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**Report of the  
Bills Committee on Lifts and Escalators Bill**

**Purpose**

This paper reports on the deliberations of the Bills Committee on Lifts and Escalators Bill ("the Bills Committee").

**Background**

2. There are about 58 000 lifts in Hong Kong. During the period from 2006 to 2010, there were 173 cases of mechanical malfunctioning related to lifts causing injury to over 20 people. In view of the number of lift incidents happened in recent years, in particular the one involving the plunging of a lift in Fu Shin Estate in Tai Po at the end of 2008, members of the public have become increasingly concerned about lift safety. It was against this background that The Ombudsman initiated a direct investigation into the regulatory system of lifts in January 2009, and released its findings and made 13 recommendations to the Administration in August 2009.

3. Apart from implementing the recommendations of The Ombudsman, the Administration has adopted a package of multi-pronged improvement measures to enhance lift safety. The measures include enhancement of the existing code of practice, disclosure of contractors' performance, stepping up of inspection, and enhancements of public education and publicity. Meanwhile, the Administration has conducted a comprehensive review of the Lifts and Escalators (Safety) Ordinance (Chapter 327) ("LESO").

4. The Administration reported the progress of implementing the improvement measures to the Panel on Development and consulted the

Panel on the proposed amendments to LESO on 27 October 2009. To gauge public views on the proposed legislative amendments, the Administration conducted public consultation from November 2009 to February 2010. The outcome of the public consultation was reported to the Panel on 22 June 2010. Panel members supported the proposed legislative amendments in principle and urged the Administration to expedite the introduction of the relevant bill to the Legislative Council ("LegCo") to enhance lift and escalator safety.

5. LESO was first enacted in 1960 and a number of amendments have been made to it over the past years. Following the comprehensive review mentioned above, the Administration finds that substantial amendments need to be made to the legislative framework. In consideration of this and the need to set out the obligations of stakeholders and the relevant provisions in the relevant legislation in a clear and systematic manner, the Administration has decided to introduce a new bill and repeal LESO.

### **The Bill**

6. The Lifts and Escalators Bill ("the Bill") was introduced into LegCo on 11 May 2011. The objects of the Bill are to provide for the safety of lifts and escalators, including the registration of contractors, engineers and workers for the purposes of carrying out lift works and escalator works; and to provide for consequential, incidental and related matters. The Bill provides for, among other things –

- (a) the strengthening of the registration regime of personnel engaged in lift and escalator works;
- (b) the increase of the penalty levels of offences;
- (c) the extension of the coverage of the legislative framework;  
and
- (d) the enhancement of operational efficiency and enforcement effectiveness.

## **The Bills Committee**

7. At the House Committee meeting on 13 May 2011, Members agreed to form a Bills Committee to study the Bill. Under the chairmanship of Ir Dr Hon Raymond HO, the Bills Committee has held seventeen meetings. The membership list of the Bills Committee is at **Appendix I**. Relevant trade associations, worker unions, and professional organizations and the general public have been invited to give views on the Bill. The Bills Committee received oral representations from 24 deputations and one individual at the meeting on 17 July 2011 and received written submissions from three other organizations and one individual. A list of the organizations and individuals which/who have submitted views to the Bills Committee is at **Appendix II**.

## **Deliberations of the Bills Committee**

8. The Bills Committee supports the policy objectives of the Bill. The main issues deliberated by the Bills Committee include the registration requirements on the persons involved in lift and escalator works and the related transitional arrangements, the coverage and liabilities of responsible persons for lifts and escalators, the penalty levels of the offences under the Bill, control over the subcontracting of lift and escalator works, measures to ensure proper functioning of the emergency devices of lifts, composition of the disciplinary boards and appeal boards formed under the Bill, and the manpower supply for lift and escalator works. The ensuing part of the report summarizes the Bills Committee's deliberations.

### Coverage of the Bill (clauses 3 and 4)

9. At present, under section 3(1A) of LESO, certain provisions in LESO are not applicable to lifts or escalators installed in certain buildings, including any building –

- (a) belonging to the Government;
- (b) upon any land vested in the Housing Authority or in any building over which the Housing Authority has control and management; or
- (c) which belongs wholly to the government of a foreign country and which is used exclusively or mainly for the

purpose of official business of the consular officer of such government.

10. The Administration considers it necessary on public safety ground to extend the Bill to cover the lifts and escalators installed in the buildings described in paragraph 9 above. According to the Administration, clauses 3 to 4 of the Bill<sup>1</sup> which stipulate the application of the future Lifts and Escalators Ordinance ("LEO") reflect this policy intention.

11. The Bills Committee's legal adviser has sought clarification from the Administration on how it would tackle the safety of those lifts and escalators in Hong Kong (a) which belong to the Central People's Government ("CPG") or over which CPG has control and management, and (b) those which belong wholly to the government of a foreign country and which is used exclusively or mainly for the purposes of the official business of the consular office of such government. He has pointed out that consular premises are inviolable under Article 31 of the Vienna Convention on Consular Relations, which has been given the force of law in Hong Kong under the Consular Relations Ordinance (Cap. 557). The authorities of the receiving State (i.e. Hong Kong) may only enter consular premises with the consent of the head of the consular post or the head of the diplomatic mission of the sending State. The Administration has confirmed that the Bill applies to the lifts and escalators installed in the consular offices in Hong Kong, and it would liaise with the relevant authorities of CPG on the safety arrangements for the lifts and escalators installed in buildings in Hong Kong belonging to CPG or over which CPG has control and management.

