (optional) and all related documents are in order for drawdown preparation.
- 8.8 Buyer's Solicitor shall inform Seller's Solicitor of the Buyer's Loan Amount under the Buyer's Mortgage.<sup>27</sup>

***2 days before Drawdown (Dday-2)***

- 8.9 Seller's Solicitor notifies the Seller's Bank that (a) BMI will effect transfer of Buyer's Loan Amount to the Seller's Bank on Dday and (b) Seller's Solicitor will send a copy of the BMIC to the Seller's Bank on Dday. Seller's Solicitor shall send to Seller's Bank by encrypted email (or other channels as agreed by Seller's Bank) the following information:
- (a) the payment instructions for distributing the Buyer's Loan Amount to each Seller's Account including (i) the amount to be distributed to (or for the benefit of) each

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<sup>27</sup> This is for purposes of enabling Seller's Solicitor to give split payment instructions to Buyer's Solicitor in respect of the part of the Balance to be paid with the Buyer's own funds.

Seller and (ii) the Account Details of each Seller's Account, **provided that** there should be no more than one bank account<sup>28</sup> for each Seller;

- (b) (if the bank account designated by a Seller is not under that Seller's name) the authorisation instructions to Seller's Bank from that Seller to transfer the part of the Buyer's Loan Amount to which that Seller is entitled to such bank account;
  - (c) a copy of the memorial form of the assignment whereby the title of the property is vested to Seller obtained from the Land Registry;
  - (d) a copy of the FSPA; and
  - (e) a copy of the ID card or the certificate of incorporation of the Seller.
- 8.10 Seller's Bank shall review the above information and ensure that the Seller to whom (or on whose instructions) funds would be distributed is indeed the true owner of the relevant property.
- 8.11 Seller's Solicitor shall send to Buyer's Solicitor a Split Payment Letter [before 12 noon] on Dday-2 setting out:
- (a) the amount of Fees and Expenses (if applicable), to be paid via Seller's Solicitor; and
  - (b) in respect of the part of the Balance to be paid with the Buyer's own funds, the amount to be paid to each Seller (if there is more than one Seller) by way of Buyer's CO(s).

***1 day before Drawdown (Dday – 1)***

- 8.12 If the Balance is paid partly with the Buyer's Loan Amount and partly with the Buyer's own funds, the Buyer shall prepare Buyer's CO(s) payable to Seller(s) and make the same available to Buyer's Solicitor by Dday-1 (or any other time on or before Dday as may be agreed between the Buyer and Buyer's Solicitor).
- (a) Where the Buyer has practical difficulties in procuring CO(s) to pay such part of the Balance which is to be paid with his own funds, the Buyer may only use other means (other than CO(s)) to pay such part of the Balance with the prior approval of BMI:
    - (i) Buyer's Solicitor should advise the Buyer that he may pay by way of solicitor's cheque / CO procured by the solicitor [or other means] only with the approval of BMI;

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<sup>28</sup> Under the current scheme, if a solicitor's cheque/CO is addressed to the Seller, the Seller still has to cash the cheque/CO into his own account before he can withdraw money to pay his other indebtedness. The PAPT would not cause more delay than the existing system.

- (ii) Buyer's Solicitor shall write to BMI informing BMI of the Buyer's request to pay such part of the Balance which is to be paid with his own funds other than by way of Buyer's CO and the basis of such request, together with supporting document (if available); and
  - (iii) BMI will confirm (verbally or in writing, or first verbally, then supplemented in writing afterwards) with Buyer's Solicitor if the request is accepted.
- (b) The bases upon which a request under paragraph 8.12(a) may be made include:
- (i) where there exist any law or regulation, any instructions, directives or orders of any regulator or law enforcement agent in any jurisdiction preventing the Buyer from taking any step necessary for issuance of the CO sufficiently in advance of the due date of the payment;
  - (ii) the Buyer is unable to go to a bank in person by reason of debilitating health condition;
  - (iii) the Buyer is residing or travelling outside of Hong Kong; or
  - (iv) other circumstances<sup>18</sup> (with particulars to be elaborated by the Buyer) that are beyond the control of Buyer which prevents the Buyer from taking any step necessary for the issuance of the CO sufficiently in advance of the due date of the payment.

