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29 June 1999

Legal Advisory and Conveyancing Office
Circular Memorandum No. 41

Revised Guidelines for Deeds of Mutual Covenant ("DMCs")

I attach a copy of DMC guidelines to replace those in Land Office Circular Memorandum No. 91 and LACO Circular Memoranda Nos. 4 (as to para. 3(a)), 4A (as to para. 3) and 9. For the avoidance of doubt, the guidelines set out in LACO Circular Memorandum No. 34 for DMCs with Government Accommodation remain unchanged and it is not the intention of this Circular Memorandum to replace or substitute any or all of those guidelines.

The attached revised guidelines are not exhaustive and in accordance with the principle that a DMC should achieve a fair balance between those having interests in a lot, the Director may vary the guidelines in individual cases.

The revised guidelines will apply to DMCs the approval of which is currently being sought and to all future applications for DMC approval. To expedite the processing of applications for approval, applicants should adhere to the guidelines. If adherence is for any reason not possible, the applicant should state so in writing together with the reason(s) for not adhering, at the time of submitting the DMC for approval.

Copies of this Circular Memorandum may be downloaded from the Lands Department website at www.info.gov.hk/landsd/.

(A L Robertson)
Deputy Director/Legal (Ag)
for Director of Lands

To: All Solicitors

GUIDELINES FOR DEEDS OF MUTUAL COVENANT ("DMC's")

To promote the concept of building management in private developments (with particular reference to residential developments) and to strike a fair balance of interests between purchasers and developers as co-owners as between owners and managers and as between owners themselves, Government has drawn up the following guidelines for the approval on behalf of the Director of Lands (the Director) of DMCs required under land grant conditions :-

1. (a) No provision in a DMC shall contravene the provisions of the Building Management Ordinance, Cap.344 (the BMO).
- (b) No provision in a DMC shall be in breach of the Government grant or lease conditions.
- ✓ 2. The provisions of the Seventh and Eighth Schedules to the BMO shall be incorporated in and form part of the DMC either by reference or by setting them out in full.
- ✓ 3. (a) The DMC shall include a definition of the common areas including plans thereof which shall be annexed to the DMC. A copy of these plans certified as to their accuracy by or on behalf of the Authorized Person, shall be kept at the Manager's office and shall be available for inspection by the owners during normal office hours. Undivided shares shall be allocated to the common areas and those shares together with all the common areas to which they relate shall be assigned to the manager as trustee for all owners, free of costs or consideration. The Manager shall assign the undivided shares free of costs or consideration to its successor as manager on termination of its appointment, or to the Owners' Corporation (when formed), if so required by it.

The Definition of common areas shall where appropriate include reference to "common parts" as defined to in the BMO.

- (b) The accuracy of all plans annexed to the DMC as to the common areas shall be certified by or on behalf of the Authorized Person.

(c) (i) Subject to sub-paragraph(ii) hereof, the whole of the car park areas, except those designated car parking spaces as shown on the carpark layout plan approved by the Building Authority, shall form part of the common areas.

(ii) In the event that the developer retains ownership of the carpark areas as a whole, sub-paragraph (i) hereof shall not apply and the developer shall be solely responsible for the management and maintenance of the carpark. Upon the sale of designated car parking spaces, all areas other than the designated spaces, such as circulation areas, lifts and landings, shall be designated as carpark common areas by way of a sub-DMC.

✓ 4. The DMC may reserve rights to the developer to execute supplemental and sub-DMCs in respect of separate towers, phases etc. All supplemental and sub-DMCs (as well as the principal DMC) shall require the approval of the Director but where the Director is satisfied upon submission of the supplemental or sub-DMC to the Director, that the sub-DMC relates only to the internal sub-division of an existing unit and by the sub-DMC there would be no alteration to common areas under the principal DMC, the Director may waive the requirement of approval of such supplemental or sub-DMC.

✓ 5. The developer/manager may reserve the rights for itself, its licensees or other third parties to install or affix chimneys, flues, pipes or any other structures or facilities on or within the common areas provided that the written approval of the Owners' Committee (or Owners' Corporation if formed) is obtained prior to the exercise of such rights and that such installation shall not unreasonably affect the enjoyment of the development by the owners and occupiers. Any consideration received therefor shall be credited to the management account for the benefit of all owners.

6. (a) Subject to the provisions of the lease conditions and the DMC, the DMC may reserve the right for the developer to retain for his own use part or parts of the lot unsold not being common areas (" the Retained Areas") provided that: -

(i) the Retained Areas shall be clearly defined and identified in the DMC; and

- (ii) the Retained Areas shall be allocated an appropriate number of undivided shares and management shares on a fair and reasonable basis, and the developer shall remain liable to contribute pro rata to management and other charges and payments.
- (b) Any use of the Retained Areas allowed to those who purchase shall be clearly specified as such in any sales brochure and pre-sale advertising.
- 7. The Director shall decide on a case by case basis whether or not the exercise of any other rights reserved to the developer should be subject to the approval of the Owners' Committee or the Owners' Corporation, if formed.
- 8. (a) The initial period of management by the first manager shall not exceed two years.
- (b) The DMC shall provide that, prior to the Owners' Corporation being formed that the Owners' Committee may terminate the manager's appointment by a resolution of the owners of not less than 50% of all undivided shares (excluding the undivided shares allocated to the common areas) and by giving the manager 3 months' notice in writing.
- (c) No provision of a DMC shall limit the application of the Seventh Schedule to the BMO by restricting or prohibiting termination of the first manager's appointment or his resignation during the initial period.
- 9. (a)(i) For residential developments, the manager's remuneration shall not exceed a percentage of the total expenditure necessarily and reasonably incurred in the management of the development. The percentage shall be based on the number of residential units in the estate and shall not exceed the following:-
 - 20 residential units 20%
 - 21 to 100 residential units 15%
 - 101 residential units and over 10%
- (ii) For non-residential developments, the manager's remuneration shall not exceed 15% of the total expenditure necessarily and reasonably incurred in the management of the development.

- (iii) For a composite development comprising both residential and non-residential units, sub-paragraph (a)(i) shall apply as if each non-residential unit is a residential unit.
 - (b) The DMC shall provide for a review of the percentages by resolution at meetings of owners, the Owners' Committee or the Owners' Corporation if formed.
 - (c) For the purposes of this Guideline only, "Unit" shall have the same definition as "flat" under the BMO.
 - (d) For the purpose of calculating the manager's remuneration, the total expenditure incurred in the management of the estate or any portion of it shall exclude (i) the manager's remuneration itself and (ii) any capital expenditure provided that the Owners' Committee (or the Owners' Corporation, if formed) may be empowered to decide to include, at its own discretion, any capital expenditure for calculating the manager's remuneration at the rate applicable under paragraph (a) or (b) of this Guideline, or at such lower rate as the Owners' Committee (or the Owners' Corporation, if formed) may consider appropriate. "Capital expenditure" shall mean expenditure of a kind not incurred annually.
10. The manager shall call the first meeting of owners as soon as possible, but, in any event, not later than 9 months after the date of the DMC, which meeting shall appoint a chairman and committee of owners or shall appoint a management committee for the purpose of forming an Owners' Corporation under the BMO.
11. During the existence of an Owners Corporation, the general meeting of the Owners' Corporation shall take the place of the meeting of owners under the DMC, and the management committee of the Owners' Corporation shall take the place of the Owners' Committee under the DMC.
12. Subject to the provisions of the BMO, the DMC shall provide for the appointment of a manager who shall have the authority to act for and on behalf of all owners in accordance with the provisions of the DMC.

