

**The Administration's Response to  
the Submission of the Law Society of Hong Kong**

**Purpose**

This note sets out the response of the Administration to the comments of the Law Society of Hong Kong (the Law Society) on the Property Management Services Bill (the Bill) detailed in the Law Society's submission of 6 August 2014.

**Definitions**

*Property Management Services*

- 2.2 The effect of the exemption in clause 7(2) of the Bill is that clause 6(2)(a) and (3)(a) does not apply to a property management practitioner (PMP) of a property management company (PMC) that falls within the description of clause 7(2).
- 2.3 Property management requires multi-disciplinary professional knowledge. Modelling on the Specification of Competency Standards for Property Management Industry of the Hong Kong Qualifications Framework (HKQF), Schedule 1 to the Bill lists out seven categories of property management services. "Law in Practice" is one of the functional areas for property management under HKQF. "Legal services relating to the management of a property" is included in Schedule 1 to the Bill as property management sometimes involves legal services relating to the management of a property, for example, drafting of contracts.
- 2.4 Clause 3(1) of the Bill provides that the Property Management Services Authority (PMSA) may, by regulation, prescribe a service falling within a category of services set out in Schedule 1 to the Bill as a property management service. A PMC, which is defined in the Bill to mean "a business entity (whether a company, partnership or sole proprietorship) that carries on the business of providing property management services" ("property management

service” is defined in the Bill to mean any service prescribed by regulation made under clause 3(1) of the Bill) will be required to obtain a licence, unless it provides only a stand-alone service. Hence, any company providing only a stand-alone service will not be required to obtain PMC licence.

### *Property Management Practitioners*

2.6 and 2.7 The definition of PMP in the Bill consists of two major elements –

- (a) assumes a managerial or supervisory role in a PMC;  
and
- (b) in relation to property management services provided by the PMC.

An individual who manages or supervises other staff in the provision of property management services fulfills both criteria (a) and (b) would be subject to licensing. Therefore, an accountant responsible for the preparation of balance sheets of a PMC, or a human resources manager responsible for recruitment of staff of a PMC, but does not manage or supervise any staff who has direct involvement in the provision of property management services to the PMC’s clients, does not fulfil criterion (b) and therefore would not be subject to licensing.

### **Exceptions to Prohibition under Clause 6**

3.2 According to clause 2 of the Bill, “owners’ organisation”, in relation to a property, means an organisation (whether or not formed under the Building Management Ordinance (Cap. 344) (BMO) or a deed of mutual covenant (DMC)) that is authorised to act on behalf of all the owners of the property. Examples of owners’ organisations include owners’ committee and mutual aid committee.

3.3 We note the Law Society’s comments and will consider in consultation with the Department of Justice whether to include the suggested exceptions in clause 7(4) of the Bill.

## **Entitlement to Information**

4.2,4.3 and 4.4      Clause 16 of the Bill is intended to require a licensed PMC to provide its client with prescribed information that relates to the property management services provided by it to that client in the prescribed manner. The provision of the information is intended to be confined to information that relates to the relevant development only. We will consider making necessary amendments to the Bill to reflect the intent more clearly.

Clause 16(2) of the Bill provides that the PMSA may, by regulation, prescribe the information and manner for the provision of information. The PMSA will take into account issues including whether expenses borne by the PMC should be disclosed.

Clause 16(2) in the present form does not empower the PMSA to make regulations relating to the burden of cost for providing the prescribed information. Paragraph 1(7) of Schedule 7 to the BMO provides that if any owner requests in writing the manager to supply him with a copy of any draft budget, budget or revised budget, the manager shall, on payment of a reasonable copying charge, supply a copy to that owner. Paragraph 2(5) of Schedule 7 to the BMO provides that the manager shall permit any owner, at any reasonable time, to inspect the books or records of account and any income and expenditure account or balance sheet, and on payment of a reasonable copying charge, supply any owner with a copy of any record or document requested by him. With reference to similar provisions in the BMO, we will consider making necessary amendments to the legislation.

The disclosure requirements in clause 16 of the Bill are modelled on paragraphs 1(7) and 2(5) of Schedule 7 to the BMO as cited above.

## **Prescribed Criteria for Holding a Licence**

- 5.3            Clause 2 of the Bill defines a PMP as an individual who assumes a managerial or supervisory role in a PMC in relation to property management services provided by the company. We will take into account the Law Society's comments in considering whether amendments should be made to the Bill to define more clearly under what circumstances an individual can be recognised as employees for the purpose of clause 15.

## **Subsidiary Legislation and Guidelines**

- 6              We will give due consideration to the views of the Advisory Committee on the Regulation of the Property Management Industry and other stakeholders when drafting the subsidiary legislation. We will release the relevant details to be contained in the subsidiary legislation as early as possible.

## **Levy on Conveyancing Transactions**

- 7              The PMSA will be a self-financing statutory body supported by income generated from both licence fees and a very small amount of fixed levy (around \$200 - \$350) to be imposed on each conveyance on sale chargeable with stamp duty under head 1(1) in the First Schedule to the Stamp Duty Ordinance (Cap. 117). At today's prices, we estimate that the recurrent expenditure of the PMSA to be around \$27 million to \$30 million a year. It is estimated that the annual income generated by licence fees would be around \$12 million to \$14 million and the annual income from levy would be in the region of \$14 million to \$18 million.

We consider that the licence fees should be set at a level affordable to both PMCs and PMPs, so that they would not seek to transfer the financial burden to private property owners and tenants. However, it would be difficult to ensure that the PMSA can be financially self-sufficient if it relied only on licence fees. Hence, we propose that a fixed amount of levy be charged on each conveyance on sale of immovable

property so as to provide the major source of funding for the PMSA.

We consider that implementing the licensing regime to the property management industry would mainly benefit the owners, because proper building management and maintenance would preserve or even increase the value of their property. It is therefore reasonable for owners to pay for part of the regulatory regime.

We are aware that some of the owners do not appoint PMCs to manage their buildings. However, we believe that they would also benefit from the implementation of the licensing regime in the long run because it would raise the service standard of the property management industry and in turn encourage more owners to appoint PMCs to manage their buildings.

We consider that the proposed amount of fixed levy per transaction (around \$200 - \$350) is an amount which property purchasers can well afford and would not add to their financial burden.

While the imposition of levy will be distinct and separate from stamp duty, the collection arrangement would be very much similar to that for stamp duty and simple and straight-forward. The Stamp Office of the Inland Revenue Department (IRD) will collect the levy on behalf of the PMSA when the conveyance on sale is submitted to the IRD for stamping.