

# Chapter 3

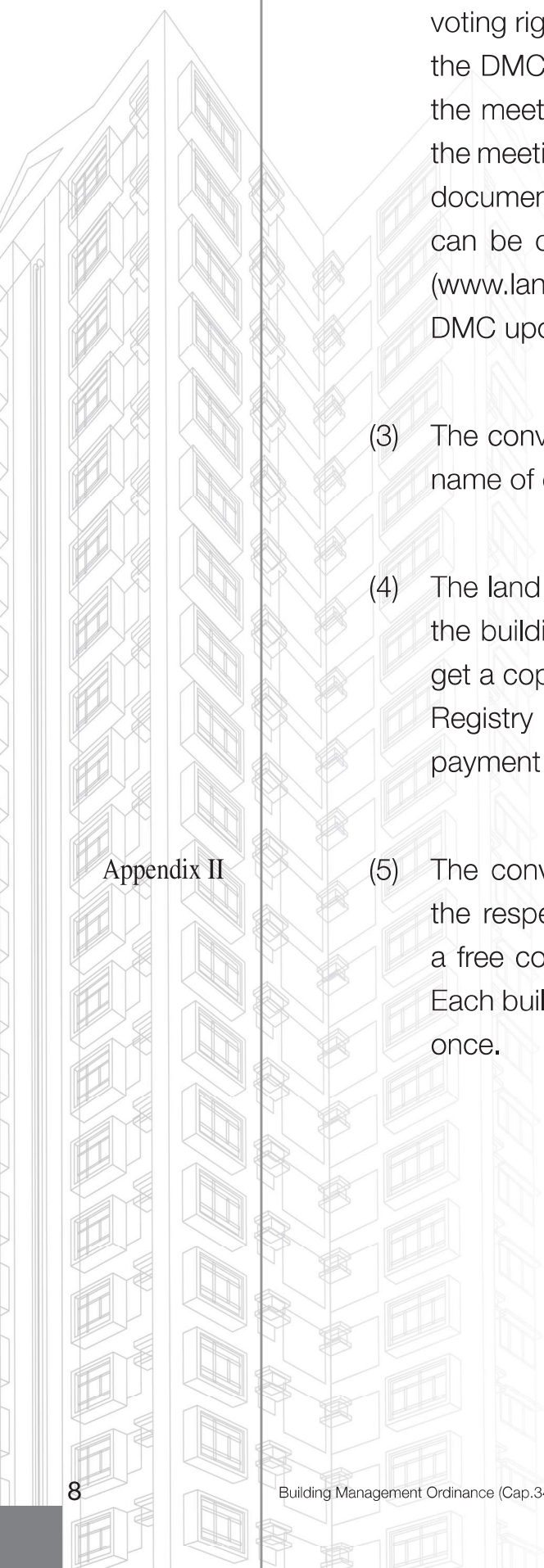
## Procedures of forming an Owners' Corporation

- 3.1 If owners intend to appoint an MC and form an OC under section 3 of the BMO (i.e. appointment of one owner by owners of not less than 5% of the shares in aggregate to convene a meeting of owners), they should convene a meeting of owners following the procedures as set out in paragraphs 3.4 to 3.6 below.
- 3.2 If owners intend to appoint an MC and form an OC under section 3A or 4 of the BMO, apart from complying with the provisions on the application for an order or the passing of the resolutions which are mentioned in Chapter 2, the procedures in convening a meeting of owners as set out in paragraphs 3.4 to 3.6 below should also be followed.
- 3.3 Should owners have any question, they may refer to the relevant provisions in the BMO or contact the District Building Management Liaison Team (DBMLT) of the relevant District Office (DO) or seek legal advice.

### 3.4 Preparation before a meeting of owners held

#### Appointment of convenor and compilation of owners' information

- (1) The owners of not less than 5% of the shares in aggregate shall appoint an owner as the convenor of the meeting of owners (*section 3(1)(c) of the BMO*). The form at Appendix I may be used to record the decision on the appointment of the convenor.



- (2) The convenor should ascertain the number of shares and voting rights of each flat by making reference to the clauses in the DMC of the building. This is to facilitate the recording at the meeting of owners the shares of the owners who attend the meeting personally or by proxy. The DMC, which is a public document, is available from the offices of the Land Registry or can be downloaded from the website of the Land Registry ([www.landreg.gov.hk](http://www.landreg.gov.hk)). The convenor can get a copy of the DMC upon payment of the prescribed fee.
- (3) The convenor should check the land register to ascertain the name of each owner.
- (4) The land register contains the record of owners of the flats in the building which are public information. The convenor can get a copy of the relevant information from the offices of Land Registry or by visiting the website of the Land Registry upon payment of the prescribed fee.
- (5) The convenor may use the form at Appendix II to apply to the respective DO for an exemption certificate for obtaining a free copy of the record of owners from the Land Registry. Each building will only be issued with the exemption certificate once.

