

9 Legal Obligations and Sanctions of “the Person who Arranged for Minor Works to be Carried Out”

9.1 Legal Obligations and Sanctions under the Buildings Ordinance

- 9.1.1** Any person who intends to carry out building works should appoint appropriate personnel required by the Buildings Ordinance (“BO” or “the Ordinance”) with a view to ensuring that the works carried out comply with the Ordinance. To secure the interests of “the person who arranged for the works to be carried out”, they are recommended to use contract on the appointment of services with sufficient insurance coverage. Some standard contracts are available for public reference. For example, “Standard Form of Contract for Decoration, Repair & Maintenance Works” issued by the Hong Kong Institute of Surveyors. Regarding the appointment and tendering, the person who arranged for the works may make reference to the “Building Maintenance Guidebook” published by the Buildings Department.
- 9.1.2** According to section 4A(2) or 9AA(2) of the BO, if a person who arranged for the works to be commenced or carried out has knowingly failed to appoint the required prescribed building professional and/or prescribed registered contractor (as the case may be), he will be liable on conviction to a fine at level 6 (\$100,000 at present) under section 40(1AB) of the Ordinance.
- 9.1.3** An order for demolition, removal or alteration of the building works (other than “minor works” commenced under the “simplified requirements”) may be served under section 24 of the BO if the works have been carried out in contravention of the Ordinance or other enactment.
- 9.1.4** For “minor works” commenced under the “simplified requirements” that have been carried out in contravention of the Ordinance or other enactment, similar order for demolition, removal or alteration of the “minor works” may be served under section 24AA of the BO.
- 9.1.5** If any building works or street works have been or are being carried out in such a manner as, in the opinion of the BA, will cause or will be likely to cause a risk of injury or damage to property, an order may be served under section 24A of the BO for ceasing the constitution of such a risk.
- 9.1.6** Any person who fails to comply with an order served on him, he will be liable on conviction to a fine and imprisonment under section 40(1BA) or 40(1BB) of the Ordinance.

9.2 Other Legal Provisions

- 9.2.1** The Building Management Ordinance (Cap. 344) requires the owners to provide management of the building. If the proposed works are to be carried out in the common part, “the person who arranged for the works to be carried out” is recommended to consult and seek prior consent from the co-owners, the Incorporated Owners and/or building management (where applicable). Yet no works should be proposed in the dedicated areas and public facilities.

9.2.2 The Immigration Ordinance (Cap. 115) stipulates that the employer of any employee who is not lawfully employable is liable on conviction to a fine and imprisonment. It is advisable to check the identity of the persons employed or appointed to ensure that they are not illegal workers.

9.3 Common Law

Under the Common Law, building owners have duties of care to their properties. They include the maintenance and repair of the structures, walls and finishes of the building, and ensure their properties are free from any unauthorized building works with a view to assuring a safe and habitable environment.

9.4 Deed of Mutual Covenant

The Deed of Mutual Covenant ("DMC") is a legal document binding the building owners registered in the Land Registry. It sets out the rights, interests and obligations of the owners, occupiers, tenants and property management agents in respect of the control, administration, maintenance and management of private properties, common parts and facilities of buildings. "The person who arranged for the works to be carried out" should be mindful of the civil liabilities under the DMC of the building and make the necessary consultation as mentioned in paragraph 9.2.1 above should works involve the common part.

9.5 Liabilities to the Third Party

"The person who arranged for the works to be carried out" is also liable to insure the third party against any injury, loss or damage caused by the proposed works or arising from the properties such as the dislodgement of window sashes.

9.6 Disposal of Construction Waste

"The person who arranged for the works to be carried out" may be requested by his contractor to pay for handling the construction waste at the prescribed facilities.

