

**The Government's response to the matters raised  
at the meeting of the Bills Committee  
on the Property Management Services Bill  
on 29 June 2015**

**Purpose**

This paper sets out the Government's response to Members' concerns raised at the meetings of the Bills Committee on 29 June 2015.

**Section 23(9) of Schedule 3**

2. Clause 46(9) of the Bill stipulates that subclauses (1), (2), (3) and (8) of clause 46 apply to a member of a committee of the Property Management Services Authority (PMSA), as if a reference to the PMSA in subclauses (2) and (8) were a reference to the committee. Therefore, a member of a committee of the PMSA must disclose his interest under this clause. Nevertheless, for the avoidance of doubt, we agree to Members' suggestion to specify clearly in section 23(9) of Schedule 3 that the committees shall be subjected to clause 46(9) of the Bill.

**Clause 55**

3. Clause 55 of the Bill sets out the follow-up measures the PMSA may take if a transferee fails to pay a levy within the payment period. In drawing up the arrangement for serving a copy of the certificate on the person affected, we have made reference to the arrangement of signature and service of notices under the Inland Revenue Ordinance (Cap. 112). Section 58 of that ordinance is similar to clause 55 of the Bill.

4. The Bill does not specify the type of post by which the certificate of arrears is to be served in order to allow flexibility for the PMSA to determine the way of serving the notice having regard to the actual circumstances. For instance, a notice issued by the PMSA under clause 56(1)(b)(i) and (ii) (if the levy is paid not later than one month, or later than one month but not later than two months after the expiry of the payment period, the penalty is double and four times the amount of the levy respectively) may be served by ordinary post; for more serious cases such as where the levy is not paid after two months, resulting in a penalty amounting to ten times that of the levy under clause 56(1)(b)(iii), the

notice may be served by registered post. This arrangement could reduce the administrative cost of the PMSA. We that clause 55, as presently drafted, is appropriate.

## **Leviable instruments**

5. Under clause 51(1) of the Bill, a leviable instrument means an instrument that is a conveyance on sale and chargeable with stamp duty under head 1(1) in the First Schedule to the Stamp Duty Ordinance (Cap. 117). In response to Members' enquiry about the circumstances under which stamp duty paid can be refunded, we have consulted the Inland Revenue Department (IRD). According to the IRD, as far as a conveyance on sale specified in the Stamp Duty Ordinance (Cap. 117) is concerned, if the conveyance is between associated bodies<sup>1</sup> as stipulated by section 45 and the application for exemption is made after payment of the stamp duty, the stamp duty so paid could be refunded. Under the circumstances, the levy paid in accordance with the Bill will also be refunded.

## **Defence**

6. Defence provisions for employees are common in legislation. Similar provisions can be found, for instance, in the Copyright Ordinance (Cap. 528) and the Food Safety Ordinance (Cap. 612). Extracts of relevant provisions are at **Annex**.

## **Schedule 4**

### ***Section 2(3)(a)(ii)***

7. In the light of Members' views, we will consider amending section 2(3)(a)(ii) of Schedule 4 to the Bill specifying the term "licence" refers to "provisional PMP licence".

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<sup>1</sup> That one is beneficial owner of not less than 90 per cent of the issued share capital of the other, or a third such body is beneficial owner of not less than 90 per cent of the issued share capital of each.

### ***Section 2(4)***

8. Section 2(4) of Schedule 4 to the Bill provides that when determining whether an applicant for a provisional PMP licence is a suitable person to hold the licence, the PMSA must have regard, for instance, to whether that person is a mentally disordered person within the meaning of section 2(1) of the Mental Health Ordinance (Cap.136), whether that person has been convicted of a criminal offence involving fraud or dishonesty, and whether that person has been convicted of a disciplinary offence or a criminal offence under the Bill.

9. This purpose of the provision is to empower the PMSA to determine whether an applicant is a suitable person by setting out matters to be considered. The PMSA will decide whether that person is suitable to hold the licence having regard to the specific circumstances of the case. The PMSA will not automatically determine an applicant as not suitable to hold the licence solely because he falls within one or more than one description in section 2(4) of Schedule 4 to the Bill.

10. As regards “disciplinary offence”, since it has already been defined in section 4 of the Bill, we consider that it is not necessary to include provision defining “disciplinary offence” in section 2(4)(c) of Schedule 4 again.

### ***Section 3(1)***

11. We will consider amending section 3(1) of Schedule 4 to the Bill to state that the term “a person” refers to “an applicant for a provisional PMP licence”.

**Home Affairs Department**  
**July 2015**

**Provisions Providing Defence for Employees**

**Copyright Ordinance (Cap. 528):**

- Sections 119(B)(15) and (16) provide that –
  - (15) It is a defence for the person charged with an offence in respect of an act under subsection (1) to prove that –
    - (a) he did the act in the course of his employment; and
    - (b) he did the act in accordance with the instruction given to him by or on behalf of his employer in the course of his employment.
  - (16) Subsection (15) does not apply to an employee who, at the time when the infringing copy in question was made or distributed, was in a position to make or influence a decision regarding the making or distribution of the infringing copy.

**Food Safety Ordinance (Cap. 612):**

- Section 53 provides that it is a defence for an employee charged with an offence under the Ordinance to show that –
  - (a) the act or omission of the employee was done or made in the course of the employee's employment and under instructions given by the employer in the course of that employment; and
  - (b) the employee was not, at the relevant time, in a position to make or influence a decision regarding that act or omission.