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Paper for the House Committee meeting

**Report of the Bills Committee on Building Management
(Amendment) Bill 2023**

Purpose

This paper reports on the deliberations of the Bills Committee on Building Management (Amendment) Bill 2023 (“the Bills Committee”).

Background

2. The Administration has pointed out that private buildings are the property of owners, and it is owners’ responsibility to manage their buildings properly. The Building Management Ordinance (Cap. 344) (“BMO”) provides a legal framework for owners to form and run owners’ corporations (“OCs”), which are body corporates that have the legal power to manage the common parts of the buildings on behalf of all owners.

3. According to the Administration, with a growing number of aged buildings in need of repair and renovation, owners are increasingly concerned about how decisions on major building maintenance are made by OCs. Besides, there has been a strong call from the community for better control over how the management committees (“MCs”), being the executive arm of OCs, handle day-to-day management. In the light of this, the Administration has, after conducting public consultation and taking into account the views of stakeholders, introduced the Building Management (Amendment) Bill 2023 (“the Bill”) into the Legislative Council (“LegCo”) to require the engagement of more owners in procurement decisions, to improve the transparency and accountability of the operation of MCs, as well as to enhance deterrence against non-compliance with BMO by amending BMO.

Building Management (Amendment) Bill 2023

4. The Bill was gazetted on 8 December 2023 and received its First Reading at the Council meeting of 13 December 2023. The Bill seeks to amend BMO to:

- (a) impose certain requirements in relation to the procurement of supplies, goods or services required for large-scale building maintenance and of other high-value supplies, goods or services required for building management;
- (b) provide for a mechanism under which natural persons authorized by corporate flat owners (i.e. owners being bodies corporate) may act for the latter at general meetings (“GMs”) of OCs, etc.;
- (c) impose or adjust certain requirements in relation to financial statements and other accounting documents of OCs, etc. and in relation to the procedure of meetings concerning building management;
- (d) criminalize the failure to keep certain documents concerning building management; and
- (e) make related and miscellaneous amendments.

5. The Bill, if passed, will come into operation on the expiry of 12 months after the day on which it is published in the Gazette as an Ordinance.

The Bills Committee

6. At the House Committee meeting on 5 January 2024, members agreed to form a bills committee to scrutinize the Bill. The membership list of the Bills Committee is in **Appendix 1**.

7. Under the chairmanship of Hon Tony TSE, the Bills Committee has held 10 meetings with the Administration and received oral representations from deputations and members of the public at one of the meetings. A list of the organizations and individuals which/who have given views to the Bills Committee is in **Appendix 2**.

Deliberations of the Bills Committee

Large-scale maintenance procurement

Relevant definition and proposed new requirements

8. The Administration has pointed out that with a growing number of aged buildings in need of repair and renovation, there have been disputes over large-scale maintenance projects of buildings from time to time. The Bill proposes to provide in BMO three categories of procurement (i.e. type 1 high-value procurement and type 2 high-value procurement as defined under the original provisions of BMO, as well as large-scale maintenance procurement newly introduced by the Bill) and put in place new tendering and declaration requirements for the above three categories of procurement. In respect of large-scale maintenance procurement, the proposed new section 2D of BMO provides that procurement for any maintenance project will be considered as large-scale maintenance procurement if the average value of the project per flat in the building concerned exceeds \$30,000¹, and subject to additional specified declaration requirements, as well as requirements for the procedures at GMs of OCs.

9. Currently, owners may attend GMs of OCs in person or through appointing proxies. The Administration has pointed out that with proxies, it is possible that resolutions for procurement are passed with the presence of only a few owners. Given the huge stake involved in large-scale maintenance procurement, the Administration has advised that it is recommended to mandate a certain level of owners' in-person participation, in order to protect their interests and to minimize potential disputes. To this end, the Bill proposes to add paragraph 4 of the proposed new Schedule 6C to BMO and to amend paragraph 48 of Schedule 7 to BMO in order to require that a resolution for large-scale maintenance procurement can only be passed if at least 5% of the owners or 100 owners (whichever is the lesser) have voted in person. The Bill also proposes to provide for a new mechanism (paragraph 14) under which corporate flat owners may authorize natural persons to attend GMs of OCs on their behalf

¹ According to the Administration, the figure has made reference to the costs of projects under the Building Rehabilitation Schemes of the Urban Renewal Authority. Any garage, carpark or carport will not be counted as building flats. Besides, procurement for recurring and regular services, such as cleaning, security and engagement of property management companies, will be excluded from the definition of large-scale maintenance procurement to avoid disruption to daily building management services.

and vote for them personally, such that corporate owners will be regarded as having voted in person at the meeting.

10. To draw owners' attention to the discussion of large-scale maintenance procurement, paragraph 3 of the proposed new Schedule 6C and Division 4 of Part 3 of Schedule 7 to BMO require that the relevant notice of meeting must set out an "important reminder" to specify that the meeting agenda will cover such procurement, with estimated amounts to be contributed from the building management fund and by each building flat owner for the procurement. Furthermore, to enhance transparency, the Bill also proposes that copies of the meeting minutes concerning large-scale maintenance works must be supplied to all owners and tenants' representatives within 28 days after the date of meeting, and record the number of votes from owners voting in person and by proxy respectively for the resolution for large-scale maintenance procurement.

Voting-in-person requirement and records

11. Members have expressed concern about how the voting-in-person requirement can be deemed satisfied. The Administration has explained that in order to satisfy the voting-in-person requirement, owners must attend the meeting in person and mark their voting preference on the ballot paper in person. If the owner concerned has done so, the voting-in-person requirement will be deemed satisfied even if he leaves the meeting early and hands the marked ballot paper to the secretary of MC or other attendees for them to put it into the ballot box on his behalf.

12. Members have enquired about the calculation of the number of owners referred to in paragraph 4(2) of the proposed new Schedule 6C and paragraph 48(2) of Schedule 7 to BMO in relation to the "voting-in-person threshold" (i.e. 5% of the owners or 100 owners (whichever is the lesser)). The Administration has explained that while there are a number of provisions in the existing BMO which make reference to the percentage of owners², section 5B of and Schedule 11 to BMO seek to explain how the percentage of owners is calculated. The same calculation method applies for the application of the number of owners as referred to in the "voting-in-person threshold". The Administration will propose amendments to amend the wording of section 5B of and Schedule 11 to BMO to make Schedule 11 applicable in the calculation of the percentage of owners and the number of owners. Paragraph (a) of Schedule 11 will be amended to cover paragraph 4(2)(b) of the proposed new Schedule 6C and

² The provisions are mainly in relation to the quorum requirement. For example, paragraph 5(1) of Schedule 3 provides that the quorum for an OC meeting shall normally be 10% of the owners.

paragraphs 11(1) and 48(2)(b) of Schedule 7 in the reference to the relevant provisions.

13. The Legal Adviser to the Bills Committee has expressed concern that as there will be no requirement similar to that as proposed in paragraph 5 of the proposed new Schedule 6C in respect of the recording of the number of votes cast in person and by proxy in the minutes of the proceedings at GMs of OCs in Schedule 7 to BMO, the new requirement will not apply to buildings in respect of which no OCs are formed. Members are of the view that given the grave importance of large-scale maintenance procurement, for buildings in respect of which no OCs are formed, the relevant minutes of meetings of owners should also be subject to the above requirement. Having considered members' views, the Administration has agreed to propose amendments with reference to paragraph 5 of the proposed new Schedule 6C to require that the minutes of the proceedings at a meeting of owners to consider a resolution on large-scale maintenance procurement should record the number of votes cast in person and by proxy under the proposed new Division 4 of Part 3 of Schedule 7, to the effect that the requirements of paragraph 5 of the proposed new Schedule 6C are also applicable to cases without OCs.

14. The Bill proposes to provide for a new mechanism under which corporate flat owners may be represented at GMs of OCs/meetings of owners by natural persons authorized by them. Under the proposed new paragraph 4A of Schedule 3 and Division 3 of Part 3 of Schedule 7 to BMO, a corporate flat owner may by a resolution of its directors or other governing body nominate one natural person and by a specified written notice given to the secretary of MC/the person in charge of the meeting authorize that person to act on behalf of the corporate flat owner at the meeting (if an authorized natural person votes on behalf of the corporate flat owner at the meeting, the owner concerned is deemed to have voted in person at the meeting). However, members consider that there is room for streamlining the relevant authorization procedures. Having considered members' suggestion, the Administration has agreed to propose amendments to the proposed new paragraph 4A of Schedule 3 and paragraph 41 of Schedule 7 to BMO to enable a body corporate owner to authorize a natural person by a notice of authorization (a resolution of its directors or other governing body is no longer needed) to streamline the relevant authorization procedures.

Splitting of contract to circumvent the definition of “large-scale maintenance procurement”

15. Members are concerned about how the Administration can prevent OCs from deliberately splitting the contract for procurement items for the sole purpose of circumventing the definition of “large-scale maintenance procurement”. The Administration has explained that the existing BMO expressly prohibits the deliberate splitting of procurement items. Section 20A(7) of the existing BMO provides that the court may, having regard to the overall circumstances, make an order declaring the contract void or voidable if it is satisfied that the OC has deliberately split a contract of greater value to avoid compliance with the relevant statutory requirements. This existing requirement will also be retained after the amendment of BMO (see the proposed new section 28J).

16. On the definition of “large-scale maintenance procurement”, the Administration has explained that the proposed new section 2D of BMO expressly provides that this type of procurement is mainly for repairing, replacing, maintaining or improving the common parts of the building, and a works project will be considered a large-scale maintenance procurement only if the average procurement value per flat exceeds \$30,000. Besides, procurement for recurring and regular services such as cleaning, security and engagement of property management companies (“PMCs”) will be excluded from the definition of large-scale maintenance procurement.

Calculation of building flats

17. Members have noted that the exclusion of garage, carpark and carport in the definition of “flat” (see footnote 1) when calculating the average procurement value per flat for large-scale maintenance procurement under the proposed new section 2D(2) of BMO is to prevent the resulting average value being substantially lowered because the building has many garages, carparks and carports, which would preclude the procurement concerned as large-scale maintenance procurement and hence, not subject to more stringent tendering requirements and meeting procedures.

18. Members have enquired whether flats also include shops in shopping arcades and rooftops with shares of ownership, and how the proposed new section 2D(2) would apply to buildings with carparks only. The Administration has responded that under the definition in the existing section 2 of BMO, “flat” means any premises in a building which are referred to in a deed of mutual covenant (“DMC”) whether described as a flat or by any other name and whether used for the purpose of a dwelling,

shop, etc., over which the owner has exclusive possession. If any shop in shopping arcade and rooftop of the building concerned can fit the relevant definition in accordance with DMC, it can be regarded as a flat.

19. As for buildings with garages, carparks and carports only, the Administration has advised that after consideration, it will propose amendments to the effect that the proposed new section 2D(2) of BMO will not apply to buildings that consist only of garages, carparks or carports.

Procurement requirements for the three proposed categories of procurement

20. Other than large-scale maintenance procurement, the Bill will also impose additional requirements on high-value procurement³ conducted by OCs. Under the existing section 20A of BMO, any supplies, goods or services with a value exceeding or likely exceeding \$200,000 or 20% of the annual budget of OCs, whichever is the lesser, is to be procured by invitation to tender by OCs, and the acceptance of tender or otherwise for the latter must be decided by a resolution of the owners passed at GMs of OCs. The Bill proposes to replace the “annual budget” benchmark by “average annual expenditure in the last three years” in order to better reflect the actual expenditure pattern of OCs and reduce the risk of circumventing the tendering and related requirements by deliberately inflating the annual budget.

21. In addition, the Bill proposes certain new requirements under the proposed new Schedule 6B and Division 4 of Part 2 of Schedule 7 to BMO to enhance the integrity and transparency of the conduct of tender for large-scale maintenance procurement and high-value procurement. Among others, members, secretary or treasurer of MCs, managers and other persons responsible for conducting the procurement will need to declare any pecuniary or personal interests in the tenders submitted for the procurement concerned, or connections with a person who has submitted a tender. Where a declaration is made, MCs will need to display a notice of declaration in a prominent place in the building to inform owners, and certain restrictions (e.g. prohibition from attending MC meetings and participating in procurement activities) will apply to the relevant persons.

