

**Legislative Council Panel on Home Affairs
Subcommittee on Review of the
Building Management Ordinance (Cap. 344)**

Purpose

This paper sets out the Administration's proposals to improve the procedures of forming owners' corporations (OCs) under the Building Management Ordinance (BMO). The proposals comprise the following:-

- a) To add a schedule specifying the appropriate procedures for owners' meetings and prescribe certain frequently used forms; and
- b) To amend paragraph 2(1) of the Second Schedule to clarify the requirements of a resolution to appoint members and holders of office of a management committee.

To specify appropriate procedures for owners' meetings and prescribe certain frequently used forms

2. We propose to insert a series of procedural requirements regarding **an owners' meeting held for the purpose of appointing the first or subsequent management committees**. They seek to address practical problems identified from operational experience of holding such owners' meetings, and to reduce the number of disputes amongst owners arising from procedural concerns. Specifically, the proposed requirements aim to supplement the existing Third Schedule by including the following elements:

- a) The powers and responsibilities of the convenor of an owners' meeting held for the purpose of appointing the first management committee;
- b) The nomination procedures for members and holders of office of a management committee;
- c) Certain standing proceedings of an owners' meeting;

- d) Scope of expenses for an owners' meeting under section 3, 3A or 4; and
- e) The sequence between retirement and appointment of management committee members.

3. We also propose to prescribe under the relevant sections of the BMO certain forms such as proxy, notice of meetings, nomination and standing order, which are frequently used in owners' meetings. The purpose is to facilitate the smooth and orderly conduct of such meetings by putting in place simple and user-friendly procedures, hence reducing the number of disputes currently arising from the interpretation of procedural requirements under the BMO. The proposed new procedures and major sample forms are at *Annex I* and *Annex II* respectively.

To clarify the requirements of a resolution to appoint members and holders of office of a management committee

4. According to paragraph 2(1) of the Second Schedule, the owners shall at a duly convened meeting appoint a chairman, a vice-chairman (if any), a secretary, a treasurer and members of the management committee, and may at such meeting appoint other holders of office. However, it has not been specified therein how these individual members and holders of office are to be appointed. Some owners are of the view that they should be appointed in the same way as the appointment of the management committee per se, i.e. by a resolution of the owners holding not less than 30% of the shares, while others argue that they can simply be appointed by a majority of the votes of the owners. As a result, the actual appointment practice varies considerably on the ground.

5. We are of the view that as long as the appointment of a management committee per se has been supported by a resolution of the owners holding not less than 30% of the shares at an owners' meeting convened in accordance with section 3(2) of the BMO, it is not necessary to adopt the same threshold for the purpose of appointing members and holders of office of the management committee at the same meeting. Allowing their appointment by a simple majority of the votes of the owners would facilitate the constitution of a

management committee, and hence the formation of an OC. We therefore propose to specify in paragraph 2(1) of the Second Schedule that members and holders of office of the management committee shall be appointed by a resolution passed by a majority of the votes of the owners voting either personally or by proxy at an owners' meeting.

The way forward

6. Subject to Members' views, we intend to consult building owners, the relevant professional bodies and trade associations on the above proposals.

7. On the basis of the latest deliberations of this Subcommittee, we propose to include the following legislative proposals in a composite Bill to amend the BMO:

- a) To make clear our legislative intent that the management committee members of an OC should not be held personally liable for any collective decision of an OC solely on the ground that they are members of the management committee;
- b) To improve the OC formation procedures in order to reduce disputes arising from procedural problems, hence facilitating OC formation, as set out in the previous paragraphs in this paper;
- c) To enable an OC to borrow money from the Government's Building Safety Loan Scheme for the sake of complying with statutory safety orders; and
- d) To rationalize the requirements regarding termination of appointment of property managers by an OC.

We plan to consult all concerned parties with a view to drawing up package of proposals in the composite Bill for the consideration of the Executive Council and then the Legislative Council.

