

立法會

Legislative Council

LC Paper No. CB(2)1577/14-15
(These minutes have been seen
by the Administration)

Ref : CB2/BC/7/13

Bills Committee on Property Management Services Bill

**Minutes of the 10th meeting
held on Tuesday, 21 April 2015, at 2:30 pm
in Conference Room 2A 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 Cyd HO Sau-lan, JP
Hon Starry LEE Wai-king, JP
Hon CHAN Kin-por, BBS, JP
Hon CHEUNG Kwok-che
Hon IP Kwok-him, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon Claudia MO
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 James TO Kun-sun
Hon Steven HO Chun-yin
Hon LEUNG Che-cheung, BBS, MH, JP

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)1269/14-15(01) & (02), CB(2)1248/14-15(01) & (02), CB(2)1275/14-15(01), CB(2)1284/14-15(01) & (02), CB(2)1297/14-15(01) & (02), CB(2)1298/14-15(01), CB(2)1307/14-15(01), 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 noted the following submissions/joint submission received between 14 to 20 April 2015, expressing views on the Property Management Services Bill ("the Bill"), in particular, the academic and professional qualifications requirements proposed for licensed property management practitioners -

- (a) submission dated 8 April 2015 from a member of the public (LC Paper No. CB(2)1248/14-15(01));

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- (b) joint submission dated 13 April 2015 from seven property management institutes and associations (LC Paper No. CB(2)1248/14-15(02));
- (c) submission dated 10 April 2015 from Department of Building and Real Estate, The Hong Kong Polytechnic University (LC Paper No. CB(2)1275/14-15(01));
- (d) submission dated 15 April 2015 from Department of Public Policy, City University of Hong Kong (LC Paper No. CB(2)1284/14-15(01));
- (e) submission dated 15 April 2015 from College of Humanities and Law, The University of Hong Kong, School of Professional and Continuing Education (LC Paper No. CB(2)1284/14-15(02));
- (f) submission dated 16 April 2015 from Department of Real Estate and Construction, The University of Hong Kong (LC Paper No. CB(2)1297/14-15(01));
- (g) submission dated 17 April 2015 from Department of Urban Planning and Design, The University of Hong Kong (LC Paper No. CB(2)1297/14-15(02)); and
- (h) submission dated 20 April 2015 from School of Continuing and Professional Education, City University of Hong Kong (LC Paper No. CB(2)1307/14-15(01)).

3. The Bills Committee received the Administration's briefing on its response to issues raised in the submissions/joint submission mentioned above (LC Paper No. CB(2)1298/14-15(01)).

4. The Bills Committee also discussed matters arising from the last meeting held on 24 March 2015 (LC Paper Nos. CB(2)1269/14-15(01) & (02)).

5. The Bills Committee continued clause-by-clause examination of the Bill from Clause 26 and examined up to Clause 36(6) (LC Paper No. CB(3)583/13-14).

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

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- (a) in relation to Clause 24(1), the Property Management Services Authority ("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);
- (b) in relation to Clause 25, to clarify that an order made under Clause 25(1) or (2) would continue to take effect according to Clause 25(4) even if an application made under Clause 25(6) to revoke, vary or suspend the order had been received by PMSA;
- (c) to include "the giving of evidence before the Authority or the disciplinary committee" under the definition of "specified act" in Clause 31(1);
- (d) to amend Clause 31(4) to the effect that the exception in Clause 31(4)(a) would apply to an offence under Clause 28 as well as Clause 39 (e.g. if the person gave false or misleading evidence at both the disciplinary hearing and the appeal); and
- (e) in order to make clear the policy intent that a party, witness, counsel, solicitor and any other person appearing before an appeal tribunal under Part 6 should be protected by the same privileges and immunities as that person would have if the appeal were civil proceedings in the Court of First Instance, necessary amendments would be made to the Bill to the effect that the provisions in Part 5 regarding immunity and privilege against self-incrimination (i.e. Clauses 30 and 31) would also apply to an appeal before the appeal tribunal.

Follow-up actions required of the Administration

Admin

7. 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**.

