

**For discussion  
on 17 May 2016**

**LEGISLATIVE COUNCIL  
PANEL ON HOME AFFAIRS**

**Review of the Building Management Ordinance (Cap. 344)**

**Purpose**

This paper aims to brief Members on the outcomes of the public consultation on various legislative and administrative proposals after the review of the Building Management Ordinance (Cap. 344) (BMO), and the proposed way forward regarding the amendments to the BMO.

**Background**

2. The BMO provides a legal framework for owners to form owners' corporations (OCs) to assist them in discharging their responsibilities to manage their buildings effectively. The BMO stipulates the formation, powers, rules of operation and monitoring mechanism of OCs, and enable private owners to realise autonomy in managing their own properties. To ensure that the BMO keeps pace with changing circumstances, we have established the "Review Committee on the Building Management Ordinance" (the Review Committee) in 2011, comprising members from relevant professional sectors and with extensive knowledge in property management, to conduct a comprehensive review of the BMO. Membership list of the Review Committee is at **Annex 1**.

3. After considering the recommendations of the Review Committee, the Home Affairs Department (HAD) issued a public consultation document in November 2014. The consultation document set out a number of legislative and administrative proposals to address the main concerns raised by the public in recent years, including disputes arising from large-scale maintenance projects, use of proxy instruments at OC meetings, appointment and remuneration of deed of mutual covenant (DMC) managers, etc. We also consulted the Panel on Home Affairs on

the consultation document on 17 November 2014. The public consultation ended in February 2015. During the consultation period, we consulted the 18 District Councils and relevant organisations. Over 1 400 written submissions were received.

4. The consultation document covered a wide range of building management issues and matters of public concern of which the community had different views. Some proposals involved legal questions. Having studied the public views in-depth and sought legal advice, we set out the outcomes of the public consultation and the proposed way forward in the ensuing paragraphs.

**(A) Operation of Management Committees (MCs) and OCs**

5. A series of proposals were made in the consultation document to enhance relevant provisions in the BMO regarding OC meetings, procurement arrangement and appointment of proxy with a view to ensuring that the decisions to conduct large-scale maintenance projects are made after detailed discussion and wide participation by owners. Details of the proposals and the public responses are as follows –

***(I) Disputes Relating to Large-scale Maintenance Projects***

***(a) Quorum of Meeting and Percentage of Votes for Passage of Resolutions***

6. With a growing number of buildings that need to undergo major maintenance or renovation, disputes relating to large-scale maintenance projects have become increasingly common in recent years. The consultation document set out two suggestions to raise the threshold for OC meeting to pass resolution on “large-scale maintenance projects” for the public consideration. Over 70% respondents supported raising the quorum of the general meeting for passing resolutions on “large-scale maintenance projects” from 10% to 20%. While 90% respondents objected to another proposal, i.e. raising the required shares of votes from the existing 50% to, say 75%, to pass resolutions on “large-scale maintenance projects” because it would render it very difficult for OC to secure sufficient supporting shares. As a result, most of the maintenance works (including works required by statutory orders) could not commence. This would obstruct building repair and maintenance and even severely affect building safety. In light of public views, we

propose to adopt the first proposal by amending the BMO to raise the quorum of the general meeting for the passage of resolutions on “large-scale maintenance projects” from 10% to 20%, with a view to encouraging owners’ participation in making such important decisions.

*(b) Definition of Large-scale Maintenance Projects*

7. Section 20A(2) of the BMO provides that any supplies, goods or services the value of which exceeds or is likely to exceed the sum of \$200,000 or a sum which is equivalent to 20% of the annual budget of the OC, whichever is lesser, shall be procured by tenders. For the latter category of procurement (i.e. of an amount exceeding 20% of the annual budget of the OC), the decision on whether a tender is accepted requires a resolution of the owners be passed at a general meeting of the OC. We consider that the provision should form the basis for the definition of “large-scale maintenance projects”.

8. Over 80% respondents considered that “large-scale maintenance projects” could be defined as a percentage of the total annual budget of the OC. Moreover, nearly 80% respondents opined that “large-scale maintenance projects” could be defined by the amount that owner(s) of each flat would have to contribute to the project.

9. We fully appreciate the different circumstances of housing estates of different scales, and that individual owner(s) might have to contribute different amount to the projects. For large housing estates with a greater number of flats, “large-scale maintenance projects” usually involves larger amount of money, and hence the risk of bid-rigging is higher than that of single tenement buildings or small housing estates with fewer flats.

10. As the amount of annual budgets of OCs of large housing estates are usually huge, the definition of “large-scale maintenance projects” should not take up an excessive proportion of the annual budget. It might not be practicable to set an absolute amount to define “large-scale maintenance projects” since the amount of individual service contract(s) (e.g. security and cleansing) would also be higher given the scale of the housing estates. For instance, if the security or cleansing contracts of large housing estate exceed the specified amount and fall within the definition of “large-scale maintenance projects”, such contracts shall be passed by a higher threshold. This is not our policy intent.

11. For single tenement buildings or small housing estates, the annual budgets of their OCs are smaller. The definition of “large-scale maintenance projects” should take up a higher proportion of the annual budget so as not to obstruct ordinary procurement of the OCs. On the other hand, we understand that some OCs of small housing estates might not prepare annual budget, and hence the definition of “large-scale maintenance projects” should provide an absolute amount.

12. Taking into account public views and actual circumstances and needs of housing estates of different scale, we propose to consider introducing a tiered system in respect of the definition of “large-scale maintenance projects”. For example –

- (i) where the building contains more than 100 flats, a “large-scale maintenance project” shall be defined as any procurement with a cost equivalent to or exceeding 40% of the annual budget of the OC; and
- (ii) where the building contains not more than 100 flats, a “large-scale maintenance project” shall be defined as any procurement with a cost equivalent to or exceeding \$1 million or twice the annual budget of the OC, whichever is the lesser.

If Members and the general public have other suggestions on the definition of “large-scale maintenance projects”, we are pleased to further study and examine.

(c) *Notice of Meeting for Voting on Large-scale Maintenance Projects*

13. The consultation document proposed that there should be a longer period of notice for the owners’ meeting at which voting of resolutions on large-scale maintenance projects would take place. Over 90% respondents supported the proposal that the notice of OC meeting at which voting of resolutions on large-scale maintenance projects would take place should be given to all owners at least 21 days before the holding of the meeting (as opposed to the existing 14 days’ notice). The notice of the meeting should also carry a conspicuous “alert” that decision(s) to be taken at the OC meeting may result in the contribution of funds by each owner.

14. In light of public views, we propose to amend the BMO to incorporate such requirements. Prior to the enactment of the legislative

amendment, we will issue administrative guidelines specifying the proposal as best practice, and will recommend and encourage MCs to adopt as far as practicable.

*(d) Tender Process*

15. Over 90% respondents supported the proposal in the consultation document that additional requirements on the tender process on “large-scale maintenance projects” should be incorporated in the BMO to raise transparency, e.g. displaying the invitation to tender in a prominent place in the building, allowing owners to inspect tender documents and setting out the requirement on the minimum number of tenders to be invited, etc. We propose to amend the BMO by incorporating some of the existing requirements set out in the Code of Practice on Procurement of Supplies, Goods and Services issued by the Secretary for Home Affairs (SHA) under the BMO into the Schedule to the BMO. Details are at **Annex 2**.

