

**LEGISLATIVE GUIDE**  
**ON THE KEY LEGISLATIVE PROVISIONS GOVERNING THE NEW MEASURES**  
**TO SAFEGUARD CONVEYANCING MONEY**  
**(Amended as of 25 November 2011)**

- (1) [Conveyancing \(Miscellaneous Amendments\) Act 2011 \(Act 17 of 2011\)](#)
- (2) [Conveyancing and Law of Property \(Conveyancing\) Rules 2011](#)
- (3) [Conveyancing and Law of Property \(Conveyancing\) \(Amendment\) Rules 2011](#)
- (4) [Conveyancing and Law of Property \(Conveyancing\) \(Amendment No. 2\) Rules 2011](#)
- (5) [Singapore Academy of Law \(Conveyancing Money\) Rules 2011](#)
- (6) [Singapore Academy of Law \(Conveyancing Money\) \(Amendment\) Rules 2011](#)

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**(A) INTRODUCTION**

1. The **Conveyancing (Miscellaneous Amendments) Act 2011 (Act 17 of 2011)** introduces **new sections 73D and 73E of the Conveyancing and Law of Property Act** to empower the Minister to *inter alia*, make the **Conveyancing and Law of Property (Conveyancing) Rules 2011** (the “**CLP Rules**”), the **Conveyancing and Law of Property (Conveyancing) (Amendment) Rules 2011** (the “**CLP (Amendment) Rules**”) and the **Conveyancing and Law of Property (Conveyancing) (Amendment No. 2) Rules 2011** (the “**CLP (Amendment No. 2) Rules**”) to regulate conveyancing transactions and the receipt, holding and distribution of conveyancing money. Collectively, these legislative amendments introduce the following key changes:

- (a) Lawyers will be prohibited from holding conveyancing money on behalf of their clients except in the manner allowed for in the CLP Rules [**CLP Rule 4(1)**].
- (b) Breach of this prohibition will be a criminal offence which is punishable with a maximum of three years’ imprisonment or a fine of up to \$50,000, or both [**CLP Rule 4(3)**]. It may be compounded by the Public Prosecutor in appropriate circumstances [**Sub-sections 73D(5) and (6) of the Act**].
- (c) Lawyers receiving conveyancing money will have to deposit the money in special conveyancing accounts held with entities appointed by the Minister e.g. Appointed Banks or the Singapore Academy of Law (“SAL”) [**CLP Rule 3 and Second Schedule to the CLP Rules**]. The framework will allow the continued use of jointly managed escrow accounts, which may be used in complex commercial transactions [**CLP Rule 4(1)(a)**].
- (d) Withdrawal of conveyancing money deposited in such an account with an appointed entity will generally require the signatures of two parties [**CLP Rule 5(7) read with Rule 7**].

- (e) Law Society will administer an adjudication scheme for quick resolution of disagreements in respect of the distribution of conveyancing money held by Appointed Banks or SAL [**CLP Rule 20** read with the **Fourth Schedule to the CLP Rules**].
- (f) The CLP Rules will apply to all conveyancing transactions involving Singapore property [see definition of “land” in **CLP Rule 2**] without exception. Any contractual term in an agreement in respect of a conveyancing transaction which is inconsistent with the CLP Rules will have no effect<sup>1</sup> [**Section 73D(4)**].

2. Real estate agents, who could potentially be asked by members of the public to hold conveyancing money, are prohibited from so doing through **Regulation 7(1) of the Estate Agents (Estate Agency Work) Regulations 2010**.

## **(B) SCOPE OF NEW MEASURES**

### ***General***

3. Any conveyancing money received by a lawyer in connection with a conveyancing transaction<sup>2</sup> must be paid into (a) a conveyancing account maintained with an Appointed Bank; (b) SAL; or (c) an escrow account in accordance with an escrow agreement, [**CLP Rule 5(1)**]. Failure to do so is an offence [**CLP Rule 4(3)**].

