

## 2. Matters Relating to the Appointment of Members of MC

### Appointment of Members of MC

**Q27 :** What is the minimum number of members in an MC?

**A :** The minimum number of members in an MC depends on the number of flats in the building. Para 1(1) of Sch. 2

No. of flats	Minimum no. of MC members
Not more than 50	3
More than 50 but not more than 100	7
More than 100	9

**Q28 :** What is meant by “flat”? Is carpark counted as a flat?

**A :** In the BMO, “flat” means any premises in a building which are referred to in a DMC whether described therein as a flat or by any other name and whether used as a dwelling, shop, factory, office or for any other purpose, of which the owner, as between himself and owners or occupiers of other parts of the same building, is entitled to the exclusive possession. Sections 2 and para 1A of Sch. 2

In counting the number of flats for the purposes of determining the minimum number of MC members in accordance with paragraph 1A of Schedule 2 to the BMO, “flat” does not mean any garage, carpark or carport.

**Q29 :** Is the tenants’ representative appointed under section 15(1) counted towards the minimum number of members for an MC?

**A :** Yes. Paragraphs 2(2) and 5(2A) of Schedule 2 to the BMO provide that the tenants’ representative appointed under section 15(1) shall be deemed to be appointed by the owners as a member of the MC. Para 2(2) and 5(2A) of Sch. 2

**Q30 :** If the secretary and treasurer are not members of the MC, will they be counted towards the minimum number of members for an MC?

**A :** No. A person who is not a member of an MC does not by virtue of his appointment as the secretary or treasurer of the MC become a member of the MC. Para 2(5), 5(4) and 6(6) of Sch. 2

**Q31 :**

**What if the DMC provides that the spouse of an owner who resides in the building could be appointed as members of the MC?**

**A :**

BMO provides that only owners could be appointed as members of the MC (with the exception of tenants' representative appointed under section 15(1) of the BMO).

Para 2(1)(b), 5(2)(a), 6(3) and 12 of Sch. 2

According to paragraph 12 of Schedule 2 to the BMO, in the event of any inconsistency between Schedule 2 and the terms of a DMC, Schedule 2 shall prevail. Owners should therefore follow BMO requirements instead of DMC provisions in appointing members of MC under the BMO.

**Q32 :**

**If the DMC has provisions that are inconsistent with BMO provisions with regard to the appointment of members of an MC, should owners follow the DMC or the BMO requirements?**

**A :**

Schedule 2 to the BMO governs the composition and procedure of MC. Paragraph 12 of Schedule 2 stipulates that in the event of any inconsistency between the Schedule and the terms of a DMC or any other agreement, Schedule 2 shall prevail. The requirements regarding composition of MC and appointment of members of MC under the BMO should therefore be followed regardless of the requirements in the DMC of the building.

Para 12 of Sch. 2

**Q33 :**

**What if the DMC provides that there should be a representative from each of the block of the estate to serve on the MC?**

**A :**

Paragraphs 2(1) and 5(2) of Schedule 2 to the BMO provide that owners shall, by resolution at a meeting of owners, appoint, from amongst the owners, the members of the MC. There is no provision in the BMO concerning how offices of members of the MC should be allocated amongst the owners.

Para 2(1) and 5(2) of Sch. 2

Owners may choose to use whatever ways to allocate the offices of members of the MC. So long as each member of the MC is appointed at a meeting of owners, such appointment will have fulfilled the requirements under the BMO.

**Q34 :**

**Who can decide or change the number of members of an MC?**

**A :**

The owners shall, by a resolution passed by a majority of votes of the owners, decide the number of members of an MC when the MC is first appointed.

Para 1(2), 1(3) and 2(1)(a) of Sch. 2

If the owners want to change the number of members of an MC, they may do so by passing a resolution at a general meeting of the corporation (except a general meeting convened under paragraph 6A(1) of Schedule 2 to the BMO).

In either case, the number of members of an MC decided by the owners should not be lower than the statutory minimum stated under paragraph 1(1) of Schedule 2 to the BMO.

**Q35 :**

**Is it a must to appoint a vice-chairman of an MC?**

**A :**

It is not a must for an MC to have a vice-chairman. It is up to the owners to decide whether a vice-chairman of an MC has to be appointed. Owners may, by resolution at a meeting of owners, appoint a member of an MC as the vice-chairman of the MC.

Para 2(1) and 5(2) of Sch. 2

However, owners have to note that it is a must to appoint a chairman, secretary and treasurer of an MC.

**Q36 :**

**How shall an OC appoint members of an MC? Is it required to pass a resolution with majority of votes for each appointment made?**

**A :**

An OC shall appoint members of an MC by the “first past the post” voting system. It is not necessary to pass a resolution with majority of votes.

