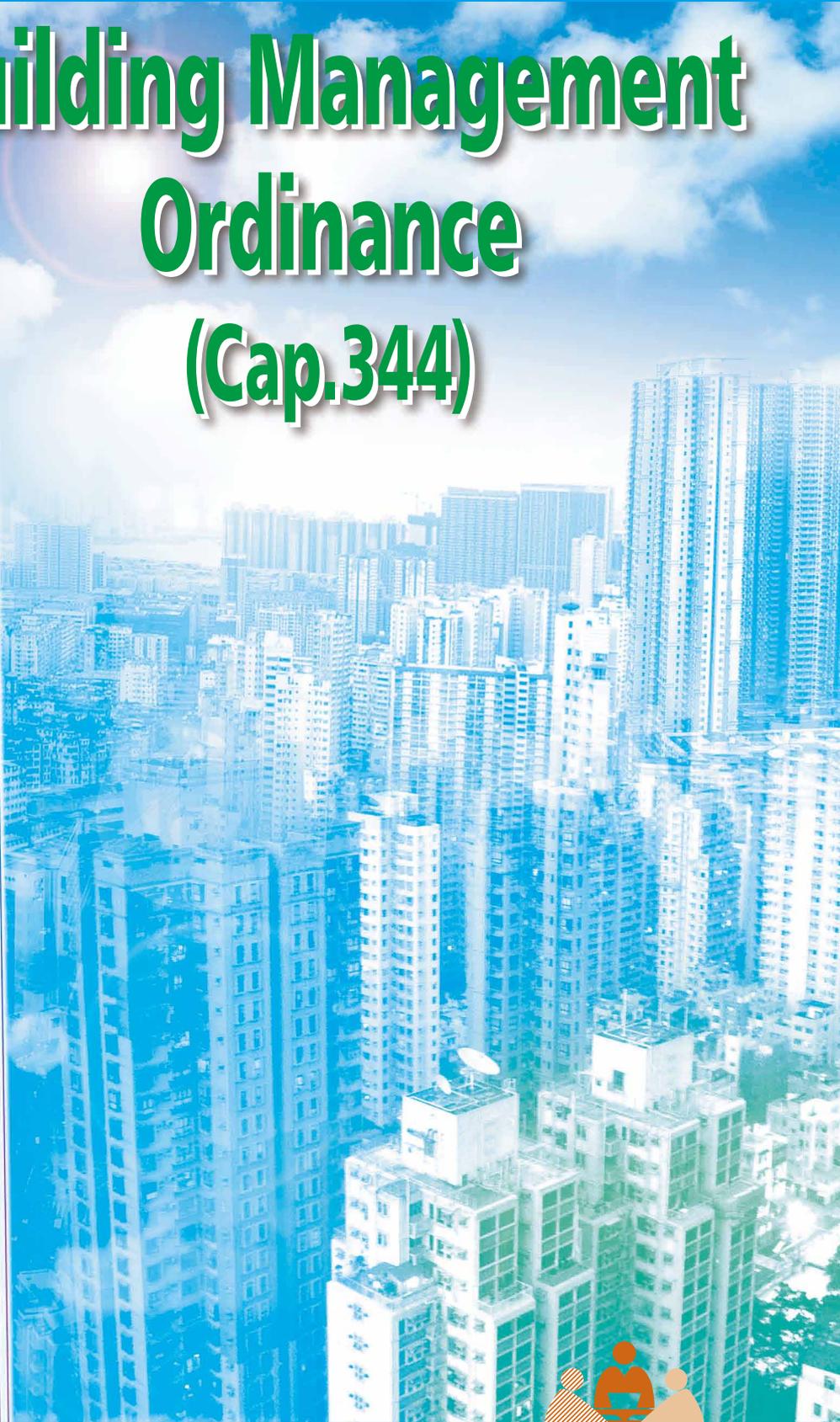
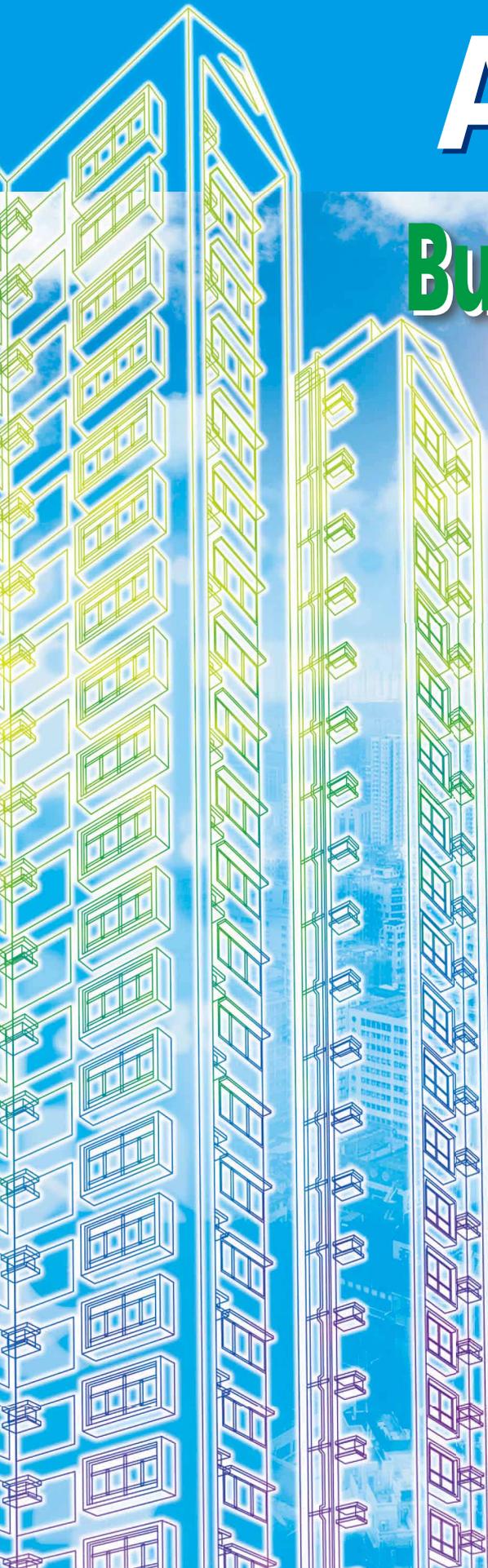


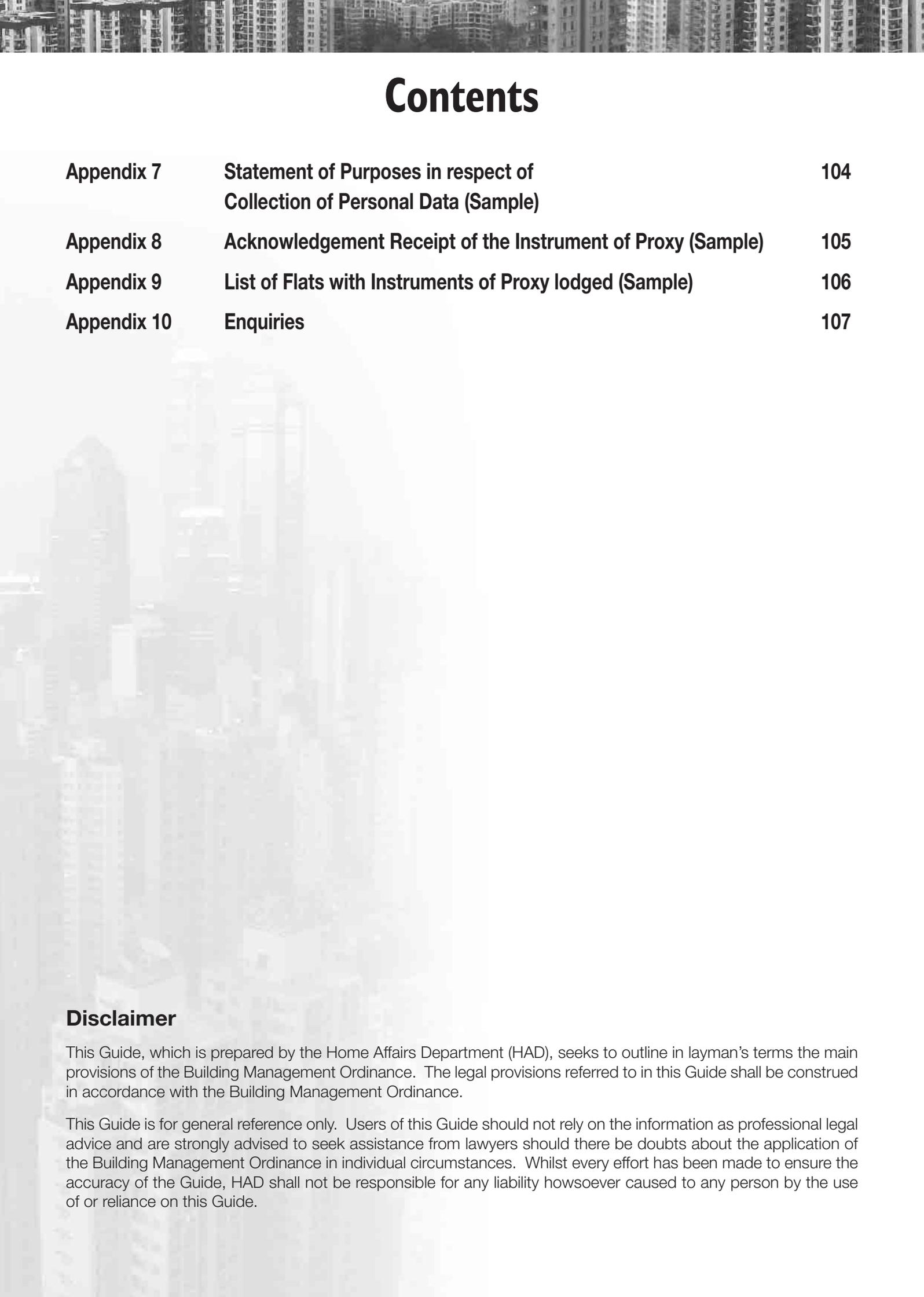
A Guide on

Building Management Ordinance (Cap.344)



Contents

Foreword		I
Chapter 1	Building Management Ordinance	3
Chapter 2	Owners' Corporation	5
Chapter 3	Formation of an Owners' Corporation	9
Chapter 4	Appointment of Members of a Management Committee	16
Chapter 5	Management Committee	25
Chapter 6	Meetings of Management Committee	32
Chapter 7	Filling Vacancies of a Management Committee	36
Chapter 8	General Meetings of Owners' Corporation	46
Chapter 9	Financial Arrangements for Owners' Corporation	56
Chapter 10	Procurement Arrangements for Owners' Corporation	65
Chapter 11	Responsibilities and Rights of Owners	72
Chapter 12	Duties of Manager	80
Chapter 13	Mandatory Building Management	94
Appendix 1	Application for Registration of Owners as a Corporation (provided by the Land Registry – L.R. 164)	97
Appendix 2	Personal Information Collection Statement (Applicable to the forms provided by the Land Registry)	98
Appendix 3	Statement of Eligibility (provided by the Land Registry – L.R. 175)	99
Appendix 4	Notice of Change of Particulars / Notice of Policy of Insurance (provided by the Land Registry – L.R. 124)	100
Appendix 4A	Sample of Notice of Change of Particulars / Notice of Policy of Insurance (provided by the Land Registry – L.R. 124)	101
Appendix 5	Statement of Change of Particulars (provided by the Land Registry – L.R. 176)	102
Appendix 6	Statutory Format of the Instrument of Proxy for Meetings of Corporation	103



Contents

Appendix 7	Statement of Purposes in respect of Collection of Personal Data (Sample)	104
Appendix 8	Acknowledgement Receipt of the Instrument of Proxy (Sample)	105
Appendix 9	List of Flats with Instruments of Proxy lodged (Sample)	106
Appendix 10	Enquiries	107

Disclaimer

This Guide, which is prepared by the Home Affairs Department (HAD), seeks to outline in layman's terms the main provisions of the Building Management Ordinance. The legal provisions referred to in this Guide shall be construed in accordance with the Building Management Ordinance.

This Guide is for general reference only. Users of this Guide 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 Guide, HAD shall not be responsible for any liability howsoever caused to any person by the use of or reliance on this Guide.



Foreword

A comfortable home is desired by all Hong Kong people. Most people want to have their own properties, if they can afford it. However, many owners of private buildings may not be aware that the properties they own include not only the flats they live in. When a person purchases a flat in a building, he purchases also the common parts of the building.

Take the Chan's family as an example. The Chan's is a family of three who lives in a 600 square feet-flat on 38th floor, Block C of Happy Garden. The favourite pastime of Mr. and Mrs. Chan is to use the sauna and fitness facilities of the club of the estate, while their son is a basketball lover who plays the game with his friends every day in the open basketball court of the estate. The water the family consumes every day is provided through the water supply system and water pipes of the estate. Every day when they go out, they use the lift of the building. Furthermore, the estate has external walls, ground foundation, pillars, beams, etc. All these facilities, fixtures and structures form the common parts of the building, which are jointly owned by all owners of the estate.

Hence, even though the Chan's family may not be aware of what the "common parts" of their building are, they are enjoying and using these common facilities every day. "Rights and responsibility go hand in hand" – an owner is thus not only responsible for maintaining his own flat but also has to share with other owners the responsibility of properly managing and maintaining the common parts. All owners of a building may be held jointly and severally liable for the liabilities arising from any accidents caused by the improper management or lack of maintenance of the common parts of the building.

Hong Kong is a small place with a large population. Most people live in private multi-storey buildings or private residential estates with individual blocks of buildings. A residential estate is no different from a small community. The participation of all owners and occupants is required in order to achieve harmony in the community. Owners and occupants should join hands to resolve building management matters, which is a huge step towards the goal of achieving a comfortable home.

The Home Affairs Department (HAD) has always encouraged and assisted owners in forming appropriate residents' organisations, such as owners' corporations (OCs) to facilitate coordination among owners and effective building management. We provide a legal framework through the Building Management Ordinance (Cap. 344) (BMO) for the formation and operation of OCs.



This Guide outlines in layman's terms the main provisions of the BMO for better understanding by the public. The legal provisions referred to in this Guide shall be construed in accordance with the BMO. For any enquiry about the BMO, please see **Appendix 10** for the services provided by HAD.



Chapter I Building Management Ordinance

Objective

The Building Management Ordinance (Cap. 344) (BMO) was enacted to provide a legal framework for the formation of Owners' Corporations (OC) to facilitate effective building management. It also sets out the powers and duties of an OC and its meeting procedures so as to facilitate the day-to-day operation of the OC and compliance by owners.

Commonly used terms in the BMO

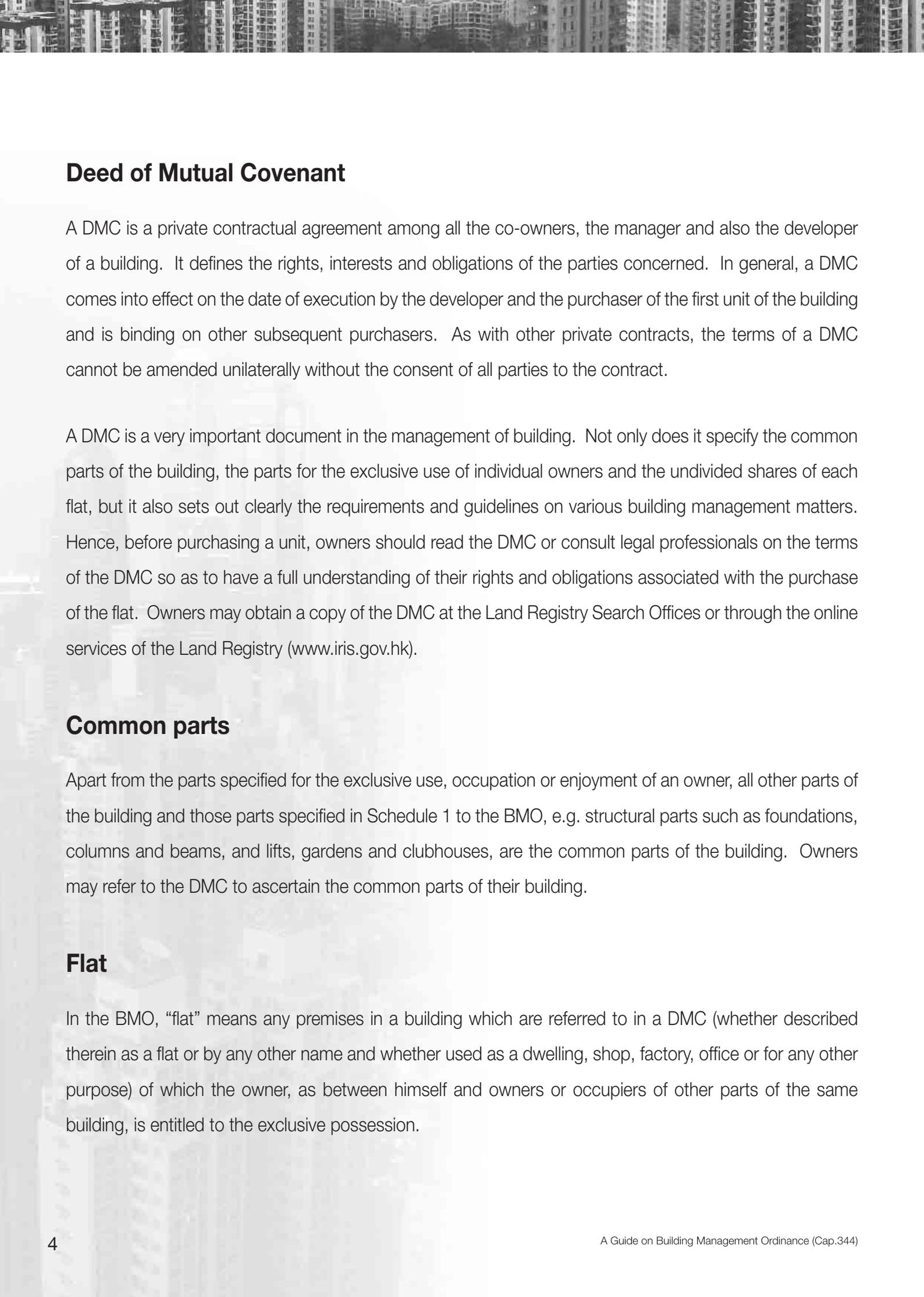
Building

In the BMO, "building" refers to any building which contains any number of flats comprising two or more levels, including basements or underground parking areas. Any land upon which that building is erected is part of the building.