13. House rules and any amendments thereto may be made by the manager with the approval of the Owners' Committee or the Owners' Corporation, if formed, but they must not be inconsistent with the DMC.
14. The Owners at an owners' meeting shall have power to require the annual accounts to be audited by an independent auditor of their choice.
15. (a) Provisions shall be made for each owner to pay the following amounts:
 - (i) a refundable or transferable deposit of not more than 3/12 of the first year's budgeted management expenses;
 - (ii) an advance payment of management fees of not more than 2/12 of the first year's budgeted management expenses;
 - (iii) a debris removal charge/decoration charge of not more than 1/12 of the first year's budgeted management expenses (to be paid by owners of residential units) in the case of residential shares or 3/12 (to be paid by owners of commercial units) in the case of commercial shares;
 - (iv) contributions during the first year towards a special fund (for capital expenditure) totalling not more than 2/12 of the first year's budgeted management expenses.
- (b) All payments, deposits, charges and contributions payable by first purchasers under the DMC which are non-transferable and non-refundable shall be of an aggregate amount not exceeding 5/12 (or 7/12 for commercial units) of the first year's budgeted management expenses, and if the initial contribution under sub-paragraph (a)(iv) hereof is transferable or refundable, such an aggregate amount shall not exceed 3/12 (or 5/12 for commercial units) of the first year's budgeted management expenses.
- (c) The Director will not object to a provision requiring the owners to further contribute to the deposit referred to in sub-paragraph(a)(i) hereof so as to make it up to 25% of any subsequent current year's budgeted management expenses per unit.

- (d) Any monies paid as debris/decoration charges not used for debris/decoration are to be paid into management funds.
16. Interest at a rate not exceeding 2% per annum above the prime rate from time to time specified by the Hong Kong and Shanghai Banking Corporation Limited and a collection charge not exceeding 10% of the amount due may be imposed on any owner failing to pay sums due under the provisions of the DMC within 30 days of demand and the amounts of such interest and collection charge plus any legal costs (on a solicitor and own client basis) involved in recovering them may be the subject of a charge on the owner's undivided shares. All interest and collection charges received shall be credited to the management account.
17. Where any consent is required from a manager by an owner of a unit any fees charged by the manager as consideration for the granting of such consent shall be held by the manager for the benefit of all owners and paid into the management account. The manager shall be entitled to charge no more than a reasonable administration fee for processing and issuing the consent.
18. The manager will on reasonable notice (except in an emergency) be allowed to enter any units for the purpose of effecting necessary repairs to the estate/building. The DMC must also provide for the remedying of damage and liability for the negligent, wilful or criminal acts of the manager, his staff, contractors, etc.
19. The manager shall be responsible for effecting and updating insurance to the full new reinstatement value in respect of loss or damage by fire and other perils in respect of the common areas and also for insurance covering public liability, occupier's liability and employer's liability in respect of employees employed within or exclusively in connection with the management of the development. The Director will not object to provision for the manager procuring block insurance for the entire development including those areas which are not the common areas.
20. (a) There shall be no provision in the DMC for interrupting the supply of electricity, water, gas or other utilities which are provided by public utility companies to any unit or to prevent access to the unit by reason of the owner of that unit failing to pay any fees or to comply with any other provisions under the DMC.

- (b) The manager may discontinue providing management services to owners who fail to pay fees or to comply with any other provisions under the DMC and the manager may, if the DMC so provides, register and enforce a charge against the interest of an owner who fails to pay any sum which is payable to the manager under the DMC.
21. The manager's rights and duties to manage the estate/building shall not include effecting any improvements to facilities or services which involves expenditure in excess of 10% of the current annual management budget except with the prior approval of the Owners' Committee or Owners' Corporation if formed.
22. The DMC may provide for the manager to appoint or employ agents, contractors or sub-managers, who may include professional property management companies, to carry out certain aspects of the management works or management works in respect of certain area(s) of the development but the manager shall not transfer or assign his rights or obligations under the DMC to any such persons: such persons must remain answerable to the manager. The manager shall at all times be responsible for the management and control of the whole development (including any part thereof) and no provision in the DMC shall attempt to take away or reduce such responsibility.
- ✓ 23. The DMC shall not exclude the liability of the manager to the owners for any act or omission involving criminal liability, dishonesty or negligence on the part of the manager or its servant or agent and no owner shall be required to indemnify the manager or its servant or agent from and against any action, claim, etc. arising out of any such act or omission.
24. The allocation of undivided shares should normally be on a gross floor area ("gfa") basis. If any other basis is proposed for allocation of undivided shares such proposal may be required by the Director to be justified. The Director shall be concerned that any basis other than gfa adopted, will not result in disproportionate voting rights being granted (e.g. to the owners of commercial parts of a development) and the prevention or hindrance of incorporation of an Owners Corporation.
25. (a) No owner may be called upon to pay more than his fair share of management expenses, and no developer may evade his responsibility

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to make payments and contributions for those expenses which are of recurrent nature for those undivided shares unsold, provided, however, that a developer shall not be obliged to make such payments and contributions in respect of undivided shares allocated to a building the construction of which has not been completed except to the extent that building benefits from provision in the DMC as to management and maintenance (e.g. as to the costs of managing and maintaining slopes or as to security etc afforded by the management of the completed parts) of a development.

- ✓ (b) For a composite development comprising residential and commercial parts, the manager shall be required to keep separate management accounts and budgets for each part. The owners of the residential parts and of the commercial parts will be responsible for the management and maintenance costs of their respective parts (e.g. owners of commercial units will alone be responsible for commercial common areas). All owners will, however, be equally liable for estate common areas.
- (c) The developer shall make the initial contribution to the special fund for capital expenditure and pay the management fee deposit, debris removal/decoration charges if he remains the owner of those undivided shares allocated to units in that part of the development the construction of which has been completed and which remain unsold 3 months after (i) execution of the DMC or (ii) the date when he is in a position validly to assign those undivided shares (i.e. when the consent to assign or certificate of compliance has been issued), whichever is the later.
- (d) Subject to Guideline 15, the Director will not raise any question as to the actual amount of the initial deposit of management fee, debris removal fee or the number or variety of capital funds.
- (e) All outgoings including management fees up to and inclusive of the date of assignment of the unit shall be paid by the developer.

26. "Owner" shall be as defined in the BMO.

