

**立法會**  
**Legislative Council**

LC Paper No. CB(2)316/15-16  
(These minutes have been seen  
the Administration)

Ref : CB2/BC/7/13

**Bills Committee on Property Management Services Bill**

**Minutes of the 15<sup>th</sup> meeting**  
**held on Wednesday, 28 October 2015, at 8:30 am**  
**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 James TO Kun-sun  
Hon WONG Kwok-hing, BBS, MH  
Hon Starry LEE Wai-king, JP  
Hon CHAN Kin-por, BBS, JP  
Hon IP Kwok-him, GBS, JP  
Hon Alan LEONG Kah-kit, SC  
Hon Steven HO Chun-yin, BBS  
Hon Frankie YICK Chi-ming, JP  
Hon LEUNG Che-cheung, BBS, MH, JP  
Hon Alice MAK Mei-kuen, BBS, JP  
Hon Christopher CHUNG Shu-kun, BBS, MH, JP

**Members absent** : Hon Abraham SHEK Lai-him, GBS, JP  
Hon Cyd HO Sau-lan, JP  
Hon CHEUNG Kwok-che  
Hon Paul TSE Wai-chun, JP  
Hon Claudia MO  
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  
Senior Government Counsel (Acting)  
Department of Justice

**Clerk in attendance** : Ms Alice LEUNG  
Chief Council Secretary (2) 6

**Staff in attendance** : Mr YICK Wing-kin  
Assistant Legal Adviser 8

Ms Vanessa CHENG  
Assistant Legal Adviser 5

Mr Richard WONG  
Council Secretary (2) 6

Miss Emma CHEUNG  
Legislative Assistant (2) 2

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**I. Meeting with the Administration**

(LC Paper Nos. CB(2)86/15-16(01) to (05), 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 the **Annex**).

Issues raised at the last meeting

2. The Bills Committee received the Administration's briefing on its response to issues raised by members at the Bills Committee meeting held on 6 July 2015 (LC Paper Nos. CB(2)86/15-16(01) & (02)).

Action

Draft Committee stage amendments

3. The Chairman invited members to note that the Legislative Council Secretariat had prepared two papers on "Summary of major issues of concerns discussed and the Administration's response" and "Summary of matters that would be addressed in the subsidiary legislation / codes of conduct / administrative guidelines to be issued by the Property Management Services Authority" for members' reference (LC Paper Nos. CB(2)86/15-16(04) and (05)).

4. Considering that members only received the Administration's paper on the draft Committee stage amendments ("CSAs") to the Property Management Services Bill ("the Bill") proposed by the Administration on the day before the meeting (LC Paper No. CB(2)86/15-16(03)) and more time should be allowed for members to consider the proposed draft CSAs, members agreed to the Chairman's suggestion that the meeting would end earlier than the scheduled time after examination of the Administration's proposed draft CSAs to Clauses 2 and 4(d) of the Bill.

5. The Administration took members through the Administration's paper setting out its proposed CSAs to the Bill. According to the Administration, the proposed CSAs were made to address various issues discussed by the Bills Committee at the previous meetings.

6. Members raised no question on the proposed amendments to Clauses 2 and 4(d) of the Bill.

Follow-up action required of the Administration

Admin

7. The Administration was requested to provide a paper listing out (a) the issues of concerns raised by members that the Administration considered it not necessary to propose CSAs to the Bill; and (b) the Administration's considerations/reasons.

**II. Any other business**

Date of next meeting

8. The Chairman reminded members that the next meeting of the Bills Committee would be held on Tuesday, 10 November 2015, at

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2:30 pm. The Bills Committee would continue the discussion on CSAs proposed by the Administration at the next meeting.

