

Property Management Services Authority

Code of Conduct

Handling Drainage Work

Code No.: C24/2024

Effective Date: 20 September 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 (Cap. 626) (“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 drainage work in common parts of the property³. In recent years, the frequency and intensity of extreme weather events caused by climate change (e.g. exceptionally severe rainstorms, severe tropical cyclones, etc.) have been increasing, which may result in exceptionally severe rainstorms and storm surges⁴, putting increasing pressure on the drainage system of properties. Good management of drainage facilities can effectively enhance the flood resilience capacity of properties and prevent / reduce human casualties and/or property damage arising from unexpected emergencies caused by extreme weather

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 The scope of this Code does not include plumbing of fresh water, sea water and fire service supply systems in common parts of properties. For information on pipes and fittings of these supply systems, please visit the webpage of the Water Supplies Department below for detail:
(<https://www.wsd.gov.hk/en/plumbing-engineering/index.html>)

⁴ During the passage of tropical cyclones, the associated strong winds push the sea water towards the coast causing a rise of the sea level. In addition, the low atmospheric pressure of the tropical cyclone also sucks up the sea water near the cyclone centre. Such phenomenon is called storm surge. If storm surge occurs during astronomical high tide, the sea can rise to a high level and cause flooding in low-lying coastal areas. Please refer to the webpage of the Drainage Services Department (“DSD”) below:
(https://www.dsd.gov.hk/EN/Flood_Prevention/Our_Flooding_Situation/Storm_Surge_Spots/index.html)

conditions (e.g. flooding, flash floods, landslides, slope collapses, etc.). The PMSA has formulated the Code to provide practical guidance to licensed PMCs and their licensed property management practitioners⁵ (“licensed PMPs”) on carrying out drainage work.

Buildings Ordinance (Cap. 123) (“BO”)

3.1 The BO regulates the planning, design and construction of buildings and associated works. Parts III and IV of its subsidiary legislation, namely the Building (Standards of Sanitary Fitments, Plumbing, Drainage Works and Latrines) Regulations (Cap. 123I) (“BPDR”), set out the requirement for a building’s plumbing⁶, and the pipes required for disposal of foul water⁷ and surface water⁸ from a building, fitments of channels such as drains⁹ and sewers¹⁰ and drainage works¹¹.

3.2 According to section 28(1) of the BO, drainage works¹² for any building shall be carried out by the owner(s) of such building to the satisfaction of the Building Authority¹³ and in compliance with regulations. If the drainage systems of any building are found to be defective, inadequate or insanitary¹⁴, the Building Authority may serve order under section 28 of the BO on the owners of the building requiring them to carry out investigation and/or remedial works within a specified period of time¹⁵. It is an offence for failure to comply with the relevant order¹⁶.

3.3 According to section 27C of the BO, regarding the water pipes, drains or sewers laid in the land of a property (if any), the owner(s) of the property is also responsible for

⁵ According to section 2 of the PMSO, licensed PMP means (a) a licensed PMP (Tier 1); or (b) a licensed PMP (Tier 2).

⁶ E.g. soil pipes, waste pipes, rain water pipes, etc.

⁷ According to section 2 of the BPDR, “foul water means any water contaminated by soil, waste or trade effluent”.

⁸ According to section 2 of the BPDR, “surface water means rain water from any part of a building including any paved area or ground, whether paved or not, appurtenant to any building”.

⁹ According to section 2 of the BO, “drain means a drain used for the drainage of one building and any buildings and yards appurtenant thereto”.

¹⁰ According to section 2 of the BO, “sewer does not include a drain as defined in this section, but includes all sewers and drains used for the drainage of more than one building and any buildings and yards appurtenant thereto”.

¹¹ Regarding “drainage works”, according to the part “Drainage of buildings” under section 39 of the BPDR, “every building shall be provided with such pipes, drains and channels as are necessary for the disposal of all foul water and surface water from the building.”

¹² Refer to the requirement related to drainage facilities (e.g. drains, sewers, manholes and disconnecting traps) in the part “Drainage Works” under Part IV of the BPDR.

¹³ According to section 2 of the BO, “Building Authority means the Director of Buildings”.

¹⁴ Regarding information on handling defective drains in a building, please visit the webpages of the Buildings Department below for detail:

https://www.bd.gov.hk/en/safety-inspection/building-safety/index_bsi_drainage.html

https://www.careyourbuilding.bd.gov.hk/en/building_safety_tips/163.html

¹⁵ According to section 28 of the BO, if the drainage systems of any building are inadequate or in a defective or insanitary condition, the Building Authority may by order serve on the owners of such building requiring them to carry out investigation and/or remedial work within a specified period of time.

