

**For Discussion on
11 May 2020**

**LEGISLATIVE COUNCIL
PANEL ON HOME AFFAIRS**

**Progress of the Review of the
Building Management Ordinance (Cap. 344)
and Related Administrative Measures**

PURPOSE

This paper briefs Members on the progress of the review of the Building Management Ordinance (Cap. 344) (BMO), including the administrative measures implemented to prepare for the enactment of the legislative amendment proposals, and the proposed technical refinements to the proposals taking into accounts the views received during the public engagement exercise.

BACKGROUND

2. The BMO provides a legal framework for owners to form and run owners' corporations (OCs) to facilitate the discharge of their building management responsibilities. The BMO stipulates, among other things, the formation, powers, rules of operation and monitoring mechanism of OCs. Taking into account the comments¹ from the Legislative Council Panel on Home Affairs (HA Panel) on the outcome of the public consultation on the BMO review², we put forward further legislative amendment proposals and administrative measures at the HA Panel meeting in March 2017, and conducted public engagement activities afterwards. In light of the views received, we presented further enhancements to the HA Panel in November 2017.

¹ At the HA Panel meeting in May 2016, we briefed the HA Panel on the outcome of the public consultation on the review of the BMO.

² A Review Committee on the BMO comprising members from relevant professional sectors and with extensive knowledge in building management was formed in 2011 to conduct a comprehensive review of the BMO. Based on the recommendations of the Review Committee, HAD conducted a public consultation from November 2014 to February 2015.

3. Following the series of public engagement exercises, the Home Affairs Bureau and the Home Affairs Department (HAD) have drawn up a total of over 60 proposals for legislative amendments to the BMO and administrative measures in the following nine key areas –

- (a) “large-scale maintenance projects” and procurement in general;
- (b) keeping of minutes;
- (c) accounts and financial statements;
- (d) criminal sanctions;
- (e) proxy instruments;
- (f) powers of the Authority under the BMO;
- (g) technical amendments;
- (h) measures pending amendments to the BMO; and
- (i) related administrative support measures.

A summary of the legislative amendment proposals and the administrative measures is at **Annex A**, and the major feedback received during the public engagement exercise is summarised at **Annex B**.

4. In view of the significant changes entailed by the legislative amendment proposals including criminal sanctions for non-compliance, there have been calls for more public education and assistance to equip and encourage OCs for voluntary compliance before the implementation of the proposals. Moreover, in the light of the experience of voluntary compliance, opportunity should be taken to review the proposals for necessary refinements and enhanced operability. Accordingly, since our last briefing to the HA Panel in November 2017, we have been implementing a host of administrative measures to assist OCs in voluntary compliance with the legislative amendment proposals. This is important to help lay a solid foundation for the legislative exercise and future compliance. Meanwhile, we have also been liaising with bureaux and departments on the legislative amendment exercise, and identified a number of areas for further refinement. Details are set out in the ensuing paragraphs.

MEASURES TO PROMOTE VOLUNTARY COMPLIANCE

Publications

5. In view of the time required for the legislative amendment exercise, we have introduced a number of measures to promote voluntary compliance with the legislative amendment proposals, including the following publications –

- (a) Code of Practice (CoP) on Procurement of Supplies, Goods and Services (CoP on Procurement) and CoP on Building Management and Safety³ effective from September 2018 – proposals which are not in contravention with the existing BMO have been incorporated into these CoPs issued under section 44 of the BMO;
- (b) Best Practices on Building Management⁴ published in January 2019 – other proposals have been incorporated into administrative guidelines as best practices, with a view to assisting owners and OCs in better fulfilling the responsibilities in managing their buildings; and
- (c) Checklist on Procedural Propriety on Building Management (Checklist) published in February 2019 – the Checklist tabulates the relevant requirements and best practices related to convening and conducting a general meeting of an OC for easy reference by management committees (MCs), Deed of Mutual Covenant (DMC) managers and property management companies (PMCs). It covers, among others, the ways of giving notice of meeting and the content of the notice, the procedures relevant to proxy instruments, matters to take note of when presiding at and conducting a general meeting and actions after the conclusion of a general meeting. MCs, DMC managers and PMCs are encouraged to adopt the Checklist, and state the reason on the Checklist if any of the best practices contained therein cannot be complied with. To further

³ The revised CoP can be accessed via the following link – https://www.buildingmgt.gov.hk/file_manager/en/documents/code_of_practice/2018_code_of_practice_en_plain.pdf. The proposals that are incorporated into the CoP on Procurement include the declaration of conflict of interests, preparation of invitation to tender, collection and opening of tenders and the timing of signing procurement contracts. Those that are incorporated into the *CoP on Building Management and Safety* concern the financial arrangement of an OC.

⁴ The latest administrative guidelines can be accessed via the following link – https://www.buildingmgt.gov.hk/pdf/Admin_Guidelines_2019_Eng.pdf.

increase transparency, the Checklist should be displayed at a prominent place in the building.

Publicity and Public Education

6. In terms of publicity, we have issued press releases and written to OCs, owners' committees (OComms) and professional associations in the property management field to publicise the administrative guidelines and the Checklist and to encourage their adoption. Our District Building Management Liaison Teams (DBMLTs) have also organised briefing sessions to introduce the key features of the administrative guidelines and the Checklist, and have been encouraging their adoption through daily liaison with OCs, OComms and owners.

