

Related Sections

M. Control and Implementation of Work

72. There are architects, surveyors and engineers on the list of Authorized Persons. At the same time, there is another list called list of Registered Structural Engineers. I am confused of the naming and duties of these professionals. Who should I employ to carry out the repair works?
- 4.3.4 A. Under the Buildings Ordinance (BO), a person for whom building works (or street works) are to be carried out shall appoint an Authorized Person (AP) to act as the co-ordinator of building works (or street works), and a Registered Structural Engineer (RSE) for the structural elements of the building works (or street works) if so required under the BO. The status, duties and responsibilities of an Authorized Person are the same, irrespective of whether he or she is an architect, a surveyor or an engineer. Where the repair works are the requirement of a Government Department, the building owners should check whether the requirement includes the appointment of an AP or a RSE. If necessary, the building owners may check with the relevant Government Department.
- 5.3
- Besides the above requirement, building owners in selecting the services of a building professional should also consider the nature of the repair works, and the experience and job references of the AP or RSE.
73. In the course of repair and upgrading works, how can I know that the materials used and workmanship are appropriate and up to standard?
- 4.3.4 A. Supervision of building works including repair and upgrading demands for technical knowledge and experience in works. Therefore, you should engage a building professional to give advice and to supervise the works to ensure that they are carried out in accordance with the specifications or the method statements as stated in the contract documents. For large scale works, to safeguard your own interest in a cost-effective manner, you should consider employing an independent and technically experienced person as your "clerk of works" to supervise the works on your behalf.
74. The contractor has asked for interim payment. How can I verify that the claimed payment is reasonable?
- 4.3.7 (c) A. Interim payments should be made in accordance with the provisions of the contract. You should engage a building professional as the project consultant to supervise the works of the contractor and to certify completion of the works in stages for interim payment. Please note that the contractor might have completed certain works that are not in accordance with the contract conditions. You should withhold the payment for such works until they have been rectified.

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75. Some owners had made suggestions to the contractor who subsequently changed specification of the works. Now the contractor has claimed additional payment for the variation. Is there any way to prevent this or ensure that the payment is value for money?
- 4.3.7 (e) A. If you have appointed a Project Consultant or a Project Manager, they are the appropriate persons to assist you to handle any contractual dispute with the Contractor. Otherwise, you should consider the guidelines given below.
- First of all, contractors should not take instructions from just any of the owners and change the agreed specification of the works. Instructions to the contractor should always be given via proper and agreed channels, e.g. by the project consultant or persons authorized by the Project Steering Committee of the Owners' Corporation (OC). If the contractor has already been notified of this channel for giving instructions, the OC cannot be held responsible for the changes. The contractor should also rectify the works for compliance with the original specification under the contract.
- If the OC consider that they are willing to pay the contractor irrespective of the source of instruction, the value of such can be worked out according to the schedule of rates under the contract documents.
76. We want the work to be finished within a very tight schedule. What can we do to ensure that the contractor can finish on time?
- 4.3.6 (l) (m)
4.3.7 (a) (b) A. In preparing the tender documents, special consideration should be given to arrive at a realistic time for the contractor to complete the required works. It is always advisable to require the contractors to submit a program for consideration prior to award of the contract. Regular review on the progress of work is also of great importance to ensure that the contractor has followed its program. It is also a common practice to impose the conditions of surety bond and liquidated damages in the contract to protect the interest of the owners.
77. After the scaffolding for the works have been erected, there have been repeated theft cases reported. What should the management do as a remedy?
- 4.3.8 (b) A. Very often scaffolding structures form a convenient access to the building for thieves and burglars. You should instruct your contractor to provide necessary precautionary measures at the scaffoldings such as barbed wires to inhibit climbing by burglars and flood-lights to provide adequate lighting during nighttime. The property manager should also be instructed to strengthen security measures such as additional security guards and patrols especially after dark.

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78. The contractor seems to be in a financial difficulty and works have been suspended for some time causing nuisance to the tenants and owners. What options does the Owners' Corporation (OC) have?

A. If a Project Consultant has been engaged to supervise the work, the OC should instruct him to serve a notice to the contractor to demand resumption of works.

If no action is taken after expiry of the time given for resuming works, the Project Consultant can serve a notice to terminate the contract and to arrange for re-tendering of the remaining works. If the OC suffers financial losses due to the change of contractor, the OC may seek compensation via legal action.

If the OC has not yet appointed a Project Consultant, the OC is strongly advised to do so immediately.

