

立法會
Legislative Council

LC Paper No. CB(1)1843/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/7/10/2

Bills Committee on Lifts and Escalators Bill

**Eleventh meeting on
Tuesday, 29 November 2011, at 10:45 am
in Conference Room 2A 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 LI Fung-ying, SBS, 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

Members absent : Hon Abraham SHEK Lai-him, SBS, JP
Hon CHEUNG Hok-ming, GBS, JP

**Public officers
Attending** : Mr Jimmy CHAN Pai-ming
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

Mr Hugo CHIU
Council Secretary (1)5

I Meeting with the Administration

Follow-up to issues arising from previous meetings

(LC Paper No. CB(1)467/11-12(01) — Administration's response to issues raised at the meeting on 22 November 2011

LC Paper No. CB(1)467/11-12(02) — List of follow-up actions arising from the discussion at the meeting on 22 November 2011)

Clauses-by-clause examination of the Bill (starting with clause 110 – Schedule 12)

(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**).

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Follow-up actions to be taken by the Administration

3. The Administration was requested to clarify whether section 2(4) of Schedule 14 is applicable to cases remitted by the Court of First Instance.

II Any other business

Date of next meeting

4. The Chairman reminded members that the next two meetings would be held on 2 December 2011 and 6 December 2011.
5. There being no other business, the meeting ended at 12:45 am.

Council Business Division 1
Legislative Council Secretariat
11 May 2012

**Proceedings of the
Bills Committee on Lifts and Escalators Bill
Eleventh meeting on Tuesday, 29 November 2011, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
001011 – 001111	Chairman	Introductory remarks	
001112 – 002210	Administration	Briefing by the Administration on LC Paper No. CB(1)467/11-12(01) ("the Paper")	
002211 – 002722	Chairman Administration	<p>The Chairman made the following points:</p> <ul style="list-style-type: none"> (a) Past experience in various incidents including the incident on piling faults revealed that multi-layered subcontracting could give rise to serious problems and thus should be regulated even if all the parties involved were registered lift contractors; and (b) If the examination requirements in respect of alarm bell, intercom system and car ventilation were not set out in the legislation, these lift components might not be given sufficient attention by the parties concerned in performing their respective duties under the Bill. <p>The Administration responded that:</p> <ul style="list-style-type: none"> (a) As each registered lift contractor would be subject to the same statutory requirements under the Bill, the subcontracting arrangement per se would not have any material effect on their legal liabilities. Thus the proposed regulatory requirements in the Bill should be sufficient to safeguard the safety of lift works, even if there was any multi-layered subcontracting; and (b) The Electrical and Mechanical Services Department (EMSD) had stipulated in relevant code of practice that all lift components including the alarm bell, intercom system and car ventilation should be inspected during its periodic maintenance check and such inspection had to be recorded in detail. A registered lift engineer was also required to examine all lift components 	

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		including those three components in the annual examination of the lift.	
002723 – 003707	Mr IP Wai-ming Administration Chairman	<p>Referring to the experience of past incident involving piling faults, Mr IP reiterated his view that multi-layered subcontracting should be regulated even if all the parties involved were registered lift contractors. Mr IP also pointed out that without such regulation, the following scenario could happen: a large company asked its staff (who were registered lift engineers) to set up some smaller companies and subcontracted its lift works to these companies. These smaller companies would then ask their staff (who were registered lift workers) to further set up other companies and subcontracted lift works to them. Such process might repeat a number of times and companies in the lower layers of the multi-layered subcontracting, which earned less than those in the upper layers, might sacrifice safety and quality of lift works for profits. Mr IP also pointed out that multi-layered subcontracting would reduce the opportunities for apprentices to enter the industry.</p> <p>The Administration responded as follows:</p> <ul style="list-style-type: none"> (a) Each registered lift contractor involved in multi-layered subcontracting would be subject to the same legal requirements and sanctions. Their quality of works would also be monitored by the Government. Thus the proposed legislation in the Bill would safeguard the safety standards of lift works even under a multi-layered subcontracting arrangement; (b) The Bill sought to restrict the subcontracting of lift works to unregistered lift contractors as these contractors were not qualified to carry out lift works personally under the Bill; and (c) If the Government were to regulate multi-layered subcontracting of lift works where all the parties involved were registered lift contractors, the Government would be in effect interfering with the contractual arrangements between the responsible persons of lifts and registered lift contractors. It might not appropriate for the Government to interfere with such private contractual arrangements. 	

