

Chapter 12 Duties of Manager

Building management involves a wide range of matters. Many buildings would engage a manager (i.e. property management company) to assist in the management of the building.

There are two main types of managers –

- (1) the person who is specified in the DMC to manage the building (i.e. DMC manager);
- (2) any other person who for the time being is managing the building for the purposes of the DMC. It generally refers to a manager appointed by the owners on contract basis (i.e. contract manager).

Section 34D(1)

Schedule 7 to the BMO sets out the requirements in relation to the manager of a building. Its provisions are mandatory terms to be impliedly incorporated into every DMC. In the event of any inconsistency between the provisions in Schedule 7 and the terms of a DMC, the provisions in Schedule 7 shall prevail.

Section 34E(1) and (2)

The provisions in Schedule 7 shall be binding on the manager of the building. Both the DMC manager and the contract manager shall comply with the requirements stipulated in Schedule 7.

Schedule 7 to the BMO mainly sets out the requirements with regard to the following –

- financial arrangements
- procurement arrangements
- resignation of manager
- termination of manager's appointment by the OC

- obligations after manager's appointment ends
- communication among owners

Financial arrangements

Opening accounts

- The manager shall open and maintain an interest-bearing account and shall use that account exclusively in respect of the management of the building.
 - ◆ If there is an OC, the manager shall open 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 OC in respect of the management of the building.
- The manager shall display a document showing evidence of the above bank accounts opened and maintained by him in a prominent place in the building.
- Except for retention of a reasonable amount to cover expenditure of a minor nature, the manager shall without delay pay all money received by him in respect of the management of the building into the bank accounts mentioned above.
 - ◆ If there is an owners' committee, the amount to be retained to cover expenditure of a minor nature shall be determined by a resolution of the owners' committee;

Para 3 of Sch. 7

- ◆ Any other condition or arrangement for dealing with the money, such as holding the amount in cash or paying it into a current account, may also be determined by a resolution of the owners' committee (if any).

What is an owners' committee?

An owners' committee means an owners' organization formed under and in accordance with the DMC. Its composition, operational details, duties and powers shall be such as the DMC may set out. An owners' committee is not a body corporate.

Where an MC has been appointed and an OC formed in respect of a building, the members of the MC shall be deemed to be the owners' committee and shall have all the functions, powers and duties of the owners' committee under the DMC.

Sections 34D and 34K

Establishment of a fund

- The manager shall establish and maintain a special fund to provide for expenditure of a kind not expected to be incurred annually, such as the cost of major maintenance works.
- If there is an OC, the OC shall determine, by a resolution at a general meeting of the OC, 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.

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- The manager shall open and maintain at a bank 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 of the special fund.
 - ◆ If there is an OC, the manager shall open 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 OC in respect of the special fund.
- The manager shall display a document showing evidence of the bank accounts in respect of the special fund opened and maintained by him in a prominent place in the building.
- The manager shall without delay pay all money received by him in respect of the special fund into the bank accounts mentioned above.
- Unless in a situation considered by the manager to be an emergency or the payment is approved by a resolution of the owners' committee, the manager shall not pay any money out of the special fund.

Budget

- The manager shall prepare a draft budget for each financial year setting out the proposed expenditure during the financial year.
- The manager shall send a copy of the draft budget to the owners' committee or, where there is no owners' committee, display a copy of the draft budget in a prominent place in the building for 7 consecutive days.

Para 1(2) of Sch. 7

- From the date the copy of the draft budget was sent or displayed, the manager shall issue a notice inviting each owner to send his comments on the draft budget to the manager within a period of 14 days.
- Having collected comments from the owners, the manager shall prepare a budget specifying the total proposed expenditure during the financial year.
- The manager shall send a copy of the budget to the owners' committee or, where there is no owners' committee, display a copy of the budget in a prominent place in the building for 7 consecutive days.
- Where, in respect of a financial year, the manager has not complied with the above requirements before the start of that financial year by preparing the draft budget and the budget, the total amount of the management expenses for that year shall, until he has so complied, be deemed to be the same as the total amount of management expenses for the previous financial year.

Para 1(3) of Sch. 7

Can the manager revise the budget after it has been prepared?

