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LACO/HQ/127 III

14 August 1998

**Legal Advisory and Conveyancing Office**  
**Circular Memorandum No. 34**

**Provisions to be included in**  
**Deeds of Mutual Covenant in regard to the Provision of**  
**Government Accommodation within Private Developments**

As you may have noticed, the "Provisions" attached to Legal Advisory and Conveyancing Office ("LACO") Circular Memorandum No. 11 for drawing up Deeds of Mutual Covenant ("DMC") in respect of private developments within which Government Accommodation is to be provided have not incorporated all the latest requirements of the Government Property Administrator ("GPA") for these DMCs. Accordingly, GPA has revised the "Provisions" to embrace as far as possible all the standard requirements and to elaborate on certain issues with a view to expediting the processing of applications. The new guidelines ("the Guidelines and Checklist") are now attached and should be adhered to for all applications as from the date hereof submitted to LACO for approval of DMCs for developments involving Government Accommodation.

2 The Guidelines and Checklist have been drawn up in the format of a checklist to facilitate processing by applicants and GPA. From now on, when submitting an application for LACO's approval of a DMC containing Government Accommodation, Solicitors should at the same time forward to GPA at 31/F, Revenue Tower, 5 Gloucester Road, Wanchai, Hong Kong all supporting documents listed in Part I of the Guidelines and Checklist together with two copies of the Guidelines and Checklist duly completed for his processing. A copy of the completed Guidelines and Checklist should also be forwarded to the LACO office for its record. **Please note that the DMC will not be scrutinised by GPA if the Solicitors fail to supply all the mandatory documents or complete the Guidelines and Checklist to the satisfaction of GPA and the application for approval of the DMC will be rejected by LACO without assigning any priority number to the application.**

3. There is no need for the Guidelines and Checklist to be completed and submitted in respect of applications for approval of DMCs involving Government Accommodation currently being processed by LACO and GPA.

4. GPA may in individual cases vary the requirements under the Guidelines and Checklist or impose additional obligations in the DMC to suit specific circumstances.

5. LACO Circular Memoranda Nos. 3 (as to paragraph 4 thereof only) and 11 are hereby cancelled. Annex 2 of the Checklist attached to LACO Circular Memorandum No. 1A is hereby replaced. LACO Circular Memorandum No. 21, in so far as it relates to paragraph 3 thereof, is hereby modified.

6. If you have any enquires relating to the intention of the new guidelines or the interpretation thereof, please address them to the GPA direct for attention.

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

To : All solicitors

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## **GPA's Guidelines and Checklist**

for the preparation of Deeds of Mutual Covenant ("DMC") in developments with Government Accommodation ("GA")

TO :- GOVERNMENT PROPERTY ADMINISTRATOR ("GPA")  
Government Property Agency  
Legal Advisory Division  
31/F Revenue Tower  
5 Gloucester Road  
Wanchai  
Hong Kong.

**Note :-** *The DMC will not be scrutinised until all supporting documents in Part I are submitted to the satisfaction of GPA together with this Guideline and Checklist duly completed.*

### **I Documents :-**

No.	Description of documents	Please tick when submitted	Remarks
1.	3 copies of the <b>DMC</b> (Revised drafts/pages also in triplicate)		
2.	1 certified Land Registry copy or copy certified by a solicitor of the <b>Land Grant</b> ("the Conditions") and of any <b>modifications</b> thereto including any subsequent modifications.		
3.	1 copy of updated historical and current <b>Land Registry search</b> of the Lot.		
4.	<b>Authorised Person's Certificate</b> which shall certify :-  (a) (i) the gross floor area ("gfa") of the GA;  (ii) the total gfa of all "buildings" as defined in the Buildings Ordinance, Cap. 123 erected or to be erected on the lot;		

No.	Description of documents	Please tick when submitted	Remarks
	<p>(iii) the number of undivided shares allocated to the GA;</p> <p>(iv) the total number of undivided shares in the whole of the lot;</p> <p>(v) the number of management shares (if any) allocated to the GA;</p> <p>(vi) the total number of management shares in the whole of the lot; and</p> <p>(vii) separate figures of gfa, undivided shares and management shares (if any) shall be given for each component of the GA (for example, a Social Centre for the Elderly and a Day Nursery would be 2 components).</p> <p>(b) that the proportion of undivided shares and management shares (if any) in the whole of the lot allocated to the GA shall bear the same proportion which the gfa of the GA bears to the total gfa of all the buildings on the lot.</p> <p>Note : The gfa of the GA and of all the buildings on the lot shall include their gfa irrespective of whether that gfa is accountable under the Buildings Ordinance or under the Conditions.</p>		
<b>*5.</b>	4 copies plus 1 for each user department of <b>latest approved building plans of the GA</b> on a scale not smaller than 1:200 clearly delineating the boundary of the GA.		

