

Site Safety Management – Whose Responsibility?

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Agenda

- Under the definitions and scopes of the Factories & Industrial Undertakings Ordinance, the Occupational Safety & Health Ordinance and their subsidiary regulations
 - ❖ What is a “site”?
 - ❖ Who are the stakeholders on “site safety”?
 - ❖ What are the requirements on “safety management”?
 - ❖ What are the duties of the “safety officer” and “safety supervisor”?
- Some discussions on the High Court Magistracy Appeal and Personal Injury Cases

- Details of the Factories & Industrial Undertakings Ordinance, the Occupational Safety & Health Ordinance and their subsidiary regulations are available at the Government website
❖ www.legislation.gov.hk
- Details of the High Court Cases quoted in this talk are available at the Government website
❖ www.judiciary.gov.hk

Definition of “Construction Site” in CSSR

- **Construction Sites (Safety) Regulations**
Cap. 59I r. 2 Interpretation
 - ❖ “Construction Site (建築地盤)” means a place where **construction work** is undertaken and also any area in the immediate vicinity of any such place which is used for the storage of materials or plant used or intended to be used for the purpose of the construction work

Definition of “Construction Work” in the FIUO

■ Factories & Industrial Undertakings Ordinance Cap. 59 s. 2 Interpretation

❖ “Construction Work (建築工程)” means:-

(a) the construction, erection, installation, reconstruction, repair, **maintenance** (including redecoration & **external cleaning**), renewal, removal, alteration, improvement, dismantling, or demolition of any structure or works specified in the **Third Schedule**;

(b) any work involved in preparing for any operation referred to in paragraph (a), including the laying of foundations & the excavation of earth & rock prior to the laying of foundations;

(c) The use of machinery, plant, tools, gear, & materials in connexion with any operation referred to in paragraph (a) or (b)

Scope included in the “Third Schedule” of FIUO

- **Factories & Industrial Undertakings Ordinance Cap. 59 Schedule 3 Specified Structures & Works (指明的構築物及工程)**
 - ❖ Any **building**, edifice, **wall**, fence, or chimney, whether constructed wholly or partly above or below ground level
 - ❖ Any road, motorway, railway, tramway, cableway, aerial ropeway or canal
 - ❖ Any harbour works, dock, pier, sea defence work, or lighthouse
 - ❖ Any aqueduct, viaduct, bridge, or tunnel
 - ❖ Any sewer, sewage disposal works, or filter bed
 - ❖ Any airport or works connected with air navigation
 - ❖ Any dam, reservoir, well, pipeline, culvert, shaft, or reclamation
 - ❖ Any drainage, irrigation, or river control work
 - ❖ Any water, electrical, gas, telephonic, telegraphic, radio, or TV installation or works, or any other works designed for the manufacturing or transmission of power or the transmission or reception of radio or sound waves
 - ❖ Any **structure designed for the support of machinery, plant, or power transmission lines**

Definition of “Contractor” in FIUO

- **Factories & Industrial Undertakings Ordinance**
Cap. 59 s. 2 Interpretation
 - ❖ **“Contractor (承建商)” in relation to construction work, means any person or firm engaged in carrying out construction work by way of trade or business, either on his own account or pursuant to a contract or arrangement entered into with another person, including the State or any public body**

Scope of “Industrial Undertaking” under the FIUO

■ Factories & Industrial Undertakings Ordinance Cap. 59 s. 2 Interpretation

❖ “Industrial Undertaking (工業經營)” includes:-

(a) ... ;

(e) Any **construction work**;

(f) ...;

(i) Any premises or **site** in or upon which, & the machinery, plant, tools, gear & materials with which, any of the foregoing industrial undertakings is carried on

Definition of “Proprietor” in the FIUO

- Factories & Industrial Undertakings Ordinance
Cap. 59 s. 2 Interpretation
 - ❖ “Proprietor (東主)” in relation to any industrial undertaking or notifiable workplace includes the person for the time being having the management or control of the business carried on in such industrial undertaking or notifiable workplace & includes a body corporate & a firm & also the occupier of any industrial undertaking or notifiable workplace & the agent of such occupier

Definition of “Employer”, “Employee” & “Occupier” in the OSHO

- Occupational Safety & Health Ordinance Cap. 509 s. 2 Interpretation
 - ❖ “Employer (僱主)” means a person who employs natural persons under contracts of employment or apprenticeship
 - ❖ “Employee (僱員)” means a natural person who works under a contract of employment or apprenticeship, but does not include a domestic servant
 - ❖ “Occupier (佔用人)” in relation to any premises or workplace, includes a person who has any degree of control over the premises or workplace &, in particular, includes a person who, under a lease or control, has an obligation for the maintenance or repair of premises, or the safety of, or the absence of risks to health arising from the condition or use of, any plant or substance located on premises, or an obligation to provide, maintain or repair a means of access to, or egress from, premises

Definition of “Premises” & “Workplace” in the OSHO

- Occupational Safety & Health Ordinance Cap. 509 s. 2 Interpretation
 - ❖ “Premises (處所)” includes any vehicle & any public place, & also includes a part of particular premises
 - ❖ “Workplace (工作地點)” means **any place where employees work**, but does not include an aircraft or vessel when located in a public place; when a vehicle that is designed or used for the carriage of people, animals or goods is located in a public place, the seat or position normally occupied by the driver of the vehicle; domestic premises at which the only employees are domestic servants; a place at which only self-employed persons work; & any other place of a kind prescribed by a regulation for the purposes of this paragraph