27. No owner shall be allowed to make any structural alteration which will

interfere with or affect the rights of other owners. No provision shall be made to prevent an owner from taking legal action against another owner in this respect.

- ✓ 28. (a) Provisions shall be included in the DMC specifying clearly that the owners shall at their own expense maintain and carry out all works in respect of any and all slopes, slope treatment works, retaining walls and other structures within or outside the lot or estate as required by the Government Grant (collectively referred to in this guideline as "the slope structures") and in accordance with the "Geoguide 5 - Guide to Slope Maintenance" issued by the Geotechnical Engineering Office (as amended from time to time).
- (b) If there is one or more "slope structures", a plan of a scale of not less than 1:500 showing all the slope structures (for identification purposes only), certified by the Authorised Person as to the inclusion of all the structures on the plan shall be annexed to the DMC. The plan shall also be attached to a sub-DMC under which undivided shares reserved to a phase of the development are allocated.
- (c) The manager (which for this purpose shall include or Owners' Corporation, if formed) shall be given full authority by the owners to engage suitable qualified personnel to inspect, keep and maintain in good substantial repair and condition, and carry out any necessary works in respect of the structures in compliance with the Government Grant and in particular in accordance with all guidelines issued from time to time by the appropriate Government department regarding the maintenance of slopes, retaining walls and related structures.
- (d) The DMC shall have adequate provisions for the payment to the manager by all owners of all costs lawfully incurred or to be incurred by the manager in carrying out such maintenance repair and any other works.
- (e) The manager shall not be made personally liable for carrying out any such requirements of the Government Grant, which shall remain the responsibility of the owners if, having used all reasonable endeavours, the manager has not been able to collect the costs of the required works from all owners.

Miss Cynthia Wong, Dir. S/HAD
Tax No. 25910002

- ✓ 29. (a) No owner including the developer shall have the right to convert any of the common parts to his own use or for his own benefit or to convert any of his own areas to common parts unless approved by the Owners' Committee or Owners' Corporation.
- (b) The developer shall have no right to designate retained areas as common areas unless such areas are for the beneficial use of all owners and unless the approval of the Owners' Committee or Owners' Corporation has been obtained. Neither the developer nor the manager shall have the right to redesignate common areas.
- ✓ 30. The DMC shall provide that the undivided shares allocated to the common areas shall not carry any voting rights or liability to pay fees under the DMC, nor shall such undivided shares be taken into account for the purpose of calculating the quorum of any meeting.
31. The DMC shall provide for a resolution on whether or not to rebuild or reinstate any part of the estate/building having been damaged by fire, typhoon, earthquake, subsidence or other causes rendering it substantially unfit for use or habitation shall be a resolution of not less than 75% majority at a meeting of the owners of not less than 75% of the undivided shares allocated to that part of the estate/building that has been damaged (excluding the undivided shares allocated to the common areas).
32. The DMC shall provide for all owners of undivided shares who do not occupy the units to which those shares relate to provide the manager with an address in Hong Kong for service of notices under the DMC.
33. The developer shall at its own cost provide a direct translation or summary in Chinese of the DMC within 3 months of the date of the DMC, and shall ensure that it is available for inspection at the management office and for the taking of copies by owners at their expense. The DMC shall specify which version shall prevail in the event of a dispute as to the effect of the Chinese translation and the English language document.
34. The Director will not be concerned whether or not pets are permitted or subject to any controls.

35. The Director will not be concerned as to any arrangements or restrictions on the design, decoration or colour schemes of any external parts of the development.

Notes to Guidelines

- (1) These Guidelines shall apply to all developments regardless of user and size.
- (2) These Guidelines are not required to be incorporated into DMCs verbatim, but the wording may be suitably adapted for particular cases.



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333 Java Road
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9 August, 1999

Legal Advisory and Conveyancing Office
Circular Memorandum No. 41A

Revised Guidelines for Deeds of Mutual Covenant ("DMCs")

Pursuant to the Legal Advisory and Conveyancing Office ("LACO") Circular Memorandum No. 41 issued on 29.6.99, I attach hereto a copy of a Checklist for completion by solicitors when submitting applications for approval of DMCs. The Checklist also incorporates an Annex, which should also be completed where the proposed DMC sets out in full the provisions of the Seventh and Eighth Schedules of the Building Management Ordinance (Cap. 344). This Checklist replaces Part (A) and Annex 1 of the checklist enclosed with LACO Circular Memorandum No. 1A, which was issued on 21.10.94.

With immediate effect, all applications for approval of DMC must be accompanied by the Checklist duly completed. For cases presently being processed, solicitors are welcome to furnish a checklist in this format if they consider that it will facilitate consideration of the application.

Copies of this Circular Memorandum may be downloaded from the Lands Department website at www.info.gov.hk/landsd/.

(J.S.R.Edge)

Deputy Director/Legal (Ag)
for Director of Lands

To : All Solicitors

**CHECKLIST FOR SUBMISSION OF DEED OF
MUTUAL COVENANT AND MANAGEMENT AGREEMENT ("DMC")
TO LACO FOR APPROVAL**

(to be completed by the applicant's solicitors)

(A) Documents Submitted

1. Draft DMC (in duplicate)
2. One set of Government Grant (including any modifications thereof) and Deed Register / Record of Owners / Computer printout certified by the Land Registrar or a Solicitor (No submission is required if one set has already been enclosed with the application for consent to sell submitted at the same time)

(B) General Information

1.	Lot No.	
2.	Conditions No./New Grant No. (with date)	
3.	Lease term	
4.	User of lot (quoting S.C. No.)	
5.	Type of development	
6.	Name of development (in English and Chinese)	
7.	Total gross floor area of development	
8.	Government Accommodation required to be provided	No/Yes - see separate Checklist attached
9.	Restriction on alienation	S.C. No(s).
10.	DMC Clause : approval of DMC required under	S.C. No(s).

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11.	Other special requirement for DMC required under	S.C. No(s).
12.	Draft DMC submitted is a Principal DMC/Sub-DMC (if Sub-DMC, indicate the date of approval of the Principal DMC)	
13.	Draft DMC complies with all guidelines	No/Yes - see Part (C)

(C) Compliance with Guidelines for DMC (LACO CM 41)

I - Definitions

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
1.	"Owner" shall be as defined in the Building Management Ordinance, Cap.344 (the BMO).		
2. a)	Definition of common areas, which shall include reference to "common parts" as defined in the BMO where appropriate.		
b)	i) Plans showing common areas to be annexed to DMC. ii) Provision for plans showing common areas to be prepared by Developer and certified as to their accuracy by or on behalf of the Authorized Person be kept at Manager's office, available for inspection by Owners during normal office hours.		
c)	The accuracy of all plans annexed to the DMC as to the common areas be certified by or on behalf of the Authorized Person. (For the purpose of this Guideline, it is not necessary at the time of application to submit the plans if they are not yet available. However, the plans must be produced to LACO before approval to the DMC can be given.)		