79. The contractor has provided sub-standard works, and the Owners' Corporation (OC) decided not to pay the balance of the contract sum. Now the contractor is suing the OC. What should we do?

4.3.7 A. In case the contractor wants to sue the OC for non-payment of works carried out, the OC should appoint a building professional to provide an independent assessment of the performance of the contractor and the standard of works done in order to justify the withholding of payment. Such assessment may be used in court as evidence. Legal advisor should also be engaged to deal with the necessary legal proceedings initiated by the contractor. You may negotiate with the contractor to seek arbitration as an alternative.

N. Maintenance and the Owners' Corporations

80. The Management Committee of the OC recently notified us that they had already called for several quotations from the contractors for the major repair works of the building and selected a contractor. We did not know anything beforehand. What should I consider?

4.3.4 A. In order to prevent corruption or malpractice under the Building Management Ordinance, all purchasing or procurement of services by an Owners' Corporation (or Owners' Committee) should be done through a tender process. Enquiries in this regard can be made to the ICAC.

4.3.5

4.3.6

4.3.10

(b) & (c)

For example, in a repair contract that would likely cost more than HK\$100,000, a minimum of 5 competitive tenders have to be sought. For the sake of fairness, quotations called from the contractors must be based on the same set of tender specifications and documents.

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Question 80 (continues)

An effective and reliable way to handle maintenance work in a multi-ownership building is to engage a building professional as the Project Consultant, and if necessary, a Project Manager to represent the client.

Every owner has the right to know whether the OC has followed the proper procedures in selecting the contractor. If there has been serious non-conformance with the Code of Practice on Procurement of Supplies, Goods and Services issued under Section 44 of Building Management Ordinance (included in Appendix B of "Code of Practice on Building Management and Maintenance" issued by the Home Affairs Department), the whole selection process could be nullified.

81. **My tenant told me that there is an Order posted on the staircase requiring the owners to repair the drainage system of the building. What should I do? How should I proceed?**
- 4.2.2 (c) A. If an Order is posted on the staircase walls requiring the owners to repair the drainage system, the common drainage system of the building should have been found defective by the Buildings Department. All the owners of the building have the responsibility to carry out the repair as they have undivided shares of the common parts of the building. You should contact the Owners' Corporation (if any), or co-ordinate all the owners together to carry out the repair or replacement of the drainage system as required under the Order. You are strongly advised to engage the service of a building professional as the Project Consultant.
82. **I am just one of the many owners of this building, how should I proceed to initiate repair work for the whole building?**
- 4.6 A. The Owners' Corporation (OC) is legally responsible to repair and maintain the common parts of the building. You are advised to inform the Chairman of the Management Committee of the OC your request and ask him to convene a general meeting to discuss the issue. Under the Deed of Mutual Covenant and Building Management Ordinance (BMO), all resolutions passed at the OC's general meeting have to be observed by the Management Committee and all owners.

If there is no OC in your building, the first step will be to form one under the provisions of the BMO. You may also seek assistance from the District Offices for establishing an OC.

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83. **It is disappointing that only a few owners are interested to repair the common areas. What is the minimum percentage of owners required to make decisions?**
- 4.6.3 A. You may consider to group together the support from not less than 5% of the owners and request the Chairman of the Management Committee of the OC to convene an extraordinary general meeting (EGM). A quorum of 10% of the owners will be adequate for the purpose of passing a resolution on repair and maintenance activities. If owners are not satisfied with the work of the Management Committee or problems cannot be solved at Management Committee level, owners can lodge their complaints to the District Offices or Building Management Resource Centres .
- 4.6.5
84. **The Owners' Corporation (OC) has passed a resolution to undertake a major renovation to the building. Some owners refused to pay their shares. Are there any effective ways to recover the cost from them?**
- 4.6.8 A. Resolutions passed at the OC's general meeting have to be observed by the Management Committee and all owners. You are suggested to refer the case to your property manager to administer the recovery of such costs as it is one of his management duties.
- Also, the OC can file a claim through the Small Claims Tribunal demanding payment of the outstanding shares if the amount is below HK\$50,000. For claims over HK\$50,000 but not exceeding HK\$600,000, the case shall be handled by the District Court, whereas for claims over HK\$600,000, the case shall be dealt with by the High Court.
- However, in case the non-payment is prompted by some owners on the validity of the resolution made by the OC, such dispute will have to be referred to the Lands Tribunal for a decision.
- Order by the Court can be registered against the title of the properties which may affect future transactions of the properties.
85. **A contractor has erected scaffolding on the external wall of my building and claimed that they have already entered into agreement with some of the committee members of the Owners' Corporation (OC) for carrying out the external wall repair works. But this contractor has not been selected according to the proper procedures. What can we do?**
- 4.3.6 A. Under the Building Management Ordinance, when an OC procures supplies, goods or services which exceed HK\$100,000 in value or 20% of its annual budget, tenders shall be invited in accordance with the "Code of Practice on Procurement of Supplies, Goods and Services".
- 4.3.10

