

Frequently Asked Questions on

Building Management (Amendment) Ordinance 2007



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on
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(Amendment) Ordinance 2007**

Abbreviation for Frequently Used Terms

BMO **Building Management Ordinance**

DMC **Deed of mutual covenant**

OC **Owners' corporations**

MC **Management committee**

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Disclaimer

This set of Frequently Asked Questions (FAQs) is prepared by the Home Affairs Department for general reference only. Users of the FAQs should not rely on the information as professional legal advice and are strongly advised to seek assistance from lawyers should there be doubts about the application of the Building Management Ordinance in individual circumstances. Whilst every effort has been made to ensure the accuracy of the FAQs, Home Affairs Department shall not be responsible for any liability howsoever caused to any person by the use of or reliance on the FAQs.

The court cases referred to in this FAQs are for general reference only. Users of the FAQs are strongly advised to read the full judgement of those court cases and seek legal advice on the applicability of those court cases in individual circumstances.

I. Appointment of MC for the Incorporation of Owners

Q1 : How can owners appoint a convenor under section 3(1)(c) of the BMO?

A : There is no rigid rule to regulate how the decision of appointing a convenor should be made under section 3(1)(c) of the BMO. The owners may do so by holding a meeting amongst themselves or by a letter of authorization signed by the owners. The key is that the convenor must be appointed by all the owners of not less than 5% of the shares in aggregate in order to fulfill the legal requirement under section 3(1)(c).

Section 3(1)(c)

Owners may obtain a sample form from District Offices or Land Registry Offices to facilitate the appointment of convenor. They may also download the sample form from the following websites –

www.landreg.gov.hk
www.buildingmgt.gov.hk

Q2 : Who should act as the convenor of a meeting of owners if the owner appointed under section 3(1)(c) as the convenor is a body corporate?

A : If the owner concerned is a body corporate, the body corporate may appoint a director or other officer of that body or some other individual to act as its representative. This representative could then act as the convenor of the meeting of owners.

Section 3(1)(c)

The same applies when the meeting of owners is convened in accordance with section 3(1)(a) of the BMO, i.e. by the person managing the building in accordance with the DMC, who is in most cases a body corporate.

Q3 : Can the owners of not less than 5% of the shares in aggregate appoint more than one owner to be the convenor of the meeting of owners referred to under section 3(1)(c) of the BMO?

A : No. The owners should only appoint one owner to be the convenor of the meeting of owners.

Section 3(1)(c)

Q4 :

Can a non-owner (e.g. staff of the property management company, a district personality, a legal professional etc.) convene the meeting of owners under section 3?

A :

According to section 3(1) of the BMO, only three types of persons may convene a meeting of owners to appoint an MC. They are – Section 3(1)

- (a) any person managing the building in accordance with the DMC;
- (b) any other person authorized to convene such a meeting by the DMC; or
- (c) one owner appointed to convene such a meeting by the owners of not less than 5% of the shares in aggregate.

If a non-owner falls within the description of (a) or (b) above (e.g. the DMC manager), then he may convene the meeting of owners. Otherwise, a non-owner cannot convene such meeting under section 3 of the BMO.

Q5 :

Under the new requirements, how can the owners appoint an MC under section 3 of the BMO? What if the DMC has different requirements?

A :

Section 3(2) of the BMO provides that owners may appoint an MC by – Section 3(2)

- (a) passing a resolution by a majority of votes of the owners voting either personally or by proxy; **and**
- (b) such resolution is supported by the owners of not less than 30% of the shares in aggregate.

The above-stipulated requirements in the BMO should be followed in the appointment of an MC regardless of the requirements in the DMC of the building. Only the MC which is appointed in accordance with the BMO requirements is recognized under the BMO and could be registered with the Land Registry. Any committee (howsoever its name) appointed in accordance with the requirements in the DMC could not be registered with the Land Registry and does not possess the rights and duties of the MC referred to in the BMO.

Court case: *Siu Siu Hing trading as Chung Shing Management Company v. The Land Registrar* [HCAL 77/2000]

Q6 :

If there is no need to follow the DMC requirements in the appointment of an MC, is there no need to refer to the DMC at all?

A :

DMC is a very important document in the management of building. An owner's share in a building shall generally be determined in the manner provided in a DMC. In other words, all issues relating to common ownership of land point to the DMC of the building. When owners decide to incorporate and appoint an MC, they must refer to the DMC to ascertain their respective shares and voting rights at the meeting of owners.

Sections 3(9)(a), 3A(3G)(a), 4(11)(a) and 39 and para 3(5)(a) of Sch. 3

Even after an OC has been formed, it does not have the power to pass a resolution that contravenes the DMC unless such resolution is passed in accordance with a statutory provision which overrides the inconsistent terms of the DMC.

Q7 :

What is the DMC of a building? Where could owners obtain a copy of the DMC?

A :

According to section 2 of the BMO, DMC means a document which –
(a) defines the rights, interests and obligations of owners among themselves; **and**
(b) is registered in the Land Registry.

Section 2

Generally speaking, DMC is a private contractual agreement among all the co-owners, the manager, and also the developer of a building. It sets out the respective rights and obligations of the parties concerned, for example the owners' right to exclusive use and possession of particular units in a building, obligations relating to the repair and maintenance of common parts etc. A DMC is usually executed by the purchaser of the first unit sold by the developer, but the provisions in a DMC are binding on all subsequent owners.

Owners may obtain a copy of the DMC at any Land Registry Search Offices or through the online services of the Land Registry (www.iris.gov.hk).

Q8 :

What is meant by “supported by the owners of not less than 30% of the shares in aggregate” in section 3(2)(b) of the BMO?

A :

It means that in passing a resolution concerning the appointment of an MC for the incorporation of owners, owners holding not less than 30% of the shares in aggregate vote in favour of appointing the MC.

Section 3(2)

Q9 :

At a meeting of owners convened under section 3 of the BMO, whether the resolution to appoint an MC will be regarded as passed if 30% of the shares of owners support it but owners of a higher percentage of shares (e.g. 35% of the shares of owners) vote against it in the meeting?

A :

Section 3(2) of the BMO stipulates that at a meeting of owners convened under section 3, the owners may appoint an MC by a resolution –

Section 3(2)

- (a) passed by a majority of the votes of the owners voting either personally or by proxy; **and**
- (b) supported by the owners of not less than 30% of the shares in aggregate.

This means that the resolution to appoint an MC must be passed by a majority of the votes of the owners. If owners with a higher percentage of shares (e.g. 35% of the shares of owners) vote against the resolution, then such resolution will not be regarded as passed even if it is supported by owners of 30% of the shares.

Q10 :

Our estate has three blocks. All three blocks are covered by one single DMC and each of the blocks has its own sub-DMC. Could we form three OCs so that the present mode of separate management could be maintained?

A :

Section 8(1A) of the BMO stipulates that the Land Registrar shall not issue a certificate of registration to more than one corporation for a building in respect of which a DMC is in force. If an estate is covered by one single DMC, no matter how many blocks it has, only one OC could be formed.

Section 8(1A)

In fact, the basis of common ownership among owners of a building (i.e. shares of each owner) is set out in the DMC of the building. Owners under one DMC could only form themselves into one OC to manage the building of which they have common ownership.

Q11 :

Our estate has three blocks, each of which is covered by a separate DMC. There is no master DMC which governs the whole estate. Could we form one OC to facilitate management?

A :

The owners in this case could not incorporate as one single OC. It will not be possible for them to calculate their respective shares under the different DMCs. Owners covered by the same DMC could decide to incorporate and three OCs could be formed for this estate.

Court case: 萬高大廈B座業主立案法團 訴 鄒永平及另一人 [LDBM 306/2005]

Q12 :

Some single-block old tenement buildings are covered by more than one DMC. Should these buildings form one OC or not?

A :

The owners in this case could not incorporate as one single OC. A DMC sets out the rights and obligations of the owners concerned, such as the shares owned by respective owners. Different DMCs may have different basis for calculation of the undivided shares in respect of the units in the building. The absence of a proper basis for calculation of the owners' undivided shares in the building presents an insurmountable obstacle to the formation and subsequent operation of the OC. Problems like whether the owners covered by one DMC should share the burden of the liabilities of the owners covered by another DMC, the sharing of management expenses among the owners covered by the two DMCs, etc may arise.

Q13 :

Sections 3, 3A and 4 of the BMO provide for different methods to appoint an MC. When could sections 3A and 4 be invoked?

A :

We encourage owners to follow section 3 of the BMO first. If, however, owners consider there may be genuine difficulties in obtaining the support of 30% of the shares of the owners at a meeting of owners as required under section 3, they may resort to invoke sections 3A and 4 of the BMO.

Application to the Secretary for Home Affairs under section 3A will be considered on a case by case basis. A previous attempt under section 3 to appoint an MC is not a pre-condition for application under section 3A or section 4.

Sections 3, 3A and 4



Q14 :

For a meeting of owners to appoint the first MC, what shall be the resolutions listed on the notice of meeting?

A :

Please refer to the booklet on *“How to form an Owners’ Corporation”* published by the Home Affairs Department which is available at all District Offices and at the following website – www.buildingmgt.gov.hk. The resolutions should be –

Sections 3(4),
3A(3B) and 4(6)

- (1) to resolve on the formation of OC and the appointment of an MC;
- (2) to resolve on the number of members of the MC;
- (3) to resolve on the appointment of members of the MC;
- (4) to resolve on the establishment of the office of vice-chairman of the MC;
- (5) to resolve on the appointment of a chairman of the MC;
- (6) to resolve on the appointment of a vice-chairman of the MC (subject to the passage of a resolution on the establishment of the office);
- (7) to resolve on the appointment of a secretary of the MC;
- (8) to resolve on the appointment of a treasurer of the MC;
- (9) to resolve on the registered address of the OC;
- (10) any other business.

Q15 :

Can matters other than the incorporation of owners, such as maintenance works or termination of manager be discussed at a meeting of owners to appoint the first MC?

A :

A meeting of owners convened for the purpose of appointing the first MC should resolve only on matters relating to the appointment of an MC and the incorporation of owners. The owners have not yet incorporated at this meeting and it is not appropriate for them to pass any resolutions relating to the management of the building at this meeting. The resolutions so passed are likely to be regarded as invalid.

Sections 3(4),
3A(3B) and 4(6)

Q16 :

What is the effective date of the formation of an OC? Is it the date of the meeting of owners convened under section 3, 3A, 4 or 40C or the date of issue of the certificate of registration by the Land Registry?

A :

The effective date of the formation of an OC should be the date of issue of the certificate of registration by the Land Registry. Section 13 of the BMO provides that a certificate of registration issued by the Land Registrar in respect of a corporation shall be conclusive evidence that such corporation is incorporated under the BMO.

Section 13

Even if a meeting of owners is convened under section 3, 3A, 4 or 40C, there is a possibility that the application for the incorporation of owners may be rejected by the Land Registrar (maybe due to incorrect procedures). Thus, the date of the meeting of owners could not be deemed as the effective date of the formation of an OC.

Q17 :

Sections 3, 3A and 4 of the BMO only set out the requirement for the appointment of an MC. How about the procedures for the appointment of members of the MC?

A :

The procedures for the appointment of members of the MC are set out in Schedule 2 to the BMO.

Sch. 2

Q18 :

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 owners. 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.

Sections 3(3),
3A(3A), 4(5) and
40C(4)

To illustrate, let's assume that the meeting of owners 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]

Q19 :

How shall the notice of meeting be given to owners?

A :

The notice of meeting shall be given by the convenor to each owner through any one of the following three methods –

- (a) by delivering it personally to the owner;
- (b) by sending it by post to the owner at his last known address; or
- (c) by leaving it at the owners' flat or depositing it in the letter box for that flat.

Sections 3(5),
3A(3C), 4(7) and
40C(6)

Q20 :

If the notice of meeting is sent to the owners by post, does the convenor 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.

Section 37

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]

Q21 :

How about the display of notice in a prominent place in the building? Should it be displayed 14 days before the meeting as well?

A :

Besides giving the notice of meeting to owners, the convenor shall also display the notice in a prominent place in the building at least 14 days before the date of the meeting of owners convened under section 3, 3A, 4 or 40C of the BMO.

Sections 3(6),
3A(3D), 4(8) and
40C(7)

Q22 : Is there the need to publish the notice of meeting in a newspaper?

A : There is no longer the need to publish the notice of meeting in a newspaper.

Q23 : Who shall preside at a meeting of owners for the appointment of an MC?

A : The convenor shall preside at a meeting of owners convened under section 3, 3A, 4 or 40C of the BMO.

Sections 3(7), 3A(3E), 4(9) and 40C(8)

Q24 : If the convenor is not available at a meeting of owners for the appointment of an MC, can the owners present at the meeting appoint another person to preside at the meeting?

A : No. BMO provides that the convenor shall preside at a meeting of owners convened under section 3, 3A, 4 or 40C. There is no provision in the BMO that provides for the delegation of such statutory duty of the convenor to another person.

Sections 3(7), 3A(3E), 4(9) and 40C(8)

Q25 : What should be the quorum at a meeting of owners convened under section 3, 3A, 4 or 40C of the BMO? Should the quorum be counted in terms of shares or number of owners?

A : The quorum should be 10% of the owners. It should be counted in terms of the number of owners, without regard to the shares owned by the owners. For example, if there are 100 owners in a building, the quorum of the meeting should be 10 owners.

Sections 3(8), 3A(3F), 4(10), 5B and 40C(9) and Sch. 11

Q26 : There is already an owners' committee formed under the DMC in our building. What will happen after an MC has been appointed and an OC formed?

A : Section 34K of the BMO stipulates that where an MC in respect of a building has been appointed, the members of the MC for the time being shall be deemed, for the purposes of the DMC in respect of that building, to be the owners' committee. In other words, the MC, once appointed, will replace the owners' committee.

Section 34K

2. Matters Relating to the Appointment of Members of MC

Appointment of Members of MC

Q27 : What is the minimum number of members in an MC?

A : The minimum number of members in an MC depends on the number of flats in the building. Para 1(1) of Sch. 2

No. of flats	Minimum no. of MC members
Not more than 50	3
More than 50 but not more than 100	7
More than 100	9

Q28 : What is meant by “flat”? Is carpark counted as a flat?

A : In the BMO, “flat” means any premises in a building which are referred to in a DMC whether described therein as a flat or by any other name and whether used as a dwelling, shop, factory, office or for any other purpose, of which the owner, as between himself and owners or occupiers of other parts of the same building, is entitled to the exclusive possession. Sections 2 and para 1A of Sch. 2

In counting the number of flats for the purposes of determining the minimum number of MC members in accordance with paragraph 1A of Schedule 2 to the BMO, “flat” does not mean any garage, carpark or carport.

Q29 : Is the tenants’ representative appointed under section 15(1) counted towards the minimum number of members for an MC?

A : Yes. Paragraphs 2(2) and 5(2A) of Schedule 2 to the BMO provide that the tenants’ representative appointed under section 15(1) shall be deemed to be appointed by the owners as a member of the MC. Para 2(2) and 5(2A) of Sch. 2

Q30 : If the secretary and treasurer are not members of the MC, will they be counted towards the minimum number of members for an MC?

A : No. A person who is not a member of an MC does not by virtue of his appointment as the secretary or treasurer of the MC become a member of the MC. Para 2(5), 5(4) and 6(6) of Sch. 2

Q31 :

What if the DMC provides that the spouse of an owner who resides in the building could be appointed as members of the MC?