Para 2(3) and (4) and 5(2B) and (2C) of Sch. 2

Here are some examples to illustrate the “first past the post” voting system. Suppose that the number of members of an MC is 3. If there are exactly 3 candidates, then there is no need to carry out the voting and all the candidates shall be deemed to be appointed as members of the MC. If, however, there are 4 candidates, then voting has to be carried out and the top 3 candidates who can get the greatest number of votes shall be appointed as the members of the MC.

The “first past the post” voting system is also applicable to the appointment of chairman, vice-chairman, secretary and treasurer of an MC. For example, if there is only 1 candidate for the office of the chairman, then such candidate shall be deemed to be appointed as the chairman of the MC. If there are 3 candidates running for the office of the chairman, then the one who gets the greatest number of votes shall be appointed.



**Q37 :**

**When the members of an MC have been appointed by owners at the meeting of the owners, could the members elect among themselves the chairman, vice-chairman (if any), secretary and treasurer?**

**A :**

No. Paragraphs 2(1) and 5(2) of Schedule 2 to the BMO provide that the appointment of chairman, vice-chairman (if any), secretary and treasurer of an MC shall be made by the owners by passing a resolution at a meeting of owners.

Para 2(1) and 5(2) of Sch. 2

**Q38 :**

**If the owners decide that the number of members of the MC should be 3 and there are exactly 3 candidates, do the owners still have to carry out the voting procedure to confirm the appointment of these 3 members?**

**A :**

No. The appointment of members of an MC shall be made in accordance with the “first past the post” voting system. If the number of members of an MC is exactly the same as the number of candidates, then no voting has to be carried out and all the candidates shall be deemed to be appointed as members of the MC.

Para 2(3)(a) and 5(2B)(a) of Sch. 2

**Q39 :**

**If the owners decide that the number of members of the MC should be 3 and there are 5 candidates, then how should the voting be carried out?**

**A :**

In such situation, voting has to be carried out to determine who shall be appointed as members of the MC. In giving the votes, an owner may vote for not more than the number of members of the MC. In this hypothetical case, it means that an owner can at most vote for 3 candidates.

Para 2(3)(b)(i) and 5(2B)(b)(i) of Sch. 2

Assuming that the voting result is as follows –

Candidate A	105 votes
Candidate B	159 votes
Candidate C	51 votes
Candidate D	225 votes
Candidate E	88 votes

The top 3 candidates who can get the greatest number of votes shall be appointed as members of the MC. This means that in the above example, Candidates A, B and D shall be appointed as members of the MC.

**Q40 :**

**If there are 2 candidates for the appointment of chairman of the MC and it turns out that these 2 candidates have an equal number of votes, then which one of these candidates shall be the chairman?**

**A :**

If the 2 candidates have an equal number of votes, then the person who presides over the meeting shall determine the result by drawing lots. The candidate on whom the lot falls shall be appointed as the chairman of the MC.

Para 2(4)(b)(ii) and 5(2C)(b)(ii) of Sch. 2

This mechanism is also applicable to the appointment of vice-chairman, secretary, treasurer and members of an MC.

**Q41 :**

**In appointing the members of an MC, if some of the candidates have an equal number of votes, then how to determine who shall be appointed as the members?**

**A :**

Here is an example to illustrate. Suppose that the number of members of an MC is 3 and there are 4 candidates. The voting result is as follows –

Para 2(3)(b)(ii) and 5(2B)(b)(ii) of Sch. 2

Candidate A	70 votes
Candidate B	103 votes
Candidate C	70 votes
Candidate D	92 votes

In this hypothetical case, Candidates B and D who obtain more votes shall be appointed as members of the MC. The remaining candidates, Candidates A and C, obtain an equal number of votes. The person presiding over the meeting shall determine which one of them shall be appointed as a member of the MC by drawing lots. The candidate on whom the lot falls is to be appointed.

**Q42 :**

**BMO stipulates that the one presiding over the meeting of owners shall determine the result by drawing lots in case the candidates have an equal number of votes. How should the act of drawing lots be carried out?**

**A :**

There is no rigid rule on the method of drawing lots. However, it is important for the one presiding over the meeting to ensure that the act of drawing lots is conducted in a fair and open manner.

**Q43 :**

**Could an owner fill two posts of an MC?**

**A :**

There is no provision in the BMO that prohibits an owner from filling two posts of an MC. However, to encourage more owners to participate in the MC and for the MC to be more representative, it is strongly advisable for an owner to fill one post of an MC. Moreover, since chairman, vice-chairman, secretary and treasurer are vested with specific powers and responsibilities under the BMO, appointing an owner to fill two posts may cause confusion and hinder smooth operation of the OC.

**Q44 :**

**Could co-owners of the same flat serve as MC members at the same time?**

**A :**

There is no provision in the BMO that prohibits co-owners of the same flat from being MC members at the same time. Nonetheless, in order to encourage more participation of owners in the MC and for the MC to be more representative, we strongly advise owners to appoint owners of different flats to be MC members.