7. Moreover, we have been reaching out to MCs and owners through our various support measures. For example, the DBMLTs will take the opportunity of the Pre-meeting Advisory Service for OCs (see paragraph 10 below) to introduce the CoP, administrative guidelines and the Checklist where appropriate. Similarly, the PMC engaged under the Pilot Scheme on Advisory Services to OCs (see paragraphs 11 to 12 below) has introduced the various best practices contained in the administrative guidelines and assisted MCs and owners in putting them into practice.

8. With the above publicity efforts, some OCs and OComms have already adopted applicable best practices set out in the administrative guidelines, while others have expressed interests in adopting the administrative guidelines and the Checklist. We will continue to actively advocate the adoption of the administrative guidelines and the Checklist through our daily liaison and support services, and will launch an educational video later this year to demonstrate how the best practices can be put into practice in daily building management. We will also provide logistical assistance through relevant administrative support measures to help owners and OCs, etc. in implementing the best practices.

RELATED ADMINISTRATIVE SUPPORT MEASURES

Advisory Service to Enhance Compliance

9. To better prepare OCs for compliance with the legislative amendment proposals, we have introduced additional support measures as detailed in paragraphs 10 to 12 below.

Pre-meeting Advisory Service for OCs

10. We launched the Pre-Meeting Advisory Service for OCs on 1 April 2017. The service mainly targets (a) newly formed OCs, (b) new term MCs of OCs, and (c) OC general meetings with expected items in dispute (e.g. maintenance projects). By December 2019, the DBMLTs have provided over 15 000 sessions of pre-meeting advisory service. As mentioned earlier, the DBMLTs have been taking the opportunity to introduce the CoP, administrative guidelines and the Checklist where appropriate.

Pilot Scheme on Advisory Services to OCs

11. To supplement our efforts in supporting OCs, we launched a Pilot Scheme on Advisory Services to OCs in May 2018 by engaging a PMC to provide professional advisory service to eligible OCs (i.e. those which are newly formed or with newly elected MCs, and those requiring assistance to resolve disputes) in the following areas –

- (a) providing advice and assistance on daily operation to ensure compliance with the BMO and the CoP and adoption of relevant guidelines;
- (b) attending MC and OC meetings to provide advice on procedural matters;
- (c) providing advice and assistance in tackling building management problems; and
- (d) providing assistance in the application for building management related support services and subsidies.

12. As at December 2019, the PMC provided services to around 130 OCs, which generally considered the service helpful in promoting more effective building management. The scheme has recently been regularised. To tie in with our efforts to promote the administrative guidelines and the Checklist and compliance with the BMO, PMCs under the regularised scheme will be tasked to provide intensive logistical assistance to OCs in adopting the administrative guidelines and the Checklist.

Dispute Resolution

Building Management Dispute Resolution Service

13. We previously reported to the HA Panel that a new service known as the Building Management Dispute Resolution Service (BMDRS) would be introduced in response to concerns about the cost and time taken to resolve building management disputes through legal proceedings at the Lands Tribunal. The BMDRS was subsequently launched in April 2018 as a two-year free pilot scheme. It is steered by retired Judges/Judicial Officers with relevant experience in dealing with building management cases. Depending on the wishes of the parties involved in the dispute and the circumstances of each case, the retired Judges/Judicial Officers will assist the parties in identifying the issues in the dispute, and exploring and generating options, with a view to reaching settlement.

14. As at December 2019, we received 45 applications and resolved 21 disputes. Users of the BMDRS were in general very satisfied with the scheme and the assistance provided by the retired Judges/Judicial Officers. Users indicated that they would recommend the use of the BMDRS to others for resolving building management disputes. The BMDRS was regularised in April 2020.

Free Outreach Legal Advice Service on Building Management

15. We have been collaborating with the Law Society of Hong Kong (Law Society) since 2015 to offer assistance to OCs and owners through the Free Legal Advice Service on Building Management. Under the service, lawyers are assigned to offer legal advice by appointment free of charge at HAD's office in Wan Chai or the Urban Renewal Resource Centre in Tai Kok Tsui.

16. In view of the importance of the general meeting of OCs as an essential building management platform for owners to discuss building management matters and to make important decisions, we consider that there are merits in enhancing support for OCs at those meetings. In this connection, we have, in collaboration with the Law Society, launched the Free Outreach Legal Advice Service on Building Management (FOLAS) in September 2019 on a pilot basis for three years. Under the FOLAS, upon successful application, a lawyer experienced in handling building management matters will be assigned to the OC to provide free legal service, i.e. (a) attending the pre-meeting of the general meeting of the OC; (b) reading relevant information about the meeting provided by the OC; and (c)

attending and giving legal advice at the meeting, for up to six hours. We will monitor the implementation of the FOLAS and review its operation in due course.

REFINEMENTS TO LEGISLATIVE AMENDMENT PROPOSALS

17. Apart from the above measures to assist OCs in voluntary compliance with the legislative amendment proposals, we have been liaising with bureaux and departments in preparing for the legislative amendment exercise, and identified a number of technical refinements, including the following as set out in paragraphs 18 to 23 below.