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		<p>The Chairman pointed out that members were concerned about the potential risks arising from the multi-layered subcontracting of lift works. He however remarked that since members and the Administration had different positions on the issue and had already put forth their arguments, members might consider moving a Committee Stage amendment (CSA) if necessary.</p>	
003708 – 004943	Mr Andrew CHENG Administration ALA1	<p>Mr CHENG referred to the section on "Registered Lift Contractor to Post a Notice of Lift Incident" of the Paper and remarked that he disagreed with the arguments set out by the Administration for the following reasons:</p> <ul style="list-style-type: none"> (a) If a statutory requirement was imposed on registered lift contractors to post notices of lift incident, their posting of notices of lift incident would not be hindered by responsible persons of the lifts; and (b) The severity of some lift incidents might not warrant the issuance of a prohibition order by the Director of Electrical and Mechanical Services ("the Director"). If registered lift contractors were not statutorily required to post notices of lift incident, the public might not be informed of the details and progress of the lift incidents because it was possible that no notices would be posted at all. <p>Mr CHENG remarked that he would move a CSA if the Administration insisted on its position on the issue.</p> <p>The Administration responded that it agreed that the posting of notices of lift incident was a good practice, but considered that it would be more appropriate for responsible persons for a lift to undertake this task because he could arrange it more easily. Mr CHENG disagreed with the Administration's remark and pointed out that responsible persons for a lift (particularly the lift in a single residential building) would rely on information provided by the registered lift contractor to prepare the notice of lift incident. Mr CHENG reiterated his intention of moving a CSA.</p>	

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		<p>The Chairman remarked that the Bills Committee had had sufficient discussions on the issue. Members might proposed their CSAs for consideration by the Bills Committee after the clause-by-clause examination of the Bill.</p> <p>Mr CHENG suggested that the Bills Committee should consider at this stage whether a CSA on the issue would be moved in the name of the Bills Committee, so that the ALA1 could make timely preparation of such CSA.</p> <p>ALA1 suggested that the Administration consider adding a provision under clause 40 and 70 to require that the written notification submitted to the Director be posted at suitable locations for public information.</p> <p>The Administration undertook to examine the amendment proposed by ALA1.</p>	
004944 – 005658	Ms LI Fung-ying Administration	<p>Ms LI referred to the section on "Lift Components" of the Paper and considered the argument set out by the Administration not convincing. Ms LI remarked that it was important to ensure the proper functioning of the alarm bell, intercom system and car ventilation, and this matter should be accorded higher priority over other considerations such as the possibility of causing inconvenience to lift users.</p> <p>The Administration responded that those lift components would be checked in the monthly routine maintenance work of the registered lift contractor, and this should be sufficient to ensure their proper functioning.</p> <p>The Chairman enquired about the implications of having those lift components added to relevant schedule(s) of the Bill. The Administration advised that if they were included in the relevant schedule(s) of the Bill, any replacement or alteration works involving any of those components would be considered as a major alteration. It would take a longer time to resume the operation of the lift after the completion of the works, because such resumption would be subject to prior certification of a registered lift engineer and approval of the Director.</p>	

