

**立法會**  
***Legislative Council***

LC Paper No. CB(2)701/15-16

Ref : CB2/BC/7/13

**Paper for the House Committee meeting on 22 January 2016**

**Report of the Bills Committee on  
Property Management Services Bill**

**Purpose**

This paper reports on the deliberations of the Bills Committee on Property Management Services Bill ("the Bills Committee").

**Background**

2. Property management companies ("PMCs") and property management practitioners ("PMPs") play an important role in assisting property owners to properly manage their buildings. Property management requires multi-disciplinary professional input, such as general management services, management of property environment, building repair and maintenance, finance and asset management, facility management, human resources management and legal service.

3. According to the Administration, unethical acts or malpractice of PMCs and PMPs will adversely affect the safety and hygiene standards of the buildings. A mandatory licensing regime which sets a minimum qualification requirement for PMCs and PMPs will raise professional standards, increase public awareness of the importance of engaging a qualified PMC, and promote the concept of maintaining building safety and value through continuous effective building management. Empowering a statutory authority to enforce the relevant legislation and issue a code of conduct and to take disciplinary actions against non-compliant PMCs and PMPs will meet such objectives.

4. Following the public consultation exercise on the proposed licensing regime conducted from December 2010 to March 2011, the Administration established in December 2011 the Advisory Committee on the Regulation of the Property Management Industry ("the Advisory Committee"), comprising

members from the industry, related professions and the community, to work out the details of the proposed licensing regime. According to the Administration, relevant professional bodies are supportive of the introduction of a licensing regime for the property management industry.

## **The Bill**

5. The Bill was introduced into the Legislative Council ("LegCo") on 7 May 2014. The Bill seeks to regulate and control the provision of property management services by establishing the Property Management Services Authority ("PMSA") and introducing a licensing regime for entities carrying on, and individuals engaged in, the business of providing such services, and to provide for related matters. Under the Bill, it would be an offence to provide property management services without a licence. PMSA would be empowered to investigate licensees' conduct and to impose sanctions on disciplinary offences. The Bill is divided into nine Parts and contains five Schedules. Details of the provisions of the Bill are set out in paragraphs 4 to 17 of the Legal Service Division Report (LC Paper No. LS53/13-14).

## **The Bills Committee**

6. At the House Committee meeting on 9 May 2014, Members agreed to form a Bills Committee to study the Bill. The membership list of the Bills Committee is in **Appendix I**. Under the chairmanship of Mr Tony TSE Wai-chuen, the Bills Committee has held a total of 17 meetings with the Administration. The Bills Committee has also received oral presentation from 22 organizations and individuals at one of these meetings. A list of the organizations and individuals which/who have given views to the Bills Committee is in **Appendix II**.

## **Deliberations of the Bills Committee**

### Scope of application of the Bill

7. The Bills Committee notes that under clause 2 of the Bill<sup>1</sup>, "property" means a building as defined by section 2 of the Building Management Ordinance (Cap. 344) ("BMO"). According to BMO, "building" means -

- (a) any building which contains any number of flats comprising two or

---

<sup>1</sup> Unless otherwise specified, the clauses cited in the ensuing part of this report refer to clauses of the Bill.

more levels, including basements or underground parking areas;

- (b) any land upon which that building is erected; and
- (c) any other land (if any) which -
  - (i) is in common ownership with that building or land; or
  - (ii) in relation to the appointment of a management committee ("MC") under section 3, 3A, 4 or 40C of BMO or any application in respect thereof, is owned or held by any person for the common use, enjoyment and benefit (whether exclusively or otherwise) of the owners and occupiers of the flats in that building.

"Flat" is further defined under BMO to mean any premises in a building which are referred to in a Deed of Mutual Covenant ("DMC") whether described therein as a flat or by any other name and whether used as a dwelling, shop, factory, office or for any other purpose, of which the owner, as between himself and owners or occupiers of other parts of the same building, is entitled to the exclusive possession.

8. The Administration has explained to the Bills Committee that the purpose of defining "property" as "building" under BMO is to delineate the scope of application of the Bill. It is the Administration's policy intent to subject only those multi-storey buildings involving shared ownership of common parts and with DMCs in effect to the licensing regime under the Bill. In response to the Bills Committee's enquiry, the Administration has affirmed that PMCs managing a house development and/or property development consisting of multi-storey buildings and houses that fall within the definition of "property" will be subject to the licensing regime.

#### Proposed single-tier licensing regime for PMCs

9. According to the LegCo Brief<sup>2</sup>, the Bill provides for a single-tier licensing regime for PMCs. Some deputations from the trade have expressed their views to the Bills Committee that the proposed single-tier licensing regime will drive the small and medium-sized PMCs out of the market, resulting in the monopoly of the market by large PMCs. Sharing these deputations' concern and considering that there are different types of properties in the market requiring different types of property management service, some members including Mr Frankie YICK

---

<sup>2</sup> LegCo Brief was issued on 23 April 2014 (File Ref.: HAD HQ CR/20/3/5(C)).

have enquired about the Administration's rationale for not adopting a multi-tier licensing regime for PMCs.

10. The Administration has advised that in its view, a multi-tier licensing regime will create or reinforce a labelling effect. It will also create restrictions on the types of developments that the small-to-medium sized PMCs can serve, which in turn may reduce the scope of business for these companies. A single-tier licensing regime for PMCs supported by the availability of transparent information is the best option as it strikes a balance between providing a level playing field to PMCs of different sizes and facilitating consumers in making informed choices. The Administration has pointed out that under clause 13(1) and (2), PMSA must keep a PMC register and the PMC register must, for each licensed PMC, contain the number (given in the form of a range) of licensed PMPs employed by PMC and the number (given in the form of a range) of household units for which property management services are provided by PMC. The register will be made available at the offices of PMSA and on the Internet for public reference.

#### Proposed two-tier licensing regime for PMPs

11. The Administration has informed the Bills Committee that the Bill provides for a two-tier licensing regime of PMPs and frontline staff will not be required to obtain PMP licences. A two-tier licensing regime will help encourage PMPs to pursue professional development and upgrade to the upper tier, while continuing to allow PMPs with a lower level of qualifications to have access to the job market. As provided under clause 2, PMP is defined as an individual who assumes a supervisory or managerial role in a property management services provided by a PMC.

12. The Legal Adviser to the Bills Committee has pointed out that in a sizeable PMC where frontline staff (e.g. security guards, cleaners, porters, etc.) may comprise multiple ranks. Clarification has been sought on whether the more senior frontline staff (e.g. Chief or Senior Security Officers) will fall within the proposed definition of PMP if they also have subordinates.

13. The Administration has advised that the definition of PMP in the Bill consists of two major elements – (a) assumes a managerial or supervisory role in a PMC; and (b) in relation to property management services provided by the PMC concerned. Whether an individual is subject to the licensing requirement does not depend on his/her post title, but rather whether his/her job fulfills both criteria (a) and (b) and falls within the definition of PMP. For example, a senior accountant responsible for the preparation of balance sheets of a PMC but does not manage or supervise any staff who has direct involvement in the provision of property

management services to the PMC's clients will not be subject to licensing.

14. The Bills Committee has requested the Administration to elaborate what constitutes a managerial or supervisory role and what level of supervision does a staff need to attain before the staff concerned is qualified to be in a supervisory role. According to the Administration, its preliminary thinking is that, in applying for a PMC licence, PMC should submit its organization chart to PMSA. PMSA will then specify in the licence as licence conditions which post holders should hold PMP (Tier 1) or PMP (Tier 2) licences having regard to the optimal ratio of the number of licensed PMP (Tier 1) and licensed PMP (Tier 2) to the management portfolio of PMC (e.g. number of flats or area to be managed). Employees filling posts requiring a licence should have the respective tier of licences, and the total number of such employees should correspond to the management portfolio of PMC so as to ensure that there is sufficient managerial/supervisory staff to oversee the management of buildings. In case there is any change to the management portfolio, organization structure or the post holder as a licensing condition, PMC should inform PMSA of such changes within a specified timeframe. Therefore, whether a person needs to obtain the PMP licence depends on the post he holds as specified by PMC in the organization chart to be submitted to PMSA.

#### Three-year transitional period

15. The Bills Committee has received a joint submission from seven property management related professional bodies<sup>3</sup> in which they have stressed that the licensed PMPs (Tier 1) should be academically and professionally qualified and have attained certain local practical experiences in the property management industry. In their view, a one-off "grandfathering arrangement" can minimize the disruption to the industry and service to the community, as the implementation of the proposed licensing regime will not lead to an immediate reduction in manpower supply and adverse impact to the livelihood of the in-service practitioners. Some other deputations have also expressed concern about the impact of the proposed licensing regime on the employment prospects of experienced in-service PMPs with lower level of educational attainment.

16. At the request of the Bills Committee, the Administration has provided information on its preliminary thinking on the licensing requirements for PMPs. For a licensed PMP (Tier 1), the person should hold (a) a degree or equivalent qualification in property management to be specified by PMSA plus at least three

---

<sup>3</sup> They include the Chartered Institute of Housing Asian Pacific Branch, The Hong Kong Association of Property Management Companies, The Hong Kong Institute of Facility Management, The Hong Kong Institute of Housing, The Hong Kong Institute of Surveyors (Property and Facility Management Division), the Housing Managers Registration Board and the Royal Institution of Chartered Surveyors Hong Kong.

years of local working experience in property management; or (b) other degree(s) or equivalent qualification or above, plus at least five years of local working experience in property management. The licensed PMP (Tier 1) should also be (a) a member of property management related professional bodies<sup>4</sup> to be specified by PMSA; or (b) a member of other equivalent professional bodies as assessed and recognized by PMSA and will be subject to professional assessment in relation to property management by PMSA. In respect of the licensing requirements for a licensed PMP (Tier 2), the person should hold (a) other degrees or equivalent qualification or above (applicable to those not fully satisfying the Tier 1 requirement); or (b) diploma, sub-degree or equivalent qualification in property management to be specified by PMSA. The licensed PMP (Tier 2) should also have (a) at least two years local working experience in property management; or (b) at least one year local working experience in property management under the supervision of a licensed PMP (Tier 1).

