

Chapter 7 Filling Vacancies of a Management Committee

An MC member's term of office is normally about 2 years.

At the second annual general meeting of an OC and thereafter at every alternate annual general meeting (i.e. the fourth, sixth, eighth annual general meeting of an OC and so on), all members (except the tenants' representative), and the secretary and treasurer of the MC, shall retire from office. The OC shall appoint the members, chairman, vice-chairman (if any), secretary and treasurer of the new MC at the same annual general meeting.

Para 5 of Sch. 2

Ceasing to be an MC member

An MC member, irrespective of his term of office, shall cease to be a member of the MC with immediate effect if he –

Para 4(2) of Sch. 2

- (a) is declared bankrupt;
- (b) enters into a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap. 6) with his creditors without paying the creditors in full;
- (c) is convicted of an offence in Hong Kong or any other place for which he is sentenced to imprisonment, whether suspended or not, for a term exceeding 3 months without the option of a fine;



It should be noted that if there is any change to an MC member's circumstances as mentioned in (a), (b) or (c) above –

- he shall, within 21 days after the change occurs, make a statement in a specified form [L.R.176] (**Appendix 5**) to state the particulars of the change and lodge the signed statement with the MC secretary.
- the MC secretary shall lodge with the Land Registry the statement made by the MC member within 28 days after receiving it.

The statement requirement does not apply to the tenants' representative. Besides, the tenants' representative will not cease to be an MC member even if there is a change to his circumstances as mentioned in (a), (b) or (c) above.

Para 4(5), 4(6)(b) and (7) of Sch. 2

(d) fails to lodge, within 21 days after his appointment as an MC member (except the tenants' representative), with the MC secretary a statement in a specified form [L.R.175] (**Appendix 3**);

Para 4(4) of Sch. 2

(e) becomes incapacitated by physical or mental illness;

Para 4(2) of Sch. 2

(f) absents himself from 3 or more consecutive meetings of the MC without the consent of the MC;

(g) resigns his office, by notice in writing delivered to the MC secretary;

If it is the MC secretary who resigns, or the office of the MC secretary is vacant, the member who resigns his office shall do so by delivering the notice in writing to the MC chairman.

(h) ceases to be an owner, if appointed as an MC member in his capacity as an owner;

(i) ceases to be an occupier of a flat, if deemed to be appointed as an MC member in his capacity as the tenants' representative; or

(j) is removed from office by resolution of the OC.

How can an OC remove from office and replace any MC members?

- An OC may remove from office and replace any MC member (other than a member who is the tenants' representative) by a resolution passed by a majority of the votes of the owners at a general meeting of the OC.
- It should be noted that the OC shall appoint, at the meeting at which such resolution is passed, new members, so that the number of MC members will comply with the minimum requirement stipulated in paragraph 1 of Schedule 2 to the BMO –

No. of flats in a building	No. of members
Not more than 50	Not less than 3
More than 50 but not more than 100	Not less than 7
More than 100	Not less than 9

- If a number of MC members are removed and new members are not appointed in their place such that the number of the remaining MC members falls below the number required under paragraph 1 of Schedule 2, the resolution for their removal shall not have effect.

Section 14(2) and (3)

An MC member who ceases to be such member shall, within 14 days of his ceasing to be a member, hand over to the MC secretary the following items in his custody in respect of the control, management and administration of the building –

- any books or records of account, papers, documents and other records;
and
- any movable property that belongs to the OC.

Para 5A of Sch. 2

In case the office of the MC secretary is vacant, the MC member who ceases to be such member shall hand over the items required to the MC chairman.

Filling a vacancy in an MC

A vacancy will occur in an MC if any of its members ceases to be such member for whatever reasons. With the exception of the vacancy caused by the tenants' representative ceasing to be an MC member, a vacancy in an MC which occurs other than by reason of the expiration of the term of office may be filled by the OC or the MC.

Para 6(1) of Sch. 2

Vacancies to be filled by the OC

- If the vacancy occurs in the office of an MC member, the OC may appoint an owner to fill the vacancy by a resolution passed at a general meeting of the OC.
- If the vacancy occurs in the office of the chairman, vice-chairman (if any), secretary or treasurer of the MC, the OC may, by a resolution passed at a general meeting of the OC, appoint –
 - ◆ a person, from amongst the MC members, to fill the vacancy of the chairman or vice-chairman (if any);
 - ◆ a person to fill the vacancy of the secretary or treasurer.

Para 6(3)(a) of Sch. 2

**Para 6(4)(a) and
6(5)(a) of Sch. 2**

- The vacancy in the office of an MC member shall be filled by an owner whereas that of the chairman and vice-chairman (if any) shall be filled by an MC member.

- The secretary and treasurer need not be MC members or owners. If the secretary and treasurer are not MC members, they shall not become MC members by virtue of their appointment to these two offices.

- Their term of office will be the same as that of the existing MC members. In other words, their term will last till the next annual general meeting of the OC at which all members of the MC retire.

- The “first past the post” voting system shall be used in filling the vacancy occurring in the office of the MC member, chairman, vice-chairman, secretary or treasurer at a general meeting of the OC. That is –

- ◆ where the number of candidates is not more than the number of vacancies, the candidates shall be elected uncontested and no votes shall be given.
- ◆ where the number of candidates is more than the number of vacancies, votes shall be given and candidates who obtain the greatest number of votes shall be appointed.
- ◆ before voting, the person who presides at the meeting should remind the owners that the number of candidates they vote for shall not be more than the number of vacancies.
- ◆ after the counting is finished, if there is an equal number of votes, the person who presides at the meeting shall determine the result by drawing lots, and the candidate on whom the lot falls is to be appointed.

