

Handling Instrument of Appointing a Proxy

Code of Conduct

Code No.: C21/2024



Preamble ● ● ●

The following code of conduct (“Code”) is issued by the Property Management Services Authority (“PMSA”) pursuant to section 5 of the Property Management Services Ordinance (“PMSO”) and contains practical guidance for the purposes of section 4 of the PMSO (disciplinary offences). Although a licensee¹ does not incur a legal liability only because the licensee has contravened a provision of the Code, the Code is admissible in evidence in disciplinary hearings, and proof that a licensee contravened or did not contravene the relevant provision of the Code may be relied on as tending to establish or negate a matter that is in issue in the hearings.

Background ● ● ●

2. An owner of a property may appoint third party (including other owners, licensed property management company (“PMC”) or its licensed property management practitioner² (“PMP”), or other persons) to represent him/her to attend a meeting of an owners’ corporation (“OC”)³ or an owners’ meeting⁴ and vote on the agenda item(s). The PMSA has formulated the Code to provide practical guidance to licensed PMCs and their licensed PMPs on dealing with matters concerning the attendance of the aforementioned meeting as authorised and/or appointed by owners and the related voting matters.

¹ The term “licensee” means the holder of the following licence: a PMC licence; a PMP (Tier 1) licence; a PMP (Tier 2) licence; a provisional PMP (Tier 1) licence; or a provisional PMP (Tier 2) licence.

² According to Section 2 of the PMSO, licensed PMP means (a) a licensed PMP (Tier 1); or (b) a licensed PMP (Tier 2).

³ Refers to meetings convened in accordance with Schedule 3 to the Building Management Ordinance (Cap.344) (“BMO”).

⁴ Refers to meetings convened in accordance with the DMC of the building (which may include the provisions in Schedule 8 to the BMO that are consistent with and incorporated into the DMC).



Interests and obligations of owners

3.1 Deed of Mutual Covenant (“DMC”) of a property

3.1.1 The DMC of a property is a legal document which is binding on all owners of the property and stipulates clearly the rights, interests and obligations of owners regarding management of their flats and common parts within the property. The DMC, in general, sets out clauses concerning matters relating to owners’ meetings.

3.2 Building Management Ordinance (Cap. 344)

3.2.1 At the OC meeting held in accordance with the BMO⁵, an owner may cast vote in person or by proxy using the instrument (authorisation form) as specified in the BMO⁶ to appoint representative to attend on the owner’s behalf and vote for him/her. The provisions regarding requirements on owners’ meetings set out in Schedule 8 to the BMO shall, to the extent that they are consistent with the DMC, be incorporated into the respective DMC.

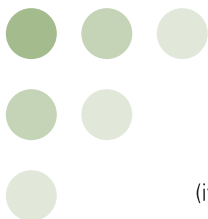
Owner appointing proxy to attend OC meeting

- Code:** A(1) Prior to an OC meeting⁷ is held at a property for which property management (“PM”) services are provided by it, a licensed PMC has to:
- (a) remind owners -
 - (i) as far as possible, attend the meeting in person and cast vote;
 - (ii) if they cannot attend the meeting, they should appoint trustworthy person(s) to attend the meeting on their behalf and cast vote;
 - (iii) when appointing proxy, they should fill in the names of the proxy and alternative proxy and the meeting date immediately on the instrument appointing proxy (authorisation form) (if there is no appointment of alternative proxy, delete the respective blank space); and must not sign a blank instrument of appointing proxy (authorisation form) for others to use;

⁵ Please refer to footnote 3.

⁶ According to Section 4(1) of Schedule 3 and Section 13(b) of Schedule 8 to the BMO, at a meeting of the corporation and at a meeting of owners, an owner may cast a vote personally or by proxy.

⁷ The BMO specifies OC meetings and its procedure. For details, please refer to Section 4 of Schedule 3 to the BMO.



- (iv) the instrument appointing proxy (authorisation form) has to comply with the form set out in the BMO (refer to **Annex 1**), and has to be signed by the owner; if the owner is a body corporate, it has to, notwithstanding anything to the contrary in its constitution, be impressed with the seal or chop of the body corporate and signed by a person authorised by the body corporate in that behalf⁸;
 - (v) the instrument appointing proxy (authorisation form) has to be lodged with the secretary of the management committee⁹ ("MC") at least 48 hours before the time for holding the meeting¹⁰; and
 - (vi) the instrument appointing proxy (authorisation form) is valid only if it is made and lodged in accordance with paragraphs A(1)(a)(iv) and (v) of the Code¹¹.
- (b) issue to owners instrument appointing proxy (authorisation form) which complies with the form set out in the BMO (refer to **Annex 1**), and accompanied by a statement of purposes in respect of the collection of personal data.



