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A BILL

To

Amend the Building Management Ordinance and to provide for incidental and transitional matters.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the Building Management (Amendment) Ordinance 2005.

2. Commencement

(1) This Ordinance, other than sections 10, 13 and 28(e) and Part 3, shall come into operation on the day on which it is published in the Gazette.

(2) Sections 10, 13 and 28(e) and Part 3 shall come into operation on a day to be appointed by the Secretary for Home Affairs by notice published in the Gazette.

PART 2

AMENDMENTS TO BUILDING MANAGEMENT ORDINANCE

3. Interpretation

Section 2 of the Building Management Ordinance (Cap. 344) is amended—

- (a) in paragraph (c)(ii) of the definition of “building”, by repealing “Part II” and substituting “section 3, 3A, 4 or 40C”;
 - (b) in the definition of “management committee”, by repealing “section 3, 3A or 4” and substituting “section 3, 3A, 4 or 40C”;
 - (c) by adding—
 - ““convenor” (召集人)—
 - (a) in relation to a meeting of owners convened under section 3, means the person referred to in section 3(1)(a) or (b) or the owner appointed under section 3(1)(c);
 - (b) in relation to a meeting of owners convened under section 3A, means the owner directed under section 3A(1);
 - (c) in relation to a meeting of owners convened under section 4, means the owner directed under section 4(1); or
 - (d) in relation to a meeting of owners convened under section 40C, means the owner named in the order made under section 40C(1);
- “member” (委員), in relation to a management committee, means a person appointed as a member of the management committee under paragraph 2(1)(a) or 5(2)(a) of Schedule 2;”.

4. Appointment of management committee

Section 3 is amended—

- (a) by repealing subsection (1)(c) and substituting—
 - “(c) an owner appointed to convene such a meeting by the owners of not less than 5% of the shares in aggregate.”;
- (b) by repealing subsection (2) and substituting—
 - “(2) At a meeting of owners convened under this section, the owners may, by a resolution—
 - (a) passed by a majority of the votes of the owners voting either personally or by proxy; and
 - (b) supported by the owners of not less than 30% of the shares in aggregate,appoint a management committee.”;

(c) by adding—

“(3) The convenor shall, at least 14 days before the date of the meeting of owners, give notice of the meeting to each owner and—

(a) where the convenor is the person referred to in subsection (1)(a), to any person referred to in subsection (1)(b);

(b) where the convenor is the person referred to in subsection (1)(b), to any person referred to in subsection (1)(a); or

(c) where the convenor is the owner appointed under subsection (1)(c), to any person referred to in subsection (1)(a) or (b).

(4) The notice of meeting shall specify—

(a) the date, time and place of the meeting; and

(b) the resolutions that are to be proposed at the meeting and, in particular, the resolution for the appointment of a management committee.

(5) The notice of meeting may be given—

(a) in the case of an owner—

(i) by delivering it personally to the owner;

(ii) by sending it by post to the owner at his last known address; or

(iii) by leaving it at the owner’s flat or depositing it in the letter box for that flat; or

(b) in the case of a person referred to in subsection (1)(a) or (b)—

(i) by delivering it personally to the person; or

(ii) by sending it by post to the person at his last known address.

(6) The convenor shall also, at least 14 days before the date of the meeting of owners, display the notice of meeting in a prominent place in the building and publish the notice in a newspaper selected from a list of newspapers specified by the Authority from time to time for that purpose.

(7) The convenor shall preside at a meeting of owners convened under this section.

(8) The quorum at a meeting of owners convened under this section shall be 10% of the owners.

(9) At a meeting of owners convened under this section—

- (a) an owner shall, unless the deed of mutual covenant (if any) otherwise provides, have one vote in respect of each share he owns;
 - (b) an owner may cast a vote personally or by proxy;
 - (c) 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 subparagraph (i) or (ii), either by one of the co-owners personally or by a proxy appointed by one of the co-owners; and
 - (d) 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.
- (10) For the purposes of subsection (9)—
- (a) the instrument appointing a proxy shall be in the form set out in Form 1 in Schedule 1A, and—
 - (i) shall be signed by the owner; or
 - (ii) if the owner is a body corporate, shall, notwithstanding anything to the contrary in its constitution, be sealed or stamped with the seal or stamp of the body corporate and signed by a person authorized by the body corporate in that behalf;
 - (b) the instrument appointing a proxy shall be lodged with the convenor at least 24 hours before the time for the holding of the meeting; and
 - (c) a proxy appointed in accordance with paragraphs (a) and (b) to vote for an owner shall, for the purposes of establishing a quorum, be treated as being an owner present at the meeting.”.

5. Appointment of management committee after application to the Authority

Section 3A is amended—

- (a) in subsection (1), by repealing “(“convenor” (召集人))”;
- (b) in subsection (3), by repealing “the meeting of owners convened under this section may,” and substituting “at a meeting of owners convened under this section, the owners may,”;
- (c) by adding—

“(3A) The convenor shall, at least 14 days before the date of the meeting of owners, give notice of the meeting to each owner and any person referred to in section 3(1)(a) or (b).

(3B) The notice of meeting shall specify—

- (a) the date, time and place of the meeting; and
- (b) the resolutions that are to be proposed at the meeting and, in particular, the resolution for the appointment of a management committee.

(3C) The notice of meeting may be given—

- (a) in the case of an owner—
 - (i) by delivering it personally to the owner;
 - (ii) by sending it by post to the owner at his last known address; or
 - (iii) by leaving it at the owner’s flat or depositing it in the letter box for that flat; or
- (b) in the case of a person referred to in section 3(1)(a) or (b)—
 - (i) by delivering it personally to the person; or
 - (ii) by sending it by post to the person at his last known address.

(3D) The convenor shall also, at least 14 days before the date of the meeting of owners, display the notice of meeting in a prominent place in the building and publish the notice in a newspaper selected from a list of newspapers specified by the Authority from time to time for that purpose.

(3E) The convenor shall preside at a meeting of owners convened under this section.

(3F) The quorum at a meeting of owners convened under this section shall be 10% of the owners.

(3G) At a meeting of owners convened under this section—

- (a) an owner shall, unless the deed of mutual covenant (if any) otherwise provides, have one vote in respect of each share he owns;
- (b) an owner may cast a vote personally or by proxy;
- (c) 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 subparagraph (i) or (ii), either by one of the co-owners personally or by a proxy appointed by one of the co-owners; and
- (d) 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.

(3H) For the purposes of subsection (3G)—

- (a) the instrument appointing a proxy shall be in the form set out in Form 1 in Schedule 1A, and—
 - (i) shall be signed by the owner; or
 - (ii) if the owner is a body corporate, shall, notwithstanding anything to the contrary in its constitution, be sealed or stamped with the seal or stamp of the body corporate and signed by a person authorized by the body corporate in that behalf;
- (b) the instrument appointing a proxy shall be lodged with the convenor at least 24 hours before the time for the holding of the meeting; and

- (c) a proxy appointed in accordance with paragraphs (a) and (b) to vote for an owner shall, for the purposes of establishing a quorum, be treated as being an owner present at the meeting.”;
- (d) in subsection (4), by repealing “by notice served upon the Authority not less than 7 days” and substituting “by notice given to the Authority at least 7 days”;
- (e) in subsection (5), by repealing “served with a notice under section 5(1)(ba)” and substituting “to whom a notice has been given under subsection (3A)”.

6. Appointment of management committee after application to tribunal

Section 4 is amended—

- (a) in subsection (4), by repealing “The meeting of owners convened under this section may,” and substituting “At a meeting of owners convened under this section, the owners may,”;
- (b) by adding—
 - “(5) The convenor shall, at least 14 days before the date of the meeting of owners, give notice of the meeting to each owner and any person referred to in section 3(1)(a) or (b).
 - (6) The notice of meeting shall specify—
 - (a) the date, time and place of the meeting; and
 - (b) the resolutions that are to be proposed at the meeting and, in particular, the resolution for the appointment of a management committee.
 - (7) The notice of meeting may be given—
 - (a) in the case of an owner—
 - (i) by delivering it personally to the owner;
 - (ii) by sending it by post to the owner at his last known address; or
 - (iii) by leaving it at the owner’s flat or depositing it in the letter box for that flat; or
 - (b) in the case of a person referred to in section 3(1)(a) or (b)—
 - (i) by delivering it personally to the person; or
 - (ii) by sending it by post to the person at his last known address.

(8) The convenor shall also, at least 14 days before the date of the meeting of owners, display the notice of meeting in a prominent place in the building and publish the notice in a newspaper selected from a list of newspapers specified by the Authority from time to time for that purpose.

