

**The Government's response to the matters raised  
at the meeting of the Bills Committee  
on the Property Management Services Bill  
held on 28 October 2015**

**Purpose**

This paper sets out the Government's response to Members' concerns raised at the meeting of the Bills Committee on the Property Management Services Bill (the Bill) on 28 October 2015.

**Committee Stage Amendments**

2. We thank Members' valuable comments on the Bill. We have proposed Committee Stage Amendments such that the decision of an owners' organisation to switch from engaging a property management company or property management practitioner to "self-management" must be supported by a resolution passed at a general meeting, owners' organisation or owners of property containing 1 500 flats or above cannot "self-manage", as well as the detailed arrangements for renewal of licence, etc. At the same time, we have also proposed a number of technical and textual amendments in response to comments of Members and the Assistant Legal Adviser of the Bills Committee (ALA).

3. For clauses 10(2), 21, 24 and 36 as well as section 22 of Schedule 3 to the Bill, we have undertaken to consider whether amendments to certain parts of these provisions are needed in light of the comments of the Members and ALA. After consulting the Department of Justice, we consider that it is not necessary to make the relevant amendments. Justifications are as follows:

**Clause 10(2)**

4. Clause 10(2) of the Bill provides that the Property Management Services Authority (PMSA) must not renew a licence unless –

- (a) the PMSA is satisfied that –
  - (i) the applicant is a suitable person to hold the licence; and
  - (ii) the applicant meets all the prescribed criteria for holding the licence; and
- (b) the applicant has paid the prescribed fee for the issue of the renewed licence.

5. At a meeting of the Bills Committee held earlier on, there was a view that the use of the word “must”, instead of “may”, in the English text of the relevant clause might render the PMSA unable to exercise its discretion in handling application for renewal of licence.

6. Upon careful examination of clause 10(2) of the Bill, we consider that the three requirements imposed on the applicant for renewal of licence, i.e. (i) being a suitable person to hold the licence; (ii) meeting all the prescribed criteria for holding the licence; and (iii) having paid the prescribed fee for the issue of the renewed licence, are the basic requirements when the PMSA considers whether the licence renewal application is to be approved. If the applicant fails to meet the relevant requirements, the PMSA should not and cannot exercise discretion in handling the application. Hence, we consider that it is appropriate to use the word “must”, instead of “may”, in that provision. The same drafting approach is adopted in other licensing or registration regime, e.g. section 44(8B) of the Construction Workers Registration Ordinance (Cap. 583)<sup>1</sup>.

### **Clauses 21, 24 and 36 and Section 22 of Schedule 3**

7. Clause 21 of the Bill provides for the investigators’ power to obtain information and documents, clauses 24 and 36 stipulate the procedures of the hearing before the PMSA and an appeal tribunal respectively, and section 22 of Schedule 3 concerns the Director of Audit’s examination.

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<sup>1</sup> The wording of section 44(8B) of the Construction Workers Registration Ordinance (Cap. 583) is as follows –

- (8B) The Registrar **must not** renew the registration of a person made under section 40A(1) unless the Registrar is satisfied that the person complies with the requirements for registration set out in sections 40(1) and (if applicable) 42(5).
- (8B) 凡某人是根據第 40A(1)條註冊的，則除非註冊主任信納該人符合第 40(1)及(如適用)42(5)條所列的註冊要求，否則註冊主任不得將該項註冊續期。

8. In response to ALA's enquiry, we have agreed that there should be express provision in the Bill (including clauses 21, 24 and 36 and section 22 of Schedule 3) that any reference to "documents" should include electronic documents or electronically stored information.

9. In item 21 of the Draft Committee Stage Amendments (LC Paper No. CB(2)86/15-16(03)), the proposed amendment to clause 21(5) of the Bill will have empowered an investigator to require electronically stored information/document to be reduced into a written form on paper. The PMSA and/or an appeal tribunal can use the information/documents obtained by the specified means when hearing a matter under clauses 24 and 36, and the PMSA is obliged to submit all documents as required by the Director of Audit in accordance with section 22 of Schedule 3. Therefore, we consider the proposed amendment to clause 21(5) of the Bill shall have met our policy objectives, i.e. "documents" already included electronic documents or electronically stored information, and that it is not necessary to amend other provisions.

**Home Affairs Department**  
**November 2015**