

Slope Management Work

Code of Conduct

Code No.: C23/2024



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. A licensed property management company ("PMC") may, in respect of clients' ² property for which property management services ("PMSs") are provided by it, manage the private slopes³ related to the property. A lease document issued by the Lands Department (such as a Government lease or conditions of grant, conditions of sale, and conditions of exchange, etc.) (i.e. "land lease") also stipulates that the concerned owners are liable for maintenance of adjoining slopes and natural terrain (such slopes and natural terrain aforementioned hereafter referred to as "slopes"). The PMSA has formulated the Code to provide practical guidance to licensed PMCs and their licensed PMPs on carrying out slope management work.

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 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 PMSs, 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.

³ "Private Slopes" refer to slopes, retaining walls and natural terrain hazard mitigation measures with the maintenance responsibility resting with the owners of private properties. For details, please refer to the Geotechnical Engineering Office, Civil Engineering and Development Department's webpage: (<https://hkss.cedd.gov.hk/hkss/en/prevention-of-landslide-hazards/slope-maintenance/index.html>)



Buildings Ordinance (Cap. 123) ("BO")

- 3.1 Where any slope, including any natural, formed or man-made land, or any earth-retaining structure, has due to any cause been rendered so dangerous or liable to become so dangerous, the Buildings Department may issue Dangerous Hillside Order under Section 27A of the BO pursuant to the advice of the Geotechnical Engineering Office of the Civil Engineering and Development Department ("Geotechnical Engineering Office") in writing served on the owners of the land or structure, or on the persons who under the terms of the land lease are under the obligation to maintain the land or structure, require the concerned owners to appoint an authorized person, a registered structural engineer or a registered geotechnical engineer or the concerned professionals specified in the order to undertake the investigation works and, if necessary, to appoint registered specialist contractor to repair the dangerous slopes under their responsibility within the period stipulated in the order. The order will be registered in the Land Registry against the related land title and would be discharged when it is complied with.
- 3.2 If a water pipe, drain or sewer of any building is laid in, on or under the ground in or in the vicinity of any natural, formed or man-made land, or any earth-retaining structure and any leakage, defect or inadequacy of the water pipe, drain or sewer may result in a landslide of the land or a collapse of the structure, either totally or partially, and such landslide or collapse may cause, or may be likely to cause, a risk of injury to any person or damage to any property, the Buildings Department may issue Buried Services Investigation Order under Section 27C of the BO pursuant to the advice of the Geotechnical Engineering Office, requiring the concerned owners to appoint an authorized person to undertake the investigation works and, if necessary, to arrange works to rectify any leakage, defect or inadequacy of the water pipe, drain or sewer laid in the vicinity of any slopes or earth-retaining structures which may result in a landslide or collapse of the structure within the period stipulated in the order. The order will be registered in the Land Registry against the related land title and would be discharged when it is complied with.

- 3.3 Under Section 40(1B) of the BO, any person who fails to comply with a statutory order served on him/her under Section 27A or 27C without reasonable excuse shall be guilty of an offence and liable on conviction to a fine at Level 5 (HK\$50,000 at present) and imprisonment for one year. Those persons who still fail to comply with the order will be fined a further HK\$5,000 for each subsequent day of continued failure⁴. Besides, the Buildings Department may carry out the required works on behalf of the owners and will recover the costs plus supervision charges and surcharges.

Duties of Owners

- 4.1 Owners of private slopes are responsible for the safety and maintenance of their slopes. They are responsible for the inspection, maintenance, repair and upgrading works of slopes located within their land lots, as well as adjoining slopes specified in the land leases or other land title documents, so as to ensure the slopes are in good condition and safe.
- 4.2 An owner has to, in accordance with the “Geoguide 5 – Guide to Slope Maintenance” issued by the Geotechnical Engineering Office⁵, regularly inspect and repair the slope which he/she is liable for, so as to ensure that such slope is in good condition and safe⁶.
- 4.3 Apart from the legislation aforementioned in paragraphs 3.1 to 3.3, other laws and regulations, terms, codes of practice and guidelines relevant to slope management and repair in respect of a property also include the following:

Common Law Duty of Care

- 4.3.1 The owners of a landed property have a common law duty of care to maintain the property. The owners may be held liable for personal injury and/or property damage arising from failure to observe the duty. Therefore, the owners have to properly manage and repair slopes which they are liable for so as to prevent and avoid having personal injury and/or property damage to the public caused by slope failure.

⁴ For details, refer to section 40(1B) of the BO.

⁵ Refer to the “Geoguide 5 – Guide to Slope Maintenance” issued by the Geotechnical Engineering Office (https://www.cedd.gov.hk/filemanager/eng/content_113/eg5_2023.11.pdf).

⁶ For relevant requirements, refer also to item 5.1 – Slope Safety of the “Code of Practice on Building Management and Maintenance” issued by the Home and Youth Affairs Bureau (https://www.buildingmgt.gov.hk/file_manager/en/documents/code_of_practice/code_of_practice_on_building_management_and_maintenance_en.pdf).



Occupiers Liability Ordinance (Cap. 314)⁷

4.3.2 In the event of failure to properly manage and repair slopes responsible thus causing injury or death to third parties, the owners / owners' corporation ("OC") can be held legally liable for a breach of the Occupiers Liability Ordinance. Therefore, the owners / OC have to comply with the relevant law to ensure the reasonable safety of third parties.