³ Where the value of supplies, goods or services exceeds, or is likely to exceed, \$200,000 but does not exceed, or is not likely to exceed, 20% of average annual expenditure in the last three financial years (referred to as “**type 1 high-value procurement**” in the Bill), or the value of supplies, goods or services exceeds, or is likely to exceed, 20% of average annual expenditure in the last three financial years (referred to as “**type 2 high-value procurement**” in the Bill).

22. Besides, the Bill also proposes under the proposed new Schedule 6A and Division 3 of Part 2 of Schedule 7 to BMO the requirements, among others, to display a copy of invitation to tender in a prominent place in the building for owners' information; bar the acceptance of tenders submitted after the deadline; and specify the minimum number of potential suppliers that must be invited for procurement the value of which exceeds a certain amount⁴.

23. To facilitate understanding of the proposed new requirements for the aforesaid three proposed new categories of procurement (i.e. large-scale maintenance procurement, type 1 high-value procurement and type 2 high-value procurement) under the Bill, the Administration has summarized sequentially the relevant requirements in the form of a diagram (see **Appendix 3**).

Declarations of interests

Definition of "responsible person"

24. Members note that the Bill proposes to add the definition of "responsible person" under section 2(1) of BMO to provide for the persons who are required to make declarations under the proposed new Schedule 6B (paragraphs 9, 10 and 22) and Division 4 of Part 2 of Schedule 7 to BMO in respect of high-value procurement and large-scale maintenance procurement.⁵ "Responsible persons" include, in addition to the manager, persons "accustomed or obliged to act in accordance with the directions or instructions of the manager in connection with the procurement" ("慣於或

⁴ For procurement with a value exceeding or likely exceeding \$200,000, an invitation to tender must have been issued to **no less than 5** potential suppliers; for procurement with a value exceeding or likely exceeding \$10,000 but not exceeding or unlikely exceeding \$200,000, an invitation to tender must have been issued to **no less than 3** potential suppliers.

⁵ According to the proposed section 2(1):
"responsible person (負責人), in relation to the procurement of any supplies, goods or services for a building—
(a) means—
(i) the manager of the building; or
(ii) a person who is accustomed or obliged to act in accordance with the directions or instructions of the manager in connection with the procurement, regardless of whether the directions or instructions are made to the person directly or indirectly; and
(b) does not include a member, secretary or treasurer of the management committee in respect of the building".

有義務按照經理人就有關採購而給予指示或指令行事的人”). The Administration has explained that this takes into account the fact that a manager (usually a property management company) may enlist the assistance of other persons, who are not necessarily its employees or agents (e.g. those belonging to the subsidiaries or associates within the same group of companies), in large-scale procurement. The proposed definition is adopted in the Bill to cover all persons responsible for procurement as far as possible, in order to better protect the interests of owners in high-value procurement and large-scale maintenance procurement.

25. Members are concerned that in relation to the definition of “responsible person”, whether it is accurate to render the term “obliged” in the English text as “有義務” in the Chinese text. Having considered members’ views, the Administration has agreed to propose amendments to change the term “有義務” in the relevant Chinese provisions to “有責任” for enhancing clarity of the provisions. For consistency in wording, the Administration will also propose amendments to change the term “有義務” to “有責任” in the Chinese text of the proposed new section 2(5)(g) of BMO.

26. Members have also expressed concern that the wording of paragraph (a)(ii) of the definition of “responsible person” in the proposed section 2(1) of BMO (see footnote 5) may be interpreted to mean that a person would become a responsible person because of trivial duties concerning the procurement. In response to members’ views, the Administration has advised that it will propose amendments so that paragraph (a)(ii) of the definition of “responsible person” in the proposed section 2(1) will be worded along the following line: “a person who is accustomed or obliged to act in accordance with the directions or instructions of the manager in connection with **substantive matters in respect of** the procurement, regardless of whether the directions or instructions are made to the person directly or indirectly” (“慣於或**有責任**按照該經理人就有關採購的**實質事宜**而給予的指示或指令行事的人(不論該等指示或指令，是直接給予該人，抑或是間接給予該人)”).

27. Moreover, for consistency in wording, the Administration will also propose amendments to paragraphs 13(2)(b)(ii) and 25(2)(b)(ii) of the proposed new Schedule 6B and the proposed new paragraphs 26(2)(b)(ii) and 34(2)(b)(ii) of Schedule 7 to BMO (regarding the capacity of the person making the declaration as described in the declaration notice or document) to change the reference to “the management of the building” to “substantive matters in respect of the procurement”.

28. Members have noted that in addition to responsible person, MC participants (i.e. members, secretary or treasurer of MCs) are also required to make declarations under the proposed new Schedule 6B to BMO (paragraphs 1 and 17) in respect of high-value procurement and large-scale maintenance procurement. As it is possible that an MC participant may also be the responsible person for the procurement, members are concerned about the need for double declaration by such persons. The Administration has explained that to avoid double declaration by such persons, MC participants have been excluded from the definition of “responsible person” (see paragraph (b) of the definition of “responsible person” in the proposed section 2(1) of BMO) (see footnote 5).

Proposed new requirements relating to declarations

29. The proposed new section 2(5) of BMO contains a list setting out the circumstances where a person would have a connection with another person for the purposes of the amended BMO, such that MC participants and responsible persons are required to make declarations in respect of high-value procurement and large-scale maintenance procurement (the relevant requirements are set out in the proposed new Schedule 6B to BMO, such as those in paragraphs 1(1) and 9(2)).

30. Apart from connection with another person, the Bill also proposes the requirement for MC participants and responsible persons to declare any pecuniary or other personal interests in a tender (e.g. paragraphs 1(1) and 10(1) of the proposed new Schedule 6B to BMO). Responsible persons are also required to declare any pecuniary or other personal dealing with MC members (e.g. paragraph 9(1) of the proposed new Schedule 6B to BMO). For this reason, the circumstances involving any pecuniary or other personal interests and dealings should be declared even if certain relationships (including cohabitants, former cohabitants and former spouses) are not covered by the proposed new section 2(5) of BMO.

31. In response to members’ concerns, the Administration has advised that the meaning of the term “spouse” in the proposed new section 2(5) of BMO refers only to spouse in a heterosexual marriage. Nevertheless, as mentioned above, even if the meaning of “spouse” does not cover certain relationships (e.g. partner in a civil partnership), any pecuniary or other personal interests and dealings should still be declared.

32. The Bill also proposes that after making the declaration, MC participants will be prevented from attending MC meetings and participating in procurement activities, whereas restrictions on responsible

persons will only be imposed regarding participation in procurement activities, in view that there is practical need for managers to attend MC meetings (see paragraphs 7, 8 and 16 of the proposed new Schedule 6B to BMO). In this connection, at members' suggestion, the Administration has agreed to propose amendments to paragraph 16(1) of the proposed new Schedule 6B to BMO to the effect that a responsible person will be prohibited from participating in procurement activities if he makes a declaration under paragraph 9 (declarations of dealings or connections with MC members) as in the case of a declaration under paragraph 10 (declarations of interests or connections for tenders). Similar amendments will also be made to the proposed new paragraph 29 of Schedule 7 to BMO.

33. The Administration has supplemented that the restrictions on the attendance of MC participants at MC meetings and on the participation of responsible persons in procurement activities may be waived by a management committee resolution or a corporation resolution (see paragraphs 7(3) and 16(2) of the proposed new Schedule 6B to BMO).

34. However, taking into account the views expressed by members, the Administration has agreed to propose amendments to paragraph 7(3) of the proposed new Schedule 6B to BMO to the effect that paragraph 7(1)(b) of Schedule 6B (i.e. must not be counted toward the quorum at the meeting) will still apply when a declarant is exempted from the prohibition on attending meetings, so as to avoid the scenario where a declarant is not permitted to vote but is counted toward the quorum; and that apart from not being allowed to vote on a resolution of the MC in respect of the procurement concerned, the declarant must also be excused from the meeting during the voting.

35. Members note that paragraph 5(1) of the proposed new Schedule 6B to BMO sets out the specific procedures for MC meetings in case a declaration is made by an MC participant. Members have suggested that paragraph 5(1)(a) of the proposed new Schedule 6B should specify that a copy of the declaration shall be produced to the MC at the first meeting of the MC convened since the making of the declaration, as well as all other meetings of the MC convened to discuss the relevant procurement. Taking into account the views expressed by members, the Government will propose amendments to specify that a copy of the declaration must be tabled at the first MC meeting relating to the procurement after the declaration is made, so as to make sure that the declaration will be discussed at an appropriate MC meeting. Since an MC participant will be prohibited from attending the MC meetings relating to the procurement after the declaration is made (see paragraph 7 of the proposed new Schedule 6B to BMO), the declaration has to be tabled and

considered at the first relevant meeting and the prohibition on attending the meeting will also apply to subsequent MC meetings relating to the procurement. Similar amendments will also be made to the proposed new paragraph 27 of Schedule 7 to BMO.

36. Members are of the view that the Bill should require the responsible person to declare, before the first tender acceptance meeting for the large-scale maintenance procurement, that he has no dealings or connections with members of the MC, in addition to declaring no interests in respect of the tender (paragraph 22 of the proposed new Schedule 6B to BMO). Taking on board members' views, the Administration will propose amendments to provide for this requirement in Division 2 of Part 2 of the proposed new Schedule 6B to BMO. Similar amendments will also be made to Subdivision 2 of Division 4 of the proposed new Part 2 of Schedule 7 to BMO.

Requirements for tendering

37. The Bill proposes that all high-value procurement and large-scale maintenance procurement must be conducted by an invitation to tender (the proposed new sections 28D(1), 28E(1) and 28F(1) of BMO). The requirements for tendering are set out in the proposed new Schedule 6A and Division 3 of Part 2 of Schedule 7 to BMO. Among others, it requires a minimum number of potential suppliers to be invited for tender (such as paragraph 5 of the proposed new Schedule 6A) (see footnote 4). This seeks to promote competition by preventing the MC/manager from approaching only one or two suppliers for the procurement exercise.

38. There is a view that in order to avoid the situation where only a very small number of suppliers would participate in the tender, thus failing to effectively enhance the fairness of tender exercises and prevent bid-rigging, the Administration should consider requiring OCs to conduct large-scale maintenance procurement by open tendering and to publish tender invitations for the procurement in newspapers or on online platforms.

39. The Administration has advised that under the current proposed amendments, an OC may advertise openly an invitation to tender issued for procurement or, if the OC does not opt for open advertisement, it must invite a specified number of potential suppliers (i.e. five or three) according to the procurement value, so as to prevent the MC/manager from approaching only one or two suppliers in the procurement exercise. As to whether OCs should be mandatorily required to adopt open tendering, the Administration has explained that while lists of qualified suppliers are

maintained by PMCs of large developers and the Smart Tender Building Rehabilitation Facilitating Services (“Smart Tender”) under the Urban Renewal Authority, the number of suppliers is limited and cannot meet the requirements of open tendering. As such, if OCs are mandatorily required to adopt open tendering for the relevant procurement, they may be put under certain restrictions (e.g. unable to participate in Smart Tender).

40. The Administration has further explained that under BMO, open tendering in fact includes advertising in newspapers or on online platforms. As to whether advertisements in newspapers should be made mandatory, the Administration is of the view that the cost may incur a heavy burden for small OCs. The Administration has suggested that a better way forward would be for the Home Affairs Department (“HAD”) and the Property Management Services Authority (“PMSA”) to consider providing guidelines to owners, OCs and PMCs on the tendering procedures for the relevant procurement in the form of codes of practice, the Administrative Guidelines on Best Practices on Building Management (“the Best Practices”), etc.

41. Members have noted that under paragraph 5(1) of the proposed new Schedule 6A to BMO, the invitation will not be restricted to the specified number of suppliers if the MC/manager has already advertised an invitation to tender issued for the procurement (such as in a local newspaper or on a website). The Legal Adviser to the Bills Committee has expressed concern about the reasons for not specifying in the Bill the detailed advertising requirements, such as the number of times the advertisement is to be published and the language of the advertisement, and whether the website must be accessible to the general public. Expressing similar concerns, members are of the view that the absence of such detailed requirements in the Bill may create a loophole for MCs to circumvent the requirement for issuing invitation to tender to a specified number of suppliers under the guise of publicity already conducted.

42. The Administration has explained that since the Bill does not mandate the adoption of open tendering, no detailed advertising requirements (as to the number, language, etc.) are specified. However, during discussion on procurement at GMs of OCs, owners may query whether sufficient advertising has been made by the MC in relation to the open tender. If owners consider such advertising inadequate after discussion, they may vote down the relevant procurement resolution.