**Q45 :**

**Could a member of an MC (e.g. the chairman) delegate his power to another member?**

**A :**

The BMO has conferred or imposed certain statutory power or duties on individual members of an MC. There is no provision in the BMO that provides for the delegation of such power or duties. The individual member should be the one who is responsible for exercising such power or discharging such duties.

**Q46 :**

**If a person is not an owner of the building concerned, can he be appointed as a member of the MC?**

**A :**

BMO provides that only owners could be appointed as members of an MC, with the exception of tenants' representative appointed under section 15(1) of the BMO. Paragraphs 2(2) and 5(2A) of Schedule 2 to the BMO provide that the tenants' representative shall be deemed to be appointed by the owners as a member of an MC.

A non-owner may be appointed as a secretary or treasurer of the MC. However, such person does not by virtue of his appointment become a member of an MC.

Para 2(2), 2(5),  
5(2A) and 5(4) of  
Sch. 2



**Q47 :**

**BMO provides that members of an MC shall retire from office at every alternate annual general meeting. If the secretary and treasurer of an MC are not members of the MC, do they have to retire from office also?**

**A :**

Yes. Paragraph 5(1)(b) and (c) of Schedule 2 to the BMO provides that if the secretary and treasurer of an MC are not MC members, they still have to retire from office at every alternate annual general meeting.

Para 5(1) of Sch. 2

**Q48 :**

**Does a tenants' representative, being a member of an MC, have to retire from the office at every alternate annual general meeting of the corporation?**

**A :**

No. Tenants' representative appointed under section 15(1) of the BMO does not have to retire from office at every alternate annual general meeting. According to paragraph 5(2A) of Schedule 2 to the BMO, such tenants' representative shall be deemed to be appointed by the OC as a member of the new MC.

Para 5(1) and (2A) of Sch. 2

**Q49 :**

**If a member of an MC wants to resign from his office, what should he do? What if such member is the secretary of the MC?**

**A :**

A member of an MC should resign his office by notice in writing delivered to the secretary of the MC. If the office of the secretary is vacant, the member should deliver the written notice to the chairman of the MC.

Para 4(2)(d) of Sch. 2

If such member is the secretary, he should resign his office by notice in writing to the chairman of the MC.

Court case: 陳永偉 訴 銅鑼灣灣景樓A及B座業主立案法團第29屆管理委員會 [LDBM 321/2003]

**Q50 :**

**What is the obligation of an outgoing member of an MC?**

**A :**

An outgoing member should, within 14 days of his ceasing to be a member, hand over to the secretary of the MC (or the chairman of the MC if the office of the secretary is vacant) the following things –

Para 5A of Sch. 2

- (a) any books or records of accounts, papers, documents and other records in respect of the control, management and administration of the building.
- (b) any movable property belonging to the OC that are under his control or in his custody or possession.

**Q51 :**

**If an MC does not convene the annual general meeting in a timely manner in accordance with paragraph 1(1)(b) of Schedule 3 and no re-appointment of MC is properly made in accordance with paragraph 5 of Schedule 2, will the MC become invalid?**

**A :**

Paragraph 3 of Schedule 2 to the BMO provides that the members of the MC appointed by a meeting of owners under paragraph 2(1) (b) of Schedule 2 shall hold office until the members of a new MC are appointed. The MC will not automatically dissolve or cease to have the power to represent the corporation even if no re-appointment is made.

Para 3 of Sch. 2

That said, it is highly undesirable if an MC continues to operate without re-appointment of a new MC for a long time. We strongly urge MCs to convene the annual general meeting in a timely manner in accordance with paragraph 1(1)(b) of Schedule 3.

Court cases: *The Incorporated Owners of Maple Mansion 訴 Ho Yiu Keung and Regent Talent Industrial Limited* [LDBM 98/2000]; *The Incorporated Owners of Finance Building v. Bright Hill Management Consultants Company Limited* [CACV 386/2000]; *Leung Ho Sing and others v. Shum Yiu Tung and others* [CACV 108/2006].

**Q52 :**

**If an MC does not convene the annual general meeting in a timely manner in accordance with paragraph 1(1)(b) of Schedule 3 and no re-appointment of MC is properly made in accordance with paragraph 5 of Schedule 2, what can the owners do?**

**A :**

Owners can adopt the following methods –

- (a) according to paragraph 1(2) of Schedule 3 to the BMO, not less than 5% of the owners may request the chairman of the MC to convene a general meeting of the corporation for the purposes of appointing a new MC;
- (b) owners may make an application to the Lands Tribunal for an order to compel the MC to convene the annual general meeting and re-appoint a new MC;
- (c) owners may also make an application to the Lands Tribunal under section 31 of the BMO for the dissolution of the MC and the appointment of an administrator.

