

**For discussion on
15 November 2011**

Legislative Council Panel on Home Affairs

**Creation of a Supernumerary Directorate Post
in the Home Affairs Department to Support the Initiatives of
Regulation of the Property Management Industry and
Review of the Building Management Ordinance**

Purpose

This paper seeks Members' views on the proposal to create a supernumerary Administrative Officer Staff Grade C (AOSGC) (D2) post in the Home Affairs Department (HAD) for three years with immediate effect upon approval by the Finance Committee (FC) to undertake the legislative exercise to establish a licensing regime for the property management industry and review the Building Management Ordinance (BMO).

Justification

2. The initiatives to introduce a statutory licensing regime for the property management industry and to review the BMO were announced in the Chief Executive's (CE) 2010-11 Policy Address. These initiatives are to be followed up and given priority attention by HAD.

Regulation of Property Management Industry

3. Property management companies (PMCs) and practitioners play an important role in helping owners ensure early detection of wear and tear of their buildings, timely maintenance works and prompt action to comply with statutory orders. However, there are currently no industry-wide qualification requirements for PMCs and practitioners.

4. We launched a public consultation exercise from 3 December 2010 to 15 March 2011 to gauge public views on the proposal to establish a statutory licensing regime. The community indicated general consensus that a mandatory licensing system should be introduced for the property management industry so as to set a basic benchmark of qualifications for operators and practitioners in the industry, and hence ensure their quality, raise public awareness of their professionalism and promote the concept of proper building management.

5. At the meeting of the Legislative Council (LegCo) Panel on Home Affairs on 8 July 2011, we informed Members of the proposed key parameters for the licensing regime, which include –

- (a) both PMCs and practitioners 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 licensing regime;
- (c) only those individuals taking a managerial role and accountable for the overall quality assurance of property management services be subject to the licensing regime while non-managerial staff would not be regulated, and the number of licensing tiers would be subject to further deliberation by the advisory committee referred to in paragraph 6 below;
- (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 CE 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;

- (f) the main source of funding of the proposed regulatory body be from the licence fees and a levy of a very small percentage of property transaction, say not more than 0.01% (for example, not exceeding \$500 for the transaction of a property of \$5 million in value); and
- (g) a transitional period of three years be allowed before full implementation of the licensing regime.

6. With a view to working out the details of the licensing regime and the new legislation, we shall establish the Advisory Committee on the Regulation of the Property Management Industry (the Advisory Committee) by the end of 2011. We expect to introduce the bill to the LegCo in the first half of 2013. Subject to the passage of the bill, we shall prepare for the establishment of the independent statutory body.

Review of the BMO

7. The BMO provides a legal framework for the formation and operation of OCs to facilitate effective building management. The last exercise to amend the BMO was conducted in 2007. In order to keep pace with changing circumstances since then and to address public concerns on some contentious issues, the Administration established in January 2011 a committee comprising LegCo Members, relevant professionals and experienced members of the management committees of OCs to review the BMO (the Review Committee).

8. The Review Committee is currently studying in detail common problems in building management, for example, termination of the appointment of the Deeds of Mutual Covenant (DMC) managers, formation of OCs and matters relating to DMCs, etc. It will examine if these problems should be resolved through amending the BMO. It will also make recommendations to the Government on measures to enhance the operation of OCs and protect the interests of individual owners. It is expected that the Review Committee will submit an interim report to the Administration by the first half of 2012.

9. Upon receipt of the interim report, we shall study the recommendations carefully and then proceed to the next stage of the Review Committee's work in addressing detailed legal and implementational issues, liaise with other concerned bureaux and departments, formulate a consultation plan to seek the views of relevant stakeholders and the public, prepare drafting instructions for legislative amendments and submit an amendment bill to the LegCo. It is envisaged that the work would take about three years to complete.

