

**Response to Consultation Paper on
Building Management Ordinance (Cap. 344)
Proposed Amendments**

Hong Kong Bar Association

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**The Hong Kong Bar Association’s Response to
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Overview

1. The Hong Kong Bar Association (“**HKBA**”) welcomes the opportunity to respond to the consultation paper issued by the Home and Youth Affairs Bureau, Home Affairs Department on the proposed amendments to the Building Management Ordinance (Cap. 344) (“**BMO**”), published in August 2026 (“**Consultation Paper**”). We set out the following views in a forward-looking manner, with the aim of supporting the development of a more effective and accountable building management regime that better serves the needs of owners and the wider community, particularly in view of the management deficiencies highlighted in the recent tragic Wang Fuk Court fire.

2. The HKBA appreciates the Government’s continued efforts to strengthen the building management framework and to address some long-standing issues faced by owners, Owners’ Corporations (“**OCs**”) and the broader building management sector. At the outset, we wish to express our support for the Government’s commitment to enhancing transparency, accountability and governance standards in building management, and we agree with the overall direction of reform. The Consultation Paper identifies five principal areas intended for legislative amendment: (i) decisions on large-scale maintenance procurement and high-value procurement; (ii) proxy instruments; (iii) declaration of interests; (iv) powers of the Authority; and (v) meeting procedures. These areas reflect a few of the recurrent, practical issues encountered in day-to-day building governance.

3. The 2024 amendments to the BMO sought to strengthen transparency and accountability in OC operations, particularly in relation to high-value procurement, large-scale maintenance procurement, audit thresholds, and imposition of criminal

liability for failing to keep specified building management documents (BMO sections 28J, 36A and Schedules 6B-6C).

4. The fire at Wang Fuk Court in November 2025 brought building management sharply into public focus, demonstrating how critical effective management is to district governance, the living environment, and broadly speaking, the cohesion in community. The incident highlighted several systemic deficiencies in building management and reinforced the need for a more proactive and responsive statutory framework. In the past, the Government's role in building management focused primarily on providing advice and supporting or assisting owners in discharging their responsibilities. It is fully appreciated that buildings are private properties and that individual circumstances differ, giving rise to a delicate need to maintain an appropriate balance between statutory regulations on the one hand and owner autonomy on the other.

5. The HKBA fully recognises and respects owners' discretion in deciding how their OCs operate, and therefore supports reform that generally would: (i) give owners better information before decisions are made; (ii) provide the Authority with carefully defined intervention powers before governance failure becomes acute; (iii) reduce the need for individual owners to commence costly legal proceedings; and (iv) empower the Lands Tribunal to address exceptional procedural difficulties, etc. where strict compliance with the BMO has become impracticable (Consultation Paper at e.g. §§2.3, 6.8-6.15, 8.6-8.8, etc.). These proposals coincide with, and reflect, the Government's commitment to addressing challenges directly and adopting a more active, results-oriented approach. The Government's intention, as signalled, to deepen building management reform, taking a more engaged role in building management matters, and to assist owners in resolving issues in a timely manner, is clear.

6. Importantly, the intended reforms outlined above do not merely refine procedural requirements. If successfully implemented and enforced, they would help reduce proliferation of building-management-related litigation and the consequential problems of costs and delay, which are matters all too familiar to practitioners in the

legal profession. Decisions of the Lands Tribunal illustrate two broad categories of difficulties: in the first, the BMO already provides legal redress, such as dissolution of a dysfunctional Management Committee (“MC”) under section 31, but the process entails legal costs and delays for owners; in the second, the BMO is silent or deficient, leaving owners without clear remedies. By equipping owners with better information, enabling earlier intervention by the Authority, and empowering the Tribunal to address exceptional procedural obstacles, the proposed reforms directly respond to recurring problems and would help reduce unnecessary disputes and litigation.

7. Against this background, the HKBA will respond to the six questions set out in Chapter 9 of the Consultation Paper, supplemented, where appropriate, by additional observations.

Question 1: Decisions on Large-scale Maintenance Procurement and High-value Procurement

8. The Government proposes to consider imposing higher attendance requirements and voting thresholds for meetings concerning high-value procurement and large-scale maintenance procurement. In relation thereto, the Consultation Paper invites views on: (i) whether a voting-in-person threshold should be imposed for Type 2 high-value procurement; (ii) whether a tiered quorum and voting-in-person system should be introduced for large-scale maintenance procurement; and (iii) whether briefing sessions should be required before owners’ meetings on large-scale maintenance procurement (Consultation Paper at §§3.6, 3.11, 3.14, Chapter 9(1)).

9. The HKBA supports the policy objective of further increasing owners’ participation in building management and enhancing transparency and accountability of OCs in procurement. To this end, we propose that the Government considers imposing higher attendance requirements and voting thresholds for meetings concerning high-value procurement and large-scale maintenance works. Decisions on high-value procurement and large-scale maintenance procurement carry real and

significant financial and safety implications and consequences, and it is therefore essential that such decisions be made with a higher level of owner participation and informed consent.

10. The existing BMO already classifies high-value procurement into three categories based on the nature and value of procurement, namely: (i) Type 1 high-value procurement; (ii) Type 2 high-value procurement; and (iii) large-scale maintenance procurement, and sets out the corresponding tendering and declaration requirements. In particular, for large-scale maintenance procurement, it is treated as a special category by requiring an in-person voting threshold of no less than 5% of owners, or 100 owners, whichever is the lesser (BMO Schedule 6C paragraph 4; Consultation Paper at §3.2).

