

5. Matters Common to Various Types of Meetings Convened under the BMO

Counting of Votes

Q123 :

There are many references to the percentage of owners in the BMO. When should we use the number of share of owner and when should we use the number of owner as the basis?

A :

As a general rule, all reference to voting at a meeting of owners convened under the BMO or a specified percentage of owners in the BMO should be based on the shares of owners. The general rule applies with the exception of –

- (a) meeting of an MC, where each member present shall have one vote;
- (b) meeting of the owners convened under section 40C, where each owner shall have one vote;
- (c) quorum of meeting of owners (sections 3(8), 3A(3F), 4(10) and 40C(9) and paragraph 5 of Schedule 3 and paragraph 11 of Schedule 8); and
- (d) number of owners to request an extraordinary general meeting (paragraph 1(2) of Schedule 3) and to inspect the financial documents (paragraph 1A of Schedule 6).

In the above listed exceptions, the number of owners, instead of the number of shares, is used as the basis.

Section 5B and Sch. 11

Q124 :

BMO provides that owners may appoint proxy to attend the general meeting of a corporation and vote on their behalf. Will these proxies be treated as owners present at the meeting?

A :

A proxy appointed by an owner to attend and vote on behalf of the owner at a meeting of the corporation shall, for the purposes of the meeting, be treated as being the owner present at the meeting.

This is also the case for proxy appointed to attend and vote on behalf of the owner at a meeting of owners convened under section 3, 3A, 4 or 40C of BMO.

Sections 3(10)(d), 3A(3H)(d), 4(12)(d) and 40C(11)(d) and para 5 (2) of Sch. 3



Q125 :

Section 2B of the BMO provides that owners who are not present at the meeting and those who are present at the meeting but do not vote shall be disregarded in determining whether a resolution is passed by a majority of the votes of owners. How about owners who have appointed a proxy to attend and vote on their behalf at the meeting?

A :

Section 2B, when read together with sections 3(10)(d), 3A(3H)(d), 4(12)(d) and 40C(11)(d) of and paragraph 5(2) of Schedule 3 to the BMO (which stipulate that a proxy appointed by an owner to attend and vote on behalf of the owner shall, for the purposes of the meeting, be treated as being the owner present at the meeting), is clear to show that the votes cast by a proxy will be counted in determining whether a resolution is passed by a majority of votes of the owners.

Sections 2B, 3(10)(d), 3A(3H)(d), 4(12)(d) and 40C(11)(d) and para 5(2) of Sch. 3

Q126 :

If an owner appointing a proxy turns up and casts a vote personally in the owners' meeting on a resolution before his proxy does, should the vote of the owner be counted?

A :

If the owner casts a vote personally on a resolution before the proxy does, the vote of the owner should be counted.

Q127 :

What is meant by "invalid votes"?

A :

There is no simple definition of "invalid votes" and validity of a vote should be determined by considering the individual circumstances of each case. A vote may be considered as invalid if, for example –

- (a) a voter votes for and against a resolution at the same time;
- (b) in appointing MC members, a voter votes for 10 candidates where only 9 members are to be appointed.

Usually the person who presides over the general meeting of the corporation will decide whether a vote is invalid or not. If an owner thinks that the decision of the presiding person is incorrect, he should raise objection in the meeting at once and asks that the validity of the votes concerned be determined by the majority of those present at the meeting. However, disputes on validity of votes will ultimately be decided by the court.

Q128 :

If “abstention” is provided as an option on the voting sheet, will the votes that vote for such option be counted?

A :

Section 2B of the BMO provides that abstentions shall be disregarded. Even if abstention is provided as an option on the voting sheet, abstention vote should still be disregarded.

Section 2B

Q129 :

At a general meeting of the corporation, if only 3 options (Contractor A, B, C) are available for a particular resolution, and that the owners dislike all 3 options or consider that more information is necessary for them to pass a resolution, what could they do? Could they decide to defer passing a resolution on this item?

A :

The owners may pass a resolution at the general meeting to adjourn this particular item to the next meeting.

