

Conveyancing (Miscellaneous Amendments) Bill

Bill No. 12/2011.

Read the first time on 10th March 2011.

A BILL

i n t i t u l e d

An Act to amend the Conveyancing and Law of Property Act (Chapter 61 of the 1994 Revised Edition) and the Legal Profession Act (Chapter 161 of the 2009 Revised Edition) mainly to implement certain policies relating to the holding of conveyancing money.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act may be cited as the Conveyancing (Miscellaneous Amendments) Act 2011 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 Amendment of Conveyancing and Law of Property Act

2. The Conveyancing and Law of Property Act (Cap. 61) is amended —

(a) by repealing section 64 and substituting the following section:

“Receipt in deed or endorsed thereon authority for payment, etc.

10 **64.**—(1) Where, before the appointed day, a solicitor produces a deed, having in the body thereof or endorsed thereon a receipt for consideration, the deed being executed, or the endorsed receipt being signed, by the person who is entitled to give a receipt for that consideration, the deed shall be
15 sufficient authority to the person who is liable to pay or give the consideration for his paying or giving the consideration to the solicitor, without the solicitor producing any separate or other direction or authority in that behalf from the person who executed or signed the deed.

20 (2) Where, on or after the appointed day, a solicitor produces a deed, having in the body thereof or endorsed thereon a receipt for consideration, the deed being executed, or the endorsed receipt being signed, by the person who is entitled to give a receipt for that consideration, the deed shall be sufficient
25 authority to the person who is liable to pay or give the consideration —

(a) if the consideration is in the form of money, for his tendering to the solicitor any cashiers’ orders, cheques or other similar physical payment instruments pertaining to the payment of the consideration; or
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(b) if the consideration is in any other form, for his giving the consideration to the solicitor,

without the solicitor producing any separate or other direction or authority in that behalf from the person who executed or
35 signed the deed.

(3) In this section, “appointed day” means the date of commencement of section 2(a) of the Conveyancing (Miscellaneous Amendments) Act 2011.”;

(b) by repealing section 65A and substituting the following section:

5 **“Consideration expressed in instrument authority for payment, etc.**

10 **65A.**—(1) Where, before the appointed day, a solicitor produces an instrument as defined in the Land Titles Act (Cap. 157) in which consideration is expressed and which has been executed by the person in whose favour the consideration is payable or has been paid or is partly payable and partly paid, that instrument shall be sufficient authority to the person who is liable to pay or give the consideration for his paying or giving the consideration to the solicitor, without the solicitor producing any separate or other direction or authority in that behalf from the person who executed or signed the instrument.

20 (2) Where, on or after the appointed day, a solicitor produces an instrument as defined in the Land Titles Act in which consideration is expressed and which has been executed by the person in whose favour the consideration is payable or has been paid or is partly payable and partly paid, that instrument shall be sufficient authority to the person who is liable to pay or give the consideration —

25 (a) if the consideration is in the form of money, for his tendering to the solicitor any cashiers’ orders, cheques or other similar physical payment instruments pertaining to the payment of the consideration; or

 (b) if the consideration is in any other form, for his giving the consideration to the solicitor,

30 without the solicitor producing any separate or other direction or authority in that behalf from the person who executed or signed the instrument.

35 (3) In this section, “appointed day” means the date of commencement of section 2(b) of the Conveyancing (Miscellaneous Amendments) Act 2011.”; and

(c) by inserting, immediately after section 73C, the following sections:

“Rules to regulate conveyancing transactions, etc.

5 **73D.**—(1) The Minister may make rules to regulate conveyancing transactions and the receipt, holding and distribution of conveyancing money.

(2) Without prejudice to the generality of subsection (1), the rules made under this section may —

(a) specify what constitutes —

10 (i) a conveyancing transaction; and

(ii) conveyancing money;

(b) prohibit such persons as may be prescribed from holding conveyancing money, except in such circumstances and subject to such conditions as may be prescribed;

15 (c) require any person referred to in paragraph (b) who receives any conveyancing money to deposit the money with any entity appointed by the Minister under subsection (3);

20 (d) provide for the receipt, holding and distribution of conveyancing money by any entity referred to in paragraph (c);

(e) prescribe the terms and conditions which shall apply to every conveyancing transaction;

25 (f) provide for measures to ensure compliance with the requirements of the rules;

(g) provide for any person who is required by the rules to countersign any document for the purpose of facilitating the payment of any conveyancing money to be protected from liability for countersigning that document in accordance with the rules, if his act of countersigning that document —

30 (i) was done in good faith; and

(ii) did not involve any fraud or wilful misconduct on his part;

(h) provide that any contravention of any provision of the rules shall be an offence punishable with a fine not exceeding \$50,000 or with imprisonment for a term not exceeding 3 years or with both;

(i) exempt any person or entity, or any class of persons or entities, from any provision of the rules; and

(j) contain such transitional, savings or other consequential provisions as the Minister considers necessary or expedient.

