

立法會
Legislative Council

LC Paper No. CB(2)557/14-15
(These minutes have been seen
by the Administration)

Ref : CB2/BC/7/13

Bills Committee on Property Management Services Bill

Minutes of the 5th meeting
held on Tuesday, 25 November 2014, at 10:45 am
in Conference Room 2B of the Legislative Council Complex

- Members present** : Hon Tony TSE Wai-chuen, BBS (Chairman)
Hon WU Chi-wai, MH (Deputy Chairman)
Hon James TO Kun-sun
Hon Abraham SHEK Lai-him, GBS, JP
Hon WONG Kwok-hing, BBS, MH
Hon Cyd HO Sau-lan, JP
Hon CHAN Kin-por, BBS, JP
Hon IP Kwok-him, GBS, JP
Hon Alan LEONG Kah-kit, SC
Hon Steven HO Chun-yin
Hon Frankie YICK Chi-ming
Hon Alice MAK Mei-kuen, JP
Hon KWOK Wai-keung
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
- Members absent** : Hon Starry LEE Wai-king, JP
Hon CHEUNG Kwok-che
Hon Paul TSE Wai-chun, JP
Hon WONG Yuk-man
Hon Claudia MO
Hon LEUNG Che-cheung, BBS, MH, JP
- Public Officers attending** : Item I
Mr Jack CHAN Jick-chi, JP
Deputy Director of Home Affairs (2)

Miss Linda LEUNG Ka-ying
Assistant Director of Home Affairs (5)

Mr Michael LAM Siu-chung
Senior Assistant Law Draftsman
Department of Justice

Miss Cindy CHEUK Chi-wing
Government Counsel
Department of Justice

Clerk in attendance : Ms Alice LEUNG
Chief Council Secretary (2) 2

Staff in attendance : Mr Bonny LOO
Assistant Legal Adviser 3

Miss Josephine SO
Senior Council Secretary (2) 6

Miss Emma CHEUNG
Legislative Assistant (2) 2

Action

I. Meeting with the Administration

(LC Paper Nos. CB(2)307/14-15(01) & (02), CB(3)583/13-14, CB(2)1761/13-14(02) to (04), CB(2)2014/13-14(01), CB(2)2189/13-14(01), CB(2)22/14-15(03) & (04), CB(2)82/14-15(02) and CB(2)191/14-15(03))

1. The Bills Committee deliberated (index of proceedings attached at **Annex A**).
2. The Bills Committee discussed matters arising from the last meeting and continued clause-by-clause examination of the Property Management Services Bill ("the Bill") (LC Paper No. CB(3)583/13-14).
3. The Bills Committee examined clauses 2 and 3 of and Schedule 1 to the Bill.

Action

Follow-up actions required of the Administration

Admin

4. The Administration was requested to provide written responses to issues raised by members as set out in **Annex B**.

II. Any other business

Date of next meeting

5. The Chairman said that he would schedule further meetings for continuation of the clause-by-clause examination of the Bill, and members would be informed of the meeting arrangements in due course.

(Post-meeting note: At the request of the Administration and with the concurrence of the Chairman, the next meeting of the Bills Committee was scheduled for Monday, 12 January 2015, at 4:30 pm in order to allow sufficient time for the Administration to take follow-up actions in response to the issues and concerns raised by members at this meeting. Members were informed of the meeting arrangement vide LC Paper No. CB(2)358/14-15 on 2 December 2014.)

