

Bills Committee on Property Management Services Bill

**Deputations'/individual's views on the specific clauses of the Bill
for the meeting on 23 July 2014**

Deputation/individual	Deputation's/individual's views	Administration's Response
<u>Part 1 - Preliminary</u>		
<i>Clause 2 - Interpretation</i>		
Ms Amy YUNG Wing-sheung, Islands District Council Member	<ul style="list-style-type: none">• A property management practitioner ("PMP") was defined as a person who assumes a managerial or supervisory role in a property management company ("PMC"). The definition of PMP should not be restricted to the top management and a broader range of persons responsible for providing management services should be brought under the licensing regime. It was suggested that the definition be expanded to include any person who was designated to represent the manager of a property.	<ul style="list-style-type: none">• What directly affect the management quality of buildings very much hinge on the managerial and decision-making grade, therefore, the Bill only requires PMPs assuming a managerial or supervisory role to obtain a licence.

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<i>Clause 5 - Codes of conduct for section 4</i>		
<p>Joint submission from The Hong Kong Institute of Housing ("HKIH"), Housing Managers Registration Board ("HMRB"), The Hong Kong Association of Property Management Companies ("HKAPMC"), Royal Institution of Chartered Surveyors Hong Kong ("RICS"), The Hong Kong Institute of Facility Management Ltd. ("HKIFM") and Chartered Institute of Housing Asian Pacific Branch ("CIHAPB"), The Hong Kong Institute of Surveyors ("HKIS")</p>	<ul style="list-style-type: none"> • The code of conduct should be clearly defined and focused on professional property management ("PM") practice instead of operational issues. It should not, in any circumstances, contravene the common law. Reference could be taken from the existing PM professional bodies to tailor-make a rational and practical code of conduct so that the future Property Management Services Authority ("PMSA") could follow; and • There should be different standards of the code of conduct for the licensed PMPs (Tier 1) and the licensed PMPs (Tier 2), and the standard for the licensed PMPs (Tier 1) should be set at a more stringent level. 	<ul style="list-style-type: none"> • The codes of conduct will stipulate the professional conduct that licensees should comply with and the responsibilities and best practices they should shoulder and adopt in their services. • We will follow up when drafting the subsidiary legislation and the codes of conduct.

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<u>Part 2 - Prohibition</u>		
<i>Clause 7 - Exceptions to section 6</i>		
宏景花園關注組	<ul style="list-style-type: none"> • Clauses 7(3) and 7(4) - These clauses should only apply to a property with less than 100 property units and the owners' organization/owners of a property with more than 100 property units must hire a licensed PMC or a licensed PMP to provide PM services for the property. The decision for the owners' organization or the property owner to provide the property with PM services should be made by a resolution passed by not less than 30% of the votes of the owners at a general meeting of the property owners. 	<ul style="list-style-type: none"> • The majority of views received during the public consultation period opined that OCs managing their own buildings should not be put under the regulatory framework because - <ul style="list-style-type: none"> (i) it would be unfair to subject members of management committees (MCs) serving on a pro bono basis to hold personal legal liability under the licensing regime; (ii) the buildings they managed were only old single tenement buildings with a small number of flats and do not need the high qualification requirements for PMCs. • When considering whether to set a limit on the maximum number of units for the property that can be managed by an owners' organisation, in addition to the above-mentioned factors, the possible impacts brought about by imposing an upper limit will also need to be examined in details, for instance, whether it will discourage owners from taking up OC duties, whether some

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		<p>OCs or owners originally intended to manage their own properties due to low cost will be mandated to engage PMCs, thereby increasing their financial burden.</p> <ul style="list-style-type: none"> Through a mandatory licensing regime for PMCs, a benchmark on the minimum requirement can be set, thereby ensuring the service level and enhancing the quality of the PMCs. In the long run, we believe that this will encourage more owners to engage PMCs.
<p>Joint submission from HKIH, HMRB, HKAPMC, RICS, HKIFM, CIHAPB, and HKIS</p>	<ul style="list-style-type: none"> Clause 7(3) and 7(4) - There was a need to clarify if the exemption applied to PMCs which were formed by a single owner for management of its own properties. In addition, there should be exemption for the PMPs being employed in this type of PMCs to hold a PMP licence. 	<p>PMCs</p> <ul style="list-style-type: none"> Under the Bill, PMCs providing property management services to buildings with “shared ownership” (i.e. buildings involving multiple ownership and having a DMC) will be required to obtain a licence. If a property is owned by a single owner and multiple ownership is not involved and that the building does not have a DMC, the PMC responsible for management will not be required to obtain a licence. The exemption granted to owners managing their