Undivided shares

Ownership in a multi-storey building is generally expressed in terms of undivided shares. When an owner purchases a flat in a multi-storey building, he is not only entitled to the exclusive possession of his flat, but also jointly owns the common parts of the building with other owners of the same building. As the common parts are co-owned by all owners, the shares of the building are undivided.

The undivided shares of each flat are set out clearly in the deed of mutual covenant (DMC) of the building. Under most circumstances, the maintenance and management fees as well as the voting right of owners at a meeting of owners are determined on the basis of the undivided shares owned by him.



Deed of Mutual Covenant

A DMC is a private contractual agreement among all the co-owners, the manager and also the developer of a building. It defines the rights, interests and obligations of the parties concerned. In general, a DMC comes into effect on the date of execution by the developer and the purchaser of the first unit of the building and is binding on other subsequent purchasers. As with other private contracts, the terms of a DMC cannot be amended unilaterally without the consent of all parties to the contract.

A DMC is a very important document in the management of building. Not only does it specify the common parts of the building, the parts for the exclusive use of individual owners and the undivided shares of each flat, but it also sets out clearly the requirements and guidelines on various building management matters. Hence, before purchasing a unit, owners should read the DMC or consult legal professionals on the terms of the DMC so as to have a full understanding of their rights and obligations associated with the purchase of the flat. Owners may obtain a copy of the DMC at the Land Registry Search Offices or through the online services of the Land Registry (www.iris.gov.hk).

Common parts

Apart from the parts specified for the exclusive use, occupation or enjoyment of an owner, all other parts of the building and those parts specified in Schedule 1 to the BMO, e.g. structural parts such as foundations, columns and beams, and lifts, gardens and clubhouses, are the common parts of the building. Owners may refer to the DMC to ascertain the common parts of their building.

Flat

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.

Chapter 2 Owners' Corporation

What is an Owners' Corporation?

An owners' corporation (OC) is a body corporate set up under the BMO. It has the legal status to represent all owners in managing the common parts of the building.

Why do we have to form an OC?

Hong Kong is a small place with a large population. Most people live in private multi-storey buildings or private residential estates with individual blocks of buildings. It is the joint responsibility of owners to manage and maintain the common parts of their building which they co-own.

Managing and maintaining a building is no simple task. It involves a myriad of matters, ranging from minor ones like cleansing and refuse clearing in the common parts of the building to major issues such as appointment of property management company and commission of major maintenance works. All these involve a decision-making process. For large residential estates with hundreds or even thousands of owners, it is difficult, if not impossible, to obtain unanimous consent from all the owners on each and every single building management matter. It is therefore necessary to put in place a mechanism to facilitate collective decision-making of owners on building management matters.

BMO is enacted to provide a mechanism for the incorporation of owners. The OC, being a body corporate, can deal with building management matters on behalf of all the owners. After an OC is formed, the owners may discuss various building management matters at the general meetings of the OC which are properly convened and held in accordance with the BMO. Any collective decision made at the general meetings of the OC shall be binding on all the owners.

Any provision in a DMC that operates to prevent the owners from being registered as a corporation shall be void and of no effect.

Section 34J(1)

Powers and duties of an OC

When an OC has been formed, the rights, powers, privileges and duties of the owners in relation to the common parts of the building shall be exercised and performed by the OC. The liabilities of the owners in relation to the common parts of the building shall also be enforceable against the OC.

Section 16

The OC shall therefore properly manage and maintain the common parts of the building, and do all things reasonably necessary for the enforcement of the obligations contained in the DMC for the control, management and administration of the building. In order to reduce the risks faced by owners in times of accidents, an OC shall procure and keep in force third party risks insurance in relation to the common parts of the building and the property of the corporation.

Section 18(1)

Section 28

The OC may decide whether to engage any paid staff member, property management company or other professional trade or person to assist in carrying out its duties or powers. The OC may also decide on matters related to the common parts of the building, e.g. provision of facilities or renovation, improvement or decoration work.

Section 18(2)

In the performance of its duties and the exercise of its powers, the OC shall be guided by the “*Code of Practice on Building Management and Maintenance*”. The Code of Practice is available at all District Offices and can be downloaded from the HAD Homepage on Building Management (www.buildingmgt.gov.hk).

Section 18(2A)

At a general meeting of the corporation, the OC may pass any resolution with respect to –

Section 14(1)

- the control, management and administration of the common parts of the building;
- the renovation, improvement or decoration of these common parts.

These resolutions shall be binding on the management committee and all the owners.

Management Committee

Building management covers a wide range of matters. It will be difficult to deal with these matters promptly and effectively if each and every single matter has to be decided by a general meeting of the corporation. Hence, a management committee (MC) is appointed to handle the day-to-day business of the OC. Under normal circumstances, the powers and duties conferred or imposed by the BMO shall be exercised and performed on behalf of the OC by the MC.

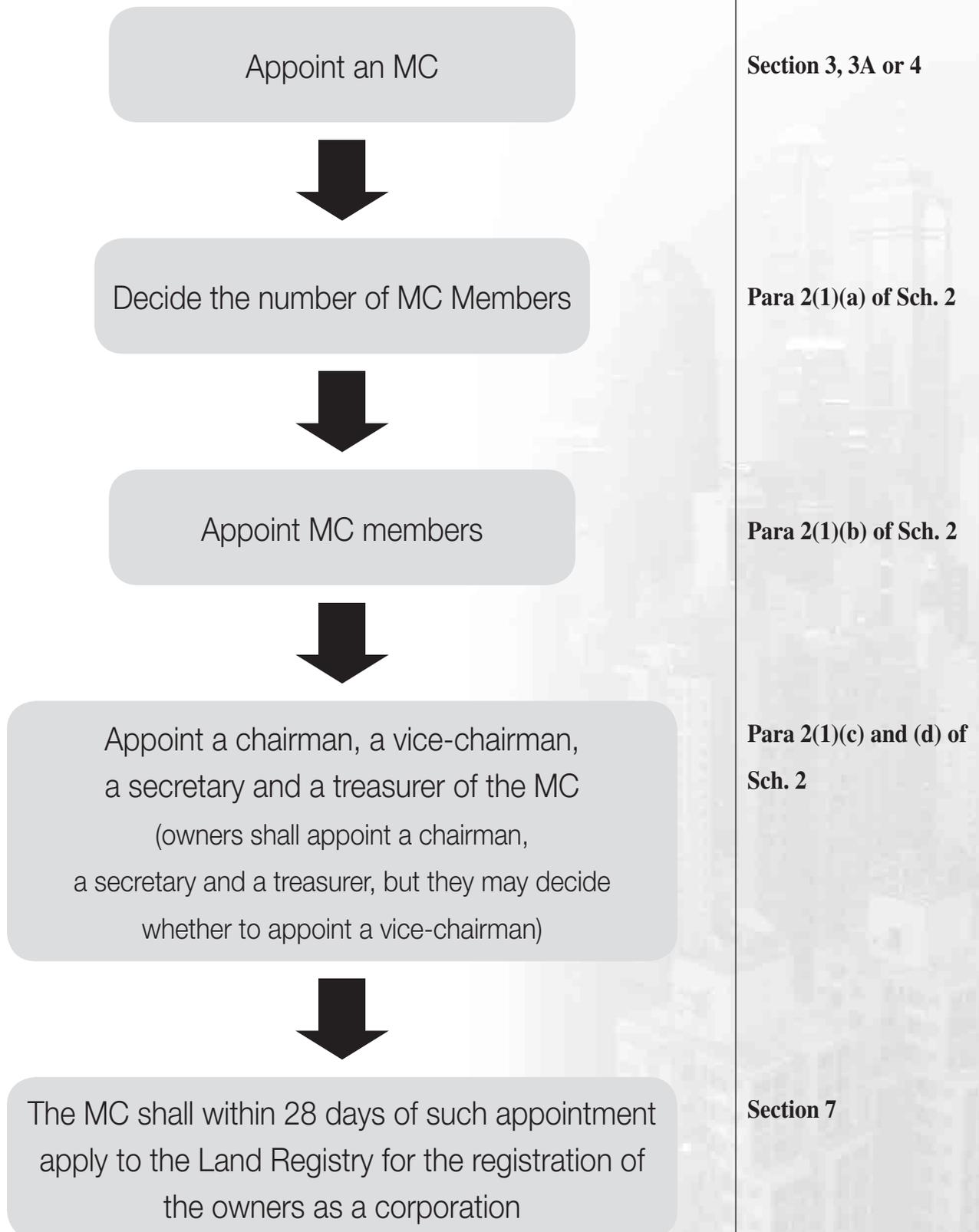
Section 29

All owners of the building are members of the OC. They may appoint any owner whom they think fit to be member of the MC by resolution passed at a general meeting of the OC. MC member has a fiduciary responsibility to all owners and should abide by the principles of openness, transparency, integrity and accountability in performing his duties and conducting the affairs of the OC.



Chapter 3 Formation of an Owners' Corporation

How to form an OC?



Appointment of an MC

Owners may, in accordance with section 3, 3A or 4 of the BMO, convene a meeting of owners to appoint an MC and form an OC.

For the appointment of an MC and formation of an OC, owners should follow the requirements set out in the BMO, instead of the DMC of the building. However, they still have to refer to the DMC to ascertain the owners' votes at a meeting of owners. Unless the DMC otherwise provides, at a meeting of owners convened in accordance with section 3, 3A or 4 of the BMO, an owner shall have one vote in respect of each share he owns.

**Sections 3(9)(a),
3A(3G)(a) and 4(11)(a)**

Section 3

In most circumstances, owners would appoint an MC under section 3 of the BMO. It is also advisable for owners to invoke section 3 of the BMO as this will enlist more support from owners towards the appointment of an MC, which is conducive to the smooth operation of the OC and effective building management thereafter.

According to section 3 of the BMO, a meeting of owners may be convened by –

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

Section 3(1)

A resolution to appoint an MC shall be –

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

A vote may be cast either personally or by proxy

Where owners cannot appoint an MC and form an OC under section 3 of the BMO, the following options may be considered –

Section 3A – Application to the Authority (Secretary for Home Affairs)

The owners of not less than 20% of the shares in aggregate may apply to the Authority for a meeting of owners to be convened for the purposes of appointing an MC.

If the Authority approves the application, he will order that a meeting of owners shall be convened by such owner as he may direct. At the meeting of owners, the owners may appoint an MC by a resolution passed by a majority of the votes of the owners voting either personally or by proxy.

An order of the Authority made under section 3A shall be of no effect if a notice of objection from the owners of not less than 20% of the shares in aggregate is given to the Authority at least 7 days before the date of meeting. In such case, the applicants shall not convene a meeting of owners for the appointment of an MC under the order.

Section 3(2)

Section 3A(1)

Section 3A(3)

Section 3A(4) and (5)

Section 4 – Application to the Lands Tribunal

The Lands Tribunal may, upon application by the owners of not less than 10% of the shares in aggregate or the Authority, order that a meeting of owners be convened by such owner as the Lands Tribunal may direct for the purposes of appointing an MC.

Section 4(1)

At the meeting of owners, the owners may appoint an MC by a resolution passed by a majority of the votes of the owners voting either personally or by proxy.

Section 4(4)

	Convenor	Resolution to appoint an MC
Section 3	(a) DMC manager; (b) person authorized by the DMC; or (c) an owner appointed by the owners of not less than 5% of the shares in aggregate.	(a) passed by a majority of the votes; and (b) supported by the owners of not less than 30% of the shares in aggregate
Section 3A	such owner as the Authority may direct	passed by a majority of the votes
Section 4	such owner as the Lands Tribunal may direct	passed by a majority of the votes

Holding a meeting of owners

For details on the arrangements for a meeting of owners, please refer to “*How to Form an Owners’ Corporation*” published by HAD. The booklet is available at all District Offices and can be downloaded from the HAD Homepage on Building Management (www.buildingmgt.gov.hk).

Formation of an OC

- The newly appointed MC shall, within 28 days of its appointment, apply to the Land Registry for the registration of the owners as a corporation in a specified form [L.R.164] **(Appendix 1)**. **Section 7(1)**
- Upon approval of the application for incorporation and receipt of the fees concerned, the Land Registry shall issue a certificate of registration to the OC. **Section 8(1)**
- The Land Registry shall not issue a certificate of registration to more than one OC for a building in respect of which a DMC is in force. **Section 8(1A)**
- The date of incorporation is the date of issue of the certificate of registration by the Land Registry. With effect from the date of issue of the certificate, the owners for the time being shall be a body corporate with perpetual succession and the new MC shall be deemed to be the first MC of the OC. **Section 8(2)**

After an OC has been formed

- The Land Registry shall maintain a register of OCs and permit any person to inspect the register at any reasonable time. The register contains the following particulars –
 - ◆ the name of the OC;
 - ◆ the name (if any) and address of the building;
 - ◆ the address of the registered office of the OC;
 - ◆ the name and address of the MC chairman, vice-chairman (if any), secretary and treasurer;
 - ◆ the name and address of other MC members.
- An OC shall have a common seal, the affixing of which shall be authenticated by the signature of the MC chairman and secretary.
- An OC shall have a registered office in Hong Kong.

OCs usually set up offices in their own buildings.
- An MC shall display in a prominent place in the building the following documents –
 - ◆ a copy of the certificate of registration of the OC;
 - ◆ a notice of registered office of the OC (if the office is located in the building);
 - ◆ a copy of the notice of registered office of the OC (if the office is not located in the building).

Section 12(1) and (2)

Section 8(3)

Section 8(4)

Section 11(1)

- Where the registered office of an OC is not located in the building, the MC shall display a notice of registered office in a prominent place at the registered office of the OC.

Section 11(1A)

- An OC shall establish and maintain a general fund. It shall open and maintain an interest-bearing account and use that account exclusively in respect of the management of the building. (Please see Chapter 9 for details about the financial arrangements for OC)

Section 20(1) and (3)

- An OC shall procure and keep in force third party risks insurance in relation to the common parts of the building and the property of the corporation.

Section 28

- The MC secretary shall maintain a register containing the name and address of each owner in the building.

Section 38

- ◆ Where any flat is subject to a mortgage, the secretary shall also enter in the register the name and address of the registered mortgagee.
- ◆ The address of an owner shall be the address of the flat which he owns and the address of a registered mortgagee shall be his address appearing in the registered mortgage, unless the owner or registered mortgagee notifies the MC secretary in writing of some other address.
- ◆ The MC secretary shall from time to time amend the register to incorporate any change to the particulars of owners and registered mortgagees.

Chapter 4 Appointment of Members of a Management Committee

At a meeting of owners convened under section 3, 3A or 4, after an MC has been appointed, the owners should vote on the following resolutions as specified in the notice of meeting –

- to resolve on the number of MC members;
- to resolve on the appointment of MC members;
- to resolve on the establishment of the office of the MC vice-chairman;
- to resolve on the appointment of MC chairman, vice-chairman (subject to the passage of a resolution on the establishment of the office), secretary and treasurer.

Number of MC members

At a meeting of owners, the owners shall, by a resolution passed by a majority of votes of the owners, decide the number of MC members.