43. The Administration has further explained that the original intention of paragraph 5(1) of the proposed new Schedule 6A to BMO is to encourage OCs to conduct major procurements through open tender.

However, having considered members' views, the Administration will propose amendments to remove the exemption in relation to publicity. For the avoidance of doubt, the Bill will stipulate that an invitation to tender must be issued to at least five or three (depending on the amount of the procurement) potential suppliers even if the MC has publicized the invitation to tender. Similar amendments will also be made to the proposed new paragraph 20 of Schedule 7.

44. The Administration has added that under paragraph 5(4) of the proposed new Schedule 6A to BMO, an OC may, by resolution of the MC (in the case of type 1 high-value procurement) or by resolution of the OC (in the case of type 2 high-value procurement), decide to waive the requirement for issuing tender invitation to a specified number of suppliers. The exemption takes into account the fact that under some special circumstances, there may only be a small number of suppliers of individual supplies, goods or services in the market, rendering it impossible for the MC to invite a sufficient number of suppliers to be required under the law. In view of the circumstances, the Administration proposes to retain that provision.

45. In addition, the proposed new sections 28D(3) and 28E(3) of BMO provide that the tender and declaration requirements do not apply if the OC resolves to obtain the same type of procurement from the existing supplier. Taking into account the views expressed by members, the Administration agrees to propose amendments to the proposed new sections 28D(3) and 28E(3) of BMO, as well as paragraphs 1 and 10 of Schedule 6B to provide that the declaration requirements in the proposed new Schedule 6B will still be applicable in the case of procurement from an existing supplier, so as to enhance transparency in procurement. Similar amendments will also be made to the proposed new paragraphs 12(3), 13(3) and 23 of Schedule 7.

Financial statements and accounts

46. Under the existing section 27 of BMO, only financial statements of OCs in respect of buildings with more than 50 flats are required to be audited. However, given that the income and expenditure of a building with a small number of flats (for example, a low-density building or housing development with few units) may still be substantial, the Administration proposes that it would be more appropriate to use the income and expenditure as the basis for determining the audit requirement.

47. With reference to regular building expenditure items such as the salary of security and cleansing staff, insurance, etc., the Bill proposes that the financial statements of the buildings with total annual income or

expenditure exceeding \$500,000 must be audited regardless of the number of flats.

48. Besides, BMO currently only requires that the financial statements, together with the accountant's report, be laid before the OC at the annual general meeting. To enable owners to have an earlier access to the financial statements without having to wait for the annual general meeting, the Bill proposes a new requirement that copies of the financial statements and accountant's reports must be displayed in a prominent place in the building once available for at least seven consecutive days, and must be supplied to owners and tenants' representative, etc. within 28 days after the date on which a written request for such copies is made.

Criminal sanctions

Balancing the deterrent effect of sanctions and the impact on owners' motivation for taking up duties of management committees

49. Apart from keeping the existing criminal offences under BMO⁶, the Bill also creates new offences in relation to the failure to keep certain documents concerning building management. The Bill proposes to add new criminal sanctions against failure to keep invoices, receipts, etc., referred to in the accounting accounts, certified minutes of MC meetings and GMs of OCs, tender documents and proxy instruments. Upon conviction, the relevant persons (including convenors of the meetings, as well as members, treasurer or secretary of MCs) are liable to a fine at level 4 (\$25,000).

50. Some members have concurred with the addition of more criminal sanctions under BMO to achieve greater deterrence against non-compliance. On the other hand, some members consider that as MC members serve voluntarily, they are worried that criminal liability would affect owners' motivation to take up building management duties. They are also worried that the passage of the Bill may lead to the resignation of a large number of MC members, resulting in the dissolution of OCs concerned.

⁶ There are currently 10 provisions in BMO that impose criminal sanctions (see Appendix 4). These provisions generally relate to the more important duties of OCs, such as the duty to prepare financial statements (existing section 27(3) of BMO), the duty to procure and keep in force third party risks insurance (existing section 28(2) of BMO), and the duty to comply with an order of the Authority (existing sections 40A(2) and 40B(2) of BMO).

51. The Administration has advised that it fully understands that MCs' work is voluntary and criminal sanctions may affect owners' motivation for taking up OC duties. However, the Administration has pointed out that the absence of criminal sanctions would fail to deter non-compliance with BMO. According to the Administration, with a view to balancing against the deterrent effect of sanctions and the impact on owners' motivation for taking up OC duties, contravention of the provisions concerning rules and procedures would not constitute criminal offences (but owners can seek a ruling at the Lands Tribunal under section 45 of BMO). Nevertheless, there are 10 provisions in BMO as mentioned in paragraph 49 above (see **Appendix 4**) that impose criminal sanctions in the event of non-compliance.

52. The Administration has further advised that having regard to the need to strike a balance as mentioned above, the introduction of the new criminal sanctions in the Bill⁷ is a response to the long-standing calls for additional sanctions in BMO to deter against non-compliance with BMO. The proposed sanctions are also in general supported by stakeholders after rounds of consultation and discussion.

53. The Bill proposes to add new criminal sanctions against failure to keep accounting accounts, meeting minutes, tender documents and proxy instruments. The Administration has pointed out that all these documents are important records of OCs and may be relied upon in case of disputes. Hence, as it is an important duty for MCs to keep these documents, there is a need to introduce the new offences to practically address stakeholders' concerns.

Narrowing the scope of regulation

54. Members have noted that under the proposed new sections 4B(3) and 27A(1) and (2) of BMO, if an MC contravenes the requirement relating to the keeping of proxy instruments and certain requirements relating to the accounts of the OC concerned, every participant of the MC commits an offence. Members generally consider the provisions too stringent and suggest that the Administration should review whether the scope of regulation is too wide. Members have also enquired about the duty to keep documents where there is a change of term of MCs.

⁷ The Bill creates new offences in relation to the keeping of certain OC documents, including supporting documents (e.g. bills and invoices) of accounting documents of OCs (proposed section 27A(2) of BMO), procurement documents (proposed section 28B(2)), minutes for MC and OC meetings (proposed section 36A(4) of BMO) and proxy instruments (proposed sections 4B(1) and (3), 36A(4), and 40CA(1) and (3) of BMO).

55. Having considered members' views, the Administration has agreed to propose an amendment to impose the relevant criminal liability on the **“accountable”** MC participants (instead of each MC participant). For the avoidance of doubt, the amendments specify that the “accountable” person is the person who has assumed responsibility as a participant of the at the time when the contravention of the provisions occurs. Therefore, if a change of MC term is involved and the outgoing MC has not kept the relevant documents, the responsible participant of the previous MC will be held criminally liable. Meanwhile, the Administration will also propose amendments to make it clear that the relevant new criminal sanctions do not apply to GMs of OCs if the documents have been obtained or the notices of meetings have been given before the date on which the amended BMO (if the Bill is enacted) comes into operation.

56. To ensure that the criminal offences introduced by the Bill are commensurate with those in the existing BMO, the amendments will also amend the existing sections 11 (display of copies of certificates of registration), 12 (notification of changes in the register of OCs to the Land Registrar), 27 (keeping of books of account and preparation of financial records), 28 (procurement of third party risks insurance policies) and 40B (compliance with an order of the Authority) of BMO so that the relevant criminal liabilities are imposed on the accountable MC participants.

Statutory defence for existing and proposed new offences under the Building Management Ordinance

57. In addition, the Administration has pointed out that as in the existing BMO, the relevant criminal offence provisions in the Bill will provide a statutory defence to protect participants of MCs who have exercised due diligence in discharging their duties. The Bill proposes that the person charged for the relevant offence is entitled to be acquitted if (i) sufficient evidence is adduced to raise an issue that the offence was committed without the person's consent or connivance, and/or that the person exercised all due diligence that he ought to have exercised in the circumstances to prevent the commission of the offence; and (ii) the contrary is not proved by the prosecution beyond reasonable doubt.

58. Noting that one of the conditions in the proposed defence provisions (proposed new sections 4B(2) and (4) of BMO) is that “the person exercised all due diligence that the person ought to have exercised in the circumstances to prevent the commission of the offence”, members have expressed concern whether the threshold of the statutory defence would become too high with the reference to “all due diligence”.

59. The Administration has advised that in the English text of the proposed new sections 4B(2) and (4) of BMO, the relevant expression is “exercised all due diligence”. This expression is also used in the existing sections 11, 27, 28 and 40B of BMO to provide for the “all due diligence” statutory defence in respect of the offences under those sections. The element of “all” is a standard element for an “all due diligence” defence (more than 100 similar references can be found in Hong Kong legislation). As the Bill is to adopt the aforesaid defence, the relevant expression is retained accordingly. In addition, the Bill has lowered the threshold of the statutory defence so that the defendant only has an “evidential burden”, i.e. to adduce sufficient evidence to raise an issue, and the prosecution has to disprove the defendant’s defence beyond reasonable doubt. This ensures that there is no infringement of the presumption of innocence under Article 11(1) of the Hong Kong Bill of Rights.

60. However, for the Chinese text, the Administration will propose amendments such that the relevant provisions to be added by the Bill (i.e. proposed new sections 4B(2) and (4), 11(4), 27A(3), 28(2A), 28B(3), 36A(5), 40B(2A), and 40CA(4) and (5) of BMO) will be worded more consistently with the existing provisions (such as section 28(2) of BMO). The provisions will be worded along the following line: “該人已盡了在有關情況下應盡的一切努力，以防止干犯有關罪行”.

61. Members have opined that the expression “the person charged is entitled to be acquitted” in the relevant provisions contentious. Having considered members’ views, the Administration will propose amendments to refine the wording of the relevant provisions. To address members’ concern, the Administration will also delete the condition of “the offence was committed without the person’s consent or connivance” in the proposed defence. The Administration has advised that referring to the drafting methods adopted in the recently enacted Ordinances, the amended defence provisions will be worded along the following line:

- “(2) **It is a defence** for a person charged with an offence under subsection (1) to establish that the person exercised all due diligence that the person ought to have exercised in the circumstances to prevent the commission of the offence.
- (2A) A person is taken to have established a matter that needs to be established for a defence under subsection (2) if—
 - (a) there is sufficient evidence to raise an issue with respect to that matter; and

- (b) the contrary is not proved by the prosecution beyond reasonable doubt.”

62. Similar amendments will also be made to the proposed new sections 27A(3), 28(2A), 28B(3), 36A(5), 40B(2A) and 40CA(4) and (5) of BMO.

63. Members have suggested that the protection of not being personally liable for acts done in good faith and in a reasonable manner as provided in the existing section 29A of BMO for members of MCs should be extended to secretaries and treasurers of MCs (who are not MC members) to enhance the protection for relevant post-holders. The Administration has taken on board members’ suggestion and will propose amendments to the existing section 29A of BMO by applying the interpretation of “participant” in the proposed new section 2(4) of BMO so that the protection as referred to in section 29A will be extended to secretaries and treasurers who are not MC members.

Support for owners’ corporations and owners

64. Members have called on the Administration to assist OCs and owners in complying with various requirements under BMO as amended by providing them with appropriate support. Members are also concerned about the adequacy of the Administration’s support for “three-nil buildings”. The Administration has advised that in addition to the legal framework for owners to organize OCs under BMO, HAD has all along been providing various support services to assist owners in discharging their building management responsibilities. Those support services cover matters that owners need to handle in day-to-day building management, including services targeted at “three-nil buildings”, legal and other advisory services, dispute resolution services, education and publicity, etc. The relevant services are listed in **Appendix 5**.

65. The Administration has pointed out that regarding the Building Management Professional Advisory Service Scheme, HAD has earlier extended an open invitation to community organizations/non-governmental organizations to participate in a new round of the scheme, which will cover the whole territory for a period of three years. The Administration has anticipated that the new round of the scheme will be launched in the third quarter of 2024 to provide continuous support to “three-nil buildings”.

