

Provision of Prescribed Information and Financial Document to Clients

Best Practice Guide

Code No.: G10/2022



PROPERTY MANAGEMENT SERVICES AUTHORITY

Best Practice Guide on Provision of Prescribed Information and Financial Document to Clients

Guide No.: G10/2022

Effective Date: 21 January 2022

Preamble

For the purpose of enabling licensees¹ to comply more effectively and professionally with the guidelines set out in the code of conduct² entitled “Provision of Prescribed Information and Financial Documents to Clients” (Code No.: C10/2022) (“Code”) issued by the Property Management Services Authority (“PMSA”) on 21 January 2022, the PMSA provides relevant guidelines in this best practice guide (“Guide”) pursuant to section 44³ of the Property Management Services Ordinance (Cap. 626) (“PMSO”). While licensees are encouraged to use their best endeavours to follow the Guide, failure to comply with the Guide will, however, not be regarded as a disciplinary offence referred to in section 4 of the PMSO.

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 clients⁴ 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

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 With regard to the code of conduct containing practical guidance issued by the PMSA under section 5 of the PMSO for the purpose of section 4 of the PMSO (disciplinary offences), although a licensee does not incur a legal liability only because the licensee has contravened a provision of the code of conduct, the code of conduct is admissible in evidence in disciplinary hearings, and proof that a licensee contravened or did not contravene the relevant provision of the code of conduct may be relied on as tending to establish or negate a matter that is in issue in the hearings.

³ Section 44 of the PMSO provides: “The Authority may do anything it considers appropriate for it to do for, or in relation to, the performance of its functions”.

⁴ 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.

a disciplinary offence stipulated in section 4 of the PMSO if it contravenes section 16(2) of the PMSO.

Provide information concerning conflict of interests

Code: 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 days⁵ after receipt of a request from the client and payment of a reasonable copying fee, providing the client with a copy of the information.

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- a(1) Conflict of interests mentioned in paragraph A(1) of the Code includes conflict of pecuniary or beneficial interests, as well as possible or potential conflict of interests.
- a(2) Conflict of interests includes but not limited to the following situations: a licensed PMC provides property management services to a property and the company held by the licensed PMC, its director, shareholder or person-in-charge (including an immediate relative⁶ of the above-mentioned persons) intends to offer supplies or provide service to the property, and the licensed PMC is responsible for handling the relevant contractual matters.

⁵ Calendar day and is consistent with sections 1(a)(ii)(B) and 1(b)(ii)(B) of Schedule 3 to the PMSR.

⁶ Immediate relative means the parent, spouse, child, brother or sister.

- a(3) To comply with the requirements set out in paragraph A(2)(a) of the Code, a licensed PMC should, when displaying the concerned information, display the information legibly and in appropriate font size and should, so far as reasonably practicable, display the information in a prominent place at every building in the related property. A licensed PMC may make reference to the sample in **the Appendix** when providing the concerned information to its clients.
- a(4) Unless the provision of information mentioned in paragraph A(1) of the Code is in the form for display, a licensed PMC should make a record of the information provided to the client mentioned in paragraph A(1) of the Code (e.g. description of the information and the date of provision, etc.), request the client to sign an acknowledgement of receipt and keep the record for at least 3 years from the date of provision of such information to the client.

Provide information concerning contracts relating to property management

- Code:** B(1) A licensed PMC has to provide to its clients the information in the contracts⁷ entered into for or on behalf of its clients in respect of the supply of goods or services⁸.
- 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 days⁵ after receipt of a request from the client and payment of a reasonable copying fee, providing the client with a copy of the information.

⁷ 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.

⁸ The concerned guideline is consistent with section 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 years⁹.

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”).

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b(1) In respect of a contract for the supply of goods, the information mentioned in paragraph B(1) of the Code should include the name of the supplier, the description and type of the goods, quantity, unit price and total amount of the contract.

b(2) In respect of a contract for services:

(a) if the related service is provided by staff employed by a licensed PMC and without violating the PDPO, the information mentioned in paragraph B(1) of the Code should include the service provided in the related property by the licensed PMC, i.e. scope of service, number of related staff of all ranks, the total amount of salary of all staff in the concerned property, related benefits (e.g. Mandatory Provident Fund, medical benefits, etc.) and duties, etc. and the information on support by the PMC’s headquarter (if any).

(b) If the relevant service is provided by a sub-contractor of a licensed PMC, the information mentioned in paragraph B(1) of the Code should include the name of the sub-contractor, the total amount, scope of service, number of staff of all ranks (if any) and duties involved for the provision of the related service, etc.

b(3) To comply with the requirement set out in paragraph B(2)(a) of the Code, a licensed PMC should, when displaying the concerned information, display the information legibly and in appropriate font size and should, so far as reasonably practicable, display the information in a prominent place at every building in the concerned property.