Definition of “Person Responsible for a Workplace” in the OSHO

- Occupational Safety & Health Ordinance Cap. 509 s. 2 Interpretation
 - ❖ “Person Responsible (負責人)” for a workplace (工作地點), in relation to a workplace, is the **employer** of the employees who are employed to carry out work there, or if the employer **does not exercise any degree of control over the relevant part or aspect of the workplace,** means the **occupier of the workplace**

Duties of “Contractor” under the CSSR

- Construction Sites (Safety) Regulations Cap. 59I
r. 2(2)(a) Interpretation
 - ❖ A Contractor is responsible for a construction site if he is undertaking construction work there or, where there is more than one contractor undertaking construction work at the site, if he is the principal contractor undertaking work there

Duties of “Proprietor” under the FIUO

- **Factories and Industrial Undertakings Ordinance**
Cap. 59 s. 6A(1) General Duties of a Proprietor
 - ❖ **It shall be the duty of every proprietor of an industrial undertaking to ensure, so far as is reasonably practicable, the health and safety at work of all persons employed by him at the industrial undertakings**

Duties of “Persons Employed” under the FIUO

- **Factories & Industrial Undertakings Ordinance**
Cap. 59 s. 6B(1)(a) General Duties of Persons Employed
 - ❖ **It shall be the duty of every person employed at an industrial undertaking while at work to take reasonable care for the health & safety of himself & of other persons who may be affected by his acts or omissions at work**

Personal Liabilities of “Directors”, “Manager”, “Secretary”, “Other Similar Officer of the Company”, “Partners of a Firm” or “Any Person concerned in the Management of the Firm” under the FIUO Cap. 59

- **Factories & Industrial Undertakings Ordinance Cap. 59 s. 14**
Liabilities of Directors, Partners, etc.
 - ❖ (1) Where the person convicted of an offence against FIUO is a **company** & it is proved that the offence was committed with the **consent or connivance of, or was attributable to any neglect on the part of any director, manager, secretary or other similar officer of the company, the director, manager, secretary or other similar officer shall be guilty of the like offence**
 - ❖ (2) Where the person convicted of an offence against FIUO is a **firm** & it is proved that the offence was committed with the **consent or connivance of, or was attributable to any neglect on the part of any partner in the firm or any person concerned in the management of the firm, the partner or the person concerned in the management of the firm shall be guilty of the like offence**

Duties of “Employer” under the OSHO

- Occupational Safety & Health Ordinance Cap. 509 s. 6(1) Employers to ensure Safety & Health of Employees
 - ❖ Every employer must, so far as reasonably practicable, ensure the safety & health at work of all the employer's employees

Duties of “Occupier” under the OSHO

- Occupational Safety & Health Ordinance Cap. 509 s. 7(1) Occupier of Premises to ensure Safety & Health of Persons Employed at those Premises
 - ❖ If an employee's workplace is located on premises that are not under the control of the employee's employer, the **occupier of the premises** must ensure that the premises, and the means of access to & egress from the premises, and any plant or substances kept at the premises are, so far as reasonably practicable, **safe & without risks to health**

Duties of “Employee” under the OSHO

- Occupational Safety & Health Ordinance Cap. 509 s. 8(1)(a) Employees at work to take care of Others & to cooperate with the Employer
 - ❖ An Employee while at work must, so far as reasonably practicable, take care for the safety & health of persons (including the employee) who are at the employee's workplace & who may be affected by the employee's acts or omissions at work

Personal Liabilities of "Directors", "Manager", "Secretary", "Other Similar Officer of the Company", "Partners of a Firm" or "Any Person concerned in the Management of the Firm" under the OSHO

- Occupational Safety & Health Ordinance Cap. 509 s. 33 Liabilities of Directors, Partners, etc.
 - ❖ (1) Where the person convicted of an offence against OSHO is a company & it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of any director, manager, secretary or other similar officer of the company, the director, manager, secretary or other similar officer shall be guilty of the like offence
 - ❖ (2) Where the person convicted of an offence against OSHO is a firm & it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of any partner in the firm or any person concerned in the management of the firm, the partner or the person concerned in the management of the firm shall be guilty of the like offence

Definition of “Safety Management” in the FIU(SM)R

- **Factories and Industrial Undertakings (Safety Management) Regulations Cap. 59AF s. 2 Interpretation**
 - ❖ “**Safety Management (安全管理)**” means the **management functions connected with the carrying on of an industrial undertaking that relate to the safety of personnel in the undertaking, including the planning, developing, organizing & implementing of a safety policy, & the measuring, auditing or reviewing of the performance of those functions**

Definition of “Safety Management System” in the FIU(SM)R

- **Factories and Industrial Undertakings (Safety Management) Regulations Cap. 59AF s. 2 Interpretation**
 - ❖ “Safety Management System (安全管理制度)” means a system which provides safety management in an industrial undertaking

Definition of “Safety Officer” & “Safety Supervisor” in the FIU(SOSS)R

- **Factories and Industrial Undertakings (Safety Officers & Safety Supervisors) Regulations Cap. 59Z r. 2 Interpretation**
 - ❖ “Safety Officer (安全主任)” means a person employed as a safety officer in an industrial undertaking
 - ❖ “Safety Supervisor (安全督導員)” means a person employed as a safety supervisor in an industrial undertaking

Duties of Proprietor & Contractor to Develop, etc. Safety Management System under the FIU(SM)R

- **Factories and Industrial Undertakings (Safety Management) Regulations Cap. 59AF s. 8 Duty of Proprietor & Contractor to Develop, etc. SMS**
 - ❖ **A proprietor or contractor specified in Part 1 / 2 / 3/ 4 of Schedule 3 shall develop, implement & maintain in respect of the relevant industrial undertaking a safety management system which contains the elements specified in Schedule 4 / Part 1 of Schedule 4**

