

14 July 2014

Ms Camy YOONG
Clerk to Bills Committee on Property Management Services Bill
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Sirs,

Concerns and Views from the Professionals
on Property Management Services Bill

In view of the recent commencement of the 2nd Reading and Debate on the Property Management Services Bill (“the Bill”) on 7.5.2014, seven property management [PM] related professional bodies had jointly organized a Forum on 7.6.2014 for respective members to voice out their concerns on the Bill. The seven professional bodies include Chartered Institute of Housing Asian Pacific Branch [CIHAPB], The Hong Kong Association of Property Management Companies [HKAPMC], The Hong Kong Institute of Facility Management [HKIFM], The Hong Kong Institute of Housing [HKIH], The Hong Kong Institute of Surveyors [HKIS], Housing Managers Registration Board [HMRB] and Royal Institution of Chartered Surveyors [RICS]. These form the major stakeholders in the property management profession.

We understand that the Bill covers mainly the broad framework for future legislation, however, we believe our members' valuable and practical feedback below can assist in formulating more comprehensively both the major framework and the subsequent subsidiary legislation before commencement of the 3rd Reading and official enactment of the Bill which is expected to be completed within this year.

The comments and feedbacks from our respective members are summarized as below:

Part 1 of the Bill (Preliminary)

- (1) The Code of Conduct shall be clearly defined and focused on professional PM practice instead of operational issues. It shall not, in any circumstance, contravene the Common Law. Reference can be taken from the existing PM professional bodies to tailor-make a rational and practical Code of Conduct so that the future Property Management Services Authority [the Authority] can follow.
- (2) There should be different standards of the Code of Conduct for Tier 1 and Tier 2 property management practitioners [PMP], and naturally, Tier 1 shall be at a more stringent level.

Part 2 of the Bill (Prohibition)

- (1) Clause 7(3) and 7(4) - There is a need to clarify if the exemption applies to property management companies [PMCs] which are formed by a single owner for management of its own properties. In addition, there should be exemption for the PMPs being employed in this type of PMCs to hold PMP licence.

Part 3 of the Bill (Licensing of PMCs and PMPs)

- (1) Clauses 13(2)(f) and 15(2)(a) - There should be a clear guideline on setting the ratio of Tier 1 and Tier 2 PMPs to be recruited for qualifying the PMC licence corresponding to the magnitude of portfolio which the PMC undertakes to manage by reference to number of residential units or areas of commercial/industrial premises/other facilities.
- (2) Clause 13(2)(g) - It is very common in the PM industry that the portfolios of a PMC change from time to time, voluntarily or involuntarily. As such, we would suggest the submission of updates to the PMC register by PMCs shall be made

upon next renewal of PMC licence or within a reasonable period so that it will not become an offence if such changes are not updated instantly.

- (3) In the most serious case of PMC being notified of non-renewal, revocation or suspension of the PMC licence by the Authority, the management contracts of all the portfolios under that PMC will be void and the management services will have to be ceased. This would create a damaging impact to the concerned building(s) or owners, not to mention the risk of claims faced by that PMC itself. So we would suggest a sufficient period of notice be served so that the affected building owners can have sufficient time to enter into new management contract with other PMCs.
- (4) Furthermore, if that PMC is a Deed of Mutual Covenant [DMC] Manager for some buildings, greater impact to the buildings/owners than those mentioned in item (3) above would occur as there may still be lots of latent problems in the new development for the DMC manager to follow up. Owners will suffer greatly if no Owners' Committee or Owners' Corporation has been formed yet. So we would suggest even longer period of notice be served on the PMC i.e. DMC Manager as well as the affected building owners who need to follow the Building Management Ordinance (Cap. 344) for engaging new PMC for the building(s) before departure of the DMC Manager.
- (5) Clauses 13(3)(d) and 13(4)(d) – A Tier 1 PMP may be the director of a few PMCs which are subsidiaries of a single developer. So, there is a need to determine the number of PMC licences under which a Tier 1 PMP licensee can be registered as a director.
- (6) Clause 15(2)(a) - If the PMC licence is affected due to change of director or absence of related directorate grade, there should be a grace period for the replacement of a director, so that PMC licence will not be revoked or suspended immediately.
- (7) Clause 15(2)(b)(i) - Requirements of academic qualification, professional qualification and relevant work experience should be set for Tier 1 and Tier 2 PMPs.

Part 4 of the Bill (Duties of licensed PMCs and licensed PMPs)

- (1) Clause 16(3) - The financial documents shall only refer to those related to the specific building management accounts of the respective client concerned.
- (2) Clause 17(1) - If PMP licensee is temporarily unemployed or taking a career

break for various reasons, the PMP licence shall still be valid until its expiry.

Part 5 of the Bill (Disciplinary matters)

- (1) Clause 18(1) and (2) - There has been a great concern on the initial screening process of the complaints. We would like to emphasize that the complaint system shall not be abused. The screening process should be conducted in a proper and fair manner.
- (2) Clause 19 - There should be clear guidelines and procedures for handling the complaint. Reference can be made to the existing effective mechanism adopted by the PM professional bodies and other licensed bodies to ease the conflict/confrontation between the complainant and the concerned PMC or PMP.
- (3) Clause 20 – There are numerous industry practices and situational difficulties involving people, buildings and environments, even laws and regulations. Therefore, investigators shall be those experienced PM practitioners who possess professional PM knowledge and thus can give fair and rational views on the complaint.
- (4) PMP licence should be granted again after fulfilment of the summary conviction or imprisonment in an offence stipulated in the Bill.

