

By Hand &  
By Email (bc\_57\_13@legco.gov.hk)

Bills Committee on  
Property Management Services Bill  
Legislative Council  
Legislative Council Complex  
1 Legislative Council Road  
Central  
Hong Kong

Attn: The Hon Tony TSE Wai-chuen,  
Chairman

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Dear Sirs

**Property Management Services Bill (“the Bill”)**

Our client

1. We act for a property holding group (“**the Group**”) whose principal business is the holding of office and retail premises for leasing to third parties.

**Principal submission:**  
**property management services by one associated company to another**

Business model

2. Typically :-

- (a) Each of the properties of the Group is held by a separate **associated company**<sup>1</sup> of the Group (a “**property holding company**”).
- (b) A property management company<sup>2</sup> which is also an associated company of the Group (a “**management company**”) is formed to provide property management services<sup>3</sup> to the various property holding companies.

<sup>1</sup> In this submission, “**associated company**” has the same meaning as defined in section 2 of the Companies Ordinance, namely, in relation to a body corporate, it means (a) a subsidiary of the body corporate; (b) a holding company of the body corporate; or (c) a subsidiary of such a holding company.

<sup>2</sup> There may be more than one management company, as a separate management company may be formed to undertake management of, say, office premises, and another retail premises.

<sup>3</sup> In this submission, the term “**property management services**” has the same meaning as set out in Schedule 1 of the Bill.

3. The structure is adopted so that the resources for the provision of property management services may be pooled, and so that the services may be provided more economically and consistently to all the properties owned by the Group.
4. The reality is that it is an in-house arrangement, all within the Group. The property management services are provided only to associated companies within the Group and not to owners of properties outside the Group.

#### Policy of the Bill

5. The policy is to regulate the property management industry in order to protect owners who are consumers of property management services. The policy does not extend to provision of such services through in-house arrangements within a group of companies<sup>4</sup>.
6. Property management services provided by one associated company to another does not come within the policy and hence the Bill should not apply to such services.
7. The Bills Committee may wish to refer to the exemption contained in section 2(2)(g) of the Estate Agents Ordinance, Cap 511. By that provision, the Estate Agents Ordinance does not apply to any agency work carried out by a company in relation to the sale of property owned by another member of the same group of companies or for a joint venture in which the group is a party.

#### Our principal submission

8. **Our submission is that the Bill should be amended to include a specific exemption whereby the Ordinance does not apply to property management services provided by one associated company to another.**

#### **Exemption for single ownership building**

9. We note that the Administration has stated that “*our policy intent is 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*”. In other words, the intention is that the Bill should apply only to those developments which are subject to a DMC.
10. We would observe that there is a real risk that this policy intent has not been achieved by the current drafting of the Bill, for the reasons set out in the **Appendix** to this letter.

#### **Named manager and de facto manager**

11. We would invite the Bills Committee to consider and address the following issue :-
  - (a) Very often, a Deed of Mutual Covenant (“**DMC**”) provides for the appointment of a named manager for the building (“**named manager**”), and the named manager may be one of the owners of the building.

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<sup>4</sup> In this submission, “**group of companies**” has the same meaning as defined in section 2 of the Companies Ordinance, namely, any 2 or more bodies corporate one of which is the holding company of the other or others.

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- (b) The named manager may not have the necessary expertise, or may have decided that it would be more economical to outsource the management, and it delegates or subcontracts the management to a professional management company ("**de facto manager**"), either pursuant to a provision of the DMC, or with the approval of the other owners.
  - (c) The property management services are in fact provided by the de facto manager.
  - (d) As a matter of policy, it would appear that the licensing regime (with the consequential obligations and liabilities) should apply only to the de facto manager, instead of the named manager.
12. We should be grateful for confirmation that the legislative intent is for the Bill, when passed into law, to apply only to the de facto manager, and not the named manager.

Yours faithfully

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## Appendix

### Exemption for single ownership building

1. The Administration has stated that *“our policy intent is 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”*. In other words, the intention is that the Bill should apply only to those developments which are subject to a DMC.
2. There is a real risk that this policy intent has not been achieved by the current drafting of the Bill.
3. The questions that were asked by the Legco Assistant Legal Adviser were these :-
  - “1. *“Property” is proposed to mean a building as defined by section 2 of the Building Management Ordinance (Cap. 344). In view of the definition of “building” in Cap. 344 and that Cap. 344 applies to the management of multi-storey buildings but not house developments, please clarify whether the Bill is intended to apply to house developments managed by property management companies and, if not, why not.*
  2. *If a property development consists of multi-storey buildings and houses and is managed by the same property management company, is that company subject to the licensing scheme under the Bill?” (Emphasis added.)*
4. The focus of the questions was on the application of the Bill (i) to house development and (ii) mixed multi-storey building cum house development. The focus was not on development under single ownership.
5. The Administration’s response is that *“Our policy intent is 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.”*. The response was not to the point and the policy intent is not achieved by the drafting of the Bill.
6. The Administration suggests that because “property” is defined in the Bill by reference to the definition of “building” in the Building Management Ordinance (“BMO”), the Bill only applies to a building subject to a Deed of Mutual Covenant (“DMC”). This suggestion is not justified by how the Bill is currently drafted. A “building”, as defined in the BMO, need not be subject to a DMC. What that definition does is to include property which *could be* the subject of strata or multiple ownership. The formation of an owners’ corporation by appointment of a management committee under Part II of the BMO does require that the building be subject to a DMC. Part VIA of the BMO (dealing with mandatory terms implied in DMC and use of common areas) again applies only where there is a DMC. But one cannot thereby conclude that “building” can only refer to a building subject to a DMC.
7. Interpretation of a statute depends on the words actually used in the statute, and not on what might have been said in correspondence during the legislative process, even though statements made by the Administration can sometimes be prayed in aid of the interpretation if the matter should come before the courts. Given that there are criminal sanctions for breach, the Bill should be amended to put the matter beyond doubt.