Yes, but the manager shall prepare a draft revised budget and, as with the preparation of the draft budget, the manager shall send a copy of the draft revised budget to the owners' committee or, where there is no owners' committee, display a copy of the draft revised budget in a prominent place in the building and issue a notice inviting each owner to send his comments.

Having prepared the revised budget, the manager shall also send a copy of the revised budget to the owners' committee or, where there is no owners' committee, display a copy of the revised budget in a prominent place in the building.

Para 1(4) of Sch. 7

- If there is an OC and, within a period of 1 month from the date that a budget or revised budget is sent to the MC by the manager, the OC decides by a resolution of the owners at a general meeting of the OC to reject the 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 year.

Para 1(6) of Sch. 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 owner.

Para 1(7) of Sch. 7

Amount payable by owners

- The total amount of management expenses payable by the owners shall be the total proposed expenditure specified by the manager in the budget.
- If the manager revises the budget, the amount that owners shall contribute towards the management expenses shall be adjusted according to the revised budget.

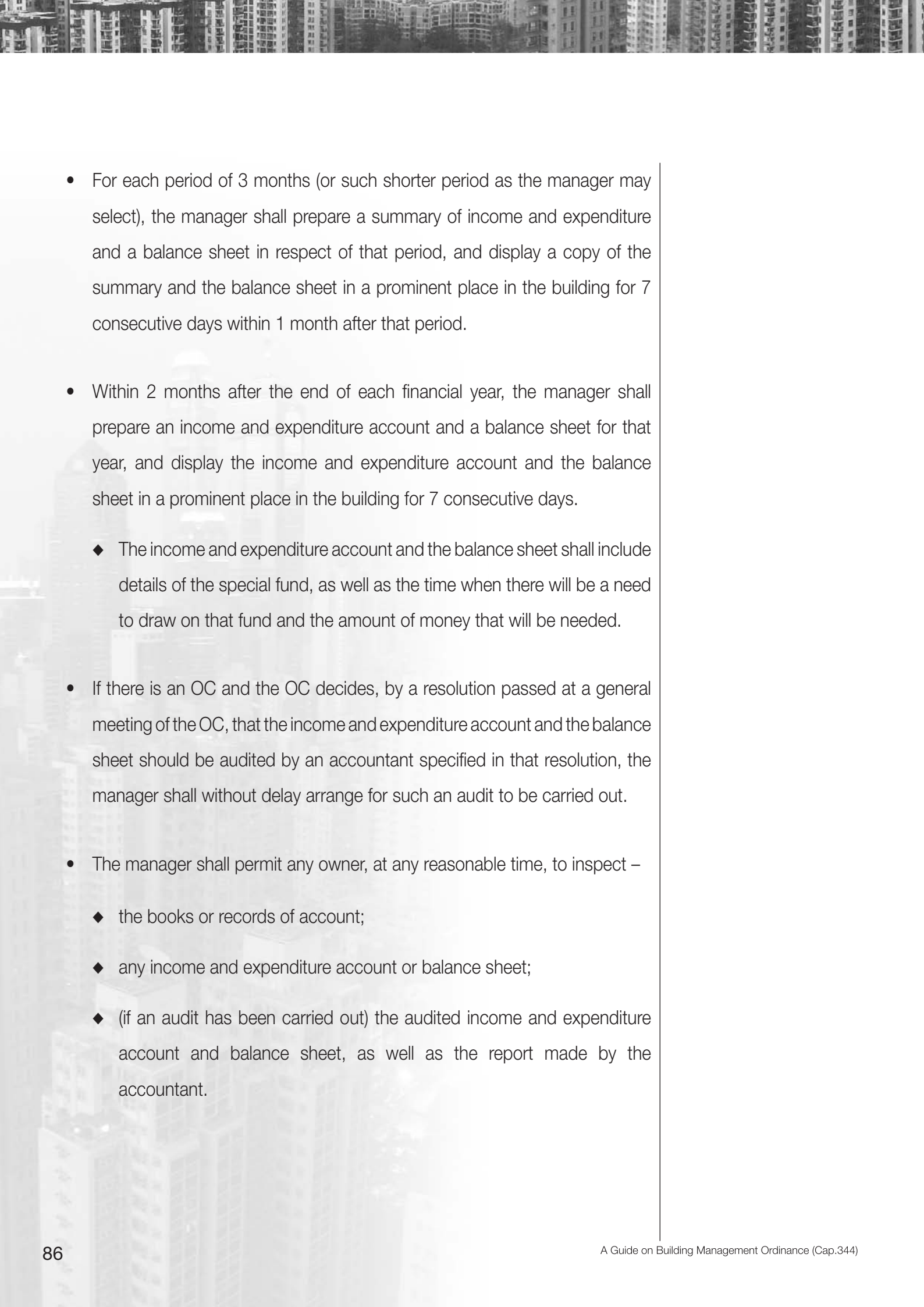
Para 1(1) of Sch. 7

Para 1(5) of Sch. 7

Accounts

- The manager shall keep the following for at least 6 years –
 - ◆ proper books or records of account and other financial records; **and**
 - ◆ all bills, invoices, vouchers, receipts and other documents referred to in those books and records.

Para 2 of Sch. 7

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- For each period of 3 months (or such shorter period as the manager may select), the manager shall 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 building for 7 consecutive days within 1 month after that period.
 - Within 2 months after the end of each financial year, the manager shall 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 building for 7 consecutive days.
 - ◆ The income and expenditure account and the balance sheet shall include details of the special fund, as well as the time when there will be a need to draw on that fund and the amount of money that will be needed.
 - If there is an OC and the OC decides, by a resolution passed at a general meeting of the OC, that the income and expenditure account and the balance sheet should be audited by an accountant specified in that resolution, the manager shall without delay arrange for such an audit to be carried out.
 - The manager shall permit any owner, at any reasonable time, to inspect –