¹⁶ Under section 40(1B) of the BO, any person who fails to comply with a statutory order served on him / her under section 28(3) of the BO shall be guilty of an offence and liable on conviction to a maximum fine at Level 5 (HK\$50,000 at present); and maximum imprisonment for one year.

their maintenance and repair¹⁷. If any leakage, defect or inadequacy of these water pipes may result in a landslip of the land or a collapse of the structure, and such landslip 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 requiring the concerned owner(s) to undertake investigation¹⁸, and arrange works to rectify the conditions within a specified period of time. The order will be registered in the Land Registry against the related land title¹⁹ and would be discharged when it is complied with. Under section 40(1B) of the BO, any person who fails to comply with a statutory order served on him / her under section 27C without reasonable excuse shall be guilty of an offence²⁰.

Duties of Owners

4.1 An owner of a property owns undivided shares of the land on which the property is erected, and also co-owns with other owners the common parts and facilities (including drainage facilities²¹, such as sewers, drains, waste pipes²² and rain water pipes²³ both on the ground (e.g. fitted onto the exterior wall of the property) and under the ground) of that property; hence owners have duty to clean, repair and maintain these facilities to ensure that they are constantly in good and safe condition so as to prevent personal injury and/or property damage arising from defective drainage facilities.

4.2 Apart from the legislation aforementioned in paragraphs 3.1 to 3.3, other laws, regulations and provisions relevant to handling drainage facilities of a property also

¹⁷ According to section 27C(1) of the BO, 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 landslip of the land or a collapse of the structure, either totally or partially, and such landslip 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 pursuant to the advice of the Geotechnical Engineering Office to the concerned building owner(s).

In addition, please refer to paragraphs 3.2 and 3.3 of the “Slope Management Work” Code of Conduct and Best Practice Guide issued by the PMSA:

(<https://www.pmsa.org.hk/en/regulatory-framework/codes-of-conduct>)

¹⁸ Refer to section 27C(2) of the BO

¹⁹ According to section 27C(6) of the BO, the Building Authority may, upon the service of an order under section 27C(1) of the BO, cause the order to be registered by memorial in the Land Registry against the building to which the order relates.

²⁰ Under section 40(1B) of the BO, any person who fails to comply with a statutory order served on him/her under section 27C of the BO shall be guilty of an offence and liable on conviction to a maximum fine at Level 5 (HK\$50,000 at present); and maximum imprisonment for one year.

²¹ Please refer to paragraph 6 of Schedule 1 to the Building Management Ordinance (Cap. 344) (“BMO”). Unless otherwise specified in the deed of mutual covenant of the building, “common parts” of a building include the building’s sewers, drains, waste pipes, gutters, etc. If the building has an owners’ corporation, it shall comply with and act in accordance with the relevant requirement in the “Code of Practice on Building Management and Safety” (revised version effective from 1 September 2018) issued by the Secretary for Home and Youth Affairs under section 44(1)(b) of the BMO. (Please refer to “Drainage”, paragraph 8.9 for detail): (https://www.buildingmgt.gov.hk/en/Policy_and_Legislation/3_3.html)

²² According to section 2 of the BPDR, “waste pipe means a pipe used or constructed to be used for carrying off waste”.

²³ According to section 2 of the BPDR, “rain water pipe means a pipe used or constructed to be used for carrying off surface water directly from roof surfaces, verandahs and balconies”.

include the following :

Common Law Duty of Care

4.2.1 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 the drainage facilities which they are liable for so as to prevent and avoid issues causing personal injury and/or property damage to the public.

Occupiers Liability Ordinance (Cap. 314)²⁴

4.2.2 In the event of failure to properly manage and repair the drainage facilities responsible thus causing injury or death to third parties, the owners / owners' corporation²⁵ ("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

4.2.3 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 Lease²⁶

4.2.4 If, according to the land lease of a property, owners are responsible for inspecting and repairing slopes adjoining their lot and natural terrain outside the site boundary²⁷, and the repair of such slopes and natural terrain involves the repair of drainage facilities laid in them, then the concerned owners also have to bear the relevant responsibilities. Therefore, the concerned owners should clearly understand the relevant land lease and confirm the scope and responsibilities for maintaining the drainage facilities.

²⁴ 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.

²⁵ An OC is a body corporate set up under the BMO. It has the legal status to represent all owners in managing the common parts of the property.

²⁶ 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.

²⁷ Please refer to "Provisions in Land Leases", paragraph 4.3.4 of the "Slope Management Work" Code of Conduct and Best Practice Guide issued by the PMSA:
(<https://www.pmsa.org.hk/en/regulatory-framework/codes-of-conduct>)

General Duties of a Licensed PMC

5. A licensed PMC has to, in respect of the property for which PMSs are provided by it, remind the owners' organization²⁸ (if any) and the owners that they have full and ultimate duty regarding the common parts and facilities (including drainage) within and beyond the property owned by them (if responsible), and that they have to perform such duty in accordance with the relevant laws and regulations, provisions, code and guidelines, and the DMC of the property.

