

**立法會**  
**Legislative Council**

LC Paper No. CB(2)987/14-15  
(These minutes have been seen  
by the Administration)

Ref : CB2/BC/7/13

**Bills Committee on Property Management Services Bill**

**Minutes of the 7<sup>th</sup> meeting**  
**held on Monday, 9 February 2015, at 10:45 am**  
**in Conference Room 2B of the Legislative Council Complex**

**Members present** : Hon Tony TSE Wai-chuen, BBS (Chairman)  
Hon WU Chi-wai, MH (Deputy Chairman)  
Hon Abraham SHEK Lai-him, GBS, JP  
Hon WONG Kwok-hing, BBS, MH  
Hon Cyd HO Sau-lan, JP  
Hon Starry LEE Wai-king, JP  
Hon CHAN Kin-por, BBS, JP  
Hon IP Kwok-him, GBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon Alan LEONG Kah-kit, SC  
Hon Claudia MO  
Hon Steven HO Chun-yin  
Hon LEUNG Che-cheung, BBS, MH, JP  
Hon Alice MAK Mei-kuen, JP  
Hon Christopher CHUNG Shu-kun, BBS, MH, JP

**Members absent** : Hon James TO Kun-sun  
Hon CHEUNG Kwok-che  
Hon Frankie YICK Chi-ming  
Hon KWOK Wai-keung

**Public Officers attending** : Item I  
Mr Jack CHAN Jick-chi, JP  
Deputy Director of Home Affairs (2)

Mr Franco KWOK Wai-fan, JP  
Assistant Director of Home Affairs (4)

Mr Michael LAM Siu-chung  
Senior Assistant Law Draftsman  
Department of Justice

Miss Cindy CHEUK Chi-wing  
Government Counsel  
Department of Justice

**Clerk in attendance** : Ms Alice LEUNG  
Chief Council Secretary (2) 2

**Staff in attendance** : Mr YICK Wing-kin  
Assistant Legal Adviser 8

Ms Vanessa CHENG  
Assistant Legal Adviser 5

Ms Jasmine TAM  
Senior Council Secretary (2) 8

Miss Emma CHEUNG  
Legislative Assistant (2) 2

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Action

**I. Meeting with the Administration**

(LC Paper Nos. CB(2)776/14-15(01) & (02), CB(3)583/13-14, CB(2)1761/13-14(02) to (04), CB(2)2014/13-14(01), CB(2)2189/13-14(01), CB(2)22/14-15(03) & (04), CB(2)82/14-15(02) and CB(2)191/14-15(03))

The Bills Committee deliberated (index of proceedings attached at **Annex A**).

2. The Bills Committee discussed the Administration's responses to members' concerns and enquiries raised at the last meeting held on 12 January 2015 (LC Paper No. CB(3)776/14-15(02)) and continued clause-by-clause examination of the Property Management Services Bill ("the Bill") (LC Paper No. CB(3)583/13-14).

Action

3. The Bills Committee examined Clauses 6 to 10 of the Bill.
4. The Bills Committee noted that the Administration would consider elaborating Clause 6(2)(c) and (3)(c) by adding a prohibition for any person to describe oneself in any language as a "registered professional property manager" or "licensed property management officer" or in any similar term or title that would be capable of deceiving or misleading other persons into believing that the person was licensed property management practitioner ("PMP") (Tier 1) or licensed PMP (Tier 2).

Follow-up actions required of the Administration

Admin

5. The Administration was requested to provide written responses to issues raised by members and the Legal Adviser to the Bills Committee as set out in **Annex B**.

**II. Any other business**

Date of next meeting

6. The Chairman reminded members that the next meeting of the Bills Committee would be held on Friday, 27 February 2015, at 10:45 am to continue clause-by-clause examination of the Bill.
7. There being no other business, the meeting ended at 12:38 pm.

