

LCQ18: Payment arrangements for residential property transactions

Following is a question by the Hon Chan Chun-ying and a written reply by the Secretary for Financial Services and the Treasury, Mr Christopher Hui, in the Legislative Council today (April 6):

Question:

It is learnt that as the existing payment arrangements for residential property transactions (i.e. the practice of banks disbursing mortgage loans through law firms) may pose risks to the banks and customers concerned, the Hong Kong Association of Banks and the Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies (the industry associations), in consultation with the Hong Kong Monetary Authority, have formulated a proposal on payment arrangements for property transactions (the new proposal) and sought comments thereon from their member institutions, and will also test out the operational processes of the new proposal. The new proposal suggests that the mortgage loan proceeds advanced to the buyer should, without routing through the account of the law firm engaged by the buyer, be disbursed to the seller's mortgage bank directly by the buyer's mortgage bank, which should issue a payment confirmation with irrevocable effect to the buyer's lawyer for confirmation. In this connection, will the Government inform this Council:

- (1) whether it knows the comments which the industry associations have received during their consultation with their member institutions on the new proposal;
- (2) whether it has studied what aspects in the property transaction process require the special attention of both buyers and sellers under the new proposal;
- (3) whether it has studied the circumstances under which the payment confirmation issued by a bank will cease to have irrevocable effect, and if there are any remedial measures in place; and
- (4) whether it knows the details of the test conducted on the operational processes of the new proposal; whether it will engage an independent third party organisation to review the relevant results?

Reply:

President,

The intervention into Wong, Fung & Co. in late 2020 affected a number of bank customers. The incident exposed the potential risks that may be caused to customers and banks by the existing practice of disbursing mortgage loan proceeds through law firms in property transactions. In particular, in

unforeseen circumstances such as intervention into law firms, funds in connection with property transactions may be frozen. If the buyer cannot arrange extra funding, the property transaction may not be able to complete, and thus the deposit may be subject to forfeiture, with the buyer potentially subject to claims by the seller, resulting in significant loss. To address the risks exposed by the incident, the banking industry has established a task force to study an alternative payment arrangement with the Hong Kong Monetary Authority (HKMA), and engaged the Law Society of Hong Kong in the process.

Having consulted the HKMA, my reply to the question is as follows:

(1) In December 2021, the Hong Kong Association of Banks and the DTC Association (industry associations) consulted the industry on the proposed payment arrangements for property transactions (PAPT). During the consultation exercise which ended in January this year, the banking industry expressed general support for introducing the PAPT so as to enhance the protection for various parties in property transactions. The industry mainly provided comments on technical details of the proposal (e.g. scope and detailed operations of the PAPT proposal, transitional arrangements, etc). The HKMA will continue to work closely with the banking and legal sectors on the matter.

(2) The key feature of PAPT is that, under the arrangement, the buyer's law firm will no longer hold the property transaction funds and issue cheques using its bank account. Instead, on completion of transaction, the mortgage bank of the buyer will disburse and transfer the mortgage loan proceeds directly to the seller's mortgage bank or the seller's designated bank, for settling the outstanding balance of the mortgage loan of the seller and/or paying the seller. For any remaining balance to be paid by the buyer, payment will be made by means of cashier's order to be arranged by the buyer, which will be passed to the seller's lawyer via the buyer's lawyer.

It has to be stressed that the above arrangement will not fundamentally alter the existing process of property transactions, but only seeks to make refinements to enhance the security and reliability of fund transfers. Lawyers will continue to be responsible for providing various services to their clients such as preparing the sale and purchase agreement, conducting due diligence (e.g. title checking), providing legal advice and explaining the transactional workflow, as well as completing the transaction. Banks will focus on providing mortgage loans for their mortgage customers and handling payments in a safe and secure manner. We therefore do not envisage any major impact to the buyers and sellers.

(3) As an operational detail under the proposed PAPT, the buyer's mortgage bank will issue a confirmation to the buyer's lawyer, confirming that the bank will transfer the mortgage loan proceeds to the seller's mortgage bank or seller's designated bank directly. The buyer's lawyer will be able to pass to the seller's lawyer both the confirmation and any cashier's order for the remaining balance of the property transaction amount, such that the seller's lawyer will have the needed assurance before continuing with the rest of the transaction procedures.

In general, the confirmation is irrevocable upon issuance except under extraordinary circumstances, e.g. when both the buyer and seller agree to terminate the transaction after issuance of the confirmation. The industry associations are now working with their legal counsel in drafting the detailed terms of the confirmation.

(4) Upon completing the detailed design of the proposed PAPT, the banking sector will work with law firms to conduct pilot tests. The industry associations' task force is currently working on the details of the pilot tests, and has engaged a legal counsel in providing advice. The HKMA will provide advice on the pilot tests, and will closely communicate with other relevant stakeholders (including the Consumer Council and the Estate Agents Authority). The task force will also continue discussions with the Law Society of Hong Kong.

In order to ensure smooth implementation of the proposed PAPT, the industry associations and the HKMA will continue to communicate with various stakeholders and work with the relevant stakeholders in promoting to and conducting education for the banking, legal and estate agent industries as well as the general public on the workflows under the PAPT.