

Property Management Services Bill ("PMS Bill")
Submission to Bills Committee

A. Issues associated with company structure and/or "secondment" arrangement among companies

Company A is the manager named in the DMC of Development I. Company X is the de facto property manager providing management service to Development I. Company X is a wholly owned subsidiary of Company A. The property management staff working in Company X are employees of Company A and are seconded from Company A to work for Company X in Development I. A staff employed by Company A may be seconded to several developments and provide property management services for several companies to several developments. This financially works to the advantage of the developments concerned.

1. Is Company A being the company named as the manager of Development I in the DMC but is not the entity actually providing the property management services to Development I required to obtain a PMC licence?
2. Is Company X being the company actually providing the property management services but not the manager named in the DMC required to obtain a PMC licence?
3. Will the answer to 1. and 2. above be different if Company X is not a wholly owned subsidiary of Company A or is not a subsidiary of Company A i.e. Company X is an external property management agency unrelated to Company A?
4. Is Company A (the DMC manager) liable for the acts and deeds of Company X (the de facto manager) under the PMS Bill? In case Company A has to be responsible for offences committed by Company X under the PMS Bill, please explain the reasons why. Otherwise, the PMS Bill should make this clear.

5. Staff of Company X are employees of Company A but seconded to work in Company X (and other companies) for a portion of the staff's total working hours? Will Company X be able to fulfill its requirements for the PMC licence with such secondment arrangement?
6. It should be noted that if no secondment arrangement is allowed, Company A will not be able to second staff employed by Company A to work for Company X and other companies for various developments, but will be forced to terminate the employment of existing staff of Company A and employ them as new staff under each de facto management company. This will seriously adversely affect the staff's employment and retirement benefits.
7. If secondments are allowed, then what would be the standard for proving that the MPC has got the sufficient no. of staff having the required qualifications? How are the no. counted?
8. Will there be any limitation on the number of secondments involved e.g. if Company A holds 2 PMCs and each PMC in turn holds several management companies each managing a few developments, staff employed by Company A will be seconded to the 2 PMCs first, then further seconded to the management companies. Will each of the management companies, the 2 PMCs and Company A be able to fulfill the requirements to obtain each of their PMC licences?

B. Issues relating to the property management of Commercial Accommodations

1. If a Commercial Accommodation ("CA"), being part of a development, is owned solely by Company A and Company A as owner is carrying out the CA's property management and other services, it is understood that no PMC licence is required to be obtained by Company A under the PMS Bill as Company A is only managing its own asset. It is also understood that staff of Company A involved in the property management of the CA are also

not required to obtain PMP licences. Please confirm if this understanding is correct.

2. If the CA is in the registered ownership of Company A, but there are other entities having interests in the CA (e.g. other entities may be entitled to share the income from the CA), would the answer to 1. above be different?
3. If the CA is solely owned by Company A but Company A engages Company B to carry out the property management services of the CA, does Company B need to have a PMC licence? What about Company A in this case?
4. Will the answer to 3. above be different if the CA is not solely owned by Company A but by Company A and Company B jointly on the land registry's record as joint owners?

C. Issues relating to the grant or revocation of PMC and PMP licences

1. Company X is a multi-business corporation operating various businesses both in Hong Kong and outside of Hong Kong. Company X is the manager named in the DMC of Development I.
 - a) If Company X is required to obtain a PMC licence, will the revocation of Company X's PMC licence affect Company X's remaining businesses? It would not be acceptable if revocation of Company X's PMC licence will affect Company X's business in property development and sale of units and its other businesses.
 - b) The Company X manages 10 nos. of developments as DMC managers. If Company X commits an offence in one development and Company X's PMC licence is suspended, can Company X continue to provide property management services to the remaining 9 nos. of developments?

- c) Would the answer to b) above be different - if Company X (the manager named in 10 DMCs) has appointed 10 nos. of property management companies to provide property management services to the 10 developments and one of the 10 property management companies (a de facto manager of one development) commits certain offences and its PMC licence is suspended (in above Question A4 asking whether Company X is liable for one of property management company's offences), can Company X continue to be the DMC manager of the other 9 developments to maintain the contractual relationship with other property management companies to provide property management services to the remaining 9 nos. of developments?
2. In case the answers to b) and c) above are "no", what would be the consequences? What if there is no Owners Corporation yet for all the 10 developments? Who can employ another manager immediately? It will be chaotic and unfair to the developments (particularly for the 9 developments not involved in the offence) if they were forced not to continue with Company X as its manager but to immediately engage another management company which may be more costly than Company X. It should be noted that in some old DMCs, the manager was appointed for the rest of the lease term and hence contractually the owners cannot terminate the appointment of the manager. What should happen in these cases?
3. What should happen if the PMP licence of a staff is revoked? Does its employer, being a PMC, have the right to terminate his/her employment? Is this allowed under the Bill?
4. Is a PMC obliged to give any internal information or documents to the PMS Authority for potential offence investigation concerning personal licence of PMP under PMC if a notice under section 21 (2) is received by the PMP Licensee only but not the PMC?
5. Is the PMC obliged to provide support (e.g. legal advice and representative) to a PMP Licensee working for the PMC for disciplinary hearing and/ or investigation for potential offence against personal PMP Licence only if the