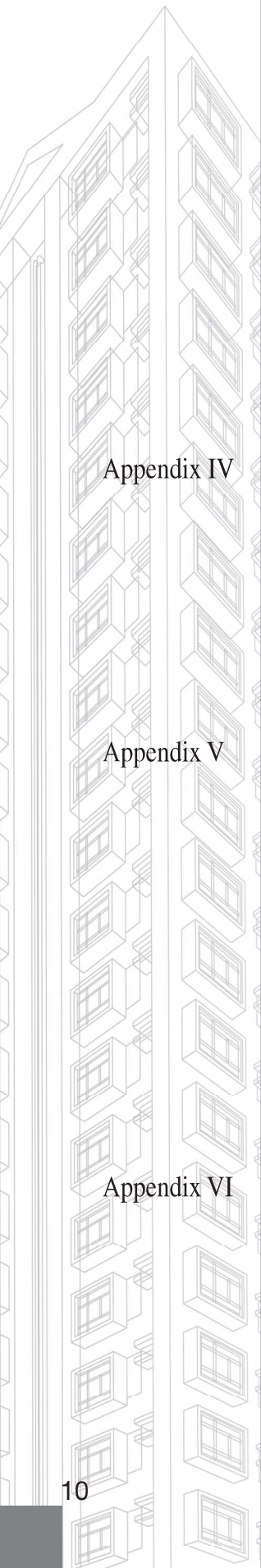
## Appendix II

### **Notice of meeting of owners**

- (6) The convenor has to make sure that the date, time and place of the meeting as well as the agenda of meeting are clearly specified in the notice of meeting of owners (a sample of the notice of meeting of owners is at Appendix III). The agenda shall only specify the resolutions that are related to the incorporation of the owners and the appointment of an MC (*section 3(4) of the BMO*).
- (7) The convenor has to make sure that the address of the building (especially the name of the building) as specified on the notice of meeting of owners is the same as the address appeared in the land register. (The book “*Names of Buildings*” published by the Rating and Valuation Department or the DMC of the building may be used as reference.)
- (8) The convenor has to make sure that the notice of meeting of owners is delivered to all the owners, the DMC manager and the person authorized by the DMC (if any) at least 14 days before the date of the meeting (*section 3(3) of the BMO*). The notice of meeting of owners may be delivered personally to the recipient, sent by post to his/her last known address, left at the owner’s flat or deposited in the letter box for that flat (*section 3(5) of the BMO*).

(The 14-day notification period includes the day of issue of the notice of meeting, but excludes the day of the meeting. Public holidays, Saturdays and Sundays are included. It would be more desirable if longer period of notification is given.)



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- (9) The convenor has to make sure that the notice of meeting of owners is displayed in a prominent place in the building at least 14 days before the date of the meeting of owners (*section 3(6) of the BMO*).

**Matters related to the instrument appointing a proxy (proxy form)**

- (10) The convenor has to make sure that the instrument prepared for the purpose of appointing a proxy shall be in the form set out in Form 1 in Schedule 1A to the BMO (*section 3(10) (a) of the BMO*). A statutory format of the instrument is at Appendix IV.

- (11) The instrument of proxy may be attached to the notice of meeting issued to owners or be available at the management office of the building (if any) for the owners. It is advisable to attach a statement of purposes (a sample is at Appendix V) to the instrument, stating the purposes of collection of owners' information.

- (12) The convenor is advised to remind the owners to lodge with him the instruments of proxy at least 48 hours before the time for the holding of the meeting (*section 3(10)(b) of the BMO*).

- (13) The convenor has to send an acknowledgement of receipt (a sample is at Appendix VI) to the owner who has lodged an instrument of proxy. The receipt may be left at the flat of the owner or deposited in the letter box for the flat (*section 3(10) (e)(i) of the BMO*).

Appendix IV

Appendix V

Appendix VI

(14) The convenor has to determine the validity of the instruments of proxy (*section 3(10)(e)(ii) of the BMO*).

(15) The instrument appointing a proxy is valid only if it is made and lodged in the following manner –

(i) The instrument of proxy shall be in the form set out in the BMO and signed by the owner. If the owner is a body corporate (such as a company or a society, etc), it should be impressed with the seal or chop of the body corporate and signed by the person authorized by the body corporate in that behalf.