Court case: *Tony Sai Kwong Chan v. The Incorporated Owners of Great George Building and All its Executive Members for 97/99* [LDBM 194/1998]; *胡桂容及廖廣海 訴 黃漢明* [LDBM 323/2002]; *Fung Yuet Hing v. The Incorporated Owners of Hing Wong Mansion, Lee Leng Kong and Wong Sik Cham* [LDBM 367/2004]



**Q53 :**

**If owners are dissatisfied with the performance of the MC (or individual MC members), what can the owners do?**

**A :**

The owners may adopt the following courses of action –

- (a) according to paragraph 1(2) of Schedule 3 to the BMO, not less than 5% of the owners may request the chairman of the MC to convene a general meeting of the corporation. At such meeting, owners may resolve to remove members of the MC from office, or to appoint an administrator and dissolve the incumbent MC;
- (b) owners may vote down such members of the MC at the next alternate annual general meeting where a new MC will be appointed;
- (c) owners may make an application to the Lands Tribunal under section 31 of the BMO for the dissolution of the incumbent MC and the appointment of an administrator.

Court case: *Tony Sai Kwong Chan v. The Incorporated Owners of Great George Building and All its Executive Members for 97/99* [LDBM 194/1998]; *胡桂容及廖廣海 訴 黃漢明* [LDBM 323/2002]; *Fung Yuet Hing v. The Incorporated Owners of Hing Wong Mansion, Lee Leng Kong and Wong Sik Cham* [LDBM 367/2004]

## Eligibility for Appointment as MC members

**Q54 :**

**Who is eligible for being appointed as a member of the MC?**

**A :**

Every owner is eligible for being appointed as an MC member provided that he does not fall within the following description –

- (a) is an undischarged bankrupt at the time of the appointment or 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;
- (b) 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.

Para. 4(1) of Sch. 2

**Q55 :**

**If a person has been convicted of an offence and sentenced to an imprisonment for a term exceeding 3 months within the previous 5 years, where such imprisonment is suspended by the court, then is he eligible to be appointed as a member of an MC?**

**A :**

No. According to the paragraph 4(1)(b) of Schedule 2 to the BMO, if a person is sentenced to imprisonment for a term exceeding 3 months without the option of a fine within the previous 5 years, then no matter such imprisonment is suspended or not, he is not eligible to be appointed as an MC member.

Para 4(1)(b) of Sch. 2

**Q56 :**

**If an owner has obtained a discharge in bankruptcy within the previous 5 years, is he eligible to be appointed as a member of an MC?**

**A :**

The key to the answer is whether the owner has obtained the discharge in bankruptcy by paying his creditors in full. If an owner has obtained the discharge within the previous 5 years without paying his creditors in full, then such owner is not eligible to be appointed as a member of an MC.

Para 4(1)(a) of Sch. 2

If, however, an owner has obtained the discharge by paying his creditors in full, then provided that such owner does not fall within the description of paragraph 4(1)(b) of Schedule 2 to the BMO, he is eligible to be appointed as an MC member.

**Q57 :**

**Each member of an MC is required to self-declare whether he qualifies as a member of the MC. What should the member do in order to fulfil the requirement? Is it necessary for the member to make a statement?**

**A :**

In order to fulfil the requirement, a member of an MC has to sign the "Statement of Eligibility" [L.R. 175] in the presence of a witness who shall also sign the statement to confirm that the signature of the member is genuine. The witness may be any person aged 18 or above such as a family member, a neighbour or another MC member. The MC member may lodge the statement in or outside Hong Kong. He has to fill in a statement stating that he does not fall within the description of paragraph 4(1)(a) or (b) of Schedule 2 to the BMO. The "Statement of Eligibility" is available at the offices of the Land Registry, District Offices or the following websites –

Para 4(3) of Sch. 2

[www.landreg.gov.hk](http://www.landreg.gov.hk)  
[www.buildingmgt.gov.hk](http://www.buildingmgt.gov.hk)

After making the statement, the member has to lodge the signed statement with the secretary of the MC within 21 days after his appointment.

**Q58 :**

**If an existing member of the MC is re-appointed under paragraph 5(2) of Schedule 2 to the BMO, does he have to hand in a fresh statement?**

**A :**

Yes. According to paragraph 4(3) of Schedule 2 to the BMO, with the exception of tenants' representative, every member of the MC appointed (no matter such member is new to the MC or is an existing member) shall, within 21 days after the appointment, make a statement and lodge the completed statement with the secretary of the MC.

Para 4(3) of Sch. 2

**Q59 :**

**If the secretary or treasurer of an MC is not a member of the MC, does he have to hand in a statement?**

**A :**

No. Only members of an MC have to hand in statements. If the secretary or treasurer of an MC is not a member of the MC, he is not subject to the requirements on qualifications of MC members and neither does he need to hand in a statement.

Para 4(3) of Sch. 2

**Q60 :**

**Does a tenants' representative appointed under section 15(1) of the BMO have to hand in a statement?**

**A :**

No. A tenants' representative need not hand in a statement.

