

## **Payment Arrangements for Property Transactions (the "PAPT")**

### **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 the purchase / refinancing monies are paid through solicitors' accounts. In this digital era, the use of electronic funds transfer for the remittance of the purchase / refinancing monies, with a view to keeping the number of intermediaries through which the funds may pass to a minimum and thereby increasing the security of funds flow, will be the way forward and should be encouraged. In addition, with the use of electronic funds transfers, in the event that the practices of law firms are intervened and the firms' funds are frozen, the property transactions handled by such firms will not be seriously disrupted. Clients of such firms under intervention are significantly prejudiced in the circumstances, as they had to seek court approval before they could retrieve their funds held by these firms and may risk failing to complete the transaction.
- 1.2 The PAPT will 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 PAPT will cover mortgage refinancing transactions involving single mortgages first as an alternative means for payment of funds with a view to enhancing protection to mortgage customers and enabling stakeholders to gain more experiences with the new process in a gradual manner.
- 1.3 This document focuses on the refinancing transactions.
- 1.4 Under the PAPT, the bulk of the refinancing monies are to be paid with electronic funds transfer via CHATS from the Refinancing Mortgage Institution (that has granted bank facilities to the borrower) to the Original Mortgage Institution.
- 1.5 A key feature of the PAPT is to substitute the solicitors' cheque or cashier's order procured by the solicitor payable on redemption with a confirmation issued by the Refinancing Mortgage Institution, confirming that the amount borrowed by the borrower will be transferred by the Refinancing Mortgage Institution via CHATS according to the payment details set out therein on the redemption date. The PAPT is not intended to change the rights of a borrower under the existing regime; the existing practice for completing a property transaction is to be preserved as far as possible.

### **2. DEFINITIONS FOR REFINANCING SCENARIO**

#### **2.1 Definitions**

"**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).

**"Borrower"** means a natural person or a Property Holding Company.

**"Cash Out Amount"** means the Refinancing Loan Amount; minus:

- (a) the Remittance Amount; and
- (b) (if the RMI Borrower takes out any mortgage insurance product in connection with the Refinancing Mortgage) the mortgage insurance premium payable by the RMI Borrower, if and to the extent that such insurance premium is funded by the proceeds of the Refinancing Loan Amount.

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

**"CO"** means cashier's order.

**"Drawdown Day"** means the date of drawdown of the Refinancing Loan Amount; all references to Drawdown Day plus or minus any number of days means Drawdown Day plus or minus such number of business day i.e. Monday to Friday excluding Saturday, Sunday and general holidays defined in the General Holidays Ordinance (Cap. 149).

**"Mortgage Institution"** refers to an AI, regardless of whether it is a HKD Clearing Member of the CHATS or not.

**"OMI Borrower"** means the Borrower under the bank facilities granted by the Original Mortgage Institution, which are secured by the Original Mortgage.

**"OMI Borrower's CO"** means CO issued by a Bank as arranged by the OMI Borrower or any third party paying on the OMI Borrower's behalf.

**"Original Mortgage"** means the mortgage over a property securing the bank facilities granted to a Borrower by the Original Mortgage Institution; such mortgage is to be discharged in full by (i) the loan provided by the Refinancing Mortgage Institution and (ii) (where there is any shortfall) the OMI Borrower's own funds.

**"Original Mortgage Institution"** or **"OMI"** means the Mortgage Institution that has granted bank facilities to a Borrower, with such bank facilities being secured by the Original Mortgage.

**"Original Mortgage Institution's Solicitor"** or **"OMI's Solicitor"** means the solicitor engaged by the Original Mortgage Institution.

**"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(s) is/are natural person(s); and

- (c) whose direct and indirect shareholder(s) (other than the ultimate shareholder(s)) do not have any operating business.<sup>1</sup>

**"Redemption Amount"** means the outstanding amount of loan (including principal and interest) secured by the Original Mortgage as of Drawdown Day (as applicable).

**"Redemption Reference"** means the reference number assigned by the OMI for the remittance to be made under the RMIC.

**"Refinancing Loan Amount"** means the loan amount drawn down by the RMI Borrower under the Refinancing Mortgage.<sup>2</sup>

**"Refinancing Mortgage"** means the mortgage over a property securing the bank facilities granted to a Borrower by the Refinancing Mortgage Institution; with such property being either (i) a mortgage-free property or (ii) a property originally charged under the Original Mortgage (which will be fully discharged from the Original Mortgage on redemption).

