

# Review of the Building Management Ordinance

## Public Consultation

### Highlights



The Building Management Ordinance (Cap. 344) (BMO) provides a legal framework for owners to organise themselves to discharge their building management responsibilities. To cope with the changing needs and circumstances of building management, the Government has established the Review Committee on the Building Management Ordinance (the Review Committee) to conduct a comprehensive review of the BMO. Taking into account the recommendations of the Review Committee, we have identified a number of proposed legislative amendments and issues that we would like to consult the public.

While we are open to suggestions from the public on how the provisions of the BMO can be improved, public views are invited specifically on the following proposals:

### Disputes relating to Large-scale Maintenance Projects

**To ensure that the owners' corporation (OC) meeting at which voting of resolutions on large-scale maintenance projects will take place will be attended by a significant proportion of owners, the following proposals may be considered:**

#### *Quorum and Percentage of Votes*

- the quorum of the meeting be raised from 10% to, say 20%, of the total number of owners; or
- the required percentage of shares of votes for the passage of the resolution be raised from 50% to, say 75%, of the shares of votes at the meeting.

#### *Definition of "Large-Scale Maintenance Projects"*

- to consider how "large-scale maintenance projects" should be defined for the purpose of BMO. Options include: projects exceeding a certain percentage (or percentages) of the total annual budget of the OC, or set the threshold as the amount the owner(s) of each flat will have to contribute to the project.

#### *Notice of Meeting*

- should be given to each owner at least 21 days before the holding of the meeting.

- should carry a conspicuous "alert" that any decision(s) to be taken at the OC meeting may result in the contribution of funds exceeding a certain specified amount by each owner.

#### *Tender Process*

- to stipulate in the BMO additional requirements on the tender process, e.g. displaying a copy of the invitation to tender at a prominent place of the building, allowing inspection of the tender documents by owners, etc.

### Convening of an OC General Meeting at the Request of Owners

**To ensure that OC meetings can be convened expeditiously, the BMO can be amended to:**

- require the Chairman of the management committee (MC) to place the discussion items requested by the owners on a high priority on the agenda; and
- when the office of the MC Chairman is vacant, the Vice-chairman should convene the general meeting in place of the Chairman; where no Vice-chairman is elected, the MC should appoint one of its members to convene the general meeting; and where the MC fails to appoint any member to convene the general meeting, those owners who have requested to convene the general meeting may nominate a representative among themselves to convene the general meeting.

### Counterfeit Proxy Instruments and Improper Practices

**To minimise improper or abusive use of proxies at OC meetings, the following proposals can be considered:**

#### *Collection of Proxy Instruments*

- to require the MC Secretary/convenor to state clearly in the notice of meeting as to the exact location of the proxy collection boxes and the timing for opening the boxes to inspect and count the proxy.
- the proxy collection boxes should be double-locked and placed in a prominent location of the building.
- the two keys of each box should be held by the MC Secretary/convenor and a third party respectively.

Please send your views to us by:

Email: [bm\\_consultation@had.gov.hk](mailto:bm_consultation@had.gov.hk)

Fax: 2575 1009

Address: Division V, Home Affairs Department,  
31/F Southern Centre, 130 Hennessy Road,  
Wan Chai, Hong Kong.



- the boxes should be opened by the key holders in the presence of witnesses.
- only the original copy of the proxy forms will be accepted.
- the date of the OC meeting should be printed on each proxy form.
- to provide the MC Secretary/convenor with an additional option of acknowledging receipt of the proxy instrument by passing the receipts to the owners in person.

### **Verification of Proxy Instruments**

- the list of flats with proxy instruments lodged should be displayed in a prominent place of the building at least 24 hours before the meeting and until seven days after the meeting.
- the MC Chairman/convenor should mark on each proxy instrument the reasons for invalidating it and to allow representatives of owners and the appointed third party to inspect invalidated proxy instruments and appeal against the invalidation with justifications.

### **Formation of OCs**

**The following measures seek to protect the rights of owners in forming OCs by lowering the threshold and tightening up the eligibility of convenors:**

#### **Percentage of Shares in Aggregate Required for the Formation of OCs and Determination of Owner's Shares**

- whether the threshold for OC formation under section 3 of the BMO should be lowered from 30% to 20% of shares in aggregate.
- whether the thresholds under sections 3A and 4 of the BMO should be lowered correspondingly (say to 10% and 5% respectively), or whether there is a need to retain sections 3A and 4 of the BMO after the threshold stipulated in section 3 of the BMO has been lowered to 20%.
- to introduce a technical amendment to make it clear that shares with no voting right will not be counted as part of the total shares when calculating the proportion of shares supporting the formation of an OC out of the total number of shares in aggregate.

### **Eligibility of the Convenor**

- to impose the following eligibility criteria on the convenor –
  - is not an undischarged bankrupt at the time of the appointment or has not, 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 or her creditors, in either case without paying the creditors in full;
  - has not, within the previous 5 years, been convicted of an offence in Hong Kong or any other place for which he or she has been sentenced to imprisonment, whether suspended or not, for a term exceeding 3 months without the option of a fine.

### **Termination of the Appointment of Deed of Mutual Covenant (DMC) Managers**

**The following measures will lower the threshold for terminating the appointment of the DMC managers by owners:**

- to lower the threshold for terminating the appointment of DMC managers from 50% to 30% of shares in aggregate.
- to limit the term of appointment of DMC managers to five years.
- whether the new arrangements, if implemented, should be applicable to new and existing developments or to new developments only.

### **Remuneration of DMC Managers**

**The following shows the possible ways to reduce the remuneration rate of DMC managers of large scale developments and to improve the transparency of calculating remuneration:**

- to reduce the ceiling on the remuneration rate of DMC managers by a specified percentage (e.g. 0.5%) each year.
- to exclude expenditure items which do not involve any value-added services by the DMC manager (e.g. electricity charges, water bills, etc.) from the

formula for calculating the remuneration of the DMC manager.

- for certain expenditure items incurred by the headquarters of the DMC manager (e.g. services provided by the DMC manager's accountants who serve more than one developments), the DMC manager should provide the owners with detailed breakdown on how the service fee of the headquarters is apportioned among the developments they serve.
- to increase the number of tiers of ceiling on the DMC manager's remuneration and set lower ceilings for large scale developments with, e.g. above 300, 500, 700 and 1 000 (and so on) residential units and parking spaces.
- whether the new arrangements, if implemented, should be applicable to new and existing developments or to new developments only.

Members of the public are invited to give their comments on the above proposals, as well as other suggestions on whether and how other provisions of the BMO could be enhanced. Comments can be sent in writing to the Home Affairs Department on or before 2 February 2015:

**Address:** Division V,  
Home Affairs Department,  
31/F Southorn Centre,  
130 Hennessy Road,  
Wan Chai, Hong Kong.

**Fax number:** 2575 1009

**E-mail Address:** [bm\\_consultation@had.gov.hk](mailto:bm_consultation@had.gov.hk)

Full text of the consultation document is available at the Public Enquiry Service Centres at District Offices, or at the Building Management Website of the Home Affairs Department [www.buildingmgt.gov.hk](http://www.buildingmgt.gov.hk).

Home Affairs Department  
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