

**Provisions Relating to the Deeds of Mutual Covenant in
the Building Management Ordinance (Cap. 344)**

Background

During the discussion on the “Interim Report of the Review Committee on the Building Management Ordinance and other Building Management Initiatives” at the meeting of the Legislative Council Panel on Home Affairs (the Panel) held on 28 May 2013, we were requested by Members of the Panel to provide supplementary information on the specific provisions of the Building Management Ordinance (BMO) (Cap. 344) which prevail over the terms of deeds of mutual covenant (DMC) in the event of inconsistency between the two. The required information is appended below for Members’ information.

Part VIA of the BMO

2. Upon the enactment of the Multi-storey Buildings (Owners Incorporation) (Amendment) Ordinance 1993, “Part VIA Deeds of Mutual Covenant” was added to the then Multi-storey Buildings (Owners Incorporation) Ordinance to provide for a number of requirements that are applicable to buildings in respect of which DMCs are in force. The latter Ordinance was then renamed as the BMO in 1993. Section 34C(2) of the BMO stipulates that Part VIA should prevail over any DMC or other agreement that is inconsistent with it. The ensuing paragraphs explain the major provisions under Part VIA of the BMO.

Mandatory Terms in DMCs

3. By virtue of section 34E of the BMO, the provisions in Schedule 7 are impliedly incorporated into every DMC, and prevail over inconsistent provisions contained in any DMC. Hence, the provisions in Schedule 7 can be regarded as mandatory terms in every DMC.

4. Schedule 7 is mainly related to the requirements that the manager¹ should follow in relation to the financial management of the building, and the arrangements concerning the termination of a manager's appointment. The detailed requirements in respect of each of the provisions in Schedule 7 are set out at **the Annex**.

Terms Added if Consistent with DMC

5. By virtue of section 34F of the BMO, the terms in Schedule 8 are impliedly incorporated into every DMC, but only to the extent that they are already consistent with the DMC. These terms relate to the procedures to be followed in respect of meetings of the owners' committee and of the owners. For example, paragraph 9 of Schedule 8 provides that the person convening the meeting of owners shall, at least 14 days before the date of the meeting, give notice of the meeting to each owner.

Other Requirements

6. The remaining provisions in Part VIA of the BMO (i.e. sections 34G to 34L) provide for a number of requirements that are applicable in specified circumstances, and such requirements will prevail over the terms of DMC in the event of inconsistency.

7. For example, section 34H provides that where a person owns any part of a building or has the exclusive right to use it, that person has a duty to maintain that part in good repair and condition even if the DMC does not impose an obligation on that person to maintain the part. Section 34I prohibits any person from using the common parts of a building in a manner that causes nuisance to others, and from converting any of the common parts of a building to his or her own use, unless this has been approved by the owners' committee.

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¹ Under section 34D of the BMO, "manager", in relation to a building, means the DMC manager or any other person who for the time being is, for the purposes of the DMC, managing the building.

**Schedule 7 to the BMO:
Mandatory Terms in DMC**

- (i) Paragraph 1 regulates the way in which the total amount of the management expenses payable during any financial year is arrived at. The manager is required to prepare a budget after consulting the owners upon a draft budget.
- (ii) Paragraph 2 regulates the keeping of accounts by the manager and gives the owners the right to inspect those accounts.
- (iii) Paragraph 3 requires the manager to pay all money received by him in respect of the management of the building into a separate, interest-bearing bank account, and use that account exclusively in respect of the management of the building.
- (iv) Paragraph 4 requires the manager to maintain a special fund, to be used for unusual items of expenditure, in an interest-bearing bank account.
- (v) Paragraph 5 prohibits the manager from entering into any contract involving an expenditure exceeding \$200,000 or 20% of the annual budget unless specified tendering procedures are followed.
- (vi) Paragraph 6 prevents a manager from resigning unless he has given 3 months' notice of his intention to resign.
- (vii) Paragraph 7 enables the owners' corporation (OC), by a resolution of the owners of not less than 50% of the shares in the building, to terminate a manager's appointment by giving him not less than 3 months' notice.
- (viii) Paragraph 8 deals with the manager's obligations, after his appointment ends, in relation to the accounts and their audit.

- (ix) Paragraph 9 requires the manager to consult the OC and adopt the approach decided by the OC on the channels of communication among owners on any business relating to the management of the building.