

Opinion from a Solicitor on the  
Review of the Building Management Ordinance (Cap 344)

From: Wong Charn Hung Andrew

Date: 31 May 2017

I am a solicitor in Hong Kong. A large portion of my work is to attend Owners Meetings of Owners' Incorporations of various buildings in Hong Kong to give legal advice in owners' meetings and meetings of management committees of Owners' Incorporations. On the average, I attend 10 to 12 meetings of Owners' Incorporations per month.

I would like to make use of this opportunity to voice what I have seen in owners' meetings which calls for amendments of the Building Management Ordinance (Cap 344).

Proxies and Management Companies

I have seen in more than one occasion where owners held meetings to resolve the appointment of management companies or security guard companies, and the existing management companies solicited proxies (on behalf of Chairpersons and/or committee members of the Management Committees of Owners' Incorporations) from aged owners who would then use the proxies to vote in favour of the existing management companies and their subsidiary security guard companies. There is obviously conflict of interest, but staff of management companies and members of Management Committees of Owners' Incorporations continue to do such kind of thing openly, as if it is as of right. Because the number of undivided shares carried by such proxies was so big that the existing

management companies and/or their subsidiaries are bound to win the service contracts. It was meaningless for other owners to attend owners' meetings to vote.

I hope that the amendment of BMO can take the aforesaid into account, at least do something to prohibit management companies and members of Management Committees of Owners' Incorporations from soliciting proxies for the purpose of voting in favour of existing management companies and/or their related companies, such as companies offering security guard services.

I strongly urge the LegCo to consider the following in the review of the Building Management Ordinance (Cap 344):

1. To make it a criminal offence if any staff of management company are found:

- (i) to solicit Proxies from owners; and
- (ii) give those Proxies to other owners who would vote in favour of the management company and/or its subsidiary companies.

2. To make it a criminal offence if any member of the Management Committee of an Owners' Incorporation are found:

- (i) to accept Proxies solicited from owners by management company; and
- (ii) use those Proxies to vote in favour of the management company and/or its subsidiary companies.

3. To add the owners' right to check Proxies:

The management committee shall, at the request of not less than 5% of the owners, permit those owners or any person appointed by those owners to

inspect and make copies of the Proxies of Owners' Meetings at any reasonable time.

4. Suggested amendment to Paragraph 14(ii) of LC Paper No. CB(2)1038/16-17(03) as marked in red:

“委任代表文書持有人須作出聲明，表示其持有的委任代表文書並非由他人代他從有關業主取得，而是由他自己親自從有關業主誠實地取得或由有關業主自發地給予，並會真誠準確地履行該業主的投票指示”

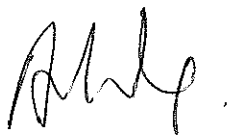
5. Proxies shall **only be collected through Proxy Boxes with locks** and shall be placed into the Proxy Boxes by the owners themselves, **not by staff of management companies.**
6. The Chairman of Owners' Incorporation or the person who presides at the Owners' Meeting, should not be the only person to determine the validity of a proxy. In addition to checking the compliance with the statutory requirements, the donor of the proxy should also be consulted in order to verify his/her true intention of giving out the proxy.

Management companies can easily obtain huge number of proxies from owners through their security staff. Many owners, especially aged owners, are solicited by the security staff and sign proxies without actually knowing what they sign. Existing management companies and/or their subsidiaries can easily win service contracts of Owners Corporations. if their security staff are allowed to procure proxies from owners.

There is also serious doubt as to the reason why so many Committee Members (especially Chairpersons) of Owners Corporations are willing to accept proxies procured for them by management companies. Their usual excuse is that there would not be sufficient quorum for the Owners' Meetings. Obviously this excuse is not acceptable at all. This excuse merely creates a platform for existing management companies to win service contracts for themselves and their subsidiaries. This also creates temptation to members of Management Committee to the detriment of all other owners.

I hope sincerely that my aforesaid opinion could be tabled in meetings of the LegCo Committee and be considered and adopted in the amendments of Cap 344.

Sincerely,

A handwritten signature in black ink, appearing to read 'Andrew Wong', written in a cursive style.

Wong Charn Hung Andrew  
Solicitor,  
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