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		<p>Ms LI reiterated her view that the three lift components of alarm bell, intercom system and car ventilation should be subject to more stringent safety requirements. The Chairman remarked that both members and the Administration had fully expressed their views on the issue and members might consult ALA1 if they planned to move CSAs.</p>	
005659 – 010942	Administration	<p><u>Clause-by-clause examination of the Bill</u></p> <p><u>Clause 110 – Establishment, composition, meetings and proceedings of disciplinary board, etc.</u></p> <p><i>Schedule 12 – Composition, Meetings and Proceedings of Disciplinary Board, etc.</i></p> <p><u>Clause 111 – Hearing of complaints alleging disciplinary offences against registered persons</u></p> <p>Members raised no question on clauses 110-111 and Schedule 12.</p> <p><u>Clause 112 – Supplementary provisions to section 111</u></p>	
010943 – 011040	Mr IP Wai-ming Administration	<p>Mr IP referred to clause 112(3) and enquired which party would be responsible for recovering the civil debt. The Administration advised that the usual practice of civil proceedings would apply.</p>	
011041 – 011315	Administration	<p><u>Clause 113 – Publication of disciplinary orders</u></p>	
011316 – 011538	Mr IP Wai-ming Administration ALA1	<p>Mr IP referred to clause 113(1) and sought clarification on the term "有關上訴當局的決定". The Administration advised that it referred to the decision of the authority hearing the appeal.</p> <p>ALA1 clarified that under clause 113(1), the term "當局" could be the appeal board and/or the Court of First Instance. The Administration concurred with ALA1's clarification.</p>	
011539 – 012317	Administration	<p><u>Clause 114 – Privileges and immunities of members of disciplinary board, etc.</u></p> <p>Members raised no question on clause 114.</p>	

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		<p>Part 6</p> <p>Appeals</p> <p><u>Clause 115 – Appeals</u></p> <p>The Administration remarked that the term "Director" in clause 115(g) should be replaced by "Registrar" and it would move a CSA to effect this correction.</p>	
012318 – 013116	Mr Alan LEONG Administration	<p>Noting that the disciplinary and appeal mechanisms provided in the Bill would apply to relevant professionals, Mr LEONG enquired whether there were any precedents of such arrangement in other legislation.</p> <p>The Administration advised that disciplinary and appeal mechanisms were also provided under the Lifts and Escalators (Safety) Ordinance (Cap. 327) (LESO) and the mechanisms were applicable to persons registered under the LESO.</p> <p>In reply to Mr LEONG's further enquiries, the Administration advised that –</p> <ul style="list-style-type: none"> (a) clauses 113(1) and 113(2) mirrored the relevant existing provisions in LESO and clause 113(3) was a new provision; (b) the party to a hearing before a disciplinary board could be accompanied by a counsel or a solicitor, as provided under proposed section 7(3)(b) of Schedule 12; (c) as provided in the Bill, subject to the relevant Schedule and provisions in the Bill, a disciplinary board or an appeal board could determine its own procedures; (d) the existing guidelines on the procedures and practices of disciplinary boards and appeal boards drawn up by the Administration for reference by for a disciplinary board or appeal board formed under LESO would need to be revised to cater for the changes introduced in the Bill, and a major change was the inclusion of new categories of registered persons, i.e. registered lift workers and registered escalator workers; 	

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		<p>(e) the Task Force for Legislative Amendments to the Lifts and Escalators (Safety) Ordinance ("the Task Force") had been consulted on the disciplinary and appeal mechanisms proposed in the Bill; and</p> <p>(f) as all relevant sectors of the lift and escalator industry would be represented in the disciplinary board panel and appeal board panel, the relevant professional bodies and trade associations could have access to the future guidelines.</p>	
013117 – 013424	Ms LI Fung-ying ALA1 Administration	<p>Ms LI referred to the phrase "a decision of any other person" in clause 115(3)(d) and sought clarification on the scope of the term "any other person". ALA1 advised that the phrase "a decision of any other person" in clause 115(3)(d) seemed to be related to the phrase "a decision made by any person under any regulation made under section 154" in clause 115(1)(l). However, the scope of "any other person" was not clear for the time being because the regulations to be made under section 154 of the future Lifts and Escalators Ordinance were not yet available.</p> <p>The Administration advised that the regulation referred to in clause 154 of the Bill was subsidiary legislation subject to the scrutiny of the Legislative Council ("LegCo"). As for the scope of the term "any person" in respect of the phrase "a decision made by any person under any regulation made under section 154" in clause 115(1)(l), it was to be determined by the regulation to be made under the Bill after its enactment. In response to Ms LI's enquiry, the Administration remarked that the concrete scope for the term "any person" in clause 115(1)(l) was not available for the time being.</p>	
013425 – 013848	Mr IP Wai-ming Department of Justice (DoJ) Administration	<p>Mr IP noted that clause 154 provided that "the Secretary (i.e. the Secretary for Development) may make regulations for the better carrying out the provisions of this Ordinance" and expressed concern that it might confer on the Secretary the power to appoint any person to implement the regulations concerned.</p> <p>The Administration clarified that clause 154 only provided that the Secretary could make regulations. The regulations would be subject to</p>	

