

立法會
Legislative Council

LC Paper No. CB(1)1361/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/7/10/2

Bills Committee on Lifts and Escalators Bill

Seventh meeting on
Tuesday, 8 November 2011, at 10:45 am
in Conference Room 2B of the Legislative Council Complex

Members present : Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP (Chairman)
Hon James TO
Hon Andrew CHENG Kar-foo
Hon Abraham SHEK Lai-him, SBS, JP
Hon LI Fung-ying, SBS, JP
Hon CHEUNG Hok-ming, GBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP
Hon Alan LEONG Kah-kit, SC

Public officers : Mr Jimmy CHAN Pai-ming
Attending Principle Assistant Secretary for Development (Works) 3

Mr Jacky WU Kwok-yuen
Assistant Secretary for Development (Works Policies) 7

Mr Alfred SIT Wing-hang
Deputy Director/Regulatory Services
Electrical and Mechanical Services Department

Mr Harry LAI Hon-chung
Assistant Director/Gas and General Legislation
Electrical and Mechanical Services Department

Ms Frances HUI Hang-ka
Senior Government Counsel
Department of Justice

Ms Angie LI Sau-lee
Senior Government Counsel
Department of Justice

Clerk in attendance : Ms Anita SIT
Chief Council Secretary (1)5

Staff in attendance : Mr Kelvin LEE
Assistant Legal Adviser 1

Ms Haley CHEUNG
Legislative Assistant (1)5

I Meeting with the Administration

Follow-up to issues arising from previous meetings

(LC Paper No. CB(1)244/11-12(01) — Administration's response to issues raised at the meeting on 25 October 2011 (Two codes of practice are attached)

LC Paper No. CB(1)205/11-12(01) — List of follow-up actions arising from the discussion at the meeting on 25 October 2011

LC Paper No. CB(1)255/11-12(01) — List of follow-up actions arising from the discussion at the meeting on 1 November 2011)

Clauses-by-clause examination of the Bill (starting with clause 24)

(LC Paper No. CB(3)684/10-11 — The Bill

LC Paper No. CB(1)182/11-12(01) — Administration's paper on "Corresponding provisions of Lifts and Escalators Bill and Lifts and Escalators (Safety) Ordinance (Cap. 327)"

Discussion

2. The Committee deliberated (Index of proceedings attached at **Appendix**).

Admin

Follow-up actions to be taken by the Administration

3. The Administration was requested to provide the following information:
- (a) review the penalty levels in respect of the various offences in the Bill, taking into account members' comments that –
 - (i) there should not be unjustified disparity between the sanctions for a "responsible person" and a "qualified person";
 - (ii) it could lead to dire consequences if lift/escalator works are carried out by a person not (i) being a qualified person or a specified person, or (ii) under the direct supervision of a qualified person at the place at which the works are carried out; and
 - (iii) the sanctions provided in the Bill should impart a bold message to the industry and the public that a person who knowingly or without reasonable excuse fails to perform his duty in respect of any lift/escalator and related works should be subject to heavy penalty;
 - (b) refine the drafting of the Chinese version of clauses 26(2), 26(3), 27(1)(b), 27(2)(b), 27(3)(b), and 31(4)(a); and
 - (c) explain the effect of the defence provision under clause 31(4)(a), and address the concern that the defence provision may create an additional barrier for a worker in defending himself against a charge under clause 31(3).