A :

BMO provides that only owners could be appointed as members of the MC (with the exception of tenants' representative appointed under section 15(1) of the BMO).

Para 2(1)(b), 5(2)(a), 6(3) and 12 of Sch. 2

According to paragraph 12 of Schedule 2 to the BMO, in the event of any inconsistency between Schedule 2 and the terms of a DMC, Schedule 2 shall prevail. Owners should therefore follow BMO requirements instead of DMC provisions in appointing members of MC under the BMO.

Q32 :

If the DMC has provisions that are inconsistent with BMO provisions with regard to the appointment of members of an MC, should owners follow the DMC or the BMO requirements?

A :

Schedule 2 to the BMO governs the composition and procedure of MC. Paragraph 12 of Schedule 2 stipulates that in the event of any inconsistency between the Schedule and the terms of a DMC or any other agreement, Schedule 2 shall prevail. The requirements regarding composition of MC and appointment of members of MC under the BMO should therefore be followed regardless of the requirements in the DMC of the building.

Para 12 of Sch. 2

Q33 :

What if the DMC provides that there should be a representative from each of the block of the estate to serve on the MC?

A :

Paragraphs 2(1) and 5(2) of Schedule 2 to the BMO provide that owners shall, by resolution at a meeting of owners, appoint, from amongst the owners, the members of the MC. There is no provision in the BMO concerning how offices of members of the MC should be allocated amongst the owners.

Para 2(1) and 5(2) of Sch. 2

Owners may choose to use whatever ways to allocate the offices of members of the MC. So long as each member of the MC is appointed at a meeting of owners, such appointment will have fulfilled the requirements under the BMO.

Q34 :

Who can decide or change the number of members of an MC?

A :

The owners shall, by a resolution passed by a majority of votes of the owners, decide the number of members of an MC when the MC is first appointed.

Para 1(2), 1(3) and 2(1)(a) of Sch. 2

If the owners want to change the number of members of an MC, they may do so by passing a resolution at a general meeting of the corporation (except a general meeting convened under paragraph 6A(1) of Schedule 2 to the BMO).

In either case, the number of members of an MC decided by the owners should not be lower than the statutory minimum stated under paragraph 1(1) of Schedule 2 to the BMO.

Q35 :

Is it a must to appoint a vice-chairman of an MC?

A :

It is not a must for an MC to have a vice-chairman. It is up to the owners to decide whether a vice-chairman of an MC has to be appointed. Owners may, by resolution at a meeting of owners, appoint a member of an MC as the vice-chairman of the MC.

Para 2(1) and 5(2) of Sch. 2

However, owners have to note that it is a must to appoint a chairman, secretary and treasurer of an MC.

Q36 :

How shall an OC appoint members of an MC? Is it required to pass a resolution with majority of votes for each appointment made?

A :

An OC shall appoint members of an MC by the “first past the post” voting system. It is not necessary to pass a resolution with majority of votes.

Para 2(3) and (4) and 5(2B) and (2C) of Sch. 2

Here are some examples to illustrate the “first past the post” voting system. Suppose that the number of members of an MC is 3. If there are exactly 3 candidates, then there is no need to carry out the voting and all the candidates shall be deemed to be appointed as members of the MC. If, however, there are 4 candidates, then voting has to be carried out and the top 3 candidates who can get the greatest number of votes shall be appointed as the members of the MC.

The “first past the post” voting system is also applicable to the appointment of chairman, vice-chairman, secretary and treasurer of an MC. For example, if there is only 1 candidate for the office of the chairman, then such candidate shall be deemed to be appointed as the chairman of the MC. If there are 3 candidates running for the office of the chairman, then the one who gets the greatest number of votes shall be appointed.

Q37 :

When the members of an MC have been appointed by owners at the meeting of the owners, could the members elect among themselves the chairman, vice-chairman (if any), secretary and treasurer?

A :

No. Paragraphs 2(1) and 5(2) of Schedule 2 to the BMO provide that the appointment of chairman, vice-chairman (if any), secretary and treasurer of an MC shall be made by the owners by passing a resolution at a meeting of owners.

Para 2(1) and 5(2) of Sch. 2

Q38 :

If the owners decide that the number of members of the MC should be 3 and there are exactly 3 candidates, do the owners still have to carry out the voting procedure to confirm the appointment of these 3 members?

A :

No. The appointment of members of an MC shall be made in accordance with the “first past the post” voting system. If the number of members of an MC is exactly the same as the number of candidates, then no voting has to be carried out and all the candidates shall be deemed to be appointed as members of the MC.

Para 2(3)(a) and 5(2B)(a) of Sch. 2

Q39 :

If the owners decide that the number of members of the MC should be 3 and there are 5 candidates, then how should the voting be carried out?

A :

In such situation, voting has to be carried out to determine who shall be appointed as members of the MC. In giving the votes, an owner may vote for not more than the number of members of the MC. In this hypothetical case, it means that an owner can at most vote for 3 candidates.

Para 2(3)(b)(i) and 5(2B)(b)(i) of Sch. 2

Assuming that the voting result is as follows –

Candidate A	105 votes
Candidate B	159 votes
Candidate C	51 votes
Candidate D	225 votes
Candidate E	88 votes

The top 3 candidates who can get the greatest number of votes shall be appointed as members of the MC. This means that in the above example, Candidates A, B and D shall be appointed as members of the MC.

Q40 :

If there are 2 candidates for the appointment of chairman of the MC and it turns out that these 2 candidates have an equal number of votes, then which one of these candidates shall be the chairman?

A :

If the 2 candidates have an equal number of votes, then the person who presides over the meeting shall determine the result by drawing lots. The candidate on whom the lot falls shall be appointed as the chairman of the MC.

Para 2(4)(b)(ii) and 5(2C)(b)(ii) of Sch. 2

This mechanism is also applicable to the appointment of vice-chairman, secretary, treasurer and members of an MC.

Q41 :

In appointing the members of an MC, if some of the candidates have an equal number of votes, then how to determine who shall be appointed as the members?

A :

Here is an example to illustrate. Suppose that the number of members of an MC is 3 and there are 4 candidates. The voting result is as follows –

Para 2(3)(b)(ii) and 5(2B)(b)(ii) of Sch. 2

Candidate A	70 votes
Candidate B	103 votes
Candidate C	70 votes
Candidate D	92 votes

In this hypothetical case, Candidates B and D who obtain more votes shall be appointed as members of the MC. The remaining candidates, Candidates A and C, obtain an equal number of votes. The person presiding over the meeting shall determine which one of them shall be appointed as a member of the MC by drawing lots. The candidate on whom the lot falls is to be appointed.

Q42 :

BMO stipulates that the one presiding over the meeting of owners shall determine the result by drawing lots in case the candidates have an equal number of votes. How should the act of drawing lots be carried out?

A :

There is no rigid rule on the method of drawing lots. However, it is important for the one presiding over the meeting to ensure that the act of drawing lots is conducted in a fair and open manner.

Q43 :

Could an owner fill two posts of an MC?

A :

There is no provision in the BMO that prohibits an owner from filling two posts of an MC. However, to encourage more owners to participate in the MC and for the MC to be more representative, it is strongly advisable for an owner to fill one post of an MC. Moreover, since chairman, vice-chairman, secretary and treasurer are rested with specific powers and responsibilities under the BMO, appointing an owner to fill two posts may cause confusion and hinder smooth operation of the OC.

Q44 :

Could co-owners of the same flat serve as MC members at the same time?

A :

There is no provision in the BMO that prohibits co-owners of the same flat from being MC members at the same time. Nonetheless, in order to encourage more participation of owners in the MC and for the MC to be more representative, we strongly advise owners to appoint owners of different flats to be MC members.

Q45 :

Could a member of an MC (e.g. the chairman) delegate his power to another member?

A :

The BMO has conferred or imposed certain statutory power or duties on individual members of an MC. There is no provision in the BMO that provides for the delegation of such power or duties. The individual member should be the one who is responsible for exercising such power or discharging such duties.

Q46 :

If a person is not an owner of the building concerned, can he be appointed as a member of the MC?

A :

BMO provides that only owners could be appointed as members of an MC, with the exception of tenants' representative appointed under section 15(1) of the BMO. Paragraphs 2(2) and 5(2A) of Schedule 2 to the BMO provide that the tenants' representative shall be deemed to be appointed by the owners as a member of an MC.

A non-owner may be appointed as a secretary or treasurer of the MC. However, such person does not by virtue of his appointment become a member of an MC.

Para 2(2), 2(5),
5(2A) and 5(4) of
Sch. 2

Q47 :

BMO provides that members of an MC shall retire from office at every alternate annual general meeting. If the secretary and treasurer of an MC are not members of the MC, do they have to retire from office also?

A :

Yes. Paragraph 5(1)(b) and (c) of Schedule 2 to the BMO provides that if the secretary and treasurer of an MC are not MC members, they still have to retire from office at every alternate annual general meeting.

Para 5(1) of Sch. 2

Q48 :

Does a tenants' representative, being a member of an MC, have to retire from the office at every alternate annual general meeting of the corporation?

A :

No. Tenants' representative appointed under section 15(1) of the BMO does not have to retire from office at every alternate annual general meeting. According to paragraph 5(2A) of Schedule 2 to the BMO, such tenants' representative shall be deemed to be appointed by the OC as a member of the new MC.

Para 5(1) and (2A) of Sch. 2

Q49 :

If a member of an MC wants to resign from his office, what should he do? What if such member is the secretary of the MC?

A :

A member of an MC should resign his office by notice in writing delivered to the secretary of the MC. If the office of the secretary is vacant, the member should deliver the written notice to the chairman of the MC.

Para 4(2)(d) of Sch. 2

If such member is the secretary, he should resign his office by notice in writing to the chairman of the MC.

Court case: 陳永偉 訴 銅鑼灣灣景樓A及B座業主立案法團第29屆管理委員會 [LDBM 321/2003]

Q50 :

What is the obligation of an outgoing member of an MC?

A :

An outgoing member should, within 14 days of his ceasing to be a member, hand over to the secretary of the MC (or the chairman of the MC if the office of the secretary is vacant) the following things –

Para 5A of Sch. 2

- (a) any books or records of accounts, papers, documents and other records in respect of the control, management and administration of the building.
- (b) any movable property belonging to the OC that are under his control or in his custody or possession.

Q51 :

If an MC does not convene the annual general meeting in a timely manner in accordance with paragraph 1(1)(b) of Schedule 3 and no re-appointment of MC is properly made in accordance with paragraph 5 of Schedule 2, will the MC become invalid?

A :

Paragraph 3 of Schedule 2 to the BMO provides that the members of the MC appointed by a meeting of owners under paragraph 2(1)(b) of Schedule 2 shall hold office until the members of a new MC are appointed. The MC will not automatically dissolve or cease to have the power to represent the corporation even if no re-appointment is made.

Para 3 of Sch. 2

That said, it is highly undesirable if an MC continues to operate without re-appointment of a new MC for a long time. We strongly urge MCs to convene the annual general meeting in a timely manner in accordance with paragraph 1(1)(b) of Schedule 3.

Court cases: *The Incorporated Owners of Maple Mansion 訴 Ho Yiu Keung and Regent Talent Industrial Limited* [LDBM 98/2000]; *The Incorporated Owners of Finance Building v. Bright Hill Management Consultants Company Limited* [CACV 386/2000]; *Leung Ho Sing and others v. Shum Yiu Tung and others* [CACV 108/2006].

Q52 :

If an MC does not convene the annual general meeting in a timely manner in accordance with paragraph 1(1)(b) of Schedule 3 and no re-appointment of MC is properly made in accordance with paragraph 5 of Schedule 2, what can 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 for the purposes of appointing a new MC;
- (b) owners may make an application to the Lands Tribunal for an order to compel the MC to convene the annual general meeting and re-appoint a new MC;
- (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]

Q53 :

If owners are dissatisfied with the performance of the MC (or individual MC members), what can the owners do?

A :

The owners may adopt the following courses of action –

- (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. At such meeting, owners may resolve to remove members of the MC from office, or to appoint an administrator and dissolve the incumbent MC;
- (b) owners may vote down such members of the MC at the next alternate annual general meeting where a new MC will be appointed;
- (c) owners may make an application to the Lands Tribunal under section 31 of the BMO for the dissolution of the incumbent 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]

Eligibility for Appointment as MC members

Q54 :

Who is eligible for being appointed as a member of the MC?

A :

Every owner is eligible for being appointed as an MC member provided that he does not fall within the following description –

- (a) is an undischarged bankrupt at the time of the appointment or 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) with his creditors, in either case without paying the creditors in full;
- (b) has, within the previous 5 years, been convicted of an offence in Hong Kong or any other place for which he has been sentenced to imprisonment, whether suspended or not, for a term exceeding 3 months without the option of a fine.

Para. 4(1) of Sch. 2

Q55 :

If a person has been convicted of an offence and sentenced to an imprisonment for a term exceeding 3 months within the previous 5 years, where such imprisonment is suspended by the court, then is he eligible to be appointed as a member of an MC?

A :

No. According to the paragraph 4(1)(b) of Schedule 2 to the BMO, if a person is sentenced to imprisonment for a term exceeding 3 months without the option of a fine within the previous 5 years, then no matter such imprisonment is suspended or not, he is not eligible to be appointed as an MC member.

Para 4(1)(b) of Sch. 2

Q56 :

If an owner has obtained a discharge in bankruptcy within the previous 5 years, is he eligible to be appointed as a member of an MC?

A :

The key to the answer is whether the owner has obtained the discharge in bankruptcy by paying his creditors in full. If an owner has obtained the discharge within the previous 5 years without paying his creditors in full, then such owner is not eligible to be appointed as a member of an MC.

Para 4(1)(a) of Sch. 2

If, however, an owner has obtained the discharge by paying his creditors in full, then provided that such owner does not fall within the description of paragraph 4(1)(b) of Schedule 2 to the BMO, he is eligible to be appointed as an MC member.

Q57 :

Each member of an MC is required to self-declare whether he qualifies as a member of the MC. What should the member do in order to fulfil the requirement? Is it necessary for the member to make a statutory declaration?

A :

In order to fulfil the requirement, a member of an MC has to make a statutory declaration under oath at either the offices of the Land Registry or the Public Enquiry Service Centres of the District Offices, or before other person authorized by law to administer an oath (e.g. a justice of the peace, lawyer or notary public). He has to fill in a declaration form [L.R. 169], stating that he does not fall within the description of paragraph 4(1)(a) or (b) of Schedule 2 to the BMO. Declaration forms are available at the offices of the Land Registry, District Offices or the following websites –

Para 4(3) of Sch. 2

www.landreg.gov.hk
www.buildingmgt.gov.hk

After making the declaration under oath, the member has to lodge the signed declaration form with the secretary of the MC within 21 days after his appointment.

Q58 :

If an existing member of the MC is re-appointed under paragraph 5(2) of Schedule 2 to the BMO, does he have to hand in a fresh declaration form?

A :

Yes. According to paragraph 4(3) of Schedule 2 to the BMO, with the exception of tenants' representative, every member of the MC appointed (no matter such member is new to the MC or is an existing member) shall, within 21 days after the appointment, make a declaration under oath and lodge the completed declaration form with the secretary of the MC.

Para 4(3) of Sch. 2

Q59 :

If the secretary or treasurer of an MC is not a member of the MC, does he have to hand in a declaration form?