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

The number of MC members shall be as follows –

Para 1(1) of Sch. 2

No. of flats in a building	No. of members
Not more than 50	Not less than 3
More than 50 but not more than 100	Not less than 7
More than 100	Not less than 9

For the purposes of determining the minimum number of MC members, “flats” does not include any garage, carpark or carport.

Para 1A of Sch. 2

If owners want to change the number of MC members, they may do so by a resolution passed at a general meeting of the corporation.

Para 1(3) of Sch. 2

At a meeting of owners convened under section 3, 3A or 4, the owners shall, by a resolution passed by a majority of votes of the owners, decide the number of MC members. If owners want to change the number of MC members, they may do so by a resolution passed by a majority of votes at a general meeting of the corporation.

How to determine whether a resolution is passed by a majority of votes of the owners? Should abstentions be counted?

In determining whether a resolution is passed by a majority of the votes of owners, the following shall be disregarded –

- X** owners who are not present at the meeting;
- X** owners who are present at the meeting but do not vote;
- X** blank or invalid votes;
- X** abstentions.

It should be noted that a proxy appointed by an owner to attend and vote on behalf of the owner at a meeting shall be treated as being the owner present at the meeting.

Section 2B

Appointment of MC members

Having decided the number of MC members, the owners shall, by resolution, appoint, from amongst the owners, MC members.

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

The “first past the post” voting system shall be used in appointing MC members. Under the system –

Para 2(3) of Sch. 2

- where the number of candidates is not more than the number of MC members, the candidates shall be deemed to be elected uncontested and no votes shall be given.
- where there are more candidates than the number of MC members, votes shall be given. The candidates to be appointed as MC members are those who obtain the greatest number of votes and then the next greatest and so on. For example, if the number of MC members is 9, then the 9 candidates with the greatest number of votes shall be appointed as MC members.
- Before voting, the person who presides at the meeting should remind the owners that they shall not vote for more than the number of MC members. In other words, if the number of MC members is 9, the owners may not vote for more than 9 candidates.
- After the counting is finished, if there is an equal number of votes, the person who presides at the meeting shall determine the result by drawing lots, and the candidate on whom the lot falls is to be appointed as an MC member.

An approved association can be formed by occupiers of the building with the approval of the Authority (i.e. Secretary for Home Affairs). It may, by a resolution passed by a majority of the votes of the members, appoint an occupier as the tenants' representative. The appointed representative shall be deemed to be appointed as an MC member.

**Section 15 and
para 2(2) of Sch. 2**



Quiz

Do you know how the “first past the post” voting system works?

Q: Suppose the number of MC members is 3 and there are 4 candidates and the voting result is as follows. Who shall be appointed as MC members?

Candidate A	130 votes
Candidate B	200 votes
Candidate C	90 votes
Candidate D	160 votes

A: Candidates A, B and D shall be MC members as they obtain the greatest number of votes.

Q: Assuming that the votes obtained by the 4 candidates are as follows. Who shall be appointed as MC members?

Candidate A	130 votes
Candidate B	200 votes
Candidate C	130 votes
Candidate D	160 votes

A: Candidates B and D who obtain the greatest number of votes shall be appointed as MC members. As Candidates A and C have an equal number of votes, the voting result shall be determined by drawing lots. The candidate on whom the lot falls is to be appointed as MC member.

Eligibility for appointment as MC members

All MC members, except the tenants’ representative, shall be owners of the building.

With the exception of the tenants’ representative, a person is not eligible to be appointed as an MC member if he –

Para 4(1) of Sch. 2

- is an undischarged bankrupt;
- has, within the previous 5 years, either obtained a discharge in bankruptcy or entered into a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap. 6) with his creditors, in either case without paying the creditors in full;
- 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.

With the exception of the tenants' representative, every MC member shall, within 21 days after their appointment, make a statement in a specified form [L.R.175] **(Appendix 3)**, to state that he does not fall within the description of the above paragraph, and lodge the signed statement with the MC secretary.

Para 4(3) of Sch. 2

- An MC member who fails to comply with the requirement shall cease to be such member.
- The statement is available at the offices of the Land Registry and District Offices. It can also be downloaded from the following websites –
www.landreg.gov.hk
www.buildingmgt.gov.hk
- The statement shall be signed by an MC member in the presence of a witness who shall also sign the statement to confirm that the signature of the member is genuine. A witness may be any person aged 18 or above such as a family member, a neighbour or another MC member. The MC member may lodge the statement in or outside Hong Kong.

Para 4(4) of Sch. 2

- As the application for registration of owners as an OC shall be accompanied by the statement of each MC member, the MC secretary shall, after receiving the statements from the MC members, cause the statements to be lodged with the Land Registry within the period of 28 days after the appointment of the MC.

If an owner is a body corporate, can it be appointed as an MC member?

Yes. Where a body corporate is appointed as an MC member, that body corporate may appoint any person to act as its representative (“authorized representative”).

Like any other MC members, an authorized representative shall also make a statement and lodge the signed statement with the MC secretary. If the authorized representative fails to do so, he shall cease to be an MC member and the body corporate may appoint another authorized representative in his place.

**Section 7(3) and
para 4(6)(a) of Sch. 2**

Para 11 of Sch. 2

Appointment of MC chairman, vice-chairman (if any), secretary and treasurer

After the appointment of MC members, the owners shall appoint the MC chairman, secretary and treasurer by a resolution passed at the same meeting. It is a must to make appointment to these three offices.

**Para 2(1)(c) and (d) of
Sch. 2**

The owners may, by resolution, appoint a vice-chairman of the MC. Owners may decide whether to establish the office of a vice-chairman.

The MC chairman and vice-chairman (if any) shall be MC members while the secretary and treasurer need not be MC members or owners.

The “first past the post” voting system shall be used in the appointment of the MC chairman, vice-chairman (if any), secretary and treasurer. Under the system –

- where there is only one candidate for each of these offices, the candidate shall be deemed to be elected uncontested and no votes shall be given.
- where there is more than one candidate, votes shall be given and the candidate who obtains the greatest number of votes shall be appointed.
- where there is an equal number of votes, the person who presides at the meeting shall determine the result by drawing lots and the candidate on whom the lot falls is to be appointed.

If the MC secretary or treasurer is not an MC member, he does not become an MC member by virtue of his appointment as secretary or treasurer.

Term of office of MC members

The MC shall convene the first annual general meeting of the OC not later than 15 months after the date of the registration of the OC. The MC shall thereafter convene another annual general meeting between 12 and 15 months after each annual general meeting.

All the members (except the tenants’ representative) and the secretary and treasurer of the first MC shall retire from office at the second annual general meeting. The OC shall appoint the members, chairman, vice-chairman (if any), secretary and treasurer of a new MC at the same annual general meeting.

Para 2(4) of Sch. 2

Para 2(5) of Sch. 2

Para 1(1) of Sch. 3

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

Thereafter at every alternate annual general meeting (i.e. the fourth, sixth, eighth annual general meeting of the OC and so on), all the members (except the tenants' representative) and the secretary and treasurer of the MC shall retire from office. The OC shall appoint the members, chairman, vice-chairman (if any), secretary and treasurer of the new MC at the same annual general meeting.

An MC member who retires from office shall, within 14 days of his retirement, hand over to the MC secretary the following items in his custody in respect of the control, management and administration of the building –

- any books or records of account, papers, documents and other records;
and
- any movable property that belongs to the OC.

If the office of the secretary is vacant, the MC member who retires from office shall hand over the relevant items to the MC chairman.

Appointment of MC members in subsequent annual general meetings

The requirements above which relate to the appointment of the members, chairman, vice-chairman (if any), secretary and treasurer of the first MC are also applicable to the appointment of the same in subsequent alternate annual general meetings. In other words, at every alternate annual general meeting, the owners shall make appointment to the above offices by the “first past the post” voting system.

Para 5A of Sch. 2

Para 5 of Sch. 2



It should be noted that the “first past the post” voting system is only applicable to the following two appointments –

- (a) the appointment of MC members, chairman, vice-chairman (if any), secretary and treasurer at the meeting of owners convened for the purposes of appointing an MC and forming an OC; **and**
- (b) the appointment of MC members, chairman, vice-chairman (if any), secretary and treasurer at the general meeting of the OC.

All other resolutions passed at a general meeting of the OC (except a resolution to change the name of the corporation) shall be by a majority of the votes of the owners.

Para 3(3) of Sch. 3

The above eligibility criteria for MC members are also applicable to members of the new MC.

With the exception of the tenants' representative, every MC member appointed at subsequent alternate annual general meetings shall, within 21 days after the appointment, make a statement in a specified form [L.R.175] **(Appendix 3)** and lodge the signed statement with the MC secretary.

Para 4(3) of Sch. 2

- An MC member who fails to comply with the requirement shall cease to be such member.
- The MC secretary shall, within 28 days after receiving a statement from an MC member, lodge the statement with the Land Registry.

Para 4(4) of Sch. 2

Para 4(6)(b) of Sch. 2

As the register of OCs kept by the Land Registry contains the name and address of the MC chairman, vice-chairman (if any), secretary, treasurer and other members, the MC secretary shall, within 28 days after the appointment of the new MC members, notify the Land Registry of the changes in a specified form [L.R.124] **(Appendix 4)**.

Section 12(3)

Chapter 5 Management Committee

Powers and duties of an MC

Day-to-day business of an OC is mostly handled by an MC. Subject to the BMO, the powers and duties conferred or imposed by the BMO on the OC shall be exercised and performed on behalf of the OC by the MC.

In addition to the above, the BMO has conferred or imposed certain powers and duties on the MC. These include –

- convening the annual general meetings of the OC at specified time;
- organizing meetings of the MC regularly;
- preparing financial statements of the OC, which together with the accountant's report (if auditing is required under the BMO) shall be laid before the OC at the annual general meetings of the OC;
- preparing budgets of the OC, determining the amount to be contributed by the owners to the general fund and the contingency fund, and certifying matters relating to payment of contributions;
- permitting the persons designated under the BMO to inspect –
 - ◆ the books of account;
 - ◆ all bills, invoices, vouchers, receipts and other documents referred to in the books or records of account and other records;
 - ◆ the policy of insurance and any receipt for the premium in respect of that policy;

Section 29

Para 1(1) of Sch. 3

Para 7 of Sch. 2

Section 27(1)

**Sections 21(1) and 26
and Sch. 5**

Section 27(2)

Para 1A of Sch. 6

Section 28

- maintaining the following documents –
 - ◆ all bills, invoices, vouchers, receipts and other documents referred to in the books or records of account and other records; **Section 27(1) and para 1 of Sch. 6**
 - ◆ the tender documents, copies of contracts, accounts and invoices and other documents relating to the procurement of supplies, goods and services; **Section 20A(4)**
 - ◆ the certified minutes of meetings of the MC and general meetings of the OC; **Para 10A of Sch. 2 and para 6A of Sch. 3**
 - ◆ the instruments for the appointment of proxies to attend a general meeting of the OC; **Para 4(6) of Sch. 3**
- displaying the following documents in a prominent place in the building –
 - ◆ a copy of the certificate of registration of the OC and a notice of registered office of the OC; **Section 11(1)**
 - ◆ a notice containing the particulars of the legal proceedings to which the OC is a party. **Section 26A**
 - ◆ a notice of insurance containing the particulars of the policy. **Schedule, Cap.344B**

Powers and duties of the MC chairman, vice-chairman, secretary and treasurer

The BMO also specifies the powers and duties of the MC chairman, vice-chairman, secretary and treasurer.

MC chairman

- convene and preside at meetings of the MC;
- preside at general meetings of the OC;
- convene and hold a general meeting of the OC at the request of not less than 5% of the owners;
- convene a general meeting of the OC for the purposes of filling the vacancies in the MC if the number of vacancies is more than 50% of the number of MC members;
- determine the validity of the instruments for the appointment of proxies to attend a general meeting of the OC;
- If the office of the secretary is vacant,
 - ◆ receive written notice of resignation delivered by MC members;
 - ◆ receive from any outgoing MC member any books or records of account, papers, documents and other records of the OC together with any movable property that belongs to the OC.

Para 8 of Sch. 2

Para 3(1) of Sch. 3

Para 1(2) of Sch. 3

Para 6A of Sch. 2

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

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

Para 5A of Sch. 2

MC vice-chairman (if any)

- in the absence of the MC chairman,
 - ◆ convene and preside at meetings of the MC;
 - ◆ preside at general meetings of the OC.

Para 8 of Sch. 2

Para 3(1) of Sch. 3

MC secretary

- give notice of meetings of the MC and general meetings of the OC and display such notice in a prominent place in the building. **Para 8(2) of Sch. 2 and para 2 of Sch. 3**
- keep minutes of meetings of the MC and general meetings of the OC and display the certified minutes in a prominent place in the building. **Para 10 of Sch. 2 and para 6 of Sch. 3**
- supply copies of certified minutes of meetings of the MC and general meetings of the OC to persons designated under the BMO upon payment of a reasonable copying charge. **Para 10A of Sch. 2 and para 6A of Sch. 3**
- convene and hold a meeting of the MC at the request of 2 MC members. **Para 8(1)(b) of Sch. 2**
- lodge the statement from an MC member with the Land Registry after receiving the completed statement. **Para 4(6) of Sch. 2**
- Where an instrument for the appointment of a proxy for a general meeting of the OC is received, **Para 4(5)(a) of Sch. 3**
 - ◆ acknowledge receipt of the instrument;
 - ◆ display information of the owners' flats with instruments of proxy lodged in a prominent place in the place of the meeting.
- receive written notice of resignation delivered by MC members. **Para 4(2)(d) of Sch. 2**
- receive from any outgoing MC member any books or records of account, papers, documents and other records of the OC together with any movable property belonging to the OC that are in his custody. **Para 5A of Sch. 2**

- give notice to the Land Registry of any change in respect of the particulars (such as the name and address of MC members, name and address of the insurance company) entered in the register.
- maintain a register of owners and update the register from time to time.

**Section 12(3) and
Section 28(6A)**

Section 38

MC treasurer

- prepare a summary of the income and expenditure of the OC and display a copy of the summary in a prominent place in the building.
- supply the following to persons designated under the BMO upon payment of a reasonable copying charge –
 - ◆ copies of the budget of the OC;
 - ◆ copies of the financial statements of the OC;
 - ◆ copies of the accountant's report if the financial statements of the OC are required to be audited by an accountant under the BMO;
 - ◆ copies of the summary of the income and expenditure of the OC;
 - ◆ copies of the policy of insurance and any receipt for the premium in respect of that policy.

Para 2 of Sch. 6

Para 4 of Sch. 5

Para 3 of Sch. 6

Section 28

Protection of MC members

If MC members act in good faith and in a reasonable manner, they shall not be personally liable for –

- any act done or default made by the OC in the exercise of its powers or the performance of its duties; or
- any act done or default made on behalf of the OC in the exercise of its powers or the performance of its duties.

It should be noted that this protection provision shall not in any way affect the liability of the OC for that act or default.

Section 29A(1)

Section 29A(2)



Quiz

Under what circumstances is this protection provision for MC members applicable?

Q: If an MC member has committed a default in the exercise of the powers conferred on him or in the performance of the duties imposed on him by the BMO, can he invoke this protection provision?

For example, if the MC chairman fails to convene a general meeting of the OC pursuant to the BMO after receiving the request of not less than 5% of the owners, can this protection provision be invoked?

A: This protection provision cannot be invoked in this case. It only applies to circumstances where an MC member **exercises or performs the powers and duties on behalf of the OC. To convene a general meeting of the OC at the request of not less than 5% of the owners is a **personal duty** imposed by the BMO on the MC chairman, not the OC. **Under such circumstances, this provision is not applicable.****

Para 1(2) of Sch. 3

Allowances for the MC chairman, vice-chairman, secretary and treasurer

The OC may, by resolution passed at a general meeting of the OC, approve the payment of allowances to the MC chairman, vice-chairman (if any), secretary and treasurer and determine the amount of such allowances, which in aggregate shall not exceed the maximum per month for each person as set out below –

No. of flats in a building	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

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



Chapter 6 Meetings of Management Committee

An MC shall meet at least once in every period of 3 months.

Para 7 of Sch. 2

Convening an MC meeting

- An MC meeting may be convened at any time by the MC chairman or the MC vice-chairman (if any) in the absence of the MC chairman.
- An MC meeting shall be convened by the MC secretary, at the request of any 2 MC members, within 14 days of receiving such request, and held within 21 days of receiving such request.

Para 8(1) of Sch. 2

What is the difference between convening and holding a meeting?

For this purpose, convening a meeting means giving notice of meeting, while holding a meeting means causing it to actually take place.

Notice of meeting

- The MC secretary shall, at least 7 days before the date of the MC meeting –
 - ◆ give notice of the meeting to each MC member and (if the treasurer is not a member of the MC) the MC treasurer; **and**
 - ◆ display the notice of meeting in a prominent place in the building.
- The notice of meeting may be –
 - ◆ delivered personally to the addressee;

Para 8(2) of Sch. 2

Para 8(2A) of Sch. 2

- ◆ sent by post to the addressee at his last known address; or
 - ◆ left at the flat of the addressee or deposited in the letter box for that flat.
- The notice of meeting shall specify –
 - ◆ the date, time and place of the meeting; **and**
 - ◆ the resolutions that are to be proposed at the meeting.