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
d)	<p>Either</p> <p>i) the whole of the car park areas, except those designated car parking spaces as shown on the carpark layout plan approved by the Building Authority, shall form part of the common areas;</p> <p>or</p> <p>ii) in the event that the developer retains ownership of the carpark areas as a whole, the developer shall be solely responsible for the management and maintenance of the carpark. Upon the sale of designated car parking spaces, all areas other than the designated spaces, such as circulation areas, lifts and landings, shall be designated as carpark common areas by way of a sub-DMC.</p>		

II - Management Term

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
1.	Provision for appointment of First Manager for initial term of not exceeding 2 years.		
2.	Prior to the formation of the Owners' Corporation, the Owners' Committee may terminate the Manager's appointment by a resolution of the owners of not less than 50% of all undivided shares (excluding the undivided shares allocated to the common areas) and by giving the Manager 3 months' notice in writing.		
3.	No provision to limit the application of the 7th Schedule to the BMO by restricting or prohibiting termination of the First Manager's appointment or his resignation during the initial period.		

III - Powers and Functions of Manager

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
1.	Provision for the appointment of a manager who shall subject to the provisions of the BMO, have the authority to act for and on behalf of all owners in accordance with the provisions of the DMC.		
2. a)	The Manager be allowed, subject to reasonable notice (except in emergency), to enter into units for the purpose of effecting necessary repairs to the estate/building.		
b)	Provision for remedy of damage done by, and liability for negligent, wilful or criminal acts of the Manager, his staff, contractors, etc.		
3. a)	The Manager to effect and update insurance to full new reinstatement value in respect of loss or damage caused by fire and other perils in respect of the common areas and also for insurance covering public liability, occupier's liability and employer's liability in respect of employees employed within or exclusively in connection with the management of the development.		
b)	The Manager may procure block insurance for the entire development including those areas which are not common areas.		
4.	House rules and any amendments thereto must all be consistent with the DMC, and may be made by Manager with approval of the Owners' Committee or Owners' Corporation if formed.		
5.	The Manager shall not effect any improvements to facilities or services which involve expenditure in excess of 10% of the current annual management budget except with the prior approval of the Owners' Committee or Owners' Corporation if formed.		

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
6.	The Manager may appoint or employ agents, contractors or sub-managers, who may include professional property management companies, to carry out certain aspects of the management works or management works in respect of certain area(s) of the development but the Manager shall not transfer or assign his rights or obligations under the DMC to any such persons : such persons must remain answerable to the Manager. The Manager shall at all times be responsible for the management and control of the whole development (including any part thereof) and no provision shall attempt to take away or reduce such responsibility.		
7.	No provision to exclude the liability of the Manager to the owners for any act or omission involving criminal liability, dishonesty or negligence on the part of the Manager, its servants or agents and no owner shall be required to indemnify the Manager, its servants or agents from and against any action, claim, etc. arising out of any such act or omission.		

IV - Management Expenses, etc.

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks						
1. a)	<p>i) For residential developments and composite developments comprising both residential and non-residential units (in which case each non-residential unit shall be regarded as a residential unit), the Manager's remuneration shall not exceed a percentage of the total expenditure necessarily and reasonably incurred in the management of the development, which percentage shall be based on the number of residential units in the development, as follows:-</p> <table style="margin-left: 40px;"> <tr> <td>20 residential units</td> <td>20%</td> </tr> <tr> <td>21 - 100 residential units</td> <td>15%</td> </tr> <tr> <td>101 residential units and over</td> <td>10%</td> </tr> </table> <p>"Unit" in this Guideline shall have the same definition as "flat" under the BMO.</p>	20 residential units	20%	21 - 100 residential units	15%	101 residential units and over	10%		
20 residential units	20%								
21 - 100 residential units	15%								
101 residential units and over	10%								

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
	<p>ii) For non-residential developments:</p> <p>The Manager's remuneration shall not exceed 15% of the total expenditure necessarily and reasonably incurred in the management of the development.</p> <p>b) Provision for review of the percentage by resolution at meetings of owners, the Owners' Committee or Owners' Corporation if formed.</p> <p>c) For the purpose of calculating the Manager's remuneration, the total expenditure incurred in the management of the estate or any portion of it shall exclude:</p> <p>i) the Manager's remuneration itself; and</p> <p>ii) any capital expenditure provided that the Owners' Committee (or the Owners' Corporation, if formed) may be empowered to decide to include, at its own discretion, any capital expenditure for calculating the Manager's remuneration at the rate applicable under sub-items (a) or (b) above, or at such lower rate as the Owners' Committee (or Owners' Corporation, if formed) may consider appropriate. "Capital expenditure" shall mean expenditure of a kind not incurred annually.</p>		
2.	<p>a) No owner be called upon to pay more than his fair share of management expenses.</p> <p>b) No developer to evade his responsibility to make payments and contributions for those expenses which are of recurrent nature for those undivided shares unsold.</p> <p>c) The developer shall not be obliged to make the payments and contributions mentioned in b) in respect of undivided shares allocated to a building the construction of which has not been completed except to the extent that the building benefits from the provisions in the DMC as to management and maintenance (e.g. as to the costs of managing and maintaining slopes or as to security etc. afforded by the management of the completed parts) of the development.</p>		

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
3.	<p>a) For a composite development comprising residential and commercial parts, the Manager shall keep separate management accounts and budgets for each part.</p> <p>b) The owners of the residential parts and of the commercial parts will be responsible for the management and maintenance costs of their respective parts (e.g. owners of commercial units will alone be responsible for commercial common areas). All owners will be equally liable for the estate common areas.</p>		
4.	The developer shall make the initial contribution to the special fund for capital expenditure and pay the management fee deposit and debris removal/decoration charges if he remains the owner of those undivided shares allocated to units in that part of the development the construction of which has been completed and which remain unsold 3 months after (i) execution of the DMC or (ii) the date when he is in a position validly to assign those undivided shares (i.e. when the consent to assign or certificate of compliance has been issued), whichever is the later.		
5.	All outgoings including management fees up to and inclusive of the date of assignment of the units shall be paid by the developer.		
6.	<p>a) Any fees charged by the Manager as consideration for the granting of any consent shall be paid into the management account for the benefit of all owners.</p> <p>b) The Manager be entitled to charge no more than a reasonable administration fee for processing and issuing such consent.</p>		
7.	The owners at owners' meeting shall have power to require annual accounts to be audited by an independent auditor of their choice.		

