



PROPERTY MANAGEMENT SERVICES BILL

The Law Society's Submissions

1. Background

- 1.1 The Property Management Services Bill was published in the Gazette on 25 April 2014 and was introduced into the Legislative Council on 7 May 2014.
- 1.2 The Bill aims to:-
 - (a) establish a Property Management Services Authority ("Authority") to regulate and control the provision of property management services with power to enforce the statutory provisions, issue a Code of Conduct and institute disciplinary actions;
 - (b) introduce a single-tier mandatory licensing regime for property management company ("PMC"); and
 - (c) introduce a two-tier mandatory licensing regime for property management practitioner ("PMP") who take up a supervisory or managerial role in the provision of property management services – "*registered professional property manager*" and "*licensed property management officer*".
- 1.3 The Law Society's Property Committee has reviewed the Bill. In principle, subject to the comments made below, we welcome the Bill as it will enhance the quality and standard of building management resulting in a sustainable living environment.

2. Definitions

Property Management Services

- 2.1 "*Property Management Services*" is defined in Clause 2 of Part 1 and Schedule 1 of the Bill. Schedule 1 sets out 7 items of property management services including, inter alia, finance and asset management relating to a property, human resources

management relating to personnel involved in the management of a property and legal services relating to the management of a property.

- 2.2 Clause 7(2) of Part 2 of the Bill appears to reflect the intent of the Administration¹ that companies providing only “stand-alone” services (such as those providing only cleaning or security services) would not be required to obtain a license. However, if a company providing “stand-alone” services is exempted, it is unclear whether the supervisory/managerial staff of such company will also be exempted from applying for the necessary PMP license. The Administration is invited to clarify the aforesaid.
- 2.3 In view of provision of legal services being regulated by the Legal Practitioners Ordinance and its subsidiary legislation, the Administration is invited to clarify the meaning of “*legal services*” adopted in the Bill and explain the reason/appropriateness for including “*legal services*” in the definition of property management services, bearing in mind a PMC may not have qualified persons to perform legal services.
- 2.4 Whether a law firm providing legal services for a PMC is required to obtain a license or would it be regarded as a “stand-alone” service?

Property Management Practitioners

- 2.5 “*Property Management Practitioner*” is defined in Clause 2 of the Bill as “*an individual who assumes a managerial or supervisory role in a property management company in relation to property management services provided by the company*”
- 2.6 The meaning of “*managerial or supervisory*” is unclear and the Administration is invited to clarify or elaborate what constitutes a managerial or supervisory role? What level of supervision does a staff need to attain before he/she is qualified in a supervisory role?
- 2.7 “*Property Management Practitioner*” is defined with reference to property management services provided by a PMC. It inevitably renders an in-house counsel, a senior accountant responsible for preparing balance sheets of a PMC and a human resources director/manager involved in recruitment of staff in a PMC to become a PMP and subject to the requirement of licensing, although they have no direct involvement in the provision of any property management services. The definition fails to reflect the intention of the Administration.²

¹ See paragraph 5 of the Legislative Council Brief dated 23 April 2014 which can be downloaded from the Legislative Council’s website http://www.legco.gov.hk/yr13-14/english/bills/brief/b201404253_brf.pdf

² See paragraph 4 of Annex 1 to the letter dated 6 June 2014 from the Home Affairs Department to the Legislative Council Secretariat which can be downloaded from the Legislative Council’s website <http://www.legco.gov.hk/yr13-14/english/bc/bc57/papers/bc570611cb2-1761-4-e.pdf>

3. Exceptions to Prohibition under Clause 6

- 3.1 Clause 7(3) of Part 2 of the Bill stated that it does not prohibit the owners' organization of a property from providing the property with property management services if no PMC or PMP is engaged by the organization for such purpose.
- 3.2 The meaning of "*owners' organization*" is unclear and the Administration is invited to clarify the same.
- 3.3 It is the intention of the Administration to subject only those multi-storey buildings involving shared ownership of common parts and with Deed of Mutual Covenants ("DMC") in effect to the licensing regime.³ Hence, the following situation should be excluded from the Bill:-
- (i) The sole owner of a part (e.g. commercial accommodation) in a development involving no shared ownership of common areas should be allowed to manage the commercial accommodation without being subject to the licensing regime.
 - (ii) Similarly, if the commercial accommodation is owned by two owners without strata-title, either or both of the owners should also be allowed to manage such commercial accommodation and not subject to the licensing regime.

The Administration is invited to clarify the above scenario and include them as exceptions to Clause 6 of Part 2 of the Bill.

4. Entitlement to Information

- 4.1 Clause 16 of Part 4 of the Bill requires a PMC to prepare and provide certain prescribed information to the PMC's clients. Such prescribed information includes a PMC's books or records of account.
- 4.2 The wordings of Clause 16(3) appear to be too wide which entitle the owners to all books and records of the PMC relating not only to the relevant development, but also relating to other developments or business managed/conducted by the PMC which are totally irrelevant to the particular development.

