

立法會
Legislative Council

LC Paper No. CB(2)1204/19-20(01)

Ref : CB2/SS/4/19

**Subcommittee on Property Management Services Ordinance
(Commencement) Notice 2020 and Property Management Services
(Licensing and Related Matters) Regulation**

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information on the Property Management Services Ordinance (Commencement) Notice 2020 ("the Commencement Notice") (L.N. 86) and the Property Management Services (Licensing and Related Matters) Regulation ("the Regulation") (L.N. 87), and summarizes the relevant discussion of the Panel on Home Affairs ("the Panel").

Background

Establishment and functions of the Property Management Services Authority

2. The Property Management Services Ordinance (Cap. 626) ("PMSO") was enacted by the Legislative Council ("LegCo") on 26 May 2016. The Property Management Services Authority ("PMSA") is a body corporate established under section 42(1) of PMSO. According to section 43 of PMSO, the principal functions of PMSA are:

- (a) to regulate and control the provision of property management services ("PMSs") in Hong Kong by the licensing of property management companies ("PMCs") and property management practitioners ("PMPs");
- (b) to promote the integrity, competence and professionalism of the profession of PMSs; and
- (c) to maintain and enhance the status of the profession of PMSs.

Licensing framework

3. PMSO provides for a single-tier licensing regime of PMCs. A PMC has to fulfil all the licensing criteria, including the minimum number of employees

holding PMP licences, the suitability of the company in holding PMC licence, etc., which will be set out in the subsidiary legislation for the licensing regime to be made by PMSA.

4. PMSO also provides for a two-tier licensing regime of PMPs. Only those PMPs who take up a supervisory or managerial role in the provision of PMSs in a PMC will be subject to licensing. Frontline staff will not be required to obtain PMP licences. The PMP licensing criteria will be set in terms of academic qualifications, professional qualifications, years of working experience and the suitability of the person in holding PMP licence. The qualification requirements for the first tier of PMPs will be higher than that for the second tier of PMPs. Such a two-tier system would 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.

The Property Management Services Ordinance (Commencement) Notice 2020 (L.N. 86)

5. The Commencement Notice is made by the Secretary for Home Affairs under section 1(2) of PMSO to appoint:

- (a) 1 August 2020 as the day on which the uncommenced provisions (except section 6(1)(a), (2)(a) and (3)(a)¹) of PMSO come into operation; and
- (b) 1 August 2023 as the day on which section 6(1)(a), (2)(a) and (3)(a) of PMSO comes into operation to allow for a three-year transitional period for PMCs and PMPs.

6. According to paragraphs 13 and 14 of the LegCo Brief (File Ref: HAD HQ CR/20/3/7(C) Pt. 40) issued by the Home Affairs Bureau, the Home Affairs Department and PMSA in May 2020, the deferred commencement of section 6(1)(a), (2)(a) and (3)(a) of PMSO is to allow a transitional period for PMCs and PMPs to apply for the respective licences. The three-year transitional period proposed by the Administration was noted by the then Bills Committee on the Property Management Services Bill during its deliberations. Members may refer to the report of the then Bills Committee [LC Paper No. CB(2)701/15-16] for further details.

¹ Section 6(1)(a), (2)(a) and (3)(a) of PMSO prohibits a person from acting as a PMC or a PMP without a licence.

The Property Management Services (Licensing and Related Matters) Regulation (L.N. 87)

7. The Regulation is made by PMSA under sections 3(1), 15(1), 16(3), 17(2) and 47(8) of, and section 5(1) to Schedule 4 to, PMSO for the implementation of the proposed licensing regime. Details of the Regulation are set out in paragraphs 10 to 12 of the LegCo Brief under reference. The Regulation is proposed to come into operation on 1 August 2020.

Discussion of the Panel on Home Affairs

8. The Administration consulted the Panel at its meeting on 24 June 2019 on the licensing regime for PMCs and PMPs proposed by PMSA, including the main provisions of the draft Regulation to be made under PMSO. The major concerns expressed by members are summarized below.