Para 8(2AA) of Sch. 2

Quorum

- 50% of the members of the MC (rounded up to the nearest whole number) or 3 such members, whichever is the greater.

Para 9 of Sch. 2

Presiding over a meeting

- An MC meeting shall be presided over by –
 - ◆ the MC chairman; or
 - ◆ in the absence of the MC chairman, the MC vice-chairman (if any);
 - ◆ in the absence of the MC chairman and vice-chairman (if any), a member appointed as chairman for that MC meeting by the MC.

Para 10(1) of Sch. 2

Voting at a meeting

- All matters raised in an MC meeting may be decided by a resolution passed by a majority of the votes of the MC members present at the meeting.

Para 10(2) of Sch. 2

In determining whether a resolution is passed by a majority of the votes of the MC members, the following shall be disregarded –

- ✗ MC members who are not present at the meeting;
- ✗ MC members who are present at the meeting but do not vote;
- ✗ blank or invalid votes;
- ✗ abstentions.

Section 2B

- Each MC member shall have one vote on each resolution.
- If there is an equality of votes, the person presiding over the meeting shall have, in addition to a deliberative vote, a casting vote.

Para 10(3) of Sch. 2

Meeting procedure

Subject to the BMO, the procedure at MC meetings shall be determined by the MC.

Para 10(5) of Sch. 2

Minutes of meeting

- The minutes of the proceedings at every MC meeting shall be certified by the person presiding over the meeting as containing a true record of the proceedings of the meeting.
- The MC secretary shall display the certified minutes in a prominent place in the building within 28 days from the date of the MC meeting for 7 consecutive days.
- The MC shall keep the certified minutes for such period, being not less than 6 years, as the OC may determine.
- Any of the following persons may request in writing the OC to supply him with copies of any certified minutes –
 - ◆ an owner;
 - ◆ a registered mortgagee;
 - ◆ the tenants' representative; or
 - ◆ any person authorized in writing by an owner or a registered mortgagee.

The MC secretary shall supply such copies to the person concerned upon payment of a reasonable copying charge.

The copying charge shall be determined by the MC. To enhance transparency in its operation, the MC is advised to set the copying charge at a low level.

Para 10(4A) of Sch. 2

Para 10(4B) of Sch. 2

Para 10A(1) of Sch. 2

Para 10A(2) of Sch. 2

Chapter 7 Filling Vacancies of a Management Committee

An MC member's term of office is normally about 2 years.

At the second annual general meeting of an OC and thereafter at every alternate annual general meeting (i.e. the fourth, sixth, eighth annual general meeting of an OC and so on), all members (except the tenants' representative), and the secretary and treasurer of the MC, shall retire from office. The OC shall appoint the members, chairman, vice-chairman (if any), secretary and treasurer of the new MC at the same annual general meeting.

Para 5 of Sch. 2

Ceasing to be an MC member

An MC member, irrespective of his term of office, shall cease to be a member of the MC with immediate effect if he –

Para 4(2) of Sch. 2

- (a) is declared bankrupt;
- (b) enters into a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap. 6) with his creditors without paying the creditors in full;
- (c) is convicted of an offence in Hong Kong or any other place for which he is sentenced to imprisonment, whether suspended or not, for a term exceeding 3 months without the option of a fine;



It should be noted that if there is any change to an MC member's circumstances as mentioned in (a), (b) or (c) above –

- he shall, within 21 days after the change occurs, make a statement in a specified form [L.R.176] (**Appendix 5**) to state the particulars of the change and lodge the signed statement with the MC secretary.
- the MC secretary shall lodge with the Land Registry the statement made by the MC member within 28 days after receiving it.

The statement requirement does not apply to the tenants' representative. Besides, the tenants' representative will not cease to be an MC member even if there is a change to his circumstances as mentioned in (a), (b) or (c) above.

Para 4(5), 4(6)(b) and (7) of Sch. 2

(d) fails to lodge, within 21 days after his appointment as an MC member (except the tenants' representative), with the MC secretary a statement in a specified form [L.R.175] (**Appendix 3**);

Para 4(4) of Sch. 2

(e) becomes incapacitated by physical or mental illness;

Para 4(2) of Sch. 2

(f) absents himself from 3 or more consecutive meetings of the MC without the consent of the MC;

(g) resigns his office, by notice in writing delivered to the MC secretary;

If it is the MC secretary who resigns, or the office of the MC secretary is vacant, the member who resigns his office shall do so by delivering the notice in writing to the MC chairman.

(h) ceases to be an owner, if appointed as an MC member in his capacity as an owner;

(i) ceases to be an occupier of a flat, if deemed to be appointed as an MC member in his capacity as the tenants' representative; or

(j) is removed from office by resolution of the OC.

How can an OC remove from office and replace any MC members?

- An OC may remove from office and replace any MC member (other than a member who is the tenants' representative) by a resolution passed by a majority of the votes of the owners at a general meeting of the OC.
- It should be noted that the OC shall appoint, at the meeting at which such resolution is passed, new members, so that the number of MC members will comply with the minimum requirement stipulated in paragraph 1 of Schedule 2 to the BMO –

No. of flats in a building	No. of members
Not more than 50	Not less than 3
More than 50 but not more than 100	Not less than 7
More than 100	Not less than 9

- If a number of MC members are removed and new members are not appointed in their place such that the number of the remaining MC members falls below the number required under paragraph 1 of Schedule 2, the resolution for their removal shall not have effect.

Section 14(2) and (3)

An MC member who ceases to be such member shall, within 14 days of his ceasing to be a member, hand over to the MC secretary the following items in his custody in respect of the control, management and administration of the building –

- any books or records of account, papers, documents and other records;
and
- any movable property that belongs to the OC.

Para 5A of Sch. 2

In case the office of the MC secretary is vacant, the MC member who ceases to be such member shall hand over the items required to the MC chairman.

Filling a vacancy in an MC

A vacancy will occur in an MC if any of its members ceases to be such member for whatever reasons. With the exception of the vacancy caused by the tenants' representative ceasing to be an MC member, a vacancy in an MC which occurs other than by reason of the expiration of the term of office may be filled by the OC or the MC.

Para 6(1) of Sch. 2

Vacancies to be filled by the OC

- If the vacancy occurs in the office of an MC member, the OC may appoint an owner to fill the vacancy by a resolution passed at a general meeting of the OC.

- If the vacancy occurs in the office of the chairman, vice-chairman (if any), secretary or treasurer of the MC, the OC may, by a resolution passed at a general meeting of the OC, appoint –
 - ◆ a person, from amongst the MC members, to fill the vacancy of the chairman or vice-chairman (if any);

 - ◆ a person to fill the vacancy of the secretary or treasurer.

Para 6(3)(a) of Sch. 2

**Para 6(4)(a) and
6(5)(a) of Sch. 2**

- The vacancy in the office of an MC member shall be filled by an owner whereas that of the chairman and vice-chairman (if any) shall be filled by an MC member.

- The secretary and treasurer need not be MC members or owners. If the secretary and treasurer are not MC members, they shall not become MC members by virtue of their appointment to these two offices.

- Their term of office will be the same as that of the existing MC members. In other words, their term will last till the next annual general meeting of the OC at which all members of the MC retire.

- The “first past the post” voting system shall be used in filling the vacancy occurring in the office of the MC member, chairman, vice-chairman, secretary or treasurer at a general meeting of the OC. That is –

- ◆ where the number of candidates is not more than the number of vacancies, the candidates shall be elected uncontested and no votes shall be given.
- ◆ where the number of candidates is more than the number of vacancies, votes shall be given and candidates who obtain the greatest number of votes shall be appointed.
- ◆ before voting, the person who presides at the meeting should remind the owners that the number of candidates they vote for shall not be more than the number of vacancies.
- ◆ after the counting is finished, if there is an equal number of votes, the person who presides at the meeting shall determine the result by drawing lots, and the candidate on whom the lot falls is to be appointed.

Para 6(6) of Sch. 2

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

Para 6(7) and 6(8) of Sch. 2

Vacancies to be filled by the MC

- If no general meeting of the OC has been convened or no appointment is made to fill the vacancy at a general meeting of the OC, the vacancy may be filled by the MC.
- The MC may make an appointment to fill the vacancy in the office of a member or the chairman, vice-chairman (if any), secretary and treasurer of the MC by a resolution passed by a majority of votes at a meeting of the MC.
- The vacancy in the office of an MC member shall be filled by an owner whereas that of the MC chairman or vice-chairman (if any) by an MC member.
- The MC secretary and treasurer need not be MC members or owners. If the person appointed to fill the vacancy of the MC secretary or treasurer is not an MC member, he does not by virtue of his appointment as the MC secretary or treasurer become an MC member.
- It should be noted that the appointment made by the MC to fill the vacancy only lasts till the next general meeting of the OC.

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

Para 6(6) of Sch. 2

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

What is the difference between filling a vacancy at a general meeting of the OC or by the MC?

	Filling a vacancy at a general meeting of the OC	Filling a vacancy by the MC
Term of office	Till the next annual general meeting of the OC at which the MC members retire	Till the next general meeting of the OC
Voting system	“First past the post” voting system	A resolution passed by a majority of votes

What if the vacancy is caused by the tenants' representative ceasing to be an MC member? Can it be filled by a general meeting of the OC or by the MC?

The vacancy of the tenants' representative cannot be filled by a general meeting of the OC or by the MC. If the vacancy is caused by the tenants' representative ceasing to be an MC member for whatever reason, the approved association referred to in section 15(2) may appoint a new tenants' representative to fill the vacancy by a resolution passed by a majority of votes.

Para 6(1A) of Sch. 2

Filling vacancies under special circumstances

Where the number of vacancies in the offices of MC members is more than 50% of the number of MC members as decided by owners at the general meeting of the OC, the MC cannot meet the quorum requirement for holding an MC meeting and it cannot pass any resolution.

Under such circumstances, the vacancies can be filled in the following ways –

Para 6A(1) of Sch. 2

- the MC chairman may convene a general meeting of the OC for the purpose of filling the vacancies in the MC; or
- where the office of the MC chairman is vacant, the remaining members of the MC may appoint a person from amongst themselves to convene a general meeting of the OC for the purpose of filling the vacancies.

At a general meeting of the OC so convened, the owners may, by resolution, fill the vacancies in the offices of the MC members, chairman, vice-chairman (if any), secretary or treasurer. The “first past the post” voting system shall be used in making such appointment.

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

It should be noted that such a general meeting of the OC may only be convened for the sole purpose of filling the vacancies in the MC. At the general meeting, resolutions that are not related to filling the vacancies cannot be passed.

Para 6A(1) of Sch. 2

At a general meeting of the OC so convened –

- where the office of MC secretary is vacant, the MC chairman shall be responsible for the duties of the secretary, e.g. giving notices of meetings and receiving instruments of proxy;
- where the office of MC chairman is vacant, the convenor appointed by the remaining members of the MC shall be responsible for the duties of the chairman, e.g. presiding over a meeting and deciding whether an instrument of proxy is valid;
- where both the offices of the MC chairman and secretary are vacant, the convenor appointed by the remaining members of the MC shall be responsible for the duties of both the chairman and secretary.

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

Where the number of vacancies in the offices of MC members is more than 50% of the number of MC members as decided by the owners at the general meeting of the OC, can the vacancies be filled by the MC or OC at a general meeting, as in normal circumstances, in accordance with paragraph 6 of Schedule 2 to the BMO?

Where the number of vacancies in the offices of the MC members is more than 50% of the number of MC members –

- the vacancies cannot be filled by the MC. The quorum at a meeting of the MC is 50% of the members of the MC or 3 such members, whichever is the greater. If the number of vacancies in the offices of MC members is more than 50% of the number of MC members, the MC cannot meet the quorum requirement for holding an MC meeting and it cannot pass any resolution.
- where the MC chairman is still in office, not less than 5% of the owners may request the chairman to convene a general meeting of the OC under paragraph 1(2) of Schedule 3 to the BMO to fill the vacancies in the MC. The following conditions must be satisfied if vacancies are filled in such way –
 - ◆ the MC chairman is still in office; **and**
 - ◆ not less than 5% of the owners request a general meeting to be convened for filling the vacancies.

The vacancies cannot be filled in such a way if any one of the conditions is not met. Under the circumstances, vacancies can be filled in accordance with paragraph 6A of Schedule 2 to the BMO mentioned above.

Follow-up work after filling vacancies of MC

Whether the vacancy is filled by the OC at a general meeting or by the MC, or is filled under special circumstances, the MC member so appointed shall make a statement in a specified form [L.R.175] (**Appendix 3**) to state that he does not fall within the following descriptions –

Para 4(3) of Sch. 2

- an undischarged bankrupt;
- one who 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;
- one who 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 fine.

The MC member who has filled the vacancy shall, within 21 days after the appointment, make a statement and lodge it with the MC secretary.

- The MC member shall cease to be such member if he fails to comply with the above requirement.
- The MC secretary shall lodge the statement with the Land Registry within 28 days after receiving the statement.

As the register of OCs kept at the Land Registry contains the name and address of the MC chairman, vice-chairman (if any), secretary, treasurer and other members, the MC secretary shall, within 28 days after the vacancy is filled, notify the Land Registry of the changes in a specified form [L.R.124] **(Appendix 4)**.

Para 4(4) of Sch. 2

Para 4(6)(b) of Sch. 2

Section 12(3)

Chapter 8 General Meetings of Owners' Corporation

Convening a general meeting of the OC

- Annual general meeting –
 - ◆ the MC shall convene the first annual general meeting of the OC not later than 15 months after the date of the registration of the OC;
 - ◆ thereafter, the MC shall convene an annual general meeting within 12 to 15 months after the date of the previous annual general meeting.
- The MC shall convene a general meeting of the OC at any time for such purposes as it thinks fit.
- The MC chairman shall convene a general meeting of the OC 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.
 - ◆ 5% of the owners should be counted in terms of the number of owners, without regard to the shares owned by the owners.

Para 1(1) of Sch. 3

Para 1(2) of Sch. 3

Section 5B and Sch. 11

What is the difference between convening and holding a meeting ?

In this case, convening a meeting means giving notice of the meeting, whereas holding a meeting means causing it to actually take place.

- Where the number of vacancies occurring in the offices of MC members is more than 50% of the number of MC members, the MC chairman (if the office of the MC chairman is vacant, the person appointed from amongst the remaining MC members) may convene a general meeting of the OC and at such general meeting only the resolutions with regard to filling the vacancies shall be passed.

Para 6A of Sch. 2

Notice of meeting

The 14-day notification period includes the day of issue of the notice of meeting, but excludes the day of the meeting. Public holidays, Saturdays and Sundays are included. Despite the above, it is always advisable to allow a few more days in giving the notice of meeting.

- The MC secretary shall, at least 14 days before the date of the general meeting of the OC,
 - ◆ give notice of the meeting to each owner and the tenants' representative (if any); **and**
 - ◆ display the notice of meeting in a prominent place in the building.
- The notice of meeting given by the MC secretary may be –
 - ◆ delivered personally to the addressee;
 - ◆ sent by post to the addressee at his last known address; or
 - ◆ left at the flat of the addressee or deposited in the letter box for that flat.
- The notice of meeting shall specify –
 - ◆ the date, time and place of the meeting; **and**
 - ◆ the resolutions that are to be proposed at the meeting or other matters that are to be discussed at the meeting.

Para 2(1) of Sch. 3

Para 2(2) of Sch. 3

Para 2(1A) of Sch. 3

Para 2(1AA) of Sch. 3



It should be noted that no resolution passed at any general meeting of the OC shall have effect unless the same was set forth in the notice of meeting or is ancillary or incidental to a resolution or other matter so set forth.

Para 3(7) of Sch. 3

Person presiding over a meeting

- A general meeting of the OC shall be presided over by –
 - ◆ the MC chairman; or
 - ◆ in the absence of the MC chairman, the MC vice-chairman (if any);
 - ◆ in the absence of the MC chairman and vice-chairman (if any), a person appointed by the owners present at the meeting from amongst themselves.

Para 3(1) of Sch. 3

Quorum

- normally 10% of the owners;
- 20% of the owners, in the case of dissolving the MC and appointing an administrator under section 30 of the BMO.

Para 5(1) of Sch. 3

How to count the quorum?

The quorum should be counted in terms of the number of owners, without regard to the shares owned by the owners. For instance, if the total number of owners is 100, then normally the quorum of a general meeting of the OC is 10.

Section 5B and Sch. 11

How to count the number of owners?

