

立法會
Legislative Council

LC Paper No. CB(2)505/15-16
(These minutes have been seen
by the Administration)

Ref : CB2/BC/7/13

Bills Committee on Property Management Services Bill

Minutes of the 17th meeting
held on Monday, 30 November 2015, at 4:30 pm
in Conference Room 3 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 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 Claudia MO
Hon Steven HO Chun-yin, BBS
Hon Alice MAK Mei-kuen, BBS, JP
- Members absent** : Hon Abraham SHEK Lai-him, GBS, JP
Hon WONG Kwok-hing, BBS, MH
Hon CHEUNG Kwok-che
Hon Alan LEONG Kah-kit, SC
Hon Frankie YICK Chi-ming, JP
Hon LEUNG Che-cheung, BBS, MH, JP
Hon KWOK Wai-keung
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

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

Action

I. Meeting with the Administration

(LC Paper Nos. CB(2)350/15-16(01) & (02), CB(2)245/15-16(01), CB(2)86/15-16(03) to (05), CB(3)583/13-14, CB(2)1761/13-14(02) to (04), CB(2)2014/13-14(01) and CB(2)221/15-16(01))

The Bills Committee deliberated (index of proceedings attached at the **Annex**).

2. The Bills Committee received the Administration's briefing on its response to issues raised by members as well as the discussion draft of Committee stage amendments ("CSAs") proposed by the Deputy Chairman and tabled at the meeting on 10 November 2015 [LC Paper No. CB(2)350/15-16(02)].

3. As regards the discussion draft of CSAs proposed by the Deputy Chairman, members were advised that having considered members' views and discussion with the Deputy Chairman, the Administration would propose CSAs to Clauses 4 and 61 of the Bill in respect of

Action

disciplinary offences for the licensees and the defence for a licensed property management practitioner charged with a disciplinary offence. Members were further advised that the Administration, having consulted the Department of Justice, would propose CSAs to the effect that the provisions in relation to self-incrimination would be applicable to hearings before the Property Management Services Authority, the disciplinary committee and an appeal tribunal. Members did not raise objection to the Administration's proposals and noted that the Administration would provide the relevant CSAs for members' consideration in due course.

Legislative timetable

4. The Chairman said that the Bills Committee had completed the clause-by-clause examination of the Bill and considered the draft CSAs proposed by the Administration. Members noted the Administration's advice that the full set of draft CSAs proposed by the Administration would be ready for issuance to members within the next one or two days. Members agreed to the Chairman's suggestion that the next meeting scheduled for 7 December 2015 would be cancelled if members had no further comment on the draft CSAs proposed by the Administration and raised no other issue for discussion after considering the full set of CSAs to be provided by the Administration.

(Post-meeting note: The full set of draft CSAs proposed by the Administration was issued to members for consideration vide LC Paper No. CB(2)389/15-16(01) on 3 December 2015. As members had no comment on the draft CSAs proposed by the Administration and raised no other issue for discussion, members were informed vide LC Paper No. CB(2)404/15-16 on 4 December 2015 that the meeting originally scheduled for 7 December 2015 had been cancelled.)

5. Members raised no objection to the resumption of the Second Reading debate on the Bill and noted that the Administration intended to resume the Second Reading debate on the Bill before the Chinese New Year.

(Post-meeting note: Members were informed vide LC Paper No. CB(2)418/15-16 on 8 December 2015 that the Administration had proposed to resume the Second Reading debate on the Bill at the Council meeting of 3 February 2016. The Chairman of the Bills Committee would report the deliberations of the Bills Committee

Action

to the House Committee at its meeting on 22 January 2016. The deadline for giving notice of CSAs, if any, would be 25 January 2016.)

II. Any other business

6. There being no other business, the meeting ended at 5:01 pm.

Council Business Division 2
Legislative Council Secretariat
23 December 2015

**Proceedings of the 17th meeting of the
Bills Committee on Property Management Services Bill
on Monday, 30 November 2015, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action Required
000258 - 000325	Chairman	The Chairman's opening remarks	
000326 - 001341	Chairman Admin	<p>Briefing by the Administration on its response to issues raised by members as well as the discussion draft of Committee stage amendments ("CSAs") proposed by the Deputy Chairman and tabled at the meeting on 10 November 2015 [LC Paper No. CB(2)350/15-16(02)].</p> <p>As regards the discussion draft of CSAs proposed by the Deputy Chairman, members noted the Administration's advice that it would propose amendments to -</p> <p>(a) Clause 4 to provide that a licensee committed a disciplinary offence if the court determined that the licensee had contravened a requirement in the Building Management Ordinance (Cap. 344) ("BMO") or a deed of mutual covenant ("DMC") that was applicable to the licensee; and</p> <p>(b) Clause 61(a) by replacing "acted in good faith and in a reasonable manner" with "took all reasonable steps and exercised all due diligence to avoid committing the disciplinary offence".</p> <p>In respect of Clause 31 "Self-incrimination", the Administration advised that relevant CSAs would be moved to give the effect that the provisions in relation to self-incrimination would be applicable to hearings before the Property Management Services Authority ("PMSA"), the disciplinary committee and an appeal tribunal.</p> <p>Members raised no objection to the Administration's proposals and noted that the Administration would provide the full set of CSAs to the Bills Committee for consideration within next one or two days.</p>	
001342 - 002055	Chairman Deputy Chairman Admin	The Administration advised that under section 45 of and Schedule 10 to BMO, the Lands Tribunal had jurisdiction over the proceedings relating to the interpretation of the provisions in BMO and	