Para 4(3) of Sch. 2

**Q61 :**

**If a member of the MC is a body corporate, does such member have to hand in a statement?**

**A :**

Yes. If a body corporate is appointed as a member of the MC, that body corporate may appoint a person to act as its representative for the purposes of the BMO, as if such representative were a member of the MC in his own right. Such representative, just like other members of the MC, shall lodge with the secretary of the MC a statement within 21 days after the appointment.

Para 11 of Sch. 2



**Q62 :**

**What should a member of the MC do if a change occurs in any matter stated in his statement?**

**A :**

If a change occurs in any matter stated in the statement, then the person who made the statement shall, within 21 days after the change occurs, lodge with the secretary of the MC a “Statement of Change of Particulars” [L.R. 176] to state the particulars of the change. He has to sign the statement in the presence of a witness who shall also sign the statement to confirm that the signature of member is genuine. The witness may be any person aged 18 or above such as a family member, a neighbour or another MC member.

Para 4(5) of Sch. 2

Owners may obtain the “Statement of Change of Particulars” from the offices of the Land Registry or District Offices. They may also download the forms from the following websites –

[www.landreg.gov.hk](http://www.landreg.gov.hk)  
[www.buildingmgt.gov.hk](http://www.buildingmgt.gov.hk)

**Q63 :**

**What is the consequence if a member of the MC fails to lodge his statement with the secretary of the MC within the stipulated time limit under paragraph 4(3) of Schedule 2 to the BMO? Will such person be deemed as member of the MC again if he lodges the statement after the stipulated deadline?**

**A :**

If a member of the MC fails to lodge the completed statement [L.R. 175] within the stipulated time limit (i.e. 21 days after the appointment), then according to paragraph 4(4) of Schedule 2 to the BMO, such member shall cease to be a member of the MC.

Para 4(3) and (4) of Sch. 2

This cessation of membership is permanent and irreversible. Even if the person lodges the statement afterwards, he will not be deemed as a member of the MC again. If the person wants to be appointed as a member of the MC again, he will have to get a fresh appointment in accordance with the requirements in Schedule 2.

**Q64 :**

**After the appointment of the first MC, if one of the members appointed fails to comply with paragraph 4(3) of Schedule 2 to the BMO, will the registration of the OC with the Land Registrar under section 7 be affected?**

**A :**

If a member fails to comply with paragraph 4(3) of Schedule 2, then such member shall cease to be a member of the MC. This may affect the registration of the OC if the number of remaining members is below the statutory minimum stipulated in paragraph 1(1) of Schedule 2 to the BMO. If the number of members of the MC is below the statutory requirement, an OC cannot be registered with the Land Registry.

To illustrate, suppose that the number of members of an MC is 9, which is also the statutory minimum. If one of the members fails to lodge the statement with the secretary within 21 days of his appointment, then such member shall cease to be an MC member. Since the number of remaining members, which is 8 in this case, is below the statutory minimum, the owners may not be able to register as an OC.

On the other hand, if the number of members of an MC is 15, then even if one member fails to comply with the statement requirement and thus ceases to be a member, the number of remaining members is still above the statutory minimum. In this case, the registration of OC will not be affected.

**Q65 :**

**Suppose that 15 owners are appointed by the meeting of owners to be the MC members and subsequently, one of the members fails to comply with the statement requirement and thus ceases to be a member. When the MC applies to the Land Registry for registration of the OC, what is the size of the MC? Should the size of the MC be 14 or 15 members?**

**A :**

In this case, the size of the MC should be 15 members, which is the number decided by the meeting of owners, with 1 vacancy in the MC.



**Q66 :**

**After receiving the statements from members of the MC, what should the secretary do?**

**A :**

For the appointment of the first MC, after receiving the completed statements from members of the MC, the secretary shall cause the statements to be lodged with the Land Registrar within 28 days of the appointment of this first MC. These statements shall be submitted together with other documents to the Land Registrar for the registration of the owners as an OC.

Para 4(6) of Sch. 2

For other occasions (such as subsequent appointment of MC at every alternate annual general meeting or where a change occurs in any matter stated on the statement of the MC member), the secretary shall lodge with the Land Registrar the completed statements within 28 days after receiving the statements from the MC members.

**Q67 :**

**If the secretary of the MC fails to lodge the statements with the Land Registrar within the time limit specified under paragraph 4(5) of Schedule 2 to the BMO, will this render the appointment of the members of the MC invalid?**

**A :**

No. The statutory duty of a member of the MC is to lodge the statement with the secretary within the stipulated time limit. The failure of the secretary to observe his statutory duty to lodge the statements with the Land Registrar within the stipulated time limit will not render the appointment of the MC members invalid.