(9) The convenor shall preside at a meeting of owners convened under this section.

(10) The quorum at a meeting of owners convened under this section shall be 10% of the owners.

(11) At a meeting of owners convened under this section—

- (a) an owner shall, unless the deed of mutual covenant (if any) otherwise provides, have one vote in respect of each share he owns;
- (b) an owner may cast a vote personally or by proxy;
- (c) 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 subparagraph (i) or (ii), either by one of the co-owners personally or by a proxy appointed by one of the co-owners; and
- (d) 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.

(12) For the purposes of subsection (11)—

- (a) the instrument appointing a proxy shall be in the form set out in Form 1 in Schedule 1A, and—
 - (i) shall be signed by the owner; or

- (ii) if the owner is a body corporate, shall, notwithstanding anything to the contrary in its constitution, be sealed or stamped with the seal or stamp of the body corporate and signed by a person authorized by the body corporate in that behalf;
- (b) the instrument appointing a proxy shall be lodged with the convenor at least 24 hours before the time for the holding of the meeting; and
- (c) a proxy appointed in accordance with paragraphs (a) and (b) to vote for an owner shall, for the purposes of establishing a quorum, be treated as being an owner present at the meeting.”.

7. Notice of and voting at meetings

Section 5 is repealed.

8. Application of section 5 to meetings held under section 40C

Section 5A is repealed.

9. Application by management committee for registration of owners as a corporation

Section 7(3) is amended—

- (a) in paragraph (c), by repealing “and”;
- (b) in paragraph (d)—
 - (i) by repealing “section 5, 5A or 5B” and substituting “section 5B”;
 - (ii) by repealing the full stop and substituting “; and”;
- (c) by adding—
 - “(e) a declaration by each member of the management committee appointed under paragraph 2(1)(a) of Schedule 2, in such form as the Land Registrar may specify, that he does not fall within the description of paragraph 4(1)(a) or (b) of that Schedule.”.

10. Land Registrar to maintain register of corporations

Section 12(2) is amended by adding—

“(da) the name and address of the insurance company with which the corporation has effected a policy of insurance under section 28 and the period covered by the policy of insurance;”.

11. Duties and powers of corporation

Section 18 is amended—

(a) in subsection (2)(aa)—

(i) by repealing “subject to subsection (3), and”;

(ii) by repealing “the chairman, vice-chairman (if any), secretary, treasurer and other holders of office of the management committee appointed in accordance with the Second Schedule” and substituting “the members of the management committee”;

(b) in subsection (3), by repealing “A person” and substituting “For the avoidance of doubt, it is declared that a member of a management committee”;

(c) in subsection (4), by repealing “a person who is otherwise entitled to receive an allowance under this section” and substituting “a member of a management committee who is entitled to receive an allowance under subsection (2)(aa)”.

12. Establishment of funds

Section 20 is amended—

(a) in subsection (3), by adding “open and” before “maintain”;

(b) in subsection (4), by adding “opened and” before “maintained”.

13. Supplies, goods and services

Section 20A is amended—

(a) in subsection (2)—

(i) in paragraph (a), by repealing “\$100,000” and substituting “\$200,000”;

(ii) in paragraph (b), by repealing “as may be approved by the corporation by a resolution passed at a general meeting” and substituting “as the Authority may specify by notice in the Gazette”;

- (iii) by adding “, unless the supplies, goods or services fall within a list of urgent matters specified in a resolution of the owners passed at a general meeting of the corporation” after “invitation to tender”;
- (b) by adding—
 - “(2A) 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.”.

14. Accounts of corporation

Section 27 is amended—

- (a) in subsection (1), by repealing “an income and expenditure account and a balance sheet which shall both be signed” and substituting “financial statements which shall be signed”;
- (b) by adding immediately after subsection (1)—
 - “(1AA) The financial statements referred to in subsection (1) shall include—
 - (a) an income and expenditure account which gives a true and fair view of the financial transactions of the corporation for the period to which it relates; and
 - (b) a balance sheet which gives a true and fair view of the financial position of the corporation as at the date to which the income and expenditure account is made up.”;
- (c) in subsection (1A)—
 - (i) by repealing “, the income and expenditure account and balance sheet” and substituting “, the financial statements”;
 - (ii) by repealing “such account and balance sheet present fairly the financial transactions of the corporation during the period to which the income and expenditure account and balance sheet relate; and the financial position of the corporation at the end of that period,” and substituting “such financial statements are, in his opinion, properly prepared so as to give a true and fair view of the financial transactions of the corporation for the period to which the income and expenditure account relates and the financial position of the corporation as at the date to which the income and expenditure account is made up.”.

15. Section added

The following is added in Part IV—

“29A. Protection of members of management committee

(1) No member of a management committee, acting in good faith, shall be personally liable for any act done or default made by or on behalf of the corporation—

- (a) in the exercise or purported exercise of the powers conferred by this Ordinance on the corporation; or
- (b) in the performance or purported performance of the duties imposed by this Ordinance on the corporation.

(2) The protection conferred by subsection (1) on a member of a management committee shall not in any way affect the liability of the corporation for that act or default.”.

16. Interpretation

Section 34D(1) is amended—

- (a) by repealing the definition of “manager” and substituting—
““manager” (經理人), in relation to a building, means the DMC manager or any other person who for the time being is, for the purposes of the deed of mutual covenant, managing the building;”;
- (b) by adding—
““DMC manager” (公契經理人), in relation to a building, means the person who is specified in the deed of mutual covenant to manage the building;”.

17. Right to establish corporation and conduct business

Section 34J(4) is amended—

- (a) in paragraph (a), by repealing “Part II” and substituting “section 3, 3A, 4 or 40C”;
- (b) in paragraph (b), by repealing “a manager’s appointment” and substituting “a DMC manager’s appointment”.

18. Appointment of building management agent by order of Authority

Section 40B(3) is repealed and the following substituted—

“(3) For the purposes of this section and section 40C, a person is eligible to be appointed as a building management agent if his name appears in a list of persons engaged in the business of the management of buildings compiled by the Authority from time to time and published in the Gazette.”.

19. Appointment of management committee or building management agent by order of tribunal

Section 40C is amended—

(a) by repealing subsection (3) and substituting—

“(3) At a meeting of owners convened under this section, the owners may, by a resolution passed by a majority of the votes of the owners voting either personally or by proxy, appoint—

(a) a management committee; or

(b) (if no management committee is appointed) a building management agent.”;

(b) by adding—

“(3A) If no management committee or building management agent is appointed at the meeting of owners, the convenor may appoint a building management agent directly.”;

(c) by repealing subsection (4) and substituting—

“(4) The convenor shall, at least 14 days before the date of the meeting of owners, give notice of the meeting to each owner and any person referred to in section 3(1)(a) or (b).”;

(d) by adding—

“(5) The notice of meeting shall specify—

(a) the date, time and place of the meeting; and

(b) the resolutions that are to be proposed at the meeting and, in particular, the resolution for the appointment of a management committee and the resolution for the appointment of a building management agent.

(6) The notice of meeting may be given—

(a) in the case of an owner—

(i) by delivering it personally to the owner;

(ii) by sending it by post to the owner at his last known address; or

- (iii) by leaving it at the owner's flat or depositing it in the letter box for that flat; or
- (b) in the case of a person referred to in section 3(1)(a) or (b)—
 - (i) by delivering it personally to the person; or
 - (ii) by sending it by post to the person at his last known address.

(7) The convenor shall also, at least 14 days before the date of the meeting of owners, display the notice of meeting in a prominent place in the building and publish the notice in a newspaper selected from a list of newspapers specified by the Authority from time to time for that purpose.

(8) The convenor shall preside at a meeting of owners convened under this section.

(9) The quorum at a meeting of owners convened under this section shall be 10% of the owners.

(10) At a meeting of owners convened under this section—

- (a) each owner shall have one vote;
- (b) an owner may cast a vote personally or by proxy;
- (c) in the case of co-owners, the vote 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 subparagraph (i) or (ii), either by one of the co-owners personally or by a proxy appointed by one of the co-owners; and
- (d) where, in the case of co-owners, more than one of the co-owners seeks to cast a vote, only the vote that is cast, whether personally or by proxy, by the co-owner whose name, in order of priority, stands highest in the register kept at the Land Registry shall be treated as valid.

