

Property Management Services Bill (“the Bill”)

Debate and voting arrangements

Main Object of the Bill : To enact new legislation to regulate and control the provision of property management services by property management companies and property management practitioners and to establish the Property Management Services Authority (“PMSA”).

First debate	: Clauses with no – Clauses 1, 3, 8, 9, 12, 14, 17 to 20, 22, 23, 27, 28, 29, 32 to 35, 38 to 60 and 62 to 65
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Voting	: To vote on the above clauses standing part of the Bill
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Second debate	: Clauses with amendments proposed by the Secretary for Home Affairs (“SHA”) – Clauses 2, 4 to 7, 10, 11, 13, 15, 16, 21, 24, 25, 26, 30, 31, 36, 37 and 61
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Joint debate on the original clauses and the amendments thereto.

Clause 2

- To amend the English text of the definition of “company” to align it with the Chinese text.

Clause 4

- To amend the English text of clause 4 by deleting “if the licensee –” and substituting it with “if –”;
- to amend clauses 4(a), (b), (c), and (e) to make textual amendments to the reference to “the licensee”;
- to amend clause 4(d) to expand the scope of the clause for disciplinary offences committed by licensees so that non-compliance by a licensee with a notice given by an investigator under clause 21(2) and non-compliance with summons issued by PMSA under clause 24(1)(b) and by the appeal tribunal under clause 36(1)(b) shall be a disciplinary offence; and
- to add clause 4(da) to specify that a licensee commits a disciplinary offence if 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.

Clause 5

- To amend clause 5(1) and add clause 5(1A) to empower PMSA to issue codes of conduct containing any practical guidance that it considers appropriate for the purposes of section 4 of the Bill, including the matters relevant to determining the question of misconduct or neglect committed by a licensee in a professional respect and the offences that may bring the profession of property management services into disrepute;
- to amend the Chinese text of clause 5(3)(b) by deleting “該守則” and substituting it with “該等守則”; and
- to amend clause 5(5) to require PMSA to publish codes of conduct for the purposes of section 4, and the amendments to them, in the Gazette.

Clause 6

- To amend clauses 6(2)(c) and 3(c) to prohibit a person from using a title in any language that so closely resembles “registered professional property manager” or “licensed property management officer” as to be capable of deceiving or misleading any person into believing that the person is a licensed property management practitioner (“PMP”) at Tier 1 or Tier 2.

Clause 7

- To add clause 7(2A) to move the original clause 7(5) of the Bill to clause 7(2A) and delete clause 7(5);
- to add clause 7(2B) to stipulate that the Bill does not prohibit a person from providing advisory services relating to property management services without consideration;
- to add clause 7(4A) to provide that if an owners’ organization decides to switch from engaging a property management company or property management practitioner to “self-management”, such decision must be supported by passing a resolution at a general meeting of the owners’ organization, otherwise the owners’ organization concerned would not be exempted from obtaining a property management company licence;
- to add clause 7(4B) to provide that an owners’ organization or owners could not self-manage a property that contains 1 500 flats or above; and
- in view of the newly added clauses 7(4A) and (4B), to make corresponding technical amendments to clauses 7(3) and (4).

Clauses 10 and 15

- To amend clause 10(1)(a) to stipulate that an application for the renewal of a property management company should be made within 6 to 9 months before the expiry of the licence, and PMP (Tier 1) licence or PMP (Tier 2) licence should be made within 3 to 6 months before the expiry of the licence;
- to delete clause 10(7) to add the following clauses to improve the licence renewal procedures:
 - (a) to add clauses 10(9) and (10) to stipulate that if a licensee has already made a renewal application within the stipulated timeframe, his licence will remain in force until PMSA’s determination of the application, except if the application is made after the period specified in aforementioned clause 10(1)(a) as amended, the application is withdrawn or the licence is revoked or suspended under section 25 (disciplinary orders);

- (b) to add clause 10(11) to stipulate that if PMSA does not receive a renewal application from a property management company within the stipulated timeframe, it will inform the owners or owners' organizations of the property managed by the company;
- (c) to add clause 10(12) to stipulate that PMSA could exercise discretion to handle licence renewal applications made after the stipulated timeframe but before the expiry of the licence on a case-by-case basis. Under such circumstances, PMSA could charge a prescribed fee and impose other conditions, and extend the validity of the licence for a period not exceeding 6 months if necessary;
- (d) to add clause 10(13) to stipulate that if PMSA decides not to renew a licence, it must notify the applicant of the decision and reasons for it in writing within 21 days beginning on the date on which the decision is made. For property management companies whose licence renewal applications are rejected, PMSA may extend the validity of the licence for a period not exceeding 6 months under certain conditions; and
- to add clause 15(1)(da) to empower PMSA to, for licence renewal applications made after the stipulated timeframe and for those property management companies whose licence renewal applications are rejected, prescribe the fees that may be charged for extending the validity of the licence under clauses 10(12)(b) or (13)(b).

Clause 11

- To amend clauses 11(2)(a)(ii), (b)(iii) and (c)(iv), and 11(4)(a)(ii) and (b)(iii) to add “協議” after “重整” in the Chinese text to ensure consistency.

Clause 13

- To amend clause 13(2)(h) and add clause 13(2)(ha) to stipulate that section 2 of the Rehabilitation of Offenders Ordinance (Cap. 297) will only apply to property management companies that are natural persons, and make a corresponding amendment to clause 13(7);
- to amend clause 13(7) to change “登記冊及” to “登記冊或” in the Chinese text to ensure consistency between the Chinese and English texts; and
- to amend clause 13(8) to stipulate that no person will be allowed to obtain a copy of the conviction records of property management companies that are individuals and property management practitioners from the register.