Form	Illustration	To be counted as
Multiple ownership of 1 flat	1 flat with 3 co-owners	1 owner
1 owner owning a number of flats	1 owner owning 35 flats	1 owner
Person holding proxy	1 person holding a proxy from 1 owner	1 owner
	1 owner holding a 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

Sch. 11

Appointment of proxy

- At a general meeting of the OC, an owner may cast a vote personally or by proxy. A proxy appointed by an owner shall, for the purposes of the meeting, be treated as being the owner present at the meeting.
- The instrument appointing a proxy shall be in the statutory form set out in Form 2 in Schedule 1A to the BMO (**Appendix 6**).

Para 4(1) and 5(2) of Sch. 3

Para 4(2) of Sch. 3

Many OCs will prepare proxy forms for use by owners –

- The MC must ensure that the proxy form it prepared is in the statutory form set out in Form 2 in Schedule 1A to the BMO.
- The proxy form may be attached to the notice of meeting or be available at the management office for use by owners.
- The MC is advised to attach to the proxy form a statement of purposes (a sample is at **Appendix 7**), stating the purposes of collecting personal data of owners.

- The statutory form of the instrument of proxy can be downloaded from HAD's Homepage on Building Management (www.buildingmgt.gov.hk).
- The instrument of proxy shall be lodged with the MC secretary at least 48 hours before the time for the holding of the meeting.
- Upon receipt of the instrument of proxy, the MC secretary shall –
 - ◆ issue a receipt (a sample is at **Appendix 8**) to all the owners who have lodged the instruments of proxy to acknowledge receipt of the instrument before the time for the holding of the meeting. The receipt may be left at the flat of the owner or deposited in the letter box for that flat.
 - ◆ prepare a list (a sample is at **Appendix 9**) setting out the information of all the flats with instruments of proxy lodged. The list shall be displayed in a prominent place at the place of the meeting before the time for the holding of the meeting and shall remain so displayed until the conclusion of the meeting.
- The MC chairman (or if he is absent, the person who presides at the meeting) shall determine the validity of the instrument of proxy received in accordance with the requirements under the BMO.

Para 4(3) of Sch. 3

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

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

What are the requirements for an instrument of proxy to be valid?

- ✓ The instrument shall be in the form set out in Form 2 in Schedule 1A;
- ✓ It shall be signed by the owner, or if the owner is a body corporate (e.g. a company or a society etc.), shall be impressed with the seal or chop of the body corporate and signed by a person authorized by the body corporate for the purposes of the general meeting; **and**
- ✓ It shall be lodged with the secretary of the management committee at least 48 hours before the time for the holding of the meeting.

Para 4(4) of Sch. 3

If the MC chairman has determined that certain instruments of proxy are invalid, is the MC secretary still required to issue acknowledgement receipts for these instruments and set out the information of such flats on the list displayed?

The MC secretary shall issue acknowledgement receipts for **all** instruments of proxy received and display a list setting out the information of the owners' flats, irrespective of the validity of the instruments.

Nevertheless, if the MC chairman has decided that certain instruments are invalid, he may contact the owners concerned and explain the matter to them. The owners may consider whether to attend the general meeting of the OC in person. In addition, the MC secretary may put a mark on the list against the flats of the owners concerned for ease of identification.

- The MC shall keep all instruments of proxy that have been lodged with the MC secretary for a period of at least 12 months after the conclusion of the meeting.

Para 4(6) of Sch. 3

Voting at the meeting

- With the two exceptions listed below, all matters arising at a meeting of the OC shall be decided by a majority of the votes of the owners voting either personally or by proxy.
- The two exceptions are –
 - ◆ appointment of MC members, chairman, vice-chairman (if any), secretary and treasurer at a general meeting of the OC, which shall be made by using the “first past the post” voting system;
 - ◆ change of name of the OC which shall be decided by a resolution passed by not less than 75% of the votes of the owners at a general meeting of the OC.

Para 3(3) of Sch. 3

Section 10(1)(b)

How to determine whether a resolution is passed by a majority of votes? Will abstentions be counted?

In determining whether a resolution is passed by a majority of the votes of owners, the following shall be disregarded –

- ✗ owners who are not present at the meeting;
- ✗ owners who are present at the meeting but do not vote;
- ✗ blank or invalid votes;
- ✗ abstentions.

It should be noted that a proxy appointed by an owner to attend and vote on behalf of the owner at a meeting of the OC shall be treated as being the owner present at the meeting.

Section 2B

- An owner shall, unless the DMC provides otherwise, have one vote in respect of each share he owns.
 - ◆ If a registered mortgagee is in possession of an owner's flat, such mortgagee shall, to the exclusion of the owner, be entitled to exercise the voting rights of such owner.

- If two or more persons are the co-owners of a share,
 - ◆ the vote in respect of the share may be cast –
 - (a) by a proxy jointly appointed by the co-owners;
 - (b) by a person appointed by the co-owners from amongst themselves; or
 - (c) if no appointment is made under (a) or (b), either by one of the co-owners personally or by a proxy appointed by one of the co-owners.
 - ◆ Where more than one of the co-owners seeks to cast a vote in respect of the share, only the vote that is cast, whether personally or by proxy, 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.

- With the exception of the appointment of MC members, chairman, vice-chairman (if any), secretary and treasurer, if there is an equal number of votes, the person presiding over the meeting shall have, in addition to a deliberative vote, a casting vote.

Para 3(5)(a) and 3(6) of Sch. 3

Para 3(5)(b) and 3(5)(c) of Sch. 3

Para 3(4) of Sch. 3

The MC should put clearly on record the voting result of each resolution. To facilitate vote counting, an “Easy Count” vote-counting computer programme can be downloaded from the HAD Homepage on Building Management (www.buildingmgt.gov.hk).

Meeting procedure

The procedure at a general meeting of the OC shall be determined by the OC.

Para 7 of Sch. 3

Adjourned meetings

- If a general meeting of the OC is adjourned, the above requirements with regard to the giving of notice of the meeting, the person who presides at the meeting, the quorum of the meeting, the appointment of proxy and the casting of votes shall also apply to the adjourned meeting.
- A valid instrument appointing a proxy for the original meeting shall remain valid for the adjourned meeting, unless –
 - ◆ the owner has crossed out the words “and at any adjournment thereof” in the instrument;
 - ◆ the instrument is revoked (e.g. the owner will attend the adjourned meeting in person or has requested the MC before the adjourned meeting to revoke the instrument of proxy); or
 - ◆ the instrument is replaced by a new instrument.

Para 5A of Sch. 3



It should be noted that an adjourned meeting is a continuation of the original meeting. Thus, the owners can only pass resolutions with regard to items that have not been resolved at the original meeting. Should the owners want to pass resolutions on items not set out in the notice of the meeting of the original meeting, they should convene a new general meeting of the OC.

Minutes of meeting

- The minutes of every general meeting of the OC shall be certified by the person presiding over the meeting as containing a true record of the proceedings of the general meeting.
- The MC secretary shall display the certified minutes in a prominent place in the building within 28 days of the date of the general meeting for 7 consecutive days.
- The certified minutes shall be kept by the MC for such period, being not less than 6 years, as the OC may determine.
- The following persons may request in writing the OC to supply him with copies of any certified minutes –
 - ◆ an owner;
 - ◆ a registered mortgagee;
 - ◆ the tenants' representative; or
 - ◆ any person duly authorized in writing by the owner or registered mortgagee.

The MC secretary shall supply such copies to the person making the request, upon receipt of a reasonable copying charge.

The copying charge shall be determined by the MC. To facilitate owners' access to information on matters discussed at a general meeting of the OC, the MC is advised to set the copying charge at a low level.

Para 6(1) and (2) of Sch. 3

Para 6(3) of Sch. 3

Para 6A(1) of Sch. 3

Para 6A(2) of Sch. 3

Chapter 9 Financial Arrangements for Owners' Corporation

Financial management is an integral part of building management. The BMO provides for the financial arrangements to be observed by OCs to ensure effective financial management and a sound financial position of the building.

Apart from reading this chapter, owners may also refer to “*Building Financial Management Toolkit*”, which is jointly published by HAD, the Independent Commission Against Corruption (ICAC), the Hong Kong Housing Society, the Hong Kong Institute of Certified Public Accountants and the Hong Kong Association of Property Management Companies. The publication provides practical guidance to OCs on financial management, as well as sample documents for preparation of budgets, income and expenditure accounts, etc. The publication can be downloaded from HAD’s Building Management website (www.buildingmgt.gov.hk).

Opening a bank account

- An OC shall open and maintain an interest-bearing bank account in the name of the OC for keeping funds and meeting payments in relation to building management. The account shall only be used exclusively in respect of the management of the building.
- An OC shall, apart from retaining a reasonable amount to cover expenditure of a minor nature, without delay pay all money received in respect of the management of the building into the interest-bearing account.
 - ◆ The MC shall decide by a resolution the amount to be retained to cover expenditure of a minor nature;

Section 20(3) and (7)

Section 20(4), (5) and (6)

- ◆ The MC may also decide by a resolution any other conditions or arrangements for dealing with the amount of money, for example, whether the amount is to be held in the form of cash or paid into the current account of the OC.

Establishment of funds

- The funds to be established by an OC include –
 - ◆ a general fund;
 - ◆ a contingency fund.
- An OC shall establish and maintain a general fund –
 - ◆ to defray the cost of the exercise of its powers and the performance of its duties under the BMO or the DMC, such as the cost of employing caretakers and cleaners; **and**
 - ◆ to pay Government rent, premiums, taxes or other outgoings, including any outgoings in relation to any maintenance or repair works, which are payable in respect of the building as a whole.
- An OC may establish and maintain a contingency fund –
 - ◆ to provide for any expenditure of an unexpected or urgent nature; and
 - ◆ to meet any payments when the general fund is insufficient to meet them.

Section 20(1)

Section 20(2)

Budget of an OC

- An MC shall prepare an annual budget for the OC showing the estimates of all expenditure items, irrespective of whether the expenditure will be paid by the general fund or the contingency fund.

Sch. 5

In general, the annual budget of an OC mainly includes the following items –

- ✓ salary, long service payment, mandatory provident fund and employees' insurance for the staff for the management of the building;
- ✓ expenses for repair and maintenance of the common areas and facilities;
- ✓ expenses for cleansing services and cleansing materials;
- ✓ costs of engaging professional services from lawyers and accountants, etc;
- ✓ utility charges such as water, electricity and telephone charges;
- ✓ fire insurance and third party risks insurance;
- ✓ Government rent, rates, stationery and miscellaneous expenses.

When preparing a budget and an estimate of expenditure for the coming year, the MC should take into account the expenditure of the preceding year, the proposed items to be added and deleted in the coming year, market prices and cost adjustments in response to anticipated inflation, etc.

- A revised budget may be prepared if the MC is of the opinion that any sum set out in the budget is insufficient to meet the expenditure.
- Any of the following persons may request in writing the OC to supply him with copies of the budget or revised budget of the OC –
 - ◆ an owner;
 - ◆ a registered mortgagee;

- ◆ the tenants' representative; or
- ◆ any person duly authorized in writing by an owner or registered mortgagee.

The treasurer of the MC shall, on the payment of a reasonable copying charge, supply such copies to that person.

The copying charge shall be determined by the MC. To enhance the transparency of the MC's financial management, the MC is advised to set the copying charge at a low level.

Amount required to be contributed by owners

- The MC shall determine the amount to be contributed by the owners as a whole to the general fund and/or contingency fund based upon the OC's annual budget.
- If the subsequent amount determined by the MC increases by over 50% of the preceding amount, that subsequent amount shall be approved by the OC by a resolution passed at a general meeting of the OC.

**Section 21(1) and (4)
and para 1 of Sch. 5**

Section 21(1A)

If the OC's general and contingency funds are insufficient to meet the costs of non-statutory maintenance works for the building, and the MC has not included the maintenance costs when preparing the budget and when determining the amount to be contributed by the owners as a whole, can the MC subsequently increase the amount to be contributed by the owners as a whole?

No. Having determined the amount to be contributed by the owners as a whole based on the budget, the MC shall not increase the amount. Any proposed increase in the amount shall be approved by the OC by a resolution passed at a general meeting of the OC.

Section 21(2)

- If the OC receives –
 - ◆ an order of the Lands Tribunal; or
 - ◆ any notice, order or other document served upon the OC in relation to the common parts by the Government or a public body under any Ordinance,

and the general fund and/or contingency fund is insufficient to meet any payment due by the OC in respect of the cost of complying with the said order, then the MC may increase the amount required to be contributed by the owners without approval from a general meeting of the OC.

- Having determined the amount to be contributed by the owners as a whole, the MC shall, in accordance with the DMC, determine the amount to be contributed by individual owner.

- If the DMC does not provide for the fixing of contributions, the MC shall, in accordance with the respective shares of the owners, determine the amount to be contributed by an owner.

- In addition, the MC shall determine at which time and in what manner the contribution is payable.

Section 21(3)

Section 22(1)

Section 22(2)

Section 22(1)

Recovery of contributions from owners by the OC

- The amount to be contributed by an owner shall be a debt due from him to the OC at the time when it is payable.

Section 22(3)

The owner shall, at such time and in such manner as the MC may determine, pay the amount on time.

- If an owner does not settle the amount payable, the OC may try to contact the owner to enquire about the case and urge the owner to pay the amount on time. The OC may also by notice in writing remind the owner to pay the outstanding amount.
- If the owner still refuses to pay the amount, the OC may through its legal representative apply to the District Court for an order demanding the outstanding amount from the owner for claims not exceeding \$1 million. For claims not exceeding \$50,000, the OC may recover the outstanding amount through the Small Claims Tribunal without the need to appoint a legal representative.
- In addition, the OC may also adopt the following courses of action to recover the outstanding amount –
 - ◆ If a DMC provides that if an owner fails to pay any sum which is payable under the DMC, a person may sell that owner's interest in the land or register a charge against such interest in the Land Registry, the OC may exercise such power in the same manner as if it were the person referred to in the DMC.
 - ◆ If any amount payable by an owner whose flat is rented out remains unpaid for a period of 1 month after it has become due, the OC may by notice in writing demand such amount from the occupier of the flat, who shall be liable to pay the same to the OC and shall pay the rent for the flat concerned to the OC instead of the owner of the flat.

Section 19

Section 23

Accounts of the OC

- The MC shall prepare, within 15 months after the date of the registration of the OC and thereafter every 12 months, financial statements which shall be laid before the OC at the annual general meeting of the OC.

Section 27(1)

For this requirement, “flats” does not include any garage, carpark or carport.

Section 27(1B)

- In respect of a building which contains more than 50 flats, the financial statements shall be audited by an accountant retained by the OC by a resolution passed at a general meeting. The audited financial statements, together with the accountant’s report, shall be laid before the OC at the annual general meeting of the OC.

Section 27(1) and (1A)

- Financial statements

- ◆ shall be signed by –

- ✓ the MC chairman; **and**
- ✓ the MC secretary or treasurer;

Section 27(1)(a)

- ◆ and shall include –

- ✓ an income and expenditure account; **and**
- ✓ a balance sheet,

Section 27(1AA)

both of which shall give a true and fair view of the financial position of the OC.

- For each period of 3 months (or such shorter period as the MC may select), the treasurer shall prepare a summary of the income and expenditure of the OC in respect of that period, and display a copy of the summary in a prominent place in the building for 7 consecutive days within 1 month after that period.

Para 2 of Sch. 6

Inspection of accounts

- The MC shall maintain proper books or records of account and other financial records. It shall permit the following persons to inspect the books of account at any reasonable time –
 - ◆ an owner
 - ◆ a registered mortgagee;
 - ◆ the tenants' representative; or
 - ◆ any person authorized in writing by an owner or registered mortgagee.
- The persons listed above may request in writing the OC to supply them with copies of –
 - ◆ the financial statements;
 - ◆ the accountant's report (if the financial statements are required to be audited by an accountant under the BMO); or
 - ◆ a summary of the income and expenditure.

The treasurer of the MC shall supply such copies to that person on the payment of a reasonable copying charge.

The copying charge shall be determined by the MC. In order to enhance the transparency of the accounts of the OC, the MC is advised to set the copying charge at a low level.

- All bills, invoices, vouchers, receipts and other documents referred to in the books or records of account and other records shall be kept by the MC for not less than 6 years.

Section 27(1) and (2)

Para 3 of Sch. 6

Para 1 of Sch. 6

- If an owner wants to inspect the bills, invoices, vouchers, receipts or other documents referred to in the books or records of account and other records, he may adopt the following courses of action –
 - ◆ not less than 5% of the owners may request the MC to permit them or any person authorized by them to inspect the documents concerned; or
 - ◆ an owner may apply to the court for an order authorizing him or any other person named in the application to inspect the documents concerned. The court may make an order if it is satisfied that the application is made in good faith and is for a proper purpose.

On receipt of the request of not less than 5% of the owners or an order made by the court, the MC shall permit the relevant persons to inspect the documents concerned at any reasonable time.

5% of the owners means 5% of the total number of owners, without regard to the shares owned by such owners.



