

**File Ref.: HAD HQ CR/20/3/7/(C)**

## **LEGISLATIVE COUNCIL BRIEF**

Property Management Services Ordinance (Cap. 626)

### **Property Management Services Ordinance (Commencement) Notice 2018**

### **Property Management Services (Levy) Regulation**

## **INTRODUCTION**

The Secretary for Home Affairs (“SHA”) has made the following subsidiary legislation –

- A
- (a) the Property Management Services Ordinance (Commencement) Notice 2018 (“Commencement Notice”) at **Annex A** under section 1(2) of the Property Management Services Ordinance (“PMSO”) for the commencement of operation of Part 8 of the PMSO; and
- B
- (b) the Property Management Services (Levy) Regulation (“Levy Regulation”) at **Annex B** under section 62 of the PMSO to prescribe the amount of levy payable for a leviable instrument under the PMSO and exempt certain persons from the payment of levy.

## **JUSTIFICATIONS**

### ***Financial Arrangement for the Property Management Services Authority (“PMSA”)***

2. The PMSA is a body corporate established under 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 and property management practitioners; (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.

3. The PMSA is a self-financing statutory body supported by income generated from both licence fees and levies.

4. The PMSA estimates that its annual recurrent expenditure will increase from about \$33 million in 2019-20 financial year to about \$38 million in 2024-25 financial year. To meet the PMSA's recurrent expenditure, the financial plan is that the licence fees should be set at a level that would generate an annual income of around \$12 million to \$14 million<sup>1</sup>, while the levy should be set at a level that would generate an annual income of about \$28 million. As the relevant subsidiary legislation on levy and licence fees has not yet been enacted, a commitment of \$22 million from the Loan Fund was approved by the Legislative Council ("LegCo") Finance Committee in November 2017 to meet the set-up and initial operating expenses of the PMSA.

### *Amount of Levy*

C 5. The imposition of the levy is provided under Part 8 of the PMSO (relevant provisions at **Annex C**), which has yet to be commenced. According to section 53 of the PMSO, a leviable instrument is a 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.

6. Under Section 62(a) of the PMSO, SHA may, by regulation prescribe the amount of levy payable for a leviable instrument. According to the statistics on the number of conveyances on sale in recent years, the average number of conveyances on sale<sup>2</sup> is expected to be around 80 000 per year.

<sup>1</sup> According to section 15 of the PMSO, the PMSA may, by regulation, prescribe the fees payable in an application for a licence and the fees payable for the issue of a licence. The actual levels of such fees will be determined after the commencement of the relevant provisions in the principal legislation, and such fees will take into account the detailed requirements to be specified in the subsidiary legislation.

<sup>2</sup> The number of conveyances on sale for the previous financial years as provided by the Inland Revenue Department ("IRD") is as follows –

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

7. We therefore propose that the amount of levy payable for a leviable instrument should be set at \$350 with a view to generating an annual income of about \$28 million.

### ***Exemption***

8. Section 62(b) of the PMSO provides that SHA may, by regulation provide for the exemption of any class of persons or instruments from the application of Part 8 of the PMSO. Our policy intent is that, where any exemption from stamp duty is available under the SDO, no levy would be payable under the PMSO. In other words, the exemption under the PMSO levy regime should be the same as that under the SDO. Accordingly, we propose to provide exemption to the classes of persons covered by sections 41 and 43(1) of the SDO, such as the Government, person acting in his capacity as a public officer, diplomatic agent, consular officer, etc.

### ***Commencement of Part 8 of the PMSO and the Levy Regulation***

9. The collection of levy should commence as early as practicable to enable the PMSA to recover its expenditure through a stable source of income and to attain financial sustainability. To allow time to familiarise members of the public and relevant stakeholders with the levy collection arrangement through, among others, the launching of publicity measures, we propose that, subject to negative vetting by the LegCo, Part 8 of the PMSO and the Levy Regulation shall commence on 1 July 2018.

### ***Collection Arrangement for the Levy***

10. According to section 55 of the PMSO, the levy is to be collected by the PMSA or for the PMSA by the Collector of Stamp Revenue (“Collector”), or any assistant collector appointed under section 3 of the SDO and authorised in writing by the Collector. In this regard, the PMSA will, as provided under section 56 of the PMSO, enter into an agreement with the Collector on the collection and transmission of the levy. The arrangement for the collection of levy will be very similar to that of stamp duty, whereby the Stamp Office of the IRD will collect the levy on behalf of the PMSA when a conveyance on sale, for which a levy is payable, is

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submitted to the IRD for stamping. Any cost incurred by the IRD arising from the collection of the levy should be fully recovered from the PMSA.