*(e) Measures to Prevent Large-scale Maintenance Projects from Bid-rigging*

16. While it is the responsibility of owners to manage and properly maintain their buildings, the Government has always attached great importance to suspected bid-rigging in building maintenance works. Over the years, relevant departments and organisations, including the Development Bureau, the Buildings Department, the Urban Renewal Authority (URA), the Hong Kong Housing Society, the Independent Commission Against Corruption, the Hong Kong Police Force and HAD have been working closely to assist owners in carrying out building maintenance works, and to prevent unlawful activities by unscrupulous people in the course of works through a multi-pronged approach, such as provision of professional support, investigation and law enforcement, publicity and education. Furthermore, URA will launch the Building Rehabilitation Facilitating Services (Pilot Scheme) this month to strengthen the technical and professional assistance to owners for carrying out building maintenance works. After the full commencement of the Competition Ordinance (Cap. 619) in December 2015, the Competition Commission indicated that it would investigate anti-competitive conducts in relation to bid-rigging and highlighted in its publicity and advocacy efforts the harms of bid-rigging. Details of the work of various departments and organisations in combating bid-rigging are at **Annex 3**.

## ***(II) Convening a General Meeting of an OC at the Request of Owners***

17. Paragraph 1(2) of Schedule 3 to the BMO provides that the MC Chairman shall convene a general meeting of the OC at the request of not less than 5% of the owners for the purposes specified by such owners within 14 days of receiving such request, and hold the general meeting within 45 days of receiving such request. Over 90% respondents supported the proposal in the consultation document that discussion items requested by the owners must be handled first on the agenda. Therefore, we propose to amend the BMO to incorporate the requirement.

18. Regarding the case in which the MC Chairman resigns but the MC refuses to fill the vacancy in accordance with the by-election mechanism stipulated in the BMO thus preventing the convening of an OC meeting, the responding members of the public supported the proposal in the consultation document that when the office of the MC Chairman is vacant, the Vice-chairman should convene the general meeting in place of the Chairman; and where no Vice-chairman is elected, the MC should appoint one of its members to convene the general meeting. As regards the proposal that where the MC fails to appoint any member to convene the general meeting, those owners who have requested to convene such meeting may nominate a representative among themselves to convene the meeting, there were views that an owners' representative not elected at an owners' meeting could not execute the function of the MC and it was therefore inappropriate for him to convene the general meeting. After seeking legal advice, we propose to amend the BMO to the effect that when the office of the MC Chairman is vacant and where the MC fails to appoint any member to convene the general meeting, the owners can apply to the Lands Tribunal for appointment of an administrator in accordance with section 31 of the BMO to dissolve and re-elect the MC.

## ***(III) Proxy Instruments***

19. Over 95% respondents supported tightening the requirements concerning the collection and verification of proxy instruments and the relevant administrative measures as proposed in the consultation document. In addition, we have received different views from quite a number of Members, political parties, professional institutes, OCs and members of the public on the arrangements for further enhancing the

proxy instruments. After in-depth study to consider the views from all sectors, we propose a series of amendments to the BMO. Details are at **Annex 4**.

**(B) Formation of OC**

**(I) *Percentage of Shares in Aggregate Required for the Formation of OCs***

20. The respondents generally considered the percentages of shares in aggregate required for the formation of OCs stipulated under sections 3, 3A and 4 of the existing BMO<sup>1</sup> appropriate and operate effectively. There is no need to further lower the threshold for formation of OCs under the BMO so as not to affect their representativeness.

**(II) *Eligibility of the Convenor***

21. The convenor plays an important role in the OC formation process. Over 95% respondents supported the proposal in the consultation document that the eligibility criteria on the convenor should be incorporated into the BMO to ensure the integrity of the convenor. Therefore, we propose to amend the BMO by imposing the eligibility criteria on the convenor which are the same as those currently applied to MC members under paragraph 4 of Schedule 2 to the BMO. Details are at **Annex 5**.

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<sup>1</sup> Section 3 of the BMO provides that owners of not less than 5% of the shares in aggregate may appoint a person amongst themselves to convene an owner's meeting for the purpose of appointing an MC and forming an OC. A resolution to appoint an MC and to form an OC shall be passed by a majority of votes at the meeting, and be supported by the owners of not less than 30% of shares in aggregate.

Section 3A of the BMO provides that owners of not less than 20% of the shares in aggregate may apply to SHA for an order to convene an owners' meeting for the purpose of appointing an MC and forming an OC. However, the order shall be of no effect if a notice of objection from the owners of not less than 20% of the shares in aggregate is given to SHA.

Section 4 of the BMO provides that owners of not less than 10% of the shares in aggregate may make an application to the Lands Tribunal for an order to convene an owners' meeting for resolving to form an OC.

(C) **Appointment and Remuneration of DMC Managers**

(I) *Termination of Appointment of DMC Managers*

22. The proposal of lowering the threshold for terminating the appointment of DMC manager<sup>2</sup> and limiting the term of appointment of DMC managers to five years in the consultation document were strongly opposed by the property management industry. It was considered that lowering the threshold to less than 50% of shares in aggregate is against the principle of majority rule. Furthermore, owners might hold on to their own views and result in frequent change of managers, leading to instability or even chaos in building management. On the other hand, limiting the term of appointment of DMC managers to five years would hinder the managers from making long-term management plans, adversely affect the quality of service, the livelihood of practitioners as well as the development of the industry. Other than the views of the property management industry, about 55% of other responses objected the proposals, while about 45% of the respondents requested that the existing requirement of 50% shares in aggregate be relaxed.

23. We appreciate that some owners wish to terminate the appointment of non-performing DMC managers more flexibly to protect their interests. However, as pointed out by the industry, if owners hold different views on the managers, lowering the threshold for the termination of appointment (e.g. from 50% to 30%) might lead to disputes and affect building management work. As for limiting the term of appointment of DMC managers to five years, it would create a sense of uncertainty to the DMC managers and the managers might be reluctant to consider the long-term management services and needs of the housing estates. Moreover, if the buildings could not form OCs within the five years due to various reasons and that the appointment of DMC managers was automatically terminated, there would be no legal entity with the necessary legal status to engage a new manager / service provider and sign the contract on behalf of the owners, which could result in the worst-case scenario of “management vacuum”.

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<sup>2</sup> Under paragraph 7(1) of Schedule 7 to the BMO, the resolution for terminating a DMC manager’s appointment requires a majority of the votes of the owners and supported by the owners of not less than 50% of the shares in aggregate at a general meeting of the OC.



24. To strike a proper balance between ensuring stability in building management and provision of services and allowing owners to terminate the appointment of non-performing DMC managers when needed, we propose to maintain the existing threshold for terminating the appointment of DMC managers with the support of not less than 50% of the owners. We also propose an additional arrangement, that the term of appointment of DMC managers would be automatically terminated five years after the formation of OC, by when the OC may enter into a new contract and negotiate new contract terms (such as the tenure of appointment, remuneration, etc.) with the existing DMC manager or engage a new manager / service provider through open tender.

## ***(II) Remuneration of DMC Managers***

25. Over 70% respondents objected to the proposals of reducing the ceiling on the remuneration rate of DMC managers by a specified percentage each year and excluding payments for and on behalf of owners from the formula for calculating DMC managers' remuneration. However, we noticed that most of the objecting views are from the property management industry. As for District Council Members and other members of the public who responded to this issue, over 70% supported the proposals. In addition, over 70% of respondents concurred with the proposal that DMC managers should provide the owners with a detailed breakdown, as well as the proposal of increasing the number of tiers of ceiling and setting lower ceilings on the remuneration of DMC managers for large scale developments.

