

The Building Management (Amendment) Ordinance 2024

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The Building Management (Amendment) Ordinance 2024

Major amendments

- Procurement
- Requirements of financial statements and other accounting documents
- Criminal sanctions against failure to keep specified documents of building management

Procurement

Initiation decision (啟動決定) (Section 2(1))

After an initiation decision in relation to the procurement of any supplies, goods or services (including a decision that potential suppliers are to be approached) is made, to determine whether the categories of procurement shall apply

Categories of procurement

Under the amendment, three categories of procurements should be conducted by an invitation to tender

Three categories of procurement

| | |
|---|---|
| Type 1 High-value procurement | <ul style="list-style-type: none">- The procurement value exceeds, or is likely to exceed, \$200,000; and does not exceed 20 % of the average of total amount of annual expenditure for the last 3 financial years; and the procurement is not large-scale maintenance procurement (Section 2D(1)(a)) |
| Type 2 - high-value procurement | <ul style="list-style-type: none">- The procurement value exceeds, or is likely to exceed, 20% of the average of total amount of annual expenditure for the last 3 financial years; and the procurement is not large-scale maintenance procurement (Section 2D (1)(b)) |
| Large-scale maintenance procurement (Section 2E) | <ul style="list-style-type: none">- The procurement is mainly for repairing, replacing, maintaining or improving the common parts of the building;- The average procurement value per flat in the works project exceeds, or is likely to exceed, \$30,000; and- The procurement is not the procurement of any cleaning or security services for the building, or any building management services provided by the manager of the building <p>Per flat - does not include any garage, carpark or carport</p> |

Procurement - Type 1 – High-value procurement

To conduct procurement and tendering

- ▶ To comply with the Code of Practice on Procurement of Supplies, Goods and Services (Section 28A/ para 12(1)(a) of Sch 7)
- ▶ To conduct the procurement by an invitation to tender and comply with tender requirements (Section 28D, Schedule 6A)

Procurement - Type 1 – High-value procurement

- ▶ Tender requirements (Sch 6A/Sch 7 Division 3 Part 2)
 - Setting deadline;
 - content of invitation to tender
 - (i) nature of the supplies, goods or services;
 - (ii) specified time on a specified day in respect of submission of tender
 - (iii) stating reasons of postponement
 - No acceptance of late submission

Procurement - Type 1 – High-value procurement

- ▶ Requirement to invite specified number of potential suppliers (section 28D)
 1. If the value of goods, supplies exceeds or is likely to exceeds \$200,000, tender shall be issued to 5 or more potential suppliers are required;
 2. If the value of goods, supplies exceeds or is likely to exceeds \$100,000 to \$200,000, tender shall be issued to 3 or more potential suppliers are required (Para 20 of Sch 7)
 3. Invitation to tender /Open tender to any potential suppliers

Procurement - Type 1 – High-value procurement

- ▶ Services of tender (para 5 of Sch 6A);
- ▶ Displaying of copy of invitation to tender (including revised tender) (if any) after issuing of it until the deadline of submission
- ▶ Complying with declaration of interests or connections (Part 1 of Schedule 6B/ Part 2 Division 4 Subdivision 1 of Sch 7)
- ▶ Deciding at the meeting of MC

Procurement – Type 2 – High-value procurement

1. To comply with the Code of Practice on Procurement of Supplies, Goods, and Services (Section 28A/ Para 13(1)(a) of Sch 7)
2. To conduct the procurement and comply with tender requirement (Sch 6A/ Division 3 Part 2 of Sch 7)
3. Declaration of interests or connections (Part 1 of Sch 6B/Sch 7 Part 2 Division 4 Subdivision 1)
4. To accept the tender via corporation or owners' meeting (Section 28E(2)(c)/ Para 13(1)(c) of Sch 7);
5. To vary or terminate the contract via the corporation meeting/owners' meeting (Section 28E(2)(d)/Para 13(4) of Sch7).

Large-scale maintenance procurement

- ▶ To comply with the Code of Practice (Section 28A/Para 14(1)(a) of Sch 7)
- ▶ Tender requirement (Sch 6A, Sch 7 Part 2 Division 3) (same to types 1 and 2)
- ▶ Declaration of interests or connections (Parts 1 & 2 of Sch 6B/Sch 7 Part 2 Division 4 Subdivisions 1 & 2)
- ▶ To accept the tender via corporation or owners' meeting (Section 28E(2)(c)/Para 13(1)(c) of Sch 7);
- ▶ To vary or terminate the contract via the corporation meeting/owners' meeting (Section 28E(2)(d)/Para 13(4) of Sch7)

Declaration

- ▶ Declaration (Parts 1 of Schedule 6B/Sch 7 Part 2 Division 4 subdivision 1)
- ▶ Declaration (Part 2 of Schedule 6B/Sch 7 Part 2 Division 4 subdivision 2)