(1) Type 2 High-value Procurement

11. The HKBA however does not recommend applying the same in-person threshold to every Type 2 high-value procurement without qualification. While procurement decisions involving higher value generally warrant stronger safeguards, it is neither realistic nor practical to assume or treat all procurement decisions as carrying the same level of risks. It is advisable that the statutory scheme should avoid an undifferentiated approach and ensure that safeguards are proportionate to the nature and implications of the procurement in question. The value of Type 2 high-value procurement exceeds 20% of the building's average annual expenditure for the last three financial years, yet it may cover ordinary service contracts, such as lift maintenance, cleaning and security. As noted in the Consultation Paper, imposing a mandatory voting in-person threshold for such routine yet essential services may make procurement more difficult and could adversely affect daily building operations (Consultation Paper at §§3.5-3.6).

12. In view of the above considerations, and to avoid giving rise to practical and operational difficulties, any in-person voting threshold should be introduced for Type 2 high-value procurement contracts that involve material safety considerations, potential conflicts of interest, or exceptional financial implications. For contracts involving

routine service renewals, but which nonetheless still carry relatively high value, it would be appropriate to consider imposing requirements of enhanced notice, disclosure and record-keeping to ensure that owners receive adequate information and sufficient time for scrutiny before the vote, rather than leaving them having to litigate after the event. From case law, it appears that challenges to procurement resolutions are often evidentially difficult to establish (*正好工業大廈業主立案法團 v 傑迅有限公司 and another* [2025] HKLdT 39).

(2) Large-scale Maintenance Procurement

13. The HKBA agrees, in principle, with a tiered system for large-scale maintenance procurement. The proposed tiers of HK\$30,000, HK\$80,000 and HK\$120,000 per flat in the works project would progressively raise the quorum and in-person voting requirements as the average apportioned procurement value increases (Consultation Paper at §§3.7-3.11).

14. The tiered system should, however, incorporate appropriate safeguards to avoid any risk of paralysis in the decision-making process. When quorum and in-person voting requirements rise, convening owners' meetings for work-related resolutions can become more cumbersome, with the potential to slow down or stall project timelines. Elevated thresholds may also create opportunities for dissenting owners or affiliated interest groups to block or frustrate necessary works by discouraging attendance, a concern or risk already identified in the Consultation Paper (Consultation Paper at §3.10).

15. The HKBA therefore recommends that any tiered threshold be accompanied by a proper safeguard or fallback mechanism to ensure that essential building projects or management are not unduly hindered. Such a mechanism should address situations where the statutory threshold prevents a decision from being made despite proper notice being given, adequate information being served, and there being a genuine safety or compliance need for owners. For instance, where proposed works relate to building

safety or compliance with a statutory notice, such as those issued by the Building Authority or the Fire Services Department, an affected owner or interested party should be able to seek directions from the Lands Tribunal, thereby providing a proper avenue for timely resolution.

16. To illustrate the point made above, case law demonstrates that the practical difficulties that arise when there is no operative OC able to authorise necessary works, deploy funds, or appoint contractors to comply with statutory safety requirements, and it also shows that the BMO provides a means of redress through the existing mechanism for appointing an administrator under section 31. Once appointed, the administrator is vested with the powers of the chairman and secretary under section 32, enabling him or her to hold a general meeting under paragraph 1 of Schedule 3 or to respond appropriately to any request for such a meeting. This mechanism has been relied upon in practice to address situations where the corporation is unable to function (*Kannix Ltd v The Incorporated Owners of On Hing Building* (unrep., LDBM 57/2014, 30 May 2014) at §§5, 8 & 10; *Smart Wealth Asia Pacific Ltd v The Incorporated Owners of Kelly Court* (unrep., LDBM 251/2013, 31 December 2013) at §§15-17).

(3) Briefing Sessions for Large-scale Maintenance Works

17. The HKBA supports the Government's proposal to introduce a mandatory briefing session before owners' meeting held for large-scale maintenance procurement. The briefing should be held sufficiently in advance to allow owners to understand the scope of the works, the proposed tender evaluation, the financial implications, any conflicts and the voting consequences. A minimum of seven days' notice is appropriate, with longer periods required for more complex projects (Consultation Paper at §§3.12-3.14).

Question 2: Proxy Instruments

18. The Government proposes to impose a ceiling on the number of proxy instruments a person may hold and to enhance transparency in the handling of proxy instruments. In relation to that, the Consultation Paper invites views on various proxy-related issues, including (i) the imposition of a proxy cap; (ii) the handling of excess proxies; (iii) earlier lodgement of proxy instruments; (iv) public disclosure of proxy instruments; (v) voting instructions to proxies; (vi) signature requirements; (vii) declaration obligations; and (viii) restrictions on the identity of authorised persons attending owners' meetings (Consultation Paper at §§4.6, 4.9, 4.15, 4.18 and Chapter 9(2)).

19. The HKBA supports the Government's initiative to reform the proxy regime.

20. Under the existing BMO, an owner may vote by proxy. The proxy instrument is required to be lodged at least 48 hours before the meeting, and it is valid only if made and lodged in accordance with the statutory requirements. After the meeting, the MC is required to retain the lodged proxy instruments (BMO Schedule 3 paragraph 4; section 36A; Consultation Paper at §§4.1-4.3).

