

Obligations of Property Management Company under the Building Management Ordinance

Code of Conduct


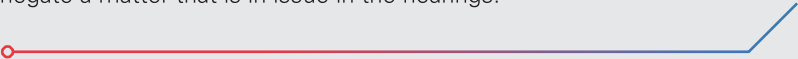
Code No.: C19/2023

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Preamble

The following code of conduct (“Code”) is issued by the Property Management Services Authority (“PMSA”) pursuant to section 5 of the Property Management Services Ordinance (“PMSO”) and contains practical guidance for the purposes of section 4 of the PMSO (disciplinary offences). Although a licensee¹ does not incur a legal liability only because the licensee has contravened a provision of the Code, the Code is admissible in evidence in disciplinary hearings, and proof that a licensee contravened or did not contravene the relevant provision of the Code may be relied on as tending to establish or negate a matter that is in issue in the hearings.



Background

A licensed property management company (“PMC”), acting as the “Manager”² of a property (“Manager”), may deal with various matters related to property management when providing property management services (“PMSs”) to its clients³. Whether acting as the deed of mutual covenant (“DMC”) manager or the person managing the property for the purposes of the DMC, a licensed PMC has to act in accordance with the relevant provisions of the Building Management Ordinance (Cap. 344) (“BMO”)⁴. The provisions

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 According to section 34D(1) of the BMO, there are two main types of managers: (1) the person who is specified in the DMC to manage the building (i.e. DMC manager); or (2) any other person who for the time being is managing the building for the purposes of the DMC.

³ 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 PMSs, 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.

⁴ If there are any amendments to the relevant provisions of the legislation, a licensed PMC has to act in accordance with the latest revised provisions.

in Schedule 7 to the BMO are mandatory terms to be impliedly incorporated into every DMC⁵. In the event of any inconsistency between the provisions in Schedule 7 and the terms of a DMC, the provisions in Schedule 7 shall prevail⁶.

A licensed PMC, in its role as a Manager, is not only obligated to act in accordance with the relevant provisions of the BMO, but is also required to assist and remind the owners / owners' organization (including the owners' corporation⁷ ("OC") or the owners' committee⁸ (if any)) of the property to comply with the relevant provisions of the BMO when managing the property.

Requirements for licensed PMCs under the BMO

Code: A(1) A licensed PMC, when acting as the DMC manager or the person managing the property for the purposes of the DMC, has to comply with the provisions of Schedule 7 to the BMO. Schedule 7 mainly stipulates the following matters :

- (a) Determination of management expenses
- (b) Keeping of accounts
- (c) Opening and maintaining bank account
- (d) Special fund
- (e) Procurement arrangements
- (f) Resignation of Manager
- (g) Obligations after Manager's appointment ends
- (h) Communication among owners

⁵ According to section 34E(1) of the BMO, subject to subsection (4), the provisions in Schedule 7 shall be impliedly incorporated— (a) into every deed of mutual covenant made on or after the material date; and (b) as from the material date, into every deed of mutual covenant made before that date.

⁶ According to section 34E(2) of the BMO, the provisions incorporated into a deed of mutual covenant by virtue of this section shall— (a) bind the owners and manager of the building; and (b) prevail over any other provision in the deed that is inconsistent with them.

⁷ An OC is a body corporate set up under the BMO. It has the legal status to represent all owners in managing the common parts of the property.

⁸ An owners' committee means an owners' organization formed under and in accordance with the DMC. Its composition, operation details, duties and powers shall be such as the DMC may set out. An owners' committee is not a body corporate. Where a management committee has been appointed and an OC formed in respect of a building, the members of the management committee shall be deemed to be the owners' committee and shall have all the functions, powers and duties of the owners' committee under the DMC (please refer to sections 34D and 34K of the BMO).

Determination of management expenses

- Code:** B(1) A licensed PMC has to prepare a draft budget for each financial year setting out the proposed expenditure for the financial year. The total amount of management expenses payable by the owners in the financial year has to be the total proposed expenditure⁹.
- B(2) If there is no OC¹⁰, the licensed PMC has to send a copy of the draft budget to the owners' committee¹¹ or, where there is no owners' committee¹², display a copy of the draft budget in a prominent place in the property, and cause it to remain so displayed for at least 7 consecutive days¹³.
- B(3) The licensed PMC has to issue a notice inviting each owner to send comments on the draft budget to the licensed PMC within a period of 14 days from the date the copy of the draft budget was sent or first displayed¹⁴.
- B(4) Having collected comments from the owners, the licensed PMC has to prepare a budget specifying the total proposed expenditure for the financial year¹⁵.
- B(5) The licensed PMC has to send a copy of the budget to the owners' committee¹⁶ or, where there is no owners' committee¹⁷, display a copy of the budget in a prominent place in the property for at least 7 consecutive days¹⁸.