 - ◆ the books or records of account;
 - ◆ any income and expenditure account or balance sheet;
 - ◆ (if an audit has been carried out) the audited income and expenditure account and balance sheet, as well as the report made by the accountant.

- The manager shall, on payment of a reasonable copying charge, supply any owner with a copy of the following documents –
 - ◆ the books or records of account ;
 - ◆ any income and expenditure account or balance sheet;
 - ◆ (if an audit has been carried out) the audited income and expenditure account and balance sheet, as well as the report made by the accountant.

Procurement arrangements

Procurement requirements

- Any supplies, goods or services the value of which exceeds or is likely to exceed the sum of **\$200,000** shall be procured by invitation to tender by the manager.
- For supplies, goods or services the value of which exceeds or is likely to exceed **20% of the annual budget**, the manager shall –
 - ◆ procure such goods or services by invitation to tender; **and**
 - ◆ (if there is an OC) decide whether a tender is accepted or not by a resolution passed by a majority of votes of the owners at a general meeting of the OC;
 - ◆ (if there is no OC) decide whether a tender is accepted or not by a resolution passed by a majority of votes of the owners at a meeting of owners convened and conducted in accordance with the DMC.

Para 5(1) of Sch. 7

**Section 34D(3) and
para 5(2) of Sch. 7**



It should be noted that if the value of a procurement exceeds or is likely to exceed 20% of the annual budget, the manager shall submit **all** the tenders received to –

- (if there is an OC) a general meeting of the OC; or
- (if there is no OC) a meeting of owners convened and conducted in accordance with the DMC,

and shall decide whether a tender is accepted or not by a resolution passed by a majority of votes of the owners at the meeting.

After assessing the tenders, the manager may shortlist and recommend a few to the owners. However, the manager cannot reject any tenders received without approval of the owners.

Value of the supplies, goods or services	Shall be procured by invitation to tender	Whether a tender is accepted or not shall be decided at a general meeting of the OC/ a meeting of owners
> \$200,000	✓	–
> 20% of the annual budget	✓	✓

Continuous engagement of the incumbent supplier

- If the manager intends to continuously engage the incumbent supplier and the following conditions are met, the tendering requirement may be waived. In other words, though the value of procurement exceeds \$200,000 or 20% of the annual budget, tendering is not required if the following conditions are met.