(1) Imposing a Ceiling on the Number of Proxy Instruments a Person May Hold

21. The HKBA supports the introduction of a cap on the number of proxy instruments a person may hold as an appropriate and proportionate safeguard for meetings involving large-scale maintenance procurement. In practice, there are buildings which have encountered situations where substantial concentrations of proxy holdings in the hands of a few individuals have given rise to concerns about the fairness of decision-making and the legitimacy of decisions involving substantial expenditure. Cases before the Lands Tribunal also frequently involve challenges to the validity of voting, proxy forms, meeting notices and resolutions, including cases where proxy irregularities or procedural defects have required litigation after the meeting has already

taken place (e.g. *Woo Man Fong v Incorporated Owners of Broadview Court (Shum Wan Road) and others* [2019] HKLdT 52 at §10; 蔡建平 *v Leung Po Ling and others* [2021] HKLdT 18 at §§34, 37-46; *Wealth Knight Ltd v 立德大廈業主立案法團* [2024] HKLdT 60 at §§3-4).

22. If a proxy cap is not adopted, there are alternative measures that could be considered, including enhanced disclosure of proxy instruments, earlier lodgement requirements, and strengthened verification procedures. However, in comparison, while such measures would improve transparency and reduce disputes, they do not address the underlying concern about undue concentration of voting power as effectively as a statutory cap. A statutory cap would help address this concern while ensuring, on the other hand, that owners who cannot attend in person may still participate through an authorised representative.

23. As to how the ceiling should be set, it is desirable that the cap reflect the size and characteristics of the development. For instance, for larger developments, a percentage-based cap may be appropriate.

24. Counsel for the Independent Committee (“IC”) has also recommended that the Government considers introducing a statutory cap on proxy holdings for large-scale maintenance procurement (IC Closing Submissions at §1583).

25. With respect to the practical difficulties in enforcing such a ceiling as noted in the Consultation Paper, the HKBA recommends that any excess proxy instrument should not invalidate all proxies held by that person (Consultation Paper at §§4.5-4.6). The statutory rule should specify which proxies remain valid and which have no legal effect. A fair and workable approach, among others, would be to treat proxies as valid in chronological order of lodgement until the cap is reached, unless the owner subsequently revokes or replaces the proxy before the statutory deadline. Whichever approach is chosen, it should be clearly set out in the meeting notice or proxy guidelines.

The MC should ensure that the handling of excess proxies is properly recorded and available for inspection. The process should operate in a way that is both transparent and fair. This will help minimise disputes and maintain confidence in the integrity of the voting process.

(2) Public Disclosure of Proxy Instruments

26. The HKBA supports requiring the public display of proxy instruments to enhance transparency. The schedule identifying the unit, the registered owner and the appointed proxy holder should be posted in a prominent location 48 hours before the meeting. This allows owners sufficient time to identify any irregularities before the meeting takes place, rather than only being able to discover them after votes are counted. For cases involving complaints or allegations of fake proxies and missing proxies, please see *So Kwok Wan Richard and others v The Incorporated Owners of Hoi Tao Building and others* [2024] HKLdT 96 and *Wealth Knight Ltd v 立德大廈業主立案法團* [2024] HKLdT 60 at §§3-4 for illustration (Consultation Paper at §§4.7-4.9; IC Closing Submissions at §§1584-1586).

27. The HKBA recognises the personal data concern noted in the Consultation Paper at §4.8 (see Data Protection Principles in Schedule 1 to the Personal Data (Privacy) Ordinance (Cap. 486) (“**PDPO**”)). To address these concerns, the legislation should specify the minimum information required to be displayed, ensuring compliance with the statutory requirement that collected data is “*adequate but not excessive in relation to that purpose*” (see Data Protection Principle 1). Further, the legislation should limit the use of the information strictly to meeting-related verification, as data protection principles prohibit data being “*used for a new purpose*” without the data subject’s prescribed consent (see Data Protection Principle 3). The legislation should also impose sanctions for misuse, aligning with the existing regime that criminalises the act when a person “*discloses any personal data of a data subject which was obtained from a data user without the data user’s consent*” to obtain financial gain or cause loss (see section

64(1) of the PDPO). Finally, the need for transparency does not require unrestricted copying or dissemination of full proxy instruments. The courts have established that objectives of public transparency do not automatically override privacy rights, and a proportionate approach should be taken: see *Junior Police Officers' Association of The Hong Kong Police Force and another v Electoral Affairs Commission and others* [2020] 3 HKLRD 39 at §96.

28. The HKBA also supports requiring proxy instruments to be lodged 96 hours before meetings involving large-scale maintenance procurement. The longer lodgement period is justified if it is used to verify proxy instruments and to disclose the proxy before votes are cast. It is generally accepted that post-meeting challenges to proxies and resolutions are costly, slow and disruptive. A longer lodgement period should therefore operate as a preventive measure to reduce disputes, rather than serving unduly as an additional procedural hurdle (Consultation Paper at §§4.7-4.9; IC Closing Submissions at §§1584-1586).