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		<p>own buildings under the Bill will only be applicable to owners who are individuals (not companies).</p> <p>PMPs</p> <ul style="list-style-type: none"> • Under the Bill, a “PMP” means an individual who assumes a managerial or supervisory role in a PMC in relation to property management services provided by the company. • As companies providing services to buildings with single ownership and without any DMC will not be required to obtain a licence under the Bill, there is no mandatory requirement for the PMPs engaged by these companies to obtain a licence either.
<u>Part 3 - Licensing of PMCs and PMPs</u>		
<i>Clause 12 - Publication of list of licensees</i>		
Ms Amy YUNG Wing-sheung, Islands District Council Member	<ul style="list-style-type: none"> • It was suggested that a PMC be required to post and maintain an up-to-date record of all PMPs assigned to the estate, specifying whether the licensed individual was a licensed PMP (Tier 1) or a licensed PMP 	<ul style="list-style-type: none"> • We will consider including the requirement in the codes of conduct.

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	(Tier 2), at a prominent and accessible place within the Building. This should be in addition to any power of PMSA to publish lists of licensed PMCs and PMPs.	
<i>Clauses 13 - Registers</i>		
Joint submission from HKIH, HMRB, HKAPMC, RICS, HKIFM, CIHAPB, and HKIS	<ul style="list-style-type: none"> • Clause 13(2)(f) and 15(2)(a) - There should be a clear guideline on setting the ratio of licensed PMPs (Tier 1) and licensed PMPs (Tier 2) to be recruited for qualifying the PMC licence corresponding to the number of residential units or areas of commercial/industrial premises/other facilities which the PMC undertook to manage; • Clause 13(2)(g) - It was very common in the PM industry that the portfolios of a PMC change from time to time, voluntarily or involuntarily. As such, it was suggested that the submission of updates to the PMC register by PMCs should be made upon next renewal of PMC licence or within a reasonable period so that it would not become an offence if such changes were not updated instantly; 	<ul style="list-style-type: none"> • We agree with the suggestion and will follow up when drafting the codes of conduct. • We agree with the suggestion. Clause 17 of the Bill empowers the PMSA to prescribe by regulation that licensees must notify the PMSA of any change in the prescribed matters. We will follow up the suggestion when drafting the regulation.

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	<ul style="list-style-type: none"> ● In the most serious case of PMC being notified of non-renewal, revocation or suspension of the PMC licence by PMSA, the management contracts of all the portfolios under that PMC would be void and the management services would have to be ceased. This would create a damaging impact to the building(s) or owners concerned, not to mention the risk of claims faced by that PMC itself. It was suggested that a sufficient period of notice be served so that the affected building owners could have sufficient time to enter into new management contract with other PMCs; ● If that PMC was a Deed of Mutual Covenant ("DMC") Manager for some buildings, greater impact to the buildings/owners than those mentioned above would occur as there might still be many latent problems in the new development for the DMC manager to follow up. Owners would suffer greatly if no Owner's Committee or Owners' Corporation had been formed yet. It was suggested that even longer period of notice be served on the PMC i.e. DMC Manager as well as the 	<ul style="list-style-type: none"> ● In making a decision to revoke, suspend or not to renew a PMC licence, the PMSA will allow sufficient notification time for the PMC concerned and the owners affected.