4. “Conveyancing money<sup>3</sup>” is defined in **CLP Rule 2(2)** and includes the following:

- (a) option deposit, balance purchase price and any other consideration for the land;
- (b) outgoings including rents, property tax and maintenance charges (if any);
- (c) late completion interest;

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<sup>1</sup> **CLP Rule 19** also prescribes a standard term and condition (as set out in the **Third Schedule**) that is applicable to all conveyancing transactions. This standard term makes it clear that where an Option to Purchase (which specifies that the deposit payable in exercise of the option is to be held by the seller’s lawyer as stakeholders) does not stipulate that the deposit be made payable to the seller’s lawyer’s conveyancing account, the acceptance of the Option will not be invalidated by the buyer issuing a cheque or cashier’s order in favour of the seller’s lawyer’s conveyancing account in exercise of the option.

<sup>2</sup> “Conveyancing transaction” is defined in **CLP Rule 2(2)** to include sale, purchase or assignment of land, grant or surrender of lease, licence or tenancy, and grant of mortgage of, or charge on land or the redemption or discharge thereof.

<sup>3</sup> For unclaimed conveyancing money, please refer to the transitional provisions in **CLP Rule 23**, as well as Rule 17 of the Legal Profession (Solicitors’ Accounts) Rules inserted via the Legal Profession (Solicitors’ Accounts)(Amendment No. 2) Rules 2011.

- (d) rent, licence fee, security deposit and any other money (excluding money payable for repairs or improvements to land) payable in respect of the lease, licence or tenancy;
- (e) money payable in the surrender of a lease, licence or tenancy in respect of land;
- (f) goods and services tax (if any) payable;
- (g) money disbursed under a loan, or provided for the repayment of a loan, granted for or in connection with a conveyancing transaction, regardless of whether the loan is secured by the grant of a mortgage or charge on the land and whether any mortgage or charge on the land will be fully or partially redeemed or discharged;
- (h) CPF money withdrawn in connection with the conveyancing transaction *[Note: CPF moneys withdrawn for payment of legal fees and disbursements may be paid into the client account – CLP Rule 5(2) read with CLP rule 5(5)]*;
- (i) full stamp duty on any conveyance, assignment or transfer of land (i.e. buyers' and sellers' stamp duty), or any gift involving land [see **Articles 3(a), (b), (ba), (bb) and 7 of the First Schedule to the Stamp Duties Act**] and other relevant documents<sup>4</sup>;
- (j) stamp duty amounting to or exceeding \$5,000 on a lease, licence<sup>5</sup> or tenancy, or a surrender thereof [see **Articles 1, 8(a), (b) or (c) or 12 of the First Schedule to the Stamp Duties Act**]; and
- (k) sale proceeds received after completion by a lawyer who had acted in the conveyancing transaction, upon express instructions from client to do so<sup>6</sup>.

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<sup>4</sup> "Conveyancing money" also includes full stamp duty on exchange of land [**Article 6**], settlement involving land [**Articles 3(e) and 11(a)**], transaction between trustees where the beneficial interest in land passes [**Article 3(g)(i)**] and distribution of land in specie to shareholders in company liquidation [**Article 3(h)**].

<sup>5</sup> A license agreement that amounts to a lease is liable to stamp duty.

<sup>6</sup> This may occur for example, in matrimonial cases where a lawyer (who had acted for a party to a conveyancing transaction) may be asked to hold the proceeds of sale of a matrimonial home pending directions from the court on ancillary relief. In such a situation, the lawyer would receive the money from the seller as a "Category C" payee and must hold the money in his conveyancing account until such time a Court order for the pay-out has been received. On the other hand, if the sale proceeds are, with the consent of the seller, handed over to another lawyer (who did not act in the conveyancing transaction), that lawyer may receive and hold the money in his client's account.

[See definition of “conveyancing money” in **CLP Rule 2**, **CLP Rule 5(1)** and **CLP Rule 5(9)**].

5. Anticipatory Conveyancing Money: It is an offence for a lawyer to receive and hold any money which a client may wish to place with the lawyer in anticipation of purchasing or renting a property. Such anticipatory conveyancing money cannot be placed in the conveyancing account, client account or otherwise [**CLP Rule 4(2)** and **(3)**].

