

**For discussion on
27 November 2017**

**LEGISLATIVE COUNCIL
PANEL ON HOME AFFAIRS**

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

PURPOSE

This paper aims to brief Members on the major views received by the Home Affairs Bureau (HAB) on the further legislative proposals and administrative measures in connection with the review of the Building Management Ordinance (Cap. 344) (BMO), and the proposed enhancements put forward in the light of these views.

BACKGROUND

2. At the meeting of the Panel on Home Affairs (the Panel) held on 27 March 2017, the HAB further proposed 34 legislative proposals and administrative measures (Further Proposals) covering nine areas on top of the proposed amendments to the BMO put forward in 2016 –

- (I) Procurement and Large-scale Maintenance Projects;
- (II) Proxy Instruments;
- (III) Safekeeping and Circulation of Records;
- (IV) Accounts and Financial Statements;
- (V) Non-performance of Management Committees (MCs) and Powers of the Authority;
- (VI) Criminal Sanctions;
- (VII) Other Technical Amendments;
- (VIII) Measures Pending Amendments to the BMO; and
- (IX) Related Administrative Support Measures.

3. After making the Further Proposals, we have been in contact with different stakeholders, including Legislative Council Members, District Councils, Property Management Services Authority, property management related professional bodies, members of MCs of owners' corporations (OCs), Resident Liaison Ambassadors, owners and the local communities, etc., through public engagement activities to gauge their views. Along with the special meeting on the review of the BMO held by the Panel on 4 May, we attended a total of 18 briefing sessions and received 83 written submissions.

4. The public and the stakeholders in general support the Further Proposals, and agree to the directions and objectives of encouraging owners to attend OC meetings in person and enhancing the transparency, accountability and traceability of the operation of OCs. Some opined that the Government should refine some of the proposals with reference to the scale of the housing estates to meet actual operational needs. After consolidating views of Members and different stakeholders, we propose further enhancements in six of the nine areas, including fine-tuning as appropriate for (I), (II) and (IV) above with reference to the scale of housing estates, as well as enhanced proposals for (V), (VI) and (VII), with a view to taking into account of the actual operational needs while strengthening regulation. In addition, to address the views of some stakeholders, we will study applying the proposed BMO amendments to owners' committees as appropriate. Details are set out in paragraphs 5 to 34 below. A summary of the consolidated proposals is tabulated at **Annex 1**.

AMENDMENTS TO THE BMO – PROPOSED ENHANCEMENT

(I) Procurement and Large-scale Maintenance Projects

(A) *Quorum of Meeting*

5. Paragraph 5(1)(b) of Schedule 3 to the BMO provides that the quorum at an OC meeting shall be 10% of the owners¹. In view of extensive public support, we have indicated earlier that legislative amendments would be introduced to the BMO to **raise** the quorum of the general meeting for the passage of resolutions on “large-scale maintenance projects” **from 10% to 20% of the owners**. To avoid important decisions on “large-scale maintenance projects” being made at an OC meeting when there are a small number of owners holding a large number of proxies, we have further proposed that, of the 20% of owners required for forming the quorum, **at least 10% of the owners have to attend the OC meeting in person** when resolutions on “large-scale maintenance projects” are passed.

6. On the requirement of having at least 10% of the owners present in person at meetings when resolutions on “large-scale maintenance projects” are passed, some consider that large housing estates which has a rather large number of flats may not be able to fulfil this requirement, thereby easily resulting in adjournment of meetings. It may also be difficult to secure suitable meeting venues to accommodate hundreds of owners concurrently. There are also concerns that even if 10% of the owners attend the meeting in person, it may be the case that the majority of them would have left without

¹ The enumeration of owners is specified in Schedule 11 to the BMO.

casting their votes in person when the resolutions on “large-scale maintenance projects” are put to vote.

7. Having considered the views of Members and the public, the distribution of existing OCs by the number of flats, and the actual circumstances of common meeting venues, we **will enhance the proposal as follows** –

- (a) in respect of OCs for 4 000 flats or below (10 078 OCs, about 99.6% of the total number of OCs), of the 20% of owners required for forming the quorum, **at least 10% of the owners should attend the OC meeting and vote in person when resolutions on “large-scale maintenance projects” are passed**; and
- (b) in respect of OCs for 4 001 flats or above (37 OCs, about 0.4% of the total number of OCs), of the 20% of owners required for forming the quorum, **at least 10% of the owners or 400 owners, whichever is less, should attend the OC meeting and vote in person when resolutions on “large-scale maintenance projects” are passed**.

(B) Definition of “Large-scale Maintenance Projects”

8. We have proposed to introduce a three-tier system in respect of the definition of “large-scale maintenance projects” according to the number of flats in housing estates as follows –

Number of flats (Percentage of OCs)	Absolute amount	Percentage of the average audited annual expenditure of the OC for the past three years
	Whichever is the lesser	
(a) 501 or above (around 5%)	\$4 million	40%
(b) 101 to 500 (around 12%)	\$2 million	70%
(c) 100 or below (around 83%)	\$1 million	200%

9. During the public engagement, there were quite some views that the proposed absolute amount in respect of the definition of “large-scale maintenance projects” for medium and large housing estates with more than 100 flats is too small. Hence, regular service contracts of the housing estates, such as those of property management, cleansing or security, may also be classified as “large-scale maintenance projects”. Since such recurrent

expenditure is generally without much controversy, owners may decide not to attend the meeting resulting in the failure to meet the quorum and pass the resolution. Regarding small housing estates with 100 flats or below, the public generally considers the proposed threshold for the definition of “large-scale maintenance projects” reasonable.

10. Our policy objective is to encourage more owners to participate in the affairs of OCs in person. Even for the procurement of “large-scale maintenance projects”, the additional requirements will only be a higher quorum and a larger number of owners attending and voting in person. From our understanding and experience in handling cases, for a general meeting of the OC where a resolution involving huge expenditure is to be passed, generally more than 10% of the owners would attend in person. We are also aware of quite some cases in which not less than 5% of the owners requested the MC Chairman to convene a general meeting of the OC in order to overturn a resolution passed at an earlier general meeting without their knowledge as they had not attended. Usually, more than 10% of the owners would then attend such a meeting in person. We consider it more desirable that owners participate in person in the voting of resolutions at a general meeting of the OC in the first place to minimise future disputes.