17. Members including the Chairman, Mr WU Chi-wai, Mr WONG Kwok-hing, Miss Alice MAK and Mr KWOK Wai-keung have expressed particular concerns about the employment prospects of the experienced in-service practitioners who have not received formal training and also the manpower supply and demand of PMPs after the implementation of the proposed licensing regime. Mr Frankie YICK and Mr Christopher CHUNG also share the deputations' view that the Administration should consider adopting the "grandfathering arrangement" and issuing permanent PMP licences to experienced in-service PMPs without requiring them to obtain the required academic qualifications or to complete the relevant continuing professional development ("CPD") courses.

18. The Administration has stressed that it is not the intention of the Administration to set a high threshold for the issuing of PMP licences, thereby undermining the employment opportunities of existing PMPs. In order to facilitate experienced PMPs with lower level of formal qualifications to adapt to the new licensing regime, experienced PMPs who do not satisfy all the licensing requirements (e.g. academic qualifications) will be issued provisional licences if they can meet certain basic requirements (e.g. years of working experience) during the three-year transitional period. After they have obtained the provisional licences, they will be allowed three years to complete the necessary CPD courses recognized by PMSA so that they can be issued formal licences upon the expiry of their provisional licences. PMSA will draw reference from the practice of relevant professional bodies and consider accepting experienced

---

<sup>4</sup> The Advisory Committee consists of a number of PMP related professional bodies. These include the Chartered Institute of Housing, The Hong Kong Institute of Facility Management, The Hong Kong Institute of Housing, The Hong Kong Institute of Surveyors, the Housing Managers Registration Board and the Royal Institution of Chartered Surveyors.

PMPs to submit dissertations or reports in lieu of completion of the CPD courses. For those PMPs who have met the licensing criteria of formal licences, they may apply for formal licences directly during the three-year transitional period.

19. In response to members' concern about the length of the transitional period, the Administration has advised that during the public consultation on the proposed regulatory regime held in 2011, the majority view of the respondents was in support of the proposed three-year transitional period. When determining the length of the transitional period, the Administration has strived to strike a proper balance between the interests of different stakeholders. The Administration has assured members that PMSA will collaborate with the relevant professional bodies and tertiary institutions to ensure that there is adequate training provided for PMPs to meet the licensing requirements.

#### Prohibition of unlicensed activities

20. The Bills Committee notes that clause 6 makes it an offence for a person to act as a PMC or PMP, or claim to be a licensed PMC or licensed PMP, without an appropriate licence and clause 7 sets out the exceptions to clause 6. Clause 6(2)(c) provides that no person may, without a PMP (Tier 1) licence describe himself or herself as a "registered professional property manager" or "註冊專業物業經理". Under clause 6(3)(c), no person may, without a PMP (Tier 2) licence describe himself or herself as a "licensed property management officer" or "持牌物業管理主任". The Administration agrees with the view of the Legal Adviser to the Bills Committee that clause 6(2)(c) and (3)(c) should also apply to situations where a person describes himself as a "registered professional property manager" ("註冊專業物業經理") or a "licensed property management officer" ("持牌物業管理主任") in a language other than Chinese or English. The Administration will propose Committee stage amendments ("CSAs") to clause 6(2)(c) and (3)(c) for this purpose.

#### Exceptions to the prohibition of unlicensed activities

##### *Existing proposed exceptions under the Bill*

21. Under clause 3(1), PMSA may, by regulation, prescribe a service falling within a category of services set out in Schedule 1 to the Bill<sup>5</sup> as a property management service. Schedule 1 sets out seven categories of property management services: general management services relating to a property; management of the environment of a property; repair, maintenance and

---

<sup>5</sup> Unless otherwise specified, the Schedules cited in the ensuing part of this report refer to the Schedules to the Bill.

improvement of a property; finance and asset management relating to a property; facility 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.

22. In response to members' enquiry, the Administration has confirmed that while a business entity may be a PMC under clause 2 by carrying on the business of providing property management services, given clauses 6(1)(a) and 7(2), if the entity, without a PMC licence, only provides one category of services in the regulation made under clause 3(1) or one type of service if there is more than one type of service under a category of services in the regulation made under clause 3(1), it will not commit an offence. The Administration has further advised that clause 6(2)(a) and (3)(a) relating to the prohibition of unlicensed activities do not apply to a PMP of a PMC that is covered by clause 7(2).

23. The Administration has further advised that as provided under clause 7, the licensing requirement will not apply to the Hong Kong Housing Authority or a PMC providing property management services to a property outside Hong Kong. The licensing requirement will also not apply to the owners' organization of a property which provides the property with property management services without engaging a PMC or PMP. Similarly, any owners<sup>6</sup> of a property who provide property services to the property without engaging a PMC or a PMP will not be subject to the licensing requirement provided that they are individuals and do not provide any property management services to another property for profit.

#### *Definition of owners' organization*

24. Under clause 2, "owners' organization" means an organization (whether or not formed under BMO or a DMC) that is authorized to act on behalf of all the owners of the property. Some members including the Chairman, Mr WU Chi-wai and Mr Alan LEONG are concerned that the scope of definition of "owners' organization" is too wide. Mr WU Chi-wai has suggested the Administration to consider listing out all possible forms of owners' organizations in order to remove any uncertainty. Mr Alan LEONG has expressed concern about the potential loopholes arising from the proposed exceptions from prohibition of unlicensed activities.

25. The Administration has advised that other than owners' corporations ("OCs"), Mutual Aid Committees ("MACs") and owners' committees, there are other forms of owners organizations e.g. cooperative society, federation of

---

<sup>6</sup> Under clause 2, "owner" has the meaning given by section 2 of BMO. Under BMO, "owner" means a person who for the time being appears from the records at the Land Registry to be the owner of an undivided share in land on which there is a building, and a registered mortgagee in possession of such share.

owners in the form of a limited company, etc. which currently do not engage PMCs. As the Administration does not have the exhaustive list of the various kinds of owners' organizations, it considers it desirable to retain flexibility in the definition of "owners' organization" in clause 2 so that such types of owners' organizations can continue to self-manage their properties after the implementation of the licensing regime.

*Provision of property management services by non-profit or charitable organizations*

26. Members including Mr James TO, Mr WU Chi-wai and Mr IP Kwok-him have expressed concern that the Bill, as presently drafted, will require non-profit or charitable organizations and Members' offices which provide free advisory service or legal advice to owners' organizations to obtain a PMC licence. In the light of members' concerns, the Administration has informed the Bills Committee that it will move a CSA to add a new subclause (2B) to clause 7 stipulating that a person is not prohibited from providing advisory services relating to property management services without consideration.

*PMC managing a property owned by a single owner and without multiple ownership*

27. The Bills Committee has requested the Administration to clarify the concern raised by some deputations of professional bodies related to property management about whether PMCs which are formed by a single owner for management of its own properties are required to obtain licences. The Administration has advised that under the Bill, PMCs providing property management services to buildings with "shared ownership" (i.e. buildings involving multiple ownership and having a DMC in effect) will be required to obtain a licence. If a property is owned by a single owner and multiple ownership is not involved and the building does not have a DMC, the PMC responsible for management will not be required to obtain a licence. However, the exception granted to owners managing their own buildings under the Bill will only be applicable to owners who are individuals and not companies. The Administration has further advised that as companies providing property management services to these buildings will not be required to obtain a licence under the Bill, there is no requirement for PMPs engaged by these companies to obtain licences under the Bill.

Newly proposed clauses relating to exceptions provided for "self-management of property"

---

*New clause 7(4A)*

28. Regarding the proposed exemption of OCs and other forms of owners' organizations, which manage their own properties, from the licensing regime, members including Mr WU Chi-wai, Mr CHAN Kin-por, Mr IP Kwok-him, Mr Paul TSE, Ms Claudia MO, Mr Frankie YICK and Mr Christopher CHUNG share the concern of some deputations that it may create loopholes for circumventing the licensing regime. Mr WU Chi-wai has reiterated time and again his view that if an owners' organization decides to switch from engaging a PMC to "self-management of property", the decision should be supported by the passage of a resolution at a general meeting of the owners' organization, with a view to forestalling any possible circumvention of the licensing regime.

29. The Administration has initially responded that to cope with the changing needs and circumstances of building management, the Administration was conducting a public consultation exercise on the review of BMO. In view of the importance and significant implications to the management of the building if an OC decides to switch from engaging a PMC to "self-management", the Administration will propose to amend BMO to require such decision be supported by the passage of a resolution at a general meeting of the OC. In the Administration's view, it is not appropriate to take forward such requirement in the Bill given the purpose of the Bill is to provide for the licensing of business entities and individuals engaged in the business of providing property management services.

30. Having further considered members' views, the Administration has, however, advised that it will move a CSA to add new subclause (4A) to clause 7 to the effect that if the owners' organization of a property, in order to provide the property with property management services, ceases to engage a PMC or PMP, the exemption does not apply unless the cessation is approved by a resolution passed at a general meeting of the owners' organization.

31. In the light of the view of the Legal Adviser to the Bills Committee, the Bills Committee has requested the Administration to consider whether there is a need to specify in the Bill the minimum percentage of owners' shares required for passing a resolution to cease to engage a PMC or PMP at a general meeting of the owners' organization which does not have any rules and procedures on convening a general meeting and making a decision or passing a resolution at the general meeting. The Administration has advised that under paragraph 7(1) of Schedule

7 to 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 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' organizations 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 resolutions<sup>7</sup>. Since the procedures of meetings and passage of resolutions of all self-managing owners' organizations that do not engage a PMC are subject to BMO or their constitutions, the Administration considers it not necessary to stipulate in the Bill the percentage of ownership shares for passing resolution to effect self-management.