A :

No. Only members of an MC have to hand in declaration forms. If the secretary or treasurer of an MC is not a member of the MC, he is not subject to the requirements on qualifications of MC members and neither does he need to hand in a declaration form.

Para 4(3) of Sch. 2

Q60 :

Does a tenants' representative appointed under section 15(1) of the BMO have to hand in a declaration form?

A :

No. A tenants' representative need not hand in a declaration form.

Para 4(3) of Sch. 2

Q61 :

If a member of the MC is a body corporate, does such member have to hand in a declaration form?

A :

Yes. If a body corporate is appointed as a member of the MC, that body corporate may appoint a person to act as its representative for the purposes of the BMO, as if such representative were a member of the MC in his own right. Such representative, just like other members of the MC, shall lodge with the secretary of the MC a declaration under oath within 21 days after the appointment.

Para 11 of Sch. 2

Q62 :

What should a member of the MC do if a change occurs in any matter stated in his declaration form?

A :

If a change occurs in any matter stated in the declaration, then the person who made the declaration shall, within 21 days after the change occurs, lodge with the secretary of the MC another declaration under oath to state the particulars of the change. He can make the declaration under oath at the offices of the Land Registry or the Public Enquiry Service Centres of the District Offices, or before other person authorized by law to administer an oath (e.g. a justice of the peace, lawyer or notary public).

Para 4(5) of Sch. 2

Owners may obtain the statutory declaration form [L.R. 170] from the offices of the Land Registry or District Offices. They may also download the forms from the following websites –

www.landreg.gov.hk

www.buildingmgt.gov.hk

Q63 :

What is the consequence if a member of the MC fails to lodge his declaration form with the secretary of the MC within the stipulated time limit under paragraph 4(3) of Schedule 2 to the BMO? Will such person be deemed as member of the MC again if he lodges the declaration form after the stipulated deadline?

A :

If a member of the MC fails to lodge the completed declaration form under oath [L.R. 169] within the stipulated time limit (i.e. 21 days after the appointment), then according to paragraph 4(4) of Schedule 2 to the BMO, such member shall cease to be a member of the MC.

Para 4(3) and (4) of Sch. 2

This cessation of membership is permanent and irreversible. Even if the person lodges the declaration afterwards, he will not be deemed as a member of the MC again. If the person wants to be appointed as a member of the MC again, he will have to get a fresh appointment in accordance with the requirements in Schedule 2.

Q64 :

After the appointment of the first MC, if one of the members appointed fails to comply with paragraph 4(3) of Schedule 2 to the BMO, will the registration of the OC with the Land Registrar under section 7 be affected?

A :

If a member fails to comply with paragraph 4(3) of Schedule 2, then such member shall cease to be a member of the MC. This may affect the registration of the OC if the number of remaining members is below the statutory minimum stipulated in paragraph 1(1) of Schedule 2 to the BMO. If the number of members of the MC is below the statutory requirement, an OC cannot be registered with the Land Registry.

To illustrate, suppose that the number of members of an MC is 9, which is also the statutory minimum. If one of the members fails to lodge the declaration form with the secretary within 21 days of his appointment, then such member shall cease to be an MC member. Since the number of remaining members, which is 8 in this case, is below the statutory minimum, the owners may not be able to register as an OC.

On the other hand, if the number of members of an MC is 15, then even if one member fails to comply with the declaration requirement and thus ceases to be a member, the number of remaining members is still above the statutory minimum. In this case, the registration of OC will not be affected.

Q65 :

Suppose that 15 owners are appointed by the meeting of owners to be the MC members and subsequently, one of the members fails to comply with the declaration requirement and thus ceases to be a member. When the MC applies to the Land Registry for registration of the OC, what is the size of the MC? Should the size of the MC be 14 or 15 members?

A :

In this case, the size of the MC should be 15 members, which is the number decided by the meeting of owners, with 1 vacancy in the MC.



Q66 :

After receiving the declaration forms from members of the MC, what should the secretary do?

A :

For the appointment of the first MC, after receiving the completed declaration forms from members of the MC, the secretary shall cause the declaration forms to be lodged with the Land Registrar within 28 days of the appointment of this first MC. These declaration forms shall be submitted together with other documents to the Land Registrar for the registration of the owners as an OC.

Para 4(6) of Sch. 2

For other occasions (such as subsequent appointment of MC at every alternate annual general meeting or where a change occurs in any matter stated on the declaration form of the MC member), the secretary shall lodge with the Land Registrar the completed declaration forms within 28 days after receiving the forms from the MC members.

Q67 :

If the secretary of the MC fails to lodge the declaration forms with the Land Registrar within the time limit specified under paragraph 4(5) of Schedule 2 to the BMO, will this render the appointment of the members of the MC invalid?

A :

No. The statutory duty of a member of the MC is to lodge the declaration form with the secretary within the stipulated time limit. The failure of the secretary to observe his statutory duty to lodge the declaration forms with the Land Registrar within the stipulated time limit will not render the appointment of the MC members invalid.

Para 4(6) of Sch. 2

Q68 :

If a member of the MC makes a false declaration, what is the consequence?

A :

Section 36 of the BMO provides that any person who furnishes any information required to be furnished under the BMO, which he knows, or reasonably ought to know, to be false in a material particular, shall be guilty of an offence and shall be liable on conviction to a fine at level 3 and to imprisonment for 6 months.

Section 36

Filling Vacancies of MC

Q69 : If the number of members of an MC falls below the statutory minimum stipulated under paragraph 1 of Schedule 2 to the BMO, does the MC become invalid?

A : An MC, once appointed, does not become invalid merely because its number of members falls below the statutory minimum. When a vacancy occurs in an MC and causes the number of members to fall below the statutory minimum, either the corporation or the MC may fill such vacancy in accordance with paragraph 6 of Schedule 2 to the BMO.

Para 1 and 6 of Sch. 2

Court case: 龍珠島別墅 F1-F7 座業主立案法團 訴 Wong Chun Yee and Others [CACV 1911/2001]

Q70 : BMO provides that if a vacancy occurs in the MC, the vacancy may be filled by the MC or the corporation. What is the difference between the two methods?

A : To allow for flexibility in the operation of MC, two methods are provided in the BMO for filling vacancies in an MC. The option of allowing an MC to fill vacancies provides for a faster way in making appointments of MC members so as to ensure smooth operation of the MC and the corporation.

Para 6(3), (4) and (5) of Sch. 2

There are two main differences between the two methods.

The first one is the term of appointment. If the MC chooses to fill the vacancies by itself, the appointment will be of temporary nature and only last till the next general meeting of the corporation. This means that once a general meeting of the corporation is held, no matter such meeting is an annual general meeting or extraordinary general meeting, the appointment of such member will cease immediately. On the contrary, if a general meeting of the corporation is convened to fill the vacancies, the appointment will last till the next alternate annual general meeting at which a new MC is appointed.

The second main difference is the system of voting. If a general meeting of the corporation is convened to fill the vacancies, the owners shall adopt the “first past the post” system of voting in making the appointment. If the vacancies are filled by the MC, then the MC shall, as in making other decisions, make the appointment by passing a resolution by a majority of the votes of the MC members present at the meeting.

Q71 :

If the vacancy occurs in the MC is filled by the MC, what is the term of appointment of the members appointed?

A :

If the vacancy is filled by the MC, the appointment will be of temporary nature and only last till the next general meeting of the corporation. Once a general meeting is held, no matter such meeting is an annual general meeting or extraordinary general meeting, the appointment will cease immediately.

Para 6(3), (4) and (5) of Sch. 2

Hence, at such general meeting, the corporation should pass a resolution to fill the vacancy in the MC. If no appointment is made at such general meeting, there will remain a vacancy in the MC.

Q72 :

Who shall determine whether a vacancy in the MC be filled by the MC itself or by the corporation at a general meeting?

A :

When a vacancy occurs in the MC, if no general meeting of the corporation has been so convened or no appointment is made to fill the vacancy at a general meeting of the corporation, the MC may fill the vacancy by itself. If owners opine that the vacancies should not be filled by the MC, then not less than 5% of the owners may ask the chairman of the MC to convene a general meeting in accordance with paragraph 1(2) of Schedule 3 to the BMO to fill the vacancies in the MC.

Para 6(3), (4) and (5) of Sch. 2

Q73 :

If the number of vacancies in an MC is more than 50% of the number of members of the MC, can the chairman convene a meeting of the MC to appoint members to fill the vacancies?

A :

No. Paragraph 9 of Schedule 2 to the BMO stipulates that the quorum at a meeting of the MC shall be 50% of the members of the MC or 3 such members, whichever is greater. If the number of vacancies in an MC is more than 50% of the number of members of the MC, the meeting of the MC will not be able to meet the quorum requirement. The MC will thus become defunct and all resolutions purported to have been passed at the meeting of this defunct MC will be of no effect.

Para 9 of Sch. 2

Under such circumstances, instead of convening a meeting of the MC, the MC members shall fill the vacancies in accordance with paragraph 6A of Schedule 2 to the BMO.

Court case: *Chan Yip Keung and Leung Shiu Kuen 訴 The Incorporated Owners of Belvedere Garden Phase II and Chiang Shu To* [LDBM 54/2002]

Q74 :

If only the chairman is left in an MC and all the other members have resigned from office, what can the chairman do?

A :

Paragraph 6A(1)(a) of Schedule 2 to the BMO provides that the chairman may convene a general meeting of the corporation for the sole purpose of filling the vacancies in the MC. In other words, at such general meeting, owners should only pass resolutions with regard to filling the vacancies. Resolutions related to other matters shall be of no effect even if they are passed at such meeting.

Para 6A(1)(a) of Sch. 2

Q75 :

Suppose that the number of members of MC, as decided by the OC, is 9 and 6 of the members resign from office, what can the 3 remaining members do?

A :

In this case, since the number of vacancies in the MC is more than 50% of the number of MC members, it is not possible for the members to convene a valid MC meeting to fill the vacancies. The members may fill the vacancies in accordance with paragraph 6A of Schedule 2 to the BMO.

Para 6A(1) of Sch. 2

If the chairman is one of the 3 remaining members, then he may convene a general meeting of the corporation under paragraph 6A(1)(a) of Schedule 2 for the sole purpose of filling the vacancies in the MC. The chairman may also convene a normal general meeting of the corporation under paragraph 1(2) of Schedule 3 to fill the vacancies, if not less than 5% of owners have requested so.

If, however, the office of the chairman is vacant, then the 3 remaining members may appoint a person, from amongst themselves, to convene a general meeting of the corporation under paragraph 6A(1)(b) of Schedule 2 for the sole purpose of filling the vacancies in the MC.

Q76 :

If there is only one member (who is not the chairman) left in an MC as all the other members have resigned from office, can such member convene a special general meeting under paragraph 6A of Schedule 2 to the BMO?

A :

Yes. Such member may convene a general meeting of the corporation for the sole purpose of filling the vacancies in the MC under paragraph 6A(1)(b) of Schedule 2.

Para 6A(1)(b) of Sch. 2

Q77 :

If the remaining members in an MC could not agree among themselves who will be the convenor, can they still convene a special general meeting under paragraph 6A of Schedule 2 to the BMO?

A :

No. Paragraph 6A(1)(b) of Schedule 2 provides that the remaining members of MC may appoint a person, from amongst themselves, to convene a general meeting of the corporation for the sole purpose of filling vacancies in the MC. Such convenor has to be agreed and appointed by all the remaining members.

Para 6A(1)(b) of Sch. 2

Q78 :

If a special general meeting of the corporation is held under paragraph 6A of Schedule 2 to the BMO for filling the vacancies in the MC, can the corporation pass a resolution on other matters at the same meeting, e.g. to change the number of members of the MC (so as to meet the quorum) or other urgent matters like renovation of the building?

A :

No. At the special general meeting of the corporation held under paragraph 6A of Schedule 2 to the BMO, owners should only pass resolutions that are related to filling vacancies in the MC. Resolutions related to any other matters should not be dealt with in this special general meeting and even if such resolutions are passed, they shall be of no effect.

Para 6A(1) of Sch. 2

Q79 :

If the office of the chairman is vacant and a special general meeting of the corporation is held under paragraph 6A of Schedule 2 to the BMO, then who shall preside over the meeting?

A :

The person who is appointed by the remaining MC members to convene this special general meeting of the corporation shall preside over the meeting.

Para 6A(2)(b)(ii) of Sch. 2



Q80 :

If the office of the secretary is vacant and a special general meeting is held under paragraph 6A of Schedule 2 to the BMO, then who shall be responsible for the duties of the secretary, such as issuing acknowledgement receipt of proxy instrument?

A :

If the chairman of the MC is still in office, then the chairman shall be responsible for the duties of the secretary.

Para 6A(2)(b)(i) and (iii) of Sch. 2

If both the offices of the secretary and the chairman are vacant, then the person who is appointed by the remaining members to convene this special general meeting of the corporation shall be responsible for the duties of the secretary.

Q81 :

If the number of vacancies in an MC is more than 50% of the number of members of the MC, but yet a special general meeting has not been convened in accordance with paragraph 6A of Schedule 2 to the BMO to fill the vacancies, what can the owners do?

A :

If the chairman is still in office, then not less than 5% of the owners may request the chairman to convene a general meeting of the corporation under paragraph 1(2) of Schedule 3 to the BMO.

If the office of the chairman is vacant, an owner may 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.



Transitional Arrangements

Q82 : Will those existing MCs that are appointed in accordance with DMC provisions be invalid once the Building Management (Amendment) Ordinance 2007 commences? Can these MCs continue to adopt the procedures provided under the DMC?

A : The Building Management (Amendment) Ordinance 2007 includes a transitional provision (sections 38 and 39), which provides that during the transitional period (which is a period of 4 years after the commencement of the Ordinance), the amended Schedule 2 shall not affect the composition and procedure of those existing MCs that have been appointed in accordance with the DMC.

Sections 38 and 39 of BM(A)O 2007

Thus, these existing MCs will remain to be valid after the commencement of the Ordinance on 1 August 2007 and they may adopt the procedures provided under the DMC during the transitional period. However, when the transitional period expires on 31 July 2011, these MCs shall comply with the requirements set out in Schedule 2 as amended by the Building Management (Amendment) Ordinance 2007.

Q83 : If the owners want to adopt the provisions under Schedule 2 to the BMO during the transitional period, what should they do?

A : For those existing MCs that have been appointed in accordance with the DMC, their composition and procedure shall not be affected by the amended Schedule 2 to the BMO during the transitional period. However, if these MCs would like to adopt the provisions of Schedule 2 as amended by the Building Management (Amendment) Ordinance 2007 during the transitional period, they may pass a resolution at a general meeting of the corporation to comply with the amended Schedule 2 regarding the composition and procedure of the MC.

Sections 38 and 39 of BM(A)O 2007

Q84 : If, after the end of the transitional period, the MC still has not taken any action to comply with the amended Schedule 2 to the BMO, will such MC be considered as invalid?

A : If an MC does not take any action to comply with the amended Schedule 2 requirements when the transitional period expires, the validity of the MC, including the validity of the appointment of certain members of the MC, may be called into question.

Sections 38 and 39 of BM(A)O 2007

Therefore, it is advisable that an MC should take steps to comply with the amended Schedule 2 before the expiration of the transitional period.

Q85 :

If owners are not sure whether the transitional provision is applicable to the MC in their building, what should they do?

A :

The transitional provision provides that existing MCs that have been appointed in accordance with the DMC may still follow the pre-amended Schedule 2 to the BMO regarding the composition and procedure of the MC during the transitional period.