(3) Optimising the Format of Proxy Instruments

29. The HKBA considers that adding an optional section for owners to specify voting instructions may be beneficial in some circumstances, particularly where owners wish to ensure that their proxy votes are cast in accordance with their stated preferences. Such section should be voluntary. Subject to the terms of the proxy form, it is possible that, unless otherwise directed or instructed by the owner, the proxy holder may vote at his or her own discretion (*Re Allied Properties (H.K.) Ltd* [2020] HKCFI 2624 at §88 (in the context of a meeting approving a scheme of arrangement)). However, where specific directions are provided by the owner, a proxy is bound by them (*Lo Kai Shui v HSBC International Trustee Ltd and others* [2021] 5 HKC 337 at §224 (in the companies context)). Owners should retain the flexibility to appoint a proxy to vote generally on their behalf and at the proxy's discretion, especially in meetings where discussions and amendments may affect the final resolutions.

30. The HKBA recognises the considerations raised in the Consultation Paper regarding requiring not only the owner but the proxy to sign the proxy instrument, including the potential benefits of confirming that the proxy is aware of and accepts the appointment. However, legally speaking, the legal act of appointing a proxy is completed when the form is both signed by the owner and lodged: see BMO Schedule 3 paragraph 4(4); *Good Castle Holding Ltd v The Incorporated Owners of Hoi Luen Industrial Centre and another* (unrep., LDBM 289/2010, 26 January 2012) at §114. It is also noted that pre-meeting disclosure of the proxy and inspection of proxy instruments at the meeting should provide adequate means to verify proxy appointments. Should these be concerns as to whether the proxy is aware of, and genuinely accepts, the appointment, these existing measures are capable of addressing them.

31. The HKBA supports adding a section requiring owners to confirm that they have noted the meeting agenda and have appointed the proxy. This is consistent with the general principles on meetings, whereby a proxy's authority is tied to the specific business to be transacted (*友邦絲印製品有限公司 v 成運工業大廈業主立案法團 and others* (unrep., LDBM 247/2009, 14 April 2011) at §19). By expressly linking the proxy appointment to the meeting agenda on the form itself, such enhancement promotes informed participation and reduces the risk of owners later alleging misunderstanding or lack of notice, thereby minimising the likelihood of disputes escalating into litigation.

32. The HKBA also supports including a clear statement that providing a false proxy instrument constitutes a criminal offence, together with a reference to the applicable penalties (including the offence of using a false instrument under section 73 of the Crimes Ordinance (Cap. 200), which carries a maximum penalty of 14 years' imprisonment). The warning should be concise and statutory in nature (Consultation Paper at §§4.10-4.15; IC Closing Submissions at §1587).

(4) Imposing Restrictions on the Identity of Authorised Persons

33. The HKBA does not support a general rule restricting proxies to relatives or other owners of the same estate, as such a limitation would unduly curtail owners' freedom and autonomy to appoint a proxy who is able and willing to represent their interests. As recognised by the Lands Tribunal, a proxy "*has a very important role to play and represents the stance of the appointing corporation*", acting as more than a mere messenger (嘉居樂物業管理有限公司 v 家安花園業主立案法團 (unrep., LDBM 188/2004, 21 October 2004) at §28). Furthermore, the Consultation Paper itself recognises that there are practical concerns, including in verifying whether a proxy is a relative, and that such a requirement may create inconvenience for owners who live overseas or do not reside in the estate (Consultation Paper at §§4.16-4.18).

34. If the concern underlying a restriction that limits proxies to relatives or other owners of the same estate is the risk of false or forged proxies, the HKBA recommends strengthening verification measures rather than imposing identity-based restrictions. Property management companies should be required to examine signatures, conduct random audit calls on a defined proportion of submitted proxies, escalate to full review if irregularities appear, and refer suspected fraud to the Police for investigation. These steps should be taken prior to the meeting. As demonstrated in the Lands Tribunal cases, forged proxy forms or bad-faith meeting conduct complained of after the event can lead to full-blown litigation, uncertainty over the validity of resolutions, and delays in ordinary building management (*So Kwok Wan Richard and others v The Incorporated Owners of Hoi Tao Building and others* [2024] HKLdT 96 at §§41-87, 89-111 & 133; IC Closing Submissions at §§1589-1591).

35. The HKBA also recommends that the Government may consider studying a centralised electronic voting platform for statutory voting above defined thresholds. Such a system could reduce reliance on paper proxies, verify voters more securely, timestamp votes, and archive voting records (IC Closing Submissions at §§1594-1595).

Question 3: Declaration of Interests

36. The Government proposes to consider further improving the mechanism of declaration of interests for large-scale maintenance procurement by requiring declaration by works consultants and contractors. The Consultation Paper invites views on questions as to whether persons involved in large-scale maintenance procurement should be required to disclose interests among themselves; whether declared information should be made known to all owners; and whether the declaration form should state that a false declaration constitutes a criminal offence (Consultation Paper at §§5.5-5.9 and Ch.9(3)).

37. The HKBA supports the proposal. The current BMO imposes declaration duties on MC participants and responsible persons for high-value procurement and large-scale maintenance procurement (BMO Schedule 6B paragraphs 1, 9, 10, 17, 22 and 23; Consultation Paper at §§5.1-5.2).