⁸ Refer to Section 4(2)(a) and (b) of Schedule 3 to the BMO.

⁹ Refers to MC appointed according to Sections 3, 3A, 4 or 40C to the BMO.

¹⁰ Refer to Section 4(3) of Schedule 3 to the BMO.

¹¹ Refer to Section 4(4) of Schedule 3 to the BMO.



- (c) remind the secretary of the MC -
 - (i) where an instrument appointing proxy (authorisation form) is received, acknowledge receipt of the instrument appointing proxy (authorisation form) by sending a receipt to the flat of the owner who signs the instrument appointing proxy (authorisation form), or deposit the receipt in the letter box for that flat, before the time for holding the meeting¹²; and
 - (ii) display information of the flat relating to the instrument appointing proxy (authorisation form) at a prominent location of the place of the meeting before the time for holding the meeting, and cause the information to remain so displayed until the conclusion of the meeting¹³.
- (d) remind the chairman of the MC or the person who presides at the meeting (if the chairman of the MC is absent) that he/she has to determine the validity of the instrument appointing proxy (authorisation form) in accordance with paragraph A(1)(a)(vi) of the Code¹⁴.
- (e) remind the MC that it has to keep all the instruments for the appointment of proxy (authorisation form) for record for a period of at least 12 months after the conclusion of the meeting¹⁵.


A(2) If the licensed PMC is the secretary of the MC of the property, it has to act in accordance with paragraphs A(1)(c)(i) and (ii) of the Code.

¹² Refer to Section 4(5)(a)(i) of Schedule 3 to the BMO.

¹³ Refer to Section 4(5)(a)(iii) of Schedule 3 to the BMO.

¹⁴ Refer to Section 4(5)(b) of Schedule 3 to the BMO.

¹⁵ Refer to Section 4(6) of Schedule 3 to the BMO.



Owner appointing proxy to attend owners' meeting

Code: B(1) Prior to an owners' meeting¹⁶ is held at a property for which PM services are provided by it, a licensed PMC has to:

- (a) remind owners -
 - (i) as far as possible, attend the meeting in person and cast vote;
 - (ii) if they cannot attend the meeting, they should appoint trustworthy person(s) to attend the meeting on their behalf and cast vote;
 - (iii) when appointing proxy, they should fill in the names of the proxy and alternative proxy and the meeting date immediately on the instrument appointing proxy (authorisation form) (if there is no appointment of alternative proxy, delete the respective blank space); and must not sign a blank instrument of appointing proxy (authorisation form) for others to use;
 - (iv) the instrument appointing proxy (authorisation form) has to comply with the form set out in the BMO (refer to **Annex 2**), and has to be signed by the owner; if the owner is a body corporate, it has to, notwithstanding anything to the contrary in its constitution, be impressed with the seal or chop of the body corporate and signed by a person authorised by the body corporate in that behalf¹⁷;
 - (v) the instrument appointing proxy (authorisation form) has to be lodged with the convenor at least 48 hours before the time for holding the meeting¹⁸; and
 - (vi) the instrument appointing proxy (authorisation form) is valid only if it is made and lodged in accordance with paragraphs B(1)(a)(iv) and (v) of the Code¹⁹.

¹⁶ The BMO specifies owners' meeting (appointment of MC) procedure, for details please refer to the requirements in Sections 3(10) and (11) of the BMO.

¹⁷ Refer to Sections 3(10)(a)(i) and (ii) of the BMO.

¹⁸ Refer to Section 3(10)(b) of the BMO.

¹⁹ Refer to Section 3(10)(c) of the BMO.

- (b) issue to owners instrument appointing proxy (authorisation form) which complies with the form set out in the BMO (refer to **Annex 2**), and accompanied by a statement of purposes in respect of the collection of personal data.
- (c) remind the convenor²⁰-
 - (i) where an instrument appointing proxy (authorisation form) is received, acknowledge receipt of the instrument appointing proxy (authorisation form) by sending a receipt to the flat of the owner who signs the instrument appointing proxy (authorisation form), or deposit the receipt in the letter box for that flat, before the time for holding the meeting²¹;
 - (ii) display information of the flat relating to the instrument appointing proxy (authorisation form) at a prominent location of the place of the meeting before the time for holding the meeting, and cause the information to remain so displayed until the conclusion of the meeting²²;
 - (iii) has to determine the validity of the instrument appointing proxy (authorisation form) in accordance with paragraph B(1)(a)(vi) of the Code²³; and
 - (iv) has to keep all the instruments for the appointment of proxy (authorisation form) for record for a period of at least 12 months after the conclusion of the meeting²⁴.

B(2) If the licensed PMC is the convenor of the owners' meeting, it has to act in accordance with paragraphs B(1)(c)(i)-(iv) of the Code.


