

**For Discussion
4 July 2012**

**LEGISLATIVE COUNCIL
PANEL ON HOME AFFAIRS**

Regulation of the Property Management Industry

Purpose

This paper briefs Members on the progress of work of the Advisory Committee on the Regulation of the Property Management Industry (the Advisory Committee).

Background

2. At the Panel meeting held on 8 July 2011, we informed Members of the outcome of the public consultation exercise held during 3 December 2010 to 15 March 2011 on the proposed framework for regulating the property management industry. We also briefed Members on the following proposed key parameters of the regulatory framework which had been worked out in light of comments received during the public consultation –

- (a) Both property management companies (PMCs) and property management practitioners (PMPs) be regulated through mandatory licensing;
- (b) A single universal licensing regime be introduced for PMCs but companies providing only stand-alone services, such as those providing only security or cleaning services, be excluded from the regime;

- (c) Only practitioners taking a managerial role and accountable for the overall quality assurance of property management services be subject to the licensing regime while non-managerial practitioners would not be regulated, and the number of licensing tiers would be subject to further deliberation;
- (d) Owners' corporations (OCs) or other types of owners/residents organisations managing their own properties without engaging PMCs be excluded from the proposed licensing regime;
- (e) An independent statutory body with members drawn from the industry, related professions and the community and appointed by the Chief Executive be established as the regulatory body of the property management industry, which will take the roles of both a disciplinary body and an industry promoter; and
- (f) A transitional period of three years be allowed before full implementation of the licensing regime.

3. The Advisory Committee, comprising members from the industry, related professions and the community, had been established since December 2011 to work out details of the regulatory regime. The Advisory Committee and its three sub-committees namely, the Sub-committee on Property Management Companies, the Sub-committee on Property Management Practitioners and the Sub-committee on Administration and Finance, have so far held eleven meetings and come up with the proposals set out in the following paragraphs. More meetings will continue.

Scope of the Regulatory Regime

4. Property management requires multi-disciplinary professional knowledge. Under the Hong Kong Qualifications Framework, the Specification of Competency Standards for Property Management Industry sets out seven major functional areas, namely –

- (i) property management services for owners/tenants/community;
- (ii) management of property environment;
- (iii) building repair, maintenance/improvement and enhancement;
- (iv) finance and asset management;
- (v) facility management;
- (vi) human resources management; and
- (vii) law in practice.

The Advisory Committee considers that the above represents comprehensively the skills and knowledge required of PMCs and PMPs.

5. The legal framework of the licensing regime for PMCs and PMPs will be provided through a new legislation with the following scope –

- (a) The term “property management services” will be defined in the proposed legislation with reference to the functional areas set out in paragraphs 4(i)-(vii) above.
- (b) Companies providing services relating to property management specified in paragraphs 4(i)-(vii) above will be subject to the mandatory licensing system. However, companies providing only stand-alone services, such as those providing only cleansing or security services (which are a sub-category of the type of services in paragraph 4(ii) above), will be excluded from the regime to avoid creating unnecessary entry hurdles for these companies.
- (c) Government departments, statutory bodies and other entities managing their own properties and not providing property management services to third party for generating income will not be subject to the licensing regime.
- (d) Practitioners assuming a managerial or supervisory role in the provision of property management services will be subject to the mandatory licensing system.

Requirements Imposed on PMCs

6. To ensure the service quality of PMCs and to enable consumers to make informed choices in the selection of PMCs, the Advisory Committee recommends that PMCs should be required to meet the following requirements –