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	<p>affected building owners who needed to follow the Building Management Ordinance (Cap. 344) for engaging new PMC for the building(s) before departure of the DMC Manager; and</p>	
	<ul style="list-style-type: none"> • Clauses 13(3)(d) and 13(4)(d) - A Tier 1 PMP might be the director of a few PMCs which were subsidiaries of a single developer. There was a need to determine the number of PMC licences under which a Tier 1 PMP licensee could be registered as a director. • 	<ul style="list-style-type: none"> • Regarding the requirement in respect of the minimum number of directors holding PMP licences in PMCs, our initial proposal is that each licensed PMC is required to have at least one director holding a PMP (Tier 1) licence or PMP (Tier 2) licence. The number of PMCs which a director with PMP licence may serve will not be restricted. • We will give due consideration to the views of the Advisory Committee on the Regulation of the Property Management Industry (“the Advisory Committee”) and other stakeholders when drafting the subsidiary legislation stipulating the detailed licensing criteria.
Clause 15 - Regulations for Part 3		
<p>Joint submission from HKIH, HMRB, HKAPMC, RICS, HKIFM, CIHAPB,</p>	<ul style="list-style-type: none"> • Clause 13(2)(f) and 15(2)(a) - There should be a clear guideline on setting the ratio of Tier 1 and Tier 2 PMPs to be recruited for 	<ul style="list-style-type: none"> • We will follow up when drafting the codes of conduct.

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and HKIS	<p>qualifying the PMC licence corresponding to the number of residential units or areas of commercial/industrial premises/other facilities which the PMC undertook to manage;</p> <ul style="list-style-type: none"> • Clause 15(2)(a) - If the PMC licence was affected due to change of director or absence of related directorate grade, there should be a grace period for the replacement of a director, so the PMC licence would not be revoked or suspended immediately; and • Clause 15(2)(b)(i) - Requirements of academic qualifications, professional qualifications and relevant work experience should be set for Tier 1 and Tier 2 PMPs. 	<ul style="list-style-type: none"> • We will consider the suggestion when drafting the regulation. • We will stipulate the requirements in the subsidiary legislation.
<u>Part 4 - Duties of Licensees</u>		
<i>Clause 16 - Licensed PMC's duty to provide information to clients</i>		
<p>Ms Amy YUNG Wing-sheung, Islands District Council Member</p> <p>MTR Corporation Limited</p>	<ul style="list-style-type: none"> • The term "client" was undefined. It was suggested that the term "client" be replaced with the term "owners", and that any owner should have access to the information to be provided. Client should not be restricted to 	<ul style="list-style-type: none"> • "Client" refers to the service target of a PMC and is not confined to owners' committees. We will stipulate in the codes of conduct in detail how to ensure owners' access to the information provided by PMCs.

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	<p>the owners' committee(s);</p> <ul style="list-style-type: none"> • There should be a requirement to maintain an up-to-date record of the information required to be provided under Part 4, and to notify owners of the availability of updated information. It was unclear whether the information to be provided by PMCs referred to the PMC's own budgets and accounts, or whether it referred to the budgets and accounts of the estate that was managed by the PMC - or both. At the very minimum, the owners' funds held on trust by the PMC must be covered by this requirement; and • It was also recommended that PMC be required to disclose any related-party transaction with the developer and its subsidiaries, if the PMC was a subsidiary of the developer. 	<ul style="list-style-type: none"> • Clause 16 of the Bill refers to the accounts and information of the estates managed by PMCs. • Clause 16 of the Bill stipulates that PMCs have the duty to provide clients with information on any conflict of interest between the PMC and its clients.
<p>Joint submission from HKIH, HMRB, HKAPMC, RICS, HKIFM, CIHAPB, and HKIS</p> <p>MTR Corporation Limited</p>	<ul style="list-style-type: none"> • Clause 16(3) - The financial documents should only refer to those related to the specific building management accounts of the respective client concerned. 	<ul style="list-style-type: none"> • Under Clause 16(3) of the Bill, licensed PMCs will be required to provide their clients with information that relates to the property management services provided by the company to its clients.

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<i>Clause 17 - Licensee's duty to notify change of prescribed matters</i>		
Joint submission from HKIH, HMRB, HKAPMC, RICS, HKIFM, CIHAPB, and HKIS	<ul style="list-style-type: none"> • Clause 17(1) - If a PMP licensee was temporarily unemployed or taking a career break for various reasons, the PMP licence should still be valid until its expiry. 	<ul style="list-style-type: none"> • We agree with the suggestion. Clause 8(5) of the Bill stipulates that a licence remains in force until the end of the period specified in it.
<u>Part 5 - Disciplinary Matters</u>		
<i>Clauses 18 to 20</i>		
Joint submission from HKIH, HMRB, HKAPMC, RICS, HKIFM, CIHAPB, and HKIS	<ul style="list-style-type: none"> • Clause 18(1) and (2) - There had been a great concern on the initial screening process of the complaints. It was emphasized that the complaint system should not be abused. The screening process should be conducted in a proper and fair manner; • Clause 19 - There should be clear guidelines and procedures for handling a complaint. Reference could be made to the existing effective mechanism adopted by the PM professional bodies and other licensed bodies to ease the conflict/confrontation between the complainant and the PMC or PMP concerned; 	<ul style="list-style-type: none"> • Clause 18(2) of the Bill empowers the PMSA not being required to conduct an investigation to deal with a complaint if it is satisfied that the complaint is misconceived or lacking in substance. • Clause 19 of the Bill empowers the PMSA to issue guidelines regarding complaints. The PMSA will follow up when drafting the guidelines.

