



**Bar Malaysia
Malaysian Bar**

Circular No 028/2016

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To Members of the Malaysian Bar

**Reminder | Guidelines for Interbank E-Payment
in Respect of Redemption or Disbursement of Financing Facilities**

We refer to [Circular No 154/2014](#) dated 17 July 2014, entitled “Guidelines for Interbank E-Payment in Respect of Redemption or Disbursement of Financing Facilities”, in which we highlighted that Bank Negara Malaysia had directed all financial institutions to cease issuing cheques for interbank payments.

In 2014, the Bar Council and The Association of Banks in Malaysia worked together and agreed on a set of guidelines to immediately address the process flow for redemption or disbursement of financing facilities. The guidelines, which were contained in [Circular No 154/2014](#), took effect on **14 July 2014**.

The Association of Banks in Malaysia recently brought to our attention that some Members of the Bar are allegedly not aware of these guidelines.

Members are requested to take note of the guidelines, a copy of which is attached for your reference.

Should you have any enquiries, please contact Chuah Ying Ying, Executive Officer, by telephone at 03-2050 2106 or by email at yingying@malaysianbar.org.my.

Thank you.

Low Beng Choo
Chairperson
Conveyancing Practice Committee

THE BAR COUNCIL/ABM/AIBIM WORKING GROUP ON E-PAYMENTS
Meeting 1/2013 Friday, 20 December 2013 –
GUIDELINES FOR INTER-BANK E-PAYMENT IN RESPECT OF
REDEMPTION/DISBURSEMENT OF FINANCING FACILITIES

Introduction

In the Financial Sector Blue Print which was released by Bank Negara Malaysia (BNM) on 21 December 2011, the acceleration of the migration to electronic payments (e-payments) was emphasized. Towards this end, BNM has directed that all financial institutions which are members of IBG and RENTAS cease issuing cheques for inter-bank payments by 30 September 2013.

The messages sent by RENTAS may not contain all the relevant information without more once cheques are done away with. Although banks should ensure that they have their own internal controls to deal with rejected items, these guidelines are intended to create a more seamless process. Further, the guidelines would facilitate the entire redemption/disbursement process as a whole with the inclusion of the solicitors involved in the loop where possible or at the very least, with a clearer understanding of all parties concerned.

Accordingly, the Bar Council and The Association of Banks in Malaysia (for and on behalf of its relevant commercial bank members) agree that these guidelines will apply to address immediately the process flow in respect of the redemption of housing loans where there is a financier involved on the one part (either on the part of the vendor or the purchaser) or both parts (that is to say, both the vendor and the purchaser). A complete set of these guidelines will be extended to the Association of Islamic Banking Institutions Malaysia (AIBIM) when finalized so that it may begin to prepare a set of similar guidelines for and on behalf of its members.

1. Parties

1.1 The four parties generally involved in an e-payment transaction are –

- Sender
- Sending/originating Financial Institution (OFI)
- Receiving Financial Institution (RFI)
- Recipient

1.2 The parties generally involved in the disbursement/redemption process are –

- Purchaser (deemed Sender)
- Purchaser's solicitors [if the purchaser is represented by solicitors in the transaction concerned ("the Transaction")]
- Purchaser's financier (OFI) (if the transaction is being financed)
- OFI's solicitors (if the OFI is represented by a set of solicitors different from the Purchaser's solicitors)
- Vendor (deemed Recipient)
- Vendor's solicitors (if the vendor is represented by his own solicitors in the Transaction)
- Vendor's financier (RFI)
- RFI's solicitors

2. Redemption Statement (where there is an existing charge or deed of assignment, and a Vendor's financier/RFI is involved)

2.1 Following from a request for the redemption sum ("the Redemption Sum"), the Vendor's financier/RFI will include in the redemption statement, the particulars of the account to which the redemption sum will be remitted ("the Redemption Account"). In the event two (2) accounts are mentioned, the Vendor's financier/RFI shall specify the amount to be remitted to each account.

