

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1361/14-15  
(These minutes have been seen  
by the Administration)

Ref : CB2/BC/7/13

**Bills Committee on Property Management Services Bill**

**Minutes of the 9<sup>th</sup> meeting  
held on Tuesday, 24 March 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 James TO Kun-sun  
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 Paul TSE Wai-chun, JP  
Hon Alan LEONG Kah-kit, SC  
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 Abraham SHEK Lai-him, GBS, JP  
Hon CHEUNG Kwok-che

**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(2)1094/14-15(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 meetings on 9 and 27 February 2015 (LC Paper No. CB(2)1094/14-15(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 18 to 25 of the Bill.

4. The Administration undertook to consider proposing Committee Stage amendments to the following clauses -

- (a) references to "documents" or "document" in the Bill (including Clauses 21, 24 and 36, and section 22 of Schedule 3) should expressly include electronic documents or information recorded by electronic means;
- (b) Clause 21(5)(b) should also require electronically stored information to be reproduced into a written form on paper;
- (c) Clause 21(6)(a)(ii) should include a reference to a director or officer of a corporate, in order to cover the scenario that the person required to provide information was a corporate; and
- (d) in relation to Clause 24(1), the Property Management Services Authority would be conferred with the power 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, so as to align with the power proposed to be conferred on an appeal tribunal under Clause 36(1)(d).

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. The Chairman reminded members that the next meeting of the Bills Committee would be held on Tuesday, 21 April 2015, at 2:30 pm to continue clause-by-clause examination of the Bill.

Action

7. There being no other business, the meeting ended at 12:47 pm.

Council Business Division 2  
Legislative Council Secretariat  
29 April 2015

**Proceedings of the 9<sup>th</sup> meeting of the  
Bills Committee on Property Management Services Bill  
on Tuesday, 24 March 2015, at 10:45 am  
in Conference Room 2 of the Legislative Council Complex**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
000340 - 000436	Chairman	The Chairman's opening remarks.	
<i>Matters arising from the Bills Committee meetings on 9 and 27 February 2015</i>			
000437 - 001054	Chairman Admin	Briefing by the Administration on its response to issues raised by members at the Bills Committee meetings on 9 and 27 February 2015 (LC Paper No. CB(2)1094/14-15(02)).	
<i>Clause-by-clause examination of the Property Management Services Bill ("the Bill")</i>			
001055 - 001108	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).	
001109 - 001353	Chairman Admin Mr WONG Kwok-hing	<u>Part 5 - Disciplinary Matters</u>  <i>Clause 18 - Authority's power to conduct investigation</i>	
001354 - 002646	Chairman ALA8 Admin Mr WONG Kwok-hing Mr IP Kwok-him	<i>Clause 18(2) and 18(4)</i>  The Legal Adviser to the Bills Committee referred to Clause 18(2) of the Bill which stipulated that the Property Management Services Authority ("PMSA") was not required to conduct an investigation to deal with a complaint received under subsection (1)(b) if PMSA was satisfied that the complaint was misconceived or lacking in substance. His advice that similar provisions were provided in other legislation such as the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO") (i.e. section 39 on "Restrictions on investigations initiated by complaints") and suggestion that reference should be made to section 39(1)(b) and (c) of PDPO to specify clearly in the Bill that if the complaint was made anonymously or the complainant could not be identified or traced, PMSA might refuse to conduct an investigation to deal with a complaint received under Clause 18(1)(b).  Mr WONG Kwok-hing's enquiry and the Administration's response on safeguards provided in the Bill for prevention of abuse of the complaint handling mechanism. The Administration's advice	<b>Admin to consider the suggestion and revert to the Bills Committee (Para. 1 of Annex B refers)</b>