Duties of “Safety Officer” under the FIU(SOSS)R

- **Factories and Industrial Undertakings (Safety Officers & Safety Supervisors) Regulations Cap. 59Z r. 15(1) Duties of Safety Officer**
 - ❖ **The duty of a person employed as a SO shall be to assist the proprietor of the industrial undertaking in promoting the safety & health of persons employed therein, including for that purpose-**
 - **(a) advising the proprietor as to measures to be taken in the interest of the safety and health of persons employed in the industrial undertaking and, with the approval of the proprietor, implementing such measures;**
 - **(b) inspecting the industrial undertaking, or directing any person employed as a safety supervisor therein to inspect the industrial undertaking for the purpose of determining whether or not there is any machinery, plant, equipment, appliance or process or any description of work carried on in the industrial undertaking which is of such a nature as to be liable to cause risk of bodily injury to any person employed in an industrial undertaking;**

Duties of “Safety Officer” under the FIU(SOSS)R

- (c) reporting the findings of any inspection to the proprietor & recommending what measures, if any, ought to be taken as a result of that inspection;
- (d) assisting in the supervision of any person employed as a safety supervisor in the industrial undertaking;
- (e) advising the proprietor in the interest of the safety & health of persons employed in the industrial undertaking of any repairs or maintenance that ought to be carried out in respect of-
 - (i) any premises comprising the industrial undertaking;
 - (ii) any appliance, equipment, machinery or plant in use in the industrial undertaking;

Duties of “Safety Officer” under the FIU(SOSS)R

- (f) investigating and reporting to the proprietor, or causing to be investigated and reported to the proprietor, the circumstances of any accident, or dangerous occurrence in the industrial undertaking and making recommendations to the proprietor to prevent similar accidents or dangerous occurrences;
- (g) investigating and reporting to the proprietor, or causing to be investigated and reported to the proprietor, the circumstances of the suffering of any bodily injury by any person employed in the industrial undertaking and making recommendations to the proprietor to prevent similar suffering of any bodily injury;
- (h) investigating and reporting to the proprietor every fatal accident in the industrial undertaking and making recommendations to the proprietor to prevent similar fatal accidents;
- (i) receiving, discussing and countersigning every report submitted to him by a person employed as a safety supervisor [Form 3A];
- (j) on or before the last day in every month preparing and submitting to the proprietor a report [Form 2A];

Duties of “Safety Officer” under the FIU(SOSS)R

- (k) advising the proprietor on the implementation of a safety management system in the industrial undertaking, including-
 - (i) to assist in establishing, revising & reviewing a safety & health policy of the industrial undertaking;
 - (ii) to assist in organizing a safety & health training programme;
 - (iii) to assist in devising in-house safety rules and regulations;
 - (iv) to assist in implementing safety & health plans, programmes, arrangements & measures;
 - (v) to assist in establishing a safety committee & implementing its recommendations;
 - (vi) to assist in job hazard analysis, evaluation of potential hazards & the identification of hazardous conditions & hazardous exposure; and
 - (vii) to assist in conducting safety promotion, health assurance & personal protection programmes.

Duties of “Safety Supervisor” under the FIU(SOSS)R

- **Factories and Industrial Undertakings (Safety Officers & Safety Supervisors) Regulations Cap. 59Z r. 17(1) Duties of Safety Supervisor**
 - ❖ **The duty of a person employed as a SS shall be -**
 - **(a) to assist any person employed as a SO in the industrial undertaking in carrying out the duties of a SO;**
 - (b) to assist the proprietor responsible for the industrial undertaking in promoting the safety & health of persons employed therein including for that purpose-**
 - **(i) advising the proprietor or any person employed as a SO in the industrial undertaking, as to the observance by any person of the standards for the safety or protection of persons employed in the industrial undertaking;**

Duties of “Safety Supervisor” under the FIU(SOSS)R

- (ii) supervising the observance by any person of the standards for the safety or protection of persons employed in the industrial undertaking;
- (iii) promoting the safe carrying on of work in the industrial undertaking; &
- (iv) on or before the last day in every week, preparing & submitting, in the case where no person is employed as a safety officer in the industrial undertaking, to the proprietor, or in the case where a person is employed as a safety officer in the industrial undertaking, to the safety officer, a report [Form 3A]

What is Management?

■ Definition of Management (Wikipedia)

- ❖ Management in all business & organizational activities is the act of coordinating the efforts of people to accomplish desired goals & objectives using available resources efficiently & effectively. Management comprises planning, organizing, staffing, leading or directing, & controlling an organization (a group of 1 or more people or entities) or effort for the purpose of accomplishing a goal. Resourcing encompasses the deployment & manipulation of human resources, financial resources, technological resources, & natural resources

What is Management?

■ In Chinese 管理

- ❖ 管 to control: involves authority (權)
- ❖ 理 to handle: involves responsibility (責)

What is Management?

- In a site, the line management (PD, PM, CM, SA, Engr ...)
 - ❖ has the power (權)
 - ❖ & hence, the responsibility (責)
- The Safety Officer only acts as an Advisor, or a Consultant

Who are the Responsible Parties?

■ In summary

Venue	Activity	Main Person Responsible	Other Responsible Parties
Construction Site as defined in CSSR	Construction Work	Principal Contractor	Subcontractor; Worker
Industrial Undertaking (including Construction Site) as defined in FIUO	Industrial Activity (including Construction Work)	Proprietor	Occupier; Person Employed; Director, Manager, Secretary or Other Similar Officer of the Co., Partner or Person concerned in the Management of the Firm
Workplace (including Construction Site) as defined in OSHO	Workers at Work (including Construction Work)	Employer	Occupier; Employee; Director, Manager, Secretary or Other Similar Officer of the Co., Partner or Person concerned in the Management of the Firm

Who are the Parties Responsible for the Safety of Construction Plant & Processes?