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		<p>the scrutiny of LegCo. Thus, the Bill would not authorize the Secretary to arbitrarily appoint a person to make decisions under such regulations.</p> <p>DoJ supplemented that flexibility had to be provided in clause 115(1)(l). Moreover, the regulation was yet to be made. Thus, if clause 115(1)(l) was to be revised and it specified the person who made a particular decision under the regulation, a possible effect would be that a person would not be able to appeal to the appeal board for a decision made by any other person (if any) whose decision was specified in the regulation to be a decision against which an appeal might be made under clause 115(1)(l).</p>	
013849 – 014057	Ms LI Fung-ying ALA1	<p>Ms LI enquired whether the following understanding was accurate: regulations made by the Secretary under clause 154 would be subsidiary legislation, which would be subject to the scrutiny of LegCo. The actual scope of the term "any person" in clause 115(1)(l) would be specified in such subsidiary legislation.</p> <p>ALA1 advised that based on the current drafting of clause 154, the regulations under clause 154 would be subject to the negative vetting of the LegCo. Any power under those regulation authorizing a person to make decisions had to be submitted to and scrutinized by the LegCo. ALA1 added that clause 115 was an enabling provision allowing a person to appeal to the appeal board and thus its scope as to whom may appeal would be relatively wide. However, clause 115 would not have bearing on the details of regulations (e.g. the persons authorized to make decisions) to be made by the Secretary under clause 154.</p>	
014058 – 014354	Mr Alan LEONG ALA1 Mr IP Wai-ming	<p>Mr LEONG enquired whether ALA1's understanding was reflected in the Bill. ALA1 advised that unless the principal ordinance explicitly specified the scrutiny arrangements for its subsidiary legislation (e.g. the United Nations Sanctions Ordinance (Cap. 537)), sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) would apply, and the subsidiary legislation would be subject to the scrutiny of LegCo. The subsidiary legislation would be subject to negative vetting unless it was specified in the principal ordinance that the</p>	

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		approval of LegCo (i.e. the positive vetting procedure) is required.	
014355 – 014737	Administration	<u>Clause 116 – Appeal board panel</u> <i>Schedule 13 – Appeal Board Panel</i>	
014738 – 014846	Chairman Administration DoJ	The Chairman enquired whether the term "incapacitated" was usually rendered as "無行為能力" in the Chinese text. The Administration replied in the affirmative.	
014847 – 015016	Administration	<u>Clause 117 – How an appeal is to commence</u>	
015017 – 015058	Ms LI Fung-ying Administration	Ms LI enquired whether the term "days" in clause 117 referred to calendar days or working days. The Administration advised that it referred to calendar days unless otherwise specified.	
015059 – 015923	Administration ALA1	<u>Clause 118 – Establishment, composition, meetings and proceedings of appeal board, etc.</u> <i>Schedule 14 – Composition, Meetings and Proceedings of Appeal Board, etc.</i> ALA1 enquired whether proposed section 2(4) of Schedule 14 would be applicable to cases remitted by the Court of First Instance. The Administration undertook to examine the issue.	The Administration to take action as per paragraph 3 of the minutes.
015924 – 020056	Prof Patrick LAU Clerk	Prof LAU recapped his suggestion raised in the previous meeting regarding the addition of lay members to the disciplinary board and appeal board and enquired whether the Administration had responded to the issue. The Clerk remarked that the Administration had been asked to provide a response to the issue and the response was awaited. Prof LAU repeated his view that it was important for both those boards to contain lay members.	
020057 – 020132	Chairman	The Chairman remarked that the next two meetings would be held on 2 and 6 December 2011.	