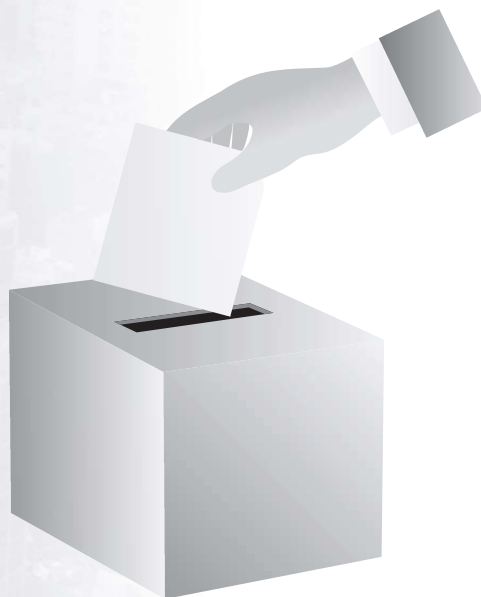
Q130 :

If the DMC provides that abstentions should be considered in counting votes, should owners follow the DMC provision or should they follow BMO?

A :

Section 2B of the BMO provides that abstentions shall be disregarded in determining whether a resolution is passed by a majority of the votes of owners at a meeting convened under the BMO. Even if the DMC provides that abstention should be considered in counting votes, abstention vote should still be disregarded for meetings convened under the BMO. The DMC provision should only be applicable for meetings convened under the DMC.

Section 2B



Q131 :

Paragraph 3(3) of Schedule 3 to the BMO stipulates that all matters arising at a meeting of the corporation at which a quorum is present shall be decided by a majority of the votes of the owners voting either personally or by proxy. What is meant by “a majority of the votes”?

A :

“Majority”, being a commonly used word, ordinarily means more than half. “A majority of the votes” means more than half of the votes. Accordingly, paragraph 3(3) of Schedule 3 means that all matters arising at a meeting of the corporation, except –

- (a) the appointment of MC members, chairman, vice-chairman (if any), secretary and treasurer; and
- (b) change of the name of the corporation under section 10(1)(b) of the BMO,

shall be decided by more than 50% of the votes of the owners voting either personally or by proxy.

Court case: The Incorporated Owners of Tsuen Wan Garden v. Prime Light Limited [LDBM 83-85/2003 and CACV 1/2004]

Para 3(3) of Sch. 3

Q132 :

Does appointment of members of an MC needs to be passed by a majority of votes?

A :

No. In appointing members of an MC at a meeting of owners or a general meeting of the corporation, the “first past the post” system of voting should be adopted. This means that candidates who obtain the greatest number of votes will be appointed as members of the MC and there is no need to obtain more than 50% of the votes.

Para 2, 5, 6 and 6A of Sch. 2



Q133 :

What is the difference between the “first past the post” voting system and the “majority” voting system?

A :

Under the “majority” voting system, for a resolution to be passed, the winning option must obtain more than 50% of the votes; whereas under the “first past the post” voting system, the option that obtains the greatest number of votes will be the winning option and there is no need for the winning option to have more than 50% of votes.

To illustrate, let's assume that there are 3 options and they obtain 40%, 35% and 25% of the votes respectively. Since none of the options obtain more than 50% of the votes, the resolution is not passed under the “majority” voting system. Yet, under the “first past the post” voting system, the first option which obtains 40% of votes (i.e. the greatest number of votes) shall be the winning option.

Under the BMO, the “first past the post” voting system is only applicable to appointment of MC members, chairman, vice-chairman (if any), secretary and treasurer.

Q134 :

How could the OCs fulfil the majority requirement if several options are available (for example in the selection of tenders)?

A :

Here are some plausible methods –

- (a) Progressive Elimination
The OC may eliminate the options one by one. After each round of voting, the OC may eliminate the option with the least number of votes and then carry out the next round of voting, until when one of the options obtains more than 50% of the votes.
- (b) Short-listing
Alternatively, after the first round of voting, the OC may short-list the 2 options that obtain the greatest number of votes for a second round of voting.
- (c) Confirmation
A second round of voting could be carried out to confirm (i.e. to either accept or reject) the option that obtains the greatest number of votes in the first round.