III Any other business

Date of next meeting

4. The Chairman reminded members that the next meeting would be held on 15 November 2011.

5. There being no other business, the meeting ended at 12:48 pm.

Council Business Division 1
Legislative Council Secretariat
20 March 2012

**Proceedings of the
Bills Committee on Lifts and Escalators Bill
Seventh meeting on Tuesday, 8 November 2011, at 10:45 am
in Conference Room 2B of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000545 – 000717	Chairman	Introductory remarks	
000718 – 001524	Administration Chairman	<p>Briefing by the Administration on the paper LC Paper No. CB(1)244/11-12(01).</p> <p>The Chairman sought confirmation from the Administration that the codes of practice (CoPs) enclosed with the paper would be revised upon passage of the Bill and the Administration replied in the affirmative.</p>	
001525 – 002205	Prof Patrick LAU Administration Chairman	<p>Prof LAU pointed out that in American English, the term "dump waiter" instead of "service lift" was used and the former was more commonly used by architects in Hong Kong. Prof LAU also requested the Administration to clarify the difference between the terms "載貨升降機 (goods lift)" and "載物升降機 (service lift)".</p> <p>The Administration advised that in the Bill, the terms "goods lift" and "service lift" were used to refer to lifts that were used exclusively for conveying goods and materials. Both terms were defined under clause 2 of the Bill. "Dump waiter" mentioned by Prof LAU was classified as "service lift" in the Bill. In the Bill, there were no particular terms to refer to different types of lifts that carried passengers, as it was considered that all lifts that carried passengers should be subject to the safety requirements in the Bill applicable to lifts in general.</p> <p>Prof LAU enquired whether hoists used for construction works were covered by the Bill. The Chairman remarked that they were covered by another piece of legislation.</p>	
002206 – 003014	Ms LI Fung-ying Administration	Ms LI considered that the severity of the offences provided for under clauses 8 and 13 was similar and thus the disparity between the penalties under the two clauses did not appear to be justified.	

Time Marker	Speaker	Subject(s)	Action Required
		<p>The Administration explained that an offence under clause 13 was committed by a responsible person who was aware that the lift concerned could not be used (such as due to the fact that the approval of the Electrical and Mechanical Services Department (EMSD) for the use of the lift had not been obtained) but decided to put the lift to use. Such act would pose serious danger to lift users and should therefore be subject to a more severe penalty.</p> <p>Ms LI considered that it could also lead to dire consequences if lift/escalator works were carried out by a person not (i) being a qualified person or a specified person, or (ii) under the direct supervision of a qualified person at the place at which the works were carried out. She thus did not consider that it was justified for an offence under clause 8 to be subject to a lower penalty level than an offence under clause 13.</p>	
003015 – 003258	Mr IP Kwok-him Administration	<p>Mr IP enquired how car lifts would be classified under the Bill. The Administration advised that a car lift that carried passengers and vehicles would be considered as "lift" under the Bill.</p> <p>The Chairman pointed out that for some car lifts, the passengers were required to leave the vehicles and only the vehicles were allowed to enter into the lifts. The Administration responded that these lifts might be a "mechanized vehicle parking system" under the Bill.</p>	
003259 – 003804	Administration	<p>The Administration tabled a paper on its response to issues raised at the meeting on 1 November 2011 ("the tabled paper") and briefed members on it.</p> <p><i>(Post-meeting note: The paper was circulated to members vide LC Paper No. CB(1)299/11-12 on 9 November 2011.)</i></p>	
003805 – 004144	Mr IP Wai-ming Administration	<p>Referring to the statement in the section on "Renewal of Registration for Registered Lift and Escalator Engineers" of the tabled paper that "Besides, we (the Administration) have discussed with the industry and received their general support during the process of drawing up the registration renewal requirements.", Mr IP requested the Administration to clarify the description "received their general support" and</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>asked whether the relevant objections raised by the industry would be ignored.</p> <p>The Administration responded that it had informed the Task Force for Legislative Amendments to the Lifts and Escalators (Safety) Ordinance ("the Task Force") about the introduction of a new registration renewal mechanism under the Bill and details of the registration renewal requirements. No objections were received from the Task Force. Besides, at the public hearing of the Bills Committee held on 17 July 2011, no strong opposition to the registration renewal mechanism had been raised by the deputations present.</p> <p>Mr IP remarked that he recalled that some deputations present at the public hearing opposed to the registration renewal mechanism and he might revisit the issue later.</p> <p>The Chairman remarked that his understanding was that the industry supported the registration renewal mechanism in principle but had reservation about some of its details. The Administration concurred with the remark of the Chairman.</p>	
004145 – 004444	Mr Andrew CHENG Chairman	Mr CHENG remarked that the consequence of the offences under clause 8 was as serious as that under clause 13 and thus the penalty level for the offences under clause 8 should not be lower than that under clause 13. He was concerned that the disparity in sanctions would convey a wrong message to the public that allowing the performance of works by unqualified persons would deserve a less severe punishment. He urged the Administration to move a Committee Stage amendment (CSA) to address the issue. Otherwise, he would move a CSA himself. The Chairman requested the Administration to review the penalty levels under the clauses taking into account the views of Mr CHENG and Ms LI Fung-ying.	The Administration to take action as per paragraph 3 of the minutes.
004445 – 005911	Prof Patrick LAU Mr Andrew CHENG Chairman Ms LI Fung-ying Administration	Prof LAU requested Mr CHENG and Ms LI to elaborate their views on the issue of penalty level. Mr CHENG remarked that both the offences under clauses 8 and 13 were committed by persons neglecting the safety of lift users, and his proposal to raise the penalty for the offences	