26. Taking into account the views of different sectors and the actual management of housing estates at present, we consider that the methods for calculating the remuneration of DMC managers should be as open and transparent as practicable. Moreover, payments for and on behalf of owners does not involve value-added services such as management or supervision, and the management costs should decrease year by year as the DMC managers accumulate experience. Therefore, we will propose to the Lands Department to amend the DMC Guidelines, such that DMC managers are required to –

- (i) provide the owners with a detailed breakdown on how the service fee of the headquarters is apportioned among the developments they serve;

- (ii) exclude payments for and on behalf of owners (e.g. electricity charges, water bills, etc.) from the formula for calculating DMC managers' remuneration; and
- (iii) reduce the ceiling on the remuneration rate of DMC managers by 0.5% per year to 8% ultimately.

**(D) Other Issues**

**(I) *Criminal Sanctions***

27. Some suggested that more criminal sanctions, to be enforced by government officials, should be provided for in the BMO to deter people, including MC members, from violating the BMO. There were also views that as owners served as MC members on a voluntary basis, it would be unfair to subject them to criminal liability.

28. Under the existing BMO, there are a number of provisions that bear criminal liability, e.g. provision of false information or document, failure to prepare financial statements to be laid before the OC within the specified timeframe and failure to procure third party risks insurance, etc. On the other hand, under the existing BMO, the Lands Tribunal has jurisdiction to hear and determine any proceedings relating to the interpretation and enforcement of the provisions of the BMO and the DMC, powers and duties of the OC, etc. Excessive provisions with criminal liability in the BMO will discourage owners who are genuinely enthusiastic in serving on a voluntary basis from taking up OC duties owing to concerns over undue blame or even criminal liability, which may incur in case of building management disputes. This will be counterproductive to encouraging active participation of owners in the management of their buildings.

29. We will further study the need and feasibility of adding other criminal sanctions in the BMO while being cautious of any undue influence on the motivation of owners to participate in building management work and take up OC duties.

**(E) Way Forward**

30. For the proposals mentioned in paragraphs 6 to 21 above, we will work with the Department of Justice on the draft amendment bill to be introduced to the Legislative Council for scrutiny. Given the time required to amend the BMO, we will recommend and encourage OCs to adopt those proposals that do not contravene the existing BMO through administrative guidelines, so as to respond to the public concerns on the arrangements for procurement and proxy instruments by OCs as soon as practicable. The relevant guidelines are at **Annex 6**.

**(F) Staffing of Liaison Officers Engaged in Building Management Duties and other Building Management Initiatives**

31. Building management covers a wide range of aspects of work. In addition to a dedicated division in HAD Headquarters, comprising, among others, experienced Liaison Officers (LOs), HAD has set up District Building Management Liaison Teams (DBMLTs) in all 18 District Offices. The DBMLTs are responsible for providing support and outreach services to OCs and owners, including assisting owners to incorporate under the BMO, attending owners' meetings to give advice and assistance, organising training courses and workshops, and helping resolve disputes among owners and residents through informal mediation services.

32. We review the staffing for building management duties from time to time to meet the needs of actual circumstances. In 2016-17, the number of LOs engaged in building management duties will increase from about 120 to 128 (an increase of about 6.7%) to further strengthen the support for OCs and owners. With a view to equipping LOs with professional knowledge in discharging their duties effectively, HAD provides training programmes and briefing sessions for them on a regular and need basis. These include induction courses on the principles and practices of building management for newly recruited LOs, as well as workshops and theme-talks on the provisions of the BMO and judgment of related court cases for more experienced LOs. HAD has also engaged a tertiary institute to provide tailor-made training courses, especially focusing on the legal aspect of multi-storey building management. Over the past three years, HAD has provided about 80 hours of training for LOs each year. The target training hours provided will be increased to 90 this year. Moreover, HAD has, in recent years, through

re-prioritisation and enhanced work arrangements, proactively introduced various targeted measures and schemes to assist owners to effectively manage their buildings so as to focus the resources and allow LOs to concentrate their efforts in handling more complicated building management matters. Details of these measures and schemes are at **Annex 7**.

### **Advice Sought**

33. Members are invited to advise on the various proposals set out in this paper.

**Home Affairs Bureau  
Home Affairs Department  
May 2016**

**Review Committee on the Building Management Ordinance  
Membership List**

**Chairman**

Mr CHUNG Pui-lam

**Core Members**

Hon TO Kun-sun, James  
Hon LEE Wai-king, Starry  
Mr FONG Chun-kwong, Edwin  
Mr KONG Tze-wing, James  
Dr LAU Chi-wang, James  
Mr LAU Kam-sing, Dickie  
Mr YUEN Ching-bor, Stephen

**Co-opted Members**

Mr CHEUNG Ching-yeung, Teddy  
Ms CHIU Kin-san  
Mr FAN Ying-ming  
Ms LAM Wai-lung  
Mr LAU Chi-wan  
Mr LAU Ming-sum, Julius  
Ms LEE Ming-ho, Verna  
Mr LEE Sau-shing  
Mr LEUNG Fuk-pui  
Mr LEUNG Hing-choi, Raymond  
Prof LEUNG Yee-tak, Andrew  
Mr LI Wai-chun  
Mr MAN Chi-wah  
Mr YIM Kin-ping

**Practices under the Existing Code of Practice on Procurement of Supplies, Goods and Services Proposed to be Incorporated into the Schedule to the Building Management Ordinance (Cap. 344)**

- The Management Committee (MC) shall prepare an invitation to tender and display a copy of it in a prominent place in the building. The closing date and time for acceptance of tenders shall be clearly stated in the invitation to tender. Late submissions shall not be accepted.
- The MC shall invite at least 5 tenders. Where the number of valid tenders obtained is fewer than 5, the MC shall pass a resolution to accept or reject the tender exercise.
- An MC member or manager of the building (if any) shall disclose in writing to the MC any personal or pecuniary interest that he may have in the tender. An MC member who has indicated a personal or pecuniary interest in the tender should abstain from voting in the selection of such tender at an MC meeting.
- The MC shall maintain and keep in safe custody all documents relating to the tender for at least 6 years. The documents shall contain sufficient information to enable the person doing inspection to calculate the financial liability of the OC at the time of inspection (including any financial liability in future).
- The MC shall permit the Authority, the tenants' representative, an owner, a registered mortgagee or any other person authorised in writing by an owner or a registered mortgagee to inspect the documents relating to the tender at any reasonable time. The MC shall, on the payment of a reasonable copying charge, supply copies of the relevant documents.

**Efforts of the Relevant Government Departments and Organisations  
on Preventing and Combating Bid-rigging in  
Building Maintenance Works**

**Professional Support**

- Building maintenance works involve complicated professional knowledge. The Development Bureau (DEVB) has worked closely with the Buildings Department (BD), Hong Kong Housing Society (HKHS) and Urban Renewal Authority (URA) over the years to implement a number of schemes to help owners maintain and repair their buildings.
- In the implementation of various building rehabilitation support schemes, the URA has accumulated a wealth of practical experience in ensuring that the tender process is fair, impartial and competitive, and collected a lot of useful market reference information on tender evaluation and works supervision.
- In view of public concern over suspected big-rigging in building maintenance works, the URA will launch the Building Rehabilitation Facilitating Services (Pilot Scheme) in May 2016 to enhance technical and professional assistance for owners to carry out building repair and maintenance works.

