

Property Management Services Authority

Code of Conduct

Handling Instrument of Appointing a Proxy

Code No.: C21/2024

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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 authorized 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 a property (which may include the provisions in Schedule 8 to the BMO that are consistent with and incorporated into the DMC).

3. 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 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 of the property⁷.

3.2.2 According to the BMO, owners shall vote on Large-scale Maintenance Procurement⁸ (see **Annex 1**) as per the voting-in-person threshold⁹ (see **Annex 2**) requirement. Corporate flat owners may, by way of a notice in writing (“authorization notice”), authorize a natural person to act for the corporate flat owner in a meeting of the OC according to the mechanism¹⁰. A vote cast by the authorized natural person who attends general meeting of the OC/owners’ meeting can be counted towards the number of votes from owners voting in person under the requirement in respect of large-scale maintenance procurement¹¹ resolution.

⁵ See 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 OC and at a meeting of owners, an owner may cast a vote personally or by proxy.

⁷ See sections 34D and 34F of the BMO. The provisions in Schedule 8 to the BMO shall, to the extent that they are consistent with the DMC, be impliedly incorporated into every DMC. Any provision in Schedule 8 that is impliedly incorporated into a DMC under this section may, insofar as that provision is so incorporated, be amended, deleted, or re-incorporated into the DMC by a resolution of the owners.

⁸ See section 2E of the BMO and Annex 1.

⁹ According to paragraph 4 of Schedule 6C (OC meeting) and paragraph 49 of Schedule 7 (owners’ meeting) to the BMO, at least 5% of the owners or 100 owners (whichever is the lesser) must vote in person in order to pass a resolution on large-scale maintenance procurement/variation or termination of a contract. According to sections 34E(1) and (2) of the BMO, subject to subsection (4), the provisions in Schedule 7 shall be impliedly incorporated— (a) into every deed of mutual covenant made on or after the material date; and (b) as from the material date, into every deed of mutual covenant made before that date. The provisions incorporated into a deed of mutual covenant by virtue of this section shall— (a) bind the owners and manager of the building; and (b) prevail over any other provision in the deed that is inconsistent with them.

¹⁰ See paragraphs 4A(1), 4A(2) and 4B of Schedule 3 to the BMO.

¹¹ See footnote 8.

Owner appointing proxy or corporate flat owner authorizing natural person to attend OC meeting

Code: A(1) Prior to an OC meeting¹² 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 (if there is no appointment of alternative proxy, delete the respective blank space); and must not sign a blank instrument of appointing proxy for others to use;
 - (iv) the instrument appointing proxy has to comply with the form set out in the BMO (see **Annex 3**), 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 authorized by the body corporate in that behalf¹³;
 - (v) at a meeting where a proposed large-scale maintenance procurement resolution is discussed, a corporate flat owner may, by way of an authorization notice) (see **Annex 4**), authorize a natural person to act for the corporate flat owner in the meeting¹⁴. A vote cast by the authorized natural person at the meeting is regarded as the owner voting in person at the meeting;

¹² The BMO specifies OC meetings and its procedure. For details, please refer to the requirements in Schedule 3 to the BMO.

¹³ Refer to paragraphs 4(2)(a) and (b) and 4A(4)(a) and (b) of Schedule 3 to the BMO.

¹⁴ See footnote 10.