11. In view of general public support, we propose to **maintain the definition of “large-scale maintenance projects” for small housing estates (i.e. the tier for buildings with 100 flats or below) mentioned in paragraph 8(c) above.** For medium and large housing estates, as the greater number of flats will lead to higher average audited annual expenditure of the OC, the contract of “large-scale maintenance project” of such housing estates may only represent a relatively smaller percentage of the average audited annual expenditure of the OC. Therefore, we consider that the threshold of the absolute amount under the definition of “large-scale maintenance projects” for large housing estates should be retained, and the definition should not be significantly relaxed in order to protect the interests of owners. Taking into account the views of Members and the public, as well as the actual circumstances of large housing estates, we **will enhance the proposal** to refine and revise the definition of “large-scale maintenance projects” for medium and large housing estates in paragraphs 8(a) and (b) by **adding another tier and adjusting the absolute amount and percentage of the average annual expenditure of the OC in both paragraphs respectively as follows** –

Number of flats	Absolute amount	Percentage of the average audited annual expenditure of the OC for the past three years
	Whichever is the lesser	
(a) 2 001 or above (around 1.1%)	\$30 million	30%
(ai) 501 to 2 000 (around 3.4%)	\$15 million	50%
(bii) 301 to 500 (around 0.9%)	\$5 million	70%
(bi) 101 to 300 (around 11.4%)	\$3 million	100%
(c) 100 or below (around 83.2%)	\$1 million	200%

(II) Proxy Instruments

12. We have previously made a series of proposals on the arrangements of appointing proxies, inter alia, a proxy shall hold proxy instruments of not more than 5% of the owner, and owners may include their voting instructions in the proxy instruments, so as to improve the current arrangements and to prevent abuses of proxy instruments.

13. During the public engagement, quite a number of views expressed concerns over the operation of the proxy arrangements in practice, such as how the proxy will know the number of proxy instruments he is holding and the corresponding percentage of owners, and how to ensure that the proxy will follow the voting instructions. On the other hand, some MC members said that proxy instruments allowing owners to include their voting instructions had been in use for their OC general meetings and gave us those instruments for reference.

(A) *Ceiling on the Number of Proxy Instruments a Person can hold*

14. The requirement that the proxy instrument be countersigned by the proxy allows the proxy to know the percentage of owners appointing him and will dovetail the proposal that a proxy shall hold proxy instruments of not more than 5% of the owners. For a building with less than 20 flats, each owner represents more than 5% of the owners, whereas for a mega housing estate of more than 4 000 flats, 5% of the owners may account for as many as 200 proxy instruments. In light of the actual circumstances of housing estates of different scales, we **will enhance** the proposal in respect of the maximum

number of proxy instruments to be held by a proxy for housing estates of different scales as follows –

- (a) for **buildings with not more than 20 flats, a proxy can hold proxy instrument from one owner**, so as to safeguard the rights of owners to appoint a proxy to attend OC meetings; and
- (b) for **buildings with more than 20 flats**, a person can hold **proxies from** not more than 5% of the owners **or 50 owners, whichever is the lesser**. In other words, for a building with the number of owners exceeding 1 000, a proxy can only hold proxy instruments from a maximum of 50 owners, so as to ensure that no proxy will hold an excessive number of proxy instruments and dominate any resolutions at OC meetings.

For the avoidance of doubt, we will specify that **the above requirements also apply to proxy instruments held by proxies appointed by owners who are body corporates**. Considering the characteristic of a body corporate owner who cannot attend OC meetings in person, we will examine the provision of exemption for certain persons (e.g. directors of companies) from the ceiling to strike a proper balance.

(B) Draft Model Proxy Instrument

15. After drawing reference to the current practice of some MCs and taking into account the views of Members and other stakeholders, our initial thinking is that future proxy instruments will be printed in specified colours and **divided into three separate parts** as follows –

- (a) Part 1: making reference to the form set out in Schedule 1A to the BMO, specifies that the owner of a flat appoints a particular person as his proxy to attend the owners’ meeting, and has to be signed by the owner as a confirmation of the appointment;
- (b) Part 2: allows the owner to specify his voting instructions in respect of any resolution. This part can be used for voting and the colour will be different from that of the ballot used by owners attending the meeting in person. For ease of operation, this part will only apply to (i) procurement and large-scale maintenance projects, and (ii) items with the options “for” and “against” only²; and

² The MC may add the option “abstain” according to the actual need of individual resolutions.

- (c) Part 3: has to be countersigned by the proxy to declare that the proxy instrument he holds is honestly procured from the owner concerned, and that he will truly and accurately vote according to owner's voting instructions.

16. When a proxy instrument is submitted to the MC Secretary and/or the property management company (PMC), **proper markings can be made**, say affixing chops to all parts of the instrument for verification to ensure that the same instrument is used for voting at the meeting. In order to ensure that the voting instructions of the owner will be followed, the MC and/or the PMC will hand over Part 2 of the proxy instrument (i.e. Owners' Voting Instructions), affixed with a chop for verification earlier on to the proxy attending the meeting for voting at the meeting. A draft sample of proxy instrument is at **Annex 2**.

17. To calculate the ceiling of the number of proxy instruments that a person can hold and to facilitate administratively the fulfilment of the voting instructions of owners, and having considered that appointment of alternative proxy is uncommon nowadays, we **will enhance the proposal by abolishing the alternative proxy arrangement** when amending the BMO. We will advise owners not to use the alternative proxy arrangement as far as practicable pending the amendment.

(C) Proxy Arrangements

18. We proposed earlier that the MC Secretary should display the list of flats with proxy instruments lodged in a prominent place of the building at least 24 hours before the meeting and until seven days after the meeting, so as to facilitate owners who decide not to attend the owners' meeting to check the list and to prevent counterfeit proxy instruments. In response to the request that sufficient time should be ensured for the MC/PMC to process the proxy instruments, we have also proposed that proxy instruments should be lodged with the MC Secretary at least 72 hours before the meeting.

19. After examining the whole procedure for convening an OC meeting (including the arrangements for proxy instruments), we consider that the procedure proposed previously may not allow sufficient time for the owners to check the list of flats with proxy instruments lodged. The MC/PMC (especially those of large housing estates) also may not have sufficient time to process and verify the proxy instruments. In order to increase transparency and to strike a proper balance between facilitating checking by owners and meeting MC/PMC's actual operational needs in convening an owners' meeting, we **will enhance the proposal** to amend the procedure of all OC general meetings, details as follows –

- (a) the MC Secretary shall, at least **21 days before** the date of the OC meeting, give notice of the meeting to each owner and the tenants' representative (if any), and display the notice of meeting in a prominent place of the building;
- (b) the proxy instrument shall be lodged with the MC Secretary at least **six days (144 hours) before** the meeting; and
- (c) the MC Secretary should display the list of flats with proxy instruments lodged in a prominent place of the building at least **three days (72 hours) before** the meeting and until seven days after the meeting.

20. We will promulgate the proposed template of the proxy instrument and procedures for convening an OC general meeting through Codes of Practice (CoP) or administrative guidelines for reference by owners, MCs and PMCs, and recommend their adoption pending amendments to the BMO.

(IV) The Requirement for Audit of Financial Statements

21. We proposed earlier that the financial statements of OCs should be audited, regardless of the number of flats of the buildings.

22. During the public engagement, quite a number of views expressed that, for a single-block building with only a few flats, its management fee may only be a few hundred dollars each year. However, the audit cost may range from several thousand dollars to tens of thousand dollars and impose a heavy burden on the owners. One suggestion was that OCs of buildings with less than 10 or 20 flats should be exempted from the requirement to audit financial statements.

