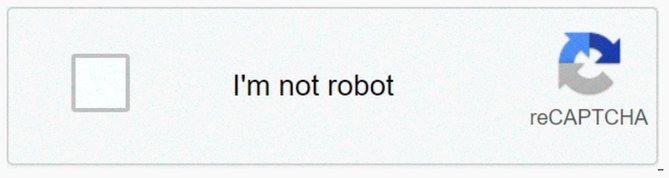

Continue

Building management ordinance pdf

The Building Management Ordinance (Cap. 344) (BMO) provides a legal framework for owners to form and run owner corporations to facilitate their fulfillment of building management responsibilities. In April, the Legislative Council Group on Home Affairs invited views on the government's latest legislative proposals to update the BMO and related administrative measures. The proposed amendments to the BMO, according to the Government, should address public concerns about construction management, including tenders and disputes arising from large-scale maintenance projects, the use of representatives at the owners' corporation meeting, and the appointment and remuneration of the deed of mutual convention administrators. The Council examined the proposed amendments to the BMO, with the assistance of the Property Committee. It regretted that the Government had not taken into account some of the issues raised earlier by the law society. The Government's attention was drew to a number of legislative proposals that deserve serious and thorough consideration. A written submission was prepared and sent to the Home Affairs Panel. The presentation of the Law Society is available in . 1. District Administration Availability (a) DC Membership on request (b) DC Order on request 2. MAC (a) MAC list, names and addresses Download online (b) MAC model rules Download online 3. List of Members of the ACs of the Zone Committees (ACs) upon request 4. Office of the Licensing Authority (OLA)* (a) Hotel Licensing Requirements, hostel, holiday apartment, holiday camp, clubhouse, bed space apartment, on-demand karaoke establishment (b) License requirements for entertainment licenses distributed free of charge (c) How to apply hotel and hostel brochures, clubhouse and bed space apartment distributed free of charge (d) Status, types, distributions and addresses, etc. of premises registered with OLA on request * Available at the Office of the Licensing Authority 5. Non-charitable public fundraising (a) Dates, times and terms of approved non-charitable fundraising activities on request (b) Statement of audited accounts prepared by the after-event admissions (subject to submission by the permissions) upon request 6. Performance Commitment distributed free of charge 7. Building Management (a) A Guide to the Building Management Ordinance (Cap.344) on request b) Frequently Asked Questions about the Building Management (Amendment) Ordinance 2007 on demand (c) Building Management Ordinance (Cap.344) How to Form a Owners Corporation on Demand (d) Building Management Ordinance Code of Practice on Procurement of Supplies, Products and Services and Code of Practice on Building Management and Maintenance on Demand (e) Building Management Toolkit on Demand (f) Building Management (Third Party Risk Insurance) Free Distributed Regulation (g) Department of Home Affairs and Private Private Private Management distributed free of charge (h) Property owners and maintenance of private buildings distributed free of charge Observations To photocopy documents to the public, the following charges may be charged (for black and white copies): A4 paper size to HK$1.30 per copy; and A3 to HK$1.50 size paper per copy (Note: Photocopy made on both sides of a sheet is counted as two copies.) The objective of the Home Affairs Office's policy is to assist landlords and tenants in fulfilling their responsibilities regarding building management, maintenance and security. In 1970, the Government enacted the Multiple Plant Buildings (Incorporation of Owners) Ordinance (Cap. 344) to provide a legal framework for owners to form owner corporations (OCs) to manage their own buildings. The Ordinance was substantially renewed in 1993 and renamed the Building Management Ordinance (BMO) to facilitate the incorporation of owners and provide them with specific competencies and responsibilities in relation to the management of common parts of buildings. We work closely with the Department of Home Affairs and in partnership with other offices and departments, non-governmental organizations, professional agencies and community leaders in achieving our goals. We will continue our education and advocacy efforts to raise public awareness of the importance of proper and effective construction management. In addition, we will help owners form OCs for better management of their buildings. For more information on building management, visit the Department of Home Affairs Building Management home page. Introduction In Hong Kong, many people live in multi-property buildings or homes, with common parts and facilities requiring proper management and maintenance. Although these buildings and farms would have a deed of Mutual Convention (DMC) to govern the respective rights and responsibilities of the owners over the common parties, most RCDs only provide for the powers and duties of the Manager without an adequate framework for management by the owners themselves. As early as the 1970s, the concept of having the owners arose, so there will be a legal entity operated by representatives elected by the owners responsible for the management of the building. Almost half a century is gone. The legal framework has been developed in conjunction with the building management industry. Both serve to provide a fair and efficient system of management of the facilities in which we live and work, and ultimately a better and safer living and working environment for the people of Hong Kong. This article aims to provide an overview of the development of the management of buildings in Hong Kong. It should be noted that the debate below covers only a few important amendments introduced or proposed on several occasions. 