- (vi) the instrument appointing proxy and the authorization notice have to be lodged with the secretary of the management committee¹⁵ (“MC”) at least 48 hours before the time for holding the meeting¹⁶; and
 - (vii) the instrument appointing proxy and the authorization notice are valid only if they are made and lodged in accordance with paragraphs A(1)(a)(iv) to (vi) of the Code¹⁷.
- (b) issue to owners instrument appointing proxy (see **Annex 3**) and authorization notice (see **Annex 4**) which comply with the specified form, and accompanied by a statement of purposes in respect of the collection of personal data.
- (c) remind the secretary of the MC -
- (i) where an instrument appointing proxy or an authorization notice is received, acknowledge receipt of the instrument appointing proxy and the authorization notice by sending a receipt to the flat of the owner who signs the instrument appointing proxy and the authorization notice, or deposit the receipt in the letter box for that flat, or (for authorization notice) sending validly a receipt in electronic format to the concerned corporate flat owner, before the time for holding the meeting¹⁸; and
 - (ii) before the time for the holding of the meeting, set out on a list every flat in respect of which an instrument appointing a proxy and an authorization notice is lodged with the secretary of the MC (if any), and display the list (if any) in a prominent place in the place of the meeting, and cause the list to remain so displayed until the conclusion of the meeting¹⁹.
- (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

¹⁵ Refers to MC appointed according to sections 3, 3A, 4 or 40C to the BMO.

¹⁶ Refer to paragraphs 4(3) and 4A(4)(c) of Schedule 3 to the BMO.

¹⁷ Refer to paragraph 4(4) of Schedule 3 to the BMO.

¹⁸ Refer to paragraphs 4(5)(a) and 4A(5)(a) of Schedule 3 to the BMO.

¹⁹ Refer to paragraphs 4(5A) and 4A(6) of Schedule 3 to the BMO.

determine the validity of the instrument appointing proxy and the authorization notice in accordance with paragraph A(1)(a)(vii) of the Code²⁰.

- (e) remind the MC that it has to keep all the instruments for the appointment of proxy and the authorization notices for record for a period of 12 months and 3 years respectively after the conclusion of the relevant meeting²¹ (see **Annex 5** for details).

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.

Owner appointing proxy or corporate flat owner authorising natural person to attend owners' meeting

Code: B(1) Prior to an owners' meeting²² for appointment of MC 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) at a meeting where a proposed large-scale maintenance procurement resolution is discussed, a corporate flat owner may, by way of an authorization notice, authorize a natural person to act for the corporate flat owner in the meeting²³. A vote cast by the authorized natural person at the meeting is regarded as the owner voting in person at the meeting;

²⁰ Refer to paragraph 4(5)(b) of Schedule 3 to the BMO.

²¹ Refer to note of paragraphs 4 and 4A of Schedule 3 to and sections 36A(2) and 36A(3) of the BMO.

²² Schedule 8 to the BMO and the DMC specify owners' meeting procedure. According to section 34F of the BMO, the provisions in Schedule 8 to the BMO shall, to the extent that they are consistent with the DMC, be impliedly incorporated into every DMC. Sections 3(10), (10A) and 4A of the BMO also specify procedure for convening owners' meeting for appointment of MC.

²³ Refer to paragraph 42(1) of Schedule 7 to the BMO.

- (iv) when appointing proxy, they should fill in the names of the proxy and alternative proxy (if there is no appointment of alternative proxy, delete the respective blank space) and the meeting date immediately on the instrument appointing proxy / the authorization notice; and must not sign a blank instrument of appointing proxy / authorization notice for others to use;
 - (v) the instrument appointing proxy / the authorization notice has to comply with the specified form (see **Annex 6** and **Annex 7**), 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 authorized by the body corporate in that behalf²⁴;
 - (vi) the instrument appointing proxy and the authorization notice have to be lodged with the convenor or person in charge of the meeting at least 48 hours before the time for holding the meeting²⁵; and
 - (vii) the instrument appointing proxy and the authorization notice are valid only if they are made and lodged in accordance with paragraphs B(1)(a)(v) and (vi) of the Code²⁶.
- (b) issue to owners instrument appointing proxy (see **Annex 6**) and the authorization notice (see **Annex 7**) which comply with the specified form, and accompanied by a statement of purposes in respect of the collection of personal data.
- (c) remind the convenor or person in charge of the meeting²⁷ -
- (i) where an instrument appointing proxy or an authorization

²⁴ Refer to sections 3(10)(a)(i) and (ii), 3A(3H)(a)(i) and (ii), 4(12)(a)(i) and (ii) of the BMO, paragraphs 42(4)(a) and (b) of Schedule 7 and paragraph 14(1) of Schedule 8 to the BMO.

