

立法會
Legislative Council

LC Paper No. CB(2)1985/14-15
(These minutes have been seen
by the Administration)

Ref : CB2/BC/7/13

Bills Committee on Property Management Services Bill

Minutes of the 12th meeting
held on Monday, 8 June 2015, at 4:30 pm
in Conference Room 3 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 Starry LEE Wai-king, JP
Hon CHAN Kin-por, BBS, JP
Hon CHEUNG Kwok-che
Hon IP Kwok-him, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon Steven HO Chun-yin
Hon Frankie YICK Chi-ming
Hon LEUNG Che-cheung, BBS, MH, JP
Hon KWOK Wai-keung

Members absent : Hon James TO Kun-sun
Hon Cyd HO Sau-lan, JP
Hon Claudia MO
Hon Alice MAK Mei-kuen, JP
Hon Christopher CHUNG Shu-kun, BBS, MH, JP

Public Officers attending : Item I

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

Mr Indiana WONG Man-chung
Senior Administrative Officer (4)
Home Affairs Department

Miss Cindy CHEUK Chi-wing
Government Counsel
Department of Justice

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

Staff in attendance : Ms Vanessa CHENG
Assistant Legal Adviser 5

Miss Josephine SO
Senior Council Secretary (2) 6

Miss Emma CHEUNG
Legislative Assistant (2) 2

Action

I. Meeting with the Administration

(LC Paper Nos. CB(2)1612/14-15(01) & (02), CB(2)1646/14-15(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 received the Administration's briefing on -

- (a) its response to issues raised by members at the Bills Committee meeting held on 4 May 2015 (LC Paper Nos. CB(2)1612/14-15(01) & (02)); and
- (b) its response to the issues of concern raised in the submission dated 11 May 2015 from The Federation of Hong Kong Property Management Industry Limited (LC Paper Nos. CB(2)1646/14-15(01) & (02)).

Action

3. The Bills Committee noted that taking into account members' views expressed at the meeting on 21 April 2015, the Administration would consider moving Committee Stage amendments ("CSAs") to the Property Management Services Bill ("the Bill") -

- (a) to give the effect that a person who provided information and gave evidence to the Appeal tribunal had the same privileges and immunities as the person would have if the investigation were civil proceedings in the Court of First Instance;
- (b) to avoid redundancy in Clauses 31(4)(b) and 31(4)(c), both of which related to the offence of perjury;
- (c) to improve the readability of Clause 36(1)(d) to facilitate clearer understanding of the provision; and
- (d) in relation to Clause 36(3), to consider specifying clearly in the Bill that any party to the appeal might request the hearing, or any part of the hearing, to be held in private, and it was for the chairperson of the tribunal to decide whether such request should be acceded to after consulting the parties concerned. As Clause 24(4) of the Bill had similar provisions governing the hearing before the Property Management Services Authority ("PMSA"), the Administration would consider making corresponding amendments to that part of the Bill.

4. The Bills Committee continued clause-by-clause examination of the Bill (LC Paper No. CB(3)583/13-14), and completed examination of Clauses 47 and 48 of Part 7 as well as sections 1 to 22 of Schedule 3 to the Bill.

5. In response to the Legal Adviser to the Bills Committee's observations/enquiries, the Administration advised that it would consider moving the following CSAs to Schedule 3 to the Bill -

- (a) in respect of the proposed section 9(2), it would consider moving CSAs with reference to section 10(5)(c) of the Communications Authority Ordinance (Cap. 616) ("CAO") to ensure that the confidentiality of PMSA's meetings would not be compromised as a result of individual members participating by electronic means as mentioned in section 9(2);

Action

- (b) in relation to the proposed section 13(1)(c), it would consider moving CSAs with reference to section 12(3) of CAO to provide that a written resolution assented to under section 13(1)(c) would become void if a meeting was subsequently requested within the 14-day period under section 13(4);
- (c) in relation to the proposed section 20(2), the Administration agreed that it was necessary for the annual report to contain an outline of all disciplinary hearings conducted under Clause 23. The Administration would consider moving CSAs to section 20(2); and
- (d) in relation to the proposed section 22(3), the Administration advised that the Director of Audit's report was intended to be laid on the table of the Legislative Council ("LegCo") and the President of LegCo would cause the report to be tabled. The Administration would consider moving CSAs to section 22(3) with reference to other ordinances to make this clear.

