

民政事務總署
香港灣仔軒尼詩道一百三十號
修頓中心二十九、三十及三十一樓



Home Affairs Department

29th, 30th and 31st Floors,
Southern Centre,
130 Hennessy Road,
Wan Chai, Hong Kong.

本署檔號 Our Ref. HAD HQ CR/20/3/5(C)
來函檔號 Your Ref. LS/B/19/13-14
電話 Tel.: 2835 2228
傳真 Fax.: 2575 1009

6 June 2014

Mr Bonny LOO
Assistant Legal Adviser 3
Legislative Council Secretariat
Legal Service Division
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

By Fax (2877 5025)

Dear Mr Loo,

Property Management Services Bill

Thank you for your letter of 21 May 2014. Our reply to your questions is set out at Annex 1 and Annex 2.

Yours sincerely,

(Linda LEUNG)
for Director of Home Affairs

c.c.	DoJ (Attn:	Mr Michael LAM	(By Fax: 2869 1302)
		Miss Grace LAM	(By Fax: 3543 0390)
		Miss Cindy CHEUK	(By Fax: 2869 1302))

Response to ALA's Observations on the Provisions of the Bill

Interpretation (Clause 2)

1. and 2. The purpose of defining “property” as “building” under the Building Management Ordinance (Cap. 344) (BMO) is to delineate the scope of application of the Property Management Services Bill (the Bill). Our policy intent is to subject only those multi-storey buildings involving shared ownership of common parts and with Deed of Mutual Covenants (DMC) in effect to the licensing regime.

According to the BMO, “building” means –

- (a) any building which contains any number of *flats* comprising 2 or more levels, including basements or underground parking areas;
- (b) any land upon which that building is erected; and
- (c) any other land (if any) which –
 - (i) is in common ownership with that building or land; or
 - (ii) in relation to the appointment of a management committee under section 3, 3A, 4 or 40C of the BMO or any application in respect thereof, is owned or held by any person for the common use, enjoyment and benefit (whether exclusively or otherwise) of the owners and occupiers of the flats in that building;

“Flat” is further defined under the BMO to mean any premises in a building which are referred to in a DMC whether described therein as a flat or by any other name and whether used as a

dwelling, shop, factory, office or for any other purpose, of which the owner, as between himself and owners or occupiers of other parts of the same building, is entitled to the exclusive possession.

The current BMO may apply to house developments. Certain house developments, for example, Chun Fai Garden and The Vineyard, have already had owners' corporations formed under the BMO.

In view of the aforesaid, multi-storey developments with DMC in effect are covered by the definition of "property" in the Bill. Property management companies (PMCs) managing a house development and/or property development consisting of multi-storey buildings and houses that fall within the definition of "property" will be subject to the licensing regime under the Bill.

3. The definition of PMC may cover non-profit and charitable organisations. We do not intend to exclude non-profit or charitable organisations from the scope of the licensing regime.
4. The definition of "property management practitioner" (PMP) in the Bill consists of two major elements -
 - (a) assumes a managerial or supervisory role in a PMC; and
 - (b) in relation to property management services provided by the PMC.

An individual who manages or supervises other staff in the provision of "property management services" fulfills both criteria (a) and (b) and therefore would be subject to licensing. Whether an individual is subject to the licensing requirement is not judged by his post title (e.g. "Chief or Senior Security Officers"), but depends on whether his job fulfills both criteria (a) and (b) and falls within the definition of PMP.

On the other hand, a senior accountant responsible for the preparation of balance sheet of the PMC or a senior human resources manager responsible for recruitment of staff of the PMC who has no direct involvement in the provision of "property management services" to a property does not fulfil criterion (b) and therefore would not be subject to licensing.

Property management services (Clause 3 and Schedule 1)

- 5.(a) Property management requires multi-disciplinary professional knowledge. Modelling on the Specification of Competency Standards for Property Management Industry of the Hong Kong Qualifications Framework, Schedule 1 of the Bill lists out seven categories of property management services, which are intended to be mutually exclusive.
- 5.(b) “Law in Practice” is one of the functional areas for property management under Specification of Competency Standards of Hong Kong Qualifications Framework. Property management sometimes involves legal services relating to the management of a property, for example, drafting of contracts.