2.2 Information other than the account number(s) mentioned in the preceding paragraph to be included in the redemption statement will comprise –

- a. The name of the account holder
- b. A description of the relevant property or unit to be redeemed;
- c. The name of the designated officer attending to the redemption, his telephone number (direct line, if any), facsimile number and email address; or if there is no designated officer, the contact particulars of the liaison persons of the Vendor's financier/RFI (which may take the form of email addresses and/or telephone numbers of the person or group to whom enquiries may be addressed or confirmations sought); and/or
- d. The preferred point of contact of the Purchaser or Purchaser's financier/OFI for the purpose of the forwarding by the Vendor's financier/RFI or the RFI's solicitors (if any) of the discharge of charge or receipt and reassignment.

Depending on the practice of the individual banks, the redemption statement or payment advice letter may be in hard copy form and may be copied to the RFI's solicitors (if any) or as the case may be, the developer concerned.

2.3 a) As soon as possible after execution of the sale and purchase agreement (SPA) for the Transaction and so as to ensure propriety of the release/disclosure of the information envisaged in the preceding paragraph, the Purchaser or, as the case may be the Vendor's solicitors and/or the Purchaser's solicitors, will obtain:-

- (i) the contact particulars (and more importantly, the email particulars) as well as the other relevant information of the Vendor's financier/RFI, the Vendor's solicitors (if any), the Purchaser's financier/OFI, the RFI's solicitors (if any) and the OFI's solicitors (if any); together with
- (ii) the written authorization/consent of the parties mentioned above expressly authorizing/consenting to the disclosure of such information to the Purchaser's financier/OFI and the OFI's solicitors (if any),

and proceed to inform the Purchaser's financier/OFI and the OFI's solicitors (if any) as soon as the information is available.

b) Alternatively, all the requisite information envisaged in paragraphs 2.1, 2.2 and 2.3 can be set out and contained in the SPA provided the relevant authorization/consent as envisaged is in hand. Any change(s) in the information which is set out and contained in the SPA will be

communicated to all relevant parties by way of a subsequent letter or letters or agreement or agreements which will be read together with the SPA and in supplement of the same.

- 2.4 a) It is noted that the only relevant point of contact with the Vendor's financier/RFI is when the Vendor or the Vendor's solicitors requests for the redemption statement from the RFI. To facilitate the Vendor's financiers/RFI copying the confirmation to the relevant parties, the Vendor or the Vendor's solicitors will include the request for information in its letter to the Vendor's financier/RFI for the redemption statement.
- b) In amplification:-
- (i) all solicitors concerned will provide their relevant contact information and ensure that the redemption statement issued by the Vendor's financier/RFI to the Purchaser or the Purchaser's financier/OFI contains the relevant contact information of the parties involved and set out in paragraph 2.2(a), (c) and (d); and
 - (ii) the OFI's solicitors (if any) will, when advising the Purchaser's financier/OFI to permit drawdown for redemption, use its best endeavours to provide the contact information to the Purchaser' financier/OFI.

- 2.5 Upon a transfer of the redemption sum being made or remitted electronically by the Purchaser's financier/OFI to the Redemption Account, the Purchaser's financier/ OFI will forthwith, (and in any event no later than two (2) working days), notify (or instruct the OFI's solicitors to notify) the Vendor's financier/ RFI by email of the same on a strictly without prejudice basis. The email will be copied to the Vendor, the Vendor's solicitors, the Purchaser's solicitors, the OFI's solicitors (if any) and the RFI's solicitors (if any), provided such information is known to the Purchaser's financier/OFI (or the OFI's solicitors).

The Purchaser's financier/OFI will not bear any responsibility for the successful transmission of the message for so long as it can furnish evidence of such transmission.

- 2.6 a) In addition, the Vendor's financier/RFI will forthwith, (and in any event no later than (2) working days), upon receipt of the redemption sum, email (or instruct the RFI's solicitors to email) a confirmation of receipt of the same to the Purchaser's financier/OFI on a strictly without prejudice basis, copied also to the parties as set out in the paragraph above .
- b) The Vendor's financier/RFI (or the RFI's solicitors) will not bear any responsibility for the successful transmission of the message for so long as it can furnish evidence of such transmission.

