

4. Meetings and Procedure of OC

Q103 :

Who can convene a general meeting of the corporation?

A :

According to paragraph 1 of Schedule 3, the following parties can convene a general meeting of the corporation –

Para 1 of Sch. 3

- (a) MC. The MC shall convene an annual general meeting each year. It may also convene a general meeting at any time for purposes that the MC thinks fit.
- (b) Chairman of the MC. The chairman shall convene a general meeting at the request of not less than 5% of the owners for the purposes specified by such owners.

Q104 :

If the MC does not convene an annual general meeting of the corporation in a timely manner as required by paragraph 1(1)(b) of Schedule 3, what could the owners do?

A :

Owners can adopt the following methods –

- (a) according to paragraph 1(2) of Schedule 3 to the BMO, not less than 5% of the owners may request the chairman of the MC to convene a general meeting of the corporation;
- (b) owners may make an application to the Lands Tribunal for an order to compel the MC to convene the annual general meeting of the corporation;
- (c) owners may also make an application to the Lands Tribunal under section 31 of the BMO for the dissolution of the MC and the appointment of an administrator.

Court case: *Tony Sai Kwong Chan v. The Incorporated Owners of Great George Building and All its Executive Members for 97/99* [LDBM 194/1998]; *胡桂容及廖廣海 訴 黃漢明* [LDBM 323/2002]; *Fung Yuet Hing v. The Incorporated Owners of Hing Wong Mansion, Lee Leng Kong and Wong Sik Cham* [LDBM 367/2004]

Q105 :

After receiving the request of not less than 5% of the owners for a general meeting of the corporation, what should the chairman of the MC do? What is the difference between convening and holding a meeting?

A :

Paragraph 1(2) of Schedule 3 to the BMO provides that at the request of not less than 5% of the owners, the chairman of the MC shall –

- (a) convene a general meeting of the corporation for the purposes specified by such owners within 14 days of receiving such request;
and
- (b) hold the general meeting within 45 days of receiving such request.

The word “convene” in paragraph 1(2) of Schedule 3 does not mean formally holding the meeting. It only means giving notice of the meeting.

Court case: 顏偉國 訴 何蘭和嘉都大廈業主立案法團 [LDBM 173/2000]

Para 1(2) of Sch. 3

Q106 :

If the MC decides that a general meeting of the corporation should not be convened despite the request of not less than 5% of the owners, can the chairman of the MC use this as a valid reason for not convening the general meeting?

A :

No. The responsibility to convene a general meeting of the corporation at the request of not less than 5% of the owners rests with the chairman of the MC and not the MC. Once the chairman receives the requests of not less than 5% of the owners, he has the statutory duty to convene the meeting within 14 days and hold the meeting within 45 days.

Court Cases: 胡桂容及廖廣海 訴 黃漢明 [LDBM 323/2002]; *Fung Yuet Hing v. The Incorporated Owners of Hing Wong Mansion, Lee Leng Kong and Wong Sik Cham* [LDBM 367/2004]

Para 1(2) of Sch. 3

Q107 :

Should the phrase “5% of the owners” referred to in paragraph 1(2) of Schedule 3 to the BMO be interpreted as 5% of the total number of owners or 5% of the total number of shares?

A :

“5% of the owners” referred to in paragraph 1(2) of Schedule 3 means 5% of the total number of owners, without regard to the shares owned by such owners.

Court case: *U Wai Investment Co. Ltd. And Another v. Au Kok Tai and Others* [LDBM 80/1997]

Section 5B,
para 1(2) of Sch. 3
and Sch. 11

Q108:

If the MC chairman refuses to convene an extraordinary general meeting of the corporation on the request of not less than 5% of the owners, or refuses to convene the meeting on the grounds that the MC chairman has resigned, what could the owners do?

A:

The owners may apply to the Lands Tribunal for an order to compel the MC chairman to convene a general meeting of the corporation.

Court cases: 顏偉國 訴 何蘭和嘉都大廈業主立案法團 [LDBM 173/2000]; 胡桂容及廖廣海 訴 黃漢明 [LDBM 323/2002]; *Fung Yuet Hing v. The Incorporated Owners of Hing Wong Mansion, Lee Leng Kong and Wong Sik Cham* [LDBM 367/2004]; 周春燕及另一百四十五人 訴 富嘉花園業主立案法團 [LDBM 300/2013]

Q109:

How to count the 14 days in fulfilling the requirement on giving notice of meeting to the owners? Are public holidays or weekends included in counting the 14 days?