Home Affairs Bureau
September 2002

**Meeting Procedures for Owners' Meetings
(Complement to Section 8(5) and the Third Schedule)**

1. For a meeting of owners to appoint a management committee convened under section 3, 3A or 4

- (1) The convenor of a meeting of owners under sections 3(1)(a), 3(1)(b), 3A or 4, or an owner nominated by the convenors of a meeting of owners under section 3(1)(c), shall-
 - (a) prepare agenda for the meeting;
 - (b) arrange service, display and publication of notice of the meeting in accordance with section 5;
 - (c) accept nomination of candidates for appointment to the management committee if the nomination form is signed by at least 2 owners and lodged with him not less than 24 hours before the time for the holding of the meeting;
 - (d) allow nomination at the meeting if there is no nomination or insufficient nominations for the purpose of forming a management committee as stipulated in the Second Schedule;
 - (e) preside at the whole meeting; and
 - (f) declare cancellation of the meeting if-
 - (i) the management committee has not been appointed within 2 hours after the time scheduled for commencement of the meeting;
 - or
 - (ii) the order of the meeting cannot be maintained; or
 - (iii) the meeting cannot be continued due to inclement weather.

- (2) The owners may, at a meeting convened under section 3, 3A or 4, pass a resolution on the following by a majority of the votes of the owners voting either personally or by proxy at the commencement of the meeting-
 - (a) a standing order of the meeting;
 - (b) the number of members of the management committee subject to paragraph 1 of the Second Schedule; and
 - (c) the term of office of the secretary and treasurer.

(3) The expenses incurred in convening a meeting under section 3, 3A or 4, including service of notice under section 5, arrangement of venue and printing of documents, may be defrayed by the general fund to be established by the corporation under section 20(1).

2. For an annual general meeting convened under paragraphs 1(1)(b) of the Third Schedule

- (1) The chairman of the incumbent management committee has to comply with all the requirements stipulated in the Third Schedule. In addition, the chairman shall-
 - (a) accept nomination of candidates for appointment to the new management committee if the nomination form is signed by at least 2 owners and lodged with him 24 hours before the time for the holding of the meeting;
 - (b) allow nomination at the meeting if there is no nomination or insufficient nominations for the purpose of forming a management committee as stipulated in the Second Schedule;
 - (c) preside at the whole meeting; and
 - (d) adjourn the meeting until 14 days thereafter if-
 - (i) the order of the meeting cannot be maintained; or
 - (ii) the meeting cannot be continued due to inclement weather.
- (2) Subject to section 14 and paragraph 4 of the Second Schedule, the members of the management committee appointed at an annual general meeting convened under paragraph 1(1)(b) of the Third Schedule shall hold office until a new management committee is appointed and assumes office at the next annual general meeting of the corporation.

***Sample notice of meeting to be served on each owner of the building
and for display in a prominent place in the building
in accordance with section 5 of the Building Management Ordinance***

To : _____(name of owner)
The owners of _____ (name of building)

Notice of Owners' Meeting of _____ (name of building)

In accordance with section *3/3A/4/40C of the Building Management Ordinance, notice is hereby given that a meeting of the owners of the abovementioned building will be held at the following :-

Date :

Time :

Place :

for the purpose of forming an owners' corporation and appointing a management committee consisting of a chairman, a †vice-chairman (if any), a secretary, a treasurer and other members in compliance with the provisions of the Building Management Ordinance, and for the discussion of matters arising therefrom and for the transaction and resolution of the matters itemized in the appended agenda.

Agenda :

- (1) to form an owners' corporation and to appoint a management committee
- (2) to pass a resolution on the number of management committee members
(See (1) of Notes for the convenor(s))

- (3) to appoint the members of the management committee
- (4) to appoint a chairman of the management committee
- (5) to appoint a †vice-chairman (if any) of the management committee
- (6) to appoint a secretary of the management committee
- (7) to appoint a treasurer of the management committee
- (8) to pass a resolution on the registered address of the owners' corporation
- (9) to pass a resolution that the management committee will apply to the Land Registrar for the registration of the owners as an owners' corporation under section 7 of the Building Management Ordinance
- (10) any other business

All owners of the abovementioned building are cordially invited to attend the meeting and vote personally or to vote by proxy appointed in writing.

The proxy form is available at _____
 (details of location). The proxy form duly signed by the owner(s) must be delivered to the *convenor(s)/representative of the convenor(s) of the owners' meeting not less than 24 hours before the time for the holding of the owners' meeting at which the proxy proposes to vote. The name and address of the *convenor(s)/representative of the convenor(s) is _____.