(ii) All instruments of proxy shall be lodged with the convenor at least 48 hours before the time for the holding of the meeting. (*section 3(10)(c) of the BMO*)

(If the convenor has decided that the instrument of proxy lodged by any owner is invalid, he is advised to inform the owner concerned before the meeting.)

## Appendix VII

(16) A list (Appendix VII) setting out the flats with instruments of proxy lodged (no matter the instrument is valid or not) shall be displayed in a prominent place in the place of the meeting before the time for the holding of the meeting. The information shall remain so displayed until the conclusion of the meeting (*section 3(10)(e)(iii) of the BMO*).

(If the convenor has decided that the instrument of proxy lodged by any owner is invalid, he is advised to put a mark against the flat concerned on the list for information of the attendees of the meeting.)





## 3.5 Holding a meeting of owners

### Making sure that the quorum is met

- (1) The convenor has to record clearly the name of the owners and proxies present at the meeting of owners, and the number of shares allotted to the flats concerned.
- (2) The convenor should make sure that the quorum, i.e. 10% of the owners (including those present personally and those represented by proxies) is met (*sections 3(8) and 3(10)(d) of the BMO*).

(As set out in section 5B of the BMO, a reference to a percentage of the owners is to be construed as a reference to the total expressed percentage of the number of persons who are owners without regard to their ownership of any particular percentage of the total number of shares into which the building is divided.)

Schedule 11 to the BMO provides for the enumeration of the percentage of owners for the purpose of forming a quorum at a meeting. For example, multiple ownership of one flat is to be counted as one owner; an owner owning more than one flat is to be counted as one owner; a person holding proxies from ten owners is to be counted as ten ones.)

### Presiding at the meeting of owners

- (3) The convenor has to preside at a meeting of owners (*section 3(7) of the BMO*).

## Determining the voting method

- (4) Before a resolution is put to vote, the convenor has to explain to the owners present at the meeting the voting method, for example, by a show of hands or by putting a “✓” or “✗” on the voting forms.

## Explaining how votes are counted

- (5) Unless the DMC of the building provides otherwise, an owner shall have one vote in respect of each share he owns (*section 3(9)(a) of the BMO*). Any valid vote cast by the owner personally or by proxy is to be counted.

- (6) If a share is owned by 2 or more persons –

- (i) the vote in respect of the share of the flat may be cast –

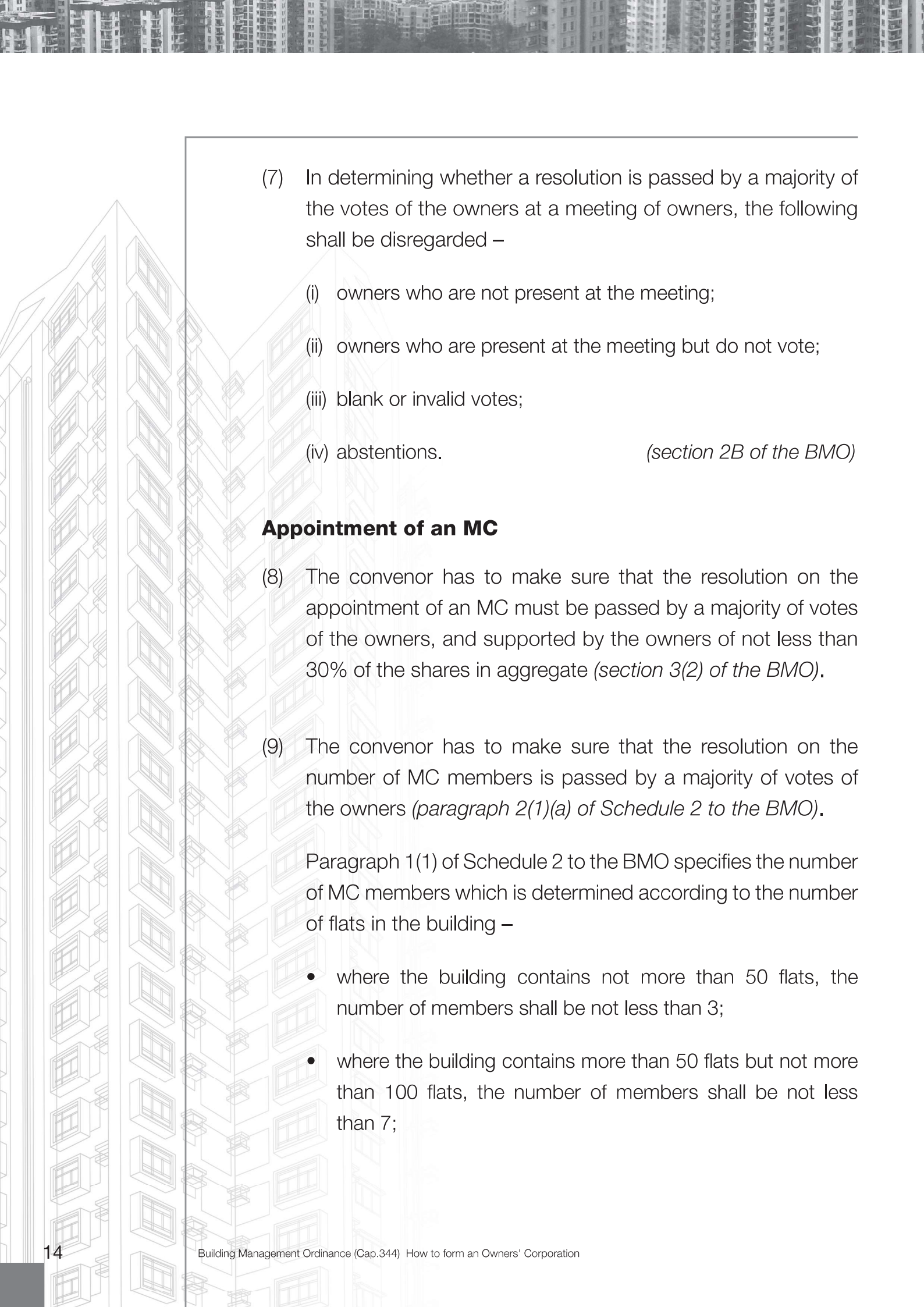
- (a) by a proxy jointly appointed by the co-owners;