Notice of Meeting for OC meeting to Discuss/Resolve “Large-scale Maintenance Projects”

18. There have been comments that the manner in which some OCs and managers conduct the tendering process are not fully transparent to owners. We previously proposed that the notice of meeting for an OC meeting to discuss/resolve “large-scale maintenance projects” shall set out clearly and legibly an important reminder stating that the decision(s) to be taken at the OC meeting may result in each owner having to contribute funds exceeding a certain amount.

19. There have been views during our public engagement exercise that in some cases, the expenditure for the “large-scale maintenance projects” is covered by the general fund, special fund or contingency fund under the BMO. Hence, we will revise the legislative amendment proposal to require that the notice of meeting shall also include the **estimated amount to be contributed by the general fund, special fund or contingency fund (as appropriate)**, and the estimated apportioned additional sum to be contributed by each owner.

“Average Annual Audited Expenditure” and “Annual Budget”

20. We previously proposed to replace the benchmark “the annual budget”⁵ with “the average annual audited expenditure for the past three

⁵ Under Section 20A of the BMO, for supplies, goods or services the value of which exceeds or is likely to exceed 20% of the annual budget of the OC, such supplies, goods or services shall be procured by invitation to tender by the OC, and whether a tender is accepted or not shall be decided by a resolution passed by a majority of votes at an OC general meeting.

years”⁶ in section 20A of the BMO for the procurements by an OC. There have been concerns that the “average annual audited expenditure for the past three years” may not be always available⁷. In this connection, we will provide under the BMO that in cases **where the “average annual audited expenditure” is unavailable, the “annual budget” shall be used as a replacement.**

Application to OComms

21. As reported to the HA Panel in November 2017, we received views that consideration should be given to extending the proposed BMO amendments to cover OComms, so as to allow buildings without OCs for various reasons to benefit from the proposals. We proposed to the HA Panel that we would consider formulating amendments to Schedules 7 and 8 to the BMO as appropriate, with a view to making proposals (including amendments related to procurement and accounts and financial statements) applicable to both OCs and OComms⁸.

22. In this regard, we note that the existing BMO already provides for a framework to govern procurement⁹ and the preparation of accounts and financial statements for buildings¹⁰ with or without OCs where applicable. The legislative amendment proposals concerning “large-scale maintenance projects” and “accounts and financial statements” will increase the transparency, traceability and accountability in respect of the various types of procurement made for those buildings and the operation of the OCs concerned. We therefore propose to **extend the coverage of these proposals concerning procurement and accounts and financial statements to buildings without OCs where applicable.**

⁶ According to section 27(1) of the BMO, the MC shall prepare financial statements which shall be audited in respect of a building containing more than 50 flats. The financial statements shall include an income and expenditure account according to section 27(1AA)(a) of the BMO.

⁷ There are different reasons on why the “average annual audited expenditure for the past three years” would be unavailable. For example, the building where the OC is incorporated in may have not more than 50 flats. Some MCs may experience delay in preparing the latest set(s) of audited expenditure due to insufficient documents provided to the accountant.

⁸ According to sections 34E and 34F of the BMO, the provisions in Schedule 7 to the BMO shall be impliedly incorporated into every DMC, and those in Schedule 8 to the BMO shall be impliedly incorporated into every DMC to the extent that they are consistent with the DMC.

⁹ See section 20A of and paragraph 5 of Schedule 7 to the BMO.

¹⁰ See section 27 of and paragraph 2 of Schedule 7 to the BMO.

Computerisation of OC Records

23. There have been views that OC records kept by the Land Registry should be computerised¹¹ to, among others, enhance the search service provided to the public. In view of the increasing use of electronic communication in general, we are working towards enabling the computerisation of the OC records. We will also consider introducing suitable express provisions under the BMO to recognise these computerised and electronic records for the convenience and efficiency of OC communications.

24. As for the legislative amendment proposals in other areas, we may further refine them in the light of the feedback from owners, OCs, PMCs and other stakeholders on the best practices and their implementation.

WAY FORWARD

25. We will continue to refine the legislative amendment proposals, taking into account the feedback from Members, owners, OCs and other stakeholders where appropriate, and will work with the Department of Justice in drafting the amendment bill.

Home Affairs Bureau
Home Affairs Department
May 2020

¹¹ At present, the Land Registry keeps physical OC records at its offices. According to section 12(5)(a) of the BMO, upon payment of such fee as may be prescribed, any person may inspect the register and any document required to be submitted to the Land Registrar under the BMO.

**Summary of Legislative Amendment Proposals and
Administrative Measures Previously Proposed to the
Home Affairs Panel**

I. “Large-scale Maintenance Projects” and Procurement in General

1. Apart from raising the quorum of the meeting of the owners’ corporations (OCs) from 10% of the owners to 20% of the owners when a “large-scale maintenance project” is to be discussed and/or resolved, to stipulate that a resolution for a “large-scale maintenance project” shall only be passed if at least 10% of the owners or 400 owners, whichever is the lesser, have voted in person.
2. To link the definition of “large-scale maintenance projects” with the average annual audited expenditure of the OC for the past three years.
3. To set five tiers for the definition of “large-scale maintenance projects” and classify a “maintenance project” as “large-scale” if its value exceeds or likely exceeds the relevant “threshold” as follows –

