

立法會
Legislative Council

LC Paper No. CB(2)774/14-15
(These minutes have been seen
by the Administration)

Ref : CB2/BC/7/13

Bills Committee on Property Management Services Bill

Minutes of the 6th meeting
held on Monday, 12 January 2015, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex

Members present : Hon WU Chi-wai, MH (Deputy Chairman)
Hon Abraham SHEK Lai-him, GBS, JP
Hon WONG Kwok-hing, BBS, MH
Hon Cyd HO Sau-lan, JP
Hon Starry LEE Wai-king, JP
Hon CHAN Kin-por, BBS, JP
Hon IP Kwok-him, GBS, JP
Hon Claudia MO
Hon Steven HO Chun-yin
Hon Frankie YICK Chi-ming
Hon LEUNG Che-cheung, BBS, MH, JP
Hon KWOK Wai-keung

Members absent : Hon Tony TSE Wai-chuen, BBS (Chairman)
Hon James TO Kun-sun
Hon CHEUNG Kwok-che
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon Alice MAK Mei-kuen, JP
Hon Christopher CHUNG Shu-kun, BBS, MH, JP

Public Officers attending : Item I

Mr Jack CHAN Jick-chi, JP
Deputy Director of Home Affairs (2)

Mr Franco KWOK Wai-fan, JP
Assistant Director of Home Affairs (4)

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)556/14-15(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. As the Chairman was unable to attend the meeting, the Deputy Chairman presided over the discussions at the meeting.
2. The Bills Committee deliberated (index of proceedings attached at **Annex A**).
3. The Bills Committee discussed matters arising from the last meeting held on 25 November 2014 and continued clause-by-clause examination of the Property Management Services Bill ("the Bill") (LC Paper No. CB(3)583/13-14).
4. The Bills Committee examined clauses 4 and 5 of the Bill.

Action

5. The Bills Committee noted that the Administration would -
- (a) in view of the significant implications on the management of the building if an owners' corporation ("OC") decided to switch from engaging a property management company to "self-management", propose to amend the Building Management Ordinance (Cap. 344) to require such decision be supported by the passage of an owners' resolution at a general meeting of the OC;
 - (b) consider expanding the scope of Clause 4(d) of the Bill to include non-compliance with the requirements under Clause 21(2)(a), (b), (c) or (d), Clause 24(1)(b)(ii) or (iii) and Clause 36(1)(b)(i), (ii) or (iii); and
 - (c) make necessary amendments to the Bill to the effect that the proposed Property Management Services Authority should be required to publish the codes of conduct in the gazette, given their importance.

Follow-up actions required of the Administration

Admin

6. The Administration was requested to provide written responses to issues raised by members and the Legal Adviser to the Bills Committee as set out in **Annex B**.

II. Any other business

Date of next meeting

7. The Deputy Chairman reminded members that the next meeting of the Bills Committee would be held on Monday, 9 February 2015, at 10:45 am to continue clause-by-clause examination of the Bill.

8. There being no other business, the meeting ended at 6:07 pm.

**Proceedings of the 6th meeting of the
Bills Committee on Property Management Services Bill
on Monday, 12 January 2015, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action Required
000057 - 000158	Deputy Chairman	The Deputy Chairman's opening remarks	
<i>Matters arising from the last meeting held on 25 November 2014</i>			
000159 - 000956	Deputy Chairman Admin	Briefing by the Administration on its response to issues raised by members at the meeting on 25 November 2014 (LC Paper No. CB(2)556/14-15(02)).	
000957 - 001106	Deputy Chairman Mr Frankie YICK Admin	Mr Frankie YICK's enquiries and the Administration's responses concerning (a) the provision of property management services by a company to a property owned or held by another company within the same group of companies; and (b) the detailed arrangement (e.g. the minimum attendance requirement) of continuing professional development courses designed for experienced property management practitioners ("PMPs") with lower level of formal qualifications to facilitate their obtaining of a PMP licence.	
001107 - 001414	Deputy Chairman Mr CHAN Kin-por Admin	<p>The Bills Committee noted that the Administration would, in view of the significant implications on the management of the building if an owners' corporation ("OC") decided to switch from engaging a property management company ("PMC") to "self-management", propose to amend the Building Management Ordinance (Cap. 344) ("BMO") to require such decision be supported by the passage of an owners' resolution at a general meeting of the OC (para. 5 of LC Paper No. CB(2)556/14-15(02)).</p> <p>Mr CHAN Kin-por reiterated his view that an upper limit should be imposed on the number of property units that could be "self-managed" by OCs or owners' organizations without having to obtain licences under the Property Management Services Bill ("the Bill"). His concern that the management standard of "self-managed" buildings/estates might not be satisfactory if the number of property units in such buildings/estates was very large.</p> <p>The Administration's response that it appreciated</p>	Admin