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

Chapter 10 Procurement Arrangements for Owners' Corporation

From time to time, an OC has to procure the supplies, goods and services required for building management and maintenance works. For example, it may engage the services of a management company or a cleansing company, appoint an engineering company to carry out maintenance works, and purchase maintenance materials, etc.

An OC shall make a procurement in accordance with the relevant provisions of the BMO.

Procurement requirements

- Any supplies, goods or services the value of which exceeds or is likely to exceed the sum of **\$200,000** shall be procured by invitation to tender by the OC.
- For supplies, goods or services the value of which exceeds or is likely to exceed **20% of the annual budget of the OC** –
 - ◆ such goods or services shall be procured by invitation to tender by the OC; **and**
 - ◆ whether a tender is accepted or not shall be decided by a resolution passed by a majority of votes at a general meeting of the OC.

Section 20A(2)(a)

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



It should be noted that if the value of a procurement exceeds or is likely to exceed 20% of the annual budget of the OC, the MC shall submit **all** the tenders received to a general meeting of the OC. Whether a tender is accepted or not shall be decided by a resolution passed by a majority of votes at the general meeting of the OC.

After assessing the tenders, the MC may shortlist and recommend a few to the owners. However, the MC cannot reject any tenders received without the approval of a general meeting of the OC.

Value of the supplies, goods or services	Shall be procured by invitation to tender	Whether a tender is accepted or not shall be decided at a general meeting of the OC
> \$200,000	✓	–
> 20% of the annual budget of the OC	✓	✓



Quiz

When does the OC have to invite tenders and/or select a tender by a resolution passed at a general meeting of the OC?

Q: Suppose that the OC has to carry out maintenance works and the cost of hiring an engineering company is \$1,200,000, representing about 40% of the OC's annual budget. Under such circumstances, does the OC have to invite tenders and hold a general meeting to select a tender?

A: Since the value of procurement exceeds 20% of the OC's annual budget, the OC shall, in accordance with the BMO, invite tenders and select a tender by a resolution passed by a majority of votes of the owners at a general meeting of the OC.

Q: Suppose that the OC has to procure cleansing services and the cost of such services is \$300,000, representing about 10% of the OC's annual budget. Under such circumstances, does the OC have to invite tenders and hold a general meeting to select a tender?

A : Since the value of procurement exceeds \$200,000, the OC is required to invite tenders. However, as the value of such services does not exceed 20% of the OC's annual budget, the OC is not required to select a tender by a resolution passed at a general meeting of the OC. In that case, the MC may decide whether to accept the tender(s) received.

Q : Suppose that the OC has to procure cleansing materials and the cost of such materials is \$50,000, representing about 5% of the OC's annual budget. Under such circumstances, does the OC have to invite tenders and hold a general meeting to select a tender?

A : Since the value of procurement does not exceed \$200,000 nor 20% of the OC's annual budget, the OC is not required under the BMO to invite tenders or hold a general meeting to select a tender. Having said that, by inviting tenders, owners can make a comparison and obtain the latest market information. Therefore, the OC may consider inviting tenders even though it is not a requirement under the BMO.

Code of Practice

- In making procurement and conducting tendering exercise, the OC shall ensure that the procurement details and tendering procedures comply with the standards and guidelines specified in the “*Code of Practice on Procurement of Supplies, Goods and Services*” (Code of Practice). The Code of Practice is available at all District Offices and can be downloaded from HAD Homepage on Building Management (www.buildingmgt.gov.hk).
- A failure on the part of the OC to comply with the Code of Practice shall not of itself render the OC liable to criminal proceedings of any kind. However, such failure may be relied upon in any civil or criminal proceedings as tending to establish or to negative any liability which is in question in such proceedings.
- Any procurement contract made by the OC shall not be void by reason only that it does not comply with the standards and guidelines specified in the Code of Practice.

Section 20A(1)

Section 44(2)

Section 20A(5)

Continuous engagement of the incumbent supplier

- If the OC intends to continuously engage the incumbent supplier and the following conditions are met, the tendering requirement stipulated in the BMO may be waived. In other words, though the value of procurement exceeds \$200,000 or 20% of the annual budget of the OC, tendering is not required if the following conditions are met.

Section 20A(2A)

- The conditions are as follows –
 - ◆ the supplier concerned must be the one engaged by the OC for the time being;
 - ◆ the supplies, goods or services to be procured by the OC are of the same type as those which are for the time being supplied by the supplier; **and**
 - ◆ the OC decides by a resolution of the owners passed at a general meeting of the OC that –
 - invitation to tender will not be made; **and**
 - the supplies, goods or services shall be procured from that supplier on such terms and conditions as specified in the resolution.
- All the above conditions must be met for the OC to be allowed to waive the tendering requirement.

It is advisable for OCs to conduct tendering exercise so as to obtain the more updated market information.

Consequences of non-compliance with procurement requirements

- Failure of the OC to comply with the procurement requirements stipulated in the BMO (i.e. to procure by invitation to tender or decide whether a tender is accepted or not by a resolution of the owners passed at a general meeting of the OC) may have effect on –
 - ◆ the validity of the procurement contract;

- ◆ the personal liability of the person who enters into the contract.

Validity of a procurement contract

- Any procurement contract made by the OC shall not be void by reason only that it does not comply with –
 - ◆ the tendering requirement; or
 - ◆ the requirement of deciding whether a tender is accepted or not by a resolution of the owners passed at a general meeting of the OC.

Section 20A(6)(a)

- In the event that the procurement contract made by the OC does not comply with procurement requirements set out in the paragraph above, the owners may –

(a) avoid the contract by a resolution of the owners passed at a general meeting of the OC; or

Section 20A(6)(b)

(b) seek an order from the court with regard to the validity of the contract.

Section 20A(7)



It should be noted that before passing a resolution to avoid a procurement contract, it is important for the OCs and the owners to fully understand the implication of passing such a resolution. OCs are strongly recommended to seek independent legal advice and explain to the owners the possible consequence, including the legal and financial implications on the OC and the owners, e.g. whether the OC is required to compensate the supplier after the resolution is passed and the amount of compensation payable, etc.

In addition, the OC should be aware that under section 20A(6)(b), a contract may be avoided by the OC only for the reason that it does not comply with the statutory procurement requirements.

- In the legal proceedings concerned, the court will take into account all the circumstances of the case, including (but not limited to) the following factors –
 - (a) whether the OC has procured by invitation to tender;
 - (b) whether the OC has convened a general meeting to select the tenders;
 - (c) whether the OC has complied with the Code of Practice;
 - (d) whether the contract has been split from another contract for the sole purpose of lowering the value of the contract so that compliance of the statutory procurement requirements can be avoided;
 - (e) whether the procurement is urgently required;
 - (f) the progress of any activities or works in relation to the procurement;
 - (g) whether the owners have benefited from the contract;
 - (h) whether the owners have incurred any financial loss due to the contract and the extent thereof;
 - (i) whether the supplier has acted in good faith;
 - (j) whether the supplier has benefited from the procurement contract; and
 - (k) whether the supplier has incurred any financial loss due to the procurement contract and the extent thereof.
- The court may make orders or give directions in respect of the rights and obligations of the contractual parties, including but not limited to –
 - ◆ declaring that the procurement contract is valid;
 - ◆ declaring that the contract is void;

- ◆ declaring that the contract is voidable.

- If the court makes an order that the contract is voidable at the instance of the OC, it shall also make an order that a general meeting of the OC be convened and held in such manner as the court thinks fit, so as to decide whether the contract is to be avoided.

Section 20A(8)

Personal liability

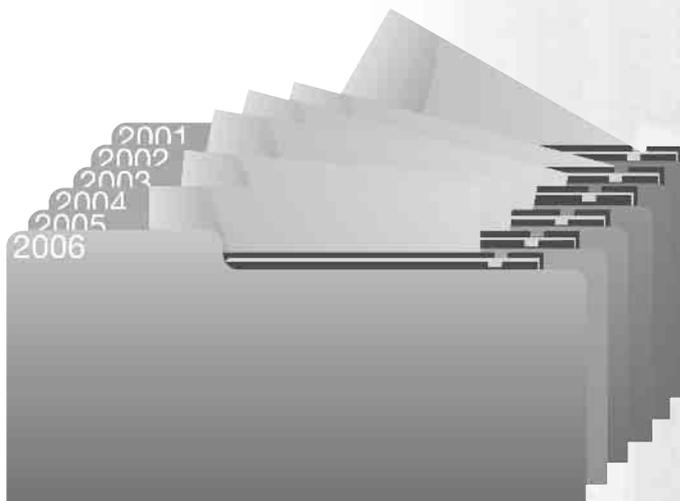
- Any person who enters into a procurement contract otherwise than in compliance with the statutory procurement requirements may be personally liable for any claims arising from the contract.

Section 20A(9)

Keeping of documents

- All tender documents, copies of contracts, accounts and invoices and any other documents relating to the procurement shall be kept by the OC for not less than 6 years.

Section 20A(4)



Chapter II Responsibilities and Rights of Owners

Responsibilities of owners

When an owner purchases a flat in a multi-storey building, he is not only entitled to the exclusive possession of his flat, but he also co-owns the common parts of the building with other owners. The formation of an OC facilitates the organization of owners to effectively manage their building.

Where an OC is formed, it will legally represent all owners in the management of the building. However, this does not mean that the owners themselves no longer have the responsibility to manage the building. The formation of an OC does not affect the individual owners' responsibility in respect of the common parts of the building.

An OC may be held liable for making compensation for any accidents arising from the improper management or lack of maintenance of the building. If the OC is unable to make compensation, the party concerned may apply to court for the winding up of the OC under the provisions of Part X of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32). Similarly, if the OC is unable to discharge its debts and liabilities, such as maintenance fees in arrears, the creditor may also apply to court for the winding up of the OC. In the winding up of an OC, the owners shall be liable, both jointly and severally, to contribute, according to their respective shares of ownership, to the assets of the OC to an amount sufficient to discharge its debts and liabilities.

As such, all owners of a building, being members of the OC, should actively take part in the affairs of the OC and the management of the building in order to maintain the common parts in a state of good and serviceable repair.

Sections 33 and 34

Generally, owners are obliged to –

- comply with the resolutions passed at a general meeting of the OC or at a meeting of the MC;
- share and make timely payment of the management expenses and other funds in respect of the building, including the maintenance costs for the common parts of the building, in accordance with the DMC of the building and the BMO;
 - ◆ If an owner has the right to the exclusive possession of any part of a building or has the exclusive right to the use, occupation or enjoyment of that part, the owner is obliged to maintain that part in good repair and condition even though there is no such requirement under the DMC of the building.
- comply with the provisions in the DMC of the building and the BMO, and avoid acting contrary to such provisions, such as change of use of his flat and unlawful occupation of the common parts of the building;
 - ◆ No person may convert the common parts of a building to his own use unless such conversion is approved by a resolution of the owners' committee (if any).
 - ◆ In addition, no person may use or permit to be used the common parts of a building in such a manner as –
 - unreasonably to interfere with the use and enjoyment of those common parts by any owner or occupier; or
 - to cause a nuisance or hazard to any person lawfully in the building.

Section 34H

Section 34I

What is an owners' committee?

An owners' committee means an owners' organization formed under and in accordance with the DMC. Its composition, operation details, duties and powers shall be such as the DMC may set out. An owners' committee is not a body corporate.

Where an MC has been appointed and an OC formed in respect of a building, the members of the MC shall be deemed to be the owners' committee and shall have all the functions, powers and duties of the owners' committee under the DMC.

Sections 34D and 34K

- take an interest in matters relating to the OC and building management by, for example, attending general meetings of the OC and exercising their voting rights.

Rights of owners

Being a member of an OC, an owner may exercise his rights to monitor the operation of the OC and the MC in the following manner –

General meetings of the OC

- Attend any general meeting of the OC and vote on each resolution. At any general meeting of the OC, the owner shall, unless the DMC otherwise provides, have one vote in respect of each share which he owns.
- If an owner is unable to attend a general meeting, he may appoint a proxy to attend and vote at the meeting. The appointed proxy shall be treated as being the owner present at the meeting.

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

Para 4(1) and 5(2) of Sch. 3

The appointed proxy may vote at the meeting on behalf of the owner. An owner should therefore appoint someone he trusts to be his proxy.

- An owner can give his views on the operation of the OC to the MC or request the MC chairman to convene a general meeting of the OC to discuss and pass resolution on the matter concerned.
 - ◆ The MC chairman shall convene a general meeting of the OC 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.
 - “5% of the owners” shall be counted in terms of the number of owners, without regard to the shares owned by such owners.
 - In this case, “to convene a meeting” means giving notice of the meeting while “to hold the meeting” means causing it to actually take place.

MC members

- Owners may run for the office of MC member, or appoint any owner whom they think fit to be member of the MC by resolution passed at a general meeting of the OC.
- If owners are dissatisfied with the performance of individual MC members, they may, by resolution passed at a general meeting of the OC, remove from office and replace any MC member.

Para 1(2) of Sch. 3

Section 5B and Sch. 11

Para 5 of Sch. 2

Section 14(2)

- If owners are dissatisfied with the performance of the MC, they may –
 - ◆ by a resolution passed at a general meeting of the OC, appoint an administrator and thereafter dissolve the MC.
 - It is important to note that the quorum at such general meeting of the OC shall be 20% of the owners.
 - A resolution shall have no effect until it is certified as correct by the person presiding at the meeting and lodged with the Land Registry within 14 days after the date of the meeting.
 - ◆ make an application to the Lands Tribunal for an order to dissolve the MC and appoint an administrator.

Section 30(1)

Para 5(1) of Sch. 3

Section 30(2)

Section 31

What are the powers and duties of an administrator? What is the term of his appointment?

- An administrator shall have all the powers and duties of an MC and of the MC chairman, secretary and treasurer.
- An administrator shall, within 7 days of his appointment or the termination of his appointment, give notice thereof to the Land Registry.
- If an administrator is appointed by a general meeting of the OC, he shall hold office from the date upon which a certified copy of the resolution is lodged with the Land Registry until the appointment of another administrator or a new MC.
- If the administrator is appointed by the Lands Tribunal, the Tribunal may specify the term of his appointment.

Section 32

Section 30(3)

Section 31(2)

Information about the OC

- Owners may know about the operation of the OC and MC from the documents displayed in a prominent place in the building which include –
 - ◆ notice of an MC meeting;
 - the MC secretary shall display the notice at least 7 days before the date of the meeting.
 - ◆ notice of a general meeting of the OC;
 - the MC secretary shall display the notice at least 14 days before the date of the meeting.
 - ◆ certified minutes of meeting of the MC and general meeting of the OC;
 - the MC secretary shall display the certified minutes within 28 days of the date of the meeting, and cause the minutes to remain so displayed for 7 consecutive days.
 - ◆ copy of the summary of the income and expenditure of the OC;
 - the MC treasurer shall display a copy of the summary in a prominent place in the building once every 3 months, or at shorter interval as the MC may select, and cause it to remain so displayed for 7 consecutive days.
 - ◆ notice containing the particulars of a legal proceedings to which the OC is a party.
 - the OC shall –
 - ❖ within 7 days of receiving any court documents commencing the proceedings; or
 - ❖ within 7 days of issuing any court documents commencing the proceedings,display a notice in a prominent place in the building for 7 consecutive days.

Para 8(2) of Sch. 2

Para 2(2) of Sch. 3

**Para 10(4B) of Sch. 2
and para 6(3) of Sch. 3**

Para 2 of Sch. 6

Section 26A

What shall be included in the notice?

The notice shall contain particulars of the proceedings, which may include –

- ✓ the capacity of the parties of the proceedings;
- ✓ 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.);
- ✓ nature of the case; **and**
- ✓ 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.)

- Owners can also obtain copies of the following documents –
 - ◆ certified minutes of meetings of the MC and general meetings of the OC;
 - ◆ financial statements of the OC;
 - ◆ the accountant's reports (if the financial statements are required to be audited by accountants under the BMO);
 - ◆ the summary of the income and expenditure of the OC;
 - ◆ the policy of insurance and any receipt for the premium in respect of that policy.
- Owners can also inspect the following documents –
 - ◆ the books of account;
 - ◆ the policy of insurance and any receipt for the premium in respect of that policy;
 - ◆ the register of owners maintained by the MC secretary.

**Para 10A(2) of Sch. 2
and para 6A(2) of Sch. 3**

Para 3 of Sch. 6

Section 28

Section 27(2)

Section 28

Section 38

- Owners can also inspect the bills, invoices, vouchers, receipts and other documents referred to in the books and records of account and other records at the request of not less than 5% of the owners or at the order of the court.
 - ◆ 5% of owners should be counted in terms of the number of owners, without regard to the shares owned by the owners.

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

Section 5B and Sch. 11

Lands Tribunal

- Owners can apply to the Lands Tribunal for a ruling on any building management matter.

