

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1688/14-15  
(These minutes have been seen  
by the Administration)

Ref : CB2/BC/7/13

**Bills Committee on Property Management Services Bill**

**Minutes of the 11<sup>th</sup> meeting**  
**held on Monday, 4 May 2015, at 4:30 pm**  
**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 Alan LEONG Kah-kit, SC  
Hon Claudia MO  
Hon Frankie YICK Chi-ming  
Hon Alice MAK Mei-kuen, JP  
Hon KWOK Wai-keung
- Members absent** : Hon James TO Kun-sun  
Hon Cyd HO Sau-lan, JP  
Hon Starry LEE Wai-king, JP  
Hon CHEUNG Kwok-che  
Hon Steven HO Chun-yin  
Hon LEUNG Che-cheung, BBS, MH, JP  
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
- Public Officers attending** : Item I  
Mr Franco KWOK Wai-fan, JP  
Assistant Director of Home Affairs (4)

Mr Indiana WONG Man-chung  
Senior Administrative Officer (4)  
Home Affairs Department

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

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Action

**I. Meeting with the Administration**

(LC Paper Nos. CB(2)1359/14-15(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 discussed matters arising from the last meeting on 21 April 2015 (LC Paper Nos. CB(2)1359/14-15(01) & (02)) and continued clause-by-clause examination of the Property Management Services Bill ("the Bill") from Clause 36(7) (LC Paper No. CB(3)583/13-14).

Action

3. The Bills Committee examined up to Clause 46 of the Bill.

Follow-up actions required of the Administration

Admin

4. 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

5. The Chairman reminded members that the next meeting of the Bills Committee would be held on Monday, 8 June 2015, at 4:30 pm to continue clause-by-clause examination of the Bill.
6. There being no other business, the meeting ended at 6:25 pm.

Council Business Division 2  
Legislative Council Secretariat  
10 June 2015

**Proceedings of the 11<sup>th</sup> meeting of the  
Bills Committee on Property Management Services Bill  
on Monday, 4 May 2015, at 4:30 pm  
in Conference Room 2 of the Legislative Council Complex**

| <b>Time marker</b>  | <b>Speaker</b>                         | <b>Subject(s)</b>  | <b>Action Required</b>   |
|---|--|--|--|
| 000452 -<br>000547  | Chairman                               | The Chairman's opening remarks   |  |
| <i>Matters arising from the last meeting on 21 April 2015</i> |  |  |  |
| 000548 -<br>001137  | Chairman<br>Admin                      | Briefing by the Administration on its response to issues raised by members at the Bills Committee meeting on 21 April 2015 (LC Paper No. CB(2)1359/14-15(02)).   |  |
| 001138 -<br>002042  | Chairman<br>Mr WONG Kwok-hing<br>Admin | <p>Referring to the joint submission from the seven professional bodies (LC Paper No.: CB(2)1248/14-15(02)), Mr WONG Kwok-hing's advice that these professional bodies remained concerned about the proposed licensing criteria for property management practitioners ("PMPs"). The Administration's response that it would give due consideration to the views of the Advisory Committee on the Regulation of Property Management Industry and other stakeholders, including relevant professional bodies, in drafting the subsidiary legislation stipulating the detailed licensing criteria.</p> <p>The Administration's elaboration on the proposed transitional arrangements for existing PMPs to prepare themselves to migrate to the new licensing regime (paragraphs 8 to 10 of LC Paper No. CB(2)1298/14-15(01)).</p> <p>The Chairman and Mr WONG Kwok-hing called on the Administration to continue to communicate with the seven professional bodies to listen to their views on the proposed licensing criteria for PMPs, and to report to the Bills Committee on the outcome of the discussion or consensus, if any, reached.</p> | <b>Admin to revert to the Bills Committee (Para. 1(a) of Annex B refers)</b> |
| 002043 -<br>002226  | Chairman<br>Ms Claudia MO<br>Admin     | In response to Ms Claudia MO's enquiry, the Administration advised that it would provide, before the next Bills Committee meeting, detailed responses to the issues raised by members at the last meeting regarding the immunity and privilege against self-incrimination provisions respectively under Clauses 30 and 31 (paragraph 3(b) of LC Paper No. CB(2)1359/14-15(01) refers).   | <b>Admin to provide detailed responses (Para. 1(b) of Annex B refers)</b>    |

