

立法會
Legislative Council

LC Paper No. CB(2)2052/14-15
(These minutes have been seen
by the Administration)

Ref : CB2/BC/7/13

Bills Committee on Property Management Services Bill

Minutes of the 13th meeting
held on Monday, 29 June 2015, at 10:45 am
in Conference Room 2B 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 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 Steven HO Chun-yin
Hon Frankie YICK Chi-ming
Hon LEUNG Che-cheung, BBS, MH, JP
Hon Alice MAK Mei-kuen, JP
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
- Member absent** : Hon KWOK Wai-keung
- 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

Action

I. Meeting with the Administration

(LC Paper Nos. CB(2)1788/14-15(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 held on 8 June 2015 (LC Paper Nos. CB(2)1788/14-15(01) & (02)).

Action

3. The Bills Committee noted that taking into account members' views expressed at the meeting on 8 June 2015, the Administration would consider moving Committee Stage amendments ("CSAs") to Schedule 3 to the Property Management Services Bill ("the Bill") as follows -

- (a) in relation to section 3 of Schedule 3, replacing the term "remuneration" with a more appropriate term by drawing reference to other legislation, including the Mental Health Ordinance (Cap. 136); and
- (b) in relation to section 6 of Schedule 3, amending the provision such that the Chairperson of the Property Management Services Authority ("PMSA") might, depending on actual circumstances, decide whether there was a need to arrange the Vice-chairperson to act in the place of the Chairperson during the period when the Chairperson was temporarily absent from Hong Kong.

4. The Bills Committee continued clause-by-clause examination of the Bill (LC Paper No. CB(3)583/13-14), and completed examination of section 23 of Schedule 3, Clauses 49 to 60 (Part 8), Clauses 61 to 65 (Part 9) as well as sections 1 to 4 of Schedule 4 to the Bill.

5. In response to the Legal Adviser to the Bills Committee's observations/enquiries, the Administration advised that it would consider moving the following CSAs to the Bill –

- (a) regarding section 23(1) in Schedule 3, to consider amending the Chinese rendition of "disciplinary matters" to "紀律事宜" to avoid inconsistency between the Chinese text of the proposed section 23(1) of Schedule 3 and the heading of Part 5 of the Bill; and
- (b) to amend Schedule 4 to make it clear that PMSA's disciplinary powers under Part 5 and the defence under Clause 61 should also apply to the holders of provisional property management practitioner licences.

Follow-up actions required of the Administration

Admin

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

Action

II. Any other business

Date of next meeting

7. The Chairman reminded members that the next meeting of the Bills Committee would be held on Monday, 6 July 2015, at 4:30 pm to continue clause-by-clause examination of the Bill.