Prohibition against unlicensed activities (Part 2)

- 6.(a)&(b) We agree that clause 6(2)(c) and (3)(c) should also apply to situations where a person describes himself as a “registered professional property manager” or a “licensed property management officer” in a language other than Chinese or English. We will consider elaborating clause 6(2)(c) and (3)(c) by adding a prohibition to use a title in any language that so closely resembles “registered professional property manager” or “licensed property management officer” so as to be capable of deceiving or misleading any person into believing that the person is licensed PMP (Tier 1) or licensed PMP (Tier 2).
- 7. The Hong Kong Housing Authority (HKHA), established under section 3 of the Housing Ordinance (Cap. 283) and through its executive arm Housing Department (HD), manages public

housing estates, most of which are under sole ownership and do not fall within the definition of “building” under the BMO. The employment of HD officers is governed by Civil Service Regulations. The academic/professional and experience requirements for different ranks of staff are on par with the licensing requirements. Moreover, HKHA has well-established internal guidelines to monitor the quality of its property management. In view of the unique ownership structure of estates managed by HKHA and the well-established internal guidelines of HKHA, we consider that it is appropriate to exempt HKHA and its employees from the licensing regime.

The Hong Kong Housing Society (HKHS) manages property built under different housing schemes including Sandwich Class Housing, Full Market Value Developments, Urban Renewal Projects and rental housing units, etc. Some of the developments managed by HKHS are of shared ownership. Given the different ownership structure of developments managed by HKHA and HKHS, we consider that it is justifiable to have different arrangements for the two organisations.

In formulating the exemption arrangement for the licensing regime, we have consulted HKHS and understand that it intends to obtain licence under the licensing regime.

- 8.(a) The effect of the exemption in clause 7(2) is that clause 6(2)(a) and (3)(a) does not apply to a PMP of a PMC that falls within the description of clause 7(2).
- 8.(b) Clause 3(1) of the Bill provides that the Property Management Services Authority (the Authority) may, by regulation, prescribe a service falling within a category of services set out in Schedule 1 as a property management service. Clause 7(2) provides that companies providing only stand-alone services need not obtain licences.

In addition to the examples quoted in paragraph 5 of the

Legislative Council (LegCo) Brief, the Authority may, for example, prescribe gardening work as a property management service under the category of “management of the environment of a property”. The Authority may also prescribe lift and escalator maintenance as a property management service under the category of “repair, maintenance and improvement of a property”. Companies providing such stand-alone services need not obtain licences.

9. Owner’s organisations or individual owners who engage licensed PMCs or licensed PMPs to provide property management services to their own properties would not be required to obtain a licence.

Disciplinary offences and codes of conduct (clauses 4 and 5)

- 10.(a) Non-compliance with a summons requiring the giving of evidence or the provision of information or document under clause 24(1)(b)(ii) or (iii) should constitute a disciplinary offence. We will consider expanding the scope of clause 4(d).
- 10.(b) Non-compliance with a notice given under clause 21(2)(a), (b), (c) or (d) should constitute a disciplinary offence. We will consider expanding the scope of clause 4(d).
- 11.&12. We agree that the Authority should have the power to issue codes of conduct to specify matters relevant to the criteria for determining what criminal offences would bring the profession into disrepute. We will consider making necessary amendments to the Bill.
13. Given the importance of the codes of conduct, we agree that the Authority should be required to publish it in the gazette. The Authority can also publish the codes of conduct through other additional means, for example, posting onto its website. We will consider making necessary amendments to the Bill.

Application for renewal of licences (clause 10)

14. We agree that it is necessary to provide for situations where a licence expires before an application for renewal is determined by the Authority. We will consider making necessary amendments to the Bill.

Registers (clause 13)

15. We have consulted the Advisory Committee on the Regulation of the Property Management Industry (ACPMI) on the information to be publicised by the Authority on its website. While it was agreed that the conviction record of licensees in relation to disciplinary offences or criminal offences under the Bill should be released to the public, the ACPMI considered that it would affect the livelihood of the licensees concerned if the information is publicised on the website. Taking into account the views of the ACPMI, the Bill excludes particulars of a licensee's conviction record from the online registers, and the public would be able to inspect the same particulars at the offices of the Authority.

Duties of licensees (Part 4)

16. We are considering the issue and will revert as soon as practicable.

Investigation and disciplinary matters (Part 5)

17. We agree that the Authority may refuse to investigate a complaint if the complaint is trivial, frivolous, vexatious or not made in good faith. We will consider making necessary amendments to the Bill.
18. Clause 19(3) provides that the guidelines may be published in any manner the Authority considers appropriate. We consider that amendment is not necessary.