Action

II. Any other business

Date of next meeting

8. Members noted that the next meeting of the Bills Committee would be held on Monday, 4 May 2015, at 4:30 pm to continue clause-by-clause examination of the Bill.

9. There being no other business, the meeting ended at 4:37 pm.

Council Business Division 2
Legislative Council Secretariat
28 May 2015

**Proceedings of the 10th meeting of the
Bills Committee on Property Management Services Bill
on Tuesday, 21 April 2015, at 2:30 pm
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action Required
000508 - 000621	Chairman	The Chairman's opening remarks	
<i>Administration's response to issues raised in the submissions received between 14 April to 20 April 2015</i>			
000622 - 001320	Chairman Admin	Briefing by the Administration on its response to issues raised in the submissions/joint submission received by the Bills Committee between 14 April to 20 April 2015, with emphases on the proposed licensing requirements and transitional arrangements for property management practitioners ("PMPs") (LC Paper No. CB(2)1298/14-15(01)).	
001321 - 003102	Chairman Mr WONG Kwok-hing Mr IP Kwok-him Admin Ms Claudia MO	<p>Expression of concerns by members (including Mr WONG Kwok-hing, Ms Claudia MO, Mr IP Kwok-him and the Chairman) over the proposed licensing requirements for PMPs (Tier 1), in particular, the academic and professional qualification requirements.</p> <p>Mr WONG Kwok-hing's request that the Administration should continue to communicate with the seven professional institutes/associations, so as to clear their doubts and address their concerns about the proposed licensing criteria for PMPs (Tier 1) as set out in paragraph 4 of LC Paper No. CB(2)1298/14-15(01).</p> <p>Responding to Mr IP Kwok-him, the Administration advised that during the transitional period, experienced PMPs who did not satisfy all the licensing requirements (e.g. academic qualification) would be granted provisional licences if they could meet certain basic requirements (e.g. years of working experience) so that they could continue to provide property management services. These PMPs would be allowed three years to complete the continuing professional development ("CPD") courses recognized by the Property Management Services Authority ("PMSA") and be granted formal licences after completion of the CPD courses. PMSA would draw reference from the practice of relevant professional bodies and consider accepting experienced PMPs to submit dissertations or reports in lieu of completion of the CPD courses.</p>	