**"Refinancing Mortgage Institution"** or **"RMI"** means the Mortgage Institution that has granted bank facilities to a Borrower, with such bank facilities being secured by the Refinancing Mortgage.

**"Refinancing Mortgage Institution Confirmation"** or **"RMIC"** means a document issued by the Refinancing Mortgage Institution confirming that the Redemption Amount (or such part thereof) will be transferred by the Refinancing Mortgage Institution via CHATS according to the payment details set out therein on Drawdown Day.

**"Refinancing Mortgage Institution's Solicitor"** or **"RMI's Solicitor"** means the solicitor engaged by the Refinancing Mortgage Institution.

**"Remittance Amount"** has the meaning given to that term in paragraph 7.3.

**"RMI Borrower"** means the Borrower under the bank facilities granted by the Refinancing Mortgage Institution, which are secured by the Refinancing Mortgage.

## 2.2 Construction

Any reference to the singular form of "Borrower", "OMI Borrower" or "RMI Borrower" shall include its plural form and vice versa.

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<sup>1</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 the PAPT. 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.

<sup>2</sup> If the RMI Borrower takes out a mortgage insurance product in respect of the Refinancing Mortgage, the mortgage insurance premium amount may form part of the Refinancing Loan Amount. Such mortgage insurance premium will not be remitted to the OMI pursuant to the RMIC on Drawdown Day and hence is excluded from the "Remittance Amount".

### 3. SCOPE OF THE REFINANCING SCENARIO

3.1 The PAPT only applies to refinancing transaction of a residential property in Hong Kong (including car parking space in a residential building whether independently or together with a residential unit) where:

- (a) there is not more than one existing mortgage over the property in favour of a Bank and booked in Hong Kong, under which the loan is denominated in HKD. This condition will not apply if a property over which there is no existing mortgage is to be charged;
- (b) only one mortgage will be taken out by the RMI Borrower with a Bank and booked in Hong Kong for the refinancing (under which the loan is denominated in HKD);
- (c) both the Original Mortgage Institution and the Refinancing Mortgage Institution are Banks which provide bank accounts and mortgage accounts booked in Hong Kong;
- (d) the completion of the refinancing is by way of solicitors' undertakings; and
- (e) where the Cash Out Amount under the refinancing transaction is expected to be a positive value, the Cash Out Amount will be paid into a bank account of the RMI Borrower with the Refinancing Mortgage Institution in Hong Kong.

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

- (a) there is a single or multiple Borrower(s) under the Original Mortgage or the Refinancing Mortgage;
- (b) the Original Mortgage and/or the Refinancing Mortgage is a two-party mortgage or a three-party mortgage;<sup>3</sup>
- (c) there is an existing mortgage over the property or not;
- (d) the Refinancing Mortgage Institution's Solicitor is the same as or different from Original Mortgage Institution's Solicitor;
- (e) 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 facility letter any restriction on alienation has been uplifted; or
- (f) those transactions involve mortgage insurance arrangement (such as the Mortgage Insurance Programme operated by HKMC Insurance Limited).

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<sup>3</sup> This is where, in relation to a mortgage, the Borrower is different from the mortgagor under that mortgage.

#### 4. **EXCLUSIONS OF THE REFINANCING SCENARIO**

4.1 The following refinancing transactions are excluded (each an "**Exclusion**"):

- (a) where any of the conditions set out in paragraph 3.1 above is not met;
- (b) where the Cash Out Amount under the refinancing transaction is expected to be a positive value but the Cash Out Amount will be paid to a bank account not with the Refinancing Mortgage Institution;
- (c) where completion of refinancing is by way of formal completion;
- (d) where the entire Redemption Amount is paid with the OMI Borrower's own funds (in such cases, the OMI Borrower is encouraged to use CO or debit from its account maintained with the Original Mortgage Institution for the payment of the Redemption Amount to the Original Mortgage Institution); or
- (e) where the property is subject to any charging order.<sup>4</sup>

#### 5. **DOCUMENTS AND SAMPLE CLAUSES PREPARED IN RESPECT OF THE REFINANCING SCENARIO**

5.1 In support of the adoption of the PAPT for refinancing transactions, the following draft documents and sample clauses will be provided:

- (a) Refinancing Mortgage Institution Confirmation;
- (b) sample clauses for facility letter to be entered into between the Refinancing Mortgage Institution and the RMI Borrower; and
- (c) inter-bank protocol.