## THE REGULATION

11. The key provisions of the Commencement Notice and the Levy Regulation are set out below –

- (a) the **Commencement Notice** – provides 1 July 2018 as the day on which Part 8 of the PMSO comes into operation;
- (b) the **Levy Regulation** –
  - (i) **section 1** provides that the Levy Regulation comes into operation on 1 July 2018;
  - (ii) **section 2** provides for the definition of “leviable instrument” under the Levy Regulation;
  - (iii) **section 3** stipulates the amount of levy payable for a leviable instrument (i.e. \$350); and
  - (iv) **section 4** provides exemption from application of Part 8 of the PMSO to persons not liable to pay stamp duty in respect of a leviable instrument under the relevant sections of the SDO.

## LEGISLATIVE TIMETABLE

12. The legislative timetable for the Commencement Notice and the Levy Regulation is as follows –

Publication in the Gazette	23 February 2018
Tabling at LegCo for negative vetting	28 February 2018
Commencement Date	1 July 2018

## IMPLICATIONS OF THE PROPOSAL

13. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the binding effect of the existing provisions of the PMSO. It has no productivity, environmental, sustainability, gender and competition implications and no significant family implications. The financial and civil service implications and the economic implications are set out at **Annex D**.

## **PUBLIC CONSULTATION**

14. Members of the Bills Committee were consulted on the proposed collection of the levy during the scrutiny of the Property Management Services Bill in 2016. We also consulted the LegCo Panel on Home Affairs on the financial arrangement for the PMSA (including the level of the levy) in May 2017. The Members concerned were generally supportive of the proposal.

## **PUBLICITY**

15. A press release will be issued on 23 February 2018 and a spokesman will be available to answer enquires. Publicity measures will be launched before the collection of the levy which will commence on 1 July 2018.

## **ENQUIRIES**

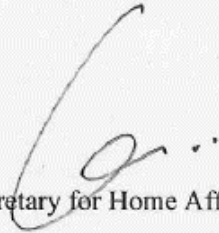
16. Any enquiries on this brief can be addressed to Miss Vega Wong, Assistant Director of Home Affairs at telephone number 2835 2121.

**Home Affairs Bureau**  
**Home Affairs Department**  
February 2018

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**Property Management Services Ordinance  
(Commencement) Notice 2018**

Under section 1(2) of the Property Management Services Ordinance (Cap. 626), I appoint 1 July 2018 as the day on which Part 8 of the Ordinance comes into operation.



Secretary for Home Affairs

14 February 2018

**Property Management Services (Levy) Regulation**

(Made by the Secretary for Home Affairs under section 62 of the Property Management Services Ordinance (Cap. 626))

**1. Commencement**

This Regulation comes into operation on 1 July 2018.

**2. Interpretation**

In this Regulation—

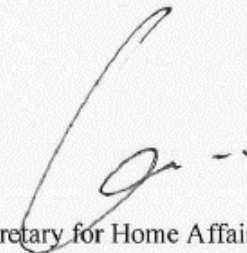
*leviable instrument* (徵款適用文書) has the meaning given by section 51 of the Ordinance.

**3. Amount of levy**

The amount of levy payable for a leviable instrument is \$350.

**4. Exemption from application of Part 8 of Ordinance**

If a person is not liable to pay stamp duty in respect of a leviable instrument under section 41 or 43(1) of the Stamp Duty Ordinance (Cap. 117), Part 8 of the Ordinance does not apply to the person in respect of the instrument.



Secretary for Home Affairs

14 February 2018



**Explanatory Note**

Under section 53(1) of the Property Management Services Ordinance (Cap. 626), a levy at the prescribed amount is payable for a leviable instrument.

2. This Regulation—
  - (a) prescribes the amount of levy; and
  - (b) exempts certain persons from the payment of levy.



**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.

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**Financial, Civil Service, and Economic Implications**

**Financial and Civil Service Implications**

The Property Management Services Authority (“PMSA”) is a self-financing statutory body established under section 42 of the Property Management Services Ordinance (“PMSO”). The levy will be collected through the Stamp Office of the Inland Revenue Department (“IRD”) on behalf of the PMSA. The levy collected does not form part of the general revenue.

2. The additional work brought by the collection of the levy will be absorbed by the existing resources of the IRD. Any additional cost incurred by the IRD arising from the collection of the levy should be fully recovered from the PMSA.

**Economic Implications**

3. The proposed amount of levy per instrument (i.e. \$350) should be insignificant relative to the total cost of the transaction concerned, and should be an amount which property purchasers can well afford. As such, the proposal should not have any significant impacts on the property market and the wider economy. Implementing the proposed licensing regime by the PMSA, supported financially by levy and licence fees, would mainly benefit the owners, as proper building management would help maintain the value of the property.