

**立法會**  
**Legislative Council**

LC Paper No. LS17/11-12

**Paper for the Bills Committee on the Lifts and Escalators Bill**

**Comments on the Definition of "Responsible Person" in  
the Lifts and Escalators Bill**

**Background**

At the meeting of the Bills Committee on the Lifts and Escalators Bill (the Bill) on 25 October 2011, Members requested the legal adviser to the Bills Committee to examine whether the definition of "responsible person" in clause 2 is sufficiently clear, particularly for the purpose of determining the respective liabilities of the relevant persons under different provisions in the Bill.

**"Responsible person"**

2. Under clause 2(1) of the Bill, "responsible person" is defined as a person who owns, or any other person who has the management or control of, a lift or escalator.

3. Clause 2(3) of the Bill further provides that, for the purpose of the definition of "responsible person", a person is not to be regarded as a person who has the management or control of a lift or escalator only because the person does one or more of the following acts –

- (a) uses or operates the lift or escalator;
- (b) carries out any works in relation to the lift or escalator.

**Duties of a responsible person**

4. In relation to lifts, the duties of responsible persons are set out in Subdivision 1, Division 2, Part 2 of the Bill, which include, among other things –

- (a) duties to ensure that lifts are in a proper state of repair and in safe working order (clause 12);
- (b) duties in respect of use and operation of lifts (clause 13); and
- (c) duties to ensure that registered lift contractors undertake maintenance works and certain other lift works (clause 15).

5. A person contravening the provisions imposing the above duties commits an offence and is liable on conviction to a fine or imprisonment.

6. Similar duties in relation to escalators are imposed on a responsible person under Subdivision 1, Division 2, Part 3 of the Bill.

7. There are other offence-creating provisions which may cover responsible persons, such as clause 8(3) which provides that –

"A person who knowingly causes or permits any other person to carry out any lift works<sup>1</sup> in contravention of subsection (1)<sup>2</sup> commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 6 months."

8. Unlike a registered person<sup>3</sup> who may become the subject of disciplinary proceedings under Part 5 of the Bill, a responsible person is not liable to any such proceedings.

## Comments

9. Under the Bill, the safety of lifts and escalators are regulated by, among other things, the issue of permits in relation to their use. "Responsible person" is not required to be registered under the Bill.

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<sup>1</sup> "Lift works" is defined in clause 2(1), which "includes any kind of work concerning the installation, commissioning, examination, maintenance, repair, alteration or demolition of a lift or any associated equipment or machinery of a lift".

<sup>2</sup> Clause 8(1) provides that a person must not personally carry out any lift works unless the person is a qualified or specified person or is under the direct supervision of a qualified person at the place at which the works are carried out.

<sup>3</sup> "Registered person", under clause 2(1) of the Bill, means a registered lift/escalator contractor; a registered lift/escalator engineer; and a registered lift/escalator worker.

## Owner

10. With regard to the first limb of the definition of a responsible person, the owner of a lift or an escalator would normally be the person who owns the building or in the case of multiple ownership by undivided shares, the owners who jointly own the building's common parts in which the lift or escalator is installed. This is similar to the existing regime under the Lifts and Escalators (Safety) Ordinance (Cap. 327) (LESO), as the owner of a lift or escalator is defined to mean, generally, the owner of the building in which the lift or escalator is installed. Under LESO, similar duties imposed by the Bill upon a responsible person are imposed on an owner.

11. Generally, the owner may be ascertained from the terms of any relevant sale agreement of the building where the lift or escalator forms part as fixture and/or from any other relevant documents such as the deed of mutual covenant of the building. Such agreements and/or documents would normally be registered in the Land Registry under the Land Registration Ordinance (Cap. 128) and copies would be available at the Land Registry.

## Management and control

12. The second limb of the definition of "responsible person", i.e. any other person who has the management or control of a lift or escalator, is a new provision which seeks to extend the class of persons who should be responsible for the safety of the lifts and escalators.

13. "Management" and "control" are not defined in the Bill. Therefore, they should be understood in their ordinary meaning. In the context of property management, one of the meanings of "control" is "superintendence". Controlling a property means that the property is under superintendence and management.<sup>4</sup> Clause 2(3) of the Bill limits the scope of "management" and "control" by excluding a person from the definition of "responsible person" if that person merely use or operate a lift or escalator. What amounts to "management" and "control" appear to be a matter of fact and degree.

14. If the owner or owners have agreed to retain a building manager to manage the building, including any lift and escalator, the manager may be regarded as a "responsible person" in addition to the owner(s).

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<sup>4</sup> Black's Law Dictionary, page 493, Vol 1, 9<sup>th</sup> edition.

### Owners' corporation

15. When the owners of a building have been incorporated under the Building Management Ordinance (Cap. 344) (BMO), the rights, powers, privileges and duties of the owners in relation to the common parts of the building shall be exercised and performed by, and the liabilities of the owners in relation to the common parts of the building shall be enforceable against the corporation to the exclusion of the owners.<sup>5</sup> The owners' corporation (OC) may also at its meeting pass any resolution with respect to the control, management and administration of the common parts or the renovation, improvement or decoration of those parts. Any such resolution is binding on all owners.<sup>6</sup>

16. "Common parts", under section 2 of the BMO, means the whole of a building, except such parts as have been specified or designated in an instrument registered in the Land Registry as being for the exclusive use, occupation or enjoyment of an owner. Unless it is so specified or designated, "common parts" include those parts specified in Schedule 1 to the BMO. Paragraph 9 of Schedule 1 provides that lifts, escalators, lift shafts and machinery and apparatus used in connexion therewith and the housing thereof are "common parts".

17. In the light of the provisions of the BMO, an OC may also be a "responsible person" as defined in the Bill.

### Other observations

18. Under the proposed definition, it is not clear as to whether a watchman or security guard whose duty is to call for maintenance for (or to maintain the order or security of) a lift or escalator, is a responsible person. In any event, all the owners of a building, including those who are not involved in the management of the building, may be liable for failure to discharge their duties under the Bill as the responsible persons.

19. It also appears that all the owners, OC, and a building manager of a building may all be liable under the Bill as responsible persons in the same incident. Under the Bill, it is not a defence available to owners or OCs if a building manager has been appointed to manage and control the lifts and escalators.

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<sup>5</sup> Section 16 of BMO

<sup>6</sup> Section 14(1) of BMO.

20. While who is ultimately be liable under the Bill may depend on the evidence, Members may wish to invite the Administration to clarify if there is a breach of the duties under the Bill in a building where there are more than one person or company that may be a responsible person as defined, whether all of them would be prosecuted. If it is not, what are the criteria in determining who should be prosecuted.

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