23. We consider it undesirable that the requirement for audit of the financial statements of an OC is to be determined solely by the number of flats of a building, as the income and management expenses of a building with a small number of flats may well be substantial. Taking into account the situation, to safeguard the interests of owners, we consider that it is more appropriate to use the annual income and expenditure of an OC as the basis to determine whether it is necessary to audit its financial statements. Therefore, we **will enhance the proposal such that, if an OC has an annual income or expenditure of over \$100,000, its financial statements have to be audited.**

(V) Non-performance of MCs and Powers of the Authority

24. We proposed earlier to amend the BMO to empower the Authority to, at the request of not less than 5% of the owners, dissolve the

non-performing MC and appoint an administrator to (a) chair an OC meeting to re-elect an MC, and (b) look after the operation of the OC before a new MC is elected by the owners under the BMO.

25. During the public engagement, there were many views expressing concerns about the possible abuse of the Authority's power. For instance, the operation of an OC would be paralysed if supporters of the new and old MCs, leveraging the threshold of 5% of the owners, repeatedly make requests to the Authority to dissolve the MC. Some views opined that there should be objective and stringent criteria to prevent MCs from being dissolved easily.

26. After considering the views of Members and various stakeholders, we **will enhance the proposal** as follows –

- (a) the threshold for requesting the Authority to dissolve an MC be raised, such that the Authority may, **at the request of not less than 10% of the owners, and after issuing a warning, dissolve a non-performing MC.** This threshold draws reference from the existing arrangement under the BMO. According to section 30 of and paragraph 5(1)(a) of Schedule 3 to the BMO, in the case of an OC meeting at which a resolution for the dissolution of the MC is proposed, the quorum at the OC meeting shall be 20% of the owners. It is also stipulated in paragraph 3(3) of Schedule 3 to the BMO that all matters arising at an OC meeting at which a quorum is present shall be decided by a majority of the votes of the owners voting either in person or by proxy. In other words, assuming that the shares of all owners are approximately the same, the lowest threshold for an MC to be dissolved by the owners is 10% of the owners; and
- (b) **unless there are exceptional grounds, the Authority will only exercise the power stated in (a) above in respect of any OC once every 12 months,** so as to allow sufficient time for an MC to function and to avoid unstable management caused by frequent dissolution of MCs.

(VI) Criminal Sanctions

27. We have proposed that criminal sanctions be introduced in relation to non-compliance with the requirements for (i) audited accounts³, (ii) proper

³ Currently, pursuant to section 27(3) of the BMO, in the event of a contravention of the requirements in relation to the accounts of an OC, every member of the MC shall be guilty of an offence and shall be liable on conviction to a fine at level 5. In March 2017, we proposed to the Panel that section 27(3) of the BMO be amended to extend the criminal liability (currently applicable to MC members) to the Deed of Mutual Covenant (DMC) Managers/PMC in case of failure to produce audited accounts as required by contract.

safekeeping and circulation of minutes of MC/OC meetings, and (iii) safekeeping of tender documents.

28. During the public engagement, there were views that the fine should be increased to achieve greater deterrence, and there were further views that, apart from fine, imprisonment should be introduced as penalty. On the other hand, there were also views pointing out that, as MC members serve on a voluntary basis, many of the MC members would consider it unfair if they would be criminally liable for their voluntary participation in building management work on behalf of other owners. Owners' motivation to take up OC duties would be undermined.

29. Taking into account the views of various stakeholders, we consider that the requirement for MCs to (iv) keep all the proxy instruments and relevant declarations for at least three years is similar in nature to the proposed introduction of criminal sanctions in relation to the safekeeping of minutes of meetings and tender documents, as they all seek to enhance the transparency, accountability and traceability of OC operation, and to achieve greater deterrence. In this connection, we **will enhance the proposal as follows** –

- (a) **imposing a criminal liability on DMC Managers/PMC/MC members** for non-compliance with **the requirement for (iv) keeping all the proxies**; and
- (b) raising the level of penalty for non-compliance with the requirements for (ii) proper safekeeping and circulation of minutes of MC/OC meetings, (iii) safekeeping of tender documents, and (iv) keeping all the proxy instruments from the original proposal of a fine at level 2 (\$5,000) to **a fine at level 4 (\$25,000)**.

Apart from the above proposed penalty, we will consider the views of Members and stakeholders and examine whether there is a need to raise the level of penalty, with a view to striking a proper balance between the deterrent effect of the proposed penalty and its impact on owners' motivation to take up OC duties. We will also consult the DoJ to ensure the proportionality of the level of penalty.

30. As proposed earlier, it may be pleaded as defence if the contravention was committed (i) without the consent or connivance of MC members, DMC Manager and/or PMC; and (ii) the party concerned has exercised all such due diligence to prevent the commission of the offence as he ought to have exercised in the circumstances.

31. There were opinions that criminal sanctions should be introduced against failure to convene a general meeting at the request of not less than 5% of the owners on the part of the MC Chairman/MC so as to achieve greater

deterrence. We have carefully considered the suggestion. The MC Chairman/MC may have genuine difficulties in convening a general meeting within the timeframe as required by the BMO⁴, such as the lack of availability of suitable meeting venue or absence of a quorum, etc. We consider that it will be unfair if the MC Chairman/MC is liable to criminal sanctions for some factors not under their control. To address the issue, it will be a more direct and effective approach for the Authority to exercise the power proposed in paragraph 26 above, such that the Authority may, at the request of not less than 10% of the owners, dissolve the MC if it is still non-performing after issuing a warning to the MC.

(VII) Other Amendments

32. Some suggested that consideration be given to extending the proposed BMO amendments to cover owners' committees, so as to allow housing estates whose owners cannot or choose not to set up an OC for various reasons to benefit from the proposals.

33. Pursuant to section 34E of the BMO, the provisions in Schedule 7 shall be impliedly incorporated into every DMC. Pursuant to section 34F of the BMO, the provisions in Schedule 8 shall, to the extent that they are consistent with the DMC, be impliedly incorporated into every DMC. Schedule 7 mainly covers the provisions related to procurement, accounts and financial arrangements, while Schedule 8 is mainly related to the procedures of meetings and owners' meetings of owners' committee. In regard to the proposed BMO amendments, we will **consider formulating amendments to Schedules 7 and 8 to the BMO as appropriate, with a view to rendering the proposals (including amendments related to procurement, accounts and financial arrangements, etc.) applicable to both owners' committees and OCs as far as practicable.**

34. At the same time, to reduce possible disputes arising from the signing of contracts between certain OCs and suppliers/contractors within a very short period of time after the passing of resolutions on "large-scale maintenance projects" in OC meetings, we will include in the CoP issued under section 44 of the BMO or related administrative guidelines "best practices" to recommend that OCs should sign contracts with suppliers/contractors at least one month after the passing of a resolution on large-scale maintenance projects.

⁴ Pursuant to paragraph 1(2) of Schedule 3 to the BMO, the MC Chairman shall convene an OC general meeting at the request of not less than 5% of the owners for the purposes specified by such owners within 14 days of receiving such request, and hold the general meeting within 45 days of receiving such request.