(1) Requiring the Mandatory Declaration of Interests by Persons Involved in the Works

38. Under the BMO, any procurement that falls within the categories of high-value procurement or large-scale maintenance procurement requires the members of the MC and the responsible persons for the procurement, being the manager, or a person acting under the manager's direction in relation to the procurement, to comply with the requirements set out in Schedule 6B before entering into a procurement contract. They must declare any pecuniary or personal interests in a tender submitted, as well as any connection with a tender. In addition, the responsible persons for the procurement must declare any pecuniary or personal dealings, or connections with members of the MC.

39. The present gap is that certain persons involved in the works such as registered inspectors, works consultants and contractors are not mandatorily required to publicly disclose their interests before the large-scale maintenance works commence

(Consultation Paper at §5.2). As stated in the Consultation Paper, such gap may prevent owners from identifying potential conflicts and may facilitate bid-rigging, thereby undermining the fairness of the procurement process. It is justified, and indeed necessary, to strengthen monitoring and disclosure requirements as proposed, particularly in view of the frequent complaints and disputes concerning procurement cases (see, e.g., *輝振有限公司 v 何耀興 and others* [2024] HKLdT 34 at §§1, 114 (noting that litigation triggered by tenders for maintenance works is a common occurrence in the Lands Tribunal); *正好工業大廈業主立案法團 v 傑迅有限公司 and another* [2025] HKLdT 39). Once owners have approved a works contract, allegations of inflated pricing, connected-interest arrangements, opaque tendering or bid-rigging cannot be readily resolved without costly legal proceedings, and further bearing in mind the evidential difficulties involved. All of these demonstrate why it is important and desirable to have effective monitoring taking place before the procurement procedures proceed.

40. The HKBA supports the proposal and recommends that the declaration duty expressly covers direct and indirect interests, including shareholdings, common directors, family relationships, business co-operation, referral or rebate arrangements, and any arrangement that may reasonably affect independent judgment. A “nil interest” declaration should also be required where no interest exists. The duty should arise early enough for owners to consider the declarations before voting (Consultation Paper at §5.5; *正好工業大廈* at §§123-124).

(2) Requiring the Disclosure of Information on Declared Interests

41. The HKBA supports the disclosure of all declarations to owners. The BMO already requires declaration notices to be displayed and declarations to be kept and made available for inspection in existing procurement contexts (BMO Schedule 6B paragraphs 4, 6, 13, 15, 20, 21, 26 and 27). This is consistent with the current statutory approach and will assist owners in identifying any potential conflicts of interest.

(3) Setting out the Legal Consequences of Making False Declarations

42. The proposal is that the specified declaration form must expressly state that making a false declaration constitutes a criminal offence and set out the relevant penalties. This is intended to enhance the veracity of the information declared and to deter potential misconduct. The HKBA supports this requirement. A false declaration completely compromises the basis on which owners make decisions and prejudices financial interests. It is appreciated that some argue that connections between contracts are often highly concealed, making it difficult even for law enforcement agencies to prove illegal links and secure convictions. However, this does not justify dispensing with declaration requirements. Complementary measures to combat illicit bid-rigging activities would of course be welcome and should operate alongside clear and enforceable declaration obligations (Consultation Paper at §§5.7-5.9).

Question 4: Powers of the Authority

43. The Government proposes to consider granting the Authority additional powers to intervene and provide assistance in special circumstances where the MC cannot function normally or fails to handle the affairs of the OC, and in circumstances where the OC Chairman refuses to convene a general meeting at the request of 5% of the owners or cancels a meeting without reasonable cause. The Consultation Paper invites views on whether the Authority should intervene (i) where an MC cannot function normally; (ii) where the MC Chairman refuses to convene a meeting requested by 5% of owners; (iii) where the Chairman cancels a meeting without reasonable cause; and (iv) whether an appeal board should be established (Consultation Paper at §§6.8-6.15 and Chapter 9(4)).

44. The HKBA supports giving the Authority enhanced powers to intervene in clearly defined circumstances. The current BMO section 31 route remains important, but it is not sufficient as the sole practical response to MC dysfunction. The authorities reveal several distinct and recurring problems:

- 44.1 An MC may become defunct because its members, including office-bearers, have disposed of their units and thereby ceased to hold office (*Smart Wealth Asia Pacific Ltd v The Incorporated Owners of Kelly Court* (unrep., LDBM 251/2013, 31 December 2013) at §§6-7, 14 & 17; *Asia Turbo Development Ltd and another v The Incorporated Owners of Tai Chi Factory Building* (unrep., LDBM 286/2013, 24 February 2014) at §§4-5 & 10).
- 44.2 A vacant chairmanship may paralyse the convening of general meetings, because the statutory machinery depends on the chairman initiating the meeting (*Kannix Ltd v The Incorporated Owners of On Hing Building* (unrep., LDBM 57/2014, 30 May 2014) at §§4-5, 8 & 10; *周春燕 and others v 富嘉花園業主立案法團* (unrep., LDBM 300/2013, 22 August 2014) at §§7-9, 13, 19 & 23; *寶利實業有限公司 v 豐明大樓業主立案法團* (unrep., LDBM 140/2016, 26 September 2016) at §§2, 14 & 16).
- 44.3 Selective non-enforcement of the Deed of Mutual Covenant (“DMC”), especially where MC members are themselves implicated, may indicate that the MC is unwilling or unable to perform its statutory duties (*Wing Ming Garment Factory Ltd v The Incorporated Owners of Wing Ming Industrial Centre* [2025] HKLdT 20 at §§221, 363-364).