#### Responsible persons for lifts and escalators (clauses 2, 5 and others)

12. Under clause 2(1), "responsible person" is defined to mean a person who owns, or any other person who has the management or control of, a lift or escalator. Clause 2(3) 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;

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<sup>1</sup> Unless otherwise specified, the clauses cited in the ensuing part of this report refer to clauses of the Bill.

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

Clause 5 further provides that if there are two or more responsible persons for the lift or escalator, compliance with a requirement imposed on the responsible person for a lift or escalator under the Bill by one of the responsible persons is to be regarded as compliance with the requirement by every other responsible person for the lift or escalator.

13. Prof Hon Patrick LAU has expressed concern on whether the definition of "responsible person" is sufficiently clear, particularly for the purpose of determining the liabilities of the relevant persons under different provisions in the Bill.

14. In this regard, the Bills Committee has asked its legal adviser to provide a paper on the issue. The legal adviser's paper, vide LC Paper No. LS17/11-12, has commented on the duties of a responsible person for a lift or escalator as stipulated in the Bill, sanctions that are applicable to a responsible person, how the "owner" and "any other person who has the management or control" of a lift/escalator may be ascertained, and whether an owners' corporation ("OC") is a "responsible person" as defined in the Bill. The legal adviser has set out the following observations in his paper –

- (a) 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.
- (b) It also appears that all the owners, OCs, 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.
- (c) While the matter of who is ultimately liable under the Bill may depend on the evidence, the Administration may be invited 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, and if not, what the criteria are for determining who should be prosecuted.

15. In response to the above observations of the Bills Committee's legal adviser and enquiries from Bills Committee members, the Administration has made the following points –

- (a) The Director of Electrical and Mechanical Services ("the Director") does not maintain a register of owners of lifts and escalators. The ownership of a lift or escalator is determined by the evidence of each case. When needed, the Director will collect relevant evidence including land ownership information.
- (b) The Administration considers that, in addition to lift or escalator owners, persons who have the management or control of lifts or escalators, such as the property management company of a building, should be brought under the jurisdiction of the new control regime. To reflect this policy intention, "responsible person" is defined in the Bill to mean a person who owns a lift or escalator or any other person who has the management or control of a lift or escalator.
- (c) The responsibilities of a watchman or security guard have 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 is required to arrange regular maintenance works for a lift and/or keep relevant records in the lift's log-book, he may be a responsible person for the lift concerned because he would be responsible for the management or control of the lift.
- (d) The owner of a lift or escalator, who is a responsible person under the Bill, is required to observe certain statutory duties imposed under the Bill. While responsible persons may call for the assistance of other persons when discharging their duties, they cannot pass such statutory duties to other persons. To protect an innocent responsible person from being caught under the Bill, it is inserted in certain provisions a requirement that the conduct complained of

must be one which is "without reasonable excuse". The Administration considers that this arrangement is sufficient to safeguard the position of a responsible person who is not culpable in the matter.

- (e) In general, the Administration would take into account all the evidence, including any information that the suspect may choose to provide to the authorities during investigation, with reference to the relevant legal provisions before taking enforcement actions against any person. In case there are more than one responsible person for the lift concerned, in determining the appropriate subjects against whom enforcement actions should be taken, one major consideration is the purpose of the proposed legislation, namely to ensure the safety of lifts and escalators, so that the enforcement actions, if and when taken, would be efficient and effective in achieving the purpose of the legislation.

16. Hon James TO, Hon IP Wai-ming and Hon IP Kwok-him have expressed concern about the legal liabilities of owners or OCs for lift incidents. While noting that the responsible person for a lift has certain legal responsibilities such as ensuring that the lift is subject to proper maintenance and is in safe working condition, the members have pointed out that the repair and replacement of lift components and equipment usually involves high costs. Unless the registered lift contractor has advised that use of the lift would pose immediate danger and has to be stopped immediately, the owner or OC concerned would understandably need some time to consider such matters. The members have enquired whether the owner or OC would incur liabilities during this window period.

17. The Administration has responded that a lift should be subject to proper maintenance by a registered lift contractor. As it is the duties of responsible persons to ensure that lifts are in proper state of repair and in safe working order pursuant to clause 12, the responsible person should stop the lift's operation if the registered lift contractor advises that the lift's operation poses immediate danger. However, the responsible person might seek a second opinion by consulting another registered lift contractor or registered lift engineer to decide the appropriate actions to take. The responsible person may also notify the Electrical and Mechanical Services Department ("EMSD"). The Director may serve on a responsible person for a lift a prohibition order to prohibit the lift from being used or operated or continuing to be used or operated, or an

improvement order to carry out any work specified in the order within a specified date as appropriate.

