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**Paper for the House Committee Meeting
on 9 May 2014**

**Legal Service Division Report on
Property Management Services Bill**

I. SUMMARY

- 1. The Bill**

The Bill seeks to regulate and control the provision of property management services by establishing a Property Management Services Authority (the Authority) and introducing a licensing regime for entities carrying on, and individuals engaged in, the business of providing such services. Under the Bill, it would be an offence to provide property management services without a licence. The Authority would be empowered to investigate licensees' conduct and to impose sanctions on disciplinary offences.
- 2. Public Consultation**

According to the LegCo Brief, a three-month public consultation exercise was conducted from 3 December 2010 to 15 March 2011 to gauge public views on the proposed licensing regime. The 18 District Councils were consulted and were supportive of the proposal.
- 3. Consultation with LegCo Panel**

The Panel on Home Affairs was briefed on the proposals to establish a regulatory regime for the property management industry and to set up the Authority for the licensing of property management companies (PMCs) and property management practitioners (PMPs) on 13 December 2013. Various concerns were expressed by the Panel members.
- 4. Conclusion**

Our scrutiny of the Bill is continuing. Since the Bill seeks to introduce a licensing regime for PMCs and PMPs, Members may wish to study its policy aspects in detail.

II. REPORT

The date of First Reading of the Bill is 7 May 2014. Members may refer to the Legislative Council (LegCo) Brief (File Ref.: HAD HQ CR/20/3/5(C)) issued by the Home Affairs Department on 23 April 2014 for further details.

Object of the Bill

2. The Bill seeks to introduce a statutory licensing regime to regulate and control the provision of property management services by property management companies¹ (PMCs) and property management practitioners² (PMPs), to establish a Property Management Services Authority (Authority), and to provide for related matters.

Background

3. Entities carrying on, and individuals engaged in, the business of providing property management services are not at present subject to statutory regulation³. According to paragraph 3 of the LegCo Brief, the Administration considers that a mandatory licensing regime for PMCs and PMPs would 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. According to the Administration, empowering a statutory authority to enforce the relevant legislation by issuing codes of conduct and taking disciplinary actions against non-compliant PMCs and PMPs would meet such objectives.

Provisions of the Bill

4. The main features of the proposed licensing regime are summarized below.

Licensing of PMCs and PMPs

5. Part 3 of the Bill proposes a single-tier licensing regime for PMCs. Under the Bill, all PMCs providing property management services as described in Schedule 1⁴ to the Bill relating to a property⁵ would be required to obtain licences. The licensing requirement, however, would not apply to the provision of property management services to a property outside Hong Kong or the provision of such services by:

¹ Under clause 2, "property management company" means a business entity (whether a company, partnership or sole proprietorship) that carries on the business of providing property management services.

² Under clause 2, "property management practitioner" is defined as an individual who assumes a managerial or supervisory role in a property management company in relation to property management services provided by the company.

³ It is noted that the Security and Guarding Services Ordinance (Cap. 460) provides for the licensing of security companies and the issuing of permits to individuals doing security work, which includes guarding any property, person or place.

⁴ Schedule 1 sets out seven categories of services relating to the management of a property: general management; environment management; repair, maintenance and improvement; finance and asset management; facility management; human resources management; and legal services.

⁵ Under the Bill, "property" means a building as defined by section 2 of the Building Management Ordinance (Cap. 344).

- (a) the Hong Kong Housing Authority (HKHA);
- (b) a PMC whose business does not involve the provision of more than one category of property management services or (if there is more than one type of service under a category) more than one type of service;
- (c) the owners' organization⁶ of a property which provides the property with property management services without engaging a PMC or PMP; and
- (d) any owners of a property who provide property management services to the property without engaging a PMC or PMP, provided that such owners are individuals and do not provide the services to another property for profit.

6. The Bill proposes a two-tier regime for PMPs. Only individuals who assume a managerial or supervisory role in the provision of property management services would be required to obtain PMP licences under the Bill. The provision of the services by employees of HKHA or public officers acting in their respective official capacities would not be subject to the PMP licensing regime.

Establishment of the Authority as the licensing authority

7. Part 7 seeks to establish the Authority whose principal functions are to regulate and control the provision of property management services by the licensing of PMCs and PMPs, to promote their integrity, competence and professionalism, and to maintain and enhance the status of the profession. The Authority would not be a servant or agent of the Government and would not enjoy any status, immunity or privilege of the Government. The Authority would consist of a Chairperson, a Vice-chairperson and not more than 18 ordinary members to be appointed by the Chief Executive from among:

- (a) individuals who are engaged in property management services;
- (b) individuals with experience in property management, general administration or consumer affairs; and
- (c) other individuals who appear to the Chief Executive to be suitable to be appointed as members of the Authority.

8. Under the Bill, the Authority would be required, among other things, to keep registers of licensed PMCs and licensed PMPs for public inspection at its offices and through the Internet (clause 13), and to give to the Secretary for Home Affairs (SHA) an annual report and audited accounts to be tabled at LegCo (Part 6 of Schedule 3). The Authority could appoint a Chief Executive Officer, or employ or engage other persons it considers necessary to perform its functions (Part 3 of Schedule 3). By virtue of Schedule 5, the Authority would be subject to the Prevention of Bribery Ordinance (Cap. 201) and The Ombudsman Ordinance (Cap. 397).