*New clause 7(4B)*

32. Some members including Mr CHAN Kin-por and Mr IP Kwok-him have expressed concern that the management standard of "self-management" buildings/estates may not be satisfactory if the number of property units in such buildings/estates is very large. Sharing the view of some deputations, Mr CHAN Kin-por has emphasized time and again the importance that the Administration should specify the circumstances for getting exemption, by setting a limit on the maximum number of property units that can be managed by an exempted owners' organization.

33. The initial response of the Administration is that most of the buildings managed by OCs or other forms of owners' organizations without engaging PMCs are old single tenement buildings with a small number of flats. In order not to put undue financial pressure on property owners of old single tenement buildings who may at present manage their own properties through OCs or other forms of owners' organizations, the Administration will not make it a mandatory requirement for all property owners to appoint a PMC. The Administration envisages that with the introduction of the new regulatory regime, the service quality and professional standards of PMCs and PMPs will be enhanced, thus

---

<sup>7</sup> 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 MAC. Resolutions passed by a simple majority at a general meeting shall be binding on MAC, provided that these resolutions are consistent with the provisions contained in the DMC in 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 and their constitutions.

increasing the public awareness of the importance of engaging a qualified PMC.

34. At the request of the Bills Committee, the Administration has provided information on the profile of buildings managed by OCs or other forms of owners' organizations without engaging PMCs<sup>8</sup>. According to the information provided by the Administration, there are at present about 40 000 private buildings in Hong Kong, and out of which, around 8500 buildings are managed by OCs or other forms of owners' organizations without engaging PMCs. Among these buildings, around 69% are single tenement buildings and around 31% of such OCs or other forms of owners' organizations are managing more than one block of building. Among those buildings of which OCs or other forms of owners' organizations are managing more than one block of building, only 1% (i.e. three estates) is managing more than 1 000 units. In the light of the above information, Mr CHAN Kin-por maintains his view and has suggested that the maximum number of property units that can be managed by an owners' organization or individual owners under clause 7 should be limited. In so doing, existing self-managed buildings/estates will not be affected by the proposed licensing regime. He has urged the Administration to consider his suggestion.

35. After further consideration, the Administration has subsequently advised that it will propose a CSA to add new subclause (4B) under clause 7 to specify that owners' organization or owners cannot self-manage property that contains 1 500 or more than 1 500 flats within the meaning of section 2 of BMO.

### Disciplinary offences

36. Under clause 4, a licensee commits a disciplinary offence if the licensee - (a) commits misconduct or neglect in a professional respect; (b) contravenes a condition imposed on the licensee's licence; (c) contravenes a requirement in the enacted Ordinance that is applicable to the licensee; (d) without reasonable excuse, does not attend before PMSA or the disciplinary committee when summoned to do so as a witness; or (e) is convicted in Hong Kong or elsewhere of a criminal offence that - (i) may bring the profession of property management services into disrepute; and (ii) is punishable with imprisonment (whether or not the licensee was sentenced to imprisonment).

37. Mr WU Chi-wai has repeatedly expressed his view that the Administration should make it a mandatory requirement for all licensed PMCs and PMPs to fulfill the statutory requirements under BMO and to observe and follow the relevant Codes of Practice and best practice guides on building management. The

---

<sup>8</sup> For details of the breakdown of the figures on the profile of buildings which are currently managed by OCs or other forms of owners' organizations without engaging PMCs, please refer to LC Paper No. CB(2)307/14-15(02).

Administration has once proposed to stipulate in the codes of conduct to be issued by PMSA that it is the licensee's responsibility to comply with relevant requirements in BMO and DMC, otherwise it will constitute a disciplinary offence.

38. Notwithstanding the Administration's proposal, Mr WU Chi-wai maintains his view and has indicated that he intends to propose amendments to clause 4 or 5 to give the effect that should the licensee fail to meet those requirements under BMO or Codes of Practice issued that are applicable to him or her, the licensee will commit a disciplinary offence. Mr WU has provided his discussion draft of CSAs to the Bills Committee for consideration.

39. At the request of the Bills Committee, the Administration has provided its response on Mr WU Chi-wai's proposed amendments. In the Administration's view, there is no difference between its proposal and Mr WU Chi-wai's proposal in principle. The Administration has pointed out that BMO aims to facilitate building owners to form OCs and to regulate the conduct and procedures of OCs. While licensees should assist OCs and owners to comply with BMO, there are very few requirements in BMO that are directly applicable to licensees. Under section 45 and Schedule 10 to BMO, the Lands Tribunal has jurisdiction over the proceedings relating to the interpretation of the provisions in BMO and DMC. Therefore, PMSA does not have the power to determine whether a licensee contravenes BMO or a DMC, nor to issue any code of conduct for that purpose.

40. The Administration has, however, advised that after further consideration of the intention and justification behind Mr Wu Chi-wai's proposal, it agrees to move a CSA to amend clause 4(d) to provide that a licensee commits a disciplinary offence if the court determines that the licensee has contravened a requirement in BMO or a DMC that is applicable to the licensee. The Administration has also advised that having considered the suggestion of the Legal Adviser to the Bills Committee, it will propose a CSA to expand the scope of clause 4(d) so that non-compliance with a notice given under clause 21(2) and non-compliance with summons under clauses 24(1)(b) and 36(1)(b) will constitute a disciplinary offence.

41. Some members including Ms Starry LEE, Mr IP Kwok-him and Mr KWOK Wai-keung have expressed concern that a PMC may, under pressure from OC, commit acts which constitute offences under BMO or non-compliance with the codes of conduct to be issued by PMSA. These members consider that a mechanism should be put in place for a PMC to report any decisions/acts of OC which may affect the PMC's compliance with the relevant statutory requirements. The Administration agrees with members' view that licensed PMCs may report to PMSA of any cases of suspected violating acts on the decisions or instructions of

OC (including any unreasonable requests by an OC involving contravention of the requirements under BMO, the Bill and the codes of conduct) for record purpose. PMSA should take such report into account in considering any complaints against the licensed PMC concerned. The Administration has further advised that these matters will be addressed in the administrative guidelines to be issued by PMSA.

#### PMSA's power to issue codes of conduct and administrative guidelines

42. The Legal Adviser to the Bills Committee has pointed out that as presently drafted, PMSA's power to issue codes of conduct under clause 5(1) is limited to specifying matters relevant to the question of misconduct or neglect in a professional respect under clause 4(a).

43. Having regard to members' view and the observation of the Legal Adviser to the Bills Committee, the Administration will propose a CSA to amend clause 5(1) for the purpose of expanding its scope to empower PMSA to issue codes of conduct containing any practical guidelines that it considers appropriate for the purposes of section 4, including the matters that PMSA considers to be relevant to determining the question of misconduct or neglect committed by a licensee in a professional respect and the criminal offences that may bring the profession of property management services into disrepute. Concurring with members' view of the importance of the codes of conduct, the Administration will also move a CSA to clause 5(5) to require PMSA to publish the codes of conduct and the amendments made to them in the Gazette. At the request of the Bills Committee, the Administration has provided information on the issues to be covered in the codes of conduct and the administrative guidelines. Details of the information are set out in **Appendix III**.

#### Defence for licensed PMP as employee

44. Clause 61 provides that it is a defence for a licensed 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.

45. In the discussion draft of CSAs provided to the Bills Committee, Mr WU Chi-wai has proposed to amend clause 61(a) to stipulate that it is a defence only if the licensee proves that he has taken all reasonable steps and exercised all due

diligence to avoid committing the disciplinary offence. Having considered Mr WU Chi-wai's proposed amendment and made reference to provisions relating to defence in other legislations, the Administration has advised that it will move a CSA to amend clause 61(a) to the effect that PMP should take all reasonable steps and exercise all due diligence to avoid committing the offence.

### Applications for licences

#### *Licence fees*

46. Some deputations representing the trade have expressed the view that the licence fees should not be set higher than that of the membership fees of the relevant professional bodies. They have also suggested that the annual licence fees for a licensed PMC, a licensed PMP (Tier 1) and a licensed PM (Tier 2) should be \$2,200, \$400 and \$200 respectively. Some members including Ms Cyd HO has expressed concern about the affordability of PMPs in particular the PMP (Tier 2) licensees and considered that the annual licence fees for PMCs and PMPs should be proportionate to the amount of work and manpower involved in processing applications for issue or renewal of licensees respectively from PMCs and PMPs. The Administration has advised that in its view, the acceptable level of annual licence fee for a PMC should be around \$6,000 while that for a PMP should be around \$400 (Tier 2) to \$1,200 (Tier 1).

#### *Application for renewal of licences*

47. In the light of members' concerns and the observations of the Legal Adviser to the Bills Committee, the Administration agrees that the arrangement for renewing PMC and PMP licences is very important as it has a direct bearing on the livelihoods of the licensees as well as the properties they manage. The Administration will propose CSAs to clause 10 to enhance the licence renewal procedures as follows -

- (a) if a licensee has already made a renewal application within the stipulated timeframe, his licence will remain in force until the PMSA's determination of the application;
- (b) if PMSA does not receive renewal application from a PMC within the stipulated timeframe, it will proactively inform the owners or owners' organizations of the property managed by the PMC concerned;
- (c) PMSA can 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 situation, PMSA can charge a fee

and impose other conditions, and extend the validity of the licence for a period not exceeding six months if necessary; and

- (d) for those PMCs whose licence renewal applications are rejected, PMSA can extend the validity of the licence for a period not exceeding six months, subject to any prescribed fees the PMSA may charge and any conditions PMSA may impose. PMCs can continue to provide services to existing owners and owners' organizations such that they will have sufficient time to hire a new service provider.