18. Hon James TO has further enquired whether the owner or OC in their role as responsible persons for a lift would be held liable for a lift incident, if the owner or OC has caused the lift to be subject to proper regular examination by a registered lift engineer and regular maintenance by a registered lift contractor (and thus has a valid use permit) and the following conditions are met –

- (a) the registered lift contractor undertaking maintenance works for the lift has not indicated that the lift has to stop operation immediately;
- (b) no prohibition order or improvement order is in force in respect of the lift; and
- (c) the safety certificate issued by the registered lift engineer for the lift has not been revoked.

The Administration has responded that if the conditions mentioned by Mr TO are met under normal use or operation of the lift, the owner or OC should generally be regarded as having fulfilled the responsibilities under the Bill pertaining to responsible persons. However, the prevailing circumstances of each incident would have to be considered.

Registration of lift engineers and escalator engineers (clauses 78 to 81, 90 to 93, and Schedule 9)

19. Under LESO, one may seek registration as a lift/escalator engineer if he or she is in possession of a qualification at, or higher than a higher diploma or higher certificate in stipulated disciplines, and either (a) has completed an apprenticeship in stipulated discipline of not less than two years, and has not less than three years' subsequent working experience, or (b) has not less than five years' relevant working experience.

20. To bring the qualification of engineering professionals responsible for lift and escalator works up to a level compatible with other legislation for building safety control<sup>2</sup>, the Bill requires them to be registered

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<sup>2</sup> For example, under the Builders' Lifts and Tower Working Platforms (Safety) Ordinance (Cap. 470), the registered examiner for carrying out periodic examination of builders' lifts or tower platforms needs to be a registered professional engineer of relevant discipline registered under the Engineers Registration Ordinance (Cap. 409).

professional engineers ("RPEs") of stipulated disciplines<sup>3</sup> with at least two years' relevant working experience before they may be considered for registration as lift/escalator engineers.

21. Registered engineers are also required under the Bill to renew their registrations every five years. Part 3 of Schedule 9 to the Bill specifies the requirements of relevant professional training and relevant working experience for renewal of registration of registered engineers, i.e. they need to have completed at least 90 hours of relevant professional training and have at least one year's relevant working experience obtained within the 5-year period immediately before their submission of the applications.

*Transitional arrangements for existing registered engineers*

22. The Bills Committee has enquired about the transitional arrangements provided in the Bill for lift/escalator engineers registered under LESO in order not to jeopardize their livelihood and for ensuring that there will be sufficient manpower in the trade to provide services when the Bill is enacted and comes into force.

23. The Administration has advised that the Bill provides the following three relevant transitional arrangements –

- (a) existing lift/escalator engineers who are registered under LESO will be deemed to be registered lift/escalator engineers under the Bill for five years from the date the LESO is repealed;
- (b) the existing registration qualification requirements under LESO are recognized during the transitional period, and
- (c) persons who are in possession of a qualification at, or higher than a degree in recognized disciplines and have not less than four years' relevant working experience and has the necessary practical experience may apply for registration during the transitional period.

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<sup>3</sup> Under the Engineers' Registration Ordinance (Cap. 409), a person may be registered as a registered professional engineer if, among other requirements, he is a member of the Hong Kong Institution of Engineers or equivalent, has had at least one year of relevant professional experience in Hong Kong before the date of his application for registration, and is ordinarily resident in Hong Kong.

24. The Administration has advised that there will be a need to retain the second transitional arrangement for about five years and the timetable of repealing the third transitional arrangement will be reviewed at the lapse of five years from the time the proposed legislation comes into operation. The Administration has not proposed in the Bill the expiry dates of these arrangements to provide for flexibility to deal with contingent events (for example, the number of registered lift/escalator engineers in the trade is considered to be insufficient to meet the demand). During the transitional period, the Administration will continue to work with lift and escalator contractors' associations, qualified trade undertakings and the Hong Kong Institution of Engineers to facilitate existing registered lift and escalator engineers to attain RPE status enabling them to register under the proposed legislation, and to encourage the trade undertaking to provide recognized professional training programmes for engineering graduates of appropriate disciplines to sit for professional qualification examinations leading to their admission to the RPE status.

#### *Renewal of registration*

25. Hon IP Wai-ming has relayed the concern of some existing registered lift/escalator engineers that as their registration under LESO is for life, requiring them to renew their registration every five years under the new regulatory regime is not fair to them. Mr IP has expressed the view that while it is reasonable to require the existing registered engineers to undertake continuing professional training and development to ensure that they would keep abreast of the relevant developments of the industry, it may not be necessary to impose the registration renewal requirement on them. A deputation<sup>4</sup> which has given views to the Bills Committee has also raised objection to the registration renewal requirement. In this regard, the Bills Committee has asked the Administration to explain the rationale for applying the registration renewal requirement to the existing registered lift/escalator engineers.

