

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

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A BILL

To

Establish a Property Management Services Authority; to provide for the licensing of business entities carrying on, and individuals engaged in, the business of providing property management services; to regulate and control the provision of property management services; and to provide for related matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Property Management Services Ordinance.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Home Affairs by notice published in the Gazette.

2. Interpretation

In this Ordinance—

appeal tribunal (上訴審裁小組) means an appeal tribunal appointed under section 34;

Authority (監管局) means the Property Management Services Authority established by section 40;

Chairperson (主席) means the Chairperson of the Authority appointed under section 2 of Schedule 3;

Chief Executive Officer (行政總裁) means the Chief Executive Officer of the Authority appointed under section 7(1)(a) of Schedule 3;

committee (委員會), in relation to the Authority, means a committee of the Authority established under section 23(1) or (2) of Schedule 3;

company (公司) has the meaning given by section 2(1) of the Companies Ordinance (Cap. 622) and includes a body corporate—

- (a) incorporated or otherwise established by or under any other Ordinance; or
- (b) incorporated or otherwise established outside Hong Kong;

deed of mutual covenant (公契) has the meaning given by section 2 of the Building Management Ordinance (Cap. 344);

disciplinary committee (紀律委員會) means the standing committee established under section 23(1) of Schedule 3;

disciplinary offence (違紀行為)—see section 4;

former Companies Ordinance (《舊有公司條例》) has the meaning given by section 2(1) of the Companies Ordinance (Cap. 622);

licence (牌照) means—

- (a) a PMC licence;
- (b) a PMP (Tier 1) licence; or
- (c) a PMP (Tier 2) licence;

licensed PMC (持牌物業管理公司) means the holder of a PMC licence;

licensed PMP (持牌物業管理人) means—

- (a) a licensed PMP (Tier 1); or
- (b) a licensed PMP (Tier 2);

licensed PMP (Tier 1) (持牌物業管理人(第 1 級)) means the holder of a PMP (Tier 1) licence;

licensed PMP (Tier 2) (持牌物業管理人(第 2 級)) means the holder of a PMP (Tier 2) licence;

licensee (持牌人) means the holder of a licence;

member (成員), in relation to the Authority, means a member of the Authority appointed under section 2 of Schedule 3;

owner (業主) has the meaning given by section 2 of the Building Management Ordinance (Cap. 344);

owners' organization (業主組織), in relation to a property, means an organization (whether or not formed under the Building Management Ordinance (Cap. 344) or a deed of mutual covenant) that is authorized to act on behalf of all the owners of the property;

PMC licence (物業管理公司牌照) means a PMC licence issued under section 8(1)(a);

PMP (Tier 1) licence (物業管理人(第 1 級)牌照) means a PMP (Tier 1) licence issued under section 8(1)(b);

PMP (Tier 2) licence (物業管理人(第 2 級)牌照) means a PMP (Tier 2) licence issued under section 8(1)(c);

property (物業) means a building as defined by section 2 of the Building Management Ordinance (Cap. 344);

property management company (物業管理公司) means a business entity (whether a company, partnership or sole proprietorship) that carries on the business of providing property management services;

property management practitioner (物業管理人) means an individual who assumes a managerial or supervisory role in a property management company in relation to property management services provided by the company;

property management service (物業管理服務) means any service prescribed by regulation made under section 3(1);

Secretary (局長) means the Secretary for Home Affairs;

Vice-chairperson (副主席) means the Vice-chairperson of the Authority appointed under section 2 of Schedule 3.

3. Property management services

- (1) The Authority may, by regulation, prescribe a service falling within a category of services set out in Schedule 1 as a property management service.
- (2) In the regulation—
 - (a) the services must be prescribed with reference to the categories of services set out in Schedule 1; and
 - (b) more than one type of service may be prescribed under a category.

4. Disciplinary offences

For the purposes of this Ordinance, a licensee commits a disciplinary offence if the licensee—

- (a) commits misconduct or neglect in a professional respect;
- (b) contravenes a condition imposed on the licensee's licence;
- (c) contravenes a requirement in this Ordinance that is applicable to the licensee;

- (d) without reasonable excuse, does not attend before the Authority or the disciplinary committee when summoned to do so as a witness; or
- (e) is convicted in Hong Kong or elsewhere of a criminal offence that—
 - (i) may bring the profession of property management services into disrepute; and
 - (ii) is punishable with imprisonment (whether or not the licensee was sentenced to imprisonment).

5. Codes of conduct for section 4

- (1) For the purposes of section 4(a), the Authority may issue codes of conduct specifying the matters it considers to be relevant in determining the question of misconduct or neglect committed by a licensee in a professional respect.
- (2) A licensee does not incur a civil or criminal liability only because the licensee has contravened a provision of the codes of conduct.
- (3) However, in any proceedings (whether disciplinary, civil or criminal), if the Authority, the disciplinary committee or the court is satisfied that a provision of the codes of conduct is relevant to determining a matter that is in issue in the proceedings—
 - (a) the codes of conduct are admissible in evidence in the proceedings; and
 - (b) proof that a licensee contravened or did not contravene the provision may be relied on as tending to establish or negate that matter.
- (4) The Authority may amend the codes of conduct, and a reference in this section to the codes is to be construed as including a reference to the codes as so amended.

- (5) The codes of conduct, and the amendments made to them, may be published in any manner the Authority considers appropriate.
 - (6) Neither the codes of conduct, nor the amendments made to them, are subsidiary legislation.
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Part 2**Prohibition****6. Prohibition of unlicensed activities**

- (1) No person may, without a PMC licence—
 - (a) act as a property management company; or
 - (b) claim to be a licensed PMC.
- (2) No person may, without a PMP (Tier 1) licence—
 - (a) act as a property management practitioner;
 - (b) claim to be a licensed PMP (Tier 1); or
 - (c) describe himself or herself as a “registered professional property manager” or “註冊專業物業經理”.
- (3) No person may, without a PMP (Tier 2) licence—
 - (a) act as a property management practitioner;
 - (b) claim to be a licensed PMP (Tier 2); or
 - (c) describe himself or herself as a “licensed property management officer” or “持牌物業管理主任”.
- (4) A person who contravenes subsection (1), (2) or (3) commits an offence and is liable—
 - (a) on conviction on indictment to a fine of \$500,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

7. Exceptions to section 6

- (1) Section 6(1)(a), (2)(a) or (3)(a) does not apply to—

- (a) the Hong Kong Housing Authority or an employee of that Authority acting in that capacity; or
 - (b) a public officer acting in that capacity.
- (2) Section 6(1)(a), (2)(a) or (3)(a) does not apply to a property management company whose business does not involve the provision of property management services that—
- (a) fall within more than one category of services in the regulation made under section 3(1); or
 - (b) (if there is more than one type of service under a category of services in the regulation made under section 3(1)) fall within more than one type of service.
- (3) Section 6(1)(a), (2)(a) or (3)(a) does not prohibit the owners' organization of a property from providing the property with property management services if no property management company or property management practitioner is engaged by the organization for the purpose.
- (4) Section 6(1)(a), (2)(a) or (3)(a) does not prohibit one or more of the owners of a property from providing the property with property management services if—
- (a) no property management company or property management practitioner is engaged by the owner or owners for the purpose; and
 - (b) the owner or owners providing the property management services—
 - (i) is or are individuals; and
 - (ii) does not or do not provide another property with property management services for profit.
- (5) Section 6(1)(a), (2)(a) or (3)(a) does not prohibit a person from providing a property outside Hong Kong with property management services.

- (6) Section 6(2) does not apply to the holder of a provisional PMP (Tier 1) licence issued under section 1(1)(a) of Schedule 4.
- (7) Section 6(3) does not apply to the holder of a provisional PMP (Tier 2) licence issued under section 1(1)(b) of Schedule 4.

Part 3**Licensing of Property Management Companies and
Property Management Practitioners****8. Property management services licences**

- (1) The Authority may, on application, issue—
 - (a) a PMC licence;
 - (b) a PMP (Tier 1) licence; or
 - (c) a PMP (Tier 2) licence.
- (2) A PMC licence may only be issued to a company, a partnership or an individual carrying on business as a sole proprietor.
- (3) A PMP (Tier 1) licence or PMP (Tier 2) licence may only be issued to an individual.
- (4) A licence is not transferable.
- (5) A licence remains in force until the end of the period specified in it.
- (6) The period specified under subsection (5) must not be longer than 36 months beginning on the date on which the licence is issued.

9. Application for licences

- (1) An application for a licence—
 - (a) must be made to the Authority in the specified form;
 - (b) must contain the prescribed information; and
 - (c) must be accompanied by the prescribed documents and application fee.
- (2) The Authority must not issue a licence unless—

- (a) the Authority is satisfied that—
 - (i) the applicant is a suitable person to hold the licence; and
 - (ii) the applicant meets all the prescribed criteria for holding the licence; and
 - (b) the applicant has paid the prescribed fee for the issue of the licence.
- (3) The Authority may impose on a licence those conditions, including prescribed conditions, that it considers appropriate.
 - (4) If the Authority decides not to issue a licence, it must, by notice in writing given to the applicant within 21 days beginning on the date on which the decision is made—
 - (a) notify the applicant of the decision; and
 - (b) give reasons for the decision.