8. a)	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
	<p>Provisions shall be made for each owner to pay the following amounts:</p> <ul style="list-style-type: none"> i) a refundable or transferable deposit of not more than 3/12 of the first year's budgeted management expenses; ii) an advance payment of management fees of not more than 2/12 of the first year's budgeted management expenses; iii) a debris removal charge/decoration charge of not more than 1/12 of the first year's budgeted management expenses (to be paid by owners of residential units) in the case of residential shares or 3/12 (to be paid by owners of commercial units) in the case of commercial shares; iv) contributions during the first year towards a special fund (for capital expenditure) totalling not more than 2/12 of the first year's budgeted management expenses. <p>b) All payments, deposits, charges and contributions payable by first purchasers which are non-transferable and non-refundable shall be of an aggregate amount not exceeding 5/12 (or 7/12 for commercial units) of the first year's budgeted management expenses, and if the initial contribution towards the special fund is transferable or refundable, such an aggregate amount shall not exceed 3/12 (or 5/12 for commercial units) of the first year's budgeted management expenses.</p> <p>c) The owners may be required to further contribute to the management fee deposit so as to make it up to 25% of any subsequent current year's budgeted management expenses per unit.</p> <p>d) Any monies paid as debris/decoration charges not used for debris/decoration to be paid into the management funds.</p>		

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
9.	<p>a) Interest at a rate not exceeding 2% per annum above the prime rate from time to time specified by the Hongkong and Shanghai Banking Corporation Limited and a collection charge not exceeding 10% of the amount due may be imposed on any owner failing to pay sums due under the provisions of the DMC within 30 days of demand.</p> <p>b) The amount of the interest and collection charge plus any legal costs (on a solicitor and own client basis) involved in recovering them may be the subject of a charge on the owner's undivided shares.</p> <p>c) Any interest and collection charges received be credited to the management account.</p>		
10.	<p>a) No provision for interrupting the supply of electricity, water, gas or other utilities which are provided by public utility companies to any unit or to prevent access to the unit by reason of the owner of that unit failing to pay any fees or to comply with any other provisions under the DMC.</p> <p>b) The Manager may discontinue providing management services to owners who fail to pay fees or comply with any other provisions under the DMC and the Manager may register and enforce a charge against the interest of an owner who fails to pay any sum which is payable to the Manager under the DMC.</p>		

V- Reservation of Rights to Developer/Manager

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
1.	a) The developer may reserve the rights to execute supplemental and sub-DMCs in respect of separate towers, phases etc.		

	Subject	Clause No. (Page No.) (Insert where applicable)	Remarks
b)	All supplemental and sub-DMCs (as well as the principal DMC) shall require the approval of the Director of Lands ("the Director") but where the Director is satisfied upon submission of the supplemental or sub-DMC that the sub-DMC relates only to the internal sub-division of an existing unit and by the sub-DMC there would be no alteration to common areas under the principal DMC, the Director may waive the requirement of approval of such supplemental or sub-DMC.		
2. a)	The developer/manager may reserve the rights for itself, its licensees or other third parties to install or affix chimneys, flues, pipes or any other structures or facilities on or within the common areas provided that the written approval of the Owners' Committee (or Owners' Corporation if formed) is obtained prior to the exercise of such rights and that such installation shall not unreasonably affect the enjoyment of the development by the owners and occupiers.		
b)	Any consideration received pursuant to a) shall be credited to the management account for the benefit of all owners.		
3. a)	Subject to the provisions of the lease conditions and the DMC, the developer may reserve the right to retain for his own use part or parts of the lot unsold not being common areas ("the Retained Areas") provided that:		
i)	the Retained Areas shall be clearly defined and identified in the DMC; and		
ii)	the Retained Areas shall be allocated an appropriate number of undivided shares and management shares on a fair and reasonable basis, and the developer shall remain liable to contribute pro rata to management and other charges and payments.		
b)	Any use of the Retained Areas allowed to those who purchase shall be clearly specified as such in any sales brochure and pre-sale advertising.		

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
4.	The developer shall have no right to designate retained areas as common areas unless such areas are for the beneficial use of all owners and unless the approval of the Owners' Committee or Owners' Corporation has been obtained. Neither the developer nor the Manager shall have the right to redesignate common areas.		
5.	Any other rights to the developer - please indicate Clause No(s). (Whether the exercise of such rights should be subject to the approval of the Owners' Committee or Owners' Corporation, if formed, shall be decided by the Director of Lands on a case by case basis.)		

VI - Owners' Covenants

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
1. a)	No owner shall be allowed to make any structural alteration which will interfere with or affect the rights of other owners.		
	b)		
2.	No owner including the developer shall have the right to convert any of the common parts to his own use or for his own benefit or to convert any of his own areas to common parts unless approved by the Owners' Committee or Owners' Corporation.		

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VII- Owners' Meetings

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
1.	The Manager to call the first meeting of owners to be held not later than 9 months from the date of the DMC to appoint a chairman and committee of owners or appoint a management committee for the purpose of forming an Owners' Corporation under the BMO.		
2.	The undivided shares allocated to the common areas shall not carry any voting rights or liability to pay fees under the DMC, nor shall such undivided shares be taken into account for the purpose of calculating the quorum of any meeting.		
3.	Provision for a resolution on whether or not to rebuild or reinstate any part of the estate/building having been damaged by fire, typhoon, earthquake, subsidence or other causes rendering it substantially unfit for use or habitation shall be a resolution of not less than 75% majority at a meeting of the owners of not less than 75% of the undivided shares allocated to that part of the estate/building that has been damaged (excluding the undivided shares allocated to common areas).		
4.	During the existence of an Owners' Corporation, the general meeting of the Owners' Corporation to take the place of the meeting of owners and the management committee of the Owners' Corporation to take the place of the Owners' Committee.		

VIII - Slope Maintenance

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
1.	The owners at their own expense to maintain and carry out works in respect of all slopes, slope treatment works, retaining walls or other structures within or outside the lot or estate ("the slope structures") as required by the Government Grant and in accordance with the "Geoguide 5 - Guide to Slope Maintenance" issued by the Geotechnical Engineering Office (as amended from time to time).		

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	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
2.	<p>a) If there is one or more slope structures, plan(s) of a scale of not less than 1:500 showing all the slope structures (for identification purposes only), certified by the Authorized Person as to the inclusion of all the slope structures on the plan(s), shall be annexed to the DMC.</p> <p>b) The plan(s) shall also be attached to a sub-DMC under which undivided shares reserved to a phase of the development are allocated.</p> <p>(For the purpose of this Guideline, it is not necessary at the time of application to submit the plan(s) if they are not yet available. However, the plan(s) must be produced to LACO before approval to the DMC can be given.)</p>		
3.	<p>The Manager (or the Owners' Corporation, if formed) be given full authority to engage suitable qualified personnel to inspect, keep and maintain in good substantial repair and condition, and carry out any necessary works in respect of the slope structures in compliance with the Government Grant and in particular in accordance with all guidelines issued from time to time by the appropriate Government department regarding the maintenance of slopes, retaining walls and related structures.</p>		
4.	<p>Provision for collection by the Manager from all owners of all costs lawfully incurred or to be incurred in carrying out the necessary slope maintenance and related works.</p>		
5.	<p>The Manager not personally liable for carrying out any requirement of slope maintenance and related works under the Government Grant, which shall remain the responsibility of the owners if, having used all reasonable endeavours, the Manager has not been able to collect the costs of the required works from all owners.</p>		

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IX - Compliance with Government Grant and Legislation

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
1.	No provision to contravene the provisions of the BMO.		
2.	No provision be in breach of the Government Grant or lease conditions.		
3.	The provisions of the 7th and 8th Schedules to the BMO be incorporated in and form part of the DMC either by reference or by setting them out in full. (If setting out in full in the DMC, the Annex, duly completed, should also be attached.)		

