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For Discussion on
22 May 2017

LEGISLATIVE COUNCIL
PANEL ON HOME AFFAIRS

Financial Arrangement for
the Property Management Services Authority

PURPOSE

The Property Management Services Authority (PMSA) is a self-financing statutory body. According to the relevant provisions of the Property Management Services Ordinance (Cap. 626) (PMSO) [1] (at **<u>Annex 1</u>**), the PMSA is supported by income generated from licence fees and levies. This paper seeks Members' views on the proposed financial arrangement for the PMSA and seeks Members' support for seeking the approval of the Financial Committee (FC) for the proposed loan arrangement to meet the initial operating cost of the PMSA.

BACKGROUND

Establishment of the PMSA

2. The Legislative Council (LegCo) passed the PMSO on 26 May 2016. The PMSA is a body corporate established in accordance with section 42 of the PMSO. Its principal functions are (i) to regulate and control the provision of property management services in Hong Kong by the licensing of property management companies (PMCs) and property management practitioners (PMPs); (ii) to promote the integrity, competence and professionalism of the profession of property management services; and (iii) to maintain and enhance the status of the profession of property management services. The Chief Executive has appointed the Members of the PMSA in accordance with paragraph 2 of Schedule 3 to the PMSO for a period of three years with effect from 1 December 2016. The membership list of the PMSA is at **<u>Annex 2</u>**.

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[1] Section 42(3) of the PMSO stipulates that Schedule 3 (which contains constitutional, administrative and financial provisions) has effect with respect to the PMSA. Part 5 of Schedule 3 to the PMSO stipulates the financial provisions. The relevant provisions are at **<u>Annex 1</u>**.

Financial Arrangement for the PMSA

3. The PMSA is a self-financing statutory body supported by income generated from both licence fees and a very small amount of fixed levy 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). The transferee under a leviable instrument is liable to pay the levy payable for the instrument. The arrangement for the collection of levy will be very similar to that for stamp duty, whereby the Stamp Office of the Inland Revenue Department (IRD) will collect the levy on behalf of the PMSA when the conveyance on sale is submitted to the IRD for stamping. Any cost incurred by the IRD for the PMSA should be fully recovered from the PMSA.

4. According to section 15 of the PMSO, the PMSA may, by regulation, prescribe the licence fees. According to section 62 of the PMSO, the Secretary for Home Affairs (SHA) may, by regulation, prescribe the amount of the levy. The actual level of licence fees and levy will be worked out after the commencement of the relevant principal legislation, and the licence fees will take into account the detailed licensing requirements to be specified in the subsidiary legislation.

5. In April 2014, when the Home Affairs Bureau (HAB) introduced the Property Management Services Bill to the LegCo for scrutiny, it was estimated that the recurrent expenditure of the PMSA would be around $27 million to $30 million, the annual income generated by licence fees would be around $12 million to $14 million, and the income generated from levy would be in the region of $14 million to $18 million. On this basis, the Government preliminarily estimated at that time that the amount of fixed levy for each leviable instrument would be around $200 to $350. At the initial stage of the establishment of the PMSA, a start-up loan of around $13 million to $15 million would be required to meet its operating cost before it could generate income from licence fees and levy.

LATEST ESTIMATE ON THE FINANCIAL ARRANGEMENT FOR THE PMSA

6. The latest estimates on the expenditure, income and proposed loan arrangement for the PMSA are set out in paragraphs 7 to 17 below.

Estimated Annual Recurrent Expenditure

7. Taking into account inflation over the past few years (about 10% cumulative inflation since 2014) and an estimated annual inflation at 3% in the coming years until 2014-25, when the PMSA will fully settle the loan, we estimate that the annual recurrent expenditure of the PMSA will increase from $27 million to $30 million by 10% to 20% to $30 million to $38 million.