8. There being no other business, the meeting ended at 12:42 pm.

Council Business Division 2
Legislative Council Secretariat
27 August 2015

**Proceedings of the 13th meeting of the
Bills Committee on Property Management Services Bill
on Monday, 29 June 2015, at 10:45 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action Required
000708 - 000759	Chairman	The Chairman's opening remarks	
<i>Matters arising from the last meeting on 8 June 2015</i>			
000800 - 001535	Chairman Admin	<p>Briefing by the Administration on its response to issues raised by members at the Bills Committee meeting held on 8 June 2015 (LC Paper Nos. CB(2)1788/14-15(01) & (02)).</p> <p>The Bills Committee noted that taking into account members' views expressed at the meeting on 8 June 2015, the Administration would consider moving Committee Stage amendments ("CSAs") to Schedule 3 to the Property Management Services Bill ("the Bill") as follows -</p> <p>(a) in relation to section 3 of Schedule 3, replacing the term "remuneration" with a more appropriate term by drawing reference to other legislation, including the Mental Health Ordinance (Cap. 136); and</p> <p>(b) in relation to section 6 of Schedule 3, amending the provision such that the Chairperson of the Property Management Services Authority ("PMSA") might, depending on actual circumstances, decide whether there was a need to arrange the Vice-chairperson to act in the place of the Chairperson during the period when the Chairperson was temporarily absent from Hong Kong.</p>	
001536 - 002419	Chairman Ms Claudia MO Admin Mr IP Kwok-him	<p>Ms Claudia MO's enquiry on why the suggestion of members to establish a database on the judgments of cases heard by PMSA, the disciplinary committee or the appeal tribunal for public access was not acceded to. The Administration's reiteration of its explanation as set out in paragraphs 13 to 15 of LC Paper No. CB(2)1788/14-15(02), and advice that the suggestion would be relayed to PMSA for consideration.</p> <p>In response to Ms Claudia MO's further enquiry,</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>the Administration advised that at present, there was no legislation requiring the registration of property management companies ("PMCs") and hence, the Administration had no information on large-, medium- and small-sized PMCs' direct or indirect relationship with property developers.</p> <p>The Chairman's recapitulation of members' major concerns raised at the last meeting relating to the proposed establishment of a database on case judgments. The Administration's elaboration on the specific information that had to be included in PMSA's annual report and registers of PMCs and property management practitioners ("PMPs"), all of which would be made available for public inspection free of charge.</p>	
<i>Clause-by-clause examination of the Bill</i>			
002420 - 003619	Chairman Admin Mr IP Kwok-him ALA8 Ms Claudia MO	<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>Schedule 3 to the Bill</u></p> <p><i>Section 23 - Authority may establish committees</i></p> <p>In reply to Mr IP Kwok-him's enquiry, the Administration advised that the proposed section 23(6) of Schedule 3 provided that the chairperson of a committee must be a member of PMSA.</p> <p>In response to the observation of the Legal Adviser to the Bills Committee on the proposed section 23(1) of Schedule 3, the Administration advised that it would consider amending the Chinese rendition of "disciplinary matters" to "紀律事宜" to avoid inconsistency between the Chinese text of the proposed section 23(1) of Schedule 3 and the heading of Part 5 of the Bill.</p> <p>In relation to the proposed section 23(9) of Schedule 3, the Legal Adviser to the Bills Committee suggested that amendments should be proposed to the Bill to make section 23(9) of Schedule 3 also subject to Clause 46, which sought to regulate disclosure of interests at a meeting by the member of a committee of PMSA and the procedure of such meeting relating to disclosure of interests by members of the committee.</p>	<p>Admin to consider the suggestion and revert to the Bills Committee (Para. 1 of Annex B refers)</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>In response to Mr IP Kwok-him's and Ms Claudia MO's enquiries about the voting rights of the chairperson of a meeting of PMSA, the Administration advised that as provided in section 11(2) of Schedule 3, the member presiding at the committee meeting of PMSA had a deliberative vote and also a casting vote in the event that the number of votes for and against a motion was equal. In exercising the casting vote, the member presiding the meeting could vote according to his/her own wish.</p> <p>Responding to Ms Claudia MO's another enquiry raised earlier at the meeting, the Administration advised that PMSA was not a government department and hence the Code on Access to Information, which provided a formal framework for access to information held by government departments, would not be applicable to PMSA.</p>	
003620 - 003902	Chairman Admin	<p><u>Part 8 of the Bill - Levy</u></p> <p><i>Clause 49 - Interpretation of Part 8</i></p> <p><i>Clause 50 - Application of Part 8</i></p> <p><i>Clause 51 - Leviable instruments</i></p>	
003903 - 004522	Chairman Admin Deputy Chairman ALA8	<p><i>Clause 52 - Payment of levy</i></p> <p>The Deputy Chairman's enquiry on whether a levy would be charged in the situation that the change of ownership of a property owned by a company was effected through the transfer of shares of the company. The Administration's response that a fixed levy would be imposed on each conveyance on sale chargeable with stamp duty under head 1(1) in the First Schedule to the Stamp Duty Ordinance (Cap. 117) ("SDO"). The transferee under a leviable instrument would be liable to pay the levy payable for the instrument.</p> <p>The Legal Adviser to the Bills Committee's advice that according to Clause 51(1) of the Bill and head 1(1) in the First Schedule to SDO, an instrument would fall within the description of leviable instrument if the subject matter of an instrument involved an immovable property in Hong Kong.</p>	