Follow-up actions required of the Administration

Admin

- 6. The Administration was requested to provide written responses to issues raised by members as set out in **Annex B**.

II. Any other business

Date of next meeting

- 7. The Chairman reminded members that the next meeting of the Bills Committee would be held on Monday, 29 June 2015, at 10:45 am to continue clause-by-clause examination of the Bill.

- 8. There being no other business, the meeting ended at 6:25 pm.

**Proceedings of the 12th meeting of the
Bills Committee on Property Management Services Bill
on Monday, 8 June 2015, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action Required
000742 - 000829	Chairman	The Chairman's opening remarks	
<i>Matters arising from the last meeting on 4 May 2015</i>			
000830 - 001759	Chairman Admin Deputy Chairman	<p>Briefing by the Administration on its response to issues raised by members at the Bills Committee meeting on 4 May 2015 (LC Paper Nos. CB(2)1612/14-15(01) & 02)).</p> <p>The Bills Committee noted that taking into account members' views expressed at the meeting on 21 April 2015, the Administration would consider moving Committee Stage amendments ("CSAs") to the Property Management Services Bill ("the Bill")</p> <p>-</p> <p>(a) to give the effect that a person who gave evidence to the Appeal tribunal or an investigator appointed under Clause 20 had the same privileges and immunities as the person would have if the investigation were civil proceedings in the Court of First Instance;</p> <p>(b) to avoid redundancy in Clauses 31(4)(b) and 31(4)(c), both of which related to the offence of perjury;</p> <p>(c) to improve the readability of Clause 36(1)(d) to facilitate clearer understanding of the provision; and</p> <p>(d) in relation to Clause 36(3), to consider specifying clearly in the Bill that any party to the appeal might request the hearing, or any part of the hearing, to be held in private, and it was for the chairperson of the tribunal to decide whether such request should be acceded to after consulting the parties concerned. As Clause 24(4) of the Bill had similar provisions governing the hearing before the Property Management Services Authority ("PMSA"), the Administration would consider making corresponding amendments to that part of the Bill.</p>	

Time marker	Speaker	Subject(s)	Action Required
<i>Administration's response to issues raised in the submission from The Federation of Hong Kong Property Management Industry Limited</i>			
001800 - 002256	Chairman Admin	Briefing by the Administration on its response to the issues of concern raised in the submission dated 11 May 2015 from The Federation of Hong Kong Property Management Industry Limited (LC Paper Nos. CB(2)1646/14-15(01) & (02)).	
002257 - 004008	Chairman Deputy Chairman Admin	<p>The Deputy Chairman's expression of concern about the survival of small and medium-sized property management companies ("PMCs") after the implementation of the licensing regime. His worries that small and medium-sized PMCs might be driven out of the market due to the lack of the requisite number of licensed property management practitioners ("PMPs") as employees, thus resulting in the monopoly of the market by large PMCs. The Administration was requested to provide information on -</p> <p>(a) the criteria adopted to divide PMCs into three categories, namely large-, medium- and small-sized PMCs; and</p> <p>(b) the estimated number and proportion of these three categories of PMCs which could fully meet the licensing criteria and register with PMSA after the enactment of the Bill.</p> <p>Regarding the proposed transitional arrangements for experienced PMPs who did not satisfy the licensing requirements on academic qualifications to migrate to the new licensing regime, the Deputy Chairman's enquired and the Administration responded on how it would work in practice. The Administration reiterated that a three-year transitional period would be provided after the enactment of the principal ordinance and subsidiary legislation. Unlicensed PMCs and PMPs would not be allowed to practise in the industry after the end of the transitional period. The proposed transitional arrangements allowed those experienced PMPs who had not fully met the licensing requirements to obtain a provisional licence. They would be granted formal licences after completion of certain requirements, e.g. taking courses on continuing professional development in order to attain the required professional standard. PMSA would liaise closely with the industry organizations and local tertiary institutes to ensure that sufficient training would be provided to PMPs to meet the</p>	Admin to provide the requested information (Para. 1 of Annex B refers)