9. There being no other business, the meeting ended at 9:27 am.

Council Business Division 2  
Legislative Council Secretariat  
19 November 2015

**Proceedings of the 15<sup>th</sup> meeting of the  
Bills Committee on Property Management Services Bill  
on Wednesday, 28 October 2015, at 8:30 am  
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action Required
000255 - 000632	Chairman	The Chairman's opening remarks	
000633 - 000908	Chairman Admin	Briefing by the Administration on its response to issues raised at the meeting on 6 July 2015 (LC Paper No. CB(2) CB(2)86/15-16(01)).	
000909 - 001055	Chairman Ms Starry LEE Admin	<p>Referring to the Administration's response to issues raised at the meeting on 6 July 2015, Ms Starry LEE was concerned that the definition of "disclosable interest" in Clause 46(1) of the Property Management Services Bill ("the Bill") (which might include interpersonal relationship such as spouse, relatives and friends) might be too broad, making it difficult for members of the Property Management Services Authority ("PMSA") to follow the procedures for disclosure of interests at a meeting. She enquired whether any guideline would be provided to PMSA members for reference.</p> <p>The Administration responded that -</p> <p>(a) similar requirement was found in other legislations, such as section 30 of Schedule 5 to the Competition Ordinance (Cap. 619) and section 14 of the Communications Authority Ordinance (Cap. 616); and</p> <p>(b) the future PMSA might issue guidelines on the procedures for disclosure of interests at a meeting for PSMA members' reference.</p>	
001056 - 001917	Chairman Admin Mr WONG Kwok-hing Mr CHAN Kin-por Deputy Chairman	<p>Considering that members only received the Administration's paper on the draft Committee stage amendments ("CSAs") to the Bill proposed by the Administration on the day before the meeting (LC Paper No. CB(2)86/15-16(03)) and more time should be allowed for members to consider the proposed draft CSAs, members agreed to the Chairman's suggestion that the meeting would end earlier than the scheduled time after examination of the Administration's proposed draft CSAs to Clauses 2 and 4(d) of the Bill.</p> <p>At the request of Mr WONG Kwok-hing, the</p>	<b>Admin to follow up</b>

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		Administration agreed to provide a paper listing out (a) the issues of concerns raised by members that the Administration considered it not necessary to propose CSAs to the Bill; and (b) the Administration's considerations/reasons.	(paragraph 7 of the minutes refers)
001918 - 002649	Chairman Admin	<p>Briefing by the Administration's on its proposed draft CSAs (LC Paper No. CB(2) CB(2)86/15-16(03)), which were made to address various issues discussed by the Bills Committee at previous meetings. In gist, three major areas of amendments were as follows -</p> <p>(a) a new Clause 7(4A) would be added to the effect that an owners' organization's decision to opt for "self-management" without engaging any property management company ("PMC") must be supported by a resolution passed at a general meeting of the owners' organization, otherwise the owners' organization concerned would not be exempted from obtaining PMC licence;</p> <p>(b) a new Clause 7(4B) would be added to the Bill to specify that owners' organization or owner could not self-manage property that contained 1 500 flats or above; and</p> <p>(c) amendments would be made to Clause 10 to enhance the licence renewal procedures as follows -</p> <p>(i) an application for the renewal of a property management practitioner ("PMP") and PMC licence should be made three to six months before expiry and six to nine months before expiry respectively;</p> <p>(ii) if a licensee had already made a renewal application within the stipulated timeframe, the licence would remain in force until PMSA's determination of the application;</p> <p>(iii) if PMSA did not receive renewal application from a PMC within the stipulated timeframe, it would proactively inform owners or owners' organizations of the property managed by the PMC concerned;</p> <p>(iv) PMSA could exercise discretion to handle licence renewal applications made after the</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>stipulated timeframe but before the expiry of the licence on a case-by-case basis. PMSA could charge a fee and impose other conditions, and extend the validity of the licence for a period not exceeding six months if necessary; and</p> <p>(v) for those PMCs whose licence renewal applications were rejected, PMSA could extend the validity of the licence for a period not exceeding six months, subject to any prescribed fees PMSA might charge and any conditions PMSA might impose.</p> <p>The Administration also advised that regarding the issue of whether Clause 31 on "self-incrimination" should be applicable to the hearings of PMSA, disciplinary committee and appeal tribunal, the Administration was seeking further views and advice from the Department of Justice and would report to the Bills Committee in due course.</p>	
002650 - 003105	Chairman Mr CHAN Kin-por Admin	<p>Mr CHAN Kin-por expressed support for the proposed addition of new Clauses 7(4A) and 7(4B) to the Bill. He enquired about the meaning of "flat" in the proposed new Clause 7(4B), particularly on whether parking spaces would be included in the 1 500 flats.</p> <p>Clause 7(3) of the Bill provided that the Bill did not prohibit the owners' organization of a property from providing the property with management services if no PMC or PMP was engaged, and Clause 7(4) of the Bill provided that the Bill did not prohibit one or more of the owners of a property from providing the property with management services if no PMC was engaged, and that the owner(s) providing the property management services were individuals. Mr CHAN was concerned that some owners, owners' corporations ("OCs") or other forms of owners' organizations might exploit the potential loopholes that might arise from the proposed exceptions from prohibition of unlicensed activities under Clause 6 of the Bill and enquired whether any enforcement action would be taken against non-compliant owners/ owners' organizations.</p> <p>The Administration responded that -</p> <p>(a) the definition of "flat" (單位) in the proposed new Clause 7(4B) was the same as that provided</p>	

