

9. Mandatory Terms in DMCs – Requirements for Manager

Financial Arrangements for Managers

Q228 : If the manager is responsible for preparing the accounts of the corporation, does he have to retain an accountant to audit the accounts?

A : If there is a corporation and the corporation decides, by a resolution of the owners at the general meeting, that any income and expenditure account and balance sheet should be audited by an accountant, then the manager shall without delay arrange for such an audit to be carried out. Para 2(6) of Sch. 7

Q229 : If an accountant is retained by the manager to audit the accounts of the corporation, are the audited accounts and accountant's report open to owners' inspection?

A : Yes. The manager shall permit any owner to inspect the audited income and expenditure account and balance sheet and the accountant's report. Para 2(6) of Sch. 7

The manager shall also, at the request of any owner, supply the owner with a copy of the audited income and expenditure account and balance sheet and also the accountant's report on payment of a reasonable copying charge.

Q230 : In opening and maintaining a bank account for the management of a building, what requirements have to be observed by the manager?

A : There are 2 key requirements to be observed by the manager in opening and maintaining a bank account for the building – Para 3 of Sch. 7

- (a) such account shall be an interest-bearing account; **and**
- (b) the manager shall use that account exclusively in respect of the management of the building.

If there is a corporation, then the manager shall open and maintain one or more segregated interest-bearing accounts, each of which shall be designated as a trust account or client account, for holding money received by him from or on behalf of the corporation in respect of the management of the building.

The manager shall also display a document showing evidence of any account opened and maintained in a prominent place in the building.

Q231 :

What is meant by trust account or client account? What is the difference between these accounts?

A :

Generally speaking, trust account involves a trust deed and the banks may be bounded by more stringent obligations in monitoring the accounts. For client account, it is usually in the name of, say “ABC property management company – The Incorporated Owners of XYZ building”. The banks would know that the management companies are holding the money on behalf of a third party.

Para 3(1A) of Sch. 7

Procurement of Supplies, Goods and Services by Manager

Q232 :

What is the statutory threshold for managers to procure by invitation to tender?

A :

Threshold	Invitation to tender	Meeting of OCs/ owners
> \$200,000	✓	–
> 20% of the annual budget	✓	✓

Para 5(1) and (2) of Sch. 7

The table above summarizes the statutory thresholds with regard to procurement of supplies, goods and services by managers. According to paragraph 5(1) and (2) of Schedule 7 to the BMO, any procurement which exceeds or is likely to exceed –

- (a) the sum of \$200,000; or
- (b) a sum equivalent to 20% of the annual budget,

whichever is the lesser, shall be procured by invitation to tender.

For any procurement that exceeds the sum of 20% of the annual budget, whether a tender is accepted or not shall be decided by –

- (c) if there is a corporation, a resolution of the owners passed at a general meeting of the corporation; or
- (d) if there is no corporation, a resolution of the owners passed at a meeting of owners.

All managers shall follow the above statutory requirements in procuring supplies, goods or services.

Q233 :

After the tenders are received, who shall be responsible for deciding whether a tender submitted is accepted or not?

A :

For tenders whose value does not exceed 20% of the annual budget, subject to any contractual requirements, the manager could decide whether tenders are accepted or not.

Para 5(2) of Sch. 7

For tenders whose value exceeds 20% of the annual budget, whether the tenders submitted are accepted or not shall be decided by –

- (a) if there is a corporation, a resolution of the owners passed at a general meeting of the corporation; **or**
- (b) if there is no corporation, a resolution of the owners passed at a meeting of owners.

Q234 :

Does the manager have the authority to reject some of the tenders and only shortlist a few for the owners to choose from?

A :

For procurement whose value exceeds 20% of the annual budget, the manager does not have the authority to reject some of the tenders. All tenders have to be put up to the general meeting of the corporation (if there is a corporation) or the meeting of owners (if there is no corporation). The manager may shortlist a few as recommendations to the owners, yet it will be up to the owners to decide which tender is accepted and which ones are rejected.

Para 5(2) of Sch. 7

Q235 :

If the procurement contract is made with an incumbent supplier, can the manager skip the tendering process?