(11) For the purposes of subsection (10)—

- (a) the instrument appointing a proxy shall be in the form set out in Form 1 in Schedule 1A, and—

- (i) shall be signed by the owner; or
 - (ii) if the owner is a body corporate, shall, notwithstanding anything to the contrary in its constitution, be sealed or stamped with the seal or stamp of the body corporate and signed by a person authorized by the body corporate in that behalf;
- (b) the instrument appointing a proxy shall be lodged with the convenor at least 24 hours before the time for the holding of the meeting; and
- (c) a proxy appointed in accordance with paragraphs (a) and (b) to vote for an owner shall, for the purposes of establishing a quorum, be treated as being an owner present at the meeting.”.

20. Power to make regulations

Section 41(*ca*) is amended—

- (a) in subparagraph (vi), by repealing “dissolution” and substituting “winding up”;
- (b) by adding—
 - “(xi) the avoidance of arrangements, agreements or understandings, or parts thereof, made or reached after 31 March 2005 as to the liability of corporations, or owners of buildings, towards third parties;”.

21. Common parts

The First Schedule is amended—

- (a) by repealing “FIRST SCHEDULE” and substituting “SCHEDULE 1”;
- (b) by repealing “[s. 2]” and substituting “[ss. 2 & 42]”.

22. Schedule 1A added

The following is added—

“SCHEDULE 1A

[ss. 3, 3A, 4, 40C
& 42 & Schs.
3 & 8]

FORMS

FORM 1

INSTRUMENT OF PROXY FOR MEETINGS OF OWNERS CONVENED
UNDER SECTION 3, 3A, 4 OR 40C OF OR PARAGRAPH 8 OF
SCHEDULE 8 TO THE BUILDING MANAGEMENT
ORDINANCE (CAP. 344)

Meeting of the owners of
(name of building)

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

Dated this day of .

(Signed)

*Delete where inapplicable.

FORM 2

INSTRUMENT OF PROXY FOR MEETINGS OF CORPORATION
CONVENED UNDER PARAGRAPH 1 OF SCHEDULE 3 TO
THE BUILDING MANAGEMENT ORDINANCE
(CAP. 344)

The Incorporated Owners of
(name of building)

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

Dated this day of .

(Signed)

*Delete where inapplicable.”.

23. Composition and procedure of management committee

The Second Schedule is amended—

- (a) by repealing “SECOND SCHEDULE” and substituting “SCHEDULE 2”;
- (b) by repealing “[ss. 6 & 42]” and substituting “[ss. 2, 6, 7, 14, 34K & 42 & Sch. 3]”;
- (c) in paragraph 1—
 - (i) by repealing subparagraph (a) and substituting—
 - “(a) consist of—
 - (i) not less than 3 persons where the building contains not more than 50 flats;
 - (ii) not less than 7 persons where the building contains more than 50 flats but not more than 100 flats; or
 - (iii) not less than 9 persons where the building contains more than 100 flats; and”;
 - (ii) by repealing subparagraphs (b) and (c);
- (d) in paragraph 2—
 - (i) by repealing subparagraph (1) and substituting—
 - “(1) Subject to subparagraph (2), at a meeting of owners convened under section 3, 3A, 4 or 40C, after a management committee is appointed, the owners shall, by a resolution passed by a majority of the votes of the owners voting either personally or by proxy—

- (a) appoint, from amongst themselves, the members of the management committee;
- (b) appoint a person, from amongst the members of the management committee, as the chairman of the management committee;
- (c) appoint a person, whether or not he is a member of the management committee, as the secretary of the management committee; and
- (d) appoint a person, whether or not he is a member of the management committee, as the treasurer of the management committee,

and the owners may, by a resolution passed by a majority of the votes of the owners voting either personally or by proxy, appoint a person, from amongst the members of the management committee, as the vice-chairman of the management committee.”;

(ii) by adding—

“(3) A person who is not a member of the management committee appointed under subparagraph (1)(a) does not by virtue of his appointment as the secretary or treasurer of the management committee under subparagraph (1)(c) or (d), as the case may be, become a member of the management committee.

(4) For the purposes of appointing the members, chairman, vice-chairman (if applicable), secretary and treasurer of a management committee under subparagraph (1) at a meeting of owners convened under section 3, 3A, 4 or 40C—

- (a) if the meeting is convened under section 3, the provisions in section 3(8), (9) and (10) shall apply as they apply for the purposes of appointing a management committee under section 3;
- (b) if the meeting is convened under section 3A, the provisions in section 3A(3F), (3G) and (3H) shall apply as they apply for the purposes of appointing a management committee under section 3A;

- (c) if the meeting is convened under section 4, the provisions in section 4(10), (11) and (12) shall apply as they apply for the purposes of appointing a management committee under section 4; or
 - (d) if the meeting is convened under section 40C, the provisions in section 40C(9), (10) and (11) shall apply as they apply for the purposes of appointing a management committee under section 40C.”;
- (e) in paragraph 3, by repealing everything after “members of the management committee” and substituting “appointed under paragraph 2(1)(a) shall hold office until the members of a new management committee are appointed under paragraph 5(2)(a).”;
- (f) in paragraph 4—
 - (i) by repealing subparagraph (1) and substituting—
 - “(1) For the purposes of paragraphs 2(1)(a) and 5(2)(a), a person is not eligible to be appointed as a member of a management committee if he—
 - (a) is an undischarged bankrupt at the time of the proposed 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 the person’s creditors, in either case without paying the creditors in full;
 - (b) has, within the previous 5 years, been convicted of an offence for which he has been sentenced to imprisonment, whether suspended or not, for a term exceeding 3 months without the option of a fine.”;
 - (ii) in subparagraph (2)(e), by repealing “, or ceases to be qualified to be a member according to the deed of mutual covenant (if any), as the case may be”;

(iii) by adding—

“(3) Every member of the management committee appointed under paragraph 5(2)(a) shall, within 14 days after the appointment, lodge with the secretary of the management committee a declaration, in such form as the Land Registrar may specify, stating that he does not fall within the description of subparagraph (1)(a) or (b).

(4) Subject to subparagraph (6), where a change occurs in any matter stated in a declaration referred to in section 7(3)(e) or subparagraph (3), the person who made the declaration shall, within 14 days after the change occurs, lodge with the secretary of the management committee another declaration, in such form as the Land Registrar may specify, stating the particulars of the change.

(5) The secretary of the management committee shall, within 28 days after receiving a declaration by virtue of subparagraph (3) or (4), lodge with the Land Registrar the declaration.

(6) Where the person referred to in subparagraph (4) is the secretary of the management committee, that person shall, within 28 days after the relevant change occurs, lodge with the Land Registrar a declaration, in such form as the Land Registrar may specify, stating the particulars of the change.”;

(g) in paragraph 5—

(i) in subparagraph (1), by repealing “annual general meeting, all members of the management committee, other than the member (if any) deemed to be appointed under paragraph 2(2) in his capacity as the tenants’ representative, shall retire from office.” and substituting—

“annual general meeting—

(a) all members of the management committee (other than the member (if any) deemed to be appointed under paragraph 2(2) in his capacity as the tenants’ representative);

(b) if the secretary of the management committee is not a member of the management committee, the secretary; and

- (c) if the treasurer of the management committee is not a member of the management committee, the treasurer, shall retire from office.”;
- (ii) by repealing subparagraph (2) and substituting—
- “(2) Subject to subparagraph (2A), at an annual general meeting of a corporation at which the members of the management committee retire under subparagraph (1), the owners shall—
- (a) appoint, from amongst themselves, the members of a new management committee;
- (b) appoint a person, from amongst the members of the new management committee, as the chairman of the new management committee;
- (c) appoint a person, whether or not he is a member of the new management committee, as the secretary of the new management committee; and
- (d) appoint a person, whether or not he is a member of the new management committee, as the treasurer of the new management committee,
- and the owners may appoint a person, from amongst the members of the new management committee, as the vice-chairman of the new management committee.”;
- (iii) by adding—
- “(2A) The tenants’ representative appointed under section 15(1) shall be deemed to be appointed by the owners as a member of the new management committee.”;
- (iv) by adding—
- “(4) A person who is not a member of the new management committee appointed under subparagraph (2)(a) does not by virtue of his appointment as the secretary or treasurer of the new management committee under subparagraph (2)(c) or (d), as the case may be, become a member of the new management committee.”;
- (h) in paragraph 8—
- (i) by repealing subparagraph (2) and substituting—

“(2) The secretary shall, at least 7 days before the date of the meeting of the management committee, give notice of the meeting to each member of the management committee.”;

(ii) by adding immediately after subparagraph (2)—

“(2AA) The notice of meeting shall specify—

- (a) the date, time and place of the meeting; and
- (b) the resolutions (if any) that are to be proposed at the meeting.”;

(iii) in subparagraph (2A)—

(A) by repealing “Service of a notice required to be served under subparagraph (2) may be effected” and substituting “The notice of meeting may be given”;

(B) in sub-subparagraph (a), by repealing “personally upon” and substituting “by delivering it personally to”;

(C) in sub-subparagraph (b), by repealing “by post addressed to” and substituting “by sending it by post to”;

(D) in sub-subparagraph (c)—

(I) by repealing “the notice” where it twice appears and substituting “it”;

(II) by repealing “his letter box” and substituting “the letter box for that flat”;

(iv) in subparagraph (3), by repealing “serve a copy of such resolution, and a copy of any subsequent resolution of the management committee affecting the same, upon each member” and substituting “give a copy of such resolution, and a copy of any subsequent resolution of the management committee affecting the same, to each member”;

(i) by adding—

“10A. (1) The minutes certified in accordance with paragraph 10(4A) shall be kept by the management committee for such period, being not less than 6 years, as the corporation may determine.

