

**The Administration's response to the matters raised
at the meetings of the Bills Committee
on the Property Management Services Bill
held on 9 and 27 February 2015**

Purpose

This paper sets out the Administration's response to Members' concerns raised at the meetings of the Bills Committee on 9 and 27 February 2015.

Procedures for Licence Renewal

2. At the meeting of the Bills Committee on 9 February 2015, Members made valuable suggestions on the timing and procedures for licence renewal. We fully understand the importance of the arrangement for renewing the licences of property management company (PMC) and property management practitioner (PMP), as it has a direct bearing on the livelihoods of the licensees as well as the housing estates/buildings they manage. To allow adequate time for the Property Management Services Authority (PMSA) to process the applications, we agree that the renewal procedures should commence as soon as practicable.

3. At the last Bills Committee meeting, we briefed Members on our preliminary thinking on the licence renewal procedures. Details are as follows –

- (a) An application for the renewal of a PMP and PMC licence should be made three to six months before expiry and six to nine months before expiry respectively. For the latter, a longer time is provided because more factors would need to be considered by the PMSA.

If the PMSA does not receive renewal application from a PMC within the stipulated timeframe, it will proactively inform the owners' corporations (OCs) and/or individual owners of the estates/buildings the PMC manages for early preparation.

- (b) Similar to the arrangement under other licensing regime, the Property Management Services Bill (the Bill) will provide for the situation that if a licensee has already made a renewal

application within the stipulated timeframe, his licence will remain in effect until the PMSA's determination of the application.

- (c) Depending on the actual circumstances of the case, we propose to empower the PMSA to issue short-term exemption (say, three to six months) to those PMCs whose licence renewal applications are rejected, so that the PMCs could continue to provide service to existing OCs and owners and assist them to hire new service providers within the exemption period.
- (d) We propose to empower the PMSA to exercise discretion to handle licence renewal applications made after the stipulated timeframe or after the expiry of the licences on a case-by-case basis.

4. Subject to Members' views on the above-mentioned proposed arrangements, we will, in consultation with the Department of Justice (DoJ), consider introducing suitable committee stage amendments (CSAs) to the Bill.

Licence Number

5. We agree in principle that a unique licence number should be assigned to each licensee and the same licence number should not be used again. The PMSA will take this suggestion into account when processing licence application in future.

Other Drafting Issues

Clause 13

6. Clause 8(2) of the Bill provides that a PMC licence may be issued to a company, a partnership or an individual carrying on business as a sole proprietor. We agree that, for clause 13(2)(h), it is necessary to clarify that section 2 of the Rehabilitation of Offenders Ordinance (Cap. 297) would only apply to PMCs that are natural persons. We will consider introducing suitable CSAs to the Bill.

7. The primary purpose of clause 13(7) is to protect the privacy of PMPs but not that of the PMCs. We will consider introducing suitable CSAs to the Bill so that the conviction records of PMCs would be available on the Internet, and that the conviction records of PMPs would only be available for inspection at PMSA's office. In addition, no person will be allowed to obtain a copy of the PMPs' conviction records from the register.

Clause 15

8. We consider that clause 15, as presently drafted, strikes a balance between limiting the PMSA's discretionary power and allowing certain degree of flexibility for the PMSA to impose criteria for granting licences. The subsidiary legislation made by the PMSA would be scrutinised by the Legislative Council before enactment. We have already undertaken in our earlier response that the draft subsidiary legislation will be made available to the relevant Panel as early as practicable.

9. We consider that, in clause 15(2)(a), for the sake of clarity, it is better to keep the references to "the person" in the English text (and "有關人士" in the Chinese text) so that the specified requirements are related to the relevant person (i.e. the person applying for a PMC/PMP licence or the renewal of a PMC/PMP licence).

Clause 16

10. We agree that PMCs should have the responsibility to inform their client's in case their licences are suspended, revoked or not to be renewed. We will, in consultation with the DoJ, consider how best to take forward the proposed requirements.

Procedures, Average Waiting Time and Average Legal Costs for Processing Building Management Cases in the Lands Tribunal

11. Pursuant to the Building Management Ordinance (Cap. 344) (BMO), the Lands Tribunal is empowered to adjudicate on building management disputes such as those involving the interpretation and enforcement of the provisions of the BMO, deeds of mutual covenant, the appointment or dissolution of the management committee, and the convening of owners' meeting etc. The Judiciary has advised that the parties involved in building management cases can normally expect to go through three key stages –

- (a) Stage 1: filing of a case;
- (b) Stage 2: setting down to trial; and
- (c) Stage 3: trial.

Stage 1: Filing of a case

12. An applicant seeking an order in connection with a building management case must file with the Registrar of the Lands Tribunal (the Registrar) a notice of application and serve a copy of the notice of application on the respondent.

13. After service of the notice of application, the applicant must, within three days of service, file with the Registrar an affidavit or affirmation of service, unless the respondent has filed a notice of opposition.

14. If the respondent wishes to oppose the application, he must file with the Registrar a notice of opposition and serve a copy of it on the applicant within 21 days of the service of the notice of application on him.

15. Where a notice of opposition has been filed, or the time set for filing has elapsed and no notice of opposition has been filed, any party to the application, on giving notice to all other parties, may apply to the Registrar to have the application set down for hearing.

16. Following the filing of an application for setting down, a call-over hearing for directions would be held by a Presiding Officer of the Lands Tribunal. At the call-over hearing, the Presiding Officer would identify outstanding issues between the parties and give directions to the parties for preparing the case for trial, such as ordering the filing and serving of witness statements and relevant documents, as well as fixing the case for trial and exploration of mediation. Before and during this period, there could also be interlocutory hearings for considering issues such as applications for joining as co-respondent, extension of time to file and/or serve relevant documents, application of any party to require further and better particulars of any document filed with the Registrar as well as urgent injunction applications.

17. The length of this stage varies from case to case depending on factors like complexity of the case, the state of preparedness of parties

concerned in preparing the witness statements and/or expert reports, the number of applicants/respondents involved in the proceedings and the time taken for mediation.

18. For the building management cases filed in 2014, the average time taken from filing of application to setting down for trial, including interlocutory and call-over hearings, was 108 days. This was largely the time required by the parties for preparing the cases for trial and for considering/engaging in mediation.

Stage 2: Setting down to trial

19. For civil cases including the building management cases, the period from the date of setting down to the date of trial, i.e. from the date the case is ready for trial to the date of trial, is regarded as the waiting time. Insofar as building management cases in the Lands Tribunal listed for trial in 2014 are concerned, the average waiting time was 30 days, which was well within the target (which is 90 days) set for this particular type of cases.

Stage 3: Trial

20. In 2014, it took about half a day to seven days to hear building management cases. The average time required to hear a building management case is 1.09 days.

21. The Judiciary has advised that they do not have information on the average legal costs borne by the relevant property owners in building management disputes adjudicated through the Lands Tribunal.

**Home Affairs Department
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