



13 April 2015

The Hon Tony TSE Wai-chuen, BBS
Chairman, Bills Committee on Property Management Services Bill
The Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Mr. Tse,

**Concerns and Disappointment about
HAD's proposals on the Property Management Services Bill**

We are writing on behalf of seven property management related professional institutes and association, including 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 Property and Facility Management Division (HKIS PFMD), Housing Managers Registration Board (HMRB) and Royal Institution of Chartered Surveyors (RICS) Hong Kong. Together we represent over 25,000 members, who are Registered Architects (RAs), Registered Professional Engineers (RPEs), Registered Professional Housing Managers (RPHMs), Registered Professional Surveyors (RPSs), etc., recognized by the HKSAR Government and serving vast majority of Hong Kong citizens. We are registering our serious concerns about several issues of significant public interests arising from the recently proposed licensing requirements for Property Management Practitioners (PMPs) as outlined in the attached Home Affairs Department's ("HAD") document [LC Paper No. CB (2)556/14-15(02) dated January 2015] (Appendix I) provided to the Bills Committee regarding the Property Management Services Bill ("the Bill") on 12 January 2015.

Over the past four years, we have been in active discussions with the HAD, Legislative Council and key stakeholders on matters related to the Bill. We are deeply disappointed by the recently proposed licensing requirements for PMPs (Tier 1), which have completely nullified our engagement efforts and consensus built over a long period of time.

In line with the core objective of the Bill to ensure service quality and enhance professionalism in the property management industry, the two-tier licensing requirements proposed in the Bill are designed with a view to encouraging PMPs to pursue continuous professional development, so as to obtain the relevant qualifications and upgrade to the upper tier, while continuing to allow PMPs with a more junior level of qualifications to have access to the job market. With strong commitment to achieving this core objective, a firm agreement has long been reached among all professional bodies concerned that BOTH academic AND professional qualifications are equally important and essential requirements for attaining the Tier 1 qualifications. .

However, the recent proposal put forward by the HAD that Tier 1 PMPs are only required to possess EITHER academic qualifications OR professional qualifications, plus relevant local work experience [see Clause 7 LC Paper No. CB (2)556/14-15(02) dated January 2015], completely deviates from the original intention to set the PMP licensing criteria in terms of “academic qualifications, professional qualifications, years of working experience and the suitability of the person in holding PMP license”, as mentioned in the government’s document provided to the Legislative Council [see Clause 9 Legislative Council Brief HAD HQ CR/20/3/5(C) dated 23 April 2014] (Appendix II). In short, a high standard comprising three clear criteria has been watered down to requiring just two, of which candidates are only required to satisfy either academic or professional requirements. **We are strongly against such lowering of high standards as originally envisaged and agreed upon.**

It is clear that the proposal by the HAD goes against the originally agreed objective: “a minimum qualification requirement for PMCs and PMPs will raise professional standards, increase public awareness of the importance of engaging a qualified PMC, and promote the concept of maintaining building safety and value through continuous effective building management.” [see Clause 3 Legislative Council Brief HAD HQ CR/20/3/5(C) dated 23 April 2014]. If endorsed, it is likely that this proposal will discourage PMPs from seeking higher qualifications for professional development and undermine the overall quality and standard of PMPs and Property Management Companies (PMCs), and as a direct result the quality of service to be enjoyed by the general public. It is ironical, to say the least, that at a time when the profession is working closely with local universities on organizing professionally qualified degree courses for students and enhancing professional support and guidance, the government seems to be undermining such efforts by sending all the wrong signals to those who are considering to join the industry: that academic and professional training is optional, not strictly required.

HAD’s deviations from the original agreement with the professional community will not only cause detrimental impact to the profession of the PMPs, but will also affect the well-being of the general public. If practitioners are no longer required to meet strict qualifications acquired through professional supervision and training, the quality of service received by owners or occupants can no longer be guaranteed or further enhanced, potentially bringing far-reaching impact to the safety and value of properties under their management. It is clear that the new proposal flies in the face of the key objective of the licensing initiative: to enhance professional standards, among other things, so as to safeguard public interests.