10. Application for renewal of licences

- (1) An application for the renewal of a licence—
 - (a) must be made to the Authority in the specified form within 2 months before the expiry of the licence;
 - (b) must contain the prescribed information; and
 - (c) must be accompanied by the prescribed documents and application fee.
- (2) The Authority must not renew a licence unless—
 - (a) the Authority is satisfied that—
 - (i) the applicant is a suitable person to hold the licence; and
 - (ii) the applicant meets all the prescribed criteria for holding the licence; and

- (b) the applicant has paid the prescribed fee for the issue of the renewed licence.
- (3) The Authority may impose on a renewed licence those conditions, including prescribed conditions, that it considers appropriate.
- (4) A renewed licence is not transferable.
- (5) A renewed licence remains in force until the end of the period specified in it.
- (6) The period specified under subsection (5) must not be longer than 36 months beginning on the date on which the renewed licence is issued.
- (7) If the Authority decides not to renew a licence, it must, by notice in writing given to the applicant within 21 days beginning on the date on which the decision is made—
 - (a) notify the applicant of the decision; and
 - (b) give reasons for the decision.
- (8) A licence may be renewed more than once.

11. Persons suitable to hold licences for sections 9 and 10

- (1) In this section—
officer (高級人員) has the meaning given by section 2(1) of the Companies Ordinance (Cap. 622).
- (2) For the purposes of sections 9(2)(a)(i) and 10(2)(a)(i), in determining whether a person is a suitable person to hold a PMC licence, the Authority must have regard to the following—
 - (a) for an individual—
 - (i) whether the individual is an undischarged bankrupt;

- (ii) whether, in the 5 years before the relevant application, the individual has entered into a composition or scheme of arrangement with the individual's creditors;
 - (iii) whether the individual is a mentally disordered person, or a patient, within the meaning of section 2(1) of the Mental Health Ordinance (Cap. 136);
 - (iv) whether the individual has been convicted of a criminal offence (other than an offence under this Ordinance) involving fraud or dishonesty;
 - (v) whether the individual has been convicted of a disciplinary offence or a criminal offence under this Ordinance;
 - (vi) whether the individual is or was the sole proprietor of a property management company whose application for a PMC licence has been refused or whose PMC licence has been revoked or suspended;
 - (vii) whether the individual is or was an officer of, or a partner in, a property management company whose application for a PMC licence has been refused or whose PMC licence has been revoked or suspended;
- (b) for a company—
- (i) whether the company is in liquidation or is the subject of a winding-up order;
 - (ii) whether a receiver has been appointed in relation to the company;
 - (iii) whether, in the 5 years before the relevant application, the company has entered into a

- composition or scheme of arrangement with its creditors;
- (iv) whether the company has been convicted of a criminal offence (other than an offence under this Ordinance) involving fraud or dishonesty;
- (v) whether the company has been convicted of a disciplinary offence or a criminal offence under this Ordinance;
- (vi) whether every director of the company is a suitable person to be associated with the company's business of providing property management services;
- (c) for a partnership—
 - (i) whether any partner in the partnership is an undischarged bankrupt;
 - (ii) whether any partner in the partnership is in liquidation or is the subject of a winding-up order;
 - (iii) whether a receiver has been appointed in relation to any partner in the partnership;
 - (iv) whether, in the 5 years before the relevant application, any partner in the partnership has entered into a composition or scheme of arrangement with the partner's creditors;
 - (v) whether any partner in the partnership is a mentally disordered person, or a patient, within the meaning of section 2(1) of the Mental Health Ordinance (Cap. 136);
 - (vi) whether any partner in the partnership has been convicted of a criminal offence (other than an offence under this Ordinance) involving fraud or dishonesty;

- (vii) whether any partner in the partnership has been convicted of a disciplinary offence or a criminal offence under this Ordinance;
 - (viii) whether any partner in the partnership is or was the sole proprietor of a property management company whose application for a PMC licence has been refused or whose PMC licence has been revoked or suspended;
 - (ix) whether any partner in the partnership is or was an officer of, or a partner in, a property management company whose application for a PMC licence has been refused or whose PMC licence has been revoked or suspended.
- (3) For the purposes of sections 9(2)(a)(i) and 10(2)(a)(i), in determining whether an individual is a suitable person to hold a PMP (Tier 1) licence or PMP (Tier 2) licence, the Authority must have regard to the following—
- (a) whether the individual is a mentally disordered person, or a patient, within the meaning of section 2(1) of the Mental Health Ordinance (Cap. 136);
 - (b) whether the individual has been convicted of a criminal offence (other than an offence under this Ordinance) involving fraud or dishonesty;
 - (c) whether the individual has been convicted of a disciplinary offence or a criminal offence under this Ordinance;
 - (d) whether the individual is or was the sole proprietor of a property management company whose application for a PMC licence has been refused or whose PMC licence has been revoked or suspended;

- (e) whether the individual is or was an officer of, or a partner in, a property management company whose application for a PMC licence has been refused or whose PMC licence has been revoked or suspended.
- (4) For the purposes of subsection (2)(b)(vi), in determining whether a director of a company is a suitable person to be associated with the company's business of providing property management services, the Authority must have regard to the following—
 - (a) for a director that is an individual—
 - (i) whether the director is an undischarged bankrupt;
 - (ii) whether, in the 5 years before the relevant application, the director has entered into a composition or scheme of arrangement with the director's creditors;
 - (iii) whether the director is a mentally disordered person, or a patient, within the meaning of section 2(1) of the Mental Health Ordinance (Cap. 136);
 - (iv) whether the director has been convicted of a criminal offence (other than an offence under this Ordinance) involving fraud or dishonesty;
 - (v) whether the director has been convicted of a disciplinary offence or a criminal offence under this Ordinance;
 - (vi) whether the director is or was the sole proprietor of a property management company whose application for a PMC licence has been refused or whose PMC licence has been revoked or suspended;
 - (vii) whether the director is or was an officer of, or a partner in, a property management company whose

- application for a PMC licence has been refused or whose PMC licence has been revoked or suspended;
- (b) for a director that is a company—
 - (i) whether the director is in liquidation or is the subject of a winding-up order;
 - (ii) whether a receiver has been appointed in relation to the director;
 - (iii) whether, in the 5 years before the relevant application, the director has entered into a composition or scheme of arrangement with the director's creditors;
 - (iv) whether the director has been convicted of a criminal offence (other than an offence under this Ordinance) involving fraud or dishonesty;
 - (v) whether the director has been convicted of a disciplinary offence or a criminal offence under this Ordinance;
 - (vi) whether the director is or was an officer of another company whose application for a PMC licence has been refused or whose PMC licence has been revoked or suspended.

12. Publication of list of licensees

- (1) The Authority must, from time to time by notice published in the Gazette, publish a list of licensees (including their names and licence numbers).
- (2) A notice published under subsection (1) is not subsidiary legislation.

13. Registers

- (1) The Authority must keep—
 - (a) a PMC register;
 - (b) a PMP (Tier 1) register; and
 - (c) a PMP (Tier 2) register.
- (2) The PMC register must, for each licensed PMC, contain—
 - (a) the name and address of the PMC;
 - (b) if the PMC is incorporated under the Companies Ordinance (Cap. 622) or a former Companies Ordinance, the date of the incorporation of the PMC;
 - (c) if the PMC is neither incorporated under the Companies Ordinance (Cap. 622) nor incorporated under a former Companies Ordinance, the date on which the PMC commences business, as stated in the PMC's application for registration under the Business Registration Ordinance (Cap. 310);
 - (d) the PMC's licence number;
 - (e) the period for which the PMC's licence is issued and, if applicable—
 - (i) the period for which the licence is renewed; and
 - (ii) the date on which the licence is revoked or suspended;
 - (f) the number (given in the form of a range) of licensed PMPs employed by the PMC;
 - (g) the number (given in the form of a range) of household units—
 - (i) that, under one or more deeds of mutual covenant, may be used for residential purposes; and

- (ii) for which property management services are provided by the PMC;
 - (h) subject to section 2 of the Rehabilitation of Offenders Ordinance (Cap. 297), the conviction record of the PMC (if any) in relation to disciplinary offences or criminal offences under this Ordinance; and
 - (i) any other particulars the Authority considers appropriate.
- (3) The PMP (Tier 1) register must, for each licensed PMP (Tier 1), contain—
 - (a) the name of the PMP;
 - (b) the PMP's licence number;
 - (c) the period for which the PMP's licence is issued and, if applicable—
 - (i) the period for which the licence is renewed; and
 - (ii) the date on which the licence is revoked or suspended;
 - (d) a statement as to whether or not the PMP is a director of a licensed PMC;
 - (e) subject to section 2 of the Rehabilitation of Offenders Ordinance (Cap. 297), the conviction record of the PMP (if any) in relation to disciplinary offences or criminal offences under this Ordinance; and
 - (f) any other particulars the Authority considers appropriate.
- (4) The PMP (Tier 2) register must, for each licensed PMP (Tier 2), contain—
 - (a) the name of the PMP;
 - (b) the PMP's licence number;

- (c) the period for which the PMP's licence is issued and, if applicable—
 - (i) the period for which the licence is renewed; and
 - (ii) the date on which the licence is revoked or suspended;
 - (d) a statement as to whether or not the PMP is a director of a licensed PMC;
 - (e) subject to section 2 of the Rehabilitation of Offenders Ordinance (Cap. 297), the conviction record of the PMP (if any) in relation to disciplinary offences or criminal offences under this Ordinance; and
 - (f) any other particulars the Authority considers appropriate.
- (5) For the purpose specified in subsection (6), the Authority must make the PMC register, PMP (Tier 1) register and PMP (Tier 2) register available for inspection free of charge—
- (a) at the offices of the Authority during ordinary business hours;
 - (b) through the Internet or a similar electronic network; and
 - (c) in any other manner the Authority considers appropriate.
- (6) The purpose is to enable a member of the public to ascertain the following—
- (a) whether a business entity is a licensed PMC;
 - (b) whether an individual is a licensed PMP;
 - (c) the particulars of a licensed PMC or licensed PMP.
- (7) For subsection (5)(b), the contents of the PMC register, PMP (Tier 1) register or PMP (Tier 2) register available on the Internet or similar electronic network must not include particulars of a record mentioned in subsection (2)(h), (3)(e) or (4)(e).