- **Construction Plant & Processes**
 - ❖ **Lifting Appliance & Lifting Gear (LALG)**
 - ❖ **Suspended Working Platform (SWP, Gondola)**
 - ❖ **Loadshifting Machinery (LSM)**
 - ❖ **Hoist, Winch, Scaffold, Ladder, Boatswain's Chair, Mechanical Equipment, etc. & Other Construction Plant / Processes**

Definition of “Owner” of “Lifting Appliance or Lifting Gear (LALG)” in the FIU(LALG)R

- Factories and Industrial Undertakings (Lifting Appliances & Lifting Gear) Regulations Cap. 59J r. 3(1) Interpretation
 - ❖ “Owner (擁有人)” in relation to any LA or LG, includes
 - The Lessee (承租人) or Hirer (租用人) thereof, & any
 - Overseer (監工),
 - Foreman (管工),
 - Agent (代理人) or
 - Person in charge (主管) or having the control (控制) or management (管理) of the LA or LG, &
 - The Contractor (承建商) who has control over the way any construction work which involves the use of the LA or LG is carried out &, in the case of a LA or LG situated on or used in connection with work on a construction site, also includes the Contractor Responsible for the Construction Site

Definition of “Owner” of “Suspended Working Platform (SWP, or Gondola)” in the FIU(SWP)R

- **Factories and Industrial Undertakings (Suspended Working Platform) Regulations Cap. 59AC s. 3(1) Interpretation**
 - ❖ **“Owner (擁有人)” in relation to any SWP, includes**
 - **The Lessee (承租人) or Hirer (租用人) thereof, & any**
 - **Overseer (監工),**
 - **Foreman (管工),**
 - **Agent (代理人) or**
 - **Person in charge (主管) or having the control (控制) or management (管理) of the SWP, &**
 - **The Contractor (承建商) who has control over the way any construction work which involves the use of the SWP is carried out &, in the case of a construction site, includes the Contractor Responsible for the Construction Site**

Definition of “Responsible Person” of “Loadshifting Machine (LSM)” in the FIU(LSM)R

- **Factories and Industrial Undertakings (Loadshifting Machinery) Regulations Cap. 59AG s. 2(1) Interpretation**
 - ❖ **“Responsible Person (負責人)” in relation to a LSM, means**
 - **A Person who is having the management or in charge of the machine but does not include a person who operates the machine, &**
 - **The Contractor who has control over the way any construction work which involves the use of the machine is carried out &, in the case of a LSM situated on or used in connection with work on a construction site, also means the Contractor Responsible for the Construction Site**

Duties of The Contractor Responsible for Construction Plant & Processes under the CSSR

■ Construction Sites (Safety) Regulations Cap. 59I

❖ The Contractor Responsible for a ... (Construction Site, Plant or Process) & Any Contractor who has **Direct Control** over Any Construction Work / over Any Construction Work which involves the use of the ... (Plant & Process)

- Hoist [r. 5, 8, 8A, 9, 10(2), 20, 31-38]
- Winch [r. 10(1)]
- Scaffold, Ladder or other Means of Support [r. 38D-F]
- Boatswain's Chair [r. 38G]
- Excavation [r. 39-41A]
- Prime Mover, Transmission or Other Machinery [r. 44]
- Process involving Risk of Dust or Fume Inhalation [r. 42], Risk of Eye Injury [r. 43], Head Injury [r. 48], Risk of Falling Materials [r. 49], Risk of Projecting Nails [r. 51], Risk of Drowning [r. 52A]
- Process involving Use of Electricity [r. 47], Lighting of Workplace [r. 50], Material Keeping [r. 52], Prohibition of Smoking [r. 53],
- Provision & Maintenance of Fire Escape & Firefighting Appliances [r. 54], First Aid [r. 60-65], Shelter & Facilities for Meals [r. 66]

Duties of The Contractor Responsible for Safety of Construction Plant & Processes under the CSSR

- **Construction Sites (Safety) Regulations Cap. 59I**
 - ❖ **The Contractor Responsible for the Construction Site & Any Contractor Responsible for ... (Construction Equipment or Process)**
 - **Mechanical Equipment [r. 45]**
 - **Dangerous Machinery or Plant [r. 46]**

Who are the Responsible Parties regarding Safety of Construction Plant & Processes?

■ In summary

Plant or Equipment	Applicable Legislation	Main Person Responsible	Other Responsible Parties
Lifting Appliance & Lifting Gear (LALG)	FIU (LALG) R	Contractor Responsible for the Site	Lessee / Hirer; Overseer; Foreman; Agent; Person in charge or having the Control or Management of the LALG; Contractor having Control of the Way the Construction Work (involving the use of the LALG) is carried out
Suspended Working Platform (SWP, Gondola)	FIU (SWP) R	Contractor Responsible for the Site	Lessee / Hirer; Overseer; Foreman; Agent; Person in charge or having the Control or Management of the SWP; Contractor having Control of the Way the Construction Work (involving the use of the SWP) is carried out
Loadshifting Machinery (LSM)	FIU (LSM) R	Contractor Responsible for the Site	Person having the Management or In Charge of the LSM; Contractor having Control of the Way the Construction Work (involving the use of the LSM) is carried out
Other Construction Plant or Process	CSSR	Contractor Responsible for the Site	Contractor Responsible for Construction Plant / Process Any Contractor who has Direct Control over Any Construction Plant / Process / Any Construction Work which involves the use of ... (Construction Plant or Process) / which results in ... (Hazard / Risk from Process)

Apart from the above Criminal Liability, there is Civil Liability

■ Architects & Developers No Responsibility in Fortuna Hotel Demolition Accident in 1994 which Resulted in 6 Fatalities to Passers-by



An outer wall of the Fortuna Hotel in Nathan Road collapsed during demolition, killing six passers-by in September 1994.