To enable a smooth transition upon the enactment of the legislation, and to assure a fair, open and considerate arrangement for the serving PMPs in the industry, we have recommended to the Government to accept our proposal of a “grandfathering arrangement”. We recognize that many experienced and reputable PMPs may not have qualifications that satisfy the requirements of the proposed PMP license, but all along they have been providing valuable contributions to the property management industry. An one-off “grandfathering” arrangement could minimize the disruption to the industry and service to the community, as the licensing process will not result in an immediate reduction of manpower in the industry and adverse impact to the livelihood of the existing PMPs. In parallel, we strongly suggest that future Licensed PMPs (Tier 1) must be academically and professionally qualified and have attained certain local practical experiences in the property management industry.

While we fully support the implementation of the licensing regime, we strongly object HAD's latest proposal, which appears to us as unreasonable, unjustified and unfounded, given the overarching objectives of the Bill. The proposal seriously damages the long-held consensus reached during the consultation on the Bill between the professional institutes and association we represent and the Government. We do not believe watering down the standard by requiring either academic or professional qualification for Tier 1 licensees will be beneficial to the industry or society. The three requirements are complementary and indispensable for assuring quality services to the public; thus they must all be fulfilled jointly, not selectively, by Tier 1 licensees.

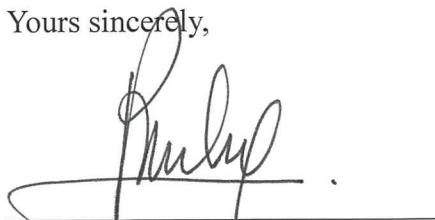
We sincerely hope that our concerns and views stated above will be considered by the Bills Committee, not only for the sake of supporting the profession, but also safeguarding, ultimately, the interest of the general public. We hope that Members of the Bills Committee could relay our concerns to the government and raise related questions during the Bills Committee meetings, so that the salient issues we highlighted in this submission could be thoroughly debated.

If the government is unwilling to engage in a constructive dialogue with the Bills Committee and the professions over the issues mentioned above, we shall have no alternative but to mobilize our members, our customers, other stakeholders and members of the public in stepping up protest actions to express our disapproval and opposition towards the HAD's proposal.


If you require more information from us on our grievances or the issues discussed above, please feel free to contact Ms. Margaret Yuen, General Manager of the HKIHK Secretariat on 2544 3111 or by email at info@housing.org.hk.

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

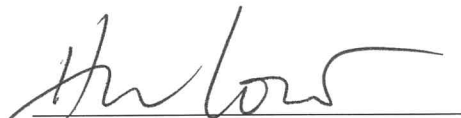
Yours sincerely,



Paul NG
Chairman
CIHAPB




Ivan TAM
President
HKAPMC



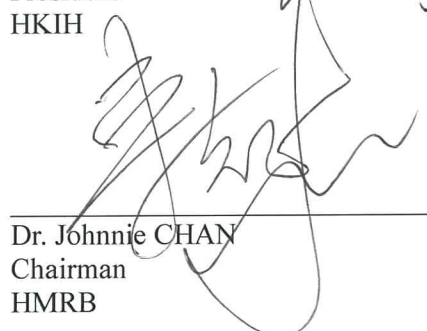
LOW Hon Wah
President
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Elly's IP
President
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Dr. Edmond CHENG
Chairman
HKIS PFMD



Dr. Johnnie CHAN
Chairman
HMRB



Andrew LEE
Chairman
RICS Hong Kong

- cc. All members of the Bills Committee
Chief Secretary for Administration – Mrs Carrie Lam Cheng Yuet-ngor, GBS, JP
Secretary for Home Affairs – Mr Tsang Tak-sing, GBS JP
Permanent Secretary for Home Affairs- Mrs Betty Fung, JP
Director of Home Affairs – Mrs Pamela M.W. Tan, JP
Deputy Director of Home Affairs – Mr Jack Chan, JP
Chairman of Advisory Committee on Regulation of the Property
Management Industry – Mr Chung Pui-lam, GBS, OBE, JP

LC Paper No. CB(2)556/14-15(02)

**The Administration's response to the matters raised
at the meeting of the Bills Committee
on the Property Management Services Bill
held on 25 November 2014**

Purpose

This paper provides the supplementary information requested by Members at the meeting of the Bills Committee on 25 November 2014.