Time Marker	Speaker	Subject(s)	Action Required
		<p>under clause 8 to make it on a par with the penalty for the offences under clause 13 was to impart a bold message to the industry and the public that a person who knowingly or without reasonable excuse failed to perform his duty in respect of any lift/escalator and related works should be subject to heavy penalty. Ms LI said that there was no basic difference between Mr CHENG's views and hers on the issue.</p> <p>The Administration explained that in considering the penalty levels to be adopted for various offences of the Bill, it had to maintain consistency with those of other relevant legislation. This principle was supported by the industry. In determining the penalty levels for the offences under clauses 8 and 13, the Administration reported that reference had been made to the Electricity Ordinance (Cap. 406) (i.e. the penalty level for conducting electricity work by unregistered electrical workers) and the Buildings Ordinance (Cap. 123) (i.e. the penalty level for using premises without obtaining the occupation permit) respectively.</p> <p>The Chairman considered that the reference used by the Administration to determine the penalty level for the offences under clause 8 might not be appropriate because the consequences of lift accidents could be much more serious, in terms of the number and severity of casualties.</p> <p>Mr CHENG concurred with the Chairman's view and added that it might not be necessary to strictly juxtapose the offences of the Bill with those of other legislation for strict comparison. The Administration might instead consider conveying a new message through the new legislation and determine the penalty levels accordingly.</p> <p>The Chairman remarked that given the grave concern of the public over lift accidents, the Administration should review whether the penalty level under clause 8 should not be lower than that under clause 13, and whether the legislation that the Administration had drawn reference from was appropriate. Mr CHENG requested the Administration to also review the penalty levels of other offences stipulated in the Bill, having regard to his and other members' comments.</p>	<p>The Administration to take action as per paragraph 3 of the minutes.</p>

Time Marker	Speaker	Subject(s)	Action Required
005912 – 010540	Administration	<p><u>Clause-by-clause examination of the Bill</u></p> <p><u>Clause 24 – Issue of safety certificates by registered lift engineers</u></p> <p><u>Schedule 6 – Examination with Load</u></p> <p>Members raised no question on clause 24 and schedule 6.</p>	
010541 – 011601	Mr Andrew CHENG Administration Chairman ALA1 Department of Justice (DoJ)	<p><u>Clause 25 – Issue of safety certificates by registered lift engineers after major alterations</u></p> <p>Mr CHENG enquired whether the current drafting of clause 25 would lead to different interpretations over the term "major alterations". The Administration replied that Schedule 1 set out the types of works that were meant to be "major alterations" under the Bill.</p> <p>Mr CHENG enquired whether it was necessary to include a reference to Schedule 1 under clause 25. The Administration replied that the interpretation of the term "major alteration" under clause 2 included a reference to Schedule 1.</p> <p>ALA1 said that he noticed that the term "major alternations" was only mentioned in the heading of clause 25 but not in the text of clause 25. However clause 25(1) contained the term "affected part" and the interpretation of this term under clause 2 included a reference to "major alteration".</p> <p>ALA1 sought clarification from the Administration on whether the term "safety certificate" under clauses 24 and 25 was relevant to the use permit and resumption permit to be issued by the Director of Electrical and Mechanical Services. The Administration replied that the applicant for a use permit or resumption permit for a lift was required to provide in the application the safety certificate issued by a registered lift engineer. After passage of the Bill, the Administration would introduce subsidiary legislation to provide for the application procedures of the use permit and resumption permit.</p>	