Related Sections

Question 85 (continues)

Therefore, if the proper tendering procedure has not been followed to select this contractor, any form of agreement entered into by the committee members with this contractor will not be binding on the OC. You can discuss with the Chairman of the Management Committee of the OC about the termination of this contractor's work and removal of the scaffolding already erected (including any repair to damage caused by the erection/removal of the scaffolding). In case the matter cannot be solved within the OC itself, you might approach the District Office for assistance.

86. In the middle of the maintenance work, if the Owners' Corporation (OC) decides not to continue because of lack of fund, what is our liability in the contract?

4.6.3 **4.6.6** **A.** Upon entry into a contractual agreement, both the OC and the contractor have their obligations and responsibilities as stated. Termination of contract by the OC without non-performance or breach of conditions of contract by the contractor will lead to claims by the contractor for works already carried out and the financial losses thus incurred. Eventually, all the building owners will be held liable for the claim.

The Management Committee of the OC should consider calling an Extraordinary General Meeting of all the owners to advise them of the situation and aim at passing a resolution to collect additional fund from the owners in order to complete the remaining works.

The OC should consult the Project Consultant and legal adviser before terminating the contract. In anticipation of the legal proceedings, it may sometimes be more costly to terminate the contract than to complete the works.

87. Last month, the metal flower rack at 5/F fell on the pavement and caused injuries. Someone said that the external wall were common areas of the building and held the Owners' Corporation (OC) liable. What can the OC do?

3.2.2 (f) **3.4.4** **A.** In essence, if the metal flower rack is exclusively used by one of the unit, the owner of that unit should be responsible for its stability even if the rack was installed on the external walls which are common parts of the building. Nevertheless, the OC should report to the insurance company of the incident so that the company can arrange for the necessary investigation and, if considered necessary by the company, to pursue the case with the owner of the unit where the flower rack was installed.

Related Sections

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5.3
Appendix 21

88. If we want to employ a consultant for the maintenance project for our building, how do we know that the consultant is competent, or the fee quoted is reasonable? How can I monitor the Project Consultant's performance?

A. The relevant professional institutions, i.e. HKIA, HKIE and HKIS have kept lists of qualified members or information of the practicing consultant firms. You can also refer to the list of Authorized Persons kept by the Buildings Department (BD) for the initial shortlisting process. You should request the shortlisted consultants to provide their job references which are relevant to the type of maintenance works you require and contact their referees to verify their performance. The professional fee is usually small compared to the cost of works required. Getting competitive pricing for professional service should not be over emphasized. It is always worthwhile to pay more for a competent and experienced Project Consultant.

It is very important to shortlist only reliable building professionals to submit quotations for the service. It is also normal to request the interested professionals to submit a proposed organization chart for the subject works with details of team members and their qualification and experience. You may also require the consultant to provide details for his supervision plan such as the frequency of site inspections, the frequency of meeting with contractors and the OC, etc in their fee proposal.

The performance of the Project Consultant can be reflected in his attendance to site supervisions and meetings with contractors. If the Consultant starts sending inexperienced staff or skipping coordination meetings, you should warn the Consultant and ask for improvement. If efforts are futile, you might have to consider terminating his service.

89. How should I engage a building contractor to carry out repair works?

4.3.5
4.3.6
Appendix 20

A. You should follow the tendering procedures as stated in the Building Management Ordinance for the selection of a contractor. The number of quotations required will depend on the estimated cost of the works. When you are short-listing contractors to provide competitive tenders, you should note that in some cases you must employ a registered general building contractor (RGBC) under the Buildings Ordinance, eg a repair order issued by BD which specifies the requirement for a RGBC. In any case, whether a RGBC is required or not, you are recommended to shortlist contractors who are competent and have relevant job experience for the type of works required. You may contact their referees to verify their past performance as claimed. (Note : BD is currently formulating a new registration system for minor works contractors competent in carrying out minor building works and repair works. Details will be announced when the system is finalized.)

You should also appoint a building professional as the Project Consultant (PC) to prepare the tender documents in order that the contractors are submitting tenders on equal basis. The PC will also analyze the tenders returned and make recommendations to the OC for consideration. If the shortlisting procedures or pre-qualification process have been done properly, normally, the lowest tender should be accepted.