Information on Buildings with Different Forms of Owners' Organisations

2. Neither owners' corporations (OCs) nor property owners are obliged to inform the Authority of the form of management of their buildings under the Building Management Ordinance (Cap. 344) (BMO). Therefore, the Home Affairs Department (HAD) does not have respective numbers of different forms of owners' organisations undertaking self-management of the buildings. Based on the information available to us, either collected by HAD frontline staff in their regular contacts with the owners or provided by the owners voluntarily, we estimate that the percentage of buildings with different forms of owners' organisations without engaging property management company (PMC) is as follow –

<u>Breakdown of buildings by type of owners' organisation</u>	<u>Percentage</u>
Buildings with OCs	78%
Buildings with Mutual Aid Committees	19%
Buildings with owners' committees or other forms of owners organisations (e.g. cooperative society, federation of owners limited company)	3%

3. We wish to reiterate that "self-management" does not necessarily mean poor or even below average management. The majority of the above-mentioned "self-managed" buildings/estates are properly managed. Owners and residents are generally satisfied with the current forms of management.

Self-management by OC

4. There are established mechanisms for owners to terminate the appointment of both deed of mutual covenant managers and contract managers. In our earlier response to the Bills Committee, we have also undertaken that HAD frontline liaison officers will remain vigilant, through their regular contacts with the OCs, of any potential cases where OCs are planning to opt for “self-management”. If such case is identified, they will immediately render necessary advice to the OCs and owners concerned.

5. In view of the importance and significant implications to the management of the building if an OC decides to switch from engaging a PMC to “self-management”, we will propose to amend the BMO to require such decision be supported by the passage of a resolution at a general meeting of the OC. To cope with the changing needs and circumstances of building management, we are now conducting a public consultation exercise on the review of the BMO. We will make recommendations on the way forward having regard to the views received including the aforementioned proposed amendment in the next legislative amendment exercise of the BMO.

6. However, we consider that it is not appropriate to take forward such requirement in the Bill. The purpose of the Bill is to provide for the licensing of business entities and individuals engaged in the business of providing property management services. It is not the legislative intent of the Bill to regulate the operation of OCs, the legal basis of which should be provided for in the BMO.

Licensing Requirements for Property Management Practitioners (PMPs)

7. The licensing requirements for PMP will be set in terms of academic qualifications, professional qualifications, years of working experience and the suitability of the person in holding PMP licence (the “suitability requirement” is set out in clause 11 of the Bill, which includes, e.g. whether the individual is a mentally disordered person, whether there is past conviction record on relevant offences, etc.). On the requirements on academic qualifications, professional qualifications and years of working experience for licensed PMP (Tier 1) and licensed PMP (Tier 2), our preliminary thoughts are set out in the table below –

	<u>Licensed PMP (Tier 1)</u>	<u>Licensed PMP (Tier 2)</u>
Academic and/or Professional Qualifications	<ul style="list-style-type: none"> ● Degree or equivalent qualification in property management to be specified by the Property Management Services Authority (PMSA) (plus at least 3 years of local working experience in property management); or ● Other degrees or equivalent qualification or above (plus at least 5 years of local working experience in property management). 	<ul style="list-style-type: none"> ● Other degrees or equivalent qualification or above (applicable to those not fully satisfying the Tier 1 requirement); or ● Diploma, sub-degree or equivalent qualification in property management to be specified by the PMSA.
Relevant Working Experience	<ul style="list-style-type: none"> ● See requirements set out above. 	<ul style="list-style-type: none"> ● At least 2 years local working experience in property management; or ● At least 1 year local working experience in property management under the supervision of a Tier 1 PMP.
Other Requirements	<ul style="list-style-type: none"> ● Members of property management related professional bodies to be specified by the PMSA; or ● Subject to assessment (e.g. interview) by the PMSA if considered necessary. 	<ul style="list-style-type: none"> ● Nil

Who Will Be Required to Obtain the PMP Licence

8. Our preliminary thought is in applying for a PMC licence, the PMC should submit its organisation chart to the PMSA. The PMSA will then specify in the licence as licence conditions which post holders should

hold PMP (Tier 1) or PMP (Tier 2) licences having regard to the optimal ratio of the number of licensed PMP (Tier 1) and licensed PMP (Tier 2) to the management portfolio of the PMC (e.g. number of flats or area to be managed). Employees filling posts requiring a licence should have the respective tier of licences, and the total number of such employees should correspond to the management portfolio of the PMC so as to ensure that there is sufficient managerial/supervisory staff to oversee the management of buildings. In case there is any change to the management portfolio, organisation structure or the post holder as a licensing condition, the PMC should inform the PMSA of such changes within specified timeframe. On summary, whether a person would need to obtain the PMP licence would depend on the post he holds as specified by the PMC in the organisation chart to be submitted to the PMSA.