⁹ Paragraphs 1(1) and 1(2) of Schedule 7 to the BMO

¹⁰ See footnote 7 of this Code

¹¹ See footnote 8 of this Code

¹² See footnote 8 of this Code

¹³ Paragraph 1(2)(b) of Schedule 7 to the BMO

¹⁴ Paragraph 1(2)(c) of Schedule 7 to the BMO


¹⁵ Paragraph 1(2)(d) of Schedule 7 to the BMO

¹⁶ See footnote 8 of this Code

¹⁷ See footnote 8 of this Code

¹⁸ Paragraph 1(2)(e) of Schedule 7 to the BMO



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- B(6) Where, in respect of a financial year, a licensed PMC has not complied with the above requirements for preparing the draft budget and the budget before the beginning of that financial year, the total amount of the management expenses for that year has to, until the licensed PMC has so complied, be deemed to be the same as the total amount of management expenses for the previous financial year¹⁹.
- B(7) If there is an OC²⁰ and, within a period of 1 month from the date that the budget or revised budget (if any) is sent by the licensed PMC, the OC²¹ decides, by a resolution of the owners, to reject the relevant budget, the total amount of management expenses for the financial year shall not exceed 110% of the total amount of management expenses for the previous financial year²².
- B(8) If any owner requests in writing a licensed PMC to provide a copy of any draft budget, budget or revised budget, the licensed PMC has to, on payment of a reasonable copying charge, provide a copy to that owner²³.

Keeping of accounts

- Code:** C(1) (a) A licensed PMC has to keep the following accounting documents for at least 6 years²⁴:
- (i) proper books or records of account and other financial records; and
 - (ii) all bills, invoices, vouchers, receipts and other documents referred to in those books and records.

¹⁹ Paragraph 1(3) of Schedule 7 to the BMO



²⁰ See footnote 7 of this Code

²¹ See footnote 7 of this Code

²² Paragraph 1(6) of Schedule 7 to the BMO

²³ Paragraph 1(7) of Schedule 7 to the BMO

²⁴ Paragraph 2(1) of Schedule 7 to the BMO

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- (b) A licensed PMC has to prepare a summary of income and expenditure and a balance sheet and display a copy of the summary and the balance sheet in a prominent place in the property²⁵ in accordance with the relevant requirements, which include the following :
 - (i) for each period of 3 months (or such shorter period as the licensed PMC may select), the licensed PMC has to prepare a summary of income and expenditure and a balance sheet in respect of that period, and display a copy of the summary and the balance sheet in a prominent place in the property for at least 7 consecutive days within 1 month after that period; and
 - (ii) within 2 months after the end of each financial year, the licensed PMC has to prepare an income and expenditure account and a balance sheet for that year, and display the income and expenditure account and the balance sheet in a prominent place in the property for at least 7 consecutive days.
 - (c) A licensed PMC has to permit any owner to inspect the books or records of account, any income and expenditure account or balance sheet, and the accountant's / the auditor's report (if any), and supply any owner with a copy thereof in accordance with the relevant requirements²⁶.

Opening and maintaining bank account

Code: D(1) (a) A licensed PMC has to open and maintain an interest-bearing bank account and has to use that account exclusively in respect of the management of the property^{27,28}.

²⁵ Paragraphs 2(2) to 2(4) and 2(7) of Schedule 7 to the BMO

²⁶ Paragraphs 2(5) and 2(6) of Schedule 7 to the BMO

²⁷ Paragraphs 3(1), 3(1B) and 3(2)-3(5) of Schedule 7 to the BMO

²⁸ The PMSA has issued the "*Handling Payment for or Arranging Payment to be Made by Clients*" Code of Conduct and Best Practice Guide regarding the opening and maintaining of bank account(s) for clients by the licensed PMCs when handling payment(s) relating to PMSs. In matters related to handling bank account(s), the licensed PMCs have to comply with the Code of Conduct and refer to the relevant parts of the Best Practice Guide: <https://www.pmsa.org.hk/en/regulatory-framework/codes-of-conduct>

- (b) If there is an OC²⁹, the licensed PMC has to open and maintain one or more segregated interest-bearing accounts, each of which has to be designated as a trust account or client account, for holding money received from or on behalf of the OC³⁰ in respect of the management of the property³¹.
- (c) A licensed PMC has to display a document showing evidence of any account opened and maintained in a prominent place in the property³².
- (d) Unless otherwise specified, a licensed PMC has to without delay pay all money received in respect of the management of the property into the bank account(s) mentioned above³³.