Estimated Annual Recurrent Income

Licence Fees

8. According to section 15(1) of the PMSO[2], the PMSA may, by regulation, prescribe the fees payable for the application, renewal, issue and extension of the validity of a licence.

9. Having regard to the financial requirements of the PMSA and the acceptable level of PMCs and PMPs, we **proposed** at the Bills Committee that the levels of annual licence fees and application fees be initially set as follows –

(a) annual fee for PMC licence: $6,000
(b) annual fee for PMP (Tier 1) licence: $1,200
(c) annual fee for PMP (Tier 2) licence: $400
(d) application fee for each of the above licences: $100

10. We **propose** that the licence fees for PMCs and PMPs be **maintained** at the proposed levels above. With reference to the existing number of PMCs and PMPs in the market[3] and the three-year transitional period of the licensing regime, it is expected that the proposed levels of

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[2] Section 15(1) of the PMSO stipulates that the PMSA may, by regulation, prescribe –
(a) the information to be contained in, and the documents to accompany, an application for a licence or the renewal of a licence;
(b) the fees payable in an application for a licence or the renewal of a licence;
(c) the criteria for holding a licence;
(d) the fees payable for the issue of a licence or renewed licence;
(e) the fees payable for the extension of the validity of a licence under section 10(11)(b) or (12)(b);
(f) the conditions that may be imposed on a licence or renewed licence; and
(g) the fees payable for a copy under section 13(8).

[3] According to a survey conducted by a property management professional body in 2013, there were about 800 PMCs, 4 000 registered professional property managers (PMP(Tier 1)) and 7 500 licensed property management officers (PMP(Tier 2)).

licence fees and application fees above can generate an annual income of around $12 million to $14 million for the PMSA starting from 2020-21 (i.e. after the end of the three-year transitional period). The PMSA will, based on actual operational experience and levy income, further review the relevant fee levels and make the subsidiary legislation, which is expected to be introduced into the LegCo in mid-2018 for negative vetting.

Levy

11. Part 8 of the PMSO (relevant provisions are at **Annex 3**) provides that the PMSA may impose a very small amount of fixed levy on the transferee on each conveyance on sale chargeable with stamp duty under head 1(1) in the First Schedule to the SDO. Under Section 62 of the PMSO, SHA may, by regulation —

(a) prescribe the amount of levy payable for a leviable instrument;
(b) provide for the exemption of any class of persons or instruments from the application of Part 8 of the PMSO; and
(c) provide generally for the better carrying out of that Part.

12. As the estimated annual recurrent expenditure of the PMSA will increase to $30 million to $38 million, while the annual income from licence fees will remain unchanged, and there will be a three-year transitional period under the licensing regime, we expect that only a small number of PMCs and PMPs would obtain licences at the initial stage. As a result, the PMSA's income from licence fees at the initial stage may be relatively low. To ensure that the PMSA can maintain a balanced budget and repay the loan, the annual income from levy should be increased from the region of $14 million to $18 million to about $28 million.

13. We **initially propose** that at the early stage of the establishment of the PMSA, a levy of $350 to be imposed on each leviable instrument. According to the statistics on the number of conveyance on sale in recent years below, the average number of conveyances on sale is expected to be around 80 000 per year –

Financial Year	**Number of Conveyances on Sale**
2013-14	75 453
2014-15	95 304
2015-16	82 800
2016-17	81 319

(Source：IRD)

14. The HAB plans to introduce the relevant regulation on levy to the LegCo for negative vetting in the fourth quarter in 2017, with an aim to start collecting levy in the first quarter in 2018. It is estimated that the above proposal on levy can generate an annual income of about $28 million for the PMSA starting from 2018-19.

Loan

15. Since the PMSA has already been appointed, it needs financial and manpower resources to support its operation. However, as the relevant subsidiary legislation on levy and licence fees has not yet been enacted, the statutory funding sources of the PMSA are not yet available. We propose to apply for Loan Fund to meet the initial operating cost of the PMSA.