All care and no site responsibility



Wong Chi-shing

Vague legislation regulating construction work in Hong Kong has been blamed for the failure to allot responsibility for a Yau Ma Tei demolition accident which killed six passers-by 18 months ago.

Ten people connected with the demolition tragedy in Nathan Road were acquitted last week, prompting an outcry by relatives who said justice had not been done.

Unionists have said deficiencies in the law contribute to the high accident and death rates in the construction industry.

This view is echoed by Francis Wong, an associate professor at the Polytechnic University's department of building and real estate. Wong said it was difficult to determine which party should be held responsible for a construction site accident in the territory because the legal responsibility was not clearly stated, and the photographs and written records required by law were inadequate.

He said Britain and other European Union countries had clear regulations defining liability for construction-site accidents.

Wong said that under the 1994 Construction, Design and Management Regulation Act, developers, contractors, designers and consultants in Britain all had responsibility

for accidents on sites and any resulting casualties, whether they involved workers or passers-by.

He said clearly stated liability could encourage a higher degree of consideration for safety in the construction industry.

Wong said that under existing law, owners or developers in the territory could be free of any accident liability as long as they had appointed an "authorised person" for the construction or demolition work.

An authorised person can be an architect, a civil or structural engineer or a surveyor, who is eligible to submit a construction plan to the Buildings Department.

Wong said the "authorised person" designation existed only in Hong Kong and was introduced in the 1960s when the Works Department could not handle the influx of construction plans.

Owners and developers were asked to appoint professionals to evaluate the technical aspects of the construction plans, he said.

Wong said accidents often involved problems of working procedures rather than problems of design.

"But it's difficult to determine whether there is an error in procedure or an error in supervision."

Wong said the law also lacked a definition of "adequate" supervision and a clear division for the supervision duties between authorised persons and developers.

"An authorised person is not required to stay on a construction site all the time."

Wong said supervision at the site was now carried out by clerks from the authorised persons' companies or fore-

men from developers or subcontractors.

Although the "authorised person" role did not exist in other countries, Wong said it had its function in the territory because of the huge pace of development.

The pre-examination of construction plans by authorised persons is designed to reduce the processing time the Buildings Department needs to approve a plan.

Last week, charges against 10 people - including contractors, architects and engineers - involved in the demolition of the old Fortuna Hotel in Nathan Road were dropped after the prosecution considered a report on the incident prepared by an independent structural engineer.

Meanwhile, an International Labour Organisation report released earlier this month criticised Hong Kong for its poor safety record in the building industry, which it

said was 25 times worse than that of Japan and Singapore.

Chan Kam-hong, the chief executive of the Association for the Rights of Accident Victims, also criticised the ambiguity of laws regulating safety on construction sites.

"For example, the term 'appropriate' is vague, an 'appropriate' person should take the responsibility of supervision, but an 'appropriate' person could be any person," he said.

Chan said such terms give no standard for prosecution, thereby allowing the employers to elude their responsibility in court after accidents happened.

He said definite and objec-

tive standards should be introduced rather than allowing employers to provide their own interpretations.

Chan said light penalties against employers also failed to encourage safety on construction sites.

He said last year's average fine against violators of the Factories and Industrial Undertakings Ordinance was only \$12,000 although the maximum penalty could be two years' jail and a \$200,000 fine.

He slammed the Government for seldom prosecuting violators of safety regulations, except in cases where breaches of the law resulted in casualties.

Chan rejected the allegation that the high accident rate was due to the low skill levels of construction workers.

"Although the safety standard of our construction industry is poor, the quality of our buildings is comparable to the world standard," he said.

"It illustrates that the high accident rate does not arise from a problem in skill, but the unwillingness to carry out safety precautions."

Chan said because construction sites are insured, employers lose little as a result of accidents. He said the Government seemed more concerned with the quality of buildings than the safety of construction workers.

"If the Government paid the same attention to safety as it had paid on the quality of building, the safety standard could be as good as the quality of buildings."

Tsang Yuen-yi, of the Hong Kong Workers Health Centre, said developers should be required by law to assign a certain proportion of their budget to safety precautions.

She said the Government could also offer incentives to developers such as allowing those with good safety records and safety training priority in securing government tenders.

'Employers don't care about safety because the projects are insured and they lose nothing'

Collapsed Canopy: The Albert House (香港仔添喜大廈) Case (For details see Aberdeen Winner Investment Co. Ltd. V. Incorporated Owners of Albert House in HCCW 1046/2004)

- With the other liable "Limited Companies" winding up, the main liability to pay compensation rests with the building owners

酒樓管理公司紛「離場」 小業主受害
場篷奪命 掀釘契風波
法團清盤

場篷釀致命慘劇，苦主獲判償逾
大廈管理公司及工程公司陸續因破產
業主將「矛頭」轉向大廈業主立案
千多萬元的賠償金，昨獲高等法院頒
律界人士指，小業主的物業可能遭
存漏洞，促請盡快修訂，以保障小業
記者：梁瑞琪 黃詠嫻

