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From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 3 February 2016

Property Management Services Bill

Committee stage amendments

The Second Reading debate on the above Bill will be resumed at the Council meeting of 3 February 2016. Subject to the Bill receiving Second Reading, the President has given permission for the Secretary for Home Affairs to move proposed amendments to the Bill at its Committee stage.

2. As directed by the President, the proposed amendments are attached for Members' consideration.

(Boris LAM)
for Clerk to the Legislative Council

Encl.

Property Management Services Bill

Committee Stage

Amendments to be moved by the Secretary for Home Affairs

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>In the English text, by deleting the definition of <i>company</i> and substituting—</p> <p>“<i>company</i> (公司) has the meaning given by section 2(1) of the Companies Ordinance (Cap. 622) and includes—</p> <ul style="list-style-type: none">(a) a body corporate incorporated or established by or under any other Ordinance; and(b) a body corporate incorporated or established outside Hong Kong;”.
4	<p>In the English text, by deleting “if the licensee—” and substituting “if—”.</p>
4(a)	<p>By adding “the licensee” before “commits”.</p>
4(b)	<p>By adding “the licensee” before “contravenes”.</p>
4(c)	<p>By adding “the licensee” before “contravenes”.</p>
4	<p>By deleting paragraph (d) and substituting—</p> <ul style="list-style-type: none">“(d) the licensee, without reasonable excuse, fails to—<ul style="list-style-type: none">(i) comply with a requirement of a notice under section 21(2); or(ii) comply with a summons under section 24(1)(b) or 36(1)(b);(da) the court determines that the licensee has contravened a requirement in the Building Management Ordinance (Cap. 344) or a deed of mutual covenant that is applicable to the licensee; or”.

- 4(e) By adding “the licensee” before “is convicted”.
- 5 By deleting subclause (1) and substituting—
- “(1) The Authority may issue codes of conduct containing any practical guidance that it considers appropriate for the purposes of section 4.
 - (1A) Without limiting subsection (1), the codes of conduct may specify—
 - (a) for the purposes of section 4(a), the matters that the Authority considers to be relevant to determining the question of misconduct or neglect committed by a licensee in a professional respect; and
 - (b) for the purposes of section 4(e), the criminal offences that the Authority considers may bring the profession of property management services into disrepute.”.
- 5(3)(b) In the Chinese text, by deleting “該守則” and substituting “該等守則”.
- 5 By deleting subclause (5) and substituting—
- “(5) The Authority must publish the codes of conduct, and the amendments made to them, in the Gazette.”.
- 6(2)(c) By deleting the full stop and substituting “or use a title in any language that so closely resembles “registered professional property manager” or “註冊專業物業經理” as to be capable of deceiving or misleading any person into believing that the person is a licensed PMP (Tier 1).”.
- 6(3)(c) By deleting the full stop and substituting “or use a title in any language that so closely resembles “licensed property management officer” or “持牌物業管理主任” as to be capable of deceiving or misleading any person into believing that the person is a licensed

PMP (Tier 2).”.

7

By adding—

- “(2A) Section 6(1)(a), (2)(a) or (3)(a) does not prohibit a person from providing a property outside Hong Kong with property management services.
- (2B) Section 6(1)(a), (2)(a) or (3)(a) does not prohibit a person from providing advisory services relating to property management services without consideration.”.

7(3)

By deleting “Section” and substituting “Subject to subsections (4A) and (4B), section”.

7(4)

By deleting “Section” and substituting “Subject to subsection (4B), section”.

7

By adding—

- “(4A) If the owners’ organization of a property, in order to provide the property with property management services, ceases to engage a property management company or property management practitioner, subsection (3) does not apply unless the cessation is approved by a resolution passed at a general meeting of the organization.
- (4B) Subsections (3) and (4) do not apply to a property that contains 1 500 or more than 1 500 flats as defined by section 2 of the Building Management Ordinance (Cap. 344).”.

7

By deleting subclause (5).