16. Taking into account inflation over the past few years, the time required to formulate the subsidiary legislation on levy and licence fees as two sources of statutory fund, and the need for contingency, we **propose** to apply to the Loan Fund for a loan of $22 million. The interest for the loan will be calculated at "no-gain-no-loss" rate[4]. The PMSA plans to settle the loan principal by 5 equal annual instalments starting from the 2020-21 financial year. The loan arrangement is based on the PMSA Cash Flow Projection for the financial years from 2017-18 to 2024-25 (see **Annex 4**).

17. We aim to submit the loan proposal to the FC for approval in June 2017. Since the PMSO has been passed for one year, various sectors of the community expect the PMSA to start its operation early for more effective regulation of property management services. In case the loan cannot be discussed and approved by the FC within the current legislative session, the HAB / Home Affairs Department would consider making transitional arrangement under its expenditure items to support the PMSA's initial operation and necessary expenses, which has to be fully repaid by the PMSA.

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4 The "no-gain-no-loss" rate is set at a certain percentage below the average best lending rate of note-issuing banks. That percentage is the average spread between the average best lending rate for banks in the past 10 years and the 12-month Hong Kong dollar interbank interest rate, to be reviewed every two years.

FINANCIAL IMPLICATIONS

18. The PMSA will be self-financed and supported by income generated from licence fees and the levy imposed on conveyances on sale. At the initial establishment of the PMSA before the enactment of subsidiary legislation on levy and licence fees, we propose to apply to the Loan Fund for a loan of $22 million to cope with its set-up costs and the operating expenses. The interest of the loan will be calculated at "no-gain-no-loss" rate. The above proposal does not involve any Government's recurrent expenditure.

SUMMARY OF PROPOSALS

19. In summary, to cope with the set-up costs and initial operating expenses of the PMSA, as well as its estimated recurrent expenditure in future, we **propose** –

(a) At the initial stage of establishment of the PMSA before the enactment of the relevant subsidiary legislation on levy and licence fees, to apply to the Loan Fund for a loan of $22 million to cope with the PMSA's set-up costs and initial operating expenses (see paragraphs 15 to 17 above);

(b) To meet the PMSA's recurrent expenditure in future –

(i) the licence fees should be set at a level that would generate an annual income of around $12 million to $14 million for the PMSA (see paragraphs 8 to 10 above); and

(ii) the levy should be set at a level that would generate an annual income of about $28 million for the PMSA (see paragraphs 11 to 14 above).

20. On the proposal for item (b) above, the HAB plans to –

(i) introduce the regulation on licence fees to the LegCo for negative vetting in mid-2018, with an aim to start collecting licence fees by end 2018; and

(ii) introduce the regulation on levy to the LegCo for negative vetting in the fourth quarter of 2017, with an aim to start collecting levy in the first quarter in 2018.

ADVICE SOUGHT

21. Members are invited to comment on the various proposals set out in this paper, and to support us to seek FC's approval for the proposed loan arrangement.

Home Affairs Bureau
Home Affairs Department
Property Management Services Authority
May 2017

<u>**Annex 1**</u>

Relevant Provisions of the
Property Management Services Ordinance (Cap. 626)

Part 7
The Property Management Services Authority

42. Establishment of Authority

(1) A body corporate is established with the name “Property Management Services Authority” in English and “物業管理業監管局” in Chinese.

(2) The Authority—
(a) has perpetual succession under its corporate name;
(b) must provide itself with a common seal; and
(c) may sue and be sued in its corporate name.

(3) Schedule 3 (which contains constitutional, administrative and financial provisions) has effect with respect to the Authority.

Part 5 of Schedule 3
Financial Provisions

15. Financial year

The financial year of the Authority is—

(a) the period beginning on the date on which this section comes into operation and ending on the next 31 March; or

(b) the period of 12 months ending on 31 March in each subsequent year.