\* - in the case of Public Transport Terminus, 5 additional copies of the plan

## II. The Guidelines

The DMC should include the following:-

No.	Subject	Clause No. and Page No.	Remarks
1.	<p><b><u>Definitions</u> :-</b></p> <p>(a) <u>The Financial Secretary Incorporated</u></p> <p>The Government shall hold the GA in the name of The Financial Secretary Incorporated (“FSI”) to be defined as follows:-</p> <p>"The Financial Secretary Incorporated is a corporation sole incorporated under and by virtue of The Financial Secretary Incorporation Ordinance Cap. 1015 of the Laws of Hong Kong and the expression "F.S.I." shall mean FSI in its capacity as the Owner of the Government Accommodation and if the context so permits the successors and assigns of FSI as Owner of the Government Accommodation".</p> <p>(b) <u>The Government Accommodation</u></p> <p>A precise definition by reference to the Conditions must be given.</p> <p>(c) <u>The "Items"</u></p> <p>Include a definition of the "Items" as defined in the Conditions. [3(d), 4(a) and (b) (i) below are relevant]</p>		

No.	Subject	Clause No. and Page No.	Remarks
2.	<p><b><u>Rights, Privileges and Easements to be incorporated into DMCs :-</u></b></p> <p>(a) (i) In favour of <i>FSI, its lessees, tenants, licensees and persons authorised by it and the Owner or occupier of the GA :-</i></p> <p>(I) the right of shelter, support and protection for the GA;</p> <p>(II) the right at all times of free passage and running of gas, electricity, water, sewage, air-conditioning, telephone and all other services from and to the GA through the gutters, sewers, drains, flues, conduits, ducts, watercourses, cables, pipes, wires and other conducting media now or hereafter laid on or running through any part of the lot and any part of the development on the lot;</p> <p>(III) the right at its own cost to alter, divert, vary, relay or reinstate any of the services and facilities serving exclusively the GA at any time at its absolute discretion without having to obtain the approval or consent of the Grantee/Purchaser or the Manager Provided that proper and adequate care and precaution shall be taken during any such works;</p> <p>(IV) the right to go pass and repass over and along and to use any common parts of the lot or any common parts of the development on the lot in connection with the proper use and enjoyment of the GA and to use and receive the benefit of any common facilities within the lot or the development on the lot;</p>		

No.	Subject	Clause No. and Page No.	Remarks
	<p>(V) the right at all reasonable times with or without surveyors, contractors, workmen and others and with or without vehicles, plant, equipment, material and machinery to enter upon the lot or any part of the development on the lot for the purposes of extending or carrying out maintenance, repair, addition alteration and other works to the GA and services and facilities serving the GA;</p> <p>(VI) the free and uninterrupted rights of way to and from the GA;</p> <p>(VII) the exclusive right to install, erect, exhibit, display, maintain, repair, remove and renew signs and advertisements on the walls, columns and other structural elements of, within, around and on the boundary of the GA as F.S.I. shall deem fit and the right of access over the lot or any part of the development on the lot with or without servants, workmen and others and with or without plant, equipment, machinery and material for the purposes of inspecting, installing, erecting, exhibiting, displaying, maintaining, repairing, removing and renewing such signs and advertisements;</p> <p>(VIII) the right of access to the lighting conduits, such fire services, ventilation and other services, facilities, installations, fixtures, ancillary works, plants and materials fixed on in or to the roof slabs, walls and other structural elements of the GA;</p> <p>(IX) the right to alter and run additional services to serve and benefit exclusively the GA on the walls, columns, beams, ceilings, roof slabs, carriageway/floor slabs and other structural elements of, in, around, within, above and below the same and the related right of access over the lot or any part of the development on the lot with or without servants, workmen and others and with or without plant, equipment, machinery and material.</p>		