Time marker	Speaker	Subject(s)	Action Required
		<p>that while 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, Clause 22(2) of the Bill stipulated that a person would commit an offence if he/she (a) provided any information or document, gave any answer, response, explanation or particular, or made any statement, that was false or misleading in a material particular; and (b) knew that, or was reckless as to whether, the information, document, answer, response, explanation, particular or statement was false or misleading in a material particular.</p> <p>The Administration advised that PMSA would issue guidelines regarding complaints.</p> <p>Noting that Clause 18(4) of the Bill provided that PMSA must, as soon as practicable after it decided to conduct an investigation into any conduct of a licensee, notify the licensee in writing of the substance of the matter being investigated, Mr IP Kwok-him held the view that it would be more desirable to specify a timeframe in Clause 18(4) within which PMSA should notify the licensee, instead of using the phrase "as soon as practicable".</p>	<p><b>Admin to consider and revert to the Bills Committee (Para. 2 of Annex B refers)</b></p>
002647 - 003206	<p>Chairman Admin Mr WONG Kwok-hing</p>	<p><i>Clause 19 - Guidelines regarding complaints</i></p> <p>The Administration's advice that PMSA would be empowered to issue guidelines in relation to the handling of complaints, which were procedural in nature. Neither the guidelines, nor the amendments made to them, were subsidiary legislation.</p>	
003207 - 004345	<p>Chairman Admin Mr IP Kwok-him Mr WONG Kwok-hing Mr LEUNG Che-cheung</p>	<p><i>Clauses 20 &amp; 21 - Appointment of investigators &amp; Power to obtain information and documents</i></p> <p>Members (including the Chairman, Mr IP Kwok-him, Mr WONG Kwok-hing and Mr LEUNG Che-cheung) expressed concerns that PMSA might in writing appoint any person as an investigator for the purposes of conducting an investigation and the investigators so appointed would be conferred with the power to obtain information and documents relevant to the investigation. They sought information on whether guidelines would be in place governing PMSA's appointment of investigators and the powers and obligations of investigators in carrying out their duties, covering issues such as the eligibility criteria of an</p>	<p><b>Admin to provide more detailed information and to consider improving the drafting of Clauses 20 and 21 in the light of members'</b></p>

Time marker	Speaker	Subject(s)	Action Required
		investigator, the requirements on confidentiality in respect of the information and documents obtained by an investigator as well as conflict of interests on investigators, and PMSA's policy and procedure for the retention and destruction of information obtained through investigation etc.	<b>concerns (Para. 3 of Annex B refers)</b>
004346 - 004736	Chairman Admin Mr WONG Kwok-hing Mr IP Kwok-him	<p>The Administration's advice that while the licensing criteria for property management companies ("PMCs") and property management practitioners ("PMPs") would be specified in the subsidiary legislation, PMSA would also issue administrative guidelines covering, inter alia, the criteria and procedure for appointment of investigators as well as the powers and obligations of investigators.</p> <p>Mr WONG Kwok-hing's request that to facilitate the Bills Committee's future discussion, the Administration should compile a list of matters that would be addressed in the codes of conduct/codes of practice and set out a framework for such codes.</p>	<b>Admin to provide the information (Para. 5 of Annex B refers)</b>
004737 - 005913	Chairman Mr Alan LEONG Admin ALA8	<p>Mr Alan LEONG's enquiry on why the guidelines in relation to the handling of complaints were not subsidiary legislation. The Administration advised that the arrangement was intended to provide more flexibility for PMSA to improve and refine, where appropriate, the procedures for handling complaints having regard to the actual circumstances. The Administration stressed that the guidelines and the codes of conduct/codes of practice would be made public. Under the proposed licensing regime, there would also be an independent appeal mechanism under which aggrieved parties could seek recourse against the decisions made by PMSA.</p> <p>In response to the Chairman's enquiry on whether reference had been made to other regulatory authority, the Administration advised that in accordance to Clause 38 of the Competition Ordinance (Cap. 619), the Competition Commission was empowered to issue guidelines indicating the manner and form in which complaints were to be made.</p> <p>Mr Alan LEONG's concern as to whether the Bills Committee would have the opportunity to discuss the draft guidelines.</p>	

