

立法會
Legislative Council

LC Paper No. CB(1)2225/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/7/10/2

Bills Committee on Lifts and Escalators Bill

**Fifteenth meeting on
Tuesday, 20 December 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 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 James TO
Hon Andrew CHENG Kar-foo
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 Information papers issued since the last meeting on 13 December 2011

(LC Paper No. CB(1)656/11-12(01) — Submission dated 12 August 2011 from the Hong Kong General Union of Lift and Escalator Employees (Chinese version only)

LC Paper No. CB(1)656/11-12(02) — Submission dated and 9 December 2011 from the Hong Kong General Union of Lift and Escalator Employees (Chinese version only))

II Meeting with the Administration

Follow-up to issues arising from previous meetings

- (LC Paper No. LS17/11-12 — Paper prepared by the Legal Service Division entitled "Comments on the Definition of 'Responsible Person' in the Lifts and Escalators Bill"
- LC Paper No. CB(1)603/11-12(03) — List of follow-up actions arising from the discussion at the meeting on 6 December 2011
- LC Paper No. CB(1)669/11-12(01) — List of follow-up actions arising from the discussion at the meeting on 13 December 2011
- LC Paper No. CB(1)669/11-12(02) — Administration's response to issues raised at the meetings on 6 and 13 December 2011 and other outstanding issues)

Discussion

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

- Admin 2. The Administration was requested to, in respect of clause 141, provide examples of other pieces of legislation (other than the Employment Ordinance (cap. 57)) that have a provision providing for the criminal liabilities of certain persons connected with a body corporate or partnership in the case where the body corporate or partnership has committed an offence.
- ALA 3. The legal adviser of the Bills Committee was requested to, in respect of clause 141, provide views on how section 43Q of the Employment Ordinance (Cap. 57) is compared to clause 141 of the Bill, having regard to their different contexts.

III Any other business

Date of next meeting

4. The Chairman remarked that the two meetings scheduled for 3 January 2012 and 5 January 2012 would be cancelled and the next meeting would be held on 10 January 2012.
5. There being no other business, the meeting ended at 12:31 pm.

Council Business Division 1
Legislative Council Secretariat
21 June 2012

**Proceedings of the
Bills Committee on Lifts and Escalators Bill
Fifteenth meeting on Tuesday, 20 December 2011, at 10:45 am
in Conference Room 2B of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
001142 – 001237	Chairman	Introductory remarks	
001238 – 001924	ALA1	Briefing by ALA1 on LC Paper No. LS17/11-12 ("the 1 st paper")	
001925 – 002444	Administration	<p>The Administration responded to the 1st paper as follows:</p> <p>(a) The responsibilities of a watchman or security guard had to be determined on a case-by-case basis. For instance, a watchman or security guard performing solely security tasks would not be a responsible person for the lift concerned. On the other hand, if a watchman or security guard was required to arrange regular maintenance works for a lift and/or keep relevant records in the lift's log-book, he might be a responsible person for the lift concerned because he would be responsible for the management or control of the lift; and</p> <p>(b) Regarding the query set out in paragraph 20 of the 1st paper on the prosecution arrangement for a building with more than one person or company that might be responsible persons, the Administration would prosecute in accordance with its prosecution policy, i.e. in deciding whether a prosecution should be instituted, the Administration would consider (i) the sufficiency of evidence; and (ii) the public interest. It was possible that the Administration would not prosecute all the persons or companies concerned.</p>	
002445 – 003356	MR IP Kwok-hing Administration	Mr IP requested the Administration to set out clear criteria for prosecution and enquired whether an owners' corporation ("OC") would incur any legal liability under the Bill if it had fulfilled the relevant requirements stipulated in the Bill.	

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		<p>The Administration replied as follows:</p> <ul style="list-style-type: none"><li data-bbox="552 342 1214 450">(a) The prosecution was required to prove all the elements of an offence beyond reasonable doubt;<li data-bbox="552 490 1214 674">(b) For certain offences under the Bill, the person charged would not be convicted of the relevant offence if the person had reasonable excuse or the relevant statutory defence could be established (as the case may be);<li data-bbox="552 714 1214 1111">(c) Where an offence under the Bill was committed by a body corporate or a partner in a partnership, the effectiveness of the Bill would be affected if (a) for an offence committed by a body corporate, no person concerned in the management of the body corporate could be criminally liable for a like offence; or (b) for an offence committed by a partner in a partnership, no other person concerned in the management of the firm could be criminally liable for a like offence;<li data-bbox="552 1151 1214 1480">(d) The existing Lifts and Escalators (Safety) Ordinance (Cap. 327) ("LESO") was enacted in 1960 and only had the concept of "owner". In view of the fact that residents of many buildings had engaged agents like property management companies to manage the lifts of the buildings, the Administration introduced the concept of "responsible person" in the Bill to cover the liabilities of such agents;<li data-bbox="552 1520 1214 1771">(e) If a building had two or more responsible persons for a lift, compliance with the requirement by one of those responsible persons would be regarded as compliance with the requirement by every other responsible person for the lift, as provided under clause 5; and<li data-bbox="552 1812 1214 2094">(f) If the flat owners of a building had engaged a registered lift contractor for the management and control of the building's lift, the registered lift contractor might also be a responsible person for the lift. However, flat owners of a building might still bear responsibilities under certain scenarios under the Bill. For instance, if the Electrical and	