Para 4(6) of Sch. 2

**Q68 :**

**If a member of the MC makes a false statement, what is the consequence?**

**A :**

Section 36 of the BMO provides that any person who furnishes any information required to be furnished under the BMO, which he knows, or reasonably ought to know, to be false in a material particular, shall be guilty of an offence and shall be liable on conviction to a fine at level 3 and to imprisonment for 6 months.

Section 36



## Filling Vacancies of MC

**Q69 :**

**If the number of members of an MC falls below the statutory minimum stipulated under paragraph 1 of Schedule 2 to the BMO, does the MC become invalid?**

**A :**

An MC, once appointed, does not become invalid merely because its number of members falls below the statutory minimum. When a vacancy occurs in an MC and causes the number of members to fall below the statutory minimum, either the corporation or the MC may fill such vacancy in accordance with paragraph 6 of Schedule 2 to the BMO.

Para 1 and 6 of Sch. 2

Court case: 龍珠島別墅 F1-F7 座業主立案法團 訴 Wong Chun Yee and Others [CACV 1911/2001]

**Q70 :**

**BMO provides that if a vacancy occurs in the MC, the vacancy may be filled by the MC or the corporation. What is the difference between the two methods?**

**A :**

To allow for flexibility in the operation of MC, two methods are provided in the BMO for filling vacancies in an MC. The option of allowing an MC to fill vacancies provides for a faster way in making appointments of MC members so as to ensure smooth operation of the MC and the corporation.

Para 6(3), (4) and (5) of Sch. 2

There are two main differences between the two methods.

The first one is the term of appointment. If the MC chooses to fill the vacancies by itself, the appointment will be of temporary nature and only last till the next general meeting of the corporation. This means that once a general meeting of the corporation is held, no matter such meeting is an annual general meeting or extraordinary general meeting, the appointment of such member will cease immediately. On the contrary, if a general meeting of the corporation is convened to fill the vacancies, the appointment will last till the next alternate annual general meeting at which a new MC is appointed.

The second main difference is the system of voting. If a general meeting of the corporation is convened to fill the vacancies, the owners shall adopt the “first past the post” system of voting in making the appointment. If the vacancies are filled by the MC, then the MC shall, as in making other decisions, make the appointment by passing a resolution by a majority of the votes of the MC members present at the meeting.

**Q71 :**

**If the vacancy occurs in the MC is filled by the MC, what is the term of appointment of the members appointed?**

**A :**

If the vacancy is filled by the MC, the appointment will be of temporary nature and only last till the next general meeting of the corporation. Once a general meeting is held, no matter such meeting is an annual general meeting or extraordinary general meeting, the appointment will cease immediately.

Para 6(3), (4) and (5) of Sch. 2

Hence, at such general meeting, the corporation should pass a resolution to fill the vacancy in the MC. If no appointment is made at such general meeting, there will remain a vacancy in the MC.

**Q72 :**

**Who shall determine whether a vacancy in the MC be filled by the MC itself or by the corporation at a general meeting?**

**A :**

When a vacancy occurs in the MC, if no general meeting of the corporation has been so convened or no appointment is made to fill the vacancy at a general meeting of the corporation, the MC may fill the vacancy by itself. If owners opine that the vacancies should not be filled by the MC, then not less than 5% of the owners may ask the chairman of the MC to convene a general meeting in accordance with paragraph 1(2) of Schedule 3 to the BMO to fill the vacancies in the MC.

Para 6(3), (4) and (5) of Sch. 2

**Q73 :**

**If the number of vacancies in an MC is more than 50% of the number of members of the MC, can the chairman convene a meeting of the MC to appoint members to fill the vacancies?**

**A :**

No. Paragraph 9 of Schedule 2 to the BMO stipulates that the quorum at a meeting of the MC shall be 50% of the members of the MC or 3 such members, whichever is greater. If the number of vacancies in an MC is more than 50% of the number of members of the MC, the meeting of the MC will not be able to meet the quorum requirement. The MC will thus become defunct and all resolutions purported to have been passed at the meeting of this defunct MC will be of no effect.

Para 9 of Sch. 2

Under such circumstances, instead of convening a meeting of the MC, the MC members shall fill the vacancies in accordance with paragraph 6A of Schedule 2 to the BMO.

Court case: *Chan Yip Keung and Leung Shiu Kuen v. The Incorporated Owners of Belvedere Garden Phase II and Chiang Shu To* [LDBM 54/2002]

**Q74 :**

**If only the chairman is left in an MC and all the other members have resigned from office, what can the chairman do?**

**A :**

Paragraph 6A(1)(a) of Schedule 2 to the BMO provides that the chairman may convene a general meeting of the corporation for the sole purpose of filling the vacancies in the MC. In other words, at such general meeting, owners should only pass resolutions with regard to filling the vacancies. Resolutions related to other matters shall be of no effect even if they are passed at such meeting.