Sections 38 and 39 of BM(A)O 2007

Based on the records from the Land Registry, majority of the OCs are formed in accordance with provisions in the BMO. Only around 60 OCs were formed in accordance with the provisions of their respective DMCs (i.e. where transitional provision is applicable). If owners are doubtful of whether their OCs are formed in accordance with the DMC, they may check the registration records at the Land Registry. It is also advisable for them to pass a resolution at a general meeting of the corporation to comply with the amended Schedule 2 to the BMO.

Q86 :

For MCs that are appointed in accordance with DMC provisions, can they just adopt part, but not all, of the provisions in the amended Schedule 2 to the BMO during the transitional period?

A :

No. If the owners have passed a resolution at a general meeting of the corporation to comply with the amended Schedule 2 during the transitional period, then the corporation shall adopt all provisions in the amended Schedule 2. Owners could not opt to just adopt some provisions of the amended Schedule 2.

Sections 38 and 39 of BM(A)O 2007



Allowance paid by the OC

Q87 : Who is eligible for receiving allowance paid by the corporation under section 18(2)(aa) of the BMO? How much is the allowance?

A : Chairman, vice-chairman, secretary and treasurer of an MC are eligible for receiving allowance paid by the corporation. However, it will be up to the corporation to decide, by passing a resolution at the general meeting, whether allowance should be given to any of these people.

Section 18(2)(aa) and Sch. 4

The amount of the allowance shall also be determined by the corporation at the general meeting, subject to the following maximum amount –

No. of flats	Maximum per month for each person
Not more than 50	\$ 600
More than 50 but not more than 100	\$ 900
More than 100	\$ 1,200

Q88 : Could the OC pass a resolution at the general meeting of the corporation to grant a higher level allowance to the chairman?

A : No. The maximum amount of allowance is stipulated in Schedule 4 to the BMO. The OC could not pass a resolution to grant an allowance that is higher than the stipulated amount.

Section 18(2)(aa) and Sch. 4

Q89 : Could the OC pass a resolution at the general meeting of the corporation to grant allowance to all or some members of the MC?

A : Not all members of the MC are eligible for receiving allowance. Only chairman, vice-chairman, secretary and treasurer of the MC are eligible. Therefore, OC could not pass a resolution to grant allowance to all MC members.

Section 18(2)(aa) and Sch. 4

However, OC could pass a resolution to grant allowance to some of the eligible persons. For example, it may decide to only grant allowance to the chairman, but not to vice-chairman, secretary and treasurer.

Q90 :

If the secretary or the treasurer of the MC is not a member of the MC, is he eligible for receiving the allowance?

A :

Yes. Even if the secretary or treasurer is not a member of the MC, he is eligible for receiving the allowance.

Section 18(2)(aa)
and Sch. 4

Q91 :

For cases where the secretary or the treasurer of the MC is not a member of the MC, he is usually a staff engaged by the OC. In this circumstance, is the maximum amount that an OC can pay to such person the amount stipulated under Schedule 4 to the BMO?

A :

Section 18(2)(a) of the BMO provides that an OC may, in its discretion, engage and remunerate staff for any purpose relating to the powers or duties of the OC under the BMO or DMC. If the secretary or treasurer is a staff engaged by the OC, the OC may decide the amount of remuneration given to such staff. In this case, the remuneration is not an allowance and is not subject to the maximum amount stipulated in Schedule 4 to the BMO.

Section 18(2)(a)

Q92 :

Is the allowance paid by the corporation under section 18(2)(aa) taxable?

A :

The allowance paid by the corporation under section 18(2)(aa) is taxable under section 8(1)(a) of the Inland Revenue Ordinance (Cap.112).

In ascertaining the net assessable income of a person, there shall be deducted from the assessable income of that person all outgoings and expenses, other than expenses of a domestic or private nature and capital expenditure, wholly, exclusively and necessarily incurred in the production of the assessable income. Each case will be assessed by the Inland Revenue Department on a case by case basis.



Protection of Members of MC

Q93 : Under what circumstances can a member of an MC claim protection under section 29A?

A : According to section 29A, individual member of an MC shall not be held personally liable if both of the following criteria are fulfilled – Section 29A

- (a) the MC member is acting in good faith and in a reasonable manner; **and**
- (b) the acts are done by the OC or they are done by the member on behalf of the OC in the exercise or purported exercise of the powers conferred by the BMO on the OC, or in the performance or purported performance of the duties imposed by the BMO on the OC.

Q94 : How could one decide whether a member of an MC has acted in good faith and in a reasonable manner?

A : The expression of “in good faith” or “in a reasonable manner” is ubiquitous in legislation. “Good faith” generally means honesty or sincerity of intention, whereas “reasonable manner” generally describes acts that are logical and sensible. Yet, each case has to be determined on its own facts. The court will take into account all the circumstances of the case in determining whether a member of an MC has acted in good faith and in a reasonable manner. Section 29A

Q95 : With section 29A, does it mean that no court action could be brought against individual members of an MC?

A : Section 29A does not prohibit anyone from taking legal action against a member of an MC. It only provides a statutory basis for the member concerned to apply for striking out the legal proceedings brought against him or defend the claim if section 29A is applicable. Section 29A

Q96 :

If a member fails to carry out his statutory duty under the BMO, for example when the chairman fails to convene a general meeting of the corporation under paragraph 1(2) of Schedule 3, can he claim protection under section 29A of the BMO?

A :

No. Section 29A only covers acts done by or on behalf of the OC in the exercise of the powers conferred or performance of the duties imposed by the BMO. It does not cover statutory obligations imposed on individual members.

Using paragraph 1(2) of Schedule 3 as an example, the responsibility to convene a meeting of the corporation at the request of not less than 5% of owners rests with the MC chairman and not the MC. As such, section 29A does not apply to such circumstances.

Court Case: *胡桂容及廖廣海 訴 黃漢明* [LDBM 323/2002]

Section 29A



3. Meetings and Procedure of MC

Q97 : What is the quorum of a meeting of the MC?

A : The quorum at a meeting of the MC shall be 50% of the members of the MC (rounded to the nearest whole number) or 3 such members, whichever is greater. Para 9 of Sch. 2

For example, if the number of members of the MC is 9, then the quorum shall be 5 members. If the number of the MC is 3, then the quorum shall be 3 members.

Q98 : How frequently should an MC meet?

A : An MC shall meet at least once in every period of 3 months. Para 7 of Sch. 2

Q99 : Could owners attend meeting of an MC?

A : There is no provision in the BMO that provides for the right of attendance of meeting of an MC by owners who are not MC members, although the MC members may well permit individual owners to attend any such meetings. Such owners, however, have no right to vote in the MC meetings.

Apart from attending the MC meetings, owners have other channels to know what is discussed at the MC meetings. Paragraph 8(2) of Schedule 2 to the BMO provides that the 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. Paragraph 10(4B) of Schedule 2 also stipulates that the secretary shall display the minutes of the MC meeting in a prominent place in the building within 28 days of the date of the meeting. Owners may also request the OC to supply him with copies of any minutes of the MC meetings.

Q100 : Paragraph 8 of Schedule 2 to the BMO provides that the secretary of an MC shall convene a meeting of the MC within 14 days of receiving the request of any 2 members, and that such meeting shall be held within 21 days. What is the difference between convening and holding a meeting?

A : Generally, convening a meeting means arranging for a meeting, whereas holding a meeting means causing it to actually take place. The word “convene” in paragraph 8 of Schedule 2 does not mean formally holding the meeting and could be interpreted as giving notice of the meeting. Para 8 of Sch. 2

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

Q101 :

How should the notice of a meeting of an MC be given?

A :

The secretary shall, at least 7 days before the date of the MC meeting, display the notice of meeting in a prominent place in the building and give notice to the following persons –

- (a) each member of the MC; and
- (b) the treasurer of the MC (if he is not an MC member).

The secretary may give notice by –

- (a) delivering it personally;
- (b) sending it by post at the last known address of the recipient;
- (c) leaving it at the flat of the recipient; or
- (d) depositing it in the letter box for the flat of the recipient.

Para 8 of Sch. 2

Q102 :

Who should decide the agenda for a meeting of an MC?

A :

If the meeting of the MC is convened by the chairman / vice-chairman, then the agenda for the meeting of an MC should be determined by the chairman / vice-chairman, in consultation with members of the MC.

If the meeting is convened by the secretary at the request of any 2 MC members, then the agenda should be determined by the members who request the meeting.

Q103 :

Could an MC pass resolutions on items that are not included in the notice of the MC meeting?

A :

Paragraph 8(2AA) of Schedule 2 to the BMO provides that the notice of MC meeting shall specify the resolutions that are to be proposed at the MC meeting. Such notice has to be delivered to every MC member and MC treasurer (if he is not an MC member) and be displayed in a prominent place of the building. This allows the MC members and owners to know in advance what would be discussed at the MC meeting. Therefore, although a resolution passed at an MC meeting may not be considered as invalid simply because it has not been included in the notice of meeting, MCs should avoid passing resolutions on items that are not included in the notice of meeting.

Para 8(2AA) of Sch. 2

Q104 :

Can a member of an MC appoint a proxy to attend the meeting of MC for him?

A :

No. BMO does not provide for the appointment of proxy for meetings of MC. MC members must attend the MC meetings in person.

Q105 :

Who should preside over a meeting of an MC?

A :

The chairman of an MC shall preside over a meeting of an MC. 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 member appointed by the MC.

Para 10(1) of Sch. 2

Q106 :

If the secretary and treasurer are not members of the MC, can they vote at a meeting of MC?

A :

No. Paragraphs 2(5) and 5(4) of Schedule 2 to the BMO provide that a person who is not a member of the MC does not by virtue of his appointment as the secretary or treasurer become a member of the MC. According to paragraph 10(3) of Schedule 2, only member of an MC shall have the right to vote at a meeting of the MC.

Para 2(5), 5(4) and 10(3) of Sch. 2

Q107 :

How can owners know what is discussed at the meeting of the MC?

A :

Owners may know what is discussed at the meeting of the MC by reading the notice of meeting and minutes of meeting.

Para 8(2), 10(4B) and 10A(2) of Sch. 2

Paragraph 8(2) of Schedule 2 to the BMO provides that the 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. Paragraph 10(4B) of Schedule 2 also stipulates that the secretary shall display the minutes of the MC meeting in a prominent place in the building within 28 days of the date of the meeting. Owners may also request the OC to supply him with copies of any minutes of the MC meetings.



4. Meetings and Procedure of OC

Q108 : 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.

Q109 : 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]

Q110 :

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

Q111 :

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

Q112 :

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

Q113:

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, 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]

Q114:

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.

Para 2(1) of Sch. 3

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]



Q115 :

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.

Para 1(2) of Sch. 3

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.

Q116 :

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.

Section 37

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]

Q117:

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

Q118:

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

Q119:

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

Q120 :

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

Q121 :

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 Q119, 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

Q122 :

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.

Q123 :

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 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.

Para 3(7) of Sch. 3

Court case: 蘇振文、鄧平與盧永佳 訴 置安大廈業主立案法團 [CACV302/99]

Q124 :

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



Q125 :

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

Q126 :

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

Q127 :

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]



5. Matters Common to Various Types of Meetings Convened under the BMO

Counting of Votes

Q128 : There are many references to the percentage of owners in the BMO. When should we use the number of share of owner and when should we use the number of owner as the basis?

A : As a general rule, all reference to voting at a meeting of owners convened under the BMO or a specified percentage of owners in the BMO should be based on the shares of owners. The general rule applies with the exception of –

- (a) meeting of an MC, where each member present shall have one vote;
- (b) meeting of the owners convened under section 40C, where each owner shall have one vote;
- (c) quorum of meeting of owners (sections 3(8), 3A(3F), 4(10) and 40C(9) and paragraph 5 of Schedule 3 and paragraph 11 of Schedule 8); and
- (d) number of owners to request an extraordinary general meeting (paragraph 1(2) of Schedule 3) and to inspect the financial documents (paragraph 1A of Schedule 6).

In the above listed exceptions, the number of owners, instead of the number of shares, is used as the basis.

Section 5B and Sch. 11

Q129 : BMO provides that owners may appoint proxy to attend the general meeting of a corporation and vote on their behalf. Will these proxies be treated as owners present at the meeting?

A : A proxy appointed by an owner to attend and vote on behalf of the owner at a meeting of the corporation shall, for the purposes of the meeting, be treated as being the owner present at the meeting.

This is also the case for proxy appointed to attend and vote on behalf of the owner at a meeting of owners convened under section 3, 3A, 4 or 40C of BMO.

Sections 3(10)(d), 3A(3H)(d), 4(12)(d) and 40C(11)(d) and para 5 (2) of Sch. 3



Q130 :

Section 2B of the BMO provides that owners who are not present at the meeting and those who are present at the meeting but do not vote shall be disregarded in determining whether a resolution is passed by a majority of the votes of owners. How about owners who have appointed a proxy to attend and vote on their behalf at the meeting?

A :

Section 2B, when read together with sections 3(10)(d), 3A(3H)(d), 4(12)(d) and 40C(11)(d) of and paragraph 5(2) of Schedule 3 to the BMO (which stipulate that a proxy appointed by an owner to attend and vote on behalf of the owner shall, for the purposes of the meeting, be treated as being the owner present at the meeting), is clear to show that the votes cast by a proxy will be counted in determining whether a resolution is passed by a majority of votes of the owners.

Sections 2B, 3(10)(d), 3A(3H)(d), 4(12)(d) and 40C(11)(d) and para 5(2) of Sch. 3

Q131 :

If an owner appointing a proxy turns up and votes in the meeting, whose votes should be counted? The vote of the owner or that of the proxy?

A :

By attending the meeting in person, the owner has revoked his appointment of the proxy. The vote of the owner, and not that of the proxy, should therefore be counted.

Q132 :

What is meant by “invalid votes”?

A :

There is no simple definition of “invalid votes” and validity of a vote should be determined by considering the individual circumstances of each case. A vote may be considered as invalid if, for example –

- (a) a voter votes for and against a resolution at the same time;
- (b) in appointing MC members, a voter votes for 10 candidates where only 9 members are to be appointed.

Usually the person who presides over the general meeting of the corporation will decide whether a vote is invalid or not. If an owner thinks that the decision of the presiding person is incorrect, he should raise objection in the meeting at once and asks that the validity of the votes concerned be determined by the majority of those present at the meeting. However, disputes on validity of votes will ultimately be decided by the court.

Q133 :

If “abstention” is provided as an option on the voting sheet, will the votes that vote for such option be counted?

A :

Section 2B of the BMO provides that abstentions shall be disregarded. Even if abstention is provided as an option on the voting sheet, abstention vote should still be disregarded.

Section 2B

Q134 :

At a general meeting of the corporation, if only 3 options (Contractor A, B, C) are available for a particular resolution, and that the owners dislike all 3 options or consider that more information is necessary for them to pass a resolution, what could they do? Could they decide to defer passing a resolution on this item?

A :

The owners may pass a resolution at the general meeting to adjourn this particular item to the next meeting.