Time marker	Speaker	Subject(s)	Action Required
004523 - 004718	Chairman Admin Mr IP Kwok-him	<p><i>Clause 53 - Collection of levy</i></p> <p>In response to Mr IP Kwok-him's enquiry, the Administration advised that the arrangement for the collection of levy would be very similar to that for stamp duty, whereby the Stamp Office of the Inland Revenue Department ("IRD") would collect the levy on behalf of PMSA when the conveyance on sale was submitted to IRD for stamping. Clause 53(1)(b) was an enabling provision to allow IRD to collect the levy on behalf of PMSA.</p>	
004719 - 005618	Chairman Admin Deputy Chairman ALA8	<p><i>Clause 54 - Agreement for collection and transmission of levy</i></p> <p>The Deputy Chairman's enquiry and the Administration's response on what would be included in the agreement to be entered into by PMSA and the Collector, which would set out the details of administrative arrangements in relation to the collection and transmission of levy.</p> <p>In response to the Deputy Chairman's/Legal Adviser to the Bills Committee's enquiries, the Administration advised that Clause 54 was an enabling provision such that PMSA and the Collector might enter into an agreement detailing the obligations and liabilities of both parties in relation to the collection and transmission of levy. It would be a matter for PMSA and the Collector to discuss on the need for and the details of the agreement.</p>	
005619 - 010708	Chairman Admin Mr IP Kwok-him Deputy Chairman	<p><i>Clause 55 - Failure to pay levy</i></p> <p>Mr IP Kwok-him's concern that the person named on the certificate might claim that he/she had not received a copy of the certificate due to failure of postal delivery. He suggested that the Administration should specify clearly in Clause 55(4) that a copy of the certificate of levy and penalty under this section should be served by registered post if it was to be sent by post to, the person's last known postal address, or place of abode, business or employment.</p> <p>In response to the Deputy Chairman's enquiry, the Administration advised that the definition of "Chief Executive Officer" was provided in Clause 2 of the Bill.</p>	<p>Admin to consider the suggestion and revert to the Bills Committee (Para. 2 of Annex B refers)</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>In response to the Chairman's enquiry, the Administration advised that Clauses 56 to 58 provided for the imposition of penalty for failure to pay the levy and the recovery of the levy and penalty. It would be PMSA's responsibility to follow up the matter, including the recovery of levy and penalty.</p>	
<p>010709 - 011352</p>	<p>Chairman Admin Mr IP Kwok-him Deputy Chairman</p>	<p><i>Clause 56 - Penalty</i></p> <p><i>Clause 57 - Certificate of levy and penalty</i></p> <p><i>Clause 58 - Recovery of levy and penalty</i></p> <p>In response to the Deputy Chairman's enquiry, the Administration advised that Clause 57(8) provided that on the recovery of the levy and penalty, PMSA must lodge in the Land Registry an appropriate memorial of satisfaction against the certificate registered under Clause 57(3) against any premises or land in respect of which the levy and penalty arose. PMSA would bear the related fees and charges for releasing the legal charge created under Clause 57(5)(b).</p>	
<p>011353 - 011914</p>	<p>Chairman Admin Deputy Chairman ALA8</p>	<p><i>Clause 59 - Authority's powers to remit and refund</i></p> <p>The Deputy Chairman's enquiry and the Administration's advice that there might be cases where stamp duty in respect of an immovable property was not required (e.g. successful appeal against the payment of stamp duty), thereby a need to include in the Bill Clause 59 which was an enabling clause for PMSA to remit and refund levy or penalty paid or payable for a leviable instrument. To facilitate members' understanding of possible situations of refund of stamp duty, the Deputy Chairman requested the Administration to provide illustrative examples in this respect.</p> <p>In response to Legal Adviser to the Bills Committee's enquiry about the application of Clause 57(7), the Administration advised that the Clause would apply to the situation where the purchaser or mortgagee of the premises or land had completed the sale and purchase transaction before PMSA registered the certificate of levy and penalty in the Land Registry against the premises or land concerned in respect of which the levy and penalty arose.</p>	<p>Admin to provide the requested information (Para. 3 of Annex B refers)</p>

