

PROPERTY MANAGEMENT SERVICES AUTHORITY

Code of Conduct

Handling Building Works

Code No.: C20/2023

Effective Date: 8 December 2023

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. A licensed property management company (“licensed PMC”) may, in respect of the property for which property management services (“PMSs”) are provided by it, from time to time, carry out building works² (including repair, maintenance, alteration and addition (“RMAA”) works) by itself or by engaging contractor, or follow-up on building works carried out by individual flat owners in the property. The PMSA has formulated the Code to provide practical guidance to licensed PMCs on carrying out or following-up on such works.

3. Obligations Towards Property / Building Works

3.1 Duties of Owners

3.1.1 An owner³ of a property owns undivided shares of the land on which the building

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 Buildings Ordinance (Cap. 123), “building works” include any kind of building construction, site formation works, ground investigation in the scheduled areas, foundation works, repairs, demolition, alteration, addition and every kind of building operation, and include drainage works.

³ The term “owner” has the same meaning as defined by section 2 of the BMO, i.e. “(a) a person who for the time being appears from the records at the Land Registry to be the owner of an undivided share in land on which there is a building; and (b) a registered mortgagee in possession of such share”.

is erected, and also co-owns with other owners the common parts and facilities of that land; hence owners have full and ultimate duty regarding building works carried out in the concerned property, and the common parts and facilities owned by them.

3.2 Common Law Duty of Care

3.2.1 The owner of a landed property has a common law duty of care to maintain the property. The owner may be held liable for personal injury and / or property damage arising from failure to observe the duty. Therefore, the owner has to use, maintain, repair and handle properly building works carried out in the concerned property, and the common parts and facilities owned by them so as to avoid causing personal injury and / or property damage to the public.

3.3 Buildings Ordinance (Cap. 123)

3.3.1 Building works carried out in private properties are regulated by the Buildings Ordinance in order to ensure that the concerned planning, design and construction all meet the statutory safety and hygiene standards. According to the requirements of the Buildings Ordinance, the Building Authority⁴ may issue a repair order to an owner requiring the owner to make good dangerous or defective parts of a building, e.g. dilapidated structural elements or outer walls, dangerous slopes or retaining walls, defective drainage system, etc.; an investigation order requiring the owner to carry out investigation so as to evaluate required remedial or restoration works; and a removal order requiring the owner to remove unauthorised building works (“UBW”)⁵. The Building Authority may also issue to targeted building owners mandatory building inspection notice and mandatory window inspection notice, demanding prescribed inspection and repair to be conducted. The Buildings Department may prosecute owners failing to comply with the order / notice without reasonable excuse.

3.3.2 In accordance with the Buildings Ordinance, the Buildings Department may prosecute any person who obstructs the owners’ corporation in complying with the requirements of the order / notice without reasonable excuse. The Buildings Department may prosecute any person who obstructs the Building Authority, any officer authorized by him or any other public officer, in the exercise of his power under the Buildings Ordinance.

⁴ According to Section 2 of the Buildings Ordinance, “Building Authority” means the Director of Buildings.

⁵ Orders issued by the Buildings Department in accordance with Section 24 (i.e. removal order), Section 26 (i.e. building repair order), Section 26A (i.e. building investigation order), Section 27A (i.e. slope repair order) and Section 28 (i.e. drainage repair / investigation order) of the Buildings Ordinance.

3.3.3 In addition, in accordance with the Buildings Ordinance, excluding exempted works, additions and alterations to a building carried out without the prior approval and consent of the Buildings Department or without complying with the simplified requirements of the Minor Works Control System are deemed UBW. The Buildings Department may prosecute any person who intentionally conducts or erects UBW.

3.4 Building Management Ordinance (Cap. 344) (“BMO”)

3.4.1 If a property has an owners’ corporation (“OC”), the OC has to be responsible for the management of the common parts and facilities of the building in accordance with the BMO and maintain them in a state of good and serviceable condition.

3.5 Occupiers Liability Ordinance (Cap. 314)⁶

3.5.1 In the event of failure to use, maintain, repair and handle properly building works of the property causing injury or death to a third party, the owner / OC can be held legally liable for a breach of the Occupiers Liability Ordinance. Therefore, the owner / OC has to comply with the relevant law to ensure the reasonable safety of third parties in the property.

3.6 Deed of Mutual Covenant (DMC) of a property

3.6.1 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, the PMC, etc. regarding the supervision, repair, maintenance and management of private areas, common parts and facilities, etc. within the property.

3.7 General duties of a licensed PMC

3.7.1 A licensed PMC has to, in respect of the property for which PMSs are provided by it, remind the owners’ organisation⁷ (if any) and the owners that they have full and ultimate duty regarding building works (including RMAA works) in the concerned property, and the common parts and facilities owned by them, and that they have to perform such duty in accordance with the BMO and the DMC of the property.