26. The Administration has advised that in view of technological advancement and growing public aspirations for higher lift and escalator safety, the Bill seeks to uplift the registration qualification requirements for registered lift engineers and registered escalator engineers, and to introduce a registration renewal requirement to ensure public safety. The

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<sup>4</sup> Hong Kong General Union of Lift and Escalator Employees

registration renewal requirement will also enable the Registrar<sup>5</sup> to be appointed under the Bill to maintain a register with accurate information on registered engineers for public inspection. During the public consultation exercise on the legislative proposals in the Bill, there was also general public support for the registration renewal requirement.

27. The Administration has further advised that the proposed training and practice requirements for registration renewal have taken into account the practical needs for engineers to keep abreast of technological development of lifts and escalators and to maintain their skills and expertise as registered engineers, yet without unnecessarily creating hindrances to their application for registration renewal. The arrangement of applying the registration renewal requirement to all registered lift/escalator engineers under the Bill (including the engineers registered under the existing LESO) aims to protect public safety and is considered fair for all the engineers under the new registration regime. The Administration has discussed with the industry and received their general support during the process of drawing up the registration renewal requirements. The Task Force on Legislative Amendments to the Lifts and Escalators (Safety) Ordinance<sup>6</sup> ("Task Force") has also expressed support for the relevant requirements.

28. The Bills Committee notes that regarding the renewal of registration of lift engineers, clause 79(3) provides that the Registrar must not grant a renewal unless -

- (a) the requirement for an applicant set out in Part 3 of Schedule 9 is satisfied; and
- (b) the Registrar is satisfied that the applicant is a fit and proper person to continue to perform the functions conferred or imposed on the applicant under the registration of which renewal is sought under this section.

A similar provision is proposed under clause 91(3) regarding the renewal of registration of escalator engineers.

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<sup>5</sup> According to clause 72, a person shall be appointed by the Secretary for Development as the Registrar to perform the registration functions under the Bill.

<sup>6</sup> In order to gauge views on the detailed arrangements of the legislative proposals, the Administration has established in 2010 the Task Force with representatives from public bodies, professional bodies, the lift and escalator contractors associations, workers union, training institutions, and property management companies association. Views collected have been taken into account in formulating the proposals in the Bill. The Administration has provided a membership list of the Task Force vide LC Paper No. CB(1)2528/10-11(01).

29. Hon Alan LEONG has suggested that it may help allay the concern expressed by relevant stakeholders by adopting an alternative drafting approach for clauses 79(3) and 91(3) so that the Registrar is obliged to renew a registration if certain stipulated requirements are complied with. The Bills Committee has requested the Administration to consider Mr LEONG's suggestion, and to check whether the proposed alternative drafting approach is adopted in other legislation of Hong Kong.

30. The Administration has responded that the drafting approach adopted in the Bill reflects the policy intention. The drafting of clauses 79 and 91 follows the normal drafting approach. Examples can also be found in existing legislation which adopt the same or a similar approach<sup>7</sup>. Regarding the suggested alternative drafting approach, the Administration can only find a few precedents and one of them is section 15(1) of the Water Pollution Control Ordinance (Cap. 358). Taking into account the policy intention, the comprehensibility of the two clauses if the two approaches are respectively adopted and the current drafting practice, the Administration considers it appropriate to adopt the approach now reflected in the Bill.

31. The Administration has also pointed out that the power conferred on the Registrar under clauses 79 and 91 is not an unfettered power and must be exercised properly. If the Registrar decides to refuse an application or not to grant a renewal of registration, the Registrar must provide the applicant with the reasons for making the decision as stipulated in clauses 81 and 93. Furthermore, any person who is aggrieved by the decision of the Registrar may appeal against the decision pursuant to clause 115.

Registration of lift contractors and escalator contractors (clauses 74 to 79, 86 to 89 and Schedule 8)

32. At present, any person considered by the Director to be qualified to carry out lift works or escalator works may be registered as a lift contractor or escalator contractor under LESO. The factors to be

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<sup>7</sup> Examples include section 7B of the Factories and Industrial Undertakings (Safety Officers and Safety Supervisors) Regulations (Cap. 59Z), section 8C of the Buildings Ordinance (Cap. 123), section 16 of the Architects Registration Ordinance (Cap. 408), section 15 of the Engineers Registration Ordinance (Cap. 409), section 15 of the Planners Registration Ordinance (Cap. 418), section 14 of the Land Survey Ordinance (Cap. 473), section 15 of the Landscape Architects Registration Ordinance (Cap. 516) and section 44 of the Construction Workers Registration Ordinance (Cap. 583).

considered by the Director for granting such registration status are not expressly stated in LESO. In order to promote transparency, the Bill sets out the factors that the Registrar would consider in deciding whether it is appropriate to register the applicant as a lift contractor or escalator contractor under the Bill. To ensure a smooth transition, existing lift contractors and escalator contractors will be allowed to retain their registration status when the Bill is enacted and comes into force. Furthermore, a registration renewal system for lift contractors and escalator contractors on a five-year basis will be introduced to provide a mechanism for continual compliance checking of their eligibility.