小業主苦況

■阮女士表示，她吃飯也
只用二十元，現在小業主
分擔二千多萬元「唔知點
撙」。

■曾女士形容大業主的做法
等於要小業主「墊屍底」。

■大廈小業主陳先生手持有關意外
後的訴訟費及賠償收條。 黃詠嫻攝

百戶小業主「墊屍底」

逾大，可能對釐不受保。
保險業聯會就表示，強制業主立案法
團購買第三者保險，最低保險額要達到一
千萬元，業界促請業主在條例生效前，自
行購買保險。

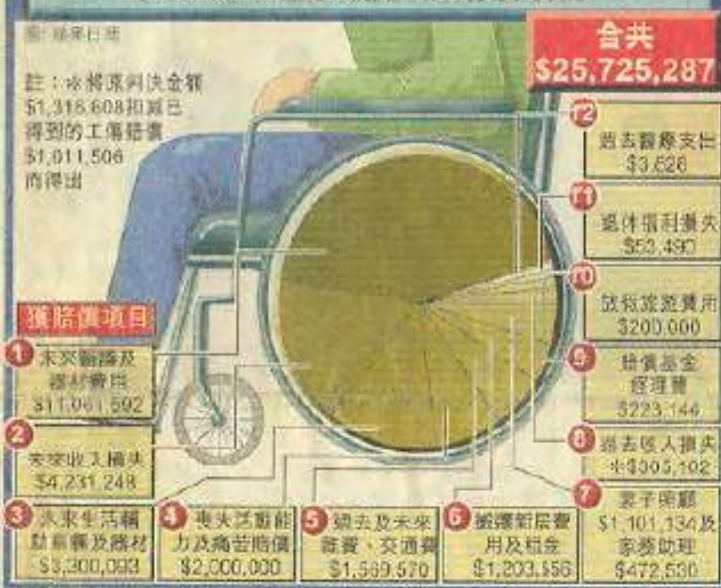
■許先生的岳母在當年意外中喪生。

RMAA Work: Sun Hing Building (旺角新興大廈) Case (For details refer to Ta Xuong v. The Incorporated Owners of Sun Hing building in HCPI 496/1995)

技工跌癱獲償二十六萬 新興大廈每戶須賠七萬多元

21-10-97

四肢癱瘓工人謝昌獲賠償項目



代表原訴人的資深大律師蕭朗年表示，擔心業主立案法團何時能支付賠償。法官同意下

勒令兩週內付賠償

主審法官孫國治在判詞中嚴厲批評建築商對新興大廈的管理水準每況愈下，大廈充斥非法搭建結構，殘破的裝修，造成危險環境，原訴人雖已出事，但三樓環境更甚於其慘狀，可見大廈管理十分疏忽。

曾向法官訴苦指很多業主不支付款項修大廈的業主立案法團代表許超明，散庭後表示將於下月十八日舉行大會通知業主判決，他又承認大廈在意外時沒有購買上保險。

下月中舉行業主會

以新興大廈現有業權四百多戶，由於賠償額利息由昨日開始計算，再加上訴訟費，業主法團估計最終賠償額約三千萬，估計每戶要付七萬多元。

「記者歐陽國輝報導」水電技師謝昌六年前在旺角新興大廈外牆工作時，因中橫竹梯墜地導致四肢癱瘓。高等法院昨日裁定大廈業主立案法團需對其賠償二千五百七十多萬，外加訴訟費，成為人身傷害索償的最高紀錄（見下表）。也是本港法庭裁出的最高賠償額。



謝昌表示，他目前責任慘重，向新興大廈業主索償，指出他當日已合法訪客身分工作，但大廈卻未採取措施安全令意外發生，因此有責任作出賠償。

案件編號：PILCHS

法官在判詞中中指出，謝昌所受身心痛苦較以往任何類案的受害人嚴重，因此「喪失活動能力及痛苦賠償」一項特別判得二百萬元（見左圖）。較判例中「嚴重」般受傷的一百萬賠償額上取加倍。

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RMAA Work: The Timpanist Case (For details see Kristan Bowers Phillips v. Initial Environmental Services Ltd. & Others in HCPI 580/1996)

五億二堂訟興 水蟲殺入吸入排綵 美鼓手神經受損獲償二千萬

五被告分擔賠償一覽表 表一

公司、機構名稱	賠償百分比	賠償額
專業清潔服務有限公司	20%	\$3,920,384
香港曾強樂團	10%	\$1,960,192
香港演藝學院	15%	\$2,940,288
入口商汽巴葛基(香港)有限公司	35%	\$6,860,672
零售商黃河清有限公司	20%	\$3,920,384
總額		\$18,601,920

美籍前首席定音鼓手 人身傷亡賠償一覽表 表二

類別	賠償額
痛楚及失去人生樂趣賠償	\$750,000
過往擔任首席定音鼓手收入損失	\$2,958,478
未來十年之收入損失	\$6,532,754
與妻子因失業之賠償	\$1,000,000
檢閱樂器所得之收入	\$750,000
特別賠償(過往損失及支出)	\$3,885,268
額外將來損失及支出	\$3,601,421
在美國過往及將來損失的收入	US\$15,500

註：以上賠償未包括利息

【本報訊】香港曾強樂團前美籍首席定音鼓手，十年前在香港演藝學院排練時，因吸入濃度含有第二次世界大戰時化學戰劑毒氣成分的殺蟲劑，導致神經系統受損，失去謀生能力，法院昨裁定五個被告或須負責，原告人可獲得賠償逾一千九百六十多萬元，成為本港歷來最高額的人身傷害賠償，是案六名與鼓手的堂費高達近一億五千萬之巨。

沒有危險警告標誌

原告人 Mr. David Timpani，現年四十七歲，意外發生時為香港曾強樂團的首席定音鼓手，現已返美居住。五名被告包括：(一)負責噴射殺蟲劑的專業清潔服務有限公司；(二)香港曾強樂團；(三)香港演藝學院；(四)盤點劇的人口商汽巴葛基(香港)有限公司及(五)零售商黃河清有限公司。