Special fund

- Code:** E(1) (a) A licensed PMC has to establish and maintain a special fund to provide for expenditure not expected to be incurred annually³⁴.
- (b) If there is an OC³⁵, a licensed PMC has to remind the OC³⁶ to 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 have to be made³⁷.
 - (c) A licensed PMC has to open and maintain an interest-bearing bank account, the title of which has to refer to the special fund for the property, and has to use that account exclusively for the purpose of the special fund³⁸.

²⁹ See footnote 7 of this Code

³⁰ See footnote 7 of this Code

³¹ Paragraphs 3(1A) and 3(2)-3(5) of Schedule 7 to the BMO

³² Paragraph 3(1B) of Schedule 7 to the BMO

³³ Paragraphs 3(2)-3(4) of Schedule 7 to the BMO

³⁴ Paragraphs 4(1)-4(5) of Schedule 7 to the BMO

³⁵ See footnote 7 of this Code

³⁶ See footnote 7 of this Code

³⁷ Paragraph 4(2) of Schedule 7 to the BMO

³⁸ Paragraph 4(3) of Schedule 7 to the BMO





- (d) If there is an OC³⁹, a licensed PMC has to open and maintain one or more segregated interest-bearing accounts, each of which has to be designated as a trust account or client account, for holding money received in respect of the special fund⁴⁰. The licensed PMC has to display a document showing evidence of any account opened and maintained in a prominent place in the property⁴¹.
- (e) A licensed PMC has to without delay pay all money received in respect of the special fund into the bank account(s) mentioned above⁴².
- (f) Unless in situation considered by a licensed PMC to be an emergency or the payment is approved by a resolution of the owners' committee⁴³ (if any), the licensed PMC shall not pay any money out of the special fund⁴⁴.

Procurement arrangements

Code: F(1) Except in situation where the tender requirement can be waived, for any goods or services the value of which exceeds or is likely to exceed the sum of \$200,000⁴⁵, a licensed PMC has to procure such goods or services by invitation to tender⁴⁶.

³⁹ See footnote 7 of this Code

⁴⁰ Paragraph 4(3A) of Schedule 7 to the BMO

⁴¹ Paragraph 4(3B) of Schedule 7 to the BMO

⁴² Paragraph 4(4) of Schedule 7 to the BMO

⁴³ See footnote 8 of this Code

⁴⁴ Paragraph 4(5) of Schedule 7 to the BMO

⁴⁵ Or such other sum in substitution therefor as the Authority (i.e. Secretary for Home and Youth Affairs) may specify by notice in the Gazette (see paragraph 5(1) of Schedule 7 to the BMO)

⁴⁶ Paragraph 5 of Schedule 7 to the BMO

F(2) Except in situation where the tender requirement can be waived, for goods or services the value of which exceeds or is likely to exceed a sum which is equivalent to 20% of the annual budget⁴⁷, a licensed PMC has to procure such goods or services by invitation to tender, and by a resolution passed by a majority of votes of the owners at a general meeting of the OC⁴⁸ (or at a meeting of owners convened and conducted in accordance with the DMC (if there is no OC⁴⁹)) to decide whether to accept a tender or not⁵⁰.

Resignation of Manager

- Code:** G(1) If a licensed PMC resigns, it has to give not less than 3 months' notice in writing by⁵¹:
- (a) sending such notice to the owners' committee⁵²; or
 - (b) where there is no owners' committee⁵³, by giving such notice to each of the owners and by displaying such notice in a prominent place in the property.
- G(2) If a contract had been entered into for appointment of a licensed PMC, the licensed PMC has to abide by the terms on resignation as contained in the appointment contract.
- G(3) The notice referred to in paragraph G(1) of the Code has to be given by a licensed PMC through one of the following ways⁵⁴:
- (a) delivering it personally to the owner;
 - (b) sending it by post to the owner at the last known address; or
 - (c) leaving it at the owner's flat or depositing it in the letter box for that flat.

⁴⁷ Or such other percentage in substitution therefor as the Authority may specify by notice in the Gazette (see paragraph 5(2) of Schedule 7 to the BMO)

⁴⁸ See footnote 7 of this Code

⁴⁹ See footnote 7 of this Code

⁵⁰ Section 34D(3) of the BMO and paragraph 5 of Schedule 7 to the BMO


⁵¹ Paragraph 6(1) of Schedule 7 to the BMO

⁵² See footnote 8 of this Code

⁵³ See footnote 8 of this Code

⁵⁴ Paragraph 6(2) of Schedule 7 to the BMO





Obligations after Manager's appointment ends

Code: H(1) If a licensed PMC's appointment ends for any reason, it has to meet the following obligations^{55,56}:

- (a) as soon as practicable after its appointment ends, and in any event within 14 days of the date its appointment ends, deliver to the owners' committee⁵⁷ (if any) or the licensed PMC appointed to take up its place any movable property in respect of the management of the property that is in its possession, and that belongs to the OC⁵⁸ (if any) or the owners⁵⁹.
- (b) within 2 months of the date its appointment ends, prepare an income and expenditure account and a balance sheet, and arrange for that account and balance sheet to be audited by the accountant or auditor specified by the owners' organization (if any)⁶⁰.
- (c) deliver to the owners' organization (if any) or the licensed PMC appointed to take up its place any books or records of accounts, papers, documents and other records required for the purposes of preparing an income and expenditure account and a balance sheet^{61,62}.