6. There being no other business, the meeting ended at 12:46 pm.

Council Business Division 2
Legislative Council Secretariat
7 January 2015

**Proceedings of the 5th meeting of the
Bills Committee on Property Management Services Bill
on Tuesday, 25 November 2014, at 10:45 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action Required
000157 - 000304	Chairman	The Chairman's opening remarks	
000305 - 000930	Chairman Admin	Briefing by the Administration on its response to issues raised by members at the meeting on 4 November 2014 (LC Paper No. CB(2)307/14-15(02)).	
000931 - 001451	Chairman Deputy Chairman Admin	The Chairman and the Deputy Chairman's concerns as to whether the scope of definition of "owners' organization" under Clause 2 of the Property Management Services Bill ("the Bill") was too wide. There was a suggestion that instead of defining the term as "an organization (whether or not formed under the Building Management Ordinance (Cap. 344) ("BMO") or a deed of mutual covenant ("DMC")) that is authorized to act on behalf of all the owners of the property", it would be more appropriate to list out all possible forms of owners' organizations in order to remove any uncertainty in this respect in future.	Admin to consider and provide a written response (Para. 7(a) of Annex B refers)
001452 - 001629	Chairman Admin	The Chairman's enquiry and the Administration's elaboration on the new targetted support scheme to be introduced by the Home Affairs Department to specifically support those "self-managed" buildings and estates with more than 500 units to ensure that they were properly managed.	
001630 - 002233	Chairman Deputy Chairman Admin	<p>The Deputy Chairman reiterated his view that the Administration should require that owners' corporations' ("OCs") decision to opt for "self-management" without engaging any property management companies ("PMCs") had to be made by passing a resolution at an owners' meeting.</p> <p>The Administration's explanation on the statutory procedures stipulated in BMO for the termination of the appointment of DMC managers or contract managers as well as the alarm mechanism in place to monitor OCs' contemplation to opt for "self-management".</p>	

Time marker	Speaker	Subject(s)	Action Required
002234 - 003406	Chairman Mr Alan LEONG Admin Mr CHAN Kin-por	<p>Mr Alan LEONG expressing concerns over the wide scope of the definition of "owners' organization" in Clause 2 of the Bill and the potential loopholes arising from the proposed exceptions from prohibition of unlicensed activities under Clause 6 of the Bill that might create an incentive for property owners/OCs to opt for "self-management" instead of engaging PMCs to undertake the property management work. Mr LEONG and Mr CHAN Kin-por both supported the Deputy Chairman's proposal of requiring OCs' decision to opt for "self-management" to be made by the passage of a resolution at an owners' meeting.</p> <p>Regarding the 8 425 buildings currently managed by OCs or other forms of owners' organizations without engaging PMCs, the Administration agreed to provide supplementary information on the respective numbers of different forms of owners' organizations undertaking "self-management of property", including OCs registered under BMO, Owners' Committees formed under DMC and Mutual Aid Committees formed by residents of a building and exempted from the Societies Ordinance (Cap. 151) etc.</p> <p>Mr CHAN Kin-por's suggestion that the maximum number of property units that could be managed by an OC, owners' organization or individual owners under Clause 7 of the Bill should be limited to 1 800 units. In so doing, existing self-managed buildings/estates would not be affected by the proposed licensing regime. His indication of intention to move Committee Stage amendments ("CSAs") to this effect if the Administration refused to accept his suggestion.</p> <p>The Administration's emphasis that its policy intent under the Bill was not to regulate owners or OCs, and that the conduct and operation of OCs and their management committees ("MCs") were regulated by the relevant provisions of BMO. This notwithstanding, the Administration was willing to consider, during the current review of BMO, whether improvements could be made having regard to members' views and concerns.</p>	<p>Admin to consider and provide a written response (Para. 7(a) of Annex B refers)</p> <p>Admin to provide further information (Para. 1 of Annex B refers)</p>

Time marker	Speaker	Subject(s)	Action Required
003407 - 004814	Chairman Deputy Chairman Admin Mr CHAN Kin-por	<p>The Deputy Chairman reiterating his call for the Administration to stipulate clearly in the Bill that OCs' decision to switch from engaging a PMC to manage the building to "self-management of property" should be supported by the passage of a resolution at a general meeting of the OC, with a view to forestalling any possible circumvention of the licensing regime. He requested the Administration to consider his suggestion and to advise on how the proposal could be brought forward under BMO and whether similar amendments would also be made to the Bill. He further requested the Administration's provision of the underlying rationale and justifications if its answer to the latter was negative. The Deputy Chairman's indication that he might consider moving CSAs to achieve the effect as suggested by him if the Administration did not agree to do so.</p> <p>Mr CHAN Kin-por's expression of doubt on the effectiveness of improvements proposed by the Administration to the provisions of BMO for monitoring the operation of OCs, given the lack of criminal sanctions for non-compliance with BMO.</p> <p>The Administration's response that under BMO, the provision of false statement or information was regarded as a criminal offence. However, as owners served as MC members on a voluntary basis, they would consider it unfair to subject them to too much criminal sanctions under BMO. Imposition of too much criminal sanctions might discourage owners from participating in the management of their buildings.</p>	Admin to provide a response (Para. 2 of Annex B refers)

