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14 November 2011

Clerk to the Bills Committee,
LegCo Secretariat,
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

(Attn: Ms Anita SIT)

Dear Ms SIT,

**Bills Committee on Lifts and Escalators Bill
Administration's Response to Follow-up Items**

In response to Members' discussion at the meeting of the Bills Committee on Lifts and Escalators Bill on 8 November 2011, we provide the relevant information in the ensuing paragraphs.

1. Penalty Level

When preparing the relevant penalty clauses in the Bill, we have taken due account of the nature, seriousness, defence provisions and onus of proof, etc., as well as considering the maximum penalty levels of similar offences in other ordinances, in setting the relevant penalty levels.

We agreed that the penalties under the Bill should have adequate punitive and deterrent effect to impel any person to observe statutory requirements so as to ensure public safety. At the same time, for

maintaining consistency in the legislation, the penalty level as a whole should be compatible with the offences of similar nature in other ordinances. On that basis, we will carefully study Members' comments on penalty level and provide our response to the Bills Committee in due course.

2. Clauses 26, 27 and 31 of the Bill

We will take into account Members' views on the Chinese text of clauses 26(2), 26(3), 27(1)(b), 27(2)(b), 27(3)(b), and 31(4)(a) of the Bill, and will consider providing an alternative version with the original meaning maintained.

3. Clause 31(4)(a) of the Bill

When a lift is prohibited from being used by a prohibition order issued by the Director of Electrical and Mechanical Services (DEMS) under clause 30 of the Bill and its electricity supply is subsequently disconnected by DEMS under clause 31(1)(a) of the Bill, its continued use without permission could cause immediate danger to the public. On an overriding principle to ensure public safety, clause 31(3)(a) of the Bill stipulates that should any person without written permission of DEMS reconnects the electricity supply to such lift, the person commits an offence and is liable on conviction to a fine of \$200,000 and to imprisonment for 12 months. In order to protect an innocent person from being caught under clause 31(3)(a) of the Bill, we have provided under clause 31(4)(a) of the Bill a defence if the person does not know and could not with due diligence have discovered that the electricity supply is disconnected by DEMS under clause 31(1)(a) of the Bill.

With a view to striking a proper balance between protection of an innocent person and public safety, the defence stipulated under clause 31(4)(a) has two legs and we consider it necessary and important that both legs need to be satisfied so that public safety will not be unduly compromised. Further, we consider that it will not create an unreasonable barrier for the innocent person to meet the said conditions on the ground that if a prohibition order is issued in relation to a lift, DEMS will serve the order on the responsible person for the lift and post a copy of the order in a conspicuous position of the lift. The fact that a prohibition order is issued will be stated in the log-book of the lift. If the supply of electricity is subsequently disconnected by DEMS, this fact will also be included in the log-book. Furthermore, at the place where the electricity

supply is disconnected, there will be clear indication that the disconnection has been carried out by DEMS. Under such circumstances, before a person reconnects the electricity supply to the concerned lift, the person should reasonably have been able to discover or suspect that the disconnection is or may be in relation to a prohibition order. In case of doubt, the person may check with the responsible person for the lift or DEMS.

Yours sincerely,



(Jimmy PM CHAN)
for Secretary for Development

c.c.

Director of Electrical and Mechanical Services (Attn: Mr Alfred SIT)
Law Officer (Civil Law), Department of Justice (Attn: Ms Bonnie CHAU)
Law Draftsman, Department of Justice (Attn: Ms Frances HUI and Ms Angie LI)