33. The Bills Committee notes that the registration requirements for lift contractors are stipulated under clause 74 and part 2 of Schedule 8 to the Bill. They include the technical qualifications of the applicant and the applicant's employees; the capability of the applicant to maintain the necessary facilities, the resources and workforce to carry out lift works; and the capability of the applicant to obtain technical assistance or other support from any other person, including a lift manufacturer, for technological updating, technical training of staff, sourcing of spare parts, etc. in case this is required.

34. Hon IP Wai-ming has requested the Administration to provide the concrete criteria that would be adopted by the Registrar in determining whether a lift contractor has sufficient workforce to carry out lift works when applying for registration and for renewal of registration, and whether there is a standard in the ratio of the number of lift maintained by the registered lift contractor and the number of registered lift workers deployed for the work for making such determination.

35. The Administration has advised that in considering whether an applicant is suitable for registration as a registered lift contractor or for renewal of his registration, the Registrar must take into account, inter alia, whether the person has and is capable of maintaining the necessary workforce to carry out lift works. As far as maintenance of lift is concerned, it is understandable that the manpower demand for maintaining a lift serving a 30-storey modern high-rise building would be more than that for maintaining a stair-lift with the height of travel of four meters. It is therefore not possible to set a rigid standard on the level of workforce to be maintained by an applicant for registration as registered lift contractor. Instead, the Registrar has to conduct assessment on a case-by-case basis taking into account such factors as the number of lifts being maintained by the applicant as well as the age, usage, design and construction of the lifts to be maintained.

36. The Administration has further advised that EMSD would maintain close monitoring to ascertain whether the registered lift contractors have sufficient workforce to carry out lift works. Registered lift contractors are required to submit relevant workforce information to EMSD regularly. EMSD would assess whether the contractor has maintained a reasonable level of workforce and may conduct investigation on suspected cases. Clause 16 stipulates that a registered lift contractor undertaking any lift works must ensure that there is sufficient workforce to carry out the works, and the relevant code of practice (CoP) would specify that certain lift works had to be conducted by two lift workers together. If a registered lift contractor fails to comply with such requirements, EMSD would consider whether its registration should be revoked. Furthermore, if the quality of works of a registered lift contractor is not satisfactory, EMSD would take appropriate actions as necessary.

Registration of lift workers and escalator workers (clauses 82 to 85, 94 to 97 and Schedule 10)

37. Under LESO, there are two routes for experienced lift and escalator workers to acquire the status of competent lift workers or competent escalator workers<sup>8</sup>. Route 1 is to meet the stipulated academic or training requirement and have not less than 4 years' relevant working experience. Route 2 is to satisfy the stipulated employment requirement and have the recognition of a registered contractor that the worker has acquired sufficient experience or training to carry out lift or escalator works competently. Competent workers who have obtained the recognized status via Route 2 (amount to about 75% of all competent workers) may lose their status of being competent lift workers or competent escalator workers when they are no longer employed by a registered lift/escalator contractor.

38. The Bill introduces a registration system for lift and escalator workers in order to recognize their competence. The registration system can also provide better control of workmanship, promote continuous self-development, institute sanctions against improper and unsafe practices when performing lift and escalator works, and replace the existing employment-tied arrangement. Under the Bill, a worker having the necessary practical experience and relevant training who (a) meets the

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<sup>8</sup> Pursuant to section 29A of the LESO, "competent lift workers" and "competent escalator workers" who are under the employment of registered lift contractors and registered escalator contractors, as appropriate, are respectively authorized to carry out lift works and escalator works independently and to supervise others to perform such works.

stipulated academic requirement and has not less than 4 years' relevant working experience of which at least one year was obtained within the 5-year period immediately before the date of submission of the application<sup>9</sup>; or (b) has not less than 8 years' relevant working experience and has passed a recognized trade test are qualified for registration. Registered workers are required to renew their registrations every five years with working and training requirements mandated for renewal.

*Transitional arrangements*

39. The Bills Committee has asked about the details of the transitional arrangements for practising lift and escalator workers. The Bills Committee considers that suitable transitional arrangements should be made in order not to jeopardize the livelihood of practicing lift and escalator workers and to ensure sufficient manpower resources in the trade to provide services when the Bill is enacted and comes into operation.

40. The Administration has advised that in connection with the new registration system, the Bill provides for two transitional arrangements as follows -

- (a) the Bill retains the existing competent lift/escalator worker arrangement under LESO during the transitional period to enable those workers with qualifications equivalent to existing competent lift workers or competent escalator workers to personally carry out lift or escalator works based on their recognition status without being registered as lift or escalator workers or under direct supervision by a qualified person; and
- (b) the Bill allows workers who do not possess the academic attainment but can satisfy the Route 2 requirements as described in paragraph 37 to apply for registration as lift or escalator workers.

41. To provide flexibility for dealing with contingent events such as when the number of workers in the trade is considered to be insufficient to meet the demand, the expiry dates of the two transitional arrangements are not specified in the Bill. The Administration estimates that there will be a need to retain the first transitional arrangement for about one year so

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<sup>9</sup> Details of the eligibility requirements are provided in Schedule 10 to the Bill.

as to provide adequate time for about 5 000 existing competent workers to seek registration under the new registration system. During the transitional period, the Administration will adopt appropriate measures to facilitate the eligible workers to apply for registration. As for the second transitional arrangement, the Administration estimates that the arrangement will need to last for about 5 years so that workers not in possession of the stipulated academic attainment but are currently practising lift or escalator works can seek registration by satisfying the requirements under Route 2. During the transitional period, the Administration will adopt appropriate measures to ensure that the termination of this transitional arrangement will not adversely affect the livelihood of existing workers or the human resources in the trade. The measures will include notifying workers of the transitional arrangement, and monitoring the operation of the new registration system and manpower resources in the trade.