²⁵ Refer to sections 3(10)(b), 3A(3H)(b), 4(12)(b) of the BMO, paragraphs 42(4)(c) and 42(5) of Schedule 7 and paragraph 14(2) of Schedule 8 to the BMO.

²⁶ Refer to Sections 3(10)(c), 3A(3H)(c) and 4(12)(c) of the BMO. Make reference to paragraphs 42(4)(a)-(c) of Schedule 7 to the BMO.

²⁷ Sections 3(1), 3A(1) and 4(1) of the BMO specify the persons who may convene a meeting of the owners to appoint an MC.

notice is received, acknowledge receipt of the instrument appointing proxy or the authorization notice by sending a receipt to the flat of the owner who signs the instrument appointing proxy and the authorization notice, or deposit the receipt in the letter box for that flat, or (for authorization notice), sending validly a receipt in electronic format to the concerned corporate flat owner, before the time for holding the meeting²⁸;

- (ii) before the time for the holding of the meeting, set out on a list every flat in respect of which an instrument appointing a proxy and an authorization notice is lodged with (if any), and display the list (if any) in a prominent place in the place of the meeting, and cause the list to remain so displayed until the conclusion of the meeting²⁹;
- (iii) has to determine the validity of the instrument appointing proxy and the authorization notice in accordance with paragraph B(1)(a)(vii) of the Code³⁰; and
- (iv) has to keep all the instruments appointing proxy and the authorization notices for record for a period of 12 months and 3 years respectively after the conclusion of the meeting³¹.

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

B(3) In addition to owners' meeting for appointment of MC, if a licensed PMC holds other owners' meetings at a property for which PM services are provided by it, it has to, so far as reasonably practicable, act in accordance with paragraphs B(1) and B(2) of the Code.

Owner appointing licensee to attend meeting

Code: C(1) If an owner intends to appoint a licensed PMC or its licensed PMP as

²⁸ Refer to sections 3(10)(e)(i), 3A(3H)(e)(i) and 4(12)(e)(i) of the BMO.

²⁹ Refer to section 3(10A) of the BMO.

³⁰ Refer to sections 3(10)(e)(ii), 3A(3H)(e)(ii) and 4(12)(e)(ii) of the BMO. Make reference to paragraphs 42(4)(a)-(c) of Schedule 7 to the BMO.

³¹ Refer to section 4A of the BMO.

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 about large-scale maintenance procurement and high-value procurement and the aforementioned licensed PMC is a bidder³²), 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 / authorization notice 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 / the authorization notice, nor fill in information of proxy without the owners' knowledge or consent, nor request the owners to sign the instrument appointing proxy / the authorization notice 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).

³² Regarding large-scale maintenance procurement and high-value procurement in a property, a licensed PMC as manager or a person who is accustomed or obliged to act in accordance with the directions or instructions of the licensed PMC in connection with the procurement, should refer to Division 2 of Part 1 and Division 2 of Part 2 of Schedule 6B and Division 4 of Part 2 of Schedule 7 to the BMO for the requirements and arrangements in respect of declaration.

- 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 / authorization notices 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, authorization notice and related information

- Code:** E(1) If a licensed PMC assists the OC or the concerned meeting convenor in collecting instrument appointing proxy and authorization notice, counting of instrument appointing proxy and authorization notice, recording and displaying the list on instrument appointing proxy and authorization notice and keeping instrument appointing proxy, 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)³³.
- E(2) If a licensed PMC assists in the voting at a meeting of the OC / an owners' meeting in respect of the handling of large-scale maintenance procurement, the minutes of meeting must contain a clear record of the total number of votes cast personally and the total number of votes cast by proxy³⁴.

— END —

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.

³³ See footnotes 3, 4, 9, 12 and 22.