Continuation of clause-by-clause examination of the Bill

004815 - 004922	Chairman	The Bills Committee continued clause-by-clause examination of the Bill, with the aid of the Blue Bill (LC Paper No. CB(3)583/13-14)	
004923 - 005144	Chairman Admin ALA3	<p><u>Clause 2 - Interpretation</u></p> <p><i>The definition of the term "property"</i></p> <p>The Administration's advice that the current BMO might apply to house developments. Certain house developments, e.g. Chun Fai Garden and The Vineyard, had already had OCs formed under BMO. Multi-storey developments with DMC in effect were covered by the definition of "property"</p>	

Time marker	Speaker	Subject(s)	Action Required
		in the Bill. PMCs managing a house development and/or property development consisting of multi-storey buildings and houses that fell within the definition of "property" would be subject to the licensing regime under the Bill.	
005145 - 005235	Chairman Admin	<i>The definition of the term "appeal tribunal"</i>	
005236 - 005927	Chairman Admin ALA3 Deputy Chairman Mr IP Kwok-him Ms Cyd HO	<p><i>The definition of the term "company"</i></p> <p>ALA3 pointed out that in the definition of "company", the phrase "incorporated or otherwise established" was rendered as "成立或設立". The word "otherwise" was not rendered in the Chinese text. The Administration advised that it would consider removing "otherwise" from the English text of the definition of "company".</p> <p>The Deputy Chairman's query on whether by using the word "及" to link up paragraphs (a) and (b) in the Chinese version, a body corporate had to fall within the meaning of both paragraphs (a) and (b). The Administration's advice that the effect of the definition was that it included a body corporate that fell within the meaning of paragraph (a), and included a body corporate that fell within paragraph (b). The Administration was invited to (i) consider whether there was a need to align the English and Chinese expressions to ensure consistency in the drafting of the definition; and (ii) provide examples of other pieces of legislation where the word "及" linked up a series of paragraphs introduced by the words "包括".</p>	Admin to provide a response/the requested information (Para. 7(b) of Annex B refers)
005928 - 010140	Chairman Admin	<i>The definition of the terms "deed of mutual covenant", "Chairperson", "member", "Chief Executive Officer", "Secretary" and "committee"</i>	
010141 - 011433	Admin Chairman ALA3 Deputy Chairman Ms Cyd HO Mr IP Kwok-him	<p><i>The definition of the terms "property management practitioner", "PMP (Tier 1) licence" and "PMP (Tier 2) licence"</i></p> <p>ALA3 pointed out that "property management practitioner ("PMP")" was 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". Having regard to members' concern about the duties</p>	Admin to provide a response/further information (Para. 3 of Annex B

Time marker	Speaker	Subject(s)	Action Required
		<p>expected of a licensed PMP (Tier 1) and a licensed PMP (Tier 2) and to facilitate members' scrutiny of the Bill, the Administration undertook to provide its preliminary thoughts on the licensing requirements and the respective scope of duties of a licensed PMP (Tier 1) and a licensed PMP (Tier 2) at the next Bills Committee meeting, and to consider whether it was necessary for the Bill to define what constituted "a managerial or supervisory role".</p> <p>The Deputy Chairman's and Ms Cyd HO's suggestion that the Bills Committee might need to hold another public hearing for in-service PMPs to express their views on the proposed licensing requirements. Mr IP Kwok-him's view that as the Bills Committee had received views from deputations, there was no need to decide at this stage to arrange another public hearing. The Chairman's remarks that he noted members' views on the suggestion.</p>	refers)
011434 - 011628	Admin Chairman ALA3 Ms Cyd HO	<p><i>The definition of the term "property management company"</i></p> <p>ALA3's advice that PMC would mean "a business entity (whether a company, partnership or sole proprietorship) that carries on the business of providing property management services". He had earlier sought clarification from the Administration on whether the word "business" was intended to cover a non-profit or charitable organization that provided such services otherwise than for gain or reward. According to the Administration, the definition of PMC might cover non-profit and charitable organizations which the Administration did not intend to exclude from the scope of the licensing regime.</p> <p>Ms Cyd HO's enquiry and the Administration's response that the licensing regime was intended to apply to the Hong Kong Housing Society as well as MTR Corporation Limited. In the light of this, Ms Cyd HO invited the Legal Adviser to the Bills Committee to consider, where appropriate, whether any provisions of the Bill, as presently drafted, would be inconsistent with relevant provisions of the Mass Transit Railway Ordinance (Cap. 556).</p>	

