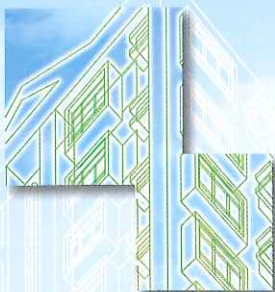


# An Introduction to

## Building Management (Amendment) Ordinance 2007



The Building Management (Amendment) Ordinance 2007 (the Amendment Ordinance) was passed by the Legislative Council on 25 April 2007. Except for the provisions relating to the mandatory procurement of third party risks insurance by owners' corporations (OCs), the Amendment Ordinance came into operation on **1 August 2007**.



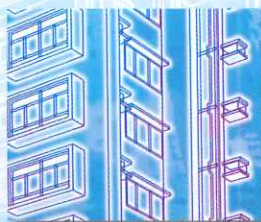
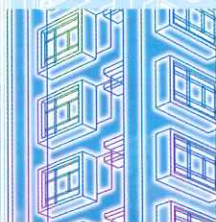
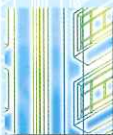
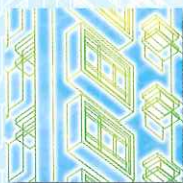
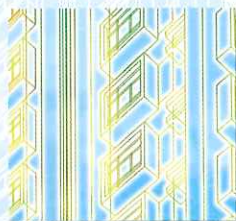
The Amendment Ordinance mainly aims to —

- assist OCs in performing their duties and exercising their powers ;
- safeguard the interests of property owners ; and
- rationalize the appointment procedures of a management committee (MC) and its members.

The main contents of the Amendment Ordinance are summarized as follows —

### **1 Appointment of an MC and formation of an OC**

- For the formation of an OC, owners shall appoint an MC according to the requirements set out in the Building Management Ordinance (Cap. 344) (BMO), instead of the deed of mutual covenant (DMC) of the building.
- Under normal circumstances, owners of not less than 5% of the shares in aggregate may appoint an owner to be the convenor who shall convene and preside at a meeting of owners for the appointment of an MC and the formation of an OC.
- At the meeting of owners convened for the above purposes, owners may appoint an MC by a resolution —
  - ◆ passed by a majority of the votes of the owners ; **and**
  - ◆ supported by the owners of not less than 30% of the shares in aggregate.
- Only resolutions that are related to the appointment of an MC and the incorporation of the owners can be passed at the meeting.
- The quorum at the meeting shall be 10% of the owners.





## 2 Appointment of MC members

- Owners shall follow the BMO requirements instead of DMC provisions in appointing MC members.
- The number of MC members shall be determined by a resolution passed by a majority of votes of the owners, and shall comply with the minimum requirement set out in the BMO.
- Owners may decide whether to appoint an MC vice-chairman.
- The “first-past-the-post” voting system shall be used in the appointment of MC members, chairman, vice-chairman, secretary and treasurer.

## 3 Eligibility for Appointment as MC members

- All MC members, except the tenants’ representatives, shall be owners of the building, regardless of the requirements of the DMC.
- With the exception of the tenants’ representative, a person is not eligible for appointment as an MC member if he —
  - ◆ is an undischarged bankrupt ;
  - ◆ has, within the previous 5 years, either obtained a discharge in bankruptcy or entered into a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap. 6), in either case without paying the creditors in full ;
  - ◆ has, within the previous 5 years, been convicted of an offence for which he has been sentenced to imprisonment, whether suspended or not, for a term exceeding 3 months without the option of a fine.
- With the exception of the tenants’ representative, all appointed MC members shall make a statutory declaration, stating that they do not fall within the description of the above paragraph, and lodge the duly completed declaration form with the MC secretary within 21 days after the appointment. An MC member who fails to comply with this requirement shall cease to be such member.
- For the first MC, the MC shall lodge the declaration forms and other relevant documents with the Land Registry within 28 days of its appointment for the registration of the owners as an OC.
- For other occasions, the MC secretary shall lodge the declaration forms with the Land Registry within 28 days after receiving the forms from the MC members.

## 4 Filling vacancies of MC

- A vacancy (except the vacancy of tenants’ representative) in the MC which occurs other than by reason of the expiration of the term of office may be filled by the OC or the MC.

