

立法會
Legislative Council

LC Paper No. CB(2)1113/14-15
(These minutes have been seen
by the Administration)

Ref : CB2/BC/7/13

Bills Committee on Property Management Services Bill

Minutes of the 8th meeting
held on Friday, 27 February 2015, at 10:45 am
in Conference Room 2 of the Legislative Council Complex

Members present : Hon Tony TSE Wai-chuen, BBS (Chairman)
Hon WU Chi-wai, MH (Deputy Chairman)
Hon Abraham SHEK Lai-him, GBS, JP
Hon WONG Kwok-hing, BBS, MH
Hon CHAN Kin-por, BBS, JP
Hon IP Kwok-him, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Claudia MO
Hon Steven HO Chun-yin
Hon Frankie YICK Chi-ming
Hon LEUNG Che-cheung, BBS, MH, JP
Hon Alice MAK Mei-kuen, JP
Hon KWOK Wai-keung
Hon Christopher CHUNG Shu-kun, BBS, MH, JP

Members absent : Hon James TO Kun-sun
Hon Cyd HO Sau-lan, JP
Hon Starry LEE Wai-king, JP
Hon CHEUNG Kwok-che
Hon Alan LEONG Kah-kit, SC

Public Officers attending : Item I
Mr Jack CHAN Jick-chi, JP
Director of Home Affairs (Acting)

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 YICK Wing-kin
Assistant Legal Adviser 8

Ms Vanessa CHENG
Assistant Legal Adviser 5

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)903/14-15(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))

The Bills Committee deliberated (index of proceedings attached at **Annex A**).

2. The Bills Committee received the Administration's briefing on its response to issues raised by members at the Bills Committee meeting on 9 February 2015 (LC Paper No. CB(2)903/14-15(02)) and continued clause-by-clause examination of the Property Management Services Bill ("the Bill") (LC Paper No. CB(3)583/13-14).

Action

3. The Bills Committee completed examination of clauses 11 to 17 of the Bill.

4. The Bills Committee noted that the Administration would consider moving Committee Stage amendments to Part 4 of the Bill to empower the Property Management Services Authority to promulgate requirements regarding moneys received or held by property management companies for or on account of their clients.

Follow-up actions required of the Administration

Admin

5. 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

6. Members noted that the next meeting of the Bills Committee would be held on Tuesday, 24 March 2015, at 10:45 am to continue clause-by-clause examination of the Bill.

7. There being no other business, the meeting ended at 12:30 pm.

Council Business Division 2
Legislative Council Secretariat
23 March 2015

**Proceedings of the 8th meeting of the
Bills Committee on Property Management Services Bill
on Friday, 27 February 2015, at 10:45 am
in Conference Room 2 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action Required
000455 - 000558	Chairman	The Chairman's opening remarks	
<i>Matters arising from the last meeting held on 9 February 2015</i>			
000559 - 001250	Chairman Admin	<p>Briefing by the Administration on its response to issues raised by members at the Bills Committee meeting on 9 February 2015 (LC Paper No. CB(2)903/14-15(02)).</p> <p>The Administration's advice that after considering members' views expressed at the meeting on 9 February 2015, the detailed procedures on application for the renewal of a property management company ("PMC") licence and a property management practitioner ("PMP") licence had been worked out. These included the timing for application, when and how the clients of a PMC were to be informed of the Property Management Services Authority ("PMSA")'s decision that the PMC's licence was not to be renewed, whether a licence that expired prior to PMSA's determination of a renewal application should remain in force until PMSA's determination of the application and whether PMSA should have discretion to accept licence renewal applications made after the expiry of the licences.</p>	Admin to elaborate in writing the details of the proposed amendments (Para. 1 of Annex B refers)
<i>Clause-by-clause examination of the Property Management Services Bill ("the Bill")</i>			
001251 - 001654	Chairman Admin	<p>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)</p> <p><u>Part 3 - Licensing of Property Management Companies and Property Management Practitioners</u></p> <p><i>Clause 11 - Persons suitable to hold licences for sections 9 and 10</i></p>	
001655 - 002451	Chairman Deputy Chairman Admin Mr IP Kwok-him	The Deputy Chairman expressed concern about the possibility that unscrupulous directors of a defunct PMC whose licence was not renewed or revoked by PMSA might continue the operation of the PMC in disguise of a new company name and business registration. The Administration's advice that to eliminate the possibility of PMC carrying on	