10(1)

By deleting paragraph (a) and substituting—

- “(a) must be made to the Authority in the specified form—
 - (i) for a PMC licence, within 6 to 9 months before the expiry of the licence; or
 - (ii) for a PMP (Tier 1) licence or PMP (Tier 2) licence, within 3 to 6 months before the expiry of the licence;”.

10 By deleting subclause (7).

10 By adding—

- “(9) Subject to subsection (10), a licence in respect of which an application for renewal is made under this section and which, but for this subsection, would have expired before the determination of the application remains in force until the determination by the Authority of the application.
- (10) Subsection (9) does not apply if—
 - (a) the application is made after the period specified in subsection (1)(a)(i) or (ii);
 - (b) the application is withdrawn; or
 - (c) the licence is revoked or suspended under section 25.
- (11) If a licensed PMC does not apply for the renewal of the PMC’s licence within the period specified in subsection (1)(a)(i), the Authority must, by notice in writing given to the owners or owners’ organizations of the property for which the PMC provides property management services, inform the owners or organizations of that fact.
- (12) If an application for the renewal of a licence is made after the period specified in subsection (1)(a)(i) or (ii) but before the expiry of the licence, the Authority—
 - (a) may accept the application if the Authority considers that there is a good reason for doing so; and
 - (b) may extend the validity of the licence for a period not exceeding 6 months, subject to any prescribed fees the Authority may charge and any conditions the Authority may impose.
- (13) If the Authority decides not to renew a licence—
 - (a) the Authority must, by notice in writing given to the applicant within 21 days beginning on the date on which the decision is made—
 - (i) notify the applicant of the decision; and
 - (ii) give reasons for the decision; and
 - (b) for a PMC licence, the Authority may extend the validity of the licence for a period not exceeding 6 months, subject to any prescribed fees the Authority may charge and any conditions the Authority may impose.”.

11(2)(a)(ii) In the Chinese text, by adding “協議” after “重整”.

- 11(2)(b)(iii) In the Chinese text, by adding “協議” after “重整”.
- 11(2)(c)(iv) In the Chinese text, by adding “協議” after “重整”.
- 11(4)(a)(ii) In the Chinese text, by adding “協議” after “重整”.
- 11(4)(b)(iii) In the Chinese text, by adding “協議” after “重整”.
- 13(2) By deleting paragraph (h) and substituting—
- “(h) if the PMC is a company, the conviction record of the PMC (if any) in relation to disciplinary offences or criminal offences under this Ordinance;
 - (ha) if the PMC is not a company, subject to section 2 of the Rehabilitation of Offenders Ordinance (Cap. 297), the conviction record of the PMC (if any) in relation to disciplinary offences or criminal offences under this Ordinance; and”.
- 13(7) By deleting “(2)(h)” and substituting “(2)(ha)”.
- 13(7) In the Chinese text, by deleting “登記冊及” and substituting “登記冊或”.
- 13(8) By deleting “this section” and substituting “subsection (2) (except paragraph (ha)), subsection (3) (except paragraph (e)) or subsection (4) (except paragraph (e))”.
- 15(1) By adding—
- “(da) the fees payable for the extension of the validity of a licence under section 10(12)(b) or (13)(b);”.
- 16 By adding before subclause (1)—
- “(1A) In this section—

client (客户), in relation to a property for which a licensed PMC provides property management services, means—

- (a) the owners' organization of the property; and
- (b) the owners of the property who pay or are liable to pay the management expenses in respect of the services.”.

16 By deleting subclause (1) and substituting—

“(1) A licensed PMC must—

- (a) prepare the prescribed information in respect of each property for which the PMC provides property management services; and
- (b) provide the PMC's clients in each property for which the PMC provides property management services with the prescribed information relating to the property in the prescribed manners.”.

16(2) In the English text, by deleting “manner” and substituting “manners”.

16 By adding—

“(2A) The regulation may prescribe different manners for different prescribed information.”.

16(3) By deleting “property management services provided by a licensed PMC to the PMC's clients” and substituting “property for which a licensed PMC provides property management services”.