- (8) A person may, on payment of the prescribed fee, obtain from the Authority a copy of the whole or a part of a register kept by the Authority under this section.

14. Offence relating to application for licences or renewal of licences

- (1) A person commits an offence if—
 - (a) the person, in connection with an application for a licence or the renewal of a licence, provides any information or document to the Authority that is false or misleading in a material particular; and
 - (b) the person knows that, or is reckless as to whether, the information or document is false or misleading in a material particular.
- (2) A person who commits an offence under subsection (1) is liable—
 - (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

15. Regulations for Part 3

- (1) The Authority may, by regulation, prescribe—
 - (a) the information to be contained in, and the documents to accompany, an application for a licence or the renewal of a licence;
 - (b) the fees payable in an application for a licence or the renewal of a licence;
 - (c) the criteria for holding a licence;
 - (d) the fees payable for the issue of a licence or renewed licence;

- (e) the conditions that may be imposed on a licence or renewed licence; and
 - (f) the fees payable for a copy under section 13(8).
- (2) The criteria mentioned in subsection (1)(c)—
- (a) for a PMC licence, may include a criterion that the person has a sufficient number of directors and employees who are licensed PMPs; and
 - (b) for a PMP (Tier 1) licence or PMP (Tier 2) licence—
 - (i) may include criteria relating to the person's academic qualifications, professional qualifications and relevant work experience; and
 - (ii) may impose more stringent requirements for a PMP (Tier 1) licence.

Part 4

Duties of Licensees.

16. Licensed PMC's duty to provide information to clients

- (1) A licensed PMC must prepare the prescribed information and provide the information to the PMC's clients in the prescribed manner.
- (2) The Authority may, by regulation, prescribe the information and manner for the purposes of subsection (1).
- (3) The prescribed information may include any of the following information that relates to the property management services provided by a licensed PMC to the PMC's clients—
 - (a) the PMC's draft budget, budget, revised budget, books, records and accounts;
 - (b) the PMC's income and expenditure account and balance sheet;
 - (c) the PMC's financial records and statement;
 - (d) any conflict between the interests of the PMC and the interests of the PMC's clients.

17. Licensee's duty to notify change of prescribed matters

- (1) A licensee must notify the Authority in writing of any change in the prescribed matters in the prescribed manner.
- (2) The Authority may, by regulation, prescribe the matters and manner for the purposes of subsection (1).

Part 5

Disciplinary Matters

18. Authority's power to conduct investigation

- (1) The Authority may conduct an investigation into any conduct of a licensee if—
 - (a) the Authority has reasonable cause to suspect that—
 - (i) the licensee has committed a disciplinary offence; or
 - (ii) the licensee no longer meets any of the prescribed criteria for holding the licence; or
 - (b) the Authority has received a complaint against the licensee, alleging a matter mentioned in paragraph (a)(i) or (ii).
- (2) The Authority is not required to conduct an investigation to deal with a complaint received under subsection (1)(b) if the Authority is satisfied that the complaint is misconceived or lacking in substance.
- (3) If the Authority decides not to conduct an investigation to deal with a complaint, it must, as soon as practicable after it makes the decision, by notice in writing given to the complainant—
 - (a) notify the complainant of the decision; and
 - (b) give reasons for the decision.
- (4) The Authority must, as soon as practicable after it decides to conduct an investigation into any conduct of a licensee, notify the licensee in writing of the substance of the matter being investigated.

19. Guidelines regarding complaints

- (1) For the purposes of section 18(1)(b), the Authority may issue guidelines indicating—
 - (a) the manner and form in which a complaint is to be lodged with the Authority; and
 - (b) the particulars that a complaint must contain.
- (2) The Authority may amend the guidelines, and a reference in this section to the guidelines is to be construed as including a reference to the guidelines as so amended.
- (3) The guidelines, and the amendments made to them, may be published in any manner the Authority considers appropriate.
- (4) Neither the guidelines, nor the amendments made to them, are subsidiary legislation.

20. Appointment of investigators

The Authority may in writing appoint any of its employees, or any other person, as an investigator for the purposes of an investigation under section 18.

21. Power to obtain information and documents

- (1) This section applies if an investigator appointed under section 20 has reasonable cause to suspect that a person—
 - (a) has or may have possession or control of information or documents relevant to the investigation; or
 - (b) may otherwise be able to assist the investigator in relation to the investigation.
- (2) The investigator may, by notice in writing given to the person, require the person—

- (a) to provide the investigator with any information relating to a matter the investigator reasonably believes to be relevant to the investigation;
 - (b) to provide the investigator with any document, or a copy of any document, relating to a matter the investigator reasonably believes to be relevant to the investigation;
 - (c) to attend before the investigator at a specified time and place, and answer any question relating to a matter the investigator reasonably believes to be relevant to the investigation; or
 - (d) to respond to any written question relating to a matter the investigator reasonably believes to be relevant to the investigation.
- (3) A notice under subsection (2) must indicate the subject matter and purpose of the investigation.
- (4) The investigator may also specify in the notice—
- (a) the time and place at which the information or document is to be provided; and
 - (b) the manner and form in which the information or document is to be provided.
- (5) The power under this section to require a person to provide information includes—
- (a) if the information is recorded otherwise than in a legible form, the power to require the production of a copy of the information in a visible and legible form or in a form from which it can readily be produced in a visible and legible form; and
 - (b) if the information is stored electronically, the power to require the provision of instructions on the operation of the equipment containing the information.

- (6) The power under this section to require a person to provide a document includes—
- (a) if the document is provided, the power—
 - (i) to make copies of it or to take extracts from it; or
 - (ii) to require that person, or any other person who is or was an employee or partner of that person, to give an explanation of or further particulars about the document; and
 - (b) if the document is not provided, the power to require that person to state, to the best of the person's knowledge and belief, where it is.

22. Offences relating to investigation

- (1) A person commits an offence if the person, without reasonable excuse, fails to comply with a requirement of a notice given to the person under section 21(2).
- (2) A person commits an offence if—
- (a) the person, in purported compliance with a requirement of a notice given to the person under section 21(2), provides any information or document, gives any answer, response, explanation or particular, or makes any statement, that is false or misleading in a material particular; and
 - (b) the person knows that, or is reckless as to whether, the information, document, answer, response, explanation, particular or statement is false or misleading in a material particular.
- (3) A person who commits an offence under subsection (1) or (2) is liable—
- (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or

- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

23. Disciplinary hearing

- (1) If, at the conclusion of an investigation under section 18, the Authority is satisfied that there is evidence that tends to establish the matter mentioned in section 18(1)(a)(i) or (ii) in respect of a licensee, the Authority may decide that a hearing into the matter should be conducted.
- (2) The matter is to be heard by—
 - (a) the Authority; or
 - (b) on the Authority's direction, the disciplinary committee.
- (3) The Authority must, as soon as practicable after it decides that a hearing should be conducted, notify the licensee in writing of the decision.

24. Hearing before Authority

- (1) The Authority has the following powers when hearing a matter under section 23—
 - (a) to take evidence on oath;
 - (b) to summon a person to—
 - (i) attend the hearing as a witness;
 - (ii) give evidence; and
 - (iii) provide any information or document in the person's possession or under the person's control that may be relevant to the hearing;
 - (c) to examine witnesses;
 - (d) to award to a witness the expenses that, in the Authority's opinion, the witness has reasonably incurred because of the witness's attendance.

- (2) At the hearing, the case against the licensee is to be presented by—
 - (a) the complainant or the complainant's legal representative;
 - (b) the Chief Executive Officer, or any other employee of the Authority appointed by it for the hearing; or
 - (c) a solicitor or counsel engaged by the Authority.
- (3) Subject to subsection (4), the hearing is to be held in public.
- (4) After consulting the licensee and the complainant (if any), the Authority may by order direct that the hearing, or any part of the hearing, be held in private.
- (5) If the Authority makes an order under subsection (4), it may also by order prohibit or restrict the publication or disclosure by all or any of the persons present at the hearing of—
 - (a) any evidence given at the hearing; or
 - (b) any matter contained in any information or document provided or received in evidence at the hearing.
- (6) For the purposes of subsection (4), the Authority must take into account the views or private interests of the licensee and of the complainant (if any), including any claims as to privilege.
- (7) If a person fails to comply with an order made under subsection (5), the Authority—
 - (a) for a person who is a licensee, may make any of the orders described in section 25(1) against the person; or
 - (b) for a person who is not a licensee, may give the person a public reprimand.
- (8) A party to the hearing—
 - (a) may, subject to any order made by the Authority, be present at the hearing; and

- (b) may participate—
 - (i) in person;
 - (ii) through a legal representative; or
 - (iii) with the consent of the Authority, through any other person.
- (9) For the purposes of subsection (8)(b)(i), a company is to be regarded as participating in person if it participates through any of its directors.
- (10) Subject to other provisions of this section, the Authority may conduct the hearing in any manner it considers appropriate.