(3) The Minister may, by the rules made under this section, appoint, upon such conditions as he may think fit, any entity or class of entities as an entity, or a class of entities, with which conveyancing money may be deposited for the purposes of the rules.

(4) Where an agreement entered into on or after the date of commencement of section 2(c) of the Conveyancing (Miscellaneous Amendments) Act 2011 in respect of a conveyancing transaction contains any contractual term that is inconsistent with the rules made under this section, that term shall, to the extent of the inconsistency, not have effect.

(5) The Public Prosecutor may, on such terms and conditions as he may determine, compound any offence under the rules made under this section.

(6) Where an offence under the rules made under this section is compounded under subsection (5), no further proceedings shall be taken against the person reasonably suspected of having committed the offence.

(7) The Minister shall designate the public officer who may collect any sum of money paid for the composition of any offence under the rules made under this section.

(8) All sums collected for the composition of offences under the rules made under this section shall be paid into the Consolidated Fund.

Adjudication of certain disputes relating to conveyancing money

73E.—(1) The Minister may make rules to establish a Scheme for the adjudication of relevant disputes.

5 (2) Without prejudice to the generality of subsection (1), the rules made under this section may —

10 (a) specify the types of disputes (being disputes relating to the receipt, holding and distribution of conveyancing money under the relevant rules) which will constitute relevant disputes;

(b) prescribe the procedure for the adjudication, under the Scheme, of any relevant dispute;

(c) provide for the appointment of an administrator for the Scheme;

15 (d) provide for the appointment of adjudicators for the Scheme;

(e) provide for the powers of an adjudicator, including —

(i) the power to determine any relevant dispute that is submitted for adjudication under the Scheme;

20 (ii) the power to order any party to a relevant dispute submitted for adjudication under the Scheme to do one or more of the following:

(A) to comply with any requirement under the relevant rules;

25 (B) to pay such compensation (including interest for the late completion of a conveyancing transaction) as the adjudicator may determine for any loss caused, by reason of that party's failure to comply with any requirement under the relevant rules, to any other party to that dispute;

30 (C) to pay such costs as the adjudicator may determine to any other party to that dispute; and
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- 5 (iii) if the adjudicator is of the opinion that any dispute submitted for adjudication under the Scheme is not a relevant dispute, or that any issue raised during the adjudication of a relevant dispute falls outside the purview of the Scheme, the power to do either or both of the following:
- (A) to determine that the Scheme does not apply to that dispute or issue;
 - 10 (B) to order the party submitting that dispute or raising that issue to pay such costs as the adjudicator may determine to any other party to that dispute;
- 15 (f) provide for an adjudicator's determination of a relevant dispute submitted for adjudication under the Scheme, and every order made by the adjudicator in relation to that dispute, to be binding on the parties to that dispute, and on any person claiming through or under any such party, unless the determination or order is set aside or varied by the court;
- 20 (g) provide for the enforcement of any determination or order of an adjudicator referred to in paragraph (e), including the recovery of any compensation or costs ordered by the adjudicator as a debt;
- 25 (h) empower any individual appointed for this purpose by the administrator of the Scheme, or by the persons in whom the management of the administrator is vested, to countersign, on behalf of any party to a relevant dispute, any document which that party has failed to countersign after being ordered to do so by an
- 30 adjudicator;
- (i) provide for an adjudicator to be protected from liability for any thing done or omitted to be done by him for the purposes of an adjudication under the Scheme, if —
- 35 (i) the thing was done or omitted in good faith; and

(ii) the thing done or omission did not involve any fraud or wilful misconduct on his part;

(j) provide for the administrator of the Scheme, the persons in whom the management of the administrator is vested, and any appointed individual referred to in paragraph (h) to be protected from liability for any thing done or omitted to be done by all or any of them for the purposes of the Scheme, if —

(i) the thing was done or omitted in good faith; and

(ii) the thing done or omission did not involve any fraud or wilful misconduct on the part of all or any of them; and

(k) provide for the payment of such deposits, expenses, fees and charges for the Scheme (including any deposits, expenses, fees and charges payable to an adjudicator) as may be prescribed.