A :

The manager does not have to comply with the tendering requirement stipulated in paragraph 5(1) and (2) of Schedule 7 to the BMO if all of the following criteria are satisfied –

Para 5(3) of Sch. 7

- (a) the relevant supplier is providing supplies, goods or services to the owners for the time being;
- (b) the relevant supplies, goods or services are of the same type as the supplies, goods or services that is provided by the supplier for the time being; **and**
- (c) the owners decide by a resolution passed at a general meeting of the corporation (if there is a corporation) or at a meeting of owners (if there is no corporation) that, the relevant supplies, goods or services shall be procured from that supplier on such terms and conditions as specified in the resolution, instead of by invitation to tender.

Despite the above, it is advisable for managers to conduct the tendering exercise so as to obtain the more updated market information.

Q236 :

Does the manager have to comply with the “Code of Practice on Procurement of Supplies, Goods and Services”?

A :

Yes, the manager shall ensure that the procurement complies with the “Code of Practice on Procurement of Supplies, Goods and Services” published by the Home Affairs Department. The Code of Practice is available at all District Offices and at the website www.buildingmgt.gov.hk.

Para 5(1) and (2) of Sch. 7

Q237 :

If the manager does not comply with paragraph 5 of Schedule 7 to the BMO and/or the Code of Practice, what could the owners do?

A :

Provisions in Schedule 7 to the BMO are mandatory terms to be impliedly incorporated into every DMC. If the manager does not comply with the provisions in Schedule 7, it is a breach of the contract terms of the DMC and the owners may seek a ruling from the court in this regard.

Termination of Manager’s Appointment by OC

Q238 :

How can owners terminate a manager’s appointment under paragraph 7 of Schedule 7?

A :

According to paragraph 7(1) of Schedule 7 to the BMO, a corporation may, at a general meeting of the corporation, terminate by notice the DMC manager’s appointment without compensation by a resolution –

Para 7(1) and (5A) of Sch. 7

- (a) passed by a majority of the votes of the owners voting either personally or by proxy; **and**
- (b) supported by the owners of not less than 50% of the shares in aggregate.

Under the above mechanism, only the owners of shares who are liable to pay the management expenses relating to those shares shall be entitled to vote.



Q239 :

Is the mechanism provided under paragraph 7(1) of Schedule 7 to the BMO only applicable to DMC managers?

A :

The mechanism provided under paragraph 7(1) of Schedule is applicable to both DMC manager and manager whose employment contract contains no provision for the termination of the manager's appointment.

Para 7(5B) of Sch. 7

Q240 :

If the employment contract of a manager contains provision for the termination of the manager's appointment, say the appointment may be terminated by 3 months' advance notice, then should the owners terminate the appointment in accordance with the contract provision or should they do so in accordance with paragraph 7(1) of Schedule 7 to the BMO?

A :

If the employment contract of a manager contains provision for the termination of his appointment, then the owners should terminate the appointment in accordance with the contract provision. Paragraph 7(1) of Schedule 7 is not applicable in this case.

Para 7(5C) of Sch. 7

Q241 :

After a manager's appointment ends, when does the outgoing manager have to hand over the properties, which are under his control and belongs to the owners, to the owners' committee or newly appointed manager?

A :

The manager shall deliver to the owners' committee or the manager appointed in his place –

Para 8 of Sch. 7

- (a) within 14 days of the date his appointment ends, any movable property in respect of the control, management and administration of the building that is under his control or in his custody or possession, and that belongs to the owner; **and**
- (b) within 2 months of the date his appointment ends –
 - an audited income and expenditure account;
 - an audited balance sheet; **and**
 - any books or records of account, papers, documents and other records which are required for preparing the income and expenditure account and balance sheet.



Communication among owners

Q242 : Can the MC or the manager decide whether certain channels of communication among owners relating to the management of the building should be allowed?

A : The manager shall consult the corporation at a general meeting of the corporation on the channels of communication among owners on any business relating to the management of the building, and adopt the approach decided by the corporation.

Para 9 of Sch. 7

Q243 : What is meant by “channels of communication”?

A : It means the ways of communication among owners. Examples are depositing leaflets / letters into letter boxes of the owners, posting of notice / posters at common parts of the building, holding meetings / forums at common parts of the building, and household visits.

Para 9 of Sch. 7

Q244 : Does the manager have to consult the owners for every single case? Can the OC make a blanket approval for a certain channel of communication?

A : It is up to the OCs to decide whether they would like the manager to consult them for every single case, or that they would like to give a blanket approval. For example, the OCs may pass a resolution at the general meeting of the corporation to allow distribution of leaflets into the letter boxes of the owners all around the year, or the OCs may choose to allow that only at times where several candidates are running for offices in the MCs.

Para 9 of Sch. 7