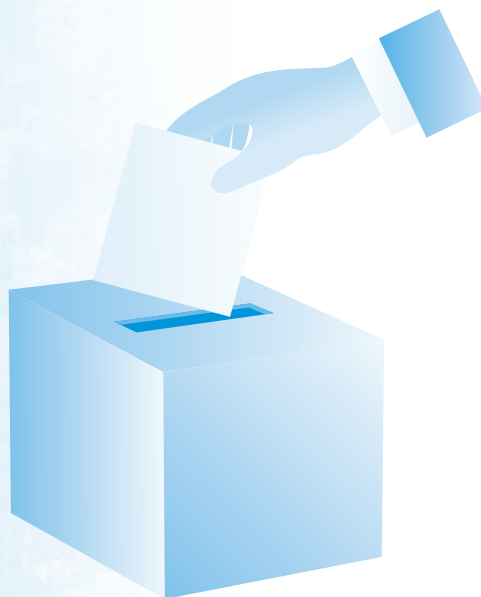
Q135 :

If the DMC provides that abstentions should be considered in counting votes, should owners follow the DMC provision or should they follow BMO?

A :

Section 2B of the BMO provides that abstentions shall be disregarded in determining whether a resolution is passed by a majority of the votes of owners at a meeting convened under the BMO. Even if the DMC provides that abstention should be considered in counting votes, abstention vote should still be disregarded for meetings convened under the BMO. The DMC provision should only be applicable for meetings convened under the DMC.

Section 2B



Q136 :

Paragraph 3(3) of Schedule 3 to the BMO stipulates that all matters arising at a meeting of the corporation at which a quorum is present shall be decided by a majority of the votes of the owners voting either personally or by proxy. What is meant by “a majority of the votes”?

A :

“Majority”, being a commonly used word, ordinarily means more than half. “A majority of the votes” means more than half of the votes. Accordingly, paragraph 3(3) of Schedule 3 means that all matters arising at a meeting of the corporation, except –

- (a) the appointment of MC members, chairman, vice-chairman (if any), secretary and treasurer; and
- (b) change of the name of the corporation under section 10(1)(b) of the BMO,

shall be decided by more than 50% of the votes of the owners voting either personally or by proxy.

Court case: *The Incorporated Owners of Tsuen Wan Garden v. Prime Light Limited* [LDBM 83-85/2003 and CACV 1/2004]

Para 3(3) of Sch. 3

Q137 :

Does appointment of members of an MC needs to be passed by a majority of votes?

A :

No. In appointing members of an MC at a meeting of owners or a general meeting of the corporation, the “first past the post” system of voting should be adopted. This means that candidates who obtain the greatest number of votes will be appointed as members of the MC and there is no need to obtain more than 50% of the votes.

Para 2, 5, 6 and 6A of Sch. 2



Q138 :

What is the difference between the “first past the post” voting system and the “majority” voting system?

A :

Under the “majority” voting system, for a resolution to be passed, the winning option must obtain more than 50% of the votes; whereas under the “first past the post” voting system, the option that obtains the greatest number of votes will be the winning option and there is no need for the winning option to have more than 50% of votes.

To illustrate, let's assume that there are 3 options and they obtain 40%, 35% and 25% of the votes respectively. Since none of the options obtain more than 50% of the votes, the resolution is not passed under the “majority” voting system. Yet, under the “first past the post” voting system, the first option which obtains 40% of votes (i.e. the greatest number of votes) shall be the winning option.

Under the BMO, the “first past the post” voting system is only applicable to appointment of MC members, chairman, vice-chairman (if any), secretary and treasurer.

Q139 :

How could the OCs fulfil the majority requirement if several options are available (for example in the selection of tenders)?

A :

Here are some plausible methods –

- (a) Progressive Elimination
The OC may eliminate the options one by one. After each round of voting, the OC may eliminate the option with the least number of votes and then carry out the next round of voting, until when one of the options obtains more than 50% of the votes.
- (b) Short-listing
Alternatively, after the first round of voting, the OC may short-list the 2 options that obtain the greatest number of votes for a second round of voting.
- (c) Confirmation
A second round of voting could be carried out to confirm (i.e. to either accept or reject) the option that obtains the greatest number of votes in the first round.

Different methods of voting may be chosen under different circumstances.

Court case: *The Incorporated Owners of Tsuen Wan Garden v. Prime Light Limited* [LDBM 83-85/2003 and CACV 1/2004]

Q140 :

If there are many options available and it may take a lot of time for the voting at the general meeting of the corporation, could the owners resolve the matter by the “first past the post” system?

A :

No. The “first past the post” voting system is only applicable to appointment of MC members, chairman, vice-chairman (if any), secretary and treasurer. All other matters arising at a meeting of the corporation (except change of name of the corporation under section 10(1)(b) of the BMO) shall be decided by a majority of the votes.

Para 3(3) of Sch. 3

Q141 :

How does an owner know the number of votes that he may cast?

A :

The DMC of a building sets out the number of shares owned by each owner and some may also set out the voting rights of each class of share of a building. For meetings of owners convened under sections 3, 3A, 4 and Schedule 3, an owner shall, unless the DMC provides otherwise, have one vote in respect of each share he owns.

Sections 3(9)(a), 3A(3G)(a) and 4(11)(a) and para 3(5)(a) of Sch. 3

Q142 :

Some of the shares are allocated to the common parts of a building and those shares are retained by the manager. Do these shares have voting rights?

A :

For meetings of owners convened under sections 3, 3A, 4 and Schedule 3, an owner shall, unless the DMC provides otherwise, have one vote in respect of each share he owns. If the DMC specifies that certain class of shares do not have voting rights, then such class of shares would not have voting rights in the meetings of owners convened under sections 3, 3A, 4 and Schedule 3. If there is no such specification in the DMC, then the owner of these shares shall have one vote in respect of each share he owns.

Sections 3(9)(a), 3A(3G)(a) and 4(11)(a), para 3(5)(a) of Sch. 3 and para 7(5A) of Sch. 7

In case of termination of a manager’s appointment by a corporation under paragraph 7 of Schedule 7 to the BMO, only owners who are liable to pay management expenses shall be entitled to vote.



Q143 :

Is it a must for the owners to cast votes on a voting sheet at a general meeting of the corporation? Can the owners vote by a show of hands?

A :

The BMO does not provide for how a vote should be cast. The owners may cast votes using voting sheets, or they may vote by a show of hands.

The owners present at the meeting may determine how the votes should be cast. If owners present at the meeting are not satisfied with the method adopted, such as vote by a show of hands, they should raise objection and demand a poll. If no one at the meeting raises objection, the meeting must be taken to assenting to the course adopted.

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

Counting of Quorum

Q144 :

What is the quorum requirement for the various meetings convened under the BMO?

A :

The quorum requirement is as follows –

Types of meetings	Quorum
Meetings of owners convened under sections 3, 3A, 4 and 40C for the incorporation of owners	10% of owners
Meetings of corporation (a) for the dissolution of the MC (b) any case other than (a)	20% of owners 10% of owners
Meetings of MC	The greater of – (a) 50% of the MC members; or (b) 3 MC members

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

Sections 3(8), 3A(3F), 4(10) and 40C(9), para 9 of Sch. 2 and para 5(1) of Sch. 3

Q145 :

Should the quorum be maintained throughout the meeting of owners or just at the start of the meeting? What if the number of owners at the meeting has reduced to below the quorum requirement?

A :

Quorum is the minimum number of persons whose presence at a meeting is requisite in order that business may be validly transacted. Any resolution passed at a meeting while a quorum is not present is invalid.

Quorum should be maintained throughout the meetings convened under the BMO (i.e. general meeting of the corporation or meeting of owners for the incorporation of owners). If the number of owners at the meeting has reduced to below the quorum requirement, it is open to anyone present at the meeting to draw the attention of the presiding person to that fact. It is then the duty of the presiding person to count the number of owners at the meeting. If the number of owners at the meeting is below the quorum requirement, business could not be validly transacted and the meeting has to be adjourned.

Court case: 寶明大廈業主立案法團 訴 Better Corporation Ltd. And Others [LDBM 136-139/1999]

Q146 :

How to calculate the number of owners?

A :

The number of owners shall be computed as follows –

Sch. 11

Form	Example	To be counted as
Several co-owners owning 1 flat	1 flat with 3 co-owners	1 owner
1 owner owning more than 1 flat	1 owner owning 35 flats	1 owner
Person holding proxy	1 person holding proxy from 1 owner	1 owner
	1 person, who is an owner himself, holding proxy from another owner	2 owners
	1 person holding proxies from 100 owners	100 owners
	35 persons holding proxies from 100 owners in aggregate	100 owners

Q147 : How should co-owners be counted when we count the number of owners in the building?

A : Co-owners of a flat should be counted as 1 owner in counting the number of owners in the building. Sch. 11

Q148 : If an owner is in possession of 10 units in a building, should he be counted as 1 owner or 10 owners when we determine whether the quorum has been met? Sch. 11

A : The owner should be counted as 1 owner in this case.

Q149 : If owner A appoints an owner, owner B, as his proxy to attend the meeting of the corporation, then should owner B be counted as 1 owner or 2 owners when determining whether the quorum has been met?

A : Owner B should be counted as 2 owners in this case. Sch. 11

Q150 : If a person (who is not an owner himself) is appointed by 10 separate owners to be their proxy to attend and vote on their behalf at the general meeting of the corporation, will the proxy be counted as 1 or 10 owners when determining whether the quorum has been met?

A : The proxy should be counted as 10 owners in this case. Sch. 11

Appointment of Proxy

Q151 : Can owners appoint proxy using forms other than those provided in Schedule 1A to the BMO?

A : No. BMO provides that for a proxy instrument to be valid, it must be in the form set out in Schedule 1A to the BMO. Sections 3(10), 3A(3H), 4(12) and 40C(11) and para 4 of Sch. 3

Owners may download the statutory proxy instruments from the website – www.buildingmgmt.gov.hk.

Q152 :

Is authorization letter issued by a lawyer (power of attorney) a valid instrument for appointing proxy?

A :

No. The instrument appointing a proxy must be in the form set out in Schedule 1A.

Sections 3(10), 3A(3H), 4(12) and 40C(11) and para 4 of Sch. 3

Q153 :

Can an owner give voting instruction on the proxy instrument to his proxy?

A :

The statutory forms set out at Schedule 1A do not provide for an owner to indicate voting instruction on the proxy instrument. Moreover, the forms provide that a proxy is appointed by an owner to attend and vote on behalf of the owner. Thus, in counting votes, only the votes given by the proxy, and not the voting instructions of the owner, will be counted.

Sch. 1A

An owner should therefore appoint someone he trusts to be his proxy.

Q154 :

Can an owner indicate in the proxy instrument that his proxy could not vote (i.e. could only be counted towards the quorum)?

A :

No. The statutory forms set out at Schedule 1A provide that a proxy is appointed by an owner to attend **and** vote on behalf of the owner. An owner cannot indicate on the proxy instrument that the proxy is not allowed to vote.

Sch. 1A

An owner should therefore appoint someone he trusts to be his proxy.

Q155 :

If an OC used to provide printed proxy forms to owners (for example, with OC chop or serial number), under the amended BMO, can the OC continue to provide such forms to owners?

A :

So long as the printed proxy forms are in the form set out in Schedule 1A to the BMO, the OC may continue to provide such printed forms to owners. However, it is not a must for owners to use these printed forms provided by the OC. As long as the proxy instruments submitted by the owners are in the statutory form, the OC could not reject these proxy instruments for the sole reason that they are not printed forms provided by the OC.

Sch. 1A

Q156 :

Could an MC include in the printed proxy forms distributed to owners the name of the proxy, say the MC chairman, an MC member or a representative of the property management company?

A :

So long as the printed forms provided by the OC are in the form set out in Schedule 1A to the BMO, such practice would not render the proxy forms invalid. However, we do not recommend such practice as owners should be allowed absolute freedom to choose their own proxy.

Sch. 1A

If an OC provides such printed proxy forms, owners who prefer to appoint another person to be his proxy could cross out the printed name on the proxy form and put down the name of his own proxy. OC could not reject these forms for the sole reason that owners have crossed out the printed name on the forms.

Q157 :

Can an OC request owners to fill in their Hong Kong Identity Card number on the proxy form?

A :

No. Hong Kong Identity Card number is not required by the statutory form set out in Schedule 1A to the BMO.

Sch. 1A

Court case: The Incorporated Owners of Tropicana Gardens 訴 Tropicana Gardens Management Ltd. and Another [LDBM 374/1998]

Q158 :

If an owner fills in his Hong Kong Identity Card number (which is not required under the statutory form) on his proxy instrument, will this render the form invalid?

A :

No. As long as the proxy instrument is in the form set out in Schedule 1A to the BMO, the mere act of providing additional information such as Hong Kong Identity Card number or time of signing the proxy will not render the form invalid.

Sch. 1A

Q159 :

Is it necessary for the owners' signature on the proxy instrument to be the same as the one appears on the deed of assignment?

A :

There is no such requirement in the BMO.

Q160 :

How should co-owners of a flat appoint proxy?

A :

The co-owners may jointly appoint a proxy, or either one of the co-owners may appoint a proxy, using the statutory form set out in Schedule 1A to the BMO.

If the co-owners appoint different proxies, then only the vote that is cast by the proxy appointed by the co-owner whose name, in order of priority, stands highest in relation to that share in the register kept at the Land Registry shall be treated as valid.

Sections 3(9), 3A(3G), 4(11) and 40C(10) and para 3(5) of Sch. 3

Q161 :

How should a body corporate appoint proxy? Should it follow its own constitution or the BMO?

A :

The body corporate shall appoint proxy using the form set out in Schedule 1A to the BMO. The form shall be –

- (a) impressed with the seal or chop of the body corporate; **and**
- (b) signed by a person authorized by the body corporate in that behalf.

In appointing the proxy, the body corporate shall follow the above requirements stipulated in the BMO, without regard to its constitution. However, the body corporate shall follow its constitution in authorizing a person to sign on the proxy instrument.

Sections 3(10), 3A(3H), 4(12) and 40C(11) and para 4 of Sch. 3

Q162 :

Is it a must for a body corporate to apply its common seal on the proxy instrument?

A :

No. In appointing proxy, a body corporate shall apply either its seal or chop on the proxy instrument.

Sections 3(10), 3A(3H), 4(12) and 40C(11) and para 4 of Sch. 3

Q163 :

The provision in the BMO provides that the instrument appointing a proxy shall be signed by the owner. What will be the case if the owner is unable to write?

A :

Section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) provides that “sign” includes, in the case of a person unable to write, the affixing or making of a seal, mark, thumbprint or chop.

Q164 :

What is the time limit for lodging a proxy instrument before the holding of a meeting? If a proxy instrument has not been lodged within the specified time limit, does the one presiding over the meeting have the authority to accept it?

A :

An instrument appointing a proxy shall be lodged with the secretary of the MC (or the convenor for meeting of owners for the incorporation of owners) at least 48 hours before the time for the holding of the meeting. If a proxy instrument is not lodged within the specified time limit, it shall be invalid and the person presiding over the meeting does not have the authority to accept such instrument.

Sections 3(10), 3A(3H), 4(12) and 40C(11) and para 4 of Sch. 3

Q165 :

Who shall determine the validity of the proxy instrument? Does such person have absolute discretion over the validity of the instrument?

A :

For meeting of owners convened under section 3, 3A, 4 or 40C for the incorporation of owners, the convenor shall determine the validity of the proxy instrument. For meeting of the corporation, the MC chairman (or if he is absent, the person who presides over the meeting) shall determine the validity of the instrument.