(2) If the tenants’ representative, an owner, a registered mortgagee or any person duly authorized in writing in that behalf by an owner or registered mortgagee requests in writing the corporation to supply him with copies of any minutes certified in accordance with paragraph 10(4A), the secretary shall, on the payment of such reasonable copying charge as the management

committee may determine, supply such copies to that person.”;

- (j) in paragraph 11(1), by repealing “Notwithstanding any provision in a deed of mutual covenant to the contrary, where” and substituting “Where”.

24. Meetings and procedure of corporation

The Third Schedule is amended—

- (a) by repealing “THIRD SCHEDULE” and substituting “SCHEDULE 3”;
- (b) by repealing “[ss. 8(5) & 42]” and substituting “[ss. 8, 10, 27, 30, 34D & 42 & Schs. 2 & 11]”;
- (c) in paragraph 2—
- (i) by repealing subparagraph (1) and substituting—
- “(1) The secretary of the management committee shall, at least 14 days before the date of the meeting of the corporation, give notice of the meeting to each owner and the tenants’ representative (if any).”;
- (ii) by adding immediately after subparagraph (1)—
- “(1AA) The notice of meeting shall specify—
- (a) the date, time and place of the meeting; and
- (b) the resolutions (if any) that are to be proposed at the meeting or other matters that are to be discussed at the meeting.”;
- (iii) in subparagraph (1A)—
- (A) by repealing “Service of a notice required to be served under subparagraph (1) may be effected” and substituting “The notice of meeting may be given”;
- (B) in sub-subparagraph (a), by repealing “personally upon” and substituting “by delivering it personally to”;
- (C) in sub-subparagraph (b), by repealing “by post addressed to” and substituting “by sending it by post to”;
- (D) by repealing sub-subparagraph (c) and substituting—
- “(c) by leaving it at the flat of the owner or tenants’ representative (if any) or depositing it in the letter box for that flat.”;
- (iv) by repealing subparagraph (2);

(d) in paragraph 3—

(i) by repealing subparagraph (1) and substituting—

“(1) A meeting of the corporation shall be presided over by—

(a) the chairman of the management committee;

(b) in the absence of the chairman of the management committee, the vice-chairman (if any) of the management committee; or

(c) in the absence of the chairman and the vice-chairman (if any) of the management committee, a person appointed by the owners present at the meeting from amongst themselves.”;

(ii) by repealing subparagraph (2);

(iii) in subparagraph (3), by repealing “majority of votes of the owners” and substituting “majority of the votes of the owners voting either personally or by proxy”;

(iv) in subparagraph (5)—

(A) in sub-subparagraph (a), by repealing “each owner shall, subject to the provisions of any instrument registered in the Land Registry” and substituting “an owner shall, unless the deed of mutual covenant (if any) otherwise provides”;

(B) by repealing sub-subparagraph (b) and substituting—

“(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-subparagraph (i) or (ii), either by one of the co-owners personally or by a proxy appointed by one of the co-owners.”;

(C) by adding—

“(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.”;

- (v) in subparagraph (7), by repealing “served” and substituting “given”;
- (e) in paragraph 4—
 - (i) in subparagraph (1), by repealing “the votes of owners may be given either” and substituting “, an owner may cast a vote”;
 - (ii) in subparagraph (2), by repealing “in writing signed by the owner, or if the owner is a body corporate, under the seal of that body.” and substituting—
 - “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 sealed or stamped with the seal or stamp of the body corporate and signed by a person authorized by the body corporate in that behalf.”;
 - (iii) by repealing subparagraph (3) and substituting—
 - “(3) The instrument appointing a proxy shall be lodged with the secretary of the management committee at least 24 hours before the time for the holding of the meeting.”;
- (f) by adding—
 - “6A. (1) The minutes certified in accordance with paragraph 6(2) shall be kept by the management committee for such period, being not less than 6 years, as the corporation may determine.
 - (2) If the tenants’ representative, an owner, a registered mortgagee or any person duly authorized in writing in that behalf by an owner or registered mortgagee requests in writing the corporation to supply him with copies of any minutes certified in accordance with paragraph 6(2), the secretary shall, on the payment of such reasonable copying charge as the management committee may determine, supply such copies to that person.”.

25. Maximum allowances in respect of each holder of office of a management committee

The Fourth Schedule is amended—

- (a) by repealing “FOURTH SCHEDULE” and substituting “SCHEDULE 4”;
- (b) in the heading, by repealing “HOLDER OF OFFICE” and substituting “MEMBER”;
- (c) by repealing “[ss. 18(2) & 42]” and substituting “[ss. 18 & 42]”.

26. Annual budget

The Fifth Schedule is amended—

- (a) by repealing “FIFTH SCHEDULE” and substituting “SCHEDULE 5”;
- (b) by repealing “[ss. 21(4) & (5) & 42]” and substituting “[ss. 21 & 42]”.

27. Accounts

The Sixth Schedule is amended—

- (a) by repealing “SIXTH SCHEDULE” and substituting “SCHEDULE 6”;
- (b) by repealing “[ss. 27(4) & (5) & 42]” and substituting “[ss. 27 & 42]”;
- (c) in paragraph 3(a)—
 - (i) by repealing “an income and expenditure account and balance sheet” and substituting “the financial statements and, if applicable, the accountant’s report”;
 - (ii) by repealing “section 27(1)” and substituting “section 27”.

28. Mandatory terms in deeds of mutual covenant

The Seventh Schedule is amended—

- (a) by repealing “SEVENTH SCHEDULE” and substituting “SCHEDULE 7”;
- (b) in paragraph 2(2)—
 - (i) by adding “and a balance sheet” after “a summary of income and expenditure”;
 - (ii) by repealing “a copy of it” and substituting “a copy of the summary and the balance sheet”;

- (c) in paragraph 3—
- (i) in the heading, by adding “**open and**” before “**maintain**”;
 - (ii) in subparagraph (1), by adding “open and” before “maintain”;
 - (iii) by adding—

“(1A) Without prejudice to the generality of subparagraph (1), if there is a corporation, the manager shall open and maintain one or more segregated interest-bearing accounts, each of which shall be designated as a trust account or client account, for holding money received by him from or on behalf of the corporation in respect of the management of the building.

(1B) The manager shall display a document showing evidence of any account opened and maintained under subparagraph (1) or (1A) in a prominent place in the building.”;
 - (iv) in subparagraph (2), by repealing “maintained under subparagraph (1)” and substituting “opened and maintained under subparagraph (1) or, if there is a corporation, the account or accounts opened and maintained under subparagraph (1A)”;
- (d) in paragraph 4—
- (i) in subparagraph (3), by adding “open and” before “maintain”;
 - (ii) by adding—

“(3A) Without prejudice to the generality of subparagraph (3), if there is a corporation, the manager shall open and maintain one or more segregated interest-bearing accounts, each of which shall be designated as a trust account or client account, for holding money received by him from or on behalf of the corporation in respect of the special fund.

(3B) The manager shall display a document showing evidence of any account opened and maintained under subparagraph (3) or (3A) in a prominent place in the building.”;
 - (iii) in subparagraph (4), by repealing “maintained under subparagraph (3)” and substituting “opened and maintained under subparagraph (3) or, if there is a corporation, the account or accounts opened and maintained under subparagraph (3A)”;

(e) by repealing paragraph 5 and substituting—

“5. Contracts entered into by manager

(1) Where any supplies, goods or services are required under section 20A(2)(a) to be procured by invitation to tender, the manager shall not enter into any contract for the procurement of the supplies, goods or services unless the contract complies with such standards and guidelines as may be specified in a Code of Practice referred to in section 20A(3) and relating to procurement and tender procedures.