A:

A notice of meeting shall be given at least 14 days before the date of the meeting of the corporation. In other words, in counting the 14 days, the date of giving the notice is included whereas the date of the meeting is not considered as one of the 14 days. Public holidays or weekends are included in counting the 14 days.

To illustrate, let's assume that the meeting of the corporation is held on 15 September. In this case, a notice given on 1 September shall be sufficient and valid, regardless of whether there are any public holidays in between 1 and 15 September.

Despite the above, it is always advisable to allow a few more days in giving the notice of meeting so as to avoid unnecessary disputes.

Court case: *The Incorporated Owners of Pearl Island Garden v. Hui Chan Soon Hoy and another* [CACV 26/2004]

Para 2(1) of Sch. 3



Q110 :

How to count the 45 days in fulfilling the requirement on holding the extraordinary general meeting of the corporation? Are public holidays or weekends included in counting the 45 days?

A :

Paragraph 1(2) of Schedule 3 to the BMO provides that the chairman shall hold the general meeting within 45 days of receiving the request from not less than 5% of the owners. In counting the 45 days, the date of receiving the request is not counted as one of the 45 days. Public holidays or weekends are included in counting the 45 days.

To illustrate, let's assume that chairman receives the request on 1 September. In this case, the chairman shall hold the general meeting on or before 16 October, regardless of whether there are any public holidays in between.

To avoid unnecessary disputes, it is always advisable to hold the general meeting at an earlier date, instead of leaving it till the last day of the 45-day period.

Q111 :

If the notice of meeting of a corporation is sent to the owners by post, does the secretary have to confirm that the owners have received the notice? If one of the owners claim that he does not receive the notice of meeting, will this affect the validity of the resolutions passed?

A :

The notice shall be deemed to be effected by properly addressing, pre-paying the postage thereon and dispatching it by post to the last known address of the person to be given the notice. Unless the contrary is proved, such notice shall be deemed to have been effected at the time at which the notice would be delivered in the ordinary course of post.

According to section 37 of the BMO, a resolution passed at any meeting convened under the BMO shall not be invalid by reason only of the omission to give notice of the meeting to any person entitled to such notice.

Court cases: 德昌大廈業主立案法團 (炮台街) 訴 唐偉德及另一人 [LDBM 104/1999]; 胡德仁 訴 香港房屋協會 [LDBM 299/1999]; *The Incorporated Owners of Winner Building v. Wai Mau Sze and others* [HCA 20180/1998 & 7564/1999]

Para 1(2) of Sch. 3

Section 37

Q112 :

Section 37 of the BMO provides that “a resolution passed at any meeting convened under this Ordinance shall not be invalid by reason only of the omission to give notice of the meeting to any person entitled to such notice.” Would section 37 apply if the omission to serve notice of the meeting is discovered before the meeting?

A :

It appears that section 37 of the BMO was intended to apply to the situation where a meeting has been held, but subsequently it is discovered that there is accidental omission to give notice of the meeting to a person entitled to such notice. Where the omission to give notice of the meeting is discovered before the meeting but the meeting is still held, it seems that the omission is not truly an “accidental” omission and section 37 may not apply.

Section 37

Q113 :

Does it mean that section 37 should only apply where the omission to give notice of the meeting on a person entitled to the notice is discovered after the meeting?

A :

Yes, section 37 should only apply where the omission to give notice of the meeting on a person entitled to the notice is discovered after the meeting.

Section 37

Q114 :

If the omission to give notice of the meeting of the owners’ corporation on a person entitled to the notice is discovered less than 14 days before the date of the meeting, what should the MC do?

A :

The MC should cancel the original scheduled meeting and convene the meeting to be held on a new date. The provision in para. 2(1) of Schedule 3 to Cap. 344 to give at least 14 days notice of the meeting of the owners’ corporation to each person entitled to the notice should be complied with (unless the person who has not been served with the notice or who has less than 14 days notice of the meeting is willing to waive the irregularity).

Para 2(1) of Sch. 3

Q115 :

If the omission to give notice of the meeting of the owners' corporation on a person entitled to the notice is discovered more than 14 days before the date of the meeting, say, the date of the meeting is scheduled for 18 September, the notice of the meeting is served on 1 September, the omission to give notice of the meeting on a person entitled to the notice is discovered on 3 September, should the MC cancel the original scheduled meeting and convene the meeting to be held on a new date?; or should the MC hold the original scheduled meeting on 18 September by serving the notice to the omitted owners on 3 September?

A :

Since there would still be sufficient time to serve 14 days notice of the meeting of the owners' corporation on the person without having to cancel the meeting, the MC should serve 14 days notice on the person, and the meeting could then be held on the original scheduled date of 18 September.