- (b) by a person appointed by the co-owners from amongst themselves; or

- (c) if no appointment is made under subparagraph (a) or (b), either by one of the co-owners personally or by a proxy appointed by one of the co-owners.

*(section 3(9)(c) of the BMO)*

- (ii) where more than one of the co-owners seeks to cast a vote in respect of the share, the convenor shall only treat the vote cast 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 be a valid one no matter whether such vote is cast personally or by proxy (*section 3(9)(d) of the BMO*).



(7) In determining whether a resolution is passed by a majority of the votes of the owners at a meeting of owners, the following shall be disregarded –

- (i) owners who are not present at the meeting;
- (ii) owners who are present at the meeting but do not vote;
- (iii) blank or invalid votes;
- (iv) abstentions. *(section 2B of the BMO)*

### **Appointment of an MC**

(8) The convenor has to make sure that the resolution on the appointment of an MC must be passed by a majority of votes of the owners, and supported by the owners of not less than 30% of the shares in aggregate *(section 3(2) of the BMO)*.

(9) The convenor has to make sure that the resolution on the number of MC members is passed by a majority of votes of the owners *(paragraph 2(1)(a) of Schedule 2 to the BMO)*.

Paragraph 1(1) of Schedule 2 to the BMO specifies the number of MC members which is determined according to the number of flats in the building –

- where the building contains not more than 50 flats, the number of members shall be not less than 3;
- where the building contains more than 50 flats but not more than 100 flats, the number of members shall be not less than 7;



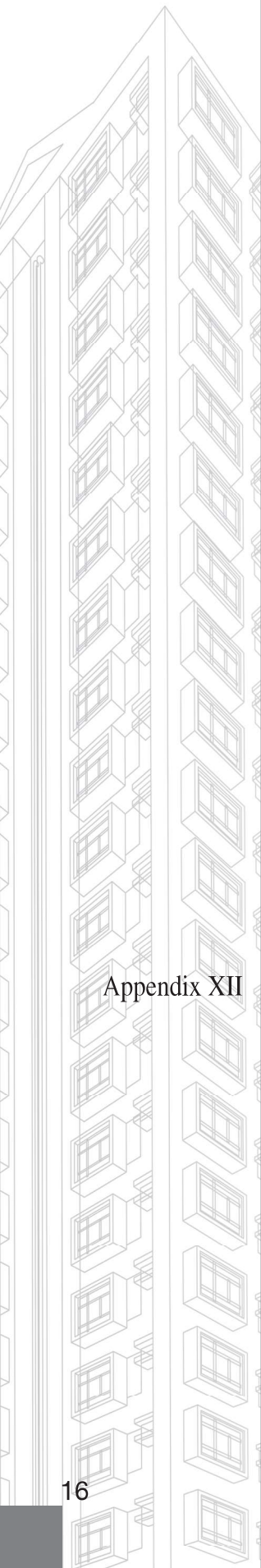
- where the building contains more than 100 flats, the number of members shall be not less than 9.