66. Besides, in response to members' concerns, the Administration has undertaken that after passage of the Bill, HAD will strengthen support for OCs and owners. The relevant work covers the following areas:

- (a) promulgating promotional materials to announce the key points and commencement date of the amendment proposals, and distributing the promotional materials to OCs and owners extensively through daily liaison and the network of PMCs;
- (b) enhancing OCs' and owners' understanding of the new requirements by organizing talks in district building management seminars and the Central Platform on Building Management;
- (c) updating the dedicated building management website and a series of Codes of Practice and guidelines, including the "Code of Practice on Procurement of Supplies, Goods and Services" and the Best Practices to enhance the clarity of the legal requirements;
- (d) providing updated guidelines to the property management sector by updating Codes of Conduct and best practice guides through PMSA; and
- (e) assisting OCs in complying with the new requirements through, among others, the Owners' Corporations Advisory Services Scheme.

Moreover, the Administration has advised that HAD will take into account the views of stakeholders and the implementation of the proposals to review and strengthen the support for OCs and owners as necessary.

67. Some members have suggested that HAD should consider setting up a designated centralized platform for OCs to upload and keep documents of OCs, as well as to publicize the invitation to tender for procurement. Members are of the view that the proposed centralized platform will not only facilitate the keeping and handover of OC documents by MCs (during the change of term of MCs), but also enable OCs to publicize their tenders through the platform to reach out to more potential suppliers, thereby enhancing the effectiveness and transparency of the tenders. The Administration has advised that as it understands, some owners have reservations about keeping documents of OCs in a third-party platform. Nonetheless, the Administration will, as always, continue to examine and implement appropriate measures to support OCs and owners.

Application to buildings without owners' corporations

68. To enable owners of buildings that do not form OCs (e.g. private housing estates managed by DMC manager) to benefit from the amendment proposals, the Bill proposes that amendments in relation to large-scale maintenance procurement and high-value procurement, as well as financial statements, will be incorporated into Schedule 7 to BMO⁸ as mandatory terms in DMCs.

69. Taking into account the views expressed by members, the Administration will propose amendments to the proposed new paragraph 4A of Schedule 7 to the effect that the manager, where there is no OC, is also required to consult the owners' committee at an owners' meeting on the channels of mutual communication among the owners on matters relating to the management of the building and to adopt the method of mutual communication among the owners as determined by the owners' committee.

Transitional arrangements

70. The Bill proposes that transitional provisions (the proposed new section 44B) be included in BMO such that new requirements relating to procurement will not apply to procurement in progress. However, where a procurement exercise is initiated before the commencement of the Bill but no contract for the procurement has been made three years after the date on which the Bill comes into operation, the new requirements concerning procurement should prevail.

71. Members have expressed concern about the reasons for adopting a transitional period of three years after the commencement date of the Bill under the aforesaid transitional arrangements. The Administration has explained that at present, some OCs may be in the middle of a tender procedure for their procurement exercises. Given the long time generally required for the completion of tenders, the above transitional arrangements are proposed in the Bill to obviate the need for initiated procurement exercises to be aborted or re-started due to the commencement of the relevant new requirements proposed in the Bill. That said, as the Administration considers that the procurement exercises concerned should be completed within a reasonable time frame, a transitional period up to three years is therefore proposed.

⁸ The provisions in Schedule 7 to BMO are impliedly incorporated into all DMCs. Currently, Schedule 7 contains provisions relating to, among others, general procurement and financial statements.

72. The Administration has supplemented that if there is any plan to vary or terminate a signed contract after the Bill has come into effect, it is necessary to act in accordance with the corporation resolution as per the requirements set out in the proposed new sections 28E(2)(d) and 28F(2)(d) of BMO.⁹ Taking into account the fact that type 2 high-value procurement and large-scale maintenance procurement are important procurement of the buildings involving significant stakes, the Administration is of the view that the relevant requirements can better protect the interests of owners.

Next stage of work

73. Members are generally concerned that the Bill has yet to cover all issues of concern to stakeholders, including instruments for the appointment of a proxy and the powers of the Authority under BMO. Members opine that many disputes over building management in the past were related to the handling of proxy instruments. Members also consider that the Administration should conduct a comprehensive review of BMO to prevent and combat bid-rigging in building maintenance works.

74. The Administration has advised that the Bill proposes amendments in three main areas, namely, large-scale maintenance procurement and high-value procurement, financial statements, and criminal sanctions against failure to keep certain documents relating to building management. The proposals represent the outcomes of public consultation and the stakeholders' views. The Administration has indicated its hope to accord priority to proposals which are of considerable public concern but are relatively less controversial, with a view to meeting public aspirations as soon as practicable.

75. The Administration has further advised that along the approach to deal with simpler issues first before the more difficult ones, the Administration will follow up on more complicated and controversial issues¹⁰ after the passage of the Bill and adopt an open mind in tapping the views of stakeholders.

⁹ The proposed new sections 28E(2)(d) and 28F(2)(d) provide that an OC shall not vary or terminate contracts in relation to type 2 large-value procurement and large-scale maintenance procurement except in accordance with a corporation resolution. The relevant provisions seek to prevent MCs from varying or terminating contracts on their own against what has been decided by corporation resolutions (e.g. by substantially revising the scope and price of the procurement) after the procurement has been approved by a corporation resolution.

¹⁰ According to the information paper (LC Paper No. [CB\(2\)217/2024\(02\)](#)) provided by the Administration to the Bills Committee, issues under consideration in the next step include powers of the Authority under BMO, proxy instruments and role of PMCs.

76. Separately, during the Bills Committee's scrutiny of the Bill, concern has been raised about issues relating to (a) whether an executor may attend and vote at an OC meeting as an owner before obtaining the probate; and (b) whether an owner may appoint a proxy to attend and vote at an OC meeting by means of a power of attorney or an enduring power of attorney.¹¹ The Administration considers that the relevant matters concern the existing enforcement of BMO, rather than arising from the provisions of the Bill.

77. The Administration has advised that apart from legal considerations, the above two issues also involve the operation of OCs. If executors (before obtaining the probate) and attorneys/attorneys appointed an enduring power of attorney are allowed to attend and vote at an OC meeting, there needs to be relevant operational mechanism, such as the deadline for lodging copies of wills/powers of attorney prior to the meeting, the mechanism for handling disputes, the requirement for keeping copies of wills/powers of attorney, the impact on the proxies already appointed, etc. The Administration has considered that since the above subject matters have significant impact on the operation of OCs, they require consultation with stakeholders and consensus of the community, and hence it is not suitable to be dealt with them in this Bill.

78. That said, the Administration has advised that it is prepared to review the above two issues together in the next phase of the review of BMO, including considering whether allowing executors before obtaining probate to attend and vote at meetings of OCs would have wider implications on probate and administration matters and arrangements beyond BMO, as well as the operation of OCs, and consult stakeholders and legal advice.¹²

Enquiries raised by the Legal Adviser to the Bills Committee on the contents of the Bill and the Administration's response

79. The Legal Adviser to the Bills Committee has raised written enquiries with the Administration on the legal and drafting aspects of the Bill, to which the Administration has provided its response. The Legal

¹¹ Please refer to the letter dated 16 April 2024 from Hon Doreen KONG to the Chairman of the Bills Committee (LC Paper No. [CB\(2\)517/2024\(01\)](#)) (Chinese version only) for details.

¹² Please refer to the Administration's written response to Hon Doreen KONG's letter (LC Paper No. [CB\(2\)760/2024\(04\)](#)) for details.

Adviser's enquiries and the Administration's response are set out in LC Paper Nos. [CB\(2\)128/2024\(01\)](#) and [CB\(2\)217/2024\(01\)](#) respectively. Members have taken note of the contents of the above papers.

Proposed amendments to the Bill

80. Major amendments proposed by the Administration to different parts of the Bill have already been elaborated in paragraphs 12 to 14, 19, 25 to 27, 32, 34 to 36, 43, 45, 55, 56, 60 to 63 and 69. In addition, having considered the views of members and the Legal Adviser, the Administration will also propose various textual and drafting amendments to the Bill including:

- (a) to amend the Chinese text of the proposed new section 2(3) of BMO along the following line: “為免生疑問，如會議延期舉行，在本條例中提述該會議結束，即提述下述會議結束：經最後一次延期而舉行的該會議。”;
- (b) to amend the Chinese text of the proposed new section 2(4)(b) of BMO along the following line: “該委員會的秘書或司庫(不屬該委員會委員者)”;
- (c) to amend the Chinese text of the proposed new sections 2C and 2D of BMO by replacing “作價” with “價值” (i.e. the wording of the existing section 20A(2) of BMO) to more accurately reflect the policy intent. The Administration will also make similar amendments to the proposed new section 28J(1)(f), paragraphs 5(1)(a) and (b) of the proposed new Schedule 6A and proposed new paragraphs 20(1)(a) and (b) of Schedule 7;
- (d) to amend the proposed new section 2C(3)(a) of BMO along the following line: “if there is more than one amount of specified annual expenditure for the last 3 financial years ...” (“如.....於對上3個.....財務年度內，有多於一筆指明年度開支款額——所有.....”). Similar amendments will also be made to the proposed new section 2C(3)(b);
- (e) to amend the definitions of “corporation financial year” and “DMC financial year” in the English text of the proposed

new section 2C(6) of BMO by replacing the word “have” with “has”;

- (f) to amend the Chinese text of the proposed new sections 2E(2)(c) and (5)(b) of BMO by replacing the expression “無輔助肉眼” with “肉眼” to enhance clarity;
- (g) to amend the definition of “electronic record” in the proposed new section 2E(6) of BMO such that the term will be defined by referring to the defined term of “electronic record” in section 2(1) of the Electronic Transactions Ordinance (Cap. 553) for internal consistency within BMO;
- (h) to amend the Chinese and English texts of the proposed new section 3(10)(e)(iii) of BMO to clearly indicate that the instrument required to be displayed is a list (一列表). Similar amendments will also be made to the proposed new sections 3A(3H)(e)(iii) and 4(12)(e)(iii), as well as the proposed new paragraphs 4(5)(a)(ii) and 4A(5)(a)(ii) of Schedule 3;
- (i) to amend the proposed new section 4A of BMO to clearly state that the instruments required to be kept include those instruments that are invalid. Similar amendments will also be made to the proposed new section 36A and section 40C;
- (j) to amend the expression “有適切需要” in the Chinese text of the proposed new section 28J(1)(g) of BMO to “有急切需要”, so as to express the meaning of “urgent” in line with the English text;
- (k) to delete the expression starting with “if ...” in the proposed new sections 36A(2) and (3) of BMO, so as to express more clearly the need for an MC to keep instruments for proxy/ authorized natural persons lodged with the secretary of the MC in respect of GM of the OC;
- (l) to amend the wording of “凡採購法團...” in the first sentence in the Chinese text of the proposed new section 44B(1) of BMO to enhance the clarity of the wording;

- (m) to amend the heading of Part 1 of the proposed new Schedule 6B to BMO by stating clearly that that the requirements of the Part apply to type 1 high-value procurement, type 2 high-value procurement and large-scale maintenance procurement; and
- (n) to amend the headings of Divisions 3 and 4 of the proposed new Part 2 of Schedule 7 to BMO to specify that the divisions and sub-divisions concerned will apply in the case where there is no OC, so as to enhance the clarity of the provisions.

The Bills Committee has examined and supports the amendments to the Bill proposed by the Administration. The full set of amendments to be moved by the Administration is in **Appendix 6**. The Bills Committee will not propose any amendments to the Bill.

Resumption of Second Reading debate on the Bill

81. The Bills Committee has completed scrutiny of the Bill. The Administration has indicated its intention to resume the Second Reading debate on the Bill at the Council meeting of 3 July 2024. The Bills Committee has raised no objection.