Time marker	Speaker	Subject(s)	Action Required
		members' concern about the management standard of "self-managed" buildings/estates which comprised a large number of property units. The Administration undertook to explore feasible options, including making amendments to the Bill, to address members' concerns in this respect.	to revert to the Bills Committee (Para. 2 of Annex B refers)
001415 - 001634	Deputy Chairman Mr Frankie YICK Admin	Mr Frankie YICK's enquiry about measures to be taken by the Administration to enhance the support for "self-managed" buildings/estates. The Administration's advice that the Home Affairs Department ("HAD") would introduce a new targetted support scheme to specifically support those "self-managed" buildings/estates with more than 500 units to ensure that they were properly managed.	
001635 - 002003	Deputy Chairman Admin	<p>The Deputy Chairman's view that the Administration should consider ways to shorten the "window period" between the enactment of the Bill and the passage of the proposed amendments to BMO in order to avoid circumvention of the "self-management" exceptions provided in Clause 7 of the Bill</p> <p>The Administration's advice that HAD had put in place an alarm mechanism to identify and follow up on potential cases where OCs were going to opt for "self-management". The Administration agreed to consider ways to address members' concern over the "window period" and revert to the Bills Committee.</p> <p>Mr Frankie YICK's view that experienced Liaison Officers ("LOs") should be deployed to provide dedicated support and outreach services to OCs contemplating "self-management". The Administration responded that experienced LOs would be deployed to support such OCs. In addition, District Officers and HAD Headquarters would render other assistance if necessary.</p>	Admin to provide a response (Para. 1 of Annex B refers)
002004 - 002351	Deputy Chairman Admin ALA3	The Deputy Chairman's enquiry and the Administration's explanation on why the proposed amendment to BMO to require OCs' decision to opt for "self-management" without engaging any PMCs or PMPs be supported by the passage of a resolution at an owners' meeting could not be made correspondingly to the Bill. The Administration's emphasis that its policy intent under the Bill was not to regulate owners or OCs,	

Time marker	Speaker	Subject(s)	Action Required
		<p>and that the conduct and operation of OCs and their management committees were regulated by the relevant provisions of BMO.</p> <p>Legal Adviser to the Bills Committee's advice that Clause 7 of the Bill provided exceptions to Clause 6 which sought to prohibit unlicensed activities. It could be argued that Committee Stage amendments ("CSAs") might be moved to Clause 7 to narrow the applicability of the proposed exceptions in relation to "self-management" by owners, OC or owners' organization of a property if the CSAs were considered to relate to the details (rather than fundamental principles) of the Bill. He pointed out that in the interpretation section of the Bill, cross-references to other ordinances, including BMO and the Companies Ordinance (Cap. 622), had been made.</p>	
002352 - 002916	Deputy Chairman Mr IP Kwok-him ALA3 Admin	<p>Mr IP Kwok-him expressing concern about the management standard of "self-managed" buildings/ estates which comprised a large number of property units. His view that the Bill should address this issue.</p> <p>In response to Mr IP's enquiry, Legal Adviser to the Bills Committee explained that it was for the President to decide whether CSAs proposed by the Bills Committee or individual Members should be admitted under relevant provisions of the Rules of Procedure. While an amendment must be relevant to the subject matter of the Bill and to the subject matter of the clause to which it related, proposed CSAs seeking to change the subject matter of a Bill would not be allowed.</p>	
002917 - 003858	Deputy Chairman Admin Mr IP Kwok-him	<p>The Deputy Chairman's enquiry and the Administration's explanation on the need to retain flexibility in the definition of "owners' organization (業主組織)" in Clause 2 of the Bill (para. 21 of LC Paper No. CB(2)556/14-15(02)).</p> <p>Discussion on whether owners' organizations not formed under BMO or a deed of mutual covenant had any legal basis to manage their buildings/estates and to collect management fees.</p>	
003859 - 004640	Deputy Chairman ALA3 Admin	Legal Adviser to the Bills Committee seeking clarification on how the Administration would amend BMO to take forward the requirement that OCs' decision to opt for "self-management"	