Time marker	Speaker	Subject(s)	Action Required
011629 - 012448	Chairman Admin ALA3	<p><i>The definition of the terms "PMC licence", "property management service", "licensee", "licensed PMP", "licensed PMP (Tier 1)" and "licensed PMP (Tier 2)"</i></p> <p>The Administration's advice that the prohibition against unlicensed activities would apply to situations where a person described himself/herself as a "registered professional property manager" or a "licensed property management officer" so as to be capable of deceiving or misleading any person into believing that the person was a licensed PMP (Tier 1) or licensed PMP (Tier 2). As provided in the proposed section 15(1)(c) and (2)(b), the Property Management Services Authority ("PMSA") might, by regulation, prescribe the criteria for a PMP (Tier 1) licence or PMP (Tier 2) licence.</p>	<p>Admin to provide information on the licensing requirements for the two tiers of PMP licences (Para. 3 of Annex B refers)</p>
012449 - 012630	Chairman Admin	<p><i>The definition of the terms "licensed PMC", "disciplinary committee", "Vice-chairperson", "licence" and "owner"</i></p>	
012631 - 013138	Chairman Admin Deputy Chairman Ms Cyd HO	<p><i>The definition of the term "owners' organization"</i></p> <p>The Deputy Chairman's reiteration of his view that instead of defining the term as "an organization (whether or not formed under BMO or a DMC) that is authorized to act on behalf of all the owners of the property", it would be more appropriate to list out all possible forms of owners' organizations in order to remove any uncertainty in this respect in future.</p>	<p>Admin to consider and provide a written response (Para. 7(a) of Annex B refers)</p>
013139 - 013300	Chairman Admin	<p><i>The definition of the terms "disciplinary offence", "Authority" and "former Companies Ordinance"</i></p>	
013301 - 013440	Chairman ALA3 Admin	<p>ALA3 pointed out that Clause 16 provided that a licensed PMC must prepare the prescribed information and provide the information to the PMC's clients in the prescribed manner. Since the term "clients" was not defined in the Bill, there was concern on whether "clients" referred to OCs, owners' organizations, individual owners and/or tenants. The Administration was requested to consider the need for including a definition of "clients" in Clause 2 or Clause 16 of the Bill.</p>	<p>Admin to consider and provide a written response (Para. 7(c) of Annex B refers)</p>

Time marker	Speaker	Subject(s)	Action Required
013441 - 015222	Chairman Admin Mr IP Kwok-him ALA3 Ms Cyd HO Deputy Chairman	<p>Clause 3 and Schedule 1 - <u>Property management services</u></p> <p>The Administration's advice that -</p> <p>(a) property management required multi-disciplinary professional knowledge. Modelling on the Specification of Competency Standards for Property Management Industry of the Hong Kong Qualifications Framework, Schedule 1 listed seven categories of property management services which were intended to be mutually exclusive; and</p> <p>(b) Clause 3 provided that PMSA might, by regulation, prescribe a service falling within a category of services set out in Schedule 1 as a property management service. More than one type of service might be prescribed under a category.</p> <p>Concerns were raised as to how each defined category of services would be further subdivided and whether the unlicensed provision of free advisory service or legal advice to OCs or owners' organizations on building management by professional bodies and Members' Offices etc. would constitute an offence under the Bill. The Administration agreed to provide for the next Bills Committee meeting its preliminary thoughts on the types of services under each category and clarification on members' concerns.</p>	<p>Admin to provide a written response (Para. 5 of Annex B refers)</p>
015223 - 020152	Chairman Mr James TO Admin ALA3 Ms Cyd HO Mr IP Kwok-him Deputy Chairman	<p>Mr James TO's and the Deputy Chairman's views that professional bodies and Members' Offices should not be required to obtain PMC licences in providing free advisory service or legal advice to OCs or owners' organizations on building management because they had no contractual relationship with each other.</p> <p>The Administration advised that Clause 6(1) of the Bill provided that no person might, without a PMC licence, act as a PMC or claim to be a licensed PMC. ALA3 pointed out that under Clause 2 of the Bill, a PMC "means a business entity (whether a company, partnership or sole proprietorship) that carries on the business of providing property management services". The Administration was requested to provide clarification on whether there</p>	<p>Admin to provide clarification (Para. 6 of Annex B refers)</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>was any difference in meaning between "providing property management services" and "acting as a property management company".</p> <p>The Administration was also requested to provide a written response to an enquiry raised by ALA3 on whether licensed PMCs' in-house lawyers or compliance officers would fall within the proposed definition of PMP and be required to obtain PMP licences.</p>	<p>Admin to provide a written response (Para. 4 of Annex B refers)</p>
020153 - 020249	Chairman	The Chairman's closing remarks.	