6. “Conveyancing money” does not include money paid for the following:

- (a) Legal fees and disbursements: These can be paid into a lawyer’s client account [**CLP Rule 5(5)**]. A lawyer acting for CPF Board may also pay into his client account any CPF money received for payment of another lawyer’s legal fees and disbursements [**CLP Rule 5(2)** read with **CLP Rule 5(5)**]. However, where a bill of costs has been rendered for costs incurred, the money that is paid on account of the bill can be paid directly into the lawyer’s office account. Similarly, any money received by a lawyer from any person towards reimbursement of actual expenses incurred may also be paid directly into the lawyer’s office account [**CLP Rule 5(6)**].
- (b) Float: This can be paid into the lawyer’s client account for payment of any amount payable for the purposes of the completion of the transaction provided that every amount disbursed from the float is properly accounted for and supported by written documentation. Any unutilised amount must be refunded to the client(s). The quantum of the float is capped at:
  - non-collective sale cases: \$5,000 (such amount is over and above the purchase price and cannot be taken out of the option deposit) [**CLP Rule 5(3)**];
  - collective sale<sup>7</sup> cases: \$2,000 per unit (subject to a total cap of \$200,000 for the collective sale); such amount may be taken out of the option deposit [**CLP Rule 5(4)**].

### **Conveyancing money viz client account, CLP Rules and the CLP (Amendment) Rules**

7. From 1 August, **Rule 3(1A) and (3) to (6) of the Legal Profession (Solicitors’ Accounts) Rules** applies to every receipt or holding, on or after 1 August 2011, by a lawyer of conveyancing money (without any qualification as to whether the agreement in respect of the conveyancing transaction pursuant to which the

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<sup>7</sup> “Collective sale” is defined to mean the sale of 5 or more lots in a strata title plan, or of 5 or more flats in a development (not all of which are owned by the same seller) in a single conveyancing transaction (**CLP Rule 5(10)**).

conveyancing money is held is entered into before, on or after 1 August 2011). From 1 August 2011, conveyancing money can no longer be deposited in client account unless it falls within the exception in **Rule 4 of the Legal Profession (Solicitors' Accounts) Rules**.

8. The amendment made to **Rule 2(1) of the CLP Rules** via the CLP (Amendment) Rules serves to clarify that the CLP Rules also apply to conveyancing money that is received or held on or after 1 August 2011 regardless of whether the agreement in respect of the conveyancing transaction pursuant to which the money is held is entered into before, on or after 1 August 2011.

### **(C) ENTITIES APPOINTED BY THE MINISTER FOR LAW: APPOINTED BANKS AND SAL**

#### ***Relationship between CLP Rules and SAL Rules***

9. A number of banks and SAL have been appointed to hold conveyancing money [these entities are listed in the **Second Schedule to CLP Rules**].

10. The service provided by the Appointed Banks is governed by the CLP Rules (save for **Part IV** which applies only to SAL).

11. The service provided by SAL is governed by the CLP Rules (save for Part III which applies only to Appointed Banks) and the Singapore Academy of Law (Conveyancing Money) Rules 2011 [**"SAL Rules"**].

12. Where SAL is concerned, the SAL Rules modifies the application of the CLP Rules in two key ways:

- (a) the scope of "conveyancing transactions" for which conveyancing money can be deposited with SAL is narrower; and
- (b) a different scheme applies to the holding of option deposits (also known as stakeholding deposits) by SAL.

#### ***(a) Narrower scope of conveyancing transactions for SAL***

11. Unlike Appointed Banks which will hold conveyancing money for the full gamut of conveyancing transactions, SAL's service only extends to the sale and purchase of land (i.e. freehold and leasehold but not sub-lease, licences and tenancies) which involves a direct relationship between seller and buyer. In other words, SAL does not deal with ancillary transactions like mortgages and payments to CPF. The SAL Rules further excludes any direct sales by housing developers and collective sales from the scope of SAL's service (which would otherwise be a sale and purchase involving a direct relationship between seller and buyer) [see the **respective definitions of "conveyancing transactions"** in both the SAL Rules and CLP Rules].

***(b) Stakeholding deposits***

12. Any conveyancing money which is deposited with SAL as stakeholder for the seller and buyer (e.g. stakeholding deposits) can only be withdrawn by the joint signatures of both the buyer and seller. This applies even where the payee is a Category A payee [**CLP Rule 17** read with **SAL Rule 7**]. The procedure for payment out for all other types of conveyancing money (e.g. balance purchase price) which is held with SAL follows the same procedure as outlined in paragraphs 19 to 23 below.