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- 4.3.6 90. **How can we award the contract if the contractors had submitted different quotations that we cannot compare on equal basis?**
- A. This will only happen when you have let out a tender without the required specifications, necessary information and scope of works. You are advised to engage a building professional as the Project Consultant, prepare the tender documents and re-tender for the works.

O. Preventive Maintenance

- 4.4 91. **Over the years, our OC has spent a lot of money on urgent repairs over the years. How can we get a better budget control and reduce the cost of repair?**
- A. Breakdown maintenance is always expensive and causes much inconvenience to the tenants. Regular servicing will prolong the life span of a building including its finishes, equipment and fittings. Regular inspection of the building will also enable symptoms of defects to be detected at an early stage, so that planned corrective measures can be carried out in advance. Your OC should work out the maintenance strategy and standard with the Building Manager. If the maintenance budget is sufficient, 'Planned Preventive Maintenance' is the best approach to meet your performance targets and prevent the sudden failure of services.
- 3.2.1 (c)
4.1.2 (c)
4.4 92. **We just don't understand why the lift service has stopped so frequently for repair in the last few months.**
- A. There are many mechanical parts in lifting systems which need to be repaired or replaced from time to time. Spare parts may not be readily available for lifts that are too old. The frequent breakdown of a lift may be an indication that the effective lifespan of the lift system might be approaching to its end. You may discuss with the lift contractor regarding the conditions of the lift and if necessary, to request for submission of an upgrading and renewal proposal. Another possibility is that the contractor has not been doing its job properly. In case of doubt, please seek advice from a building professional, preferably a registered building services engineer in this case.
- 3.2.1 (d)
4.1.4
4.4
5.2.2
Appendix 7 93. **The slopes at the back of our building have been covered by vegetation. There have been heavy rain lately. Do we need to worry about them and what should we do to ensure that they are safe?**
- A. With the vegetation covering the slope and retaining wall, it will be difficult for layman to discover any signs of danger. It is advisable to have the slope and retaining wall inspected and maintained at regular intervals, particularly before rainy seasons.

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In your OC Management Committee meetings, you should have a standing agenda to engage professionals, ie, geotechnical engineers to carry out an "engineer inspection for maintenance". The details of the follow up maintenance works, including the frequency of routine maintenance inspections and engineer inspection for maintenance should be recommended in the inspection report.

As for a slope covered by vegetation, the building management should regularly clear debris and vegetation from the channels and weepholes, remove any vegetation causing severe cracking of drainage channel, remove loose rock debris and undesirable vegetation from rock slopes or around boulders, re-grass bare soil slope surface areas, and do so more frequently during rainy season. If there is any defect discovered, repair works should be initiated as soon as possible under the supervision of a qualified building professional. The Management Committee of the OC should review the progress of slope maintenance works regularly in its meetings, and to allow sufficient funding for the inspection and maintenance works.

Some guidance on how to maintain man-made slopes and retaining walls is provided in the Layman's Guide to Slope Maintenance published by the Geotechnical Engineering Office.

94. There are a few cracks at the open car park resting on grade. Is there any danger? What should I do?

3.2.1 (d)
4.1.4
4.4

- A. Cracks of slab on grade could be due to growing of tree roots, leaking underground drain or water supply pipes causing loss of soil, inadequate provision of movement joints in the floor slab or subsidence of soil underneath the car park arising from the movement of adjoining ground or slopes.

The OC should engage a building professional to investigate and report on the cause. Buried water carrying services can be checked by using a number of methods detailed in the Code of Practice on Inspection & Maintenance of Water Carrying Services Affecting Slopes published by the Works Branch (now Works Bureau). The appointed professional may also install equipment to monitor if there is any continuous subsidence.

95. As some cracks have already appeared, I personally feel that our mosaic tiles on the external wall should be replaced. How can I persuade other owners for a consensus to carry out the work?

3.2.1 (b)(vi)
4.1.1 (b)(i)
4.4

- A. You must start with valid justifications in order to convince the other owners for the total replacement of tiles. The first step is to convince the OC to conduct a survey on the mosaic tile finishes to check its integrity. Tapping test by hammer might be effective. To start with proposing a survey contract would be easier for acceptance by the OC than the total replacement work. The survey result may then justify the need and the necessary financial arrangements for the total replacement work.

Related Sections

P. Long Term Planning

96. We are the Owners' Corporation (OC) of a newly completed estate. There has not been too much repair works during the first few years. How should we prepare for the future?