Council Business Division 2  
Legislative Council Secretariat  
9 March 2015

**Proceedings of the 7<sup>th</sup> meeting of the  
Bills Committee on Property Management Services Bill  
on Monday, 9 February 2015, at 10:45 am  
in Conference Room 2B of the Legislative Council Complex**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
000230 - 000344	Chairman	The Chairman's opening remarks	
<i>Matters arising from the last meeting held on 12 January 2015</i>			
000345 - 001250	Chairman Admin	Briefing by the Administration on its response to issues raised by members at the Bills Committee meeting on 12 January 2015 (LC Paper No. CB(2)776/14-15(02)).	
001251 - 001759	Chairman Mr CHAN Kin-por Admin	Mr CHAN Kin-por noted and supported the proposed mechanism, as set out in paragraphs 6 to 9 of the Administration's paper, for a property management company ("PMC") to report owners' corporation ("OC")'s decisions/acts affecting its compliance with statutory requirements. Mr CHAN's enquiry and the Administration's response on alternative dispute resolution mechanisms, other than the Lands Tribunal hearings, for resolving building management disputes among property owners, OCs and PMCs.	
001800 - 002233	Chairman Ms Claudia MO Admin	In response to Ms Claudia MO's query about the effectiveness of the proposed mechanism, the Administration advised that it would ensure that there was a proper check and balance. While the proposed Property Management Services Authority ("PMSA") would ensure that all complaints were handled in a fair, impartial and independent manner, PMSA could decide not to conduct an investigation to deal with a complaint if it was satisfied that the complaint was misconceived or lacking in substance under the Property Management Services Bill ("the Bill").	
002234 - 002746	Chairman Deputy Chairman Admin	The Deputy Chairman's enquiry and the Administration's response that -  (a) the codes of conduct to be issued by PMSA would specify clearly acts or omissions that would be considered as disciplinary offences, including contravention of the requirements under the Bill, the codes of conduct as well as the Building Management Ordinance (Cap. 344) ("BMO") and other relevant ordinances; and	

Time marker	Speaker	Subject(s)	Action Required
		<p>(b) the concerted efforts and earnest cooperation of PMCs, OCs and owners was of paramount importance to proper building management. The Administration strongly encouraged PMCs, OCs and owners to resolve disputes through communication.</p>	
002747 - 003056	<p>Chairman Mr CHAN Kin-por Admin</p>	<p>Mr CHAN Kin-por pointed out that at present, property owners and OCs might file their cases of building management disputes to the Lands Tribunal for adjudication. He was concerned that although property owners could file their case to the Lands Tribunal if they held the view that the election of OC was in contravention of BMO, the certificate of registration of OC might be issued before their case could be heard by the Lands Tribunal. He sought detailed information or statistics about (a) the adjudication processes involved for a building management dispute case heard and ruled by the Lands Tribunal; (b) the average waiting time for such cases heard by the Lands Tribunal; and (c) the average legal costs borne by the relevant property owners in building management disputes which had been adjudicated through the Lands Tribunal. The Chairman's and Mr CHAN's concerns that the Lands Tribunal should ensure timely hearing and conclusion of building management disputes, in particular those disputes over the formation of OCs.</p>	<p><b>Admin to provide the requested information (Para. 1 of Annex B refers)</b></p>
003057 - 003423	<p>Chairman Deputy Chairman Admin</p>	<p>The Deputy Chairman's enquiries and the Administration's response on -</p> <p>(a) the role of PMCs in enforcing the provisions in BMO, the Bill, the deed of mutual covenant and the codes of conduct to be issued by PMSA;</p> <p>(b) the timing for introducing into the Legislative Council the subsidiary legislation relating to the Bill and the Administration's plan to submit the subsidiary legislation in batches; and</p> <p>(c) the complaint/mediation/appeal mechanism built into the regulatory regime in the Bill.</p>	
003424 - 003957	<p>Chairman Mr Paul TSE Admin</p>	<p>Mr Paul TSE's expression of concerns about the mechanism for PMCs to report OCs' decisions/ acts affecting their compliance with statutory requirements, as it might lead to more conflicts between OCs and PMCs.</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>The Administration advised that sometimes, OCs or owners might inadvertently ask PMC to perform certain tasks which might contravene BMO, the Bill or the codes of conduct. Licensed PMCs, being professional in the provision of property management services, should advise OCs and owners concerned of the proper practice under BMO, the Bill and the codes of conduct.</p>	
003958 - 004429	<p>Chairman Mr IP Kwok-him Admin</p>	<p>Mr IP Kwok-him's seeking clarification on the content and coverage of the codes of conduct intended to be published under Clause 5 of the Bill. The Administration advised that apart from specifying matters relevant to the question of misconduct or neglect in a professional respect under Clause 4(a), the Administration also agreed that the scope of Clause 5(1) should be expanded to deal with matters such as offences that might bring the profession into disrepute and licensee's duties.</p>	
004430 - 005045	<p>Chairman Ms Cyd HO Admin</p>	<p>Responding to Ms Cyd HO's enquiries, the Administration advised that -</p> <p>(a) there was no provision in the Bill requiring that a PMC must report to PMSA of any suspected violating acts of OCs; and</p> <p>(b) under the regulatory regime, individual owners could lodge complaints with PMSA against their PMCs. Breach of the requirements in the legislation and the relevant codes of conduct might result in disciplinary actions to be taken by PMSA such as revocation or suspension of licences.</p>	
005046 - 005547	<p>Chairman Miss Alice MAK Admin</p>	<p>Miss Alice MAK's enquiry and the Administration's advice that PMSA would issue codes of practice to specify clearly the duties of PMCs, which included, among others, the proper keeping of records and documents relating to their management responsibilities and the transfer of such records and documents to the new PMC before the cessation of service. The Administration's further advice that licensed PMCs, being professional in the provision of property management services, should advise OCs and owners concerned of the proper practice under BMO, the Bill and the codes of conduct.</p>	

