

PROPERTY MANAGEMENT SERVICES AUTHORITY

Code of Conduct

Provision of Prescribed Information and Financial Document to Clients

Code No.: C10/2022

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 licensee¹ 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.

Background

2. Section 16(2) of the PMSO stipulates that a licensed PMC has to (a) prepare the prescribed information in respect of each property for which it provides property management services; and (b) provide the PMC’s clients² in each property for which the PMC provides property management services with the prescribed information relating to the property in the prescribed manners. The prescribed information and the prescribed manners are set out in section 13 of and Schedule 3 to the Property Management Services (Licensing and Related Matters) Regulation (Cap. 626B) (“PMSR”). The information that has to be provided is: information concerning conflict of interests between the PMC and its clients, information in contracts relating to the management of the property, and information in other documents relating to property management that the PMSA may from time to time specify. A licensed PMC commits a disciplinary offence stipulated in section 4 of the PMSO if it contravenes section 16(2) of the PMSO.

¹ 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.

² 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”. According to such a definition, a tenant is not a client.

Code

Provide information concerning conflict of interests

- A(1) A licensed PMC has to, to the best of its knowledge and belief, provide to its clients the information concerning conflict of interests between itself and its clients.
- A(2) The manner of provision of the information mentioned in paragraph A(1) of the Code by a licensed PMC to its clients is—
- (a) as soon as reasonably practicable, sending to the owners' organization of the property or displaying in a prominent place in the concerned property a copy of the information; and
 - (b) within 31 days³ after receipt of a request from the client and payment of a reasonable copying fee, providing the client with a copy of the information.

Provide information concerning contracts relating to property management

- B(1) A licensed PMC has to provide to its clients the information in the contracts⁴ entered into for or on behalf of its clients in respect of the supply of goods or services⁵.
- B(2) The manner of provision of the information mentioned in paragraph B(1) is—
- (a) as soon as reasonably practicable, sending to the owners' organization of the property or displaying in a prominent place in the concerned property a copy of the information; and
 - (b) within 31 days³ after receipt of a request from the client and payment of a reasonable copying fee, providing the client with a copy of the information.

³ Calendar day and is consistent with sections 1(a)(ii)(B) and 1(b)(ii)(B) of Schedule 3 to the PMSR.

⁴ Since the cost in "package type" contract (i.e. after paying a fixed sum for the concerned service, the client is not required to pay any extra fee (e.g. personnel salary, charges of cleaning, security, repair and maintenance, etc.)) is usually a fixed sum, individual owners may know the information concerned via financial documents such as budget and an income and expenditure account. The cost in "reimbursement" contract (i.e. the client is responsible for payment of all the cost in relation to every item of the services provided and the cost is not a fixed amount) may consist of different items and the cost of each item may be adjusted according to changes of situation, resulting in variation of the monthly fee. The nature of "reimbursement" contract is more complicated than the "package type" contract and it is not easy to clearly show the information concerned in a budget or an income and expenditure account. Therefore, the Code requires a licensed PMC to provide information in a "reimbursement" contract entered into for or on behalf of its clients in respect of supply of services, but not the information in a "package type" contract.

⁵ The concerned guideline is consistent with sections 1(b)(i) of Schedule 3 to the PMSR.

- B(3) To comply with the guideline set out in paragraph B(1) of the Code, a licensed PMC has to keep the concerned information for not less than 6 years⁶.
- B(4) If the information mentioned in paragraph B(1) of the Code involves any personal data, a licensed PMC has to handle the information in accordance with the Personal Data (Privacy) Ordinance (Cap. 486) (“PDPO”).

Provide information concerning other documents relating to the management of the property that the PMSA may from time to time specify

- C(1) A licensed PMC has to provide to its clients the information in other documents relating to the management of the property that the PMSA may from time to time specify.
- C(2) The manner of provision of the information mentioned in paragraph C(1) is—
- (a) as soon as reasonably practicable, sending to the owners’ organization of the property or displaying in a prominent place in the concerned property a copy of the information; and
 - (b) within 31 days³ after receipt of a request from the client and payment of a reasonable copying fee, providing the client with a copy of the information.
- C(3) To comply with the guideline set out in paragraph C(1) of the Code, a licensed PMC has to keep the concerned information for not less than 6 years⁷.
- C(4) If the information mentioned in paragraph C(1) of the Code involves any personal data, a licensed PMC has to handle the information in accordance with the PDPO.

Inspect financial documents and provide copies

- D(1) Subject to the provisions of the BMO, unless the scope of service of a licensed PMC does not include handling or management of financial documents, a licensed PMC, in respect of each property for which it provides property management services, has to—
- (a) upon request made by its client—

⁶ In respect of the concerned guideline, reference has been made to the relevant requirement in section 20A(4) of the Building Management Ordinance (Cap. 344) (“BMO”).

⁷ In respect of the concerned guideline, reference has been made to the relevant requirements in section 20A(4) of, paragraph 1 of Schedule 6 and paragraph 2(1) of Schedule 7 to the BMO.

- (i) allow the client, at reasonable time, to inspect books or records of account and any income and expenditure or balance sheet and audit report⁸;
 - (ii) after receipt of payment of a reasonable copying fee, provide the client with a copy of the documents mentioned in paragraph D(1)(a)(i) of the Code⁹; and
- (b) after receipt of a written request from the client and payment of a reasonable copying fee, provide a copy of the draft budget, budget or revised budget to the client¹⁰.
- D(2) To comply with the guideline set out in paragraph D(1) of the Code, a licensed PMC has to keep the financial documents mentioned in paragraphs D(1)(a)(i) and D(1)(b) of the Code for not less than 6 years¹¹.

Inspect other financial documents

- E(1) Unless a corporation¹² has been established in the concerned property, a licensed PMC has to, at the request of not less than 5% of the owners¹³ of the concerned property, allow those owners to inspect any bills, invoices, vouchers, receipts or other documents referred to in the books, records of account and other records¹⁴.
- E(2) To comply with the guideline set out in paragraph E(1) of the Code, a licensed PMC has to keep the relevant bills, invoices, vouchers, receipts or other documents mentioned in paragraph E(1) for not less than 6 years¹⁵.

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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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⁸ The concerned guideline is consistent with paragraphs 2(5)(a) and 2(6)(a) of Schedule 7 to the BMO.

⁹ The concerned guideline is consistent with paragraphs 2(5)(b) and 2(6)(b) of Schedule 7 to the BMO.

¹⁰ The concerned guideline is consistent with paragraph 1(7) of Schedule 7 to the BMO.

¹¹ In respect of the concerned guideline, reference has been made to relevant requirements in section 20A(4) of, paragraph 1 of Schedule 6 and paragraph 2(1) of Schedule 7 to the BMO.

¹² Means a corporation registered under section 8 of the BMO.

¹³ The term “owner” has the same meaning as defined in section 2 of the BMO, i.e. “(a) a person who for the time being appears from the records at the Land Registry to be the owner of an undivided share in land on which there is a building; and (b) a registered mortgagee in possession of such share”.

¹⁴ The concerned guideline is consistent with paragraph 1 of Schedule 6 to the BMO.

¹⁵ In respect of the concerned guideline, reference has been made to the relevant requirement in section 20A(4) of, paragraph 1 of Schedule 6 and paragraph 2(1) of Schedule 7 to the BMO.