Sections 3(10), 3A(3H), 4(12) and 40C(11) and para 4 of Sch. 3

Such person shall determine the validity in accordance with the requirements stipulated in the BMO, namely –

- (a) the proxy instrument shall be in the form set out in Schedule 1A to the BMO;
- (b) the instrument shall be signed by an owner; or if the owner is a body corporate, be impressed with the seal or chop of the body corporate and signed by an authorized person of the body corporate; **and**
- (c) the instrument shall be lodged at least 48 hours before the time for the holding of the meeting.

Q166 :

In determining the validity of the proxy instruments, does the convenor have to check up the signature of every individual owner or the constitution of owners who are body corporate?

A :

The convenor should determine the validity of the proxy instruments in strict accordance with the requirements specified in the BMO. It may not be necessary for the convenor to check up the signature of every single owner or the constitution of the body corporate. If the convenor has no reason to believe that the proxy instrument is not in order (for example, no enquiries received on its validity, no suspicious element on the proxy instrument, etc.) or has no reason to suspect that there is a motive for forgery, then it is acceptable for him, as a reasonable man, to consider that the proxy instrument is valid.

Sections 3(10), 3A(3H), 4(12) and 40C(11)

Q167 :

If a convenor receives two proxy instruments from the same owner, what should he do? Should both proxy instruments be considered as invalid?

A :

The proxy instrument with the most recent date shall supersede the instrument with an earlier date. If no date is marked on the proxy instruments or that both instruments are marked with the same date, the convenor may clarify with the owner concerned which proxy instrument is the correct one. If the convenor could not ascertain which instrument is the latest one, then both instruments should be considered as invalid.

Q168 :

Is there a cap on how many owners one proxy could represent?

A :

No, there is no such cap stipulated in the BMO.



Q169 :

When a proxy instrument is lodged with the convenor under section 3, 3A, 4 or 40C of the BMO, what should the convenor do?

A :

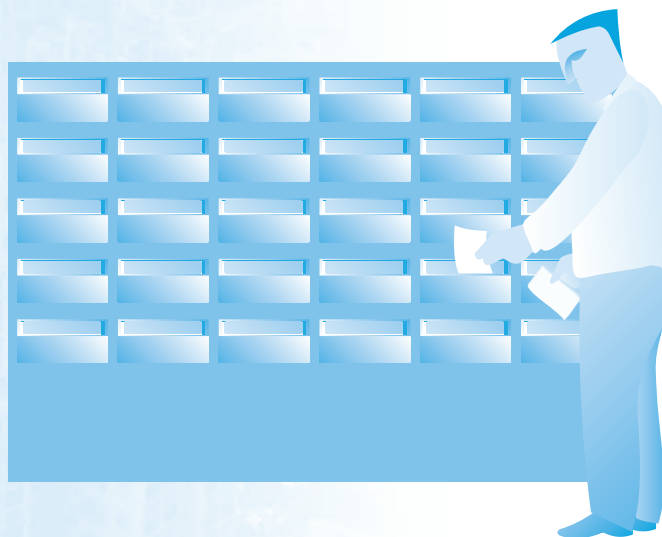
The convenor should –

- (a) acknowledge receipt of the instrument by leaving a receipt at the flat of the owner concerned, or depositing the receipt in the letter box before the holding of the meeting;
- (b) display information of the owner's flat in a prominent place in the place of the meeting throughout the meeting;
- (c) determine the validity of the instrument; and
- (d) keep the instruments for a period of at least 12 months after the conclusion of the meeting should the meeting of owners fail to appoint an MC. If an MC is appointed, the convenor shall deliver to the MC immediately after the conclusion of the meeting all the proxy instruments.

For a meeting of the corporation, the MC secretary shall be responsible for carrying out (a) and (b) above, whereas the MC chairman (or if he is absent, the one presiding over the meeting) shall be responsible for determining the validity of the instruments. The MC shall be responsible for keeping the proxy instruments.

For the sample form for acknowledging receipt of the proxy instruments and displaying information of the flats of the owners concerned, please refer to the booklet on *"How to form an Owners' Corporation"* for meetings of owners convened under section 3, 3A, 4 or 40C of the BMO and the booklet on *"A Guide on Building Management Ordinance (Cap.344)"* for meetings of corporation. These booklets are published by the Home Affairs Department and are available at all District Offices and at the following website – www.buildingmgt.gov.hk.

Sections 3(10), 3A(3H), 4(12) and 40C(11) and para 4 of Sch. 3



Q170 :

If the convenor has determined that certain proxy instruments are invalid, does he still have to issue an acknowledgement receipt for these instruments or display the information of the flats of the owners concerned in the place of the meeting?

A :

Yes. The convenor shall issue receipt for all the proxy instruments lodged with him and display the information of the flats of those owners who have made the instruments, regardless of the validity of the instruments.

Sections 3(10), 3A(3H), 4(12) and 40C(11)

However, if the convenor has determined that certain proxy instruments are invalid, it would be advisable for him to inform those owners concerned so that they may consider attending the meeting themselves. The convenor may also indicate on the list displayed at the place of the meeting which flat has lodged an invalid proxy instrument (for example by adding an asterisk next to the flat concerned).

For the sample form for displaying information of the flats of the owners concerned, please refer to the booklet on “*How to form an Owners’ Corporation*” for meetings of owners convened under section 3, 3A, 4 or 40C of the BMO and the booklet on “*A Guide on Building Management Ordinance (Cap.344)*” for meetings of corporation. These booklets are published by the Home Affairs Department and are available at all District Offices and at the following website – www.buildingmgt.gov.hk.

Q171 :

What kind of information has to be displayed at the place of the meeting for owners that appoint proxy? Is it necessary to display the names of the owners and also those of the appointed proxies?

A :

The information displayed at the place of the meeting only have to specify which flat has appointed a proxy. There is no need to display the names of the owners and the appointed proxies.

For the sample form for displaying information of the flats of the owners concerned, please refer to the booklet on “*How to form an Owners’ Corporation*” for meetings of owners convened under section 3, 3A, 4 or 40C of the BMO and the booklet on “*A Guide on Building Management Ordinance (Cap.344)*” for meetings of corporation. These booklets are published by the Home Affairs Department and are available at all District Offices and at the following website – www.buildingmgt.gov.hk.

Q172 :

If the MC secretary has not carried out his duty stipulated under paragraph 4(5)(a) of Schedule 3 (i.e. issuing acknowledgement receipt and displaying information at the place of the meeting), will this render the proxy instruments invalid?

A :

No. The failure of the MC secretary in carrying out his duty will not render the proxy instruments invalid.

Para 4(5)(a) of Sch. 3

Q173 :

If the MC secretary has not carried out his duty stipulated under paragraph 4(5)(a) of Schedule 3 (i.e. issuing acknowledgement receipt and displaying information at the place of the meeting), will this render the general meeting of the corporation invalid?

A :

If the MC secretary has not carried out his duty, it is a failure in complying with the procedural requirement of a meeting of the corporation stipulated in the BMO. The validity of the general meeting may be called into question. Aggrieved owners may seek a ruling from the court on the validity of the meeting. The court will take into account all the circumstances in making the decision.

Para 4(5)(a) of Sch. 3

Q174 :

If the office of the MC secretary is vacant, who shall be the one to carry out the stipulated duty under paragraph 4(5)(a) of Schedule 3 to the BMO? Can the chairman carry out these duties instead?

A :

The duty stipulated under paragraph 4(5)(a) of Schedule 3 shall be carried out by the MC secretary and BMO does not provide for the delegation of such statutory duty to the chairman.

Para 4(5)(a) of Sch. 3

If the office of the secretary is vacant, the MC may, in accordance with paragraph 6(5)(b) of Schedule 2, appoint a person to fill the vacancy till the next general meeting of the corporation. Such person appointed shall then carry out the statutory duty of the secretary stipulated in the BMO.

Q175 :

Who will be responsible for keeping the proxy instruments after the conclusion of a meeting of owners convened under section 3, 3A, 4, or 40C of the BMO?

A :

If an MC is appointed, the MC shall be responsible for keeping the instruments for a period of at least 12 months after the conclusion of the meeting. If an MC is not appointed, the convenor shall be responsible for keeping the instruments.

Sections 3(11)&(12), 3A(3I)&(3J), 4(13)&(14) and 40C(12)&(13)

Q176 :

Can an owner inspect the proxy instruments lodged by other owners?

A :

Proxy instruments lodged by owners contain personal data of the owners concerned. Any person who is responsible for handling proxy instruments lodged under the BMO (for example, the convenor of a meeting of owners, the MC chairman and secretary) should handle the instruments in strict accordance with the Data Protection Principles specified under the Personal Data (Privacy) Ordinance (Cap. 486). Thus, unless the owners concerned are aware that their proxy instruments may be inspected by others (for example such purpose is stated in the statement of purposes attached to the proxy instrument), the proxy instruments lodged by these owners could not be inspected by other people. Owners may refer to the booklet on *"How to form an Owners' Corporation"* or *"A Guide on Building Management Ordinance (Cap.344)"* published by the Home Affairs Department for a sample statement of purposes.

Q177 :

What should owners do if they suspect there are forged proxy instruments?

A :

Owners should inform the convenor of the meeting of owners or the MC chairman (or if he is absent, the person presiding over the meeting) if they suspect there are forged proxy instruments. Aggrieved owners may also seek a ruling from the court on the validity of the proxy instruments or the validity of the resolutions passed at the meeting.

Q178 :

If a person lodges a false proxy instrument, what is the consequence?

A :

It is a criminal offence for a person to lodge a false proxy instrument.

Section 36



Adjourned Meetings

Q179 : Who can adjourn meetings? Does the person presiding over the meeting has the absolute authority to do so?

A : The presiding person does not have the authority to adjourn the meeting unilaterally. Whether the meeting shall be adjourned should be decided by the owners present at the meeting. If necessary, a vote has to be taken to ascertain the wishes of the majority. If no objection is raised by the owners present at the meeting, then the meeting must be taken to be assenting to adjournment of the meeting.

Court cases: 余劍英 訴 張文東及另三人 [LDBM 338/2004]; 梁豪聖及另六人 訴 岑耀東及另五人 [LDBM 153/2005]; 何可華及另一人 訴 海富苑業主立案法團及另十人 [LDBM 3/2006]

Q180 : What are the procedures of adjourned meetings? Should fresh notice of meeting be given for adjourned meetings?

A : The procedures of adjourned meetings shall be the same as the original meetings. Thus, fresh notice should be given for adjourned meetings. This means that even for adjourned meetings, the MC secretary shall give notice of the meeting to each owner and the tenants' representative at least 14 days before the date of the meeting.

Sections 3(13), 3A(3K), 4(15) and 40C(14) and para 5A(1) of Sch. 3

Q181 : Suppose that a meeting of the corporation was adjourned and items (4) and (5) have not yet been discussed at this meeting. In this case, at the adjourned meeting, apart from passing resolutions on items (4) and (5), can the owners also pass resolution on some new items?

A : No. Adjourned meeting is a continuation of the original meeting. Thus, the owners could only pass resolutions with regard to items that have not yet been discussed at the original meeting. Should the owners want to pass resolutions on new items, they should regard the meeting as a new meeting.

Q182 : Do owners have to appoint proxy again for adjourned meetings?

A : No. A valid instrument appointing a proxy for the original meeting shall remain valid for the adjourned meeting, unless –

- (a) the owner has indicated on the proxy instrument that such instrument is not valid for adjourned meeting;
- (b) the instrument is revoked; or
- (c) the instrument is replaced by a new instrument.

Sections 3(14), 3A(3L), 4(16) and 40C(15) and para 5A(2) of Sch. 3

Q183 : If an owner has not appointed any proxy for the original meeting, can he appoint a proxy for the adjourned meeting?

A : Yes. Regardless of whether an owner has appointed a proxy for the original meeting, he can appoint a proxy for the adjourned meeting.

Q184 : If a meeting is adjourned, who will be responsible for keeping the proxy instruments before the adjourned meeting is convened?

A : For a meeting of owners convened under section 3, 3A, 4 or 40C for the incorporation of owners, the convenor shall be responsible for keeping the proxy instruments before the adjourned meeting is convened. For a meeting of the corporation, the MC shall be responsible for keeping the instruments.

Q185 : How long should the proxy instruments be kept if the meeting is adjourned?

A : The proxy instruments shall be kept for a period of at least 12 months after the conclusion of the adjourned meeting.

Sections 3(11), 3A(3I), 4(13) and 40C(12) and para 4(6) of Sch. 3



6. Procurement of Supplies, Goods and Services by OCs

Q186 : What is the statutory threshold for OCs to procure by invitation to tender?

A :

Threshold	Invitation to tender	Meeting of OC
> \$200,000	✓	–
> 20% of the annual budget of OC	✓	✓

Section 20A(2) and (2B)

The table above summarizes the statutory thresholds with regard to procurement of supplies, goods and services by OCs. According to section 20A(2) of the BMO, any procurement which exceeds or is likely to exceed –

- (a) the sum of \$200,000; or
 - (b) a sum equivalent to 20% of the annual budget of the OC,
- whichever is the lesser, shall be procured by invitation to tender.

For any procurement that exceeds the sum of 20% of the annual budget of the OC, whether a tender is accepted or not shall be decided by a resolution of the owners passed at a general meeting of the corporation.

All OCs must follow the above statutory requirements in procuring supplies, goods or services for the corporation.

Q187 : If the service contract is \$600,000 for 4 years, does the OC have to procure by invitation to tender?

A :

Yes. As the service contract exceeds the statutory threshold of \$200,000, the OC shall procure by invitation to tender.

Section 20A(2)

Q188 : For single-block building where the annual budget is lower, will there be another statutory threshold for procurement by the OCs?

A :

The statutory threshold for procurement is applicable to all buildings, regardless of their number of units.

Q189 :

What are the requirements for conducting a tender exercise?

A :

OCs shall comply with the requirements specified in the “Code of Practice on Procurement of Supplies, Goods and Services” published by the Home Affairs Department in conducting a tender exercise. The Code of Practice is available at all District Offices and at the website www.buildingmgt.gov.hk.

Q190 :

In conducting a tender exercise, is it a must to carry out open tender? Is quotation or restricted tender acceptable?

A :

In conducting a tender exercise, it is advisable to carry out open tender. However, quotation or restricted tender may be accepted with care. For some of the procurement exercise, such as procurement of legal services, quotations may be a more common form of invitation to tender.

Q191 :

Could the MC form a working group to carry out the procurement?

A :

There is no provision in the BMO which empowers an MC to delegate its powers and duties to a working group. If an MC wants to form a working group to handle the administrative work of the procurement exercise, it is important to observe the requirements stipulated in the BMO and the “Code of Practice on Procurement of Supplies, Goods and Services” with regard to the procedures of the tender exercise and the acceptance of the tenders submitted.

For procurement whose value exceeds a sum equivalent to 20% of the annual budget of the OC, whether the tenders submitted are accepted or not shall be decided by the general meeting of the corporation. For procurement whose value is lower than 20% of the annual budget of the OC, the MC shall decide whether tenders are accepted or not. The working group does not have any statutory duty or power to perform the functions of an MC.



Q192 :

Do MC members have to declare any interest in the tendering exercise?

A :

The “Code of Practice on Procurement of Supplies, Goods and Services” provides that a member of the MC shall disclose in writing to the MC any personal or pecuniary interest that he may have in any of the tenders to be considered by the MC or the OC. An MC member who has indicated a personal or pecuniary interest in the tender shall abstain from voting in the selection of such tender at a meeting of the MC.

Q193 :

Can MC members accept gifts, discounts or free services (e.g. decorating a MC member’s flat) from tenderers or contractors?