13. For more details on the service provided by SAL, including information on the operational details peculiar to SAL, please refer to [www.sal.org.sg](http://www.sal.org.sg).

**(D) CONVEYANCING ACCOUNTS – THE RECEIPT AND DISTRIBUTION OF CONVEYANCING MONEY**

***Difference between a conveyancing account and conveyancing (CPF) Account***

14. Where a buyer intends to use his Central Provident Fund money (“CPF money”) to meet the balance sale proceeds in part or in full, CPF Board will deposit the buyer’s CPF money in its CPF Board’s lawyer’s conveyancing (CPF) account [see definition of “conveyancing (CPF) account” in **CLP Rule 2**]. All other conveyancing money is to be deposited into the regular conveyancing account.

***Receipt of conveyancing money: payment into conveyancing account***

15. Any party to a conveyancing transaction may pay conveyancing money into a lawyer’s conveyancing account by way of cheque, bank draft<sup>8</sup>, electronic fund transfer<sup>9</sup> or telegraphic transfer [**CLP Rule 6(1)**]. No inter-bank GIRO is allowed, except for CPF money [**CLP Rule 6(2)**].

16. Every payment of conveyancing money into a conveyancing account must be accompanied by a duly completed pay-in form signed by any authorised signatory of the account holder law firm [**CLP Rule 6(3)**]. Where the payment of conveyancing money is made by way of electronic fund transfer or telegraphic transfer, the relevant pay-in form should be given to the Appointed Bank as soon as practicable to enable the Appointed Bank to create the necessary records and ring-fence the money [**CLP Rule 6(4)**]. Payment of conveyancing money into the conveyancing (CPF) account will not require a pay-in form, but must be accompanied by written instructions from CPF Board in an electronic format [**CLP Rule 6(5)**].

17. Where any conveyancing money has been paid into the conveyancing account, the lawyer must give written notice to the counter-signing party referred to in the pay-in form or in the written instructions given by CPF Board. This is so that the counter-

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<sup>8</sup> This would include cashier’s orders and foreign currency bank drafts.

<sup>9</sup> Example: via MEPS+

signing party who has been so named will have advance notice of his/her role [CLP Rule 6(6)].

### ***Money wrongly paid into a conveyancing account***

18. In the event that any money has been erroneously paid into a lawyer's conveyancing account, the Appointed Bank may, with the consent of the lawyer, reverse the payment transaction and refund the money to the person who provided the money [CLP Rule 13]. An example of this is where a client has erroneously paid money into the conveyancing account that is intended for the lawyer's client account.

### ***Distribution of conveyancing money: paying money out of a conveyancing account***

19. Money from a conveyancing account and from SAL can only be paid out in 2 ways – either pursuant to an order of court, or in accordance with a pay-out form. The CLP Rules provide for 3 different categories of payees – A, B and C [CLP Rule 2(2)], categorized according to their connection to the property transaction and likelihood of being a legitimate payee. All payment out shall be by way of bank drafts or SAL cheques<sup>10</sup>.

### ***Category A payees***

20. Category A payees are the safest category of payees e.g. Commissioner of Stamp Duties, Commissioner of Lands, Comptroller of Income Tax, Jurong Town Corporation and the SAL<sup>11</sup>. As such, there is no requirement for counter-signing [CLP Rule 7(2)] or cross-checking by the lawyer initiating the pay-out form [see CLP Rule 18 which does not impose a duty to verify payments to Category A payees].

### ***Category B payees***

21. Category B payees are the usual recipients of conveyancing money e.g. the seller, buyer, mortgagee, CPF Board. These also include a buyer's or seller's executor or administrator, assignee or other successor in title, and anyone authorised by a buyer or seller to act on his behalf in the sale and purchase of land pursuant to a power of attorney<sup>12</sup> [see respective definitions of "purchaser" and

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<sup>10</sup> Except where the conveyancing money consists of stamp duty and the payment is to be made to the Commissioner of Stamp Duties. See **Rule 7(13)(a)**.