- If a general meeting of the OC is convened to fill the vacancy, the appointment will, like those of other existing MC members, last till the next annual general meeting of the OC at which all MC members retire. If the vacancy is filled by the MC, the appointment will only last till the next general meeting of the OC.
- If the number of vacancies in an MC is more than 50% of the number of MC members, the meeting of the MC will not be able to meet the quorum requirement. Under such circumstances —
  - ◆ the MC chairman may convene a general meeting of the OC to fill the vacancies ;
  - ◆ if the office of the chairman is vacant, the remaining MC members may appoint a person from amongst themselves to convene a general meeting of the OC to fill the vacancies.

Such general meeting of the OC shall only be convened for the purpose of filling the vacancies in the MC. Owners shall not pass resolutions on any other matters at such a meeting.

- The “first-past-the-post” voting system shall be used in filling the vacancies at the general meeting of the OC.

## 5 Protection of MC members

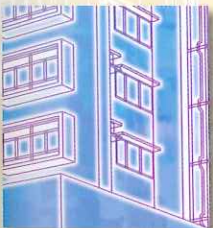
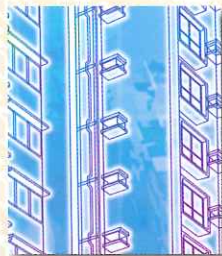
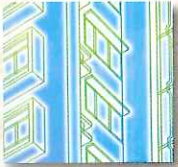
- An individual MC member acting in good faith and in a reasonable manner shall not be held personally liable for any act done or default made on behalf of the OC in the exercise of the powers or performance of the duties imposed on the OC.

## 6 Allowance paid by the OC

- The OC may, by passing a resolution at a general meeting of the OC, pay allowance to the MC chairman, vice-chairman, secretary and treasurer. Only holders of these offices of the MC are eligible for the allowance.
- The amount of the allowance shall be decided at the general meeting of the OC. The allowance per month for each member in aggregate shall not exceed the maximum amount set out in the BMO.

## 7 MC meetings

- The MC secretary shall display the notice of the MC meeting in a prominent place in the building at least 7 days before the date of the meeting.
- Certified minutes of the meeting shall be kept by the MC for not less than 6 years. Owners shall be provided with copies of minutes of any meeting upon payment of a reasonable copying charge.





## 8 General meetings of the OC

- At the request of not less than 5% of the owners, the MC chairman shall convene a general meeting of the OC for the purposes specified by such owners within 14 days of receiving such request and hold the general meeting within 45 days of receiving such request.
- Apart from giving notice of the meeting to each owner and the tenants' representative, the MC secretary shall also display the notice of meeting in a prominent place in the building at least 14 days before the date of the general meeting of the OC.
- Certified minutes of the meeting shall be kept by the MC for not less than 6 years. Owners shall be provided with copies of minutes of any meeting upon payment of a reasonable copying charge.

## 9 Determination of a majority of votes

- In determining whether a resolution is passed by a majority of votes at a meeting convened under the BMO, the following shall be disregarded —
  - ◆ owners who are not present at the meeting ;
  - ◆ owners who are present at the meeting but do not vote;
  - ◆ blank or invalid votes;
  - ◆ abstentions.

## 10 Appointment of proxy

- A proxy appointed by an owner shall, for the purposes of the meeting, be treated as being the owner present at the meeting.
- The instrument appointing a proxy shall be in the prescribed form set out in Schedule 1A to the BMO, and shall be lodged with the MC secretary at least 48 hours before the time for the holding of the meeting.
- Upon receipt of an instrument appointing a proxy, the MC secretary shall —
  - ◆ before the holding of the meeting, issue an acknowledgement receipt to all the owners who have lodged the proxy instruments ;
  - ◆ display information of the flats of all the owners who have lodged the proxy instruments in a prominent place in the place of the meeting throughout the meeting.
- The MC chairman shall determine the validity of the proxy instruments in accordance with the BMO.
- The MC shall keep all the proxy instruments for a period of at least 12 months after the conclusion of the meeting.



