

**The Government's response to the matters raised
at the meeting of the Bills Committee
on the Property Management Services Bill
held on 10 November 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 10 November 2015.

Draft Committee Stage Amendments (CSAs) proposed by the Hon WU Chi-wai

Clauses 4 and 5

2. At the Bills Committee meeting held earlier on, we proposed to stipulate in the codes of conduct to be issued by the Property Management Services Authority (PMSA) that it is the licensee's responsibility to comply with relevant requirements in the Building Management Ordinance (Cap. 344) (BMO) and the deed of mutual covenant (DMC), otherwise it will constitute a disciplinary offence. Therefore, there is no difference between our and the Hon WU Chi-wai's proposal in principle.

3. On the Hon Wu's suggested amendments, we have the following observations –

- (a) The BMO aims to facilitate building owners to form owners' corporations (OCs) and to regulate the conduct and procedures of OCs. While licensees should assist OCs and owners to comply with the BMO, there are very few requirements in the BMO that are directly applicable to licensees; and
- (b) Under section 45 and Schedule 10 to the BMO, the Lands Tribunal has jurisdiction over the proceedings relating to the interpretation of the provisions in the BMO and the DMC. Therefore, the PMSA does not have the power to determine whether a licensee contravenes the BMO or the DMC, nor to issue any code of conduct for that purpose.

4. We understand the intention and justification behind the CSAs proposed by the Hon Wu. After further consideration and having discussed with the Hon Wu, we propose to amend clause 4 of the Bill to provide that a licensee commits a disciplinary offence if the court determines that the licensee has contravened a requirement in the BMO or a DMC that is applicable to the licensee. The Law Draftsman is drafting the relevant amendment, which will be submitted for Members' consideration as soon as practicable.

Clause 61

5. Clause 61 of the Bill provides that it is a defence for a licensed property management practitioner (PMP) charged with a disciplinary offence to prove that –

- (a) the PMP acted in good faith and in a reasonable manner;
- (b) the PMP did the act or made the omission in the course of the PMP's employment;
- (c) the PMP did the act or made the omission in accordance with the instructions given to the PMP by or on behalf of the PMP's employer in the course of the PMP's employment; and
- (d) the PMP was not, at the time the act was done or omitted to be done, in a position to make or influence a decision regarding the act or omission.

6. The Hon Wu proposed to amend clause 61(a) of the Bill to stipulate that it would only be a defence if the licensee proved that he took all reasonable steps and exercised all due diligence to avoid committing the disciplinary offence.

7. With reference to provisions relating to defence in other legislations¹, we consider that the proposed amendment is similar to the existing provision in the Bill. We also note that the wording in the proposed amendment is adopted in the provisions relating to defence in

¹ Wording similar to the Bill i.e. "acted in good faith and in a reasonable manner" is used in section 29A of the Building Management Ordinance (Cap. 344); while wording similar to the proposed amendment i.e. "took all reasonable steps and exercised all due diligence" is used in section 24 of the Consumer Goods Safety Ordinance (Cap. 456), section 30 of the Estate Agents Ordinance (Cap. 511) and section 50 of the Buildings Energy Efficiency Ordinance (Cap. 610).

other legislations. Therefore, we do not object to the proposed amendment and will prepare the relevant CSAs.

Clauses 6(2)(c) and 6(3)(c)

8. Regarding the word “title” in clauses 6(2)(c) and 6(3)(c) in the draft CSAs proposed by the Administration, we agree with the view of the Assistant Legal Advisor of the Bills Committee (ALA) and propose using the word “稱謂” as the Chinese equivalent of “title”. Subject to Members’ consent, we will propose amendments to the relevant provisions of the CSAs.

Clause 7(4A)

9. The BMO does not require OCs or owners to inform the Authority of the form of management of their buildings. Based on the information collected by frontline staff of the Home Affairs Department in their regular contacts with the owners or provided by the owners voluntarily, buildings with OCs, owners’ committees, mutual aid committees (MACs), co-operative societies or federation of owners limited companies may be self-managed without engaging a property management company (PMC).

10. Under paragraph 7(1) of Schedule 7 to the BMO, an OC may, by a resolution passed by a majority of the votes of the owners voting either personally or by proxy and supported by the owners of not less than 50% of the shares in aggregate, terminate by notice the DMC manager’s appointment without compensation. In accordance with paragraph 8(b) of the Guidelines for Deeds of Mutual Covenant issued by the Lands Department, prior to the formation of the OC, an owners’ committee may also, by a resolution that is consistent with the above requirements and with three months’ notice to the manager, terminate the manager’s appointment without compensation. For owners’ organisations such as MACs, co-operative societies or federation of owners limited companies, there are specific ordinances or constitutions regulating the procedures of meetings and passage of resolutions².