- 19.(a) We agree that clause 21 should also require electronically stored information to be reduced into a written form on paper. We will consider making necessary amendments to the Bill.
- 19.(b) We agree that references to “documents” or “document” in the Bill (including clauses 21, 24 and 26, and section 22 of Schedule 3) should expressly include electronic documents or information recorded by electronic means. We will consider making necessary amendments to the Bill.
- 19.(c) We agree that clause 21(6)(a)(ii) should include a reference to a director or officer of a company. We will consider making the necessary amendments to the Bill.
- 20.(a) We need further time to seek legal advice and to consider the issue and will revert as soon as practicable.
- 20.(b) The Authority can publish the public reprimand through the issue of press release, holding of press conference, posting onto its website, etc. We do not consider it necessary to explicitly set out the means in the legislation.
21. We will consider making necessary amendments to the Bill to specify that an order made under clause 25(1) or (2) takes effect according to clause 25(4) even if an application is made under clause 25(6) to revoke, vary or suspend the order.
- 22.(a) A person giving evidence before the Authority or the disciplinary committee should be entitled to the privilege against self-incrimination. We will consider making necessary amendments to the Bill.
- 22.(b) We are considering the issue and will revert as soon as practicable.

Appeal (Part 6)

23. The Secretary for Home Affairs (SHA) will appoint individuals

with suitable knowledge and experience from different sectors to the appeal panel. A member of the Authority is not eligible for appointment to the appeal panel. For the hearing of each appeal, the chairperson of the appeal panel will appoint from the panel an appeal tribunal consisting of one individual as chairperson of the tribunal and two individuals as the other members of the tribunal. The above measures seek to ensure the independence and impartiality of the appeal panel. We do not intend to specify the detailed requirements on the qualification and experience of appeal panel members in the Bill.

24. A party, witness, counsel, solicitors and other person appearing before an appeal tribunal under Part 6 should be protected by the same privileges and immunities as that person would have if the appeal were civil proceedings in the court of First Instance. We will consider making necessary amendments to the Bill.

The Authority (Part 7 and Schedule 3)

25. The Authority's powers to issue codes of conduct and guidelines regarding complaints are intended to be delegable. We have consulted the LegCo Panel on Home Affairs on, amongst others, the organisation structure of the Authority at its meeting on 4 July 2012 (LC Paper No. CB(2)2372/11-12(01)). The Authority may delegate its power to issue codes of conduct to the Professional Development Committee, and its power to issue guidelines regarding complaints to the Disciplinary Committee.
26. In drafting clause 48(1), we have made reference to other legislation with similar provisions. On the application, in case there is reasonable suspicion that a PMC has acted unethically which may bring the property management industry into disrepute or even pose risk to public safety, the Chief Executive (CE) could give directions to the Authority to take necessary actions.

On section 5 of Schedule 3, for example, if a member of the Authority is convicted in Hong Kong or elsewhere of a criminal offence and is sentenced to imprisonment, he may not be able to continue to contribute to the work of the Authority due to the conviction. Under such circumstance the CE may consider invoking his power to remove the member concerned so that the Authority could effectively perform its functions.

The above examples are by no means exhaustive. The CE will, having regard to actual circumstances, consider whether and when to exercise his power.

- 27.(a) We will consider making necessary amendments to the Bill with reference to section 10(5)(c) of the Communications Authority Ordinance (Cap. 616) (CAO).
- 27.(b) We will consider making necessary amendments to the Bill with reference to section 11(3) of the CAO.
- 27.(c) The date on which the relevant notice is "given" should be determined as the date when the notice is sent. It is our policy intent that the notice is regarded as being "given" whether or not the member receives the same.

As the Members will be allowed sufficient time (14 days) to raise their request for referring the proposed resolution to a meeting for consideration, we do not consider it necessary to provide for different methods for determining that date depending on how the notice is given (e.g. by post, fax or other electronic transmission).

- 27.(d) We will consider making necessary amendments to the Bill with reference to section 12(3) of the CAO.
- 27.(e) For the purposes of section 16(1)(a), "penalties" is intended to include a fine imposed as a disciplinary order under clause 25(1)(b) as well as a "penalty" imposed for a failure to

pay the levy under clause 55(1)(a). For simplicity, we will consider changing “fine” in clause 25(1)(b) and the heading of Schedule 2 to “penalty”.