(IX) Related Administrative Support Measures

(A) *Pre-meeting Advisory Service for OCs*

35. We officially launched the Pre-Meeting Advisory Service for OCs on 1 April 2017. It targets at (i) newly formed OCs, (ii) MCs of OCs of a new term, and (iii) OC general meetings with expected items in dispute (e.g. maintenance projects). By the end of September, the District Building Management Liaison Teams (DBMLTs) in the 18 districts have provided over 2 600 sessions of pre-meeting advisory service. The service is generally well-received by OCs, particularly those newly formed, while some OCs reflected that they did not have time for pre-meeting advisory service before the issuance of the Notice of Meeting. Some indicated that they were well conversant with the meeting procedures and did not need such service. We are now preparing record forms to collect the views of service recipients and will review the service in due course. Where necessary, the DBMLT members will introduce to MC members/owners various voluntary professional advisory services available and recommend them to seek advice from relevant professionals on issues before the OC meetings.

WAY FORWARD

36. We will consult the Department of Justice on the legal aspects of the implementation of the various proposals, and work with them in drafting the amendment bill for submission to the Legislative Council and consultation with stakeholders. Subject to Members' views on the above enhanced proposals to amend the BMO, and in view of the time required for the legislative amendments, we will include those proposals not in contravention of the existing BMO into the CoP issued under section 44 of the BMO or relevant administrative guidelines, so as to address public concerns on the arrangements for procurement and proxy instruments of the OCs as soon as practicable. We aim to issue the revised CoP and administrative guidelines in the first quarter next year and will encourage OCs to adopt those proposals as far as practicable.

37. We will also deploy additional resources for the implementation of the above legislative proposals and administrative measures. In this regard, we propose the creation of one supernumerary Administrative Officer Staff Grade C post (D2) for five years. The main responsibilities of the post include (i) liaison with DoJ and relevant departments to implement the legislative proposals related to the BMO; (ii) review and implementation of various administrative support measures; (iii) planning and enhancement of promotion and public education efforts; (iv) coordination of internal staff training and corresponding resources; and (v) providing the assistance to the Property Management Services Authority on certain aspects of its work, etc. Moreover, we will create non-directorate posts (including Liaison Officers) to

support the above duties. The above creation of posts will bring about an additional cost of \$13,677,600. The additional full annual average staff cost, including salaries and staff on-costs is \$18,362,049. We will reflect the necessary provision and the establishment change in the 2018-19 Expenditure Estimates to meet the cost of the above proposal. Subject to Members' views, we will seek the necessary funding approval from the Legislative Council.

Home Affairs Bureau
Home Affairs Department
November 2017

**Summary of Consolidated Proposals
[Latest Proposed Enhancements shown in Revision Mode in “(C) Latest Proposals in 2017”]**

(A) Consultation Paper on Building Management Ordinance (BMO) Review in 2014-2015	(B) Proposals in the Paper for Panel on Home Affairs in 2016	(C) Latest Proposals in 2017
(I) <u>Procurement and Large-scale Maintenance Projects</u>		
(a) <i>Quorum of Meeting and Percentage of Votes</i>		
<p>1. (i) The quorum of the meeting be raised from 10% to, say 20%, of the total number of owners; or</p> <p>(ii) The required percentage of shares of votes for the passage of the resolution be raised from 50% to, say 75%, of the shares of votes at the meeting.</p>	<p>1. To adopt item 1(i) in Column (A).</p>	<p>1. Apart from adopting item 1(i) in Column (A), to stipulate that <u>–</u></p> <p><u>(i) in respect of owners’ corporations (OCs) for 4 000 flats or below, of the 20% of owners required for forming the quorum, at least 10% of the owners have toshould attend personally at the OC meeting of the owners’ corporation (OC) to decide and vote in person when resolutions on “large-scale maintenance projects:” are passed; and</u></p> <p><u>(ii) in respect of OCs for 4 001 flats or above, of the 20% of owners required for forming the quorum, at least 10% of the owners or 400 owners, whichever is the lesser, should attend the OC meeting and vote in person when resolutions on “large-scale maintenance projects” are passed.</u></p>

* Proposals in the Consultation Paper that would not be further pursued are marked with “*”.

(A) Consultation Paper on Building Management Ordinance (BMO) Review in 2014-2015	(B) Proposals in the Paper for Panel on Home Affairs in 2016	(C) Latest Proposals in 2017
(b) Definition of “Large-scale Maintenance Projects”		
<p>2. To consider how “large-scale maintenance projects” should be defined for the purpose of the BMO. Options include –</p> <p>(i) projects exceeding a certain percentage (or percentages) of the total annual budget of the OC; or</p> <p>(ii) set the threshold as the amount the owner(s) of each flat will have to contribute to the project.</p>	<p>2. To adopt item 2(i) in Column (A).</p> <p>3. To consider introducing a tiered system in respect of the definition of “large-scale maintenance projects”. For example –</p> <p>(i) where the building contains more than 100 flats, a “large-scale maintenance project” shall be defined as any procurement with a cost equivalent to or exceeding 40% of the annual budget of the OC; and</p> <p>(ii) where the building contains not more than 100 flats, a “large-scale maintenance project” shall be defined as any procurement with a cost equivalent to or exceeding \$1 million or twice the annual budget of the OC, whichever is the lesser.</p>	<p>2. Apart from adopting item 2(i) in Column (A), to link the definition of “large-scale maintenance projects” with the average audited annual expenditure of the OC for the past three years immediately before the maintenance proposal.</p> <p>3. To refine the tiered system on “large-scale maintenance projects” by adding one more tier and setting an absolute amount for each tier as follows –</p> <p><u>(i) Tier (aii) – where the building contains a very large scale estate with more than 5002 000 flats, a “large-scale maintenance project” would be defined as any procurement at a cost of \$430 million or above, or 4030% of the average audited annual expenditure of the OC for the past three years immediately before the maintenance proposal, whichever is the lesser;–</u></p> <p><u>(ii) Tier 2(ai) – where the building contains 101 is a large-scale estate with 501 to 2 000 flats, a “large-scale maintenance project” would be defined as any procurement at a cost of \$15 million or above, or 50% of the</u></p>

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(A) Consultation Paper on Building Management Ordinance (BMO) Review in 2014-2015	(B) Proposals in the Paper for Panel on Home Affairs in 2016	(C) Latest Proposals in 2017
		<p><u>average audited annual expenditure of the OC for the past three years immediately before the maintenance proposal, whichever is the lesser;</u></p> <p><u>(iii) Tier (bii) – where the building is a mid-scale estate with 301 to 500 flats, a “large-scale maintenance project” for such a medium housing estate would be defined as any procurement at a cost of \$25 million or above, or 70% of the average audited annual expenditure of the OC for the past three years immediately before the maintenance proposal, whichever is the lesser; and</u></p> <p><u>(iv) Tier-3 (bi) – where the building contains a mid-scale estate with 101 to 300 flats, a “large-scale maintenance project” would be defined as any procurement at a cost of \$3 million or above, or 100% of the average audited annual expenditure of the OC for the past three years immediately before the maintenance proposal, whichever is the lesser; and</u></p> <p><u>(v) Tier (c) – where the building is a small-scale estate with not more than 100 flats, a “large-scale maintenance project” would be defined as any</u></p>