Time marker	Speaker	Subject(s)	Action Required
		In response to the Chairman's concern about the provision of property management related courses, the Administration advised that PMSA would collaborate with the relevant professional bodies and tertiary institutions to ensure that there was adequate training provided for PMPs to meet the licensing requirements.	
003103 - 003800	Chairman Deputy Chairman Admin	<p>The Deputy Chairman's enquiry about -</p> <p>(a) the deliberations of the Advisory Committee on the Regulation of Property Management Industry ("Advisory Committee") regarding the proposed licensing criteria for PMPs, including the relevant meeting(s) at which the Advisory Committee, its Subcommittee or Working Group discussed and agreed on the baseline requirements in respect of the academic qualifications, professional qualifications and years of working experience for licensed PMP (Tier 1) and licensed PMP (Tier 2) as set out in para. 4 of LC Paper No. CB(2)1298/14-15(01); and</p> <p>(b) the number of graduates in each year from property management related courses, at degree level or equivalent, run by local tertiary institutions.</p>	Admin to provide the requested information (Para. 1 of Annex B refers)
003801 - 005520	Chairman Ms Cyd HO Admin Mr IP Kwok-him Mr Paul TSE Ms Claudia MO	<p>Ms Cyd HO's and Mr Paul TSE's follow-up enquiries and the Administration's responses on the proposed transitional arrangements for experienced PMPs who did not satisfy the requirements concerning academic qualification to migrate to the new licensing regime.</p> <p>The Chairman's and Mr IP Kwok-him's enquiries about the professional assessment (e.g. interview) of PMSA for the purpose of assessing whether an applicant, who was not a member of any property management related professional bodies to be specified by PMSA, could meet the professional qualifications requirements. The Administration's advice that PMSA would ensure that standards on par with those of the professional bodies would be applied in the assessment of PMSA, and the professional assessment would be carried out by an independent assessment panel to be established under PMSA, comprising experts from the relevant fields and staff members of the PMSA Secretariat.</p> <p>In response to the concerns raised by the Chairman</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>and Ms Cyd HO, the Administration advised that efforts would be made to ensure objectivity and fairness in the assessment of PMSA, in line with the competency standards required for obtaining a PMP (Tier 1) or PMP (Tier 2) licence. While the detailed licensing criteria for PMPs would be set out in the subsidiary legislation, details of the assessment criteria and mechanism to be adopted by PMSA would be provided in the administrative guidelines.</p> <p>Ms Claudia MO's further enquiries and the Administration's explanation on the definition of "experienced PMPs" and the alternative assessment tool under the transitional arrangements for experienced PMPs to obtain formal licences.</p>	
<i>Matters arising from the last meeting held on 24 March 2015</i>			
005521 - 005801	Chairman Clerk	<p>Members noted the Administration's response to issues raised at the last Bills Committee meeting on 24 March 2015 as outlined in its paper (LC Paper No. CB(2)1269/14-15(02)).</p> <p>The Clerk to the Bills Committee provided information, as requested by Mr Alan LEONG at the last meeting, on whether the draft guidelines prepared by the Competition Commission ("Commission") as required under the Competition Ordinance (Cap. 619) had been provided for consideration by the relevant Bills Committee during the scrutiny of the Competition Bill. Members noted that the broad framework of the guidelines on the conduct rules in draft which had been presented to the Bills Committee on Competition Bill was prepared on a provisional basis to facilitate members' scrutiny of the Competition Bill, and the draft framework was not binding on the Commission.</p>	
<i>Clause-by-clause examination of the Property Management Services Bill ("the Bill")</i>			
005802 - 010321	Chairman ALA8 Admin Mr IP Kwok-him	<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><i>Clause 25 - Disciplinary orders</i></p> <p>Members noted that Clause 25(1)(b) provided that if, at the conclusion of a hearing under Clause 23, PMSA was satisfied that the matter mentioned in Clause 18(1)(a)(i) or (ii) was established in respect of a licensee, PMSA might make an order imposing a fine not exceeding the amount specified in Schedule</p>	Admin to provide a written response (Para. 2 of Annex B refers)

Time marker	Speaker	Subject(s)	Action Required
		2 to the Bill. The Legal Adviser to the Bills Committee pointed out that it was uncommon to set out a fine amount in a Schedule to a principal Ordinance and not in the principal Ordinance. The Bills Committee sought information on the rationale behind the use of a Schedule for specifying the fine amount and whether other pieces of legislation which had fine provisions of a similar nature had adopted the same drafting approach.	
010322 - 010410	Chairman Admin	<i>Clause 26 - Hearing before disciplinary committee</i>	
010411 - 010443	Chairman Admin	<i>Clause 27 - Summons</i>	
010444 - 011555	Chairman Admin Ms Claudia MO Mr Paul TSE ALA8	<p><i>Clause 28 - Offences relating to disciplinary hearing</i></p> <p>Ms Claudia MO's enquiry and the Administration's explanation on the definition of "material particular" in Clause 28(1)(a).</p> <p>Mr Paul TSE enquired about the difference between a hearing held before PMSA (Clause 24) and the disciplinary committee (Clause 26), including the matters to be heard by PMSA and the disciplinary committee, the circumstances that led to the hearings, the number of PMSA members who would serve in the PMSA hearings and the composition of members of the disciplinary committee. Mr TSE expressed reservations about the Administration's proposal to provide PMSA with flexibility in determining the types of matters to be heard before PMSA or the disciplinary committee and how the hearings were to be conducted, as it would create too much uncertainty. His view that these should be set out clearly in the Bill instead of the relevant guidelines and/or code of practice to be promulgated by PMSA.</p>	Admin to provide a written response (Para. 3(a) of Annex B refers)
011556 - 011642	Chairman Admin	<i>Clause 29 - Effect of revocation or suspension of licences</i>	
011643 - 012806	Chairman Admin Ms Claudia MO ALA8 Mr IP Kwok-him Mr Paul TSE	<p><i>Clause 30 - Immunity</i></p> <p>Ms Claudia MO's and Mr IP Kwok-him's enquiries about the rationale for including in the Bill provisions in relation to immunity and privilege against self-incrimination (Clauses 30 and 31), and the protection intended to be offered under Clause 30 and Clause 31 respectively as well as how and to whom the immunity and privilege referred to therein</p>	Admin to provide the requested information (Para. 3(b) of Annex B refers)