Time marker	Speaker	Subject(s)	Action Required
011915 - 012008	Chairman Admin	<i>Clause 60 - Regulations for Part 8</i>	
012009 - 012501	Chairman Admin Deputy Chairman ALA8	<p><u>Part 9 of the Bill - Miscellaneous</u></p> <p><i>Clause 61 - Defence for licensed PMP as employee</i></p> <p><i>Clause 62 - Paid fees not refundable</i></p> <p>Noting that Clause 61 provided a defence for licensed PMPs as employees in proceedings for a disciplinary offence, the Deputy Chairman requested the Administration to provide examples of similar provisions in other legislation for members' reference.</p> <p>In response to the Deputy Chairman's enquiry, the Administration advised that specific requirements that PMPs should comply with in daily operation, which included, among others, their duty to remind owners and/or owners' organizations of the legislative requirements related to building management, would be set out in the codes of conduct to be issued by PMSA.</p> <p>In reply to Legal Adviser to the Bills Committee's enquiry, the Administration advised that for the purpose of Clause 61, the standard of proof for disciplinary proceedings to be adopted would require the defendant to establish his/her defence on a balance of probabilities.</p>	<p>Admin to provide the requested information (Para. 4 of Annex B refers)</p>
012502 - 012929	Chairman Admin Deputy Chairman Mr IP Kwok-him	<p><i>Clause 63 - Amendment of Schedules 2 and 3</i></p> <p>In response to the concern expressed by the Deputy Chairman, the Administration advised that public consultation as well as consultation with the relevant Panel of the Legislative Council would be conducted before putting forward legislative proposals to amend Schedules 2 and 3, and a decision supported by a majority of the votes cast at the meeting of PMSA at which a quorum was present was the decision of PMSA.</p>	
012930 - 013002	Chairman Admin	<p><i>Clause 64 - Transitional provisions</i></p> <p><i>Clause 65 - Related amendments</i></p>	

Time marker	Speaker	Subject(s)	Action Required
013003 - 013108	Chairman Admin	<p><u>Schedule 4 to the Bill</u></p> <p><i>Section 1 - Provisional PMP licences</i></p>	
013109 - 014324	Chairman Admin Mr IP Kwok-him ALA8 Mr Paul TSE	<p><i>Section 2 - Application for provisional PMP licences</i></p> <p>Mr IP Kwok-him expressed concern that the present drafting of the proposed section 2(4)(b) to (e) of Schedule 4 was too rigid and would have the effect of rejecting all applications where the applicants had past records of criminal conviction or whose application for a licence had been refused, revoked or suspended. He requested the Administration to clarify in writing the policy intent in respect of the granting of provisional PMP licences, in particular, whether the factors set out in the proposed section 2(4)(b) to (e) would be the exclusive factors for determining whether an applicant was a suitable person to hold a provisional PMP licence.</p> <p>In response to Legal Adviser to the Bills Committee's enquiry, the Administration advised that the phrase "disciplinary offence" in section 2(4)(c) meant a disciplinary offence as defined under Clause 4 of the Bill. In the light of the Administration's response, the Bills Committee requested the Administration to consider the need to specify clearly the meaning of "disciplinary offence" in the proposed section 2(4)(c).</p> <p>In response to Mr Paul TSE's enquiry, the Administration advised that the term "licence" in section 2(3)(a)(ii) referred to a provisional PMP licence. Mr TSE's view that the term "licence" in the above-quoted subsection should be revised, in order to avoid confusion in the interpretation of the term.</p>	<p>Admin to revert to the Bills Committee (Para. 5 of Annex B refers)</p> <p>Admin to revert to the Bills Committee (Para. 6(b) of Annex B refers)</p> <p>Admin to consider and revert to the Bills Committee (Para. 6(a) of Annex B refers)</p>
014325 - 015447	Chairman Admin Mr IP Kwok-him Mr Paul TSE	<p><i>Section 3 - Appeal in relation to provisional PMP licences</i></p> <p>Upon the Administration's explanation on the application of the proposed section 3 of Schedule 4, Mr Paul TSE suggested that the Administration should consider improving the drafting of section 3(1) in relation to the term "任何人" ("a person aggrieved by a decision not to issue a provisional PMP (Tier 1) licence or</p>	<p>Admin to consider and revert to the Bills Committee (Para. 7 of Annex B refers)</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>provisional PMP (Tier 2) licence") to spell out expressly that the term "任何人" ("a person") referred to applicants for provisional PMP licences.</p> <p>In response to Mr Paul TSE's remarks, the Administration clarified that any amendment to the enacted Ordinance, except for amendments proposed to Schedules 2 and 3, must be taken forward by an amendment bill. While the establishment as well as the functions and powers of PMSA were provided for in the main clauses in the Bill (i.e. Part 7), Schedule 3 mainly contained administrative and financial provisions. This drafting practice was not a new practice and had been used in other legislation such as the Competition Ordinance (Cap. 619).</p>	
015448 - 015620	Chairman Admin	<i>Section 4 - Regulations for Schedule 4</i>	
015621 - 015702	Chairman ALA8 Admin	In response to Legal Adviser to the Bills Committee's enquiry, the Administration advised that it would consider moving CSAs to the Bill to amend Schedule 4 to make it clear that PMSA's disciplinary powers under Part 5 and the defence under Clause 61 should apply to the holders of provisional PMP licences.	
015703 - 015857	Chairman Mr Paul TSE	Date of next meeting.	