Time marker	Speaker	Subject(s)	Action Required
		<p>without engaging any PMCs or PMPs must be supported by the passage of a resolution at an owners' meeting. The Administration's response that it was conducting a public consultation on the review of BMO. The Administration would make recommendations on the way forward having regard to the views received including the aforementioned proposed amendment in the next legislative amendment exercise of BMO (para. 5 of LC Paper No. CB(2)556/14-15(02)).</p> <p>Legal Adviser to the Bills Committee seeking clarification and the Administration's response on who would be regarded as managerial/supervisory staff in relation to property management services provided by a PMC and be required to obtain the PMP licence (para. 8 of LC Paper No. CB(2)556/14-15(02)) and whether the detailed licensing requirements for PMCs and PMPs would be set out in the subsidiary legislation and code of practices to be promulgated by the proposed Property Management Services Authority ("PMSA").</p> <p>Responding to the Legal Adviser to the Bills Committee, the Administration explained that PMCs providing more than one category or sub-category of property management services would be required to obtain licences. The details of the expected services within each category were set out in paragraphs 11 to 17 of LC Paper No. CB(2)556/14-15(02)).</p> <p>Legal Adviser to the Bills Committee's enquiry and the Administration's response on how it proposed amending the Bill to specify that only entities which provided property management services for monetary or other financial rewards would be required to obtain the PMC licence. Legal Adviser's suggestion that to avoid loopholes, the amendment should clearly provide for circumstances where the rewards were in the form of goods or services (para. 18 of LC Paper No. CB(2)556/14-15(02)).</p> <p>The Administration's confirmation that "carrying on the business of providing property management services" was synonymous with "acting as a PMC" (para. 19 of LC Paper No. CB(2)556/14-15(02)).</p>	

Time marker	Speaker	Subject(s)	Action Required
<i>Clause-by-clause examination of the Bill</i>			
004641 - 004704	Deputy 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)	
004705 - 005155	Deputy Chairman ALA3 Admin	<p><u>Clause 4 - Disciplinary offences</u></p> <p>Members noted the Administration's undertaking to consider expanding the scope of Clause 4(d) to include non-compliance with the requirements under Clause 21(2)(a), (b), (c) or (d) and 24(1)(b)(ii) or (iii). The Administration was requested to also consider expanding the scope of Clause 4(d) to include failure to comply with the requirements under Clause 36(1)(b)(i), (ii) or (iii).</p> <p>The Deputy Chairman's view that it should be specified in the Bill that non-compliance with the provisions in BMO should constitute a disciplinary offence.</p> <p>The Administration's advice that PMSA would issue guidelines and codes of conduct for the purpose of regulating or providing guidance to PMCs and PMPs.</p>	Admin to consider and provide a written response (Para. 5 of Annex B refers)
005156 - 011232	Deputy Chairman Ms Starry LEE Admin Mr IP Kwok-him Mr KWOK Wai-keung	<p>Members' enquiries and the Administration's response on the meaning of "licensee".</p> <p>The Administration's elaboration on the complaint handling mechanism provided in the Bill, including hearings before PMSA, the disciplinary committee and the appeal tribunal.</p> <p>The Administration's explanation on the merits of specifying in the codes of conduct to be issued by PMSA acts or omissions that would be considered as disciplinary offences.</p> <p>Members' (Ms Starry LEE, Mr IP Kwok-him and Mr KWOK Wai-keung) expression of concern that a PMC might, under pressure from the OC, commit acts which constituted offences or non-compliance with BMO or the codes of conduct to be issued by PMSA. There was a suggestion that a mechanism should be put in place for a PMC to report any decisions/acts of the OC which might affect the PMC's compliance with the relevant statutory requirements, e.g. PMC's presentation of report at OC's annual general meeting or reporting to the relevant</p>	Admin to consider and to respond to this suggestion (Para. 3 of Annex B refers)

Time marker	Speaker	Subject(s)	Action Required
		authorities.	
011233 - 012138	Deputy Chairman Admin Mr IP Kwok-him ALA3	<p>The Deputy Chairman noted that after the passage of the Bill, the Administration would introduce subsidiary legislation which would cover, inter alia, the detailed licensing criteria for PMCs and PMPs as well as the detailed operational arrangements of PMSA. Taking into account the number of items of subsidiary legislation to be introduced, their complexity, importance and controversy as well as far-reaching implications involved, he expressed concern whether Legislative Council ("LegCo") Members would be able to complete the scrutiny of the subsidiary legislation within the tight timeframe under the negative vetting procedure provided by section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).</p> <p>The Administration's advice that its preliminary thought was to submit to LegCo the subsidiary legislation relating to the Bill in batches.</p> <p>There was a suggestion that the draft subsidiary legislation relating to the Bill should be made available to the relevant Panel as early as possible for consideration/detailed examination by the Panel or a Subcommittee formed for the purpose before its gazettal.</p>	Admin to consider and respond (Para. 4 of Annex B refers)
012139 - 012456	Deputy Chairman Admin ALA3	Members' follow-up enquiries on the meaning of "licensee".	
012457 - 012955	Deputy Chairman Admin ALA3	<p><u>Clause 5 - Codes of conduct for section 4</u></p> <p>Legal Adviser to the Bills Committee pointed out that, as presently drafted, PMSA's power to issue codes of conduct under Clause 5(1) was limited to specifying matters relevant to the question of misconduct or neglect in a professional respect under Clause 4(a). In his view, if such codes of conduct were also intended to deal with other matters such as offences that might bring the profession into disrepute (Clause 4(e)(i)) or licensee's duties (e.g. with regard to accounting matters) (Clause 16), consideration should be given to expanding the scope of Clause 5(1) and amending the heading of Clause 5. He further pointed out that the Bill as presently drafted</p>	Admin to provide a

