

## PROPERTY MANAGEMENT SERVICES AUTHORITY

### Code of Conduct

#### Handling Payment for or Arranging Payment to be Made by Clients

**Code No.: C9/2022**

**Effective Date: 21 January 2022**

#### **Preamble**

The following code of conduct (“Code”) is issued by the Property Management Services Authority pursuant to section 5 of the Property Management Services Ordinance (Cap. 626) (“PMSO”) and contains practical guidance for the purposes of section 4 of the PMSO (disciplinary offences). Although a licensee<sup>1</sup> does not incur a legal liability only because the licensee has contravened a provision of the Code, the Code is admissible in evidence in disciplinary hearings, and proof that a licensee contravened or did not contravene the relevant provision of the Code may be relied on as tending to establish or negate a matter that is in issue in the hearings.

When providing property management services (“PMSs”), a licensed PMC may from time to time settle payment relating to PMSs for its clients<sup>2</sup> of the concerned property i.e. make payment to settle those relating to PMSs out of the deposit of the trust account or the client account opened and maintained for the concerned property. Besides, a licensed PMC may also from time to time arrange for its clients of the concerned property to settle payment relating to PMSs i.e. after the licensed PMC has provided to its clients the relevant information for the payment, its clients settle the payment concerned directly out of the deposit of their own bank account. This Code aims to provide licensed PMCs with practical guidance for handling payment for or arranging payment to be made by clients.

#### **Code**

#### **Establish proper mechanism for handling payment for clients or arranging payment to be made by clients**

- A(1) A licensed PMC has to establish a proper mechanism for the property for which PMSs are provided by it to handle payment for its clients or arrange payment to be made by its clients (if applicable). The mechanism shall include the following elements:

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<sup>1</sup> The term “licensee” means the holder of the following licence: a PMC licence; a PMP (Tier 1) licence; a PMP (Tier 2) licence; a provisional PMP (Tier 1) licence; or a provisional PMP (Tier 2) licence.

<sup>2</sup> The term “client” has the same meaning as defined in section 16 of the PMSO, i.e. “in relation to a property for which a licensed PMC provides property management services, means— (a) the owners’ organization of the property; and (b) the owners of the property who pay or are liable to pay the management expenses in respect of the services”.

- Settle payment timely;
- Verify information and documents relating to payment;
- Open bank account;
- Set authorization for payment;
- Keep cheque book and related items properly;
- Confirm receipt of payment;
- Keep record; and
- Check record.

### **Settle payment timely**

B(1) A licensed PMC should settle payment or arrange for its clients to settle payment timely in accordance with the terms of contract or agreement for the supply of services or goods.

### **Verify information and documents relating to payment**

C(1) A licensed PMC has to verify the purpose of the concerned payment, details of the payee and amount when it settles the payment or arranges for its clients to settle the payment, and to record properly.

C(2) If a payment is made by cheque, the licensed PMC has to ensure that all the information including the name of payee (e.g. the name of the concerned supplier), the amount (written in words and in number) and the date, etc. are correctly filled in the cheque before it signs or arranges for its clients to sign the cheque.

### **Open bank account**

D(1) Except where a licensed PMC is the manager<sup>3</sup> of the concerned property<sup>4</sup>, the licensed PMC has to enter into an agreement with its clients for opening and maintaining an independent bank account<sup>5</sup> (“designated account”) to handle payment relating to PMSs for its clients.

D(2) If a licensed PMC opens a bank account according to paragraph D(1) of the Code, the account has to be designated as a trust account or client account of the property concerned.

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<sup>3</sup> In this Code, the term “manager” has the same meaning as that defined by section 34D of the Building Management Ordinance (Cap.344) (“BMO”).

<sup>4</sup> It is stated in the deed of mutual covenant that the manager has to open and maintain one or more than one bank accounts for the management of the relevant property (see section 34E of and paragraphs 3(1) and (1A) of Schedule 7 to the BMO). Besides, generally owners’ organization may not be formed initially in a newly built property, and the manager has to open and operate a bank account for the management of the concerned property. Therefore, the Code does not require a licensed PMC, being a manager, to enter into an agreement with its client for the purpose of opening and maintaining a designated account.

<sup>5</sup> Bank account means an account opened in a bank as defined by section 2 of the Banking Ordinance (Cap. 155).

### **Set authorization for payment**

- E(1) A licensed PMC has to set or set according to the agreement with its clients (if any) the authorization for settling payment out of the designated account (if the designated account is opened and maintained by the licensed PMC). The password for operating the designated account must be kept strictly confidential and may only be provided to authorized person(s)<sup>6</sup>.

### **Keep cheque books and related items properly**

- F(1) A licensed PMC has to properly keep the cheque books, passbooks and items such as the stamp, etc. which may be used for withdrawing money from the designated account (if the designated account is opened and maintained by the licensed PMC).

### **Confirm receipt of payment**

- G(1) A licensed PMC has to, as far as practicable and after settling or arranging for its client to settle payment, obtain receipt from the payee, and establish measures (e.g. by way of random check) to confirm with the payee the receipt of payment and record properly.

### **Keep record**

- H(1) A licensed PMC has to keep record and documents in relation to payment (e.g. copy of signed cheque (if applicable), stub of cheque (if applicable), withdrawal slip, receipt of payment and statement of the designated account) for not less than six years from the date of issuance of the concerned documents.

### **Check record**

- I(1) A licensed PMC has to regularly check the concerned account and record against the statement of the designated account (if the designated account is opened and maintained by the licensed PMC). Immediate follow-up actions have to be taken if there is any discrepancy (e.g. the amount stated in the voucher is different from that in the record of the cheque payment).
- I(2) If the scope of work agreed by a licensed PMC and an owners' organization includes preparing an income and expenditure account and balance sheet, the licensed PMC has to—
- (a) within one month after each consecutive period of three months, or such shorter period as the licensed PMC may select, prepare a summary of income and expenditure and a balance sheet of the property concerned in

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<sup>6</sup> An authorized person means the person designated by the licensed PMC or appointed after consultation with the client (as the case may be).

respect of that period and display a copy of the summary and balance sheet in a prominent place in the property concerned for at least seven consecutive days<sup>7</sup>; and

- (b) within two months after the end of each financial year, prepare an income and expenditure account and balance sheet of the property concerned for that year and display a copy of the income and expenditure account and balance sheet in a prominent place in the property concerned for at least seven consecutive days. If an owners' organization by a resolution of the owners decides to audit the income and expenditure account and balance sheet by a specified accountant or other independent auditor in that resolution, the licensed PMC has to arrange for such an audit to be carried out by that accountant and other independent auditor without delay<sup>8</sup>.
- I(3) In case a licensed PMC arranges for an accountant or an auditor to audit the concerned account, it must not interfere with the audit work carried out by the accountant or auditor or be involved in the independent enquiry between the accountant or auditor and the concerned bank (e.g. not to receive, request to receive or keep the response made by the concerned bank in the "bank confirmation"<sup>9</sup> in respect of enquiries raised by the concerned accountant or auditor).

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If there is any inconsistency between the Chinese version and the English version of this Code, the Chinese version shall prevail.

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<sup>7</sup> In respect of the concerned guideline, reference has been made to the relevant requirement in paragraph 2(2) of Schedule 7 to the BMO.

<sup>8</sup> In respect of the concerned guideline, reference has been made to the relevant requirement in paragraphs 2(3) and 2(6) of Schedule 7 to the BMO.

<sup>9</sup> "Bank confirmation" is issued to the bank by an accountant or auditor in the name of the client during the audit process to verify the correctness and completeness of the information of cash balance and liabilities of the client's account.