#### 6. **GENERAL PRINCIPLES**

6.1 The following principles shall apply to each of the following scenarios under the PAPT for refinancing transactions:

- ❖ ***Refinancing Scenario A:*** where a Borrower seeks a refinancing loan from the Refinancing Mortgage Institution which is different from the Original Mortgage Institution, whether or not the Borrower under the Original Mortgage is the same as the Borrower under the Refinancing Mortgage.

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<sup>4</sup> Where the property is subject to a building order or has been charged by the management office for outstanding management fees or other payments payable, a property transaction involving such property is not to be automatically excluded from the PAPT. Instead, the RMI should assess on a case-by-case basis to determine whether the particular transaction should adopt the PAPT.

- ❖ **Refinancing Scenario B:** where the refinancing loan is provided by the Original Mortgage Institution but a new Borrower replaces the existing Borrower under the refinancing loan.
  - ❖ **Refinancing Scenario C:** where (i) the refinancing loan is provided by the Original Mortgage Institution to the same Borrower but the existing mortgage deed needs to be discharged and a new mortgage deed needs to be executed (e.g. from fixed amount mortgage to all monies mortgage) or (ii) a loan is provided by a Mortgage Institution to a Borrower, which is secured by a mortgage-free property.
  - ❖ For other refinancing scenarios, this document will apply *mutatis mutandis* with necessary modifications.
- (a) **Indicative timeline:** The timeline set out in each of the scenarios is designed to enable the parties and their legal advisors to have sufficient time to perform the relevant steps and proceed smoothly to drawdown. Accordingly, the anticipation is that the timeline should be followed to the extent possible. However, in practice, if exceptional circumstances arise or if parties have different transaction-specific requirements on timing (which deviate from the recommended timeline), parties shall communicate with one another in advance with a view to agreeing the suitable timeline which is to be adopted for specific transactions. It is not the intention that the timelines set out are to be followed rigidly with no exception.
- (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. The RMI has the discretion to effect payment by means other than CHATS or modify the PAPT payment mechanics to address such circumstances or issues.
- (c) **Becoming out of scope:** Where an in-scope property transaction becomes an out-of-scope property transaction on or before Drawdown Day 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. RMI has the discretion to effect payment by means other than CHATS.
- (d) **Adoption of PAPT:** Currently, the RMI Borrower would have a choice as to whether to adopt the PAPT in refinancing transactions. This would allow consumers, Banks, law firms and the market to familiarize with the PAPT.

## 7. REFINANCING Scenario A

### 7.1 This is the scenario where:

- (a) a Borrower seeks a refinancing loan from the Refinancing Mortgage Institution which is different from the Original Mortgage Institution and the Borrower under the Refinancing Mortgage is *the same as* the Borrower under the Original Mortgage (in which case, references to "RMI Borrower" and "OMI Borrower" in paragraph 7 below shall refer to the same Borrower);
- (b) a Borrower seeks a refinancing loan from the Refinancing Mortgage Institution which is different from the Original Mortgage Institution and the Borrower under the Refinancing Mortgage is *different from* the Borrower under the Original Mortgage.

### ***Facility letter Signing***

- 7.2 The decision as to whether the PAPT applies to a particular refinancing transaction is to be made by the RMI, subject to a written agreement of the RMI Borrower to adopt the PAPT. When the RMI Borrower applies for the refinancing loan, the RMI shall assess whether the PAPT is applicable to the refinancing transaction. The RMI shall (through RMI's Solicitor, *if the RMI appoints a separate law firm*) provide its assessment result to OMI's Solicitor, when OMI's Solicitor has been instructed.
- 7.3 The RMI or RMI's Solicitor shall obtain the RMI Borrower's express written consent in disclosing the refinancing arrangement, including the Refinancing Loan Amount (or such part thereof) that will be used to pay the Redemption Amount (or such part thereof) (the "**Remittance Amount**"), to the OMI and OMI's Solicitor for purposes of the PAPT before or upon the signing of the facility letter. The relevant consent, which may be recorded in the facility letter or otherwise, would set out that the consent can be withdrawn any time up to Drawdown Day-5.<sup>5</sup>
- 7.4 The RMI Borrower (via RMI's staff) indicates the intended drawdown date when applying for the refinancing loan. The actual drawdown date would be determined by the RMI and notified by RMI's Solicitor upon review of the title documents and due execution of the facility letter and the Refinancing Mortgage. Where there is any change in the actual drawdown date, RMI's Solicitor shall promptly notify the RMI and OMI's Solicitor.