42. Regarding the above transitional arrangements, Hon LI Fung-ying has requested the Administration to lay down clear procedure, such as prior consultation with the relevant trade associations and worker unions as well as the relevant LegCo Panel, for determining the expiry dates of the transitional arrangements. The Administration has assured the Bills Committee that it will take into account any adverse impact on the livelihood of the existing workers or the manpower resources situation of the industry when determining the expiry dates of the two transitional arrangements. When the proposed registration system is in place, the Administration will be able to better monitor the manpower situation, and it will consult the industry stakeholders on the proposed expiry dates.

43. Prof Hon Patrick LAU has urged the Administration to carefully plan and monitor the provision of training courses to ensure that such provision will well complement the implementation of the registration system for lift and escalator workers. The Administration has responded that the Task Force is aware of the training requirements and has discussed the issue and suitable training courses are under planning to tie in with the implementation schedule of the new registration system.

44. The Administration has advised that to effect the termination of the transitional arrangements, some provisions in the LEO to be enacted will need to be amended, and the relevant amendments are laid down in Part 9 of Schedule 16 to the Bill. To give effect to the amendments specified in any of those provisions, the Secretary for Development ("the Secretary") will have to appoint a date for commencement of the provision, and any such appointment is to be effected by means of a commencement notice

made under clause 1(2). The commencement notice is subject to the "negative vetting procedure" stipulated under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).

Appointment and functions of Registrar (clauses 72 and 73)

45. Clause 72 provides for the appointment by the Secretary of a person to be the Registrar of Registered Contractors, Engineers and Workers (Lifts and Escalators) ("Registrar") and clause 73 provides for the functions of the Registrar.

46. Prof Patrick LAU has pointed out that the registration of professionals in Hong Kong is undertaken by the relevant professional organizations rather than by the Government. For example, the Engineers Registration Board ("ERB") is responsible for the registration of professional engineers. He has expressed concern that the arrangement for the Secretary to appoint a Registrar under the Bill may depart from the established arrangement for registration of professionals in Hong Kong and may violate Article 142 of the Basic Law. He asked whether the industry has agreed to the proposed "Registrar" arrangement, and whether the Administration has considered the alternative of conferring the registration functions under the Bill on ERB.

47. The Administration has clarified that the Bill will not affect the existing arrangement of the engineering profession in Hong Kong for assessing and conferring professional qualifications. The Registrar will only assess whether a registered professional engineer (who has already registered with ERB) fulfills the registration requirements stipulated in the Bill and this assessment is independent from the professional engineer's registration with ERB. The Registrar also will not query the professional qualification of a registered professional engineer. Thus, the Bill will not be in conflict with the established registration arrangement of the engineering profession nor violate Article 142 of the Basic Law.

48. Prof Patrick LAU has asked whether the levy imposed by the Construction Industry Council ("CIC") on construction contracts covered lift and escalator works, and if so, whether the Administration would consider appointing CIC to take up the registration functions under the Bill.

49. The Administration has advised that the requirement of paying the "Construction Industry Levy" under the Construction Industry Council Ordinance (Cap. 587) is applicable to lift and escalator installation works.

As for the appointment of the Registrar under the Bill, the Administration will not preclude CIC from being appointed.

50. The Bills Committee has asked about the establishment of the office of the Registrar. The Administration has advised that at present, EMSD is responsible for the registration of lift/escalator engineers and contractors. To ensure smooth transition to the new regime, the Director would likely be appointed to undertake the registration work in the early stage of the implementation of the new regulatory regime. There would be around 5 300 lift and escalator workers/engineers/contractors to apply for registration in the first five years after the enactment of the Bill. Thus, there would be on average around 1 000 registration applications per year and around 20 registration applications per day in the peak season. EMSD has planned to proactively visit relevant companies to arrange for the registration of the lift/escalator engineers, contractors and workers so that the registration applications will not be highly clustered in certain periods. The existing manpower and resources of EMSD should be sufficient to handle this estimated workload.

#### Penalty levels of offences

51. At the Bills Committee's request, the Administration has provided comparative information on the penalty levels and disciplinary actions in respect of the offences under the Bill and offences of similar nature under LESO, and other ordinances.<sup>10</sup>

52. The Chairman and some members including Hon Andrew CHENG and Hon LI Fung-ying have expressed concern about the penalty levels in respect of certain offences in the Bill, and have made the following comments –

- (a) there should not be unjustified disparity between the sanctions applicable to different stakeholders under the Bill;
- (b) it could lead to dire consequences if any lift or escalator works are carried out by a person not being (i) a qualified person or a specified person<sup>11</sup>, or (ii) under the direct supervision of a qualified person at the site; and

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<sup>10</sup> Annexes 4, 5 and 6 to LC Paper No. CB(1)3074/10-11(01)

<sup>11</sup> The terms "qualified person" and "specified person" are defined under clause 2 of the Bill.

