

# Tree Management Work

Code of Conduct



Code No.: C18/2023



## Preamble ● ● ●

The following code of conduct (“Code”) is issued by the Property Management Services Authority pursuant to section 5 of the Property Management Services Ordinance (Cap.626) (“PMSO”) and contains practical guidance for the purposes of section 4 of the PMSO (disciplinary offences). Although a licensee<sup>1</sup> 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 (“PMC”) may, in respect of client’s<sup>2</sup> property for which property management services (“PMSs”) are provided by it, manage the landscape areas (including trees, gardens and lawns) in the common parts<sup>3</sup> of the property.

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

<sup>2</sup> The term “client” has the same meaning as defined in section 16 of the PMSO, i.e. “in relation to a property for which a licensed PMC provides property management services, means — (a) the owners’ organization of the property; and (b) the owners of the property who pay or are liable to pay the management expenses in respect of the services”. According to such a definition, a tenant is not a client.

<sup>3</sup> A licensed PMC may check the demarcation of the lot of the property and refer to the Deed of Mutual Covenant to ascertain the common parts of a property.



## 2.1 Trees

Owners<sup>4</sup> of a property own undivided shares of a building on the land where the building is located. They also own the trees growing on the common parts of that land. Therefore, the owners are considered as the “tree owners”<sup>5</sup> of the common parts within the land of the property. When carrying out tree management work for property owners, a licensed PMC has to remind and assist them in complying with applicable laws<sup>6</sup>, regulations, and relevant provisions in the land lease of the property (if any)<sup>7</sup>, to ensure that trees within the property are properly cared for. The relevant laws and regulations include



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<sup>4</sup> The term “owner” has the same meaning as defined in section 2 of the PMSO, 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”.

<sup>5</sup> For the definition of the term “Tree owner”, please refer to the “Glossary of Terms” section in the *Handbook on Tree Management*: “A person, who is the owner of a land, also owns the trees that are growing on that land. For the owner of an undivided share of a building, he / she also owns the trees that are growing on the common parts of the building.”

<sup>6</sup> The applicable laws include section 28 of the BMO, which requires procuring third party risk insurance for the common parts of a building, the Occupiers Liability Ordinance (Cap. 314), which imposes a duty on occupiers of premises to take reasonable care to ensure the safety of their visitors, the Occupational Safety and Health Ordinance (Cap. 509) , which ensures as far as reasonably practicable the safety and health of persons when they are at work, and the Employees’ Compensation Ordinance (Cap. 282), which requires employers to take out employee compensation insurance, etc.

<sup>7</sup> When a licensed PMC conducts tree management work, if the land lease of the property contains a tree preservation clause, unless under an emergency, property owners must first seek written consent of the Director of Lands prior to the removal or major pruning of the trees in concern within the property. For details, please refer to Practice Note Issue No. 2/2020 and 2/2020A of the Lands Department.



the Building Management Ordinance (Cap. 344) (“BMO”) and the relevant regulations as referred to in the *Code of Practice on Building Management and Safety* (“Code of Practice”) issued by the Secretary for Home and Youth Affairs in accordance with the BMO<sup>8</sup> (i.e. the *Handbook on Tree Management* issued and updated periodically by the Greening, Landscape and Tree Management Section of the Development Bureau<sup>9</sup>, which has been incorporated into the Code of Practice). In addition, relevant codes and guidelines issued by other relevant organizations<sup>10</sup> should also be referred to.

3. Laws, regulations, codes of practice and guidelines relating to tree management work consist mainly of the below:

### 3.1 Common Law Duty of Care

The owner of a landed property has a common law duty of care to maintain the property. The owner can be held liable for personal injury and / or property damage arising from failure to observe the duty. Therefore, the owner has to maintain the trees growing on the property so as to ensure that they will not cause personal injury and / or property damage to the public.

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<sup>8</sup> *The Code of Practice* is issued by the Secretary for Home and Youth Affairs in accordance with section 44(1)(a) of the BMO (revised version effective from 1 September 2018). For details, refer to paragraph 11: ([https://www.buildingmgt.gov.hk/en/Policy\\_and\\_Legislation/3\\_3.html](https://www.buildingmgt.gov.hk/en/Policy_and_Legislation/3_3.html))

<sup>9</sup> According to the *Code of Practice*, a licensed PMC has to, when conducting tree management work, act in accordance with the *Handbook on Tree Management* issued and updated periodically by the Greening, Landscape and Tree Management Section of the Development Bureau. *Handbook on Tree Management*: ([https://www.greening.gov.hk/filemanager/greening/en/content\\_34/HTM\\_Full\\_version\\_1\\_12\\_2020.pdf](https://www.greening.gov.hk/filemanager/greening/en/content_34/HTM_Full_version_1_12_2020.pdf))