Advice Sought

82. Members are invited to note the deliberations of the Bills Committee.

Council Business Division 2
Legislative Council Secretariat
21 June 2024

Bills Committee on Building Management (Amendment) Bill 2023

Membership list

Chairman Hon Tony TSE Wai-chuen, BBS, JP

Members Dr Hon Starry LEE Wai-king, GBS, JP
Prof Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Paul TSE Wai-chun, JP
Ir Dr Hon LO Wai-kwok, GBS, MH, JP
Hon YUNG Hoi-yan, JP
Hon Vincent CHENG Wing-shun, MH, JP
Hon Doreen KONG Yuk-foon
Hon Andrew LAM Siu-lo, SBS, JP
Hon Judy CHAN Kapui, MH, JP
Ir Hon CHAN Siu-hung, JP
Hon CHAN Hok-fung, MH, JP
Hon YANG Wing-kit
Hon TANG Fei, MH
Hon LAI Tung-kwok, GBS, IDSM, JP

(Total : 15 members)

Clerk Ms Joanne MAK

Legal Adviser Ms Clara WONG

《2023年建築物管理(修訂)條例草案》委員會
Bills Committee on Building Management (Amendment) Bill 2023

曾向法案委員會表達意見的團體/個別人士名單
List of organizations/individuals which/who have
submitted views to the Bills Committee

名稱	Name
1. 荃灣發展促進會	Association for Tsuen Wan Development
2. 聚賢薈	Centre Stage Squarer
3. 特許房屋經理學會亞太分會	Chartered Institute of Housing Asian Pacific Branch
* 4. 中國夢智庫	Chinese Dream Think Tank
5. 香港物業管理師學會	Hong Kong Institute of Certified Property Managers
6. 自由黨	Liberal Party
7. 新民黨	New People's Party
8. 寶麗新動力	Po Lai Club
9. 香港物業管理公司協會有限公司	The Hong Kong Association of Property Management Companies Limited
10. 香港設施管理學會	The Hong Kong Institute of Facility Management
11. 怡信物業管理有限公司	Wilson Property Management Ltd
12. 南昌北居民聯會	南昌北居民聯會
13. 陳龍傑先生	Mr CHAN Lung-kit
* 14. 陳羽博士	Dr Tony CHAN
15. 蔡少峰先生	Mr Benjamin CHOI Siu-fung
16. 李志恒先生	Mr Sidney LEE Chi-hang
17. 李志遠先生	Mr Brian LEE Chi-yuen
18. 梁秉堅先生	Mr LEUNG Ping-kin

名稱

Name

- | | |
|-------------|--------------------|
| * 19. 穆家駿先生 | Mr MUK Ka-chun |
| 20. 伍俊瑜先生 | Mr NG Chun-yu |
| 21. 黃雨程小姐 | Miss WONG Yu-ching |
| 22. 楊學明先生 | Mr YEUNG Hok-ming |
| 23. 劉天正先生 | 劉天正先生 |
| 24. 劉佩玉女士 | 劉佩玉女士 |

- * 只提交意見書
provided submissions only

Procurement-related Requirements under Building Management (Amendment) Bill 2023

1. Initiation decision

After an initiation decision (i.e. a decision to conduct the procurement, including approaching potential suppliers for the procurement) (proposed section 2(1)) is made, to determine whether the procurement falls within one of the following categories with reference to the procurement value:

Type 1 high-value procurement (Proposed section 2C(1)(a))

- the procurement value exceeds, or is likely to exceed, **\$200,000**
- the procurement value does not exceed, or is not likely to exceed, **20% of average annual expenditure in the last three financial years**

Type 2 high-value procurement (Proposed section 2C(1)(b))

- the procurement value exceeds, or is likely to exceed, **20% of average annual expenditure in the last three financial years**

Large-scale maintenance procurement (Proposed section 2D)

- the procurement is for repairing, replacing, maintaining or improving any of the common parts of the building
- **the value divided by the total number of flats of the building** exceeds, or is likely to exceed, **\$30,000**

Procurement-related Requirements under Building Management (Amendment) Bill 2023

Type 1 high-value procurement

2. To conduct procurement and tendering

- To comply with the **Code of Practice on Procurement of Supplies, Goods and Services** under the BMO
(Proposed section 28A / Schedule 7 paragraph 12(1)(a))
- To conduct the procurement by an **invitation to tender** and comply with new **tender requirements**
(New Schedule 6A / Schedule 7 Part 2 Division 3)
 - setting out deadline for the submission of a tender
 - display of copy of invitation to tender in a prominent place in the building
 - no acceptance of tenders submitted after deadline
 - requirement to invite specific number of potential suppliers if no open tender is issued
- To comply with **declaration of interests or connections** requirements
(New Schedule 6B Part 1 / Schedule 7 Part 2 Division 4 Subdivision 1)

3. After entering into a contract

- To **keep procurement documents** during the period of 6 years after the date on which the contract is entered into
(Proposed section 28B / Schedule 7 paragraph 10)
- To permit **inspection of procurement documents**
(Proposed section 28C / Schedule 7 paragraph 11)
- To permit specified persons to **inspect declarations**
(New Schedule 6B paragraph 6 / Schedule 7 paragraph 28)

Procurement-related Requirements under Building Management (Amendment) Bill 2023

Type 2 high-value procurement

(Additional requirements as compared to Type 1 high-value procurement are marked in red)

2. To conduct procurement and tendering

- To comply with the **Code of Practice on Procurement of Supplies, Goods and Services** under the BMO
(Proposed section 28A / Schedule 7 Paragraph 13(1)(a))
- To conduct the procurement by an **invitation to tender** and comply with new **tender requirements**
(New Schedule 6A / Schedule 7 Part 2 Division 3)
 - setting out deadline for the submission of a tender
 - display of copy of invitation to tender in a prominent place in the building
 - no acceptance of tenders submitted after deadline
 - requirement to invite specific number of potential suppliers if no open tender is issued
- To comply with **declaration of interests or connections** requirements
(New Schedule 6B Part 1 / Schedule 7 Part 2 Division 4 Subdivision 1)

3. General meeting of the corporation / owners' meeting

- **To accept the tender through a corporation or owners resolution**
(Proposed section 28E(2)(c) / Schedule 7 Paragraph 13(1)(c))

4. After entering into a contract

- To keep **procurement documents** during the period of 6 years after the date on which the contract is entered into
(Proposed section 28B / Schedule 7 paragraph 10)
- To permit **inspection of procurement documents**
(Proposed section 28C / Schedule 7 paragraph 11)
- To permit specified persons to **inspect declarations**
(New Schedule 6B paragraph 6 / Schedule 7 paragraph 28)
- **Contract must not be varied or terminated other than in accordance with a corporation or owners resolution**
(Proposed section 28E(2)(d) / Schedule 7 Paragraph 13(4))

Procurement-related Requirements under Building Management (Amendment) Bill 2023

Large-scale maintenance procurement

(Additional requirements as compared to Type 2 high-value procurement are marked in red)

2. To conduct procurement and tendering

- To comply with the **Code of Practice on Procurement of Supplies, Goods and Services** under the BMO
(Proposed section 28A / Schedule 7 Paragraph 13(1)(a))
- To conduct the procurement by an **invitation to tender** and comply with new **tender requirements**
(New Schedule 6A / Schedule 7 Part 2 Division 3)
- To comply with **declaration of interests or connections** requirements
(New Schedule 6B Part 1 / Schedule 7 Part 2 Division 4 Subdivision 1)
- To comply with **declaration of no interest for large-scale maintenance procurement**
(New Schedule 6B Part 2 / Schedule 7 Part 2 Division 4 Subdivision 2)
- To supply **copies of meeting minutes of the Management Committee's discussion about large-scale maintenance procurement**
(Schedule 2 Proposed paragraph 10B)

3. General meeting of the corporation / owners' meeting

- To accept the tender through a **corporation or owners resolution**
(Proposed section 28F(2)(c) / Schedule 7 paragraph 14(1)(c))
- To comply with **meeting procedures related to large-scale maintenance procurement, including:**
 - Notice of the meeting shall be titled "Important Reminder"
 - Notice of meeting shall set out the estimated amount of fund contribution and owners' contribution for the procurement
 - The resolution shall meet the voting-in-person threshold
 - Meeting minutes shall separately record votes cast personally and by proxy
 - Provision of copies of meeting minutes
(New Schedule 6C / Schedule 7 Part 3 Division 4)

4. After entering into a contract

- To keep **procurement documents** during the period of 6 years after the date on which the contract is entered into
(Proposed section 28B / Schedule 7 paragraph 10)
- To permit **inspection of procurement documents**
(Proposed section 28C / Schedule 7 paragraph 11)
- To permit specified persons to **inspect declarations**
(New Schedule 6B paragraphs 6 & 15 / Schedule 7 paragraphs 28 & 35)
- Contract must not be **varied or terminated** other than in accordance with a corporation or owners resolution
(Proposed section 28F(2)(d) / Schedule 7 Paragraph 14(3))

Existing provisions on criminal sanctions in the BMO

Current provisions on criminal sanctions in BMO	Relevant offences and penalties
1. Section 10(3)	An owners' corporation (OC) which makes default in complying with a direction of the Land Registrar for changing the name of the OC within a specified period of time shall be guilty of an offence and shall be liable on conviction to a fine of \$50 for each day during which the default continues.
2. Section 11(3)	If a management committee (MC) fails to display a copy of the certificate of registration and a notice of registered office (or a copy of that notice) properly in a prominent place in the building, every member of the MC shall be guilty of an offence and shall be liable on conviction to a fine at level 1 (\$ 2,000).
3. Section 12(4)	The secretary of an MC shall give notice to the Land Registrar within 28 days of the date of any change in the particulars under the register of the OC. In contravention of that requirement, the secretary of the MC shall be guilty of an offence and shall be liable on conviction to a fine of \$100 for each day during which the contravention continues.
4. Section 27(3)	An MC shall maintain proper books or records of accounts, and shall prepare financial statements which together with the accountant's report (if any) shall be laid before the OC at the annual general meeting of the OC. In the event of a contravention of that section, every member of the MC shall be guilty of an offence and shall be liable on conviction to a fine at level 5 (\$ 50,000).
5. Section 28(2)	An OC shall procure and keep in force an insurance policy in respect of third party risks in relation to the common parts of the building and the property of the OC. In contravention of that requirement, every member of the MC shall be guilty of an offence and shall be liable on conviction to a fine at level 5 (\$ 50,000).

Current provisions on criminal sanctions in BMO	Relevant offences and penalties
6. Section 32(3)	An administrator, appointed by a resolution passed at a general meeting of the OC or appointed by a court as a substitute of the MC, shall, within 7 days of the date of his appointment or the termination of his appointment, give notice thereof to the Land Registrar. Any person who contravenes that requirement shall be guilty of an offence and shall be liable on conviction to a fine of \$100 for each day during which the contravention continues.
7. Section 35	Any person who, not being an OC incorporated under the BMO, uses a name or title containing the words “Incorporated Owners” or “Owners’ Corporation” or the Chinese characters therefor, or other words or Chinese characters implying that such person is an OC incorporated under the BMO, shall be guilty of an offence and shall be liable on conviction to a fine at level 3 (\$ 10,000).
8. Section 36	Any person who furnishes any information required to be furnished under the BMO, which he knows, or reasonably ought to know, to be false in a material particular, shall be guilty of an offence and shall be liable on conviction to a fine at level 3 (\$ 10,000) and to imprisonment for 6 months.
9. Section 40A(2)	Any person who obstructs the Authority or an authorized officer to act in accordance with section 40A(1) ¹ , or fails to comply with a reasonable requirement of the Authority or an authorized officer acting under that section, commits an offence and is liable to a fine at level 4 (\$25,000).

¹ The Authority or an authorized officer may, for the purpose of ascertaining the manner in which a building is being controlled, managed or administered—

- (a) enter and inspect any common parts of a building;
- (b) attend any general meeting of a corporation;
- (c) require a corporation or any person managing the building to furnish him with such information in the possession of the corporation or that person, as the case may be, as the Authority or authorized officer may specify in relation to the control, management and administration of the building;
- (d) inspect the books or records of account and other records maintained under section 27(1) including any accounts relating to any fund established and maintained under section 20; and
- (e) inspect any other documents or records kept by a corporation in relation to any of its functions, duties or powers.

Current provisions on criminal sanctions in BMO	Relevant offences and penalties
10.Section 40B(2)	Where an MC without reasonable excuse fails to comply with an order made under section 40B(1) ² , every member of the MC shall be guilty of an offence and shall be liable on conviction to a fine at level 5 (\$ 50,000) and in the case of a continuing offence, to a further daily fine of \$1,000 for each day during which the offence continues.

Source : Paper provided by the Administration in April 2024
(Annex to LC Paper No. CB(2)460/2024(01))

² Where it appears to the Authority in the case of any building having a management committee that—
(a) no person is, for the time being, managing that building;
(b) the management committee has, in any material particular, failed substantially to perform the duties of a corporation under section 18 including without limitation, the duty of a corporation under subsection (2A) of that section to have regard to and be guided by Codes of Practice; and
(c) by reason of the circumstances mentioned in paragraphs (a) and (b), there is a danger or risk of danger to the occupiers or owners of the building,

the Authority may order that, within such reasonable period as shall be specified in the order, the management committee must appoint a building management agent for the purposes of managing that building.