<sup>11</sup> This would apply where conveyancing money is payable to the SAL as stakeholder pursuant to the (a) Housing Developers Rules; (b) Sale of Commercial Properties Rules; (c) Housing and Development (Design-Build-and-Sell Scheme – Form of Contract) Rules; or (d) Executive Condominium Housing Scheme Regulations

<sup>12</sup> In the case of a lawyer who is appointed (in his professional capacity) as an attorney, the question as to whether the conveyancing money received by him should be paid into his conveyancing account or client's account would depend on whether the lawyer is also acting for the donor in the conveyancing transaction and whether the money is received in the course of the conveyancing transaction or after the completion of the same. If the money was received **in the course of the conveyancing transaction**, then the money should be paid into a conveyancing account regardless of whether the lawyer is also acting for the donor in the conveyancing transaction. However, if the payment is made **post-completion**, it must be paid into the lawyer's conveyancing account if the

“vendor” in **CLP Rule 2**]. Payments to Category B payees must be counter-signed [**CLP Rules 7(3) & (9)**] and cross-checked by the lawyer initiating the pay-out form [**CLP Rules 18(1), (1A), (3) & (3A)**]. The CLP Rules require that the party with a duty to check take steps to verify that the payee specified in the pay-out form is indeed a Category B payee. The party performing the verification role is entitled to request for any information and documents necessary for him to perform his role.

### ***Category C payees***

22. Category C payees refer to persons who are not Category A or Category B payees, and are payees for which the payment of conveyancing money is not as common. As such, the CLP Rules requires that parties perform two-levels of verification [**CLP Rules 18(2), (2A), (4) & (4A); CLP Rules 7(3) & (10)**]:

- (a) that the conveyancing money is to be paid to a specified Category C payee; and
- (b) the amount of conveyancing money that is to be paid.

23. Parties with a duty to verify the payments for Category C payees can, additionally, request for a statutory declaration. For example, the buyer’s lawyer who is initiating the pay-out form for the balance purchase price can request that he be provided with a statutory declaration stating the seller’s decision for a Category C payee to receive the conveyancing money.

### **Conveyancing money placed with SAL**

24. For conveyancing money held by SAL, slightly different considerations apply. For stakeholding deposits, as SAL is a stakeholder for both parties, SAL thus requires the joint signatures of the buyer and seller (or their respective lawyers) to withdraw such stake-holding money. Hence, the pay-out form for the withdrawal of stakeholding deposits has to be counter-signed [**CLP Rule 17(1)**] even though the payment is to a Category A payee. For all other types of conveyancing money (e.g. balance purchase price) placed with SAL, the same requirements and policy considerations as outlined above in paragraphs 20 to 22 would apply; in other words, the pay-out form does not need to be counter-signed if the payment is made to a Category A payee [**CLP Rule 17(1)**], and counter-signing of the pay-out form is only required for payments to payees which fall under Category B [**CLP Rule 17(1)**] or Category C [**CLP Rule 17(2)**]. Please refer to [www.sal.org.sg](http://www.sal.org.sg) for further details.

### ***Amendments to pay-in forms and pay-out forms***

25. CLP Rules 10 and 11 deal with the operational details of when and how to amend particulars (including a change of counter-signatories) in the forms used for conveyancing accounts held by the Appointed Banks.

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lawyer had also acted for the donor in the conveyancing transaction; but if the lawyer did not act for the donor in the conveyancing transaction, the money can be paid into his client account.



26. For more information on these operational details, please refer to [www.conveyancing.sg](http://www.conveyancing.sg) for the “Guidebook for Lawyers” (for conveyancing money held with Appointed Banks) and [www.sal.org.sg](http://www.sal.org.sg) (for conveyancing money held with SAL).

### **(E) TWO-PARTY SIGNATORY SYSTEM**

27. In order to withdraw money from a conveyancing account or from SAL, a lawyer will need the counter-signing of the other party or its lawyer (if the party is legally represented) in the transaction<sup>13</sup>. This creates a level of check and balance. The parties who are authorised<sup>14</sup> to sign and counter-sign the relevant form(s) are set out in the **First Schedule** to the CLP Rules. If there is a change in the counter-signing party in relation to conveyancing money placed in a conveyancing account with an Appointed Bank, the change must be notified by way of a change of counter-signatory form **[CLP Rule 10(2)(a) and (b)]**.