Time marker	Speaker	Subject(s)	Action Required
		would apply. Regarding the privileges and immunities as the person would have if the investigation or hearing were civil proceedings in the Court of First Instance ("CFI"), a request was made for the Administration to provide examples of the privileges and immunities that were available to a person in the proceedings of CFI.	
012807 - 013111	Chairman Admin ALA8	<p><i>Clause 31 - Self-incrimination</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 Committee Stage amendments ("CSAs") to the following clauses -</p> <p>(a) to include "the giving of evidence before the Authority or the disciplinary committee" under the definition of "specified act" in Clause 31(1); and</p> <p>(b) to amend Clause 31(4) to the effect that the exception in Clause 31(4)(a) would apply to an offence under Clause 28 as well as Clause 39 (e.g. if the person gave false or misleading evidence at both the disciplinary hearing and the appeal).</p>	
013112 - 013406	Chairman Admin Mr Paul TSE	Mr Paul TSE's suggestion that consideration should be given to moving CSAs to the Bill to subsume Clause 31(4)(c) under Clause 31(4)(b), both of which related to the offence of perjury, so as to avoid redundancy.	Admin to consider the suggestion (Para. 3(c) of Annex B refers)
013407 - 013825	Chairman Mr WONG Kwok-hing Admin ALA8 Mr IP Kwok-him	<p><u>Part 6 - Appeal</u></p> <p><i>Clause 32 - Appeal panel</i></p> <p>Mr WONG Kwok-hing's concern about the requirements of declaration of interests by members of the appeal panel and appeal tribunals established for hearing appeals. The Administration's advice that PMSA would specify requirements of declaration of interests in the subsidiary legislation.</p>	
013826 - 014431	Chairman Admin Mr WONG Kwok-hing ALA8	<p><i>Clause 33 - Appeals against decisions etc.</i></p> <p>In response to the Chairman's enquiry, the Administration advised that it would consider</p>	

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		making necessary CSAs to the Bill to clarify that an order made under Clause 25(1) or (2) would continue to take effect according to Clause 25(4) even if an application made under Clause 25(6) to revoke, vary or suspend the order had been received by PMSA.	
014432 - 014706	Chairman Admin Mr IP Kwok-him	<i>Clause 34 - Appeal tribunal</i> Mr IP Kwok-him's enquiry and the Administration's response on whether there was a limit on (a) the number of appeal tribunals that might be formed at the same time and (b) the number of tribunals that a panel member could concurrently serve on.	
014707 - 014745	Chairman Admin	<i>Clause 35 - Date, time and place of hearing</i>	
014746 - 015617	Chairman Admin Mr IP Kwok-him	<i>Clause 36 - Hearing before appeal tribunal</i> Mr IP Kwok-him's suggestion that the Administration should consider improving the readability of Clause 36(1)(d) to facilitate clearer understanding of the provision. The Administration's advice that a party, witness, counsel, solicitor and any other person appearing before an appeal tribunal under Part 6 should be protected by the same privileges and immunities as that person would have if the appeal were civil proceedings in the Court of First Instance. In order to make clear this policy intent, the Administration would consider making necessary CSAs to the Bill to the effect that the provisions in Part 5 regarding immunity and privilege against self-incrimination (Clauses 30 and 31) would also apply to an appeal before the appeal tribunal.	Admin to consider the suggestion (Para. 3(d) of Annex B refers)
015618 - 020457	Chairman Mr Paul TSE Admin Mr IP Kwok-him ALA8	Regarding Clause 36(1)(d), Mr Paul TSE's concern that the power of the appeal tribunal would be too wide as it had the power to receive and consider any material even if the material would not be admissible in civil or criminal proceedings. On Mr TSE's concern, the Administration apprised that as advised at an earlier meeting, it would consider making 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	