(3) Notwithstanding subsections (1) and (2) and the rules made under this section, any party to a relevant dispute may apply to the court to determine that dispute —

(a) at any time before that dispute is submitted for adjudication under the Scheme; or

(b) if that dispute has been submitted for adjudication under that Scheme, at any time before an adjudicator has determined that dispute or made any order referred to in subsection (2)(e) in relation to that dispute.

(4) Where an adjudicator has determined any relevant dispute submitted for adjudication under the Scheme or made any order in relation to that dispute, any party to that dispute who is dissatisfied with the determination or order may apply to the court, within such period as may be prescribed by the rules made under this section, to set aside or vary the determination or order.

(5) An application under subsection (3) or (4) shall be —

(a) made by originating summons; and

(b) served on every party to the relevant dispute other than the applicant.

(6) Where any proceedings in an application under subsection (3) or (4) cause any delay in the completion of any conveyancing transaction, the court hearing the application may extend the time for the completion of that conveyancing transaction and make such other order as the court considers necessary or appropriate.

(7) In this section —

“adjudicator” means an adjudicator appointed for the Scheme;

“relevant rules” means the rules made under section 73D;

“Scheme” means the Scheme established by the rules made under this section.”.

Amendment of Legal Profession Act

3. The Legal Profession Act (Cap. 161) is amended —

(a) by inserting, immediately after the words “section 72” in section 25A(1)(h), the words “or any of the rules made under section 73D of the Conveyancing and Law of Property Act (Cap. 61)”;

(b) by deleting the words “Such rules” in section 72(2) and (3) and substituting in each case the words “Any rules made under this section”;

(c) by deleting subsection (2A) of section 72 and substituting the following subsection:

“(2A) Any rules made under this section shall —

(a) subject to section 130W, apply only to Singapore law practices and solicitors practising therein; and

(b) be subject to any rules made under section 73D of the Conveyancing and Law of Property Act (Cap. 61).”;

(d) by deleting sub-paragraph (c) of paragraph 1(1) of the First Schedule and substituting the following sub-paragraph:

“(c) the Council is satisfied that a solicitor has contravened —

(i) any rules made under section 72; or

(ii) any rules made under section 73D of the Conveyancing and Law of Property Act (Cap. 61);”;

5 (e) by inserting, immediately after the words “client accounts” in paragraph 2 of the First Schedule, the words “, conveyancing accounts (if any) and conveyancing (CPF) accounts (if any)”;

(f) by deleting sub-paragraph (a) of paragraph 5(1) of the First Schedule and substituting the following sub-paragraph:

10 “(a) the Council is satisfied that a law corporation has contravened —

(i) any rules made under section 72 which are applicable to the law corporation by virtue of that section; or

15 (ii) any rules made under section 73D of the Conveyancing and Law of Property Act (Cap. 61);”;

(g) by deleting sub-paragraph (a) of paragraph 8A(1) of the First Schedule and substituting the following sub-paragraph:

“(a) the Council is satisfied that a limited liability law partnership has contravened —

20 (i) any rules made under section 72 which are applicable to the limited liability law partnership by virtue of that section; or

(ii) any rules made under section 73D of the Conveyancing and Law of Property Act (Cap. 61);”;

25 (h) by inserting, immediately after the words “client account” in paragraph 10(2)(b) of the First Schedule, the words “, conveyancing account or conveyancing (CPF) account”; and

(i) by deleting paragraph 20 of the First Schedule and substituting the following paragraph:

30 “20. In this Schedule —

“controlled trust”, in relation to a solicitor, means a trust of which he is a sole trustee or co-trustee only with one or more of his partners or employees;

“conveyancing account” means a bank account maintained in accordance with any rules made under section 73D of the Conveyancing and Law of Property Act (Cap. 61) for the purpose of depositing conveyancing money;

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“conveyancing (CPF) account” means a bank account maintained in accordance with any rules made under section 73D of the Conveyancing and Law of Property Act for the purpose of depositing money withdrawn from the Central Provident Fund for or in connection with a conveyancing transaction.”.

EXPLANATORY STATEMENT

This Bill seeks to amend the Conveyancing and Law of Property Act (Cap. 61) and the Legal Profession Act (Cap. 161) mainly to implement certain policies relating to the holding of conveyancing money.