(2) Where any supplies, goods or services are required under section 20A(2)(b) to be procured by invitation to tender, the manager shall not enter into any contract for the procurement of the supplies, goods or services unless the contract complies with section 20A(2A) and with such standards and guidelines as may be specified in a Code of Practice referred to in section 20A(3) and relating to procurement and tender procedures.”;

(f) in paragraph 6—

(i) in subparagraph (1)(b), by repealing “serving such a notice on” and substituting “giving such a notice to”;

(ii) in subparagraph (2)—

(A) by repealing “Service of a notice on an owner under this paragraph may be effected” and substituting “The notice referred to in subparagraph (1)(b) may be given”;

(B) in sub-subparagraph (a), by repealing “personally upon” and substituting “by delivering it personally to”;

(C) in sub-subparagraph (b), by repealing “by post addressed to” and substituting “by sending it by post to”;

(D) in sub-subparagraph (c)—

(I) by repealing “the notice” where it twice appears and substituting “it”;

(II) by repealing “his letter box” and substituting “the letter box for that flat”;

(g) in paragraph 7—

(i) in the heading, by repealing “**manager’s appointment**” and substituting “**DMC manager’s appointment**”;

(ii) in subparagraph (1)—

(A) by repealing “(5) and”;

- (B) by repealing “the manager’s appointment” and substituting “the DMC manager’s appointment”;
- (iii) in subparagraph (2)—
 - (A) in sub-subparagraph (b), by repealing “the manager” and substituting “the DMC manager”;
 - (B) in sub-subparagraph (c), by repealing “the manager’s appointment” and substituting “the DMC manager’s appointment”;
 - (C) in sub-subparagraph (d), by repealing “is served upon the manager not more than 14 days” and substituting “is given to the DMC manager within 14 days”;
- (iv) in subparagraph (3)—
 - (A) by repealing “Service of the notice and the copy of the resolution required to be served under subparagraph (2)(d) may be effected” and substituting “The notice and the copy of the resolution referred to in subparagraph (2)(d) may be given”;
 - (B) in sub-subparagraph (a), by repealing “personally upon the manager” and substituting “by delivering them personally to the DMC manager”;
 - (C) in sub-subparagraph (b)—
 - (I) by repealing “by post addressed to the manager” and substituting “by sending them by post to the DMC manager”;
 - (II) by repealing “; or” and substituting a full stop;
 - (D) by repealing sub-subparagraph (c);
- (v) in subparagraph (4), by repealing “to terminate the manager’s appointment” and substituting “in a contract to terminate the appointment of a manager who is not a DMC manager”;
- (vi) by repealing subparagraph (5);
- (vii) in subparagraph (6), by repealing “a manager’s appointment” and substituting “a DMC manager’s appointment”.

29. Terms added if consistent with deed of mutual covenant

The Eighth Schedule is amended—

- (a) by repealing “EIGHTH SCHEDULE” and substituting “SCHEDULE 8”;

- (b) by repealing “[ss. 34D, 34F & 42]” and substituting “[ss. 34D, 34F & 42 & Sch. 11]”;
- (c) by repealing paragraph 2 and substituting—
 - “2. The person or persons convening the meeting of the owners’ committee shall, at least 7 days before the date of the meeting, give notice of the meeting to each member of the owners’ committee.”;
- (d) by adding—
 - “2A. The notice of meeting referred to in paragraph 2 shall specify—
 - (a) the date, time and place of the meeting; and
 - (b) the resolutions (if any) that are to be proposed at the meeting.”;
- (e) in paragraph 3—
 - (i) by repealing “Service of a notice required to be served under paragraph 2 may be effected” and substituting “The notice of meeting referred to in paragraph 2 may be given”;
 - (ii) in subparagraph (a), by repealing “personally upon” and substituting “by delivering it personally to”;
 - (iii) in subparagraph (b), by repealing “by post addressed to” and substituting “by sending it by post to”;
 - (iv) in subparagraph (c)—
 - (A) by repealing “the notice” where it twice appears and substituting “it”;
 - (B) by repealing “his letter box” and substituting “the letter box for that flat”;
- (f) by repealing paragraph 9 and substituting—
 - “9. The person or persons convening the meeting of owners shall, at least 14 days before the date of the meeting, give notice of the meeting to each owner.”;
- (g) by adding—
 - “9A. The notice of meeting referred to in paragraph 9 shall specify—
 - (a) the date, time and place of the meeting; and
 - (b) the resolutions (if any) that are to be proposed at the meeting.”;
- (h) in paragraph 10—
 - (i) by repealing “Service of a notice required to be served under paragraph 9 may be effected” and substituting “The notice of meeting referred to in paragraph 9 may be given”;

- (ii) in subparagraph (a), by repealing “personally upon” and substituting “by delivering it personally to”;
- (iii) in subparagraph (b), by repealing “by post addressed to” and substituting “by sending it by post to”;
- (iv) in subparagraph (c)—
 - (A) by repealing “the notice” where it twice appears and substituting “it”;
 - (B) by repealing “his letter box” and substituting “the letter box for that flat”;
- (i) in paragraph 13—
 - (i) by repealing subparagraphs (a), (b) and (c) and substituting—
 - “(a) an owner shall have one vote in respect of each share he owns;
 - (b) an owner may cast a vote personally or by proxy;
 - (c) 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 subparagraph (i) or (ii), either by one of the co-owners personally or by a proxy appointed by one of the co-owners;”;
 - (ii) by adding—
 - “(ca) 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; and”;
- (j) in paragraph 14—
 - (i) in subparagraph (1), by repealing “in writing signed by the owner or, if the owner is a body corporate, under the seal of that body.” and substituting—
 - “in the form set out in Form 1 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 sealed or stamped with the seal or stamp of the body corporate and signed by a person authorized by the body corporate in that behalf.”;
- (ii) in subparagraph (2), by repealing “not less than 24 hours before the time for the holding of the meeting at which the proxy proposes to vote, or within such lesser time as the chairman shall allow” and substituting “at least 24 hours before the time for the holding of the meeting”.

30. Exempt estates

The Ninth Schedule is amended by repealing “NINTH SCHEDULE” and substituting “SCHEDULE 9”.

31. Hearing and determination of specified proceedings by tribunal

The Tenth Schedule is amended by repealing “TENTH SCHEDULE” and substituting “SCHEDULE 10”.

32. Enumeration of owners

Schedule 11 is amended—

- (a) by repealing “[s. 5B]” and substituting “[ss. 5B & 42]”;
- (b) in paragraph (a), by repealing “section 40C(3) and” and substituting “sections 3(8), 3A(3F), 4(10) and 40C(9),”.

PART 3

AMENDMENTS TO BUILDING MANAGEMENT (AMENDMENT) ORDINANCE 2000

33. Section substituted

Section 12 of the Building Management (Amendment) Ordinance 2000 (69 of 2000) is amended, in the new section 28—

- (a) in subsection (1)—

- (i) by repealing “occupiers and”;
- (ii) by repealing “the building and all parts thereof including the common parts” and substituting “the common parts of the building”;
- (b) by adding—
 - “(1A) For the purposes of subsection (1), a corporation shall have power to enter into a policy of insurance with an insurance company as agent for the owners of a building.”;
- (c) in subsection (3), by repealing “occupiers and”;
- (d) in subsection (5)—
 - (i) by adding “of the management committee” after “the treasurer”;
 - (ii) by repealing “副本費” and substituting “複印費”;
- (e) in subsection (6), by adding “of the management committee” after “the treasurer”;
- (f) by adding—
 - “(6A) The secretary of the management committee shall, within 28 days after the corporation has effected the policy of insurance, give notice of the name and address of the insurance company and the period covered by the policy of insurance to the Land Registrar in such form as the Land Registrar may specify.”.

PART 4

AMENDMENT TO SPECIFICATION OF PUBLIC OFFICES

34. Schedule amended

The Schedule to the Specification of Public Offices (Cap. 1 sub. leg. C) is amended by adding—

“Secretary for Home
Affairs

Building Management Ordinance
(Chapter 344).”.