### **Appointment of members, chairman, vice-chairman (if applicable), secretary and treasurer of MC**

- (10) The convenor has to make sure that the resolution to appoint eligible MC members (see paragraph (17) below) from amongst the owners attending the same owners' meeting is passed by the "first past the post" voting system (*paragraphs 2(1)(b) and 2(3)(b)(i) of Schedule 2 to the BMO*). Where the number of candidates is not more than the number of MC members, the candidates shall be deemed to be appointed as members uncontested (*paragraph 2(3)(a) of Schedule 2 to the BMO*).
- (11) The convenor has to make sure that the resolution on the establishment of the office of the MC vice-chairman is passed by a majority of votes at the same owners' meeting.
- (12) The convenor has to make sure that the resolutions to appoint the MC chairman, vice-chairman (if applicable), secretary and treasurer from amongst the MC members by owners attending the same owners' meeting are passed by the "first past the post" voting system (*paragraphs 2(1)(c), 2(1)(d) and 2(4)(b)(i) of Schedule 2 to the BMO*).

The secretary and treasurer need not be MC members or owners.

Where there is only one candidate respectively for each of these offices, the candidate shall be deemed to be appointed uncontested (*paragraph 2(4)(a) of Schedule 2 to the BMO*).



(13) If the secretary and treasurer are not MC members, the convenor has to point out that they shall not become MC members by virtue of their appointment to these two offices (*paragraph 2(5) of Schedule 2 to the BMO*).

(14) If, after the counting is finished, two or more candidates have an equal number of votes, the result shall be determined by drawing lots and the candidate on whom the lot falls is to be appointed (*paragraphs 2(3)(b)(ii) and 2(4)(b)(ii) of Schedule 2 to the BMO*).

(15) The convenor has to put clearly on record the voting results and the resolutions passed.

(To facilitate vote counting, the Home Affairs Department (HAD) has designed the “Easy Count” vote-counting computer programme. The programme can be downloaded from the HAD homepage on building management ([www.buildingmgt.gov.hk](http://www.buildingmgt.gov.hk)).

(16) The convenor has to remind every MC member to make a statement in a form specified by the Land Registry (Appendix XII) to state that they do not fall within the description of paragraph (17) below, and lodge it with the MC secretary within 21 days after the appointment. An MC member who fails to comply with the requirement shall cease to be such member (*paragraphs 4(3) and 4(4) of Schedule 2 to the BMO*).

## Appendix XII



## **Eligibility of a person to be appointed as an MC member**

- (17) The convenor has to remind owners that a person is not eligible to be appointed as an MC member if he –
- (i) is an undischarged bankrupt 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;
  - (ii) 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.

*(paragraph 4(1) of Schedule 2 to the BMO)*

## **3.6 Action following a meeting of owners**

### **Keeping the instruments of proxy**

- (1) The convenor has to deliver all the instruments for the appointment of proxies received to the newly appointed MC who should keep them for at least 12 months (*section 3(12) of the BMO*).
- (2) The convenor has to keep all the instruments of proxy received for at least 12 months if the meeting did not pass the resolution to appoint an MC (*section 3(11) of the BMO*).



## **Applying to the Land Registrar for registration of owners as a corporation**

(3) The newly-appointed MC shall within 28 days after its appointment make an application in the prescribed form (Appendix VIII) to the Land Registrar for the registration of the owners as a corporation (*section 7(1) of the BMO*).

(4) An application shall be accompanied by the following documents (*sections 7(2) and 7(3) of the BMO*) –

(i) a copy of the DMC of the building;

(ii) a certified copy of the resolution (Appendix X) or any other document (e.g. minutes of the meeting) evidencing the appointment of an MC and its chairman, vice-chairman (if any), secretary and treasurer;

(iii) a declaration (Appendix XI) by the MC chairman or secretary that the appointment of an MC is in compliance with the BMO;

(iv) a statement (Appendix XII) by each MC member that he does not fall within the description of paragraph 4(1)(a) or 4(1)(b) of Schedule 2 to the BMO.

(The MC secretary shall complete and sign the Confirmation on Lodgment of Statement (Appendix XIII) after receiving the statements from MC members as mentioned in paragraph (4) (iv) above. The duly signed Confirmation shall be submitted together with the application to the Land Registry.)