16 By adding—

“(4) The prescribed manners in which a licensed PMC must provide the prescribed information relating to the property for which the PMC provides property management services may include—

- (a) sending a copy of the prescribed information to the owners' organization of the property (if any);
- (b) displaying a copy of the prescribed information in a prominent place in the property;

- (c) allowing the PMC's clients in the property to inspect the prescribed information;
- (d) on request by the PMC's clients in the property and on payment of a reasonable copying fee, supplying the clients with a copy of the prescribed information.”.

21(2)(b) By deleting “, or a copy of any document,”.

21(5) By deleting paragraph (b) and substituting—

- “(b) if the information is stored electronically, the power to require—
 - (i) the provision of instructions on the operation of the equipment containing the information; and
 - (ii) the provision of the appropriate system for reducing the information into a written form on paper.”.

21(6)(a) By deleting subparagraph (ii) and substituting—

- “(ii) to require that person, or any other person who is or was an officer (as defined by section 2(1) of the Companies Ordinance (Cap. 622)), employee or partner of that person, to give an explanation of or further particulars about the document; and”.

New By adding—

“22A. Self-incrimination

(1) In this section—

specified act (指明作為) means to provide information or a document, to answer a question, to respond to a written question, or to give an explanation of or further particulars about a document, under section 21.

(2) A person is not excused from doing a specified act only on the ground that to do so might tend to incriminate the person.

(3) If the investigator appointed under section 20 requires a person to do a specified act, the investigator must ensure that the person has first been informed or reminded of the limitations imposed by subsection (4) on the admissibility in evidence of—

- (a) the investigator's requirement; and
 - (b) the information or document provided, or the answer, response, explanation or particulars given, by the person (*subject matter*).
 - (4) If the conditions specified in subsection (5) are satisfied, the investigator's requirement and the subject matter are not admissible in evidence against the person in criminal proceedings, other than those in which the person is charged with any of the following offences in respect of the subject matter—
 - (a) an offence under section 22;
 - (b) an offence under Part V of the Crimes Ordinance (Cap. 200).
 - (5) The conditions are—
 - (a) the subject matter might tend to incriminate the person; and
 - (b) the person so claims before providing or giving the subject matter.”.
- 24(1) By adding—
- “(ca) to receive and consider any material, whether by way of oral evidence, written statements, documents or otherwise, and whether or not the material would be admissible in civil or criminal proceedings;”.
- 24(4) By adding “, on application by any of the parties to the hearing,” after “may”.
- 25(1)(b) In the English text, by deleting “fine” and substituting “penalty”.
- 25(5) By adding before paragraph (a)—
- “(aa) an application has been made under subsection (6) to revoke, vary or suspend the order;”.
- 25(8) In the English text, by deleting “fine” and substituting “penalty”.
- New By adding—

“25A. Self-incrimination

(1) In this section—

specified act (指明作為) means to give evidence, or to provide information or a document, under section 24.

(2) If the Authority requires a person attending a hearing before the Authority as a witness to do a specified act, the person is not excused from doing the act only on the ground that to do so might tend to incriminate the person.

(3) However, if the evidence given, or the information or document provided, by the person (*subject matter*) tends to incriminate the person, the Authority’s requirement and the subject matter are not admissible in evidence against the person in criminal proceedings, other than those in which the person is charged with any of the following offences in respect of the subject matter—

(a) an offence under section 28;

(b) an offence under Part V of the Crimes Ordinance (Cap. 200).”.

26 By deleting “24 and 25,” and substituting “24, 25 and 25A,”.

30 By deleting subclause (3).

31 By deleting the clause.

36(1) By deleting paragraph (d) and substituting—

“(d) to receive and consider any material, whether by way of oral evidence, written statements, documents or otherwise, and whether or not the material would be admissible in civil or criminal proceedings;”.

36(3) By adding “, on application by any of the parties,” after “may”.

