

Information Paper for the Legislative Council Panel on Housing

Criminal Liability of Contractors in respect of Substandard Building Quality

This paper aims to provide additional information to Members on the issue of criminal liability in respect of substandard building work by contractors engaged by private developers and those engaged by the Housing Authority -

- (a) If the substandard building quality is the result of **corrupt or fraudulent practices** of contractors, contractors incur criminal liability whether they are engaged by private developers or by the Housing Authority. Such contractors are liable to be prosecuted.

- (b) Contractors of **substandard private sector buildings** may be liable to prosecution for offences under the Buildings Ordinance, for example, under section 40(2A) if, defective materials are used, or there are material divergence or deviations from approved plans. A copy of section 40(2A) of the Buildings Ordinance is at Annex. As the Housing Authority's developments are exempt from the provisions of the Buildings Ordinance, contractors of substandard public housing buildings will not be liable for offences under the Buildings Ordinance. However, the Housing Authority will take necessary action both under contract and under the list management of contractors to ensure that contractors deliver the required building quality.

Housing Department
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- (2) 任何人——
- (a) 沒有給予根據第 25(1)條規定給予的任何通知；
- (b) 違反建築事務監督根據第 42 條所批予的准許證的任何條件；或
- (c) 阻礙建築事務監督、任何獲其授權的人員、任何其他公職人員、根據第 50 條委出的覆核委員會或該覆核委員會的任何成員根據本條例行使其權力，

即屬犯罪，一經定罪，在不損害任何其他罰則的原則下，可處罰款\$10,000及監禁 6 個月。(由 1979 年第 24 號第 3 條代替)

(2A) 正由他人代為進行任何建築工程或街道工程的人，以及與該等工程直接有關的任何認可人士、註冊結構工程師、註冊一般建築承建商或註冊專門承建商——(由 1993 年第 43 號第 10 條修訂；由 1996 年第 54 號第 22 條修訂)

- (a) 准許或授權在進行該等工程時加入或使用——
- (i) 任何欠妥的或不符合本條例條文的物料；
- (ii) 任何物料，而該等物料並未按照根據本條例就該等物料所規定的方式而混合、預備、應用、使用、豎立、建造、放置或固定；
- (b) 嚴重偏離建築事務監督根據本條例批准的圖則所顯示的任何工程或與之嚴重相歧；或
- (c) 明知而在根據本條例給予建築事務監督的任何圖則、證明書、表格或通知內就重要事實作出失實陳述，(由 1979 年第 24 號第 3 條代替)

即屬犯罪，一經定罪，可處罰款\$250,000 及監禁 3 年。(由 1979 年第 24 號第 3 條修訂)

(2AA) 任何認可人士或註冊結構工程師違反第 4(3)(b)條，或任何註冊一般建築承建商或註冊專門承建商違反第 9(3)(b)條，即屬犯罪，一經定罪，可處罰款 250,000 及監禁 3 年：(由 1996 年第 54 號第 22 條修訂)

但在任何因違反本款所提述任何一條而作出的檢控中，被控的人如提出證明，令法庭信納他不知道而按理他亦不能發覺控罪中所提述的違反情況，即可以此作為該項檢控的免責辯護。(由 1979 年第 24 號第 3 條增補)

(2AB) 與第 17(1)條列表 A 欄第 1、2、3、4、5 及 6 項所列任何建築工程或街道工程直接有關的人(不論是否認可人士、註冊結構工程師、註冊一般建築承建商

- (2) Any person who—
- (a) fails to give any notice required to be given under section 25(1);
- (b) contravenes any condition of a permit granted by the Building Authority under section 42; or
- (c) obstructs the Building Authority, any officer authorized by him, any other public officer, a committee of review appointed under section 50 or any member of such committee of review, in the exercise of his or its powers under this Ordinance,

shall be guilty of an offence and shall, without prejudice to any other penalty, be liable on conviction to a fine of \$10,000 and to imprisonment for 6 months. (Replaced 24 of 1979 s. 3)

(2A) Any person for whom any building works or street works are being carried out and any authorized person, registered structural engineer, registered general building contractor or registered specialist contractor directly concerned with any such works who— (Amended 43 of 1993 s. 10; 54 of 1996 s. 22)

- (a) permits or authorizes to be incorporated in or used in the carrying out of any such works any materials which—
- (i) are defective or do not comply with the provisions of this Ordinance;
- (ii) have not been mixed, prepared, applied, used, erected, constructed, placed or fixed in the manner required for such materials under this Ordinance;
- (b) diverges or deviates in any material way from any work shown in a plan approved by the Building Authority under this Ordinance; or
- (c) knowingly misrepresents a material fact in any plan, certificate, form or notice given to the Building Authority under this Ordinance, (Replaced 24 of 1979 s. 3)

shall be guilty of an offence and shall be liable on conviction to a fine of \$250,000 and to imprisonment for 3 years. (Amended 24 of 1979 s. 3)

(2AA) Any authorized person or registered structural engineer who contravenes section 4(3)(b), or any registered general building contractor or registered specialist contractor who contravenes section 9(3)(b), shall be guilty of an offence and shall be liable on conviction to a fine of \$250,000 and to imprisonment for 3 years: (Amended 54 of 1996 s. 22)

Provided that it shall be a defence in any prosecution for a contravention of any section referred to in this subsection for the person charged to prove to the satisfaction of the court that he did not know, nor could reasonably have discovered, the contravention referred to in the charge. (Added 24 of 1979 s. 3)

(2AB) Any person (whether or not an authorized person, a registered structural engineer, a registered general building contractor or a registered