**Investigation and Law Enforcement**

- Law enforcement agencies pay close attention to illegal activities related to building management and maintenance. The Independent Commission Against Corruption (ICAC) and the Hong Kong Police Force (the Police Force) have respectively set up their dedicated units to proactively follow up on all complaints and reported cases related to building management and maintenance within their purviews in accordance with the law and instigate prosecutions should there be sufficient evidence.
- The Competition Commission (the Commission) may also launch investigations on anti-competitive conducts such as bid-rigging pursuant to the Competition Ordinance (Cap. 619) which has been in full commencement since December 2015, and apply to the Competition Tribunal for imposing penalties.

## **Publicity and Education**

- Publicity and education is an essential part of government departments' multi-pronged strategy in preventing and combating bid-rigging in building maintenance works. The departments concerned and partner organisations actively collaborate to conduct different types of publicity and education activities to provide owners with relevant information and heighten their vigilance against all sorts of misconduct. Major efforts include –
  - The Home Affairs Department (HAD) co-operates with relevant departments, organisations and professional institutes from time to time to organise seminars, talks and workshops in various districts in Hong Kong to provide owners with information on building maintenance as well as advice on crime and corruption prevention. Besides, HAD also launched a new round of territory-wide major publicity and education campaign in September 2015, comprising a series of television announcement of public interest, thematic leaflets and talks on building maintenance, with the aim of further enhancing public education on building management and maintenance, encouraging owners to defend their own interests and appointing work consultants and maintenance contractors in compliance with the Building Management Ordinance (Cap. 344);
  - The RenoSafe Scheme co-ordinated by the Police Force provides owners' corporations (OCs) intending to carry out building maintenance works with an information package, listing crimes that may arise from improper handling of building maintenance works and offering advice on preventive measures. At the same time, posters or banners are displayed at conspicuous positions of the participating buildings to strengthen publicity and yield deterrence;
  - ICAC has produced corruption prevention toolkits in recent years respectively on building maintenance, financial management and day-to-day building management, whilst strengthening the education and promotional efforts on clean building management. In December 2013, the ICAC updated the Building Maintenance Toolkit to provide advice on effective corruption prevention measures, checklists on points



to note and templates of documents for the reference of OCs and owners. ICAC will continue to enhance the knowledge in anti-corruption laws and corruption prevention measures of staff of building management bodies and owners through various channels, such as visits, seminars and symposiums, and proactive liaison with newly established OCs and OCs served with repair orders or fire safety directions by BD. It will also extensively promote messages on clean building management through a dedicated website, consultation hotline and district activities, etc.;

- BD issues publicity materials on reporting of malpractices of registered professionals, and also provides enquiry and reporting channels to the public. Property owners are reminded through various channels to exercise caution when selecting and appointing Qualified Persons to carry out prescribed inspection and repair works under the Mandatory Window Inspection Scheme;
- URA launched in early 2014 a resources website on building maintenance, the Building Rehab Info Net, to provide owners with a wealth of information on building rehabilitation such as successful cases under the Operation Building Bright. New contents will be added to the website from time to time; and
- To tie in with the full commencement of the Competition Ordinance (Cap. 619), the Commission has highlighted the harms of bid-rigging in its publicity and advocacy efforts, and produced educational videos broadcast on television and social networking media as well as available for download from the Commission's website.

**Proposed Amendments to Proxy Arrangements**

- With a view to preventing a small number of persons from predominating the resolution at a meeting of an Owners Corporation (OC) by securing a large number of proxy instruments, we propose to consider setting a ceiling on the number of proxy instruments that a person can hold. Under paragraph 5(1)(b) of Schedule 3 to the Building Management Ordinance (Cap. 344) (BMO), the quorum at a meeting of an OC shall be 10% of the owners. With reference to the quorum requirement, we propose that the maximum number of proxy instruments a person can hold shall not exceed 5% of the owners.
- The Secretary of the Management Committee (MC) shall be required to –
  - (a) state in the notice of meeting as to the exact location of the proxy collection boxes;
  - (b) accept only the original copy of the proxy instruments;
  - (c) for proxy instruments lodged by post, its validity date is to be determined according to the time the MC receives the relevant instruments;
  - (d) display the list of flats with proxy instruments lodged in a prominent place of the building at least 24 hours before the meeting and until seven days after the meeting; and
  - (e) comply with the additional guidelines issued by the Home Affairs Department on the format of the notice showing the information of flats with proxy instruments lodged (e.g. the font size of the words).
- With regard to the requirement in (d) above, paragraph 4(3) of Schedule 3 to the BMO shall be amended accordingly to stipulate that proxy instruments shall be lodged with the MC Secretary at least 72 hours before the meeting.
- The MC Secretary/convenor shall be allowed to pass the receipts of proxy instruments to owners in person.
- The MC Secretary/convenor, on passing a receipt of proxy instrument to the owner in person, or leaving it at the flat of the owner or depositing it in the letter box provided for that flat, shall

issue a copy of the proxy instrument which is subject to verification to the owner at the same time.

- The MC Chairman/convenor shall be required to mark on each proxy instrument the reasons for invalidation.
- If more than one proxy instrument are received from the same owner for the same general meeting, the MC Chairman shall verify with the owner concerned.
- The MC Chairman/convenor shall be required to announce the number of invalid proxy instruments and justifications for ruling the proxy instruments invalid before the general meeting, and allow owners, owners' representatives and the appointed third party to inspect the proxy instruments which are determined as invalid by the Chairman.

**Proposed Eligibility Criteria of the Convenor  
(same as those currently applied to MC members)**

- A person is not eligible to be appointed or designated as a convenor under section 3(1) of the Building Management Ordinance (Cap. 344) if he –
  - (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.
  
- A convenor shall cease to be a convenor for the discharge of his duties if he –
  - (a) becomes disqualified for appointment as a convenor under sub-paragraph (1);
  - (b) becomes incapacitated by physical or mental illness; or
  - (c) ceases to be an owner, if appointed in his capacity as an owner.

## **Procurement Process of an Owners' Corporation**

### **Guidelines**

**Key:**

- ✓ *Requirements of the Building Management Ordinance (Cap. 344)*
- *Requirements of the Code of Practice on Procurement of Supplies, Goods and Services*
- ♻ *Good practice recommended*

#### **Disclaimer**

This set of Guidelines is intended for general reference only. Users of the Guidelines are advised to seek independent legal advice and assistance from lawyers should there be doubts on the application of the Building Management Ordinance (Cap. 344) in individual circumstances. The Government shall not be responsible for any errors, omissions or misstatements or misrepresentations (whether expressed or implied) in any part of the Guidelines and shall not be held liable or accept any liability, obligation and responsibility whatsoever (including, without limitation, consequential loss or damage) arising from or in respect of any use, inability to use or misuse or reliance on the Guidelines.

The Government reserves the right to revise, omit, suspend or edit the Guidelines at any time in its absolute discretion without giving any reason or prior notice.

#### **Introduction**

It is the joint duty and responsibility of property owners to manage their buildings. The Government's policy is to facilitate effective management of buildings through multi-pronged measures including the provision of a legal framework (i.e. the Building Management Ordinance (Cap. 344) ("BMO")) for owners to form an Owners' Corporation ("OC").