Time marker	Speaker	Subject(s)	Action Required
		<p>licensing requirements.</p> <p>In response to the Deputy Chairman's further enquiries, the Administration advised that it would, as it had undertaken at earlier meetings, submit the subsidiary legislation relating to the Bill in batches and make available the draft subsidiary legislation to the relevant Panel of the Legislative Council ("LegCo") for information as early as practicable. As regards the codes of conduct and administrative guidelines, the Administration would make the draft framework available to the Bills Committee for information when they were ready. The Administration further advised that since there were strong calls for the early implementation of the proposed licensing regime, it proposed to adopt the negative vetting procedure for the subsidiary legislation to be made under the Bill.</p>	
<i>Clause-by-clause examination of the Bill</i>			
004009 - 004359	Chairman Admin Mr IP Kwok-him	<p>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).</p> <p><u>Part 7 - Property Management Services Authority</u></p> <p><i>Clause 47 - Delegation by Authority</i></p> <p>Mr IP Kwok-him's enquiry and the Administration's response on the number of committee (whether or not as a standing committee) that PMSA might establish and the composition of such committees.</p>	
004400 - 004505	Chairman Admin	<i>Clause 48 - Directions by Chief Executive</i>	
004506 - 004537	Chairman Admin	<p><u>Schedule 3 to the Bill</u></p> <p><i>Section 1- Interpretation</i></p>	
004538 - 005427	Chairman Admin Mr IP kwok-him	<p><i>Section 2 - Appointment of members of Authority</i></p> <p>The Chairman's relay of some trade deputations' view that there should be more members from those who were engaged in property management services ("Category I persons") on PMSA. The Administration advised that PMSA would consist of members representing the three categories of individuals as set out in the proposed section 2(2) of Schedule 3 to the Bill, in order to strike a balance between protecting the interests of the industry and</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>those of property owners and the general public. While "Category III persons" (i.e. individuals who appeared to the Chief Executive ("CE") to be suitable for appointment as members) would take up at least half of the ordinary members of PMSA, half of the other ordinary members were "Category I persons" and another half of those members were "Category II persons" (i.e. individuals who because of their experience in property management, general administration or consumer affairs, appeared to CE to have knowledge of property management services).</p> <p>In response to Mr IP kwok-him's enquiry, the Administration explained how the phrase "if, at any time, the number of ordinary members is odd, that number is to be taken as having been increased by 1" in the proposed section 2(4) of Schedule 3 would work in the appointment of members of PMSA. As section 2(3)(a) of Schedule 3 required half of the ordinary members to be Category III persons, section 2(4) aimed to facilitate calculation of the number of members when the total number of ordinary members was odd. Responding to Mr IP's further question, the Administration advised that the proposed section 11(2) of Schedule 3 stipulated that the member presiding at a meeting of PMSA had a deliberative vote and also a casting vote if the number of votes for and against a motion was equal.</p>	
005428 - 005819	Chairman Mr Paul TSE Admin	Noting that Clause 48 of the Bill provided that CE might give PMSA written directions for performing any of its functions if CE was satisfied that it was in the public interest to do so, Mr Paul TSE enquired about the purpose of Clause 48 and sought information on whether the said provision was modelled on similar provisions governing other regulatory bodies and, if yes, whether there were cases (including illustrative examples) where regulatory bodies were directed to perform any specific function by CE.	Admin to provide the requested information (Para. 2 of Annex B refers)
005820 - 012002	Chairman Admin Mr IP kwok-him Mr WONG Kwok-hing Mr Alan LEONG	<p><i>Section 3 - Terms of appointment</i></p> <p>Mr IP kwok-him's enquiry about the sources of funds of PMSA and whether the Government would provide funding to PMSA if PMSA recorded a deficit. The Administration advised that PMSA would be a self-financing statutory body supported by income generated from licence fees and a very</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>small amount of fixed levy to be imposed on each conveyance on sale.</p> <p>In response to Mr WONG Kwok-hing's enquiry, the Administration advised that it was stipulated in the proposed section 3(1) of Schedule 3 to the Bill that each member of PMSA was to be appointed for a period not exceeding 3 years, which was specified in the member's letter of appointment, but was eligible for reappointment. In appointing members of PMSA, the Administration would follow the Government's general guidelines for appointment of members to advisory and statutory bodies ("ASBs"), including the six-board rule as well as the six-year rule. According to the two rules, a person should not serve on more than six ASBs at the same time and the maximum total period of a person's service on the same ASB must not exceed six years. Members of ASBs might receive remuneration or allowances as determined by individual ASBs.</p> <p>In response to Mr Alan LEONG's enquiry, the Administration advised that there was no specific provision in the Bill on the criteria for the appointment of the Chairperson and the Vice-chairperson of PMSA.</p> <p>In response to Mr Alan LEONG's further question, the Administration advised that PMSA would be established as a body corporate. Petition could be made to court for PMSA to be wound up.</p> <p>Mr IP kwok-him's concern over the appropriateness of using the term "remuneration" in the proposed section 3 of Schedule 3 to the Bill. He and the Chairman requested the Administration to -</p> <p>(a) review the appropriateness of retaining the term "remuneration" with reference to the terms of appointment of members of PMSA; and</p> <p>(b) advise on whether the term "remuneration" in section 3(2) and (3) of Schedule 3 was commonly used in other ordinances involving appointment of members of regulatory bodies that were established by or appointed under statutes in Hong Kong.</p> <p>The Administration's advice that the remuneration and/or allowances to be paid to a member of PMSA</p>	<p>Admin to revert to the Bills Committee (Para. 3 of Annex B refers)</p>