- (a) Before a PMC is granted a licence, the PMC must fulfil all the licensing criteria which will be set in terms of the minimum amount of registered capital required, the minimum number of staff/directors holding PMP licences, the minimum number of specific types of skilled staff (such as technicians, accounting officers, etc) and the fitness and propriety of the company (for example, whether the company is in liquidation or subject to a winding-up order, whether there is past conviction record on relevant offences, etc), etc.
- (b) The duration of a PMC licence will be of three years or a shorter period as the future licensing body may specify. During the validity period of its licence, the PMC will be required to submit annually certain specified documents (such as financial statement and business registration certificate of the company) to the licensing body for checking.
- (c) All licensed PMCs are required to comply with the requirements stipulated in the proposed legislation, a code of conduct and a code of practice to be promulgated by the future licensing body.
- (d) Breach of the requirements in the legislation, the code of conduct and the code of practice may result in criminal sanction or disciplinary action to be taken by the future licensing body, depending on the seriousness of the contravention.
- (e) To enable consumers to make informed choices, licensed PMCs will be required to provide certain essential information (for example, names of its controlling shareholders, the number of staff of the company, the number of licensed PMPs employed

by the company, the range of number and types of premises being served by the company, etc.) to the future licensing body for uploading onto its website for public access.

- (f) As disputes between PMCs and owners are often related to financial management matters, specific requirements in relation to the preparation of budget, keeping of financial statements for clients, etc. will be stipulated in the legislation and the code of conduct and the code of practice. PMCs will have an obligation to disclose specified information to their clients. They will have to comply with additional requirements towards the end of their appointment period in order to ensure smooth handover to the new PMC.

Requirements Imposed on PMPs

7. Similarly, PMPs will have to fulfil certain requirements before they are granted the licences. The obligations and liabilities of PMPs are as follows –

- (a) The future licensing body will take into account the academic and/or professional qualifications, relevant work experience and fitness and propriety of the person in deciding whether to approve an application for PMP licence. The Advisory Committee will discuss at its next stage of work whether the applicants will have to pass an assessment (in the form of examination and/or interview) before they are granted the licences.
- (b) The Advisory Committee recommends that a two-tier licensing be introduced for PMPs, because it would help encourage PMPs to pursue professional development so as to obtain the relevant qualifications and upgrade to the upper tier, while continuing to allow access to the job market for PMPs without formal qualifications. While both tiers of PMPs will need to have a minimum number of years of working experience in property management, the first tier of PMPs should have completed a

higher level of approved academic and/or professional qualifications. The academic qualification requirement for the second tier of PMPs will be lower, for example, completion of specified diploma/sub-degree courses on property management will suffice.

- (c) In order to ensure a smooth transition at the initial stage of the operation of the licensing regime, two tiers of provisional licences may be granted to some existing practitioners in recognition of their experience and/or current academic/professional qualifications. Depending on the experience and qualifications of individual provisional licence holders, they may be required to complete certain top-up requirements (for example, taking top-up courses) before they can be granted full licences upon expiry of the provisional licences. The Advisory Committee will discuss details of the transitional arrangements at its next stage of work.
- (d) The Advisory Committee will also discuss at its next stage of work the arrangements for the granting of licences to existing members of professional bodies relating to property management.
- (e) Public officers carrying out property management duties on behalf of the Government and persons providing property management services for properties outside Hong Kong will be exempted from the licensing regime.
- (f) There will be a specific provision in the proposed legislation prohibiting any persons whose names do not appear on the register of licensed PMPs from describing themselves as licensed PMPs.
- (g) The maximum duration of a PMP licence is three years. Licensed PMPs will be required to provide annually certain information, such as documentary proof showing their current employment, to the future licensing body.

- (h) All licensed PMPs are required to comply with the requirements stipulated in the proposed legislation, the code of conduct and the code of practice to be promulgated by the future licensing body.
- (i) Breach of the requirements in the legislation, the code of conduct and the code of practice may result in criminal sanction or disciplinary action to be taken by the future licensing body, depending on the seriousness of the contravention.
- (j) PMPs acting in good faith or in a reasonable manner shall not be personally liable for any act done or default made by or on behalf of his employer.

The Licensing Body

8. The Advisory Committee made the following recommendations in respect of the composition, functions, structure and operation of the future licensing body –

- (a) The Property Management Services Authority (PMSA) will assume the dual functions of a licensing body and an industry promoter. The Chairman and members of the PMSA will be appointed by the Chief Executive. Different categories of stakeholders will be suitably represented in the PMSA so as to strike a balance between protecting the interest of the property management industry and that of the property owners and the public at large. The proposed composition of the PMSA is set out at **Annex A**.
- (b) The Chief Executive will be empowered to give directions to the PMSA if he considers that the public interest so requires or if he thinks fit with respect to the exercise of powers and performance of functions by the PMSA.