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	<ul style="list-style-type: none"> • Clause 20 - There were numerous industry practices and situational difficulties involving people, buildings and environments, even laws and regulations. Investigators should be those experienced PM practitioners who possessed professional PM knowledge and thus could give fair and rational views on the complaint; and • A PMP licence should be granted again after serving sentence. 	<ul style="list-style-type: none"> • The PMSA will appoint suitable investigators. • Clause 9 of the Bill stipulates that the PMSA can only issue a licence if it is satisfied that the applicant is a suitable person to hold the licence. Clause 11 stipulates that in determining whether a person is a suitable person, the PMSA must have regard to matters including whether the individual has been convicted of a disciplinary offence or a criminal offence under the Bill. The PMSA will consider the actual circumstances of each case in deciding whether to issue a licence.
<u>Part 6 - Appeal</u>		
<i>Clauses 32 and 34</i>		
Joint submission from HKIH, HMRB, HKAPMC, RICS, HKIFM, CIHAPB,	<ul style="list-style-type: none"> • Clauses 32 and 34 - The appeal panel (with one chairperson and 11 other members) and appeal tribunal (with one chairperson and 	<ul style="list-style-type: none"> • In appointing the chairperson and members of the appeal panel, the Secretary for Home Affairs will appoint individuals with the relevant background

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and HKIS	<p>two members from the appeal panel) should have a majority of members from PM industry, so that a fair judgment could be reached. This was commonly adopted by the disciplinary panel/tribunal of some professions like certified public accountants (40% were industry related members), doctors (86%), barristers (58%) etc.; and</p> <ul style="list-style-type: none"> • Clause 32(2) - Since the appeal panel (including the appeal tribunal) would be independent from PMSA or any of its standing committee formed for hearing disciplinary matters and the decision of the appeal tribunal was final as stipulated in the Bill, members of the appeal panel or PMSA should not revoke the decision made by the appeal tribunal. 	<p>to ensure all cases are handled in a fair, impartial and independent manner.</p> <ul style="list-style-type: none"> • Clause 37(2) of the Bill stipulates that the decision of the appeal tribunal is final.
<u>Part 7 and Schedule 3 - Property Management Services Authority and Schedule 3</u>		
Joint submission from HKIH, HMRB, HKAPMC, RICS, HKIFM, CIHAPB, and HKIS	<ul style="list-style-type: none"> • Schedule 3 Part 2, sections 2 and 3 - In appointing a member of PMSA, the Chief Executive must ensure that (a) at least half of the ordinary members were Category III persons; and (b) for the other ordinary members, so far as possible, half of them 	<ul style="list-style-type: none"> • The PMSA will include members representing different categories of stakeholders to strike a balance between protecting the interests of the property management industry and those of owners and the general public.

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	<p>were Category I persons and half of them were Category II persons. It was considered that Category I persons (i.e. individuals engaged in property management services) should form the majority in the other half of the ordinary members of PMSA as against Category II persons (i.e. individuals, not being Category I persons, who, because of their experience in property management, general administration or consumer affairs, appear to the Chief Executive to have knowledge of property management services).</p>	
<u>Part 9 - Miscellaneous</u>		
<i>Clause 61 - Defence for licensed PMP as employee</i>		
<p>Joint submission from HKIHK, HMRB, HKAPMC, RICS, HKIFM, CIHAPB, and HKIS</p>	<ul style="list-style-type: none"> • Clause 61(c) and 61(d) - Most owners, members of owners' committee or owners' corporation were laymen but they possessed the absolute power vested in the administration, management and control of their properties. As such, it was reasonable for them to bear the responsibility of any outcome caused by their decision. Therefore, it was suggested to add an 	<ul style="list-style-type: none"> • It is the responsibility of the PMCs and PMPs to remind owners and/or owners' organisations of the legislative requirements related to building management. In determining whether a PMC or PMP has contravened the law or the codes of conduct, the court and/or the PMSA will consider the actual circumstances of each case. • Clause 61 of the Bill provides a defence for