Time marker	Speaker	Subject(s)	Action Required
		was more like a nominal honorarium for their service to PMSA.	
012003 - 012109	Chairman Admin	<i>Section 4 - Resignation of members of Authority</i> <i>Section 5 - Removal from office</i>	
012110 - 012553	Chairman Admin Mr IP Kwok-him	<i>Section 6 - Acting Chairperson</i> <i>Section 7 - Power to employ staff etc.</i> In respect of the proposed section 6 of Schedule 3 which stated that "if, for any period, the Chairperson is temporarily absent from Hong Kong or, for any other reason, temporarily unable to perform the functions of the office of Chairperson, the Vice-chairperson is to act in the place of the Chairperson during that period", Mr IP Kwok-him queried the need to categorically arrange an acting appointment if and when the Chairperson was temporarily absent from Hong Kong. His view that with the increasing popularity of Internet and rapid technology advancement, the Chairperson might still be able to perform the roles and functions of the office of Chairperson while he/she was out of town. The Administration was requested to review the proposed section 6 of Schedule 3.	Admin to consider members' views and revert to the Bills Committee (Para. 4 of Annex B refers)
012554 - 013001	Chairman Admin Mr IP Kwok-him ALA5	<i>Section 8 - General procedure for meetings</i> <i>Section 9 - Quorum for meetings</i> Noting that members of PMSA might participate in PMSA's meeting by telephone, video conferencing or other electronic means pursuant to the proposed section 9(2) of Schedule 3, the Administration was requested to review the appropriateness of section 6 in the light of section 9(2) of Schedule 3. In response to the observation of the Legal Adviser to the Bills Committee on the proposed section 9(2) of Schedule 3, the Administration advised that it would consider moving CSAs to the Bill with reference to section 10(5)(c) of the Communications Authority Ordinance (Cap. 616) ("CAO") to ensure that the confidentiality of PMSA's meetings would not be compromised as a result of individual members participating by electronic means as mentioned in section 9(2).	Admin to consider members' views and revert to the Bills Committee (Para. 4 of Annex B refers)

Time marker	Speaker	Subject(s)	Action Required
013002 - 013143	Chairman Admin	<i>Section 10 - Presiding member at meetings</i> <i>Section 11 - Voting at meetings</i> <i>Section 12 - Minutes</i>	
013144 - 013800	Chairman Admin Mr IP Kwok-him ALA5	<i>Section 13 - Written resolutions</i> Mr IP kwok-him's enquiry and the Administration's response on the use of written resolutions for decision-making, and the mechanism/procedure for requesting a resolution proposed to be made under section 13(1) of Schedule 3 be referred to a meeting of PMSA for consideration. In response to the observation of the Legal Adviser to the Bills Committee, the Administration advised that it would consider moving CSAs to the Bill with reference to section 12(3) of CAO to provide that a written resolution assented to under the proposed section 13(1)(c) would become void if a meeting was subsequently requested within the 14-day period under section 13(4).	
013801 - 013902	Chairman Admin	<i>Section 14 - Decisions not invalidated by defects in appointment etc.</i> <i>Section 15 - Financial year</i>	
013903 - 014107	Chairman Admin Mr IP Kwok-him	<i>Section 16 - Funds</i> In response to Mr IP Kwok-him's enquiry, the Administration advised that upon the approval of the Financial Secretary, PMSA might invest its funds that were not immediately required by it in such forms of investment, other than those stipulated under the proposed section 16(2)(a).	
014108 - 014259	Chairman Admin	<i>Section 17 - Authority is exempt from taxation</i> <i>Section 18 - Accounts</i> <i>Section 19 - Authority to appoint auditor</i>	
014300 - 015024	Chairman Admin ALA5 Mr Alan LEONG	<i>Section 20 - Annual report</i> In response to the view of the Legal Adviser to the Bills Committee, the Administration advised that it agreed that it was necessary for the annual report to contain an outline of all disciplinary hearings conducted under Clause 23. The Administration	