³⁴ For details, please refer to paragraph 5 of Schedule 6C and paragraph 50 of Schedule 7 to the BMO.

Building Management Ordinance

2E. References to large-scale maintenance procurement

- (1) For the purposes of this Ordinance, the procurement of any supplies, goods or services required in the performance of a function under the deed of mutual covenant or this Ordinance is large-scale maintenance procurement if—
 - (a) the supplies, goods or services are so required for repairing, replacing, maintaining or improving any of the common parts of the building;
 - (b) the value of the supplies, goods or services divided by the total number of flats of the building exceeds, or is likely to exceed, \$30,000; and
 - (c) the procurement is not the procurement of—
 - (i) any cleaning or security services for the building; or
 - (ii) any building management services provided by the manager of the building.
- (2) In subsection (1)(b), a reference to flats does not include any garage, carpark or carport unless every flat in the building concerned is, or is part of, a garage, carpark or carport.
- (3) The Authority may by notice published in the Gazette amend the monetary amount specified in subsection (1)(b).

Building Management Ordinance

Paragraph 4 of Schedule 6C - Voting-in-person threshold

- (1) The voting in respect of a proposed large-scale maintenance procurement resolution at a meeting of a corporation is subject to a voting-in-person threshold specified under subparagraph (2).
- (2) The voting-in-person threshold is the lesser of—
 - (a) 5% of the owners; or
 - (b) 100 owners.

Paragraph 49 of Schedule 7 - Voting-in-person threshold

- (1) The voting in respect of a proposed large-scale maintenance procurement resolution at a meeting of owners is subject to a voting-in-person threshold specified under subparagraph (2).
- (2) The voting-in-person threshold is the lesser of—
 - (a) 5% of the owners; or
 - (b) 100 owners.

Form 2

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.

Authorization notice for Corporate Flat Owner (Sample)

Authorization notice of the natural person
for general meeting of a corporation / meetings of owners*

[The Incorporated Owners of]* (description of building)

The company / We*, (name of the corporate
flat owner), being the owner of

..... (unit and address of building),

hereby authorize (name of the authorized natural
person) to attend and vote on behalf of the company / our behalf* at the [general meeting
/ annual general meeting* of the corporation]* / [meeting of owners]* of

..... (description of building) to be held on the day
of in [and at any adjournment thereof]*.

The company / We* understand that, the vote of the authorized natural person at the
meeting will be regarded as the vote of the company / us* in person at the meeting.

Dated this day of

Common seal of the corporate flat owner:

Signature of representative of the corporate flat owner:

*Delete where inapplicable.

Building Management Ordinance

36A. Duty to keep certain documents concerning meetings

- (1) A management committee—
 - (a) must keep any certified minutes for a management committee meeting during the period of 6 years after the date on which they are certified in accordance with Schedule 2; and
 - (b) must keep any certified minutes for a corporation general meeting during the period of 6 years after the date on which they are certified in accordance with Schedule 3.
- (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).
- (4) If a management committee contravenes subsection (1), (2) or (3), every person who is accountable for the contravention commits an offence and is liable on conviction to a fine at level 4.
- (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.

...

Form 1

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.

Authorization notice for Corporate Flat Owner (Sample)

**Authorization notice of the natural person
for general meeting of a corporation / meetings of owners***

[The Incorporated Owners of]* (description of building)

The company / We*, (name of the corporate flat owner), being the owner of

..... (unit and address of building),

hereby authorize (name of the authorized natural person) to attend and vote on behalf of the company / our behalf* at the [general meeting / annual general meeting* of the corporation]* / [meeting of owners]* of

..... (description of building) to be held on the day of in [and at any adjournment thereof]*.

The company / We* understand that, the vote of the authorized natural person at the meeting will be regarded as the vote of the company / us* in person at the meeting.

Dated this day of

Common seal of the corporate flat owner:

Signature of representative of the corporate flat owner:

*Delete where inapplicable.