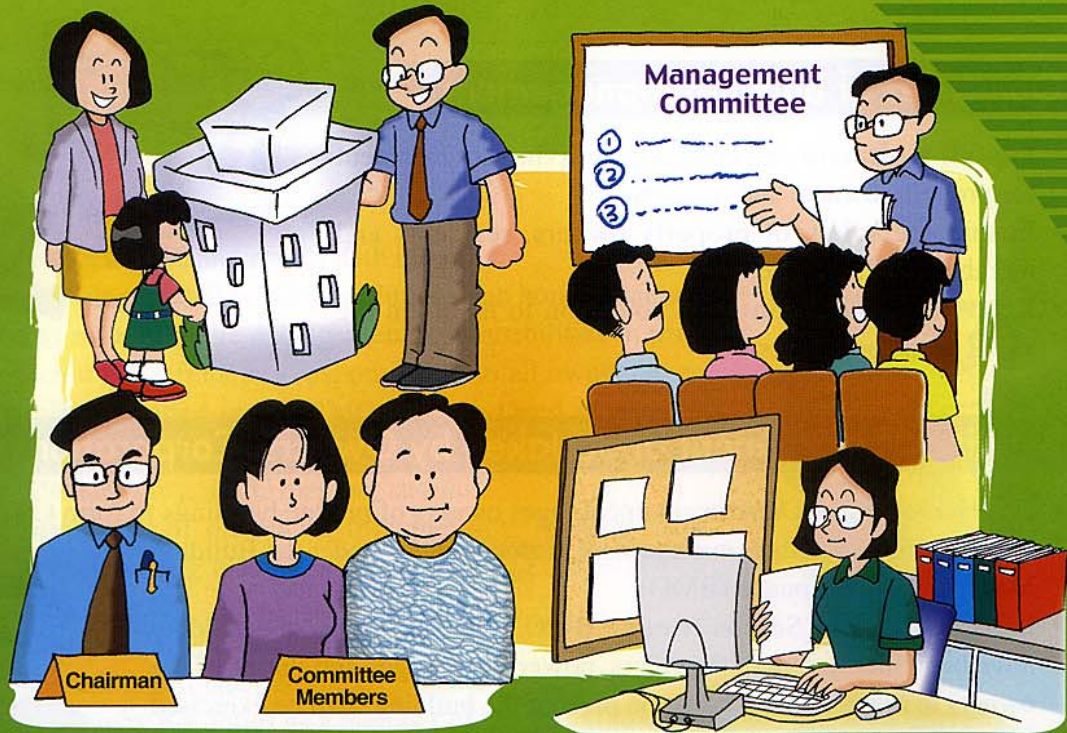




Home Affairs Department



# Corporate Governance in Building Management

## Objectives of Building Management

- Provide a pleasant and comfortable living environment for property owners and residents.
- Ensure the safety of property owners, residents and members of the public.
- Keep the buildings in good condition to maintain the value of the properties.



## Building Management Undertaken by Owners' Corporations

- The Home Affairs Department encourages owners of private buildings to form Owners' Corporations (OCs) to discharge their management responsibilities under the Building Management Ordinance (BMO).
- In accordance with Section 16 of the BMO, when the owners of a building have been incorporated, 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.
- Section 29 of the BMO also provides that the powers and duties conferred or imposed by the BMO on an OC shall be exercised and performed on behalf of the OC by the Management Committee (MC).

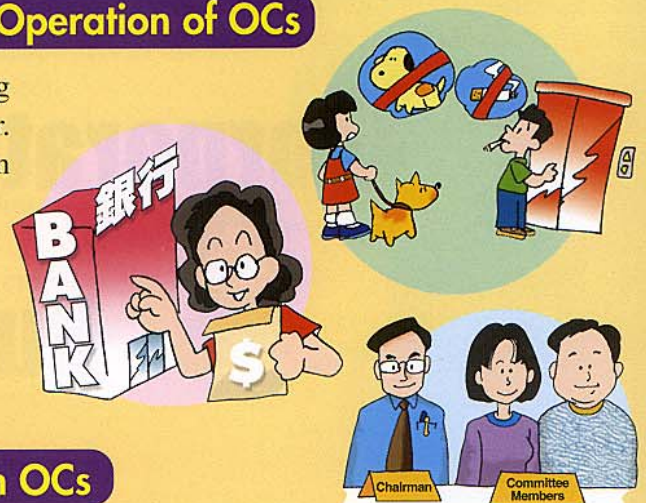


## Concepts of Corporate Governance

- Not all the shareholders will take part in the management of the corporation for various reasons.
- Under such circumstances, the management of the corporation has to be entrusted to the managers, i.e. directors or board of directors.
- The board of directors will take collective responsibility for the management of the corporation.
- In performing their fiduciary duty, the directors should act in good faith, work truthfully for the interests of the corporation and exercise the powers conferred on them for legitimate purposes.