Name(s) of the convenor(s) :

Signature(s) of the convenor(s) :

Date :

* Please delete as appropriate

Notes for the convenor(s)

- (1) The owners or convenors should refer to the deed of mutual covenant and paragraph 1 of the Second Schedule to the Building Management Ordinance on the number of persons to constitute the management committee.
- (2) The convenor(s) has/have to make sure that the name and address of the building in the notice are correct. This can be done by making reference to the “Names of Buildings” published by the Rating and Valuation Department, the deed of mutual covenant and the Land Registry records.
- (3) This notice shall be served upon each owner in the building and any person referred to in section 3(1)(a) or (b) of the Building Management Ordinance not less than 14 days (not counting the day of service of the notice and the day of the meeting) before the date of the meeting.
- (4) This notice shall be displayed in a prominent place in the building and shall be published in a newspaper, from amongst a list of newspapers specified by the Secretary for Home Affairs, at a reasonable period of time before the date of meeting.
- (5) Service of the notice may be effected -
 - (i) personally upon the owner, and any person referred to in section 3(1)(a) or (b) of the Building Management Ordinance; or
 - (ii) by post addressed to the owner, and any person referred to in section 3(1)(a) or (b) of the Building Management Ordinance at his last known address; or
 - (iii) in the case of an owner, by leaving the notice at the owner’s flat or depositing the notice in his letter box.
- (6) If an owners’ meeting is to be convened in accordance with section 3 of the Building Management Ordinance, the convenor(s) must be –
 - (i) a person managing the building in accordance with the deed of mutual covenant (if any); or
 - (ii) any other person authorized to convene such a meeting by the deed of mutual covenant (if any); or

- (iii) the owners of not less than 5% of the shares.
- (7) If an owners' meeting is to be convened in accordance with section 3A of the Building Management Ordinance, the convenor must be the owner specified in the order granted by the Secretary for Home Affairs under section 3A(1) of the Building Management Ordinance.
- (8) If an owners' meeting is to be convened in accordance with section 4 of the Building Management Ordinance, the convenor must be the owner specified in the order granted by the Lands Tribunal under section 4(1) of the Building Management Ordinance.
- (9) If an owners' meeting is to be convened in accordance with section 40C of the Building Management Ordinance, the convenor must be the owner specified in the order granted by the Lands Tribunal under section 40C(1) of the Building Management Ordinance.
- (10) A † vice-chairman shall be appointed if that office (howsoever named) is specified in the deed of mutual covenant.
- (11) The convenor(s) of owners' meetings convened under section 3, 3A, 4 or 40C of the Building Management Ordinance should make reference to the Building Management Ordinance and the relevant provisions of the deed of mutual covenant when using this form and make any necessary adaptations.

***Sample notice for publication in a newspaper from amongst
a list of newspapers specified by the Secretary for Home Affairs
in accordance with section 5(3)(b) of the Building Management Ordinance***

Pursuant to the Building Management Ordinance (Chapter 344)

Notice of Owners' Meeting

_____ (name and address of building)

In accordance with section *3/3A/4/40C of the Building Management Ordinance, notice is hereby given that a meeting of the owners of the abovementioned building will be held at the following :-

Date :

Time :

Place :

for the purpose of forming an owners' corporation and appointing a management committee consisting of a chairman, a †vice-chairman (if any), a secretary, a treasurer and other members in compliance with the provisions of the Building Management Ordinance, and for the discussion of matters arising therefrom and for the transaction and resolution of the matters itemized in the appended agenda.

Agenda :

- (1) to form an owners' corporation and to appoint a management committee
- (2) to pass a resolution on the number of management committee members
- (3) to appoint the members of the management committee

- (4) to appoint a chairman of the management committee
- (5) to appoint a †vice-chairman (if any) of the management committee
- (6) to appoint a secretary of the management committee
- (7) to appoint a treasurer of the management committee
- (8) to pass a resolution on the registered address of the owners' corporation
- (9) to pass a resolution that the management committee will apply to the Land Registrar for the registration of the owners as an owners' corporation under section 7 of the Building Management Ordinance
- (10) any other business

All owners of the abovementioned building are cordially invited to attend the meeting and vote personally or to vote by proxy appointed in writing.