⁶ The Occupiers Liability Ordinance imposes on an occupier of premises, that is the person in control of the premises, a duty to his visitors to take such care as is reasonable in the circumstances to see that his visitors will be reasonably safe in using the premises for the permitted purposes.

⁷ The term “owners’ organisation” has the same meaning as defined by section 2 of the PMSO i.e. “in relation to a property, means an organisation (whether or not formed under the BMO or a DMC) that is authorised to act on behalf of all the owners of the property”.

Building works in common parts of the property

Code: A(1) A licensed PMC has to, in respect of the property for which PMSs are provided by it, handle properly building works carried out in the common parts and facilities of the property, and so far as reasonably practicable, obtain agreement⁸ from the owners' organisation (including OC) (if any) to carry out such works so as to ensure public safety.

A(2) If the works referred to in paragraph A(1) of the Code involve alteration and addition works which are carried out by the licensed PMC itself, the licensed PMC has to ensure that it:

- (a) consults the prescribed building professionals⁹ for advice before carrying out the works to ensure that the works comply with the requirements in relevant laws and regulations (including the Buildings Ordinance and the DMC of the property);
- (b) submits formal application to the Building Authority¹⁰ for approval (if applicable) in order to carry out the works¹¹;
- (c) if the alteration and addition works are minor works, carries out the works in compliance with the simplified requirements of the Minor Works Control System;
- (d) does not carry out illegal building works (including UBW¹²);
- (e) ensures that the works comply with the DMC of the property; and

⁸ The agreement should not affect the work of a licensed PMC as the manager to carry out its duties pursuant to the BMO or the DMC of the respective property. The term "manager" has the same meaning as that defined by section 34D of the BMO.

⁹ According to Section 2 of the Buildings Ordinance, a "prescribed building professional" means an authorized person, a registered structural engineer, a registered geotechnical engineer or a registered inspector. Information on "prescribed building professionals" and relevant contractors can be found at <https://www.bd.gov.hk/en/resources/online-tools/registers-search/registrationsearch-disclaimer.html>

¹⁰ Please refer to footnote 4.

¹¹ Please refer to Section 14(1) of the Buildings Ordinance for details.

¹² Additions and alterations to a property carried out without the prior approval and consent of the Buildings Department or without complying with the simplified requirements of the Minor Works Control System are deemed UBW. For details, please refer to the website of the Buildings Department. If in doubt, please consult prescribed building professionals.

- (f) engages qualified contractors, including registered general building contractors (RGBCs), registered specialist contractors (RSCs) or registered minor works contractors (RMWCs) to carry out such works¹³.

A(3) If the works referred to in paragraph A(2) of the Code are carried out by a contractor engaged by a licensed PMC or an owners' organisation (if any), the licensed PMC has to ensure that the contractor:

- (a) consults the prescribed building professionals¹⁴ for advice before carrying out the works to ensure that the works comply with the requirements in relevant laws and regulations (including the Buildings Ordinance and the DMC of the property);
- (b) submits formal application to the Building Authority¹⁵ for approval (if applicable) in order to carry out the works¹⁶;
- (c) if the alteration and addition works are minor works, carries out the works in compliance with the simplified requirements of the Minor Works Control System;
- (d) does not carry out illegal building works (including UBW¹⁷);
- (e) ensures that the works comply with the DMC of the property; and
- (f) engages qualified contractors, including registered general building contractors (RGBCs), registered specialist contractors (RSCs) or registered minor works contractors (RMWCs) to carry out such works¹⁸.

Building Works in individual flats of the property

Code: B(1) A licensed PMC has to, in respect of the property for which PMSs are provided by it, draw up the terms and procedures for processing application for carrying out building works in individual flats of the property ("application") (if there is no owners' organisation); or

¹³ Information on registered contractors can be found at the website of the Buildings Department - <https://www.bd.gov.hk/en/resources/online-tools/registers-search/registrationsearch-disclaimer.html>

¹⁴ Please refer to footnote 9.

¹⁵ Please refer to footnote 10.

¹⁶ Please refer to footnote 11.

¹⁷ Please refer to footnote 12.

¹⁸ Please refer to footnote 13.

consult¹⁹ with the owners' organisation (if any) on the terms and procedures for processing such application in accordance with the BMO and the DMC.

B(2) If the works referred to in paragraph B(1) of the Code involve alteration and addition works, before the concerned owners carry out the works, the licensed PMC has to:

- (a) remind the owners to consult prescribed building professionals for advice to ensure that the works comply with the requirements in the relevant laws and regulations (including the Buildings Ordinance and the DMC of the property, etc.), and engage qualified contractors, including registered general building contractors (RGBCs), registered specialist contractors (RSCs) or registered minor works contractors (RMWCs) to carry out such works;
- (b) require the owners to provide relevant information (e.g. drawings signed by a building professional) to show the scope of the alteration and addition works, information on the building professional and contractor engaged by the owners, and the Building Authority's written approval and approved plans or design drawings (if approval from the Building Authority is required for the works); and
- (c) if approval from the Building Authority is required for the works, remind the owners to carry out the works in accordance with the Building Authority's approval and approved plans or design drawings, and not to carry out any illegal building works (including UBW²⁰); and if the works are minor works, remind the owners to comply with the simplified requirements of the Minor Works Control System.