Time marker	Speaker	Subject(s)	Action Required
		<p>power proposed to be conferred on an appeal tribunal under Clause 36(1)(d).</p> <p>Mr Paul TSE's suggestion that consideration should be given to specifying clearly in Clause 36(3) that any party to the appeal might request the hearing, or any part of the hearing, to be held in private, and it was for the chairperson of the tribunal to decide whether such request should be acceded to after consulting the parties concerned.</p>	Admin to consider the suggestion (Para. 3(e) of Annex B refers)
020458 - 020721	Chairman Mr Paul TSE Admin	Mr Paul TSE's view that in order to ensure procedural justice to all parties to the appeal, consideration should be given to raising the sanction presently proposed under Clause 36(6)(b) (i.e. giving the person concerned a public reprimand) for failure to comply with an order made under Clause 36(4) by a person who was not a licensee.	Admin to consider the view (Para. 3(f) of Annex B refers)
020722 - 020758	Chairman	The Chairman's closing remarks.	

**Bills Committee on
Property Management Services Bill**

**List of follow-up actions arising from the discussion
at the meeting on 21 April 2015**

1. The Administration was requested to provide information on -
 - (a) the deliberations of the Advisory Committee on the Regulation of Property Management Industry ("Advisory Committee") regarding the proposed licensing criteria for property management practitioners ("PMPs"), including the relevant meeting(s) at which the Advisory Committee, its Subcommittee or Working Group discussed and agreed on the baseline requirements in respect of the academic qualifications, professional qualifications and years of working experience for licensed PMP (Tier 1) and licensed PMP (Tier 2); and
 - (b) the number of graduates in each year from property management related courses, at degree level or equivalent, run by local tertiary institutions.
2. Clause 25(1)(b) provided that if, at the conclusion of a hearing under Clause 23, the Property Management Services Authority ("PMSA") was satisfied that the matter mentioned in Clause 18(1)(a)(i) or (ii) was established in respect of a licensee, PMSA might make an order imposing a fine not exceeding the amount specified in Schedule 2 to the Property Management Services Bill ("the Bill"). The Legal Adviser to the Bills Committee pointed out that it was uncommon to set out a fine amount in a Schedule to a principal Ordinance and not in the principal Ordinance. The Bills Committee sought information on the rationale behind the use of a Schedule for specifying the fine amount and whether other pieces of legislation which had fine provisions of a similar nature had adopted the same drafting approach.
3. The Administration was also requested to -
 - (a) explain the difference between a hearing held before PMSA (Clause 24) and the disciplinary committee (Clause 26), including the matters to be heard by PMSA and the disciplinary committee, the circumstances that led to the hearings, the number of PMSA members who would serve in the PMSA hearings and the composition of members of the disciplinary committee;

- (b) provide the rationale for including in the Bill provisions in relation to immunity and privilege against self-incrimination (Clauses 30 and 31), and advise on the protection intended to be offered under Clause 30 and Clause 31 respectively as well as how and to whom the immunity and privilege referred to therein would apply. Furthermore, regarding the privileges and immunities as the person would have if the investigation or hearing were civil proceedings in the Court of First Instance ("CFI"), to provide examples of privileges and immunities that were available to a person in the proceedings of CFI;
- (c) consider a member's suggestion that amendments be made to the Bill to subsume Clause 31(4)(c) under Clause 31(4)(b), both of which related to the offence of perjury, so as to avoid redundancy;
- (d) consider improving readability of Clause 36(1)(d) to facilitate clearer understanding of the provision;
- (e) in relation to Clause 36(3), consider specifying clearly in the Bill that any parties to the appeal might request the hearing, or any part of the hearing, to be held in private, and it was for the chairperson of the tribunal to decide whether such request should be acceded to after consulting the parties concerned; and
- (f) consider a member's view that in order to ensure procedural justice to all parties to the appeal, consideration should be given to raising the sanction presently proposed under Clause 36(6)(b) (i.e. giving the person concerned a public reprimand) for failure to comply with an order made under subsection (4) by a person who was not a licensee.