We endeavour to assist owners in forming OCs to discharge their responsibilities on building management. A lot of effort has been dedicated to public education on building management and maintenance to encourage owners to actively participate in owners' meetings, discussions to decide on building maintenance works and to engage consultants and contractors in compliance with the BMO.

Section 20A of the BMO prescribes the process for the procurement of supplies, goods and services by the OC and section 20A(1) stipulates that the procurement of all supplies, goods or services required by an OC in the exercise of its powers and the performance of its duties under the deed of mutual covenant (if any) or the BMO shall comply with such standards and guidelines as may be specified in the Code of Practice on Procurement of Supplies, Goods and Services (“Code of Practice”) issued by the Secretary for Home Affairs under section 44(1)(a) of the BMO.

### **Supplies, Goods or Services Required to be Procured by Invitation to Tender**

- ✓ Any supplies, goods or services the value of which exceeds or is likely to exceed the sum of \$200,000 or a sum which is equivalent to 20% of the annual budget of the OC, whichever is the lesser, shall be procured by the OC by invitation to tender, unless –
  - (a) the relevant supplies, goods or services are of the same type as any supplies, goods or services which are for the time being supplied to the OC by a supplier; and
  - (b) the OC decides by a resolution of the owners passed at a general meeting of the OC that the relevant supplies, goods or services shall be procured from that supplier on such terms and conditions as specified in the resolution, instead of by invitation to tender.

Sections  
20A(2) and  
(2A) of the  
BMO

### **Conduct of the Management Committee (“MC”), Members of the MC and Agents or Employees of the OC**

- An MC shall conduct a tender exercise in an open and fair manner.
- A member of the MC shall not solicit or accept any advantage from any supplier or contractor in relation to the tender.
- An agent or employee of the OC is prohibited from soliciting or accepting any advantage in connection with his duty unless with the permission of the OC. An agent or employee shall also declare any conflict of interest relating to his duties.

Para. 3 of the  
Code of  
Practice

Para. 4 of the  
Code of  
Practice

Para. 5 of the  
Code of  
Practice

- ☞ An agent or employee of the OC should declare whether he has any actual, potential or perceived conflict of interest at the start of preparation of tender documents, deliberation or as soon as he becomes aware of a potential conflict.
- ☞ An agent or employee of the OC should take steps to avoid any conflict of interest with any prospective tenderer or tenderer by not putting himself in a position of obligation towards any of them, for example, by not accepting any favour or lavish or excessive entertainment, and not over-socialising with any of them.

### **Preparation of Invitation to Tender**

- The MC shall prepare an invitation to tender setting out the types of supplies, goods or services required, the period open for tender and other terms and conditions of the relevant contract. A copy of the invitation to tender shall be displayed in a prominent place in the building.
- An MC shall not split a contract of procurement from a contract which should have been made for the procurement of greater value for the sole purpose of avoiding the compliance of the requirements governing the value of procurement by invitation to tender (as stipulated in section 20A of the BMO).
- The closing date and time for acceptance of tenders shall be clearly stated in the invitation to tender. Late submissions shall not be accepted.

Para. 6 of the Code of Practice

Para. 14 of the Code of Practice

Para. 10 of the Code of Practice

### **Number of Tenders to be Invited**

- The minimum number of tenders to be invited shall be as follows –
  - (a) three in the case of a contract for the procurement of supplies, goods or services the value of which exceeds \$10,000 but does not exceed \$200,000; or
  - (b) five in the case of a contract for the procurement of supplies, goods or services the value of which exceeds \$200,000.
- Where the number of valid tenders obtained is fewer than the number of tenders required above, the MC shall pass a resolution to accept or reject the tender exercise.

Para. 9 of the Code of Practice

Para. 11 of the Code of Practice

## Collection and Opening of Tenders

- A tender shall be in writing and be sealed and deposited in a strong double locked box marked “Tender-Box” (投標箱) provided for that purpose only and such box shall be securely located in a prominent place in the building. The two keys of the tender-box are to be separately kept by the Chairman of the MC (“Chairman”), the Secretary of the MC (“Secretary”) or the Treasurer of the MC. Where it is impracticable or difficult to comply with the requirement, the OC may, by a resolution passed at a general meeting of the OC, accept tenders handed in or sent by post to the registered office of the OC. The tenders shall be properly acknowledged and kept safely.
- All tenders shall be opened at the same time and witnessed by at least three members of the MC who shall certify and date each of the tenders.
- ↳ The witnesses should certify and date each of the tenders when they are opened.

Para. 7 and 8  
of the Code  
of Practice

Para. 12 of  
the Code of  
Practice

## Consideration and Decision on Acceptance of Tenders

- ✓ The acceptance of a tender the value which exceeds or is equivalent to 20% of the annual budget of an OC shall be decided by a resolution of the owners passed at a general meeting of the OC.
- ↳ Where a tender covering a large-scale maintenance project requires approval by a resolution passed at a general meeting of the OC, the notice should be given by the Secretary to all owners at least 21 days before holding of the meeting. Such notice should carry a conspicuous “alert” stating the estimated cost for each project, breakdown of the amount to be borne by each share, and the contribution of funds by each owner which may result from approval of the tender.
- A tender which requires approval from a general meeting of the OC by a resolution must be passed by majority votes of the owners. Where there are more than two alternatives and no option receives majority votes in the first round of voting, the general meeting of the OC will have to conduct a second round of voting in order to comply with the majority requirement. Some plausible methods of voting are –
  - (a) progressive elimination - after the first round of voting, the general meeting of the OC may eliminate the option with the least number of votes and then carry out a second round of voting. If no option receives majority votes, another round of voting will be carried out, with one more option being eliminated. This will go on until only

Section  
20A(2B) of  
the BMO

Para. 15 of  
the Code of  
Practice



two options are left in the final round of voting, in which either one of the options will receive majority votes.

- (b) short-listing - after the first round of voting, the general meeting of the OC may short-list the two options which gain the greatest number of votes for a second round of voting. This also means that the ultimate choice fulfils the majority requirement.
- (c) confirmation - a second round of voting could be carried out to confirm the option which has attained the greatest number of votes in the first round. This also ensures that majority votes are achieved.

- A tender the value of which does not exceed 20% of the annual budget of the OC shall be submitted to the MC which may accept or reject it.

Para. 13 of  
the Code of  
Practice

- A member of the MC shall disclose in writing to the MC any personal or pecuniary interest that he may have in any of the tenders to be considered by the MC or the OC. A member of the MC who has indicated a personal or pecuniary interest in the tender should abstain from voting in the selection of such tender at an MC meeting.

Para. 16 of  
the Code of  
Practice

↳ If a member of the MC has any personal or pecuniary interest in any of the tenders to be considered by the MC or the OC, in addition to disclosing in writing to the MC and abstaining from voting in the selection of such tender at an MC meeting, the member should also withdraw from the meeting during the discussion concerned.

### **Keeping and Inspection of Documents Relating to the Tender Process**

- ✓ All tender documents, copies of contracts, accounts and invoices and any other documents in the possession of an OC and relating to the procurement of supplies, goods and services shall be kept by the OC for such period, being not less than six years, as the OC may determine.

Section  
20A(4) of  
the BMO

- The MC shall maintain and keep in safe custody for such period, being not less than six years, as the OC may determine, all tender documents, copies of contracts, accounts and invoices and any other documents in the possession of the OC and relating to the procurement of supplies, goods and services. The MC shall permit the Authority, the tenants' representative, an owner, a registered mortgagee or any other person authorised in writing by an owner or a registered mortgagee to inspect the documents concerned at any reasonable time.