1. Ordinance of Multi-Storey Buildings (Incorporation of Owners) In view of the growing number of residential farms that accompany the growth of the and population, the Ordinance on Multi-Plant Buildings (Incorporation of Owners) was first enacted in June 1970 by the Hong Kong Government. The legislative objective was to facilitate the incorporation of floor owners into multi-storey buildings and to provide for the management of such buildings and for matters incidental to or related to them. The Ordinance provided for the legal authority of a corporation (i.e. incorporated owners (IO)) formed by the owners of a building or farm to manage it. It also prescribes the structure and operation of the IO (i.e. having a management committee elected by the owners as the governing body of the IO) and matters such as the composition and dissolution of the management committee and the liquidation of the IO. Some of these provisions or their modified versions can still be found in this Building Management Ordinance (Cap. 344) (BMO). 2. BMO in 1993 In 1993, the Multi-Storey Buildings Ordinance (incorporation of owners) was substantially amended, and the new name BMO was first adopted. The most important amendments, apart from the name of the ordinance itself, are the retrospective incorporation of a number of legal provisions in Part VIA and Schedule 7 of the BMO that prevail over inconsistent provisions in the RCDs. The amendments had retrospective effect because they apply not only to future RCDs, but also to existing RCDs when the BMO came into operation. At the time, the RCDs were thought to contain some provisions by which developers had unfairly exploited their buyers and successors in the title. For example, some developers reserved for their exclusive use of certain parts of the building such as external walls and ceiling in the DMC, so they may license the right to use those areas, for example, for advertising purposes. However, under the DMC, the developer does not need to bear any of the management expenses of those reserved areas. It would be that the other owners did not have the right to use the affected areas who have to pay those costs. In order to deal with this unfair situation, Paragraph 34H of the BMO was enacted, which provides that if an owner is entitled to exclusive use or enjoyment of a particular part of the building, he shall be solely responsible for all costs of repair, maintenance, etc. of that party. Thus, in the famous uniland Investment Enterprises Ltd/ The Incorporated Owners of Sea View Estate and another [1999], the High Court stated that, since the developer has reserved the exclusive right to use the external walls of the demand building, he would have to bear only all of his management costs, including the costs for fulfilling a building order under Paragraph 34H of the BMO. That

would be the position when the DMC provides otherwise. Another example is that some older BDCs exempted developers from any obligation to pay management fees for their unsold units. This would create a situation that a particular unit would not carry any obligation to pay management fees when it was still retained by the developer, but once it was sold, the developer's buyer would be required to pay. In addition, if many units remained uns sold when buyers started moving, those buyers would have to bear the full burden of paying building management fees for some time, depending on the condition of the real estate market and whether the developer was eager to sell the remaining units. In that regard, Paragraph 34G of the BMO provides that a developer must be in the same situation as his purchaser of a unit as regards the obligation to contribute to the management costs of the building, so that any provision in the old (and future) RCDs confiding that privilege to the developer has been annulled after the BMO entered into operation in 1993. In fact, the guidelines issued by the Department of Land governing the content of the DMC guidelines have gone further, providing that the developer has to make contributions to management deposits and debris disposal fees as an individual buyer, if the units in question have not been sold 3 months after (i) the execution of the CDM, or (ii) the date on which the developer is in a position to assign validly the units, whatever later, although the deposits (but not the debris removal fee) may well be transferable and the developer can request a refund from their buyer when the unit is finally sold. In addition, paragraph 7 of Annex 7 to the BMO establishes the OA's right to terminate the appointment of the DMC Manager, who may otherwise remain as long as he wishes under the RCD. It should be noted, however, that the legal provision applies only if the owners have been incorporated under the BMO, although the Guidelines have extended their application to many recently developed goods with a Owners Committee formed under the DMC. However, the threshold for termination of the Manager's appointment, namely a resolution approved by owners who have to pay management fees and have no less than 50% of the shares is quite high and often unattainable. Retrospective legislation is rarely used in law reform, as the re-enactment would have an effect on matters that occur before it entered into operation. This may well cause injustice because people generally conduct their affairs according to the current state of law, and they could not predict what the law would be tomorrow. Moreover, the majority view at the time of the 1993 amendment was that the abusive provisions on the RCD had caused serious injustices, and extreme measures should be introduced so that BMO applies to the old RCDs. In addition to rewriting CDMs and repealing some unfair terms, the BMO contains more detailed provisions relating to the operation, competencies and duties of the IO, thus providing clearer guidance to owners in the management of their own buildings. 