高等法院法官區錦輝昨中指出，入口商輸入的「Diazinon」化學殺蟲劑，在銷售時卻沒有貼出使用時的危險性，明知在不安全情況下使用這些有毒物質，對於滅蟲者及公眾均構成危險，由於入口商疏於檢查，故須負上最大責任，即負上百分之三十五的賠償額。

完全失去謀生能力

至於演藝學院方面，對案中指控其在清潔公司噴殺蟲劑的同時允許樂團排練，但沒有警告團員有關噴殺蟲劑時須注意的安全系統，場內亦沒有任何緊急系統或工具，根本未能預料防範。

殺蟲劑經冷氣傳播

事發於八七年六月二十一日，原告人與約八十至九十人的樂團在演藝學院演奏廳進行排練，他吸入一些殺蟲劑，感到眼睛灼熱，不斷流眼水及咳嗽，同時感到步履不穩，精神萎靡，因神經系統受損，身體部分肌肉及骨骼系統持久力減弱，思維及記憶亦有障礙。

原告人吸入的為一種名為「Diazinon」的化學殺蟲劑，含有機磷成份。原告人一方指當日排練樂器的地方包括後座及門廊部分，但殺蟲劑卻通過冷氣系統擴至演奏廳。

本案自今年一月開審，聆訊時間歷時八十多天，原被告雙方共有十二位律師代表，其中五位為資深大律師，由於文件數目繁多，法庭內需移送公證照上全部座椅以供放置。

案件編號：1/1996

客，故須負上百分之二十的責任。(見表一)

判斷中又指原告人身體及精神所受的創傷是可見的，雖然他的身體創傷部分已復元，但精神上的損害卻不能完全康復。原告人亦不能重新擔任首席定音鼓手的工作，因事業上的打擊令他沮喪多年，完全失去謀生能力及需要接受康復的治療。

原告人獲得的賠償共一千九百六十多萬元，包括未來十年損失的收入及特別賠償等，賠償額中則未包括利息。(見表二) 香港演藝學院昨日不肯就裁決作出評論。

據原告一方律師陳國治表示，雙方共六名與鼓手合共花費高達二億五千萬元堂費，由法律援助處的律師一方已佔一億元，法官昨下令堂費由五名被告支付八至九成。



■前香港曾強樂團首席定音鼓手獲賠償近二千萬美元，旁為其妻子。

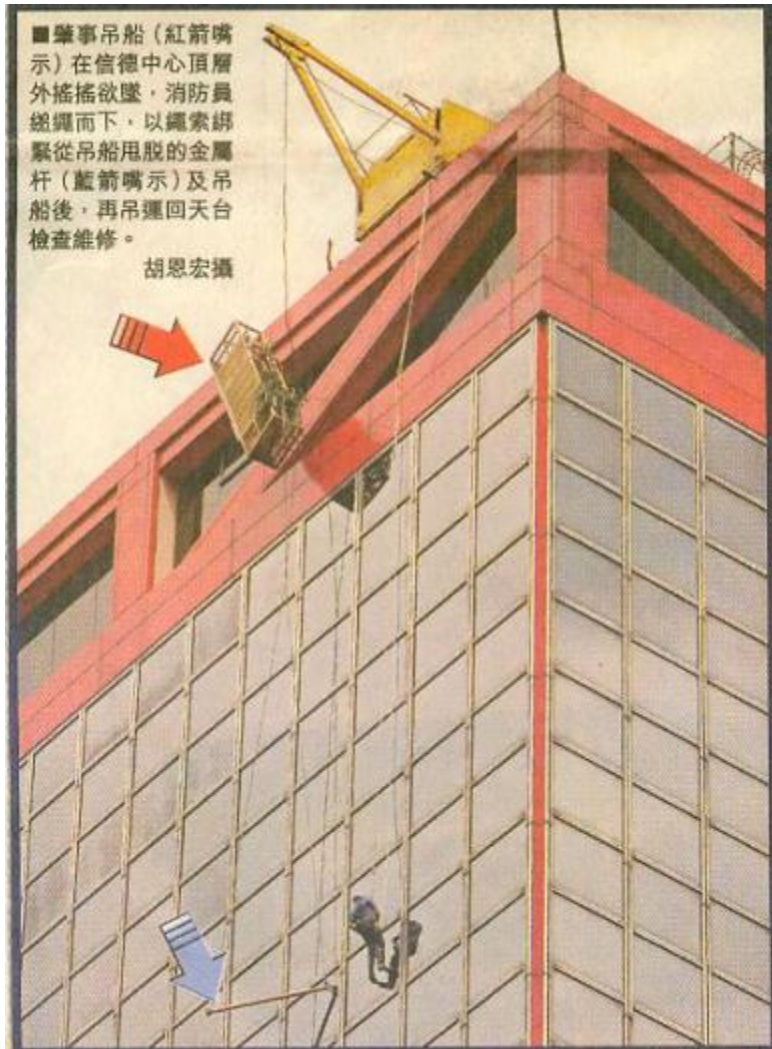
RMAA Work: The Timpanist Case (For details see Kristan Bowers Phillips v. Initial Environmental Services Ltd. & Others in HCPI 580/1996)