25. Disciplinary orders

- (1) If, at the conclusion of a hearing under section 23, the Authority is satisfied that the matter mentioned in section 18(1)(a)(i) or (ii) is established in respect of a licensee, the Authority may make any of the following orders against the licensee—
 - (a) an order giving a verbal warning or written reprimand;
 - (b) an order imposing a fine not exceeding the amount specified in Schedule 2;
 - (c) an order imposing a condition on the licence;
 - (d) an order varying a condition of the licence;
 - (e) an order suspending the licence for a specified period or until a specified event occurs;
 - (f) an order revoking the licence.
- (2) If the Authority makes an order under subsection (1) against a licensee, it may also order the licensee to pay the costs and expenses incurred in relation to the hearing, whether by the Authority or any person attending the hearing as a witness.

- (3) If the Authority makes an order under subsection (1) or (2) against a licensee, it must—
 - (a) by notice in writing given to the licensee within 21 days beginning on the date on which the order is made—
 - (i) notify the licensee of the order; and
 - (ii) give reasons for the order; and
 - (b) publish notice of the order in the Gazette.
- (4) An order made under subsection (1) or (2) takes effect on—
 - (a) the date of the order; or
 - (b) if a later date is specified in the order, that later date.
- (5) Subsection (4) applies even if—
 - (a) the licensee has lodged a notice of appeal under section 33 against the order;
 - (b) the time for lodging the notice of appeal has not expired; or
 - (c) a notice of the order has not been published in the Gazette.
- (6) Subject to subsection (7), the Authority may, of its own volition or on application, by order revoke, vary or suspend an order made under subsection (1) or (2).
- (7) Before making an order under subsection (6), the Authority must satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice any person.
- (8) The fine, costs and expenses mentioned in subsections (1)(b) and (2) are recoverable as a civil debt.

26. Hearing before disciplinary committee

If a matter is heard by the disciplinary committee under section 23, sections 24 and 25, with necessary modifications, apply to the committee as they apply to the Authority.

27. Summons

A summons under section 24(1)(b)—

- (a) must be in the specified form; and
- (b) must be signed—
 - (i) if the matter is heard by the Authority, by the Chairperson; or
 - (ii) if the matter is heard by the disciplinary committee, by the chairperson of the committee.

28. Offences relating to disciplinary hearing

(1) A person commits an offence if—

- (a) the person, at a hearing under section 23, gives any evidence, or provides any information or document, that is false or misleading in a material particular; and
- (b) the person knows that, or is reckless as to whether, the evidence, information or document is false or misleading in a material particular.

(2) A person commits an offence if the person, without reasonable excuse, fails to comply with a summons issued to the person under section 24(1)(b).

(3) A person who commits an offence under subsection (1) or (2) is liable—

- (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or

- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

29. Effect of revocation or suspension of licences

A revocation or suspension of a licence under section 24(7)(a) or 25(1)(e) or (f) does not operate—

- (a) to avoid or affect an agreement, transaction or arrangement entered into by the licensee whether the agreement, transaction or arrangement was entered into before or after the revocation or suspension; or
- (b) to affect a right, obligation or liability arising under the agreement, transaction or arrangement.

30. Immunity

(1) A person who, in connection with an investigation under section 18, gives evidence to the Authority or an investigator appointed under section 20 has the same privileges and immunities as the person would have if the investigation were civil proceedings in the Court of First Instance.

(2) In subsection (1), the reference to the giving of evidence includes a reference to providing any information or document, giving any answer, response, explanation or particular, and making any statement.

(3) A party, solicitor, counsel, witness or any other person who appears before the Authority or the disciplinary committee at a hearing under section 23 has the same privileges and immunities as the person would have if the hearing were civil proceedings in the Court of First Instance.

31. Self-incrimination

(1) In this section—

specified act (指明作為) means—

- (a) to provide information under this Part;
 - (b) to answer a question under this Part; or
 - (c) to give an explanation of or further particulars about a document under this Part.
- (2) A person is not excused from doing a specified act only on the ground that to do so might tend to incriminate the person.
- (3) If an investigator appointed under section 20 requires a person to do a specified act, the investigator must ensure that the person has first been informed or reminded of the limitations imposed by subsection (4) on the admissibility in evidence of—
 - (a) the investigator's requirement; and
 - (b) the information provided, or the answer, explanation or particulars given, by the person (*subject matter*).
- (4) Despite anything in this Ordinance, if the conditions specified in subsection (5) are satisfied, the investigator's requirement and the subject matter are not admissible in evidence against the person in criminal proceedings, other than those in which the person is charged with any of the following offences in respect of the subject matter—
 - (a) an offence under section 28;
 - (b) an offence under Part V of the Crimes Ordinance (Cap. 200);
 - (c) the offence of perjury.
- (5) The conditions are—
 - (a) the subject matter might tend to incriminate the person; and
 - (b) the person so claims before providing or giving the subject matter.

Part 6

Appeal

32. Appeal panel

- (1) For hearing appeals under this Part, the Secretary must appoint a panel of individuals consisting of 1 chairperson and 11 other members.
- (2) A member of the Authority is not eligible for appointment under subsection (1).

33. Appeals against decisions etc.

- (1) A person aggrieved by any of the following matters may lodge an appeal against the matter—
 - (a) a decision not to issue or renew a licence;
 - (b) a decision to impose conditions on a licence or renewed licence;
 - (c) a decision regarding the period for which a licence is issued or renewed;
 - (d) a finding made at a hearing under section 23;
 - (e) an order made under section 24(7)(a) or 25(1) or (2) by the Authority or the disciplinary committee.
- (2) A person who wishes to appeal against a matter under subsection (1) must lodge a notice in writing with the Secretary—
 - (a) for a matter that falls within subsection (1)(a), (b) or (c), within 21 days after receiving notice of the decision;
 - (b) for a matter that falls within subsection (1)(d), within 21 days after the finding is made; or

- (c) for a matter that falls within subsection (1)(e), within 21 days after receiving notice of the order.

34. Appeal tribunal

As soon as practicable after a notice of appeal has been lodged under section 33, the chairperson of the panel appointed under section 32(1) must appoint from the panel an appeal tribunal consisting of the following persons to hear the appeal—

- (a) 1 individual as the chairperson of the tribunal; and
- (b) 2 individuals as the other members of the tribunal.

35. Date, time and place of hearing

The chairperson of an appeal tribunal must—

- (a) fix the date, time and place for the hearing of the appeal so that the hearing can commence as soon as practicable; and
- (b) not later than 28 days before the date so fixed, give the parties to the appeal a notice of the date, time and place so fixed in the form the chairperson determines.

36. Hearing before appeal tribunal

- (1) An appeal tribunal has the following powers when hearing an appeal—
 - (a) to take evidence on oath;
 - (b) to summon a person to—
 - (i) attend the hearing as a witness;
 - (ii) give evidence; and
 - (iii) provide any information or document in the person's possession or under the person's control that may be relevant to the hearing;

- (c) to examine witnesses;
 - (d) to receive and consider any material, whether by way of oral evidence, written statements, documents or other thing, even if the material would not be admissible in civil or criminal proceedings;
 - (e) to award to a witness the expenses that, in the tribunal's opinion, the witness has reasonably incurred because of the witness's attendance.
- (2) Subject to subsection (3), the hearing is to be held in public.
 - (3) After consulting the parties to the appeal, the chairperson of the tribunal may by order direct that the hearing, or any part of the hearing, be held in private.
 - (4) If the chairperson of the tribunal makes an order under subsection (3), the chairperson may also by order prohibit or restrict the publication or disclosure by all or any of the persons present at the hearing of—
 - (a) any evidence given at the hearing; or
 - (b) any matter contained in any information or document provided or received in evidence at the hearing.
 - (5) For the purposes of subsection (3), the chairperson of the tribunal must take into account the views or private interests of the parties to the appeal, including any claims as to privilege.
 - (6) If a person fails to comply with an order made under subsection (4), the chairperson of the tribunal—
 - (a) for a person who is a licensee, may make any of the orders described in section 25(1)(a), (b), (e) and (f) against the person; or
 - (b) for a person who is not a licensee, may give the person a public reprimand.

- (7) A party to the hearing—
- (a) may, subject to any order made by the chairperson of the tribunal, be present at the hearing; and
 - (b) may participate—
 - (i) in person;
 - (ii) through a legal representative; or
 - (iii) with the consent of the chairperson of the tribunal, through any other person.
- (8) For the purposes of subsection (7)(b)(i), a company is to be regarded as participating in person if it participates through any of its directors.
- (9) Subject to other provisions of this section and any regulation made under section 38, the chairperson of the tribunal may conduct the hearing in any manner the chairperson considers appropriate.

37. Decision of appeal tribunal

- (1) An appeal tribunal hearing an appeal may confirm, vary or reverse any decision, finding or order to which the appeal relates.
- (2) The decision of the tribunal is final.

38. Regulations for hearing of appeals

The Secretary may, by regulation, prescribe the procedures for the hearing of appeals under this Part.