Proposed licensing regime for property management companies

Scope of regulation

9. Some members considered that the proposed licensing regime failed to specify clearly the circumstances under which a business entity that engaged in one or more of the seven categories of the prescribed PMSs was required to obtain a PMC licence. They enquired, for example, whether a construction company or a company providing PMS(s) to hostels would be required to obtain a PMC licence under the proposed licensing regime. Some members enquired whether consideration would be given to exempting the works contractors currently on the list of approved contractors of government bureaux/departments from licensing. These members also asked whether a business entity would be required to obtain a PMC licence if all the PMSs it provided were literally outsourced to third parties.

10. Representatives of PMSA advised that a business entity whose business did not involve the provision of PMSs that fell within more than one category of services was not required to hold a PMC licence, and PMS(s) incidental to the provision of PMS under a particular category of services was regarded as PMS under that category only. As such, a construction company which might carry out cleansing and/or security services in the course of the repair and maintenance services it provided was not regarded as having engaged in more than one category of services. In addition, PMSO defined "property" as "building" under the Building Management Ordinance (Cap. 344) ("BMO"), and given that "building" as defined under BMO did not include property without a deed of mutual covenant ("DMC"), PMCs which managed properties without DMCs (e.g. hostels) were not required to hold a PMC licence. To

facilitate understanding by the general public, PMSA would consider providing elaboration and examples for illustration in the relevant codes of practice or guidelines as appropriate.

11. Some members expressed concern that PMCs would be able to circumvent the requirement to obtain a PMC licence by setting-up different business entities for providing different categories of PMSs. Concern was also raised that a business entity which had all along been providing services in a single category of PMS could get licensed only by engaging in an additional category of PMS. Representatives of PMSA explained that in their view, it would not be feasible for owners' corporations ("OCs") to engage different PMCs to provide different categories of PMSs to them. In addition, by so doing, these OCs would forgo the benefit of putting their PMS providers under regulatory control.

Monitoring of PMCs

12. Some members enquired whether PMSA would consider introducing a performance rating system for licensed PMCs to facilitate OCs to choose a suitable service provider. These members also enquired whether licensed PMCs would be required to deposit guarantee money with PMSA to strengthen their commitment to conducting the business in a professional manner. Members further expressed concern about the possibility that unscrupulous directors of a defunct PMC whose licence had been revoked by PMSA might continue the operation of the PMC by using a new business entity in disguise. Concern was also raised about the possible impact on OCs in the event that the licence of an in-service PMC was suspended/revoked or not renewed by PMSA due to disciplinary reasons.

13. Representatives of PMSA advised that it would consider the introduction of a performance rating system for PMCs when the licensing regime was fully developed and upon reaching a consensus among the trade. Under PMSO, PMSA would maintain registers of PMCs, PMPs (Tier 1) and PMPs (Tier 2) at its office and on the Internet for public inspection, which would contain conviction record in relation to disciplinary offences or criminal offences under PMSO of licensees. Representatives of PMSA further advised that although PMSO had not imposed any guarantee money requirement on PMCs, it was stipulated in section 11 of PMSO that in determining whether a person was suitable for holding a PMC licence, PMSA must have regard to a number of prescribed factors, including whether the person had been convicted of a criminal offence involving fraud or dishonesty; or had been convicted of a disciplinary offence or a criminal offence under PMSO. PMSA would prescribe procedures for handling complaints about licensed PMCs and PMPs.

Transitional arrangement

14. Some members asked if the proposed three-year transitional period was sufficient for the trade to migrate to the new licensing regime. Concern was raised as to whether the proposed licensing regime would impose additional financial burden on property owners as PMCs, especially the small and medium-sized ones, might have to engage additional licensed PMPs in order to fulfil the licensing requirements.