Different methods of voting may be chosen under different circumstances.

Court case: *The Incorporated Owners of Tsuen Wan Garden v. Prime Light Limited* [LDBM 83-85/2003 and CACV 1/2004]

Q135 :

If there are many options available and it may take a lot of time for the voting at the general meeting of the corporation, could the owners resolve the matter by the “first past the post” system?

A :

No. The “first past the post” voting system is only applicable to appointment of MC members, chairman, vice-chairman (if any), secretary and treasurer. All other matters arising at a meeting of the corporation (except change of name of the corporation under section 10(1)(b) of the BMO) shall be decided by a majority of the votes.

Para 3(3) of Sch. 3

Q136 :

How does an owner know the number of votes that he may cast?

A :

The DMC of a building sets out the number of shares owned by each owner and some may also set out the voting rights of each class of share of a building. For meetings of owners convened under sections 3, 3A, 4 and Schedule 3, an owner shall, unless the DMC provides otherwise, have one vote in respect of each share he owns.

Sections 3(9)(a), 3A(3G)(a) and 4(11)(a) and para 3(5)(a) of Sch. 3

Q137 :

Some of the shares are allocated to the common parts of a building and those shares are retained by the manager. Do these shares have voting rights?

A :

For meetings of owners convened under sections 3, 3A, 4 and Schedule 3, an owner shall, unless the DMC provides otherwise, have one vote in respect of each share he owns. If the DMC specifies that certain class of shares do not have voting rights, then such class of shares would not have voting rights in the meetings of owners convened under sections 3, 3A, 4 and Schedule 3. If there is no such specification in the DMC, then the owner of these shares shall have one vote in respect of each share he owns.

Sections 3(9)(a), 3A(3G)(a) and 4(11)(a), para 3(5)(a) of Sch. 3 and para 7(5A) of Sch. 7

In case of termination of a manager’s appointment by a corporation under paragraph 7 of Schedule 7 to the BMO, only owners who are liable to pay management expenses shall be entitled to vote.



Q138 :

Is it a must for the owners to cast votes on a voting sheet at a general meeting of the corporation? Can the owners vote by a show of hands?

A :

The BMO does not provide for how a vote should be cast. The owners may cast votes using voting sheets, or they may vote by a show of hands.

The owners present at the meeting may determine how the votes should be cast. If owners present at the meeting are not satisfied with the method adopted, such as vote by a show of hands, they should raise objection and demand a poll. If no one at the meeting raises objection, the meeting must be taken to assenting to the course adopted.

Court case: *Kwan & Pun Company Limited v. Chan Lai Yee and Others* [CACV 234/2002]

Counting of Quorum

Q139 :

What is the quorum requirement for the various meetings convened under the BMO?

A :

The quorum requirement is as follows –

Types of meetings	Quorum
Meetings of owners convened under sections 3, 3A, 4 and 40C for the incorporation of owners	10% of owners
Meetings of corporation (a) for the dissolution of the MC under section 30 (b) any case other than (a)	20% of owners 10% of owners
Meetings of MC	The greater of – (a) 50% of the MC members; or (b) 3 MC members

The quorum should be counted in terms of the number of owners, without regard to the shares owned by the owners.

Sections 3(8), 3A(3F), 4(10) and 40C(9), para 9 of Sch. 2 and para 5(1) of Sch. 3

Q140 :

Should the quorum be maintained throughout the meeting of owners or just at the start of the meeting? What if the number of owners at the meeting has reduced to below the quorum requirement?

A :

Quorum is the minimum number of persons whose presence at a meeting is requisite in order that business may be validly transacted. Any resolution passed at a meeting while a quorum is not present is invalid.

Quorum should be maintained throughout the meetings convened under the BMO (i.e. general meeting of the corporation or meeting of owners for the incorporation of owners). If the number of owners at the meeting has reduced to below the quorum requirement, it is open to anyone present at the meeting to draw the attention of the presiding person to that fact. It is then the duty of the presiding person to count the number of owners at the meeting. If the number of owners at the meeting is below the quorum requirement, business could not be validly transacted and the meeting has to be adjourned.