- (c) given the grave concern of the public over lift and escalator incidents, 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 duties in respect of any lift/escalator and related works should be subject to heavy penalty.

53. Specifically, Hon Andrew CHENG has opined that the maximum penalty level under clause 16(2)<sup>12</sup> (i.e. fine at level 6 and imprisonment for 6 months) applicable to registered lift contractors should be increased to a level not lower than the penalty level under clause 13(4)<sup>13</sup> (i.e. fine at level 6 and imprisonment for 12 months) applicable to responsible persons, as he considers that these offences are of similar severity and they all have direct impact on public safety. He also expressed the view that the lower penalty level under clauses 16(2) and 17(2) for first conviction of the corresponding offences are also not on a par with that applicable to responsible persons. On similar grounds, Hon Andrew CHENG and Hon LI Fung-ying have expressed the view that it is not justified for the offences under clause 8(2) and (3)<sup>14</sup> to be subject to a lower penalty than the offence under clause 13(4). In view of members' concerns and comments, the Bills Committee has requested the Administration to undertake an overall review of the penalty levels proposed in the Bill.

54. The Administration has responded that in setting the penalty levels in the Bill, it has taken due account of the nature and seriousness of the offences, defence provisions and onus of proof, etc., as well as the maximum penalty levels of similar offences in other ordinances. The Administration agrees that the penalty levels 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 levels under the

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<sup>12</sup> The relevant offence is that a registered lift contractor without reasonable excuse fails to ensure that lift works undertaken are carried out properly and safely.

<sup>13</sup> In brief, the relevant offence is that the responsible person for a lift consents or connives, or fails to take all responsible steps to prevent, the use or operation of the lift, -  
(i) if lift works concerning the lift are underway;  
(ii) where there is no use permit in force; or  
(iii) no resumption permit has been issued after any major alteration to the lift.

<sup>14</sup> The relevant offences are –  
A person not being (i) a qualified person or a specified person; or (ii) under the direct supervision of a qualified person at the site; personally carries out lift works.  
A person knowingly causes or permits any other person to carry out any lift works if that other person is not (i) a qualified person or a specified person; or (ii) under the direct supervision of a qualified person at the site.

Bill should be compatible with the penalty for offences of similar nature in other ordinances. In view of members' comments and without deviating from the principle that the proposed penalty levels under the Bill should be compatible with offences of similar nature in other pieces of legislation, the Administration proposes to raise the maximum penalty level of the offences in 21 clauses<sup>15</sup> to a fine at level 6 and 12 months imprisonment to bring them on a par with penalty level under clause 13(4). The proposed change is made on the ground that contravention of the related provisions may lead directly to dangerous situations or hamper the safety of a lift or escalator. Furthermore, to avoid disparity between the sanctions for other offences in the Bill, the Administration also proposes to remove the different penalties for first conviction and subsequent convictions of the offences under eight other clauses<sup>16</sup>. The Bills Committee has examined and supports the relevant Committee Stage amendments ("CSA") proposed by the Administration.

55. According to the Administration, it has consulted the relevant trade associations and worker union on the proposed amendments to the penalty clauses in the Bill and they have not raised objection to the proposed amendments. At the request of Hon Patrick LAU, the Administration has subsequently written to these trade associations and worker union to ensure that the proposed amendments are clearly conveyed to them.

#### Composition of disciplinary board and appeal board (clauses 110, 118 and Schedules 11 and 12)

56. Schedules 11 and 12 to the Bill stipulate that a disciplinary board panel and a disciplinary board (with members selected from the panel) set up under the Bill shall consist of eight categories of persons, viz. three from engineering professions, one from registered engineers, one from registered contractors, one from registered workers, one from persons carrying on the business of property management and one from management committee members or lift/escalator owners. Schedules 13 and 14 to the Bill stipulate that an appeal board panel and an appeal board (with members selected from the board) set up under the Bill shall consist of three categories of persons, all from the engineering professions.

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<sup>15</sup> The 21 clauses include clause no. 8(2), 8(3), 9(4), 10(3), 10(4), 11(2), 16(2), 16(3), 31(2), 32(3), 35(3), 38(2), 42(2), 42(3), 43(4), 47(2), 47(3), 61(2), 62(3), 65(3) and 68(2).

<sup>16</sup> The eight clauses include clause no 17(2), 17(3), 24(8), 25(6), 48(2), 48(3), 54(7) and 55(6).