39. Offences relating to appeal

- (1) A person commits an offence if—

- (a) the person, at a hearing before an appeal tribunal, gives any evidence, or provides any information or document, that is false or misleading in a material particular; and
 - (b) the person knows that, or is reckless as to whether, the evidence, information or document is false or misleading in a material particular.
- (2) A person commits an offence if the person, without reasonable excuse, fails to comply with a summons issued to the person under section 36(1)(b).
- (3) A person who commits an offence under subsection (1) or (2) is liable—
- (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

Part 7**Property Management Services Authority****40. Establishment of Authority**

- (1) A body corporate is established with the name "Property Management Services Authority" in English and "物業管理業監管局" in Chinese.
- (2) The Authority—
 - (a) has perpetual succession under its corporate name;
 - (b) must provide itself with a common seal; and
 - (c) may sue and be sued in its corporate name.
- (3) Schedule 3 (which contains constitutional, administrative and financial provisions) has effect with respect to the Authority.

41. Principal functions of Authority

The principal functions of the Authority are—

- (a) to regulate and control the provision of property management services by the licensing of property management companies and property management practitioners;
- (b) to promote the integrity, competence and professionalism of the profession of property management services; and
- (c) to maintain and enhance the status of the profession of property management services.

42. Powers of Authority

The Authority may do anything it considers appropriate for it to do for, or in relation to, the performance of its functions.

43. Authority not servant or agent of Government

The Authority is not a servant or agent of the Government and does not enjoy any status, immunity or privilege of the Government.

44. Immunity from civil liability

- (1) A person to whom this subsection applies is not civilly liable for an act done or omitted to be done by the person in good faith—
 - (a) in performing or purportedly performing a function of the Authority under this Ordinance; or
 - (b) in exercising or purportedly exercising a power of the Authority under this Ordinance.
- (2) Subsection (1) applies to—
 - (a) a member of the Authority;
 - (b) a member of a committee of the Authority;
 - (c) an officer or employee of the Authority; and
 - (d) a person who is performing any service for the Authority under a contract for services.
- (3) Subsection (1) does not affect any liability of the Authority for the act or omission.

45. Register of interests

- (1) A member of the Authority must disclose to the Authority any interest that the member has which is of a class or description determined by the Authority under subsection (3)—
 - (a) on the member's first appointment to the Authority;
 - (b) at the beginning of each calendar year after the member's appointment;
 - (c) on becoming aware of the existence of an interest not previously disclosed under this subsection; and

- (d) after any change occurs to an interest previously disclosed under this subsection.
- (2) A member of a committee of the Authority who is not also a member of the Authority must disclose to the Authority any interest that the member has which is of a class or description determined by the Authority under subsection (3)—
 - (a) on the member's first appointment to the committee;
 - (b) at the beginning of each calendar year after the member's appointment;
 - (c) on becoming aware of the existence of an interest not previously disclosed under this subsection; and
 - (d) after any change occurs to an interest previously disclosed under this subsection.
- (3) For the purposes of subsections (1) and (2), the Authority may—
 - (a) determine the class or description of the interests required to be disclosed;
 - (b) determine the details of the interest required to be disclosed and the manner in which the interest is to be disclosed; and
 - (c) from time to time change any matter determined under paragraph (a) or (b).
- (4) The Authority must keep a register relating to any disclosure made under subsection (1) or (2).
- (5) If a person makes a disclosure under subsection (1) or (2), the Authority must record the person's name and the particulars of the disclosure in the register, and if a further disclosure is made, the Authority must record the particulars of the further disclosure in the register.

- (6) The Authority must make the register available for inspection free of charge—
 - (a) at the offices of the Authority during ordinary business hours;
 - (b) through the Internet or a similar electronic network; and
 - (c) in any other manner the Authority considers appropriate.
- (7) A person may, on payment of the prescribed fee, obtain from the Authority a copy of the whole or a part of the register.
- (8) The Authority may, by regulation, prescribe the fees payable for a copy under subsection (7).

46. Disclosure of interests

- (1) In this section—

disclosable interest (應披露利害關係) means—

- (a) a pecuniary interest (whether direct or indirect); or
- (b) a personal interest greater than that which a person has as a member of the public.
- (2) If a member of the Authority has a disclosable interest in any matter under discussion at a meeting of the Authority—
 - (a) the member must disclose the nature of the interest at the meeting; and
 - (b) the disclosure must be recorded in the minutes.
- (3) The following provisions apply in the case of a disclosure under subsection (2)—
 - (a) if the disclosure is made by the member presiding, the member must vacate the chair during the discussion;
 - (b) if so required by the majority of the other members present, the member (including one who has vacated the

- chair under paragraph (a)) must withdraw from the meeting during the discussion;
- (c) unless the majority of the other members present determine otherwise, the member (including one who has vacated the chair under paragraph (a)) must not vote on a resolution concerning the matter under discussion or be counted for a quorum.
- (4) If—
- (a) a matter is being dealt with by circulating written resolutions under section 13 of Schedule 3; and
- (b) a member of the Authority has a disclosable interest in the matter,
- the member must disclose the nature of the interest by attaching to the papers being circulated a note recording the disclosure.
- (5) For the purposes of section 13(1)(c) of Schedule 3, if a member of the Authority has made a disclosure under subsection (4), the member's signature (if any) is not to be counted unless the Chairperson directs otherwise.
- (6) If the member making a disclosure under subsection (4) is the Chairperson, the power under subsection (5) is to be exercised by the Vice-chairperson.
- (7) If both the Chairperson and the Vice-chairperson have made a disclosure under subsection (4) on the same matter, section 13 of Schedule 3 does not apply to the matter.
- (8) The validity of any proceeding of the Authority is not affected by the failure by a member of the Authority to comply with this section.
- (9) Subsections (1), (2), (3) and (8) apply to a member of a committee of the Authority, as if a reference to the Authority in subsections (2) and (8) were a reference to the committee.

47. Delegation by Authority

- (1) The Authority may delegate any of its powers to—
- (a) a committee of the Authority;
- (b) the Chief Executive Officer; or
- (c) the holder of any office in the Authority, designated by the Authority.
- (2) However, the following powers must not be delegated—
- (a) the power conferred by subsection (1) to delegate;
- (b) the power conferred by section 23 of Schedule 3 to establish committees;
- (c) the power conferred by this Ordinance to make regulations.
- (3) A person purporting to act in accordance with a delegation under subsection (1) is presumed, unless the contrary is proved, to be acting in accordance with the terms of the delegation.

48. Directions by Chief Executive

- (1) The Chief Executive may give the Authority written directions for performing any of its functions if the Chief Executive is satisfied that it is in the public interest to do so.
- (2) The Authority must comply with a direction given under subsection (1).
- (3) This section does not enable the Chief Executive to exercise power or control in relation to—
- (a) a particular application, or any other matter, with which the Authority or a committee of the Authority is concerned; or
- (b) a particular case with which an appeal tribunal is concerned or which is pending.

- (4) Directions given under subsection (1) are not subsidiary legislation.
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Part 8

Levy

49. Interpretation of Part 8

In this Part—

Collector (署長) means the Collector of Stamp Revenue appointed under section 3 of the Stamp Duty Ordinance (Cap. 117);

conveyance on sale (售賣轉易契) has the meaning given by section 2(1) of the Stamp Duty Ordinance (Cap. 117);

leviable instrument (徵款適用文書) means an instrument for which a levy is payable under section 51(1);

payment period (繳款限期), in relation to the levy payable for a leviable instrument, means the period within which the levy is payable under section 52(3);

transferee (承讓人), in relation to a leviable instrument, means the person to whom the immovable property concerned is transferred, or in whom the immovable property concerned is vested, under the instrument.

50. Application of Part 8

This Part applies to a conveyance on sale of immovable property.

51. Leviable instruments

- (1) A levy at the prescribed amount is payable for an instrument that is—
- (a) a conveyance on sale; and
 - (b) chargeable with stamp duty under head 1(1) in the First Schedule to the Stamp Duty Ordinance (Cap. 117).

- (2) A question as to whether or not an instrument falls within the description of subsection (1)(a) and (b) is to be determined in accordance with the Stamp Duty Ordinance (Cap. 117).

52. Payment of levy

- (1) The transferee under a leviable instrument is liable to pay the levy payable for the instrument.
- (2) For the purposes of subsection (1), if there is more than one transferee under the instrument, the transferees are jointly and severally liable to pay the levy.
- (3) The levy is payable within 30 days after the instrument is executed.

53. Collection of levy

- (1) The levy is to be collected—
 - (a) by the Authority; or
 - (b) for the Authority by—
 - (i) the Collector; or
 - (ii) any assistant collector appointed under section 3 of the Stamp Duty Ordinance (Cap. 117) and authorized in writing by the Collector.
- (2) The levy collected does not form part of the general revenue.

54. Agreement for collection and transmission of levy

- (1) The Authority and the Collector may enter into an agreement for—
 - (a) the collection by the Collector of the levy for the Authority; and
 - (b) the transmission by the Collector of the levy to the Authority.

- (2) An agreement entered into under subsection (1) is not subsidiary legislation.