37 By deleting subclause (1) and substituting—

“(1) An appeal tribunal hearing an appeal—

(a) may confirm, vary or reverse any decision,

- finding or order to which the appeal relates; and
- (b) may make an order as to the payment of the costs and expenses incurred in relation to the hearing, whether by the tribunal, any party to the hearing, or any person attending the hearing as a witness.”.

New In Part 6, by adding—

“39A. Self-incrimination

- (1) In this section—
specified act (指明作為) means to give evidence, or to provide information or a document, under section 36.
- (2) If an appeal tribunal requires a person attending a hearing before the tribunal as a witness to do a specified act, the person is not excused from doing the act only on the ground that to do so might tend to incriminate the person.
- (3) However, if the evidence given, or the information or document provided, by the person (*subject matter*) tends to incriminate the person, the tribunal’s requirement and the subject matter are not admissible in evidence against the person in criminal proceedings, other than those in which the person is charged with any of the following offences in respect of the subject matter—
- (a) an offence under section 39;
 - (b) an offence under Part V of the Crimes Ordinance (Cap. 200).”.

61 By deleting paragraph (a) and substituting—

- “(a) the PMP took all reasonable steps and exercised all due diligence to avoid committing the offence;”.

New By adding—

“61A. Immunity

A party, solicitor, counsel, witness or any other person who appears at a hearing before the Authority or the disciplinary committee under Part 5, or before an appeal tribunal under Part 6, has the same privileges and immunities as the person would have if the hearing were civil proceedings in the Court of First Instance.”.

- Schedule 2 In the heading, in the English text, by deleting “**Fine**” and substituting “**Penalty**”.
- Schedule 3,
section 3(2) and
(3) In the Chinese text, by deleting “薪酬” and substituting “酬金”.
- Schedule 3,
section 6 By deleting “the Vice-chairperson is” and substituting “the Chairperson may designate the Vice-chairperson”.
- Schedule 3,
section 9 By adding—
 “(3) The Authority must make standing orders, not inconsistent with this Ordinance, for the purposes of regulating the conduct of any meeting to which subsection (2) applies, in order to ensure that the confidentiality of the meeting, if any, is not compromised.”.
- Schedule 3,
section 13 By adding—
 “(1A) For the purposes of subsection (1), a resolution to which that subsection applies may be—
 (a) in the form of one document; or
 (b) in the form of more than one document, each in the same form and signed by one or more members of the Authority.”.
- Schedule 3,
section 13 By adding—
 “(5) If, in respect of any matter being dealt with by circulating written resolutions, a request is made under subsection (3), any resolution signed, or assented to, under subsection (1)(c) becomes void.”.
- Schedule 3,
section 19(1) In the Chinese text, by deleting “審核” and substituting “審計”.
- Schedule 3,
section 20(2) By adding—
 “(ba) an outline of all hearings conducted under section 23 of this Ordinance;”.

Schedule 3, section 23(1)	In the Chinese text, by deleting “違紀” and substituting “紀律”.
Schedule 3, section 23(9)	By adding “section 46(9) of this Ordinance and” after “Subject to”.
Schedule 4, section 2	By deleting subsection (7).
Schedule 4, section 3	By deleting subsection (1) and substituting— <p>“(1) An applicant for a provisional PMP (Tier 1) licence or provisional PMP (Tier 2) licence who is aggrieved by a decision not to issue the licence may lodge an appeal.”.</p>
Schedule 4	By adding— <p>“3A. Provisions applicable to holders of provisional PMP licences</p> <p>The following provisions, with necessary modifications, apply to the holder of a licence issued under section 1 of this Schedule as they apply to a licensed PMP—</p> <p>(a) sections 12 and 13 of this Ordinance;</p> <p>(b) Parts 5 and 6 of this Ordinance;</p> <p>(c) section 61 of this Ordinance.”.</p>
Schedule 4, section 4(1)(a)	In the Chinese text, by deleting “申請或” and substituting “或”.
Schedule 5, section 1	By deleting “127” and substituting “128”.