### ***Release of Title Deeds***

- 7.5 RMI's Solicitor shall make a request to OMI's Solicitor for the release of title deeds. The OMI or through OMI's Solicitor, with authorization from the OMI Borrower, shall provide to RMI's Solicitor the relevant title deeds as soon as reasonably practicable.

### ***10 days before Drawdown (Drawdown Day-10)***

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<sup>5</sup> Although the Remittance Amount does not necessarily equal the Refinancing Loan Amount under this scenario (e.g. the Refinancing Loan Amount may include the Cash Out Amount which would not be remitted to OMI, and/or any mortgage insurance premium payable by the RMI Borrower), the Remittance Amount which will be stated in the RMIC partially reveals (if not wholly) the level of borrowing of the RMI Borrower. We therefore consider that the express consent of the RMI Borrower should be obtained to reveal the Remittance Amount.

7.6 OMI's Solicitor to ask the OMI for the Redemption Amount.

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

7.7 The OMI shall notify OMI's Solicitor by letter / email / fax of the Redemption Amount and the Redemption Reference.

7.8 If the Redemption Amount so notified under paragraph 7.7 is subsequently varied, see the workflow on Drawdown Day-2 in paragraph 7.13 below.

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

7.9 OMI's Solicitor shall notify RMI's Solicitor in a written letter of the Redemption Amount payable to the OMI and the Redemption Reference, together with a copy of the letter or email from the OMI confirming such information.<sup>6</sup> If the name of the OMI Borrower or mortgagor under the Original Mortgage (if different from the OMI Borrower) is different from the name shown on the Original Mortgage document(s) as registered at the Land Registry, the RMI Borrower shall provide copies of the relevant document to evidence the change of name (e.g. deed poll or certificate of change of name) to RMI's Solicitor.

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

7.10 RMI's Solicitor sends original book loan letter to the RMI with:

- (a) drawdown details (drawdown date, loan amount, etc.);
- (b) RMI Borrower's name (and name of the mortgagor under the Refinancing Mortgage in case the mortgagor is different from the RMI Borrower), together with relevant documentary evidence provided by the RMI Borrower to evidence the change of name (if any);
- (c) Name of OMI Borrower and OMI;
- (d) the Remittance Amount to be remitted under the RMIC and the Cash Out Amount payable to the RMI Borrower (if applicable);<sup>7</sup>
- (e) the Redemption Reference;
- (f) title confirmation by RMI's Solicitor together with the updated land searches; and

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<sup>6</sup> In the case where the OMI appoints the same law firm as the RMI, this step can be dispensed with.

<sup>7</sup> The Remittance Amount is not necessarily the Refinancing Loan Amount. For example, in a case which does not involve mortgage insurance, the Redemption Amount may be HKD4 million while the Refinancing Loan Amount may be HKD6 million. The HKD2 million is defined as the "Cash Out Amount" in this Refinancing Scenario A which would be directly credited by the RMI to the RMI Borrower. On the other hand, it is not necessarily the case that the Remittance Amount equals the Redemption Amount. For example, in a case which does not involve mortgage insurance, the Redemption Amount may be HKD4 million, and the Refinancing Loan Amount may be HKD2 million only, and the balance is paid with the OMI Borrower's own funds, which means only part of the Redemption Amount would be transferred by the RMI to the OMI.



- (g) other documents or information as may be required by the RMI under the relevant facility letter and instructions letter to RMI's Solicitor, such as confirmation that the Refinancing Mortgage has been executed in escrow.

7.11 OMI's Solicitor (where the Borrower under the Refinancing Mortgage is different from the Borrower under the Original Mortgage) or RMI's Solicitor (where the Borrower under the Refinancing Mortgage is the same as the Borrower under the Original Mortgage) shall confirm with the OMI Borrower:

- (a) such part of the Redemption Amount which is to be paid with the OMI Borrower's own funds; and
- (b) whether the OMI Borrower will settle the amount described in paragraph 7.11(a) by OMI Borrower's CO or funds standing to the credit of the OMI Borrower's repayment account maintained with the OMI.