What Company Will Be Required to Obtain the PMC Licence

9. 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 to the Bill lists out seven categories of property management services –

- (a) General management services relating to a property;
- (b) Management of the environment of a property;
- (c) Repair, maintenance and improvement of a property;
- (d) Finance and asset management relating to a property;
- (e) Facility management relating to a property;
- (f) Human resources management relating to personnel involved in the management of a property; and
- (g) Legal services relating to the management of a property.

10. Our preliminary thought is that except for “Management of the environment of a property”, which will be divided into four sub-categories, others will serve as stand-alone category. PMCs providing more than one category or sub-category of services will be required to obtain licences. Details of the expected services within each category are set out below –

(a) *General management services relating to a property*

11. This category is on the daily services for and liaison with owners, residents and tenants. Examples include handling and following up on

enquiries, complaints and suggestions, convening of regular meetings such as owners' committee meeting, management committee meeting, owners' general meeting and annual general meetings and/or periodical submission of work report.

(b) *Management of the environment of a property*

12. This category is on the cleanliness, hygienic conditions, landscape improvement and safety of the environment, and will be further divided into four sub-categories, namely –

- (i) Cleanliness of common types of buildings;
- (ii) Landscape design and maintenance;
- (iii) Environmental protection; and
- (iv) Security and fire safety.

(c) *Repair, maintenance and improvement of a property*

13. This category is on repair and maintenance of the building structure and its facilities including ventilation, plumbing and drainage, air-conditioning and electrical installations. It also involves the maintenance and continuous improvement of the functions of a building in order to enhance its value. Purchasing and outsourcing of repair and maintenance works of buildings are included.

(d) *Finance and asset management relating to a property*

14. This category is on financial management and budget preparation. Examples include collection of management fees, submission of income and expenditure statement and balance sheet and calculation of annual expenditure on regular items and service contracts.

(e) *Facility management relating to a property*

15. This category is on property management related facility management including the management of club house, shopping centre and other types of ancillary facility e.g. carparks and loading areas. For the management of club house, it includes the application of relevant licences and maintenance and replacement of recreational facility. For the management of shopping centre, it includes the use, management and development of such facilities or premises. For the management of

carparks and loading areas, it includes the access control system, illumination, air quality and direction signs etc.

(f) *Human resources management relating to personnel involved in the management of a property*

16. This category is on the plan on manpower needs, staff recruitment, training, performance assessment and work safety.

(g) *Legal services relating to the management of a property*

17. This category is on the understanding on the general scope of work of government departments and the judiciary system, arrangement of litigation and mediate, drafting of contracts and provide suggestions on the BMO.

18. On Members' concern whether professional bodies or Members' Offices would need to obtain the PMC licence to provide free advisory service or legal advice to owners' organisations, we will consider specifying in the Bill that only entities which provide property management services for monetary or other financial rewards would be required to obtain the PMC licence.

Difference Between “Providing Property Management Services” and “Acting As a PMC”

19. Clause 2 is on the interpretation, which provides that “PMC” means a business entity (whether a company, partnership or sole proprietorship) that carries on the business of providing property management services. Clause 6(1)(a) is on the prohibition of unlicensed activities, which provides that no person may, without a PMC licence, act as a PMC. Clause 7(2) provides the exception that, amongst others, clause 6(1)(a) does not apply to a PMC whose business does not involve the provision of property management services that fall within more than one category or one type of services.

20. By virtue of the above provisions, while a business entity may be a PMC under clause 2 by carrying on the business of providing property management services, given clauses 6(1)(a) and 7(2), if the entity, without a PMC licence, only provides one stand-alone category of services, it will not commit an offence.

Observations/Comments on Other Issues

(a) “Owners’ Organisations (業主組織)”

21. As stated in paragraph 2 above, other than OCs, Mutual Aid Committees and owners’ committees, there are other forms of owners organisations e.g. cooperative society, federation of owners limited company, etc. which currently do not engage PMCs. While we do not have the exhaustive list of the various kinds of owners’ organisations, we consider that it is desirable to retain flexibility in the definition of “owners’ organisation (業主組織)” in clause 2 of the Bill so that such types of owners’ organisations could continue to self-manage their properties after the implementation of the licensing regime.