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(A) Consultation Paper on Building Management Ordinance (BMO) Review in 2014-2015	(B) Proposals in the Paper for Panel on Home Affairs in 2016	(C) Latest Proposals in 2017
		procurement at a cost of \$1 million or more above, or twice the average audited annual expenditure of the OC for the past three years immediately before the maintenance proposal, whichever is the lesser.
(c) Notice of Meeting		
<p>3. Should be given to each owner at least 21 days before the holding of the meeting.</p> <p>4. Should carry a conspicuous “alert” that any decision(s) to be taken at the OC meeting may result in the contribution of funds exceeding a certain specified amount by each owner.</p>	<p>4. To adopt item 3 in Column (A).</p> <p>5. To adopt item 4 in Column (A).</p>	<p><u>4. The Management Committee (MC) Secretary shall, at least 21 days before the date of the OC meeting, give notice of the meeting to each owner and the tenants’ representative (if any), and display the notice of meeting in a prominent place of the building.</u></p>
(d) Tender Process		
<p>5. To stipulate in the BMO additional requirements on the tender process, e.g. displaying a copy of the invitation to tender at a prominent place of the building, allowing inspection of the tender documents by owners, etc.</p>	<p>6. To adopt item 5 in Column (A). Specifically, to amend the BMO by incorporating the following existing requirements in the “Code of Practice on Procurement of Supplies, Goods and Services” (CoP on Procurement) issued by the Secretary for Home Affairs (SHA) under the BMO into the Schedule to the BMO –</p> <p>(i) The MC shall prepare an invitation to tender and display a copy of it in a</p>	<p>5. Apart from adopting item 5 in Column (A), to amend section 20Aof and paragraph 5 of Schedule 7 to the BMO to make reference to the “audited annual expenditure of the OC”, instead of “the annual budget of the OC” as the benchmark.</p> <p>6. To specify that the declaration under the CoP on Procurement should cover any business, pecuniary or any other relationship¹ between the <u>Deed of Mutual Covenant (DMC)</u></p>

¹ This refers to any relationship which in the eyes of the objective and reasonable member of the general public may influence the judgment of the person(s) concerned.

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(A) Consultation Paper on Building Management Ordinance (BMO) Review in 2014-2015	(B) Proposals in the Paper for Panel on Home Affairs in 2016	(C) Latest Proposals in 2017
<p> </p> <p> </p>	<p>prominent place in the building. The closing date and time for acceptance of tenders shall be clearly stated in the invitation to tender. Late submissions shall not be accepted.</p> <p>(ii) The MC shall invite at least five tenders. Where the number of valid tenders obtained is fewer than five, the MC shall pass a resolution to accept or reject the tender exercise.</p> <p>(iii) An MC member or manager of the building (if any) shall disclose in writing to the MC any personal or pecuniary interest that he may have in the tender. An MC member who has indicated a personal or pecuniary interest in the tender should abstain from voting in the selection of such tender at an MC meeting.</p> <p>(iv) The MC shall maintain and keep in safe custody all documents relating to the tender for at least six years. The documents shall contain sufficient information to enable the person doing inspection to calculate the financial liability of the OC at the time of inspection (including any financial liability in future).</p>	<p>Manager/Property Management Company (<u>PMC</u>) and any of the MC members as well as the two with any tenderers/consultants/professional services providers for the OC.</p> <p>7. To make the declaration requirement in item 56 of “Latest Proposals in 2017” mandatory under the BMO.</p>

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	<p>(v) The MC shall permit the Authority, the tenants' representative, an owner, a registered mortgagee or any other person authorised in writing by an owner or a registered mortgagee to inspect the documents relating to the tender at any reasonable time. The MC shall, on the payment of a reasonable copying charge, supply copies of the relevant documents.</p>	
<p>(II) <u>Convening of an OC General Meeting at the Request of Owners</u></p>		
<p>6. Require the MC Chairman to place the discussion item requested by the owners on a high priority on the agenda; and</p> <p>7. When the office of the MC Chairman is vacant, the Vice-chairman should convene the general meeting in place of the Chairman –</p> <p>(a) where no Vice-chairman is elected, the MC should appoint one of its members to convene the general meeting; and</p> <p>(b) * where the MC fails to appoint any member to convene the general meeting, those owners who have requested to convene the general meeting may nominate a representative among themselves to convene the general meeting.</p>	<p>7. To adopt items 6 and 7 in Column (A), except item 7(b), where the MC fails to appoint any member to convene the general meeting. Under such circumstances, the owners can apply to the Lands Tribunal for appointment of an administrator in accordance with section 31 of the BMO to dissolve and re-elect the MC.</p>	<p>Please see item 4621 of “Latest Proposals in 2017”</p>

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(A) Consultation Paper on Building Management Ordinance (BMO) Review in 2014-2015	(B) Proposals in the Paper for Panel on Home Affairs in 2016	(C) Latest Proposals in 2017
(III) Counterfeit Proxy Instruments and Improper Practices		
<p>(a) <i>Collection of Proxy Instruments</i></p> <p>8. To require the MC Secretary/convenor to state clearly in the notice of meeting as to the exact location of the proxy collection boxes and the timing for opening the boxes to inspect and count the proxy.</p> <p>9. The proxy collection boxes should be double-locked and placed in a prominent location of the building.</p> <p>10. The two keys of each box should be held by the MC Secretary/convenor and a third party (e.g. a mediator, an auditor or a lawyer) respectively.</p> <p>11. The boxes should be opened by the key holders in the presence of witnesses.</p> <p>12. Only the original copy of the proxy forms will be accepted.</p> <p>13. The date of the OC meeting should be printed on each proxy form.</p> <p>14. To provide the MC Secretary/convenor with an additional means of acknowledging receipt of the proxy instrument by passing the receipts to the owners in person.</p>	<p>8. To adopt items 8 to 17 in Column (A). In addition, the MC Secretary shall be required to determine the validity date for proxy instruments lodged by post according to the time the MC receives the relevant instrument.</p> <p>9. To consider setting a ceiling on the number of proxy instruments that a person can hold. We proposed that the maximum number of proxy instruments a person can hold shall not exceed 5% of the owners.</p> <p>10. With regard to item 15 in Column (A), paragraph 4(3) of Schedule 3 to the BMO shall be amended accordingly to stipulate that proxy instruments shall be lodged with the MC Secretary at least 72 hours before the meeting.</p> <p>11. The MC Secretary/convenor, on passing a receipt of proxy instrument to the owner in person, or leaving it at the flat of the owner or depositing it in the letter box provided for that flat, shall issue a copy of the proxy instrument which is subject to verification to the owner at the same time.</p> <p>12. If more than one proxy instrument are received from the same owner for the same</p>	<p>Apart from adopting items 8 to 13 in Column (B) –</p> <p>8. Owners may include their voting instructions in the proxy instruments <u>(a draft sample of proxy instrument is at Annex 2). For ease of operation, the part for specifying voting instructions will only apply to (i) procurement and large-scale maintenance projects, and (ii) items for resolution with options “for” and “against” only.</u></p> <p><u>9. It is proposed that the alternative proxy arrangement be abolished when amending the BMO. We will advise owners not to use the alternative proxy arrangement as far as practicable pending the amendment.</u></p> <p>10. The proxy instrument should be countersigned by the proxy, so that the proxy would know the percentage of owners appointing him and such percentage should not exceed 5% of the owners.</p> <p><u>11. In respect of the maximum number of proxy instruments to be held by a person –</u></p> <p><u>(i) where the building is a very small-scale estate with not more than 20 flats, a proxy can hold proxy</u></p>