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		<p>DMC. Therefore, PMSA would not have the power to determine whether a licensee contravened any requirement(s) in BMO or DMC, nor to issue any codes of conduct for that purpose.</p> <p>The Deputy Chairman made the following enquiries -</p> <ul style="list-style-type: none">(a) as the Lands Tribunal had jurisdiction over the proceedings relating to the interpretation of the provisions in BMO and DMC, how the codes of conduct to be issued by PMSA would deal with issues relating to disciplinary offences involving contraventions of requirement(s) in BMO/DMC, and how PMSA would determine whether a licensee had contravened any requirement(s) in BMO/DMC; and(b) the timetable for making subsidiary legislation for the implementation of the enacted Bill, particularly on whether the Administration would provide further information relating to the subsidiary legislation to be made by PMSA to the Bills Committee for reference before the resumption of the Second Reading debate on the Bill. <p>The Administration's responses that -</p> <ul style="list-style-type: none">(a) it would propose amendment to Clause 4 to provide that a licensee committed a disciplinary offence if the court determined that the licensee had contravened a requirement in BMO or DMC that was applicable to the licensee. The codes of conduct to be issued by PMSA would specify that acts or omissions being regarded as disciplinary offences included, among other things, contravention of relevant requirements in BMO or DMC. However, PMSA's determination on whether a licensee contravened any requirement(s) in BMO or DMC would have to be based on the Land Tribunal's (or the relevant court's) determination on the same case; and(b) the Administration had previously provided information to the Bills Committee regarding the subsidiary legislation to be made and the codes of conduct to be issued upon passage of the Bill by the Legislative Council ("LegCo"), the details of which could be found in the	

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		<p>paper entitled "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" prepared by the LegCo Secretariat (LC Paper No. CB(2)86/1516(05)).</p>	
002056 - 002452	<p>Chairman Ms Claudia MO Admin</p>	<p>Ms Claudia MO enquired about how PMSA (which would not have the power to determine whether a licensee contravened BMO or DMC) would deal with complaints against a licensee in respect of disciplinary offences involving contravention of requirement(s) in BMO/DMC applicable to the licensee, pending the Lands Tribunal's determination on proceedings relating to such complaint cases.</p> <p>The Administration responded that as PMSA's determination on whether a licensee contravened any requirement(s) in BMO or DMC would be based on the Land Tribunal's (or the relevant court's) determination on the same case, PMSA could only conduct disciplinary hearing following the Lands Tribunal's (or the relevant court's) determination on that case. However, upon receiving a complaint against a licensee, PMSA might proceed with the preparatory work for conducting an investigation to deal with the complaint.</p>	
002453 - 002917	<p>Chairman Admin</p>	<p>Completion of clause-by-clause examination of the Bill</p> <p>Members' agreement to the Chairman's suggestion that the next meeting would be cancelled if members had no comment on the draft CSAs and raised no other issue for discussion after considering the full set of CSAs to be provided by the Administration after the meeting.</p> <p>In response to the Chairman's enquiry, the Administration indicated that it intended to resume the Second Reading debate on the Bill before the Chinese New Year. It would inform the Bills Committee the proposed date for the resumption of the Second Reading debate on the Bill in due course.</p> <p>Members raised on objection to the resumption of Second Reading debate on the Bill.</p>	

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002918 - 003234	Chairman Mr CHAN Kin-por Ms Claudia MO Admin	<p>Mr CHAN Kin-por urged the Administration to expedite its work to facilitate the early implementation of the enacted Bill.</p> <p>Ms MO enquired about the timetable for implementing the enacted Bill.</p> <p>The Administration responded that the enacted Bill would be implemented in phases. Following the passage of the Bill by LegCo, the Administration would proceed with the preparatory work for the gazettal of the commencement notice of the Ordinance and the appointment of members of PMSA. It was envisaged that the subsidiary legislation including those relating to the service(s) within a category of services set out in Schedule 1 to the Bill as a property management service, the licensing criteria of property management companies and property management practitioners, and the procedures for the hearing of appeals would be introduced into LegCo at a later stage, say the fourth quarter of 2016.</p>	
003235 - 003302	Chairman	The Chairman's closing remarks.	