Need for additional directorate support

10. Introducing a regulatory regime for the property management industry and reviewing the BMO as mentioned above will entail heavy policy and legislative work. The legislation for regulating the property management industry is a new piece of legislation which involves not only drafting of detailed provisions but also introducing and setting up of a new licensing regime. As the regime will have significant impact on the long-term development of the industry and the practitioners, the Administration must work closely with the Advisory Committee and maintain a close liaison with the industry and all relevant stakeholders when drafting the bill so as to ensure its smooth implementation in due course. A very substantial amount of work will be involved in formulating all the key issues as well as detailed provisions, including –

- (a) the definitions of PMCs and property managers;
- (b) the licensing criteria, draft code of conduct and code of practice for both PMCs and property managers;
- (c) the number of tiers for the practitioners;
- (d) the institutional arrangement for the regulatory body; and
- (e) the proposed penalty levels for breaches and grandfathering arrangement, etc.

11. We have undertaken to introduce the bill to the LegCo in the first half of 2013. Subject to the passage of the bill, we shall prepare for

the establishment of the independent statutory regulatory body. To meet public call for early implementation of the new regulatory regime and establishment of the independent statutory body, we target to complete all the work by early 2015. To ensure timely and effective delivery of these complicated tasks, it is necessary to have a dedicated small team led by a directorate officer to carry out the work.

12. As regards the review of the BMO, the nature of building management issues is highly complicated. Given that building management affects everybody's daily life and involves the fundamental interest of various stakeholders, from individual small property owners and tenants to large property developers, any amendment to the BMO which will inevitably affect the interest of the stakeholders is bound to be controversial. Not only will conflicts arise among owners and tenants, but also between PMCs/developers and owners, OCs and owners, and PMCs/developers and OCs. Just take two examples –

- (a) Individual property owners and OCs will welcome lowering the percentage of shares and votes required for the termination of the DMC managers which are mostly PMCs, but the PMCs and property developers who are the major owners will resist such an amendment.
- (b) Likewise, any tightening of the meeting procedures will be supported by some owners who advocate for closer monitoring of the OCs. However, for the OCs, they will consider that such an amendment would make the operation of an OC too difficult.

13. During the last review of the BMO in 2005-07, over 50 meetings were held at the Bills Committee to deliberate these complex matters and agree on the amendments. The review team hence has to be led by an AOSGC to ensure that the proposals would best meet the public's needs, strike a balance among various parties' interests and stand the test of time. This directorate officer will need to tactfully handle the complex and controversial issues encompassing policy, legal, public relations, resource and other areas. We target to complete the review, consultation and amendment exercise in about three years' time.

14. The introduction of a licensing regime for the property management industry is inter-related with the review of the BMO, given that both facilitate effective building management. Disputes between PMCs and owners/OCs are one of the major problems in building management, and an effective licensing regime can help address the concerns. It will be conducive to both legislative tasks if a dedicated AOSGC takes up the responsibility to handle both initiatives.

15. In view of the above and having regard to the scale and complexity of the two initiatives, we consider that there is a genuine need to set up a dedicated small team in HAD for three years, led by a full-time directorate officer at AOSGC level in order to implement the initiatives. The officer should be sufficiently senior to provide policy advice, co-ordinate amongst bureaux/departments concerned and engage stakeholders so as to ensure timely and successful implementation.

16. We propose that the supernumerary AOSGC post, designated as Assistant Director of Home Affairs (5) (ADHA(5)), be created in HAD for a period of three years, with immediate effect upon approval by FC. The major responsibilities of the proposed ADHA(5) are as follows –

- (a) **Working with the Advisory Committee on the details of the licensing regime:** ADHA(5) will engage the Advisory Committee in formulating the detailed legislative proposals, including the definitions, complaint handling mechanism, licence fee level, penalty level, issue/revoke of licences, and strategic planning of the future statutory body, etc;
- (b) **Overseeing the set-up of the future statutory regulatory body:** ADHA(5) will formulate and oversee the overall design and set-up of the future independent statutory body, including its institutional and financial arrangement;
- (c) **Taking forward the proposals put up by the Review Committee:** ADHA (5) will carefully deliberate the proposals put up by the Review Committee, work with the Review Committee to address the problems identified, and consult the stakeholders on the proposals; and

- (d) **Liaising with bureaux/departments/stakeholders/public:** ADHA(5) will liaise closely with relevant bureaux and departments, stakeholders and the public in formulating the legislative proposals, and assessing the implications and viability of the proposals.