⁹ 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”).

- b(4) Unless the provision of information mentioned in paragraph B(1) of the Code is in the form for display, a licensed PMC should make a record of the information provided to the client mentioned in paragraph B(1) of the Code (e.g. description of the information and the date of provision, etc.), request the client to sign an acknowledgement of receipt and keep the record for at least 3 years from the date of provision to the client.

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

- Code:** 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 days⁵ 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 years¹⁰.
- 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.

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- c(1) In respect of the information of the other documents mentioned in paragraph C(1) of the Code, a licensed PMC should pay heed to the relevant notice issued by the PMSA in different manners (e.g. publication or information published on the PMSA's website).

¹⁰ 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.

- c(2) To comply with the requirement set out in paragraph C(3)(a) of the Code, a licensed PMC should, when displaying the concerned information, display the information legibly and in appropriate font size and should, so far as reasonably practicable, display the information in a prominent place at every building in the concerned property.
- c(3) Unless the provision of information mentioned in paragraph C(1) of the Code is in the form for display, a licensed PMC should make a record of the information provided to the client mentioned in paragraph C(1) of the Code (e.g. description of the information and the date of provision, etc.), request the client to sign an acknowledgement of receipt, and keep the record for at least 3 years from the date of provision to the client.

Inspect financial documents and provide copies

Code: 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—
 - (i) allow the client, at reasonable time, to inspect books or records of account and any income and expenditure or balance sheet and audit report¹¹;
 - (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 Code¹²; 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 client¹³.

¹¹ The concerned guideline is consistent with paragraphs 2(5)(a) and 2(6)(a) of Schedule 7 to the BMO.

¹² The concerned guideline is consistent with paragraphs 2(5)(b) and 2(6)(b) of Schedule 7 to the BMO.

¹³ The concerned guideline is consistent with paragraph 1(7) of Schedule 7 to the BMO.

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 years¹⁴.

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d(1) A licensed PMC should make a record of the copy of the financial document provided to the client mentioned in paragraph D(1)(a)(ii) and D(1)(b) of the Code (e.g. description of the copy and the date of provision, etc.), request the client to sign an acknowledgement of receipt, and keep the record for at least 3 years from the date of provision to the client¹⁵.

Inspect other financial documents

Code: E(1) Unless a corporation¹⁶ has been established in the concerned property, a licensed PMC has to, at the request of not less than 5% of the owners¹⁷ 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 records¹⁸.

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 years¹⁹.

¹⁴ 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.

¹⁵ Paragraph d(1) of the Guide does not preclude the requirement on keeping financial records for at least 6 years as stipulated in paragraph 2(1) of Schedule 7 to the BMO.

¹⁶ Means a corporation registered under section 8 of the BMO.

¹⁷ 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”.

¹⁸ The concerned guideline is consistent with paragraph 1 of Schedule 6 to the BMO.

¹⁹ 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.

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- e(1) After the inspection of the relevant documents by the concerned owners, a licensed PMC should, so far as reasonably practicable, request the concerned owners to confirm in writing that they had inspected such documents and keep the confirmation properly for not less than 3 years from the date of receipt of the confirmation²⁰.

— END —

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

²⁰ Paragraph e(1) of the Guide does not preclude the requirement on keeping financial records for at least 6 years as stipulated in paragraph 2(1) of Schedule 7 to the BMO.

To: [Name of owners' organization / owner]

Information on Conflict of Interest

Our company provides the information on conflict of interest mentioned in section 1(a)(i) of Schedule 3 to the Property Management Services (Licensing and Related Matters) Regulation (Cap. 626B) as follows:

a) Person(s)/company(ies) with whom/which our company, our company's director, shareholder or person-in-charge (including immediate relative¹ of the above-mentioned person) have official dealings in our company's provision of property management service for [name of property]

b) The relationship between [our company's director, shareholder or person-in-charge (including immediate relative the of the above-mentioned person) and person(s)/company(ies) in (a) (e.g. holding company/ relative)

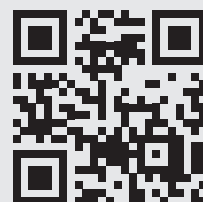
c) Brief description of the duties of [our company, our company's director, shareholder or person-in-charge (including immediate relative the of the above-mentioned person)] which involved the person(s)/company(ies) (e.g. handling of tender exercise)

Name of the licensed PMC: _____

Licence No.: _____


Date: _____


¹ Immediate relative means the parent, spouse, child, brother or sister.




Related Code of Conduct

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