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		<p>in the Building Management Ordinance (Cap. 344) ("BMO"), i.e. "any premises in a building which are referred to in a deed of mutual covenant whether described therein as a flat or by any other name and whether used as a dwelling, shop, factory, office or for any other purpose, of which the owner, as between himself and owners or occupiers of other parts of the same building, is entitled to the exclusive possession". As such, if a deed of mutual covenant ("DMC") had allocated shares to a parking space, the parking space concerned would fall under the definition of "flat"; and</p> <p>(b) the proposed addition of new Clauses 7(4A) and 7(4B) to the Bill would plug the potential loopholes that might arise from the proposed exceptions in relation to self-managed property. Upon enactment of the Bill, enforcement action against any non-compliance would be considered and conducted on a case-by-case basis.</p>	
003106 - 004425	Chairman Deputy Chairman Admin	<p>The Deputy Chairman expressed support for the proposed amendments to Clause 7 of the Bill to give the effect that OC's decision to opt for "self-management" without engaging any PMC must be made by a resolution passed at a general meeting.</p> <p>The Deputy Chairman reiterated his view that amendments should be made to the Bill to the effect that it would be a mandatory requirement for all licensed PMCs and PMPs to fulfill the statutory requirements under BMO and to observe and follow the provisions of the relevant DMCs. He considered it not desirable for the Administration to address the issue in the codes of conduct to be issued by the future PMSA. He indicated that he would consider how to address the issue in the Bill and whether to propose CSAs to the above effect if the Administration decided not to do so.</p> <p>The Administration responded that -</p> <p>(a) PMCs, as the entities of Hong Kong, were always obliged to observe all laws of Hong Kong including BMO. It was unnecessary and uncommon to include a provision in a legislation specifying that it was a mandatory requirement to comply with another law of Hong Kong in general;</p>	



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		<p>(b) Apart from BMO, there were a number of legislations relating to property management (e.g. the Buildings Ordinance (Cap. 123), Fire Safety (Buildings) Ordinance (Cap. 572), etc.). If only BMO was singled out in the Bill, it would be confusing for the public why PMCs were not required to observe other legislations and that it might have other unintended legal consequences. However, it was neither practicable nor in line with the drafting convention to include an exhaustive list of such legislations in the Bill;</p> <p>(c) BMO aimed to regulate the conduct and procedures of OCs. While PMCs should assist OCs and owners to comply with BMO, the BMO provisions were not directly applicable to PMCs; and</p> <p>(d) it was considered appropriate for the future PMSA to specify in the codes of conduct that the licensee should observe the laws in performing their duties, contravention of which might result in disciplinary offences. In doing so, the Deputy Chairman's concern could have been properly addressed.</p>	
004426 - 005138	Chairman Mr IP Kwok-him Admin	<p>Mr IP Kwok-him's views that -</p> <p>(a) he appreciated that the Administration had proposed CSAs in response to issues of concerns raised by members; and</p> <p>(b) while he considered it important that PMC/PMP must follow the statutory requirements under BMO and the relevant provisions in DMCs, he subscribed to the Administration's view that it was unnecessary to further amend the Bill to such effect.</p>	
005139 - 005305	Chairman Ms Starry LEE Admin	<p>Ms Starry LEE enquired whether the Administration had further consulted the trade on the proposed amendments in relation to "self-management" of a property and PMC/PMP licence renewal procedures.</p> <p>The Administration responded that -</p> <p>(a) in response to comments received and the concerns raised during the public consultation exercise, the Bill proposed that OCs or other types of owners/resident organizations managing their own properties without engaging PMCs be</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>excluded from the proposed licensing regime. Taking into consideration members' views and concerns raised at previous meetings, the Administration proposed further amendments in relation to self-managed property as set out in the Administration's proposed draft CSAs. The Administration considered that the proposed amendments had struck a balance among different views in relation to self-managed property; and</p> <p>(b) the proposed amendments in relation to PMC/PMP licence renewal procedures would further facilitate the trade and the Administration expected that the trade would welcome these amendments.</p>	
005306 - 005435	Chairman Admin Mr IP Kwok-him	Suggestion on using the "Marked-up Copy" ( <b>Annex B</b> to LC Paper No. 86/15-16(03)) when examining the draft CSAs proposed by the Administration.	
005436 - 005543	Chairman Admin ALA8	<p><i>Proposed CSAs to Clause 2</i></p> <p>Members raised no question on the proposed amendment.</p>	
005544 - 005637	Chairman Admin	<p><i>Proposed CSAs to Clause 4</i></p> <p>Members raised no question on the proposed amendment.</p>	
005638 - 005748	Chairman	<p>Date of next meeting.</p> <p>The Chairman's closing remarks.</p>	