

4.6 Owners' Corporation (OC)

4.6.1 Functions of an Owners' Corporation

An Owners' Corporation (OC) is an independent statutory body formed in accordance with the Building Management Ordinance (BMO) and is empowered to sue, but also liable to be sued. An OC acts legally on behalf of all owners in managing the common parts of the building safeguarding their interests and taking up responsibilities. It is also empowered to appoint a property manager, monitor and terminate the services provided.

4.6.2 Procedures to Form an Owners' Corporation

The Land Registrar shall, if satisfied that the provisions of section 3, 3A, 4 or 40C and section 7(2) and (3) of the BMO have been complied with, issue a certificate of registration in such form as may be specified by the Authority from time to time.

Under Section 3 of the BMO, owners of not less than 5% of the shares in the building can act as the convener and convene a meeting of owners for the purpose of appointing a Management Committee.

Notice of meeting, including date, time, place of meeting and issues to be discussed, including the appointment of a Management Committee, must be given to all owners at least 14 days before the meeting takes place. It must be displayed in a prominent place in the building and place notice in a newspaper, from amongst a list of newspapers specified by the Secretary for Home Affairs published in Hong Kong. Such list of newspapers can be obtained from the District Offices and Building Management Resource Centres.

If the Deed of Mutual Covenant (DMC) provides for the appointment a Management Committee, these provisions must be followed.

If there is no DMC or the DMC contains no provision for the appointment of a Management Committee, a Management Committee can be appointed by a resolution of the owners of not less than 30% of the shares in the building. However, when there are practical difficulties in appointing the Management Committee under Section 3, the following methods can be adopted:

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- Under Section 3A of the BMO, owners of not less than 20% of the shares in the building may apply to the Secretary for Home Affairs for an order to convene a meeting of owners, in which the Management Committee can be appointed by a majority of votes of the owners voting at the meeting.
- Under Section 4 of the BMO, owners of not less than 10% of the shares in the building may apply to the Lands Tribunal for an order to convene a meeting of owners, in which the Management Committee can be appointed by a majority of votes of the owners voting at the meeting.

At the meeting, each owner has one vote for each share he owns, unless the DMC provides otherwise. An owner can appoint proxy in writing to vote on his behalf not less than 24 hours before the meeting.