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(A) Consultation Paper on Building Management Ordinance (BMO) Review in 2014-2015	(B) Proposals in the Paper for Panel on Home Affairs in 2016	(C) Latest Proposals in 2017
<p>(b) Verification of Proxy Instruments</p> <p>15. The list of flats with proxy instruments lodged should be displayed in a prominent place of the building at least 24 hours before the meeting and until seven days after the meeting.</p> <p>16. The MC Chairman/convenor should mark on each proxy instrument the reasons for invalidating it and to allow representatives of owners and the appointed third party to inspect invalidated proxy instruments and appeal against the invalidation with justifications.</p> <p>(c) Administrative Measures</p> <p>17. Owners and OCs may be encouraged to adopt the following administrative measures with regard to the use, collection and verification of proxies –</p> <p>(i) to appoint a third party, for example, a mediator, to monitor the collection and verification of proxy instruments especially during the process leading to</p>	<p>general meeting, the MC Chairman shall verify with the owner concerned.</p> <p>13. The MC Chairman/convenor shall be required to announce the number of invalid proxy instruments and justifications for ruling the proxy instruments invalid before the general meeting, and allow owners, owners’ representatives and the appointed third party to inspect the proxy instruments which are determined as invalid by the Chairman.</p>	<p><u>instrument from one owner; and</u> <u>(ii) where the building has more than 20 flats, a person can hold proxies from not more than 5% of the owners or 50 owners, whichever is the lesser.</u></p> <p><u>For the avoidance of doubt, the above requirements also apply to proxy instruments held by proxies appointed by owners who are body corporates.</u></p> <p>12. Holders of the proxies should make a declaration that the proxies they hold are honestly procured from the respective owners concerned and are true and accurate representation of the said owners’ voting instruction.</p> <p>13. The MC Secretary should disclose the name of any person holding proxies of 5% of the owners (and any person, whether attending in person or appointing proxy, holding 5% or more of the aggregate shares) on a list to be displayed pursuant to paragraph 4(5)(a)(ii) of Schedule 3 to the BMO.</p> <p>14. The OC should keep the record of the proxies and the declaration in item <u>912</u> of</p>

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<p>the appointment of an MC and the formation of an OC.</p> <p>(ii) to comply with additional guidelines to be promulgated by HAD on the format of the notice showing the information of flats with proxy instruments lodged (for example, the font size of the words) and the additional means of dissemination (for example, posting onto the website of the OC to facilitate checking by the owners).</p> <p>(iii) owners who do not intend to appoint a proxy to register such intention with the MC Secretary/convenor, who shall cause the register to be available for public inspection.</p> <p>(iv) owners to set out their contact details (for example, telephone number, email address, etc.) on the proxy instruments so as to facilitate the MC Chairman/convenor to check with the owner concerned when the validity of the proxy instrument is in doubt.</p>		<p>“Latest Proposals in 2017” for at least three years².</p> <p>15. <u>The proxy instrument shall be lodged with the MC Secretary at least 144 hours (six days) before the meeting.</u></p> <p>16. <u>The MC Secretary should display the list of flats with proxy instruments lodged in a prominent place of the building at least 72 hours (three days) before the meeting and until seven days after the meeting.</u></p>

² Currently, paragraph 4(6) of Schedule 3 to the BMO requires that the MC shall keep all the instruments for the appointment of proxies that have been lodged with the MC Secretary for a period of at least 12 months after the conclusion of the meeting.

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(v) owners to use the proxy instrument issued by the OC with a unique serial number printed on it to facilitate checking by the MC.		
(IV) <u>Safekeeping and Circulation of Records</u>		
Nil	Nil	<p>17. The votes cast by owners personally and those by proxy should be recorded separately in the minutes of the OC general meeting.</p> <p>18. The minutes of MC and OC meetings at which “large-scale maintenance projects” are discussed should be delivered to the letterboxes of the building owners, or be emailed to the email addresses of the owners (whichever applicable) within 28 days of the date of the meeting.</p>
(V) <u>Accounts and Financial Statements</u>		
Nil	Nil	<p>19. The financial statements of OCs, regardless of the number of flats of the buildings, shall be audited<u>If an OC has an annual income or expenditure of over \$100,000, its financial statements have to be audited.</u></p> <p>20. To add a requirement for the financial statements and the accountant’s report to be posted in a conspicuous place of the building as and when such information is ready.</p>
(VI) <u>Non-performance of MCs and Powers of the Authority</u>		

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<p style="text-align: center;">Nil</p>	<p style="text-align: center;">Nil</p>	<p>21. To amend the BMO to empower that the Authority may under Section<u>section</u> 31 of the BMO, at the request of not less than 5<u>10</u>% of the owners, <u>and after issuing a warning</u>, dissolve the a non-performing MC and appoint an administrator to (i) chair an OC meeting to re-elect an MC, and (ii) look after the operation of the OC before a new MC is elected by the owners under <u>the</u> BMO.</p> <p><u>22. Unless there are exceptional grounds, the Authority may only exercise the power in respect of any OC once every 12 months.</u></p> <p><u>23.</u> Section 40B of the BMO should be extended to empower the Authority to help resolve some management impasse, e.g. by removing the requirement on “danger or risk of danger to the occupiers or owners of the building”, so as to avoid a hiatus in the day-to-day management of the building.</p> <p><u>24.</u> If the Authority orders to appoint a building management agent, he may direct that the building management agent shall hold office for ana fixed or indefinite period or for a fixed period on such terms and conditions as to remuneration or otherwise as he thinks fit, and the remuneration and expenses of the administrator shall be deemed to be part of the expenses of management of the building</p>

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		under the BMO.
(VII) <u>Criminal Sanctions</u>		
Nil	Nil	<p><u>25.</u> To amend section 27(3) of <u>the</u> BMO to extend the criminal liability (currently applicable to MC members) to the DMC Manger/Property Management Company <u>DMC Managers/PMC</u> in case of failure to produce annual audited accounts or audited accounts as required by contract. Any contravention would be an offence and the party concerned shall be liable on conviction to a fine at level 5 <u>(\$50,000)</u>, unless he proves that (i) the offence was committed without his consent or connivance; and (ii) he has exercised all such due diligence to prevent the commission of the offence as he ought to have exercised in the circumstances.</p> <p><u>26.</u> To amend Schedules 2 and 3 to the BMO to impose a criminal liability on DMC Managers/PMC/MC members for non-compliance with the requirement for proper safekeeping and circulation of minutes of MC/OC meetings. Any contravention would be an offence and the party concerned shall be liable on conviction to a fine at <u>level 4 (\$25,000)</u>, unless he proves that (i) the offence was committed without his consent or connivance; and (ii)</p>