Court case: 寶明大廈業主立案法團 訴 Better Corporation Ltd. And Others [LDBM 136-139/1999]

Q141 :

How to calculate the number of owners?

A :

The number of owners shall be computed as follows –

Sch. 11

Form	Example	To be counted as
Several co-owners owning 1 flat	1 flat with 3 co-owners	1 owner
1 owner owning more than 1 flat	1 owner owning 35 flats	1 owner
Person holding proxy	1 person holding proxy from 1 owner	1 owner
	1 person, who is an owner himself, holding 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

Q142 :

How should co-owners be counted when we count the number of owners in the building?

A :

Co-owners of a flat should be counted as 1 owner in counting the number of owners in the building. Sch. 11

Q143 :

If an owner is in possession of 10 units in a building, should he be counted as 1 owner or 10 owners when we determine whether the quorum has been met? Sch. 11

A :

The owner should be counted as 1 owner in this case.

Q144 :

If owner A appoints an owner, owner B, as his proxy to attend the meeting of the corporation, then should owner B be counted as 1 owner or 2 owners when determining whether the quorum has been met?

A :

Owner B should be counted as 2 owners in this case. Sch. 11

Q145 :

If a person (who is not an owner himself) is appointed by 10 separate owners to be their proxy to attend and vote on their behalf at the general meeting of the corporation, will the proxy be counted as 1 or 10 owners when determining whether the quorum has been met?

A :

The proxy should be counted as 10 owners in this case. Sch. 11

Appointment of Proxy

Q146 :

Can owners appoint proxy using forms other than those provided in Schedule 1A to the BMO?

A :

No. BMO provides that for a proxy instrument to be valid, it must be in the form set out in Schedule 1A to the BMO.

Owners may download the statutory proxy instruments from the website – www.buildingmgt.gov.hk.

Sections 3(10), 3A(3H), 4(12) and 40C(11) and para 4 of Sch. 3

Q147 :

Is authorization letter issued by a lawyer (power of attorney) a valid instrument for appointing proxy?

A :

No. The instrument appointing a proxy must be in the form set out in Schedule 1A.

Sections 3(10), 3A(3H), 4(12) and 40C(11) and para 4 of Sch. 3

Q148 :

Can an owner give voting instruction on the proxy instrument to his proxy?

A :

The statutory forms set out at Schedule 1A do not provide for an owner to indicate voting instruction on the proxy instrument. Moreover, the forms provide that a proxy is appointed by an owner to attend and vote on behalf of the owner. Thus, in counting votes, only the votes given by the proxy, and not the voting instructions of the owner, will be counted.

Sch. 1A

An owner should therefore appoint someone he trusts to be his proxy.

Q149 :

Can an owner indicate in the proxy instrument that his proxy could not vote (i.e. could only be counted towards the quorum)?

A :

No. The statutory forms set out at Schedule 1A provide that a proxy is appointed by an owner to attend **and** vote on behalf of the owner. An owner cannot indicate on the proxy instrument that the proxy is not allowed to vote.

Sch. 1A

An owner should therefore appoint someone he trusts to be his proxy.

Q150 :

If an OC used to provide printed proxy forms to owners (for example, with OC chop or serial number), under the amended BMO, can the OC continue to provide such forms to owners?

A :

So long as the printed proxy forms are in the form set out in Schedule 1A to the BMO, the OC may continue to provide such printed forms to owners. However, it is not a must for owners to use these printed forms provided by the OC. As long as the proxy instruments submitted by the owners are in the statutory form, the OC could not reject these proxy instruments for the sole reason that they are not printed forms provided by the OC.

Sch. 1A

Q151 :

Could an MC include in the printed proxy forms distributed to owners the name of the proxy, say the MC chairman, an MC member or a representative of the property management company?

A :

So long as the printed forms provided by the OC are in the form set out in Schedule 1A to the BMO, such practice would not render the proxy forms invalid.