² Under paragraph 11(b) of the Model Rules for a MAC in a Private Building, a general meeting may be called from time to time to discuss and/or pass resolutions concerning any business of the MAC. Resolutions passed by a simple majority at a general meeting shall be binding on the MAC, provided that these resolutions are consistent with the provisions contained in the DMC in

11. Since the procedures of meetings and passage of resolutions of all self-managing owners' organisations that do not engage a PMC are subject to the BMO or their constitutions, we consider that it is not necessary to stipulate in the Bill the procedures of passing resolution to effect self-management.

12. As to the Chinese version corresponding to "ceases to engage a property management company or property management practitioner" in clause 7(4A) of the draft CSA proposed by the Administration, we share the ALA's view and propose replacing "終止聘用某物業管理公司或物業管理人" by "不再聘用物業管理公司或物業管理人". Subject to Members' consent, we will propose amendment to the relevant provision of the CSA.

Section 20(2) of Schedule 3

13. Section 20 of Schedule 3 to the Bill provides that after the end of each of its financial year, the PMSA must prepare an annual report, which must contain an outline of the investigations conducted by the PMSA, a summary of complaints received, and an outline of all proceedings brought before appeal tribunals. In the draft CSAs put forward by the Administration, it is proposed that subsection (aa) be added to section 20(2) of Schedule 3, requiring the PMSA to contain in its annual report an outline of all hearings conducted under section 23. The PMSA will also file the justifications of the decisions of the PMSA, the disciplinary committee and the appeal tribunal.

14. Section 13 of the Bill also provides that the PMSA must keep a PMC register, a PMP (Tier 1) register and a PMP (Tier 2) register. It also stipulates that the registers must contain the conviction record of the PMC or the PMP in relation to disciplinary offences or criminal offences under the Bill. Our preliminary thinking is that the conviction record in the registers will include the disciplinary offences committed by and the relevant punishments of the licensees.

respect of the building. Co-operative societies are formed under the Co-operative Societies Ordinance (Cap. 33). In accordance with Rule 28 of the Co-operative Societies Rules (Cap. 33A), any question submitted to the decision of the members present at a general meeting shall be decided by a majority of votes. Federation of owners limited companies are formed under the Companies Ordinance (Cap. 622). The procedures of meetings and passage of resolutions are regulated by the Companies Ordinance (Cap. 622) and their constitutions.

15. We consider that the proposed arrangement allows the public to be fully apprised of the decisions of the PMSA, the disciplinary committee and the appeal tribunal as well as the justifications concerned. Indeed, the provisions relating to the annual reports of other regulatory bodies, such as section 12 of the Estate Agents Ordinance (Cap. 511), section 27 of the Construction Industry Council Ordinance (Cap. 587) and section 25 of Schedule 5 to the Competition Ordinance (Cap. 619) do not require the annual reports to contain an outline of hearings.

Section 22(3) of Schedule 3

16. The existing provision of section 22(3) of Schedule 3 to the Bill provides that the Director of Audit may report to the President of the Legislative Council the results of the examination. In response to the ALA's suggestion earlier on that consideration should be given to specify the person to cause the report to be laid on the table of the Legislative Council, we have made reference to section 20(3) of the Hong Kong Institute of Education Ordinance (Cap. 444)³ and proposed in the draft CSAs that section 22(3) of Schedule 3 be amended to provide that the President of the Legislative Council must, on receiving the results of the Director of Audit's examination, cause them to be laid on the table of the Legislative Council.

17. We have made reference to the provisions relating to the Director of Audit's examination of other regulatory bodies, such as section 27(3) of Schedule 5 to the Competition Ordinance (Cap. 619), section 30(3) of the West Kowloon Cultural District Authority Ordinance (Cap. 601) and section 14(4) of the Hong Kong Arts Development Council Ordinance (Cap. 472)⁴. The drafting of these provisions are

³ Section 20(3) of the Hong Kong Institute of Education Ordinance provides that the Director of Audit may submit to the President of the Legislative Council the results of any examination carried out by him, and the President of the Legislative Council shall, on receiving such results, cause them to be laid on the table of the Legislative Council.

⁴ Section 27(3) of Schedule 5 to the Competition Ordinance (Cap 619) provides that the Director of Audit may report to the President of the Legislative Council the results of an examination conducted under this section. Section 30(3) of the West Kowloon Cultural District Authority Ordinance (Cap 601) provides that the Director of Audit may report to the President of the Legislative Council the results of an examination conducted by him under this section. Section 14(4) of the Hong Kong Arts Development Council Ordinance (Cap 472) provides that the Director of Audit may report to the President of the Legislative Council the results of an examination carried out under this section.

similar to the existing provision in section 22(3) of Schedule 3 to the Bill. Subject to Members' consent, we propose to retain the relevant provision and no amendment is to be made.

Provisions in Relation to Self-Incrimination

18. Having consulted the Department of Justice, we propose that the provisions in relation to self-incrimination should be applicable to hearings before the PMSA, disciplinary committee and appeal tribunal. We will prepare the relevant CSAs and submit for Members' consideration as soon as practicable.

**Home Affairs Department
November 2015**