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		<p>he has exercised all such due diligence to prevent the commission of the offence as he ought to have exercised in the circumstances.</p> <p>27. To stipulate in the BMO a criminal liability on DMC Managers/PMC/MC members for non-compliance with the requirements for safekeeping of tender documents when these are made mandatory. Any contravention would be an offence and the party concerned shall be liable on conviction to a fine at level 2 4 (\$25,000), unless he proves that (i) the offence was committed without his consent or connivance; and (ii) he has exercised all such due diligence to prevent the commission of the offence as he ought to have exercised in the circumstances.</p> <p>28. <u>To amend Schedule 3 to the BMO to impose a criminal liability on DMC Managers/PMC/MC members for non-compliance with the requirement for keeping all the proxies and relevant declarations. Any contravention would be an offence and the party concerned shall be liable on conviction to a fine at level 4 (\$25,000), unless he proves that (i) the offence was committed without his consent or connivance; and (ii) he has exercised all such due diligence to prevent the commission of the offence as he ought to have exercised in the circumstances.</u></p>

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		<p><u>Apart from the proposed penalty, we will consider the views of Members and stakeholders and examine whether there is a need to raise the level of penalty, with a view to striking a proper balance between the deterrent effect of the proposed penalty and its impact on owners' motivation to take up OC duties. We will also consult the Department of Justice to ensure the proportionality of the level of penalty.</u></p> <p><u>29.</u> To amend section 27 of the BMO and other penalty provisions to better reflect the current practice, by empoweringempower the Authority to issue a warning to specify an extended date for compliance taking into account any reasonable excuse and the circumstances of each case, before invoking the penalty provisions.</p> <p><u>30.</u> To amend the BMO, to the effect that any prosecution under the BMO shall be commenced (i) within 24 months of the commission of the offence; or (ii) within 24 months of the offence being discovered by or coming to the notice of the Authority, whichever is the later.</p>

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(A) Consultation Paper on Building Management Ordinance (BMO) Review in 2014-2015	(B) Proposals in the Paper for Panel on Home Affairs in 2016	(C) Latest Proposals in 2017
(VIII) <u>Formation of OCs</u>		
(a) <i>Percentage of Shares in Aggregate Required for the Formation of OCs and Determination of Owner's Shares</i>		
<p>18. * Whether the threshold for OC formation under section 3 of the BMO should be lowered from 30% to 20% of shares in aggregate.</p> <p>19. * Whether the thresholds under sections 3A and 4 of the BMO should be lowered correspondingly (say to 10% and 5% respectively), or whether there is a need to retain sections 3A and 4 of the BMO after the threshold stipulated in section 3 of the BMO has been lowered to 20%.</p> <p>20. To introduce a technical amendment to make it clear that shares with no voting right will not be counted as part of the total shares when calculating the proportion of shares supporting the formation of an OC out of the total number of shares in aggregate³.</p>	<p>14. Not to further pursue items 18 and 19 in Column (A), i.e. to maintain the percentages of shares in aggregate required for the formation of OCs stipulated under sections 3, 3A and 4 of the existing BMO.</p>	<p>Nil</p>
(b) <i>Eligibility of the Convenor</i>		
<p>21. To impose the following eligibility criteria on the convenor which are the same as those currently applied to MC members –</p>	<p>15. To adopt item 21 in Column (A).</p> <p>16. In addition, a convenor shall cease to be a</p>	<p>Nil</p>

³ No particular view on this proposal was received during the public consultation. Given the technical nature, we will adopt this proposal when amending the BMO.

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<p>(i) is <u>not</u> an undischarged bankrupt at the time of the appointment or has <u>not</u>, within the previous five years, either obtained a discharge in bankruptcy or entered into a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap. 6) with his or her creditors, in either case without paying the creditors in full;</p> <p>(ii) has <u>not</u>, within the previous five years, been convicted of an offence in Hong Kong or any other place for which he or she has been sentenced to imprisonment, whether suspended or not, for a term exceeding three months without the option of a fine.</p>	<p>convenor for the discharge of his duties if he –</p> <p>(i) becomes incapacitated by physical or mental illness; or</p> <p>(ii) ceases to be an owner, if appointed in his capacity as an owner.</p>	
(IX) <u>Termination of the Appointment of DMC Managers</u>		
<p>22. * The following measures will lower the threshold for terminating the appointment of DMC Managers by owners –</p> <p>(a) to lower the threshold for terminating the appointment of DMC Managers from 50% to 30% of shares in aggregate.</p> <p>(b) to limit the term of appointment of</p>	<p>17. Not to further pursue item 22 in Column (A).</p> <p>18. To introduce an additional arrangement, that the term of appointment of DMC Managers would be automatically terminated five years after the formation of OC.</p>	<p>Nil</p>

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<p>DMC Managers to five years –</p> <ul style="list-style-type: none"> (i) during the first to second years of appointment, the DMC Manager should assist the owners either to form an OC, or to appoint an owners’ committee, or to appoint an owner to sign the contract with the next service provider; (ii) during the third to fifth years of the appointment of the DMC Manager, the owners may pass a resolution with 30% of shares in aggregate to appoint a new service provider through open tender; and (iii) if the owners decide not to appoint a new service provider after the fifth year, they may negotiate new contract terms (such as the tenure of appointment, the remuneration, etc.) and enter into a new contract with the existing manager. <p>Whether the new arrangements, if implemented, should be applicable to new and existing developments or to new</p>		

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developments only.		
(X) Remuneration of DMC Managers		
<p>23. The following shows the possible ways to reduce the remuneration rate of DMC Managers of large scale developments and to improve the transparency of calculating remuneration –</p> <ul style="list-style-type: none"> (a) for developments with more than 100 residential units and parking spaces, to reduce the ceiling on the remuneration rate of DMC Manager by a specified percentage (e.g. 0.5%) each year, from 10% to 8% ultimately; (b) to exclude a specified list of expenditure items which do not involve any value-added services by the DMC Manager (e.g. electricity charges, water bills, etc.) from the formula for calculating the remuneration of the DMC Manager; (c) for certain expenditure items incurred by the headquarters of the DMC Manager (e.g. services provided by the DMC Manager’s accountants who serve more than one developments), the DMC Manager should provide the owners with detailed breakdown on 	<p>19. To adopt items 23(a)-(c), but not to pursue item 23(d) in Column (A).</p>	<p><u>31.</u> To reduce the cap, as set out in the DMC Guidelines, on the percentage of total expenses for remuneration of DMC Manager by 20%, i.e. –</p> <ul style="list-style-type: none"> (a) for developments with not more than 20 residential units and parking spaces, to reduce the ceiling on the remuneration rate of DMC Managers by 0.5% per year from 20% to 16% ultimately; and (b) for developments with 21 to 100 residential units and parking spaces, to reduce the ceiling on the remuneration rate of DMC Managers by 0.5% per year from 15% to 12% ultimately.