Appendix VIII

Appendix X

Appendix XI

Appendix XII

Appendix XIII



Appendix I

(If the meeting of owners is held under section 3 of the BMO and the appointment of the convenor is duly recorded in the form at Appendix I, the MC may submit such form as a proof together with other documents required evidencing that the convenor is duly appointed.

If an OC is formed under sections 3A or 4 of the BMO, a copy of the relevant order issued by the Secretary for Home Affairs or the Lands Tribunal, as the case may be, shall be submitted as well.)

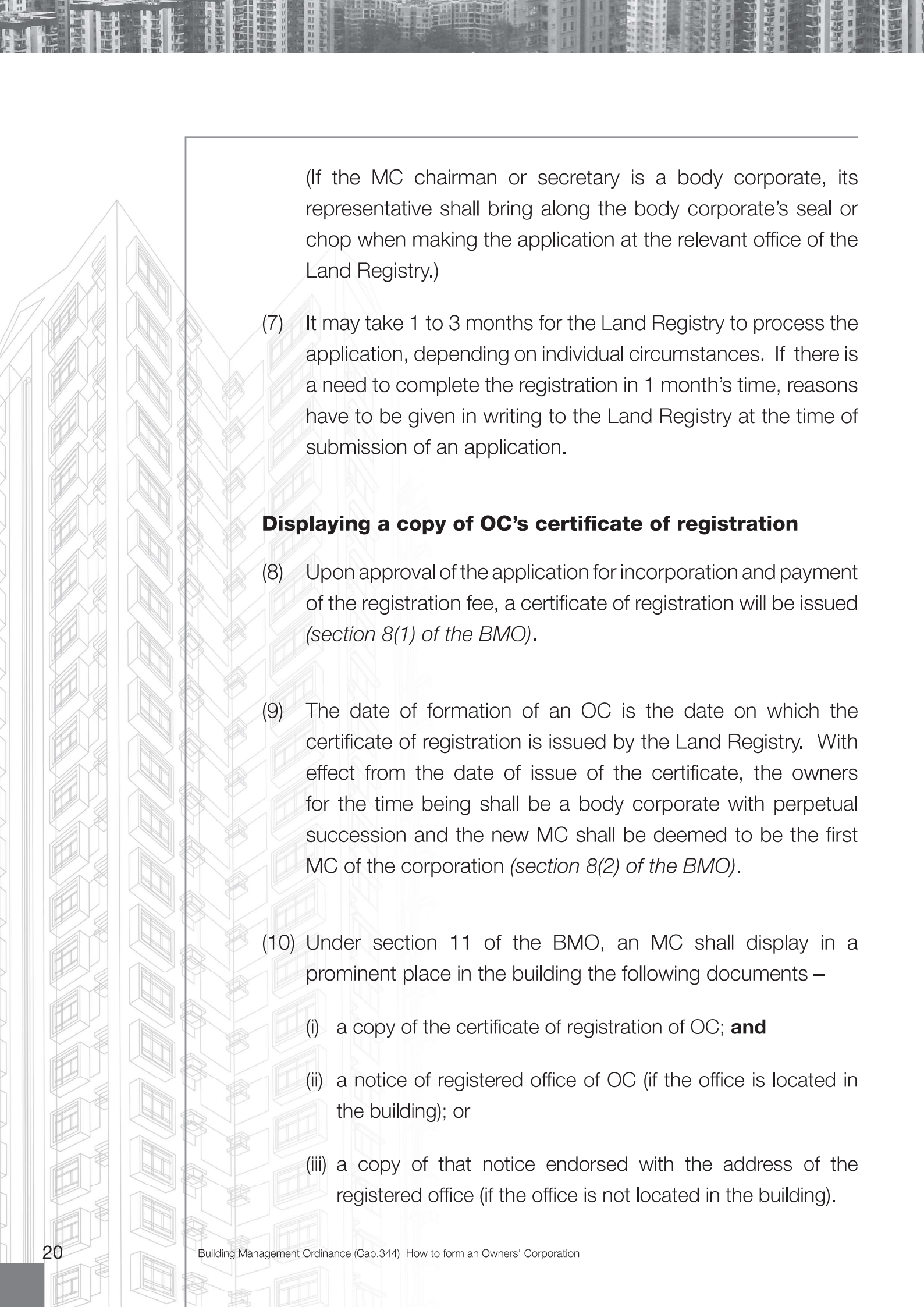
- (5) The declaration mentioned in paragraphs (4)(iii) above can be made at the offices of the Land Registry or the Home Affairs Enquiry Centres (HAECs) of DOs, or before other person authorized by law to administer an oath (e.g. a justice of the peace, lawyer or notary public). Address and telephone number of the HAD's HAECs and that of the offices of the Land Registry are at Appendices XIV and XVI respectively.