⁵⁵ Paragraph 8 of Schedule 7 to the BMO

⁵⁶ The PMSA has issued the "*Obligations of Property Management Companies regarding the Ending of their Appointment*" Code of Conduct and Best Practice Guide regarding the obligations of the licensed PMCs after their appointment ends. The licensed PMCs have to comply with the Code of Conduct and refer to relevant parts of the Best Practice Guide: <https://www.pmsa.org.hk/en/regulatory-framework/codes-of-conduct>

⁵⁷ See footnote 8 of this Code

⁵⁸ See footnote 7 of this Code

⁵⁹ Paragraph 8(1) of Schedule 7 to the BMO

⁶⁰ Paragraph 8(2)(a) of Schedule 7 to the BMO

⁶¹ The PMSA has issued the "*Obligations of Property Management Companies regarding the Ending of their Appointment*" Code of Conduct and Best Practice Guide regarding the obligations of the licensed PMCs after their appointment ends. The licensed PMCs have to comply with paragraph C(2) of the Code of Conduct and refer to relevant parts of the Best Practice Guide: <https://www.pmsa.org.hk/en/regulatory-framework/codes-of-conduct>

⁶² Paragraph 8(2)(b) of Schedule 7 to the BMO

Communication among owners

Code: I(1) A licensed PMC has to consult (either generally or in any particular case) the OC⁶³ (if any) at a general meeting of the OC⁶⁴ and follow the approach adopted by the OC⁶⁵ in respect of the channels of communication among owners on any business relating to the management of the property⁶⁶.

Requirements under the BMO which a licensed PMC has to remind an OC to comply with

Code: J(1) For a property that has an OC⁶⁷, a licensed PMC, as far as reasonably practicable, has to assist and remind the OC⁶⁸ to comply with the relevant requirements under the BMO that apply to the OC⁶⁹, and remind the OC⁷⁰ to act in accordance with the BMO. The requirements under the BMO relating to property management mainly cover the following matters :

- (a) General meeting and management committee ("MC"⁷¹) meeting;
- (b) Financial matters;
- (c) Procurement and tender procedures;
- (d) Building insurance; and
- (e) Facility management and safety of the property (including environmental hygiene, security, slope safety, lift installation safety, etc.).

J(2) If the scope of work agreed between a licensed PMC and an OC⁷² (if any) includes the property management matters referred to in paragraphs J(1) (a) to (e) of this Code, then the licensed PMC has to act in accordance with the requirements related thereto under the BMO.

⁶³ See footnote 7 of this Code

⁶⁴ See footnote 7 of this Code

⁶⁵ See footnote 7 of this Code

⁶⁶ Paragraph 9 of Schedule 7 to the BMO

⁶⁷ See footnote 7 of this Code

⁶⁸ See footnote 7 of this Code

⁶⁹ See footnote 7 of this Code

⁷⁰ See footnote 7 of this Code

⁷¹ Part II of the BMO

⁷² See footnote 7 of this Code





Requirements under the BMO which a licensed PMC has to remind an owners' committee to comply with

Code: K(1) For a property that has an owners' committee⁷³, a licensed PMC, as far as reasonably practicable, has to assist and remind the owners' committee⁷⁴ to comply with the requirements in Schedule 8⁷⁵ to the BMO that apply to the owners' committees⁷⁶, and remind the owners' committee⁷⁷ to act in accordance with such requirements. Schedule 8 mainly sets out the requirements for the meetings of owners' committee⁷⁸ and the meetings of owners.

⁷³ See footnote 8 of this Code

⁷⁴ See footnote 8 of this Code

⁷⁵ According to section 34F of the BMO, the provisions in Schedule 8 shall, to the extent that they are consistent with the DMC, be impliedly incorporated into every DMC. Any provision in Schedule 8 that is so incorporated may, by a resolution of the owners, be amended, deleted, or re-incorporated into the DMC.

⁷⁶ See footnote 8 of this Code

⁷⁷ See footnote 8 of this Code

⁷⁸ See footnote 8 of this Code

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

If there are any amendments to any laws or regulations mentioned in this Code, licensees have to act in accordance with the revised provisions.



Related Best Practice Guide

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