Deed of Mutual Covenant ("DMC") of a Property

4.3.3 The DMC of a property is a legal document which is binding on all the owners of the property and stipulates clearly the rights, interests and obligations of the owners, the PMC, etc. regarding the supervision, repair, maintenance and management of private areas, common parts and facilities, etc. within the property.

Provisions in Land Leases⁸

4.3.4 The responsibility for slope maintenance is based on land ownership as evidenced from a land lease. In addition to slopes inside a lot boundary, owners may also be responsible for maintenance of slopes adjoining their lot in accordance with the land lease. Owners may also be responsible for maintenance of land adjoining their lot, without such responsibility being stated in the land lease, when they have given themselves responsibility by their actions (e.g. they may have cut into adjoining land, an action which could render them responsible for the slope maintenance under common law). Moreover, the land lease may also include the requirements of the "Natural Terrain Clause" which specifies the owners' obligations in examining the landslide hazards originating from natural terrain outside the site boundary and in constructing and maintaining "mitigation and stabilisation measures" for protecting the property. The mitigation measures constructed and their maintenance requirements are usually documented in the Natural Terrain Hazard Mitigation and Stabilisation Works Plan registered in the Land Registry by the property developer. Therefore, owners should carefully examine the land lease to ascertain the slopes they are responsible to maintain.

⁷ The Occupiers Liability Ordinance imposes on an occupier of premises, that is the person in control of the premises, a duty to his/her visitors to take such care as is reasonable in the circumstances to see that his/her visitors will be reasonably safe in using the premises for the permitted purposes.

⁸ 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.

General Duties of a Licensed PMC

4.3.5 A licensed PMC has to, in respect of the property for which PMSs are provided by it, remind the owners' organisation⁹ (if any) and the owners that they have full and ultimate duty regarding the common parts and facilities (including slopes, retaining walls and natural terrain) within and beyond the property owned by them (if responsible), and that they have to perform such duty in accordance with the Building Management Ordinance (Cap. 344), other relevant regulations, provisions, code and guidelines, and the DMC of the property.

Slopes Relevant to a Property

Code: A(1) A licensed PMC has to, in respect of the property for which PMSs are provided by it, ascertain slopes which owners of the property are responsible to maintain (i.e. slopes inside the lot boundary of the property, and slopes adjoining the lot and natural terrain outside the lot boundary for which the owners are responsible to maintain in accordance with the land lease (if any)), and remind the owners and/or owners' organisation (if any) their responsibility to maintain these slopes.

Management Measures and Maintenance Requirements for Man-made Slopes and Retaining Walls

Code: B(1) A licensed PMC has to, in respect of the property for which PMSs are provided by it and so far as reasonably practicable, make appropriate slope management arrangements so as to properly manage and regularly maintain man-made slopes and retaining walls inside the lot boundary of the property and adjoining man-made slopes and retaining walls (if any and are responsible), thereby preventing and avoiding injury to persons and/or damage to property caused by slope collapse.

⁹ 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 Building Management Ordinance (Cap. 344) ("BMO") or a DMC) that is authorised to act on behalf of all the owners of the property" .



Maintenance Requirements for Natural Terrain Hazard Mitigation Measures

Code: C(1) A licensed PMC has to, in respect of the property for which PMSs are provided by it, remind the owners and/or owners' organisation (if any) to carry out maintenance on hazard mitigation measures on natural terrain (if any and liable for them).

Executing Dangerous Hillside Order / Buried Services Investigation Order

Code: D(1) When a licensed PMC receives Dangerous Hillside Order / Buried Services Investigation Order (order) issued by the Buildings Department, it has to, in respect of the property for which PMSs are provided by it, notify the owners and/or owners' organisation (if any), remind them to carry out maintenance work as per the order and the legal consequences of non-compliance¹⁰; and with approval from the owners and/or owners' organisation (if any) arrange for such works to be carried out so as to comply with the order.

Monitoring Service Contractors and Keeping Record

Code: E(1) If a licensed PMC engages registered professionals or contractors ("service contractors") to handle the maintenance / repair works, it has to, when making contracts with the concerned service contractors, stipulate clearly the requirements of relevant codes and monitor the services provided by such service contractors.

E(2) If the maintenance / repair works mentioned in paragraph E(1) of this Code are handled by service contractors engaged directly by the owners' organisation (if any), the licensed PMC has to remind the owners' organisation that it has to, when making contracts with the concerned service contractors, stipulate clearly the requirements of relevant codes and monitor the services provided by such service contractors.

¹⁰ Refer to paragraph 3.3 of this Code

- E(3) The licensed PMC and the owners' organisation have to keep all contracts entered into with service contractors as well as the relevant documents for not less than six years¹¹.

Notification and Follow-up Work

- Code:** F(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 maintenance / repair works before such works commence.
- F(2) After completion of the works mentioned in paragraph F(1), the licensed PMC has to supervise the service contractor to clear up the affected area, and properly restore damaged facilities and areas arising from the works.
- F(3) If the maintenance / repair works mentioned in paragraph F(1) are handled by service contractors engaged directly by the owners' organisation, the licensed PMC has to remind the owners' organisation the requirements of paragraphs F(1) and F(2) of this Code.

¹¹ This guideline is made with reference to section 20A(4) of the BMO.



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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