Clause 1 relates to the short title and commencement.

Clause 2(a) and (b) repeals and re-enacts sections 64 and 65A, respectively, of the Conveyancing and Law of Property Act to provide that —

- (a) where a solicitor produces a deed referred to in section 64 of that Act having in the body thereof or endorsed thereon a receipt for consideration, and that consideration is in the form of money, the deed will be sufficient authority to the person who is liable to pay the consideration for —
 - (i) if the deed is produced before the date of commencement of that clause, his paying the consideration to the solicitor; or
 - (ii) if the deed is produced on or after the date of commencement of that clause, his tendering to the solicitor any cashiers’ orders, cheques or other similar physical payment instruments pertaining to the payment of the consideration; and
- (b) where a solicitor produces an instrument referred to in section 65A of that Act in which consideration is expressed, and that consideration is in the form of money, that instrument will be sufficient authority to the person who is liable to pay the consideration for —
 - (i) if the instrument is produced before the date of commencement of that clause, his paying the consideration to the solicitor; or
 - (ii) if the instrument is produced on or after the date of commencement of that clause, his tendering to the solicitor any cashiers’ orders, cheques or other similar physical payment instruments pertaining to the payment of the consideration.

Clause 2(c) inserts a new section 73D in the Conveyancing and Law of Property Act to empower the Minister to make rules to regulate conveyancing transactions and the receipt, holding and distribution of conveyancing money. Such rules may, among other things, provide that any contravention of any provision of the rules will be an offence. The new section also provides, among other things, for the composition of offences under the rules, and for the Minister to appoint, by the rules, any entity or class of entities as an entity, or a class of entities, with which conveyancing money may be deposited for the purposes of the rules.

Clause 2(c) also inserts a new section 73E in the Conveyancing and Law of Property Act to provide for the establishment of a Scheme for the adjudication of certain disputes relating to the receipt, holding and distribution of conveyancing money under any rules made under the new section 73D of the Conveyancing and Law of Property Act (to be inserted by clause 2(c)), and for matters related to that Scheme.

Clause 3(a) amends section 25A(1)(h) of the Legal Profession Act to provide for section 25A of that Act to apply to any solicitor whom the Attorney-General or the Council of the Law Society of Singapore (the Council) is satisfied has failed to comply with any of the rules made under the new section 73D of the Conveyancing and Law of Property Act (to be inserted by clause 2(c)).

Clause 3(b) makes technical changes to section 72(2) and (3) of the Legal Profession Act to clarify that the rules referred to therein are the rules made under section 72 of that Act, and not the rules that are made under the new section 73D of the Conveyancing and Law of Property Act (to be inserted by clause 2(c)) and referred to in the new section 72(2A) of that Act (to be inserted by clause 3(c)).

Clause 3(c) deletes and substitutes section 72(2A) of the Legal Profession Act, so as to provide that any rules made under section 72(1) of that Act will, in addition to applying only to Singapore law practices and solicitors practising therein (which is the existing position), also be subject to any rules made under the new section 73D of the Conveyancing and Law of Property Act (to be inserted by clause 2(c)).

Clause 3(d), (f) and (g) deletes and substitutes paragraphs 1(1)(c), 5(1)(a) and 8A(1)(a), respectively, of the First Schedule to the Legal Profession Act, so as to make the powers conferred by Part II of that Schedule exercisable where the Council is satisfied that a solicitor, law corporation or limited liability law partnership has contravened any rules made under section 72 of that Act (which is the existing position) or any rules made under the new section 73D of the Conveyancing and Law of Property Act (to be inserted by clause 2(c)).

Clause 3(e) amends paragraph 2 of the First Schedule to the Legal Profession Act to provide for paragraphs 10, 11 and 12 of that Schedule to apply to the conveyancing accounts (if any) and conveyancing (CPF) accounts (if any) of the practice of a sole solicitor on the death of that solicitor.

Clause 3(h) makes an amendment to paragraph 10(2)(b) of the First Schedule to the Legal Profession Act that is consequential to the amendment of paragraph 2 of that Schedule (by clause 3(e)).

Clause 3(*i*) deletes and substitutes paragraph 20 of the First Schedule to the Legal Profession Act, so as to insert new definitions for the terms “conveyancing account” and “conveyancing (CPF) account” used in paragraphs 2 and 10(2)(*b*) of that Schedule as amended by clause 3(*e*) and (*h*), respectively.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