Number of Flats	Sum to be specified in the Building Management Ordinance (Cap. 344) (BMO)	Percentage of average annual audited expenditure for the past three years
	Whichever is the lesser	
2 001 or above	\$30 million	30%
501 to 2 000	\$15 million	50%
301 to 500	\$5 million	70%
101 to 300	\$3 million	100%
100 or below	\$1 million	200%

4. To amend section 20A of and paragraph 5 of Schedule 7 to the BMO by replacing “annual budget” with “average annual audited expenditure” as the benchmark in deciding whether the procurement of supplies, goods or services shall be made by invitation to tender.
5. To specify that the declaration under the “*Code of Practice on Procurement of Supplies, Goods and Services*” (CoP on Procurement)

shall cover any business, pecuniary or any other relationship between the Deed of Mutual Covenant (DMC) manager/property management company (PMC) and any of the Management Committee (MC) members as well as that between the DMC manager/PMC and any tenderers/consultants/professional services providers for the OC.

6. To make the declaration requirement in item 5 above mandatory under the BMO.
7. To specify that for a meeting of the OC at which “large-scale maintenance projects” is to be discussed and/or resolved, the notice of meeting shall set out clearly and legibly an important reminder stating that the decision(s) to be taken at the OC meeting may result in each owner having to contribute funds exceeding a certain amount.
8. To amend the BMO by incorporating the following existing requirements in the CoP on Procurement issued by the Secretary for Home Affairs under the BMO into the Schedule to the BMO –
 - (a) the MC shall prepare an invitation to tender and display a copy of it in a prominent place of 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;
 - (b) 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;
 - (c) 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 shall abstain from voting in the selection of such tender at an MC meeting;
 - (d) 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 inspecting the documents to calculate the financial liability of the OC at the time of inspection; and

- (e) 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 tendering process at any reasonable time. The MC shall, on the payment of a reasonable copying charge, supply copies of the relevant documents.

II. Keeping of Minutes

- 9. The votes cast by owners in person and those by proxies shall be recorded separately for each of the resolution being voted on in the minutes of the OC meeting.
- 10. The copies of the minutes of MC and OC meetings at which "large-scale maintenance project" is discussed and/or resolved shall be sent to the owners by depositing them in the letter boxes, or be sent to the email addresses of the owners (if available) within 28 days from the date of the meeting.

III. Accounts and Financial Statements

- 11. The financial statements of OCs with an annual income or annual expenditure that is or is likely to be more than \$100,000 shall be audited.
- 12. To require that the financial statements and a copy of the accountant's report shall be displayed in a prominent place in the building once available.

IV. Criminal Sanctions

- 13. To amend section 27(3) of the BMO to extend the criminal liability (currently applicable to MC members) to the DMC manager/PMC in case of failure to produce audited financial statements. Any contravention would be an offence and the party concerned shall be liable on conviction to a fine at level 5 (\$50,000), unless he proves that (a) the offence was committed without his consent or connivance; and

(b) he has exercised all such due diligence to prevent the commission of the offence as he ought to have exercised in the circumstances.

14. To amend Schedules 2 and 3 to the BMO to impose a criminal liability on DMC manager/PMC/MC members for non-compliance with the requirements for proper keeping 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 level 4 (\$25,000), unless he proves that (a) the offence was committed without his consent or connivance; and (b) he has exercised all such due diligence to prevent the commission of the offence as he ought to have exercised in the circumstances.
15. To stipulate in the BMO a criminal liability on DMC manager/PMC/MC members for non-compliance with the requirements for keeping the records of tender documents when such requirements become mandatory. 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 (a) the offence was committed without his consent or connivance; and (b) he has exercised all such due diligence to prevent the commission of the offence as he ought to have exercised in the circumstances.
16. 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 proxy instruments and relevant documents. 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 (a) the offence was committed without his consent or connivance; and (b) he has exercised all such due diligence to prevent the commission of the offence as he ought to have exercised in the circumstances.
17. To empower 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.
18. To amend the BMO, to the effect that any prosecution under the BMO shall be commenced (a) within 24 months of the commission of the offence; or (b) within 24 months of the offence being discovered by or coming to the notice of the Authority, whichever is the later.

V. Proxy Instruments

Legislative amendment proposals

19. Owners may include their voting instructions in the proxy instruments. For practical reasons, the part of the proxy instrument for stating the voting instructions will only apply to “large-scale maintenance projects” where items with only “for” and “against” as options are to be resolved.
20. The alternative proxy arrangement shall be abolished under the BMO. We will advise owners not to use the alternative proxy arrangement as far as practicable before the amendment of the BMO.
21. The proxy instrument shall be countersigned by the proxy, so that the proxy would know the percentage of owners appointing him.
22. In respect of the maximum number of proxy instruments to be held by a person –
 - (a) for a building with not more than 20 flats, a proxy can hold proxy instrument from one owner; and
 - (b) for a building with more than 20 flats, a proxy shall hold proxies instruments of not more than 5% of the owners or 50 owners (whichever is the lesser).

For the avoidance of doubt, the above requirement will also apply to proxies appointed by owners who are body corporates.

23. Holders of the proxy instruments shall make a declaration that the proxy instruments they hold are honestly acquired from the respective owners concerned and that they will follow the said owners’ voting instructions (if any).
24. The MC Secretary shall disclose the name of any person holding proxy instruments of more than 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.