Appendix XIV  
Appendix XVI

- (5A) The statement mentioned in paragraph (4)(iv) above shall be signed by the appointed MC member in the presence of a witness who shall also sign the statement to confirm that the signature of the member is genuine. A 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.

- (6) The MC chairman or secretary should, where possible, make the application and pay the fee in person at the relevant office of the Land Registry (see Appendix XVI). To save time, the MC chairman or secretary may make an appointment with the Land Registry before submission of an application.

Appendix XVI



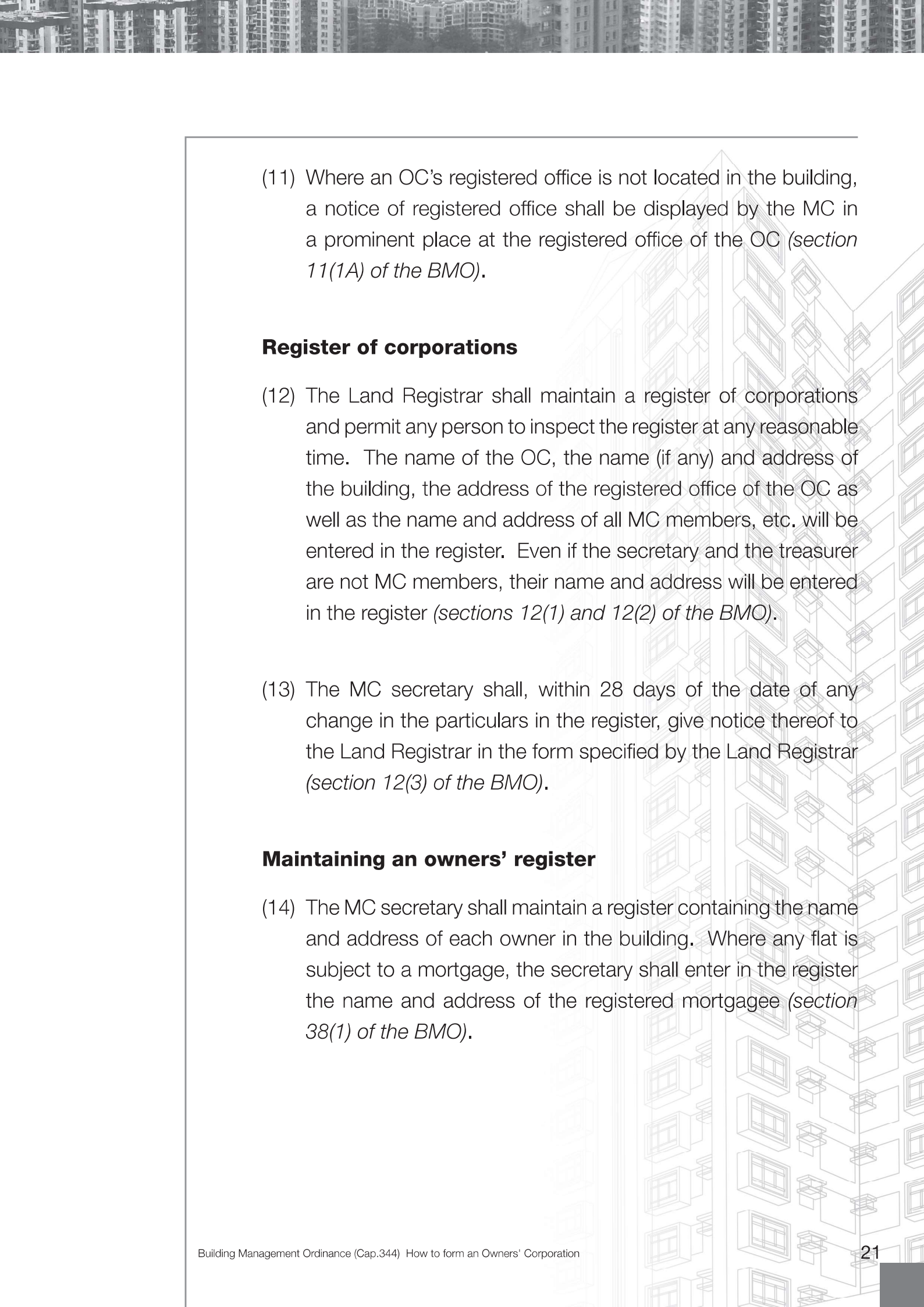
(If the MC chairman or secretary is a body corporate, its representative shall bring along the body corporate's seal or chop when making the application at the relevant office of the Land Registry.)