No.	Subject	Clause No. and Page No.	Remarks
	<p>(X) such other rights, privileges and easements (if any) as may be deemed necessary or desirable by the Director of Lands (“the Director”) and which are notified to the Grantee/Purchaser by Government or FSI for incorporation into the DMC.</p> <p>(ii) Reserve to <i>Government or FSI</i> the right to alter or vary at any time the use of the GA without having to obtain the approval or consent of the Grantee/Purchaser or the Manager.</p> <p>(b) In favour of Grantee/Purchaser and its assigns and the Manager:-</p> <p>(i) The rights reserved to <i>the Grantee/Purchaser</i> and the powers and duties of the <i>Manager</i> shall be subject to the rights and privileges of FSI and shall not in any way adversely affect or prejudice the rights easements and privileges reserved to FSI in the DMC and the Conditions.</p> <p>(ii) Where the right is reserved to <i>Grantee/Purchaser</i> to enter upon any part of the Estate to commission, construct and complete the development, such right shall exclude the GA except where entry is unavoidable when, in that event, it shall be subject to prior reasonable notice, least disturbance being caused and an indemnity for costs and expenses incurred for any damage caused to the GA;</p> <p>(iii) In respect of the GA <i>the Manager and Owners of undivided shares</i> can enter the GA for maintenance and repair purposes but they require prior approval to enter upon the GA except in emergency and shall be liable for all costs and expenses incurred for any damage caused to the GA;</p>		

No.	Subject	Clause No. and Page No.	Remarks
	<p>(iv) Any amendment to the Master Layout Plan should not affect the GA;</p> <p>(v) The right to designate any part of the Estate to be Estate (or other) Common Areas shall not affect the proper use and enjoyment of the GA;</p> <p>(vi) The right to re-allocate management shares or undivided shares should not affect the proportion of shares allocated to the GA;</p> <p>(vii) The <i>Grantee/Purchaser</i> shall not represent FSI or GPA in any dealings with the Government directly affecting the GA. GPA shall in its sole discretion determine whether or not the GA is directly affected;</p> <p>(viii) The right to change the name of the Estate should not include a right to change the name of the GA;</p> <p>(ix) The right to amend, vary, alter plans should:-</p> <p style="padding-left: 40px;">(I) not impede or restrict access to or from the GA, and</p> <p style="padding-left: 40px;">(II) require approval of the Owner of the GA if it directly affects the GA. GPA shall in its sole discretion determine whether or not the GA is directly affected.</p> <p>(x) The right to vary the terms of the Conditions :-</p> <p style="padding-left: 40px;">(I) shall require prior written approval of the Owner of the GA if in the opinion of GPA it directly affects the GA;</p>		

No.	Subject	Clause No. and Page No.	Remarks
	<p>(II) shall not be prejudicial to the rights of the Owner of the GA in the use and enjoyment of and access to the GA; and</p> <p>(III) must not result in the Owner of the GA being liable for any premium payable for any variation save that the Owner of the GA may agree to pay that portion of the premium payable for the variation to the extent that the variation, in the opinion of GPA, directly benefits the GA but not otherwise.</p> <p>(xi) The right to assign/surrender/dedicate any part of the lot should exclude the GA; and</p> <p>(xii) No chimneys, flues, pipes or other structures or facilities shall be installed or affixed onto the external walls of the GA.</p>		
3.	<p><b><u>Management and Maintenance</u></b></p> <p>(a) The Owner of the GA shall manage and maintain the GA.</p> <p>(b) Notwithstanding (a) above, upon the request of the Owner of the GA, the Manager will undertake the maintenance of services, facilities and installations serving exclusively the GA and will be reimbursed with the costs expended in carrying out such maintenance on condition that the maintenance will not be carried out until the Manager has submitted an estimate of costs together with supporting documents and any other relevant information that the Owner of the GA considers necessary and the Owner has approved in writing the estimated costs and the maintenance work to be carried out by the Manager.</p>		