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		<p>business through a "shell company", Clause 11(2) provided that for the purposes of sections 9(2)(a)(i) and 10(2)(a)(i), in determining whether a person was a suitable person to hold a PMC licence, PMSA must have regard to a set of criteria including, for a company, "whether the company has been convicted of a criminal offence (other than an offence under this Ordinance) involving fraud or dishonesty" (Clause 11(2)(b)(iv)) and "whether every director of the company is a suitable person to be associated with the company's business of providing property management services" (Clause 11(2)(b)(vi)). The criteria for determining whether a director of a company was a suitable person to be associated with the company's business of providing property management services had been further specified in Clause 11(4).</p> <p>In response to the Chairman's and the Deputy Chairman's enquiries, the Administration advised that PMSA must not issue a licence unless it was satisfied that the applicant was a suitable person to hold a PMC or PMP licence and the applicant met all the prescribed criteria for holding the relevant licence. The licensing criteria would be used in assessing the merits of individual applications.</p>	
002452 - 002850	Chairman Admin Deputy Chairman Mr IP Kwok-him	<p><i>Clause 12 - Publication of list of licensees</i></p> <p>Members noted that as provided under Clause 12 of the Bill, PMSA must, from time to time by notice published in the Gazette, publish a list of licensees (including their names and licence numbers).</p> <p>Mr IP Kwok-him's and the Deputy Chairman's suggestion that a unique licence number should be assigned to each licensee and the same licence number should not be used again in future even if the original bearer ceased to act as a PMC/PMP and no longer registered with PMSA.</p>	<p>Admin to consider the suggestion and revert to the Bills Committee (Para. 2 of Annex B refers)</p>
002851 - 003209	Chairman Admin	<p><i>Clause 13 – Registers</i></p> <p>Members noted that PMSA must maintain a PMC register, a PMP (Tier 1) register and a PMP (Tier 2) register which would be made available for public inspection.</p>	

Time marker	Speaker	Subject(s)	Action Required
003210 - 003541	Chairman Deputy Chairman Admin	<p>The Deputy Chairman's enquiry on whether there was a time limit for the licensees to notify PMSA of any change to particulars previously submitted to PMSA. The Administration's advice that PMSA would specify in the codes of conduct a timeframe within which licensees should notify PMSA of any change to particulars. As stipulated in Clause 17(1), a licensee must notify PMSA in writing of any change in the prescribed matters in the prescribed manner.</p> <p>The Chairman suggested that PMSA should require that notices be posted in prominent positions of the building to inform property owners/residents of the change(s).</p>	
003542 - 005443	Chairman Mr IP Kwok-him Admin Mr LEUNG Che-cheung Deputy Chairman	<p>Noting that Clause 13(2)(i) provided that the PMC register must, for each licensed PMC, contain, "any other particulars the Authority considers appropriate", Mr IP Kwok-him enquired about the rationale for giving such wide power to PMSA and expressed concern whether the Legislative Council ("LegCo") would be informed of PMSA's future decisions to incorporate into the registers any other particulars it considered appropriate.</p> <p>The Administration's advice that -</p> <p>(a) Clause 13(2)(i), as in Clause 13(3)(f) and (4)(f) respectively relating to the PMP (Tier 1) register and the PMP (Tier 2) register, was intended to provide more flexibility to PMSA in making available information that might be of use/ interest to the public in the light of the changes in social circumstances; and</p> <p>(b) the Bill required PMSA to furnish to the Secretary for Home Affairs ("SHA") annually its (i) statement of accounts, (ii) auditor's report and (iii) annual report about its activities in the relevant financial year. SHA should arrange for the documents received to be laid on the table of LegCo.</p> <p>In response to concerns raised by Mr LEUNG Che-cheung and the Deputy Chairman, the Administration clarified the respective relationship of Clause 13(2)(a) to (h) with subsection (2)(i), Clause 13(3)(a) to (e) with subsection (3)(f) and Clause 13(4)(a) to (e) with subsection (4)(f) and reiterated the need to allow flexibility for PMSA to</p>	