Time marker	Speaker	Subject(s)	Action Required
<i>Clause-by-clause examination of the Bill</i>			
005548 - 005635	Chairman Admin	The Bills Committee continued clause-by-clause examination of the Bill, with the aid of the Blue Bill (LC Paper No. CB(3)583/13-14)	
005536 - 005745	Chairman Admin	<p><u>Part 2 - Prohibition</u></p> <p><i>Clause 6 - Prohibition of unlicensed activities</i></p> <p>Members noted that Clause 6 of the Bill made it an offence for a person to act as a PMC or property management practitioner ("PMP") without a licence.</p>	
005746 - 010310	Chairman Mr IP Kwok-him Admin ALA8 Ms Cyd HO	<p>Mr IP Kwok-him's enquiry about the difference between conviction on indictment and summary conviction and the Administration's advice that an offender might be subject to prosecution either on summary conviction or conviction on indictment, depending on the seriousness of the offence which was a matter for the prosecutor to decide. The Administration's further advice that the amount of fine at level 6 was \$100,000.</p> <p>The Administration's confirmation that "carrying on the business of providing property management services" was synonymous with "acting as a PMC".</p> <p>Responding to the Legal Adviser to the Bills Committee, the Administration agreed that Clause 6(2)(c) and (3)(c) should also apply to situations where a person described himself as a "registered professional property manager" or a "licensed property management officer" in a language other than Chinese or English. It would consider elaborating Clause 6(2)(c) and (3)(c) by adding a prohibition to describe oneself in any language as "registered professional property manager" or "licensed property management officer" or in any similar term or title so as to be capable of deceiving or misleading any person into believing that the person was licensed PMP (Tier 1) or licensed PMP (Tier 2).</p>	
010311 - 010824	Chairman Admin Ms Cyd HO ALA8	<p><i>Clause 7 - Exceptions to section 6</i></p> <p>The Administration's confirmation that the prohibition would not apply to a PMC whose business did not involve the provision of more than one category of property management</p>	