- (c) The PMSA will be empowered to establish committees to assist it to perform its functions. The Advisory Committee recommends that five standing committees be set up under the PMSA to deal with five designated areas of work, including disciplinary matters, strategic development, etc. The executive arm of the PMSA will be headed by a Chief Executive Officer who will be underpinned by two divisional heads. A chart showing the preliminary proposal of the organisation of the PMSA is at **Annex B**.
- (d) The PMSA will be required to furnish to the Secretary for Home Affairs (SHA) annually a report on its activities, a copy of its statement of accounts and an auditor's report. SHA shall cause these reports to be tabled at LegCo.
- (e) The PMSA will be given the power to undertake self-initiated investigation as well as to conduct investigation upon receipt of complaints. In order to ensure fair trial, complainees will be given the opportunity to make representation to the PMSA during the investigation process. There will be a mechanism to deal with appeals lodged by persons who are aggrieved by the decisions of the PMSA. The proposed complaint handling, investigation and appeal mechanism are set out at **Annex C**.
- (f) The PMSA will maintain a register of licensed PMCs and PMPs respectively which are available for public inspection.

The Next Steps

9. The Advisory Committee will continue to work out the details of the licensing regime with the aim of submitting a draft Bill to the Legislative Council in mid-2013. The remaining issues to be discussed in the Advisory Committee include, for example, the detailed licensing requirements (such as the minimum amount of registered capital required for a PMC, the years of working experience and the academic/professional qualifications required for the two tiers of PMPs,

etc.), the transitional arrangements, the code of conduct, the code of practice, the financial arrangement of the PMSA, etc.

10. A transitional period of three years will be allowed before full implementation of the licensing regime. The PMSA will be established immediately after the enactment of the legislation. To prepare for the full implementation of the licensing regime, the PMSA will organize publicity and educational programmes to educate the industry on the requirements of the licensing regime and to promote the regime to the public. The PMSA will also liaise with the industry organisations and the local tertiary institutes to ensure that sufficient training will be provided to the practitioners to meet the licensing requirements.

Advice Sought

11. Members are invited to provide views on the proposals of the Advisory Committee as set out in paragraphs 4 to 8 above.