OMI's Solicitor or (as the case may be) RMI's Solicitor (through OMI's Solicitor) will then inform OMI of the same.

7.12 The RMI starts drawdown preparation.

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

7.13 If the OMI discovers that the Redemption Amount has increased since it last notified OMI's Solicitor of the same, the OMI shall inform OMI's Solicitor of any increase in the Redemption Amount by 5pm on Drawdown Day-2.<sup>8</sup>

7.14 If OMI's Solicitor is notified by the OMI that the Redemption Amount has increased, OMI's Solicitor shall inform the OMI Borrower and RMI's Solicitor of the revised Redemption Amount payable to the OMI.<sup>9</sup> RMI's Solicitor shall inform the RMI Borrower of the same.

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

7.15 If the Redemption Amount is paid partly with the Remittance Amount and partly with the OMI Borrower's own funds, the OMI Borrower may pay such part of the Redemption Amount settled by the OMI Borrower's own funds by<sup>10</sup>:

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<sup>8</sup> Where the Redemption Amount decreases after the OMI last notified OMI's Solicitor of the same, for example due to the OMI Borrower making a scheduled repayment to the OMI, any surplus resulting from the overpayment of the Redemption Amount shall be refunded to the OMI Borrower.

<sup>9</sup> This is to enable the OMI Borrower to prepare any OMI Borrower's CO in respect of such part of the Redemption Amount which is to be paid with the OMI Borrower's own funds.

<sup>10</sup> Where part of the Redemption Amount is to be settled with the OMI Borrower's own funds, OMI's Solicitor should remind the borrower to settle such sums themselves pursuant to this paragraph instead of routing through solicitors' accounts.

- (a) OMI Borrower's CO payable to the OMI, in which case the OMI Borrower shall prepare OMI Borrower's CO payable to the OMI for discharging the loan under the Original Mortgage and make the same available to:
  - (i) (where the Borrower under the Refinancing Mortgage is different from the Borrower under the Original Mortgage) OMI's Solicitor by Drawdown Day-1 (or any other time on or before Drawdown Day as may be agreed between the OMI Borrower and OMI's Solicitor); or
  - (ii) (where the Borrower under the Refinancing Mortgage is the same as the Borrower under the Original Mortgage) RMI's Solicitor by Drawdown Day-1 (or any other time on or before Drawdown Day as may be agreed between the OMI Borrower and RMI's Solicitor); or
- (b) the OMI debiting funds from the OMI Borrower's repayment account on the Drawdown Day, in which case, OMI's Solicitor shall procure:
  - (i) a confirmation signed by the OMI Borrower on or before Drawdown Day-1 to acknowledge that:
    - (A) such part of the Redemption Amount to be paid by the OMI Borrower's own funds would be settled with funds in the repayment account of the OMI Borrower on Drawdown Day; and
    - (B) the repayment account shall have sufficient funds to settle such part of the Redemption Amount to be paid by the OMI Borrower's own funds; and
  - (ii) (if required by the OMI) irrevocable debit or payment instructions signed by the OMI Borrower for the purpose of effecting such debit of funds from the OMI Borrower's repayment account,

**provided that** if there are insufficient funds in the OMI Borrower's repayment account to settle such part of the Redemption Amount to be paid by the OMI Borrower's own funds, the OMI Borrower shall pay the shortfall. The OMI would not discharge the Original Mortgage unless and until the Redemption Amount had been paid in full.

7.16

- (a) In the case of paragraph 7.15(a)(i) or 7.15(b) above, upon its receipt of each of the applicable documents as described in paragraph 7.15 above, OMI's Solicitor shall notify RMI's Solicitor in writing that it has received the same and the amount of the OMI Borrower's own funds which is the subject of (i) such OMI Borrower's CO or (as applicable) (ii) the OMI Borrower's signed confirmation and (if required by the OMI) signed debit or payment instructions.

- (b) In the case of paragraph 7.15(a)(ii) above, if RMI's Solicitor does not receive such OMI Borrower's CO, it shall notify the RMI accordingly.
- 7.17 The RMI starts preparing the RMIC to be sent by encrypted email (or other channels as agreed with RMI's Solicitor) to RMI's Solicitor on Drawdown Day.
- 7.18 The RMI starts preparing inputs for the payment details in payment system (CHATS) with narrative but the payment will not be sent until Drawdown Day.