25. The OC shall keep the records of the proxy instruments and the declaration mentioned in item 23 above for at least three years¹.
26. To require the MC Secretary/convenor to state clearly in the notice of meeting as to the exact location of the proxy instrument collection boxes and the timing for opening the collection boxes so that the owners may witness the opening of the collection boxes and counting process for the proxy instruments.
27. The proxy instrument collection boxes shall be double-locked and placed in a prominent place in the building.
28. The two keys of each box shall be held by the MC Secretary/convenor and a third party respectively.
29. The boxes shall be opened by the key holders in the presence of witnesses.
30. Only the originals of the proxy instruments will be accepted.
31. The date of the OC meeting shall be printed on each proxy instrument.
32. To provide the MC Secretary/convenor with an additional means of acknowledging receipt of the proxy instruments by passing the receipts to the owners in person.
33. The MC Chairman/convenor shall mark on each proxy instrument the reasons for invalidation and to allow representatives of owners and third party to inspect the invalidated proxy instruments.
34. The MC Secretary shall be required to determine the validity of proxy instruments lodged by post according to the time the MC receives the relevant instruments.
35. 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 at the same time a copy of the proxy instrument to the owner.

¹ 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.

36. If more than one proxy instrument are received from the same owner for the same OC meeting, the MC Chairman shall clarify with the owner concerned on which proxy instrument is intended to be used by the owner.
37. 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 OC meeting, and allow owners, owners' representatives and the appointed third party to inspect the proxy instruments which are determined as invalid by the MC Chairman/convenor.
38. 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 in the building.
39. The proxy instrument shall be lodged with the MC Secretary at least 144 hours (six days) before the meeting.
40. The MC Secretary shall display the list of flats with proxy instruments lodged in a prominent place in the building at least 72 hours (three days) before the meeting and until seven days after the meeting.
41. To require the MC Chairman to accord higher priority to the discussion items requested by 5% of the owners.
42. When the office of the MC Chairman is vacant, the MC Vice-chairman shall convene the OC meeting in place of the MC Chairman. Where no MC Vice-chairman is elected, the MC shall appoint one of its members to convene the OC meeting.

Related administrative measures

43. Owners and OCs are encouraged to adopt the following administrative measures with regard to the use, collection and verification of proxy instruments, such as² –

² The measures have been incorporated in the administrative guidelines entitled "*Best Practices on Building Management*" published in January 2019.

- (a) to comply with additional guidelines to be promulgated by the Home Affairs Department on the format of the notice showing the information of flats with proxy instruments lodged (e.g. with appropriate font size) and the additional means of dissemination (e.g. posting onto the website of the OC) to facilitate checking by the owners;
- (b) owners who do not intend to appoint proxies may register with the MC Secretary, and the register should be made available by the MC Secretary for inspection by the owners;
- (c) owners should set out their contact details (e.g. telephone number, e-mail address, etc.) on their proxy instruments so as to facilitate the MC Chairman/convenor to check with the owner concerned when the validity of any proxy instrument is in doubt; and
- (d) owners should use the proxy instrument issued by the OC with a unique serial number printed on each of the proxy instruments.

VI. Powers of the Authority under the BMO

- 44. To amend the BMO to empower that the Authority may under Section 31 of the BMO, at the request of not less than 10% of the owners, after issuing warning to the MC, dissolve the still 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 BMO.
- 45. Unless there are exceptional grounds, the Authority will only exercise the power mentioned in item 44 above in respect of an OC once every 12 months.
- 46. The scope of section 40B of the BMO should be extended by removing the requirement on “danger or risk of danger to the occupiers or owners of the building” to empower the Authority to help resolve management problems, so as to avoid a hiatus in the day-to-day management of the building.

47. If the Authority orders to appoint a building management agent, he may direct that the building management agent shall hold office on such terms and conditions as to remuneration or otherwise as he thinks fit, and the remuneration and expenses of the building management agent shall be deemed to be part of the expenses of management of the building under the BMO.

VII. Other Technical Amendments

Legislative amendment proposals

48. The term of the appointment of DMC manager shall be automatically terminated five years after the formation of the OC.
49. To revise the minimum requirement on the number of MC members in paragraph 1(1) of Schedule 2 to the BMO as follows –
 - (a) where the building contains more than 100 flats but not more than 500 flats, the number of members shall be not less than nine; and
 - (b) where the building contains more than 500 flats, the number of members shall be not less than 11.
50. For co-owners of one flat, signature by only one of the co-owners shall be counted towards the 5% of owners under paragraph 1(2) of Schedule 3 to the BMO.
51. 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.
52. To amend the BMO to prescribe the instrument for a body corporate to appoint an authorised representative; and the relevant checking mechanism.
53. To amend the BMO to empower the Authority to shorten the notice period for an OC meeting in case of emergency.

54. To formulate amendments to Schedules 7 and 8 to the BMO, with a view to rendering the amendments related to procurement and accounts and finance applicable to both owners' committees and OCs.
55. 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.
56. To impose the following eligibility criteria, which are the same as those currently applied to MC members, to convenors, i.e. the convenor –
 - (a) is not an undischarged bankrupt at the time of the appointment or has not, 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;
 - (b) has not, 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.
57. In addition, a convenor shall cease to be one for the discharge of his duties if he –
 - (a) becomes incapacitated by physical or mental illness; or
 - (b) ceases to be an owner, if appointed in his capacity as an owner.