(1) Assisting with the Re-election of a New MC when Vacancies Arise

45. The HKBA agrees that a remaining MC member who is not the Chairman should be allowed to convene a meeting to fill vacancies. The Consultation Paper proposes amending BMO Schedule 2 section 6A for this purpose (Consultation Paper at §6.8).

46. The HKBA supports empowering the Authority to appoint a specified person where all MC positions are vacant or where all MC members cannot be contacted within

a reasonable period. The present proposal requires an application by not less than 10% of owners. The HKBA welcomes this mechanism, but it may be in need of further consideration. The Lands Tribunal cases show that a building with a defunct or inquorate MC may be precisely the kind of building in which owners are least able to submit a 10% application promptly.

47. The HKBA recommends that the Authority should have an own-motion power to intervene where objective statutory triggers exist. Such triggers may include the absence of all office-bearers, failure to convene an AGM within the statutory period, refusal to convene a meeting on a 5% request, repeated non-compliance with statutory safety notices, or failure to keep or provide books and records, etc. These situations reflect recurring problems identified in the Lands Tribunal decisions (Consultation Paper at §§6.2-6.4, 6.9; BMO Schedule 2 paragraph 1; Schedule 3 paragraph 1; sections 18(1)(b), 27 and 36A).

(2) Intervening in Cases where the MC Chairman Refuses to Convene an Owners' Meeting at the Request of 5% of the Owners

48. The HKBA supports intervention by the Authority where the MC Chairman refuses to convene a meeting requested by not less than 5% of owners. Under the BMO Schedule 3 paragraph 1(2), the Chairman must convene such a meeting within 14 days of receiving the request and hold it within 45 days.

(3) Intervening in Cases where the MC Chairman Cancels an Owners' Meeting without Reasonable Cause

49. The HKBA also supports intervention by the Authority where the Chairman cancels a meeting without reasonable cause. As a matter of caution, any such power should be framed to respect the Chairman's proper procedural discretion. At the same time, it must be capable of addressing plain cases where cancellation is used to

manipulate the agenda or disrupt the meeting process, which would amount to cancellation without reasonable cause (Consultation Paper at §§6.11-6.13).

(4) Establishing an Appeal Board (Building Management)

50. The HKBA notes that the proposal to establish an appeal board raises, and is subject to, most importantly, a fundamental question of jurisdiction. Until it is clear how the jurisdiction of any appeal board would be reconciled with that of the Lands Tribunal, the HKBA is not in a position to express any view on the establishment of such a body. At present, there remain too many uncertainties and qualifications for the HKBA to take any stance on the proposal.

51. The proposal states that owners who object to a decision made by the Authority may lodge an appeal with the appeal board (Consultation Paper at §§6.14-6.15). It is unclear whether, and, if not, why such objections could not be addressed by the Lands Tribunal, which already has jurisdiction under the BMO Schedule 10 to interpret and enforce the Ordinance and adjudicates and provides established remedies in dissolution applications, appointment of administrators, meeting-validity disputes, accounting and inspection and handover disputes. Without precise delineation or jurisdiction, there is a real risk of parallel or duplicative proceedings.

52. On a related note, it is observed that under the Buildings Ordinance (Cap. 123) there is a statutory appeal mechanism through the establishment of the Buildings Appeal Tribunal, with sections 44 to 51 governing a right of appeal to that Tribunal, and providing for its constitution, prescribed membership, procedures, powers, costs provisions and relevant offences. The Building (Appeal) Regulation (Cap. 123L) also set out detailed procedural rules governing filing, hearings, evidence, costs and compliance. It appears that, crucially, the Buildings Appeal Tribunal operates in a regulatory landscape where, unlike the present context, there is no statutorily designated judicial body comparable to the Lands Tribunal. Moreover, decisions of the Building Appeal Tribunal remain subject to judicial review.

53. The proposal further suggests that decisions of the appeal board would be “binding and conclusive” to avoid protracted litigation. This requires careful consideration. In particular, it is unclear whether such decisions would be insulated from judicial review and, if so, whether that would be legally permissible. These are complex questions with significant legal implications, and they must be examined and resolved before any proposal for an appeal board can properly be taken forward.

Question 5: Meeting Procedures

54. The Government proposes to consider further clarifying the provisions concerning the procedures for holding owners’ meetings, the arrangements for agenda setting, and the mechanisms for proposing to adjourn or suspend a meeting during its course, so as to protect the rights of owners and to ensure that OCs act according to the law. The Consultation Paper invites views on matters concerning (i) repeated 5% requests to convene owners’ meetings; (ii) alteration of agenda items; (iii) unilateral postponement or suspension of meetings; and (iv) shortened notice periods for emergencies (Consultation Paper at §§7.5, 7.10, 7.14, 7.20 and Chapter 9(5)).

55. The HKBA supports clarification of meeting procedures. BMO Schedule 3 requires 14 days’ notice of an owners’ meeting, specifying the date, time, place and proposed resolutions or matters, and limits resolutions to matters set out in the notice or ancillary or incidental to them. Disputes about meeting procedures recur frequently in the Lands Tribunal case law: e.g. *Woo Man Fong v The Incorporated Owners of Broadview Court (Shum Wan Road) and others* [2019] HKLdT 52 at §10; 蔡建平 v *Leung Po Ling and others* [2021] HKLdT 18 at §§34, 37-46; *Wealth Knight Ltd v 立德大廈業主立案法團* [2024] HKLdT 60 at §§3-4.