15. Representatives of PMSA advised that in order to allow sufficient time to facilitate the trade to adapt to the new regime, PMSA would provide a three-year transitional period after the implementation of the licensing regime during which PMCs and PMPs would not be required to be licensed. In-service PMPs who possessed the specified managerial or supervisory experience but did not meet the requirements for academic qualifications and/or professional qualifications could apply for and would be issued a provisional licence during the transition period with a validity period of up to three years. Upon completion of a specified course within the validity period of the provisional licence, the licensee might apply for a formal PMP licence. With this transitional arrangement in place, it was anticipated that the new licensing regime would not put pressure on the manpower market of PMSs.

Proposed licensing regime for property management practitioners

16. Some members pointed out that some property management professional bodies had expressed concern that the licensing criteria for PMPs in terms of academic/professional qualifications and years of relevant working experience were not clearly prescribed in the draft Regulation. These members considered that PMSA should specify clearly the criteria for deciding whether certain academic qualifications, especially those obtained from institutions in the Mainland or overseas, would be accepted by PMSA. Members also enquired whether PMSA had a system for recognition and monitoring of the specified course to be completed by PMPs holding a provisional licence, and whether control would be imposed on the course fees.

17. Representatives of PMSA responded that a standing committee of PMSA would be responsible for the assessment of the academic qualifications in relation to the application for PMP licence. Regarding the specified course to assist in-service PMPs to migrate to the new licensing regime, PMSA had invited proposals from interested institutions and it was believed that the institutions would keep the course fee at a reasonable level in order to stay competitive. According to the preliminary information provided by the institutions, the course fee would be in the range of about \$100 to \$200 per hour.

Consultation with stakeholders

18. Some members expressed concern as to whether PMSA had taken into account the views and concerns expressed by property management professional bodies and related stakeholders in drawing up the proposed licensing regime. These members called on PMSA to allow ample time for further discussion with the trade and stakeholders (including District Councils and OCs) on the proposals. Representatives of PMSA advised that it had conducted a two-month public consultation exercise from November 2018 to January 2019 on its proposals for the licensing regime and had fully considered the concerns expressed by stakeholders. Nevertheless, at the meeting on 24 June 2019, the Panel passed two motions urging PMSA to further listen to the views of the trade and various stakeholders on the proposed licensing regime and to address their concerns. The motions and the written responses provided by the Administration and PMSA are in **Appendices I** and **II** respectively. In May 2020, PMSA provided an information paper (LC Paper No. CB(2)904/19-20(01)) advising that PMSA had conducted a series of consultations accordingly. PMSA also advised in the paper that in light of the views received, it had revised the proposed licensing regime and made appropriate amendments to the draft Regulation.

Relevant papers

19. A list of relevant papers available on the LegCo website is in **Appendix III**.

Council Business Division 2
Legislative Council Secretariat
13 June 2020

民政事務委員會

在2019年6月24日會議上就議程項目IV
"物業管理業監管局建議的發牌制度"通過的議案

就物業管理業監管局建議的發牌制度，本會促請當局在附屬法例立法前，進一步聽取各持份者意見，讓業界與當局討論及達成共識，以更符合各持份者需要。

動議人：柯創盛議員, MH

和議人：劉國勳議員, MH

(Translation)

Panel on Home Affairs

**Motion passed under agenda item IV
"Licensing regime proposed by
the Property Management Services Authority"
at the meeting on 24 June 2019**

Regarding the licensing regime proposed by the Property Management Services Authority, this Panel urges that before introducing the subsidiary legislation, the authorities should further listen to the views of various stakeholders and allow discussions between the trade and the authorities for reaching a consensus, so as to better meet the needs of various stakeholders.

Moved by: Hon Wilson OR, MH

Seconded by : Hon LAU Kwok-fan, MH

民政事務委員會

在2019年6月24日會議上就議程項目IV "物業管理業監管局建議的發牌制度"通過的議案

物業管理業監管局應就發牌制度立法檢討發牌準則定義，儘快再次諮詢業界意見。

動議人：區諾軒議員

(Translation)

Panel on Home Affairs

Motion passed under agenda item IV "Licensing regime proposed by the Property Management Services Authority" at the meeting on 24 June 2019

The Property Management Services Authority should consult the trade afresh as soon as practicable in respect of the review on the licensing criteria for enactment of legislation on the licensing regime.