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	<p>additional defence for PMC and PMP when acting or making the omission in accordance with the instructions given by the owners' committee or owners' corporation which might force or give undue influence to the PMC or PMP to follow their instructions despite professional advice(s) to the contrary had already been given.</p>	<p>licensed PMPs if he did the act or made an omission in accordance with the instructions given by his employer in the course of his employment, and the PMP was not in a position to influence the decision and acted in good faith and in a reasonable manner.</p>
<u>Schedule 4 - Transitional Provisions</u>		
<p>Joint submission from HKIH, HMRB, HKAPMC, RICS, HKIFM, CIHAPB, and HKIS</p>	<ul style="list-style-type: none"> • The provisional personal licence should serve the same function as the normal Tier 1 or Tier 2 PMP licence. • Section 1(5) - The three years period should be extended if there was genuine justification provided. • The professional academic trainings with degree level for PMPs had not been in place until 1990's. There were quite a number of well-experienced PMPs who were also senior executives of PMCs providing valuable contributions to the PM industry, but who might not be able to meet the criteria of any PMP licence. It was suggested to grand- 	<ul style="list-style-type: none"> • We agree with the suggestion. • There will be a three-year transitional period after the enactment of the principal ordinance and subsidiary legislation to allow the existing PMCs and PMPs to prepare themselves to migrate to the new licensing regime smoothly. Experienced PMPs meeting certain basic requirements will be granted provisional licences during the transitional period. They will be allowed three years to complete continuing professional education courses so that they can be granted formal licences upon expiry of the provisional licences. In addition, PMSA will also consider

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	<p data-bbox="613 248 1299 328">father these reputable PMPs with a one-off permanent Tier 1 PMP licence.</p> <ul data-bbox="568 376 1299 1015" style="list-style-type: none"> <li data-bbox="568 376 1299 799">● A better planning should be exercised to ensure that there would be no great reduction of manpower in the market after enactment of the Bill. The extension of provisional licences and establishment of a practical Comprehensive Professional Development ("CPD") system for renewal of PMP licence therefore was necessary. Reference of CPD system could be taken from the PM professional bodies. <li data-bbox="568 847 1299 1015">● Special care and transitional arrangement should be given to small and medium scale PMCs so as to let them maintain their survival in the market. 	<p data-bbox="1386 248 2136 416">accepting PMPs to submit dissertations or reports (similar to the practice of property management related professional bodies) in lieu of completion of continuing professional education courses.</p> <ul data-bbox="1323 464 2136 1318" style="list-style-type: none"> <li data-bbox="1323 464 2136 671">● If a PMP applies to the PMSA for a provisional licence near the end of the three-year transitional period, there will be about six years' preparation time. We consider the time for preparation should be sufficient. <li data-bbox="1323 847 2136 1318">● We propose to introduce a single-tier licensing regime for PMCs to avoid labelling effects. We also suggest enabling consumers to make an informed choice by making available for public inspection information of PMCs (e.g. the number of properties or floor area they manage). We consider that this will help strike an appropriate balance between providing a level playing field for PMCs of different scale on one hand and facilitating consumers to make a choice on the other.

<u>Name of Organization / individual</u>	<u>Submission (LC Paper No.)</u>
Chartered Institute of Housing Asian Pacific Branch Housing Managers Registration Board Royal Institution of Chartered Surveyors Hong Kong The Hong Kong Association of Property Management Companies The Hong Kong Institute of Facility Management Ltd. The Hong Kong Institute of Housing The Hong Kong Institute of Surveyors	LC Paper No. CB(2)2060/13-14(03)
MTR Corporation Limited	LC Paper No. CB(2)2060/13-14(10)
Ms Amy YUNG Wing-sheung, Islands District Council Member	LC Paper No. CB(2)2060/13-14(01)
宏景花園關注組	LC Paper No. CB(2)2116/13-14(02)