

立法會

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Panel on Home Affairs

Background brief prepared by the Legislative Council Secretariat for the meeting on 10 December 2010

Regulation of property management companies

Purpose

This paper provides background information on the regulation of property management companies ("PMCs") and highlights the views and concerns of Legislative Council ("LegCo") Members on the issue.

Background

Property management industry

2. According to the Administration's paper submitted to the Home Affairs Panel ("the Panel") in July 2010, around 24 000 out of 40 000 private buildings in Hong Kong are managed by about 800 PMCs.

3. The property management industry has been self-regulated by professional bodies. The Hong Kong Association of Property Management Companies ("HKAPMC") has 86 corporate members with a total market share of around 70%. PMCs which fulfill HKAPMC's requirements in respect of areas such as experience, portfolio size and financial soundness may apply for membership. HKAPMC members have to comply with a code of conduct on professional standards and ethical business practices. Non-compliance with the code may lead to suspension or termination of membership. Nevertheless, PMCs do not need to be HKAPMC members to practice in the industry.

4. Meanwhile, individual property managers may obtain professional qualifications from various professional bodies, and qualified professionals can register at the statutory Housing Managers Registration Board ("HMRB") on a voluntary basis. HMRB has no enforcement power on the practitioners' unethical acts or malpractice in the industry.

Request for regulation of PMCs

5. Members have requested the regulation of PMCs ever since the sudden closure of a PMC causing financial losses to many property owners in August 2003. At the Panel meetings on 28 November 2003 and 12 October 2004, in view of the lack of penalty clauses in the Building Management Ordinance (Cap. 344) ("BMO") to deter improper financial operations of PMCs, members urged the Administration to amend the BMO and actively consider regulating PMCs.

6. At the Panel meeting on 8 April 2005, the Administration advised that it had to further consider the pros and cons of the introduction of a statutory regulatory framework for PMCs before deciding on the way forward, as the public had divergent views on the issue. In the meantime, the Administration had proposed amendments to the BMO regarding the financial arrangements for owners' corporations ("OC") and building managers through the Building Management (Amendment) Bill 2005; the Amendment Bill was passed by LegCo on 27 April 2005.

7. At the LegCo meeting on 8 November 2006, a Member moved a motion on "Implementing a licensing regime for PMCs and establishing a Building Affairs Tribunal". Subsequent to the passage of the motion, the Administration informed Members on 1 February 2007 that it had launched a phased consultancy study on the introduction of a regulatory scheme for PMCs. At the Panel meeting on 4 July 2008, members passed a motion urging the Government to expeditiously introduce licensing control of PMCs.

8. At the Panel meeting on 9 July 2010, the Administration briefed members on the key findings of the consultancy study. Having examined three possible regulatory models, viz. enhanced self-regulation by the professional bodies concerned, voluntary accreditation, and mandatory licensing, the Consultant recommended that a mandatory licensing regime be introduced by legislation. In the 2010-2011 Policy Address, the Chief Executive ("CE") proposed that a statutory licensing regime for the property management industry be established to ensure the quality of their services. CE also announced that the Administration would consult the public and make a decision within the first half of 2011.

Members' views and concerns

9. Matters relating to the regulation of PMCs were discussed by Members at various LegCo forums, including meetings of LegCo, the Panel and the Bills Committee on Building Management (Amendment) Bill 2005. The relevant views and concerns of Members are highlighted in the ensuing paragraphs.

Public consultation

10. Some Members expressed disappointment at the Administration's delay in introducing a mandatory licensing regime for PMCs. They queried the need for further public consultation, as there was a clear voice in LegCo and the public for the Administration to proceed with such a regime when issues relating to the regulation of PMCs were deliberated by the Bills Committee on Building Management (Amendment) Bill 2005. They urged the Administration to work out the implementation timetable as soon as possible.

11. The Administration advised that in view of the impact of introducing a statutory regime for the property management industry, it would need to study and consider carefully the views and concerns of the public and stakeholders in a responsible manner. The Administration further advised that while some stakeholders supported a mandatory licensing regime, others were concerned that such an approach might drive the small and medium sized PMCs out of the market. There were also worries that the compliance costs might increase the management fees for property owners. In the light of these divergent views, it was undesirable to proceed with the legislative process without further public consultation.

Regulatory framework

12. Some Members were of the view that the regulatory framework for PMCs should aim at resolving problems that could not be addressed without a statutory regime. For instance, it should clearly define the respective roles, duties and liabilities of OCs and PMCs, as well as PMCs' relationship with OCs and property owners.

13. Some Members suggested that the regulatory framework for PMCs should be combined with the existing regulatory scheme for the security and guarding services industry, so as to avoid requiring the PMCs which provided both security and property management services to apply for two separate licences. They also suggested that PMCs should be required to procure liability insurance for the protection of building owners in case of winding up of these companies.

Conflict of interests

14. Some Members suggested that the regulatory framework should prohibit PMCs established by property developers to manage their housing estates, with a view to preventing conflicts of interests. The Administration agreed to

consider the suggestion in working out its recommendations on the regulatory framework. Some Members also suggested that guidelines on the avoidance of conflicts of interest should be issued through the introduction of the regulatory framework, as the Independence Commission Against Corruption had received many complaints against the malpractices of PMCs, such as awarding building maintenance work to persons or companies with whom they had close relations.