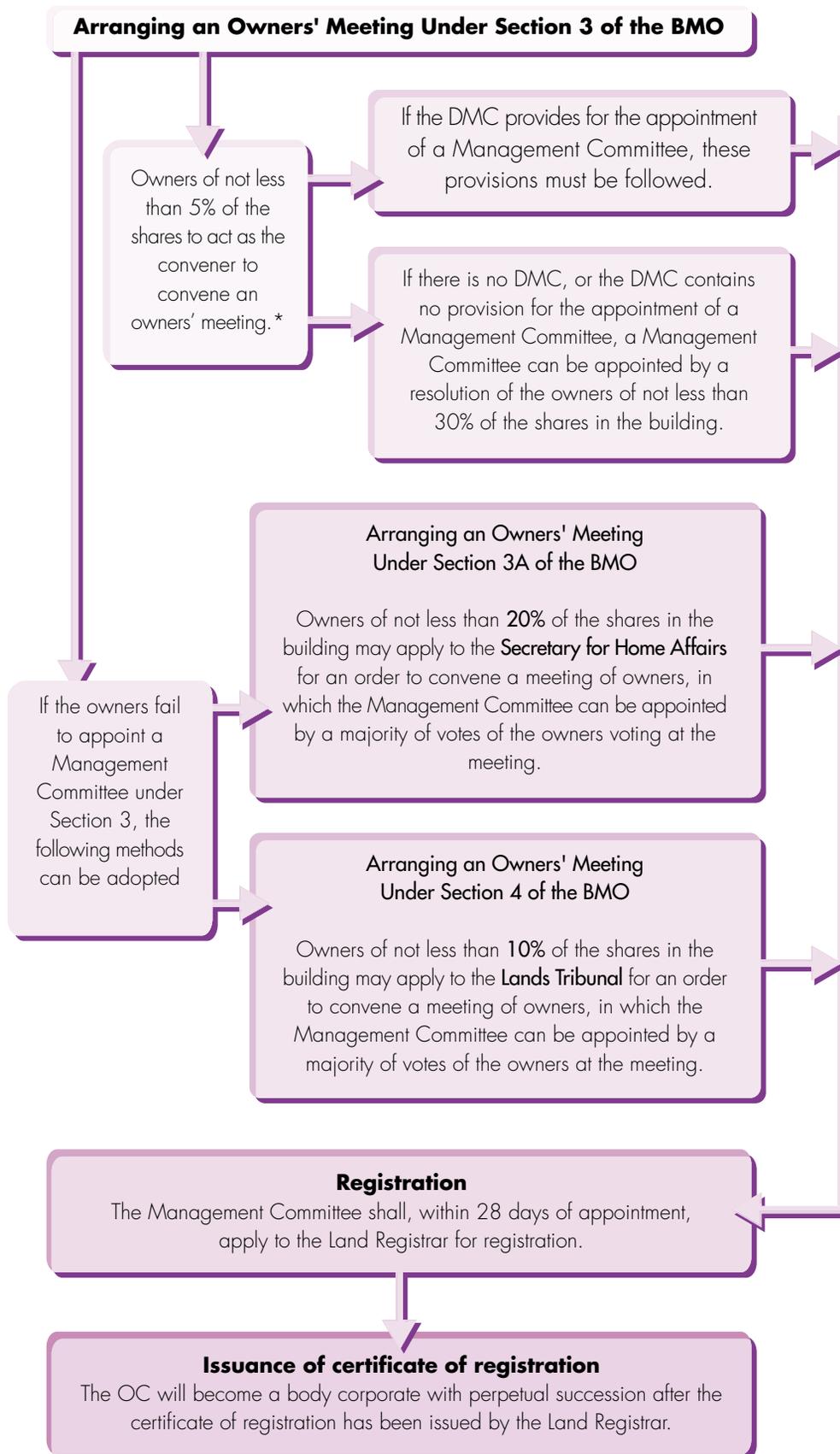
At the meeting of owners, the owners will appoint the members of the Management Committee and appoint the office holders for the posts of Chairman, Vice-Chairman (if such a post is specified in the DMC), Secretary and Treasurer.

The Management Committee shall, within 28 days of appointment, apply to the Land Registrar for registration. The OC will become a body corporate with perpetual succession only after the certificate of registration has been issued by the Land Registrar.

For detailed procedures to form an OC, please refer to the Booklet on "How to Form an Owners' Corporation and Achieve Effective Building Management" published by Home Affairs Department (HAD). Appendix 18 is relevant.

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Procedures to Form an Owners' Corporation



* There are other situations which could allow an Owners' Meeting to be convened but owners are highly recommended to seek legal advice or discuss the matter with the District Office.

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4.6.3 The Rights and Responsibilities of an Owners' Corporation

Under the DMC and BMO, all resolutions passed at the OC's general meeting have to be observed by the Management Committee and all owners. On behalf of the owners, OC is responsible for the control, management and administration of the common parts of the building such as:

- repair and maintenance of building
- implementation of Government works orders
- enforcement of DMC stipulations
- employment of building management staff
- financial management
- taking out building insurance
- fire safety
- crime prevention and security
- environmental hygiene
- compliance with the Code of Practice on Building Management and Maintenance

The OC is legally responsible for the liabilities of owners in relation to management of the common parts of the building.

If owners are not satisfied with the work of the Management Committee, and problems cannot be solved at Management Committee level, owners can lodge their complaints in the following ways:

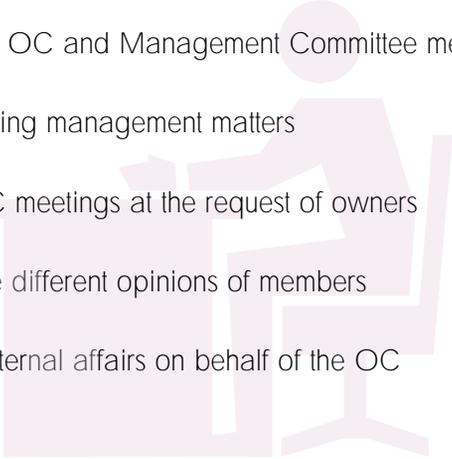
- The Chairman of the Management Committee shall convene a general meeting of the OC at the request of not less than 5% of the owners for the purposes specified by such owners within 14 days of receiving such a request.
- Owners may apply to the Lands Tribunal for adjudication on matters relating to management of the building.
- In relation to any other legal matters, owners should seek legal advice or engage a lawyer.