Support measures provided by the Home Affairs Department

Service	Scope of Service
Services targeted at “three-nil” buildings	
Building Management Professional Advisory Service Scheme	In nine districts with more “three-nil buildings”, community organisations/non-governmental organisations with experiences in building management or related fields are engaged to reach out to the owners of “three-nil buildings” to encourage and assist them to form OCs, and to provide follow-up services such as assisting in procuring third party risks insurance.
Resident Liaison Ambassador Scheme	Owners or tenants who live in buildings of 30 years or above without any management organisations are recruited as Resident Liaison Ambassadors to help Government departments contact residents of the buildings, so as to engage them in discussing and handling daily building management matters.
Legal advice and other advisory services for OCs	
Owners’ Corporations Advisory Services Scheme	Professional property management companies are engaged to provide OCs in need with free advisory services on building management, including procuring third party risks insurance, assisting defunct or inactive OCs in resuming operation, assisting OCs in need of complying with the orders/ notice/ directions issued by the Buildings Department or Fire Services Department.
Pre-Meeting Advisory Service for Owners’ Corporations	District Building Management Liaison Teams provide the MCs of OCs with free advisory service before OC meetings, including explaining meeting procedures and providing relevant information before the meetings.
Free Legal Advice Service on Building Management	The service is launched in collaboration with the Law Society of Hong Kong to provide verbal legal advice on building management by appointment.
Free Outreach Legal Advice Service on Building	The service is launched in collaboration with the Law Society of Hong Kong to assign a lawyer experienced in handling building management matters to provide free legal service for up to six hours, including attending

Service	Scope of Service
Management	general meetings of OCs and giving legal advice at the meetings.
Dispute Resolution Services	
Building Management Dispute Resolution Service	The service is steered by a retired Judge/Judicial Officer with relevant experience in dealing with building management cases. The retired Judge/Judicial Officer, as the Convenor, assists the parties in identifying the issues in dispute and exploring and generating resolution options, with a view to reaching a settlement through mediation.
Panel of Advisors on Building Management Disputes	The panel comprises professionals from different sectors, including lawyers, accountants, surveyors, engineers and property managers to help deal with complicated disputes over building management.
Free Mediation Service Scheme for Building Management	The scheme is launched in collaboration with the Hong Kong Mediation Centre and the Hong Kong Mediation Council. Accredited professional mediators provide free mediation service for up to 15 hours to assist the parties concerned in resolving their disputes over building management through mediation.
Education and Publicity	
Central Platform on Building Management	Regular briefings on building management and maintenance are organised for owners where relevant Government departments and institutions are invited to introduce information, services and schemes on building management and maintenance.
LEAD Programme Advanced LEAD Programme	Tertiary institutions are engaged to provide structured training on building management to MC members of OCs. The programmes enable participants to discharge their building management duties more effectively by enhancing their awareness of the requirements of the BMO and their professional knowledge of building management.

Source : Paper provided by the Administration in April 2024
(LC Paper No. CB(2)460/2024(01))

Building Management (Amendment) Bill 2023

Committee Stage

Amendments to be moved by the Secretary for Home and Youth Affairs

<u>Clause</u>	<u>Amendment Proposed</u>
3(4)	In the proposed definition of <i>responsible person</i> in paragraph (a)(ii), by adding “substantive matters in respect of” after “in connection with”.
3(4)	By adding in alphabetical order to the proposed definitions— <p style="text-align: center;"><i>“accountable</i> (負有責任), in relation to a contravention of, or a failure to comply with an order made under, this Ordinance—see section 2BA;”.</p>
3(5)	In the proposed section 2(3), in the Chinese text, by deleting “經最後一次延期的該會議結束” and substituting “下述會議結束：經最後一次延期而舉行的該會議”.
3(5)	In the proposed section 2(4)(b), in the Chinese text, by deleting “不屬委員的秘書或司庫” and substituting “秘書或司庫(不屬該委員會委員者)”.
3(5)	In the proposed section 2(5)(b), in the Chinese text, by adding “堂兄弟、堂姊妹、” after “姨母、”.
3(5)	In the proposed section 2(5)(g), in the Chinese text, by deleting “義務” and substituting “責任”.
4	In the heading, by deleting “ 2C, 2D and ” and substituting “ 2BA to ”.
4	By adding before the proposed section 2C—

“2BA. References to persons accountable for contravention of, or failure to comply with orders made under, this Ordinance

- (1) This section applies where a provision of this Ordinance provides that a person who is accountable for a contravention of this Ordinance commits an offence.
- (2) For the purposes of the provision, a person is accountable for the contravention if—
 - (a) the contravention occurs because a management committee fails to perform a duty; and
 - (b) at the time of the contravention, the person is, as a participant of the management committee, assuming (whether expressly or by implication) responsibility for taking the actions required for the management committee’s performance of the duty.
- (3) In this section, a reference to a contravention of this Ordinance includes a failure to comply with an order made under this Ordinance.”.

- 4 In the proposed section 2C(1)(a)(i) and (b)(i), in the Chinese text, by deleting “作價” and substituting “價值”.
- 4 In the proposed section 2C(3)(a), by deleting “more than one amount of specified annual expenditure is available” and substituting “there is more than one amount of specified annual expenditure”.
- 4 In the proposed section 2C(3)(b)(i), by adding “(*Schedule 5 amount*)” after “procurement”.
- 4 In the proposed section 2C(3)(b)(ii), by deleting “the amount of a proposed annual expenditure mentioned in subparagraph (i) is not available” and substituting “there is no Schedule 5 amount”.
- 4 In the proposed section 2C(6), in the English text, in the definitions of *corporation financial year* and *DMC financial year*, by deleting “have” and substituting “has”.
- 4 In the proposed section 2D(1)(b), in the Chinese text, by deleting “作價” and substituting “價值”.

4 In the proposed section 2D(2), by adding “unless every flat in the building concerned is, or is part of, a garage, carpark or carport” after “carport”.

4 In the proposed section 2E(2)(c)(i) and (5)(b)(i), in the Chinese text, by deleting “無輔助”.

4 In the proposed section 2E(6), by deleting the definition of *electronic record* and substituting—

“*electronic record* (電子紀錄) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);”.

5 By deleting subclause (2) and substituting—

“(2) Section 3(10)(e)(i)—

Repeal

“meeting;”

Substitute

“meeting; and”.

(2A) Section 3(10)(e)(ii)—

Repeal

“; and”

Substitute a full stop.

(2B) Section 3(10)(e)—

Repeal subparagraph (iii).

(2C) After section 3(10)—

Add

“(10A) For a meeting of owners convened under this section, the convenor must—

(a) set out on a list every flat (if any) in respect of which an instrument appointing a proxy is lodged with the convenor for the meeting; and

(b) display the list (if any) in a prominent place in the place of the meeting before the time for the holding of the meeting, and cause the list to remain so displayed until the conclusion of the meeting.”.

5 By deleting subclause (4) and substituting—

“(4) Section 3(13)—

Repeal

“, (11) and (12) shall”

Substitute

“and (10A)”.

6 By deleting subclause (1) and substituting—

“(1) Section 3A(3H)(e)(i)—

Repeal

“meeting;”

Substitute

“meeting; and”.

(1A) Section 3A(3H)(e)(ii)—

Repeal

“; and”

Substitute a full stop.

(1B) Section 3A(3H)(e)—

Repeal subparagraph (iii).

(1C) After section 3A(3H)—

Add

“(3HA) For a meeting of owners convened under this section, the convenor must—

- (a) set out on a list every flat (if any) in respect of which an instrument appointing a proxy is lodged with the convenor for the meeting; and
- (b) display the list (if any) in a prominent place in the place of the meeting before the time for the holding of the meeting, and cause the list to remain so displayed until the conclusion of the meeting.”.

6 By deleting subclause (3) and substituting—

“(3) Section 3A(3K)—

Repeal

“, (3I) and (3J) shall”

Substitute

“and (3HA)”.”.

7

By deleting subclause (1) and substituting—

“(1) Section 4(12)(e)(i)—

Repeal

“meeting;”

Substitute

“meeting; and”.

(1A) Section 4(12)(e)(ii)—

Repeal

“; and”

Substitute a full stop.

(1B) Section 4(12)(e)—

Repeal subparagraph (iii).

(1C) After section 4(12)—

Add

“(12A) For a meeting of owners convened under this section, the convenor must—

(a) set out on a list every flat (if any) in respect of which an instrument appointing a proxy is lodged with the convenor for the meeting; and

(b) display the list (if any) in a prominent place in the place of the meeting before the time for the holding of the meeting, and cause the list to remain so displayed until the conclusion of the meeting.”.”.

7

By deleting subclause (3) and substituting—

“(3) Section 4(15)—

Repeal

“, (13) and (14) shall”

Substitute

“and (12A)”.”.

8 In the proposed section 4A(1), by adding “(regardless of whether the instruments are valid under this Ordinance)” after “the meeting”.

8 By deleting the proposed section 4B(2), (3) and (4) and substituting—

- “(2) If a management committee contravenes section 4A(3)(b), every person who is accountable for the contravention commits an offence and is liable on conviction to a fine at level 4.
- (3) It is a defence for a person charged with an offence under subsection (1) or (2) to establish that the person exercised all due diligence that the person ought to have exercised in the circumstances to prevent the commission of the offence.
- (4) A person is taken to have established a matter that needs to be established for a defence under subsection (3) if—
 - (a) there is sufficient evidence to raise an issue with respect to that matter; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.
- (5) Subsections (1) and (2) do not apply in relation to the meeting of owners concerned if a notice of the meeting is given under this Ordinance before the date on which the Building Management (Amendment) Ordinance 2024 (of 2024) comes into operation.”.

New By adding—

“8A. Section 5B substituted

Section 5B—

Repeal the section

Substitute

“5B. Enumeration of owners

- (1) Schedule 11 has effect with respect to the enumeration of any percentage or number of owners that is referred to in the provisions of this Ordinance specified in that Schedule.
- (2) Moreover, to avoid doubt, the percentage or number is to be determined on the basis of the number of persons who are owners, but not on the basis of the

extent to which an owner owns the shares into which the building is divided.”.”.

10 By deleting the clause and substituting—

“10. Section 11 amended (display of copy certificate of registration, etc.)

Section 11—

Repeal subsection (3)

Substitute

- “(3) If subsection (1), (1A), (1B) or (2) is contravened, every person who is accountable for the contravention commits an offence and is liable on conviction to a fine at level 1.
- (4) It is a defence for a person charged with an offence under subsection (3) to establish that the person exercised all due diligence that the person ought to have exercised in the circumstances to prevent the commission of the offence.
- (5) A person is taken to have established a matter that needs to be established for a defence under subsection (4) if—
- (a) there is sufficient evidence to raise an issue with respect to that matter; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.”.”.

New By adding—

“10A. Section 12 amended (Land Registrar to maintain register of corporations)

(1) Section 12(3)—

Repeal

“secretary of the”.

(2) Section 12—

Repeal subsection (4)

Substitute

- “(4) If a management committee contravenes subsection (3), every person who is accountable for the contravention commits an offence and is liable on conviction to a fine of \$100 for each day during which the contravention continues.
- (4A) It is a defence for a person charged with an offence under subsection (4) to establish that the person exercised all due diligence that the person ought to have exercised in the circumstances to prevent the commission of the offence.
- (4B) A person is taken to have established a matter that needs to be established for a defence under subsection (4A) if—
 - (a) there is sufficient evidence to raise an issue with respect to that matter; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.”.

20 In the proposed section 27A(1), by deleting “participant of the management committee” and substituting “person who is accountable for the contravention”.

20 In the proposed section 27A(2), by deleting “participant of the management committee” and substituting “person who is accountable for the contravention”.

20 By deleting the proposed section 27A(3) and substituting—

- “(3) It is a defence for a person charged with an offence under subsection (1) or (2) to establish that the person exercised all due diligence that the person ought to have exercised in the circumstances to prevent the commission of the offence.
- (4) A person is taken to have established a matter that needs to be established for a defence under subsection (3) if—
 - (a) there is sufficient evidence to raise an issue with respect to that matter; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.
- (5) Subsection (2) does not apply in relation to a supporting document mentioned in section 27(6) if the date on which the

management committee obtains the document falls before the date on which the Building Management (Amendment) Ordinance 2024 (of 2024) comes into operation.”.