Time marker	Speaker	Subject(s)	Action Required
		enrich the contents of the registers available for public inspection.	
005444 - 010754	Chairman ALA8 Admin Ms Claudia MO Mr IP Kwok-him Deputy Chairman	<p>The Administration was requested to consider the following comments/suggestion made by members and the Legal Adviser to the Bills Committee concerning the drafting of Clause 13 and provide a written response -</p> <p>(a) in respect of Clause 13(2)(h), the suggestion of revising the present drafting of the provision, e.g. by dividing it into two parts, to enhance its clarity about the applicability of section 2 of the Rehabilitation of Offenders Ordinance (Cap. 297) in the disclosure of the conviction record of a licensed PMC from the PMC register to be kept by PMSA;</p> <p>(b) Clause 13(7) provided that 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 licensee's conviction record mentioned in subsections (2)(h), (3)(e) or (4)(e). It appeared that the purpose of this provision was to protect the privacy of PMPs (who were natural persons) but not the privacy of PMCs. On clarification by the Administration, it was noted that some entities might be operated by a sole proprietor or as a partnership. The Administration was requested to consider the need to amend Clause 13(7) to exclude subsection (2)(h) from the ambit of section 13(7); and</p> <p>(c) the Administration was requested to also consider the need to amend Clause 13(8) to the effect that the "copy of the whole or a part of a register" referred to in the Clause must not include particulars of a licensee's conviction record mentioned in subsections (3)(e) or (4)(e).</p> <p>In response to Ms Claudia MO's enquiry, the Administration explained that any record of convictions regarded as "spent" under section 2 of the Rehabilitation of Offenders Ordinance should not be disclosed. Given that the protection under section 2 of the Rehabilitation of Offenders Ordinance only applied to a "natural person", Clause 13(2)(h) was only applicable to an individual carrying on, through an entity, the</p>	<p>Admin to consider and provide a written response (Para. 3 of Annex B refers)</p>

Time marker	Speaker	Subject(s)	Action Required
		business of providing property management services as a sole proprietor or partnership but not a PMC which was a limited company.	
010755 - 011141	Chairman Admin Ms Claudia MO	<p><i>Clause 14 - Offence relating to application for licences or renewal of licences</i></p> <p>Ms Claudia MO's enquiry and the Administration's explanation on the meaning of the terms "reckless", "false or misleading" and "material particular" under the proposed subsection (1)(b) and their application in real life situations.</p>	
011142 - 011629	Chairman Admin Mr IP Kwok-him	<p><i>Clause 15 - Regulations for Part 3</i></p> <p>The Chairman's and Mr IP Kwok-him's view that the term "the person (有關人士)" in Clause 15(2)(a) might be redundant and cause confusion to readers. The Administration was requested to consider the view and revert to the Bills Committee.</p>	Admin to consider and provide a written response (Para. 5 of Annex B refers)
011630 - 011837	Chairman Mr Paul TSE Admin	<p>Noting that Clause 15 empowered PMSA to make regulations for Part 3 including the criteria for holding a PMC or PMP licence (Clause 15(1)(c), (2)(a) and (2)(b)) while Clause 11 had set out the factors that PMSA must have regard to in determining whether a person was suitable to hold a licence, Mr Paul TSE expressed concern on whether Clause 15, as presently drafted, would give PMSA too much discretionary power to impose additional/more stringent criteria for the granting of licences and whether LegCo would have a chance to scrutinize such criteria to be proposed by PMSA. The Administration was requested to respond to this concern of members.</p>	Admin to provide a written response (Para. 4 of Annex B refers)
011838 - 012054	Chairman Admin	<p>In response to the Chairman's enquiry, the Administration advised that as provided under Clause 15(2)(a), the licensing criteria for a PMC licence might include a criterion that "the person has a sufficient number of directors and employees who are licensed PMPs". In a case where the number of directors was reduced below the number required by PMSA pursuant to subsection (2)(a), it might result in the revocation or suspension of the PMC licence.</p>	