X - Allocation of Undivided Shares, etc.

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
1.	Total no. of undivided shares of the whole development.		
2.	Total no. of management shares (if any) of the whole development.		
3. a)	No. of undivided shares allocated to the common areas.		
b)	Provision for the undivided shares allocated to the common areas together with all the common areas to which they relate to be assigned to the Manager as trustee for all owners, free of costs or consideration.		
c)	The Manager shall assign the undivided shares of the common areas free of costs or consideration to its successor as manager on termination of its appointment, or to the Owners' Corporation (when formed), if so required by it.		

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
4.	The allocation of undivided shares should normally be on a gross floor area basis. Proposal for any other basis for allocation of undivided shares has to be justified. Any other basis for allocation should not result in disproportionate voting rights being granted (e.g. to the owners of commercial parts of a development) and the prevention or hindrance of incorporation of an Owners' Corporation.		

XI - Miscellaneous

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
1.	All owners of undivided shares not occupying the units to which those shares relate to provide the Manager with an address in Hong Kong for service of notices under the DMC.		
2.	<p>a) The developer to provide at its own cost a direct translation or summary in Chinese of the DMC within 3 months of the date of the DMC.</p> <p>b) The Chinese translation or summary to be available for inspection at the management office and for taking of copies by owners at their expense.</p> <p>c) Provision to specify which version shall prevail in the event of a dispute as to the effect of the Chinese translation and the English language document.</p>		

	Subject	Clause No. (Page No.)	Remarks
	<p>(6) If there is a corporation and, within a period of 1 month from the date that a budget or revised budget for a financial year is sent or first displayed in accordance with subparagraph (2) or (4), the corporation decides, by a resolution of the owners, to reject the budget or revised budget, as the case may be, the total amount of management expenses for the financial year shall, until another budget or revised budget is sent or displayed in accordance with subparagraph (2) or (4) and is not so rejected under this subparagraph, be deemed to be the same as the total amount of management expenses (if any) for the previous financial year, together with an amount not exceeding 10% of that total amount as the manager may determine.</p> <p>(7) If any owner requests in writing the manager to supply him with a copy of any draft budget, budget or revised budget, the manager shall, on payment of a reasonable copying charge, supply a copy to that person.</p> <p>(8) For the purposes of this paragraph, "expenditure" (開支) includes all costs, charges and expenses to be borne by the owners, including the remuneration of the manager.</p> <p>2. Keeping of accounts</p> <p>(1) The manager shall maintain proper books or records of account and other financial records and shall keep all bills, invoices, vouchers, receipts and other documents referred to in those books and records for at least 6 years.</p> <p>(2) Within 1 month after each consecutive period of 3 months, or such shorter period as the manager may select, the manager shall prepare a summary of income and expenditure in respect of that period and shall display a copy of it in a prominent place in the building.</p> <p>(3) Within 2 months after the end of each financial year, the manager shall prepare an income and expenditure account and balance sheet for that year.</p> <p>(4) Each income and expenditure account and balance sheet shall include details of the special fund required by paragraph 4 and an estimate of the time when there will be a need to draw on that fund, and the amount of money that will be then needed.</p> <p>(5) The manager shall—</p> <p>(a) permit any owner, at any reasonable time, to inspect the books or records of account and any income and expenditure account or balance sheet; and</p> <p>(b) on payment of a reasonable copying charge, supply any owner with a copy of any record or document requested by him.</p>		

Subject	Clause No. (Page No.)	Remarks
<p>(6) If there is a corporation and the corporation decides, by a resolution of the owners, that any income and expenditure account and balance sheet should be audited by an accountant or by some other independent auditor as may be specified in that resolution, the manager shall without delay arrange for such an audit to be carried out by that person.</p> <p>(7) The financial year may not be changed more than once in every 5 years, unless that change is previously approved by a resolution of the owners' committee (if any).</p> <p>3. Manager to maintain bank account</p> <p>(1) The manager shall maintain an interest-bearing account and shall use that account exclusively in respect of the management of the building.</p> <p>(2) Subject to subparagraphs (3) and (4), the manager shall without delay pay all money received by him in respect of the management of the building into the account maintained under subparagraph (1).</p> <p>(3) Subject to subparagraph (4), the manager may, out of money received by him in respect of the management of the building, retain or pay into a current account a reasonable amount to cover expenditure of a minor nature, but that amount shall not exceed such figure as is determined from time to time by a resolution of the owners' committee (if any).</p> <p>(4) The retention of a reasonable amount of money under subparagraph (3) or the payment of that amount into a current account in accordance with that subparagraph and any other arrangement for dealing with money received by the manager shall be subject to such conditions as may be approved by a resolution of the owners' committee (if any).</p> <p>(5) Any reference in this paragraph to an account is a reference to an account opened with a bank within the meaning of section 2 of the Banking Ordinance (Cap. 155), the title of which refers to the management of the building.</p>		

	Subject	Clause No. (Page No.)	Remarks
	<p>4. Special fund</p> <p>(1) The manager shall establish and maintain a special fund to provide for expenditure of a kind not expected by him to be incurred annually.</p> <p>(2) If there is a corporation, the corporation shall determine, by a resolution of the owners, the amount to be contributed to the special fund by the owners in any financial year, and the time when those contributions shall be payable.</p> <p>(3) The manager shall maintain at a bank within the meaning of section 2 of the Banking Ordinance (Cap. 155) an interest-bearing account, the title of which shall refer to the special fund for the building, and shall use that account exclusively for the purpose referred to in subparagraph (1).</p> <p>(4) The manager shall without delay pay all money received by him in respect of the special fund into the account maintained under subparagraph (3).</p> <p>(5) Except in a situation considered by the manager to be an emergency, no money shall be paid out of the special fund unless it is for a purpose approved by a resolution of the owners' committee (if any).</p> <p>5. Contracts entered into by manager</p> <p>The manager shall not, in any financial year, enter into any contract that involves an average annual expenditure of more than 20% of the budget or revised budget, as the case may be, for that financial year or of such greater amount as the Authority may specify by notice in the Gazette unless the contract complies with such standards and guidelines as may be specified in a Code of Practice referred to in section 20A(3) and relating to procurement and tender procedures.</p> <p>6. Resignation of manager</p> <p>(1) No resignation of the manager shall take effect unless he has previously given not less than 3 months' notice in writing of his intention to resign—</p> <p>(a) by sending such a notice to the owners' committee; or</p> <p>(b) where there is no owners' committee, by serving such a notice on each of the owners and by displaying such a notice in a prominent place in the building.</p> <p>(2) Service of a notice on an owner under this paragraph may be effected—</p> <p>(a) personally upon the owner; or</p> <p>(b) by post addressed to the owner at his last known address; or</p> <p>(c) by leaving the notice at the owner's flat or depositing the notice in his letter box.</p>		