***Drawdown (Drawdown Day)***

- 7.19 RMI's Solicitor performs the usual update searches and promptly inform the RMI of any adverse entries / encumbrances or restrictions which may affect the RMI's interest as first mortgagee as soon as practicable.
- 7.20 (Where part of the Redemption Amount is paid with the OMI Borrower's own funds by debit from the OMI Borrower's repayment account with the OMI) The OMI shall debit from the OMI Borrower's repayment account an amount which equals such part of the Redemption Amount which is not financed by the Remittance Amount. The OMI shall inform OMI's Solicitor (and OMI's Solicitor shall in turn notify RMI's Solicitor) of the status of such debit from the OMI Borrower's repayment account as soon as reasonably practicable, irrespective of whether or not such debit is successful.
- 7.21 The RMI issues the RMIC and sends the same by encrypted email (or other channels as agreed with RMI's Solicitor) to RMI's Solicitor before 12 noon (or such other time as agreed between the RMI and RMI's Solicitor) on Drawdown Day. The RMIC shall be in the prescribed form, which contains, among others, the following information:
  - (a) the OMI Borrower's name;
  - (b) Property address;
  - (c) the OMI's name;
  - (d) the Remittance Amount to be remitted to the OMI under the RMIC;
  - (e) the RMI Borrower's name; and
  - (f) the Redemption Reference.

((a) to (d) together, the "**Key Information**")<sup>11</sup> and RMI's Solicitor shall upon receipt verify the information contained in the RMIC and promptly inform the RMI if RMI's Solicitor is aware of any incorrect information therein. If RMI's Solicitor discovers that there is incorrect Key Information in the RMIC (to the extent that any such error may prevent the RMI from effecting payment of the correct amount to the correct designated account, such

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<sup>11</sup> It is deliberate that the Redemption Reference is not an item of Key Information. This is to reduce the chance of mistakes on a RMIC due to incorrect input of a potentially lengthy Redemption Reference, which may affect the completion of the transaction. For the same reason, RMI Borrower's name is also not an item of Key Information.

as that an incorrect OMI is named), RMI's Solicitor should not deliver the RMIC to OMI's Solicitor.

7.22 After the issuance of the RMIC but before the delivery of the same to OMI's Solicitor by RMI's Solicitor:

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

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

- (b) if (i) the RMI Borrower informs the RMI in writing that the RMI Borrower would not proceed with the refinancing transaction or that the Drawdown Day has been deferred and (ii) the RMI has already effected payment via CHATS, the RMI is entitled to receive a refund from the OMI under the inter-bank protocol.

7.23 After RMI's Solicitor has checked the RMIC as mentioned in paragraph 7.21 above, RMI's Solicitor sends to OMI's Solicitor by 5pm on Drawdown Day the RMIC (which may be sent physically or by encrypted email or other channels as agreed between the parties). Where part of the Redemption Amount is paid with the OMI Borrower's own funds by debit from the OMI Borrower's repayment account with the OMI, and where OMI's Solicitor is notified by the OMI of an unsuccessful debit in accordance with paragraph 7.20 above, OMI's Solicitor shall communicate to RMI's Solicitor in writing (whether by letter, fax or email) that the RMIC as delivered by RMI's Solicitor is not accepted (together with reasons for the non-acceptance)<sup>12,13</sup>. OMI's Solicitor shall check the Key Information and deliver (physically or by encrypted email or other channels of communication as agreed between the OMI and OMI's Solicitor) a copy of the RMIC to the OMI on Drawdown Day. If OMI's Solicitor discovers that there is incorrect Key Information in the RMIC (to the extent that any such error may prevent the RMI from effecting payment of the correct

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<sup>12</sup> It is not a mandatory requirement for OMI's Solicitor to physically return the RMIC to the RMI's Solicitor as long as the intention to reject is clearly communicated by OMI's Solicitor to the RMI's Solicitor on Drawdown Day.

<sup>13</sup> Where debit from the OMI Borrower's repayment account with the OMI is unsuccessful, the Original Mortgage will not be discharged, in which case the RMI should not be obliged to effect the payment of the Remittance Amount via CHATS, or if it already did so, it should seek a refund from the OMI.

amount to the correct designated account), OMI's Solicitor shall notify the OMI of the same forthwith.