Survival of small and medium-sized PMCs

15. Some Members expressed concern that small and medium-sized PMCs (such as those providing services for single-block buildings) might be driven out of the market under a mandatory regulatory framework, resulting in the property management market being monopolized by big PMCs, if the compliance requirements were too stringent. They suggested that the Administration should consider introducing a three-tier regulatory framework for PMCs by making reference to the licensing scheme for estate agents, so that small to medium-sized PMCs would only be required to meet the minimum regulatory requirements.

16. The Administration advised that the Government was reluctant to introduce a licensing system which might drive out the small and medium-sized PMCs which made up about 40% of the PMCs in Hong Kong, as a competitive property management market would help to keep the management fees at a reasonable level. In response to a Member's question raised at the Council meeting on 3 November 2010 on how to ensure that small and medium PMCs would have room for survival after the implementation of the licensing regime for the property management industry, the Administration said that it was aware of the concerns of some small and medium PMCs about the impact on their operational cost if the threshold for obtaining a licence was too high. The Administration would listen to the views of the industry in the upcoming public consultation exercise.

Latest development

17. On 3 December 2010, the Administration issued a public consultation paper on "Putting in place a regulatory framework for property management industry". The subject will be discussed at the Panel meeting on 10 December 2010.

Relevant papers

18. A list of relevant papers with their hyperlinks at the LegCo website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
8 December 2010

Appendix

Panel on Home Affairs

Relevant documents on Regulation of property management companies

Committee	Date of meeting	Motions/Minutes/Papers	LC Paper No.
Panel on Home Affairs	2003.11.28	Minutes of meeting	CB(2)912/03-04 http://www.legco.gov.hk/yr03-04/english/panels/ha/minutes/ha031128.pdf
	2004.10.12	Minutes of meeting	CB(2)84/04-05 http://www.legco.gov.hk/yr04-05/english/panels/ha/minutes/ha041012.pdf
	2005.04.08	Paper provided by the Administration on Regulating property management companies by legislation	CB(2)1179/04-05(01) http://www.legco.gov.hk/yr04-05/english/panels/ha/papers/ha0408cb2-1179-1e.pdf
		Minutes of meeting	CB(2)1489/04-05 http://www.legco.gov.hk/yr04-05/english/panels/ha/minutes/ha050408.pdf
Bills Committee on Building Management (Amendment) Bill 2005	2006.09.21	Minutes of Meeting	CB(2)198/06-07 http://www.legco.gov.hk/yr04-05/english/bc/bc58/minutes/bc580921.pdf
	2006.12.18	Minutes of Meeting	CB(2)956/06-07 http://www.legco.gov.hk/yr04-05/english/bc/bc58/minutes/bc581218.pdf

Committee	Date of meeting	Motions/Minutes/Papers	LC Paper No.
Council	2006.11.08	Motion on implementing a licensing regime for property management companies and establishing a building affairs tribunal	Official record of proceedings http://www.legco.gov.hk/yr06-07/english/counmtg/hansard/cm1108-translate-e.pdf (page 123)
		Progress report from Administration	http://www.legco.gov.hk/yr06-07/english/counmtg/motion/cm1108-m2-prpt-e.pdf
	2007.04.25	Report of the Bills Committee on Building Management (Amendment) Bill 2005	CB(2)1603/06-07 http://www.legco.gov.hk/yr04-05/english/bc/bc58/reports/bc580425cb2-1603-e.pdf
		Report of the Bills Committee on Building Management (Amendment) Bill 2005	http://www.legco.gov.hk/yr06-07/english/counmtg/hansard/cm0425-translate-e.pdf (page 202)
Panel on Home Affairs	2008.07.04	Administration's paper on regulation of property management companies.	CB(2)2454/07-08(02) http://www.legco.gov.hk/yr07-08/english/panels/ha/papers/ha0704cb2-2454-2-e.pdf
		Minutes of meeting	CB(2)2850/07-08 http://www.legco.gov.hk/yr07-08/english/panels/ha/minutes/ha080704.pdf
	2010.07.09	Administration's paper on regulation of the property management industry and related building management issues.	CB(2)1980/09-10(03) http://library.legco.gov.hk:1080/record=b1126786

Committee	Date of meeting	Motions/Minutes/Papers	LC Paper No.
Panel on Home Affairs	2010.07.09	Background brief on the role of Home Affairs Department in dealing with disputes under the Building Management Ordinance (Cap. 344) and regulation of property management companies	CB(2)1980/09-10(04) http://library.legco.gov.hk:1080/record=b1126787
		Minutes of meeting	CB(2)153/10-11 http://www.legco.gov.hk/yr09-10/english/panels/ha/minutes/ha20100709.pdf
Council	2010.11.03	Oral question raised by Hon CHAN Kin-por on enhancing private building management	http://www.info.gov.hk/gia/general/201011/03/P201011030209.htm

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