Related administrative measures

58. To make reference to the suggestions of “Building Maintenance Toolkit” published by the Independent Commission Against Corruption in the CoP on Procurement where appropriate to provide owners with one-stop access to the best practices on procurement.³

³ Implemented via the revised CoP on Procurement published in September 2018.

59. To reduce possible disputes arising from the signing of contracts between 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 or related administrative guidelines that OCs, having regard to the circumstances of the case, should sign contracts with suppliers/contractors at least one month after the passing of the relevant resolution.⁴
60. 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. –
- (i) 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%;
 - (ii) 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%; and
 - (iii) for developments with more than 100 residential units and parking spaces, to reduce the ceiling on the remuneration rate of DMC managers by 0.5% per year from 10% to 8%.
61. To improve the transparency of calculating remuneration of DMC managers in the DMC Guidelines, i.e. –
- (a) 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; and
 - (b) 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 shall provide the owners with breakdown on how the service fee of the headquarters is apportioned among the developments they serve,

⁴ Implemented via the revised CoP on Procurement published in September 2018.

and examine whether such arrangements should be applicable to new and existing developments or to new developments only.

VIII. Measures Pending Amendments to the BMO

62. To include those proposals, which are not in conflict with the BMO, in the Codes of Practice or related administrative guidelines as best practices.⁵
63. MC Chairman and the DMC manager should sign a “Checklist on Procedural Propriety” confirming that the procedure of convening a meeting and the proper disclosure of the information on proxy instruments for the OC meetings have been complied with. There should be explanation for any deviation from the requirements in the checklist for transparency and accountability.⁶

IX. Related Administrative Support Measures

64. To launch the “Pre-Meeting Advisory Service for OCs”.⁷
65. To launch the “Building Management Dispute Resolution Service”.⁸

⁵ The CoP on Procurement and the “*Code of Practice on Building Management and Safety*” have been revised and become effective since September 2018. The administrative guidelines entitled “*Best Practices on Building Management*” was published in January 2019.

⁶ The *Checklist on Procedural Propriety on Building Management* was published in February 2019.

⁷ Launched in April 2017.

⁸ Pilot scheme launched in April 2018.

Annex B

Summary of Major Feedback Received During the 2017 Public Engagement Exercise and the Government's Response

Major Feedback Received During Public Engagement Exercise	The Government's Response
I. General Feedback	
1. There have been calls for more public education and assistance to prepare for the implementation of the legislative amendments proposals.	To encourage the adoption of and to better prepare the owners' corporations (OCs) and owners for the legislative amendment proposals, we have been implementing a host of administrative measures, including – (a) the incorporation of proposals which are not in contravention with the existing Building Management Ordinance (Cap. 344) (BMO) into the <i>Code of Practice on Procurement of Supplies, Goods and Services</i> (CoP on Procurement) and the <i>Code of Practice on Building Management and Safety</i> , and other proposals in the administrative guidelines (titled as " <i>Best Practices on Building Management</i> ") and the <i>Checklist on Procedural Propriety on Building Management</i> ; and (b) the launch of support measures such as the Pre-meeting Advisory Service for OCs, and the Pilot Scheme on Advisory Service to OCs.
II. "Large-scale Maintenance Projects" and Procurements in General	
2. Raising the quorum requirement from 10% to 20% of the owners was generally supported. On the requirement of having at least 10% of the owners present in person at meetings of the OCs when resolutions on "large-scale maintenance projects" are passed, some considered that –	As a matter of principle, it would be desirable that owners participate in person in the voting process of resolutions at a general meeting of the OC to minimise future disputes. To address stakeholders' concern regarding large housing estates, we have already enhanced the requirement such that a resolution for a "large-scale maintenance project" shall only be passed