- (7) It may take 1 to 3 months for the Land Registry to process the application, depending on individual circumstances. If there is a need to complete the registration in 1 month's time, reasons have to be given in writing to the Land Registry at the time of submission of an application.

### **Displaying a copy of OC's certificate of registration**

- (8) Upon approval of the application for incorporation and payment of the registration fee, a certificate of registration will be issued (*section 8(1) of the BMO*).
- (9) The date of formation of an OC is the date on which the certificate of registration is issued by the Land Registry. With effect from the date of issue of the certificate, the owners for the time being shall be a body corporate with perpetual succession and the new MC shall be deemed to be the first MC of the corporation (*section 8(2) of the BMO*).
- (10) Under section 11 of the BMO, an MC shall display in a prominent place in the building the following documents –
- (i) a copy of the certificate of registration of OC; **and**
  - (ii) a notice of registered office of OC (if the office is located in the building); or
  - (iii) a copy of that notice endorsed with the address of the registered office (if the office is not located in the building).



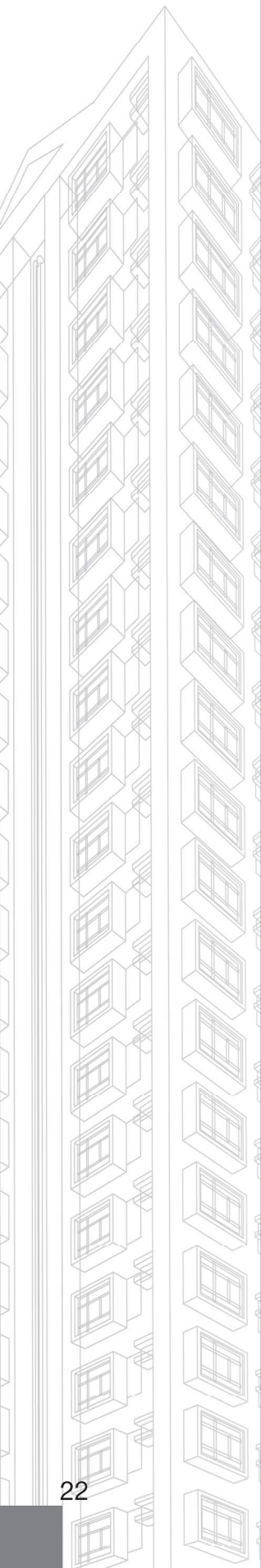
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- (11) Where an OC's registered office is not located in the building, a notice of registered office shall be displayed by the MC in a prominent place at the registered office of the OC (*section 11(1A) of the BMO*).

### **Register of corporations**

- (12) The Land Registrar shall maintain a register of corporations and permit any person to inspect the register at any reasonable time. The name of the OC, the name (if any) and address of the building, the address of the registered office of the OC as well as the name and address of all MC members, etc. will be entered in the register. Even if the secretary and the treasurer are not MC members, their name and address will be entered in the register (*sections 12(1) and 12(2) of the BMO*).
- (13) The MC secretary shall, within 28 days of the date of any change in the particulars in the register, give notice thereof to the Land Registrar in the form specified by the Land Registrar (*section 12(3) of the BMO*).

### **Maintaining an owners' register**

- (14) The MC secretary shall maintain a register containing the name and address of each owner in the building. Where any flat is subject to a mortgage, the secretary shall enter in the register the name and address of the registered mortgagee (*section 38(1) of the BMO*).



(15) The address of an owner shall be the address of the flat which he owns and the address of a registered mortgagee shall be his address appearing in the registered mortgage, unless the owner or registered mortgagee notifies the MC secretary in writing of some other address (*section 38(2) of the BMO*).

(16) The MC secretary shall from time to time amend the register if there is any change to the particulars of owners and registered mortgagees (*section 38(3) of the BMO*).

### **3.7 Annual general meeting of an OC**

#### **Convening an annual general meeting of an OC**

(1) An MC shall convene the first annual general meeting of the OC not later than 15 months after the date of the registration of the OC (*paragraph 1(1)(a) of Schedule 3 to the BMO*).

(2) An MC shall convene another annual general meeting not earlier than 12 months, and not later than 15 months, after the date of the first annual general meeting (*paragraph 1(1)(b) of Schedule 3 to the BMO*). At the annual general meeting, all MC members, together with the secretary and the treasurer (even if they are not MC members), shall retire from office. An OC shall, by a resolution passed at the same annual general meeting, appoint a new MC (*paragraphs 3, 5(1) and 5(2) of Schedule 2 to the BMO*).