Para 6A(1)(a) of Sch. 2

**Q75 :**

**Suppose that the number of members of MC, as decided by the OC, is 9 and 6 of the members resign from office, what can the 3 remaining members do?**

**A :**

In this case, since the number of vacancies in the MC is more than 50% of the number of MC members, it is not possible for the members to convene a valid MC meeting to fill the vacancies. The members may fill the vacancies in accordance with paragraph 6A of Schedule 2 to the BMO.

Para 6A(1) of Sch. 2

If the chairman is one of the 3 remaining members, then he may convene a general meeting of the corporation under paragraph 6A(1)(a) of Schedule 2 for the sole purpose of filling the vacancies in the MC. The chairman may also convene a normal general meeting of the corporation under paragraph 1(2) of Schedule 3 to fill the vacancies, if not less than 5% of owners have requested so.

If, however, the office of the chairman is vacant, then the 3 remaining members may appoint a person, from amongst themselves, to convene a general meeting of the corporation under paragraph 6A(1)(b) of Schedule 2 for the sole purpose of filling the vacancies in the MC.

**Q76 :**

**If there is only one member (who is not the chairman) left in an MC as all the other members have resigned from office, can such member convene a special general meeting under paragraph 6A of Schedule 2 to the BMO?**

**A :**

Yes. Such member may convene a general meeting of the corporation for the sole purpose of filling the vacancies in the MC under paragraph 6A(1)(b) of Schedule 2.

Para 6A(1)(b) of Sch. 2



**Q77 :**

**If the remaining members in an MC could not agree among themselves who will be the convenor, can they still convene a special general meeting under paragraph 6A of Schedule 2 to the BMO?**

**A :**

No. Paragraph 6A(1)(b) of Schedule 2 provides that the remaining members of MC may appoint a person, from amongst themselves, to convene a general meeting of the corporation for the sole purpose of filling vacancies in the MC. Such convenor has to be agreed and appointed by all the remaining members.

Para 6A(1)(b) of Sch. 2

**Q78 :**

**If a special general meeting of the corporation is held under paragraph 6A of Schedule 2 to the BMO for filling the vacancies in the MC, can the corporation pass a resolution on other matters at the same meeting, e.g. to change the number of members of the MC (so as to meet the quorum) or other urgent matters like renovation of the building?**

**A :**

No. At the special general meeting of the corporation held under paragraph 6A of Schedule 2 to the BMO, owners should only pass resolutions that are related to filling vacancies in the MC. Resolutions related to any other matters should not be dealt with in this special general meeting and even if such resolutions are passed, they shall be of no effect.

Para 6A(1) of Sch. 2

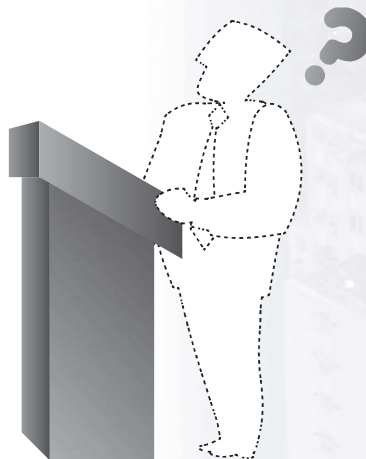
**Q79 :**

**If the office of the chairman is vacant and a special general meeting of the corporation is held under paragraph 6A of Schedule 2 to the BMO, then who shall preside over the meeting?**

**A :**

The person who is appointed by the remaining MC members to convene this special general meeting of the corporation shall preside over the meeting.

Para 6A(2)(b)(ii) of Sch. 2



**Q80 :**

**If the office of the secretary is vacant and a special general meeting is held under paragraph 6A of Schedule 2 to the BMO, then who shall be responsible for the duties of the secretary, such as issuing acknowledgement receipt of proxy instrument?**

**A :**

If the chairman of the MC is still in office, then the chairman shall be responsible for the duties of the secretary.

Para 6A(2)(b)(i)  
and (iii) of Sch. 2

If both the offices of the secretary and the chairman are vacant, then the person who is appointed by the remaining members to convene this special general meeting of the corporation shall be responsible for the duties of the secretary.

**Q81 :**

**If the number of vacancies in an MC is more than 50% of the number of members of the MC, but yet a special general meeting has not been convened in accordance with paragraph 6A of Schedule 2 to the BMO to fill the vacancies, what can the owners do?**

**A :**

If the chairman is still in office, then not less than 5% of the owners may request the chairman to convene a general meeting of the corporation under paragraph 1(2) of Schedule 3 to the BMO.

If the office of the chairman is vacant, an owner may make an application to the Lands Tribunal under section 31 of the BMO for the dissolution of the MC and the appointment of an administrator.



## Allowance paid by the OC

**Q82 :** Who is eligible for receiving allowance paid by the corporation under section 18(2)(aa) of the BMO? How much is the allowance?