Major Feedback Received During Public Engagement Exercise	The Government’s Response																					
<p>(a) large housing estates may not be able to meet the more stringent quorum requirement, and may have difficulties in securing suitable meeting venues to accommodate hundreds of owners concurrently; and</p> <p>(b) the majority of owners would have left the meeting without casting the votes in person when the resolutions on “large-scale maintenance projects” are put to vote.</p>	<p>if at least 10% of the owners or 400 owners, whichever is the lesser, have voted in person.</p> <p>The above proposal has been incorporated in the administrative guidelines entitled “<i>Best Practices on Building Management</i>” published in January 2019. We may further refine our legislative amendment proposals in light of the feedback from owners, OCs, property management companies (PMCs) and other stakeholders on the administrative guidelines and their implementation.</p>																					
<p>3. On the proposal in March 2017 of introducing a three-tier system for defining “large-scale maintenance projects”, some considered that –</p> <p>(a) the sum specified for defining “large-scale maintenance projects” for medium and large housing estates (i.e. those with more than 100 flats) would be too small, creating obstacles for the procurement of regular service contracts (such as those of property management, cleansing or security); and</p> <p>(b) the sum specified for defining “large-scale maintenance projects” for small housing estates with 100 flats or below would be reasonable.</p>	<p>We have revised the definition of “large-scale maintenance projects” for medium and large housing estates by adding another two tiers and adjusting the specified sum and percentage of the average annual expenditure of the OC as follows –</p> <table border="1" data-bbox="772 1200 1495 1727"> <thead> <tr> <th data-bbox="772 1200 967 1458">Number of Flats</th> <th data-bbox="967 1200 1235 1458">Sum to be specified in the BMO provisions</th> <th data-bbox="1235 1200 1495 1458">Percentage of average annual audited expenditure for the past three years</th> </tr> </thead> <tbody> <tr> <td colspan="3" data-bbox="772 1458 1495 1536" style="text-align: center;">Whichever is the lesser</td> </tr> <tr> <td data-bbox="772 1536 967 1592">2 001 or above</td> <td data-bbox="967 1536 1235 1592">\$30 million</td> <td data-bbox="1235 1536 1495 1592">30%</td> </tr> <tr> <td data-bbox="772 1592 967 1648">501 to 2 000</td> <td data-bbox="967 1592 1235 1648">\$15 million</td> <td data-bbox="1235 1592 1495 1648">50%</td> </tr> <tr> <td data-bbox="772 1648 967 1704">301 to 500</td> <td data-bbox="967 1648 1235 1704">\$5 million</td> <td data-bbox="1235 1648 1495 1704">70%</td> </tr> <tr> <td data-bbox="772 1704 967 1760">101 to 300</td> <td data-bbox="967 1704 1235 1760">\$3 million</td> <td data-bbox="1235 1704 1495 1760">100%</td> </tr> <tr> <td data-bbox="772 1760 967 1816">100 or below</td> <td data-bbox="967 1760 1235 1816">\$1 million</td> <td data-bbox="1235 1760 1495 1816">200%</td> </tr> </tbody> </table> <p>The above proposal has been incorporated in the administrative guidelines entitled “<i>Best Practices on Building Management</i>” published in January 2019. We may further refine our legislative amendment proposals in light of the feedback from owners, OCs, PMCs and other</p>	Number of Flats	Sum to be specified in the BMO provisions	Percentage of average annual audited expenditure for the past three years	Whichever is the lesser			2 001 or above	\$30 million	30%	501 to 2 000	\$15 million	50%	301 to 500	\$5 million	70%	101 to 300	\$3 million	100%	100 or below	\$1 million	200%
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Major Feedback Received During Public Engagement Exercise	The Government's Response
	stakeholders on the administrative guidelines and their implementation.
<p>4. The legislative amendment proposal to incorporate the requirements related to tender process in the CoP on Procurement into the BMO was generally supported. However, some considered that it may be impracticable to set the minimum number of the tenders that the Management Committee (MC) should invite under the BMO.</p>	<p>The requirement on the minimum number of tenders seeks to improve the transparency of the tendering process. To address stakeholders' views, we have already proposed that, where the number of valid tenders obtained is fewer than that required, the MC shall pass a resolution to accept or reject the tender exercise.</p>
<p>5. On the proposal in March 2017 to replace the benchmark "the annual budget" with "the average annual audited expenditure for the past three years" in section 20A of the BMO for the procurements by an OC, there have been comments from the public that the "average annual audited expenditure for the past three years" may not be always available.</p>	<p>We will provide under the BMO that in cases where the "average annual audited expenditure" is unavailable, the "annual budget" shall be used as a replacement.</p>
<p>6. On the proposal in May 2016 that the notice of meeting for an OC meeting to discuss/resolve "large-scale maintenance projects" shall set out clearly and legibly an important reminder stating that the decision(s) to be taken at the OC meeting may result in each owner having to contribute funds exceeding a certain amount, there has been feedback that in some cases, the expenditure for the "large-scale maintenance projects"</p>	<p>We will revise the legislative amendment proposal that the notice of meeting shall also include the estimated amount to be contributed by the general fund, special fund or contingency fund (as appropriate), and the estimated apportioned additional sum to be contributed by each owner.</p>

Major Feedback Received During Public Engagement Exercise	The Government's Response
<p>is covered by the general fund, special fund or contingency fund under the BMO.</p>	
III. Accounts and Financial Statements	
<p>7. On the proposal that the financial statements for all OCs should be audited (regardless of the number of flats in the building), some considered that –</p> <ul style="list-style-type: none"> (a) the audit cost may impose a heavy burden on the owners of single-block buildings with only a few flats; and (b) OCs of buildings with less than 10 or 20 flats should be exempted from the requirement to audit financial statements. 	<p>The requirement for audit of the financial statements of an OC should not 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.</p> <p>In view of stakeholders' comments, we have enhanced the proposal such that the financial statements of OCs with an annual income or annual expenditure that is or is likely to be more than \$100,000 shall be audited.</p>
IV. Criminal Sanctions	
<p>8. On the proposal in March 2017 to extend the criminal sanctions to Deed of Mutual Covenant (DMC) Managers/PMCs for failure to prepare audited financial statements and introduce criminal sanctions for failure to keeping meeting minutes and tender documents, some considered that the fine should be increased and imprisonment should be introduced to achieve greater deterrence. However, some considered that it would be unfair to hold DMC managers/PMCs criminally liable.</p>	<p>DMC managers/PMCs are often responsible for the preparation of audited financial statements, as well as the safekeeping of minutes and tender documents. It would be necessary to introduce suitable measures commensurate with those applicable to MC members as deterrence against non-compliance by DMC managers/PMCs. To address stakeholders' concern, the relevant amendment will provide that it is a defence if the contravention was committed (a) without the consent or connivance of the DMC manager and/or PMC; and (b) 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.</p>