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		<p>services or, if there were more than one type of service under a category, more than one type of service. Schedule 1 to the Bill listed out seven categories of property management services which were intended to be mutually exclusive.</p> <p>Ms Cyd HO's concern as to whether domestic waste collection and recycling would be considered as separate types of service. The Administration undertook that PMSA would take into account Ms HO's view in determining the types of services under each defined category of services.</p> <p>Responding to the Legal Adviser to the Bills Committee, the Administration advised that the provision of property management services by a public officer acting in that capacity would not be subject to the PMP licensing regime. The definition of "public officer" would follow that provided for in the Interpretation and General Clauses Ordinance (Cap. 1).</p>	
010825 - 012230	Chairman Ms Cyd HO Admin Mr IP Kwok-him ALA8	<p><u>Part 3 - Licensing of PMCs and PMPs</u></p> <p><i>Clause 8 - Property management services licences</i></p> <p>Ms Cyd HO's and Mr IP Kwok-him's expression of concerns and the Administration's explanation on why a PMC/PMP (Tier 1)/PMP (Tier 2) licence must not be longer than 36 months beginning on the date on which the licence was issued. The Administration's advice that to prevent disruption to PMC's provision of property management services upon licence expiry, it was the responsibility of the licensee to apply for renewal of licence. Any entity carrying on the business of providing property management services without a PMC licence would commit an offence.</p> <p>The Chairman's enquiry and the Administration's elaboration on who would be required to obtain the PMP licence (Para. 8 of LC Paper No. CB(2)556/14-15(02)).</p> <p>Mr IP Kwok-him's concern about whether a PMC could enter into a service contract with an OC with a contract period that would go beyond the validity period of its licence. In response to Mr IP's enquiry, the Legal Adviser to the Bills Committee said that an OC, in entering into a</p>	



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		<p>service contract with a PMC, might specify in the service contract that the management service agreement should be terminated if the PMC failed to renew its licence, so as to protect its interests.</p> <p>Ms Cyd HO's view that it should be stated clearly in the relevant codes of conduct, codes of practice or subsidiary legislation that it was licensed PMCs' duty to inform their clients or prospective clients the date on which their licences were going to expire. The Administration's undertaking to do so and advice that licensed PMCs would be required to provide certain essential information to PMSA for uploading onto its website for public access. PMSA would also make available to the public information on the date(s) on which PMCs' licence/renewed licence was issued.</p>	
012231 - 012932	Chairman Admin Ms Cyd HO	<p><i>Clause 9 - Application for licences</i></p> <p>The Administration's advice that PMSA would be a self-financing statutory body supported by income generated from both licence fees and a very small amount of fixed levy (around \$200-\$350) to be imposed on each conveyancing transaction. The Administration considered that the acceptable level of annual licence fee for a PMC should be around \$6,000 while that for a PMP should be around \$400 (Tier 2) to \$1,200 (Tier 1).</p> <p>Ms Cyd HO's concern about the affordability of PMPs in particular the PMP (Tier 2) licensees and considered that the annual licence fees for PMCs and PMPs should be proportionate to the amount of work and manpower involved in processing applications for issue or renewal of licences respectively from PMCs and PMPs.</p>	
012933 - 013951	Chairman Admin Mr IP Kwok-him Mr Paul TSE	<p><i>Clause 10 - Application for renewal of licences</i></p> <p>Mr IP Kwok-him's enquiry and the Administration's explanation why an application for the renewal of a licence must be made to PMSA within two months before the expiry of the licence (i.e. Clause 10(1)(a)). Mr IP's suggestion that to facilitate licensees in maintaining business viability and stability, consideration should be given to extending the two-month period for application for renewal of licences to say, six months.</p>	<b>Admin to consider the suggestion and provide a written response (Para. 2 of Annex B refers)</b>

Time marker	Speaker	Subject(s)	Action Required
		<p>Mr Paul TSE's query on why the word "must", instead of "may", was used in Clause 10(2) about the application for the renewal of licences. In his view, the word "must" would be too restrictive for PMSA to exercise its discretion in the renewal of a PMC or PMP licence. The Administration agreed to consider and provide a written response after the meeting.</p>	<p><b>Admin to consider this view and provide a written response (Para. 3 of Annex B refers)</b></p>
<p>013952 - 014410</p>	<p>Chairman ALA8 Admin</p>	<p>Legal Adviser to the Bills Committee seeking clarification on the applicability of Clause 10 under the following situations -</p> <p>(a) in the event that a licence expired before an application for renewal was decided by PMSA, whether it should be provided in the Bill that any licence which would expire prior to PMSA's determination of an application for renewal should, unless such application was withdrawn, or the licence was revoked or suspended, remain in force until PMSA's determination of the application;</p> <p>(b) whether Clause (10)(1) and (2), as presently drafted, would give PMSA the discretion to accept applications which were made after the expiry of the relevant licence for renewal of licences; and</p> <p>(c) Clause 10(7) provided that if PMSA decided not to renew a licence, it must, by notice in writing given to the applicant within 21 days beginning on the date on which the decision was made, notify the applicant of the decision and give reasons for the decision. Given the significant impact of non-renewal of a licence on a PMC and its existing clients, whether it should be provided in the Bill that the licensee should keep its clients informed of PMSA's decision immediately after it came to notice of such decision. If the two-month period in Clause 10(1)(a) for application for renewal of licences was to be extended, whether the 21 days' requisite notice would be adjusted accordingly so that the clients of the PMC concerned would have sufficient time to engage another licensed PMC.</p>	<p><b>Admin to respond in writing (Para. 4 of Annex B refers)</b></p>