Declaration Part 1 (types 1 & 2, large -scale maintenance procurement - Sch 6B Part 1/ Sch 7 Part 2 Division 4 Subdivision 4)

Declarations by Participants of Management Committee

- Any pecuniary or other personal interest in a tender
- Any connection with a person who has submitted a tender

Declarations by Responsible Person

- Any pecuniary or other personal dealing with/any connection with a member of MC;
- Any pecuniary or other personal interest in a tender submitted; any connection with a person who has submitted a tender

Declaration (types 1 & 2, large -scale maintenance procurement)

- ▶ Declaration form and submitting the same to specified member of the management committee
- ▶ Lodging Declaration in hard copy (original) or electronic copy (Para 3 of Sch 6B)
- ▶ Content of Notice of Declaration
- ▶ Displaying the notice of the declaration in prominent place at least 7 consecutive days (Para 4 of Sch 6B)

Declaration (types 1 & 2, large -scale maintenance procurement)

- ▶ Producing a copy of declaration to the MC at the 1st procurement meeting (Para 5 of Sch 6B) and attaching to the minutes of the meeting.
- ▶ Permitting the specified person to inspect a copy of declaration (i.e. owners/Authority/registered mortgagee)

Declaration (types 1 & 2, large -scale maintenance procurement)

Prohibition from attending meeting of management committee (Para 7 of Sch 6B)

- Declarant (MC members)

Prohibition from participating in procurement activities (Para 8 of Sch 6B/Para 16)

- Declarant (MC members and Responsible Persons)

Declaration - Part 2

Large-scale maintenance procurement

Part 2 of Declaration by Participants of Management Committee

- ▶ every participant of MC must make the declaration in specified form
- ▶ No interest or connection for tenders submitted

Declarations by Responsible Persons

- ▶ No dealing or connection with members of management committee
- ▶ No interest or connect for tender submitted

Declaration - Part 2

Large-scale maintenance procurement

- ▶ lodging the declaration to chairman or secretary or other members (as the case may be) by using hard copy or electronic copy
- ▶ The documents attached to the minutes of the 1st tender acceptance meeting.
- ▶ Duration of keeping the declaration
- ▶ Right to inspect the declaration

Large-scale maintenance procurement - corporation meeting

Notice of Corporation meeting's procedure (Part 6C)

Before corporation meeting

- Issuing a notice of meeting - “Important Reminder” and “重要提示”
- Proposed resolution of the notice meeting
 1. setting out (1) estimated amount to be contributed from the management fund; and (2) estimated apportioned amount to be contributed by each owners; or
 2. variation or termination of contract;

Large-scale maintenance procurement - corporation meeting

- ▶ Authorisation notice in respect of corporation owner (Para 4A of Sch 3/Par 41 of Sch 7)

Large-scale maintenance procurement

During the meeting

- Quorum is sufficient;
- Voting-in-person requirement: not less than 5% of owners; or 100 owners (whichever is lesser); (para 4(2) of Sch 6C/ Para 48(2) of Sch 7)
- Recording number of votes cast in person and by proxy (para 5 of Sch 6C/Division 4 of Part 3 of Sch 7)

After the meeting

- MC must, within 28 days after the date of meeting, display in a prominent place for at least 7 consecutive days and supply each of the owner with a copy of certified minutes (Paragraph 6A of Sch 3, Para 6 of 6C)

Financial matters

Existing BMO

50 owners of the building

Account report laid before at Annual General Meeting

Audit requirements (Amendment)

- Total income or expenditure exceeds or is likely to exceed HK\$500,00 must be audited. (section 27(2)(c))
- Produce a copy of financial statement and account report in a prominent place in the building asap after the corporation so obtain the report and display the same at least 7 consecutive days (Section 27(7), Para 6B of Sch 7)

Keeping of documents

- Supporting documents (bill, invoice, voucher receipt of any other documents must be kept the period of 6 years (Section 27((6))
- Procurement documents must be kept for the period of 6 years after the dated on which the contract is entered into (Section 28B / Para 10 of Sch 7)
- Keeping Proxy instruments for meeting of owners convened under section 3, 3A or 4 for the period of 12 months after the conclusion of the meeting (Section 4A, Section 36A(2))
- The original of every authorization notice (hard copy) or copy of the same not less than 3 years since the conclusion of the meeting (Section 36A(3))
- Minutes of a meeting of MC and IO not less than 6 years (Section 36A(1))

Inspection and request a copy of documents

► Accounting documents

- inspection of accounting documents (Section 27(5))
- supplying to the specified person with copy of accounting docs within 28 days from the date of request (Para. 3(1) of Sch 6/ Para 6C of Sch 7)

► Draft budget, budget, revised budget

- Supplying it within 28 days from the date of request (Para. 4 of Schedule 5, Para 7 of Sch 7)

