

The Hong Kong Chartered Governance Institute

Submission on:

Official Receiver's Office

Payment Arrangements for Property Transactions

The Hong Kong Chartered Governance Institute 香港公司治理公會

(Incorporated in Hong Kong with limited liability by guarantee)

3/F, Hong Kong Diamond Exchange Building, 8 Duddell Street, Central, Hong Kong

Tel: (852) 2881 6177 E: ask@hkcgi.org.hk W: hkcgi.org.hk

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By Email Only

The Official Receiver
Official Receiver's Office
10/F - 12/F, High Block
Queensway Government Offices
66 Queensway
Hong Kong

Dear Sirs

Payment Arrangements for Property Transactions ("PAPT")

About HKCGI

The Hong Kong Chartered Governance Institute (HKCGI), formerly known as The Hong Kong Institute of Chartered Secretaries (HKICS), is the only qualifying institution in Hong Kong and the Mainland of China for the internationally recognised Chartered Secretary and Chartered Governance Professional qualifications.

With over 70 years of history and as the China Division of The Chartered Governance Institute (CGI), the Institute's reach and professional recognition extends to all of CGI's nine divisions, with more than 40,000 members and students worldwide. HKCGI is one the fastest growing divisions of CGI, with a current membership of over 6,800, 300 graduates and 3,000 students with significant representations within listed companies and other cross-industry governance functions.

Believing that better governance leads to a better future, HKCGI's mission is to promote good governance in an increasingly complex world and to advance leadership in the effective governance and efficient administration of commerce, industry and public affairs. As recognised thought leaders in our field, the Institute educates and advocates for the highest standards in governance and promotes an expansive approach which takes account of the interests of all stakeholders.

General support for the PAPT proposal

Reference is made to the following:

- HKAB and DTCA's consultation paper:
<https://www.hkab.org.hk/DisplayArticleAction.do?sid=5&ss=0&lang=en>
("Payment Arrangements for Property Transactions" under "Related Links")

- HKMA's circular: <https://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2021/20211229e1.pdf>

The reduction of payment risks under conveyancing transactions by taking out of the control of solicitors' firms large sums of funds, including in respect of mortgage proceeds/redemption monies, is sound risk management and hence in good governance. This is supported by our Institute. This is especially with the number of law firms that have seen interventions recently and fraud related losses from rogue staff of some of these intervened law firms.

As to the insolvency aspects, any uncleared funds by a company will remain its funds, subject to insolvency set-off, in the absence of trusts, quasi-trust or other legal basis. In the US, there is the escrow arrangement, in certain States, for example California, which provides an even simpler solution with statutory backing, ringfencing and insurance support, which the Hong Kong Monetary Authority and stakeholders could consider at the appropriate stage.

For now, subject to the contractual arrangements to be worked out with the Law Society, it would appear that the use of cashier cheques and CHATS are good mechanisms to adopt, and as with all insolvency related cases will have to be unravelled on a case-by-case basis at the appropriate time. We have no particular insolvency related concerns, but if there are specific areas that you would like to address, please feel free to reach out to Ellie Pang FCG HKFCG, Chief Executive, HKCGI or Mohan Datwani FCG HKFCG(PE), Deputy Chief Executive, HKCGI at 2881 6177 or research@hkcgi.org.hk.

Yours sincerely

For and on behalf of
The Hong Kong Chartered Governance Institute

Ernest Lee FCG HKFCG(PE)
President