55. Failure to pay levy

- (1) If the levy payable for a leviable instrument is not paid within the payment period, the Authority may, without limiting any other remedy of the Authority for recovering the levy—
 - (a) impose a penalty for the failure to pay the levy; and
 - (b) issue a certificate, certifying that—
 - (i) the levy and penalty is due and payable to the Authority; and
 - (ii) the person named on the certificate is liable to pay the levy and penalty.
- (2) The certificate must bear the name of the Chief Executive Officer, and is valid if the name of the Chief Executive Officer is printed or signed on it.
- (3) The Authority must serve a copy of the certificate on the person affected by the certificate.
- (4) A copy of the certificate may be served on a person either personally or by being delivered at, or sent by post to, the person's last known postal address, or place of abode, business or employment.
- (5) If a copy of the certificate is sent by post, it is presumed, unless the contrary is proved, to have been served on the day after the day on which it would have been received in the ordinary course by post.

56. Penalty

- (1) For the purposes of section 55(1)(a)—
 - (a) the transferee under the relevant leviable instrument is liable to pay the penalty; and

- (b) the amount of the penalty is—
 - (i) if the levy is paid not later than 1 month after the expiry of the payment period, double the amount of the levy;
 - (ii) if the levy is paid later than 1 month but not later than 2 months after the expiry of the payment period, 4 times the amount of the levy; or
 - (iii) in any other case, 10 times the amount of the levy.
- (2) For the purposes of subsection (1)(a), if there is more than one transferee under the instrument, the transferees are jointly and severally liable to pay the penalty.

57. Certificate of levy and penalty

- (1) This section applies if a certificate is issued under section 55(1)(b) in relation to a levy and penalty, and is served in compliance with section 55.
- (2) Unless the contrary is proved, the certificate is evidence of the facts certified in it in any proceedings.
- (3) At any time before the levy and penalty has been wholly recovered, the Authority may register the certificate in the Land Registry against any premises or land in respect of which the levy and penalty arose.
- (4) For the purposes of the Land Registration Ordinance (Cap. 128), the certificate is taken to be an instrument affecting premises or land and is registrable in the Land Registry.
- (5) On the registration of the certificate, the levy and penalty—
 - (a) is recoverable from a person who from the Land Registry register appears to be the owner of the premises or land; and
 - (b) constitutes a legal charge on the premises or land that gives the Authority the same powers and remedies in

- respect of the premises or land as if it were a mortgagee under a mortgage by deed in common form having powers of sale and lease and of appointing a receiver.
- (6) Despite sections 3(1) and 5 of the Land Registration Ordinance (Cap. 128), if the certificate is duly registered, it has priority from the beginning of the day after the date of registration.
- (7) The charge created under subsection (5)(b) is void, and no liability is to accrue under that subsection, against a bona fide purchaser or mortgagee of the premises or land for valuable consideration without notice.
- (8) On the recovery of the levy and penalty, the Authority must lodge in the Land Registry an appropriate memorial of satisfaction against the certificate registered under subsection (3).

58. Recovery of levy and penalty

The Authority may recover the amount of any levy or penalty payable under this Part as a civil debt due to it.

59. Authority's powers to remit and refund

The Authority may—

- (a) remit, wholly or in part, any levy or penalty payable for a leviable instrument; or
- (b) refund, wholly or in part, any levy or penalty paid for a leviable instrument.

60. Regulations for Part 8

The Secretary may, by regulation—

- (a) prescribe the amount of levy payable for a leviable instrument;

- (b) provide for the exemption of any class of persons or instruments from the application of this Part; and
- (c) provide generally for the better carrying out of this Part.

Part 9

Miscellaneous

61. Defence for licensed PMP as employee

It is a defence for a licensed PMP charged with a disciplinary offence for an act done or omitted to be done under this Ordinance to prove that—

- (a) the PMP acted in good faith and in a reasonable manner;
- (b) the PMP did the act or made the omission in the course of the PMP's employment;
- (c) the PMP did the act or made the omission in accordance with the instructions given to the PMP by or on behalf of the PMP's employer in the course of the PMP's employment; and
- (d) the PMP was not, at the time the act was done or omitted to be done, in a position to make or influence a decision regarding the act or omission.

62. Paid fees not refundable

Fees paid under this Ordinance are not refundable.

63. Amendment of Schedules 2 and 3

- (1) The Authority may, by notice published in the Gazette, amend Schedule 2.
- (2) The Secretary may, by notice published in the Gazette, amend Schedule 3.

64. Transitional provisions

The transitional provisions specified in Schedule 4 have effect.

65. Related amendments

The enactments specified in Schedule 5 are amended as set out in that Schedule.

Schedule 1

[s. 3]

Property Management Services

Column 1

Column 2

Item

Category of services

1. General management services relating to a property.
2. Management of the environment of a property.
3. Repair, maintenance and improvement of a property.
4. Finance and asset management relating to a property.
5. Facility management relating to a property.
6. Human resources management relating to personnel involved in the management of a property.
7. Legal services relating to the management of a property.

Schedule 2

[ss. 25 & 63]

Maximum Amount of Fine**\$300,000**

Schedule 3[ss. 2, 40,
46, 47 & 63]**Property Management Services Authority****Part 1****Interpretation****1. Interpretation**

In this Schedule—

ordinary member (普通成員) means an ordinary member of the Authority appointed under section 2 of this Schedule.

Part 2**Members of Authority****2. Appointment of members of Authority**

(1) The Authority is to consist of the following members—

- (a) the Chairperson;
- (b) the Vice-chairperson;
- (c) not more than 18 ordinary members.

(2) Every member of the Authority is to be appointed by the Chief Executive from among the following categories of individuals—

- (a) individuals who are engaged in property management services (*Category 1 persons*);

- (b) individuals, not being Category I persons, who, because of their experience in property management, general administration or consumer affairs, appear to the Chief Executive to have knowledge of property management services (*Category II persons*);
 - (c) individuals, not being Category I persons or Category II persons, who appear to the Chief Executive to be suitable to be appointed as members of the Authority (*Category III persons*).
- (3) In appointing a member of the Authority, the Chief Executive must ensure that—
- (a) at least half of the ordinary members are Category III persons; and
 - (b) for the other ordinary members, so far as possible, half of them are Category I persons and half of them are Category II persons.
- (4) For subsection (3)(a), if, at any time, the number of ordinary members is odd, that number is to be taken as having been increased by 1.
- (5) Public officers are eligible to be appointed as members of the Authority.

3. Terms of appointment

- (1) Each member of the Authority is to be appointed for a period, not exceeding 3 years, that is specified in the member's letter of appointment, but is eligible for reappointment.
- (2) The Chief Executive may determine the terms of appointment (including remuneration and allowances) of the members of the Authority.
- (3) The remuneration and allowances of a member of the Authority are to be paid out of the funds of the Authority.

4. Resignation of members of Authority

- (1) A member of the Authority may, at any time, resign from office by giving written notice of the resignation to the Chief Executive.
- (2) The notice must be signed by the member.
- (3) The notice takes effect on—
 - (a) the date on which the notice is received by the Chief Executive; or
 - (b) if a later date is specified in the notice, that later date.

5. Removal from office

- (1) The Chief Executive may remove a member of the Authority from office if the Chief Executive considers that the removal is desirable for the Authority to effectively perform its functions.
- (2) If a member of the Authority is removed from office under this section, the Chief Executive must give the member written notice informing the member of the removal.

6. Acting Chairperson

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.

Part 3

Staff

7. Power to employ staff etc.

- (1) The Authority may—

- (a) appoint a person it considers suitable to be its Chief Executive Officer or other officers or employees; and
 - (b) engage on a contract for services a person it considers necessary to perform its functions.
- (2) The Authority may determine—
 - (a) the remuneration and other conditions of employment of its staff; and
 - (b) the remuneration and other conditions of engagement of persons engaged on contracts for services.
- (3) The Authority may provide and maintain schemes (whether contributory or not) for the payment of retirement benefits, gratuities or other allowances to its employees or former employees and to their dependants.

Part 4

Meetings

8. General procedure for meetings

- (1) Meetings of the Authority are to be held at times and places determined by the Chairperson or, in the Chairperson's absence, the Vice-chairperson.
- (2) The procedure for convening meetings of the Authority and for the conduct of business at those meetings is, subject to this Schedule, to be determined by the Authority.

9. Quorum for meetings

- (1) The quorum for a meeting of the Authority is one-half of its members.
- (2) For determining the quorum, a member of the Authority who participates in the meeting by telephone, video conferencing

or other electronic means is to be regarded as being present at the meeting if—

- (a) that member is able to hear the other members who are actually present at the meeting; and
- (b) the members who are actually present at the meeting are able to hear that member.

10. Presiding member at meetings

A meeting of the Authority is to be presided over by—

- (a) the Chairperson;
- (b) if the Chairperson is absent, the Vice-chairperson; or
- (c) if both the Chairperson and the Vice-chairperson are absent, one of the members of the Authority elected by the members present.

11. Voting at meetings

- (1) Subject to subsection (2), each member of the Authority who is present at a meeting of the Authority has 1 vote at the meeting.
- (2) The member presiding at a meeting of the Authority has a deliberative vote and also has a casting vote if the number of votes for and against a motion is equal.
- (3) The member presiding at a meeting of the Authority must ask each member who is present at the meeting to indicate how he or she has voted.
- (4) The result of the vote, showing which way each member has voted, must be recorded in the minutes.
- (5) A decision supported by a majority of the votes cast at the meeting of the Authority at which a quorum is present is the decision of the Authority.

12. Minutes

The Authority must maintain minutes of the proceedings, including a record of all decisions made, at each meeting of the Authority.