PART 5

TRANSITIONAL PROVISIONS

35. Interpretation

In this Part—

- “commencement date” (生效日期) means the day on which this Part comes into operation;
- “corporation” (法團) has the meaning assigned to it by section 2 of the pre-amended Ordinance;
- “management committee” (管理委員會) means a management committee appointed under section 3, 3A, 4 or 40C of the pre-amended Ordinance;
- “pre-amended Ordinance” (未經修訂條例) means the Building Management Ordinance (Cap. 344) as in force immediately before the commencement date;
- “transitional period” (過渡期) means a period of 4 years after the commencement date.

36. Management committees appointed in accordance with deeds of mutual covenant

(1) This section applies to a management committee of a corporation which has been appointed in accordance with a deed of mutual covenant under section 3(2)(a) of the pre-amended Ordinance and which is in existence immediately before the commencement date.

(2) Subject to subsection (3), during the transitional period, the amendments made by section 23 of this Ordinance to the Second Schedule to the pre-amended Ordinance shall not affect the composition and procedure of a management committee to which this section applies, and the Second Schedule to the pre-amended Ordinance shall continue to have effect with respect to the composition and procedure of the management committee as if section 23 of this Ordinance had not been enacted.

(3) Subsection (2) shall cease to have effect with respect to the composition and procedure of a management committee to which this section applies when—

- (a) the corporation decides, by a resolution passed at an annual general meeting during the transitional period, that Schedule 2 to the Building Management Ordinance (Cap. 344) as amended by section 23 of this Ordinance shall have effect with respect to the composition and procedure of the management committee; or
- (b) (if no resolution referred to in paragraph (a) is passed during the transitional period) the transitional period expires,

and Schedule 2 to the Building Management Ordinance (Cap. 344) as amended by section 23 of this Ordinance shall after such cessation have effect with respect to the composition and procedure of the management committee accordingly.

PART 6

MINOR AND CONSEQUENTIAL AMENDMENTS

Building Management Ordinance**37. Interpretation**

Section 2 of the Building Management Ordinance (Cap. 344) is amended—

- (a) in paragraph (b) of the definition of “common parts”, by repealing “the First Schedule” and substituting “Schedule 1”;
- (b) in paragraph (a) of the definition of “exempt estate”, by repealing “the Ninth Schedule” and substituting “Schedule 9”;
- (c) in paragraph (c)(ii) of the definition of “建築物”, by repealing “委任” where it twice appears and substituting “委出”;
- (d) in the definition of “管理委員會”, by repealing “委任” and substituting “委出”.

38. Appointment of management committee

Section 3(1) is amended by repealing “委任” and substituting “委出”.

39. Appointment of management committee after application to the Authority

Section 3A is amended—

- (a) in subsection (1)—
 - (i) by adding “in aggregate” after “the shares”;
 - (ii) by repealing “委任” and substituting “委出”;
- (b) in subsection (3), by repealing “委任” and substituting “委出”;
- (c) in subsection (4), by repealing “委任” and substituting “委出”;
- (d) in subsection (5)—
 - (i) in paragraph (a), by repealing “owners of not less than 20% of the shares” and substituting “the owners of not less than 20% of the shares in aggregate”;
 - (ii) in paragraph (b), by repealing “owners of not less than 20% of the shares” and substituting “the owners of not less than 20% of the shares in aggregate”.

40. Appointment of management committee after application to tribunal

Section 4 is amended—

- (a) in subsection (1)—
 - (i) in paragraph (a), by adding “in aggregate” after “the shares”;
 - (ii) by repealing “委任” and substituting “委出”;
- (b) in subsection (4), by repealing “委任” and substituting “委出”.

41. Composition and procedure of management committee

Section 6 is amended by repealing “The Second Schedule” and substituting “Schedule 2”.

42. Application by management committee for registration of owners as a corporation

Section 7 is amended—

- (a) in subsection (1)—
 - (i) by repealing “委任的” and substituting “委出的”;
 - (ii) by repealing “獲委任” and substituting “委出”;
- (b) in subsection (2), by repealing “採用土地註冊處處長所指明的格式” and substituting “符合土地註冊處處長指明的格式”;
- (c) in subsection (3)—
 - (i) in paragraph (c), by repealing “委任” and substituting “委出”;
 - (ii) in paragraph (d), by repealing “聲明書格式由土地註冊處處長指明” and substituting “聲明書須符合土地註冊處處長指明的格式”.

43. Incorporation

Section 8 is amended—

- (a) in subsection (2)(b), by repealing “委任” and substituting “委出”;
- (b) in subsection (5), by repealing “The Third Schedule” and substituting “Schedule 3”.

44. Change of name

Section 10(1) is amended by repealing “the Third Schedule” and substituting “Schedule 3”.

45. Powers of corporation generally

Section 14(3) is amended by repealing “the Second Schedule” and substituting “Schedule 2”.

46. Tenants’ representative

Section 15(1) is amended by repealing “親自出席或委派代表出席投票” and substituting “親自投票或委派代表投票”.

47. Duties and powers of corporation

Section 18 is amended—

- (a) in subsection (2)(aa), by repealing “the Fourth Schedule” and substituting “Schedule 4”;
- (b) in subsection (3), by repealing “所訂的” and substituting “所指的”.

48. Contributions to funds

Section 21 is amended—

- (a) in subsection (4)—
 - (i) by repealing “The Fifth Schedule” and substituting “Schedule 5”;
 - (ii) by repealing “製備” and substituting “擬備”;
- (b) in subsection (5), by repealing “the Fifth Schedule” and substituting “Schedule 5”.

49. Accounts of corporation

Section 27 is amended—

- (a) in subsection (1)—
 - (i) by repealing “the Third Schedule” and substituting “Schedule 3”;
 - (ii) by repealing “製備” and substituting “擬備”;
- (b) in subsection (1A), by repealing “製備” and substituting “擬備”;

- (c) in subsection (4)—
 - (i) by repealing “The Sixth Schedule” and substituting “Schedule 6”;
 - (ii) by repealing “收支概要的製備” and substituting “收支概算表的擬備”;
- (d) in subsection (5), by repealing “the Sixth Schedule” and substituting “Schedule 6”.

50. Dissolution of management committee and appointment of administrator

Section 30 is amended—

- (a) in subsection (1), by repealing “the Third Schedule” and substituting “Schedule 3”;
- (b) in subsection (3)(a)—
 - (i) by repealing “the Third Schedule” and substituting “Schedule 3”;
 - (ii) by repealing “委任”;
 - (iii) in subparagraph (i), by adding “委任” before “另”;
 - (iv) in subparagraph (ii), by adding “委出” before “新”.

51. Interpretation

Section 34D is amended—

- (a) in subsection (1)—
 - (i) by repealing “the Seventh and Eighth Schedules” and substituting “Schedules 7 and 8”;
 - (ii) in the definition of “業主委員會”—
 - (A) in paragraph (a), by repealing “委任” and substituting “委出”;
 - (B) in paragraph (b), by repealing “委任” and substituting “委出”;
- (b) in subsection (2), by repealing “the Seventh Schedule” and substituting “Schedule 7”;
- (c) in subsection (3)—
 - (i) in paragraph (a), by repealing “the Third Schedule” and substituting “Schedule 3”;
 - (ii) in paragraph (b), by repealing “在業主親自出席或委派代表出席的按照公契召開及進行的業主大會上” and substituting “在按照公契召開和進行的業主大會上由親自投票或委派代表投票的業主”;

- (d) in subsection (4)—
 - (i) by repealing “the Seventh Schedule” and substituting “Schedule 7”;
 - (ii) by repealing “the Third Schedule” and substituting “Schedule 3”.

52. Mandatory terms in deeds of mutual covenant

Section 34E is amended—

- (a) in subsection (1), by repealing “the Seventh Schedule” and substituting “Schedule 7”;
- (b) in subsection (4), by repealing “the Seventh Schedule” and substituting “Schedule 7”;
- (c) in subsection (5)—
 - (i) by repealing “the Seventh Schedule” and substituting “Schedule 7”;
 - (ii) by repealing “(in aggregate)”;
 - (iii) by repealing “owners of not less than 50% of the shares” and substituting “the owners of not less than 50% of the shares in aggregate”;
- (d) in subsection (6), by repealing “the Ninth Schedule” and substituting “Schedule 9”;
- (e) in subsection (7)—
 - (i) in paragraph (a)—
 - (A) by repealing “(in aggregate)”;
 - (B) by repealing “owners of not less than 50% of the shares” and substituting “the owners of not less than 50% of the shares in aggregate”;
 - (C) by repealing “the Ninth Schedule” and substituting “Schedule 9”;
 - (ii) in paragraph (c), by repealing “the Ninth Schedule” and substituting “Schedule 9”;
- (f) in subsection (8), by repealing “製備” and substituting “擬備”.