56. The purpose of any amendment should accordingly be the prevention and minimisation of disputes. Clear rules would allow owners and chairmen to know, before the meeting, what can validly be done and what cannot, thereby reducing uncertainty and avoiding disputes (Consultation Paper at §§7.1-7.2).

(1) Addressing Repeated Issues

57. The HKBA supports the introduction of reasonable restrictions on repeated requests, but only if the term “repeated request” is defined narrowly (Consultation Paper at §§7.3-7.5). A request should be regarded as “repeated” only where it concerns substantially the same resolution, based on substantially the same facts, within a clearly defined period. The definition should not extend to a request prompted by new information, materially changed circumstances, or non-compliance with a previous duly passed resolution.

(2) Altering the Meeting Agenda

58. The HKBA supports prohibiting a chairman from altering or excluding a 5% owners’ agenda item without reasonable cause, provided the item falls within the powers conferred by the BMO (Consultation Paper at §§7.6-7.10). This aligns with the established Lands Tribunal authorities which confirm that upon a 5% owners’ request, the chairman has little alternative but to convene the meeting as required of him statutorily; he has no discretion in the circumstances (*兆軒苑業主立案法團 v 馮志昌 and another* (unrep., LDBM 262/2013, 16 October 2014) at §25). The concern is not theoretical. The Lands Tribunal cases show owners resorting to litigation only after meeting irregularities have already occurred. It is far preferable to define the chairman’s powers clearly at the outset, so that owners and chairmen alike know what may or may not be done, rather than leaving owners having to seek declaratory relief after a resolution has been passed or a meeting has failed.

(3) Postponing or Suspending a Meeting

59. The HKBA supports clarifying that a chairman may not unilaterally postpone or suspend an owners’ meeting after its commencement without reasonable cause. There have been occasions in practice where an MC chairman has unilaterally declared the

adjournment or postponement of an owners' meeting after it had begun, refused to preside over the meeting, and departed from the venue. The statutory position should be made clear. If the chairman leaves and the owners wish to continue, the owners present should be able to elect one of themselves to chair and conduct the meeting (Consultation Paper at §§7.11-7.14; BMO Schedule 3 paragraph 3(1)(c)). This would reduce the risk that the statutory meeting machinery is defeated by the absence, resignation or refusal of a single office-holder, a problem which has appeared in the Lands Tribunal cases concerning vacant chairmanship and defunct MCs (e.g. **On Hing Building**; 富嘉花園).

60. Clear rules would provide certainty to owners and chairmen alike and would help prevent disputes arising from irregularities occurring in the middle of a meeting.

(4) Dealing with Emergencies

61. The HKBA supports the introduction of emergency meeting procedures. The Consultation Paper rightly recognises that emergency requires a clear and workable definition (Consultation Paper at §§7.15-7.20). A properly framed emergency mechanism would allow owners' meetings to be convened and conducted lawfully despite urgent conditions, while maintaining safeguards against misuse. Clear criteria and procedures would promote certainty, reduce potential disputes and ensure that all essential decisions can be made promptly when the building or its owners face immediate risk.

62. The HKBA recommends that emergency procedures should not be confined to procurement-related meetings. They should also apply in exceptional circumstances where strict compliance with notice or service requirements has become impracticable, e.g. in situations involving fire, structural collapse or other disaster affecting the building or its occupants, as further considered under **Question 6** below.

Question 6: Other Proposed Amendments

63. With a view to optimising the overall operation and effective enforcement of the BMO, the Consultation Paper also invites views on matters concerning (i) eligibility criteria for non-member secretaries and treasurers; (ii) whether declaration forms should expressly state that making a false instrument is a criminal offence; and (iii) whether the Lands Tribunal should be expressly empowered to deal with OC meeting arrangements in exceptional circumstances (Consultation Paper at §§8.5, 8.8 and Ch.9(6)).

(1) Extending the Existing MC Member Eligibility Criteria to Officers (namely, the Positions of Secretary and Treasurer) Held by Persons Who Are Not MC Members

64. The HKBA supports extending MC-member eligibility criteria to non-member secretaries and treasurers. BMO Schedule 2 provides that a person may be appointed as secretary or treasurer even if he or she is not an MC member. It also prescribes eligibility criteria for MC members, including disqualification on grounds such as bankruptcy and serious criminal convictions (Consultation Paper at §§8.2-8.5).

65. The extension of eligibility criteria to non-member secretaries and treasurers is justified because such office holders may handle tender documents, procurement contracts and bank account records (Consultation Paper at §8.3). Their functions directly engage financial accountability, transparency and compliance. The Lands Tribunal decisions concerning financial record-keeping and handover obligations demonstrate the importance of proper financial governance and the risk posed when records are mishandled or unavailable (BMO sections 27 and 36A; Schedule 3 paragraphs 6-6A; Schedule 7 paragraph 8; *Simon Patrick Michael Durrant v Incorporated Owners of Southorn Development* (unrep., LDBM 230/2013, 18 November 2013) at §§8-19; *The Incorporated Owners of Yuen Long Wah On Villa v Guardway Security Guarding Service Ltd t/a Guardway Property Management* (unrep.,

LDBM 224/2010, 21 August 2012) at §5; *百誠大廈業主立案法團 v 合豐物業管理有限公司* (unrep., LDBM 128/2012, 8 February 2013) at §§3, 31).