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<p>how the service fee of the headquarters is apportioned among the developments they serve; and</p> <p>(d) * to increase the number of tiers of ceiling on the DMC Manager’s remuneration and set lower ceilings for large scale developments with, e.g. above 300, 500, 700 and 1 000 (and so on) residential units and parking spaces.</p> <p>Whether the new arrangements, if implemented, should be applicable to new and existing developments or to new developments only.</p>		
(XI) <u>Other Technical Amendments</u>		
<p>Nil</p>	<p>Nil</p>	<p><u>32.</u> To revise the minimum requirement on the number of MC members in paragraph 1(1) of Schedule 2 to the BMO as follows –</p> <p>(a) where the building contains not more than 50 flats, the number of members shall be not less than three;</p> <p>(b) where the building contains more than 50 flats but not more than 100 flats, the number of members shall be not less than seven;</p>

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<p> </p> <p> </p> <p> </p>		<p>(c) where the building contains more than 100 flats but not more than 500 flats, the number of members shall be not less than nine (<i>new requirement</i>); and</p> <p>(d) where the building contains more than 500 flats, the number of members shall be not less than 11 (<i>new requirement</i>).</p> <p><u>33.</u> For co-owners of one flat, signature by only one of the co-owners should be counted towards the 5% of owners under paragraph 1(2) of Schedule 3 to the BMO.</p> <p><u>34.</u> To consider amending section 8 of the BMO to the effect that, for the avoidance of doubt, sections 8(2)(a) and (2)(aa) shall have effect, notwithstanding any changes to the DMC and land lease provided that the building (as defined in section 2 of the BMO) remains the same.</p> <p><u>35.</u> To amend the BMO to prescribe –</p> <p>(a) the instrument for a body corporate to appoint an authorised representative; and</p> <p>(b) the checking mechanism (similar to the prescribed proxy instrument for</p>

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		<p>attendance at OC general meetings).</p> <p>36. To amend the BMO to empower the Authority to shorten the notice period for OC meeting in case of emergency.</p> <p><u>37.</u> To refer to the “Building Maintenance Toolkit” in the CoP on Procurement where appropriate.</p> <p><u>38.</u> <u>To formulate amendments to Schedules 7 and 8 to the BMO, with a view to rendering the amendments related to procurement, accounts and finance applicable to both owners’ committees and OCs.</u></p> <p>39. <u>To reduce possible disputes arising from the signing of contracts between certain OCs and suppliers/contractors within a very short period of time after the passing of resolutions on “large-scale maintenance projects” in OC meetings, we will include in the Codes of Practice (CoP) or related administrative guidelines “best practices” to recommend that OCs should sign contracts with suppliers/contractors at least one month after the passing of a resolution on large-scale maintenance projects.</u></p>

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(XII) <u>Measures Pending Amendments to the BMO</u>		
Nil	20. Given the time required to amend the BMO, we recommended and encouraged OCs to adopt those proposals that did not contravene the existing BMO through administrative guidelines (i.e. “Guidelines on Procurement Process of an OC” and “Guidelines on Proxy for the General Meeting of an OC”), so as to respond to the public concerns on the arrangements for procurement and proxy instruments by OCs as soon as practicable.	40. To include those proposals, which are not in conflict with the BMO, in the <u>CoP or relevant administrative guidelines</u> as best practices. 41. To require the MC Chairman and the DMC Manager to sign a checklist <u>the Checklist on Procedural Propriety</u> confirming that the procedure for convening a meeting and the proper disclosure of the information on proxies for the OC meetings have been complied with. There should be explanation for any deviation from the requirements in the guidelines in the Checklist for the sake of transparency and accountability.
(XIII) <u>Related Administrative Support Measures</u>		
Nil	Nil	42. To launch the Building Management Dispute Resolution Service. 43. To launch the Pre-Meeting Advisory Service for OCs.

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Serial Number:

Points to Note

- (This paragraph is to be completed by the property management company (PMC)/Management Committee (MC)) Pursuant to Section 5B of and Schedule 11 to the Building Management Ordinance (BMO) (Cap. 344), there is a total of [] owners of the building as at the [] day of [], and the maximum number of proxy instruments to be held by a proxy is [].
[Note: (a) for building with not more than 20 flats, a proxy can hold proxy instrument from one owner / (b) for building with more than 20 flats, a person should hold proxies from not more than 5% of the owners or 50 owners, whichever is the lesser.]
- In the event that an owner has signed two or more proxy instruments for the purpose of a particular meeting of the owners' corporation (OC), the proxy instrument with the most recent date will supersede the proxy instrument(s) with an earlier date. In the event that the number of proxy instruments held by a proxy already accounts for 5% of the owners, any additional proxy instruments received by the proxy will be invalid. Owners should keep close contact with their proxies to ensure that their proxy instruments will not be invalidated for the reason that their proxies are holding proxy instruments of more than the ceiling of 5% of the owners.

Part 1: Instrument of Proxy for Meetings of Corporation

The Incorporated Owners of (description of building)

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

Dated this day of

Signature of owner(s):

*Delete where inapplicable

Part 2: Owners' Voting Instructions (to be completed by the owner(s))

Please put a ✓ in the appropriate box(es) to indicate the voting instruction(s) of the owner(s). The owner(s) **may** specify the voting instructions or in the absence of any indication, the proxy may vote on each resolution as he or she thinks fit.

[Note: The PMC/MC shall prepare a form appropriate for the item(s) for resolution, for owner(s) to indicate the voting instructions.]

[Note: This part only applies to (i) procurement and large-scale maintenance projects, and (ii) items for resolution with the options "for" and "against" only. The MC may add the option "abstain" according to the actual need of individual resolutions.]

Item for resolution: Item 1	For	Against
.....	<input type="checkbox"/>	<input type="checkbox"/>
Serial number: Number of shares: (To be completed by the PMC/MC)	Signature of owner(s):	
Item for resolution: Item 2	For	Against
.....	<input type="checkbox"/>	<input type="checkbox"/>
Serial number: Number of shares:	Signature of owner(s):	

Part 3: Proxy's Declaration (to be completed by the proxy)

I, (name of proxy), holder of HKID Card No., hereby declare that this proxy instrument (serial number:) is honestly procured from the abovenamed owner(s) and *[is true and accurate representation of the voting instructions of the said owner(s) / I decline accepting the appointment].

Dated this day of

Signature of proxy:

*Delete where inapplicable

Warning: Pursuant to the BMO, any person who in any form required by the BMO, or in any notice or document given, issued or made for the purposes of the BMO, makes any statement or furnishes any information; or furnishes any information required to be furnished under the BMO, which he knows, or reasonably ought to know, to be false in a material particular, shall be guilty of an offence and shall be liable on conviction to a fine at level 3 and to imprisonment for 6 months.