- 7.24 Where RMI's Solicitor is also OMI's Solicitor, such solicitor shall nevertheless inform both the OMI and RMI the point of time that the delivery of the RMIC takes place, notwithstanding that there is no physical delivery of such document from one law firm to another law firm. The delivery time in such case is deemed to be the time when RMI's Solicitor completes checking of the RMIC after receipt of the same from the RMI and confirms that the information therein is correct.
- 7.25 Once the RMIC is delivered to OMI's Solicitor by RMI's Solicitor, it is irrevocable and the Remittance Amount set out in the relevant RMIC shall be transferred by the RMI to the OMI, except in the circumstances where:
- (a) any of the Key Information on the RMIC is incorrect, to the extent that any such error prevents the RMI from effecting payment of the correct amount to the correct designated account;
  - (b) the RMI Borrower informs the RMI in writing that the RMI Borrower would not proceed with the refinancing transaction or that the Drawdown Day has been deferred,

in which case the RMI is not obliged to effect the payment via CHATS, and if the RMI has already effected the payment via CHATS, it shall notify the OMI / any unintended recipient Bank by 9am on Drawdown Day+1 and it is entitled to receive a refund from the OMI / that unintended recipient Bank under the inter-bank protocol.

- 7.26 In the case of paragraph 7.25(a) above, any deemed payment of the Remittance Amount on Drawdown Day as evidenced by the delivery of the RMIC shall be deemed not to have been made on Drawdown Day. The RMI Borrower, the OMI Borrower, the RMI and the OMI shall discuss and agree in their own discretion as to whether or not to arrange for a revised RMIC (containing the correct Key Information) to be issued by the RMI and/or to defer the refinancing transaction.
- 7.27 The RMI checks payment details against the RMIC and make the payment via CHATS as soon as possible, but in any event before the CHATS cut off time on Drawdown Day. It is noted that depending on the internal arrangement of the RMI, the CHATS may be sent before or after the delivery of the RMIC to OMI's Solicitor by RMI's Solicitor.
- 7.28 The RMI shall arrange for payment of the Cash Out Amount (if any) to the RMI Borrower by crediting the RMI Borrower's account with the RMI.
- 7.29 The RMI shall send notification to the RMI Borrower under the Refinancing Mortgage via suitable channels (SMS, e-mail or letter) on the completion of payment. It is expected that the RMI will explore the possibility of same day electronic notification.

- 7.30 If any part of the Redemption Amount outstanding under the Original Mortgage is paid with the OMI Borrower's own funds and the OMI Borrower elects to pay such sums by OMI Borrower's CO:
- (a) (in the case of paragraph 7.15(a)(i) above) OMI's Solicitor passes to the OMI the OMI Borrower's CO for settling such part of the Redemption Amount; and
  - (b) (in the case of paragraph 7.15(a)(ii) above) RMI's Solicitor passes to OMI's Solicitor (who shall pass the same to the OMI) the OMI Borrower's CO for settling such part of the Redemption Amount.
- 7.31 The OMI checks its General Ledger account (being a suspense account) on Drawdown Day. After confirming that the RMIC and the full Redemption Amount had been received, the OMI settles the loan under the Original Mortgage.
- 7.32 If OMI's Solicitor does not receive the RMIC by 5pm, or where OMI's Solicitor has refused to accept the RMIC delivered by RMI's Solicitor by reason of unsuccessful debit by the OMI of the amount of Redemption Amount to be paid with the OMI Borrower's own funds, the OMI shall arrange for any payment received via CHATS to be refunded to the RMI under the inter-bank protocol.

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

- 7.33 In the event that funds transferred via CHATS have not reached the OMI on Drawdown Day, the OMI checks its General Ledger account (being a suspense account) again before 9am on Drawdown Day+1 to see if funds have arrived. In the event that funds are not received by the OMI by 9am on Drawdown Day+ 1:
- (a) the OMI's Solicitor shall reach out to the RMI's Solicitor to ascertain the reason for the delay; and
  - (b) the RMI Borrower, the OMI Borrower, the RMI and the OMI shall discuss and agree in their own discretion as to whether or not to defer the refinancing transaction.
- 7.34 The OMI notifies the OMI Borrower on the repayment of loan and discharge of Original Mortgage via suitable channels (SMS, e-mail or letter). It is expected that the OMI will explore the possibility of same day electronic notification.
- 7.35 OMI's Solicitor sends the release document to the OMI for OMI's execution.