The Administration will also move another CSA to amend clause 15(1) to the effect that for licence renewal applications made after the stipulated timeframe and for those PMCs whose licence renewal applications are rejected, PMSA is empowered to prescribe, by regulation, the fees that may be charged for extending the validity of the licence.

48. Some members including Mr WU Chi-wai are concerned about the possibility that unscrupulous directors of a defunct PMC whose licence is not renewed or revoked by PMSA may continue the operation of the PMC in disguise of a new company name and business registration. The Administration has assured members that to eliminate the possibility of PMC carrying on business through a "shell company", clause 11(2) provides that for the purposes of sections 9(2)(a)(i) and 10(2)(a)(i), in determining whether a person is a suitable person to hold a PMC licence, PMSA must have regard to a set of criteria including, for a company, "whether the company has been convicted of a criminal offence (other than an offence under this Ordinance) involving fraud or dishonesty" (clause 11(2)(b)(iv)), "whether the company has been convicted of a disciplinary offence or a criminal offence under this Ordinance" (clause 11(2)(b)(v)) and "whether every director of the company is a suitable person to be associated with the company's business of providing property management services" (clause 11(2)(b)(vi)). The criteria for determining whether a director of a company is a suitable person to be associated with the company's business of providing property management services has been further specified in clause 11(4).

### Registers

49. Having regard to the views of the Legal Adviser to the Bills Committee, the Administration has clarified that any record of convictions regarded as "spent" under section 2 of the Rehabilitation of Offenders Ordinance (Cap. 297) should not be disclosed. Given that the protection under section 2 of the Rehabilitation of Offenders Ordinance only applies to a "natural person", clause 13(2)(h) is only applicable to an individual carrying on, through an entity, the business of providing property management services as a sole proprietor or partnership but

not a PMC which is a limited company. The Administration will propose CSAs to clauses 13(2)(h) and (ha) to specify that section 2 of the Rehabilitation of Offenders Ordinance will only apply to PMCs that are natural persons. To protect the privacy of PMCs that are individuals and PMPs, the Administration will move another CSAs to clause 13(7) and (8) to specify that the conviction records of PMCs that are not individuals will not be available on the Internet, and that no person will be allowed to obtain copy of the conviction records of PMCs that are individuals and PMPs from the register.

#### Regulations for the licensing of PMCs and PMPs

50. Under clause 15, PMSA is empowered to make regulations for the licensing of PMCs and PMPs, including the criteria for holding a PMC or PMP licence while clause 11 sets out the factors that PMSA must have regard to in determining whether a person is suitable to hold a licence. Mr Paul TSE has expressed the view that clause 15, as presently drafted, may give PMSA too much discretionary power to impose additional/more stringent criteria for the issuing of licences. The Administration has advised the Bills Committee that clause 15, as presently drafted, strikes a balance between limiting the PMSA's discretionary power and allowing certain degree of flexibility for PMSA to impose criteria for issuing licences. The regulations will be made as subsidiary legislation subject to negative vetting by LegCo.

#### Licensed PMC's duty to provide information to clients

51. The Legal Adviser to the Bills Committee has pointed out that under clause 16, a licensed PMC may be required to provide its accounts and financial statements to its clients. However, there are no requirements regarding moneys received or held by PMCs for or on account of their clients. The Administration has agreed to propose a CSA to expand the scope of clause 5(1) to deal with matters such as licensee's duties. Requirements regarding moneys received or held by PMC for or on account of their clients will be addressed in the codes of conduct.

52. In response to members' suggestion, the Administration will move a CSA to clause 16(1A) to define "clients", 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.

53. Members have raised concern that clause 16(3), as presently drafted, is too wide to such an extent that owners are entitled to have access to all books and records of PMC relating not only to the relevant property/building, but also

relating to other properties/buildings or business managed/conducted by PMC which are irrelevant to the particular property/building. Also, Clause 16 seems to be silent on the burden of the cost for providing the prescribed information.

54. The Administration has advised that clause 16 is intended to require a licensed PMC to provide its client with prescribed information that related to the property management services provided by it to that client in the prescribed manner. The provision of the information is intended to be confined to information that related to the relevant property/building only. The Administration will move a CSA to clause 16(3) to reflect clearly the intent. The Administration has further advised that it will move a CSA to clause 16(1) to clarify the Administration's legislative intent that a licensed PMC should provide PMC's clients in the property for which PMC provides property management services with the prescribed information relating to the property in the prescribed manners. A further CSA will be moved to add a new subclause (4) under clause 16 to set out the manners in which a licensed PMC provides the prescribed information. The prescribed manners may include, among others, displaying a copy of the prescribed information in a prominent place in the property, and allowing PMC's clients in the property to inspect the prescribed information.

55. According to the Administration, clause 16(2) in the present form does not empower PMSA to make regulations relating to the burden of cost for providing the prescribed information. Paragraph 1(7) of Schedule 7 to BMO provides that if any owner requests in writing the manager to supply him with a copy of any draft budget, budget or revised budget, the manager should, on payment of a reasonable copying charge, supply a copy to that owner. Paragraph 2(5) of Schedule 7 to BMO provides that the manager should permit any owner, at any reasonable time, to inspect the books or records of account and any income and expenditure account or balance sheet, and on payment of a reasonable copying charge, supply any owner with a copy of any record or document requested by him. The Administration will move a CSA to add a new subclause (4) under clause 16 to give such effect.

### Regulatory powers of PMSA

#### *PMSA's power to conduct investigation*

56. Clause 18(2) provides that PMSA is not required to conduct an investigation to deal with a complaint received under subsection (1)(b) if PMSA is satisfied that the complaint is misconceived or lacking in substance. The Legal Adviser to the Bills Committee has advised that similar provisions are provided in other legislation and has suggested that reference should be made to section 39(1)(b) and (c) of the Personal Data (Privacy) Ordinance (Cap. 486) to specify

clearly in the Bill that if the complaint is made anonymously or the complainant cannot be identified or traced, PMSA may refuse to conduct an investigation to deal with a complaint received under clause 18(1)(b).

57. The Administration has explained that PMSA may refuse to investigate a complaint received under clause 18(1)(b) if the complaint is trivial, frivolous, vexatious, not made in good faith, anonymous, repetitive, or the complainant cannot be identified or traced. In the Administration's view, clause 18(2) in the present drafting is sufficient to empower PMSA not to deal with such complaints.

58. In response to members' enquiry about the safeguards for preventing the abuse of the complaint handling mechanism, the Administration has advised that clause 22(2) stipulates that a person commits an offence if he/she (a) provides any information or document, gives any answer, response, explanation or particular, or makes any statement, that is false or misleading in a material particular; and (b) knows that, or is reckless as to whether, the information, document, answer, response, explanation, particular or statement is false or misleading in a material particular. PMSA will issue administrative guidelines regarding the handling of complaints.

59. The Administration has further advised that the administrative guidelines in relation to the handling of complaints will not be made as subsidiary legislation. The arrangement is intended to provide more flexibility for PMSA to improve and refine, where appropriate, the procedures for handling complaints having regard to the actual circumstances. The Administration has stressed that the codes of conduct and the administrative guidelines will be made public. Under the proposed licensing regime, there will also be an independent appeal mechanism under which aggrieved parties can seek recourse against the decisions made by PMSA.

60. Clause 18(4) provides that PMSA must, as soon as practicable after it decides to conduct an investigation into any conduct of a licensee, notify the licensee in writing of the substance of the matter being investigated. Mr IP Kwok-him considers that it will be more desirable to specify a timeframe in clause 18(4) within which PMSA should notify the licensee, instead of using the phrase "as soon as practicable". The Administration has assured members that PMSA will specify in its service pledge the timeframe within which it must notify the licensee being investigated.

*Appointment of investigators and power to obtain information and documents*

61. Members including the Chairman, Mr WONG Kwok-hing, Mr IP Kwok-him and Mr LEUNG Che-cheung have expressed concern that PMSA may in writing appoint any person as an investigator for the purposes of conducting an investigation and the investigators so appointed will be conferred with the power to obtain information and documents relevant to the investigation. The Administration has advised that PMSA will issue administrative guidelines specifying issues such as the eligibility criteria of an investigator, the requirements on confidentiality in respect of the information and documents obtained by an investigator as well as avoidance of conflict of interests of investigators, and the PMSA's policy and procedure for retention and destruction of information obtained through investigation etc.

62. The Bills Committee notes that clause 21 provides for the investigators' power to obtain information and documents, clauses 24 and 36 stipulate the procedures of the hearing before PMSA and an appeal tribunal respectively, and section 22 of Schedule 3 is related to the Director of Audit's examination. The Administration has advised that in the light of the observation of the Legal Adviser to the Bills Committee, it agrees that there should be express provision in the Bill to empower PMSA to require electronically stored information/document to be reduced into written form on paper. The Administration will propose a CSA to this effect.

63. The Administration has further advised that clause 21 gives power to an investigator appointed under section 20 to obtain information and documents. Under clause 21(6)(a), an investigator has the power to make, if the documents is provided, copies of it or to take extracts from it; or to require that person, or any other person who is or was an employee or partner of that person, to give an explanation of or further particulars about the document. In response to the suggestion of the Legal Adviser of the Bills Committee, the Administration will move a CSA to clause 21(6)(a) to include a reference to an officer of a corporate in clause 21(6)(a), in order to cover the scenario that the person required to provide information is a corporate.

*Hearing before PMSA*

64. Having considered the suggestion of the Legal Adviser to the Bills Committee, the Administration has advised that it will move a CSA to add a new clause 24(1)(ca) to empower PMSA 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, for the purpose of aligning the power to be conferred on an appeal tribunal under clause 36(1)(d).