Time Marker	Speaker	Subject(s)	Action Required
011602 – 012401	Administration Chairman ALA1 DoJ Mr IP Wai-ming	<p>Division 4 – Powers of Director</p> <p><u>Clause 26 – Issue etc. of use permits</u></p> <p>The Chairman considered the drafting of the Chinese version of clauses 26(2) and 26(3) unnatural. ALA1 concurred with the Chairman. The Chairman requested the Administration to refine the drafting of the Chinese version of clauses 26(2) and 26(3).</p> <p>Mr IP remarked that the drafting of the Chinese version of Bill should not be unduly constrained by the syntax of the English version because this would affect the readability of the former.</p>	The Administration to take action as per paragraph 3 of the minutes.
012402 – 014105	Administration Mr Andrew CHENG DoJ Chairman Prof Patrick LAU Mr IP Wai-ming ALA1 Mr Abraham SHEK	<p><u>Clause 27 – Validity period of use permits</u></p> <p>Regarding the Chinese version of clauses 27(1)(b), 27(2)(b) and 27(3)(b), Mr CHENG remarked that it was rare for a clause of a Chinese sentence to begin with the word "的" and requested the Administration to refine it. The Administration responded that the clauses concerned should be read in conjunction with the starting phrase at clauses 27(1), 27(2) and 27(3) respectively.</p> <p>The Chairman disagreed with the Administration's explanation and requested the Administration to refine the drafting of the Chinese version of clauses 27(1)(b), 27(2)(b) and 27(3)(b). Mr CHENG also pointed out that on some occasions the Chinese texts of legislation should not be translated directly from the English texts.</p> <p>Prof LAU remarked that he found it difficult to comprehend the Chinese texts of some provisions in the Bill, and enquired whether the Bill was drafted in English first and subsequently translated into Chinese. The Chairman remarked that in general the English version of a Bill was drafted first.</p> <p>Mr IP suggested that the relevant Panel of the Legislative Council discuss with the Department of Justice (DoJ) on the necessity for the drafting of the Chinese texts of legislation to strictly follow that of the English texts, which he considered would adversely affect the readability of the former. ALA1 advised that the issue raised by</p>	The Administration to take action as per paragraph 3 of the minutes.

Time Marker	Speaker	Subject(s)	Action Required
		<p>Mr IP fell within the purview of the Panel on Administration of Justice and Legal Services.</p> <p>Prof LAU suggested that DoJ make reference to the Construction Law of the People's Republic of China (中華人民共和國建築法), which was in Chinese only and was much more readable.</p> <p>Mr SHEK considered that what was most important was to ensure that the texts of legislation could accurately reflect the legislative intent. DoJ should be given more time to accumulate experience in drafting legislation in both languages, and it should be up to DoJ to decide whether a piece of legislation should be drafted in Chinese or English first. Members should avoid interfering with the drafting work of DoJ as far as possible.</p>	
014106 – 014832	Administration	<p><u>Clause 28 – Issue etc. of resumption permits</u></p> <p><u>Clause 29 – Issue of duplicates of use permits and resumption permits</u></p> <p><u>Clause 30 – Prohibition orders</u></p> <p><u>Schedule 4 – Lifts to While Sections 10 and 11 Apply</u></p> <p>Members raised no question on clauses 28 to 30 and schedule 4.</p>	
014833 – 015942	Chairman Administration Mr IP Wai-ming	<p><u>Clause 31 – Director's power to disconnect supply of electricity</u></p> <p>The Chairman requested the Administration to refine the drafting of the Chinese version of clause 31(4)(a).</p> <p>Noting that a defence provision was provided under clause 31(4)(a), Mr IP requested the Administration to explain its effect and address his concern that the inclusion of the phrase "and could not with due diligence have discovered" may create an additional barrier for a worker in defending himself against a charge under clause 31(3).</p>	<p>The Administration to take action as per paragraph 3 of the minutes.</p> <p>The Administration to take action as per paragraph 3 of the minutes.</p>

Time Marker	Speaker	Subject(s)	Action Required
015943 – 020150	Administration Mr IP Wai-ming	<u>Clause 32 – Cessation orders in respect of lift works</u> Members raised no question on clause 32. Mr IP requested the Administration to explain the effect of clause 31(4)(a) with reference to real-life circumstances.	
020151 – 020202	Chairman	The Chairman remarked that the next meeting would be held on 15 November 2011.	

Council Business Division 1
Legislative Council Secretariat
20 March 2012