

## Notice to Complainant

1. The Property Management Services Authority (“PMSA”) handles complaints against licensed property management companies or licensed property management practitioners who have committed disciplinary offences or are no longer meeting the prescribed criteria for holding their licences (“non-compliance”) in accordance with section 18 of the Property Management Services Ordinance (Cap. 626) (“PMSO”). The PMSA, however, does not give legal advice to complainants or licensees on legal proceedings between them.
2. The provisions concerning disciplinary matters in the PMSO came into operation on 1 August 2020 without retrospective effect. Therefore, the PMSA has no jurisdiction under the PMSO to investigate complaints which occurred before 1 August 2020. In addition, the PMSA may only handle a complaint where the person in question was and acted as, at the time when the suspected non-compliance occurred, a licensee. In other words, for a case occurring on or after 1 August 2020, if the person being complained of was not a licensee at the material time, the PMSA has no jurisdiction under the PMSO to investigate the matter.
3. If at the material time, the concerned property management companies (PMCs) or property management practitioners (PMPs) are not licensees or the matter of complaint occurred before 1 August 2020, while the PMSA would not be able to carry out investigation or take disciplinary action under the PMSO, however, the PMSA will depending on the situation, strive to provide assistance to the complainant, including making enquiries with the respective PMCs or PMPs, relaying the complainant’s concerns to them, and encouraging them to follow up on the relevant issues and enhance communication with the complainant in order to address the concern or to reach consensus for resolving the matter under complaint.
4. Moreover, the PMSA may consider not conducting an investigation if:
  - (a) the complaint is misconceived or lacking in substance (for example, the complaint is based on mere speculation);
  - (b) the matter complained of is outside the jurisdiction of the PMSA (for example, the matter complained of is a mere contractual dispute);

- (c) the matter complained of has occurred for more than 12 months, and the complainant fails to give a reasonable explanation for the delay in lodging the complaint;
- (d) the complainant is not willing to testify in the disciplinary hearing and/or refuses to complete the Complaint Form and/or refuses to attend a meeting with the PMSA to give a detailed statement; or
- (e) the matter complained of is also the subject of legal proceedings<sup>1</sup>.

5. If the PMSA decides not to conduct an investigation into the complaint or to terminate the investigation, it will, as soon as practicable, notify the complainant in writing of the decision and give reasons for the decision.

6. The complainant is required to provide his/her name, Hong Kong identity card number/ passport number, correspondence address and telephone number so that the PMSA may contact him/her and, where required, issue a summons for the complainant to appear in the disciplinary hearing to testify.

7. A complaint may be lodged at the office of the PMSA (preferably by calling the PMSA in advance to arrange for a meeting) in person or in writing and sent to the PMSA by post, fax or email. A complainant should provide the details of the complaint, including the date of the incident, the address of the relevant property, and the identity of the relevant person(s) and property management company. To assist the PMSA to handle the complaint more efficiently, the PMSA will invite the complainant to **complete the Complaint Form properly and lodge it with the PMSA**. If the complainant does not complete the Complaint Form properly or lodge it with the PMSA, the PMSA may take longer time to follow up on the complaint.

8. If a complaint is lodged anonymously or the complainant refuses to have his/ her identity disclosed to the complaine and/or other relevant parties, the PMSA may decide whether or not to handle the complaint and, in any event, will not inform the person lodging the complaint of its decision, the progress and result of the investigation. Moreover, unless the complainant clearly states that he/she requires the PMSA to take follow-up action, the PMSA will in general only record the complaint which is copied to the PMSA without taking further action.

9. The PMSA will conduct a preliminary assessment on the information provided by

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<sup>1</sup> The PMSA may consider deferring an investigation pending the outcome of the legal proceedings.

a complainant. If the PMSA, after the preliminary assessment, considers that there is insufficient information to substantiate the allegation against the complainee, the PMSA will cease handling the complaint and notify the complainant in writing of the reasons for its decision. If the complainant is not satisfied with the PMSA's decision, he/she may raise his/her objection in writing and provide further or new information to the PMSA for consideration. If the PMSA decides to conduct an investigation into the matter complained of, the case will be investigated by an investigator appointed by the PMSA. Having considered the circumstances of a complaint, the PMSA may, if necessary, contact the complainant for obtaining further information.

10. The PMSA shall treat all the information received in strict confidence (irrespective of whether it is provided by the complainant, complainee or witness). However, if the investigation so warrants and for fairness sake, the PMSA may inform the complainee and the witnesses, if any, of the details of the complaint and with the consent of the complainant, appropriately disclose the identity of the complainant to the relevant person(s). In general, the investigator will set out, in writing, the complaint against the complainee and will request the complainee to respond.

11. Generally, after the PMSA has obtained sufficient information for a complaint case, the case will be handled and completed **within 6 months**. The PMSA will, acknowledge receipt of the complaint within **ten calendar days** and thereafter inform the complainant of the progress in writing **on a monthly basis**.

12. A person may commit an offence if he/she, pursuant to the investigator's enquiry in accordance with the PMSO, provides any information or document or gives any response that is false or misleading in a material particular. On conviction, the maximum penalty is a fine of \$200,000 and imprisonment for 1 year.

13. The information provided by the complainant will only be used for purposes which are related to the complaint. All personal data submitted by the complainant may be transferred to parties who may be involved in the processing of the complaint, including the complainee or other relevant persons or organisations, or to such persons and organisations authorized to receive information relating to disciplinary hearing, law enforcement, prosecution, review of decision or carrying out the functions of the PMSA under the PMSO.

14. If, after the investigation, there is *prima facie* evidence to support the complainant's allegations against the complainee, the PMSA may consider conducting a

hearing. If the evidence obtained from the investigation is insufficient to support the complainant's allegations against the complainee, the PMSA will, without disclosing any details of the investigation, notify the complainant and complainee in writing of the decision. If the complainant is not satisfied with the decision made by the PMSA, he/she may raise objection in writing and provide to the PMSA further and/or new information for consideration. The PMSA will take appropriate action in accordance with the procedures set out in paragraph 11 above.

15. If the PMSA decides to conduct a hearing, a summons may be issued to any person for attending the hearing as a witness, giving evidence, and providing any information or documents under the possession or control of the said person. A person may commit an offence if he/she, without reasonable excuse, fails to comply with the summons. On conviction, the maximum penalty is a fine of \$200,000 and imprisonment for 1 year. If the complainant is unable or refuses to attend the hearing, the PMSA may not have sufficient evidence to continue to handle the case concerned.

16. A person may commit an offence if he/ she, at a hearing, gives any evidence, or provides any information or document, that is false or misleading in a material particular; and knows that, or is reckless as to whether, the evidence, information or document is false or misleading in a material particular. On conviction, the maximum penalty is a fine of \$200,000 and imprisonment for 1 year.

17. At the conclusion of the hearing, the PMSA will notify the complainant and complainee of the result in writing. Any person aggrieved by the disciplinary order made after the disciplinary hearing may lodge an appeal against the order. The appeal will be heard by an appeal tribunal composed of members of the Appeal Panel which is appointed by the Secretary for Home and Youth Affairs. An appeal tribunal may confirm, vary or reverse any decision, finding or order to which the appeal relates.