<sup>10</sup> The Lands Department also provides suggestive guidance on felling trees, i.e. Guidance Notes on Tree Preservation and Removal Proposal for Building Development in Private Projects - Compliance of Tree Preservation Clause under Lease (Guidance Notes on Tree Preservation and Removal Proposal for Building Development in Private Projects - Compliance of Tree Preservation Clause under Lease) as mentioned in Practice Note Issue No. 2/2020. For other relevant codes and guidelines, please refer to these publications issued by the Labour Department: *Safety at Work – A Guide to Ladders and Elevated Working Platforms*, *Guidelines for Safe Use of Mobile Elevating Work Platform*, *Code of Practice for Metal Scaffolding Safety*, *Code of Practice for Bamboo Scaffolding Safety*, *Guidance Notes on Classification and Use of Safety Belts and their Anchorage Systems*. Please visit the link below for information: (<https://www.labour.gov.hk/eng/public/index.htm>)

### 3.2 Building Management Ordinance

If a property has an owners' organization, the owners' organization has to be responsible for the management of the common parts of the building (including the landscape areas) in accordance with the BMO and maintain them in a state of good and serviceable condition. The owners' organization has to act in accordance with the *Handbook on Tree Management* referred to in paragraph 2 above (key items are listed in paragraphs B(1) to B(2) of this Code).

### 3.3 Occupiers Liability Ordinance<sup>11</sup>

In the event of tree failure causing injury or fatality to a third party, the owner / owners' organization can be held legally liable for a breach of the Occupiers Liability Ordinance. Therefore, the owner / owners' organization has to comply with the respective Ordinance to ensure the reasonable safety for third parties in the property.

### 3.4 Provisions in Land Leases<sup>12</sup>

For the lease of a private lot containing a tree preservation clause, the lot owner has to, except in emergency situation, obtain written consent from the Lands Department for tree removal or major pruning work<sup>13</sup>.

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<sup>11</sup> The Occupiers Liability Ordinance (Cap. 314) imposes on 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.

<sup>12</sup> In the sale or grant of a plot of land, the Lands Department executes a lease with the purchaser / grantee, who will then be the owner of the land and is required to comply with the lease conditions. Leases executed at different times contain different conditions prevailing at that time. Lot owners (including the above purchasers / grantees and their subsequent assignees) have to check and comply with the lease conditions.

<sup>13</sup> In granting a written consent, the relevant District Lands Office of Lands Department may impose conditions such as transplanting, compensatory landscaping or replanting as deemed appropriate.

## Formulating tree management measures

**Code:** A(1) A licensed PMC, when managing the landscape areas in the common parts of the property, has to formulate effective tree management measures to properly manage and maintain such areas and trees in order to ensure the safety of the public.

A(2) These measures have to include the following elements:

- Tree record<sup>14</sup> and inspection;
- Monitoring service contractors and keeping record; and
- Issuing work notice and follow-up work.

## Tree record and inspection

**Code:** B(1) A licensed PMC has to ascertain the extent of areas with trees on the property in order to clearly define its responsibility and effectively carry out tree management work.

B(2) So far as is reasonably practicable, a licensed PMC has to perform regular tree inspection and maintenance, and undertake appropriate mitigation measures when necessary to ensure the safety of the public.



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<sup>14</sup> For best practice, please refer to section 2.2 of Part 2 “*Knowing Your Tree Stock*” of the *Handbook on Tree Management*.

## Monitoring service contractors and keeping record

- Code:** C(1) If a licensed PMC engages service contractors to handle tree management work referred to in paragraphs B(1) and B(2) of the Code, the licensed PMC has to stipulate clearly the requirement of the Code in the contract to be made with the concerned service contractors, and monitor the services provided by such service contractors.
- C(2) If the matters in paragraphs B(1) and B(2) of the Code are handled by service contractors engaged by the owners' organization (if any) directly, the licensed PMC has to remind the owners' organization that it has to stipulate clearly the requirement of the Code in the contract to be made with the concerned service contractors, and monitor the services provided by such service contractors.
- C(3) A licensed PMC and owners' organization have to keep all contracts entered into with service contractors as well as the relevant documents for not less than six years<sup>15</sup>.

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<sup>15</sup> This guideline is consistent with section 20A(4) of the BMO.





## Issuing work notice and follow-up work

- Code:** D(1) If the matters addressed in paragraphs B(1) and B(2) of the Code involve construction work, a licensed PMC has to display notice in a prominent place of the lobby of the property concerned to inform the owners and relevant persons about the work before such work commences.
- D(2) After completion of the work as stated in paragraph D(1), a licensed PMC has to monitor the service contractor to appropriately clear up the affected area, and properly restore damaged facilities and areas arising from the work.
- D(3) If the matters in paragraphs B(1) and B(2) of the Code are handled by service contractor engaged directly by the owners' organization, a licensed PMC has to remind the owners' organization the requirements set out in paragraphs D(1) and D(2) of the Code.

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



Related Best Practice Guide

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