

LCQ19: Alternative payment mechanism for property transactions

Following is a question by the Hon Chan Chun-ying and a written reply by the Acting Secretary for Financial Services and the Treasury, Mr Joseph Chan, in the Legislative Council today (April 21):

Question:

At the end of last year, the Council of the Law Society of Hong Kong (Law Society) suspected after investigation that a former employee of a law firm (the firm), which took up a significant number of property sale and purchase cases, had dishonestly misappropriated the money of the clients of the firm, and the Law Society intervened in the operation of the firm pursuant to the relevant legislation. The firm's practice forthwith ceased, and all the money of the firm has been held by the Law Society on trust. It has been reported that the firm's clients suffered huge losses because huge sums of money they deposited with the firm for property transactions (including deposit money and mortgage money from banks) were frozen. In order to prevent the occurrence of similar incidents, the Hong Kong Monetary Authority (HKMA), in collaboration with the banking industry, is exploring a payment mechanism for property transactions that does not involve law firms (alternative payment mechanism), with an option under consideration being that the purchaser's bank transfers the major sums of payments involved in a property transaction directly into the vendor's bank account. In this connection, will the Government inform this Council:

(1) if it knows the total amount of money frozen in the past 10 years due to the Law Society's intervention which had been deposited with law firms by their clients for property transactions, as well as the amount and percentage of such money which has now been unfrozen and returned to the clients concerned;

(2) whether HKMA has explored ways to enable the alternative payment mechanism to better ensure, as compared with the existing mechanism, the security of property transactions (e.g. ensuring that the purchaser's solicitor has verified the title prior to the transfer of money by banks); and

(3) whether HKMA has commenced a consultation exercise with the stakeholders on the alternative payment mechanism; if so, the initial views received; if not, when the consultation exercise will commence?

Reply:

President,

Having consulted the Department of Justice and the Hong Kong Monetary Authority (HKMA), my reply to the various parts of the question is as

follows:

(1) According to the information provided by the Law Society of Hong Kong (Law Society), there were a total of 23 interventions involving law firms between 2011 and 2020.

In respect of the 21 interventions from 2011 to 2019, the Law Society received a total of 979 claims (excluding those that were subsequently withdrawn). The total amount of admitted claims was about HK\$130 million. For the two interventions in 2020 which are still in receipt of claims, the Law Society is unable to provide the total number of claims at this stage. The Law Society has also indicated that as the intervention agents did not categorise the amount of claims by their nature, it is not able to provide other figures sought in the question.

(2) As noted from the above figures, apart from Messrs. Wong, Fung & Co. whose practice was intervened by the Law Society in December 2020, the past decade also saw other incidents in Hong Kong where clients involved in property and other transactions were affected by law firms with problematic practices. The HKMA is studying with the banking industry an alternative payment arrangement for property transactions and the related operational flows and details. Without prejudice to the roles and responsibilities of the various parties involved in a property transaction (including the buyer, the seller, their respective law firms, and their respective mortgage banks), the new arrangement will allow banks to settle payments of property mortgage loan proceeds and other sizable funds in relation without routing through the accounts of law firms. The proposed arrangement aims at minimising any impact on banks and clients in the event of serious disruption in the operation of a law firm and enhancing protection for the parties involved in a property transaction. In fact, under special circumstances there are at present certain property transactions in which the mortgage loan proceeds and other related payments are settled using bank cashier's orders without going through accounts of law firms.

(3) The HKMA and the banking industry are closely discussing and following up on the alternative payment arrangement proposal with the relevant stakeholders (including the Law Society and the Consumer Council). From the comments received so far, there was support for the objective of the proposed arrangement to protect various parties in a property transaction; some stakeholders considered that the proposed arrangement should be implemented as soon as practicable; others also suggested the need for the proposed arrangement to cater for property transactions in different scenarios and circumstances with a view to ensuring adequate protection for all the parties involved. The HKMA and the banking industry will take into account the comments received to refine the proposal and firm up the operational flows and details.