## Benefits of Corporate Governance to the Operation of OCs

- Encourage owners and MCs to handle building management affairs in an open, fair and impartial manner.
- Promote co-operation and exchange of views between owners and MCs.
- Facilitate clean and effective financial management.
- Enhance the transparency of the operation of OCs.
- Enhance the accountability of OCs.
- Enrich the OCs' experience in governance.
- Enhance the quality of building management.



## How to Practise Corporate Governance in OCs

### Similarities between an OC and a corporation

- Manage properties through bodies corporate.

- Required to appoint a MC/Board of Directors to make and execute the decisions for the OC/corporation.
- Required to employ managers or staff.

## Fiduciary Duty of a MC

- "Fiduciary" means being trusted and acting with integrity.
- Fiduciary duty means being trusted to perform duties in an honest manner.
- A MC is appointed to undertake the management responsibilities in trust for the owners. Hence it has a fiduciary responsibility to all owners even if it is not specifically provided in the BMO and the Deed of Mutual Covenant (DMC).
- In performing his fiduciary duty, a MC member should
  - abide by the principles of openness, transparency, integrity and accountability in performing his duties and conducting the affairs of the OC;
  - act truthfully in the overall interests of the OC;
  - exercise his power for legitimate purposes;
  - avoid situations whereby his duties as a member of the MC conflict with his personal interests;
  - refrain from capitalising on business opportunities for his private gains.



## Fundamental Responsibilities of a MC

- Execute the management duties in accordance with the requirements under the BMO and the DMC.
- Follow the codes of practice issued by the Secretary for Home Affairs.
- Meet the aspirations and demands of owners and balance their different interests, having regard to the overall interests of owners.
- Promote owners' understanding of matters concerning building management and provide them with the necessary information.
- Act prudently to avoid misunderstandings and unnecessary disputes.



## Major Tasks of a MC

- Employ management staff to manage the building and decide the terms of their employment contracts and remuneration package.
- Monitor the performance of management staff.
- Work out the conditions of tenders and tender procedures.
- Manage the OC's finance.
- Assume the fiduciary responsibility to prepare reports and give a proper account of its work to the owners.

## A Member of the MC should not

- Act arbitrarily.
- Be ignorant of the management/operation of the OCs.
- Cause situations whereby his duties as a member of MC conflict with his private interests.
- Abuse the information kept by the OC in confidence.
- Abuse the properties of the OC.
- Capitalise on any business opportunities for his private gains.



- Be influenced by others or follow others' instructions in voting.
- Serve without training.
- Carry out the duties of a building management agent (applicable only to OCs with building management agents).



## Role of Owners

- Although the MC is the most important executive body of the OC, owners should take the initiative to participate in, promote and monitor the work of building management. Owners should, where possible, serve on the MCs and work for the interests of the residents of their buildings.
- An owner shall -
  - act in an honest and sincere manner.
  - put the overall interests of the building before all other considerations.
  - comply with the requirements under the DMC.
  - comply with the "House Rules" drawn up by owners' committee/MC or property manager in accordance with the DMC.
  - actively give his views and the information required to the MC.
  - attend owners' meetings convened by the OC, and discuss and vote on matters relating to building management.
  - Before making a decision at owners' meetings, he should-
    - have a full understanding of the issues
    - carefully consider all relevant information
    - make judgment independently
    - not be influenced by others or follow others' instructions in voting.
  - observe and comply with the resolutions passed at owners' meetings.
  - pay management fee and other necessary charges duly (including any maintenance fee for the building's structural elements such as external walls, common areas and public facilities).



## How Owners and Members of MC should Equip Themselves for Building Management Duties

- Have a thorough understanding of the duties and responsibilities of the OC.
- Develop a sense of responsibility for building management.
- Attend meetings of the OC regularly.
- Seek advice from the Home Affairs Department, other government departments and relevant professional bodies.
- Receive training in building management.
- Support, participate and collaborate in building management and work out succession plans.

