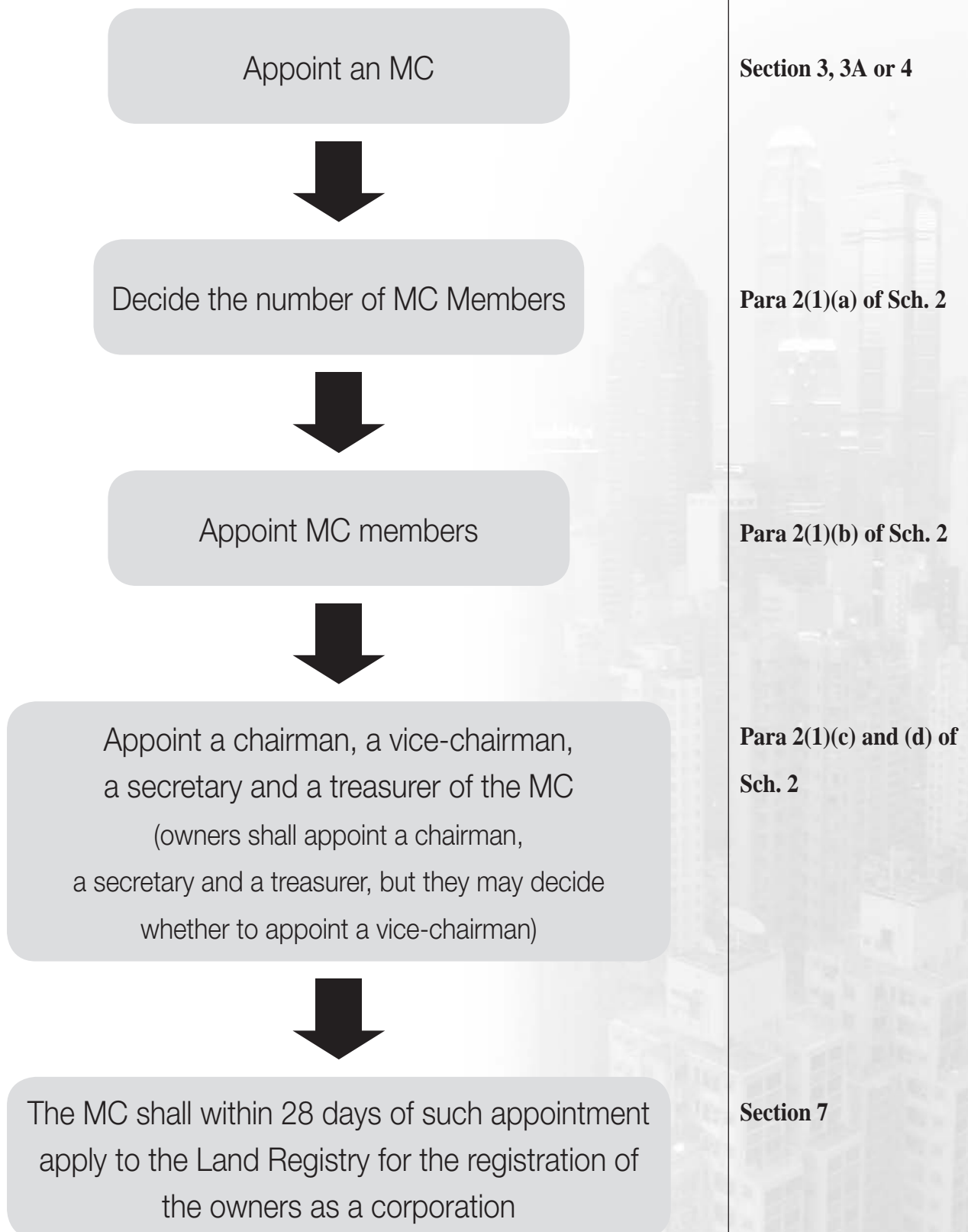


Chapter 3 Formation of an Owners' Corporation

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. **Section 8(3)**
- An OC shall have a registered office in Hong Kong. **Section 8(4)**
 - OCs usually set up offices in their own buildings.
- An MC shall display in a prominent place in the building the following documents – **Section 11(1)**
 - ◆ 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).

- 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.