Section 45 and Sch. 10

The disputes between owners and the OC very often arise because of insufficient understanding of the provisions of the BMO on the part of owners or MC members or misunderstanding between the two parties. Owners and MC members should try to settle the disputes through communication and mediation.

Owners are advised to seek independent legal advice before taking any legal action.

Chapter 12 Duties of Manager

Building management involves a wide range of matters. Many buildings would engage a manager (i.e. property management company) to assist in the management of the building.

There are two main types of managers –

- (1) the person who is specified in the DMC to manage the building (i.e. DMC manager);
- (2) any other person who for the time being is managing the building for the purposes of the DMC. It generally refers to a manager appointed by the owners on contract basis (i.e. contract manager).

Section 34D(1)

Schedule 7 to the BMO sets out the requirements in relation to the manager of a building. Its provisions are mandatory terms to be impliedly incorporated into every DMC. In the event of any inconsistency between the provisions in Schedule 7 and the terms of a DMC, the provisions in Schedule 7 shall prevail.

Section 34E(1) and (2)

The provisions in Schedule 7 shall be binding on the manager of the building. Both the DMC manager and the contract manager shall comply with the requirements stipulated in Schedule 7.

Schedule 7 to the BMO mainly sets out the requirements with regard to the following –

- financial arrangements
- procurement arrangements
- resignation of manager
- termination of manager's appointment by the OC

- obligations after manager's appointment ends
- communication among owners

Financial arrangements

Opening accounts

- The manager shall open and maintain an interest-bearing account and shall use that account exclusively in respect of the management of the building.
 - ◆ If there is an OC, the manager shall open 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 OC in respect of the management of the building.
- The manager shall display a document showing evidence of the above bank accounts opened and maintained by him in a prominent place in the building.
- Except for retention of a reasonable amount to cover expenditure of a minor nature, the manager shall without delay pay all money received by him in respect of the management of the building into the bank accounts mentioned above.
 - ◆ If there is an owners' committee, the amount to be retained to cover expenditure of a minor nature shall be determined by a resolution of the owners' committee;

Para 3 of Sch. 7

- ◆ Any other condition or arrangement for dealing with the money, such as holding the amount in cash or paying it into a current account, may also be determined by a resolution of the owners' committee (if any).

What is an owners' committee?

An owners' committee means an owners' organization formed under and in accordance with the DMC. Its composition, operational details, duties and powers shall be such as the DMC may set out. An owners' committee is not a body corporate.

Where an MC has been appointed and an OC formed in respect of a building, the members of the MC shall be deemed to be the owners' committee and shall have all the functions, powers and duties of the owners' committee under the DMC.

Sections 34D and 34K

Establishment of a fund

- The manager shall establish and maintain a special fund to provide for expenditure of a kind not expected to be incurred annually, such as the cost of major maintenance works.
- If there is an OC, the OC shall determine, by a resolution at a general meeting of the OC, the amount to be contributed to the special fund by the owners in any financial year, and the time when those contributions shall be payable.

Para 4 of Sch. 7

- The manager shall open and maintain at a bank an interest-bearing account, the title of which shall refer to the special fund for the building, and shall use that account exclusively for the purpose of the special fund.
 - ◆ If there is an OC, the manager shall open 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 OC in respect of the special fund.
- The manager shall display a document showing evidence of the bank accounts in respect of the special fund opened and maintained by him in a prominent place in the building.
- The manager shall without delay pay all money received by him in respect of the special fund into the bank accounts mentioned above.
- Unless in a situation considered by the manager to be an emergency or the payment is approved by a resolution of the owners' committee, the manager shall not pay any money out of the special fund.

Budget

- The manager shall prepare a draft budget for each financial year setting out the proposed expenditure during the financial year.
- The manager shall send a copy of the draft budget to the owners' committee or, where there is no owners' committee, display a copy of the draft budget in a prominent place in the building for 7 consecutive days.

Para 1(2) of Sch. 7

- From the date the copy of the draft budget was sent or displayed, the manager shall issue a notice inviting each owner to send his comments on the draft budget to the manager within a period of 14 days.
- Having collected comments from the owners, the manager shall prepare a budget specifying the total proposed expenditure during the financial year.
- The manager shall send a copy of the budget to the owners' committee or, where there is no owners' committee, display a copy of the budget in a prominent place in the building for 7 consecutive days.
- Where, in respect of a financial year, the manager has not complied with the above requirements before the start of that financial year by preparing the draft budget and the budget, the total amount of the management expenses for that year shall, until he has so complied, be deemed to be the same as the total amount of management expenses for the previous financial year.

Para 1(3) of Sch. 7

Can the manager revise the budget after it has been prepared?

Yes, but the manager shall prepare a draft revised budget and, as with the preparation of the draft budget, the manager shall send a copy of the draft revised budget to the owners' committee or, where there is no owners' committee, display a copy of the draft revised budget in a prominent place in the building and issue a notice inviting each owner to send his comments.

Having prepared the revised budget, the manager shall also send a copy of the revised budget to the owners' committee or, where there is no owners' committee, display a copy of the revised budget in a prominent place in the building.

Para 1(4) of Sch. 7

- If there is an OC and, within a period of 1 month from the date that a budget or revised budget is sent to the MC by the manager, the OC decides by a resolution of the owners at a general meeting of the OC to reject the budget, the total amount of management expenses for the financial year shall not exceed 110% of the total amount of management expenses for the previous financial year.

Para 1(6) of Sch. 7

- If any owner requests in writing the manager to supply him with a copy of any draft budget, budget or revised budget, the manager shall, on payment of a reasonable copying charge, supply a copy to that owner.

Para 1(7) of Sch. 7

Amount payable by owners

- The total amount of management expenses payable by the owners shall be the total proposed expenditure specified by the manager in the budget.
- If the manager revises the budget, the amount that owners shall contribute towards the management expenses shall be adjusted according to the revised budget.

Para 1(1) of Sch. 7

Para 1(5) of Sch. 7

Accounts

- The manager shall keep the following for at least 6 years –
 - ◆ proper books or records of account and other financial records; **and**
 - ◆ all bills, invoices, vouchers, receipts and other documents referred to in those books and records.

Para 2 of Sch. 7

- For each period of 3 months (or such shorter period as the manager may select), the manager shall prepare a summary of income and expenditure and a balance sheet in respect of that period, and display a copy of the summary and the balance sheet in a prominent place in the building for 7 consecutive days within 1 month after that period.
- Within 2 months after the end of each financial year, the manager shall prepare an income and expenditure account and a balance sheet for that year, and display the income and expenditure account and the balance sheet in a prominent place in the building for 7 consecutive days.
 - ◆ The income and expenditure account and the balance sheet shall include details of the special fund, as well as the time when there will be a need to draw on that fund and the amount of money that will be needed.
- If there is an OC and the OC decides, by a resolution passed at a general meeting of the OC, that the income and expenditure account and the balance sheet should be audited by an accountant specified in that resolution, the manager shall without delay arrange for such an audit to be carried out.
- The manager shall permit any owner, at any reasonable time, to inspect –
 - ◆ the books or records of account;
 - ◆ any income and expenditure account or balance sheet;
 - ◆ (if an audit has been carried out) the audited income and expenditure account and balance sheet, as well as the report made by the accountant.

- The manager shall, on payment of a reasonable copying charge, supply any owner with a copy of the following documents –
 - ◆ the books or records of account;
 - ◆ any income and expenditure account or balance sheet;
 - ◆ (if an audit has been carried out) the audited income and expenditure account and balance sheet, as well as the report made by the accountant.

Procurement arrangements

Procurement requirements

- Any supplies, goods or services the value of which exceeds or is likely to exceed the sum of **\$200,000** shall be procured by invitation to tender by the manager.
- For supplies, goods or services the value of which exceeds or is likely to exceed **20% of the annual budget**, the manager shall –
 - ◆ procure such goods or services by invitation to tender; **and**
 - ◆ (if there is an OC) decide whether a tender is accepted or not by a resolution passed by a majority of votes of the owners at a general meeting of the OC;
 - ◆ (if there is no OC) decide whether a tender is accepted or not by a resolution passed by a majority of votes of the owners at a meeting of owners convened and conducted in accordance with the DMC.

Para 5(1) of Sch. 7

**Section 34D(3) and
para 5(2) of Sch. 7**



It should be noted that if the value of a procurement exceeds or is likely to exceed 20% of the annual budget, the manager shall submit **all** the tenders received to –

- (if there is an OC) a general meeting of the OC; or
- (if there is no OC) a meeting of owners convened and conducted in accordance with the DMC,

and shall decide whether a tender is accepted or not by a resolution passed by a majority of votes of the owners at the meeting.

After assessing the tenders, the manager may shortlist and recommend a few to the owners. However, the manager cannot reject any tenders received without approval of the owners.

Value of the supplies, goods or services	Shall be procured by invitation to tender	Whether a tender is accepted or not shall be decided at a general meeting of the OC/ a meeting of owners
> \$200,000	✓	–
> 20% of the annual budget	✓	✓

Continuous engagement of the incumbent supplier

- If the manager intends to continuously engage the incumbent supplier and the following conditions are met, the tendering requirement may be waived. In other words, though the value of procurement exceeds \$200,000 or 20% of the annual budget, tendering is not required if the following conditions are met.

Para 5(3) of Sch. 7

- The conditions are as follows –
 - ◆ the supplier concerned must be the one engaged for the time being;
 - ◆ the supplies, goods or services to be procured by the manager are of the same type as those which are for the time being supplied by the supplier; **and**
 - ◆ a resolution shall be passed by a majority of votes at –
 - (if there is an OC) a general meeting of the OC; or
 - (if there is no OC) a meeting of owners convened and conducted in accordance with the DMC,to decide that –
 - invitation to tender will not be made; **and**
 - the supplies, goods or services shall be procured from that supplier on such terms and conditions as specified in the resolution.
- **All** the above conditions must be met for the manager to be allowed to waive the tender requirement.

It is advisable for managers to conduct tendering exercise so as to obtain the more updated market information.

Resignation of manager

- If the manager wants to resign, he shall give not less than 3 months' notice in writing –
 - ◆ by sending such a notice to the owners' committee; or

Para 6 of Sch. 7

- ◆ where there is no owners' committee, by giving such a notice to each of the owners and by displaying such a notice in a prominent place in the building.
- The notice may be given –
 - ◆ by delivering it personally to the owner;
 - ◆ by sending it by post to the owner at his last known address; or
 - ◆ by leaving it at the owner's flat or depositing it in the letter box for that flat.

Termination of manager's appointment by the OC

- The OC may, by a resolution passed at a general meeting of the OC, terminate by notice the **DMC manager's** appointment without compensation.
- The resolution shall be –
 - ◆ passed by a majority of votes; **and**
 - ◆ supported by the owners of not less than 50% of the shares in aggregate who are entitled to vote.

Only the owners of shares who are liable to pay the management expenses relating to those shares shall be entitled to vote.

Para 7 of Sch. 7

- The resolution shall provide for –
 - ◆ a period of not less than 3 months' notice; or
 - ◆ in lieu of notice, an agreement to be made with the DMC manager for paying him a sum equal to the amount of remuneration which would have accrued to him during that period.
- After the resolution is passed, the OC shall give a notice in writing to the DMC manager within 14 days after the date of the meeting, informing him of the termination of his appointment. The notice shall be accompanied by a copy of the resolution terminating the appointment.
- The notice may be given –
 - ◆ by delivering it personally to the DMC manager; or
 - ◆ by sending it by post to the DMC manager at his last known address.
- If a contract for the appointment of a manager (other than a DMC manager) contains no provision for the termination of the manager's appointment, the OC may also apply the above mechanism to terminate the appointment of the contract manager concerned.



It should be noted that the above mechanism is only applicable to terminating the appointment of –

- the DMC manager; or
- a contract manager whose contract contains no provision for the termination of his appointment.

If the contract of a contract manager contains provisions for the termination of the appointment, the OC shall comply with the provisions thereof, instead of applying the above mechanism to terminate the appointment.

Obligations after manager's appointment ends

If the manager's appointment ends for any reason, he shall fulfil the following obligations –

- as soon as practicable after his appointment ends, and in any event within 14 days of the date his appointment ends, deliver to the owners' committee (if any) or the manager appointed in his place any movable property in respect of the management of the building that is in his possession, and that belongs to the OC or the owners.
 - ◆ if the movable property, such as books or records of accounts, is required for the purposes of preparing the income and expenditure account and the balance sheet mentioned in the paragraph below, the manager shall within 2 months of the date his appointment ends, deliver to the owners' committee (if any) or the manager appointed in his place any such records.
- within 2 months of the date his appointment ends –
 - ◆ prepare an income and expenditure account and a balance sheet, and arrange for that account and balance sheet to be audited by the accountant specified by the owners' committee (if any).
 - in the absence of such an owners' committee or any such specification, by such accountant as may be chosen by the manager.

Para 8 of Sch. 7

- ◆ deliver to the owners' committee (if any) or the manager appointed in his place any books or records of accounts, papers, documents and other records required for the purposes of preparing an income and expenditure account and a balance sheet.

Communication among owners

- The manager shall consult (either generally or in any particular case) the OC at a general meeting of the OC and adopt the approach decided by the OC on the channels of communication among owners on any business relating to the management of the building.

Para 9 of Sch. 7

Other matters relating to the manager

- The manager of any building shall not be entitled to be indemnified by the OC or by the owners of the flats in that building in respect of any legal costs, charges, expenses or fees relating to any civil or criminal proceedings (whether successful or otherwise) between or in respect of that manager and that OC or those owners. Any such provision contained in the DMC shall be void and of no effect.
- If any share in the building had not or has not been sold, the owner for the time being of the share shall be liable to pay the management expenses relating to the share.

Section 34L

Section 34G

Chapter 13 Mandatory Building Management

The common parts of a multi-storey building are co-owned by all its owners. It is the responsibility of the owners to co-operate and participate actively in building management.

If owners do not duly discharge their responsibilities regarding building management, causing danger to the owners or occupiers of the building, the Authority (i.e. the Secretary for Home Affairs) may issue the orders mentioned below –

For a building with an OC

- Where it appears to the Authority that –
 - ◆ no person is managing the building;
 - ◆ the MC has failed to perform the duties of an OC; **and**
 - ◆ by reason of the circumstances mentioned above, there is a danger or risk of danger to the owners or occupiers of the building,

the Authority may order that, within such reasonable period, the MC must appoint a building management agent for the purposes of managing the building.

What is a “building management agent”?

A “building management agent” is a person whose name appears in a list of persons engaged in the business of the management of buildings compiled by the Authority from time to time and published in the Gazette.

Section 40B

For a building without an OC

- The Authority may make an application to the Lands Tribunal. Where it appears to the Lands Tribunal that –

- ◆ an MC is not likely to be appointed by the owners;
- ◆ no person is managing the building; **and**
- ◆ by reason of the circumstances mentioned above, there is a danger or risk of danger to the owners or occupiers of the building,

the Lands Tribunal may order that, within the specified reasonable period, a meeting of owners must be convened by such owner as shall be named in the order.

- At the meeting of owners, each owner shall have one vote. The owners may, by a resolution passed by a majority of the votes of the owners voting either personally or by proxy, appoint –

- ◆ an MC; or
- ◆ (if no MC is appointed) a building management agent.

- If no MC or building management agent is appointed at the meeting of owners, the owner named in the order issued by the Lands Tribunal may appoint a building management agent direct.

Section 40C

Other powers of the Authority

- Apart from the above, the Authority or an authorized officer may, for the purpose of ascertaining the manner in which a building is being controlled, managed or administered –
 - ◆ enter and inspect any common parts of the building;
 - ◆ attend any general meeting of the OC;
 - ◆ require the OC or any person managing the building to furnish him with information;
 - ◆ inspect the books or records of account and other records of the OC;
 - and**
 - ◆ inspect any other documents or records kept by the OC in relation to any of its functions, duties or powers.

Section 40A

Application for Registration of Owners as a Corporation Appendix 1 (provided by the Land Registry – L.R. 164)

BUILDING MANAGEMENT ORDINANCE

(Section 7)

APPLICATION FOR REGISTRATION OF OWNERS AS A CORPORATION

Application is hereby made on behalf of the Management Committee appointed under Section *3/3A/4/40C of the Building Management Ordinance for registration of the owners of the under-mentioned building as a corporation, particulars of which are as follows:

* Delete whichever is not applicable.

- (1) Name of the proposed Corporation

The Incorporated Owners of _____

(Description of building) ("Building")

- (2) Name, if any, and Address of the Building:

- (3) Address of the proposed Registered Office of the Corporation:

- (4) Name and address of the Chairman and the Secretary of the Management Committee:

	Name	Address
Chairman		
Secretary		

2. The following documents are attached:

† Delete as appropriate.

- †(1) Copy of Deed of Mutual Covenant dated _____ and registered in the Land Registry by Memorial No. _____

- †(2) Copy of Order of the Lands Tribunal dated _____ in _____ No. _____ of 20 _____

- †(3) Copy of Order of the Authority dated _____ in _____ No. _____ of 20 _____

* Delete whichever is not applicable.