Subject	Clause No. (Page No.)	Remarks
<p>7. Termination of manager's appointment by owners' corporation</p> <p>(1) Subject to subparagraph (5), at a general meeting convened for the purpose a corporation may, by a resolution of the owners of not less than 50% of the shares, terminate by notice the manager's appointment without compensation.</p> <p>(2) A resolution under subparagraph (1) shall have effect only if—</p> <ul style="list-style-type: none"> (a) the notice of termination of appointment is in writing; (b) the length of notice specified therein is for a period of not less than 3 months; (c) the notice is accompanied by a copy of the resolution terminating the manager's appointment; and (d) the notice and the copy of the resolution is served upon the manager not more than 14 days after the date of the meeting. <p>(3) Service of the notice and the copy of the resolution required to be served under subparagraph (2)(d) may be effected—</p> <ul style="list-style-type: none"> (a) personally upon the manager; or (b) by post addressed to the manager at his last known address; or (c) by leaving the notice at the address of the registered office of the corporation. <p>(4) This paragraph operates without prejudice to any other power there may be to terminate the manager's appointment.</p> <p>(5) The manager's appointment may not be terminated under this paragraph—</p> <ul style="list-style-type: none"> (a) in the case of a corporation in respect of which a certificate of registration was issued under section 8 prior to the commencement of section 41 of the Multi-storey Buildings (Owners Incorporation) (Amendment) Ordinance 1993 (27 of 1993), by a notice that expires before the end of a period of 9 months from that commencement; (b) in any other case, by a notice that expires before the end of a period of 1 year from the commencement of section 41 of the Multi-storey Buildings (Owners Incorporation) (Amendment) Ordinance 1993 (27 of 1993); (c) if, within the previous 3 years, the appointment of a previous manager was terminated under this paragraph; or (d) if the manager was appointed by the corporation under subparagraph (6)(b). 		

Subject	Clause No. (Page No.)	Remarks
<p>(6) If a notice to terminate a manager's appointment is given under this paragraph— (a) no appointment of a new manager shall take effect unless the appointment is approved by a resolution of the owners' committee (if any); and (b) if no such appointment is approved under sub-subparagraph (a) by the time the notice expires, the corporation may appoint another manager and, if it does so, the corporation shall have exclusive power to appoint any subsequent manager.</p> <p>(7) If any person has given an undertaking in writing to, or has entered into an agreement with, the Government to manage or be responsible for the management of the building, and the corporation has appointed a manager under subparagraph (6)(b), the corporation shall be deemed to have given to that person an instrument of indemnity under which the corporation shall be liable to indemnify that person in respect of any act or omission by the manager appointed under that subparagraph that may otherwise render that person liable for a breach of that undertaking or agreement.</p> <p>(8) This paragraph is subject to any notice relating to the building that may be published by the Authority under section 34E(4) but does not apply to any single manager referred to in that section.</p> <p>8. Obligations after manager's appointment ends If the manager's appointment ends for any reason, he shall within 2 months of the date his appointment ends— (a) prepare— (i) an income and expenditure account for the period beginning with the commencement of the financial year in which his appointment ends and ending on the date his appointment ended; and (ii) a balance sheet as at the date his appointment ended, and shall arrange for that account and balance sheet to be audited by an accountant or by some other independent auditor specified in a resolution of the owners' committee (if any) or, in the absence of any such specification, by such accountant or other independent auditor as may be chosen by the manager; and (b) deliver to the owners' committee (if any) or the manager appointed in his place any books or records of account, papers, documents and other records in respect of the control, management and administration of the building that are under his control or in his custody or possession.</p>		

	Subject	Clause No. (Page No.)	Remarks
	Eighth Schedule of the BMO Terms added if consistent with Deed of Mutual Covenant		
	<p>Meetings of owners' committee</p> <ol style="list-style-type: none"> 1. A meeting of the owners' committee may be convened at any time by the chairman or any 2 members of the owners' committee. 2. Notice of a meeting of the owners' committee shall be served by the person or persons convening the meeting upon each member of the owners' committee at least 7 days before the date of the meeting, and that notice shall specify the place, date and time of the meeting and the resolutions (if any) that are to be proposed. 3. Service of a notice required to be served under paragraph 2 may be effected— <ol style="list-style-type: none"> (a) personally upon the member of the owners' committee; or (b) by post addressed to the member of the owners' committee at his last known address; or (c) by leaving the notice at the member's flat or depositing the notice in his letter box. 4. The quorum at a meeting of the owners' committee shall be 50% of the members of the owners' committee (rounded up to the nearest whole number) or 3 such members, whichever is the greater. 5. A meeting of the owners' committee shall be presided over by— <ol style="list-style-type: none"> (a) the chairman; or (b) in the absence of the chairman, a member of the owners' committee appointed as chairman for that meeting. 6. At a meeting of the owners' committee, each member present shall have 1 vote on a question before the committee and if there is an equality of votes the chairman shall have, in addition to a deliberative vote, a casting vote. 7. The procedure at meetings of the owners' committee shall be as is determined by the owners' committee. 		

	Subject	Clause No. (Page No.)	Remarks
	<p>Meetings of owners</p> <p>8. A meeting of owners may be convened by— (a) the manager; or (b) the owners of not less than 5% of the shares.</p> <p>9. Notice of a meeting of owners shall be served by the person or persons convening the meeting upon each owner at least 14 days before the date of the meeting, and that notice shall specify the place, date and time of the meeting and the resolutions (if any) that are to be proposed.</p> <p>10. Service of a notice required to be served under paragraph 9 may be effected— (a) personally upon the owner; (b) by post addressed to the owner at his last known address; or (c) by leaving the notice at the owner's flat or depositing the notice in his letter box.</p> <p>11. The quorum at a meeting of owners shall be 10% of the owners.</p> <p>12. A meeting of the owners shall be presided over by the chairman of the owners' committee or, in his absence, by an owner appointed by the owners as chairman for that meeting.</p> <p>13. At a meeting of owners— (a) each owner shall have 1 vote in respect of each share that he owns; (b) the votes of owners may be given either personally or by proxy; (c) if a share is jointly owned by 2 or more persons, the vote in respect of that share may be cast— (i) by a proxy jointly appointed by the co-owners; (ii) by 1 co-owner appointed by the others; or (iii) if no appointment has been made under sub-subparagraph (i) or (ii), by the co-owner whose name stands first in relation to that share in the register kept at the Land Registry; and (d) if there is an equality of votes the person presiding over the meeting shall have, in addition to a deliberative vote, a casting vote.</p>		

	Subject	Clause No. (Page No.)	Remarks
	<p>14. (1) An instrument appointing a proxy shall be in writing signed by the owner or, if the owner is a body corporate, under the seal of that body.</p> <p>(2) The appointment of a proxy shall have no effect unless the instrument appointing the proxy is lodged with the person, or one of the persons, as the case may be, who convened the meeting not less than 24 hours before the time for the holding of the meeting at which the proxy proposes to vote, or within such lesser time as the chairman shall allow.</p> <p>15. The procedure at a meeting of owners shall be as is determined by the owners.</p>		

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13 January 2000

Legal Advisory and Conveyancing Office
Circular Memorandum No. 41B

Revised Guidelines for Deeds of Mutual Covenant
Guide to Slope Maintenance

Section 2.2 of the Geoguide 5 - Guide to Slope Maintenance issued by the Geotechnical Engineering Office recommends that the designer of a slope or retaining wall ("slope structures") should prepare a Slope Maintenance Manual ("the Manual") to assist the owner or other parties responsible for the maintenance to understand the requirements. The Manual will be more or less finalised upon completion of site formation works and hence the layout of the slope structures can be established at the time when the developer applies for consent to sell uncompleted units.