17. The proposed job description of ADHA(5) is at **Annex A**. ADHA(5) will be supported by a small team of non-directorate staff, comprising one Senior Administrative Officer (SAO), one Liaison Officer I (LOI), and two non-civil service contract (NCSC) staff providing general administrative and clerical support. The SAO and one NCSC staff are additional resources, while the LOI and the other NCSC staff will be re-deployed internally. An organisation chart of HAD showing the proposed ADHA(5) is at **Annex B**. We will review the need for the ADHA(5) post in the light of the actual workload and progress of the legislative work before the lapse of the post in January 2015.

Alternatives Considered

18. We have critically reviewed whether the existing directorate staff responsible for the building management issues could absorb or share out the duties of the proposed time-limited ADHA(5) post. At present, ADHA(4), pitched at AOSGC level, is responsible for reviewing and formulating policy on building management, including matters relating to OCs. ADHA(4) is also responsible for monitoring and co-ordinating the implementation of the BMO, reviewing and formulating policy on the licensing of hotels, guesthouses, clubs and bedspace apartments, supervising the Office of the Licensing Authority, coordinating the work relating to urban renewal and the Urban Renewal Authority, as well as formulating policy on Mutual Aid Committees.

19. In the past years, ADHA(4) has been tasked to conduct public consultation to gauge public views on the proposal to introduce a mandatory licensing regime, to map out the key parameters of the licensing regime and to prepare for the establishment of the Advisory Committee. ADHA(4) has also been tasked to assist in the set-up of the

Review Committee of the BMO, to undertake initial research and study on the topics to be discussed at the Review Committee, and to follow up on the issues raised by the Review Committee. The additional work has proven to be too onerous when large amounts of work on licensing and other matters also need to be carried out.

20. Looking ahead, there are several other new initiatives to be undertaken by ADHA(4). CE announced in the 2010-11 Policy Address a series of new initiatives which include the implementation of the Building Management Professional Advisory Service Scheme (BMPASS) to provide professional advice and services on building management to owners of old buildings, the promotion of building care campaign by organising structured training to office-bearers of OCs, and the establishment of a panel of advisors to provide owners with impartial and authoritative advice on building management disputes.

21. HAD is concerned that some owners of old buildings are willing but unable to manage and maintain their buildings owing to their limited organising skills, lack of financial capability and necessary professional knowledge. ADHA(4) has spearheaded the BMPASS which provides one-stop service to owners of 1 200 old and dilapidated buildings in 18 districts in three years with free professional advice and follow-up services on building management and maintenance. As this is the first time HAD engages PMCs to provide such extensive services on a medium term basis, ADHA(4) has started and will continue to develop a comprehensive system and guidelines on management and implementation of the scheme, closely monitor the performance of the PMCs and adjust the strategy in the light of client feedback. In the initial stage of the scheme, it is envisaged that there will be unforeseeable issues which will require quick intervention from ADHA(4) to ensure that the objective of enhancing building safety and safeguarding the public will be achieved.

22. On the structured training for office-bearers of OCs, ADHA(4) has, in close partnership with a local university, successfully steered the development of the first interactive training programme. ADHA(4) will continue to oversee the improvement of the programme to ensure the legal concept and practical knowledge taught in class can be easily

understood and applied by office-bearers of OCs in discharging their building management duties. ADHA(4) will also map out the strategy, modus operandi and implementation plan for the graduates of the programme to out-reach and share experience with other office-bearers of OCs. The more OC office-bearers are well-equipped with building management knowledge, the stronger building care culture we can foster.

23. ADHA(4) has mapped out the institutional set-up and the modus operandi of the Panel of Advisors on Building Management Disputes, which has just been established. ADHA(4) will lead a team to provide secretariat support to the Panel which will centrally handle the most complicated dispute cases from 18 districts. The provision of impartial and authoritative advice by experts, such as lawyers, accountants and surveyors, will help the disputing parties understand their respective responsibilities in building management, resolve disputes and proceed with the necessary action in enhancing the management of the concerned buildings.