Time marker	Speaker	Subject(s)	Action Required
005914 - 011020	Chairman Deputy Chairman Admin	<p>The Deputy Chairman reiterated his concern that Legislative Council Members might not have sufficient time to scrutinize 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 responded that as undertaken earlier, the subsidiary legislation relating to the Bill would be submitted in batches. The draft subsidiary legislation would be made available to the relevant Panel for information as early as practicable. Under Clause 5(1) of the Bill, PMSA was empowered to issue codes of conduct for PMCs and PMPs. With reference to the existing codes of conduct/practice of relevant professional bodies, the Administration was preparing the framework of the codes of conduct for the reference of the future PMSA. The Administration would make the draft framework available to the Bills Committee for information when it was ready.</p>	
011021 - 012553	Chairman Mr WONG Kwok-hing Admin ALA8 Mr IP Kwok-him	<p>Members' follow-up questions and the Administration's responses on -</p> <ul style="list-style-type: none"> <li>(a) the requirements on confidentiality in respect of the information and document obtained by an investigator;</li> <li>(b) what constituted a reasonable timeframe for the provision of information or document required by the investigator;</li> <li>(c) the consequence of not providing the information or document, in the manner and form or at the time and place, specified by the investigator in the notice; and</li> <li>(d) PMSA's policy and procedure for the retention and destruction of information obtained through investigation.</li> </ul> <p>The Administration's advice that the relevant procedural matters and guidelines would be set out in the administrative guidelines to be issued by PMSA.</p>	<b>Admin to provide more detailed information (Para. 3 of Annex B refers)</b>



Time marker	Speaker	Subject(s)	Action Required
012554 - 012849	Chairman ALA8 Admin	<p>Having regard to the comments made by the Legal Adviser to the Bills Committee, the Administration undertook to consider proposing Committee Stage amendments ("CSAs") to the following clauses -</p> <p>(a) references to "documents" or "document" in the Bill (including Clauses 21, 24 and 36, and section 22 of Schedule 3) should expressly include electronic documents or information recorded by electronic means;</p> <p>(b) Clause 21(5)(b) should also require electronically stored information to be reproduced into a written form on paper; and</p> <p>(c) Clause 21(6)(a)(ii) should include a reference to a director or officer of a corporate, in order to cover the scenario that the person required to provide information was a corporate.</p>	
012850 - 013559	Chairman Admin Mr WONG Kwok-hing	<p><i>Clause 22 - Offences relating to investigation</i></p> <p>Mr WONG Kwok-hing reiterated his concern about the severity of the consequence of not complying with a requirement of a notice given under Clause 21(2). He was particularly concerned that under Clause 21(4), the investigator might specify in the notice the time and place at which the information or document was to be provided.</p> <p>The Administration advised that the future PMSA would issue guidelines for investigators to carry out their work, including how to set the time and place at which the information or document was to be provided. The Administration further advised that if a person considered that PMSA or its investigators had abused the power by imposing an unreasonable requirement on him/her, he/she might lodge a judicial review against the requirement. The court might consider it a "reasonable excuse" for failure to comply with the statutory requirement.</p>	
013600 - 013701	Chairman Admin	<i>Clause 23 - Disciplinary hearing</i>	
013702 - 014004	Chairman Admin	<i>Clause 24 - Hearing before Authority</i>	

Time marker	Speaker	Subject(s)	Action Required
014005 - 014118	Chairman ALA8 Admin	<p><i>Clause 24(1) and Clause 36(1)(d)</i></p> <p>Having regard to the comments made by the Legal Adviser to the Bills Committee, the Administration advised that it would consider proposing CSAs to Clause 24(1) to the effect that PMSA would be conferred with the power 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, so as to align with the power proposed to be conferred on an appeal tribunal under Clause 36(1)(d).</p>	
014119 - 014529	Chairman Admin Mr IP Kwok-him	<p><i>Clauses 24(2), 24(4) and 24(5)</i></p> <p>The Chairman's concern and the Administration's responses regarding the disclosure of confidential information obtained through investigation during hearings. PMSA might by order direct that the hearing, or any part of the hearing, be held in private. It might 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.</p> <p>Mr IP Kwok-him's enquiry and the Administration's response on the criteria and procedure for determining whether a hearing should be held in private or, vice versa, in public.</p>	
014530 - 015259	Chairman Admin	<p><i>Clause 25 - Disciplinary orders</i></p> <p>Regarding the disciplinary orders that might be given by PMSA as set out in Clause 25(1)(a) to (f), the Chairman enquired about the yardstick/ considerations for determining which of the orders should be made against a convicted licensee. The Administration advised that while each case would be considered on its own merits, a heavier penalty might be imposed for repeated offence in order to achieve a greater deterrence. The penalties that PMSA meted out were generally made having regard to the severity of the cases.</p>	
015300 - 020053	Chairman ALA8 Admin Mr IP Kwok-him	The Administration was requested to consider the suggestion made by the Legal Adviser to the Bills Committee that the Administration should consider proposing CSAs to the Bill to spell out clearly that	<b>Admin to provide a response (Para. 4 of</b>