**Bills Committee on
Property Management Services Bill**

**List of follow-up actions arising from the discussion
at the meeting on 29 June 2015**

1. In relation to the proposed section 23(9) of Schedule 3 to the Property Management Services Bill ("the Bill"), the Administration was requested to consider the suggestion made by the Legal Adviser to the Bills Committee to move Committee Stage amendments to make section 23(9) of Schedule 3 also subject to Clause 46, which sought to regulate disclosure of interests at a meeting by the member of a committee of the Property Management Services Authority ("PMSA") and the procedure of such meeting relating to disclosure of interests by members of the committee.
2. The Administration was also requested to consider a member's suggestion of specifying clearly in Clause 55(4) that a copy of the certificate of levy and penalty under this section should be served by registered post if it was to be sent by post to, the person's last known postal address, or place of abode, business or employment.
3. In the course of examining Clause 59, members were advised that there might be cases where stamp duty in respect of an immovable property was not required (e.g. successful appeal against the payment of stamp duty), thereby a need to include in the Bill an enabling clause for PMSA to remit and refund levy or penalty paid or payable for a leviable instrument. To facilitate members' understanding of possible situations of refund of stamp duty, the Administration was requested to provide illustrative examples in this respect.
4. Noting that Clause 61 provided a defence for licensed property management practitioners ("PMPs") as employees in proceedings for a disciplinary offence, the Administration was requested to provide examples of similar provisions in other legislation for members' reference.
5. Concern was raised that the present drafting of the proposed section 2(4)(b) to (e) of Schedule 4 was too rigid and would have the effect of rejecting all applications where the applicants had past records of criminal conviction or whose application for a licence had been refused, revoked or suspended. The Administration was requested to clarify in writing the policy intent in respect of the granting of provisional PMP licences, in particular, whether the factors set out in the proposed section 2(4)(b) to (e) would be the exclusive factors for determining whether an applicant was a suitable person to hold a provisional licence.

6. Regarding the proposed section 2 of Schedule 4, the Administration, taking into account the comments/observations made by members and the Legal Adviser to the Bills Committee, agreed to consider the need to specify clearly that -

- (a) in relation to subsection (3)(a)(ii), the term "licence" referred to a provisional PMP licence, in order to avoid confusion in the interpretation of the term; and
- (b) in relation to subsection (4)(c), the phrase "disciplinary offence" meant a disciplinary offence as defined under Clause 4 of the Bill.

7. The Administration also agreed to consider improving the drafting of section 3(1) of Schedule 4 in relation to the term "任何人" ("a person aggrieved by a decision not to issue a provisional PMP (Tier 1) licence or provisional PMP (Tier 2) licence") to spell out expressly that the term "任何人" ("a person") referred to applicants for provisional PMP licences.

Council Business Division 2
Legislative Council Secretariat
27 August 2015