

Submissions of the Hong Kong Bar Association
On the Consultation Paper of the Property Management Service Authority on
“Proposed Licensing Regime for Property Management Companies and
Property Management Practitioners”

1. The Property Management Service Authority (“**PMSA**”) launched a public consultation on the *Proposed Licensing Regime for Property Management Companies and Property Management Practitioners* in November 2018. The relevant consultation document (“**the Consultation Paper**”) was forwarded by the Law Society to the Hong Kong Bar Association for consideration.
2. The Hong Kong Bar Association has now considered the Consultation Paper and sets out the comments in the ensuing paragraphs.
3. By way of background, the Bar understands that the Property Management Services Ordinance (Cap. 626) (“**PMSO**”) was enacted in May 2016 with a view to establishing a licensing regime for businesses and individuals providing property management services. The PMSA was also established for that purpose pursuant to the provisions in the PMSO.
4. The PMSO’s principal function is to regulate the provision of property management services by property management companies (“**PMCs**”) and property management practitioners (“**PMPs**”). PMCs and PMPs are given the following definitions under section 2 in the PMSO:

*“**property management company** (物業管理公司) means a business entity (whether a company, partnership or sole proprietorship) that carries on the business of providing property management services;*

***property management practitioner** (物業管理人) means an individual who assumes a managerial or supervisory role in a property management company in relation to property management services provided by the company;”*

5. Both definitions make reference to “property management services”, which is defined under section 3 as any such services (i) falling within a category of services set out in Schedule 1, and (ii) prescribed by PSMA through regulation with reference to the said categories.

6. Section 6 of the PMSO provides for the prohibition of unlicensed activities - in short, no person may, without a PMC or PMP licence (as the case may be), act as a PMC or PMP. Section 7 sets out the exceptions to the prohibition, one of them being the case of a PMC whose business does not involve the provision of property management services falling within more than one category or sub-category of property management services.

7. Schedule 1 of the PMSO provides for seven categories of *property management services*:
 - (1) General management services relating to a property;
 - (2) Management of the environment of a property;
 - (3) Repair, maintenance and improvement of a property;
 - (4) Finance and asset management relating to a property;
 - (5) Facility management relating to a property;
 - (6) Human resources management relating to personnel involved in the management of a property; and
 - (7) Legal services relating to the management of a property.

8. The Bar wishes to place particular emphasis on paragraph 1.2(7) in Chapter 5 of the Consultation Paper, where the PMSA describes the seventh category as follows:

“(7) 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, arbitration and mediation relating to the management of a property, drafting of building management related contracts and provision of advice on issues relating to the Building Management Ordinance (BMO) (Cap. 344), the Property Management Services Ordinance (Cap. 626), the DMC of a building and relevant legislation or statutory orders.”

9. As the Consultation Paper explains, the seventh category includes what apparently coincides with the common types of work of legal practitioners who practise in the area of property management and related matters.

10. As the Bar understands it, the Consultation Paper does not suggest that there is currently contemplated the need for designating sub-categories under the seventh category. It follows that solicitors and barristers that practise in property management and related matters, despite technically falling within the seventh category of property management services and are therefore PMCs under the definitions of PMSO, will not require a PMC/PMP licence to continue to provide such legal services pursuant to section 7. The Bar cannot envisage a scenario in the normal circumstances where any such legal services of a solicitor or a barrister will fall within the ambit of any one of the other six categories of property management services.

11. However, this is not to say that the convenient exception under section 7 is an ideal method to exclude legal practitioners from regulation meant for “actual” PMCs. First, the prescription of sub-categories might change in the future such that the practice of a legal practitioner might fall into two or more sub-categories, subjecting themselves to the licensing requirement. Secondly and more crucially, the absurd scenario where legal practitioners who advise or otherwise provide legal services on property management matters are defined as PMCs/PMPs potentially eligible to apply for licences under the PMSO which exists as a result of ambiguous definitions is per se undesirable. From reading of the current PMSO, there is no provision that bring legal practitioners out of the self-referencing definitions of PMCs and PMPs.

12. The Bar takes the view that legal practitioners who are already subject to the Legal Practitioners Ordinance (Cap. 159) should be expressly exempt from the purview of the PMSO. This removes the apparent ambiguity as discussed above. Although the Bar does not expect that as a matter of enforcement and execution the regulation will in fact “bite” on legal practitioners as this is clearly not intended by the enactment of the PMSO (per the relevant Hansards), surely legal practitioners (be they solicitors or barristers) will benefit from the use of words in statutes which will avoid ambiguity.

Hong Kong Bar Association

Dated: 21 January 2019