Time marker	Speaker	Subject(s)	Action Required
		<p>would consider moving CSAs to section 20(2) of Schedule 3.</p> <p>Mr Alan LEONG's and the Chairman's views that for cases heard by PMSA, the disciplinary committee or the appeal tribunal and the decisions taken by/deliberations of PMSA, the disciplinary committee or the appeal tribunal might have high reference value to PMCs, PMPs, property owners and owners' organizations. Mr LEONG's suggestion that PMSA should keep a database of the judgments and make available the information therein contained for public access.</p>	Admin to consider this suggestion and revert to the Bills Committee (Para. 5 of Annex B refers)
015025 - 015128	Chairman Admin	<i>Section 21 - Annual report and audited accounts to be laid on table of Legislative Council</i>	
015129 - 015331	Chairman Admin ALA5	<p><i>Section 22 - Director of Audit's examination</i></p> <p>In response to the Legal Adviser to the Bills Committee's enquiry, the Administration advised that the Director of Audit's report was intended to be laid on the table of LegCo. The President of LegCo would cause the report to be tabled. The Administration would consider moving CSAs to section 22(3) with reference to other ordinances.</p>	
015332 - 015511	Chairman Mr IP Kwok-him	Date of next meeting.	

**Bills Committee on
Property Management Services Bill**

**List of follow-up actions arising from the discussion
at the meeting on 8 June 2015**

1. The Administration was requested to provide information on (a) the criteria adopted to divide property management companies ("PMCs") into three categories, namely large-, medium- and small-sized PMCs; and (b) the estimated number and proportion of these three categories of PMCs which could fully meet the licensing criteria and register with the Property Management Services Authority ("PMSA") after the enactment of the Property Management Services Bill ("the Bill").
2. Clause 48 of the Bill provided that the Chief Executive ("CE") might give PMSA written directions for performing any of its functions if CE was satisfied that it was in the public interest to do so. Members enquired about the purpose of Clause 48 and sought information on whether the above provision was modelled on similar provisions governing other regulatory bodies and, if yes, whether there were cases (including illustrative examples) where regulatory bodies were directed to perform any specific function by CE.
3. Regarding the proposed section 3 of Schedule 3 to the Bill, members requested the Administration (a) to review the appropriateness of retaining the term "remuneration" with reference to the terms of appointment of members of PMSA and (b) to advise on whether the term "remuneration" in section 3(2) and (3) of Schedule 3 was commonly used in other ordinances involving appointment of members of regulatory bodies that were established by or appointed under statutes in Hong Kong.
4. In respect of the proposed section 6 of Schedule 3, some members queried the need to categorically arrange an acting appointment if and when the Chairperson was temporarily absent from Hong Kong. These members were of the view that with the increasing popularity of Internet and rapid technology advancement, the Chairperson might still be able to perform the roles and functions of the office of Chairperson while he/she was out of town. Noting that members of PMSA might participate in PMSA's meeting by telephone, video conferencing or other electronic means pursuant to the proposed section 9(2) of Schedule 3, the Administration was requested to review the appropriateness of section 6 in the light of section 9(2) of Schedule 3.

5. There was a suggestion that PMSA should keep a database of the judgments of cases heard by PMSA, the disciplinary committee or the appeal tribunal and make available the information therein contained for public access. The Administration was requested to consider this suggestion and revert to the Bills Committee.

Council Business Division 2
Legislative Council Secretariat
3 August 2015