**A :** Chairman, vice-chairman, secretary and treasurer of an MC are eligible for receiving allowance paid by the corporation. However, it will be up to the corporation to decide, by passing a resolution at the general meeting, whether allowance should be given to any of these people.

Section 18(2)(aa) and Sch. 4

The amount of the allowance shall also be determined by the corporation at the general meeting, subject to the following maximum amount –

No. of flats	Maximum per month for each person
Not more than 50	\$ 600
More than 50 but not more than 100	\$ 900
More than 100	\$ 1,200

**Q83 :** Could the OC pass a resolution at the general meeting of the corporation to grant a higher level allowance to the chairman?

**A :** No. The maximum amount of allowance is stipulated in Schedule 4 to the BMO. The OC could not pass a resolution to grant an allowance that is higher than the stipulated amount.

Section 18(2)(aa) and Sch. 4

**Q84 :** Could the OC pass a resolution at the general meeting of the corporation to grant allowance to all or some members of the MC?

**A :** Not all members of the MC are eligible for receiving allowance. Only chairman, vice-chairman, secretary and treasurer of the MC are eligible. Therefore, OC could not pass a resolution to grant allowance to all MC members.

Section 18(2)(aa) and Sch. 4

However, OC could pass a resolution to grant allowance to some of the eligible persons. For example, it may decide to only grant allowance to the chairman, but not to vice-chairman, secretary and treasurer.



**Q85 :**

**If the secretary or the treasurer of the MC is not a member of the MC, is he eligible for receiving the allowance?**

**A :**

Yes. Even if the secretary or treasurer is not a member of the MC, he is eligible for receiving the allowance.

Section 18(2)(aa) and Sch. 4

**Q86 :**

**For cases where the secretary or the treasurer of the MC is not a member of the MC, he is usually a staff engaged by the OC. In this circumstance, is the maximum amount that an OC can pay to such person the amount stipulated under Schedule 4 to the BMO?**

**A :**

Section 18(2)(a) of the BMO provides that an OC may, in its discretion, engage and remunerate staff for any purpose relating to the powers or duties of the OC under the BMO or DMC. If the secretary or treasurer is a staff engaged by the OC, the OC may decide the amount of remuneration given to such staff. In this case, the remuneration is not an allowance and is not subject to the maximum amount stipulated in Schedule 4 to the BMO.

Section 18(2)(a)

**Q87 :**

**Is the allowance paid by the corporation under section 18(2)(aa) taxable?**

**A :**

The allowance paid by the corporation under section 18(2)(aa) is taxable under section 8(1)(a) of the Inland Revenue Ordinance (Cap.112).

In ascertaining the net assessable income of a person, there shall be deducted from the assessable income of that person all outgoings and expenses, other than expenses of a domestic or private nature and capital expenditure, wholly, exclusively and necessarily incurred in the production of the assessable income. Each case will be assessed by the Inland Revenue Department on a case by case basis.



## Protection of Members of MC

**Q88 :** Under what circumstances can a member of an MC claim protection under section 29A?

**A :** According to section 29A, individual member of an MC shall not be held personally liable if both of the following criteria are fulfilled –

- (a) the MC member is acting in good faith and in a reasonable manner; **and**
- (b) the acts are done by the OC or they are done by the member on behalf of the OC in the exercise or purported exercise of the powers conferred by the BMO on the OC, or in the performance or purported performance of the duties imposed by the BMO on the OC.

Section 29A

**Q89 :** How could one decide whether a member of an MC has acted in good faith and in a reasonable manner?

**A :** The expression of “in good faith” or “in a reasonable manner” is ubiquitous in legislation. “Good faith” generally means honesty or sincerity of intention, whereas “reasonable manner” generally describes acts that are logical and sensible. Yet, each case has to be determined on its own facts. The court will take into account all the circumstances of the case in determining whether a member of an MC has acted in good faith and in a reasonable manner.

Section 29A

**Q90 :** With section 29A, does it mean that no court action could be brought against individual members of an MC?

**A :** Section 29A does not prohibit anyone from taking legal action against a member of an MC. It only provides a statutory basis for the member concerned to apply for striking out the legal proceedings brought against him or defend the claim if section 29A is applicable.

Section 29A

**Q91 :**

**If a member fails to carry out his statutory duty under the BMO, for example when the chairman fails to convene a general meeting of the corporation under paragraph 1(2) of Schedule 3, can he claim protection under section 29A of the BMO?**

**A :**

No. Section 29A only covers acts done by or on behalf of the OC in the exercise of the powers conferred or performance of the duties imposed by the BMO. It does not cover statutory obligations imposed on individual members.

Using paragraph 1(2) of Schedule 3 as an example, the responsibility to convene a meeting of the corporation at the request of not less than 5% of owners rests with the MC chairman and not the MC. As such, section 29A does not apply to such circumstances.

Court Case: *胡桂容及廖廣海 訴 黃漢明* [LDBM 323/2002]

Section 29A