(b) “Company (公司)”

22. We are of the view that the Chinese text of the definition of “公司” is accurate. A list of example of other legislations where “及” was used to link up a series of paragraphs introduced by “包括” is at the Annex for Members’ reference.

23. If there is any concern from the Members, we will consider moving “body corporate” in the chapeau of the English text of the definition to paragraphs (a) and (b) of the definition, and using “and” to link up paragraphs (a) and (b).

(c) “Clients (客戶)”

24. For clause 16 of the Bill, we are of the view that “clients (客戶)” should include the property owners who pay or who are liable to pay the management expenses. We will consider making necessary amendments to the Bill.

Home Affairs Department
January 2015

Annex

Use of “包括” and “及” in legislation

Examples in Principal Ordinances

s.2, Mandatory Provident Fund Schemes Ordinance (Cap. 485)

紀錄 (record) 指不論以任何方式編纂、記錄或貯存的任何資料紀錄，並包括—

- (a) 任何簿冊、紀錄冊或載有資料的其他文件；及
- (b) 任何能夠從中產生資料的紀錄碟、紀錄帶或其他物品；

record (紀錄) means any record of information, however compiled, recorded or stored, and includes-

- (a) any book, a register and any other document containing information; and
- (b) any disc, tape or other article from which information is capable of being produced;

S.2, West Kowloon Cultural District Authority (Cap. 601)

“相關設施”(related facilities) 指在批租地區內提供的任何設施(藝術文化設施除外)，該等設施被包含在核准發展圖則中劃為該等設施的任何土地內，並包括—

- (a) 任何零售、飲食或娛樂設施；
- (b) 為在該區內運載乘客及其個人財物而建造或改裝的機械系統(如有的話)；
- (c) 道路、公眾碼頭及其他運輸設施；
- (d) 公眾停車場；
- (e) 公眾休憩用地；及
- (f) 管理局認為屬必需或合宜的其他設施；

“related facilities” (相關設施) means any facilities other than arts and cultural facilities provided within the leased area that are comprised in any land set apart for such facilities in the approved development plan, including—

- (a) any retail, dining or entertainment facilities;

- (b) a mechanical system (if any) which is constructed or adapted for the carriage of passengers and their personal effects within such area;
- (c) roads, public piers and other transport facilities;
- (d) public car parks;
- (e) public open space; and
- (f) such other facilities as the Authority considers necessary or expedient;

s.2, Buildings Energy Efficiency Ordinance (Cap. 610)

住宅建築物 (residential building) 指純粹作住宅用途的建築物，並包括—

- (a) 學生宿舍及員工宿舍；及
- (b) 綜合用途建築物的作住宅用途的部分，但不包括旅館；

residential building (住宅建築物) means a building solely used for residential purposes and includes—

- (a) student hostels and staff quarters; and
- (b) a portion of a composite building that is for residential use, but does not include a hotel or a guesthouse;

Examples in Subsidiary Legislation

s.2, Harmful Substances in Food Regulations (Cap. 132AF)

煉奶 (condensed milk) 指經稠煉(稠煉方法是將其部分水分蒸發，不論有否加糖)的奶類，並包括—

- (a) 任何用脫脂奶或部分脫脂奶製造的該等經稠煉奶類；及
- (b) 淡奶；

condensed milk (煉奶) means milk which has been condensed by the evaporation of a portion of its water content, whether or not sugar has been added, and includes-

- (a) any such milk made from skimmed milk or partly skimmed milk; and
- (b) evaporated milk;

s.2, Securities and Futures (Disclosure of Interest-Securities Borrowing and Lending) Rules (Cap. 571X)

“股份”(shares) 指上市法團的有投票權股份，並包括—

- (a) 上述有投票權股份的權益；及
- (b) 相等股份；

"shares" (股份) means voting shares in a listed corporation and includes—

- (a) an interest in such voting shares; and
- (b) equivalent shares;

s.3(1), Companies (Disclosure of Information about Benefits of Directors) Regulation (Cap. 622G)