| Time marker                                     | Speaker   | Subject(s)   | Action Required               |
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| 002227 - 003207                                 | Chairman<br>Deputy Chairman<br>Admin<br>Mr CHAN Kin-por | <p>The Deputy Chairman urged the Administration to make available as early as possible the draft framework of the codes of conduct/codes of practice/administrative guidelines specifying various issues relevant to the Property Management Services Bill ("the Bill") prepared for the reference of the future Property Management Services Authority ("PMSA").</p> <p>The Administration reiterated that it would, as it had undertaken at earlier meetings, submit the subsidiary legislation relating to the Bill in batches and make available the draft subsidiary legislation to the relevant Panel of the Legislative Council for information as early as practicable. On the codes of conduct/codes of practice/administrative guidelines, the Administration would make the draft framework available to the Bills Committee for information when they were ready.</p> <p>The Deputy Chairman and Mr CHAN Kin-por called on the Administration to expedite its work in preparing the subsidiary legislation and the proposed Committee Stage amendments to the Bill, with a view to meeting public call for early implementation of the new licensing regime for property management companies ("PMCs") and PMPs.</p> <p>The Administration's elucidation on the rationale behind the use of a Schedule (i.e. Schedule 2 to the Bill) 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 (paragraph 7 of LC Paper No. CB(2)1359/14-15(02)). The Administration advised that in accordance with Clause 63, PMSA might, by notice published in the Gazette, amend the fine amount specified in Schedule 2.</p> |                               |
| <i>Clause-by-clause examination of the Bill</i> |   |  |                               |
| 003208 - 003737                                 | Chairman<br>Admin<br>Deputy Chairman                    | <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 6 - Appeal</u></p> <p><i>Clause 36(7) to (9)</i></p> <p>Noting that Clause 38 of the Bill provided that the Secretary for Home Affairs ("SHA") might, by</p>  | <b>Admin to revert to the</b> |

| Time marker     | Speaker   | Subject(s)   | Action Required   |
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|                 |   | regulation, prescribe the procedures for the hearing of appeals under Part 6, the Deputy Chairman requested the Administration to advise on the timetable for making available the draft regulation to be made by SHA under Clause 38.   | <b>Bills Committee (Para. 3 of Annex B refers)</b>                        |
| 003738 - 004011 | Chairman<br>Admin<br>ALA8   | <i>Clause 37 - Decision of appeal tribunal</i><br><br>The Administration was requested to consider the suggestion made by the Legal Adviser to the Bills Committee to add a provision to Part 6 of the Bill to make it clear if the appeal tribunal also had power to make an order for costs and expenses incurred in relation to hearings before the tribunal, as in the situation provided in Clause 25(2) relating to disciplinary hearings, and to clarify whether the meaning of "costs and expenses" in Clause 25(2) covered lawyer fees/legal costs incurred in the disciplinary proceedings and hearings.   | <b>Admin to provide a written response (Para. 2 of Annex B refers)</b>    |
| 004012 - 004045 | Chairman<br>Admin   | <i>Clause 38 - Regulations for hearing of appeals</i>  |   |
| 004046 - 004905 | Chairman<br>Admin<br>Deputy Chairman<br>Mr IP Kwok-him<br>Mr Paul TSE | <i>Clause 39 - Offences relating to appeal</i><br><br>The Deputy Chairman's enquiry about the situations or circumstances under which an offender might be subject to prosecution either on conviction on indictment or summary conviction as provided for in Clause 39(3). The Administration's response that it was a matter for the prosecutor to decide, having regard to the seriousness of the offence committed in a particular case.<br><br>In respect of Clause 39(3) which stipulated the penalties for contravention of subsection (1) or (2) that provided for the offences relating to appeal, the Deputy Chairman and Mr Paul TSE enquired about -<br><br>(a) whether and how the penalty provisions under Clause 39(3) differed from those penalty provisions for offences of the same nature and similar gravity in other legislation, e.g. the Criminal Procedure Ordinance (Cap. 221) ("CPO");<br><br>(b) whether a person committed the offences stipulated under Clause 39(1) or (2) of the Bill | <b>Admin to provide information (Para. 4(a) to (c) of Annex B refers)</b> |