3. The 1st Major BMO in 2000 After the BMO adopted its current name and skeleton, the first major amendment was made in 2000. A significant amendment was to reduce the threshold for the appointment of a management committee. Prior to the amendment, a decision was required from the owners of no less than 50% of the shares. This was reduced to 30% in the 2000 amendment, which facilitated the formation of an OS. However, it appears that the Department of Home Affairs (HAD) is quite reluctant to further reduce the threshold, as it believes that the IO should be widely recognized by the owners before it can adequately represent them in the performance of their day-to-day functions. In addition, the new Article 28 of the Ordinance was enacted in 2000 to require the IO to carry out and maintain third-party risk insurance in relation to the common parties. Members of the OI steering committee who do not can be found as crimes. The main objective was to introduce a compulsory insurance system in personal injury claims filed by third parties against the I/O in force in workers' compensation and traffic accidents. However, it should be noted that this new section 28 did not enter into force until 2011. One of the reasons for the delay was that there were many ancient or ruined buildings in Hong Kong with illegal structures. Some of them were not even under the management of professional managers. Insurance companies may be reluctant to provide liability insurance to these high-risk buildings. Therefore, it would be difficult for IoT of those buildings to obtain the required insurance to a premium they deem acceptable or affordable or any insurance at all. Some of the management committees may face criminal prosecution as a result. Many of these Members would resign and OIs would not be able to function if the new section 28 had immediate effect. In the end, the Building Management Insurance (Third Party Risks) Regulations enacted in 2009, which became operational at the same time as the new BMO Article 28 in January 2011, provided that liability arising from the unauthorized structure of construction erected without complying with the Building Ordinance was not covered by compulsory insurance. Therefore, insurers will not be required to compensate the insured I/O of any claim with respect to unauthorized structures in the building. As a result, most third-party insurance now contracting I/O would not cover those claims. It will be for the IoT and the owners of the building to assume any possible liability arising from unauthorized structures completely. In addition, section 5B and List 11 on listing the percentage of owners were introduced in 2000. This made it clear that the percentages of the owners mentioned in some of the provisions (e.g., the 10% requirement to constitute the quorum of the EO general meetings, the owners' meetings were convened to form EO and the 5% requirement to force the president of management committee to convene a general meeting) refer to the number of owners and not to the actions they had together. Of course, there are other provisions in the BMO expressly stating that the percentage of owners required is by reference to the shares they hold. Examples include owners who own no less than 5% of the shares can convene a meeting to consider and resolve I/O training, and owners who own no less than 50% of the shares involved in the obligation to pay management fees can be resolved for the termination of the appointment of the DMC manager. 4. The 2nd Major Amendment of 2007 The 2007 amendments were implemented after the persistent hard work of hadeeth, which had conducted long and in-depth consultations and studies. The amendments compensated for many ambiguities of the BMO due to the miswording of previous versions and the conflict of judicial opinion expressed in interpreting the provisions. In the respectful opinion of the authors, it has contributed greatly to improving the quality of the BMO and has been the best exercise ever to revise and propose amendments to the BMO. For example, prior to the 2007 amendment, Paragraph 3(2) of the BMO, which lays down the requirement to appoint a management committee to form IoT, provides that a management committee may be appointed by a decision of the owners of not less than 30% of the shares. In Kwan & Pun Co Ltd v Chan Lai Yee & Others [2002], the question of the precise meaning of the sentence cited above was raised. In the Land Court, the President interpreted the provision as meaning that it was not necessary for owners to have a vote of not less than 30% in support of the formation of I/O operations. It would be sufficient if there were no less than 30% of the owners who vote on the motion, and of the votes cast, there would be more votes in support of OA formation than against (i.e. the denominator should not be less than 30%, but the numerator is not necessary). When the case went to the Court of Appeals, of the three judge presidents, one of them agreed with the observations of the Land Court, while another disagreed. The latter judge considered that the decision should be approved by owners holding no less than 30% of the shares they vote in support of the motion (i.e. the numerator must not be less than 30%). The third judge did not express any clear views on this issue. This has created a lot of uncertainty and doubt in the precise requirement to form I/O, which is the first step in setting the stage for the implementation of the mechanism prescribed by the BMO for the management of its own buildings by owners. The 2007 amendment eliminated all doubts by providing that the resolution should be adopted by a resolution owners of no less than 30 percent of the shares as a whole. Since then, it has become clear that the I.O. could only be validly formed when there are owners who own no less than 30% of the shares they vote for in support of their training. In addition, the well-known case of the Incorporated Owners of Tsuen Wan Garden v Prime Light Ltd. [2005], both the Land Court and the Court of Appeal held that the meaning of the majority vote in the BMO should mean not only that the proposal had received the highest number of votes than cast, but should also have the support of more than half of the total number of valid votes. In that case, three plans for renewal