A :

MC members should not solicit or accept any advantage from any tenderer, supplier or contractor in relation to the tender exercise. Examples of an advantage include money, loan, reward, gifts, discounts or free services. Solicitation or acceptance of any advantage may contravene the Prevention of Bribery Ordinance (Cap. 201).

Q194 :

Could an OC waive the tendering requirement for urgent works?

A :

No. Any procurement which exceeds or is likely to exceed the statutory threshold (i.e. the lesser of \$200,000 or a sum equivalent to 20% of the annual budget of the OC) shall be procured by invitation to tender.

Section 20A(2)

A list of pre-qualified service providers for emergency works or repair may be drawn up to minimize the time required for sourcing and ensure that only eligible ones are invited to bid.

Q195 :

What could the owners do if they suspect that their OC has split a large-sum contract into mini-contracts so as to avoid the tendering requirement?

A :

The owners may seek a declaration from the court on the validity of the mini-contracts. The court will consider all the circumstances of the case in making the decision. One of the factors that will be considered by the court, as set out in section 20A(7) of the BMO, is whether the contract has been split from a contract of greater value for the sole purpose of avoiding the compliance of requirements in section 20A(2) (i.e. procure by invitation to tender) or section 20A(2B) (i.e. tender shall be accepted or rejected by the general meeting of the corporation).

Section 20A(2), (2B) and (7)

If the contract is procured through fraudulent or corrupt means, a report should be made to the Police or the ICAC.

Q196 :

Are there any requirements for the procurement of professional service (e.g. legal service)?

A :

The procurement of all supplies, goods or services required by a corporation shall comply with the requirements stipulated in the BMO. There is no exception for procurement of professional service.

Section 20A

For the procurement of legal service, legal professionals advised that quotations in the form of hourly/daily rate (subject to a maximum cap) or a lump sum fee could be given to the OCs to facilitate their consideration of the appointment.

Court case: Incorporated Owners of Hip Wo House v. Galant King Development Limited [HCCW 248/2006]

Q197 :

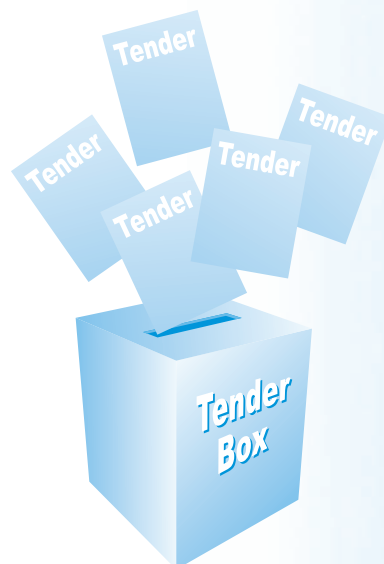
After the tenders are received, who shall be responsible for deciding whether a tender is accepted or not? Does the MC have the authority to reject some of the tenders and only shortlist a few for the owners to choose from at the general meeting of the corporation?

A :

For tenders whose value does not exceed 20% of the annual budget of the OC, the MC shall decide whether tenders are accepted or not.

Section 20A(2B)

For tenders whose value exceeds 20% of the annual budget of the OC, whether the tenders submitted are accepted or not shall be decided by the general meeting of the corporation. The MC does not have the authority to reject some of the tenders and all tenders have to be put up to the general meeting of the corporation. The MC may shortlist a few as recommendations to the owners, yet it will be up to the owners to decide which tender is accepted and which ones are rejected.



Q198 :

If an OC wants to procure supplies, goods or services from an incumbent supplier, can it do so without invitation to tender?

A :

The OC does not have to comply with the tendering requirement stipulated in section 20A(2A) of the BMO if all of the following criteria are satisfied –

Section 20A(2A)

- (a) the relevant supplier is providing supplies, goods or services to the OC for the time being;
- (b) the relevant supplies, goods or services are of the same type as the supplies, goods or services that is provided by the supplier for the time being; **and**
- (c) the corporation decides by a resolution of the owners passed at a general meeting of the corporation that the relevant supplies, goods or services shall be procured from that supplier on such terms and conditions as specified in the resolution, instead of by invitation to tender.

Despite the above, it is advisable for OCs to conduct tendering exercise so as to obtain the more updated market information.

Q199 :

If an OC has previously procured from ABC company 3 years ago, can it now engage ABC company again for a contract of \$300,000 without invitation to tender?

A :

No, the OC shall procure by invitation to tender as ABC company is not a supplier engaged by the OC for the time being. The criteria for waiving the tendering requirement are not satisfied.

Section 20A(2A)

Q200 :

If an OC is now procuring security services from ABC company, can it engage ABC company for a cleansing contract of \$300,000 without invitation to tender?

A :

No, the OC shall procure by invitation to tender as security services and cleansing services are not of the same type. The criteria for waiving the tendering requirement are not satisfied.

Section 20A(2A)

Q201 :

Can the MC negotiate for better terms and conditions in engaging the incumbent supplier for a new contract? Does the MC need to inform the owners about the new terms and conditions?

A :

The MC may negotiate with the incumbent supplier for better terms and conditions in signing the new contract. The terms and conditions shall be approved by the owners at a general meeting of the corporation should the tendering requirement be waived.

Section 20A(2A)

Q202 :

If the owners do not agree to the continuous engagement of the incumbent supplier at the general meeting of the corporation, what should the MC do?

A :

In such case, it means that the criteria for waiving the tendering requirements are not satisfied. The MC should thus comply with the statutory requirement under section 20A(2) of the BMO and procure by invitation to tender.

Section 20A(2) and (2A)

Q203 :

If an OC is going to continuously engage the incumbent supplier for a contract whose value exceeds \$200,000 but is below 20% of the annual budget of the OC, then does it have to convene a general meeting of the corporation?

A :

If the OC wants to waive the tendering requirement, then the MC has to convene a general meeting of the corporation. At the meeting, the owners have to pass a resolution that the relevant supplies, goods or services shall be procured from the incumbent supplier on such terms and conditions specified in the resolution, instead of by invitation to tender.

Section 20A(2), (2A) and (2B)

If, however, the OC decides to carry out the tendering exercise, then there is no need to convene a general meeting of the corporation, as tender whose value does not exceed 20% of the annual budget shall be submitted to the MC which may accept or reject them.

Q204 :

If a procurement contract does not comply with the “Code of Practice on Procurement of Supplies, Goods and Services”, will the contract be void?

A :

A contract for the procurement of any supplies, goods or services shall not be void by reason only that it does not comply with the Code of Practice.

Section 20A(5)

Q205 :

What are the consequences if an OC does not comply with the Code of Practice?

A :

A failure of an OC to comply with the Code of Practice shall not of itself render the OC liable to criminal proceedings of any kind. Yet, such failure may be relied upon in any legal proceedings as tending to establish or to negative any liability which is in questions in such proceedings.

Section 44(2)

Q206 :

If a procurement contract does not comply with the statutory requirements under section 20A(2) (relating to tendering) or 20A(2B) (relating to the passing of resolution at meeting of the corporation), will the contract be void?

A :

The contract shall not be void by reason only that it does not comply with section 20A(2) or (2B). However, the contract may be avoided by the corporation by a resolution passed at a general meeting of the corporation in accordance with section 20A (6) of the BMO.

Section 20A(6)

It is important for the OC and the owners to fully understand the implication of invoking section 20A(6) before they pass a resolution to such effect. OCs are strongly recommended to seek independent legal advice and explain to owners the possible consequence, including the legal and financial implications on the OC and the owners.

Q207 :

If a procurement contract does not comply with the statutory requirements under section 20A(2) and (2B), what could the owners do?

A :

The owners may adopt the following courses of action –

- (a) Not less than 5% of the owners may request the chairman to convene a general meeting of the corporation in accordance with paragraph 1(2) of Schedule 3 to the BMO. The corporation may then decide to avoid the contract by a resolution passed at the general meeting in accordance with section 20A(6) of the BMO. It is important to note that the corporation may only avoid the contract for the reason that the contract does not comply with section 20A(2) or (2B).
- (b) Owners may also seek a declaration from the court on the validity of the contract. The court will take into account all the circumstances of the case, including the list of factors stipulated under section 20A(7) of the BMO. The court may then make orders (including whether the contract is void or voidable) or give directions in respect of the rights and obligations of the contractual parties.

The above courses of action are not necessarily exclusive to each other. Even if a resolution is passed or rejected by the corporation, owners may still seek a declaration from the court. However, if the court has given any order with regard to the case, then the resolutions passed by the corporation would be subject to the court's order.

OCs and owners are strongly recommended to seek independent legal advice on the possible consequence, including the legal and financial implications on the OC and the owners, before they take action on the above.

Q208 :

If the owners think that the procurement contract is too expensive, can they invoke section 20A(6) and pass a resolution to avoid the contract at a general meeting of the corporation?

A :

No. Section 20A(6) could only be invoked for the reason that the procurement contract does not comply with the statutory requirements stipulated under section 20A(2) and (2B).

Section 20A(6) and (7)

Section 20A(6)

Q209 :

If a procurement contract is avoided by an OC in accordance with section 20A(6) of the BMO, does the OC still have to pay the contractor / supplier?

A :

If a procurement contract is avoided by an OC, the contract may still be valid for the period before the resolution is made. Thus, the OC may still have to pay for the works that have been carried out by the contractor or services that have been provided by the supplier or any compensation claimed by the contractor in accordance with the contract provisions. The amount of payment will be subject to negotiation between the OC and the contractor / supplier or any court order.

Section 20A(6)

It is therefore important for the OC and the owners to fully understand the implication of invoking section 20A(6) before they pass a resolution to such effect. OCs are strongly recommended to seek independent legal advice and explain to owners the possible consequence, including the legal and financial implications on the OC and the owners.

Q210 :

If a procurement contract is declared void by the court under section 20A(7), does the OC still have to pay the contractor / supplier?

A :

Section 20A(7) provides that the court may make such orders and give such directions in respect of the rights and obligations of the contractual parties as the court thinks fit. Whilst the court may make an order that the contract shall be void, it may also give directions in respect of the contractual obligations (e.g. payment) between the OC and the contractor / supplier.

Section 20A(7)

Q211 :

If a procurement contract is already avoided by an OC in accordance with section 20A(6), can an individual owner still go to the court and seek a declaration over the validity of the contract?

A :

Yes. A resolution of the owners to avoid the contract under section 20A(6), no matter such resolution is passed or not, does not preclude an owner from making an application to the court.

Section 20A(7)

It is therefore important for the OC and the owners to fully understand the implication of invoking section 20A(6) before they pass a resolution to such effect. OCs are strongly recommended to seek independent legal advice and explain to owners the possible consequence, including the legal and financial implications on the OC and the owners.

Q212 :

Section 20A(7) sets out a list of factors which will affect the court's decision on the validity of the contract. Will all the factors be taken into account? Are there any weightings for these factors?

A :

The court will take into account all the circumstances of the case in making the decision. These include, but are not limited to, the factors listed out under section 20A(7). BMO does not provide for the weightings for these factors. Each case will be considered by the court on its own merit.

Section 20A(7)

Q213 :

If a person, say the chairman of the MC, enters into a procurement contract that does not comply with section 20A(2) or (2B), can the OC or the contractor claim against the chairman for any loss arising from the contract? Can the chairman claim protection under section 29A?

A :

Section 20A(9) provides that subject to section 29A, any person who enters into a procurement contract that does not comply with section 20A(2) or (2B) may be personally liable for any claims arising from the contract. Section 29A provides that no MC member, acting in good faith and in a reasonable manner, shall be personally liable for any act done or default made by or on behalf of the OC in the exercise or purported exercise of the powers conferred by the BMO on the OC; or in the performance or purported performance of the duties imposed by the BMO on the OC.

Section 20A(9)

The chairman would only be able to claim protection under section 29A of the BMO if he acts in good faith and in a reasonable manner. In the case of non-compliance with the statutory procurement requirements, although the chairman may claim that he has acted in good faith, the chance that he could successfully claim that he has acted in a reasonable manner is rather low. That said, the liability of the chairman in such a claim will ultimately be determined by the court.

Court case: 宜高物業管理有限公司 訴 新蒲崗大廈業主立案法團 [DCCJ 14835/2000]



7. Financial Arrangements for OCs

Q214 :

Section 27 of the BMO stipulates that an MC shall maintain proper books or records of account and other financial records and shall prepare, within the stipulated time period, financial statements. What is meant by “financial statements”?

A :

Financial statements shall include –

- (a) an income and expenditure account which gives a true and fair view of the financial transactions of the corporation for the period to which it relates; **and**
- (b) a balance sheet which gives a true and fair view of the financial position of the corporation as at the date to which the income and expenditure account is made up.

The financial statements shall be signed by –

- (a) the MC chairman; **and**
- (b) the MC secretary or treasurer.

Section 27(1) and (1AA)

Q215 :

Is it necessary for all OCs to retain an accountant for the auditing of the financial statements?

A :

No. For OCs that are incorporated in respect of a building which contains not more than 50 flats, it is not mandatory for them to retain an accountant for the auditing of the financial statements.

That said, we strongly advise all buildings to arrange for an independent checking on their financial statements for the better protection of the owners' interests.

Section 27(1A)

Q216 :

What is meant by “flat”? Is carpark counted as a flat?

A :

In the BMO, “flat” means any premises in a building which are referred to in a DMC whether described therein as a flat or by any other name and whether used as a dwelling, shop, factory, office or for any other purpose, of which the owner, as between himself and owners or occupiers of other parts of the same building, is entitled to the exclusive possession.

In counting the number of flats for the purposes of section 27(1A) (which provides that for a building with an OC and contains 50 flats or more, the OC has to arrange for the audit of the financial statements), “flat” does not mean any garage, carpark or carport.

Sections 2 and 27(1B)

Q217 :

If an OC is required to retain an accountant for the auditing of the financial statements, is the MC required to lay before the general meeting of the corporation the audited financial statements and the accountant's report?

A :

For buildings with more than 50 flats, the financial statements shall be audited by an accountant retained by the OC. Such audited statements and the accountant's report shall be laid before the corporation at the annual general meeting of the corporation.

Section 27(1) and (1A)

Q218 :

If an owner wants to know more about the financial position of the OC, what can he do?

A :

The owner may know more about the financial position of the OC through the following ways –

Section 27, Sch. 5 and 6

- (a) attend the annual general meeting of the corporation, as the financial statements shall be laid before the corporation at such meeting;
- (b) inspect the books of account of the corporation;
- (c) obtain a copy of the budget prepared by the MC on the payment of a copying charge;
- (d) obtain a copy of the financial statements and if the building has more than 50 flats, a copy of the accountant's report, on the payment of a copying charge;
- (e) obtain a copy of the summary of income and expenditure of the corporation, which is prepared by the MC treasurer for each consecutive period of 3 months, on the payment of a copying charge;
- (f) inspect bills, invoices, vouchers, receipts and other documents referred to in the books or records of account after fulfilling certain criteria.



Q219 :

If an owner wants to inspect the bills, invoices, vouchers, receipts and other documents referred to under paragraph 1 of Schedule 6 to the BMO, what should he do?

A :

The owners may adopt the following courses of action –

- (a) not less than 5% of the owners may request the MC to permit them or any person appointed by them to inspect the bills, invoices, vouchers, receipts etc; **or**
- (b) an owner may apply to the court for an order authorizing the owner, or any other person named in the application, to inspect the bills, invoices, vouchers, receipts etc. The court may make an order if it is satisfied that the application is made in good faith and that the inspection is for a proper purpose.