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4.6.4 Tenure and Responsibility of an OC's Management Committee

Responsibilities of Members of the Management Committee are given below:

(a) The Chairman

- presides over OC and Management Committee meetings
 - handles building management matters
 - convenes OC meetings at the request of owners
 - reconciles the different opinions of members
 - deals with external affairs on behalf of the OC
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(b) The Vice-Chairman (if such a post is specified in the DMC)

- assists the Chairman in discharging the duties of the OC
- presides over meetings of the OC and the Management Committee in the Chairman's place when he is absent

(c) The Secretary

- serves all notices of meetings and prepares the agenda
 - takes and keeps minutes of meetings
 - maintains a register of owners and verifies owners' proxies to ensure sufficient shares of the building are represented at the meeting
 - reports to the Land Registry any changes of registered information
 - displays the minutes of each meeting in a prominent place in the building
 - takes over all documents, records, account books and any movable property of the OC kept by members of the Management Committee who retire from their office
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(d) The Treasurer

- prepares an income and expenditure account and a balance sheet
- oversees miscellaneous expenditure
- maintains the income and expenditure account with proper care to facilitate auditing and for owners' inspection
- prepares a budgeted statement of income and expenditure for the coming year and lays it before the OC at its Annual General Meeting (AGM) for discussion
- displays regularly an income and expenditure account in a prominent place in the building
- hands all accounts to the Secretary or the Management Committee upon retirement from office

(e) Management Committee Meeting

- Subject to the Building Management Ordinance, the powers and duties conferred or imposed by the Ordinance on a corporation shall be exercised and performed on behalf of the corporation by the Management Committee
- The Management Committee shall meet at least once every 3 months
- A notice of the meeting of the Management Committee shall be served upon each member of Management Committee at least 7 days before the date of the meeting. Such notice shall specify the place, date and time of the meeting, and the resolutions (if any) that are to be proposed
- The quorum at the meeting shall be 50% of the members (rounded up to the nearest whole number) of the Management Committee or 3 such members, whichever is the greater
- All acts, matters or things authorized or required to be done by the Management Committee may be decided by a resolution passed by a majority of the votes of members of the Management Committee present at the meeting

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4.6.4(e) Management Committee Meeting (continues)

- At the meeting, each member present has one vote on a question. If there is an equality of votes, the person presiding over the meeting have, in addition to a deliberative vote, a casting vote
- The minutes of the meeting, certified by the person presiding over the meeting, shall be displayed by the Secretary in a prominent place in the building within 28 days of the date of the meeting

(f) Tenure of the Management Committee

At the second annual general meeting of a corporation convened in accordance with paragraph 1(1)(b) of the Third Schedule of the BMO and thereafter at every alternate annual general meeting, all members of the Management Committee, other than the member (if any) deemed to be appointed under paragraph 2(2) of the BMO in his capacity as the tenants representative, shall retire from office, unless re-elected.

4.6.5 Meetings of the Owners' Corporation

(a) Meetings

The Management Committee shall convene:

- the first annual general meeting of a corporation not later than 15 months after the date of the registration of the corporation
- an annual general meeting not earlier than 12 months, and not later than 15 months after the date of the first or previous annual general meeting
- a general meeting of the corporation at any time for such purposes as the Management Committee thinks fit, and
- a general meeting of the corporation 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

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(b) Notice of Meeting

A notice of the meeting of the corporation shall be served upon each owner and upon tenants' representative (if any) at least 14 days before the date of the meeting. Such notice shall specify the place, date and time of the meeting, and every resolution to be proposed or other matter to be discussed at the meeting.