⁶ The "owners' organization" of 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.

9. According to paragraph 13 of the LegCo Brief, the Authority would be a self-financing statutory body supported by two main income streams, namely, licence fees to be prescribed by the Authority under clause 15, and a levy (around \$200 to \$350) payable under Part 8 by the transferee of each conveyance on sale⁷ chargeable with stamp duty under head 1(1) in the First Schedule to the Stamp Duty Ordinance (Cap. 117). The precise amount of the levy would be prescribed by SHA under clause 60.

Licensing criteria

10. Under clauses 9(2) and 10(2), the Authority must not issue or renew a licence unless it is satisfied that the applicant is a suitable person to hold the licence⁸ and meets all the criteria for holding the licence to be prescribed by regulation made by the Authority. Under clause 15(2), these criteria may include:

- (a) for a PMC licence, a criterion that the applicant 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, requirements relating to the applicant's academic and professional qualifications, and relevant work experience, which may be more stringent for a PMP (Tier 1) licence.

Regulatory powers of the Authority

11. Part 5 of the Bill seeks to confer on the Authority certain regulatory powers. These include the powers to conduct an investigation (whether of its own volition or on receiving a complaint) into any conduct of a licensed PMC or licensed PMP, to issue guidelines regarding complaints, and to conduct (or to direct the disciplinary committee to conduct) a disciplinary hearing.

12. All licensed PMCs and licensed PMPs would have to comply with any conditions imposed on their licences, as well as applicable requirements in the Bill (including those relating to the disclosure of information to clients (clause 16)) and codes of conduct issued by the Authority about misconduct or neglect in a professional respect (clause 5). Non-compliance with such conditions or requirements would constitute a disciplinary offence under clause 4, which could result in the Authority conducting an investigation and/or making a disciplinary order against the licensee, including a verbal warning or written reprimand, a fine not exceeding \$300,000, the imposition or variation of a licence condition, and a suspension or revocation of the licence.

⁷ "Conveyance on sale" would have the meaning given by section 2(1) of the Stamp Duty Ordinance (Cap. 117). Under that section, the term means every conveyance whereby any immovable property, upon the sale thereof, is transferred to or vested in a purchaser or any other person on his behalf or by his direction, and includes a foreclosure order.

⁸ Under clause 11, the Authority would determine whether a person is a suitable person to hold a licence having regard to, among other matters, whether the person is bankrupt, is mentally disordered, has been convicted of any disciplinary or criminal offences, has had his licence application refused, or has had his licence revoked or suspended.

Proposed offences and penalties

13. Under clause 6 of the Bill, a person would commit an offence if he acts as a PMC or PMP, or claims to be a licensed PMC or licensed PMP, without a PMC or PMP licence. The maximum penalty for the offence is a fine of \$500,000 and imprisonment for 2 years on conviction on indictment, or a fine at level 6 (i.e. \$100,000) and imprisonment for 6 months on summary conviction.

14. Other criminal offences proposed under the Bill include:

- (a) provision of false or misleading information in connection with an application for a licence or the renewal of a licence (clause 14);
- (b) failure to provide information, or provision of false or misleading information, relevant to an investigation (clause 22); and
- (c) failure to comply with a summons, or giving false or misleading evidence, at a disciplinary hearing (clause 28) or the hearing of an appeal (clause 39).

The maximum penalty for any of these offences is a fine of \$200,000 and imprisonment for 1 year on conviction on indictment, or a fine at level 6 (i.e. \$100,000) and imprisonment for 6 months on summary conviction.

Transitional arrangements

15. Schedule 4 sets out the transitional arrangements. According to paragraph 15 of the LegCo Brief, the Administration proposes a three-year transitional period to allow PMCs and PMPs to migrate to the new licensing system. During this period, experienced PMPs with lower level of formal qualifications who meet certain basic requirements (which would be prescribed by regulation) would be granted provisional licences under Schedule 4. These PMPs would have three years after obtaining their provisional licences to complete continuing professional development courses to enable them to be granted formal PMP licences upon expiry of their provisional licences. PMPs who already meet the licensing criteria under Part 3 may also apply for formal licences during this period.

Other provisions

16. Other provisions deal with matters such as the power of the Authority to make regulations to prescribe the fees for the application, issue or renewal of a PMC or PMP licence, the conditions that may be imposed on a licence, and appeals against certain decisions made by the Authority.

Commencement

17. The Bill, if enacted as an ordinance, would come into operation on a day to be appointed by SHA by notice published in the Gazette (clause 1(2)).

Public Consultation

18. According to paragraph 20 of the LegCo Brief, 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. The 18 District Councils or their committees were consulted, and were supportive of the proposal.

Consultation with LegCo Panel

19. As advised by the Clerk to the Panel on Home Affairs, the Panel was briefed on the legislative proposals on 13 December 2013. Members generally supported the proposals. Some members urged the Administration to shorten the three-year transitional period to two years, while some others expressed concerns about the survival of small and medium-sized PMCs after the full implementation of the proposed licensing regime and its impact on the employment prospects of PMPs employed by the small-sized PMCs. Concerns were also raised about the composition and income of the Authority and the measures to avoid cost transfer from PMCs to property owners.

Conclusion

20. Our scrutiny of the Bill is continuing. Since the Bill seeks to introduce a licensing regime for PMCs and PMPs, Members may wish to study the policy aspects of the Bill in detail.

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