of different scales were put to the vote at a general meeting of the EO. One of the plans received the highest number of votes, but was less than half of the total votes cast. When the IO brought an action in court against some owners for paying their share of the renewal costs, the court held that the decision was invalid because it did not get more than half of the votes cast. Indeed, the 2007 amendments confirmed the accuracy of judicial decisions by amending the Chinese version of the majority voting BMO from 多數票 to 過半數票. When owners are given more than two options, the proposal that receives the most votes may, as in the case of Tsuen Wan Garden, not have received a majority voting imperative to pass a valid resolution, triggering the need for a second or subsequent rounds of voting. A similar problem could occur in the election of members of management committees, when owners could be asked to choose to say, 9 members of 15 candidates. If any of the 9 candidates receiving the highest number of votes have not received a majority vote (i.e. more than half of the valid votes cast), they may not have been validly designated. The electoral process would become quite complicated and time-consuming. In fact, it is not known whether there may have been any defect in the validity in the appointment of some members of the management committee for some buildings made before the 2007 amendments when the majority vote might not have been reached. The 2007 amendment introduced the first-in-position voting system for the appointment of the members of the steering committee, which means that the candidate who receives the most vote wins, whether or not he reaches majority voting. The 2007 amendment also made it clear that all members of the steering committee, except tenants' representatives, must be registered owners of the building. In addition, a person is not eligible if it is an unpaid bankruptcy, discharged within the previous 5 years without paying creditors in full or convicted of a crime for which he has been sentenced to prison for a period longer than 3 months within the previous 5 years. In order to determine whether the resolution is adopted by a majority vote, Article 2B introduced in 2007 provides that for meetings convened under the BMO, owners who are not present, owners who are present but do not vote, blank or invalid votes and abstentions will be ignored. The amendment was made to repeal fung Yuet Hing v Incorporated Owners of Hing Wong Mansion & Others[2005]. That's what it's all about. the plaintiff argued that the resolutions adopted at a general meeting were null and void, claiming that there was no majority vote. The Land Court upheld the complaint on the basis that owners who were present in person or by proxy at the meeting but did not vote or cast a abstention vote must be counted (i.e. as denominator) to decide whether there was a majority vote and, therefore, a valid decision. Another major amendment introduced in 2007 is that when the OCI acquired supplies, goods and services for the estate without tendering or that the supplier or service provider was selected by a decision approved at the O.I. general meeting in violation of Article 20A of the BMO, the court will have discretion to decide whether the contract is null and void after considering all circumstances , including the factors set out in Article 20A(7). These factors include whether the Code of Practice has been complied with, whether supplies, goods or services were urgently necessary, the progress of any activity or work in relation to supplies, goods or services, whether the owners have benefited from the contract, etc. Prior to the amendment, the consequence of not observing Article 20A was not entirely clear and there were conflicting decided cases on the issue. 5. Some important individual amendments, apart from the 2000 and 2007 amendments, have been amended in individual sections over the years. For example, an interesting and important amendment to Paragraph 14(1) of the BMO was made in 1998. This is an extremely important arrangement because it allows most to prevail to carry out works in the common parts of the building. If this provision had not been, the consent of all owners in the building may have been necessary to carry out the work. Obviously, it would not be practical for the OI to obtain unanimous consent in each case. This Article 14(1) provides that at a general meeting of the IO, any resolution may be adopted with respect to the control, management and administration of the common parties or the renewal, improvement or decoration of those parties and any such resolution shall be binding on the management committee and all owners. However, the words underlined were only introduced in 1998. Without those words subsequently added, the High Court held in Incorporated Owners of Bayview Mansion v Chan Cheung Kit Mui [1995] that IO had no power under the BMO to renew or improve the common parts of majority-resolution buildings adopted under Article 14(1). In that case, a resolution was adopted at a general meeting at which several parts of the common areas and common facilities were renewed. It was also resolved that each owner should to the costs of such works. One of the owners refused to pay the contribution and was sued in court. The court held that the claim for contribution against the owner had no legal authority, since neither the RCD nor Article 14(1) 14(1) for any power or authority for the management committee to improve amenities or update the state of the building (rather than performing repair and maintenance). Such improvement or improvement work, including replacing the main iron door with a large-looking electric-operated aluminum door, installing an electronic communication system at the entrance and a magnificent counter in the management office, could only be done with the consent of all owners. The implication that brought the decision was, of course, very undesirable, not only because the owners might well want to carry out some improvement works in the common parts, but rather the distinction between repair and maintenance on the one hand and the improvement and renewal on the other may not be entirely clear in some cases. The addition of the underlined words makes it clear that the I.O. can adopt at its general meetings any majority resolution for the improvement, improvement and renewal of the common parts that would be binding on all owners. 