Council Business Division 2
Legislative Council Secretariat
7 January 2015

**Bills Committee on
Property Management Services Bill**

**List of follow-up actions arising from the discussion
at the meeting on 25 November 2014**

1. Regarding the 8 425 buildings which were currently managed by owners' corporations ("OCs") or other forms of owners' organizations without engaging property management companies ("PMCs"), the Administration agreed to provide supplementary information on the respective numbers of different forms of owners' organizations undertaking "self-management of property", including OCs registered under the Building Management Ordinance (Cap. 344) ("BMO"), Owners' Committees formed under a Deed of Mutual Covenant ("DMC") and Mutual Aid Committees formed by residents of a building and exempted from the Societies Ordinance (Cap. 151) etc.
2. There was a suggestion that if an OC decided to switch from engaging a PMC to manage the building to "self-management of property", the decision should be supported by the passage of a resolution at a general meeting of the OC, with a view to forestalling any possible circumvention of the licensing regime. The Administration was requested to consider the suggestion and advise on how the proposal could be brought forward under BMO and whether similar amendments would also be made to the Property Management Services Bill ("the Bill"). If the answer to the latter was negative, please provide the underlying rationale and justifications.
3. In Clause 2 of the Bill, "property management practitioner ("PMP") (物業管理人)" was 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". Concern was raised about the duties expected of a licensed PMP (Tier 1) and a licensed PMP (Tier 2). To facilitate the scrutiny of the Bill, the Administration undertook to provide its preliminary thoughts on the licensing requirements and the respective scope of duties of a licensed PMP (Tier 1) and a licensed PMP (Tier 2) at the next Bills Committee meeting, and to consider whether it was necessary for the Bill to define what constituted "a managerial or supervisory role".
4. The Administration was also requested to provide a written response to an enquiry raised by the Legal Adviser to the Bills Committee on whether licensed PMCs' in-house lawyers or compliance officers would fall within the proposed definition of PMP and be required to obtain PMP licences.

5. Regarding the seven categories of property management services set out in Schedule 1 to the Bill, concern was raised about how each defined category of services would be further subdivided. There was also concern as to whether the unlicensed provision of free advisory service or legal advice to OCs or owners' organizations on building management by professional bodies and Members' Offices etc. would constitute an offence under the Bill. The Administration was requested to provide (a) its preliminary thoughts on the types of services under each category; and (b) clarification on members' concern.

6. In relation to item 5 above, members noted that under Clause 2 of the Bill, a PMC "means a business entity (whether a company, partnership or sole proprietorship) that carries on the business of providing property management services". Clause 6 of the Bill provided that no person might, without a PMC licence, "act as a property management company". The Administration was requested to provide clarification on whether there was any difference in meaning between "providing property management services" and "acting as a property management company".

7. The Bills Committee requested the Administration to consider the following observations/comments on certain provisions raised by members and the Legal Adviser to the Bills Committee -

- (a) concern was raised as to whether the scope of definition of "owners' organization (業主組織)" under Clause 2 of the Bill was too wide. There was a suggestion that instead of defining the term as "an organization (whether or not formed under BMO or a DMC) that is authorized to act on behalf of all the owners of the property", the Administration should consider whether it would be more appropriate to list out all possible forms of owners' organizations in order to remove any uncertainty in this respect in future;
- (b) in the definition of "company (公司)", the conjunction "及" was used to link up paragraphs (a) and (b) in the Chinese version. The Administration was invited to (i) consider whether there was a need to align the English and Chinese expressions to ensure consistency in the drafting of the definition; and (ii) provide examples of other pieces of legislation where the word "及" linked up a series of paragraphs introduced by the words "包括"; and
- (c) Clause 16 provided that a licensed PMC must prepare the prescribed information and provide the information to the PMC's clients in the prescribed manner. Since the term "clients (客戶)"

was not defined in the Bill, there was concern on whether "clients" referred to OCs, owners' organizations, individual owners and/or tenants. The Administration was requested to consider the need for including a definition of "clients" in Clause 2 or Clause 16 of the Bill.

Council Business Division 2
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7 January 2015