Time marker	Speaker	Subject(s)	Action Required
		<p>the taking effect of an order made under Clause 25(1) or (2) (i.e Clause 25(4)) should not be affected by an application to revoke, vary or suspend such order made to PMSA under Clause 25(6).</p> <p>In response to Mr IP Kwok-him's enquiry, the Administration advised that Clauses 33, 34 and 35 of the Bill respectively related to appeals against PMSA's decisions, the establishment of appeal tribunal and the date, time and place for hearing appeals lodged by persons who were aggrieved by the decisions of PMSA.</p> <p>Mr IP Kwok-him opined that a specific timeframe should be spelled out clearly in the Bill for the appeal tribunal to fix the date and time for the hearing of appeals. The Administration responded that PMSA will specify in its service pledge the timeframe for the hearing of appeals.</p>	Annex B refers)
020054 - 020254	Chairman Ms Starry LEE Admin	In response to Ms Starry LEE's enquiry, the Administration advised that the codes of conduct to be issued by PMSA would require PMCs and PMPs to remind the owners corporations to follow the relevant legislation when carrying out their functions and duties. In case of complaints, it would be a defence for PMCs/PMPs to prove that they had taken actions to comply with the guidelines.	
020255 - 020516	Chairman	The Chairman's closing remarks and date of next meeting.	

**Bills Committee on  
Property Management Services Bill**

**List of follow-up actions arising from the discussion  
at the meeting on 24 March 2015**

1. Referring to Clause 18(2) of the Property Management Services Bill ("the Bill"), the Legal Adviser to the Bills Committee advised that similar provisions were provided in other legislation such as the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO") (i.e. section 39 on "Restrictions on investigations initiated by complaints"). He suggested that reference be made to section 39(1)(b) and (c) of PDPO to specify clearly that if the complaint was made anonymously or the complainant could not be identified or traced, the Property Management Services Authority ("PMSA") may refuse to conduct an investigation to deal with a complaint received under Clause 18(1)(b). The Administration agreed to consider this suggestion and revert to the Bills Committee in due course.
2. Clause 18(4) of the Bill provides that PMSA 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. In some members' views, it would be more desirable to specify a timeframe in Clause 18(4) within which PMSA should notify the licensee, instead of using the phrase "as soon as practicable". The Administration was requested to consider this view of members and revert to the Bills Committee.
3. Regarding Clauses 20 and 21 of the Bill, members expressed concerns that PMSA might in writing appoint any other person as an investigator for the purposes of conducting an investigation and the investigators so appointed would be conferred with the power to obtain information and documents relevant to the investigation. These members sought information on whether guidelines would be in place governing PMSA's appointment of investigators and the powers and obligations of investigators in carrying out their duties, covering issues such as the eligibility criteria of an investigator, the requirements on confidentiality in respect of the information and documents obtained by an investigator as well as conflict of interests on investigators, and PMSA's policy and procedure for retention and destruction of information obtained through investigation etc. The Administration was requested to provide more detailed information on these aspects and to consider improving the drafting of Clauses 20 and 21 in the light of members' concerns.

4. The Administration was requested to consider the suggestion made by the Legal Adviser to the Bills Committee that the Administration should consider proposing Committee Stage amendments to the Bill to spell out clearly that the taking effect of an order made under Clause 25(1) or (2) (i.e Clause 25(4)) should not be affected by an application to revoke, vary or suspend such order made to PMSA under Clause 25(6).

5. As advised by the Administration, PMSA would issue codes of conduct and codes of practice to specify matters relevant to the Bill, covering, inter alia, the licensing criteria for property management companies and property management practitioners, guidelines regarding complaints, the criteria and procedure for appointment of investigators as well as the powers and obligations of investigators. The Bills Committee requested that to facilitate members' future discussion, the Administration should compile a list of matters that would be addressed in the codes of conduct/codes of practice and set out a framework for such codes.

Council Business Division 2  
Legislative Council Secretariat  
29 April 2015