Moved by: Hon AU Nok-hin

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2 August 2019

Ms Joanne MAK
Clerk to the Panel on Home Affairs
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Ms MAK,

Panel on Home Affairs
Follow-up to the Meeting on 24 June 2019

We have received your letter dated 25 June 2019.

We noted that two motions under the agenda item “Licensing Regime Proposed by the Property Management Services Authority” were passed at the meeting of the Panel on Home Affairs on 24 June 2019, requesting the Property Management Services Authority (“PMSA”) to, as soon as practicable, further consult the trade and listen to the views of various stakeholders before proceeding with legislative procedures to implement the licensing regime and in respect of the licensing criteria, with a view to allowing discussions between the trade and the PMSA and reaching consensus to better meet the needs of various stakeholders.

As a member of the PMSA and the interface of the relevant policy, the Home Affairs Department will urge the PMSA to continue to proactively

consult the relevant stakeholders, including the trade, professional bodies, District Councils, owners' corporations, etc., so as to further listen to their views on the licensing regime and to address their concerns. The Home Affairs Department will continue with the prevailing practice to proactively participate in the meetings and engagement sessions between the PMSA and the stakeholders on matters related to the licensing regime. Enclosed please find the response from the PMSA to the two motions passed under the agenda item above for Members' reference.

Yours sincerely,



(Miss Grace LI)
for Director of Home Affairs

Encl.

16 July 2019

Ms Joanne MAK
Clerk to the Panel on Home Affairs
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong



(By fax and by post)

Dear Ms MAK,

Panel on Home Affairs
Follow-up on the Meeting on 24 June 2019
Proposed Licensing Regime for
Property Management Companies and Property Management Practitioners

The Property Management Services Authority (Authority) received, via the Home Affairs Department, your letter dated 25 June 2019 addressed to the Secretary for Home Affairs.

We would like to express our gratitude to the Panel on Home Affairs (Panel) for allowing the representatives of the Authority to brief the Panel at the meeting held on 24 June 2019 on the proposed licensing regime for the Property Management Companies and Property Management Practitioners (Licensing Regime), the relevant background and the consultation work carried out. Regarding the two motions on “The licensing regime proposed by the Authority” passed at the meeting, which advise the Authority to further gauge the views of the industry and stakeholders before embarking on the legislative procedures for the implementation of the Licensing Regime, our reply is as follows.

Consultation Work Completed

The Authority has been, through continuous and active dialogue with stakeholders for their views and for understanding the mode of operation of the industry, formulating a practicable licensing regime that will benefit both the industry and the society.

Since October 2017, the Authority has conducted a number of consultations with stakeholders, including the industry and the public, on the draft framework of the Licensing Regime. Furthermore, the Authority initiated meetings with various industry bodies, trade unions, organisations, councillors, owners' corporations and members of the relevant sectors to solicit their views. After the public consultation conducted at the beginning of this year, the Authority has fully considered the concerns of stakeholders, and has accordingly clarified and optimised some details of the Licensing Regime to dispel their doubts.

Since 20 May 2019, the Authority has announced the latest details on the Licensing Regime to the media and disseminated such through its website. The Authority also met with relevant stakeholders, in particular, the more than 30 organizations and stakeholders who have previously expressed specific opinions or concerns, including 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 and the Housing Managers Registration Board (Five Organisations). On 20 June 2019, the Authority also attended the Meeting of the Chairmen and Vice-chairmen of the 18 District Councils (DCCVC) to explain the regime. Responses were generally positive.

As an important step of the consultation process, the Authority set out, in the “LC Paper No. CB(2)1662/18-19(02)” (LC Paper), the background, the consultation work carried out and a summary of the Licensing Regime on which consensus had been basically reached among stakeholders, and briefed the Panel at the aforesaid meeting. Stakeholder consultation has continued after the meeting as planned for promoting the subsidiary legislation as well as for formulating the relevant codes of conduct and guidelines.