- 27.(f) We consider that it is not necessary to provide for explicit non-exemption to the Authority’s employees, etc.
- 27.(g) We agree that it is necessary for the annual report to contain an outline of all disciplinary hearings conducted under clause 23. We will consider making necessary amendments to the Bill.
- 27.(h) To retain flexibility, we consider that it is not necessary to specify a time frame in which SHA must table the Authority’s annual report and audited accounts before LegCo.
- 27.(i) The Director of Audit’s report is intended to be laid on the table of LegCo. The President of LegCo will cause the report to be tabled. We will consider making necessary amendments to the Bill with reference to section 20(3) of the Hong Kong Institute of Education Ordinance (Cap. 444).
- 27.(j) We consider that it is not necessary to make section 23(9) of Schedule 3 subject to clause 46(9).

Defence for licensed PMP as employee (clause 61)

- 28.-30. Please be informed that we are seeking legal advice for our consideration of the issue raised and we will revert to you as soon as practicable.

Response to ALA's Observations on the Chinese Text of the Bill

Long title

1. “Property management services” refers to the services being provided. Therefore, “物業管理服務” is adopted as the Chinese equivalent in the Bill.

For the bilingual name of the Property Management Services Authority (the Authority) (i.e. “物業管理業監管局”), we have consulted the Advisory Committee on the Regulation of the Property Management Industry (ACPMI). As the Authority regulates the property management industry (i.e. “物業管理業”), the ACPMI considers that the existing formulation could better reflect the nature of the Authority

Interpretation (Clause 2)

2. We will consider removing “otherwise” in the definition of “company”.

Licensing of PMCs and PMPs (Part 3)

3. We will consider adding “協議” after “債務重整” in clause 11(2)(a)(ii), (b)(iii) and (c)(iv), and (4)(a)(ii) and (b)(iii) for the sake of consistency.
4. We will consider changing “及” to “或” in clause 13(7).

Duties of licensees (Part 4)

5. Clause 16(3)(d) provides for the conflict of “interests” between the PMC and its clients. Thus, “利益衝突” is used as the Chinese equivalent. On the other hand, the “interest” in clause 45(1) is used in the context of a register recording the interest disclosed, as in section 29 in Schedule 5 to the Competition Ordinance (Cap. 619), where “利害關係登記冊” is used as the Chinese equivalent to “Register of interests”.

Disciplinary matters (Part 5)

6. The expression “相干事宜” is defined in the Chinese text of clause 21(2)(a) to make the subsequent paragraphs more readable. The structure of the corresponding English text is different, which does not require a similar definition.
7. According to the Concise Oxford Dictionary (10th ed.), “readily” can mean, among other things, “easily available or obtained; within reach” or “immediate, quick or prompt”. Depending on the meaning of a word in a particular statutory context, the Chinese equivalents to a word may be different in different legislation. In clause 21(5)(a) of this Bill, the intention is to follow the meaning in section 41(6)(a) of the Competition Ordinance (Cap. 619), the wording of which is similar to the present clause.
8. We will consider adding “的任何其他人” after “合夥人” in clause 21(6)(a)(ii).
9. The expression “要求對象” is used to enhance readability. This approach has also been used in the provisions of the Companies Ordinance (Cap. 622) requiring a person to provide information or explanation (see sections 865(1), 872(1) and 876(1)).

Property Management Services Authority (Part 7)

10. Clause 41(b) and (c) are about the functions of the Authority in relation to the “profession of property management services”. Thus, “物業管理業” is used to refer to this profession or industry.

Miscellaneous (Part 9)

11. According to 《現代漢語詞典》, “職分” means “職務上應盡的部分”. Clause 61(d) refers to a situation where the PMP is not able to make or influence a decision regarding an act or omission by virtue of his/her job duties. We therefore consider “職分” to be an appropriate equivalent to the English text. For further information, “職分” is also the equivalent to “in a position to” in section 118(3B) of the Copyright Ordinance (Cap. 528).

Schedule 3

12. We will consider amending “審計” in section 19(1) of Schedule 3 to “審核”.
13. We will consider amending section 23(1) in Schedule 3 to “紀律事宜”.

Schedule 4

14. We will consider deleting the first reference to “申請” section 4(1)(a) in Schedule 4.