Para. 17 and  
18 of the  
Code of  
Practice

↳ Documents in the possession of the MC and any other documents in the possession of the OC and relating to the procurement of supplies, goods and services shall contain sufficient information to enable the person doing inspection to calculate the financial liability of the OC in relation to procurement (including at the time of inspection and in the future).

Para. 19 of the Code of Practice
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## Appendix

### **Relevant Provisions in the Building Management Ordinance (Cap. 344)**

#### **Section 20A: Supplies, goods and services**

- (1) The procurement of all supplies, goods or services required by a corporation in the exercise of its powers and the performance of its duties under the deed of mutual covenant (if any) or this Ordinance shall comply with such standards and guidelines as may be specified in a Code of Practice relating to such procurement.
- (2) Subject to subsection (2A), any supplies, goods or services referred to in subsection (1) the value of which exceeds or is likely to exceed –
  - (a) the sum of \$200,000 or such other sum in substitution therefor as the Authority may specify by notice in the Gazette; or
  - (b) a sum which is equivalent to 20% of the annual budget of the corporation or such other percentage in substitution therefor as the Authority may specify by notice in the Gazette,whichever is the lesser, shall be procured by invitation to tender.
- (2A) Subsection (2) does not apply to any supplies, goods or services which but for this subsection would be required to be procured by a corporation by invitation to tender (referred to in this subsection as “relevant supplies, goods or services”) if –
  - (a) the relevant supplies, goods or services are of the same type as any supplies, goods or services which are for the time being supplied to the corporation by a supplier; and
  - (b) the corporation decides by a resolution of the owners passed at a general meeting of the corporation that the relevant supplies, goods or services shall be procured from that supplier on such terms and conditions as specified in the resolution, instead of by invitation to tender.
- (2B) Where any supplies, goods or services are required under subsection (2)(b) to be procured by invitation to tender, whether a tender submitted for the purpose is accepted or not shall be decided by a resolution of the owners passed at a general meeting of the corporation.

- (4) All tender documents, copies of contracts, accounts and invoices and any other documents in the possession of a corporation and relating to the procurement of supplies, goods and services shall be kept by the corporation for such period, being not less than 6 years, as the corporation may determine.

# Proxy for the General Meeting of an Owners' Corporation

## Guidelines

### **Key:**

- ✓ ***Requirements of the Building Management Ordinance (Cap. 344)***
- ↳ ***Good practice recommended***

### Disclaimer

This set of Guidelines is intended for general reference only. Users of the Guidelines are advised to seek independent legal advice and assistance from lawyers should there be doubts on the application of the Building Management Ordinance (Cap. 344) in individual circumstances. The Government shall not be responsible for any errors, omissions or misstatements or misrepresentations (whether expressed or implied) in any part of the Guidelines and shall not be held liable or accept any liability, obligation and responsibility whatsoever (including, without limitation, consequential loss or damage) arising from or in respect of any use, inability to use or misuse or reliance on the Guidelines.

The Government reserves the right to revise, omit, suspend or edit the Guidelines at any time in its absolute discretion without giving any reason or prior notice.

### Introduction

It is the joint duty and responsibility of property owners to manage their buildings. The Government's policy is to facilitate effective management of buildings through multi-pronged measures including the provision of a legal framework (i.e. the Building Management Ordinance (Cap. 344) ("BMO")) for owners to form an Owners' Corporation ("OC").

We endeavour to assist owners in forming OCs to discharge their responsibilities on building management. We also encourage flat owners in building or groups of buildings ("owners") to actively participate in the management of their buildings, including attending OC meetings in person. It is understandable that at times owners may not be able to attend the meetings of the OC in person. To cater for such circumstances, the BMO provides that an owner may appoint a proxy to attend and vote at the meeting of the OC on his behalf.

The proxy should be appointed with extreme care because –

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

- voting at the meeting is a crucial step in the decision making process for the management of the building. Major building management matters with significant financial implication requiring contribution of the owners (e.g. maintenance and renovation works on the common parts) are generally resolved through voting at the meeting of the OC.

In view of the significance of appointment of a proxy, it is important for the Chairman of the management committee (“MC”), the Secretary of the MC (“the Secretary”) and the owners to adopt a proper practice in preparing and handling the proxy instruments.

### **For the Chairman of the MC**

Paragraph 4(5)(b) of Schedule 3 to the BMO provides that the Chairman of the MC (“the Chairman”) or, if he is absent, the person who presides at the meeting, shall determine the validity of the proxy instrument in accordance with paragraph 4(4) of Schedule 3 to the BMO. Therefore, the Chairman plays a vital role in determining the validity of a proxy instrument.

### ***Determination of the Validity of a Proxy Instrument***

- ✓ In determining the validity of a proxy instrument, the Chairman shall ensure that the proxy instrument is in the form set out in Form 2 in Schedule 1A to the BMO.
  - If the instrument appointing a proxy is in the form set out in Schedule 1A to the BMO, the Chairman should not reject the proxy instrument for the sole reason that it is not the printed proxy form provided by the OC.
  - The mere act of providing additional information such as Hong Kong Identity Card number or time of signing the proxy will not render the proxy instrument invalid.
- ✓ The Chairman is required to check whether the proxy instrument has been signed by an owner; or if the owner is a body corporate, whether it has been impressed with the seal or chop of the body corporate and signed by a person authorised by the body corporate in that behalf.
- ✓ Only those proxy instruments which are lodged within the specified statutory time limit, i.e. at least 48 hours before the time for the holding of the meeting should be considered valid.
- ☺ In the normal event that there are two proxy instruments with different dates for the purpose of a particular meeting of the OC, the proxy

Para. 4(4) of Schedule 3 to the BMO
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instrument with the most recent date would supersede the proxy instrument with an earlier date. If in doubt, the Chairman should contact the owner(s) concerned to clarify which proxy instrument is intended to be used by the owner(s). If no date is marked on the proxy instruments or both proxy instruments are marked with the same date but appointment of different proxies, the Chairman should clarify with the owner(s) concerned. Both proxy instruments should be considered as invalid if their validity cannot be ascertained after the Chairman has taken some reasonable steps to ascertain the validity of the proxy instruments.

- ↳ The Chairman is advised to handle the proxy instruments in a fair and transparent manner and in accordance with the provisions under the BMO.
- ↳ If the Chairman has determined that certain proxy instruments are invalid before the meeting, he may contact the owner(s) concerned to explain the invalidity of the proxy instrument so that the owner(s) concerned may consider whether a fresh proxy instrument should be made or to attend the meeting in person. According to paragraph 4(3) of Schedule 3 to the BMO, the instrument appointing a proxy shall be lodged with the Secretary at least 48 hours before the time for the holding of the meeting.
- ↳ To announce the number of invalidated proxy instruments before the owners' meeting.
- ↳ The reasons for invalidation should be marked on each proxy instrument and the owners, owners' representatives and the appointed third party should be allowed to inspect the proxy instruments the validity of which has been determined by the Chairman and to appeal against the Chairman's determination with justifications.

### **For the Secretary of the MC**

The instrument appointing a proxy shall be lodged with the Secretary hence the Secretary is responsible for collecting the proxy instruments for the meeting of the OC. If the office of the Secretary is vacant, the OC or the MC may, in accordance with paragraph 6(5)(a) or (b) of Schedule 2 to the BMO, appoint a person to fill the vacancy until the next annual general meeting of the OC or the next general meeting of the OC. The appointed person shall then carry out the statutory duties of the Secretary set out in the BMO.