No.	Subject	Clause No. and Page No.	Remarks
	<p>(c) The exercise of the easements rights and privileges reserved in 2(a) above shall not be subject to any permission, approval or consent of the Manager.</p> <p>(d) The Items shall be managed and maintained by the Manager with an indemnity in the DMC by all Owners (excluding FSI) to FSI and the Government for all claims, etc arising out of or as a consequence of a failure to do so.</p> <p>(e) The Estate Rules/House Rules shall not adversely affect or interfere with the use, operation and enjoyment of the GA.</p> <p>(f) The Manager shall not represent FSI or GPA in any dealings with the Government.</p>		
4.	<p><b><u>Management and Maintenance Charges</u> :-</b></p> <p><i>In accordance with the Conditions :</i></p> <p>(a) Where the Conditions provide that FSI as the Owner of the GA <u>is not liable</u> to pay any management and maintenance charges in respect of the remainder of the development, FSI shall not be liable for any contribution towards any management and maintenance charges in respect of the remainder of the development including management and maintenance charges whatsoever incurred in respect of the common areas and facilities of the development and the Items; and</p>		

No.	Subject	Clause No. and Page No.	Remarks
	<p>(b) Where FSI is <u>liable</u> for the payment of management and maintenance charges and reimbursement in respect of expenditure of a capital nature (“the charges”) the charges shall:-</p> <ul style="list-style-type: none"><li>(i) be as determined by the GPA or person nominated by the Director for this purpose in respect of the areas, facilities and services and the Items which directly serve or benefit the GA or are used by the Owner of the GA but which liability shall not exceed the proportion that the management shares of the GA bears to the total management shares of the whole development.</li><li>(ii) first be approved in writing by the GPA or person nominated by the Director for this purpose before liability for payment thereof is incurred; and</li><li>(iii) be payable from the date of the Assignment or the date of taking over the GA, whichever is the earlier.</li></ul> <p>(c) FSI as Owner of the GA shall be <u>exempt</u> from</p> <ul style="list-style-type: none"><li>(i) contributing to management deposits, capital equipment fund, insurance premium, debris removal fee, interest and penalty charges on late or default in payment of management and maintenance charges or payment of a like nature;</li></ul>		

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	<p>(ii) the Fitting Out Regulations (if any); and</p> <p>(iii) using the Grantee/Purchaser/Manager nominated maintenance or service contractors.</p> <p>(d) As may be requested in writing by the GPA, the Manager shall provide the FSI free of charge with quarterly accounts, audited reports and budgets to justify the expenses incurred/estimated.</p> <p>(e) The said accounts, reports, budgets, notices and demands shall be sent free of charge to the FSI by prepaid post or delivered by hand to the GPA, Government Property Agency, 31/F, Revenue Tower, 5 Gloucester Road, Wanchai, Hong Kong or such other person and address nominated by the FSI in writing.</p> <p>(f) Any consent that the Owner of the GA may be required to obtain from the Manager shall not be unreasonably withheld and shall be provided free of charge.</p> <p>(g) Whether to be annexed to the DMC or lodged in the management office, the Manager shall provide the Owner of the GA with a copy of the common area plans and any amendments that may be made thereto from time to time, free of costs.</p>		
5.	<p><b><u>Membership on Owners' Committee</u></b></p> <p>(a) (i) FSI as the Owner of the GA shall be allocated as many seats on owners' committees, as required, dependent on the circumstances of the case, and the need for its participation in decision making. The GPA in concert with other relevant authorities shall decide on this. As a general rule however where FSI owns less than 10% of the total undivided shares in a development the right to attend the owners' committee meeting is adequate.</p>		

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	<p>Where the total undivided shares exceed 10% the number of seats required on the owners' committee should be in direct proportion to the number of undivided shares held by FSI as compared to the total number of undivided shares in the development. In cases where the GA is extremely large, and the number of shares allocated to such are less than 10% of the total, it may be that at least one seat on the owners' committee is still required in view of the special nature of such cases and the size of the accommodation involved. <u>Developers will be advised of FSI's requirements for representation in each case; and</u></p> <p>(ii) Whether or not FSI is a member of the Owners Committee FSI shall still have the right to attend the Owners Committee meetings and to receive notices, agendas and minutes of the meetings free of charge sent in the manner provided in 4(e) hereof.</p> <p>(b) No resolution of the Owners Committee should adversely affect the use, operation or maintenance of the GA or any part thereof.</p>		
6.	<p><b><u>Owner Meetings</u></b></p> <p>No resolution of the Owners meetings should adversely affect the use, operation or maintenance of the GA or any part thereof.</p>		