24. In addition, ADHA(4) will continue to take up more duties in 2012. Subsequent to the enactment of the Communications Authority (CA) Bill in June 2011, it is intended that the CA Ordinance will commence in around April 2012. The existing functions of the Television and Entertainment Licensing Authority (TELA) in relation to the issuance of entertainment licences under the Amusement Game Centres Ordinance (Cap. 435), the Gambling Ordinance (Cap. 148) and the Miscellaneous Licences Ordinance (Cap. 114), which are currently under the policy portfolio of the Home Affairs Bureau, will be taken up by HAD and under the direct supervision of ADHA(4). To facilitate the smooth transition of the new duties and manpower from TELA to merge seamlessly with the existing HAD setup to provide uninterrupted service to the public, ADHA(4) has to, in addition to her already expanded portfolio, draw up the transitional and future operation plans to ensure that some 460 licensed premises under the three ordinances can continue to operate in accordance with the conditions stipulated in the licences.

25. In view of the above, the strategy formulation, implementation and supervising workload of ADHA(4) has become disproportionately heavy. It is no longer possible for ADHA(4) to undertake effectively on

a part-time basis the two policy initiatives on regulation of property management industry and review of the BMO, especially when each has already become a significant, substantial and important area of policy work.

26. We have also critically examined whether the other three officers at AOSGC level in HAD can absorb or share out the tasks of the proposed ADHA(5) post. However, all the three AOSGCs are already fully occupied with the workload arising from various new initiatives and on-going commitments. Details of the work schedule of the three ADHAs are set out in **Annex C**. Unlike a typical bureau setting, not only do these AOSGCs in HAD have to take up policy formulation responsibility, they are also required to oversee policy implementation and monitoring. Therefore, it is not operationally feasible for any of them to take up the tasks relating to the regulation of property management industry and review of the BMO without seriously affecting the discharge of their current duties.

Financial Implications

27. The proposed creation of the supernumerary post of ADHA(5) will bring about an additional notional annual mid-point salary cost of \$1,611,600. The full annual average staff cost of the proposal, including salaries and staff on-cost, is \$2,285,000.

28. As for the additional SAO post mentioned in paragraph 17 above, the notional annual salary cost at mid-point is \$1,068,900, and the full annual average staff cost, including salaries and staff on-cost, is \$1,693,000. The annual salary cost of the additional non-civil service contract staff providing general administrative and clerical support is \$107,000.

29. We have included sufficient provision in the 2011-12 Estimates to meet the cost of this proposal and will reflect the resource requirement in the Estimates of subsequent years.

Advice Sought

30. Members are invited to comment on the proposal. Subject to Members' support, we intend to submit the proposal to the Establishment Subcommittee of FC for recommendation in December 2011 and then to FC for approval in January 2012.

Home Affairs Department
November 2011

Job Description
Assistant Director of Home Affairs (5)