Sch. 1A

However, if an OC provides such printed proxy forms, owners who prefer to appoint another person to be his proxy could cross out the printed name on the proxy form and put down the name of his own proxy as owners should be allowed absolute freedom to choose their own proxy. OC could not reject these forms for the sole reason that owners have crossed out the printed name on the forms.

Q152 :

Can an OC request owners to fill in their Hong Kong Identity Card number on the proxy form?

A :

No. Hong Kong Identity Card number is not required by the statutory form set out in Schedule 1A to the BMO.

Sch. 1A

Court case: The Incorporated Owners of Tropicana Gardens v. Tropicana Gardens Management Ltd. and Another [LDBM 374/1998]

Q153 :

If an owner fills in his Hong Kong Identity Card number (which is not required under the statutory form) on his proxy instrument, will this render the form invalid?

A :

No. As long as the proxy instrument is in the form set out in Schedule 1A to the BMO, the mere act of providing additional information such as Hong Kong Identity Card number or time of signing the proxy will not render the form invalid.

Sch. 1A

Q154 :

Is it necessary for the owners' signature on the proxy instrument to be the same as the one appears on the deed of assignment?

A :

There is no such requirement in the BMO.

Q155 :

How should co-owners of a flat appoint proxy?

A :

The co-owners may jointly appoint a proxy, or either one of the co-owners may appoint a proxy, using the statutory form set out in Schedule 1A to the BMO.

If the co-owners appoint different proxies, then only the vote that is cast by the proxy appointed 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.

Sections 3(9), 3A(3G), 4(11) and 40C(10) and para 3(5) of Sch. 3

Q156 :

How should a body corporate appoint proxy? Should it follow its own constitution or the BMO?

A :

The body corporate shall appoint proxy using the form set out in Schedule 1A to the BMO. The form shall be –

- (a) impressed with the seal or chop of the body corporate; **and**
- (b) signed by a person authorized by the body corporate in that behalf.

In appointing the proxy, the body corporate shall follow the above requirements stipulated in the BMO, without regard to its constitution. However, the body corporate shall follow its constitution in authorizing a person to sign on the proxy instrument.

Sections 3(10), 3A(3H), 4(12) and 40C(11) and para 4 of Sch. 3

Q157 :

Is it a must for a body corporate to apply its common seal on the proxy instrument?

A :

No. In appointing proxy, a body corporate shall apply either its seal or chop on the proxy instrument.

Sections 3(10), 3A(3H), 4(12) and 40C(11) and para 4 of Sch. 3

Q158 :

The provision in the BMO provides that the instrument appointing a proxy shall be signed by the owner. What will be the case if the owner is unable to write?

A :

Section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) provides that “sign” includes, in the case of a person unable to write, the affixing or making of a seal, mark, thumbprint or chop.

Q159 :

What is the time limit for lodging a proxy instrument before the holding of a meeting? If a proxy instrument has not been lodged within the specified time limit, does the one presiding over the meeting have the authority to accept it?

A :

An instrument appointing a proxy shall be lodged with the secretary of the MC (or the convenor for meeting of owners for the incorporation of owners) at least 48 hours before the time for the holding of the meeting. If a proxy instrument is not lodged within the specified time limit, it shall be invalid and the person presiding over the meeting does not have the authority to accept such instrument.

Sections 3(10), 3A(3H), 4(12) and 40C(11) and para 4 of Sch. 3

Q160 :

Who shall determine the validity of the proxy instrument? Does such person have absolute discretion over the validity of the instrument?

A :

For meeting of owners convened under section 3, 3A, 4 or 40C for the incorporation of owners, the convenor shall determine the validity of the proxy instrument. For meeting of the corporation, the MC chairman (or if he is absent, the person who presides over the meeting) shall determine the validity of the instrument.

Sections 3(10), 3A(3H), 4(12) and 40C(11) and para 4 of Sch. 3

Such person shall determine the validity in accordance with the requirements stipulated in the BMO, namely –

- (a) the proxy instrument shall be in the form set out in Schedule 1A to the BMO;
- (b) the instrument shall be signed by an owner; or if the owner is a body corporate, be impressed with the seal or chop of the body corporate and signed by an authorized person of the body corporate; **and**
- (c) the instrument shall be lodged at least 48 hours before the time for the holding of the meeting.