| Time marker     | Speaker                                    | Subject(s)   | Action Required  |
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|                 |  | <p>would be subject to the prosecution of a similar offence under CPO; and</p> <p>(c) the rationale for making specific provisions in the Bill (i.e. Clauses 28(3) and 39(3)) on the offence of giving false or misleading evidence, information or document at both the disciplinary hearing and the appeal while there were similar provisions in other ordinances.</p>  |  |
| 004906 - 005102 | Chairman<br>Admin                          | <p><u>Part 7 - Property Management Services Authority</u></p> <p><i>Clause 40 - Establishment of Authority</i></p> <p><i>Clause 41 - Principal functions of Authority</i></p> <p><i>Clause 42 - Powers of Authority</i></p>  |  |
| 005103 - 010245 | Chairman<br>Mr Alan LEONG<br>Admin<br>ALA8 | <p>Mr Alan LEONG's enquiry and the Administration's response on eligibility for appointment to the appeal panel. The Administration advised that to ensure the independence and impartiality of the appeal panel, members of PMSA would not be appointed to the appeal panel. In appointing the Chairman and members of the appeal panel, SHA would appoint individuals with relevant background to ensure all cases were handled in a fair, impartial and independent manner.</p> <p>In response to Mr Alan LEONG, the Administration advised that offences relating to appeal where prosecution was instituted, either on summary conviction or conviction on indictment, would involve court proceedings, and it was for the court, rather than the appeal tribunal, to adjudicate and to impose penalties on those offences.</p> <p>Mr Alan LEONG's further enquiry about the rationale for making specific provisions in the Bill (i.e. Clauses 28(3) and 39(3)) on the offence of giving false or misleading evidence, information or document at both the disciplinary hearing and the appeal while there were similar provisions in other ordinances. He also asked whether prosecution would be taken out twice against a person who gave evidence, or provided information or document, that was false or misleading in a material particular at both the disciplinary hearing and the appeal proceeding as specified under Clauses 28 and 39 of the Bill.</p> | <p><b>Admin to provide a written response (Para. 4(c) and (d) of Annex B refers)</b></p> |

| Time marker     | Speaker                              | Subject(s)  | Action Required  |
|-----------------|--------------------------------------|---|--|
| 010246 - 010400 | Chairman<br>Deputy Chairman<br>Admin | The Deputy Chairman's enquiry and the Administration's response on whether allowances or honoraria would be paid to members of the appeal panel/tribunal for hearing and determining appeals.   |  |
| 010401 - 010546 | Chairman<br>Admin                    | <i>Clause 43 - Authority not servant or agent of Government</i><br><br><i>Clause 44 - Immunity from civil liability</i>   |  |
| 010547 - 011114 | Chairman<br>Admin<br>Mr IP Kwok-him  | <i>Clause 45 - Register of interests</i><br><br>Mr IP Kwok-him's suggestion and enquiry -<br><br>(a) consideration should be given to moving amendments to the Bill to combine Clauses 45(1) and 45(2), so as to make them easier to read; and<br><br>(b) the Administration should provide examples to illustrate what might be covered under "the class or description of the interests required to be disclosed" as determined by PMSA under Clause 45(3).           | <b>Admin to consider and to provide the requested information (Para. 5(a) &amp; (b) of Annex B refers)</b> |
| 011115 - 011312 | Chairman<br>Deputy Chairman<br>Admin | <i>Clauses 45(7) and 45(8)</i><br><br>In response to the Deputy Chairman's enquiry, the Administration affirmed that PMSA must make the register of interests available for inspection free of charge at the offices of PMSA during ordinary business hours and through the Internet or a similar electronic network. If a person obtained a copy of the whole or a part of the register through the Internet or a similar electronic network, no payment was required. |  |
| 011313 - 011641 | Chairman<br>Admin                    | <i>Clause 46 - Disclosure of interests</i>  |  |
| 011642 - 011840 | Chairman<br>Mr IP Kwok-him<br>Admin  | In response to Mr IP Kwok-him's enquiry, the Administration explained the meaning of the phrase "a personal interest greater than that which a person has as a member of the public" under Clause 46(1)(b). The Administration advised that the Communications Authority Ordinance (Cap. 616) contained a provision similar to Clause 46(1).  |  |



| Time marker     | Speaker   | Subject(s)  | Action Required   |
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| 011841 - 015455 | Chairman<br>ALA8<br>Admin<br>Mr IP Kwok-him<br>Mr Alan LEONG<br>Mr Paul TSE | <p>Members (including the Chairman, Mr IP Kwok-him, Mr Alan LEONG and Mr Paul TSE) and the Legal Adviser to the Bills Committee raised a number of issues over the requirements for disclosure of interests by members of PMSA, members of the disciplinary committee and members of the appeal tribunal both at the time of their appointment and during the period of holding office, including the following -</p> <ul style="list-style-type: none"> <li>(a) the requirements on the disclosure of interests by PMSA members and non-PMSA members, particularly at hearings before the disciplinary committee;</li> <li>(b) whether specific provisions should be provided in the Bill for the procedures for disclosure of interests of or relationship with the PMCs or PMPs who were subject to the disciplinary proceedings before the commencement of the proceedings/appeal hearings;</li> <li>(c) how Clauses 45 and 46 correlated with other provisions of the Bill relating to the disclosure of interests (including Clause 38 on "Regulations for hearing of appeals" and section 23(9) of Schedule 3 to the Bill) and/or the administrative guidelines to be issued by PMSA; and</li> <li>(d) the applicability of Clause 45(1) and (2) to members of the appeal panel/tribunal.</li> </ul> <p>In view of the foregoing concerns of members, the Bills Committee requested the Administration to provide detailed information on the requirements, procedures and operation of PMSA and its committees as well as the appeal tribunal concerning disclosure of interests by members of PMSA and non-PMSA members under different circumstances, in particular, disclosure of interests of or relationship with the PMCs or PMPs who were subject to the disciplinary proceedings before the commencement of the proceedings/appeal hearings. The information to be provided should include the provisions related to the disclosure of interests and/or administrative guidelines to be issued by PMSA.</p> | <p><b>Admin to provide detailed information (Para. 6 of Annex B refers)</b></p> |