### *Disciplinary orders*

65. Having regard to the view of the Legal Adviser to the Bills Committee, the Administration has advised that it will move a CSA to the Bill to spell out clearly that an order made under clause 25(1) or (2) will continue to take effect according to clause 25(4) even if an application made under clause 25(6) to revoke, vary or suspend the order has been received by PMSA.

66. Clause 25(1)(b) provides that if, at the conclusion of a hearing under clause 23, PMSA is satisfied that the matter mentioned in clause 18(1)(a)(i) or (ii) is established in respect of a licensee, PMSA may make an order imposing a fine not exceeding the amount specified in Schedule 2 to the Bill. The Bills Committee notes the advice of the Legal Adviser to the Bills Committee that it is uncommon to set out a fine amount in a Schedule to a principal Ordinance and not in the provisions of the principal Ordinance. The Bills Committee has enquired about the Administration's rationale for using a Schedule to specify the fine amount.

67. The Administration has advised that in order to allow PMSA to flexibly and timely amend the maximum amount of fine to be imposed by disciplinary orders having regard to the actual circumstances, the Administration considers it desirable to stipulate the maximum amount of fine in the Schedule. The Administration has further advised that for the purposes of section 16(1)(a) of Schedule 3, "penalties" is intended to include a fine imposed as a disciplinary order under clause 25(1)(b) as well as a "penalty" imposed for a failure to pay the levy under clause 55(1)(a). In response to the suggestion of the Legal Adviser to the Bills Committee, the Administration will, for the sake of clarity, move CSAs to clauses 25(1)(b) and 25(8) to change "fine" to "penalty" in the English text.

### *Hearing before PMSA and hearing before the disciplinary committee*

68. Mr Paul TSE considers that the Administration's proposal to provide PMSA with flexibility in determining the types of matters to be heard before PMSA or the disciplinary committee and how the hearings are to be conducted will create uncertainty. The Administration has advised that clause 18 empowers PMSA to conduct an investigation into a licensee if it has reasonable cause to suspect that the licensee has committed a disciplinary offence, no longer meets the criteria for holding a licence, or it has received a complaint in this regard. If, at the conclusion of the investigation, PMSA is satisfied that there is evidence that tends to establish that the licensee has committed a disciplinary offence or no longer meets the criteria for holding a licence, PMSA may, depending on the

severity of the case, decide whether to conduct a disciplinary hearing by PMSA or the disciplinary committee. The Administration's intention is that the more serious cases will be handled by PMSA and the relatively minor ones will be handled by the disciplinary committee.

### Appeal mechanism

#### *Establishment of appeal panel and appeal tribunal*

69. Part 6 of the Bill provides for the establishment of appeal panel and appeal tribunal for hearing appeals lodged by persons who are aggrieved by the decisions of PMSA, the power that the appeal tribunal may exercise when hearing an appeal, and the related offences. The Bills Committee notes that for hearing appeals, the Secretary for Home Affairs ("SHA") must appoint a panel of individuals consisting of one chairperson and 11 other members under clause 32(1). As advised by the Administration, SHA will appoint individuals with suitable knowledge and experience from various sectors to the appeal panel. A member of PMSA is not eligible for appointment to the appeal panel. For the hearing of each appeal, the chairperson of the appeal panel will appoint from the panel an appeal tribunal consisting of one individual as chairperson of the tribunal and two individuals as the other members of the tribunal. The above measures are to ensure the independence and impartiality of the appeal panel.

#### *Hearing before appeal tribunal*

70. Clause 35(a) provides that the chairperson of an appeal tribunal must fix the date, time and place for the hearing of the appeal so that the hearing can commence as soon as practicable. Mr IP Kwok-him considers it more desirable to specify a timeframe for the appeal tribunal to fix the date and time for the hearing of appeals. The Administration has assured members that PMSA will specify its service pledge the timeframe for the hearing of appeals in its administrative guidelines.

71. Mr Paul TSE has suggested that consideration should be given to specifying clearly in clause 36(3) that any party to the appeal may request the hearing, or any part of the hearing, to be held in private, and it is for the chairperson of the tribunal to decide whether such request should be acceded to after consulting the parties concerned. The Administration has accepted the suggestion and will move a CSA to clause 36(3) to this effect. The Administration will make corresponding amendments to clause 24(4) which empowers PMSA to order a hearing or any part of the hearing to be held in private.

72. Mr Paul TSE also considers that in order to ensure procedural justice to all parties to the appeal, consideration should be given to raising the sanction presently proposed under clause 36(6)(b) for failure to comply with an order made under clause 36(4) by a person who is not a licensee. The Administration has advised that clause 36(6) provides that the chairperson of the appeal tribunal may make an order such as giving a verbal warning or written reprimand, imposing a fine, suspending or revoking the licence against a licensee who fails to comply with his order and publicises or discloses any evidence, information or document given at the hearing. For a person who is not a licensee and does not comply with the order made under clause 36(4), it is not possible to impose sanctions such as suspending or revoking the licence by a disciplinary order. The Administration considers it appropriate and proportionate to order a public reprimand against the person by the chairperson of the appeal tribunal.

#### *Decision of appeal tribunal*

73. Clause 25(2) empowers PMSA to order the licensee to pay the costs and expenses incurred in relation to the hearing, whether by PMSA or any person attending the hearing as a witness if it makes an order under clause 25(1) against a licensee. In response to the suggestion of the Legal Adviser to the Bills Committee, the Administration will move a CSA to clause 37(1) to make it clear that the appeal tribunal also has power to make an order for costs and expenses incurred in relation to hearings before the tribunal, as in the situation provided in clause 25(2) relating to disciplinary hearings.

#### *Offences relating to appeal*

74. Under clause 39(1), a person commits an offence if the person, at a hearing before an appeal tribunal, gives any evidence, or provides any information or document, that is false or misleading in a material particular, and the person knows that, or is reckless as to whether, the evidence, information or document is false or misleading in a material particular. Clause 39(2) specifies that a person commits an offence if the person, without reasonable excuse, fails to comply with a summons issued by an appeal tribunal to the person under clause 36(1)(b). Clause 39(3) provides penalties for the above offences. A person who commits the above offences is liable on conviction on indictment to a fine of \$200,000 and to imprisonment for one year; or on summary conviction to a fine at level 6 (i.e., \$100,000) and to imprisonment for six months.

75. Members have asked about whether and how the penalty provisions under clause 39(3) differ from those penalty provisions for offences of the same nature and similar gravity in other legislation. Members are concerned whether a person

committed the offences stipulated under clause 39(1) or (2) will be liable for a similar offence under the Criminal Procedure Ordinance (Cap. 221) ("CPO").

76. The Administration has advised that in proposing penalties for the offences under clause 39, it has made reference to those penalties of the same nature under other legislation, such as the Estate Agents Ordinance (Cap. 511) ("EAO")<sup>9</sup>, and the penalties are the same as those provided under clause 39. While no offences of an identical nature to those under clauses 28 and 39 are found under CPO, the Administration notes that offences such as perjury are provided under Part V of the Crimes Ordinance (Cap. 200). In accordance with section 31 of the Crimes Ordinance, if any person lawfully sworn as a witness wilfully makes a statement in any judicial proceeding which is material in that proceeding and which he knows to be false or does not believe to be true, he shall be guilty of perjury and shall be liable on conviction upon indictment to imprisonment for seven years and to a fine. The Director of Public Prosecutions will, depending on the actual circumstances of individual case, apply the appropriate legal provision for prosecution.

### Provisions in relation to immunity and privilege against self-incrimination

#### *Provisions on immunity*

77. Clause 30 provides that a person who gives evidence under section 18 and a person, such as a party, solicitor, counsel and witness, who appears at a disciplinary hearing under section 23 have the same privileges and immunities as the person would have if the investigation/hearing are civil proceedings in the Court of First Instance. In the Administration's view, the Bill should provide the above protection to persons providing information to the investigators or the disciplinary committee, or those attending disciplinary hearing, so as to allow the investigators and the disciplinary committee to conduct investigation and hearing smoothly and effectively. The same protection should also be given to persons providing information and giving evidence at the appeal tribunal.

78. Having regard to members' view and the observation of the Legal Adviser to the Bills Committee, the Administration has advised that it will move a CSA to add a new clause 61A to specify clearly that a 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 are

---

<sup>9</sup> Under sections 55(1)(h)(iv) and (3)(b) of EAO, any person who, without reasonable excuse, makes any statement or furnishes any information, which is false or misleading in a material particular in purported compliance with any requirement imposed for the purposes of proceedings conducted by an appeal tribunal, commits an offence.

civil proceedings in the Court of First Instance.

*New proposed clauses on self-incrimination*

79. According to the Administration, the proposed inclusion of clause 31 in the Bill is to prevent a person from refusing to cooperate on the ground of worrying that the information or responses provided might incriminate the person himself/herself. It strikes a fair balance between enabling investigators and the PMSA to obtain the necessary information or responses to carry out an effective investigation or to determine any disciplinary matters on one hand, and respecting the right of the persons providing the information or responses against self-incrimination on the other. Similar provisions can be found in other legislation, such as the Residential Properties (First-hand Sales) Ordinance (Cap. 621) and the Securities and Futures Ordinance (Cap. 571).

80. Having considered the view of the Legal Adviser to the Bills Committee and consulted the Department of Justice, the Administration will move CSAs to delete clause 31 and add new clause 25A under Part 5 and new clause 39A under Part 6 to give the effect that the provisions in relation to self-incrimination should be applicable to hearings before PMSA, disciplinary committee and appeal tribunal.

Register of interests and disclosure of interests

81. Members including the Chairman, Mr IP Kwok-him, Mr Paul TSE and Mr Alan LEONG are concerned about the requirement for disclosure of interests by members of PMSA, members of disciplinary committee and members of the appeal tribunal, both at the time of their appointment and during the period of holding office. The Bills Committee has requested the Administration to elaborate the provisions in the Bill related to the disclosure of interests.