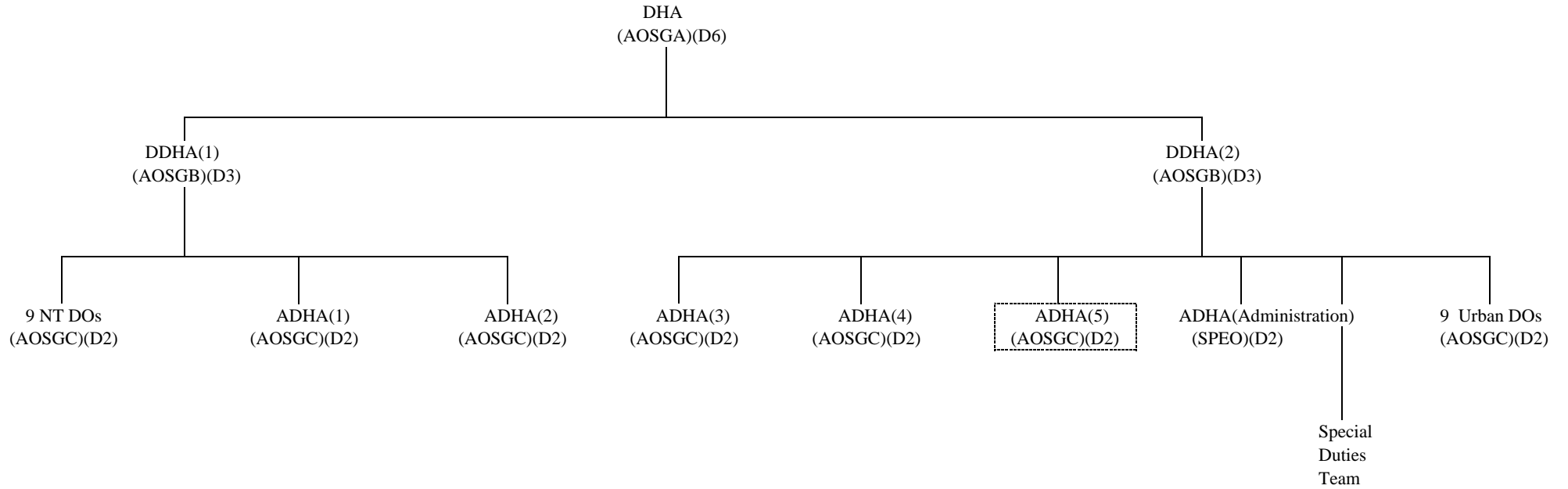
Rank: **Administrative Officer Staff Grade C (D2)**

Responsible to : **Deputy Director of Home Affairs (2) (DDHA(2))**

Main Duties and Responsibilities:

- (a) To prepare draft drafting instructions for the main legislation and subsidiary legislations for the licensing regime to regulate the property management industry, and submissions to Executive Council (ExCo) and Legislative Council (LegCo); and in consultation with the Advisory Committee on the Regulation of Property Management Industry to work out all details for the licensing regime.
- (b) To assist the LegCo in scrutinising the bill for the licensing regime to regulate the property management industry.
- (c) To oversee the set-up of the future statutory body for the regulation of the property management industry.
- (d) To examine and study the recommendations of the Review Committee on the Building Management Ordinance (BMO) and to engage the stakeholders on the amendments to the BMO.
- (e) To prepare draft drafting instructions for an amendment bill to the BMO and submissions to the ExCo and LegCo.
- (f) To assist the LegCo in scrutinising the amendment bill to the BMO.
- (g) To undertake any other tasks as assigned by DDHA(2).

Proposed Organisation Chart of Home Affairs Department



Legend

AOSGA	Administrative Officer Staff Grade A	DHA	Director of Home Affairs
AOSGB	Administrative Officer Staff Grade B	DDHA	Deputy Director of Home Affairs
AOSGC	Administrative Officer Staff Grade C	ADHA	Assistant Director of Home Affairs
SPEO	Senior Principal Executive Officer	DO	District Officer

Directorate post proposed to be created

**Duties and Responsibilities of
the Existing Administrative Officers Staff Grade C
in the Home Affairs Department**

Assistant Director of Home Affairs (1)

Assistant Director of Home Affairs (1) (ADHA(1))'s core duties include all New Territories matters, and planning and overseeing district involvement in community building activities and youth activities for all districts in Hong Kong. Apart from handling New Territories matters like rural burials, succession, rates exemption and tso and tong matters, ADHA(1) is responsible for conducting the village representative elections (including by-elections, held twice every year), elections of the 27 rural committees, as well as the Heung Yee Kuk election.

2. ADHA(1) is also responsible for overseeing and implementing programmes of major campaigns and projects, such as Walk for Million and Hong Kong Youth Cultural and Arts Competition. Furthermore, he assists in managing the Liaison Officer grade in the Home Affairs Department (HAD). He provides advice on the patronage of Home Affairs Bureau/HAD directorate staff at major functions and ceremonies, as well as on community participation aspects at committees and working groups. He collates and processes nominations for Justices of Peace, Honours and Awards, and Secretary for Home Affairs' Commendation Scheme.