66. Applying consistent eligibility standards to all individuals performing key roles or functions would therefore strengthen governance, reduce risk and support effective enforcement of the BMO.

67. The HKBA supports requiring the relevant declaration form to state expressly that making a false instrument constitutes a criminal offence and to set out the penalties. Such a requirement would promote further clarity, deterrence and informed consent, ensuring that office-holders understand the seriousness of the declaration and the legal consequences of dishonesty (Consultation Paper at §§8.3-8.5) (see, for example, *HKSAR v Gurung, Dinesh* [2025] HKCFI 942 at §2, where the defendant was convicted of using a false instrument contrary to section 73 of the Crimes Ordinance (Cap. 200) for submitting a false declaration form, illustrating that such dishonesty is strictly punishable as a criminal offence even in the absence of an express warning).

(2) Jurisdiction of the Lands Tribunal

68. The HKBA supports conferring an express power on the Lands Tribunal to deal with arrangements for OC meetings in exceptional circumstances (Consultation Paper at §§8.6-8.8).

69. The recent decision in *Hop On Management Co Ltd, as the administrator of the Incorporated Owners of Wang Fuk Court, in the capacity of the chairman of the management committee of the Incorporated Owners of Wang Fuk Court v All Owners of Wang Fuk Court* [2026] HKLdT 35 illustrates the problem. Following the fire at Wang Fuk Court, the administrator of Incorporated Owners of Wang Fuk Court sought extensions of time for convening and holding a general meeting, and directions for alternative service because ordinary service methods were impracticable or ineffective

(at §§1-3). The Tribunal held that it had no jurisdiction under the BMO to order alternative modes of giving notice of meeting, no jurisdiction to extend time for convening and holding meetings, and no inherent jurisdiction to modify statutory rules where the matter is regulated by statute (at §§75-80).

70. That decision demonstrates the need for an express statutory power. The HKBA supports expressly empowering the Lands Tribunal to extend time, approve alternative notice or service methods, and make practical directions where compliance with ordinary meeting procedures is impossible or impracticable in exceptional circumstances. Such a power would ensure that essential governance functions can continue despite disruption and would prevent the statutory machinery from being defeated by events beyond the owners' control.

Additional Matter: Enforcement of DMC Obligations

71. The HKBA invites the Government to consider further reform concerning enforcement of DMC obligations.

72. A persistent difficulty identified in the Lands Tribunal cases arises where an owner commits a breach, such as unauthorised alterations or fire hazards in common areas, but the OC refuses to take enforcement action. This scenario is most acute where the person in breach is an owner-member of the MC, but it also arises where the OC majority is unwilling to expend the resources necessary to pursue enforcement.

73. Under BMO section 18, the OC has a statutory duty to enforce the DMC provisions relating to the management and control of the building. However, this duty has been interpreted as not being absolute. In the recent case of *Centre Chase Investment Limited v The Incorporated Owners of Castle Peak Road International Industrial Building and STL Company Limited* [2026] HKCFA 26 at §§66-69, 84, the Court of Final Appeal clarified that an OC may acquiesce in a breach of the DMC. This may substantially limit the legal avenue available to dissenting owners.

74. A co-owner lacks locus to enforce the DMC directly and can only request the OC to do so. Such gap may allow structural or fire safety breaches to persist if a compliant OC majority refuses to act. The principal remedy currently available is to seek dissolution of the MC under BMO section 31, but that is a disproportionate response to what may be a straightforward enforcement failure.

75. It may be worth exploring whether the BMO should introduce a mechanism enabling relevant owners to seek permission to bring an enforcement action in the name of the OC where the OC or MC unreasonably refuses to act on a safety-critical breach of the DMC. Such a mechanism would be analogous to the principles underlying derivative actions in company law, allowing one or more owners to step into the position of the OC solely for the purpose of enforcing essential obligations relating to building safety.

76. The pre-conditions for such an application could include: (i) a breach of a safety-critical provision has occurred or is continuing; and (ii) that the OC has unreasonably refused or failed to take enforcement action.

77. The court or the Lands Tribunal could be empowered to grant injunctive relief, order remedial works, and award costs against the person in breach. Safeguards against vexatious or low-value claims could also be examined, such as requiring the applicant to demonstrate that the breach poses a material risk to the health or safety of occupants.

78. Complementary mechanisms could also be examined, such as a statutory notice-to-comply procedure enabling the relevant owners to require the OC to consider enforcement formally, targeted Tribunal powers to direct the OC to take enforcement action in defined circumstances, or an escalation mechanism allowing the Authority to intervene where safety-critical breaches persist for a specified period.

79. These options could be explored together to determine the most effective and proportionate means of protecting building safety where the OC declines to act.

Conclusion

80. For the above reasons, the HKBA supports the overall reform direction of the Consultation Paper. The proposals help improve transparency, reduce proxy abuse, strengthen declarations of interest, give the Authority targeted intervention powers, and clarify meeting procedures.

81. The HKBA would welcome continued engagement as the Government prepares the legislative proposals for introduction to the Legislative Council.

Hong Kong Bar Association

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