16. Funds

(1) The funds of the Authority consist of—

(a) all the money received by the Authority by way of fees, levies and penalties; and

(b) all other money and property, including interest and accumulations of income, lawfully received by the Authority for its purposes.

(2) Any funds of the Authority that are not immediately required by it for the performance of its functions may be—

(a) deposited on fixed term or call deposit or in a savings account in a bank nominated by the Financial Secretary, either generally or in a particular case, for that purpose; or

(b) invested in a manner approved by the Financial Secretary.

17. Authority is exempt from taxation

(1) The Authority is exempt from taxation under the Inland Revenue Ordinance (Cap 112).

(2) To avoid doubt, subsection (1) does not apply in relation to any remuneration, benefits or expenses paid out of the funds of the Authority to a member of the Authority.

<u>Annex 2</u>

Membership List of the
Property Management Services Authority

Chairperson:	Mr Tony Tse Wai-chuen
Vice-Chairperson:	Mr Wong Kwok-hing
Category I Persons (individuals who are engaged in property management services):	Mr Ivan Tam Kwok-wing
	Mr Justin Wong Fai-sing
	Mr Paul Ng Kwong-ming
	Mr Dick Kwok Ngok-chung
	Mr Yan Wai-kiu
Category II Persons (individuals, not being Category I persons, who, because of their experience in property management, general administration or consumer affairs, appear to the Chief Executive to have knowledge of property management services) :	Ms Annie Wong Pak-yan
	Ms Wendy Ng Wan-yee
	Professor Eddie Hui Chi-man
	Dr Jason Chan Kai-yue
Category III Persons (individuals, not being Category I or Category II persons, who appear to the Chief Executive to be suitable to be appointed as members of the PMSA) :	Mr Chan Han-pan
	Mr Frankie Yick Chi-ming
	Mr Yip Hing-kwok
	Mr Lanny Tam
	Ms Cheng Lai-king
	Mr Leung Man-kwong
	Dr Jennifer Ng Chui-yiu
	Director of Housing or his representative
	Director of Home Affairs or her representative

Annex 3

Relevant Provisions in the Property Management Services Ordinance (Cap. 626)

Part 8
Levy

51. Interpretation of Part 8

In this Part—

Collector (署長) means the Collector of Stamp Revenue appointed under section 3 of the Stamp Duty Ordinance (Cap. 117);

conveyance on sale (售賣轉易契) has the meaning given by section 2(1) of the Stamp Duty Ordinance (Cap. 117);

leviable instrument (徵款適用文書) means an instrument for which a levy is payable under section 53(1);

payment period (繳款限期), in relation to the levy payable for a leviable instrument, means the period within which the levy is payable under section 54(3);

transferee (承讓人), in relation to a leviable instrument, means the person to whom the immovable property concerned is transferred, or in whom the immovable property concerned is vested, under the instrument.

52. Application of Part 8

This Part applies to a conveyance on sale of immovable property.

53. Leviable instruments

(1) A levy at the prescribed amount is payable for an instrument that is—
   - (a) a conveyance on sale; and
   - (b) chargeable with stamp duty under head 1(1) in the First Schedule to the Stamp Duty Ordinance (Cap. 117).

(2) A question as to whether or not an instrument falls within the description of subsection (1)(a) and (b) is to be determined in accordance with the Stamp Duty Ordinance (Cap. 117).

54. Payment of levy

(1) The transferee under a leviable instrument is liable to pay the levy payable for the instrument.

(2) For the purposes of subsection (1), if there is more than one transferee under the instrument, the transferees are jointly and severally liable to pay the levy.

(3) The levy is payable within 30 days after the instrument is executed.

55. Collection of levy

(1) The levy is to be collected—
(a) by the Authority; or
(b) for the Authority by—
(i) the Collector; or
(ii) any assistant collector appointed under section 3 of the Stamp Duty Ordinance (Cap. 117) and authorized in writing by the Collector.

(2) The levy collected does not form part of the general revenue.