82. The Administration has explained that clause 45(1) provides that a member of PMSA must disclose to PMSA any interest that the member has on his/her first appointment to PMSA, at the beginning of each calendar year after his/her appointment, on becoming aware of the existence of an interest not previously disclosed under this subsection, and after any change occurs to an interest previously disclosed under this subsection. Clause 46(2) provides that if a member of PMSA has a pecuniary interest (whether direct or indirect) or a personal interest (greater than that which a person has as a member of the public) in any matter under discussion at a meeting of PMSA, the member must disclose the nature of the interest at the meeting and the disclosure must be recorded in the minutes of the meeting.

83. The Administration has further advised that under section 23 of Schedule 3, PMSA may establish committees<sup>10</sup> and under section 23(9) of Schedule 3, such committees may regulate its own procedure. Every member of a committee is to be appointed by PMSA. They may include members and non-members of PMSA. For the disclosure of interests of committee members, clauses 45(1) and (2) set out the requirements pertaining to members and non-members of PMSA respectively<sup>11</sup>. Clause 46(9) provides that subsections (1), (2), (3) and (8) of clause 46 apply to a member of a committee of PMSA, hence the requirements under clause 46(2) also apply to a member of a committee of PMSA (including the disciplinary committee). If a member of the disciplinary committee has a disclosable interest with a PMC or a PMP involved in a hearing of the disciplinary committee, the member should make a disclosure under clause 46(2). The Administration will move a CSA to specify clearly in section 23(9) of Schedule 3 that the committees shall be subject to clause 46(9) so that the procedure made by the committees would not be inconsistent with the above requirements on the disclosure of interest.

84. As regards the appeal tribunal, members are advised that clause 38 empowers SHA to prescribe, by regulation, the procedures for an appeal. SHA will consider whether it is necessary to specify in the subsidiary legislation the requirements and procedures etc. in respect of disclosure of interests by a member of an appeal panel or an appeal tribunal.

85. Members have expressed concern about the definition of "disclosable interest" ("應披露利害關係"). Mr Paul TSE considers that the existing definition of "disclosable interest" ("應披露利害關係") as provided in clause 46(1) has a rather narrow coverage and does not include the concept of "conflict of interest". Mr Paul TSE, Mr WONG Kwok-hing and Ms Claudia MO have enquired whether there is a need for the Administration to refine the Chinese expression "應披露利害關係" to "應披露利益關係" as the definition of "disclosable interests" ("應披露利害關係") seems to cover only "material advantage".

86. The Bills Committee notes the Administration's explanation that clause 46 provides for the procedures for disclosure of interests by members of PMSA at a meeting. According to clause 46(1), "disclosable interest" ("應披露利害關係")

---

<sup>10</sup> Clause 2 specifies that the disciplinary committee means the standing committee established under section 23(1) of Schedule 3.

<sup>11</sup> Clauses 45(1) and (2) provide respectively that a member of the PMSA and a member of its committee who is not also a member of the PMSA must disclose to the PMSA any interest on the member's first appointment, at the beginning of each calendar year after the member's appointment, on becoming aware of the existence of an interest not previously disclosed under this subsection and after any change occurs to an interest previously disclosed under this subsection.

means (a) a pecuniary interest (whether direct or indirect); or (b) a personal interest greater than that which a person has as a member of the public. If a member of PMSA has a "disclosable interest" in any matter under discussion at a meeting of the PMSA, the member must disclose the nature of the interest at the meeting and the disclosure must be recorded in the minutes of the meeting. The definition of "disclosable interest" in clause 46(1) includes all actual or potential interests. Clause 46(2) also requires members of PMSA to disclose the nature of the interests. In the Administration's view, the present drafting of clause 46 has fully reflected the legislative intent. With reference to the provisions concerning "disclosure of interests" in other legislations<sup>12</sup>, the Administration considers it more appropriate to use "應披露利害關係", instead of "應披露利益關係" as the Chinese equivalent of "disclosable interest".

87. In response to members' further enquiry, the Administration has explained that under clause 46(1)(b), "disclosable interest" ("應披露利害關係") is defined as "a personal interest greater than that which a person has as a member of the public". These may include interpersonal relationship (such as spouse, relatives, friends, etc.), or individual member's relationship with other relevant organisations/institutes. Similar requirement is also found in other legislations.

#### Schedule 1 - categories of property management services

88. Regarding the seven categories of property management services set out in Schedule 1 as mentioned in paragraph 22 above, members are concerned about how each defined category of services will be further subdivided. The Chairman is of the view that the definition of "General management services relating to a property" is not clear and has requested the Administration to consider how to refine the wording so as to clearly specify the scope of services referred to.

89. The Administration has advised that according to clause 3, PMSA is empowered to prescribe the types of services under each category by regulation. It is appropriate to retain "General management services relating to a property" in Schedule 1, such that PMSA can prescribe under this category those types of services which cannot be captured by other categories.

90. At the request of the Bills Committee, the Administration has provided information on its preliminary thought on the types of services under each category. According to the Administration, property management requires multi-disciplinary professional knowledge. Modelling on the Specification of Competency Standards for Property Management Industry of the Hong Kong

---

<sup>12</sup> Provisions concerning "disclosure of interest" can be found in section 30 of Schedule 5 to the Competition Ordinance (Cap. 619), section 10 of EAO and section 38 of the West Kowloon Cultural District Authority Ordinance (Cap. 601).

Qualifications Framework, Schedule 1 lists out seven categories of property management services as mentioned in paragraph 22 above. Except for "Management of the environment of a property", which will be divided into four sub-categories, others will serve as stand-alone category. PMCs providing more than one category or sub-category of services will be required to obtain licences. Details of the expected services within each category are set out in **Appendix IV**.

### Schedule 3 - provisions in relation to PMSA

#### *Appointment of members of PMSA*

91. The Bills Committee notes the view of the seven property management related professional bodies that the proportion of representatives of PMPs or members of the relevant professional bodies in PMSA and its disciplinary panels (including investigating committee, appeal panel and appeal tribunal) should be increased. In their view, this will help PMSA to have a clearer insight of the operation of the industry and assist the disciplinary panel in handling the complaint cases received in a fair and proper manner.

92. The Administration has advised that PMSA will consist of the Chairperson, the Vice-chairperson and not more than 18 ordinary members from three categories of individuals as set out in the proposed section 2(2) of Schedule 3 in order to strike a balance between protecting the interests of the industry and those of property owners and the general public. While "Category III persons" (i.e. individuals who appear to the Chief Executive ("CE") to be suitable for appointment as members) will take up at least half of the ordinary members of PMSA, half of the other ordinary members are "Category I persons" who are individuals engaging in property management services and another half of those members are "Category II persons" (i.e. individuals who because of their experience in property management, general administration or consumer affairs, appear to CE to have knowledge of property management services).

#### *Terms of appointment*

93. Under section 3(2), CE may determine the terms of appointment (including remuneration ("薪酬") and allowances) of the members of PMSA. Some members including Mr IP Kwok-him have expressed concern about the appropriateness of using the term "remuneration" ("薪酬"). The Administration has advised that its policy intent is to empower CE to determine the provision of nominal remuneration or allowances to members of PMSA. Having regard to members' concern, the Administration will move a CSA to amend section 3 of Schedule 3 for the purpose of replacing the Chinese expression of remuneration ("薪酬") with "酬金".

### *Acting Chairperson*

94. Section 6 of Schedule 3 provides that "if, for any period, the Chairperson is temporarily absent from Hong Kong or, for any other reason, temporarily unable to perform the functions of the office of Chairperson, the Vice-chairperson is to act in the place of the Chairperson during that period". Members have pointed out that with the increasing popularity of Internet and rapid technology advancement, the Chairperson may still be able to perform the roles and functions of the office of Chairperson while he/she is out of town. After consideration, the Administration has advised that it will propose a CSA to empower the Chairperson of PMSA to determine, having regard to the specific circumstances, whether it is necessary to designate the Vice-chairperson to act in his place when he is temporarily absent from Hong Kong.

### *Quorum for meetings*

95. In response to the suggestion of the Legal Adviser to the Bills Committee on the proposed section 9(2) of Schedule 3 to the Bill, the Administration has advised that it will move a CSA to the Bill with reference to section 10(5)(c) of the Communications Authority Ordinance (Cap. 616) ("CAO") to ensure that the confidentiality of PMSA's meetings will not be compromised as a result of individual members participating by electronic means as mentioned in section 9(2).

### *Written resolutions*

96. Under section 13(1) of Schedule 3, a resolution is a valid resolution of PMSA, even if it is not passed at a meeting of PMSA, if (a) it is in writing; (b) proper notice of it is given to all members of PMSA; and (c) it is signed, or assented to, by a majority of the members of PMSA by letter, fax or other electronic transmission. Section 13(3) and (4) provide that if any member of PMSA requests, by written notice addressed to the Chairperson, that a resolution proposed to be made under subsection (1) be referred to a meeting of PMSA for consideration, the proposed resolution must be referred to a meeting of PMSA. Such a request must be made within 14 days after the date on which the notice referred to in subsection (1)(b) is given.

97. The Legal Adviser to the Bills Committee has pointed out that since each member assenting to the proposed resolution under section 13(1) is likely to sign their own copy, it is necessary to provide that the resolution may be in the form of one or more documents, each in the same form and signed by one or more members of PMSA. The Administration has agreed to move a CSA to add a new

subsection (1A) under section 13 for this purpose. The Administration will move another CSA to the Bill with reference to section 12(3) of CAO to provide that a written resolution assented to under the proposed section 13(1)(c) will become void if a meeting is subsequently requested within the 14-day period under section 13(4). The Administration will move a CSA to add a new subsection (5) under section 13 for this effect.