Management of Drainage Facilities

Code: A(1) A licensed PMC has to, in respect of the property for which PMSs are provided by it, ascertain drainage facilities which owners of the property are responsible to maintain, and remind the owners and/or owners' organization (if any) of their related responsibilities²⁹.

A(2) 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 arrangements to properly inspect, repair and maintain drainage facilities within the concerned perimeter, so as to ensure that the fitment of these facilities comply with relevant laws and regulations³⁰ and are in good working order, thereby are prepared to cope with accidents and emergency situations caused by adverse or extreme weather, thus safeguarding the property and safety of residents.

Extreme Weather Contingency Measures

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, formulate effective measures³¹ to deal with accidents and emergencies resulting from

²⁸ The term "owners' organization" has the same meaning as defined by section 2 of the PMSO i.e. "in relation to a property, means an organization (whether or not formed under the BMO or a DMC) that is authorised to act on behalf of all the owners of the property".

²⁹ A licensed PMC should examine the land lease of the property and relevant information so as to ascertain the drainage facilities which owners of the property are responsible to maintain and repair. Where appropriate, advice may be sought from professionals (e.g. estate surveyors and lawyers, etc.) in respect of the maintenance responsibilities.

³⁰ Refer to paragraphs 3.1 to 3.3 of this Code

³¹ Please refer to the below information :

(a) The "Handling Emergencies" Code of Conduct and Best Practice Guide issued by the PMSA:

(<https://www.pmsa.org.hk/en/regulatory-framework/codes-of-conduct>)

(b) "Guidelines on Flood Resilience" issued by the DSD:

(https://www.dsd.gov.hk/EN/Files/Technical_Manual/PN_2023_02_Guidelines-on-Flood-Resilience.pdf)

(c) "Advisory Notes for Urban Flooding" issued by the DSD:

(https://www.dsd.gov.hk/EN/Files/table/Advisory_Notes_for_Urban_Flooding_EN.pdf)

(d) "Flooding" pamphlet issued by the DSD:

(https://www.dsd.gov.hk/EN/Files/table/Flooding_Eng.pdf)

(e) "HKIS Guide to Good Property Management Practices" issued by the Hong Kong Institute of Surveyors:

(<https://www.hkis.org.hk/ufiles/PMP-201008.pdf>)

adverse or extreme weather conditions, in order to prevent / minimize the impact and losses caused by such situation.

Executing Repair / Investigation Order

Code: C(1) When a licensed PMC receives Repair / Investigation Order (“Order”)³² 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’ organization (if any), remind them to carry out maintenance work as per the Order and the legal consequences in case of non-compliance³³; and with approval from the owners and/or owners’ organization (if any) arrange for such works to be carried out so as to comply with the Order.

Monitoring Service Contractors and Keeping Record

Code: D(1) If a licensed PMC engages service contractors³⁴ to handle drainage and the related maintenance / repair work, it has to, when making contract with the concerned service contractors, stipulate clearly the requirement of the relevant work and monitor the services provided by such service contractors.

D(2) If the drainage and related maintenance / repair work set out in paragraph D(1) of this Code are handled by service contractors engaged directly by the owners’ organization (if any), the licensed PMC has to remind the owners’ organization that it has to, when making contract with the concerned service contractors, stipulate clearly the requirement of the relevant work and monitor the services provided by such service contractors.

D(3) The licensed PMC and the owners’ organization (if any) have to keep all contracts entered into with service contractors as well as the relevant documents for not less than six years³⁵.

Notification and Follow-up Work

Code: E(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 drainage and the related maintenance / repair work before such

³² Order issued pursuant to section 27C or 28 of the BO

³³ Refer to section 40(1B) of the BO

³⁴ For information on registered professionals or applying to become “contractor” under the BO, refer to the below webpage of the Buildings Department:
(<https://www.bd.gov.hk/en/resources/online-tools/registers-search/registrationsearch-disclaimer.html>)

³⁵ This guideline is made with reference to section 20A(4) of the BMO.

work commences.

- E(2) After completion of the work set out in paragraph E(1) of this Code, 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 work.
- E(3) If the work set out in paragraph E(1) of this Code are handled by service contractors engaged directly by the owners' organization (if any), the licensed PMC has to remind the owners' organization the requirement of paragraphs E(1) and E(2) of this Code.

– 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 covered in this Code, licensees have to act in accordance with those prevailing amended provisions.