Time marker	Speaker	Subject(s)	Action Required
		contained no provision empowering PMSA to issue codes of practice. The Administration was requested to consider and provide a written response to the above comments raised by the Legal Adviser to the Bills Committee.	written response (Para. 6 of Annex B refers)
012956 - 013718	Deputy Chairman ALA3 Admin Mr IP Kwok-him	<p>Members noted the Administration's undertaking to make necessary amendments to the Bill to the effect that PMSA would be required to publish the codes of conduct in the gazette, given their importance. PMSA would also publish the codes of conduct through other additional means, e.g. posting onto its website.</p> <p>The Deputy Chairman's enquiry and the Administration's explanation that the codes of conduct to be issued by PMSA, or the amendments made to them, were not subsidiary legislation. The Administration was requested to provide more detailed information on the content and coverage of the codes of conduct intended to be published under Clause 5.</p> <p>In response to Mr IP Kwok-him's enquiry, Legal Adviser to the Bills Committee advised that in Hong Kong, subsidiary legislation would generally be published in the Legal Notices section of the Gazette while instruments which were not subsidiary legislation would be published in the Government Notices section of the Gazette. Although codes of conduct were not intended to be subsidiary legislation, certain ordinances had built in mechanisms for codes of conduct/codes of practice be tabled before LegCo for scrutiny by Members.</p>	Admin to provide the requested information (Para. 6 of Annex B refers)
013719 - 013826	Deputy Chairman	Date of next meeting and closing remarks.	

**Bills Committee on
Property Management Services Bill**

**List of follow-up actions arising from the discussion
at the meeting on 12 January 2015**

1. There was a view that the Administration should consider ways to shorten the "window period" between the enactment of the Property Management Services Bill ("the Bill") and the passage of the proposed amendments to the Building Management Ordinance (Cap. 344), which was now subject to public consultation, in order to avoid circumvention of the "self-management" exceptions provided in Clause 7 of the Bill. The Administration agreed to consider ways to address the concern and revert to the Bills Committee.
2. Regarding the concern raised by some members about the management standard of "self-managed" buildings/estates which comprised a large number of property units, the Administration undertook to explore feasible options to address the concern and revert to the Bills Committee.
3. Some members raised concern that a property management company ("PMC") might, under pressure from the owners' corporation ("OC"), commit acts which constituted offences or non-compliance with the codes of conduct to be issued by the Property Management Services Authority ("PMSA"). There was a suggestion that a mechanism should be put in place for a PMC to report any decisions/acts of the OC which might affect the PMC's compliance with the relevant statutory requirements, e.g. PMC's presentation of report at OC's annual general meeting or reporting to the relevant authorities. The Administration was requested to respond to this suggestion.
4. Taking into account the number of items of subsidiary legislation to be introduced, their complexity, importance and controversy as well as far-reaching implications involved, some members were concerned whether the Legislative Council Members would be able to complete the scrutiny of the subsidiary legislation within the tight timeframe under the negative vetting procedure provided by section 34 of the Interpretation and General Clauses Ordinance (Cap. 1). There was a suggestion that the draft subsidiary legislation relating to the Bill should be made available to the relevant Panel as early as possible for consideration/detailed examination by the Panel or a Subcommittee formed for the purpose before its gazettal. The Administration was requested to consider and respond to the above suggestion.

5. Regarding Clause 4(d) of the Bill, members noted the Administration's undertaking to consider expanding its scope to include non-compliance with the requirements under Clause 21(2)(a), (b), (c) or (d) and 24(1)(b)(ii) or (iii). The Administration was requested to also consider expanding the scope of Clause 4(d) to include failure to comply with the requirements under Clause 36(1)(b)(i), (ii) or (iii).

6. The Legal Adviser to the Bills Committee pointed out that, as presently drafted, PMSA's power to issue codes of conduct under Clause 5(1) was limited to specifying matters relevant to the question of misconduct or neglect in a professional respect under Clause 4(a). In his view, if such codes of conduct were also intended to deal with other matters such as offences that might bring the profession into disrepute (Clause 4(e)(i)) or licensee's duties (e.g. with regard to accounting matters) (Clause 16), consideration should be given to expanding the scope of Clause 5(1) and amending the heading of Clause 5. He further pointed out that the Bill as presently drafted contained no provision empowering PMSA to issue codes of practice. The Administration was requested to (a) consider and provide a written response to the above comments raised by the Legal Adviser to the Bills Committee; and (b) provide more detailed information on the content and coverage of the codes of conduct intended to be published under Clause 5.