3. In the coming years, ADHA(1) will oversee a comprehensive review on rural elections in the light of the operational experience gained in the rural elections held in 2011, and the recommendations of the Electoral Affairs Commission in respect of the village representative elections. The review will require thorough research and intensive consultation and liaison with the Heung Yee Kuk, the rural community, as well as other Government departments. The review would study feasibilities and merits of legislative amendments for improvement of the elections. ADHA(1) will continue to foster and oversee community building and youth activities, as well as major campaigns and projects.

The youth activities have entered into new phase since January 2011, following merger of a summer youth-programme of over 40 years, with the Commission on Youth, CE's advisor on youth matters. ADHA(1) needs to closely monitor the implementation of the merger at district level during its initial years.

Assistant Director of Home Affairs (2)

4. ADHA(2) is responsible for the formulation of the policy on HAD's minor works programmes and supervision of implementation of minor works programmes, as well as supervising the Works Section and managing the departmental Technical grades. He co-ordinates inputs and views from district perspective for territory planning and development projects. Moreover, he is responsible for implementing measures to promote social enterprises and the Enhancing Self-Reliance Through District Partnership Programme. He is also responsible for the planning of new community halls, as well as co-ordinating HAD's work relating to street management issues. He co-ordinates the implementation of the Tuen Mun River Beautification Scheme and work relating to promotion of local community economy.

5. In the coming years, ADHA(2) will strengthen measures relating to the operation of the District Minor Works Programme in view of additional allocation of funds over the next two District Council terms. He will also continue to implement the Enhancing Self-Reliance Through District Partnership Programme with the funds earmarked in the 2011-12 Budget, and promote the further development of social enterprises.

Assistant Director of Home Affairs (3)

6. ADHA(3) is responsible for the District Administration Scheme, which includes facilitating the implementation of the Review on District Councils (DCs), advising on the administration of DCs and Area Committees (ACs). She is responsible for administrating the allocation of DC funds and honorarium/allowances for DC members, and co-ordinating training for DC members and their assistants, DC Secretariat staff and civil servants who have frequent dealings with DCs.

She is also responsible for planning and formulating the publicity strategies and facilitating the electoral arrangements of DC elections and Legislative Council (LegCo) elections, and Voter Registration exercises.

7. She is also responsible for implementing the Community Care Fund Home Affairs Sub-committee's initiatives and coordinating support services for new arrivals from the Mainland and ethnic minorities. Furthermore, she advises bureaux and departments regarding public consultations and briefings of DCs on Government policies and programmes. She also co-ordinates appointments to ACs and District Fight Crime Committees, as well as provides support to the Independent Commission on Remuneration for Members of the DCs of the Hong Kong Special Administrative Region and monthly meetings with DC Chairmen and Vice-Chairmen.

8. In the coming years, ADHA(3) will continue to monitor the District Administration Scheme, assist in the LegCo election, monitor the operation of the new term DCs and coordinate support services for new arrivals from the Mainland and ethnic minorities.

Assistant Director of Home Affairs (4)

9. ADHA(4) is responsible for reviewing and formulating policy on private building management (BM), liaising with relevant professional bodies on the provision of professional advice and services to building owners and residents on BM and Owners' Corporation (OC) matters, monitoring and co-ordinating the implementation of the Building Management Ordinance (BMO), reviewing and formulating policy on the licensing of hotels, guesthouses, clubs and bedspaces, supervising the Office of the Licensing Authority in enforcing the licensing regimes for hotels, guesthouses, clubs and bedspace apartments, coordinating the work relating to urban renewal and the Urban Renewal Authority, as well as formulating policy on Mutual Aid Committees (MACs).

9. ADHA(4) is also responsible for implementing the new initiatives announced in the 2010-11 Policy Address, which include introduction of a regulatory regime for the property management industry, the review of the BMO, the implementation of the Building Management

Professional Advisory Service Scheme to provide professional advices and services on BM to owners of old buildings of 18 districts, and the promotion of building care campaign by organising structured training to office-bearers of OCs, forming a platform to share experience and establishing a panel of advisors to provide owners with impartial and authoritative advice, as well as reviewing the policy of the MACs.

10. With effect from April 2012, ADHA(4) will also take up the functions of the Television and Entertainment Licensing Authority in relation to entertainment and miscellaneous licensing.