The proxy form is available at _____
 (details of location). The proxy form duly signed by the owner(s) must be delivered to the *convenor(s)/representative of the convenor(s) of the owners' meeting not less than 24 hours before the time for the holding of the owners' meeting at which the proxy proposes to vote. The name and address of the *convenor(s)/representative of the convenor(s) is

 _____.

Name(s) of the convenor(s) :

Signature(s) of the convenor(s) :

Date :

* Please delete as appropriate

Notes for the convenor(s)

- (1) The convenor(s) has/have to make sure that the name and address of the building in the notice are correct. This can be done by making reference to the “Names of Buildings” published by the Rating and Valuation Department, the deed of mutual covenant and the Land Registry records.
- (2) This notice shall be published in a newspaper, from amongst a list of newspapers specified by the Secretary for Home Affairs, at a reasonable period of time before the date of the meeting.
- (3) If an owners’ meeting is to be convened in accordance with section 3 of the Building Management Ordinance, the convenor(s) must be –
 - (i) a person managing the building in accordance with the deed of mutual covenant (if any); or
 - (ii) any other person authorized to convene such a meeting by the deed of mutual covenant (if any); or
 - (iii) the owners of not less than 5% of the shares.
- (4) If an owners’ meeting is to be convened in accordance with section 3A of the Building Management Ordinance, the convenor must be the owner specified in the order granted by the Secretary for Home Affairs under section 3A(1) of the Building Management Ordinance.
- (5) If an owners’ meeting is to be convened in accordance with section 4 of the Building Management Ordinance, the convenor must be the owner specified in the order granted by the Lands Tribunal under section 4(1) of the Building Management Ordinance.
- (6) If an owners’ meeting is to be convened in accordance with section 40C of the Building Management Ordinance, the convenor must be the owner specified in the order granted by the Lands Tribunal under section 40C(1) of the Building Management Ordinance.
- (7) A † vice-chairman shall be appointed if that office (howsoever named) is specified in the deed of mutual covenant.

- (8) The convenor(s) of owners' meetings convened under section 3, 3A, 4 or 40C of the Building Management Ordinance should make reference to the Building Management Ordinance and the relevant provisions of the deed of mutual covenant when using this form and make necessary adaptations.
- (9) The form of the notice to be published in the newspaper shall be identical to the form of the notice to be served on owners and to be displayed in the building.

Notes for the convenor(s) and owners

- (1) The proxy form duly signed by the owner(s) must be delivered to the *convenor(s)/representative of the convenor(s) of the owners' meeting not less than 24 hours before the time for the holding of the owners' meeting at which the proxy proposes to vote (the name and address of the *convenor(s)/representative of the convenor(s) is _____) or within such lesser time as the person presiding at the owners' meeting shall allow.
- (2) The owner(s) must sign the proxy form personally. If the owner is a body corporate (e.g. a limited company), the company seal must be affixed to the proxy form with the signature of the authorized person of the body corporate.
- (3) If a share in the building is jointly owned by 2 or more persons, the vote of that share may be cast–
 - (i) by a proxy jointly appointed by the co-owners; or
 - (ii) by one co-owner appointed by the others; or
 - (iii) if no appointment has been made under (i) or (ii), then either personally or by proxy by one of the co-owners; and, in the case of any meeting where more than one of the co-owners seek to cast a vote in respect of the share, only the vote that is cast, in person 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.
- (4) The sample proxy form will enable the proxy to decide at his own discretion how to vote at the owners' meeting. If the owner(s) wishes to instruct the proxy specifically on how to vote, then specific reference has to be made on which resolution is to be voted for and which resolution is to be voted against by the proxy in the proxy form.
- (5) Information contained in the proxy form can only be used for the formation of an owners' corporation and its related purposes. The

proxy form should be destroyed upon successful registration of the owners as an owners' corporation under the Building Management Ordinance or when the owners have no intention to proceed further with the preparatory work for the formation of an owners' corporation.

- (6) Data user(s) of the proxy form should observe the relevant provisions of the Personal Data (Privacy) Ordinance.