#### ***Self-representation***

28. If a party acts in person (“lay client”) and is required to counter-sign a form, he must do so in the presence of an authorised officer of the Appointed Bank or in such other manner as may be agreed between him and the Appointed Bank **[CLP Rule 7(4) and (5)]**. Where conveyancing money is deposited with SAL, the lay client must countersign in the presence of an authorised officer of SAL. However, where the withdrawal is effected via the electronic Payment Instructions (“ePI”) service provided by the Singapore Land Authority (“SLA”), the form will be routed to SLA and the lay client will be required to attend at SLA with the relevant documents. SLA will, upon being satisfied with the documents produced and payment of a fee, counter-sign the form on behalf of the lay client (refer to **Part E11 of the Guidebook** for the detailed procedure involved).

#### ***Separate representation***

29. Save for some exceptions, where conveyancing money is or will be paid into a conveyancing account, the parties to the transaction should be separately represented in order for the relevant form(s) to be counter-signed **[CLP Rule 5(7)]**.

#### ***Joint representation***

30. A party can be represented by the same lawyer even when conveyancing money is or will be paid into a conveyancing account or conveyancing (CPF) account in the following situations **[CLP Rule 5(8)]**:

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<sup>13</sup> For example, the withdrawal of an option deposit held by a seller’s lawyer in his conveyancing account would require the endorsement of the buyer’s lawyer, whilst the withdrawal of any balance purchase price held by a buyer’s lawyer in his conveyancing account would require the endorsement of the seller’s lawyer.

<sup>14</sup> **CLP Rule 8** sets out the eligibility criteria of a lawyer authorised to sign / counter-sign the relevant form(s).

- (a) where the conveyancing money deposited is payable only to a Category A payee (where no counter-signing is required);
- (b) where a lawyer acts for a buyer, the same lawyer can also act for the buyer's mortgagee and CPF Board (to whom the buyer gives a charge);
- (c) where a lawyer acts for a seller, the same lawyer can also act for the seller's mortgagee and CPF Board (to whom the seller gives a charge);
- (d) where a lawyer acts for a mortgagor/chargor, the same lawyer can also act for the mortgagee/chargee in the grant of a mortgage of/charge on land, or in the redemption of mortgage/discharge of charge.

31. Where the same lawyer acts for all parties in a (1) refinancing; or (2) partial or full redemption of mortgage/discharge of charge; or (3) partial or full repayment of a loan (which is not secured by a mortgage) granted for or in connection with a conveyancing transaction, the following should not be paid into a conveyancing account:

- (a) the cash component payable by the mortgagor/chargor/borrower;
- (b) money disbursed by the mortgagee.

If this is paid into a conveyancing account, the Appointed Bank may, with the lawyer's consent, reverse the payment transaction and refund the money to the party who provided the money, in which event, all expenses incurred pertaining to the refund shall be borne personally by the lawyer **[CLP Rule 7(6)-(8)]**.

## **(F) ROLE OF LAWYER WHEN INITIATING A PAY-OUT FORM**

### ***General***

32. The lawyer who initiates a pay-out form has a duty to verify the payment instructions that are received, and is empowered to request for the necessary documents to perform his verification role **[CLP Rule 18]**. This would apply even in the situations where the buyer buys his own Cashier's Orders (i.e. the money does not pass through a conveyancing account or SAL) or is self-represented. However, this duty does not extend to escrow accounts **[CLP Rule 18(5)]**.

### ***Importance of role involving balance purchase money***

33. This duty is crucial in the situation where the lawyer holds the balance purchase money in his conveyancing account or with SAL, and the counter-signing lawyer is the seller's lawyer. In this situation, the seller's lawyer will typically provide a completion account to the buyer's lawyer which stipulates to whom the balance sales proceeds should be payable **[CLP Rule 18(1) and 18(2)]**. The buyer's lawyer will then prepare the pay-out form based on these instructions. Since the seller's lawyer who instructed the buyer's lawyer on how to prepare the pay-out form is not

an effective check and balance against his own instructions, CLP Rule 18 places an obligation on the buyer's lawyer to verify the instructions from the seller's lawyer.