► Insurance policy and receipt of premium

- written request to provide a copy of the policy of insurance or receipt for the premium and IO must supply the same within 28 days from the date of request (Section 28(5))

Inspection and request a copy of documents

► Procurement documents

- written request of not less than 5% of the owners for inspection (Section 28C(1)(a), Para 11 of Sch 7) or any person authorized who obtain the court order (Section 28C(1)(b), (5);
- Supplying a copy of the same to specified person(s) within 28 days in electronic or hard copy.\ (Section 28C (2) & (4), para 11 of Sch 7)

► Minutes

upon receiving of request from the specified persons, IO shall produce a copy in electronic form or hard copy form to the requester within 28 days of the date of request. (Paragraph 10A of Schedule 2)

Inspection and request a copy of documents

Declaration

keeping for 6 years and the MC/Manager must permit a specified person for inspection (para. 6 of Sch 6B, para 28 of Sch 7)

Supplying of the IO documents

- ▶ Electronic form without paying any charge; or hard copy with paying copying charge (section 2F)

Criminal sanctions against failure to keep specified documents of building management

| Matters | BMO provisions | Penalty |
|-------------------------------|--|--|
| Administrative matters | Displaying copy of certificate of registration (Section 11(1), (1A), (1B) or (2)) | Fine at level 1 (\$2000) (Section 11(3)) |
| | MC shall within 28 days give notice to Land Registrar of any change of MC members of corporation (Section 12(3)) | Fine of \$100 (Section 12(4) (secretary v. MC) |
| Accounting matters | Duty to maintain proper books or records of account and other financial statement (Section 27(1)) | Fine at Level 5 (\$50,000) (Section 27A(1)) |
| | Duty to maintain supporting documents (i.e. bills, invoice, voucher, receipt etc. for 6 years (Section 27(6)) | Fine at Level 4 (\$25,000) (Section 27A(2)) |

| Matters | BMO provisions | Penalty |
|--------------------|--|---|
| Insurance | Keeping 3 rd party insurance to the common parts and the property of corporation in force (Section 28 (1)) | Fine at Level 5 (\$50,000) (Section 28(2)) |
| Procurement | Keeping of procurement documents (e.g. tender document, copy of contract, statement of account and invoice) for 6 years after the date on which the contract entered into (Section 28B(1)) | Fine at level 4 (\$25,000) (Section 28B(2)) |

| Matters | BMO provisions | Penalty |
|---------------------------------------|---|---|
| Documents relating to meetings | Keeping of certified minutes of MC meetings and corporation meetings for 6 years (section 36A(1)) | Fine at level 4 (\$25,000) (Section 36A(4)) |
| | Keeping proxy instrument for 12 months (Section 36A(2)) | Fine at level 4 (\$25,000) (Section 36A(4)) |
| | Keeping the authorization notice (hard copy or electronic copy) for 3 years (section 36A (3)) | Fine at level 4 (\$25,000) (Section 36A(4)) |

| Matters | BMO provisions | Penalty |
|---------|---|--|
| Proxy | Convenor must keep all instrument for the meetings under section 3, 3A or 4 for 12 months (Section 4A(2)) | Fine at level 4 (\$25,000) (Section 4B(1)) |
| | After appointment of MC, convenor shall deliver the proxy to MC; and MC shall keep the proxy for 12 months (Section 4A(3) (b)) | Fine at level 4 (\$25,000) (Section 4B(2)) |
| | If the MC fails to comply order made by court for appointment of building management agent without reasonable excuse (Section 40B(1)) | Fine at Level 5 (\$50,000), thereafter further fine of \$1,000 for each day (Section 40B(2)) |
| | Covenor must keep lodged proxy instrument for 12 months (Section 40C(12)) | Fine at level 4 (\$25,000) (section 40CA(1)) |
| | After appointment of MC, Covenor must deliver the lodged proxy instrument to MC or building management agent (Section 40C(13)(a), then MC or building management agent shall keep it for 12 months (Section 40C(13)(b)) | Fine at level 4 (\$25,000) Section 40CA(2) & (3) |

Criminal sanctions against failure to keep specified documents of building management

Defence

- ▶ Sufficient evidence to raise an issue and establish that they have exercised all due diligence that he ought to have exercised in the circumstance to prevent the commission of the offence; and
- ▶ Contrary is not proved by the prosecution beyond reasonable doubt

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Transitional provisions for Building Management (Amendment) Ordinance 2024 (section 44B)

- If initiation date is made before the amendment date, new provisions of procurement does not apply but subject to execution of contract before the expiry of the grace period i.e. 3 years.

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Q&A

Thank you

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Sources/references:

Building Management (Amendment) Ordinance 2024 - Gazette

The report of the Bills Committee on Building Management (Amendment) Bill 2023