21 By deleting subclause (1) and substituting—

“(1) Section 28—

Repeal subsection (2)

Substitute

“(2) If a corporation contravenes subsection (1), every person who is accountable for the contravention commits an offence and is liable on conviction to a fine at level 5.

(2A) It is a defence for a person charged with an offence under subsection (2) to establish that the person exercised all due diligence that the person ought to have exercised in the circumstances to prevent the commission of the offence.

(2B) A person is taken to have established a matter that needs to be established for a defence under subsection (2A) if—

(a) there is sufficient evidence to raise an issue with respect to that matter; and

(b) the contrary is not proved by the prosecution beyond reasonable doubt.”.”.

21 By deleting subclause (2).

22 In the proposed section 28B(2), by deleting “participant of the management committee” and substituting “person who is accountable for the contravention”.

22 By deleting the proposed section 28B(3) and substituting—

“(3) It is a defence for a person charged with an offence under subsection (2) to establish that the person exercised all due diligence that the person ought to have exercised in the circumstances to prevent the commission of the offence.

(3A) A person is taken to have established a matter that needs to be established for a defence under subsection (3) if—

(a) there is sufficient evidence to raise an issue with respect to that matter; and

(b) the contrary is not proved by the prosecution beyond reasonable doubt.

(3B) Subsection (2) does not apply in relation to a procurement document if the date on which the management committee obtains the document falls before the date on which the Building Management (Amendment) Ordinance 2024 (of 2024) (*Amendment Ordinance*) comes into operation (*amendment date*).

(3C) If, in the circumstances described in section 44B(2), this Ordinance as amended by the Amendment Ordinance takes effect in relation to the procurement concerned on a date (*specified date*) other than the amendment date, the reference to the amendment date in subsection (3B) is to be construed as a reference to the specified date.”.

22 In the proposed section 28D(3), by deleting “(2)” and substituting “(2)(a)”.

22 In the proposed section 28E(3), by deleting “, (b)”.

22 In the proposed section 28J(1)(f), in the Chinese text, by deleting “作價” and substituting “價值”.

22 In the proposed section 28J(1)(g), in the Chinese text, by deleting “適” and substituting “急”.

New By adding—

“23A. Section 29A amended (protection of members of management committee)

(1) Section 29A, heading—

Repeal

“members”

Substitute

“participants”.

(2) Section 29A(1) and (2)—

Repeal

“member”

Substitute

“participant”.”.

- 27 By deleting the proposed section 36A(2) and (3) and substituting—
- “(2) A management committee must keep every lodged proxy instrument for a corporation general meeting during the period of 12 months after the conclusion of the meeting (regardless of whether the instrument is valid under this Ordinance).
 - (3) A management committee must, for a corporation general meeting, keep—
 - (a) the original of every authorization notice given in hard copy form; and
 - (b) a copy of every authorization notice given in electronic form,during the period of 3 years after the conclusion of the meeting (regardless of whether paragraph 4A(4) of Schedule 3 has been complied with in relation to the notice).”.
- 27 In the proposed section 36A(4), by deleting “a member or the secretary (or both a member and the secretary) of the management committee” and substituting “accountable for the contravention”.
- 27 By deleting the proposed section 36A(5) and substituting—
- “(5) It is a defence for a person charged with an offence under subsection (4) to establish that the person exercised all due diligence that the person ought to have exercised in the circumstances to prevent the commission of the offence.
 - (5A) A person is taken to have established a matter that needs to be established for a defence under subsection (5) if—
 - (a) there is sufficient evidence to raise an issue with respect to that matter; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.
 - (5B) Even if subsection (1) is contravened in relation to any certified minutes, subsection (4) does not apply in relation to the minutes if—

- (a) in the case of the contravention of subsection (1)(a)—the date on which the minutes are certified in accordance with Schedule 2; or
- (b) in the case of the contravention of subsection (1)(b)—the date on which the minutes are certified in accordance with Schedule 3,

falls before the date on which the Building Management (Amendment) Ordinance 2024 (of 2024) comes into operation (*amendment date*).

- (5C) Even if subsection (2) or (3) is contravened in relation to a corporation general meeting, subsection (4) does not apply in relation to the meeting if a notice of the meeting is given under paragraph 2 of Schedule 3 before the amendment date.”.

27

By deleting the proposed section 36A(6) and substituting—

“(6) In this section—

authorization notice given in electronic form (已發電子授權通知), in relation to a corporation general meeting, means an authorization notice (as mentioned in paragraph 4A of Schedule 3) that has been given to the secretary of the management committee in respect of the meeting by sending a copy of it in electronic form to the secretary;

authorization notice given in hard copy form (已發印本授權通知), in relation to a corporation general meeting, means an authorization notice (as mentioned in paragraph 4A of Schedule 3) that has been given to the secretary of the management committee in respect of the meeting by lodging the original of it in hard copy form with the secretary;

corporation general meeting (法團業主大會), in relation to a management committee, means a general meeting of the corporation convened under Schedule 3;

lodged proxy instrument (已送交委任書), in relation to a corporation general meeting, means an instrument appointing a proxy that has been lodged with the secretary of the management committee in respect of the meeting;

management committee meeting (管理委員會會議), in relation to a management committee, means a meeting of the management committee convened under Schedule 2.”.

28

By deleting the clause and substituting—

“28. Section 40B amended (appointment of building management agent by order of Authority)

Section 40B—

Repeal subsection (2)

Substitute

- “(2) If a management committee without reasonable excuse fails to comply with an order made under subsection (1), every person who is accountable for the failure commits an offence and is liable on conviction to a fine at level 5 and in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.
- (2A) It is a defence for a person charged with an offence under subsection (2) to establish that the person exercised all due diligence that the person ought to have exercised in the circumstances to prevent the commission of the offence.
- (2B) A person is taken to have established a matter that needs to be established for a defence under subsection (2A) if—
- (a) there is sufficient evidence to raise an issue with respect to that matter; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.””.

29(1)

By adding—

“(13B) Subsections (12), (13) and (13A) apply in relation to any lodged proxy instruments regardless of whether they are valid under this Ordinance.”.

29

By deleting subclause (2) and substituting—

“(2) Section 40C(14)—

Repeal

“and (13) shall”

Substitute

“, (13), (13A) and (13B)”.”.

- 30 In the proposed section 40CA(2), by deleting “a member or the secretary (or both a member and the secretary) of the management committee” and substituting “accountable for the contravention”.
- 30 By deleting the proposed section 40CA(4) and (5) and substituting—
- “(4) It is a defence for a person charged with an offence under subsection (1), (2) or (3) to establish that the person exercised all due diligence that the person ought to have exercised in the circumstances to prevent the commission of the offence.
 - (5) A person is taken to have established a matter that needs to be established for a defence under subsection (4) if—
 - (a) there is sufficient evidence to raise an issue with respect to that matter; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.
 - (6) Subsections (1), (2) and (3) do not apply in relation to the meeting of owners concerned if a notice of the meeting is given under section 40C before the date on which the Building Management (Amendment) Ordinance 2024 (of 2024) comes into operation.”.
- 33 In the proposed section 44B(1), in the Chinese text, by deleting “採購法團或某業主根據公契或本條例執行職能所需的供應品、貨品或服務，而該項採購” and substituting “任何供應品、貨品或服務，是法團或某業主根據公契或本條例執行職能所需的，而採購該等供應品、貨品或服務”.
- 35(3) By deleting “(10), (13)” and substituting “(10), (10A), (13)”.
- 35(4) By deleting “(3H), (3K)” and substituting “(3H), (3HA), (3K)”.
- 35(5) By deleting “(12), (15)” and substituting “(12), (12A), (15)”.
- 35(6) By adding “(13B),” after “(13A),”.
- 36 By deleting subclause (6) and substituting—
- “(6) Schedule 3, paragraph 4(5)—

Repeal sub-subparagraph (a)

Substitute

- “(a) the secretary must acknowledge receipt of the instrument by leaving a receipt at the flat of the owner who made the instrument, or depositing the receipt in the letter box for that flat, before the time for the holding of the meeting; and”.”.

36 By adding—

“(7A) Schedule 3, after paragraph 4(5)—

Add

“(5A) For a meeting of the corporation, the secretary must—

- (a) set out on a list every flat (if any) in respect of which an instrument appointing a proxy is lodged with the secretary for the meeting; and
- (b) display the list (if any) in a prominent place in the place of the meeting before the time for the holding of the meeting, and cause the list to remain so displayed until the conclusion of the meeting.”.”.

36(10) In the proposed paragraph 4A(1), by deleting “(2)(b)” and substituting “(2)”.

36(10) By deleting the proposed paragraph 4A(2) and substituting—

“(2) A corporate flat owner may by written notice (*authorization notice*) given in accordance with subparagraph (4) authorize 1 natural person for the purposes of subparagraph (1).”.

36(10) In the proposed paragraph 4A(4)(b)(ii), by deleting “behalf;” and substituting “behalf; and”.

36(10) By deleting the proposed paragraph 4A(4)(c).

36(10) By deleting the proposed paragraph 4A(5)(a) and substituting—

“(a) the secretary must acknowledge receipt of the notice before the time for the holding of the meeting—

- (i) by leaving a receipt in hard copy form at the corporate flat owner's flat in the building or depositing such a receipt in the letter box for that flat; or
- (ii) by sending validly a receipt in electronic form to the corporate flat owner; and”.

36(10) In the proposed paragraph 4A, by adding—

- “(6) For a meeting of the corporation, the secretary must—
 - (a) set out on a list every flat (if any) in respect of which an authorization notice is given to the secretary for the meeting; and
 - (b) display the list (if any) in a prominent place in the place of the meeting before the time for the holding of the meeting, and cause the list to remain so displayed until the conclusion of the meeting.
- (7) This paragraph does not apply in relation to a meeting of the corporation if—
 - (a) for an original meeting—a notice of the meeting; or
 - (b) for an adjourned meeting—a notice of the original meeting,is given under paragraph 2 before the date on which the Building Management (Amendment) Ordinance 2024 (of 2024) comes into operation.”.

36(13) In the proposed paragraph 5A(3)(a) and (c), by deleting “4A(2)(b)” and substituting “4A(2)”.

39 In the proposed Schedule 6A, by deleting paragraph 5(1) and substituting—

- “(1) Subject to subparagraph (4), no tender may be accepted for the procurement if—
 - (a) the procurement is the procurement of any supplies, goods or services the value of which exceeds, or is likely to exceed, \$200,000, and an invitation to tender has not been specifically issued to 5 or more potential suppliers for the procurement; or
 - (b) the procurement is the procurement of any supplies, goods or services the value of which—

- (i) exceeds, or is likely to exceed, \$10,000; but
- (ii) does not exceed, or is unlikely to exceed, \$200,000, and an invitation to tender has not been specifically issued to 3 or more potential suppliers for the procurement.”.

39 In the proposed Schedule 6A, by deleting paragraph 5(3) and substituting—

“(3) Subparagraph (1) applies regardless of whether an invitation to tender issued for the procurement is advertised (such as in a local newspaper or on a website) and is open to any potential suppliers.”.

39 In the proposed Schedule 6B, in Part 1, in the heading, by adding “**for Type 1 High-value Procurement, Type 2 High-value Procurement and Large-scale Maintenance Procurement**” after “**Restrictions**”.

39 In the proposed Schedule 6B, in paragraph 1, in the heading, by adding “, **etc.**” after “**submitted**”.

39 In the proposed Schedule 6B, in paragraph 1, by adding—

“(3) If the procurement is conducted in the circumstances described in section 28D(3) or 28E(3), then for the purposes of this paragraph—

- (a) the reference to a tender submitted for the procurement in subparagraph (1) is to be construed as a reference to the procurement of supplies, goods or services from the specified supplier; and
- (b) the reference to a person who has submitted a tender for the procurement in subparagraph (2) is to be construed as a reference to the specified supplier.

(4) In this paragraph—

specified supplier (指明供應商), in relation to the procurement of any supplies, goods or services conducted in the circumstances described in section 28D(3) or 28E(3), means the supplier from whom the supplies, goods or services are to be procured under the decision mentioned in that section.”.