B(3) If the application for the works is submitted by the occupier and not the owner of the individual flat of the property, a licensed PMC has to require the occupier to submit the owner's authorisation document regarding approval of carrying out the works, and act in accordance

¹⁹ The consultation should not affect the work of a licensed PMC as the manager to carry out its duties pursuant to the BMO or the DMC of the respective property. The term "manager" has the same meaning as that defined by section 34D of the BMO.

²⁰ Please refer to footnote 12.

with B(1) and B(2).

Moreover, the licensed PMC also has to remind the owner that the works shall comply with the DMC of the property.

Monitoring building works in property and keeping record

Code: C(1) A licensed PMC has to, so far as reasonably practicable, monitor properly and keep record of building works referred to in this Code and carried out in property for which PMSs are provided by it. If abnormalities are found (e.g. there are suspected illegal building works), the licensed PMC has to notify the owner / occupier to take appropriate follow-up action.

C(2) If a licensed PMC discovers that the contractor or owner / occupier contravenes the concerned legal provisions when carrying out the works referred to in paragraph A(3) or B(2) of this Code, it has to, so far as reasonably practicable, instruct the contractor concerned or demand the owner / occupier to cease the works immediately, make rectification, document the concerned works and carry out appropriate follow-up work (including reporting the incident to relevant enforcement agencies) and notify timely the owners' organisation (if any). If the concerned non-compliance has not been properly dealt with, so far as reasonably practicable, the works are not to be proceeded with.

Notification and follow-up work on building works

Code: D(1) A licensed PMC has to display notice in prominent place in the lobby of the property concerned to inform owners and relevant persons about the building works before such works commence.

D(2) After completion of the building works, a licensed PMC has to clear up by itself (if the works are carried out by itself); or supervise the contractor or owner concerned to clear up the affected area, and properly restore damaged facilities and areas arising from the works.

UBW, dangerous / defective building or defective drainage system

Code: E(1) If a licensed PMC discovers or receives a report on UBW, dangerous / defective building or defective drainage system within the property,

it has to firstly take action timely and properly in accordance with paragraphs (a)-(c) below:

- (a) if the UBW, dangerous / defective building or defective drainage system are common parts or facilities of the property:
 - (i) report and propose to owners / owners' organisation (if any) to make good and repair, or with agreement from owners / owners' organisation (if any), arrange timely for removal / remedial / repair works to be carried out;
 - (ii) if there is no owners' organisation, so far as reasonably practicable, arrange timely for removal / remedial / repair works to be carried out by itself; and
 - (iii) remind owners / owners' organisation (if any) that they bear legal responsibility as stated in paragraphs 3.1.1 to 3.6.1 above, and failure to remove the UBW and repair properly dangerous / defective building or defective drainage system may contravene the Buildings Ordinance and lead to prosecution.

- (b) if the UBW, dangerous / defective building or defective drainage system are common parts or facilities of the property which are located within a flat of an individual owner, remind owners / owners' organisation (if any) that they bear legal responsibility as stated in paragraphs 3.1.1 to 3.6.1 above, and failure to remove the UBW and repair properly dangerous / defective building or defective drainage system may contravene the Buildings Ordinance and lead to prosecution.

- (c) if the UBW, dangerous / defective building or defective drainage system concerns a flat of an individual owner:
 - (i) report to the owners' organisation (if any) and require the concerned owner to carry out removal / remedial / repair works;
 - (ii) if there is no owners' organisation, require by itself the concerned owner to carry out removal / remedial / repair works; and
 - (iii) remind the concerned owner that there is legal responsibility as stated in paragraphs 3.1.1 to 3.6.1 above,

and failure to remove the UBW and repair properly dangerous / defective building or defective drainage system may contravene the Buildings Ordinance and lead to prosecution.

- (d) if any owner obstructs²¹ the handling of UBW, dangerous / defective building, defective drainage system, etc. in common parts of the property, or fails to handle properly regarding paragraphs E(1)(a) - (c) of this Code, report to the relevant Government departments and agencies (including the Buildings Department)²² for follow-up.

E(2) A licensed PMC has to tie in with the operation of relevant Government departments and agencies in handling the aforementioned matters (e.g. arrange for inspection of common parts and facilities of the property, assist in contacting concerned owners / occupiers to allow authorised persons to access individual flats of the property to carry out inspection, posting relevant orders and carrying out the required works (if applicable))²³.