退休利益計劃 (retirement benefits scheme) 指提供退休利益的計劃，並包括—

- (a) 《稅務條例》(第112章)第2條所界定的認可職業退休計劃；
- (b) 該條所界定的強制性公積金計劃；及
- (c) 退休保險計劃；

retirement benefits scheme (退休利益計劃) means a scheme for the provision of retirement benefits, and includes—

- (a) a recognized occupational retirement scheme as defined by section 2 of the Inland Revenue Ordinance (Cap 112);
- (b) a mandatory provident fund scheme as defined by that section; and
- (c) a retirement insurance scheme;

File Ref.: HAD HQ CR/20/3/5(C)

LEGISLATIVE COUNCIL BRIEF

PROPERTY MANAGEMENT SERVICES BILL

INTRODUCTION

A At the meeting of the Executive Council on 15 April 2014, the Council ADVISED and the Chief Executive (CE) ORDERED that the Property Management Services Bill (the Bill), at Annex A, should be introduced into the Legislative Council.

JUSTIFICATIONS

2. Property management companies (PMCs) and property management practitioners (PMPs) play an important role in helping property owners to maintain proper management of their buildings. Property management requires multi-disciplinary professional input, such as general management services, management of property environment, building repair and maintenance, finance and asset management, facility management, human resources management and legal service. Unethical acts or malpractice of the PMCs or PMPs would adversely affect the safety and hygiene standards of the buildings.
3. We consider that a mandatory licensing regime which sets a minimum qualification requirement for PMCs and PMPs will raise professional standards, increase public awareness of the importance of engaging a qualified PMC, and promote the concept of maintaining building safety and value through continuous effective building management. Empowering a statutory authority to enforce the relevant legislation and issue a code of conduct and to take disciplinary actions against non-compliant PMCs and PMPs will meet such objectives. Relevant professional bodies are supportive of the introduction of a licensing regime for the industry as it will help raise the professional status of the industry.

KEY ELEMENTS OF THE BILL

4. The Bill has the following key elements.

(A) Licensing of PMCs

5. The Bill provides for a single-tier licensing regime of PMCs. Except for companies providing only stand-alone services, such as those providing only cleansing or security services, all PMCs providing property management services as defined in Schedule 1 to the Bill relating to a property will be required to obtain licences. The term “property” in the Bill will be defined as having the same meaning of “building” under the Building Management Ordinance (Cap. 344). Owners’ corporations or other forms of owners’ organizations managing their own properties will not be required to obtain PMC licences. Similarly, the provision of property management services by the owners of the properties themselves will not be subject to the licensing regime provided that they are individuals and do not provide any property management services to another property for profit. The Government and the Housing Authority will also not be subject to the licensing regime.

6. A PMC has to fulfil all the licensing criteria including the minimum number of directors and employees holding PMP licences, the suitability of the company in holding PMC licence (for example, whether the company is in liquidation or subject to a winding-up order, whether there is past conviction record on relevant offences, the suitability of the directors), etc. The detailed licensing criteria will be set out in the subsidiary legislation. To facilitate consumers in making informed choices on PMCs under a single-tier licensing regime, licensed PMCs will be required to provide certain essential information (for example, their management portfolio, the number of licensed PMPs employed by the company, etc.) to the Property Management Services Authority (PMSA) for uploading onto its website for public access.

7. All licensed PMCs will be required to comply with the requirements stipulated in the legislation and the code of conduct to be issued by the PMSA. As disputes between PMCs and owners are often related to financial management matters, specific requirements in relation to the preparation of budget, keeping of financial statements for clients, etc. will be specified in the subsidiary

legislation and the code of conduct. PMCs will have a statutory obligation to disclose specified information to their clients. They will have to comply with certain requirements towards the end of their appointment period (for example, handing over of documents from outgoing PMCs to incoming PMCs) in order to ensure smooth handover to the new PMC. Breach of the requirements in the legislation and the code of conduct may result in disciplinary actions to be taken by the PMSA such as revocation or suspension of licences and other sanctions such as reprimands, warnings, imposition of fine, etc.

(B) Licensing of PMPs

8. The Bill will provide for a two-tier licensing regime of PMPs. Only those PMPs who take up a supervisory or managerial role in the provision of property management services will be subject to licensing. Frontline staff will not be required to obtain PMP licences. This is in line with the purpose of the licensing system, which is to require those making decisions for the provision of services to ensure service quality. Since it is currently not mandatory for the practitioners to register before practising in the industry, we could only roughly estimate that there are around 10,000 PMPs based on the information provided by the professional bodies. The provision of property management services by a public officer acting in that capacity will not be subject to the PMP licensing regime.