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
014411 - 015326	Chairman Mr Paul TSE Admin Ms Cyd HO	<p>Mr Paul TSE's and Ms Cyd HO's views that more flexibility should be allowed for PMSA to process premature/late applications for the issue or renewal of licences.</p> <p>Regarding PMP licences, Ms Cyd HO was concerned whether a PMP could renew the licence after its expiry date or was required to make a fresh application. In her view, for individual practitioners who had taken rest breaks and submitted applications for PMP licence after a prolonged period of time, PMSA should consider their applications as "licence renewal" instead of "fresh applications" if they continued to meet all the prescribed criteria for holding the licence.</p>	
015327 - 015559	Chairman	Date of next meeting and the Chairman's closing remarks.	

Council Business Division 2  
Legislative Council Secretariat  
9 March 2015

**Bills Committee on  
Property Management Services Bill**

**List of follow-up actions arising from the discussion  
at the meeting on 9 February 2015**

1. Members noted that at present, property owners and owners' corporations ("OC") might file their cases of building management disputes to the Lands Tribunal for adjudication. Concern was raised that although property owners could file their case to the Lands Tribunal if they held the view that the election of OC was in contravention of the Building Management Ordinance (Cap. 344), the certificate of registration of OC might be issued before their case could be heard by the Lands Tribunal. The Administration was requested to provide detailed information or statistics about (a) the adjudication processes involved for a building management dispute case heard and ruled by the Lands Tribunal; (b) the average waiting time for such cases heard by the Lands Tribunal; and (c) the average legal costs borne by the relevant property owners in building management disputes which had been adjudicated through the Lands Tribunal.

2. In respect of Clause 10(1)(a) which provided that an application for the renewal of a licence must be made to the Property Management Services Authority ("PMSA") within two months before the expiry of the licence, there was a suggestion that to facilitate licensees in maintaining business viability and stability, consideration should be given to extending the two-month period for application for renewal of licences to say, six months. The Administration was requested to consider the suggestion and provide a written response.

3. An query was raised on why the word "must", instead of "may", was used in Clause 10(2) about the application for the renewal of licences. There was a view that the word "must" would be too restrictive for PMSA to exercise its discretion in the renewal of a property management company ("PMC") or property management practitioner license. The Administration was requested to consider this view and provide a written response.

4. The Administration was also requested to provide clarification in writing on the following situations concerning the applicability of Clause 10 raised by the Legal Adviser to the Bills Committee -

- (a) in the event that a licence expired before an application for renewal was decided by PMSA, whether it should be provided in the Bill that any licence which would expire prior to PMSA's determination of an application for renewal should, unless such application was

withdrawn, or the licence was revoked or suspended, remain in force until PMSA's determination of the application;

- (b) whether Clause (10)(1) and (2), as presently drafted, would give PMSA the discretion to accept applications which were made after the expiry of the relevant licence for renewal of licences; and
- (c) Clause 10(7) provided that if PMSA decided not to renew a licence, it must, by notice in writing given to the applicant within 21 days beginning on the date on which the decision was made, notify the applicant of the decision and give reasons for the decision. Given the significant impact of non-renewal of a licence on a PMC and its existing clients, whether it should be provided in the Bill that the licensee should keep its clients informed of PMSA's decision immediately after it came to notice of such decision. If the two-month period in Clause 10(1)(a) for application for renewal of licences was to be extended, whether the 21 days' requisite notice would be adjusted accordingly so that the clients of the PMC concerned would have sufficient time to engage another licensed PMC.

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