13. Written resolutions

- (1) A resolution is a valid resolution of the Authority, even if it is not passed at a meeting of the Authority, if—
 - (a) it is in writing;
 - (b) proper notice of it is given to all members of the Authority; and
 - (c) it is signed, or assented to, by a majority of the members of the Authority by letter, fax or other electronic transmission.
- (2) Subject to subsection (3), the date of a resolution referred to in this section is the date on which the last of the members of the Authority constituting a majority of the members signs or assents to the resolution.
- (3) If any member of the Authority requests, by written notice addressed to the Chairperson, that a resolution proposed to be made under subsection (1) be referred to a meeting of the Authority for consideration, the proposed resolution must be referred to a meeting of the Authority.
- (4) A request under subsection (3) must be made within 14 days after the date on which the notice referred to in subsection (1)(b) is given.

14. Decisions not invalidated by defects in appointment etc.

Decisions of the Authority are not invalidated solely by—

- (a) a defect in the appointment of a member of the Authority;
- (b) a vacancy among the Authority's members;

- (c) the absence of a member of the Authority from the meeting at which the decision was taken; or
- (d) an irregularity in the procedures adopted by the Authority that does not affect the merit of the decision taken.

Part 5

Financial Provisions

15. Financial year

The financial year of the Authority is—

- (a) the period beginning on the date on which this section comes into operation and ending on the next 31 March; or
- (b) the period of 12 months ending on 31 March in each subsequent year.

16. Funds

(1) The funds of the Authority consist of—

- (a) all the money received by the Authority by way of fees, levies and penalties; and
- (b) all other money and property, including interest and accumulations of income, lawfully received by the Authority for its purposes.

(2) Any funds of the Authority that are not immediately required by it for the performance of its functions may be—

- (a) deposited on fixed term or call deposit or in a savings account in a bank nominated by the Financial Secretary, either generally or in a particular case, for that purpose; or

- (b) invested in a manner approved by the Financial Secretary.

17. Authority is exempt from taxation

- (1) The Authority is exempt from taxation under the Inland Revenue Ordinance (Cap. 112).
- (2) To avoid doubt, subsection (1) does not apply in relation to any remuneration, benefits or expenses paid out of the funds of the Authority to a member of the Authority.

Part 6

Accounts, Audit and Annual Report

18. Accounts

- (1) The Authority must—
 - (a) keep accounts and other records that accurately record and explain the financial transactions and financial position of the Authority; and
 - (b) ensure that a statement of accounts is prepared within 3 months, or a longer period the Secretary allows, after the end of each financial year of the Authority.
- (2) The statement of accounts must give a true and fair view of—
 - (a) the state of affairs of the Authority as at the end of that financial year; and
 - (b) the results of the operations and cash flows of the Authority in that financial year.

19. Authority to appoint auditor

- (1) As soon as practicable after the date on which this section comes into operation, the Authority must appoint an auditor to audit its statement of accounts.
- (2) The auditor must, as soon as practicable after the end of each financial year of the Authority—
 - (a) audit the accounts and statement of accounts required under section 18 of this Schedule; and
 - (b) submit a report on the statement of accounts to the Authority.

20. Annual report

- (1) As soon as practicable, and in any case within 6 months, after the end of each financial year of the Authority, the Authority must prepare a report about its activities in that financial year.
- (2) The report must contain the following information in relation to that financial year—
 - (a) an outline of the investigations conducted by the Authority;
 - (b) a summary of complaints received;
 - (c) an outline of all proceedings brought before appeal tribunals.

21. Annual report and audited accounts to be laid on table of Legislative Council

- (1) As soon as practicable, and in any case within 6 months, after the end of each financial year of the Authority, the Authority must give the following documents to the Secretary—
 - (a) a copy of its annual report prepared under section 20 of this Schedule;

- (b) a copy of its statement of accounts;
 - (c) a copy of the auditor's report on the statement of accounts.
 - (2) The Secretary must arrange for the documents received under subsection (1) to be laid on the table of the Legislative Council.
- 22. Director of Audit's examination**
- (1) The Director of Audit may, for any financial year of the Authority, conduct an examination into the economy, efficiency and effectiveness with which the Authority has used its resources in performing its functions.
 - (2) For the purposes of conducting the examination, the Director of Audit may, at all reasonable times—
 - (a) have full and free access to all accounts, records and documents in the custody or under the control of the Authority;
 - (b) make a copy of the whole or any part of those accounts, records and documents; and
 - (c) require a person who holds or is accountable for those accounts, records or documents to give any information or explanation that the Director of Audit considers necessary.
 - (3) The Director of Audit may report to the President of the Legislative Council the results of the examination.

Part 7

Committees

23. Authority may establish committees

- (1) The Authority may establish a standing committee for hearing disciplinary matters under Part 5 of this Ordinance.
- (2) The Authority may also establish one or more than one committee (whether or not as a standing committee)—
 - (a) to advise the Authority on any matters (within the scope of the Authority's functions) that the Authority refers to it; and
 - (b) to perform any functions of the Authority that the Authority delegates to it.
- (3) Every member of a committee is to be appointed by the Authority.
- (4) A committee must consist of at least 3 members.
- (5) A committee may include members who are not members of the Authority but, for a standing committee, a majority of the members must be members of the Authority.
- (6) The chairperson of a committee must be a member of the Authority.
- (7) When the Authority establishes a committee, it must specify, in writing, the terms of reference of the committee.
- (8) The Authority may, by written notice, amend the terms of reference of a committee.
- (9) Subject to any directions that may be given by the Authority, a committee may regulate its own procedure, including the determination of its quorum.

Schedule 4

[ss. 7 & 64]

Transitional Provisions

1. Provisional PMP licences

- (1) The Authority may, on application, issue—
 - (a) a provisional PMP (Tier 1) licence; or
 - (b) a provisional PMP (Tier 2) licence.
- (2) A provisional PMP (Tier 1) licence or provisional PMP (Tier 2) licence may only be issued to an individual.
- (3) A licence issued under this section is not transferable.
- (4) A licence issued under this section remains in force until the end of the period specified in it.
- (5) The period specified under subsection (4) must not be longer than 36 months beginning on the date on which the licence is issued.

2. Application for provisional PMP licences

- (1) In this section—
officer (高級人員) has the meaning given by section 2(1) of the Companies Ordinance (Cap. 622).
- (2) An application for a provisional PMP (Tier 1) licence or provisional PMP (Tier 2) licence—
 - (a) must be made within 36 months beginning on the date on which this section comes into operation;
 - (b) must be made to the Authority in the specified form;
 - (c) must contain the prescribed information; and

- (d) must be accompanied by the prescribed documents and application fee.
- (3) The Authority must not issue a provisional PMP (Tier 1) licence or provisional PMP (Tier 2) licence unless—
 - (a) the Authority is satisfied that the applicant does not meet all the prescribed criteria for holding a PMP (Tier 1) licence or PMP (Tier 2) licence, but—
 - (i) the applicant is a suitable person to hold the licence for which the applicant applies; and
 - (ii) the applicant meets all the prescribed criteria for holding the licence for which the applicant applies; and
 - (b) the applicant has paid the prescribed fee for the issue of the licence for which the applicant applies.
- (4) For the purposes of subsection (3)(a)(i), in determining whether the applicant is a suitable person to hold the licence for which the applicant applies, the Authority must have regard to the following—
 - (a) whether the applicant is a mentally disordered person, or a patient, within the meaning of section 2(1) of the Mental Health Ordinance (Cap. 136);
 - (b) whether the applicant has been convicted of a criminal offence (other than an offence under this Ordinance) involving fraud or dishonesty;
 - (c) whether the applicant has been convicted of a disciplinary offence or a criminal offence under this Ordinance;
 - (d) whether the applicant is or was the sole proprietor of a property management company whose application for a PMC licence has been refused or whose PMC licence has been revoked or suspended;

- (e) whether the applicant is or was an officer of, or a partner in, a property management company whose application for a PMC licence has been refused or whose PMC licence has been revoked or suspended.
 - (5) The Authority may impose on a licence issued under section 1 of this Schedule those conditions, including prescribed conditions, that it considers appropriate.
 - (6) If the Authority decides not to issue a provisional PMP (Tier 1) licence or provisional PMP (Tier 2) licence, it must, by notice in writing given to the applicant within 21 days beginning on the date on which the decision is made—
 - (a) notify the applicant of the decision; and
 - (b) give reasons for the decision.
 - (7) Sections 12 and 13 of this Ordinance, with necessary modifications, apply to the holder of a licence issued under section 1 of this Schedule as they apply to a licensed PMP.
- 3. Appeal in relation to provisional PMP licences**
- (1) A person aggrieved by a decision not to issue a provisional PMP (Tier 1) licence or provisional PMP (Tier 2) licence may lodge an appeal.
 - (2) Part 6 of this Ordinance, with necessary modifications, applies to an appeal under subsection (1) as it applies to an appeal under that Part.
- 4. Regulations for Schedule 4**
- (1) The Authority may, by regulation, prescribe—
 - (a) the information to be contained in, and the documents to accompany, an application for a provisional PMP (Tier 1) licence or provisional PMP (Tier 2) licence;

- (b) the fees payable in an application for a provisional PMP (Tier 1) licence or provisional PMP (Tier 2) licence;
 - (c) the criteria for holding a provisional PMP (Tier 1) licence or provisional PMP (Tier 2) licence;
 - (d) the fees payable for the issue of a provisional PMP (Tier 1) licence or provisional PMP (Tier 2) licence; and
 - (e) the conditions that may be imposed on a provisional PMP (Tier 1) licence or provisional PMP (Tier 2) licence.
- (2) The criteria mentioned in subsection (1)(c)—
- (a) may include criteria relating to the applicant's academic qualifications, professional qualifications and relevant work experience; and
 - (b) may impose more stringent requirements for a provisional PMP (Tier 1) licence.