- 2.7 In the case of a loan extended with an overdraft facility, the timing between the transmission of the redemption sum and the notification envisaged herein must be reviewed from the perspectives of the processes, intra-financial institution and inter-financial institutions as any gap between the time of receiving/posting of redemption sum into the Redemption Account/subject account and the time of closure/cancellation of the overdraft facility may

cause unintentional withdrawal(s) of funds by the account holder. Where a cheque is issued for the purpose of redemption, the subject account would generally be closed/cancelled upon receipt of the cheque but prior to clearance. Noting however that the date of receipt of the redemption sum is an important fact in the Transaction, the Vendor's financier/RFI must be mindful to notify the relevant parties of such date on a timely basis.

2.8 Emails may be substituted by facsimile with due notification to the other parties. Any departure from the process envisaged which cannot be avoided will also be duly and promptly communicated by the affected party to the other parties involved in the spirit of cooperation and facilitation.

2.9 In the event the Vendor's Financier/ RFI refunds any surplus payment to the Vendor via electronic remittance to the Vendor's Solicitors account, the Vendor's Financier/ RFI must state the Vendor's name as the beneficiary.

3 Disbursement of loan amount by the Purchaser's financier/OFI to the Vendor in the event there is no existing charge/assignment or settlement of redemption sum is made by the Purchaser or the Vendor

3.1 The Vendor's solicitors or, as the case may be the Purchaser's solicitors, will inform the Purchaser's financier/OFI and the OFI's solicitors (if any) of the particulars of the client's account of the Purchaser's solicitors or as the case may be, of the Vendor's solicitors ("the Client's Account) as soon as practicable in order for an electronic funds transfer to be made for the benefit of the Vendor. Information of the Client's Account will be stated in the SPA or in a separate advice.

3.2 Upon the financing sum being remitted by the Purchaser's financier/OFI to the Client's Account, the Purchaser's financier/OFI will forthwith, (and in any event no later than two (2) working days), notify (or instruct the OFI's solicitors to notify) the Vendor's solicitors or as the case may be, the Purchaser's solicitors by email of the same on a strictly without prejudice basis, copied also to the Vendor, the Purchaser and the OFI's solicitors (if any). The Purchaser's financier/ OFI (or the OFI's solicitors) will not bear any responsibility for the successful transmission of the message for so long as it can furnish evidence of such transmission. Solicitors should also communicate with each other upon receipt of any such notification, to ensure that all parties are kept informed.

3.3 The preceding paragraphs will also apply in cases where there is a difference between the loan amount and the redemption sum to be paid by either the Vendor or the Purchaser to the Vendor's financier/RFI (in the case of a shortfall in the loan amount) or, by the Purchaser's financier/OFI to the Purchaser and/or the Vendor (in the case of an excess of the loan amount) in order for an electronic funds transfer to be made for the benefit of the Vendor's financier/RFI in the case of the former or the Purchaser in the case of the latter.

3.4 In amplification, where there is a shortfall in the loan amount, the two transfers (the loan amount from Purchaser's financier/OFI and the shortfall amount from either the Purchaser or the Vendor) will have to be coordinated. The Purchaser's financier/OFI will generally disburse the loan/facility amount only upon confirmation that the shortfall has been paid and upon advice of the OFI's solicitors. The Vendor's financier/RFI will have to be informed in

advance that two separate transfers are intended to make up the total redemption sum as payments of amounts lesser than the redemption sum may be treated as advance installments.

- 3.5 Pursuant to the terms and conditions in the SPA, the balance loan amount (after redemption) should be released by the Purchaser's financier/OFI to the Vendor's solicitors or the Purchaser's solicitors or the appointed stakeholder for the purpose of retention of certain sums towards payment of agreed payments and outgoings under the terms of the SPA.

4 Others

- 4.1 As between the Purchaser and the Vendor, and each of them and their respective solicitors (if any), parties may elect to write cheques although the migration to e-payments is encouraged.

Effective date : 14 July 2014