PMC reasonably believes that the PMP Licensee commits the offence due to his/ her wilful negligence /misconduct.

6. How to count supporting services – does it mean that staff in Finance and Legal Department supporting the operation of the PMC are also required to obtain PMP licences? The definition of “property management services” needs to be more clearly defined and the intention as to what are the people who need to have a PMP licence needs to be set clear. As the “Property management practitioner (PMP) is proposed to be managerial or supervisory role in PMC in relating to property management services, is the PMC entitled to determine who are the people performing a managerial or supervisory role in the PMC? If not, how are the roles determined and by whom?

D. How to read the PMS Bill read with other Ordinances?

1. Company A is the manager of the development named in its DMC (which is an old DMC). The DMC allows Company A to engage another entity to carry out the de facto management. Company A wishes to appoint its subsidiary, Company X, or an external management company to carry out the de facto property management services. Is Company A required to conduct a tendering exercise to choose the de facto manager, rather than appointing Company X or an external management company on its own accord? Do the Owners of the development have the right to force Company A to conduct a tender on the argument that such a situation is governed by s20A of the Building Management Ordinance?
2. If holder of a PMP licence becomes mentally not sound or is proved to be suffering from mental disorder and his/her PMP licence is revoked, can their employer, Company X, be entitled to terminate their employment? Will Company X be liable for discrimination under the Discrimination Ordinance? How should Company X deal with such staff who have lost their licences?

E. Issues relating to disclosure of information by PMC

1. Clause 16 of the Bill requires disclosure of "the information relates to the property management services provided by a licensed PMC to the PMC's Client". If the PMC, Company A, is a multi-business international corporation, operating various businesses both in Hong Kong and outside of Hong Kong, is the Company A required to provide budget and accounts of the whole company to its clients or only the information relating to Company A's "property management department" and also in relation to only the development concerned, but not other developments under the management of Company A? Please clarify.
2. Similar to 1. above, if a PMC is engaged in different lines of businesses, with property management services being one of them, is the PMC obliged to make all its financial records (such as loans, banking agreements, company's entire payroll records) to its clients if such records are not earmarked for any one particular line of business?
3. If Company X manages more than 1 development, is Company X obliged to disclose only the accounts of Development I to the owners of Development I under the PMS Bill, or all the accounts of Company X itself which relate to all the developments it manages?
4. Some PMC expenses are property management related but fully absorbed by the PMC directly e.g. (a) legal cost in defending the PMC and a PMP staff in any PMSA hearing from a complaint relating to Development I; or (b) costs incurred in bidding for a new property management contract for Development II. Will the PMC still be required to make all such financial information available to the PMC's clients? The PMS Bill should make the obligations clear.
5. Is the duty for PMC to make its own financial records, financial statements, draft budgets, budget, revised budget, books, record and accounts available something as of right to every PMC client? Who qualifies as the PMC's client - each owner of a development? It should be noted that there are other document inspection mechanisms currently existing under other legislations:-

- (i) Section 740 of Companies Ordinance (Cap 622), which requires court approval after considering application from
 - (a) the number of members that represents at least 2.5% of the voting rights of all the members having a right to vote at the company's general meetings at the date of application; or
 - (b) at least 5 members of the company.
- (ii) Schedule 6 (1A) of Building Management Ordinance, which requires a request of not less than 5% of the owners.

The workload of the PMC to allow access to its accounts and information by many people should be considered. Also, the potential conflicts between the manager and each owner and the Owners Committee and the Owners Corporation with their different views on the affairs of the PMC in relation to their own development should also be carefully considered.

- 6. Who bears the costs for producing the PMC's financial and operational documents to the PMC's clients? Section 740(4) of Companies Ordinance (Cap 622) requires the applicant to pay the expenses reasonably incurred by the company in the inspection. Will the PMS Bill do the same?

MTR Corporation Limited
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