| <b>Time marker</b> | <b>Speaker</b> | <b>Subject(s)</b>  | <b>Action Required</b> |
|--------------------|----------------|--|------------------------|
| 015456 -<br>015652 | Chairman       | Date of next meeting and the Chairman's closing remarks. |                        |

Council Business Division 2  
Legislative Council Secretariat  
10 June 2015

**Bills Committee on  
Property Management Services Bill**

**List of follow-up actions arising from the discussion  
at the meeting on 4 May 2015**

Matters arising from the last meeting on 21 April 2015

1. The Administration was requested to -
  - (a) continue to communicate with the seven professional bodies to listen to their views on the proposed licensing criteria for property management practitioners ("PMPs), and to report to the Bills Committee on the outcome of the discussion or consensus, if any, reached; and
  - (b) provide detailed responses to the issues raised by members at the last meeting regarding the immunity and privilege against self-incrimination provisions respectively under Clauses 30 and 31 (paragraph 3(b) of LC Paper No. CB(2)1359/14-15(01) refers).

Issues and concerns on specific clauses

2. The Administration was also requested to consider the suggestion made by the Legal Adviser to the Bills Committee to add a provision to Part 6 of the Bill to make it clear if the appeal tribunal also had power to make an order for costs and expenses incurred in relation to hearings before the tribunal, as in the situation provided in Clause 25(2) relating to disciplinary hearings, and to clarify whether the meaning of "costs and expenses" in Clause 25(2) covered lawyer fees/legal costs incurred in the disciplinary proceedings and hearings.
3. The Administration was requested to advise on the timetable for making available the draft regulation to be made by the Secretary for Home Affairs under Clause 38 of the Property Management Services Bill ("the Bill").
4. Clause 39(3) stipulated the penalties for contravention of subsection (1) or (2) which provided for the offences relating to appeal. Noting that other legislation, e.g. the Criminal Procedure Ordinance (Cap. 221) ("CPO"), had similar provisions, the Bills Committee requested the Administration to provide information on -
  - (a) whether and how the penalty provisions under Clause 39(3) differed from those penalty provisions for offences of the same nature and similar gravity in other legislation;

- (b) whether a person committed the offences stipulated under Clause 39(1) or (2) of the Bill would be subject to the prosecution of a similar offence under CPO;
- (c) the rationale for making specific provisions in the Bill (i.e. Clauses 28(3) and 39(3)) on the offence of giving false or misleading evidence, information or document at both the disciplinary hearing and the appeal while there were similar provisions in other ordinances; and
- (d) whether prosecution would be taken out twice against a person who gave evidence, or provided information or document, that was false or misleading in a material particular at both the disciplinary hearing and the appeal proceeding as specified under Clauses 28 and 39 of the Bill.

5. In relation to Clause 45, the Administration was requested to -

- (a) consider a member's suggestion that amendments be made to the Bill to combine Clauses 45(1) and (2), so as to make them easier to read; and
- (b) give examples to illustrate what might be covered under "the class or description of the interests required to be disclosed" as determined by the Property Management Services Authority ("PMSA") under Clause 45(3).

6. Members of the Bills Committee had grave concerns over the requirement for disclosure of interests by members of PMSA, members of the disciplinary committee and members of the appeal tribunal, both at the time of their appointment and during the period of holding office. The Administration was requested to provide information on the requirements, procedures and operation of PMSA and its committees as well as the appeal tribunal concerning disclosure of interests by members of PMSA and non-PMSA members under different circumstances, in particular, disclosure of interests of or relationship with the property management companies or PMPs who were subject to the disciplinary proceedings before the commencement of the proceedings/appeal hearings. The information to be provided should include the provisions related to the disclosure of interests and/or administrative guidelines to be issued by PMSA.