Forthcoming Consultation Work Plan

In respect of the above two motions on the Licensing Regime passed by the Panel, the Authority would like to summarise and report the forthcoming work plan on consultation as follows:

(1) Strengthening communication and liaison with the industry, relevant institutes and professional bodies

Regarding the joint letter dated 23 June 2019 before the Panel Meeting by the Five Organisations to the members of the Legislative Council, the relevant departments and the Authority, the Authority is of the view that their comments are mainly on two aspects, namely, differences in the interpretation of the draft subsidiary legislation and in the understanding of the LC Paper as well as that certain details of the licensing requirements should be set out in the subsidiary legislation instead of the codes and guidelines to be issued upon the commencement of the subsidiary legislation. In fact, these two aspects of comments do not disagree with the framework of the proposed regime on which consensus with stakeholders has already been reached and summarised in the LC Paper. To this end, the Authority has scheduled a meeting with the Five Organisations for 22 July to explain the above and to address their concerns. A written reply will be made after the meeting.

Notwithstanding the meetings held with the industry, relevant institutes and professional bodies, the Authority will continue to attend seminars and talks organised by these stakeholders to solicit their views on the Licensing Regime.

Furthermore, the Authority has, since early June 2019, been conducting a questionnaire survey on property management companies and property management practitioners in order to establish contacts with the industry and to obtain the relevant information and data to facilitate the implementation of the Licensing Regime.

(2) Soliciting public views through District Councils

Further to the DCCVC Meeting held in mid-June 2019, the Authority has continued to contact the 18 District Councils to arrange meetings for explaining the Licensing Regime and soliciting views. As at 9 July, the Authority has met or arranged meetings with seven District

Councils or their committees. In addition, the Authority has written to the 18 District Councils to invite comments.

(3) Relieving concerns of owners' corporations

The Authority had written to all owners' corporations and owners' committees (owners' organisations) to invite views on the Licensing Regime. A considerable number of owners' organisations had expressed concerns about whether they would be required to hold a licence. Despite the open explanations already promulgated on this regard by the Home Affairs Department and the Authority, the Authority is actively contacting the owners' organisations which have submitted comments, to further dispel their misunderstandings.

(4) Organising briefing sessions

The Authority is arranging briefing sessions to solicit different stakeholders' views on the Licensing Regime.

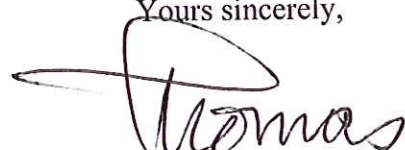
(5) Publishing comprehensive information and to invite views online

In order to facilitate stakeholders to understand the latest details of the Licensing Regime and the contents of the draft subsidiary legislation, the Authority has uploaded a fact sheet, frequently asked questions and draft subsidiary legislation to its website for public perusal and views.

With a view to implementing the Licensing Regime in early 2020, the Authority plans to submit the draft subsidiary legislation in the fourth quarter of 2019 to the Legislative Council for negative vetting and will continue to seek views from stakeholders for formulating appropriate codes and guidelines.

If you have questions on the above, please do not hesitate to contact the undersigned at 3696 1188 or Mr Kevin CHEUNG, General Manager (Regulatory), at 3696 1138.

Yours sincerely,


LEUNG Tung Choi, Thomas
Chief Executive Officer

**Relevant documents on Subcommittee on
Property Management Services Ordinance (Commencement) Notice 2020
and Property Management Services
(Licensing and Related Matters) Regulation**

Committee	Date of meeting	Paper
House Committee	22 January 2016	Report of the Bills Committee on Property Management Services Bill
Panel on Home Affairs	24 June 2019 (Item IV)	Agenda Minutes Administration's response to the motions passed by the Panel (LC Paper No. CB(2)1852/18-19(01))
	--	Information paper on "Property Management Services Authority - Proposed licensing regime for property management companies and property management practitioners" issued on 11 May 2020 (LC Paper No. CB(2)904/19-20(01))

Council Business Division 2
Legislative Council Secretariat
13 June 2020