Para 5(3) of Sch. 7

- The conditions are as follows –
 - ◆ the supplier concerned must be the one engaged for the time being;
 - ◆ the supplies, goods or services to be procured by the manager are of the same type as those which are for the time being supplied by the supplier; **and**
 - ◆ a resolution shall be passed by a majority of votes at –
 - (if there is an OC) a general meeting of the OC; or
 - (if there is no OC) a meeting of owners convened and conducted in accordance with the DMC,to decide that –
 - invitation to tender will not be made; **and**
 - the supplies, goods or services shall be procured from that supplier on such terms and conditions as specified in the resolution.
- **All** the above conditions must be met for the manager to be allowed to waive the tender requirement.

It is advisable for managers to conduct tendering exercise so as to obtain the more updated market information.

Resignation of manager

- If the manager wants to resign, he shall give not less than 3 months' notice in writing –
 - ◆ by sending such a notice to the owners' committee; or

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- ◆ where there is no owners' committee, by giving such a notice to each of the owners and by displaying such a notice in a prominent place in the building.
- The notice may be given –
 - ◆ by delivering it personally to the owner;
 - ◆ by sending it by post to the owner at his last known address; or
 - ◆ by leaving it at the owner's flat or depositing it in the letter box for that flat.

Termination of manager's appointment by the OC

- The OC may, by a resolution passed at a general meeting of the OC, terminate by notice the **DMC manager's** appointment without compensation.
- The resolution shall be –
 - ◆ passed by a majority of votes; **and**
 - ◆ supported by the owners of not less than 50% of the shares in aggregate who are entitled to vote.

Only the owners of shares who are liable to pay the management expenses relating to those shares shall be entitled to vote.

Para 7 of Sch. 7

- The resolution shall provide for –
 - ◆ a period of not less than 3 months' notice; or
 - ◆ in lieu of notice, an agreement to be made with the DMC manager for paying him a sum equal to the amount of remuneration which would have accrued to him during that period.
- After the resolution is passed, the OC shall give a notice in writing to the DMC manager within 14 days after the date of the meeting, informing him of the termination of his appointment. The notice shall be accompanied by a copy of the resolution terminating the appointment.
- The notice may be given –
 - ◆ by delivering it personally to the DMC manager; or
 - ◆ by sending it by post to the DMC manager at his last known address.
- If a contract for the appointment of a manager (other than a DMC manager) contains no provision for the termination of the manager's appointment, the OC may also apply the above mechanism to terminate the appointment of the contract manager concerned.



It should be noted that the above mechanism is only applicable to terminating the appointment of –

- the DMC manager; or
- a contract manager whose contract contains no provision for the termination of his appointment.

If the contract of a contract manager contains provisions for the termination of the appointment, the OC shall comply with the provisions thereof, instead of applying the above mechanism to terminate the appointment.

Obligations after manager's appointment ends

If the manager's appointment ends for any reason, he shall fulfil the following obligations –

- as soon as practicable after his appointment ends, and in any event within 14 days of the date his appointment ends, deliver to the owners' committee (if any) or the manager appointed in his place any movable property in respect of the management of the building that is in his possession, and that belongs to the OC or the owners.
 - ◆ if the movable property, such as books or records of accounts, is required for the purposes of preparing the income and expenditure account and the balance sheet mentioned in the paragraph below, the manager shall within 2 months of the date his appointment ends, deliver to the owners' committee (if any) or the manager appointed in his place any such records.
- within 2 months of the date his 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 specified by the owners' committee (if any).
 - in the absence of such an owners' committee or any such specification, by such accountant as may be chosen by the manager.

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- ◆ deliver to the owners' committee (if any) or the manager appointed in his 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.

Communication among owners

- The manager shall consult (either generally or in any particular case) the OC at a general meeting of the OC and adopt the approach decided by the OC on the channels of communication among owners on any business relating to the management of the building.

Para 9 of Sch. 7

Other matters relating to the manager

- The manager of any building shall not be entitled to be indemnified by the OC or by the owners of the flats in that building in respect of any legal costs, charges, expenses or fees relating to any civil or criminal proceedings (whether successful or otherwise) between or in respect of that manager and that OC or those owners. Any such provision contained in the DMC shall be void and of no effect.
- If any share in the building had not or has not been sold, the owner for the time being of the share shall be liable to pay the management expenses relating to the share.

Section 34L

Section 34G