Q161 :

In determining the validity of the proxy instruments, does the convenor have to check up the signature of every individual owner or the constitution of owners who are body corporate?

A :

The convenor should determine the validity of the proxy instruments in strict accordance with the requirements specified in the BMO. It may not be necessary for the convenor to check up the signature of every single owner or the constitution of the body corporate. If the convenor has no reason to believe that the proxy instrument is not in order (for example, no enquiries received on its validity, no suspicious element on the proxy instrument, etc.) or has no reason to suspect that there is a motive for forgery, then it is acceptable for him, as a reasonable man, to consider that the proxy instrument is valid.

Sections 3(10), 3A(3H), 4(12) and 40C(11)

Q162 :

If a convenor receives two proxy instruments from the same owner, what should he do? Should both proxy instruments be considered as invalid?

A :

The proxy instrument with the most recent date shall supersede the instrument with an earlier date. If no date is marked on the proxy instruments or that both instruments are marked with the same date, the convenor may clarify with the owner concerned which proxy instrument is the correct one. If the convenor could not ascertain which instrument is the latest one, then both instruments should be considered as invalid.

Q163 :

Is there a cap on how many owners one proxy could represent?

A :

No, there is no such cap stipulated in the BMO.



Q164 :

When a proxy instrument is lodged with the convenor under section 3, 3A, 4 or 40C of the BMO, what should the convenor do?

A :

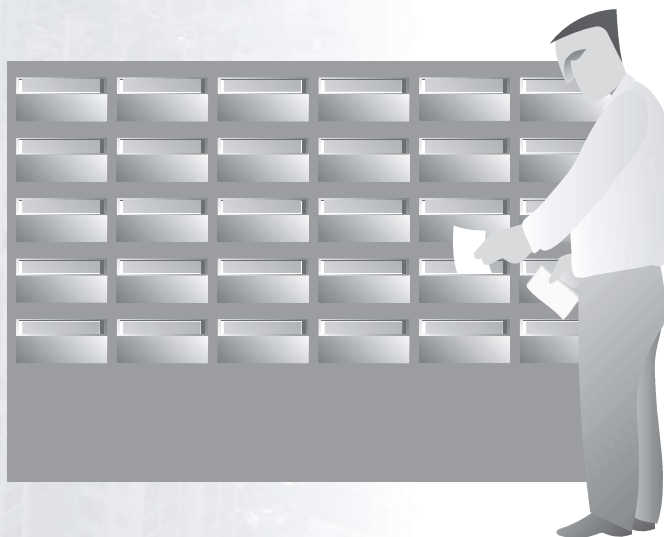
The convenor should –

- (a) acknowledge receipt of the instrument by leaving a receipt at the flat of the owner concerned, or depositing the receipt in the letter box before the holding of the meeting;
- (b) display information of the owner's flat in a prominent place in the place of the meeting throughout the meeting;
- (c) determine the validity of the instrument; and
- (d) keep the instruments for a period of at least 12 months after the conclusion of the meeting should the meeting of owners fail to appoint an MC. If an MC is appointed, the convenor shall deliver to the MC immediately after the conclusion of the meeting all the proxy instruments.

For a meeting of the corporation, the MC secretary shall be responsible for carrying out (a) and (b) above, whereas the MC chairman (or if he is absent, the one presiding over the meeting) shall be responsible for determining the validity of the instruments. The MC shall be responsible for keeping the proxy instruments.

For the sample form for acknowledging receipt of the proxy instruments and displaying information of the flats of the owners concerned, please refer to the booklet on *"How to form an Owners' Corporation"* for meetings of owners convened under section 3, 3A, 4 or 40C of the BMO and the booklet on *"A Guide on Building Management Ordinance (Cap.344)"* for meetings of corporation. These booklets are published by the Home Affairs Department and are available at all District Offices and at the following website – www.buildingmgt.gov.hk.

Sections 3(10), 3A(3H), 4(12) and 40C(11) and para 4 of Sch. 3



Q165 :

If the convenor has determined that certain proxy instruments are invalid, does he still have to issue an acknowledgement receipt for these instruments or display the information of the flats of the owners concerned in the place of the meeting?