The Secretary is advised to pay attention to the following before, during and after the general meeting of the OC regarding the handling of proxy instruments –

### ***The Statutory Format of an Instrument Appointing a Proxy***

- ✓ The instrument appointing a proxy should be in the statutory form set out in Form 2 in Schedule 1A to the BMO (available for download on the Home Affairs Department's website on Building Management ([www.buildingmgt.gov.hk](http://www.buildingmgt.gov.hk))).

Para. 4(2) of  
Schedule 3  
to the BMO

The Secretary is advised to –

- ↳ print the date of the meeting of the OC and a unique serial number on the proxy form to help ensure that the owner knows at which meeting the appointed proxy will exercise the voting right on his behalf and facilitate checking.
- ↳ attach to the proxy instrument a statement of purposes in respect of the collection of personal data of owners.
- ↳ attach to the proxy instrument explanatory notes to remind owners the importance of their voting right.
- ↳ attach a blank proxy instrument to the notice of meeting or make it available at the management office.
- ↳ distribute the proxy instrument with the name of the proxy left blank for completion by the owner(s).
- ↳ prepare a register for owners who do not intend to appoint proxy to register and make it available for public inspection.

### ***Collection of the Proxy Instruments***

- ✓ The instrument appointing a proxy shall be lodged with the Secretary at least 48 hours before the time for the holding of the meeting. Proxy instruments which are not lodged in accordance with paragraph 4(3) of Schedule 3 to the BMO would not be accepted.
- ↳ The notice of the meeting should state clearly:
  - (a) the specified statutory time within which the proxy instruments should be lodged;
  - (b) the method and location for lodging the proxy instruments (e.g. the exact location of proxy collection boxes); and
  - (c) the timing and location for inspecting and counting the proxy instruments.

Para. 4(3) of  
Schedule 3  
to the BMO



- ↳ The timing and location for collecting, inspecting and counting the proxy instruments should be convenient to all owners.
- ↳ If the property management company or the management office assists the Secretary in collecting the proxy instruments, the Secretary should give clear instructions to the property management company or the management office on the submission deadline and the collection method.
- ↳ The Secretary is advised to remind the owners to lodge with him the original proxy instrument signed by the owner(s).
- ↳ The proxy collection boxes (if any) should be double-locked and placed in a prominent place of the building. The two keys should be held by the Secretary and a third party (e.g. a mediator, an auditor or a lawyer) respectively. The boxes should be opened by the two key holders in the presence of witnesses.
- ↳ The proxy instruments received before the close of the lodging time should be kept in a safe place designated by the MC.

### ***Actions after Receipt of Proxy Instruments***

The Secretary shall –

- ✓ acknowledge receipt of all proxy instruments received by leaving a receipt at the flat of the owner who made the proxy instrument, or depositing the receipt in the letter box for that flat, before the time for the holding of the meeting.
- ✓ display information of the owner’s flat to which a proxy has been appointed in a prominent place in the place of the meeting before the time for the holding of the meeting, and cause the information to remain so displayed until the conclusion of the meeting.

Para. 4(5)(a)(i) of Schedule 3 to the BMO
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Para. 4(5)(a)(ii) of Schedule 3 to the BMO
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The Secretary is advised to –

- ↳ assist the Chairman to contact the owners concerned for verification of the validity of the proxy instruments as soon as practicable, in any event no later than the time of the holding of the meeting, if there is any query or uncertainty arising from the proxy instruments.
- ↳ display the information of those flats with proxy instruments lodged in a prominent place of the building(s) in a clear and easily readable format with appropriate font size at least 24 hours before the meeting until seven days after the meeting to facilitate checking by the owners; where feasible, additional means of dissemination of the above information (e.g.,

posting onto the website of the OC) to facilitate checking by the owners.

- ↳ declare the number of proxy instruments received as soon as practicable after the close of the lodging time, and cause a notice of the result of counting to be posted at a prominent place in the building to ensure that no proxy instruments is to be accepted after the close of the lodging time.
- ↳ put a mark on the information against the flat of the owner concerned whose proxy instrument is considered invalid by the Chairman.
- ↳ send the acknowledgement receipt of the proxy instrument to the correspondence address provided by the owner if the owner concerned does not reside at the building.
- ↳ remind the owners to check the displayed information with a view to finding out if there is any unauthorised appointment of proxy.
- ↳ confirm the undivided shares under each of the validated proxy instrument for the purpose of vote counting unless the deed of mutual covenant specifies other mechanism for determining the owners' shares.

#### ***Actions after the Conclusion of the Meeting***

- ✓ All the instruments for the appointment of proxies that have been lodged with the Secretary shall be kept by the MC for a period of at least 12 months after the conclusion of the meeting.
- ↳ It is advisable to keep the information showing the owner's flats with proxy instruments lodged for at least 12 months and make the information available for inspection by the owners of the building upon request during such period.

Para. 4(6)  
of Schedule  
3 to the  
BMO

#### **For Owners**

- ↳ For voting on important issues, consideration may be given to appointing a third party to monitor the collection and verification of proxy instruments and requiring the third party so appointed to declare his interest.

#### ***Format for the Instrument Appointing a Proxy***

- ✓ When filling out a proxy instrument, the owners should ensure that the proxy instrument shall be in the form set out in Form 2 in Schedule 1A to the BMO. The form can be downloaded from the Home Affairs Department's website on Building Management

Para. 4(2)  
of Schedule  
3 to the  
BMO

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

- Authorisation documents prepared by a lawyer (e.g. instruments creating power of attorney) are not valid instruments for appointing a proxy under the BMO
- ✓ Owners should fill in all the required information, particularly the name of the proxy and alternate proxy in the proxy instruments when appointing proxy.
- ↳ It is not absolutely necessary to use the printed proxy form provided by the OC. The instrument for appointing a proxy is considered acceptable as long as it is in accordance with the statutory format in Form 2 in Schedule 1A to the BMO. However, where the proxy instrument issued by the OC contains the date of meeting and a unique serial number, it should be used as far as practicable to facilitate checking.
- ↳ It is not necessary for the signature of the owner on the proxy instrument being identical to the signature as appeared on the deed of assignment, but it is desirable that they are.
- ↳ Owners who do not intend to appoint proxy should register with the Secretary.

### ***Persons to be Appointed as Proxy***

The purpose of appointing a proxy is to facilitate the voting at the meeting of the OC where the owners are not able to attend the meeting in person. The instrument only provides that a proxy is appointed by an owner to attend and vote on behalf of the owner. The proxy can vote according to his own wish. No voting instruction is to be provided on the proxy instrument. The OC, the MC, the manager under the deed of mutual covenant or the property management company is not in a position to enforce or check any voting instruction given by the owners as the proxies have the final voting decision.

- ↳ An owner shall appoint a person aged 18 or above whom he trusts to be his proxy and can vote on his behalf.
- ↳ An owner is advised not to pass a signed proxy instrument to any person without filling in the name of the proxy in the proxy instrument.
- ↳ In the event that an owner receives a proxy instrument with a printed name of the proxy on it but the owner prefers to appoint another person to be his proxy, he can cross out the printed name on the proxy instrument and put down the name of his own proxy, with his signature beside the amendment. The Chairman should not reject these proxy instruments for

the sole reason that the owner has crossed out the printed name on the proxy instruments if the owner has put down the name of his own proxy and signed on the proxy instrument.