Home Affairs Department
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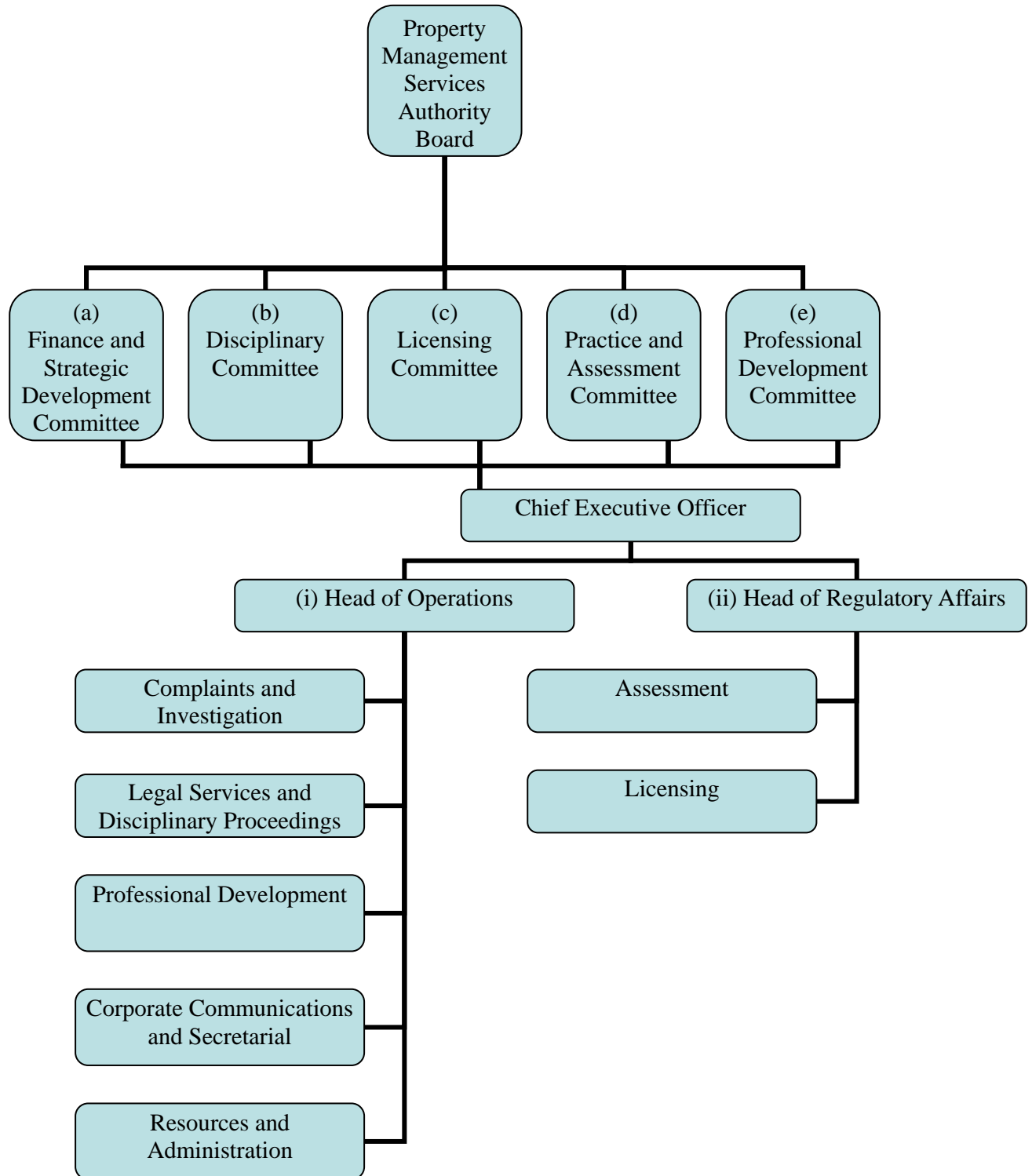
**Proposed Composition of the
Property Management Services Authority (PMSA)**

- (a) Members of the PMSA, including the Chairman, Vice-Chairman and members, shall be appointed by the Chief Executive.
- (b) The PMSA shall consist of the Chairman, the Vice-chairman and such number of members, to be determined by the Chief Executive (but being not more than 18).
- (c) The following provisions will apply as regards the membership of the PMSA –
 - (i) appointments shall be made from amongst the following categories –
 - individuals who do property management work (Category I);
 - individuals, not being persons of Category I, but because of their experience in property management, general administration or consumer affairs or because of their professional or occupational experience, appear to the Chief Executive to have knowledge of property management work and suitable for appointment to the PMSA (Category II); and
 - individuals, who are neither persons of Category I nor II, who appear to the Chief Executive to be suitable for appointment to the PMSA (Category III).
 - (ii) not less than half of the members of the PMSA (excluding the Chairman and Vice-Chairman) are persons of Category III and the remaining members should, as far as possible, be equally represented by persons of Category I and

persons of Category II.

- (iii) notwithstanding paragraph (b) above, the Chief Executive may, if he sees it appropriate, appoint public officer(s) as members;
- (d) Each member of the PMSA shall be appointed for a term not exceeding three years and may be re-appointed upon expiry of this term of office.

Proposed Organisation Chart of the PMSA



(a) Finance and Strategic Development Committee

The major functions of this committee will be to make recommendations to the PMSA on strategic issues of long term significance and budgetary matters. It will also be responsible for assisting the PMSA to oversee human resources management of the PMSA and to review and approve establishment structure, re-organisation, manpower planning and development of human resources policies and procedures.