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012055 - 012612	Chairman Admin Ms Claudia MO Deputy Chairman	<p><u>Part 4 - Duties of Licensees</u></p> <p><i>Clauses 16 - Licensed PMC's duty to provide information to clients</i></p> <p>Members noted that under Clause 16, a licensed PMC was required to provide the PMC's clients with information to be prescribed by PMSA.</p> <p>In response to Ms Claudia MO's enquiry, the Administration advised that the Bill provided for a complaint handling mechanism including, among others, investigation by and hearings before PMSA to deal with complaints. To prevent the complaint handling mechanism from being abused, PMSA could decide not to conduct an investigation to deal with a complaint if it was satisfied that the complaint was misconceived or lacking in substance under the Bill.</p> <p>Clause 16(3) listed out the prescribed information or document that a licensed PMC was required to provide to its clients. Responding to the Deputy Chairman's enquiry, the Administration advised that a licensed PMC was required to provide its clients with information or document that related to the property management services provided to the respective clients.</p>	
012613 - 012822	Chairman Mr IP Kwok-him Admin	<p>In response to Mr IP Kwok-him's enquiry, the Administration advised that -</p> <p>(a) it was stipulated under Clause 16(1) that a licensed PMC must prepare the prescribed information and provide the information to the PMC's clients in the prescribed manner, and</p> <p>(b) Clause 16(2) was an empowering provision enabling PMSA to prescribe, by regulation, the information and manner for the purposes of subsection (1).</p>	
012823 - 013204	Chairman ALA8 Admin Ms Claudia MO Deputy Chairman	<p>Legal Adviser to the Bills Committee's suggestion that as the Administration had agreed earlier that a licensed PMC should have the responsibility to inform their clients of PMSA's intention that its licence was not to be renewed or should be revoked, the Administration should consider the need to move Committee Stage amendments ("CSAs") to Clause 16(3) to require PMCs to provide such information to their clients in a timely manner.</p>	<p>Admin to consider and respond in writing (Para. 6 of Annex B refers)</p>

Time marker	Speaker	Subject(s)	Action Required
013205 - 013720	Chairman Mr WONG Kwok-hing Admin	<p>Mr WONG Kwok-hing's view that a licensed PMC should be required to maintain separate accounts and financial records for each of the PMC's clients.</p> <p>The Administration's advice that specific requirements in relation to the preparation of budget, keeping of financial records and statements for clients etc. would be specified in the subsidiary legislation and the codes of conduct to be issued by PMSA. Licensed PMCs would have to comply with certain requirements in terms of the time limit and the manner for provision of the prescribed information to their clients.</p>	
013721 - 013801	Chairman Admin	<i>Clause 17 - Licensee's duty to notify change of prescribed matters</i>	
013802 - 013907	Chairman ALA8 Admin	<p>Legal Adviser to the Bills Committee pointed out that under Clause 16, a licensed PMC was required to provide its accounts and financial statements to its clients. However, there were no requirements regarding moneys received or held by PMCs for or on account of their clients. His suggestion's and the Administration's undertaking that it would consider moving CSAs to Part 4 of the Bill to empower PMSA to promulgate requirements regarding moneys received or held by PMCs and/or PMPs for or on account of their clients.</p>	
013908 - 014536	Chairman Mr WONG Kwok-hing Admin Mr LEUNG Che-cheung	<p>Mr WONG Kwok-hing's enquiry and the Administration's confirmation that while a licensee must notify PMSA in writing of any change in the prescribed matters in the prescribed manner (Clause 17(1)), the codes of conduct to be issued by PMSA would provide for timely notification of the change to the licensees' clients.</p> <p>Mr LEUNG Che-cheung's enquiry on whether there was a time limit for the licensees to notify PMSA of any change to particulars previously submitted to PMSA. The Administration reiterated that PMSA would specify in the codes of conduct a timeframe within which licensees should notify PMSA of any change to particulars. The Administration's further advice that the codes of conduct would specify clearly the duties of PMCs, which included, among others, the proper keeping of records and documents relating to their management responsibilities and the transfer of such records and documents to the new PMC within a specified timeframe when they ceased to provide service to their clients.</p>	

Time marker	Speaker	Subject(s)	Action Required
014537 - 014641	Chairman Mr IP Kwok-him	The Chairman's closing remarks.	