56. Agreement for collection and transmission of levy

(1) The Authority and the Collector may enter into an agreement for—
(a) the collection by the Collector of the levy for the Authority; and
(b) the transmission by the Collector of the levy to the Authority.

(2) An agreement entered into under subsection (1) is not subsidiary legislation.

57. Failure to pay levy

(1) If the levy payable for a leviable instrument is not paid within the payment period, the Authority may, without limiting any other remedy of the Authority for recovering the levy—

(a) impose a penalty for the failure to pay the levy; and
(b) issue a certificate, certifying that—
(i) the levy and penalty is due and payable to the Authority; and
(ii) the person named on the certificate is liable to pay the levy and penalty.

(2) The certificate must bear the name of the Chief Executive Officer, and is valid if the name of the Chief Executive Officer is printed or signed on it.

(3) The Authority must serve a copy of the certificate on the person affected by the certificate.

(4) A copy of the certificate may be served on a person either personally or by being delivered at, or sent by post to, the person's last known postal address, or place of abode, business or employment.

(5) If a copy of the certificate is sent by post, it is presumed, unless the contrary is proved, to have been served on the day after the day on which it would have been received in the ordinary course by post.

58. Penalty

(1) For the purposes of section 57(1)(a)—
(a) the transferee under the relevant leviable instrument is liable to pay the penalty; and
(b) the amount of the penalty is—
(i) if the levy is paid not later than 1 month after the expiry of the payment period, double the amount of the levy;
(ii) if the levy is paid later than 1 month but not later than 2 months after the expiry of the payment period, 4 times the amount of the levy; or
(iii) in any other case, 10 times the amount of the levy.

(2) For the purposes of subsection (1)(a), if there is more than one transferee under the instrument, the transferees are jointly and severally liable to pay the penalty.

59. Certificate of levy and penalty

(1) This section applies if a certificate is issued under section 57(1)(b) in relation to a levy and penalty, and is served in compliance with section 57.

(2) Unless the contrary is proved, the certificate is evidence of the facts certified in it in any proceedings.

(3) At any time before the levy and penalty has been wholly recovered, the Authority may register the certificate in the Land Registry against any premises or land in respect of which the levy and penalty arose.

(4) For the purposes of the Land Registration Ordinance (Cap. 128), the certificate is taken to be an instrument affecting premises or land and is registrable in the Land Registry.

(5) On the registration of the certificate, the levy and penalty—
(a) is recoverable from a person who from the Land Registry register appears to be the owner of the premises or land; and
(b) constitutes a legal charge on the premises or land that gives the Authority the same powers and remedies in respect of the premises or land as if it were a mortgagee under a mortgage by deed in common form having powers of sale and lease and of appointing a receiver.

(6) Despite sections 3(1) and 5 of the Land Registration Ordinance (Cap. 128), if the certificate is duly registered, it has priority from the beginning of the day after the date of registration.

(7) The charge created under subsection (5)(b) is void, and no liability is to accrue under that subsection, against a bona fide purchaser or mortgagee of the premises or land for valuable consideration without notice.

(8) On the recovery of the levy and penalty, the Authority must lodge in the Land Registry an appropriate memorial of satisfaction against the certificate registered under subsection (3).

60. Recovery of levy and penalty

The Authority may recover the amount of any levy or penalty payable under this Part as a civil debt due to it.

61. Authority's powers to remit and refund

The Authority may—

(a) remit, wholly or in part, any levy or penalty payable for a leviable instrument; or

(b) refund, wholly or in part, any levy or penalty paid for a leviable instrument.

62. Regulations for Part 8

The Secretary may, by regulation—

(a) prescribe the amount of levy payable for a leviable instrument;

(b) provide for the exemption of any class of persons or instruments from the application of this Part; and

(c) provide generally for the better carrying out of this Part.