²⁰ Section 3(1) of the BMO specifies that a meeting of the owners to appoint an MC may be convened by— (a) any person managing the building in accordance with the DMC (if any); or (b) any other person authorized to convene such a meeting by the DMC (if any); or (c) one owner appointed to convene such a meeting by the owners of not less than 5% of the shares in aggregate.

²¹ Refer to Section 3(10)(e)(i) of the BMO.

²² Refer to Section 3(10)(e)(iii) of the BMO.

²³ Refer to Section 3(10)(e)(ii) of the BMO.

²⁴ Refer to Section 3(11) of the BMO.



Owner appointing licensee to attend meeting

- Code:** C(1) If an owner intends to appoint a licensed PMC or its licensed PMP as proxy to attend OC meeting or owners' meeting and cast vote, and the aforementioned PMC provides PM services to the concerned property, before accepting appointment, the licensed PMC or its licensed PMP has to:
- (a) remind the owner the importance of the right to vote and as far as possible, attend the meeting in person and cast vote; and
 - (b) if any agenda item of the meeting has conflict of interest (or potential conflict of interest) with the aforementioned PMC (e.g. the agenda item is to choose a PM service provider and the aforementioned licensed PMC is a bidder), the licensed PMC or its licensed PMP has to declare to the concerned owner the conflict of interest (including potential conflict of interest) such that the owner can reconsider as to whether the appointment should be made.
- C(2) If a licensed PMC or its licensed PMP provides to owners regarding the meeting instrument appointing proxy (authorisation form) for owners to appoint proxy, the licensed PMC or its licensed PMP must not fill in any information of proxy in advance on the instrument appointing proxy (authorisation form), nor fill in information of proxy without the owners' knowledge or consent, nor request the owners to sign the instrument appointing proxy (authorisation form) with the information of appointed proxy left blank.

A licensed PMC or its licensed PMP accepting appointment from owners to attend meeting

- Code:** D(1) If a licensed PMC or its licensed PMP accepts appointment from owners to attend OC meeting or owners' meeting and cast vote, the licensed PMC or its licensed PMP has to consult the concerned owners the voting instruction for the agenda item(s), and make clear that if there is no voting instruction for the agenda item(s), the licensed PMC or its licensed PMP may make voting decision on its own regarding the agenda item(s).
- D(2) A licensed PMC or its licensed PMP has to record clearly in writing the owner's voting instruction (if any) and ask him/her to sign as confirmation, and act faithfully in accordance with the instruction.
- D(3) When a licensed PMC or its licensed PMP attends a meeting on behalf of owners and casts vote, the licensed PMC or its licensed PMP has to announce at the meeting the total number of instruments appointing proxy (authorisation form) appointing the licensed PMC or its licensed PMP as proxy and the concerned number of shares, and has to remind the person who presides at the meeting / convenor to record the information in the minutes of the meeting.

Handling instrument appointing proxy (authorisation form) and related information

- Code:** E(1) If a licensed PMC assists the OC or the concerned meeting convenor in collecting instruments appointing proxy (authorisation form), counting of instruments appointing proxy (authorisation form), recording and displaying information on instruments appointing proxy (authorisation form) and keeping instruments appointing proxy (authorisation form), etc. in relation to the concerned meeting, it has to act in accordance with the DMC of the property and relevant laws and regulations (including the BMO)²⁵.

²⁵ Please refer to footnotes 3, 4 and 7.



Instrument of Proxy for Meetings of Corporation

The Incorporated Owners of
(description of building)

I/We, (name(s) of owner(s)), being the

owner(s) of (unit and address of building),

hereby appoint (name of proxy) *[or failing

him (name of alternative proxy)], as my/our proxy to
attend and vote on my/our behalf at the [*general meeting/annual general meeting]
of The Incorporated Owners of (description of
building), to be held on the day of *[and at any adjournment
thereof].

Dated this day of

.....
(Signature of owner(s))

* Delete where inapplicable.

Instrument of Proxy for Meetings of Owners

Meeting of the owners of
(description of building)

I/We, (name(s) of owner(s)), being the

owner(s) of (unit and address of building),

hereby appoint (name of proxy) *[or failing

him (name of alternative proxy)], as my/our proxy to
attend and vote on my/our behalf at the meeting of the owners of the building
described above, to be held on the day of *[and at any
adjournment thereof].

Dated this day of

.....
(Signature of owner(s))

* Delete where inapplicable.



• If there is any inconsistency between the Chinese version and the English version of this Code, the Chinese version shall prevail.

• If there are any amendments to any ordinances or regulations mentioned in this Code, licensees have to act in accordance with the revised provisions.



Related Best Practice Guide

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