Orders / Notices issued by the Buildings Department

Code: F(1) When a licensed PMC receives or is notified of an order²⁴ issued by the Buildings Department such as removal order, inspection order, repair order, etc. or mandatory building²⁵ / window²⁶ inspection notice, it has to deal with the matter properly, including :

²¹ According to Section 40(4B) of the Buildings Ordinance, any person who without reasonable excuse obstructs the owners' corporation in complying with the requirements of the order / notice shall be guilty of an offence and shall be liable on conviction to a fine at level 3 and to imprisonment for 6 months.

²² According to Section 22(1) of the Buildings Ordinance, the Building Authority or an authorized officer (if entry is permitted or a warrant is obtained) may at any time enter and where necessary, in the presence of a police officer, any premises or enter upon any land, (a) to ascertain whether any building, structure, street or natural, formed or man-made land is dangerous or liable to become dangerous; (b) to inspect or test any groundwater drainage works, drainage works, drainage system, sewerage works or sewerage system; (c) to ascertain whether the provisions of the Buildings Ordinance or of any notice order or regulation hereunder are being complied with; (d) to carry out or cause to be carried out any work which he is authorized to carry out under the Buildings Ordinance.

²³ According to Section 40(2AAA) of the Buildings Ordinance, any person who obstructs the Building Authority, any officer authorized by him or any other public officer, in the exercise of his power under the Buildings Ordinance, shall be guilty of an offence and shall, without prejudice to any other penalty, be liable on conviction to a fine at level 3 and to imprisonment for 6 months.

²⁴ Please refer to footnote 5.

²⁵ According to Section 30B(3) of the Buildings Ordinance, the Building Authority may by notice in writing served on any owner of a building require a prescribed inspection and, if necessary, prescribed repair in respect of the common parts of the building to be carried out within a specified time.

²⁶ According to Section 30C(3) of the Buildings Ordinance, the Building Authority may by notice in writing

- (a) if the order / notice concerns the common parts and facilities of the property:
 - (i) report and propose to the owners' organisation (if any) to deal with the matter in accordance with the order / notice, or with agreement from the owners / owners' organisation (if any), arrange for relevant works to be carried out so as to comply with the order / notice; and
 - (ii) if there is no owners' organisation, so far as reasonably practicable, arrange for relevant works to be carried out by itself so as to comply with the order / notice.
- (b) if the order / notice concerns common parts and facilities of the property which are located within a flat of an individual owner, remind the concerned owner that he/she cannot obstruct the inspection, works or other actions to be carried out in compliance with the order / notice by it or a contractor engaged by it or the owners' organisation²⁷, otherwise he/she may contravene the Buildings Ordinance²⁸.
- (c) if the order / notice concerns a flat of an individual owner, report to the owners' organisation (if any) and require the concerned owner to arrange for relevant works to be carried out so as to comply with the order / notice. If there is no owners' organisation, require by itself the concerned owner to arrange for relevant works to be carried out so as to comply with the order / notice.
- (d) if any owner obstructs the handling of matters relating to the order / notice, or fails to handle properly with respect to paragraph F(1)(c) of this Code, report to the relevant Government departments and agencies (including the Buildings Department)²⁹ for follow-up.

served on any owner of a building require a prescribed inspection and, if necessary, prescribed repair in respect of the windows in the building to be carried out within a specified time.

²⁷ According to Section 39B(1) of the Buildings Ordinance, a person who has been notified by an owners' corporation of a building that an order or notice has been served on the owners' corporation under any provision of this Ordinance in relation to any common parts of the building must not (a) obstruct a person employed or engaged by the owners' corporation in the carrying out of any inspection, investigation, works or other action that is required for the purpose of complying with the order or notice; or (b) refuse to allow a person employed or engaged by the owners' corporation access to or the use of any premises, which is reasonably necessary for the carrying out of any inspection, investigation, works or other action that is required for the purpose of complying with the order or notice.

²⁸ According to Section 40(4B) of the Buildings Ordinance, any person who without reasonable excuse contravenes Section 39B(1) shall be guilty of an offence and shall be liable on conviction to a fine at level 3 and to imprisonment for 6 months.

²⁹ Please refer to footnotes 21 and 22.

F(2) A licensed PMC has to tie in with the operation of relevant Government departments and agencies in handling the aforementioned orders / notices (e.g. arrange for inspection of the common parts and facilities of the property, assist in contacting concerned owners / occupiers to allow authorised persons to access individual flats of the property to carry out inspection and the required works (if applicable))³⁰.

END

1. If there is any inconsistency between the Chinese version and the English version of this Code, the Chinese version shall prevail.
2. If there are any amendments to any ordinances or regulations mentioned in this Code, licensees have to act in accordance with the revised provisions.

³⁰ Please refer to footnote 23.