Annex 4

Cash Flow Projection for the Property Management Services Authority (PMSA) from 2017-18 to 2024-25

	Year 1 2017-18 ('Thousand)	Year 2 2018-19 ('Thousand)	Year 3 2019-20 ('Thousand)	Year 4 2020-21 ('Thousand)	Year 5 2021-22 ('Thousand)	Year 6 2022-23 ('Thousand)	Year 7 2023-24 ('Thousand)	Year 8 2024-25 ('Thousand)
Income								
Application/Licence Fees (Note 1)	0	2,305	6,708	13,215	12,984	13,349	13,716	13,495
Levy (Note 2)	2,800	28,000	28,000	28,000	28,000	28,000	28,000	28,000
Total Income (a)	**2,800**	**30,305**	**34,708**	**41,215**	**40,984**	**41,349**	**41,716**	**41,495**
Expenditure (Note 3)								
Recurrent Expenditure	7,213	25,450	33,079	34,072	35,094	36,146	37,231	38,348
Non-recurrent Expenditure (Note 4)	4,598	4,598	0	0	0	0	0	0
Total Expenditure (b)	**11,811**	**30,048**	**33,079**	**34,072**	**35,094**	**36,146**	**37,231**	**38,348**
Surplus/(Deficit) (a)-(b)	**(9,011)**	**257**	**1,629**	**7,143**	**5,890**	**5,203**	**4,485**	**3,147**
Loan Fund	14,000	8,000						
Repayment of Loan Principal (Note 5)				-4,400	-4,400	-4,400	-4,400	-4,400
Repayment of Loan Interest (31 March of Financial Year)	-153	-391	-407	-347	-280	-186	-93	0
Overall Balance (Note 6)	**4,836**	**12,702**	**13,924**	**16,320**	**17,530**	**18,147**	**18,139**	**16,886**

Note:

Income

1. Licence Fees - $6,000 per year for PMCs, $1,200 per year for PMP(Tier I) and $400 per year for PMP(Tier II). Application fee of $100 for each application. PMCs: 800, PMP(Tier I): 4,000 and PMP(Tier II): 7,500. Assuming a fixed number of PMCs and a 2% annual increase in the number of PMPs starting financial year (FY) 2021-22. Year 1 (FY 2018-19) 1/6 PMCs and 1/6 PMPs newly registered. Year 2 (FY 2019-20) 2/6 PMCs and 2/6 PMPs newly registered. Year 3 (FY2020-21) all PMCs and PMPs all PMCs and PMPs registered.
2. Levy – assumptions: (i) levy for each leviable instrument at $350; (ii) average number of conveyance on sale is expected to be 80,000 per year; (iii) total levy per year is expected to be $350 x 80,000 = $28,000,000; (iv) 10% levy to be collected in FY2017-18.

Expenditure

3. Expenditure as at FY2017-18 price level. Assuming an annual increase of 3%. FY2019-20 to start incurring full expenditure.
4. Non-recurrent expenditure covers set-up costs including office decoration, purchase of furniture, establishment of computer system and website, logo design and recruitment of staff, to be settled in two years.

Loan Fund

5. Loan - Assuming Loan Principal of $22M. Loan Principal will be settled on a repayment term of 5 equal annual instalments (i.e. each instalment at $4.4M) starting from FY2020-21. After the day on which the loan is drawn for the first time, interest will be paid once on 31 March of each FY, to be calculated at "no-gain-no-loss" rate on the basis of simple interest rate on the outstanding loan amount. The last (5th) instalment will be settled at the beginning of FY2024-25.

Overall Balance

6. In view of the (i) time required to formulate the subsidiary legislation on the levy and licence fees; (ii) uncertainty about the number of PMCs and PMPs applying for licences during the transitional period and the number of conveyances on sale each year; (iii) time required to accumulate income from licence fees and levy, while the set-up costs have to be incurred at the initial stage upon the establishment of the PMSA, the PMSA has to maintain certain level of overall balance so as to ensure a stable financial position.