6. Proposals for amendments by BMO HAD published a consultation document in 2014 for several proposed amendments to the BMO. After gathering views from both the property management industry and the public, the proposed amendments have been adjusted on several occasions. Some of the latest proposals are highlighted below. For large-scale Maintenance Projects, it was proposed to increase the required general meeting quorum from the usual 10% to 20% of the number of owners. In addition, in view of concerns about the possible manipulation of proxies, had further proposed that of 20% of the owners required for quorum formation, at least 10% of owners should attend the I/O meeting in person when resolutions on large-scale maintenance projects are adopted. For developments consisting of more than 4000 floors, at least 10% of owners, or 400 owners, whichever is smaller, must attend the meeting and vote in person to pass such resolutions. For the definition of Large-Scale Maintenance Projects, to eliminate the risk that the estimated budget could be artificially inflated, it was proposed to adopt the average audited annual expenditure of the last three years immediately before the maintenance proposal was voted on. HAD's proposal to define whether a repair or renewal contract will be for a large-scale Maintenance Project as published in its November 2017 document is as follows (which will be less than the sum of the contract and the percentage set out below): – In addition, the minimum notification period for convening the meeting would be extended from 14 to 21 days. A visible alert will be included in the notice that any decision at the meeting may result in the contribution of the for each owner and such notice will be displayed at a prominent location in the building Recently, a new set of Code of Practice for Procurement was published by the HAD to enter into force from September 2018. 2018. the new Code, persons involved in the recruitment process, such as members of the steering committee, the Manager and their employees would have to declare their interest and refrain from participating in the selection process if, for example, there is any real or potential conflict of interest. The deadline for signing the large-scale maintenance project contract should be delayed to one month after the adoption of the resolution at the general meeting. In the past, there has been a case when the I.O. had already committed the owners to a valuable renewal contract when some owners intended to convene another meeting to reconsider and revoke the original resolution. It should be recalled that the Administrator is required to follow the Code of Practice in accordance with paragraph 5 of Schedule 7 of the BMO as if they were requirements under the RCD. With regard to the termination of the appointment of the DMC Manager, while the existing threshold for a resolution approved by owners who hold 50% of the shares under paragraph 7 of Schedule 7 of the BMO may now be maintained (despite the initial suggestion to reduce it to 30%), it was proposed that the appointment of CDM managers would be automatically completed five years after the formation of the OE, you can enter into a new contract with your existing DMC manager or hire a new manager through open bidding. In the 2014 consultation paper, it was proposed to reduce the limit remuneration rate for DMC managers by a specified percentage each year. This was said to be the subject of the property management industry, but supported by members of the public. Instead of pushing for the BMO to be modified, he had asked the Land Department to amend the Guidelines to increase transparency to calculate remuneration, so that DMC managers would be required to: – (i) provide owners with a detailed breakdown of how the headquarters service fee applies among the developments they serve; (ii) Exclude from the calculation a specified list of expenditure items that do not involve any value-added services by the DMC administrator (e.g. electricity and water costs); (iii) For developments with no more than 20 residential units and parking spaces, reduce the maximum limit of the remuneration rate of DMC managers by 0.5% per annum to 16% ultimately; (iv) For developments with 21 to 100 residential units and parking spaces, reduce the maximum limit of the remuneration rate of DMC managers by 0.5% per annum to 12% ultimately; and (v) For developments with more than 100 residential units and parking spaces, reduce the maximum remuneration rate limit for DMC managers by 0.5% per annum to 8% ultimately. If they are only modified Guidelines instead of the BMO, the above provisions may only appear in DMC approved by the Department of Land after the new Guidelines are in force, and not in buildings that have their DMC executed before then. Looking forward compared to other areas of law such as contract and laws that have been developed over about 300 years with a lot of cases decided on various issues, the building management law in Hong Kong has a relatively short history. Moreover, its development has made virtually no aid from the decided cases of other common law jurisdictions such as England. In fact, there are quite a few features in the BMO that can be peculiar to Hong Kong. We believe that HAD, under the direction of capable and experienced lawyers and staff, and after consulting the public and members of the profession, would work in the right direction for the continued development of the building management law affecting the daily lives of many people in Hong Kong. Kong.