Para 1A, 1B and 1C of Sch. 6

Q220 :

Should the phrase “5% of the owners” referred to under paragraph 1A of Schedule 6 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 under paragraph 1A of Schedule 6 means 5% of the total number of owners, without regard to the shares owned by such owners.

Section 5B, para 1A of Sch. 6 and Sch. 11

Q221 :

Do owners have to pay charge in obtaining copies of financial documents of an OC? If yes, who shall determine such charge and what is the usual level of copying charge?

A :

Owners have to pay copying charge in obtaining copies of financial documents of OCs. Such charges shall be determined by the MC.

Para 3 of Sch. 6

We strongly encourage all MCs to be as transparent as possible in their operation. Transparency in operation is conducive to effective building management and the relationship with owners. We therefore urge MCs to set a lower copying charge for owners to obtain the financial documents. As a point of reference, most OCs charge around \$1 to \$5 per page.

8. Display of Information about Legal Proceedings

Q222 : What is meant by “the particulars of the proceedings” under section 26A of the BMO?

A : The particulars of the proceedings may include –

- (a) the capacity of the parties of the proceedings;
- (b) the case number of the legal action and the forum of the case (i.e. whether it is commenced in Lands Tribunal, District Court, High Court etc.);
- (c) nature of the case; **and**
- (d) the amount claimed by the plaintiff (where OC is the defendant) or to be claimed by the OC (where OC is the plaintiff), or the remedies or relief sought if they are not monetary in nature (e.g. injunction order, declaration etc.)

Section 26A

Q223 : What is meant by court documents? If an OC receives a letter from a lawyer, saying that legal action may be or will be commenced against the OC, does the OC have to display a notice under section 26A of the BMO?

A : Court documents means documents filed with the court. Common examples of court documents commencing legal proceedings are writ of summons, originating summons or Notice of Application to Lands Tribunal. A letter from a lawyer is not a court document.

Section 26A

Q224 : Is the requirement about posting of information about legal proceedings applicable to those proceedings initiated in the Lands Tribunal and High Court only? How about those rather simple litigation in the Small Claims Tribunal?

A : The requirement is applicable to all legal proceedings. There is no exception for proceedings commenced in Small Claims Tribunal.

Section 26A

Q225 : What if the OC does not need a legal representative? Does the OC need to notify the owners in such cases?

A : Yes. No matter whether the OC engages a legal representative or not, it has to notify the owners of any legal proceedings to which the OC is a party.

Section 26A

Q226 :

If an OC becomes a third party to a legal action, does it have to notify the owners of the legal proceedings under section 26A of the BMO?

A :

Yes. The OC is a party to the legal proceedings in this case and thus have to notify owners in accordance with section 26A of the BMO. Section 26A

Q227 :

If a member of an MC becomes a party to a legal proceeding, does he have to notify the owners?

A :

No, there is no such requirement in the BMO.

9. Mandatory Terms in DMCs – Requirements for Manager

Financial Arrangements for Managers

Q228 : If the manager is responsible for preparing the accounts of the corporation, does he have to retain an accountant to audit the accounts?

A : If there is a corporation and the corporation decides, by a resolution of the owners at the general meeting, that any income and expenditure account and balance sheet should be audited by an accountant, then the manager shall without delay arrange for such an audit to be carried out. Para 2(6) of Sch. 7

Q229 : If an accountant is retained by the manager to audit the accounts of the corporation, are the audited accounts and accountant's report open to owners' inspection?

A : Yes. The manager shall permit any owner to inspect the audited income and expenditure account and balance sheet and the accountant's report. Para 2(6) of Sch. 7

The manager shall also, at the request of any owner, supply the owner with a copy of the audited income and expenditure account and balance sheet and also the accountant's report on payment of a reasonable copying charge.

Q230 : In opening and maintaining a bank account for the management of a building, what requirements have to be observed by the manager?

A : There are 2 key requirements to be observed by the manager in opening and maintaining a bank account for the building – Para 3 of Sch. 7

- (a) such account shall be an interest-bearing account; **and**
- (b) the manager shall use that account exclusively in respect of the management of the building.

If there is a corporation, then 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 received by him from or on behalf of the corporation in respect of the management of the building.

The manager shall also display a document showing evidence of any account opened and maintained in a prominent place in the building.

Q231 :

What is meant by trust account or client account? What is the difference between these accounts?

A :

Generally speaking, trust account involves a trust deed and the banks may be bounded by more stringent obligations in monitoring the accounts. For client account, it is usually in the name of, say “ABC property management company – The Incorporated Owners of XYZ building”. The banks would know that the management companies are holding the money on behalf of a third party.

Para 3(1A) of Sch. 7

Procurement of Supplies, Goods and Services by Manager

Q232 :

What is the statutory threshold for managers to procure by invitation to tender?

A :

Threshold	Invitation to tender	Meeting of OCs/ owners
> \$200,000	✓	–
> 20% of the annual budget	✓	✓

Para 5(1) and (2) of Sch. 7

The table above summarizes the statutory thresholds with regard to procurement of supplies, goods and services by managers. According to paragraph 5(1) and (2) of Schedule 7 to the BMO, any procurement which exceeds or is likely to exceed –

- (a) the sum of \$200,000; or
- (b) a sum equivalent to 20% of the annual budget,

whichever is the lesser, shall be procured by invitation to tender.

For any procurement that exceeds the sum of 20% of the annual budget, whether a tender is accepted or not shall be decided by –

- (c) if there is a corporation, a resolution of the owners passed at a general meeting of the corporation; or
- (d) if there is no corporation, a resolution of the owners passed at a meeting of owners.

All managers shall follow the above statutory requirements in procuring supplies, goods or services.

Q233 :

After the tenders are received, who shall be responsible for deciding whether a tender submitted is accepted or not?

A :

For tenders whose value does not exceed 20% of the annual budget, subject to any contractual requirements, the manager could decide whether tenders are accepted or not.

Para 5(2) of Sch. 7

For tenders whose value exceeds 20% of the annual budget, whether the tenders submitted are accepted or not shall be decided by –

- (a) if there is a corporation, a resolution of the owners passed at a general meeting of the corporation; **or**
- (b) if there is no corporation, a resolution of the owners passed at a meeting of owners.

Q234 :

Does the manager have the authority to reject some of the tenders and only shortlist a few for the owners to choose from?

A :

For procurement whose value exceeds 20% of the annual budget, the manager does not have the authority to reject some of the tenders. All tenders have to be put up to the general meeting of the corporation (if there is a corporation) or the meeting of owners (if there is no corporation). The manager may shortlist a few as recommendations to the owners, yet it will be up to the owners to decide which tender is accepted and which ones are rejected.

Para 5(2) of Sch. 7

Q235 :

If the procurement contract is made with an incumbent supplier, can the manager skip the tendering process?

A :

The manager does not have to comply with the tendering requirement stipulated in paragraph 5(1) and (2) of Schedule 7 to the BMO if all of the following criteria are satisfied –

Para 5(3) of Sch. 7

- (a) the relevant supplier is providing supplies, goods or services to the owners for the time being;
- (b) the relevant supplies, goods or services are of the same type as the supplies, goods or services that is provided by the supplier for the time being; **and**
- (c) the owners decide by a resolution passed at a general meeting of the corporation (if there is a corporation) or at a meeting of owners (if there is no corporation) that, the relevant supplies, goods or services shall be procured from that supplier on such terms and conditions as specified in the resolution, instead of by invitation to tender.

Despite the above, it is advisable for managers to conduct the tendering exercise so as to obtain the more updated market information.

Q236 :

Does the manager have to comply with the “Code of Practice on Procurement of Supplies, Goods and Services”?

A :

Yes, the manager shall ensure that the procurement complies with the “Code of Practice on Procurement of Supplies, Goods and Services” published by the Home Affairs Department. The Code of Practice is available at all District Offices and at the website www.buildingmgt.gov.hk.

Para 5(1) and (2) of Sch. 7

Q237 :

If the manager does not comply with paragraph 5 of Schedule 7 to the BMO and/or the Code of Practice, what could the owners do?

A :

Provisions in Schedule 7 to the BMO are mandatory terms to be impliedly incorporated into every DMC. If the manager does not comply with the provisions in Schedule 7, it is a breach of the contract terms of the DMC and the owners may seek a ruling from the court in this regard.

Termination of Manager’s Appointment by OC

Q238 :

How can owners terminate a manager’s appointment under paragraph 7 of Schedule 7?

A :

According to paragraph 7(1) of Schedule 7 to the BMO, a corporation may, at a general meeting of the corporation, terminate by notice the DMC manager’s appointment without compensation by a resolution –

- (a) passed by a majority of the votes of the owners voting either personally or by proxy; **and**
- (b) supported by the owners of not less than 50% of the shares in aggregate.

Under the above mechanism, only the owners of shares who are liable to pay the management expenses relating to those shares shall be entitled to vote.

Para 7(1) and (5A) of Sch. 7



Q239 :

Is the mechanism provided under paragraph 7(1) of Schedule 7 to the BMO only applicable to DMC managers?

A :

The mechanism provided under paragraph 7(1) of Schedule is applicable to both DMC manager and manager whose employment contract contains no provision for the termination of the manager's appointment.

Para 7(5B) of Sch. 7

Q240 :

If the employment contract of a manager contains provision for the termination of the manager's appointment, say the appointment may be terminated by 3 months' advance notice, then should the owners terminate the appointment in accordance with the contract provision or should they do so in accordance with paragraph 7(1) of Schedule 7 to the BMO?

A :

If the employment contract of a manager contains provision for the termination of his appointment, then the owners should terminate the appointment in accordance with the contract provision. Paragraph 7(1) of Schedule 7 is not applicable in this case.

Para 7(5C) of Sch. 7

Q241 :

After a manager's appointment ends, when does the outgoing manager have to hand over the properties, which are under his control and belongs to the owners, to the owners' committee or newly appointed manager?

A :

The manager shall deliver to the owners' committee or the manager appointed in his place –

Para 8 of Sch. 7

- (a) within 14 days of the date his appointment ends, any movable property in respect of the control, management and administration of the building that is under his control or in his custody or possession, and that belongs to the owner; **and**
- (b) within 2 months of the date his appointment ends –
 - an audited income and expenditure account;
 - an audited balance sheet; **and**
 - any books or records of account, papers, documents and other records which are required for preparing the income and expenditure account and balance sheet.



Communication among owners

Q242 : Can the MC or the manager decide whether certain channels of communication among owners relating to the management of the building should be allowed?

A : The manager shall consult the corporation at a general meeting of the corporation on the channels of communication among owners on any business relating to the management of the building, and adopt the approach decided by the corporation.

Para 9 of Sch. 7

Q243 : What is meant by “channels of communication”?

A : It means the ways of communication among owners. Examples are depositing leaflets / letters into letter boxes of the owners, posting of notice / posters at common parts of the building, holding meetings / forums at common parts of the building, and household visits.

Para 9 of Sch. 7

Q244 : Does the manager have to consult the owners for every single case? Can the OC make a blanket approval for a certain channel of communication?

A : It is up to the OCs to decide whether they would like the manager to consult them for every single case, or that they would like to give a blanket approval. For example, the OCs may pass a resolution at the general meeting of the corporation to allow distribution of leaflets into the letter boxes of the owners all around the year, or the OCs may choose to allow that only at times where several candidates are running for offices in the MCs.

Para 9 of Sch. 7



10. Meetings of Owners referred to under Schedule 8 to the BMO

Q245 : Is Schedule 8 applicable to all buildings?

A : The provisions in Schedule 8 shall be impliedly incorporated into every DMC if they are consistent with the DMC. Section 34F

Q246 : If the provisions with regard to the meetings of owners under Schedule 8 to the BMO are contrary to DMC provisions, then should the owners follow DMC or BMO provisions?

A : Provisions in Schedule 8 shall be impliedly incorporated into the DMC only if they are consistent with the DMC. Thus, if the provisions are contrary to the DMC provisions, the owners should follow DMC provisions. Section 34F

Q247 : Who can convene a meeting of owners under Schedule 8 to the BMO?

A : A meeting of owners may be convened by – Para 8 of Sch. 8

- (a) the owners' committee;
- (b) the manager; or
- (c) an owner appointed to convene such a meeting by the owners of not less than 5% of the shares in aggregate.

Q248 : How can owners appoint a convenor under paragraph 8(c) of Schedule 8 to the BMO?

A : There is no rigid rule to regulate how the decision of appointing a convenor should be made under paragraph 8(c) of Schedule 8 to the BMO. The owners may do so by holding a meeting amongst themselves or by a letter of authorization signed by the owners. The key is that the convenor must be appointed by all the owners of not less than 5% of the shares in aggregate in order to fulfill the legal requirement under paragraph 8(c) of Schedule 8. Para 8 of Sch. 8

Q249 :

Who shall preside over a meeting of owners convened in accordance with Schedule 8 to the BMO?

A :

If the meeting of owners is convened by the owners' committee, then the chairman of the owners' committee shall preside over the meeting.

If the meeting of owners is convened under paragraph 8(b) or (c) of Schedule 8, then it shall be presided over by the person convening the meeting, i.e. the manager or an owner appointed by the owners of not less than 5% of the shares in aggregate.

Para 12 of Sch. 8

Q250 :

What is the quorum requirement for the meetings referred to under Schedule 8 to the BMO?

A :

The quorum requirement stipulated under Schedule 8 is as follows –

Types of meetings	Quorum
Meetings of owners	10% of owners
Meetings of owners' committee	The greater of – (a) 50% of the members of the owners' committee; or (b) 3 such members

Section 5B, para 4 and 11 of Sch. 8 and Sch. 11

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

Q251 :

For meetings of owners convened in accordance with Schedule 8 to the BMO, are the owners required to use the statutory form provided in the BMO in appointing proxy?

A :

Yes, the instrument appointing a proxy shall be in the form set out in Form 1 in Schedule 1A to the BMO. The form shall be signed by the owner. If the owner is a body corporate, then the form shall be impressed with the seal or chop of that body corporate and signed by a person authorized by that body corporate in that behalf.

Para 14(1) of Sch. 8

Q252 :

If an owner wants to appoint a proxy to attend a meeting of owners convened in accordance with Schedule 8 to the BMO, whom shall he deliver the proxy instrument to?

A :

The proxy instrument shall be lodged with the chairman of the owners' committee at least 48 hours before the time for the holding of the meeting.

Para 14(2) of Sch. 8

If the meeting is convened under paragraph 8(b) or (c) of Schedule 8, then the instrument shall be lodged with the person convening the meeting, i.e. the manager or an owner appointed by the owners of not less than 5% of the shares in aggregate.



Telephone Number of the District Building Management Liaison Teams of 18 District Offices

Hong Kong Islands

Central & Western	2119 5010	Wan Chai	2835 1999
Eastern	2886 6569	Southern	2814 5762

Kowloon

Kowloon City	2621 3406	Kwun Tong	2171 7465
Sham Shui Po	2150 8175	Wong Tai Sin	3143 1160
Yau Tsim Mong	2399 2155		

New Territories

Kwai Tsing	2494 4543	Tsuen Wan	3515 5654
Yuen Long	2470 1125	North	2675 1719
Tuen Mun	2451 3466	Tai Po	2654 1262
Sai Kung	2163 9431	Sha Tin	2158 5388
Islands	2852 4318		