A :

Yes. The convenor shall issue receipt for all the proxy instruments lodged with him and display the information of the flats of those owners who have made the instruments, regardless of the validity of the instruments.

Sections 3(10),
3A(3H), 4(12) and
40C(11)

However, if the convenor has determined that certain proxy instruments are invalid, it would be advisable for him to inform those owners concerned so that they may consider attending the meeting themselves. The convenor may also indicate on the list displayed at the place of the meeting which flat has lodged an invalid proxy instrument (for example by adding an asterisk next to the flat concerned).

For the sample form for displaying information of the flats of the owners concerned, please refer to the booklet on *“How to form an Owners’ Corporation”* for meetings of owners convened under section 3, 3A, 4 or 40C of the BMO and the booklet on *“A Guide on Building Management Ordinance (Cap.344)”* for meetings of corporation. These booklets are published by the Home Affairs Department and are available at all District Offices and at the following website – www.buildingmgt.gov.hk.

Q166 :

What kind of information has to be displayed at the place of the meeting for owners that appoint proxy? Is it necessary to display the names of the owners and also those of the appointed proxies?

A :

The information displayed at the place of the meeting only have to specify which flat has appointed a proxy. There is no need to display the names of the owners and the appointed proxies.

For the sample form for displaying information of the flats of the owners concerned, please refer to the booklet on *“How to form an Owners’ Corporation”* for meetings of owners convened under section 3, 3A, 4 or 40C of the BMO and the booklet on *“A Guide on Building Management Ordinance (Cap.344)”* for meetings of corporation. These booklets are published by the Home Affairs Department and are available at all District Offices and at the following website – www.buildingmgt.gov.hk.

Q167 :

If the MC secretary has not carried out his duty stipulated under paragraph 4(5)(a) of Schedule 3 (i.e. issuing acknowledgement receipt and displaying information at the place of the meeting), will this render the proxy instruments invalid?

A :

No. The failure of the MC secretary in carrying out his duty will not render the proxy instruments invalid.

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

Q168 :

If the MC secretary has not carried out his duty stipulated under paragraph 4(5)(a) of Schedule 3 (i.e. issuing acknowledgement receipt and displaying information at the place of the meeting), will this render the general meeting of the corporation invalid?

A :

If the MC secretary has not carried out his duty, it is a failure in complying with the procedural requirement of a meeting of the corporation stipulated in the BMO. The validity of the general meeting may be called into question. Aggrieved owners may seek a ruling from the court on the validity of the meeting. The court will take into account all the circumstances in making the decision.

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

Q169 :

If the office of the MC secretary is vacant, who shall be the one to carry out the stipulated duty under paragraph 4(5)(a) of Schedule 3 to the BMO? Can the chairman carry out these duties instead?

A :

The duty stipulated under paragraph 4(5)(a) of Schedule 3 shall be carried out by the MC secretary and BMO does not provide for the delegation of such statutory duty to the chairman.

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

If the office of the secretary is vacant, the MC may, in accordance with paragraph 6(5)(b) of Schedule 2, appoint a person to fill the vacancy till the next general meeting of the corporation. Such person appointed shall then carry out the statutory duty of the secretary stipulated in the BMO.

Q170 :

Who will be responsible for keeping the proxy instruments after the conclusion of a meeting of owners convened under section 3, 3A, 4, or 40C of the BMO?

A :

If an MC is appointed, the MC shall be responsible for keeping the instruments for a period of at least 12 months after the conclusion of the meeting. If an MC is not appointed, the convenor shall be responsible for keeping the instruments.

Sections 3(11)&(12), 3A(3I)&(3J), 4(13)&(14) and 40C(12)&(13)

Q171 :

Can an owner inspect the proxy instruments lodged by other owners?