- 39 In the proposed Schedule 6B, in paragraph 5(1)(a), by deleting “meeting of the management committee convened under Schedule 2” and substituting “procurement meeting”.
- 39 In the proposed Schedule 6B, in paragraph 5, by adding—
- “(3) In this paragraph—
- procurement meeting*** (採購會議), in relation to a declaration, means a meeting of the management committee convened under Schedule 2 that concerns the relevant procurement.”.
- 39 In the proposed Schedule 6B, in paragraph 7(1)(b), by deleting “accordingly”.
- 39 In the proposed Schedule 6B, in paragraph 7(3)—
- (a) by deleting “(1)” and substituting “(1)(a)”;
- (b) by deleting “not vote on any proposed resolution of the management committee concerning the procurement at the meeting of the management committee” and substituting “neither vote on any proposed resolution of the management committee concerning the procurement at the meeting of the management committee, nor be present at the meeting when the proposed resolution is being voted on”.
- 39 In the proposed Schedule 6B, in paragraph 10, in the heading, by adding “, etc.” after “**submitted**”.
- 39 In the proposed Schedule 6B, in paragraph 10, by adding—
- “(3) If the procurement is conducted in the circumstances described in section 28D(3) or 28E(3), then for the purposes of this paragraph—
- (a) the reference to a tender submitted for the procurement in subparagraph (1) is to be construed as a reference to the procurement of supplies, goods or services from the specified supplier; and
- (b) the reference to a person who has submitted a tender for the procurement in subparagraph (2) is to be construed as a reference to the specified supplier.
- (4) In this paragraph—

specified supplier (指明供應商), in relation to the procurement of any supplies, goods or services conducted in the circumstances described in section 28D(3) or 28E(3), means the supplier from whom the supplies, goods or services are to be procured under the decision mentioned in that section.”.

39 In the proposed Schedule 6B, in paragraph 13(2)(b)(ii), by deleting “the management of the building” and substituting “substantive matters in respect of the procurement”.

39 In the proposed Schedule 6B, in paragraph 14(1)(a), by deleting “meeting of the management committee convened under Schedule 2” and substituting “procurement meeting”.

39 In the proposed Schedule 6B, in paragraph 14, by adding—

“(3) In this paragraph—

procurement meeting (採購會議), in relation to a declaration, means a meeting of the management committee convened under Schedule 2 that concerns the relevant procurement.”.

39 In the proposed Schedule 6B, in paragraph 16(1), by adding “9 or” after “paragraph”.

39 In the proposed Schedule 6B, in Part 2, in Division 2, by adding—

“21A. Declaration of no dealing or connection with members of management committee

If the initiation decision has been made for the large-scale maintenance procurement, every responsible person for the procurement must, before the first tender acceptance meeting is held, declare in accordance with paragraphs 23 and 24—

(a) that the responsible person, as at the date of the declaration—

(i) if the responsible person has declared a dealing under paragraph 9(1)—does not have any pecuniary or other personal dealing with a member of the management committee except for the dealing so declared; or

- (ii) in any other case—does not have any pecuniary or other personal dealing with a member of the management committee; and
- (b) that the responsible person, as at the date of the declaration—
 - (i) if the responsible person has declared a connection under paragraph 9(2)—does not have any connection with a member of the management committee except for the connection so declared; or
 - (ii) in any other case—does not have any connection with a member of the management committee.”.

39 In the proposed Schedule 6B, in paragraph 25(1), by adding “21A or” after “paragraph”.

39 In the proposed Schedule 6B, in paragraph 25(2)(b)(ii), by deleting “the management of the building” and substituting “substantive matters in respect of the procurement”.

39 In the proposed Schedule 6B, in paragraph 26(1), by adding “21A or” after “paragraph”.

39 In the proposed Schedule 6C, in the Chinese text, in paragraph 5, by deleting “採購工程” and substituting “工程採購”.

40(12) By deleting the proposed paragraph 4A and substituting—

“4A. Communication among owners

The manager must, on the channels of communication among owners on any business relating to the management of the building—

- (a) if there is a corporation—consult (either generally or in any particular case) the corporation at a general meeting of the corporation convened under Schedule 3 and adopt the approach decided by the corporation; or
- (b) if there is no corporation—consult (either generally or in any particular case) the owners’ committee at a meeting of owners convened under the deed of

mutual covenant and adopt the approach decided by the owners' committee.”.

- 40(16) In the proposed paragraph 12(1), in the Chinese text, by deleting “構” and substituting “購”.
- 40(16) In the proposed paragraph 12(3), by deleting “and (2)” and substituting “and (2)(a)”.
- 40(16) In the proposed paragraph 12(3)(b)(ii), by deleting “(2)” and substituting “(2)(a)”.
- 40(16) In the proposed paragraph 13(1), in the Chinese text, by deleting “構” and substituting “購”.
- 40(16) In the proposed paragraph 13(3), by deleting “and (2)” and substituting “and (2)(a)”.
- 40(16) In the proposed paragraph 13(3)(b)(ii), by deleting “(2)” and substituting “(2)(a)”.
- 40(16) In the proposed paragraph 14(1), in the Chinese text, by deleting “構” and substituting “購”.
- 40(16) In the proposed Part 2, in Division 3, in the heading, by deleting “**Specified for Division 2**” and substituting “**where there is No Corporation**”.
- 40(16) In the proposed paragraph 18(2)(b), in the English text, by deleting “management committee” and substituting “manager”.
- 40(16) By deleting the proposed paragraph 20(1) and substituting—
- “(1) Subject to subparagraph (4), no tender may be accepted for the procurement if—
 - (a) the procurement is the procurement of any supplies, goods or services the value of which exceeds, or is likely to exceed, the monetary amount specified in paragraph 5(1)(a) of Schedule 6A, and an invitation to tender has not been specifically issued to 5 or more potential suppliers for the procurement; or

- (b) the procurement is the procurement of any supplies, goods or services the value of which—
 - (i) exceeds, or is likely to exceed, the monetary amount specified in paragraph 5(1)(b)(i) of that Schedule; but
 - (ii) does not exceed, or is unlikely to exceed, the monetary amount specified in paragraph 5(1)(b)(ii) of that Schedule,and an invitation to tender has not been specifically issued to 3 or more potential suppliers for the procurement.”.

- 40(16) By deleting the proposed paragraph 20(3) and substituting—
- “(3) Subparagraph (1) applies regardless of whether an invitation to tender issued for the procurement is advertised (such as in a local newspaper or on a website) and is open to any potential suppliers.”.
- 40(16) In the proposed Part 2, in Division 4, in the heading, by deleting “**Specified for Division 2**” and substituting “**where there is No Corporation**”.
- 40(16) In the proposed Part 2, in Division 4, in Subdivision 1, in the heading, by adding “**for Type 1 High-value Procurement, Type 2 High-value Procurement and Large-scale Maintenance Procurement**” after “**Restrictions**”.
- 40(16) In the proposed paragraph 23, by adding—
- “(4) If the procurement is conducted in the circumstances described in paragraph 12(3) or 13(3), then for the purposes of this paragraph—
- (a) the reference to a tender submitted for the procurement in subparagraph (1) is to be construed as a reference to the procurement of supplies, goods or services from the specified supplier; and
 - (b) the reference to a person who has submitted a tender for the procurement in subparagraph (2) is to be construed as a reference to the specified supplier.
- (5) In this paragraph—
- specified supplier* (指明供應商), in relation to the procurement of any supplies, goods or services conducted in the circumstances

described in paragraph 12(3) or 13(3), means the supplier from whom the supplies, goods or services are to be procured under the decision mentioned in that paragraph.”.

40(16) In the proposed paragraph 26(2)(b)(ii), by deleting “the management of the building” and substituting “substantive matters in respect of the procurement”.

40(16) In the proposed paragraph 27(1)(a), by deleting “meeting of owners convened under the deed of mutual covenant” and substituting “procurement meeting”.

40(16) In the proposed paragraph 27, by adding—

“(3) In this paragraph—

procurement meeting (採購會議), in relation to a declaration, means a meeting of owners convened under the deed of mutual covenant that concerns the relevant procurement.”.

40(16) In the proposed paragraph 29(1), by adding “22 or” after “paragraph”.

40(16) By adding—

“30A. Declaration of no dealing or connection with members of owners’ committee

(1) If the initiation decision has been made for the large-scale maintenance procurement, the manager must, before the first tender acceptance meeting is held, declare in accordance with paragraphs 32 and 33—

(a) that the manager, as at the date of the declaration—

(i) if the manager has declared a dealing under paragraph 22(1)—does not have any pecuniary or other personal dealing with a member of the owners’ committee except for the dealing so declared; or

(ii) in any other case—does not have any pecuniary or other personal dealing with a member of the owners’ committee; and

(b) that the manager, as at the date of the declaration—

- (i) if the manager has declared a connection under paragraph 22(2)—does not have any connection with a member of the owners’ committee except for the connection so declared; or
 - (ii) in any other case—does not have any connection with a member of the owners’ committee.
- (2) If there is a responsible person for the procurement other than the manager, the manager—
 - (a) must require the responsible person to comply with subparagraph (1) that is to be construed in accordance with subparagraph (3); and
 - (b) must use the manager’s best endeavors to prevent any contravention of the requirement by the responsible person.
- (3) For the purposes of subparagraph (2)(a), subparagraph (1) is to be construed as if—
 - (a) a reference to the manager in subparagraph (1) were a reference to the responsible person;
 - (b) the reference to declaring a dealing under paragraph 22(1) in subparagraph (1)(a)(i) were a reference to declaring a dealing in compliance with a requirement imposed by the manager under paragraph 22(3)(a); and
 - (c) the reference to declaring a connection under paragraph 22(2) in subparagraph (1)(b)(i) were a reference to declaring a connection in compliance with a requirement imposed by the manager under paragraph 22(3)(a).”.

40(16) In the proposed paragraph 31(3)(c), in the Chinese text, by deleting “作出關於關連的申報” (wherever appearing) and substituting “申報某項關連”.

40(16) In the proposed paragraph 34(1), by adding “30A or” after “paragraph”.

40(16) In the proposed paragraph 34(2)(b)(ii), by deleting “the management of the building” and substituting “substantive matters in respect of the procurement”.

- 40(16) In the proposed paragraph 35(1), by adding “30A or” after “paragraph”.
- 40(16) By deleting the proposed paragraph 36 and substituting—
- “36. Application**
- (1) This Part applies if there is no corporation.
- (2) Paragraphs 39 and 40 and Division 3 do not apply in relation to a meeting of owners if—
- (a) for an original meeting—a notice of the meeting; or
- (b) for an adjourned meeting—a notice of the original meeting,
- is given under the deed of mutual covenant before the date on which the Building Management (Amendment) Ordinance 2024 (of 2024) comes into operation.”.
- 40(16) In the proposed paragraph 41(1), by deleting “(2)(b)” and substituting “(2)”.
- 40(16) By deleting the proposed paragraph 41(2) and substituting—
- “(2) A corporate flat owner may by written notice (*authorization notice*) given in accordance with subparagraph (4) authorize 1 natural person for the purposes of subparagraph (1).”.
- 40(16) In the proposed paragraph 41(4)(b)(ii), by deleting “behalf;” and substituting “behalf; and”.
- 40(16) By deleting the proposed paragraph 41(4)(c).
- 40(16) In the proposed paragraph 43(a) and (c), by deleting “41(2)(b)” and substituting “41(2)”.
- 40(16) In the proposed paragraph 47(3), in the Chinese text, by deleting “、終止或廢止” and substituting “或終止”.
- 40(16) In the proposed paragraph 48(1), in the Chinese text, by adding “投” after “親自”.
- 40(16) By adding—

“48A. Recording of votes cast personally and by proxy

If votes have been cast for a proposed large-scale maintenance procurement resolution at a meeting of owners, the manager must ensure that the minutes of the proceedings at the meeting kept under paragraph 39(1) contain a clear and legible record of—

- (a) the total number of such votes cast personally; and
- (b) the total number of such votes cast by proxy.”.

43

By deleting the clause and substituting—

“43. Schedule 11 amended (enumeration of owners)

- (1) Schedule 11, Chinese text, heading—

Repeal

“的百分率”.

- (2) Schedule 11, paragraph (a)—

Repeal

“and 40C(9) and paragraphs 1(2) and 5 of Schedule 3, paragraph 1A of Schedule 6”

Substitute

“, 28C(1) and 40C(9) and paragraphs 1(2) and 5 of Schedule 3, paragraph 1A of Schedule 6, paragraph 4(2) of Schedule 6C, paragraphs 11(1) and 48(2) of Schedule 7”.

- (3) Schedule 11, paragraph (b), after “percentage”—

Add

“or number”.”.