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		<p>Mechanical Services Department ("EMSD") had issued an improvement order for a building's lift, but the flat owners of the building decided to put the lift into operation before the relevant improvement works had been conducted.</p>	
003357 – 011137	Administration	<p>Briefing by the Administration on LC Paper No. CB(1)699/11-12(02) ("the 2nd paper"), which was tabled at the meeting.</p>	
011138 – 011857	Ms LI Fung-ying ALA1 Administration	<p>Ms LI referred to the section on "Clause 141 of the Bill" of the 2nd paper and pointed out that residents of a building usually joined the building's OC on a voluntary basis and did not receive any remuneration for being an OC member. Ms LI expressed concern that they might not be fully aware of the legal potential liabilities they would incur when they joined the OC, and might commit an offence under the Bill inadvertently. Noting that the Administration used section 43Q of the Employment Ordinance (Cap. 57) ("EO") as an example in the 2nd paper, Ms LI expressed doubt about the appropriateness of the use of this example, pointing out that the relationship between and the respective responsibilities of employers and employees were clearly defined in EO. However, many members of OCs were the retired and the elderly. Ms LI further remarked that the Bill should not impose unduly onerous liabilities on the persons concerned as this would discourage the public from participating in the management of their own properties.</p> <p>Ms LI requested the legal adviser of the Bills Committee to provide views on how section 43Q of the EO was compared to clause 141 of the Bill, having regard to their different contexts.</p> <p>Ms LI also requested the Administration to provide examples of other pieces of legislation (other than the EO) that had a provision providing for the criminal liabilities of certain persons connected with a body corporate or partnership in the case where the body corporate or partnership had committed an offence. The Chairman concurred with Ms LI. While undertaking to provide more examples, the Administration considered that EO</p>	<p>The legal adviser of the Bills Committee to take action as per paragraph 4 of the minutes.</p> <p>The Administration to take action as per paragraph 3 of the minutes.</p>

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		<p>was a relevant example because (a) an OC was a body corporate; and (b) an employment relationship would be established when an OC employed people like cleaners.</p>	
011858 – 012614	Ms LI Fung-ying Administration Chairman Department of Justice (DoJ)	<p>Ms LI referred to Appendix 3 of the 2nd paper and expressed concern that some amendments in the Chinese version of the Bill (like the phrase "為...起見" in clauses 34 and 64) were colloquial and might not be appropriate for legal provisions.</p> <p>DoJ remarked that plain language was used in drafting the amendments so that they were easily understood by the public. The phrase "為...起見" was present in other legislation. The Chairman agreed with DoJ's remark.</p> <p>Ms LI referred to the proposed contractors' performance ratings assessment criteria in Appendix 2 of the 2nd paper and enquired whether the revised system adopted a starting point of six demerit points and, if the answer was in the positive, the underlying rationale.</p> <p>The Administration replied as follows:</p> <p>(a) Under the revised system, the demerit points for ordinary faults/incidents varied from two to six. However, the demerit point for each critical non-compliant item affecting safety would be 15 as EMSD considered such non-compliance unacceptable; and</p> <p>(b) The demerit point for a reported incident resulted from equipment failure was six and was the highest among ordinary faults/incidents.</p>	
012615 – 013310	Mr IP Wai-ming DoJ Administration	<p>Mr IP referred to clause 34 in Appendix 3 of the 2nd paper and expressed doubt about the necessity of keeping the phrase "屬可取的". Mr IP suggested revising the phrase "為安全起見屬可取的" to "為安全需要".</p> <p>DoJ remarked that clause 34(1) set out the factors to be considered by the Director of Electrical and Mechanical Services ("the Director") in making an examination order and the phrase "屬可取的" specified the extent to which a factor would be</p>	

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		<p>considered by the Director, and the phrase corresponded to the word "desirable" in the English version of the clause.</p> <p>Mr IP enquired whether the present drafting would result in the following two standards: "安全需要" and "屬可取的". Mr IP considered that, if the answer was in the positive, such drafting would impose more restrictions on the Director than the phrase "為安全需要" because the Director had to take both standards into account.</p> <p>The Administration advised that clause 34(1) specified that the Director would use safety as the basis for consideration and the threshold of such consideration was "desirable" (可取). The Administration added that "desirable" (可取) was a lower threshold than "necessary" (需要). The present drafting reflected the legislative intent.</p> <p>Mr IP enquired whether the Administration would provide its response to the issue of the regulation of multi-layered subcontracting. The Chairman remarked that the Administration would provide responses to the remaining outstanding issues, including the regulation of multi-layered subcontracting, at the next meeting.</p>	
013311 – 013431	Chairman Mr IP Wai-ming	The Chairman asked whether Mr IP wished the Bills Committee to discuss the two submissions of the Hong Kong General Union of Lift and Escalator Employees (HKGULEE) and Mr IP replied in the affirmative. The Chairman remarked that the Bills Committee had received a submission from the Lift and Escalator Contractors Association (LECA) and the three submissions would be discussed at the next meeting.	
013432 – 014006	Administration Chairman	Briefing by the Administration on the 2 nd paper	
014007 – 014153	Ms LI Fung-ying DoJ	Ms LI referred to the section on "Clause 11(2) to 11(7) of schedule 15 of the Bill" of the 2 nd paper and enquired whether the following understanding was accurate: a person, A, contravened a prohibition order issued by EMSD before the LESO was repealed. If A was prosecuted before the repeal of LESO and convicted after the repeal of LESO, the sanctions of LESO would apply to A.	

Time Marker	Speaker	Subject(s)	Action Required
		The Administration confirmed that Ms LI's understanding was accurate.	
014154 – 014708	Chairman Administration Ms LI Fung-ying	Upon considering the progress of the scrutiny of the Bill, the Chairman remarked that the two meetings scheduled for 3 January 2012 and 5 January 2012 would be cancelled and the next meeting would be held on 10 January 2012 if the Administration completed the preparation of the following items: (a) response to the remaining outstanding issues; (b) response to the submissions from HKGULEE and LECA; and (c) Committee Stage amendments proposed by the Administration.	

Council Business Division 1
Legislative Council Secretariat
21 June 2012