9. The PMP licensing criteria will be set in terms of academic qualifications, professional qualifications, years of working experience and the suitability of the person in holding PMP licence (for example, whether the individual is a mentally disordered person, whether there is past conviction record on relevant offences, etc.). The qualification requirements for the first tier of PMPs, who may describe themselves as “registered professional property manager” (註冊專業物業經理), will be higher than that for the second tier of PMPs, who may describe themselves as “licensed property management officer” (持牌物業管理主任). Such a two-tier system would help encourage PMPs to pursue professional development and upgrade to the upper tier, while continuing to allow PMPs with a lower level of qualifications to have access to the job market.

10. All licensed PMPs will be required to comply with the requirements stipulated in the legislation and the code of conduct to be issued by the PMSA. Breach of the requirements may result in disciplinary actions to be taken by the PMSA such as revocation or suspension of licences, and other sanctions such as reprimands, warnings, imposition of fine, etc.

(C) PMSA

(a) Composition and Role

11. The PMSA will assume the dual functions of a licensing body and an industry promoter. The chairperson and members of the PMSA are to be appointed by the CE. The PMSA consists of the Chairperson, the Vice-chairperson and not more than 18 members from the following three categories of individuals –

- (i) individuals who are engaged in property management services;
- (ii) individuals who have experience in the relevant fields related to property management, general administration or consumer affairs;
- (iii) other individuals who appear to the CE to be suitable to be appointed as members.

12. The PMSA will maintain registers of PMCs and PMPs which are available for public inspection. It will be empowered to undertake self-initiated investigation as well as to conduct investigation upon receipt of complaints. An appeal panel will be established to deal with appeals lodged by persons who are aggrieved by the decisions of the PMSA. The PMSA will be required to furnish to the Secretary for Home Affairs (SHA) annually its statement of accounts, auditor's report and annual report. SHA shall cause the documents to be tabled at the Legislative Council (LegCo). The PMSA will be subject to regulation under the Prevention of Bribery Ordinance (Cap. 201) and The Ombudsman Ordinance (Cap. 397).

(b) Funding Arrangements

13. The PMSA will 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 conveyance on sale chargeable with stamp duty under head 1(1) in the First Schedule to the Stamp Duty Ordinance (Cap. 117). The transferee under a leviable instrument is liable to pay the levy payable for the instrument. The arrangement for the collection of levy will be very similar to that for stamp duty, whereby the Stamp Office of the Inland Revenue Department (IRD) will collect the levy on behalf of the PMSA when the conveyance on sale is submitted to IRD for stamping. Any cost incurred by IRD for PMSA should be fully recovered from PMSA.

14. The PMSA may by regulation prescribe the licence fees while the SHA may by regulation prescribe the amount of the levy. The actual level of licence fees and levy will be worked out at a later stage of the legislative exercise, taking into account the detailed licensing requirements to be set out in the subsidiary legislation.

(D) Subsidiary Legislation and Transitional Arrangements

15. After the passage of the Bill, we will propose subsidiary legislation which will cover the detailed licensing criteria for PMCs and PMPs, the information and documents required in an application for a licence, the level of licence fees and levy, and the exemption of any class of persons or instruments from the payment of levy. We propose to allow a three-year transitional period after the enactment of the principal ordinance and subsidiary legislation. Unlicensed PMCs and PMPs will not be allowed to practise in the industry after the end of the transitional period. Some suggest that the transitional period should be shortened so that the mandatory licensing regime can be fully implemented as soon as possible. However, in order to allow sufficient time for the PMCs and PMPs to prepare themselves to migrate to the new licensing system smoothly, we consider that a three-year transitional period is appropriate.

16. In order to facilitate those experienced PMPs with lower level of formal qualifications to adapt to the new licensing system, experienced PMPs meeting certain basic requirements will be granted provisional licences during the transitional period. They will be allowed three years after they have obtained the provisional licences to complete continuing professional development courses so that they can be granted formal licences by the PMSA upon expiry of the provisional licences. PMPs who already meet the licensing criteria

of formal licences may also apply for formal licences directly during the transitional period. The detailed criteria for granting formal and provisional licences respectively will be set out in the subsidiary legislation.