53. Terms added if consistent with deed of mutual covenant

Section 34F is amended—

- (a) in subsection (1), by repealing “the Eighth Schedule” and substituting “Schedule 8”;

- (b) in subsection (3), by repealing “the Eighth Schedule” and substituting “Schedule 8”.

54. Right to establish corporation and conduct business

Section 34J(4) is amended—

- (a) in paragraph (a), by repealing “委任” and substituting “委出”;
- (b) in paragraph (b), by repealing “the Seventh Schedule” and substituting “Schedule 7”.

55. Management committee to replace owners’ committee

Section 34K is amended—

- (a) in paragraph (b), by repealing “the Second Schedule” and substituting “Schedule 2”;
- (b) by repealing “委任” where it twice appears and substituting “委出”.

56. Appointment of management committee or building management agent by order of tribunal

Section 40C is amended—

- (a) in subsection (1)(a), by repealing “獲委任” where it twice appears and substituting “委出”;
- (b) in subsection (2)(a), by repealing “委任” and substituting “委出”.

57. Powers of building management agent appointed following order of tribunal

Section 40D(1) is amended by repealing “the Seventh Schedule” and substituting “Schedule 7”.

58. Power to amend Schedules

Section 42 is amended—

- (a) in subsection (1), by repealing “the Seventh and Ninth Schedules” and substituting “Schedules 7 and 9”;
- (b) in subsection (2), by repealing “the Seventh Schedule” and substituting “Schedule 7”;
- (c) in subsection (3), by repealing “the Ninth Schedule” and substituting “Schedule 9”.

59. Jurisdiction of tribunal in relation to building management

Section 45 is amended—

- (a) in subsection (1), by repealing “the Tenth Schedule” and substituting “Schedule 10”;
- (b) in subsection (3), by repealing “the Tenth Schedule” and substituting “Schedule 10”;
- (c) in subsection (5), by repealing “the Tenth Schedule” and substituting “Schedule 10”.

60. Composition and procedure of management committee

The Second Schedule is amended—

- (a) in paragraph 4(2)(e), by adding “管理” after “獲委任為”;
- (b) in paragraph 5—
 - (i) in subparagraph (1), by repealing “the Third Schedule” and substituting “Schedule 3”;
 - (ii) in subparagraph (3), by repealing “退職” and substituting “卸任”;
- (c) in paragraph 5A, by repealing “退職” where it twice appears and substituting “卸任”;
- (d) in paragraph 6(1B)(a), by repealing “the Third Schedule” and substituting “Schedule 3”.

61. Meetings and procedure of corporation

The Third Schedule is amended—

- (a) in paragraph 5(1)—
 - (i) in sub-subparagraph (a), by repealing “全部業主的 20% 的人數” and substituting “業主人數的 20%”;
 - (ii) in sub-subparagraph (b), by repealing “全部業主的 10% 的人數” and substituting “業主人數的 10%”;
- (b) in paragraph 9, by adding “或業主人數的某個百分率” after “某個百分率的業主”.

62. Annual budget

The Fifth Schedule is amended—

- (a) in paragraph 3, by repealing “製備” and substituting “擬備”;
- (b) in paragraph 4, by repealing “副本費” and substituting “複印費”.

63. Accounts

The Sixth Schedule is amended, in paragraph 3, by repealing “副本費” and substituting “複印費”.

64. Mandatory terms in deeds of mutual covenant

The Seventh Schedule is amended—

- (a) in paragraph 1(7), by repealing “副本費” and substituting “複印費”;
- (b) in paragraph 2(5)(b), by repealing “副本費” and substituting “複印費”;
- (c) in paragraph 7—
 - (i) in subparagraph (1), by adding “in aggregate” after “the shares”;
 - (ii) in subparagraph (5A)(b)—
 - (A) by adding “in aggregate” after “the shares” where it twice appears;
 - (B) by repealing “不少於 50% 份數” and substituting “份數不少於 50%”.

65. Terms added if consistent with deed of mutual covenant

The Eighth Schedule is amended—

- (a) in paragraph 8(b), by adding “in aggregate” after “the shares”;
- (b) in paragraph 11A(b), by adding “in aggregate” after “the shares”.

66. Enumeration of owners

Schedule 11 is amended—

- (a) in paragraph (a)—
 - (i) by repealing “the Third Schedule” and substituting “Schedule 3”;
 - (ii) by repealing “the Eighth Schedule” and substituting “Schedule 8”;
- (b) in paragraph (b), in column 2 of item 1, by repealing “共有人” and substituting “共同擁有人”.

Lands Tribunal Rules

67. Commencement of proceedings

Rule 77(c) of the Lands Tribunal Rules (Cap. 17 sub. leg. A) is amended by repealing “the Tenth Schedule” and substituting “Schedule 10”.

68. Forms

The Schedule is amended—

(a) in Form 27—

(i) by adding “in aggregate” after “the shares”;

(ii) by repealing “委任” and substituting “委出”;

(b) in Form 28—

(i) by adding “in aggregate” after “the shares”;

(ii) by repealing “委任管理委員會” and substituting “委出管理委員會”;

(c) in Form 29—

(i) by repealing “to Tenth Schedule” and substituting “to Schedule 10”;

(ii) by repealing “the Tenth Schedule” and substituting “Schedule 10”.

Land Titles Ordinance

69. Consequential amendments

Schedule 3 to the Land Titles Ordinance (26 of 2004) is amended—

(a) by repealing section 114;

(b) by repealing section 118;

(c) by repealing section 119.

Explanatory Memorandum

The purpose of this Bill is to amend the Building Management Ordinance (Cap. 344) and to provide for incidental and transitional matters.

2. The Bill is divided into 6 Parts.

Part 1

3. Part 1 (clauses 1 and 2) contains preliminary provisions providing for the short title and the commencement of the Bill when enacted.

Part 2

4. Part 2 (clauses 3 to 32) amends the Building Management Ordinance (Cap. 344) (“the Ordinance”).

5. Clause 3 amends section 2 of the Ordinance to clarify the meaning of certain terms used in the Ordinance.

6. Clause 4 amends section 3 of the Ordinance to make further provisions for the appointment of a management committee under that section. In particular—

- (a) the original section 3(2) is repealed to remove any doubt as to whether a management committee within the meaning of the Ordinance may be appointed in accordance with a deed of mutual covenant, and the new section 3(2) clarifies that a resolution for the appointment of a management committee must be passed by a majority of the votes of the owners and supported by the owners of not less than 30% of the shares in aggregate;
- (b) the new section 3(3), (4), (5) and (6), which is modelled on the parts of section 5(1), (2), (3) and (4) of the Ordinance relating to section 3, provides for the giving of notice of the meeting of owners for the appointment of a management committee;
- (c) the new section 3(7) specifies the person who is to preside at the meeting of owners for the appointment of a management committee; and
- (d) the new section 3(8), (9) and (10), which is modelled on the parts of section 5(5) and (6) of the Ordinance relating to section 3, provides for such matters as the quorum, the casting of votes and the appointment of proxy.

7. Clause 5 amends section 3A of the Ordinance to make further provisions for the appointment of a management committee under that section. In particular—

- (a) the new section 3A(3A), (3B), (3C) and (3D), which corresponds to the new section 3(3), (4), (5) and (6), provides for the giving of notice of the meeting of owners for the appointment of a management committee;

- (b) the new section 3A(3E), which corresponds to the new section 3(7), specifies the person who is to preside at the meeting of owners for the appointment of a management committee; and
- (c) the new section 3A(3F), (3G) and (3H), which corresponds to the new section 3(8), (9) and (10), provides for such matters as the quorum, the casting of votes and the appointment of proxy.

8. Clause 6 amends section 4 of the Ordinance to make further provisions for the appointment of a management committee under that section. In particular—

- (a) the new section 4(5), (6), (7) and (8), which corresponds to the new section 3(3), (4), (5) and (6), provides for the giving of notice of the meeting of owners for the appointment of a management committee;
- (b) the new section 4(9), which corresponds to the new section 3(7), specifies the person who is to preside at the meeting of owners for the appointment of a management committee; and
- (c) the new section 4(10), (11) and (12), which corresponds to the new section 3(8), (9) and (10), provides for such matters as the quorum, the casting of votes and the appointment of proxy.

9. Clause 7 repeals section 5 of the Ordinance which has been incorporated, with modifications, into the amended sections 3, 3A, 4 and 40C of the Ordinance.