It is not uncommon that, although certain expenses relating to the development should be charged to the owners' account, the PMC may nevertheless bear such expenses for any commercial reason whatsoever. Hence, such expenses are expenditures of the PMC and irrelevant to the owners. However, under Clause

³ See paragraphs 1 and 2 of Annex 1 to the aforesaid letter dated 6 June 2014 from the Home Affairs Department.

16(3)(b), a PMC is still obliged to provide information on such expenses even though they are not charged to the owners' account.

The Administration is invited to amend the Bill to confine the provision of prescribed information which relates only to the relevant development, but not otherwise. Further, expenses borne by the PMC and which have not been charged to the owners' account are irrelevant and should be excluded from Clause 16(3).

- 4.3 Clause 16 seems to be silent on the burden of the cost for providing the prescribed information. The Administration is invited to clarify who will bear such cost.
- 4.4 Clause 16 seems to suggest that any owner can request for the prescribed information. In order to avoid any trivial request and any hardship or difficulties which may be caused to the PMC, the Administration is invited to follow the model in Paragraph 1A of Schedule 6 of the Building Management Ordinance so that a PMC shall:-
- (i) upon receipt of a request by at least 5% of the owners, permit inspection by those owners or persons so authorized by them to inspect the prescribed information at any reasonable time; and
 - (ii) permit any person authorized by the court to inspect the prescribed information at any reasonable time.

5. Prescribed Criteria for Holding a License

- 5.1 Under Clause 15(1)(c) of Part 3 of the Bill, the Authority has the power to prescribe, inter alia, the criteria for a PMC to hold a license. It may include a criterion that the applicant company must have sufficient number of directors and employees who are licensed PMPs.
- 5.2 In reality, it is common for a management company to be held by a parent company. In order to save cost and have the resources shared among a number of developments, the staff of the parent company may be seconded to different developments to carry out jobs from time to time so that each development can have access to legal advice, human resources recruitment assistance, etc. without having to employ an in-house lawyer or HR manager for each development. This practice help minimizing management cost resulting in lower management fees, which is in the interest of the owners.
- 5.3 In view of the practice in paragraph 5.2, the Administration is invited to clarify whether the secondees in the above scenario will be recognized as employees for the purpose of Clause 15? If recognized, how will their employment be calculated to satisfy the requirement in Clause 15?

6. Subsidiary Legislation and Guidelines

- 6.1 The Bill contains enabling provisions to provide an infrastructure for implementing a regulatory regime. We understand that many details, such as licensing criteria and specific requirements on preparation of budget, keeping of financial statements, etc. are proposed to be addressed in subsidiary legislation.
- 6.2 We urge the Administration to release the relevant details to be contained in subsidiary legislation as early as possible, with adequate consultation with stakeholders in the industry. All such details should be finalized in tandem with the enactment of the Bill.
- 6.3 In view of the regulatory regime being new to PMC and PMP, it would be helpful if the Authority would issue guidelines well in advance of commencement of the regime to provide guidance for the industry.

7 Levy on Conveyancing Transactions

- 7.1 The Authority will be a self-financing statutory body supported by income from license fees. In addition, Part 8 of the Bill imposes a levy on purchaser in a conveyance on sale ("Levy") and creates a mechanism for enforcing the Levy and the penalty thereon by registering a Certificate against the relevant property in the Land Registry. The Levy will be within the range of HK\$200 to HK\$300 to be collected by Stamp Office at the same time with the stamp duty.
- 7.2 We have not received any proposed budget from the Administration showing (i) the operation expenses of the Authority and (ii) the proposed ratio of the expenses to be funded by the license fees and the Levy respectively. Without a detailed study and the support by data, the need for the Levy is doubtful.
- 7.3 Imposition of the Levy is not justifiable for the following reasons:-
 - (a) Based on the "users pay" principle, the funding of the Authority should come from the license fees. There is no direct relevance between the Levy and the conveyances on sale.
 - (b) The owners of some buildings in Hong Kong (for example, old Chinese type buildings and village type houses) have not appointed any manager to manage their buildings. As the number of units in such building is small, it would neither be cost-effective nor practicable to appoint a manager. It would be unfair for buyers of these properties to bear the cost of the Authority when they cannot benefit from the proposed licensing regime.
 - (c) In view of the Government's recent special measures like Buyer's Stamp Duty and double rates for Ad Valorem Stamp Duty, any additional levy will only increase the burden of purchasers.

- (d) The existing land title system is already infested with all kinds of incumbrances. The enforcement mechanism created by the Bill will make the title checking process even more complicated and uncertain. It is also a waste of resources to create a complicated method for enforcing a levy which is only in the sum of a few hundred dollars.

**The Law Society of Hong Kong
6 August 2014**