34. If the seller's lawyer refuses or neglects to furnish the information or documents, or if the information or documents are not satisfactory on account of its authenticity or because of a material discrepancy, CLP Rule 18 gives the buyer's lawyer (who has the discretion on stating the payee name and payment amount in the pay-out form), the power to disregard the payment instructions of the seller's lawyer and disburse the amount directly to the seller (instead of the seller's nominee) upon completion **[CLP Rule 18(1)(c)(i) to (iii) and CLP Rule 18(2)(c)(i) to (iii)]**. The buyer's lawyer can also exercise this right of re-direction on any other reasonable grounds **[CLP Rule 18(1)(c)(iv) and Rule 18(2)(c)(iv)]**, for example where he has reason to suspect that a statutory declaration has been procured by undue influence.

35. Where the buyer chooses to purchase his own Cashier's Order instead of depositing the conveyancing money in the lawyer's conveyancing account, CLP Rule 18 places a duty on that lawyer to similarly verify the seller's instructions before advising his client on procuring the Cashier's Order. The buyer's lawyer (or the buyer himself if he is acting in person) has a corresponding right, where necessary, to request for documents and exercise the right to re-direct payment from the seller's nominee to the seller. **[CLP Rules 18(1A) and (2A)]**.

***Where buyer, seller and CPF Board are separately represented***

36. Where the buyer, seller and CPF Board are separately represented, the buyer's lawyers will usually instruct the CPF Board based on instructions received from the seller. **CLP Rule 18(3) and (4)** similarly provide the lawyer acting for the CPF Board (who initiates the pay-out form for the CPF money) with the duty to review the payment instructions and request for relevant documents to perform his verification role. The lawyer acting for CPF Board is also given the power to re-direct payment to the seller (instead of the seller's nominee) under similar circumstances.

**(G) ROLE OF PARTY WHO COUNTER-SIGNS A PAY-OUT FORM**

***General***

37. The lawyer or lay-client (in cases of self-representation), who is asked to counter-sign a pay-out form also has a duty to verify the payment instructions that are received, and is empowered to request for the necessary documents to perform his verification role **[CLP Rules 7(9) and 7(10)]**. This similarly applies to conveyancing money held by SAL **[CLP Rule 17]**, save the requirement for joint signatures to withdraw stakeholding deposits even when the payment is made to a Category A payee, which is peculiar to SAL as explained in paragraph 24.

38. The counter-signing party shall refuse to counter-sign the pay-out form in the 3 situations stipulated in the **CLP Rule 7(9)(c) and 7(10)(c)** (which applies to conveyancing money held by Appointed Banks) or **CLP Rule 17(1)(c) and Rule 17(2)(c)** (which applies to conveyancing money held by SAL). He may however,

choose to refuse in any other circumstances. A counter-signing party is protected from legal actions for the act of counter-signing **[CLP Rule 7(11) and CLP Rule 17(3)]**. His duty to counter-sign pay-out forms continues even after the completion of the conveyancing transaction to which the pay-out form relates **[CLP Rule 9 and CLP Rule 17(5)]**.

### ***Importance of role involving stakeholding money***

39. The role of the counter-signing party is crucial in the situation where the buyer, in exercise of his option, places a deposit with the seller's lawyer or SAL as stakeholder. In this situation, the seller's lawyer must prepare the pay-out form which is to be counter-signed by the buyer's lawyers or buyer (in cases of self-representation), who has a duty as a counter-signing party to verify the payment instructions contained in the pay-out form. If the counter-signing party refuses to counter-sign, he has no power to re-direct that payment be made only to the seller. Instead, any dispute arising from this situation may be submitted for adjudication.

## **(H) ADJUDICATION SCHEME**

### ***General***

40. There is an adjudication scheme (the "Scheme") administered by the Law Society to deal with disputes arising from the distribution of any conveyancing money held by the Appointed Banks and SAL **[CLP Rule 20]**. The Scheme is intended to be a quicker and cheaper alternative to court proceedings and can also be used by lay clients [see definition of "party" in **Fourth Schedule CLP Rules, Paragraph 2**].