- 3.2 A. With the assistance of your property manager, you should first establish the
3.4 maintenance strategy and standards in order to derive the long-term budget
4.4 and plan. As your estate has only been completed recently, it is opportune to implement Planned Preventive Maintenance for ensuring better quality standards in the upkeep of the buildings thus its market value.

The OC should consider the setting up of a Reserve Fund to cater for the future replacement of major equipment such as water pumps, electrical switchboards, emergency generators, etc. It is also advisable to provide for a Sinking Fund for the future modernization of the common areas. With the agreement by the owners in the Annual General Meeting, a slight increase in the monthly management fee to contribute to the Funds can be made possible. You should also arrange regular inspections of the different building elements, installations, services and facilities of the building to ensure that they function properly. The information gathered from these inspections will assist the preparation of the long-term preventive maintenance plan.

97. When we prepare the long-term plans for maintenance of our building, some owners asked what would be the priorities of the repair items. What is your advice?

- 3.2 A. Repair items can usually be categorized as follows in the following order of
3.4 priority:
4.4

i. Urgent repairs

Defects that may cause hazards to both public and occupiers need urgent repair, such as loosen/detached tiles on the external walls, defective fire service installations, defective lift components, etc.

ii. General repairs and replacements

Defects that might cause substantial inconvenience or nuisance to the owners/occupiers e.g. water leakage from the roof, supply or drain pipes should be accorded with slightly higher priority over the preventive maintenance items which can be scheduled according to the needs and conditions of components of the building.

Related Sections

3.2
4.1
4.4
5.2.1

iii. Renovation, upgrading and modernization

Cosmetic treatments to enhance esthetics of appearance can be accorded with lower priority unless they are carried out together with the urgent repair works for cost savings, e.g. replacing the dilapidated mosaic tiles on the external walls with high quality stone claddings.

98. Our building is an old one, with lots of Unauthorized Building Works (UBW) at the rooftop, flat roof and at the rear lane. There are also many defective drainage pipes and concrete spalling. How should we start to improve?

- A. You should first appoint a building professional to carry out a detailed condition survey of your building to identify all defective and unauthorized items and their extent. The report should include an estimated cost for the required rectification works.

If the survey report indicates that there are urgent repairs required for safety reasons, such works will have to be carried out immediately. (Note: Works already completed are not eligible for loans under the Building Safety Loan Scheme.) For the other repair works, the owners may need to decide on the priority of the implementation of the works.

As for the UBW, they should be removed before the carrying out of repair works so that the original wall/floor surfaces can be exposed for inspection and repair or reinstated as the case may be. However, if the owners of the UBW ignore your request, you may need to take legal proceedings against them if such UBW are in common areas or request assistance from the Buildings Department (BD).

Owners with financial difficulties may apply to the BD for loans to cover the costs of the repair works under the Building Safety Loan Scheme.

Q. Financial Planning

99. The OC finds it very frustrating to ask the owners to contribute to major repair funds. What is the best tactics to address the problem?

4.4.5 (b)
4.4.5 (e)
4.6.5
5.2.1 (c)
Appendix 6

- A. The correct procedure is to organize a meeting of all the owners to advise them of the need for major repairs including the financial commitment that all the owners have to bear. Such messages should be brought sufficiently in advance for the owners to accept the idea and prepare for the expense. However, if some of the owners are willing to pay but do not have the financial resources, they could apply to the Buildings Department for a loan under the Building Safety Loan Scheme.

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4.4.5 (b)
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Question 99

Question 99 (continues)

An alternative approach is to provide for a sinking fund. A small portion of the monthly management fee could contribute to the reserve for various maintenance and management purposes.

100. Should we wait until all the contributions from the owners are collected before commencement of the repair contract?

- A. It is certainly an advantage if you can collect all the contributions from the owners before commencement of the works contract. However, if a small percentage of the owners do not pay their contribution according to the agreed time schedule but sufficient fund is already available, you can proceed with the works safely.

In the case of major repairs which require substantial contribution from each of the owners, it is advisable to collect the contribution in stages according to the implementation plan of the works. This will reduce the financial burden on the owners and to make the collection of contributions more convenient. You should seek the advice of a building professional or discuss with your property manager on the arrangement of staged payments in order to ensure that you have sufficient funds to pay the contractor for works carried out. Stage completion of the works should also be incorporated in the contract to allow flexibility in this respect.

Owners with financial difficulties may apply for a loan from the Buildings Department under the Building Safety Loan Scheme.