(b) Disciplinary Committee

This committee will be primarily responsible for assisting the PMSA to handle disciplinary cases. It will conduct such inquiry as it may think fit and make recommendations on the appropriate disciplinary actions to be taken by the PMSA. It will also draw up guidelines and procedures to ensure consistency and fairness in handling disciplinary cases and refer cases of malpractice or complaints to other committees for formulation or revision of policies, practice or regulations.

(c) Licensing Committee

This committee will be tasked to assist the PMSA to consider applications for licences submitted by the PMPs and PMCs. It will also help in designing and reviewing the application forms, licence forms, licence registers and other relevant licence documents. It is also responsible for making recommendations to the PMSA on licensing requirements and licence fees.

(d) Practice and Assessment Committee

This committee will be responsible for assisting the PMSA to draw up and review the code of conduct and the code of practice governing the conduct and practice of PMCs and PMPs respectively. Where a qualifying assessment is required, this committee will assist the PMSA to set the parameters of and administer the qualifying assessment.

(e) **Professional Development Committee**

In order to enhance professionalism in the property management industry, this committee will play an important role in liaising with the industry to explore ways to improve the standard of practice and the quality of service. It will also liaise with the local tertiary institutes in providing training to individuals and administer continuing professional development requirements.

**Proposed Complaint Handling,
Investigation and Appeal Mechanism**

Complaint Handling Mechanism

- (a) The PMSA will deal with the following types of complaints:
- a licensee has failed to comply with or has contravened any one or more provisions of the ordinance or its subsidiary legislation or the code of conduct and the code of practice to be made under the legislation
 - a licensee is not eligible to hold or continue to hold a licence, or is not entitled to be granted a licence under the proposed legislation
 - a licensee has failed to comply with a specified condition attached to the licence
- (b) The PMSA will not deal with a complaint if it falls outside the scope specified in (a) above; or if the information provided by the complainant is insufficient; or if the time between the occurrence of the incident and the lodging of the complainant has exceeded beyond a specified time limit.

Investigation

- (a) The PMSA will first make a preliminary assessment of all materials provided by the complainant. If the complaint reveals a *prima facie* case of breach of the provisions of the legislation or breach of the licence conditions or ineligibility to hold a licence, a complaint file will be opened.
- (b) The PMSA will inform in writing the licensee under investigation the reasons for which the investigation is conducted and request the licensee to produce the relevant records, documents, explanation and all assistance in connection with the investigation to the PMSA. Interviews with witnesses and other related parties, site visits as

well as review of relevant documents and materials may also be required. Should there be sufficient evidence to substantiate the allegation, the PMSA or its disciplinary committee will conduct an inquiry hearing.

- (c) Where any matter substantially or closely related to the complaint is being investigated by other law enforcement agencies, or is being or about to be tried or litigated, the PMSA may defer the investigation of the complaint until the parallel investigation or judicial proceedings are over so as not to prejudice such parallel investigation or judicial proceedings.
- (d) The PMSA should inform the licensee under investigation and the complainant of the result of the investigation, recommendations made by the investigator, and other comments arising from the investigation as the PMSA thinks fit.
- (e) If the evidence obtained from the investigation is insufficient to support the allegation, both parties will be notified in writing. The complainant may request for a review of the case in writing if he is not satisfied with the findings and he has new information to substantiate his complaint within a specified period.

Appeal Mechanism

- (a) The licensee concerned should lodge the appeal application with the Secretary for Home Affairs within a specified period, say within 21 days, after receiving notice of the decision;
- (b) An appeal panel, appointed by the Secretary of Home Affairs, will be established;
- (c) None of the persons of the appeal panel shall be members or staff of the PMSA in order to ensure impartiality;
- (d) The appeal panel will hear and determine the appeals;

- (e) There will be a specified timeframe for fixing the date, time and place of the appeal hearing, as well as timing for the licensee appealing to submit responses;
- (f) The decision of the appeal panel appointed shall be final; and
- (g) The SHA may make regulations regulating the procedure for appeals.