Clause 16

- To add clause 16(1A) to define “客戶” in clause 16;
- to amend clause 16(1) to require a licensed property management company to prepare the prescribed information in respect of the property for which it provides property management services, and provide its clients in the property with the prescribed information relating to the property in the prescribed manners;
- to add clauses (2A) and (4) to empower PMSA to prescribe different dissemination manners for different prescribed information, and make corresponding amendments to the English text of clause 16(2) by deleting “manner” and substituting it with “manners”; and

- to amend clause 16(3) to clarify that property management services are provided by the property management company for the property and not for the clients.

Clause 21

- To amend clause 21(5)(b) to empower PMSA to require electronically stored information to be changed into a written form on paper, and amend clause 21(2)(b) by deleting “or a copy of any document,”; and
- to amend clause 21(6)(a) to include a reference to an “officer” as defined in the Companies Ordinance (Cap. 622) to require those persons to provide information for investigators appointed by PMSA.

Clause 24

- To add clause 24(1)(ca) to empower PMSA to receive or consider any material in a hearing in order to align it with the power to be conferred on an appeal tribunal by clause 36; and
- to amend clause 24(4) to stipulate that PMSA, on application by any of the parties to the hearing and after consulting all the parties concerned, may decide whether to direct that the hearing, or any part of the hearing, be held in private.

Clause 25

- To amend the English text of clauses 25(1)(b) and 25(8) to change “fine” into “penalty”; and
- to add clause 25(5)(aa) to stipulate that the orders of PMSA shall take effect even if an application is made to revoke, vary or suspend the order.

Clauses 26 and 31

- In view of the newly added clauses 22A, 25A and 39A in relation to “self-incrimination”, to delete clause 31 and make corresponding amendments to clause 26.

Clause 30

- In view of the newly added clause 61A in relation to “immunity”, to delete clause 30(3).

Clause 36

- To make textual amendments to clause 36(1)(d); and
- to amend clause 36(3) to stipulate that the appeal tribunal, on application by any of the parties to the hearing and after consulting all the parties concerned, may decide whether to direct that the hearing, or any part of the hearing, be held in private.

Clause 37

- To amend clause 37(1) to stipulate that the appeal tribunal has the power to make an order for costs and expenses incurred in relation to hearings before the tribunal.

Clause 61

- To amend clause 61(a) to stipulate that a licensed property management practitioner may invoke this clause as a defence if he has taken all reasonable steps and has exercised all due diligence to avoid committing the disciplinary offence.

Voting : To vote on the above amendments together, and then vote on the original clauses or the clauses as amended standing part of the Bill

**Third debate : New clauses proposed by – Clauses 22A, 25A, 39A and 61A
SHA**

New Clauses 22A, 25A and 39A

- New clauses 22A, 25A and 39A stipulate that clauses in relation to “self-incrimination” should apply to hearings held by PMSA, the disciplinary committee and the appeal tribunal.

New Clause 61A

- New clause 61A stipulates that any party, solicitor, counsel, witness or any other person who appears at a hearing before PMSA or the disciplinary committee under Part 5 of the Bill, 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.

Voting : To vote on the above added new clauses together

**Fourth debate : Schedule with no – Schedule 1
amendment**

Voting : To vote on the above Schedule standing part of the Bill

**Fifth debate : Schedules with – Schedules 2 to 5
amendments proposed by
SHA**

Joint debate on the Schedules and the amendments thereto.

Schedule 2: Maximum Amount of Fine

- To amend the English text of the heading of Schedule 2 to change “fine” to “penalty”.

Schedule 3: PMSA

- To amend the Chinese text of section 3(2) and (3) to change “酬金” to “薪酬”;
- to amend section 6 to empower the Chairperson of PMSA to decide whether it is necessary to designate the Vice-chairperson to act in his place after considering the specific circumstances;
- to add section 9(3) to empower PMSA to make standing orders to ensure that the confidentiality of its meetings will not be compromised as a result of individual members participating by electronic means;
- to add section 13(1A) to provide that a written resolution not passed at a meeting of PMSA may be in the form of one document or in the form of more than one document, each in the same form and signed by one or more members of PMSA; and add section 13(5) to stipulate that a written resolution assented to under section 13(1)(c) becomes void if it is requested to be referred to a meeting of PMSA for consideration;
- to amend the Chinese text of section 19(1) to change “審核” to “審計”;
- to add section 20(2)(ba) to require the annual report of PMSA to contain an outline of all disciplinary hearings conducted under clause 23;
- to amend the Chinese text of section 23(1) to change “違紀” to “紀律”; and
- to amend section 23(9) to stipulate that committees under PMSA shall be subject to clause 46(9) of the Bill on disclosure of interests.

Schedule 4: Transitional Provisions

- To amend section 3(1) to clarify that an applicant for a provisional property management practitioner licence who is aggrieved by a decision made by PMSA not to issue the licence may lodge an appeal;
- to delete section 2(7) and add section 3A to stipulate that the provisions in relation to the publication of the list of licensees and registers under clauses 12 and 13 of the Bill, PMSA's disciplinary powers under Part 5, the appeal mechanism under Part 6 and the defence of licensed property management practitioners under clause 61 should apply to the holders of the provisional property management practitioner licences; and
- to amend the Chinese text of section 4(1)(a) to change “申請或” to “或”.

Schedule 5: Related Amendments

- To amend section 1 to change the number of the provision concerned.

Voting	: To vote on the amendments together, and then vote on the original Schedules or the Schedules as amended standing part of the Bill
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SHA's amendments

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