8.13 As for the Fees and Expenses (if applicable), the Buyer shall make such payment using his/her own funds and make the payment available to Buyer's Solicitor by Dday-1 (or any other time on or before Dday as may be agreed between the Buyer and Buyer's Solicitor) by way of (a) Buyer's CO; or (b) payment to Buyer's Solicitor's client account for Buyer's Solicitor to issue corresponding solicitor's cheque on Dday.

8.14 BMI starts preparing the BMIC to be sent by encrypted email (or other channels as agreed with Buyer's Solicitor) (via BMI's Solicitor if BMI engages a separate law firm) to Buyer's Solicitor before 12 noon on Dday.

8.15 BMI starts preparing inputs for the payment details in payment system (CHATS) or direct transfer (*in the event that the Seller's Bank and the BMI are the same bank*) with narrative but the payment will not be sent until Dday.

***Drawdown (Dday)***

8.16 BMI issues the BMIC and sends the same (or procures BMI's Solicitor to send the same) by encrypted email (and any other channels as agreed with Buyer's Solicitor) to Buyer's Solicitor before 12 noon on Dday. The BMIC shall be in the prescribed form, which contains, among others, the following information;

- (a) Seller's name;

- (b) Property address;<sup>29</sup>
- (c) Seller's Bank's name; and
- (d) the Buyer's Loan Amount to be remitted to Seller's Bank.

((a) to (d) together, the "**Key Information**") and Buyer's Solicitor shall upon receipt verify the information contained in the BMIC and promptly inform (via BMI's Solicitor, where applicable) BMI if Buyer's Solicitor is aware of any incorrect information therein.

8.17 After the issuance of the BMIC but before the delivery of the same to Seller's Solicitor by Buyer's Solicitor:

- (a) if any of the information in the issued BMIC is incorrect and:
  - (i) if the incorrect information in the BMIC is due to a mistake made by BMI, BMI shall correct the information in the BMIC or reissue a new BMIC before the completion time; or
  - (ii) if the incorrect information in the BMIC is due to a mistake made by any party (other than BMI), BMI shall use its reasonable endeavours to correct the information in the BMIC or reissue a new BMIC before the completion time,

and, in either case, if BMI has already effected the payment via CHATS or direct transfer (based on the incorrect information in the BMIC), BMI is entitled to receive a refund from the Seller's Bank under the inter-bank agreement in respect of the relevant incorrect BMIC; or

- (b) if (i) Buyer's Solicitor informs BMI in writing that the Buyer would not complete the transaction by the completion time or that the completion time has been extended and (ii) BMI has already effected the payment via CHATS or direct transfer, BMI is entitled to receive a refund from the Seller's Bank under the inter-bank agreement

8.18 Buyer's Solicitor sends to Seller's Solicitor by 5pm (or such other completion time as agreed between the Seller and Buyer) on Dday the following:

- (a) the BMIC (which may be sent physically or by encrypted email or other channels as agreed between the parties);
- (b) the signed assignment and other related document;
- (c) Buyer's CO or Buyer's Solicitor's cheque for Fees and Expenses (if applicable); and

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<sup>29</sup>To minimize chance of clerical error, it is sufficient to set out the address of the property. There is no need to set out the full legal description of the property.