THE BILL

17. The main provisions of the Bill are set out below –
- (a) Part 1 – contains the definitions for the interpretation of the Bill; and provides for the issue of codes of conduct by the PMSA;
 - (b) Part 2 – makes it an offence for a person to act as a PMC or PMP without licence; and sets out the exceptions;
 - (c) Part 3 – sets out the procedures for the application and renewal of PMC and PMP licences, and the related offences; sets out the criteria for determining whether a person is a suitable person to hold a PMC or PMP licence; and provides for the publication of PMC and PMP registers by the PMSA and the making of regulations by the PMSA on related matters;
 - (d) Part 4 – sets out the specific duties to provide information to PMCs’ clients and to notify the PMSA change of information;
 - (e) Part 5 – provides for the complaint handling mechanism of the PMSA, the investigation and hearing processes, the related offences, and the power of the PMSA to make disciplinary orders;
 - (f) Part 6 – provides for the establishment of appeal panel and appeal tribunal for hearing appeals lodged by persons who are aggrieved by the decisions of PMSA, the power that the appeal tribunal may exercise when hearing an appeal, and the related offences;
 - (g) Part 7 – establishes the PMSA; sets out the PMSA’s functions and powers and its status in relation to the

Government; provides personal immunity from civil liability for acts done or omitted to be done in good faith by members of the PMSA and others in the performance of functions under the Bill; and provides that the CE may give the PMSA written directions for the performance of any of its functions if the CE is satisfied that it is in the public interest to do so;

- (h) Part 8 – provides for the scope of leviable instrument, the payment and collection of levy, the recovery of levy and penalty, the PMSA’s power to remit and refund levy or penalty paid or payable for a leviable instrument, and SHA’s power to make regulations on related matters;
- (i) Part 9 – provides for miscellaneous matters such as defence for licensed PMPs as employees, the PMSA’s power to amend Schedule 2 and SHA’s power to amend Schedule 3;
- (j) Schedule 1 – sets out the categories of property management services;
- (k) Schedule 2 – provides for the maximum amount of fine that the PMSA may impose on a licensee in a disciplinary order;
- (l) Schedule 3 – contains constitutional, administrative and financial provisions relating to the PMSA;
- (m) Schedule 4 – provides for the issue of provisional PMP licences during the three-year transitional period, and the PMSA’s power to make regulations on related matters; and
- (n) Schedule 5 – provides for the necessary amendments to the Prevention of Bribery Ordinance (Cap. 201) and The Ombudsman Ordinance (Cap. 397) to subject the PMSA to the regulation under those two Ordinances.

LEGISLATIVE TIMETABLE

18. The legislative timetable will be –
- | | |
|---|----------------|
| Publication in the Gazette | 25 April 2014 |
| First Reading and commencement of
Second Reading Debate | 7 May 2014 |
| Resumption of Second Reading Debate,
Committee Stage and Third Reading | To be notified |

IMPLICATIONS OF THE PROPOSAL

B 19. The proposal has financial, civil service, economic, environmental and sustainability implications as set out at **Annex B**. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no productivity or family implications.

PUBLIC CONSULTATION

20. A three-month public consultation exercise was conducted from 3 December 2010 to 15 March 2011 to gauge public views on the key parameters of the proposed licensing regime. During the consultation period, we attended a special meeting of the LegCo Panel on Home Affairs on 18 February 2011 to collate views from the deputations and individuals. We consulted the 18 District Councils (DCs) or their relevant committees, and all DCs are supportive of the proposal. Public regional fora and focus group meetings had also been held. The Advisory Committee on the Regulation of Property Management Industry (ACPMI) was established in December 2011 to work out the details of the regulatory regime.

21. We consulted the LegCo Panel on Home Affairs on 8 July 2011 and 4 July 2012 on the key parameters of the proposed regulatory regime and the progress of work of the ACPMI respectively. We briefed members of the LegCo Panel on Home Affairs on the legislative proposals contained in the Bill on 13 December 2013. Members supported our proposals in general.

PUBLICITY

22. A spokesperson will be made available to address media enquiries if any.

ENQUIRY

23. Enquiries on this brief may be directed to Miss Linda LEUNG, Assistant Director of Home Affairs (5) at 2835 2088.

Home Affairs Department
23 April 2014