Para 6(6) of Sch. 2

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

Para 6(7) and 6(8) of Sch. 2

Vacancies to be filled by the MC

- If no general meeting of the OC has been convened or no appointment is made to fill the vacancy at a general meeting of the OC, the vacancy may be filled by the MC.
- The MC may make an appointment to fill the vacancy in the office of a member or the chairman, vice-chairman (if any), secretary and treasurer of the MC by a resolution passed by a majority of votes at a meeting of the MC.
- The vacancy in the office of an MC member shall be filled by an owner whereas that of the MC chairman or vice-chairman (if any) by an MC member.
- The MC secretary and treasurer need not be MC members or owners. If the person appointed to fill the vacancy of the MC secretary or treasurer is not an MC member, he does not by virtue of his appointment as the MC secretary or treasurer become an MC member.
- It should be noted that the appointment made by the MC to fill the vacancy only lasts till the next general meeting of the OC.

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

Para 6(6) of Sch. 2

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

What is the difference between filling a vacancy at a general meeting of the OC or by the MC?

	Filling a vacancy at a general meeting of the OC	Filling a vacancy by the MC
Term of office	Till the next annual general meeting of the OC at which the MC members retire	Till the next general meeting of the OC
Voting system	“First past the post” voting system	A resolution passed by a majority of votes

What if the vacancy is caused by the tenants' representative ceasing to be an MC member? Can it be filled by a general meeting of the OC or by the MC?

The vacancy of the tenants' representative cannot be filled by a general meeting of the OC or by the MC. If the vacancy is caused by the tenants' representative ceasing to be an MC member for whatever reason, the approved association referred to in section 15(2) may appoint a new tenants' representative to fill the vacancy by a resolution passed by a majority of votes.

Para 6(1A) of Sch. 2

Filling vacancies under special circumstances

Where the number of vacancies in the offices of MC members is more than 50% of the number of MC members as decided by owners at the general meeting of the OC, the MC cannot meet the quorum requirement for holding an MC meeting and it cannot pass any resolution.

Under such circumstances, the vacancies can be filled in the following ways –

Para 6A(1) of Sch. 2

- the MC chairman may convene a general meeting of the OC for the purpose of filling the vacancies in the MC; or
- where the office of the MC chairman is vacant, the remaining members of the MC may appoint a person from amongst themselves to convene a general meeting of the OC for the purpose of filling the vacancies.

At a general meeting of the OC so convened, the owners may, by resolution, fill the vacancies in the offices of the MC members, chairman, vice-chairman (if any), secretary or treasurer. The “first past the post” voting system shall be used in making such appointment.

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

It should be noted that such a general meeting of the OC may only be convened for the sole purpose of filling the vacancies in the MC. At the general meeting, resolutions that are not related to filling the vacancies cannot be passed.

Para 6A(1) of Sch. 2

At a general meeting of the OC so convened –

- where the office of MC secretary is vacant, the MC chairman shall be responsible for the duties of the secretary, e.g. giving notices of meetings and receiving instruments of proxy;
- where the office of MC chairman is vacant, the convenor appointed by the remaining members of the MC shall be responsible for the duties of the chairman, e.g. presiding over a meeting and deciding whether an instrument of proxy is valid;
- where both the offices of the MC chairman and secretary are vacant, the convenor appointed by the remaining members of the MC shall be responsible for the duties of both the chairman and secretary.

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

Where the number of vacancies in the offices of MC members is more than 50% of the number of MC members as decided by the owners at the general meeting of the OC, can the vacancies be filled by the MC or OC at a general meeting, as in normal circumstances, in accordance with paragraph 6 of Schedule 2 to the BMO?

Where the number of vacancies in the offices of the MC members is more than 50% of the number of MC members –

- the vacancies cannot be filled by the MC. The quorum at a meeting of the MC is 50% of the members of the MC or 3 such members, whichever is the greater. If the number of vacancies in the offices of MC members is more than 50% of the number of MC members, the MC cannot meet the quorum requirement for holding an MC meeting and it cannot pass any resolution.
- where the MC chairman is still in office, not less than 5% of the owners may request the chairman to convene a general meeting of the OC under paragraph 1(2) of Schedule 3 to the BMO to fill the vacancies in the MC. The following conditions must be satisfied if vacancies are filled in such way –
 - ◆ the MC chairman is still in office; **and**
 - ◆ not less than 5% of the owners request a general meeting to be convened for filling the vacancies.

The vacancies cannot be filled in such a way if any one of the conditions is not met. Under the circumstances, vacancies can be filled in accordance with paragraph 6A of Schedule 2 to the BMO mentioned above.

Follow-up work after filling vacancies of MC

Whether the vacancy is filled by the OC at a general meeting or by the MC, or is filled under special circumstances, the MC member so appointed shall make a statement in a specified form [L.R.175] (**Appendix 3**) to state that he does not fall within the following descriptions –

Para 4(3) of Sch. 2

- an undischarged bankrupt;
- one who 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;
- one who 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 fine.

The MC member who has filled the vacancy shall, within 21 days after the appointment, make a statement and lodge it with the MC secretary.

- The MC member shall cease to be such member if he fails to comply with the above requirement.
- The MC secretary shall lodge the statement with the Land Registry within 28 days after receiving the statement.

As the register of OCs kept at the Land Registry contains the name and address of the MC chairman, vice-chairman (if any), secretary, treasurer and other members, the MC secretary shall, within 28 days after the vacancy is filled, notify the Land Registry of the changes in a specified form [L.R.124] **(Appendix 4)**.

Para 4(4) of Sch. 2

Para 4(6)(b) of Sch. 2

Section 12(3)