■ Share of Responsibility by Defendants

1 st	Initial (aka Exclusive) Environmental Services Ltd.	Pest Control Operator	They had access to pest control information which they did not apply. Their system was deficient in many respects.	20% = HK\$ 3.92M
2 nd	The HK Philharmonic Society Ltd.	Employer	The HKPO also had poor management, supervision, & control. They did not provide a safe place of work	10% = HK\$ 1.96M
3 rd	The HK Academy for Performing Arts	Occupier	The APA knew of the risks. They had a poor system of management & control.	15% = HK\$ 2.94M
4 th	Ciba-Geigy (HK) Ltd.	Insecticide Manufacturer & Importer	They had substantial responsibility to ensure proper labelling, dissemination, instruction & overall stewardship. They failed in all respects.	35% = HK\$ 6.86M
5 th	Wong Ching Ho Co. Ltd.	Insecticide Distributor	They were badly served by Ciba but compounded these shortcomings by their own clear deficiencies.	20% = HK\$ 3.92M

RMAA Work: The Shun Tak (上環信德中心) Case (For details, see HKSAR v. Shun Tak Properties Ltd. In HCMA 1014/2006)

■ Cleaning of Curtain Wall by Contractor using Gondola which failed



RMAA Work: The Shun Tak (上環信德中心) Case (For details, see HKSAR v. Shun Tak Properties Ltd. In HCMA 1014/2006)

Shun Tak Properties Ltd.	Owner of Shun Tak Centre, considered by the court as an industrial undertaking	Owner of Gondola installed at Shun Tak Centre	Hence considered as Proprietor of the industrial undertaking
Pollution & Protection Services Ltd.	Cleaning Contractor	Employer of the two injured workers	
Score Success	Contractor maintaining, examining & certifying the gondola		Certified the gondola safe

Criminal and Civil Liabilities

- Extended from the simple Contractor of a Site to “Proprietor of an IU”
- In the Shun Tak Case, this “Proprietor of IU” can be the Property Owner (“Client”) of a gondola
- And further extended from Proprietor of IU to “Occupier”. In the Timpanist case, it can be the owner (演藝學院) who lessed out the venue.
- And further still, this “Occupier” need not be a commercial operator. In the Sun Hing Building and Albert House cases, this “Occupier” can be you or me

Occupational Hazard

■ What is your understanding of an "Occupational Hazard"?



Occupational Hazard

- An “Occupational Hazard” not only affects those directly involved in the “Activities” of the occupation
- Beware of the devil behind the term!



Work Other than RMAA

■ Occupier Liability: Who is the Visitor?

訪客安全 業主有責
法團應購公眾責任保險

法律意見

【記者陳沛敏報導】法律界人士謝連忠指出，業主作為大廈的「佔用人」，法律上有責任保障所有「訪客」的安全。訪客遇到損傷，便可向業主索償。為免一旦支付巨額賠償，業主立案法團應購買公眾責任保險。

他表示，法律上有所謂「佔用人責任」的

原則，物業的「佔用人」需照顧進入其佔用地方的「訪客」的安全。若有危險便需提出警告。

業主是大廈的「佔用人」，業主立案法團則是所有業主組成，大廈的公用地方屬於所有業主所有，由法團管理。

留下竹棚亦有法律責任

「訪客」是指所有被許可進入的人士。業主立案法團有責任確保他們在樓宇公用地方的安全。在這宗案件中，法官便認為新興大廈的業主立案法團在事發時，沒有確保原告人作為「訪客」的安全，以致讓他爬上危險的竹棚墮下。

謝連忠表示，案中叫原告人爬出竹棚的法團工人，以及留下竹棚沒有清拆的人士，也可能負有法律責任，但索償的對象由原告本身決定。且作為僱主的法團亦需為其僱員的行為負責，而留下竹棚的人士已難以追查，故最後便由業主立案法團承受所有責任。

業主不繳賠償金會被控

謝連忠指出，樓宇管理條例賦予業主立案法團權力，向所有現時擁有業權的業主募集賠償的金錢，若業主不合作，法團可控告業主。不過，若業主認為法團成員有疏忽，亦可反告他們。

■ Occupier Liability: Who is the Occupier?

【本報記者譚輝報道】未來數個月將進入家居裝修的旺季，平均每月將有逾千個家庭計劃翻新瓷磚、輕漆、換鋁窗等來過年。勞工處警告，業主如果提供一個不安全的工作環境讓裝修工人工作，或會負上法律責任，而對逾百萬的巨額賠償。

裝修工傷將罰業主
勞工處警告 賠償逾百萬

19.10.99

建築業總工會秘書處表示，由去年起，不少家庭都會在未來數個月裝修家居，其中最高峰的是翻新、換鋁窗、輕漆、時時翻新等等。而裝修工人的工傷主要來自胡亂搭棚引致由高處跌下，易然物墮或電線隨意接駁引致燒傷，以及在操作電鋸等機械的工傷。

他強調，如果業主在交接給承建商時，是一堆雜物亂堆，照明設備又不足，而令到裝修工人受傷，則這名業主或要負上法律責任，就工業意外向工人作出賠償。

戶主賠二百五十萬

勞工處官員引述，上月在本港一戶屋內的油漆和大堂着火，令到裝修工人受傷，結果被檢控到賠償二百五十萬。官員警告，裝修工人有權向地產工務處或外府業主追討賠償。

勞工處副處長李啟發建議，業主為減少意外所導致的損失，可要求裝修公司提供過往的安全紀錄。而處方短期內將會對裝修及冷氣工程地盤展開特別巡查行動，並會採取嚴厲的檢控行動，對高危及欠缺安全措施的工序，發出「暫時停工通知書」。

李啟發又表示，在本月初處方向逾七千間裝修公司發信，表示會嚴密違反安全法例的承建商，並可勒令他們停工。處方又會處以最高可達罰款五十萬元及監禁六個月的罰則。

圖為勞工處官員在巡查期間，拍攝到一名裝修工人在危險的樓河上修理水喉，明顯違背勞工法例。勞工處提供相片。