Part 6 of the Bill (Appeal)

- (1) Clauses 32 and 34 - The Appeal panel (with 1 chairperson and 11 members) and Appeal tribunal (with 1 chairperson and 2 members from the Appeal panel) should have majority members from PM industry, so that a fair judgment can be reached. This is commonly adopted by the disciplinary panel/tribunal of some professions like certified public accountants (40% are industry related members), doctors (86%), barristers (58%) etc.
- (2) Clause 32(2) – Since the Appeal panel (including the Appeal tribunal) will be independent from the Authority or any of its standing committee formed for hearing disciplinary matters and the decision of the Appeal Tribunal is final as stipulated in the Bill, members of the Appeal panel or the Authority shall not revoke the decision made by the Appeal Tribunal.

Part 7 of the Bill (Authority) and Schedule 3

Schedule 3 Part 2 (2) & (3) - For members of the Authority, Category I persons should form the majority in the other half of the ordinary members total as against Category II persons.

Part 9 of the Bill (Miscellaneous)

Clause 61(c) and 61(d) – Most owners, members of owners' committee or owners' corporation are layman but they possess the absolute power vested in the administration, management and control of their properties. As such, it is reasonable for them to bear the responsibility of any outcome caused by their decisions. Therefore, it is suggested to add an additional defence for PMC and PMP when acting or making the omission in accordance with the instructions given by the owners' committee or owners' corporation which may force or give undue influence to the PMC or PMP to follow their instructions despite professional advice(s) to the contrary has already been given.

Schedule 4 of the Bill (Transitional Provisions)

- (1) The provisional personal licence should serve the same function as the normal Tier 1 or Tier 2 PMP licence.
- (2) Clause 1(5) - The 3 years requirement should be extended if there is genuine justification provided.
- (3) Please understand that the professional academic trainings with degree level for PMPs had not in place until 1990's. There are quite a number of well-experienced PMPs who are also senior executives of PMCs providing valuable contributions to the PM industry, but who may not be able to meet the criteria of any PMP licence. We would then suggest to grand-father these reputable PMPs with an one-off permanent Tier 1 PMP licence.
- (4) A better planning should be exercised to ensure that there will be no great reduction of manpower in the market after enactment of the Bill. The extension of provisional licences and establishment of a practical Comprehensive Professional Development [CPD] system for renewal of PMP licence therefore is necessary. Reference of CPD system can be taken from the PM professional bodies.
- (5) Special care and transitional arrangement should be given to small and medium

scale PMCs so as to let them maintain their survival in the market.

Other suggestions:

- (1) In the Legislative Council [LegCo] Home Affairs Panel Paper on Regulation of the Property Management Industry discussed on 13.12.2013, Clause 13 (Transitional Arrangement) mentioned that the Authority “will also liaise with the industry organizations and tertiary institutes to ensure sufficient training will be provided to PMPs to meet the licensing requirements”. It is therefore recommended that the government should provide more subsidies to the academic institutions for provision of more PM related courses. At the same time, direct subsidies for the PMPs or potential PMPs is highly recommended to encourage them in elevating their academic qualification in managing buildings or communities with safety and quality.
- (2) To reduce the misunderstandings and conflicts between owners and the PMCs or PMPs, the government should spend more effort in community trainings and education on proper PM practices with guidelines for residents associations including owners’ committee, owners’ corporation etc.
- (3) To smoothen the implementation and enforcement of the subject Property Management Services legislation, it is strongly requested that a detailed and thorough consultation from major stakeholders of the property management industry be made when its subsidiary legislation and the relevant Code of Practice are drafted.

We sincerely hope that our members’ concerns and views stated above will be seriously considered in the finalization of the Bill and/or drafting of the subsidiary legislation as this will definitely minimize subsequent ambiguities. We fully support the implementation of the licensing regime as we share the same vision with the general public that professional PM is vital to protect property value and safety, however, the practicality and feasibility of the Bill is crucial to the realization of this vision.

Should you require more information from us, please feel free to contact Ms. Margaret Yuen, General Manager of HKIH Secretariat on 2544 3111 or by email info@housing.org.hk.

Thank you for your kind attention and we look forward to your support to our profession.

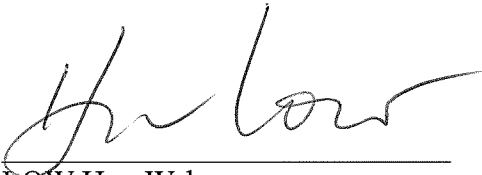
Yours sincerely



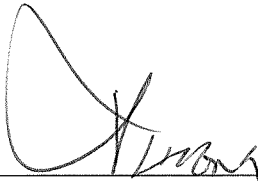
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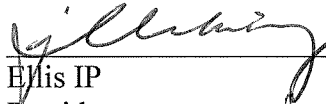
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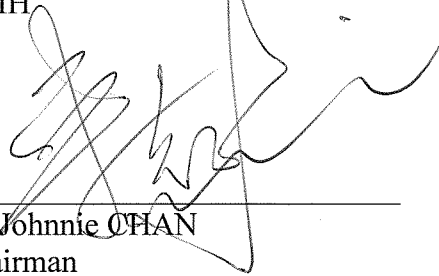
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