### *Annual report*

98. Section 20 of Schedule 3 provides that after the end of each of its financial year, PMSA must prepare an annual report, which must contain an outline of the investigations conducted by PMSA, a summary of complaints received, and an outline of all proceedings brought before appeal tribunals. Some members including the Chairman and Mr Alan LEONG share a similar view that the cases heard by PMSA, the disciplinary committee or the appeal tribunal and their deliberations/decisions are useful reference for PMCs, PMPs, property owners and owners' organizations. Mr Alan LEONG considers that PMSA should keep a database of the judgments and make available the information therein for public access.

99. The Administration concurs with members' view that it is necessary for the annual report to contain an outline of all disciplinary hearings conducted under clause 23. The Administration will move a CSA to add a new subsection (ba) to section 20(2) of Schedule 3 for this purpose. PMSA will also file the justifications of the decisions of PMSA, the disciplinary committee and the appeal tribunal. The Administration has further advised that clause 13 of the Bill also provides that 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 PMC or PMP in relation to disciplinary offences or criminal offences under the Bill. The Administration's preliminary thinking is that the conviction record in the registers will include the disciplinary offences committed by and the relevant punishments of the licensees. In the Administration's view, the proposed arrangement allows the public to be fully apprised of the decisions of PMSA, the disciplinary committee and the appeal tribunal as well as the justifications concerned.

### Levy on conveyancing transactions

#### *Payment of Levy*

100. As advised by the Administration, PMSA will be a self-financing statutory body supported by income generated from both licence fees and a very small amount of fixed levy (around \$200 - \$350) to be imposed on each conveyance on

sale chargeable with stamp duty under head 1(1) in the First Schedule to the Stamp Duty Ordinance (Cap. 117) ("SDO"). In the Administration's view, the proposed amount of fixed levy per transaction (around \$200 - \$350) is an amount which property purchasers can well afford and will not add to their financial burden. While the imposition of levy will be distinct and separate from stamp duty, the collection arrangement will be very much similar to that for stamp duty which is simple and straight-forward. The Stamp Office of the Inland Revenue Department ("IRD") will collect the levy on behalf of PMSA when the conveyance on sale is submitted to the IRD for stamping.

101. The Bills Committee has enquired whether a levy will be charged in the situation that the change of ownership of a property owned by a company is effected through the transfer of shares of the company. The Administration has explained that a fixed levy will be imposed on each conveyance on sale chargeable with stamp duty under head 1(1) in the First Schedule to SDO. The transferee under a leviable instrument will be liable to pay the levy payable for the instrument. The Legal Adviser to the Bills Committee has also advised that according to clause 51(1) and head 1(1) in the First Schedule to SDO, an instrument will fall within the description of leviable instrument if the subject matter of an instrument involves an immovable property in Hong Kong.

#### *Failure to pay levy*

102. According to clause 55, if the levy payable for a leviable instrument is not paid within the payment period, PMSA may, without limiting any other remedy of PMSA for recovering the levy, issue a certificate certifying that the person named on the certificate is liable to pay the levy and penalty. Mr IP Kwok-him has raised concern that the person named on the certificate may claim that he/she has not received a copy of the certificate due to failure of postal delivery. He has suggested that the Administration should specify clearly in clause 55(4) that a copy of the certificate of levy and penalty under this section should be served by registered post if it is to be sent by post to the person's last known postal address, or place of abode, business or employment.

103. The Administration has advised that clause 55 sets out the follow-up measures PMSA may take if a transferee fails to pay a levy within the payment period. In drawing up the arrangement for serving a copy of the certificate on the person affected, reference has been made to the arrangement of signature and service of notices under the Inland Revenue Ordinance (Cap. 112). The Bill does not specify the type of post by which the certificate of arrears is to be served in order to allow flexibility for PMSA to determine the way of serving the notice having regard to the actual circumstances. In the Administration's view, this

arrangement can reduce the administrative cost of PMSA and clause 55, as presently drafted, is appropriate.

### *PMSA's powers to remit and refund*

104. In response to members' enquiry, the Administration has advised that there may be cases where a transferee needs not pay the stamp duty in respect of an immovable property transferred to him/her (e.g. if his/her appeal against the payment of stamp duty is successful). Therefore, there is a need to include in the Bill an enabling clause for PMSA to remit and refund levy or penalty paid or payable for a leviable instrument. The Administration has further explained that under clause 51(1), a leviable instrument means an instrument that is a conveyance on sale and chargeable with stamp duty under head (1) in the First Schedule to SDO. According to IRD, as far as a conveyance on sale specified in SDO is concerned, if the conveyance is between associated bodies<sup>13</sup> as stipulated by section 45 and the application for exemption is made after payment of the stamp duty, the stamp duty so paid can be refunded. Under the circumstances, the levy paid in accordance with the Bill will also be refunded.

### Schedule 4 - Provisional PMP licences

#### *Application for provisional PMP licences*

105. Some members including Mr IP Kwok-him has expressed concern that the proposed section 2(4)(b) to (e) of Schedule 4 is too rigid and will have the effect of rejecting all applications where the applicants have past records of criminal conviction or whose application for a licence has been refused, revoked or suspended. As explained by the Administration, section 2(4) of Schedule 4 provides that when determining whether an applicant for a provisional PMP licence is a suitable person to hold the licence, PMSA must have regard, for instance, to whether that person is a mentally disordered person within the meaning of section 2(1) of the Mental Health Ordinance (Cap.136), whether that person has been convicted of a criminal offence involving fraud or dishonesty, and whether that person has been convicted of a disciplinary offence or a criminal offence under the Bill. The Administration has stressed that PMSA will decide whether that person is suitable to hold the licence having regard to the specific circumstances of the case. PMSA will not automatically determine an applicant as not suitable to hold the licence solely because he/she falls within one or more than one description in section 2(4) of Schedule 4.

---

<sup>13</sup> That one is beneficial owner of not less than 90% of the issued share capital of the other, or a third such body is beneficial owner of not less than 90% of the issued share capital of each.

### *Appeal in relation to provisional PMP licences*

106. Having considered the suggestion of members and the Legal Adviser to the Bills Committee, the Administration has advised that it will move a CSA to improve the drafting of section 3(1) to spell out expressly that the term "任何人" ("a person") referred to applicants for provisional PMP licences. Another CSA will be moved to add a new section 3A in Schedule 4 to specify clearly that clauses 12 and 13 relating to the application and renewal of licences, the PMSA's disciplinary powers under Part 5, the appeal mechanism under Part 6 and the defence under clause 61 should apply to the holders of provisional PMP licences.

### Subsidiary legislation to be made after the passage of the Bill

107. Many members including Mr WU Chi-wai, Mr CHAN Kin-por and Ms Claudia MO have urged the Administration that the Bill, if passed, should come into operation as soon as practicable. Taking into account the number of items of subsidiary legislation to be introduced as detailed in Appendix III, their complexity, importance and controversy as well as far-reaching implications involved, members are concerned that LegCo may not have sufficient time to scrutinize the subsidiary legislation within the tight timeframe under the negative vetting procedure. Members have urged the Administration that the draft subsidiary legislation relating to the Bill should be made available to the Panel on Home Affairs as early as possible for consideration.

108. The Administration has undertaken to submit the subsidiary legislation relating to the Bill in batches, and consult the Panel on Home Affairs on the draft subsidiary legislation as early as practicable. In response to members' further enquiry, it has advised that it envisages that the subsidiary legislation including those relating to the service(s) within a category of services set out in Schedule 1 as a property management service, the licensing criteria of PMCs and PMPs, and the procedures for the hearing of appeals will be introduced into LegCo at around the fourth quarter of 2016.

### **Commencement**

109. Under clause 1, the Property Management Services Ordinance comes into operation on a day to be appointed by SHA by notice published in the Gazette.

110. Members have enquired about the timetable for implementing the enacted Bill. The Administration has advised that the enacted Bill will be implemented in phases. Following the passage of the Bill, the Administration will proceed with

the preparatory work for the gazettal of the commencement notice of the Ordinance and the appointment of members of PMSA.

### **Committee stage amendments**

111. Apart from the CSAs to be moved by the Administration as elaborated in paragraphs 20, 26, 30, 35, 40, 43, 45, 47, 49, 51-52, 54-55, 62-65, 67, 71, 73, 78, 80, 83, 93-95, 97, 99 and 106 above, the Administration will also move some textual amendments to the Bill. A full set of draft CSAs to be moved by the Administration is in **Appendix V**. The Bills Committee does not object to these CSAs.

112. The Bills Committee will not propose any CSAs to the Bill.

### **Follow-up action by the Administration**

113. The Administration has undertaken to consult the Panel on Home Affairs on the draft subsidiary legislation to be made after the passage of the Bill.

### **Resumption of Second Reading debate on the Bill**

114. The Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting of 3 February 2016, subject to the moving of CSAs by the Administration.

