

**RESPONSE TO FEEDBACK RECEIVED
FROM THE FIRST PUBLIC CONSULTATION
ON PROPOSED MEASURES TO SAFEGUARD CONVEYANCING MONEYS**

1 Introduction

1.1 On 11 August 2009, the Ministry of Law (MinLaw) released a Consultation Paper (First Public Consultation Paper) on the proposed measures to safeguard conveyancing moneys. The consultation ended on 26 August 2009. MinLaw thanks all respondents for their feedback.

1.2 MinLaw has carefully considered the feedback received, and had since incorporated some of the suggestions into the revised measures and relevant legislation, for which views are now further sought in the Second Public Consultation. Please see:

<http://app2.mlaw.gov.sg/PublicConsultation/OpenConsultations/tabid/246/Default.aspx>

1.3 Comments from the feedback that are of wider interest, as well as MinLaw's responses, are set out below.

2 Lawyers to be legally prohibited from holding conveyancing moneys (defined as the purchase price and stamp duties pertaining to a property transaction; and to exclude legal fees and disbursements) in their regular client accounts; whereby breach of the prohibition would result in disciplinary action

Feedback

2.1 Some respondents sought greater clarity and offered suggestions on possible exclusions (for example, stamp duties, collective sales) to the proposed measures.

Response

2.2 In defining the particular scope of the prohibition, we are mindful of the need to strike a balance between security and practicality in deciding which portions of the conveyancing process should be subject to the suggested restrictions. The measures are aimed at providing protection to the man in the street, and will thus by and large apply to all moneys exchanged in relation to a property transaction, including those relating to the transfer or sale of portions of

interests in the property. However, MinLaw acknowledges that it would not be practical for the measures to apply without exception.

2.3 Arising from the feedback received, lawyers will be allowed to require a separate float of up to \$5,000 from their clients for the purposes of meeting disbursements and last minute adjustments. Further, lawyers acting in collective sale transactions will be allowed regulated access to a small part of the conveyancing moneys to cover all disbursements incurred in the course of such a large transaction. For such en bloc cases, lawyers would be allowed to access \$2,000 per unit in the sale, up to a maximum of \$200,000 per transaction.

2.4 Stamp duties will fall under the proposed safeguarding measures.

Feedback

2.5 One respondent proposed that the prohibitive measures should not apply in instances in which (1) there is separate representation, or (2) lawyers are authorised by both buyers and sellers to place the moneys into a joint client account.

Response

2.6 Separate representation does not in itself preclude fraud, as lawyers on either side can still abscond with the moneys in their own client accounts. In addition, buyer/seller authorisations are open to forgery if there is no separate and independent check on the instructions to withdraw moneys. The requirements for withdrawal of moneys are set out in more detail in the Second Public Consultation Paper.

Feedback

2.7 Some respondents commented that the consequences of a breach of the prohibition should be suitably hefty, in order to effectively deter and/or punish potential defalcations.

Response

2.8 It will be an offence not only for lawyers, but for any entity other than an entity approved by the Minister for Law to breach the prohibition on holding conveyancing moneys. A breach of this prohibition may attract a penalty of up to three years' imprisonment or a fine of up to \$50,000. Lawyers are not in breach if they hold these moneys according to the legal framework provided in the new regime. Lawyers in breach can also be subject to disciplinary proceedings.

Feedback

2.9 Some respondents suggested that the safeguarding measures should be extended to include all client moneys, as defalcations have occurred in non-conveyancing cases as well.

Response

2.10 MinLaw acknowledges that clients' moneys can and have been misappropriated in non-conveyancing cases and should ideally be safeguarded. The current measures are aimed at conveyancing moneys, for a start, as the purchase of a home is likely to be the most substantial investment for most individuals, and such moneys comprise the bulk of clients' moneys currently held by lawyers. An extension of the measures to include all client moneys may be considered at a later time.

3 Conveyancing moneys to be held only by entities approved by the Minister for Law

3.1 The Option Deposit (four or nine per cent of the purchase price) to be held by entities approved and appointed by the Minister for Law

Feedback

3.1.1 A number of respondents enquired whether the proposed measures could be extended to apply to the balance 90 or 95 per cent of the purchase price (Completion Moneys), as the lack of an alternative to lawyer's client accounts for such moneys would pose an grave inconvenience to buyers who would then have to purchase Cashier's Orders (COs) on or before the day of completion.

Response

3.1.2 Under the revised measures, the coverage of the scheme will be extended to allow property buyers to place balance purchase moneys in law firms' newly created conveyancing accounts for which there are safeguards against unauthorised withdrawals. This is intended to increase the comprehensiveness of the measures, as well as convenience to buyers, especially overseas buyers. Please refer to the Second Public Consultation Paper for more details.

3.2 The Singapore Academy of Law (SAL) to be one of the entities appointed to hold such conveyancing moneys

Feedback

3.2.1 Some respondents expressed a preference for banks to be appointed as the main holding entities, by virtue of their better-established financial expertise in relation to the Singapore Academy of Law (“SAL”).

Response

3.2.2 At the time of the First Public Consultation, MinLaw had commenced talks with banks to allow law firms to open conveyancing accounts, where withdrawal of funds would be through the use of a prescribed form. These discussions have been fruitful, and a number of banks intend to provide such a service as an Approved Bank (please refer to the Second Public Consultation Paper for more details), in addition to SAL’s appointment to act as a stakeholder.