10. Clause 8 repeals section 5A of the Ordinance which has been incorporated, with modifications, into the amended section 40C of the Ordinance.

11. Clause 9 amends section 7 of the Ordinance to require each member of a management committee to declare that he is eligible for appointment as such.

12. Clause 10 amends section 12 of the Ordinance to require the Land Registrar to enter into the register of owners' corporations the name and address of the insurance company with which an owners' corporation has effected a policy of insurance under the amended section 28 of the Ordinance and the period covered by the policy of insurance.

13. Clause 11 amends section 18 of the Ordinance to empower an owners' corporation to pay an allowance to a member of the management committee, irrespective of whether or not the member is a chairman, vice-chairman, secretary or treasurer.

14. Clause 12 amends section 20 of the Ordinance to achieve consistency between the Chinese and English texts.

15. Clause 13 amends section 20A of the Ordinance to require that any procurement of supplies, goods or services of a value exceeding \$200,000 by an owners' corporation must be done through tendering, and that any tender of a value exceeding 20% of the annual budget of an owners' corporation must be accepted or rejected by a resolution of the owners.
16. Clause 14 amends section 27 of the Ordinance to require a management committee to prepare financial statements which give a true and fair view of the state of affairs of the owners' corporation and require an accountant who audits the financial statements to report as to whether the financial statements are, in his opinion, properly prepared.
17. Clause 15 introduces the new section 29A of the Ordinance to provide that a member of a management committee doing anything in good faith in the exercise or performance of the powers or duties of the owners' corporation incurs no personal liability.
18. Clause 16 amends section 34D of the Ordinance to define the meaning of the term "DMC manager" used in the amended sections 34D and 34J of and Seventh Schedule to the Ordinance.
19. Clause 17 contains minor amendments to section 34J of the Ordinance.
20. Clause 18 amends section 40B of the Ordinance to clarify who is eligible to be appointed as a building management agent.
21. Clause 19 amends section 40C of the Ordinance to make further provisions for the appointment of a management committee under that section. In particular—
 - (a) the new section 40C(4), (5), (6) and (7), which is modelled on the parts of section 5(1), (2), (3) and (4) of the Ordinance relating to section 40C, provides for the giving of notice of the meeting of owners for the appointment of a management committee;
 - (b) the new section 40C(8), which corresponds to the new section 3(7), specifies the person who is to preside at the meeting of owners for the appointment of a management committee; and
 - (c) the new section 40C(9), (10) and (11), which is modelled on the parts of section 5(5) and (6) of the Ordinance relating to section 40C and on section 5A of the Ordinance, provides for such matters as the quorum, the casting of votes and the appointment of proxy.
22. Clause 20 amends section 41 of the Ordinance to empower the Chief Executive in Council to make regulations for the avoidance of arrangements, agreements or understandings as to the liability of owners' corporations, or owners of buildings, towards third parties.

23. Clause 21 contains minor amendments to the First Schedule to the Ordinance.

24. Clause 22 introduces the new Schedule 1A to the Ordinance to set out the form of an instrument of proxy for a meeting of owners and the form of an instrument of proxy for a meeting of an owners' corporation.

25. Clause 23 amends the Second Schedule to the Ordinance on the composition and procedure of a management committee. In particular—

- (a) clause 23(c) replaces the original paragraph 1(a), (b) and (c) of the Schedule with the new paragraph 1(a) to remove any doubt as to whether a management committee within the meaning of the Ordinance may be appointed in accordance with a deed of mutual covenant;
- (b) clause 23(d) amends paragraph 2(1) of the Schedule to require that the resolution for the appointment of the members of the first management committee must be passed by a majority of the votes of the owners and enable the owners to appoint a vice-chairman of the committee, and introduces the new paragraph 2(3) of the Schedule to provide that a person who is not a member of a management committee does not become such a member by virtue of his appointment as a secretary or treasurer of the committee;
- (c) clause 23(f) amends paragraph 4 of the Schedule to make further provisions for the qualification of a member of a management committee, and to require each member of a management committee to declare that he is eligible for appointment as such and, when any change occurs in any matter stated in his declaration, to lodge with the secretary of the management committee a declaration on the particulars of the change;
- (d) clause 23(g) amends paragraph 5(2) of the Schedule to provide for the appointment of the members of the second and subsequent management committees by the owners at the annual general meetings of the owners' corporation, and introduces the new paragraph 5(4) of the Schedule to provide that a person who is not a member of a new management committee does not become such a member by virtue of his appointment as a secretary or treasurer of the committee; and
- (e) clause 23(i) introduces the new paragraph 10A of the Schedule to require a management committee to keep minutes of meetings of the committee and, when requested, supply the minutes.

26. Clause 24 amends the Third Schedule to the Ordinance on the meetings and procedure of an owners' corporation. In particular—

- (a) clause 24(e) amends paragraph 4 of the Schedule to make further provisions for the appointment of proxy to attend and vote at a meeting of an owners' corporation, including the requirement that the instrument of proxy must be in the specified form; and
- (b) clause 24(f) introduces the new paragraph 6A of the Schedule to require a management committee to keep minutes of general meetings of the owners' corporation and, when requested, supply the minutes.

27. Clause 25 contains minor amendments to the Fourth Schedule to the Ordinance.

28. Clause 26 contains minor amendments to the Fifth Schedule to the Ordinance.

29. Clause 27 contains minor and consequential amendments to the Sixth Schedule to the Ordinance.

30. Clause 28 amends the Seventh Schedule to the Ordinance on the mandatory terms impliedly incorporated into a deed of mutual covenant. In particular—

- (a) clause 28(c)(iii) introduces the new paragraph 3(1A) of the Schedule to require the manager of a building to open and maintain one or more segregated accounts for holding money received in respect of the management of the building;
- (b) clause 28(d)(ii) introduces the new paragraph 4(3A) of the Schedule to require the manager of a building to open and maintain one or more segregated accounts for holding money received in respect of a special fund;
- (c) clause 28(e) amends paragraph 5 of the Schedule to further require that the manager of a building must not enter into certain contracts unless the contracts comply with the amended section 20A of the Ordinance; and
- (d) clause 28(g) amends paragraph 7 of the Schedule to make the paragraph applicable only in relation to the termination of the appointment of a manager who is specified in a deed of mutual covenant of a building to manage the building.

31. Clause 29 amends the Eighth Schedule to the Ordinance on the terms which are impliedly incorporated into a deed of mutual covenant if they are consistent with the deed of mutual covenant. In particular, clause 29(*j*) amends paragraph 14 of the Schedule to make further provisions for the appointment of proxy to attend and vote at a meeting of owners, including the requirement that the instrument of proxy must be in the specified form.
32. Clause 30 contains minor amendments to the Ninth Schedule to the Ordinance.
33. Clause 31 contains minor amendments to the Tenth Schedule to the Ordinance.
34. Clause 32 amends Schedule 11 to the Ordinance to make the Schedule applicable in relation to the enumeration of the percentage of owners mentioned in the new sections 3(8), 3A(3F), 4(10) and 40C(9) of the Ordinance.

Part 3

35. Part 3 (clause 33) amends the new section 28 (not yet in operation) of the Ordinance introduced by the Building Management (Amendment) Ordinance 2000 (69 of 2000). In particular—
- (*a*) clause 33(*a*) and (*c*) refines the new section 28(1) and (3) by repealing certain expressions which have caused ambiguity in the interpretation of the provisions;
 - (*b*) clause 33(*b*) introduces the new section 28(1A) to empower an owners' corporation to enter into a policy of insurance as agent for the owners; and
 - (*c*) clause 33(*f*) introduces the new section 28(6A) to require the secretary of a management committee to give notice to the Land Registrar of the name and address of the insurance company with which the owners' corporation has effected a policy of insurance and the period covered by the policy of insurance.

Part 4

36. Part 4 (clause 34) amends the Specification of Public Offices (Cap. 1 sub. leg. C) to enable the Secretary for Home Affairs to delegate to other public officers his powers and duties under the Ordinance.

Part 5

37. Part 5 (clauses 35 and 36) contains transitional provisions.
38. Clause 35 contains the definitions of the terms used in Part 5.

39. Clause 36 deals with the transitional arrangements for a management committee which has been appointed in accordance with a deed of mutual covenant under section 3(2)(a) of the Ordinance as in force immediately before the commencement of Part 5.

Part 6

40. Part 6 (clauses 37 to 69) contains minor and consequential amendments.

41. Clauses 37 to 66 contain minor and consequential amendments to the Ordinance.

42. Clauses 67 to 69 contain consequential amendments to other Ordinances.