41. The main features of the Scheme are:

- (a) The Scheme is triggered by the refusal of a counter-signing party to counter-sign a Pay-Out Form [see definition of "**relevant dispute**" in **CLP Rule 20(4)**];
- (b) Once initiated, the Scheme is mandatory and the decision of the adjudicator can be made even if one party does not appear for the hearing **[Fourth Schedule CLP Rules, Paragraph 4(2)(f)]**;
- (c) A party may at any time during the course of the adjudication make an application to court **[Section 73E(3)]**, in which case the adjudication will be stayed pending the outcome of the court hearing **[Fourth Schedule CLP Rules, Paragraph 4(6)]**;
- (d) An adjudicator is empowered to make the following decisions **[Fourth Schedule CLP Rules, Paragraph 5(4)]**:
  - (i) order a party to counter-sign the pay-out form;

- (ii) order either the counter-signing party or the initiating lawyer to pay compensation to the other party (including the payment of late completion interests);
  - (iii) order costs; and
  - (iv) determine whether the case is outside the purview of the Scheme.
- (e) The decision of the adjudicator is binding on the parties **[Fourth Schedule CLP Rules, Paragraph 6]** and can be enforced in the following manner:
- (i) if the adjudicator determines that counter-signing should be done and the counter-signing party still refuses to counter-sign, Law Society Council can appoint a Director of Law Society to sign the pay-out form on behalf of any unco-operative party (including non-lawyers) **[Fourth Schedule CLP Rules, Paragraph 7]**; and
  - (ii) the order for payment of costs and compensation (including late completion interest) if unpaid, can be recovered by an action for debt in court **[Fourth Schedule CLP Rules, Paragraph 7(3)]**;
- (f) A party who is dissatisfied with the decision of an adjudicator has up to 3 working days to apply to court to set aside or vary the adjudicator's determination **[Section 73E(4) read with Fourth Schedule CLP Rules, Paragraph 8]**.

***Where initiating lawyer does not initiate pay-out form as instructed***

42. Although the trigger for the Scheme is the counter-signing lawyer's refusal to counter-sign a pay-out form, the substance of the dispute can relate to the initiating lawyer's decision to exercise his right of re-direction. This would typically occur in the situation involving the payment of the balance purchase price. In this case, the Scheme is not invoked at the point in time when the buyer's lawyer raises the pay-out form which does not conform with the seller's instructions. Instead, it is only invoked after the buyer's lawyer sends the pay-out form to the seller's lawyer redirecting the payment to the seller. At this point, the seller's lawyer can decide whether:

- (a) he should counter-sign so that completion is not delayed; or
- (b) he should refuse to counter-sign whereupon either party can bring the matter for adjudication.

***Where buyer, seller and CPF Board are separately represented***

43. In the situation where the buyer, seller and and CPF Board are separately represented and the CPF Board's lawyer does not pay the CPF money as instructed

by the buyer (but instead redirects the payment to the seller), the buyer's lawyer can decide whether:

- (a) he should refuse to counter-sign the pay-out form initiated by the CPF Board's lawyer whereupon either he or the CPF Board's lawyer can bring the matter for adjudication, in which case, the buyer's lawyer may bring in the seller as a third party [see Paragraph 2(a)(iv) of definition of "party"] to the adjudication proceedings; or
- (b) he should counter-sign the pay-out form initiated by the CPF Board's lawyer and run the risk that the seller may refuse to complete the sale for failing to disburse the balance sale proceeds as per the seller's instructions<sup>15</sup>.

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**This Legislative Guide outlines the relevant provisions which govern the new conveyancing regime. Please note that while all efforts have been made to ensure the accuracy of the contents of this Guide, readers should refer directly to the relevant text of the legislation and ensure that the relevant provisions are applicable to the reader's specific circumstances before dealing with any money relating to a conveyancing transaction.**

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<sup>15</sup> The seller would not be able to commence adjudication proceedings directly against the CPF Board's lawyer as there is no pay-out form between the seller and the CPF Board. The seller is also not able to commence adjudication proceedings against the buyer in this particular instance because any pay-out form between the seller and buyer only relates to the cash portion and not the CPF portion which is in dispute.