(c) Quorum

The meeting is valid only when a quorum is present. The quorum at a meeting of the corporation shall be

- 20% of the owners in the case of a meeting at which a resolution for the dissolution of the Management Committee under Section 30 is proposed; or
- 10% of the owners in any other cases

(d) Chairman

The Chairman of the Management Committee shall preside at a meeting of the corporation. If the Chairman is absent, the Vice Chairman as the case may be, shall preside at the meeting or failing him that, the owners at the meeting shall appoint an owner as the chairman for that meeting.

(e) Minutes

The minutes of the meeting, certified by the person presiding over the meeting, shall be displayed by the Secretary in a prominent place in the building within 28 days of the date of the general meeting.

4.6.6 Establishment of Funds

Under Section 20 of the Building Management Ordinance,

(a) A Corporation Shall Establish and Maintain a General Fund

- to defray the cost of exercise of its powers and the performance of its duties under the Deed of Mutual Covenant (DMC) (if any) and the Ordinance; and
- to pay Government rent, premiums, taxes or other outgoings in respect of the building as a whole.



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(OC)**4.6.6 *Establishment of Funds (continues)***(b) A Corporation May Establish and Maintain a Contingency Fund**

- to provide for any expenditure of an unexpected or urgent nature; and
- to meet any payments of the kind specified in item (a) if the fund established thereby is insufficient to meet them.

4.6.7 Working with Property Management Companies**(a) Property Management Company**

A property management company takes the role of a property manager as provided under the DMC, and provide professional expertise to execute on behalf of the building owners or OC routine management duties including cleansing, repairing and maintenance of common parts and facilities of the building. It is also authorized to exercise the rights and responsibilities under the DMC as supplemented by the BMO with respect to building management and maintenance. For this reason, a property management company acts in the capacity of the agent of the owners or OC, and therefore should be treated with respect and caution for the possible legal consequence that an agent would bring upon his principal.

(b) Building Management Agents

Home Affairs Department (HAD) has compiled a list of building management agents which can be obtained from the Building Management Resource Centres (BMRC) and the public enquiry service center of the District Offices. The list can also be downloaded from the web site :

www.buildingmgt.gov.hk/buildingmgt/resource/

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4.6.8 Resolution of Disputes Concerning Building Management Matters

(a) Disputes

Disputes between owners individually, between owners and OC or property management company, or between OC and property management company concerning building management matters do happen frequently. If these disputes could not be resolved within the power of the OC, they may be referred to the Lands Tribunal which now has an extended jurisdiction under the provisions of the BMO to resolve matters of this nature.

(b) Lands Tribunal

Under the Building Management Ordinance, the jurisdiction of the Lands Tribunal relates mainly:

- to order that a meeting of owners shall be convened so as to appoint a Management Committee (Section 4);
- to dissolve a Management Committee and appoint or remove and replace an administrator (Section 31);
- to handle winding-up petitions or winding-up orders of an OC (Section 34A);
- to order the appointment of a building management agent (Section 40C); and
- to hear and determine legal proceedings in relation to building management (Section 45 and the Tenth Schedule).

(c) The Proceedings

The proceedings mentioned in item (b) include the ones relating to disputes between an OC and a property manager, definition and use of common parts, calculation and apportionment of management charges and other expenses, interpretation and applicability of the DMC and the BMO, etc. Hence, the public can have a quicker and cheaper means of settling disputes through legal proceedings.

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4.6.9 Owners' Committees and Mutual Aid Committees

In the case if an OC cannot be formed due to various reasons, the following alternatives, which do not enjoy the same legal status as that of an OC are available:

(a) Owners' Committees

Details for the formation and operation of an Owners' Committee are usually provided for in the DMC, which also sets out its authority and functions. An Owners' Committee mainly enhances communication between the owners and the property manager. On matters of importance, it gives advice to the property manager and makes recommendations and decisions as appropriate. It also monitors the work of the property management agent.

(b) Mutual Aid Committees (MAC)

A MAC is an owners' and tenants' organization that is formed with the approval of the District Officer. Its major function is to promote good neighbourliness among the residents and carry out basic building management work. As the MAC is not a statutory body, it cannot sue or be sued.