Para 2(1) of Sch. 3

Q116 :

Para. 1(2) of Schedule 3 provides that the chairman of the MC shall convene a general meeting of the owners' corporation at the request of not less than 5% of the owners 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. In the scenario referred to in Q114, if due to the omission of giving notice of the meeting on a person entitled to the notice, the chairman could not hold the requested meeting within 45 days, should the chairman hold personal liability?

A :

Para. 1 (2) of Schedule 3 provides that the general meeting of the owners' corporation shall be held within 45 days of the receipt by the chairman of the owners' request to convene a meeting. However, where the omission to serve notice of the meeting of the owners' corporation on a person entitled to the notice is discovered less than 14 days before the meeting, and assuming that the person who is entitled to the notice is not willing to waive the irregularity, one may reasonably argue that the original scheduled meeting should be cancelled and the meeting be held on a new date even if that means the meeting would be held more than 45 days, since rescheduling of the meeting is due to unforeseen circumstances, i.e. it has been discovered before the meeting that there is omission to serve notice of the meeting on some owners, similar to other unforeseen circumstances such as a typhoon occurring on the date of the original scheduled meeting.

Para 1(2) of Sch. 3

Q117 :

Who should decide the agenda for a general meeting of a corporation?

A :

For a general meeting convened by the MC, the agenda should be determined by the MC. For general meeting convened by the chairman of the MC at the request of not less than 5% of the owners, the agenda should be determined by the chairman of the MC and should include all the items specified by the owners who request the meeting.

Q118 :

The notice of meeting of a general meeting of the corporation has to be issued 14 days before the date of the meeting. What if there are urgent matters that need to be resolved after the notice has been issued? Can the general meeting of the corporation pass a resolution which is related to the urgent matters under “any other business”?

A :

Paragraph 3(7) of Schedule 3 to the BMO provides that no resolution passed at any meeting of the corporation shall have effect unless the same was set forth in the notice or is ancillary or incidental to a resolution or other matter so set forth. Thus, if a matter has not been set forth in the notice of meeting, then even though a resolution is passed in that regard, such resolution shall be of no effect, unless it is ancillary or incidental to a main resolution or other matter so set forth. Whether a resolution is “ancillary or incidental” to a main resolution or other matter set forth in a notice of meeting involves interpretation of the relevant legal provisions under the specified circumstances. HAD is not in the position to provide advice in this aspect.

Para 3(7) of Sch. 3

Court case: *THE INCORPORATED OWNERS OF THE COLONNADES V. GORDON TSO & CO LTD* [CACV 131/2005]

Q119 :

Who should preside over a general meeting of the corporation?

A :

The chairman of an MC shall preside over a general meeting of the corporation. If the chairman is absent, the vice-chairman shall preside over the meeting. If both chairman and vice-chairman are absent, then the meeting shall be presided over by a person appointed by the owners present at the meeting from amongst themselves.

Para 3(1) of Sch. 3

Q120 :

What should be the quorum at a meeting of a corporation? Should the quorum be counted in terms of shares or number of owners?

A :

The quorum at a meeting of a corporation shall be –

- (a) 20% of the owners, in the case of a meeting at which a resolution for the dissolution of the MC is proposed;
- (b) 10% of the owners in any other case.

The quorum should be counted in terms of the number of owners, without regard to the shares owned by the owners.

Section 5B,
para 5(1) of Sch. 3
and Sch. 11

Q121 :

Are there any ways for an owner to read the minutes of a general meeting of the corporation?

A :

Paragraph 6(3) of Schedule 3 to the BMO provides that the secretary shall display the minutes in a prominent place in the building within 28 days of the date of the general meeting. Besides, owners may also request the corporation to supply him with copies of any minutes of the general meeting of the corporation.

Para 6(3) and
6A(2) of Sch. 3

Q122 :

If owners suspect that there are irregularities in the procedures of a general meeting of the corporation, what could they do?

A :

Owners who believe that any procedure adopted in a general meeting of the corporation is irregular should raise objection in the meeting at once, and ask that his objection be recorded. This is to minimize any risk of being considered as having waived the irregularities.

After such meeting, not less than 5% of the owners may request the chairman of the MC to convene an extraordinary general meeting of the corporation under paragraph 1(2) of Schedule 3 to the BMO to discuss the matter. Alternatively, the owner may apply to the Lands Tribunal for a specific order, such as to declare that the meeting concerned or resolutions passed at the meeting are invalid.

Court case: *Kwan & Pun Company Limited v. Chan Lai Yee and Others* [CACV 234/2002]