### **Advice sought**

115. Members are invited to note the deliberations of the Bills Committee.

**Bills Committee on Property Management Services Bill**

**Membership list**

**Chairman** Hon Tony TSE Wai-chuen, BBS

**Deputy Chairman** Hon WU Chi-wai, MH

**Members**

Hon James TO Kun-sun  
Hon Abraham SHEK Lai-him, GBS, JP  
Hon WONG Kwok-hing, BBS, MH  
Hon Cyd HO Sau-lan, JP  
Hon Starry LEE Wai-king, JP  
Hon CHAN Kin-por, BBS, JP  
Hon CHEUNG Kwok-che  
Hon IP Kwok-him, GBS, JP  
Hon Paul TSE Wai-chun, JP (since 15 October 2014)  
Hon Alan LEONG Kah-kit, SC  
Hon WONG Yuk-man (up to 19 December 2014)  
Hon Claudia MO  
Hon Steven HO Chun-yin, BBS  
Hon Frankie YICK Chi-ming, JP  
Hon LEUNG Che-cheung, BBS, MH, JP  
Hon Alice MAK Mei-kuen, BBS, JP  
Hon KWOK Wai-keung  
Hon Christopher CHUNG Shu-kun, BBS, MH, JP

(Total : 19 Members)

**Clerk** Ms Alice LEUNG

**Legal Adviser** Mr YICK Wing-kin

**Bills Committee on  
Property Management Services Bill**

List of organizations/individuals which/who have given views to the Bills Committee

1. Civic Party
2. Ms Amy YUNG Wing-sheung, Islands District Council Member
3. The Hong Kong Institute of Housing
4. Housing Managers Registration Board
5. The Hong Kong Association of Property Management Companies
6. Greater China Institute of Property Management
7. The Incorporated Owners of Fung Wah Estate
8. The Incorporated Owners of Fu Tor Loy Sun Chuen (Phase 1)
9. Royal Institution of Chartered Surveyors Hong Kong
10. The Hong Kong Institute of Facility Management Ltd.
11. Chartered Institute of Housing Asian Pacific Branch
12. The Hong Kong Institute of Surveyors
13. Labour Party
14. Ms Edith LEE
15. 宏景花園關注組
16. MTR Corporation Limited
17. The Property Owners Anti-Bid Rigging Alliance
18. The Democratic Party

19. Mr MAN Chi-wah
20. The Federation of Hong Kong Property Management Industry Limited
21. Liberal Party Youth Committee
22. Hong Kong Institute of Real Estate Administrators
- \*23. A member of the public
- \*24. Mr YEUNG Wai-sing, Eastern District Council Member
- \*25. Mr Arion LAU Chi-ming, Practitioner of Property Management Service in Hong Kong
- \*26. Ms Kimmy S H TSENG
- \*27. The Law Society of Hong Kong
- \*28. Mayer Brown JSM

\* Organizations/individuals which/who have given written views only.

**Bills Committee on  
Property Management Services Bill**

**(A) Issues and matters to be covered in subsidiary legislation**

<b>Item No.</b>	<b>Issues/matters</b>
1.	<p>There will be three sets of subsidiary legislation, to be made after the passage of the Bill on Property Management Services Bill ("the Bill"), specifying the following issues -</p> <ul style="list-style-type: none"> <li>(a) the service(s) within a category of services set out in Schedule 1 to the Bill as a property management service, the licensing criteria for property management companies ("PMCs") and property management practitioners ("PMPs"), the prescribed information to be provided by a licensed PMC to its clients and the relevant fees under the Bill (to be made by the Property Management Services Authority ("PMSA"));</li> <li>(b) the procedures for the hearing of appeals (to be made by the Secretary for Home Affairs ("SHA"))<sup>1</sup>; and</li> <li>(c) the amount of levy and related matters.</li> </ul>

---

<sup>1</sup> As advised by the Administration, SHA will consider whether it is necessary to specify in the subsidiary legislation the requirements and procedures etc. in respect of disclosure of interests by a member of an appeal panel or an appeal tribunal.

**(B) Issues and matters to be covered in the codes of conduct**

<b>Item No.</b>	<b>Description</b>
1.	The professional conduct that licensees should comply with.
2.	Acts or omissions that will be considered as disciplinary offences, including contravention of the requirements under the Bill, the codes of conduct as well as certain requirements under the Building Management Ordinance (Cap. 344) ("BMO") and other relevant ordinances.
3.	The timeframe within which licensees should notify PMSA in writing, in the prescribed matters in the prescribed manner, of any change to particulars previously submitted to PMSA.
4.	Requirements regarding moneys received or held by PMCs for or on account of their clients.

**(C) Issues and matters to be covered in the administrative guidelines<sup>2</sup>**

<b>Item No.</b>	<b>Description</b>
1.	Specific requirements that PMCs should comply with in daily operation, including, (a) the proper keeping of records and documents relating to their management responsibilities and the transfer of such records and documents to the new PMC within a specified timeframe when they cease to provide service to their clients; (b) the duty of PMCs and PMPs to remind owners and/or owners' organizations of the legislative requirements related to building management; (c) the duty of licensees to notify PMSA of any change to particulars previously submitted to PMSA; (d) the duty of PMCs to inform their clients or prospective clients the date on which their licences are going to expire; (e) the duty of PMCs to inform their clients in case their licences were suspended, revoked or not to be renewed and; (f) specific requirements in relation to the preparation of budget, keeping of financial statements for clients, etc.
2.	The ratio of the number of Tier 1 and Tier 2 licensed PMPs to the number of flats and area being managed.
3.	Report to PMSA of any suspected violating acts (including any unreasonable requests by owners' corporations involving contravention of the requirements under BMO, the Bill and the codes of conduct). PMSA shall take such report into account in considering any complaints against the licensed PMC concerned.
4.	Complaints handling procedures, covering, inter alia, what constitutes a reasonable timeframe for the provision of information or document required by the investigator and how to set the time and place at which the information or document is to be provided.

---

<sup>2</sup> As advised by the Administration, compliance with certain administrative guidelines issued by PMSA (e.g. items no. 1 and 2) will be one of the licensing conditions of PMCs/PMPs. Failure to comply with such administrative guidelines will therefore be contravention of the licensing conditions, which is subject to disciplinary action in accordance with clause 4(b).

<b>Item No.</b>	<b>Description</b>
5.	Eligibility criteria of an investigator, the requirements on confidentiality in respect of the information and documents obtained by an investigator as well as avoidance of conflict of interests of investigators, and PMSA's policy and procedure for retention and destruction of information obtained through investigation etc.
6.	Service pledge regarding the timeframe for the hearing of appeals.
7.	Types of matters to be heard before PMSA or the disciplinary committee and how the hearings were to be conducted.
8.	Assessment criteria and mechanism to be adopted by PMSA for obtaining a PMP licence.

**Bills Committee on  
Property Management Services Bill**

**Expected services within each category of services  
set out in Schedule 1 to the Bill**

***(a) General management services relating to a property***

This category is on the daily services for and liaison with owners, residents and tenants. Examples include handling and following up on enquiries, complaints and suggestions, convening of regular meetings such as owners' committee meeting, management committee meeting, owners' general meeting and annual general meetings and/or periodical submission of work report.

***(b) Management of the environment of a property***

This category is on the cleanliness, hygienic conditions, landscape improvement and safety of the environment, and will be further divided into four sub-categories, namely -

- (i) Cleanliness of common types of buildings;
- (ii) Landscape design and maintenance;
- (iii) Environmental protection; and
- (iv) Security and fire safety.

***(c) Repair, maintenance and improvement of a property***

This category is on repair and maintenance of the building structure and its facilities including ventilation, plumbing and drainage, air-conditioning and electrical installations. It also involves the maintenance and continuous improvement of the functions of a building in order to enhance its value. Purchasing and outsourcing of repair and maintenance works of buildings are included.

***(d) Finance and asset management relating to a property***

This category is on financial management and budget preparation. Examples include collection of management fees, submission of income and expenditure statement and balance sheet and calculation of annual expenditure on regular items and service contracts.

**(e) *Facility management relating to a property***

This category is on property management related facility management including the management of club house, shopping centre and other types of ancillary facility e.g. carparks and loading areas. For the management of club house, it includes the application of relevant licences and maintenance and replacement of recreational facility. For the management of shopping centre, it includes the use, management and development of such facilities or premises. For the management of carparks and loading areas, it includes the access control system, illumination, air quality and direction signs etc.

**(f) *Human resources management relating to personnel involved in the management of a property***

This category is on the plan on manpower needs, staff recruitment, training, performance assessment and work safety.

**(g) *Legal services relating to the management of a property***

This category is on the understanding on the general scope of work of government departments and the judiciary system, arrangement of litigation and mediate, drafting of contracts and provide suggestions on the Building Management Ordinance (Cap. 344).

Source: the Administration's response to the matters raised at the meeting of the Bills Committee on 25 November 2014 (LC Paper No. CB(2)556/14-15(02))

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"><li>(a) a body corporate incorporated or established by or under any other Ordinance; and</li><li>(b) a body corporate incorporated or established outside Hong Kong;”.</li></ul>
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"><li>“(d) the licensee, without reasonable excuse, fails to—<ul style="list-style-type: none"><li>(i) comply with a requirement of a notice under section 21(2); or</li><li>(ii) comply with a summons under section 24(1)(b) or 36(1)(b);</li></ul></li><li>(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”.</li></ul>

- 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 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—  <b>“61A. Immunity</b> 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 “ <b>Fine</b> ” and substituting “ <b>Penalty</b> ”.
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,<br>section 19(1)   | In the Chinese text, by deleting “審核” and substituting “審計”.  |
| Schedule 3,<br>section 20(2)   | By adding—<br><br>“(ba) an outline of all hearings conducted under section 23 of this Ordinance;”.  |
| Schedule 3,<br>section 23(1)   | In the Chinese text, by deleting “違紀” and substituting “紀律”.  |
| Schedule 3,<br>section 23(9)   | By adding “section 46(9) of this Ordinance and” after “Subject to”.   |
| Schedule 4,<br>section 2       | By deleting subsection (7).   |
| Schedule 4,<br>section 3       | By deleting subsection (1) and substituting—<br><br>“(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.”.   |
| Schedule 4                     | By adding—<br><br><b>“3A. Provisions applicable to holders of provisional PMP licences</b><br>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—<br>(a) sections 12 and 13 of this Ordinance;<br>(b) Parts 5 and 6 of this Ordinance;<br>(c) section 61 of this Ordinance.”. |
| Schedule 4,<br>section 4(1)(a) | In the Chinese text, by deleting “申請或” and substituting “或”.  |

Schedule 5,      By deleting “127” and substituting “128”.  
section 1