- (d) (if part of the Balance is paid with the Buyer's own funds) Buyer's CO(s) in respect of the Buyer's own funds payable to the Seller(s).
- 8.19 Once the BMIC is delivered to Seller's Solicitor by Buyer's Solicitor, it is irrevocable and the payment under the relevant BMIC shall be transferred by BMI to the Seller's Bank, except in the circumstances where:
- (a) any of the Key Information on the BMIC is incorrect; or
  - (b) there is a mutual agreement between the Buyer and Seller to cancel, not to proceed with or to defer the transaction and that Buyer's Solicitor and Seller's Solicitor jointly inform BMI and the Seller's Bank of such mutual agreement in writing,
- in which case BMI is not obliged to effect the payment via CHATS or direct transfer (as the case may be), and if BMI has already effected the payment via CHATS or direct transfer (as the case may be), it shall notify the Seller's Bank by 9am on Dday+1 and provided that such notification is made it is entitled to receive a refund from the Seller's Bank under the inter-bank agreement.
- 8.20 In the case of paragraph 8.19(a) above, any deemed payment of the Buyer's Loan Amount by the Buyer on Dday by virtue of the delivery of the BMIC shall be deemed to have failed, provided that nothing herein will preclude the Buyer(s) and Seller(s) from reaching mutual agreement in their own discretion as to whether or not to arrange for a revised BMIC (containing the correct Key Information) to be issued by BMI and/or to defer the transaction.
- 8.21 BMI checks payment details against the related documents (including the BMIC) and effect the payment via CHATS or direct transfer. It is noted that depending on the internal arrangement of BMI, the CHATS / direct transfer may be sent before or after the delivery of the BMIC by Buyer's Solicitor to Seller's Solicitor.
- 8.22 BMI shall send notification to the Borrower under the Buyer's Mortgage on the completion of payment via suitable channels (SMS, e-mail or letter). It is expected that BMI will explore the possibility of same day electronic notification.
- 8.23 Seller's Solicitor, on being satisfied that Seller has duly executed the assignment,<sup>30</sup> shall send a copy of the BMIC to the Seller's Bank by encrypted email (or other channels as agreed with Seller's Bank) on Dday before cut-off time agreed between Seller's Solicitor and the Seller's Bank.
- 8.24 Buyer's Solicitor performs the usual steps to prepare for the completion.
- 8.25 Seller's Solicitor performs completion with the Seller. Seller shall attend the office of Seller's Solicitor on or before Dday to execute the assignment in escrow. To avoid the

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<sup>30</sup> Where the Seller has not executed the assignment, Seller's Solicitor should not deliver the BMIC to the Seller's Bank, to avoid the situation where funds are distributed to the Seller and yet the Seller has not executed the assignment.

situation where the Buyer's Loan Amount is distributed to the Seller(s) before the Seller(s) execute the assignment, this step shall be completed on or before Dday.<sup>31</sup>

- 8.26 If any part of the Balance is paid with the Buyer's own funds, Seller's Solicitor passes to the Seller(s) the Buyer's CO(s) for settling such part of the Balance. If the completion time is such that there is insufficient time to complete this step on Dday, then, in line with current practice, this step shall be performed by Dday+1.
- 8.27 Seller's Bank checks its General Ledger account (being a suspense account) on Dday. After confirming that the BMIC and the full amount of the Buyer's Loan Amount have been received, Seller's Bank shall arrange for payment of the Buyer's Loan Amount to the Seller(s) by crediting the Seller's Account not later than Dday+1 (but the actual date of receiving cleared funds will be subject to the usual AML controls).
- 8.28 If Seller's Solicitor does not receive the BMIC by the completion time on Dday, it shall notify the Seller's Bank in writing. After receiving such notification, the Seller's Bank shall arrange for any payment received via CHATS or direct transfer to be refunded to BMI under the inter-bank agreement.
- 8.29 If the property transaction has fallen through, Seller's Solicitor shall notify the Seller's Bank in writing, whereupon the Seller's Bank shall arrange for any payment received via CHATS (or direct transfer) to be refunded to BMI under the inter-bank agreement.

***By 1 day after Drawdown (By Dday + 1)***

- 8.30 In the event that funds transferred via CHATS (or direct transfer) have not reached the Seller's Bank on Dday, Seller's Bank checks its General Ledger account (being a suspense account) again before 9am on Dday+1 to see if funds have arrived. In the event that funds are not received by the Seller's Bank by 9am on Dday + 1, it shall be considered that payment of the Buyer's Loan Amount had failed.
- 8.31 Seller's Solicitor uses the Buyer's CO or Buyer's Solicitor's cheque to settle any Fees and Expenses (if applicable).

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<sup>31</sup> The Seller will need to attend the office of Seller's Solicitor on or before Dday to execute the assignment in escrow. Law firms under the existing system will allow the Seller to attend to the execution of the assignment post Dday because Seller's Solicitor will have the cheque for the Balance to hand over to the Seller (in other words, no money would be released to the Seller unless the assignment had been executed by the Seller). However, under PAPT, the Buyer's Loan Amount will be released by the Seller's Bank automatically upon completion of AML checks, and this creates the risk that the Buyer's Loan Amount had been distributed to the Seller and yet the Seller has not yet executed the assignment. If the Seller has not executed the assignment, Seller's Solicitor should not release the BMIC to the Seller's Bank.