8. **REFINANCING SCENARIO B**

8.1 This is the scenario where the refinancing loan is provided by the Original Mortgage Institution but a new Borrower replaces the existing Borrower under the refinancing loan.

8.2 The steps in Refinancing Scenario A apply to Refinancing Scenario B, with necessary modifications including the following:

- (a) References to "CHATS" in paragraphs shall be replaced by "direct transfer".
- (b) RMIC shall not be used in light of the fact that a single Bank is involved.
- (c)
  - (i) References to "OMI" and "RMI" shall be retained, despite the fact that the OMI and the RMI shall refer to the same Bank but under different capacities.
  - (ii) The Mortgage Institution in the capacity of OMI and RMI may appoint a single law firm to act for them in respect of both the discharge of the Original Mortgage and the creation of the Refinancing Mortgage, in which case, references to "OMI's Solicitor" and "RMI's Solicitor" shall be retained, despite the fact that they refer to the same law firm but under different capacities.
  - (iii) Alternatively, the Mortgage Institution in the capacity of OMI and RMI may appoint different law firms to act for them in respect of the discharge of the Original Mortgage and the creation of the Refinancing Mortgage, respectively, in which case, references to "OMI", "OMI's Solicitor", "RMI" and "RMI's Solicitor" shall be retained, despite the fact that the OMI and the RMI shall refer to the same Bank but under different capacities. Where different law firms are appointed to act for the same Mortgage Institution in the capacity of OMI and RMI, the Mortgage Institution shall notify RMI's Solicitor of the completion of payment via suitable channels (SMS, e-mail or letter). RMI's Solicitor shall inform OMI's Solicitor accordingly.

9. **REFINANCING SCENARIO C**

9.1 This is the scenario where (i) the refinancing loan is provided by the Original Mortgage Institution to the same Borrower but the existing mortgage deed needs to be discharged and a new mortgage deed needs to be executed (e.g. from fixed amount mortgage to all monies mortgage) or (ii) a loan is provided by a Mortgage Institution to a Borrower, which is secured by a mortgage-free property.

9.2 The steps in Refinancing Scenario A apply to Refinancing Scenario C, with necessary modifications including the following:

- (a) References to “CHATS” in paragraphs shall be replaced by “direct transfer”.
- (b) RMIC shall not be used in light of the fact that a single Bank is involved.
- (c) In the case of paragraph 9.1(i) as described above:
  - (i) References to "OMI" and "RMI" shall be retained, despite the fact that they refer to the same Bank but under different capacities.
  - (ii) The Mortgage Institution in the capacity of OMI and RMI may appoint a single law firm to act for them in respect of both the discharge of the Original Mortgage and the creation of the Refinancing Mortgage, in which case, references to "OMI's Solicitor" and "RMI's Solicitor" shall be retained, despite the fact that they refer to the same law firm but under different capacities.
  - (iii) Alternatively, the Mortgage Institution in the capacity of OMI and RMI may appoint different law firms to act for them in respect of the discharge of the Original Mortgage and the creation of the Refinancing Mortgage, respectively, in which case, references to "OMI's Solicitor" and "RMI's Solicitor" shall be retained, despite the fact that the OMI and the RMI shall refer to the same Bank but under different capacities. Where different law firms are appointed to act for the same Mortgage Institution in the capacity of OMI and RMI, the Mortgage Institution shall notify RMI's Solicitor of the completion of payment via suitable channels (SMS, e-mail or letter). RMI's Solicitor shall inform OMI's Solicitor accordingly.
- (d) In the case of paragraph 9.1(ii) as described above:
  - (i) There is a single Mortgage Institution and a single Borrower only, which shall be construed as the "RMI" and the "RMI Borrower", respectively under Refinancing Scenario A.
  - (ii) There will be no OMI, OMI Borrower or OMI's Solicitor such that those steps under Refinancing Scenario A which relate to matters (A) as between any of OMI, OMI Borrower and OMI's Solicitor or (B) as between any of



OMI, OMI Borrower and OMI's Solicitor (on the one hand) and any of RMI, RMI Borrower and RMI's Solicitor (on the other hand) shall be disregarded.

- (iii) There is no Redemption Amount. The Cash Out Amount shall equal the Refinancing Loan Amount and shall be directly credited to the RMI Borrower's account with the RMI as per the steps set out in Refinancing Scenario A (with necessary modifications).