3.3 The SAL to hold conveyancing moneys in accordance with the model¹ outlined in the First Public Consultation

3.3.1 The majority of responses sought clarification on, and offered constructive comments in respect of, the administrative model outlined in the First Public Consultation. These remarks can be broadly categorised into concerns about acceptable modes of payment, requirements for the release of moneys, refund of moneys in the event of abortive transactions, turnaround time, fees that will apply to the servicing of conveyancing accounts with holding entities, and the provision of insurance for funds deposited with holding entities. These are individually summarised and responded to in the paragraphs below.

Feedback

3.3.2 *Mode of Payment.* Respondents expressed concern that the proposed modes of payment to be accepted by SAL would be restricted to COs or electronic transfer. Most cited purchaser inconvenience, particularly if one was out of the country at the time of option exercise.

Response

3.3.3 This useful feedback has been accepted and SAL will be prepared to receive cheque payments.

¹ The seller should specify in the Option to Purchase Form that SAL receives such a deposit. The buyer will be asked to issue a Cashier’s Order or make an electronic payment to SAL. SAL will only pay out moneys upon the joint submission from buyer and seller’s lawyers of a Payment-Out Form, with supporting documents such as title search.

Feedback

3.3.4 *Requirements for the Release of Moneys.* The feedback received supported the requirement for a payment-out form jointly authorised by both the buyer's and the seller's lawyers, in order for moneys to be released. One respondent also suggested that the Inland Revenue Authority of Singapore ("IRAS") provide confirmation upon request as to whether the seller is or is not a property trader, in order for buyers to determine whether or not it is necessary to withhold tax.

Response

3.3.5 IRAS has plans to update the current e-Tax Guide on this matter to reflect the changes arising from the revised measures. Any buyer (individual or company) or his/its lawyer can make a request to IRAS to ascertain whether the non-resident seller is a property trader, so as to comply with the withholding obligation.

Feedback

3.3.6 *Refund of Moneys in the Event of Abortive Transactions.* A few respondents inquired as to whether there were processes in place to ensure that moneys could be quickly refunded to buyers / sellers in the event that the transaction was to be aborted for any number of reasons.

Response

3.3.7 Procedures will be in place to deal with aborted or disputed transactions.

Feedback

3.3.8 *Turnaround Time.* Some respondents expressed concern over the ability of appointed entities to instantly acknowledge the exercise of options and/or make last minute changes on completion day. Most inquired as to the burden of liability for interest payable in the event of late completion, as a result of the appointed entities not being able to cope with last minute changes.

Response

3.3.9 MinLaw recognises that turnaround time is an important consideration, and a process will be put in place to ensure that the exercise of options, or completion of property transactions, are not delayed as a result of the measures to safeguard conveyancing moneys. Please refer to the Second Public Consultation Paper for more details.

Feedback

3.3.10 *Account Servicing / Administrative Fees.* One respondent suggested that the proposed measures should be fully self-funding, and accordingly that account servicing fees should be assessed on a commercial basis.

Response

3.3.11 MinLaw agrees with a market-based approach in the determination of fees, which will apply to the servicing and operation of conveyancing accounts with holding entities.

Feedback

3.3.12 *Insurance for funds deposited with approved entities.* One respondent has asked if the conveyancing moneys would be insured.

Response

3.3.13 Entities approved to hold conveyancing moneys (that is, approved banks and SAL) will be subject to the same responsibility and liability for the safekeeping of conveyancing moneys held by them, as they are currently subject to for all other moneys currently held by them.

4 Release of conveyancing moneys by approved entities to be exclusively restricted to an approved payee list

Feedback

4.1 Concerns were raised over whether such a restrictive list could exhaustively allow for all manners of payees to receive moneys due to them in a timely manner. One respondent suggested providing for a clause to allow the release of moneys upon a written indemnity from the sellers / buyers authorising the same, in the event that a payee did not fall under the categories listed. Another expressed concern that the exclusion of lawyers and real estate agents from the approved payee list would result in an increased risk of default by sellers (particularly foreign ones), as the payment of such fees would have to be required separately from the sellers, rather than being directly deducted from Option Deposits / Completion Moneys.

Response

4.2 MinLaw agrees that an approved list could compromise flexibility in the conveyancing process, and hence will not be instituting an approved payees list. Countersigning lawyers would be required to exercise the necessary due diligence in ensuring that moneys are released to bona fide payees. However,

MinLaw will not prohibit an approved entity from introducing such a list as a requirement to their providing a service.

5 Other Feedback

Feedback

5.1 A large number of respondents commented that the proposed measures to safeguard conveyancing moneys would only be effective insofar as the relevant stakeholders were fully educated on the details of the new scheme.

Response

5.2 MinLaw agrees that stakeholder education (comprising law firms, banks, purchasers / sellers of property, property agents) is crucial to preventing further defalcations in respect of conveyancing moneys. Some activities that will be conducted well before the safeguarding measures come into effect will include the publication and dissemination of stakeholder-specific guidebooks on the conveyancing process; the hosting of public educational seminars and forums on the proposed measures; the inclusion of cautionary reminders to purchasers / sellers into relevant conveyancing forms; and the provision of a conveyancing matters hotline for queries arising under the new conveyancing model.

MINISTRY OF LAW
18 JANUARY 2010