Schedule 5

[s. 65]

Related Amendments

Part 1

Amendment to Prevention of Bribery Ordinance (Cap. 201)

1. Schedule 1 amended (public bodies)

Schedule 1—

Add

“127. Property Management Services Authority (including any committees established under the Property Management Services Ordinance (of 2014)).”.

Part 2

Amendment to The Ombudsman Ordinance (Cap. 397)

2. Schedule 1 amended (organizations to which this Ordinance applies)

Schedule 1, Part 1—

Add in alphabetical order

“Property Management Services Authority.”.

Explanatory Memorandum

The main purpose of this Bill is to regulate and control the provision of property management services by property management companies (*PMC*) and property management practitioners (*PMP*).

2. The Bill also establishes a Property Management Services Authority (*Authority*).

3. The Bill contains 9 Parts and 5 Schedules.

Part 1 (Preliminary)

4. Clause 1 sets out the short title and provides for commencement.

5. Clause 2 contains the definitions for the interpretation of the Bill.

6. Clause 3 provides for the meaning of *property management service* and empowers the Authority to prescribe, by regulation, a service falling within a category of services set out in Schedule 1 as a property management service.

7. Clause 4 sets out what constitutes a disciplinary offence (for example, committing misconduct or neglect in a professional respect).

8. Clause 5 empowers the Authority to issue codes of conduct specifying the matters it considers to be relevant in determining the question of misconduct or neglect in a professional respect.

Part 2 (Prohibition)

9. Clause 6 makes it an offence for a person to act as a PMC or PMP, or claim to be a licensed PMC or licensed PMP, without an appropriate licence.

10. Clause 7 sets out the exceptions to clause 6.

Part 3 (Licensing of PMCs and PMPs)

11. Clause 8 empowers the Authority to issue licences to PMCs and PMPs.
12. Clauses 9 and 10 provide for the procedures for the application for the issue and renewal of the licences.
13. Clause 11 sets out the factors that the Authority must have regard to in determining whether a person is suitable to hold a licence.
14. Clauses 12 and 13 require the Authority to publish a list of licensed PMCs and licensed PMPs in the Gazette, and to keep registers of the licensed PMCs and licensed PMPs.
15. Clause 14 creates an offence relating to the application for the issue or renewal of a licence.
16. Clause 15 empowers the Authority to make regulations for Part 3.

Part 4 (Duties of licensed PMCs and licensed PMPs)

17. Clause 16 requires a licensed PMC to provide the PMC's clients with information to be prescribed by the Authority.
18. Clause 17 requires a licensed PMC or licensed PMP to notify the Authority of any change in matters to be prescribed by the Authority.

Part 5 (Disciplinary matters)

19. Clause 18 provides that the Authority may, whether of its own volition or on receiving a complaint, conduct an investigation into any conduct of a licensed PMC or licensed PMP.
20. Clause 19 empowers the Authority to issue guidelines indicating the manner and form in which a complaint is to be lodged.
21. Clause 20 empowers the Authority to appoint an investigator for the purposes of an investigation.

22. Clause 21 provides for an investigator's powers.
23. Clause 22 creates offences relating to an investigation.
24. Clauses 23, 24, 26 and 27 are procedural provisions relating to the hearing of disciplinary matters.
25. Clause 25 sets out the disciplinary orders that may be made after a disciplinary hearing (including the revocation or suspension of a licence, and the imposition of a fine). Clause 29 provides for the effect of an order to revoke or suspend a licence. Schedule 2 specifies the maximum amount of the fine.
26. Clause 28 creates offences relating to a disciplinary hearing.

Part 6 (Appeal)

27. Clause 32 requires the Secretary for Home Affairs (*Secretary*) to appoint a panel of individuals for hearing appeals under Part 6.
28. Clause 33 provides that a person aggrieved by any of the specified matters may lodge an appeal with the Secretary.
29. Clauses 34 to 38 are procedural provisions relating to the hearing of an appeal.
30. Clause 39 creates offences relating to an appeal.

Part 7 (Authority)

31. Clause 40 establishes the Authority. Schedule 3 contains constitutional, administrative and financial provisions relating to the Authority.
32. Clause 41 sets out the Authority's principal functions. The Authority's other functions include to issue codes of conduct and to conduct disciplinary investigations and hearings.
33. Clause 42 sets out the Authority's powers.

- 34. Clause 43 sets out the Authority's status in relation to the Government.
- 35. Clause 44 provides immunity for an act done or omitted to be done in good faith by members of the Authority and others in the performance of the functions of the Authority.
- 36. Clauses 45 and 46 provide for disclosure of interests by a member of the Authority, or a member of a committee of the Authority.
- 37. Clause 47 provides for delegation of powers by the Authority.
- 38. Clause 48 provides for the circumstances in which the Chief Executive may give the Authority written directions for performing any of its functions.

Part 8 (Levy)

- 39. Clause 49 contains the definitions for the interpretation of Part 8.
- 40. Clause 50 clarifies that Part 8 applies to a conveyance on sale of immovable property.
- 41. Clause 51 provides that an amount to be prescribed by the Secretary is payable for a leviable instrument, and explains what a leviable instrument is.
- 42. Clause 52 provides when and by whom the levy is payable.
- 43. Clause 53 provides that the levy is to be collected by the Authority, or for the Authority by the Collector of Stamp Revenue (*Collector*) or an assistant collector.
- 44. Clause 54 provides that the Authority and the Collector may enter into an agreement for the collection and transmission of the levy.
- 45. Clause 55 empowers the Authority to impose a penalty for failure to pay the levy.
- 46. Clauses 56 to 58 provide for the recovery of the levy and penalty.

- 47. Clause 59 empowers the Authority to remit or refund any levy or penalty.
- 48. Clause 60 empowers the Secretary to make regulations for Part 8.

Part 9 (Miscellaneous)

- 49. Clause 61 provides a defence for employees in proceedings for a disciplinary offence.
- 50. Clause 62 provides that fees paid are not refundable.
- 51. Clause 63 provides for amendments to Schedules 2 and 3.
- 52. Clause 64 applies Schedule 4 which contains transitional provisions.
- 53. Clause 65 applies Schedule 5 which contains related amendments to the Prevention of Bribery Ordinance (Cap. 201) and The Ombudsman Ordinance (Cap. 397).

IMPLICATIONS OF THE PROPOSALS

Financial and Civil Service Implications

The PMSA will be self-financed and supported by income generated from licence fees and the levy imposed on conveyance on sale of immovable property. Hence, there will be no long-term recurrent financial implications on the Government. We envisage that the new PMSA will have a staff size of around 60 persons when in full operation. The PMSA will have to rent commercial premises for its office. At today's prices, we estimate that the recurrent expenditure of the PMSA to be around \$27 million to \$30 million a year.

2. It is estimated that the annual income generated by licence fees would be around \$12 million to \$14 million and the annual income from levy would be in the region of \$14 million to \$18 million. A start-up loan of about \$13 million to \$15 million would be required to meet the set-up and initial operating costs of the PMSA. We will seek approval for the start-up loan in accordance with the established mechanism. However, it should be noted that the actual level of licence fees and of the proposed levy will be worked out in the next stage of the legislative exercise, taking into account the licensing requirements to be specified in the subsidiary legislation, which will in turn affect the income and expenditure of the PMSA, and the amount of the start-up loan.

3. Additional workload arising from the implementation of the proposal prior to the establishment of the statutory licensing authority, if any, would be absorbed by the Home Affairs Department with its existing resources. The IRD will collect the proposed levy on behalf of the PMSA when conveyance on sale is submitted for stamping. Any additional resources, if required, will be sought through the established mechanism. As PMSA will be established as a self-financing statutory body, any cost incurred by IRD for PMSA should be fully recovered from PMSA.

Economic Implications

4. With the introduction of the new regulatory regime, it is envisaged that the service quality and professionalism of the industry will be enhanced, thus reducing the threat to public safety and economic costs arising from building neglect and dilapidation. Despite corresponding increases in public expenses on implementing the proposed measures and compliance costs for the industry, the quality of building management and maintenance, as well as the safety and living environment, will be improved.

5. Under the proposed single-tier licensing regime at the company level, the PMCs will compete with each other on the quality of their services and prices, given that information on the PMCs will be made transparent in future.

6. The proposal to introduce a licensing system for PMPs will enhance their service quality and professionalism to continue to serve in the industry. The transitional arrangement can enable smooth migration to the new regulatory regime.

Environmental Implications

7. Good property management practices will help reduce the environmental nuisances caused by pollution from household sources. A growing number of PMCs have also assumed active roles in facilitating waste reduction and enhancing building energy efficiency in recent years. The improvement in service quality upon introduction of a regulatory regime should therefore reinforce the industry's responsibility for maintaining pleasant living environment, and encourage continuous development of its role in satisfying residents' pursuit of greener lifestyles.

Sustainability Implications

8. The proposals would have no significant sustainability implications. The proposals would help raise the level of professionalism and service quality of the property management, and promote the concept of maintaining building safety and value through continuous effective building management. In long term, the proposals would contribute to the broad goals for achieving a sustainable urban living environment.