

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 –

- ✗ 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 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 statutory declaration in a specified form [L.R.169] (**Appendix 3**), to state that he does not fall within the description of the above paragraph, and lodge the signed declaration 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 declaration form 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
- MC members may make a statutory declaration at the offices of the Land Registry or the Public Enquiry Service Centres of District Offices, or before other person authorized by law to administer an oath (e.g. a justice of the peace, lawyer or notary public).

Para 4(4) of Sch. 2

- As the application for registration of owners as an OC shall be accompanied by the declaration of each MC member, the MC secretary shall, after receiving the declarations from the MC members, cause the declarations 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 statutory declaration and lodge the signed declaration form 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.

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.

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

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.

Para 2(4) of Sch. 2

Para 2(5) of Sch. 2

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 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 statutory declaration in a specified form [L.R.169] **(Appendix 3)** and lodge the signed declaration 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 declaration from an MC member, lodge the declaration 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 5)**.

Section 12(3)