

Key Elements of the Property Management Bill

Following the meeting of the Executive Council on 15 April 2014, and the Order by the Chief Executive, the Property Management Services Bill (the Bill) was gazetted on 25 April 2014. The 1st reading and 2nd reading of the Bill was conducted by the Legislative Council (Legco) in May 2014. The Government anticipate the Bill could be enacted within 2014.

The full set of the Bill can be accessed vide www.legco.gov.hk/yr13-14/english/bills/b201404253.pdf. To summarize, the provisions of the Bill can be categorized into following key elements:

(A) Licensing of Property Management Companies (PMCs)

The Bill provides for a single-tier licensing regime of PMCs. Except for companies providing only stand-alone services, such as those providing only cleansing or security services, all PMCs providing property management services as defined in Schedule 1 to the Bill relating to a property will be required to obtain licences. The term “property” in the Bill will be defined as having the same meaning of “building” under the Building Management Ordinance (Cap. 344). Owners’ corporations or other forms of owners’ organizations managing their own properties will not be required to obtain PMC licences. Similarly, the provision of property management services by the owners of the properties themselves will not be subject to the licensing regime provided that they are individuals and do not provide any property management services to another property for profit. The Government and the Housing Authority will also not be subject to the licensing regime.

A PMC has to fulfil all the licensing criteria including the minimum number of directors and employees holding PMP licences, the suitability of the company in holding PMC licence (for example, whether the company is in liquidation or subject to a winding-up order, whether there is past conviction record on relevant offences, the suitability of the directors), etc. The detailed licensing criteria will be set out in the subsidiary legislation. To facilitate consumers in making informed choices on PMCs under a single-tier

licensing regime, licensed PMCs will be required to provide certain essential information (for example, their management portfolio, the number of licensed PMPs employed by the company, etc.) to the Property Management Services Authority (PMSA) for uploading onto its website for public access.

All licensed PMCs will be required to comply with the requirements stipulated in the legislation and the code of conduct to be issued by the PMSA. As disputes between PMCs and owners are often related to financial management matters, specific requirements in relation to the preparation of budget, keeping of financial statements for clients, etc. will be specified in the subsidiary legislation and the code of conduct. PMCs will have a statutory obligation to disclose specified information to their clients. They will have to comply with certain requirements towards the end of their appointment period (for example, handing over of documents from outgoing PMCs to incoming PMCs) in order to ensure smooth handover to the new PMC. Breach of the requirements in the legislation and the code of conduct may result in disciplinary actions to be taken by the PMSA such as revocation or suspension of licences and other sanctions such as reprimands, warnings, imposition of fine, etc.

(B) Licensing of Property Management Practitioners (PMPs)

The Bill will provide for a two-tier licensing regime of PMPs. Only those PMPs who take up a supervisory or managerial role in the provision of property management services will be subject to licensing. Frontline staff will not be required to obtain PMP licences. This is in line with the purpose of the licensing system, which is to require those making decisions for the provision of services to ensure service quality. Since it is currently not mandatory for the practitioners to register before practising in the industry, the Government could only roughly estimate that there are around 10,000 PMPs based on the information provided by the professional bodies. The provision of property management services by a public officer acting in that capacity will not be subject to the PMP licensing regime.

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 (for example, whether the individual is a mentally disordered person, whether there is past conviction record on relevant offences, etc.). The qualification requirements for the first tier of PMPs, who may describe themselves as “registered professional property manager” (註冊專業物業經理), will be higher than that for the second tier of PMPs, who may describe themselves as “licensed property management officer” (持牌物業管理主任). 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.

All licensed PMPs will be required to comply with the requirements stipulated in the legislation and the code of conduct to be issued by the PMSA. Breach of the requirements may result in disciplinary actions to be taken by the PMSA such as revocation or suspension of licences, and other sanctions such as reprimands, warnings, imposition of fine, etc.

(C) Property Management Services Authority (PMSA)

(a) Composition and Role

The PMSA will assume the dual functions of a licensing body and an industry promoter. The chairperson and members of the PMSA are to be appointed by the Chief Executive. The PMSA consists of the Chairperson, the Vice-chairperson and not more than 18 members from the following three categories of individuals –

- (i) individuals who are engaged in property management services;
- (ii) individuals who have experience in the relevant fields related to property management, general administration or consumer affairs;
- (iii) other individuals who appear to the CE to be suitable to be appointed as members.

The PMSA will maintain registers of PMCs and PMPs which are available for public inspection. It will be empowered to undertake self-initiated investigation as well as to conduct investigation upon receipt of complaints. An appeal panel will be established to deal with appeals lodged by persons who are aggrieved by the decisions of the PMSA. The PMSA will be required to furnish to the Secretary for Home Affairs (SHA) annually its statement of accounts, auditor's report and annual report. SHA shall cause the documents to be tabled at the Legislative Council (LegCo). The PMSA will be subject to regulation under the Prevention of Bribery Ordinance (Cap. 201) and The Ombudsman Ordinance (Cap. 397).

(b) Funding Arrangements

The 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). 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 IRD for stamping. Any cost incurred by IRD for PMSA should be fully recovered from PMSA.

The PMSA may by regulation prescribe the licence fees while the SHA may by regulation prescribe the amount of the levy. The actual level of licence fees and levy will be worked out at a later stage of the legislative exercise, taking into account the detailed licensing requirements to be set out in the subsidiary legislation.

(D) Subsidiary Legislation and Transitional Arrangements

After the passage of the Bill, the Government will propose subsidiary legislation which will cover the detailed licensing criteria for PMCs and PMPs, the information and documents required in an application for a licence,

the level of licence fees and levy, and the exemption of any class of persons or instruments from the payment of levy. The Government propose to allow a three-year transitional period after the enactment of the principal ordinance and subsidiary legislation. Unlicensed PMCs and PMPs will not be allowed to practise in the industry after the end of the transitional period.

In order to facilitate those experienced PMPs with lower level of formal qualifications to adapt to the new licensing system, experienced PMPs meeting certain basic requirements will be granted provisional licences during the transitional period. They will be allowed three years after they have obtained the provisional licences to complete continuing professional development courses so that they can be granted formal licences by the PMSA upon expiry of the provisional licences. PMPs who already meet the licensing criteria of formal licences may also apply for formal licences directly during the transitional period. The detailed criteria for granting formal and provisional licences respectively will be set out in the subsidiary legislation.

Extract from: HAD HQ CR/20/3/5(C), Legislative Council Brief

By Lai Yuk Tim, Tim

Vice-Chair of Publications Committee

Chartered Institute of Housing Asian Pacific Branch