A :

Proxy instruments lodged by owners contain personal data of the owners concerned. Any person who is responsible for handling proxy instruments lodged under the BMO (for example, the convenor of a meeting of owners, the MC chairman and secretary) should handle the instruments in strict accordance with the Data Protection Principles specified under the Personal Data (Privacy) Ordinance (Cap. 486). Thus, unless the owners concerned are aware that their proxy instruments may be inspected by others (for example such purpose is stated in the statement of purposes attached to the proxy instrument), the proxy instruments lodged by these owners could not be inspected by other people. Owners may refer to the booklet on “*How to form an Owners’ Corporation*” or “*A Guide on Building Management Ordinance (Cap.344)*” published by the Home Affairs Department for a sample statement of purposes.

Q172 :

What should owners do if they suspect there are forged proxy instruments?

A :

Owners should inform the convenor of the meeting of owners or the MC chairman (or if he is absent, the person presiding over the meeting) if they suspect there are forged proxy instruments. Aggrieved owners may also seek a ruling from the court on the validity of the proxy instruments or the validity of the resolutions passed at the meeting.

Q173 :

If a person lodges a false proxy instrument, what is the consequence?

A :

It is a criminal offence for a person to lodge a false proxy instrument.

Section 36



Adjourned Meetings

Q174 : Who can adjourn meetings? Does the person presiding over the meeting has the absolute authority to do so?

A : The presiding person does not have the authority to adjourn the meeting unilaterally. Whether the meeting shall be adjourned should be decided by the owners present at the meeting. If necessary, a vote has to be taken to ascertain the wishes of the majority. If no objection is raised by the owners present at the meeting, then the meeting must be taken to be assenting to adjournment of the meeting.

Court cases: 余劍英 訴 張文東及另三人 [LDBM 338/2004]; 梁豪聖及另六人 訴 岑耀東及另五人 [LDBM 153/2005]; 何可華及另一人 訴 海富苑業主立案法團及另十人 [LDBM 3/2006]

Q175 : What are the procedures of adjourned meetings? Should fresh notice of meeting be given for adjourned meetings?

A : The procedures of adjourned meetings shall be the same as the original meetings. Thus, fresh notice should be given for adjourned meetings. This means that even for adjourned meetings, the MC secretary shall give notice of the meeting to each owner and the tenants' representative at least 14 days before the date of the meeting.

Sections 3(13), 3A(3K), 4(15) and 40C(14) and para 5A(1) of Sch. 3

Q176 : Suppose that a meeting of the corporation was adjourned and items (4) and (5) have not yet been discussed at this meeting. In this case, at the adjourned meeting, apart from passing resolutions on items (4) and (5), can the owners also pass resolution on some new items?

A : No. Adjourned meeting is a continuation of the original meeting. Thus, the owners could only pass resolutions with regard to items that have not yet been discussed at the original meeting. Should the owners want to pass resolutions on new items, they should regard the meeting as a new meeting.

Q177 :

Do owners have to appoint proxy again for adjourned meetings?

A :

No. A valid instrument appointing a proxy for the original meeting shall remain valid for the adjourned meeting, unless –

- (a) the owner has indicated on the proxy instrument that such instrument is not valid for adjourned meeting;
- (b) the instrument is revoked; or
- (c) the instrument is replaced by a new instrument.

Sections 3(14), 3A(3L), 4(16) and 40C(15) and para 5A(2) of Sch. 3

Q178 :

If an owner has not appointed any proxy for the original meeting, can he appoint a proxy for the adjourned meeting?

A :

Yes. Regardless of whether an owner has appointed a proxy for the original meeting, he can appoint a proxy for the adjourned meeting.

Q179 :

If a meeting is adjourned, who will be responsible for keeping the proxy instruments before the adjourned meeting is convened?

A :

For a meeting of owners convened under section 3, 3A, 4 or 40C for the incorporation of owners, the convenor shall be responsible for keeping the proxy instruments before the adjourned meeting is convened. For a meeting of the corporation, the MC shall be responsible for keeping the instruments.

Q180 :

How long should the proxy instruments be kept if the meeting is adjourned?

A :

The proxy instruments shall be kept for a period of at least 12 months after the conclusion of the adjourned meeting.

Sections 3(11), 3A(3I), 4(13) and 40C(12) and para 4(6) of Sch. 3