Major Feedback Received During Public Engagement Exercise	The Government's Response
V. Proxy Instruments	
<p>9. On the proposals made in March 2017 that a proxy shall not hold proxy instruments of more than 5% of the owner and that owners shall be allowed to include their voting instructions in the proxy instruments, some were concerned that –</p> <ul style="list-style-type: none"> (a) the proxy might not know the number of proxy instruments he/she would be holding and the corresponding percentage of owners; (b) it might be difficult to ensure that the proxy will follow the voting instructions; and (c) for a building with less than 20 flats, each owner would represent more than 5% of the owners, whereas for a mega housing estate of more than 4 000 flats, 5% of the owners would have accounted for as many as 200 proxy instruments. 	<p>We have proposed that the proxy instrument shall be countersigned by the proxy, so that he/she would know the percentage of owners appointing him/her.</p> <p>We have enhanced the proposal in respect of the maximum number of proxy instruments to be held by a proxy as follows –</p> <ul style="list-style-type: none"> (a) for a building with not more than 20 flats, a proxy shall not hold proxy instrument from more than one owner; and (b) for a building with more than 20 flats, a proxy shall not hold proxy instruments from more than 5% of the owners or 50 owners (whichever is the lesser). <p>For the avoidance of doubt, the above requirement will also apply to proxies appointed by owners who are body corporates. We will examine the provision of exemption for certain persons (e.g. directors of companies) from the ceiling.</p> <p>We have proposed to divide the proxy instruments into three separate parts as follows –</p> <ul style="list-style-type: none"> (a) Part 1: specifies that the owner of a flat appoints a particular person as his proxy to attend the meeting. This part 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 used by owners attending the meeting in person. For practicability, this part will only apply to “large-scale maintenance projects” where items with

Major Feedback Received During Public Engagement Exercise	The Government's Response
	<p>only “for” and “against” as options are to be resolved; and</p> <p>(c) Part 3: has to be countersigned by the proxy to declare that the proxy instrument he holds is honestly acquired from the respective owners concerned and that he will follow the said owners’ voting instructions (if any).</p> <p>The above proposals have been incorporated in the administrative guidelines entitled “<i>Best Practices on Building Management</i>” published in January 2019. We may further refine our legislative amendment proposals in light of the feedback from owners, OCs, PMCs and other stakeholders on the administrative guidelines and their implementation.</p>
<p>10. The procedures for handling proxy instruments proposed in March 2017 (i.e. to display the list of flats with proxy instruments lodged in a prominent place in the building at least 24 hours before the meeting and until seven days after the meeting) may not allow sufficient time for –</p> <p>(a) the owners to check the list of flats with proxy instruments lodged; and</p> <p>(b) the MC/PMC (especially those of large housing estates) to process and determine the validity of the proxy instruments.</p>	<p>We have enhanced the proposal to amend the procedure as follows –</p> <p>(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 in the building;</p> <p>(b) the proxy instrument shall be lodged with the MC Secretary at least 144 hours (6 days) before the meeting; and</p> <p>(c) the MC Secretary shall display the list of flats with proxy instruments lodged in a prominent place in the building at least 72 hours (three days) before the meeting and until seven days after the meeting.</p> <p>The above proposals have been incorporated in the administrative guidelines entitled “<i>Best Practices on Building Management</i>” published in January 2019. We may further refine our legislative amendment proposals in light of the</p>

Major Feedback Received During Public Engagement Exercise	The Government’s Response
	feedback from owners, OCs, PMCs and other stakeholders on the administrative guidelines and their implementation.
VI. Powers of the Authority under the BMO	
<p>11. On the proposal in March 2017 to empower the Authority to, at the request of not less than 5% of the owners, dissolve the non-performing MC, some considered that –</p> <p>(a) there might be possible abuse of the Authority’s power. For instance, 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; and</p> <p>(b) there should be objective and stringent criteria to prevent MCs from being dissolved easily.</p>	<p>We have enhanced the proposal as follows –</p> <p>(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, after issuing warning to the MC, dissolve the still 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 BMO; and</p> <p>(b) unless there are exceptional grounds, the Authority will only exercise the power in respect of any OC once every 12 months.</p>
VII. Other Amendments	
<p>12. Some suggested extending the proposed BMO amendments to cover owners’ committees, so as to allow buildings without OCs for various reasons to benefit from the proposals.</p>	<p>We would consider formulating amendments to Schedules 7 and 8 to the BMO as appropriate, with a view to rendering the proposals related to procurement and accounts and financial statements applicable to both owners’ committees and OCs.</p>
<p>13. Some considered that “cooling off period” should be added before contracts for “large-scale maintenance projects” are entered into.</p>	<p>We have included in the CoP on Procurement the recommendation that OCs, having regard to the circumstances of the case, should consider signing contracts with suppliers/contractors at</p>

Major Feedback Received During Public Engagement Exercise	The Government's Response
	least one month after the passing of the relevant resolution ¹ .

¹ The CoP on Procurement has been revised and become effective since September 2018.