- (4) Copy of Resolution or other document evidencing the appointment of the Management Committee certified as correct by the * Chairman/Secretary of the Management Committee/chairman of the meeting at which the resolution was passed.

- (5) Declaration by the *Chairman/Secretary of the Management Committee that the provisions of Section *3/3A/4/40C and the relevant provisions in Section 5B have been complied with.

- (6) Statements by the members of the Management Committee confirming that he/she does not fall within the description of paragraph 4(1)(a) or (b) of Schedule 2.[#]

[#] A member or an authorized representative of the body corporate who fails to lodge with the secretary of the management committee the statement within 21 days after the appointment shall cease to be such member or authorized representative

3. We have read the 'Personal Information Collection Statement' and fully understand it.

Dated this _____ day of _____ 20 _____ .

*Chairman of the
Management Committee*

*Secretary of the
Management Committee*

To the Land Registrar,
Hong Kong.

Note: Application for registration of owners as a corporation must be made within 28 days of the appointment of the Management Committee. A separate filing fee, the amount of which being specified in the Building Management (Fees) Regulations (Cap. 344 sub. leg. A), is payable for each document attached to this application.

Personal Information Collection Statement (Applicable to the forms provided by the Land Registry)

Appendix 2

PERSONAL INFORMATION COLLECTION STATEMENT

1. Purpose of Collection

The personal data collected in this form will be used by the Land Registry for one/more of the following purposes:

- (a) to maintain a register of corporations, and permit any person to inspect at any reasonable time:
 - (i) the register to ascertain, in connection with the management of buildings, the particulars of a corporation entered in the register pursuant to the Building Management Ordinance (Cap. 344) (“BMO”); and
 - (ii) documents required to be submitted to the Land Registry under the BMO;
- (b) to provide a certified copy, copy or extract of the register or document required to be submitted to the Land Registry under the BMO;
- (c) to administer and enforce the relevant provisions in the BMO;
- (d) any other purposes as may be required, authorized or permitted by law; and
- (e) to facilitate communications.

You understand that the provision of personal data is obligatory for compliance with the BMO. If you fail to provide information as required in this form, the Land Registry will not be able to record/update the particulars in the register or documents mentioned in paragraph 1(a) above.

Please do NOT provide any personal data (including personal data relating to third parties) which are not specifically required to be submitted. Where information of any third party is included in this form or any document(s) filed in relation to it, the Land Registry will treat that you have obtained consent from such third party to disclose such information for the purposes above.

2. Classes of Transferees

You understand that the personal data provided in this form may be disclosed or transferred to:

- (a) other government departments, bureaux and relevant organizations for the purposes mentioned in paragraph 1 above; and
- (b) any person for the purposes mentioned in paragraphs 1(a) and (b) above.

3. Access to Personal Data

You understand that pursuant to Sections 18 and 22 and Principle 6 of Schedule 1 of the Personal Data (Privacy) Ordinance (Cap. 486) (“PDPO”), you have the right to request access to and correction of your personal data held by the Land Registry. Under the PDPO, the Land Registry is entitled to charge a fee to process the said request. Any such request shall be made to the Personal Data (Privacy) Officer of the Land Registry at 28th Floor, Queensway Government Offices, 66 Queensway, Hong Kong. (For enquiries on owners incorporation matters, please call our Customer Service Hotline at 3105 0000.)

Statement of Eligibility (provided by the Land Registry – L.R. 175)

Appendix 3

Corporation No. : _____

BUILDING MANAGEMENT ORDINANCE

STATEMENT OF ELIGIBILITY UNDER PARAGRAPH 4(3) OF SCHEDULE 2

The Incorporated Owners of _____
(Name of Corporation)

Insert the name as appearing in the Hong Kong Identity Card or other identity document.

I, (# English name) _____ (*Chinese name) _____ ,

◇ To be deleted if no Chinese name.

of (address) _____ ,

* Delete whichever is not applicable.

**being an authorized representative of _____ (name of body corporate) ,*

* To be deleted if inappropriate.

confirm that:

^ **A member or an authorized representative of the body corporate who fails to lodge with the secretary of the management committee the statement within 21 days after the appointment shall cease to be such member or authorized representative.**

(1) *I am / The body corporate is a member of the management committee^ of the above Corporation appointed under the Building Management Ordinance.

(2) For the purposes of paragraph 4(3) of Schedule 2 to the Building Management Ordinance, I

- (i) am not an undischarged bankrupt at the time of the appointment;
- (ii) have, within the previous 5 years, neither obtained a discharge in bankruptcy nor entered into a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap. 6) with my creditors, in either case without paying the creditors in full; and
- (iii) have not, within the previous 5 years, been convicted of an offence in Hong Kong or any other place for which I have been sentenced to imprisonment, whether suspended or not, for a term exceeding 3 months without the option of a fine.

(3) I have read the 'Personal Information Collection Statement' and fully understand it.

I understand if I know, or reasonably ought to know, any information contained herein to be false in a material particular, I shall be guilty of an offence under section 36 of the Building Management Ordinance.

Dated this _____ day of _____ .

Signature of the above-named person : _____

Signature of Witness: _____
#Name:

Notice of Change of Particulars / Notice of Policy of Insurance Appendix 4
(provided by the Land Registry – L.R. 124) Corporation No. : _____

BUILDING MANAGEMENT ORDINANCE
(Section 12(3) & Section 28(6A))

NOTICE OF CHANGE OF PARTICULARS / NOTICE OF POLICY OF INSURANCE

The Incorporated Owners of _____

(Name of Corporation)

NOTICE is hereby given that with effect from the _____ day of _____,
particulars of the above-named Corporation have been changed as follows / a policy of insurance
under section 28(1) was effected on the _____ day of _____ as follows:

*Here insert particulars
of any change in:

- (a) Name of the corporation
- (b) Name and address of the building
- (c) Address of the registered office of the corporation
- (d) Name and address of the chairman, vice-chairman, secretary, treasurer and any other person who is a member of the management committee
- (e) Name and address of the insurance company and the period covered by the policy of insurance

I have read the 'Personal Information Collection Statement' and fully understand it.

Dated this _____ day of _____ 20 _____.

.....
Secretary of the Management Committee

To the Land Registrar,
Hong Kong.

Note: Notice must be given to the Land Registrar within 28 days of the date of any change in the registered particulars or within 28 days after the corporation has effected a policy of insurance.

Notice of Change of Particulars / Notice of Policy of Insurance Appendix 4A (provided by the Land Registry – L.R. 124)

SAMPLE

Corporation No. : _____

[Please fill in the Corporation No. shown on the Certificate of Registration.]

BUILDING MANAGEMENT ORDINANCE

(Section 12(3) & Section 28(6A))

NOTICE OF CHANGE OF PARTICULARS / NOTICE OF POLICY OF INSURANCE

The Incorporated Owners of _____ [It must be same as the corporation name shown on the Certificate of Registration.]

(Name of Corporation)

[Applicable to items (a) to (d) only - please fill in the effective date of change of particulars of the corporation or the effective date of appointment of new management committee/new members/replacements.]

NOTICE is hereby given that with effect from the _____ day of _____, particulars of the above-named Corporation have been changed as follows / a policy of insurance

*Here insert particulars of any change in:

under section 28(1) was effected on the _____ day of _____ as follows:

* [Applicable to item (e) only – please fill in the date of issue of the insurance policy.]

(a) Name of the corporation

[Items (a), (b) & (c) may be left blank if there are no changes.]

(b) Name and address of the building

(c) Address of the registered office of the corporation

(d) Name and address of the chairman, vice-chairman, secretary, treasurer and any other person who is a member of the management committee

(e) Name and address of the insurance company and the period covered by the policy of insurance

(d)	Post	Name	Address [Flat/Unit represented by the member]
	Chairman:	CHAN Tai-man	2/F., No. 3 Tai Tung Street, Kowloon
	Secretary:	Tin Tin Company Limited represented by CHAN Siu-man	3/F., No. 3 Tai Tung Street, Kowloon
	Treasurer:		
	Member:		
[If space is insufficient, please provide details on a separate sheet.]			
[Please refer to the sample below for appointment of new members/replacements.]			
	New Appointee:	LEE Ho-oi	
	Address:	4/F., 3 Tai Tung Street, Kowloon	
	Resigned member:	WONG Siu-ming	
Other members of the management committee remain unchanged.			

(e) Name of insurance company: Hong Kong Insurance Company Limited

Address:

Period covered by the policy of insurance: from DD/MM/YYYY to DD/MM/YYYY

I have read the 'Personal Information Collection Statement' and fully understand it.

[The date on which the secretary signed this notice.]

Dated this _____ day of _____ 20 _____.

[If the secretary is a body corporate, the authorized representative should sign and affix the company chop here.]

X

Secretary of the Management Committee

To the Land Registrar,
Hong Kong.

Note: Notice must be given to the Land Registrar within 28 days of the date of any change in the registered particulars or within 28 days after the corporation has effected a policy of insurance.

Statement of Change of Particulars (provided by the Land Registry – L.R. 176)

Appendix 5

Corporation No. : _____

BUILDING MANAGEMENT ORDINANCE

STATEMENT OF CHANGE OF PARTICULARS UNDER PARAGRAPH 4(5) of SCHEDULE 2

The Incorporated Owners of _____
(Name of Corporation)

Insert the name as appearing in the Hong Kong Identity Card or other identity document.

I, (# English name) _____ (* Chinese name) _____ ,

of (address) _____ ,

confirm that:

* To be deleted if no Chinese name.

(1) I ceased to be *a member of the management committee of the above Corporation / the authorized representative of _____ (name of body corporate) appointed under the Building Management Ordinance.

* Delete whichever is not applicable.

* To be deleted if inappropriate.

(2) For the purposes of paragraph 4(5) of Schedule 2 to the Building Management Ordinance, there has been a change in the particulars as follows:

† To insert the place where the person making the statement is convicted of the offence.

*(i) a bankruptcy order was made against me on _____ ;

*(ii) I have on _____ entered into a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap. 6) with my creditors, without paying the creditors in full; and

*(iii) I have on _____ been convicted of an offence in
† _____ for which I have been sentenced to imprisonment, *which is a suspended sentence , for a term exceeding 3 months without the option of a fine.

(3) I have read the 'Personal Information Collection Statement' and fully understand it.

I understand if I know, or reasonably ought to know, any information contained herein to be false in a material particular, I shall be guilty of an offence under section 36 of the Building Management Ordinance.

Dated this _____ day of _____ .

Signature of the above-named person: _____

Signature of Witness: _____

#Name: _____

Statutory Format of the Instrument of Proxy for Meetings of Corporation

Appendix 6

INSTRUMENT OF PROXY FOR MEETINGS OF CORPORATION

The Incorporated Owners of
(description of building)

I/We, (name(s) of owner(s)),
being the owner(s) of
..... (unit and address of building),
hereby appoint (name of proxy)
*[or failing him (name of
alternative proxy)], as my/our proxy to attend and vote on my/our behalf at the
[*general meeting/annual general meeting] of The Incorporated Owners
of(description of
building), to be held on the day
of*[and at any adjournment thereof].

Dated this day of .

(Signature of owner(s))

*Delete where inapplicable.

The format as shown in this instrument is the statutory one which is set out in the Building Management Ordinance (Form 2 in Schedule 1A). No alteration of the format is permitted.

Statement of Purposes in respect of Collection of Personal Data (Sample)

Appendix 7

(for reference only)

Purpose of Collection

1. This instrument is to be used by you to appoint a proxy to attend the general meeting of the corporation/the annual general meeting of the corporation and any adjourned meeting (if applicable). Your proxy will form the quorum and vote on your behalf at the meeting.
2. The chairman and/or secretary of the management committee (MC) of the owners' corporation (OC) may follow up on the personal data you provided in this instrument and, if necessary, will contact you for the purpose of verifying the validity of the appointment of your proxy.

Consent of your Proxy

3. You should obtain the consent of your proxy in using his/her personal data provided in this instrument, and provide your proxy with this statement, informing him/her of the purpose for collecting his/her personal data.

Classes of Transferees

4. The OC and its MC may disclose the personal data you provided in this instrument to other owners of this building, and/or other relevant persons and bodies for the purposes mentioned in paragraph 2 above.

Access to Personal Data

5. You have the rights of access and correction to the personal data as provided for in sections 18 and 22 and Principle 6 of Schedule 1 to the Personal Data (Privacy) Ordinance, Cap. 486. Your right of access includes the right to obtain a copy of your personal data provided in this instrument.

Enquiries

6. Enquiries concerning the personal data collected by means of this instrument, including requests for access to and correction of data, should be directed to the secretary of the MC (Telephone Number :)

Acknowledgement Receipt of the Instrument of Proxy (Sample)

Appendix 8

_____ (Date)

To : #The owner(s) of/body corporate which owns Flat ____, Floor ____, Block ____

General Meeting of _____
(name of owners' corporation)

(Date and time of the meeting: # a.m./p.m. on _____)

I hereby acknowledge receipt of the instrument of proxy lodged by you.

According to paragraph 4(5)(b) of Schedule 3 to the Building Management Ordinance, the chairman of the management committee or, if he is absent, the person who presides at the meeting shall determine the validity of the instrument.

Name of the secretary of the management committee :

Signature :

#Delete where inapplicable.

List of Flats with Instruments of Proxy lodged (Sample)

Appendix 9

General Meeting of _____
(name of owners' corporation)

Date :

Time :

Venue :

The owners of the flats listed below have lodged the instruments appointing proxies with the secretary of the management committee –

Flats		

Note :

- (1) The secretary of the management committee shall display a list of the flats whose owners have lodged the instruments of proxy (irrespective of validity) in a prominent place in the place of the meeting before the time for the holding of the meeting and cause the list to remain so displayed until the conclusion of the meeting.
- (2) Those flats whose instruments of proxy have been determined to be invalid by the chairman of the management committee or, if he is absent, the person who presides at the meeting, are marked with a sign.

HAD's Homepage on Building Management — www.buildingmgt.gov.hk

Publications related to building management are available at Home Affairs Enquiry Centres of the District Offices as below —

Hong Kong Island	
Central & Western	G/F., Harbour Building, 38 Pier Road, Central
Eastern	G/F., Eastern Law Courts Building, 29 Tai on Street, Sai Wan Ho
Wan Chai	G/F., 2 O'Brien Road, Wan Chai
Southern	G/F., Ocean Court, 3 Aberdeen Praya Road, Aberdeen
Kowloon	
Kowloon City	LG/F., Kowloon City Government Offices, 42 Bailey Street, Hung Hom
Sham Shui Po	G/F., Cheung Sha Wan Government Offices, 303 Cheung Sha Wan Road, Sham Shui Po
Yau Tsim Mong	G/F., Mong Kok Government Offices, 30 Luen Wan Street, Mong Kok
Kwun Tong	G/F., The Grande Building, 398 Kwun Tong Road, Kwun Tong
Wong Tai Sin	Unit 201, 2/F., Lung Cheung Office Block, 138 Lung Cheung Road, Wong Tai Sin



New Territories	
Kwai Tsing	2/F., Kwai Hing Government Offices Building, 166 - 174 Hing Fong Road, Kwai Chung
Yuen Long	G/F., Yuen Long District Office Building, 269 Castle Peak Road, Yuen Long
Tuen Mun	2/F., Tuen Mun Government Offices, 1 Tuen Hi Road, Tuen Mun
Sai Kung	G/F., Sai Kung Tseung Kwan O Government Complex, 38 Pui Shing Road, Hang Hau, Tseung Kwan O
Tsuen Wan	1/F., Tsuen Wan Multi-Storey Carpark Building, 174 - 208 Castle Peak Road, Tsuen Wan
North	G/F., North District Government Offices, 3 Pik Fung Road, Fanling
Tai Po	G/F., Tai Po Government Offices Building, 1 Ting Kok Road, Tai Po
Sha Tin	G/F., Sha Tin Government Offices, 1 Sheung Wo Che Road, Sha Tin
Islands	G/F., 22 San Hing Street, Cheung Chau (Cheung Chau Sub-office)
	G/F., Mui Wo Government Offices, 2 Ngan Kwong Wan Road, Mui Wo, Lantau Island (Mui Wo Sub-office)
	1/F., Tung Chung Post Office Building, 6 Mei Tung Street, Tung Chung, Lantau Island (Tung Chung Sub-office)

Enquiries on building management matters can be directed to the District Building Management Liaison Teams of the respective District Offices —

Hong Kong Island			
Central & Western	2119 5010	Wan Chai	2835 1999
Eastern	2886 6569	Southern	2814 5763
Kowloon			
Kowloon City	2621 3406	Kwun Tong	2171 7465
Sham Shui Po	2150 8175	Wong Tai Sin	2324 1871
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	3740 5351	Sha Tin	2158 5388
Islands	2852 4318		