Council Business Division 2
Legislative Council Secretariat
23 March 2015

**Bills Committee on
Property Management Services Bill**

**List of follow-up actions arising from the discussion
at the meeting on 27 February 2015**

1. The Administration advised that after considering members' views expressed at the meeting on 9 February 2015 and consulting the Department of Justice, it agreed to move Committee Stage amendments ("CSAs") to the Property Management Services Bill ("the Bill") to address members' concerns over the procedures on application for the renewal of a property management company ("PMC") licence and a property management practitioner ("PMP") licence. These included the timing for application, when and how the clients of a PMC were to be informed of the Property Management Services Authority ("PMSA")'s decision that the PMC's licence was not to be renewed, whether a licence that expired prior to PMSA's determination of a renewal application should remain in force until PMSA's determination of the application and whether PMSA should have discretion to accept licence renewal applications made after the expiry of the licences. The Administration was requested to elaborate in writing the details of the proposed amendments.
2. Noting that as provided under Clause 12 of the Bill, PMSA must, from time to time by notice published in the Gazette, publish a list of licensees (including their names and licence numbers), members suggested that a unique licence number should be assigned to each licensee and the same licence number should not be used again in future even if the original bearer ceased to act as a PMC/PMP and no longer registered with PMSA. The Administration agreed to consider this suggestion and revert to the Bills Committee in due course.
3. The Administration was requested to consider the following suggestion/ comments made by the Legal Adviser to the Bills Committee concerning the drafting of Clause 13 and provide a written response -
 - (a) in respect of Clause 13(2)(h), the suggestion of revising the present drafting of the provision, e.g. by dividing it into two parts, to enhance its clarity about the applicability of section 2 of the Rehabilitation of Offenders Ordinance (Cap. 297) in the disclosure of the conviction record of a licensed PMC from the PMC register to be kept by PMSA;
 - (b) Clause 13(7) provided that 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 licensee's conviction record mentioned in subsection (2)(h), (3)(e) or (4)(e). It appeared that the purpose of this provision was to protect the privacy of PMPs (who were natural persons) but not the privacy of PMCs. On clarification by the Administration, it was noted that some entities might be operated by a sole proprietor or as a partnership. The Administration was requested to consider the need to amend Clause 13(7) to exclude subsection (2)(h) from the ambit of section 13(7); and

- (c) the Administration was requested to also consider the need to amend Clause 13(8) to the effect that the "copy of the whole or a part of a register" referred to in the Clause must not include particulars of a licensee's conviction record mentioned in subsections (3)(e) or (4)(e).

4. Members noted that Clause 15 empowered PMSA to make regulations for Part 3 including the criteria for holding a PMC or PMP licence (Clause 15(1)(c), (2)(a) and (2)(b)) while Clause 11 had set out the factors that PMSA must have regard to in determining whether a person was suitable to hold a licence. Concerns were raised whether Clause 15, as presently drafted, would give PMSA too much discretionary power to impose additional/more stringent criteria for the granting of licences and whether the Legislative Council would have a chance to scrutinize such criteria to be proposed by PMSA. The Administration was requested to respond to this concern of members.

5. There was also a view that the term "the person (有關人士)" in Clause 15(2)(a) might be redundant and cause confusion to readers. The Administration was requested to consider the view and revert to the Bills Committee.

6. Under Clause 16, a licensed PMC was required to provide the PMC's clients with information to be prescribed by PMSA. As the Administration had agreed earlier that a licensed PMC should have the responsibility to inform their clients of PMSA's intention that its licence was not to be renewed or should be revoked, the Administration was requested to consider the need to move CSAs to Clause 16(3) to require PMCs to provide such information to their clients.