

**Code of Conduct and Best Practice Guide on “Handling Moneys Received on
behalf of Clients by Properties Management Companies
FAQs**

These FAQs are for general reference only, and the answers / solutions suggested in the FAQs are not exhaustive and do not constitute legal or professional advice. In considering whether a licensee has committed a disciplinary offence, the PMSA will determine each case on its own facts. Legal or professional advice should be sought as and when necessary on the interpretation of the relevant legal provisions and in respect of any individual case. The PMSA will not accept any liability or responsibility whatsoever for any loss or damage caused to any person howsoever arising from any use, misuse of, or reliance on the contents of these FAQs. (please amend the preamble for other FAQs as above accordingly).

1. What is a code of conduct?

Answer: A code of conduct contains practical guidance for the purposes of section 4 of the Property Management Services Ordinance (“PMSO”) (disciplinary offences) and is issued by the PMSA under section 5 of the PMSO.

2. What is a best practice guide?

Answer: A best practice guide is issued by the PMSA under section 44 of the PMSO for the purpose of enabling licensees to comply more effectively and professionally with the guidelines set out in the code of conduct.

3. What are the consequences of failing to comply with the code of conduct or the best practice guide?

Answer: Under section 5 of the PMSO, a licensee does not incur a legal liability only because the licensee has contravened a provision of the code of conduct. However, 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. Failure to comply with the best practice guide will not be regarded as a disciplinary offence referred to in section 4 of the PMSO, however, licensees are encouraged to use their best endeavours to follow the best

practice guide.

4. What does “client” mean in the Code of Conduct (Code No. C4/2021) (“Code”) and the Best Practice Guide (Code No. G4/2021) (“Guide”)?

Answer: The term “client” means the party who enters into a management agreement with a licensed PMC. In the case of a manager, “client” means the owners’ committee established under a deed of mutual covenant or the incorporated owners established under the Building Management Ordinance. The term “manager” has the same meaning as that defined by section 34D of the Building Management Ordinance, that is a DMC manager or any other person who for the time being is, for the purpose of the deed of mutual covenant, managing the property.

5. Why is a licensed PMC being a “manager” not required to enter into an agreement with its clients for opening and maintaining a bank account for handling property management related moneys received on behalf of its clients in accordance with the guideline set out in paragraph B(1) of the Code?

Answer: Since it is stated in the deed of mutual covenant that a “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 Building Management Ordinance), the Code does not require a licensed PMC, being a manager, to enter into an agreement with its client for the opening and maintaining an account for receiving property management related moneys on behalf of its clients.

6. If a payer pays the property management related moneys online or by electronic means, does a licensed PMC still need to issue a receipt to the payer in accordance with the guideline set out in paragraph D(1) of the Code?

Answer: If a payer pays the moneys online or by electronic means, the payer can be treated to have deposited the moneys directly into the designated account of the relevant property. Therefore, the licensed PMC is not required by the Code to issue a receipt to the relevant payer. However, the Guide advises that a licensed PMC should as far as reasonably practicable, issue a receipt for the moneys deposited directly into the

designated account by the payer.

7. Does a licensed PMC have to deposit the property management related moneys received on behalf of its clients into the designated account every day?

Answer: Paragraph E(1) of the Code requires a licensed PMC to deposit the moneys received into the designated account as soon as reasonably practicable. The Guide also advises that if the licensed PMC cannot deposit the moneys into the designated account on the same day of its receipt, the moneys should be deposited into the designated account on the following working day. The licensed PMC should make the most appropriate arrangement in accordance with practical circumstances (e.g. weather or manpower conditions).

8. Paragraph G(1) of the Code requires a licensed PMC to keep records and documents in relation to moneys received and payments made for not less than six years. When does the six years commence?

Answer: The period of six years commences from the date of recording or date of issuance (as the case may be) in respect of the relevant records and documents.

9. When should a licensed PMC check the records of the accounts?

Answer: The Guide advises that a licensed PMC should as far as reasonably practicable arrange daily for an inspecting officer to ensure that moneys received have been deposited into the designated account and to arrange for an inspecting officer to check the records of the relevant accounts thoroughly for not less than twice every month.

10. May the inspecting officers mentioned in the Guide be the same person?

Answer: Yes. However, the inspecting officers shall not be the one who receives moneys or is responsible for depositing moneys into the designated account.