To increase public awareness of owners' responsibility and liability under Government Grants in relation to slope structures, the Standing Committee on Slope Safety led by the Works Bureau recommended that the Manual should be annexed to the Deed of Mutual Covenant ("DMC") where slope structures exist. In future, all DMCs in respect of private developments containing slope structures should incorporate provisions to the effect that

- (i) a copy of the Manual will be annexed to the DMC; and
- (ii) the slope structures will be maintained in accordance with the Manual.

Guideline No. 28 attached to LACO CM No.41 is hereby amended. The revised Guideline is now set out in Appendix A attached. Part C VIII of the Checklist attached to LACO CM No.41A is also amended as per Appendix B attached.

In implementing the revised Guideline :

- (i) no submission of the Manual to LACO is required in the application for approval of DMC. Solicitors are required to incorporate a provision in the DMC to the effect that the Manual is annexed to the document when executed. It will also be the responsibility of Solicitors to ensure that the Manual to be attached to the DMC when executed will be the latest version of the Manual as acknowledged and returned to the Authorised Person by the Building Authority.
- (ii) in view of the highly technical nature of the Manual, LACO will not insist on the

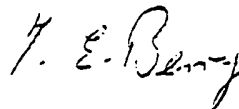
Chinese translation or summary of the Manual although it forms part of the DMC but will leave this to the option of the developers and their professional representatives.

The revised Guideline No. 28 as stipulated in this Circular Memorandum shall apply to all relevant DMCs to be approved by LACO including those that are being processed in respect of which LACO's approval has not yet been given.

Some of the location and section plans forming part of the Manual and the slope plans to be attached to the DMCs may exceed A4 in size as required by the Land Registry for registration purposes. In this connection, I have already obtained from the Land Registrar a blanket exemption from that requirement in relation to all plans including those forming part of the Manual to be attached to DMCs (including any sub-DMCs).

Except as varied by this Circular Memorandum, all other guidelines and requirements in LACO Circular Memoranda No. 41 and 41A remain in full force and effect.

Copies of this Circular Memorandum with the Appendices may be downloaded from the Lands Department website at www.info.gov.hk/landsd/.



(T. E. Berry)
Deputy Director/Legal
for Director of Lands

To : All Solicitors

c.c. LACO 7/316/88 SF (5) Pt. V

Appendix A

28. (a) Provisions shall be included in the DMC specifying clearly that the owners shall at their own expense maintain and carry out all works in respect of any and all slopes, slope treatment works, retaining walls and other structures (collectively referred to in this guideline as "slope structures") within or outside the lot or estate as required by the Government Grant and in accordance with "Geoguide 5 - Guide to Slope Maintenance" issued by the Geotechnical Engineering Office (as amended from time to time) and the Maintenance Manual(s) for the slope structures.
- (b) If there is one or more slope structures, a plan of a scale of not less than 1:500 showing (for identification purposes only) all the slope structures existing at the date of the DMC, certified by the Authorised Person as to the inclusion of all such slope structures on the plan, together with a copy of the Maintenance Manual(s) of such slope structures shall be annexed to the DMC. The plan and Maintenance Manual(s) shall also be attached to a sub-DMC under which undivided shares reserved to a phase of the development are allocated.
- (c) The manager (which for this purpose shall include the Owners' Corporation, if formed) shall be given full authority by the owners to engage suitable qualified personnel to inspect, keep and maintain in good substantial repair and condition, and carry out any necessary works in respect of the slope structures in compliance with the Government Grant and in accordance with the Maintenance Manual(s) and all guidelines issued from time to time by the appropriate Government department regarding the maintenance of slopes, retaining walls and related structures.
- (d) The DMC shall have adequate provisions for the payment to the manager by all owners of all costs lawfully incurred or to be incurred by the manager in carrying out such maintenance repair and any other works.
- (e) The manager shall not be made personally liable for carrying out any such requirements of the Government Grant, which shall remain the responsibility of the owners if, having used all reasonable endeavours, the manager has not been able to collect the costs of the required works from all owners.

VIII - Slope Maintenance

	Subject	Clause No. (Page No.) [insert where applicable]	Remarks
1.	The owners at their own expense to maintain and carry out all works in respect of all slopes, slope treatment works, retaining walls and other structures ("the slope structures") within or outside the lot or estate as required by the Government Grant and in accordance with "Geoguide 5 - Guide to Slope Maintenance" issued by the Geotechnical Engineering Office (as amended from time to time) and the Maintenance Manual(s) for the slope structures.		
2. a)	If there is one or more slope structures, plan(s) of a scale of not less than 1:500 showing (for identification purposes only) all the slope structures existing at the date of the DMC, certified by the Authorized Person as to the inclusion of all such slope structures on the plan(s), together with a copy of the Maintenance Manual(s) of such slope structures shall be annexed to the DMC.		
b)	<p>The plan(s) and Maintenance Manual(s) shall also be attached to a sub-DMC under which undivided shares reserved to a phase of the development are allocated.</p> <p>(For the purposes of this Guideline:</p> <ul style="list-style-type: none"> (i) it is not necessary at the time of application to submit the plan(s) if they are not yet available. However, the plan(s) must be produced to LACO before approval to the DMC can be given; and (ii) no submission of the Maintenance Manual(s) to LACO is required in the application for approval of DMC. Solicitors are required to ensure that the Manual(s) to be attached to the DMC when executed will be the latest version of the Manual(s) as acknowledged by the Building Authority.) 		
3.	The Manager (or the Owners' Corporation, if formed) be given full authority to engage suitable qualified personnel to inspect, keep and maintain in good substantial repair and condition, and carry out any necessary works in respect of the slope structures in compliance with the Government Grant and in accordance with the Maintenance Manual(s) and all guidelines issued from time to time by the appropriate Government department regarding the maintenance of slopes, retaining walls and related structures.		
4.	Provision for collection by the Manager from all owners of all costs lawfully incurred or to be incurred in carrying out the necessary slope maintenance and related works.		
5.	The Manager not personally liable for carrying out any requirement of slope maintenance and related works under the Government Grant, which shall remain the responsibility of the owners if, having used all reasonable endeavours, the Manager has not been able to collect the costs of the required works from all owners.		

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