## 11 Procurement arrangements

- In making procurement, OCs shall comply with the procurement requirements set out in the BMO.
- For any procurement that exceeds the sum of \$200,000, the OC shall procure by invitation to tender.
- For any procurement that exceeds a sum equivalent to 20% of the annual budget of the OC, it shall be done through invitation to tender, and whether the tender is accepted or not shall be decided by a resolution of the owners passed at a general meeting of the OC.
- If the OC wants to procure from an incumbent supplier, the tendering requirement may be waived, provided that the conditions prescribed in the BMO are met.
- The above procurement requirements also apply to procurement made by managers.

## 12 Financial arrangements

- If a building has more than 50 flats, the audited financial statement of the OC together with the accountant's report shall be laid before the annual general meeting of the OC.
- Not less than 5% of the owners may request the MC to permit them or any person appointed by them to inspect any bills, invoices, vouchers, receipts and other documents referred to in the books or records of account and other records of the OC. An owner may also apply to the court for an order authorizing any person to inspect the above documents.
- For a building with an OC, 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 in respect of the management of the building or the special fund.

## 13 Display of information about legal proceedings

- If an OC is a party to any legal proceedings, the MC shall display a notice containing the particulars of the proceedings for 7 consecutive days in a prominent place in the building within 7 days of receiving or issuing any court documents commencing the proceedings.



## 14 Termination of manager's appointment by OC

- Paragraph 7 of Schedule 7 to the BMO provides for the mechanism for terminating the appointment of a manager. The provision is only applicable to the termination of the appointment of —
  - ◆ the DMC manager ;
  - ◆ a manager whose contract contains no provision for the termination of his appointment.

## 15 Handing over arrangements for the outgoing manager

- If the manager's appointment ends for any reason, he shall —
  - ◆ within 14 days of the date his appointment ends, deliver to the owners' committee or the manager appointed in his place any movable property that belongs to the OC or the owners ; **and**
  - ◆ within 2 months of the date his appointment ends, prepare an income and expenditure account and a balance sheet, and deliver to the owners' committee or the manager appointed in his place any books or records of accounts, etc. which are required for the purposes of preparing the above-named financial statements.

## 16 Communication among owners

- The manager shall consult 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.

## 17 Transitional Provisions

- The Amendment Ordinance provides for a transitional period of four years (from 1 August 2007 to 31 July 2011) for MCs appointed in accordance with the DMC under the pre-amended BMO.
- During the transitional period, these MCs can continue to adopt the provisions under Schedule 2 to the pre-amended BMO, which sets out the composition and procedure of the MC.
- These MCs shall adopt the provisions of the amended Schedule 2 under the following circumstances —
  - ◆ the OC decides to comply with the provisions of the amended Schedule 2 by passing a resolution to such effect at a general meeting of the OC during the transitional period ; or
  - ◆ the transitional period expires (i.e. 31 July 2011).

This pamphlet serves to provide general information on the Amendment Ordinance. The legal provisions referred to in this pamphlet shall be construed in accordance with the Building Management Ordinance (Cap. 344). Users of this pamphlet are advised to seek independent legal advice on the interpretation of the provisions under the BMO.

For enquiries on building management, please contact the District Building Management Liaison Teams of the respective District Offices —

Central & Western	2119 5010	Islands	2852 4318
Eastern	2886 6569	Kwai Tsing	2494 4543
Kowloon City	2621 3406	North	2675 1719
Kwun Tong	2171 7465	Sai Kung	2163 9431
Sham Shui Po	2150 8175	Sha Tin	2158 5388
Southern	2814 5762	Tai Po	2654 1262
Wan Chai	2835 1999	Tsuen Wan	3515 5654
Wong Tai Sin	3143 1160	Tuen Mun	2451 3047
Yau Tsim Mong	2399 2155	Yuen Long	2478 6120

The following publications on the BMO are available at the Public Enquiry Service Centres of District Offices —

- **Frequently Asked Questions on Building Management (Amendment) Ordinance 2007**
- **A Guide on Building Management Ordinance (Cap. 344)**
- **Building Management Ordinance (Cap. 344) – How to Form an Owners' Corporation**
- **Building Management Ordinance (Cap. 344) – A Guide on Clean and Effective Financial Management**
- **Building Management Ordinance (Cap. 344) – Code of Practice on Procurement of Supplies, Goods and Services and Code of Practice on Building Management and Maintenance**

**For information on building management, please visit our website at**

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