### ***Co-owners***

- ✓ Co-owners of a share in the property may jointly appoint a proxy, appoint a person amongst themselves as the proxy or either one of them personally may appoint a proxy.
- ✓ If more than one of the co-owners of a share seek to cast a vote in respect of the share, 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.

Para. 3(5)(b)  
& (c) of  
Schedule 3  
to the BMO

### ***Body Corporate as Owners***

- ✓ The proxy instrument should be impressed with the seal or chop of the body corporate and signed by a person authorised by the body corporate in that behalf.
- ↳ The body corporate shall follow its constitution in authorising a person to sign on the proxy instrument.
- ↳ The body corporate shall comply with the requirements of the BMO in appointing a proxy.

Para. 4(2)(b)  
of Schedule  
3 to the  
BMO

### ***Lodging the Proxy Instruments***

- ✓ Owners shall lodge the proxy instruments with the Secretary at least 48 hours before the time for the holding of the meeting.
- ↳ The proxy forms lodged should be the original copy.
- ↳ Contact details (e.g. telephone number, e-mail address, etc) should be set out on the proxy instruments so as to facilitate checking by the Chairman when the validity of the proxy instrument is in doubt.
- ↳ Owners are advised to personally lodge the duly completed proxy instruments with the Secretary direct or deposit them in the ways as instructed by the Secretary and avoid giving the proxy instruments to a third party.
- ↳ Owners are advised to check whether they have received the acknowledgment receipt of the proxy instrument before the time for the

Para 4(3)  
of Schedule  
3 to the  
BMO

holding of the meeting to ensure that the Secretary has received the proxy instruments.

- ↳ If in doubt, the owners should check with the Secretary on the handling of the proxy instrument.
- ↳ In the event that the Chairman verifies with the owner on the validity of the proxy instrument, the owner is advised to co-operate with the Chairman as far as practicable so as to ensure the proxy has been properly appointed.
- ↳ It is advisable for the owner to make a copy of his signed proxy instrument before lodging it with the Secretary.

**Relevant Provisions in  
the Building Management Ordinance (Cap. 344)**

**Schedule 1A: FORMS**

FORM 2

INSTRUMENT OF PROXY FOR MEETINGS OF CORPORATION

The Incorporated Owners of .....  
(description of building)

I/We, ..... (name(s) of owner(s)),  
being the owner(s) of .....  
.....  
(unit and address of building), hereby appoint .....  
(name of proxy) \*[or failing him .....  
(name of alternative proxy)], as my/our proxy to attend and vote on my/our behalf  
at the [\*general meeting/annual general meeting] of The Incorporated Owners  
of .....  
(description of building), to be held on the ..... day of .....  
\*[and at any adjournment thereof].

Dated this                      day of                      .

(Signature of owner(s))

\* Delete where inapplicable.

### **Schedule 3: MEETINGS AND PROCEDURE OF CORPORATION**

#### ***Paragraph 3***

- (5)(b) Where 2 or more persons are the co-owners of a share, the vote in respect of the share may be cast –
- (i) by a proxy jointly appointed by the co-owners;
  - (ii) by a person appointed by the co-owners from amongst themselves; or
  - (iii) if no appointment is made under sub-sub-subparagraph (i) or (ii), either by one of the co-owners personally or by a proxy appointed by one of the co-owners.
- (c) Where 2 or more persons are the co-owners of a share and more than one of the co-owners seeks to cast a vote in respect of the share, only the vote that is cast, whether personally or by proxy, 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.

#### ***Paragraph 4***

- (1) At a meeting of the corporation, an owner may cast a vote personally or by proxy.
- (2) The instrument appointing a proxy shall be in the form set out in Form 2 in Schedule 1A, and –
  - (a) shall be signed by the owner; or
  - (b) if the owner is a body corporate, shall, notwithstanding anything to the contrary in its constitution, be impressed with the seal or chop of the body corporate and signed by a person authorised by the body corporate in that behalf.
- (3) The instrument appointing a proxy shall be lodged with the secretary of the management committee at least 48 hours before the time for the holding of the meeting.
- (4) The instrument appointing a proxy is valid only if it is made and lodged in accordance with subparagraphs (2) and (3).

- (5) Where an instrument appointing a proxy is lodged with the secretary of the management committee –
- (a) the secretary shall –
    - (i) acknowledge receipt of the instrument by leaving a receipt at the flat of the owner who made the instrument, or depositing the receipt in the letter box for that flat, before the time for the holding of the meeting; and
    - (ii) display information of the owner's flat in a prominent place in the place of the meeting before the time for the holding of the meeting, and cause the information to remain so displayed until the conclusion of the meeting; and
  - (b) the chairman of the management committee or, if he is absent, the person who presides at the meeting, shall determine the validity of the instrument in accordance with subparagraph (4).
- (6) The management committee shall keep all the instruments for the appointment of proxies that have been lodged with the secretary of the management committee for a period of at least 12 months after the conclusion of the meeting.



**Measures and Schemes launched by the Home Affairs Department  
in Recent Years**

- The second phase of the **Building Management Professional Advisory Service Scheme (BMPASS)**, which is implemented following the successful completion of phase 1 of the BMPASS in March 2014, has engaged two property management companies (PMCs) to provide one-stop professional advisory services to a new batch of 1 200 “three-nil” buildings (i.e. buildings which do not have an OC or any owners/residents organisations or engage a PMC). The BMPASS, on one hand, allows the PMCs to share out the task of household visits which is very labour intensive, and on the other, makes use of the professional knowledge and experience of the PMCs to provide more direct and needy assistance to owners and residents of “three-nil” buildings.
- Structured training programmes to owners engaged in OC responsibilities to enhance their knowledge and capability in building management so that they can run the daily businesses of OCs more smoothly.
- Extensive liaison network through the setting up of **BM Link** and recruitment of **Resident Liaison Ambassadors (RLAs)** in “three-nil” buildings. They facilitate not only Liaison Officers to maintain a more effective and direct link with residents, but also members of BM Link and RLAs to promote quality building management.
- The “**AP Easy**” **Building Maintenance Advisory Service (“AP Easy”)**, implemented in collaboration with the Hong Kong Institute of Surveyors, the Hong Kong Institution of Engineers and the Hong Kong Institute of Architects, provides in-depth, comprehensive and tailor-made professional advisory services to those OCs which intend to carry out building maintenance works but without the support of professional PMCs, to assist them in commissioning suitable consultants to carry out the works. “AP Easy” is only a pilot scheme. As URA will launch the Building Rehabilitation Facilitating Services (Pilot Scheme) in May 2016 to enhance the technical and professional assistance to owners in a more comprehensive manner, “AP Easy” was not extended upon its

completion in end-March 2016 when all cases were satisfactorily completed.

- The **Free Legal Advice Service on Building Management**, implemented in collaboration with the Law Society of Hong Kong, provides advice on legal matters relating to building management to OCs and owners in need by voluntary lawyers free of charge.
- The **Panel of Advisors on Building Management Disputes** comprising solicitors, accountants, surveyors and property management professionals, etc., to provide impartial professional advice to assist owners and OCs in resolving their disputes.
- The **Free Mediation Service Pilot Scheme for Building Management**, implemented in collaboration with the Hong Kong Mediation Council and the Hong Kong Mediation Centre, assists owners in handling disputes relating to building management. A maximum of 15 hours of free professional mediation services can be arranged for each case.