57. The Chairman and Prof Hon Patrick LAU have expressed the view that it is important for any disciplinary board and appeal board set up under the Bill to contain lay members so as to enhance the board's impartiality. The Administration agrees with the view, and proposes to introduce an additional requirement in Schedule 11 to the Bill such that every person from the two categories of "persons carrying on the business of property management" and "management committee members or lift/escalator owners" must be a layperson. To enhance the representativeness and impartiality of the appeal board, the Administration proposes to amend Schedules 13 and 14 to the Bill so as to make the composition of the appeal board panel and disciplinary board panel the same as that of the disciplinary board panel and disciplinary board respectively. The Administration considers that the new membership will make the appeal board more able to look after the interests of all those whom may be affected by any of the decisions and orders listed in clause 115. The Bills Committee supports the relevant CSAs proposed by the Administration.

Code of practice (clauses 2(5), 145, 146 and 147)

58. Clauses 145 and 146 empowers the Director to issue or approve any code of practice ("CoP") and revisions to such code for providing practical guidance in respect of any matter concerning the safety of lifts or escalators, including providing practical guidance in respect of the use and operation of lifts or escalators and providing practical guidance to persons who carry out any lift works or escalator works.

59. Clause 147 provides that a failure by a person to observe a provision of a code of practice does not of itself make the person liable to any civil or criminal proceedings, but if in any legal proceedings the court is satisfied that a code of practice or any part of a code of practice is relevant to determining a matter that is in issue in the proceedings—

- (a) the code or part is admissible in evidence in the proceedings; and
- (b) proof that the person contravened or did not contravene a relevant provision of the CoP may be relied on by a party to the proceedings as tending to establish or negate that matter.

Clause 2(5) also stipulates that regard must be had to the relevant CoP in determining a number of specified matters including whether adequate safety precautions are taken to prevent injury to any person or damage to

any property, and whether there is sufficient workforce to carry out any lift works or escalator works, etc.

60. In view of the importance of the CoPs that will be issued under the LEO to be enacted and the fact that the CoPs are not subsidiary legislation and thus will not be subject to the scrutiny of LegCo, the Bills Committee has asked about the work on the preparation of the CoPs, in particular how the relevant stakeholders will be consulted in the process.

61. The Administration has advised that EMSD has issued two sets of CoPs under LESO, namely the "Code of Practice for Lift Works and Escalator Works", which sets out the acceptable methods and procedures for examination, testing, maintenance, repair and periodic examination, etc; and the "Code of Practice on the Design and Construction of Lifts and Escalators", which sets out the design and construction requirements for different types of lifts and escalators. In respect of the provisions under the Bill, EMSD has started drafting a new set of CoPs to replace these existing CoPs, with a view to promulgating the new CoPs soonest possible following enactment of the Bill.

62. In regard to the mechanism for preparing the CoPs and subsequent amendments to the CoPs, the Administration has advised that due to rapid technological advancements of lifts and escalators, the relevant CoPs must be timely amended for compliance by the industry. This has all along been done through close discussion between EMSD and the industry, including the relevant trade associations and worker unions, and that EMSD would only issue new CoPs and their amendments after consensus has been reached with the stakeholders. In the past three years, there were a total of 10 amendments made to the two existing CoPs, and the time taken in discussing with the industry for each amendment varied between two months and 24 months. Overall, the industry is satisfied with the existing consultation arrangement as well as the amendment and promulgation procedures of CoPs.

63. Hon LI Fung-ying considers that apart from the industry, the general public should have the opportunity to offer views in the course of preparing the new CoPs. In response, the Administration has undertaken to upload the draft CoPs onto EMSD's website to facilitate stakeholders and the public to offer views. In this regard, the Administration has uploaded the first draft of the new CoPs onto EMSD's webpage in January 2012.

## Emergency devices

64. The Chairman and Hon Andrew CHENG, Prof Hon Patrick LAU and Hon LI Fung-ying have expressed the view that the proper functioning of the emergency devices of a lift including the alarm bell, intercom system and ventilation fan is vital at times of lift passenger entrapments. The Bills Committee has therefore requested the Administration to consider specifying the emergency devices in the relevant schedule(s) to the Bill so that responsible persons, registered lift contractors and registered lift engineers are required to give special attention to these devices in performing their respective duties.

65. The Administration has advised that at present, registered lift contractors are required to confirm the proper functioning of the components of a lift, including the alarm bell, intercom system and ventilation fan during their monthly routine maintenance cycle. Separately, registered lift engineers are required to verify the functioning of these components when conducting periodic examination. These requirements have already been laid down in the relevant CoP issued under LESO. Furthermore, EMSD has issued guidelines recommending responsible building management staff to regularly check the concerned components and to inform their registered lift contractor of any malfunctioning for immediate repair.

66. As regards the suggestion of specifying the emergency devices in the relevant schedule(s) to the Bill, the Administration has advised that specifying these lift components in the relevant schedule(s) to the Bill will lead to inconvenience to lift users because of the additional procedures to be followed, causing longer lead time for resuming the lift to normal operation. After balancing the merits and demerits of the proposal, the Administration considers the existing arrangement can provide adequate assurance in the proper functioning of these components.

67. The Bills Committee does not subscribe to the Administration's view that the existing measures are already adequate to ensure the proper functioning of the emergency devices. In the light of heightened public concern over lift safety and the dire consequence that the malfunctioning of the emergency devices may lead to, the Bills Committee has urged the Administration to consider further means to step up the relevant control measures. In view of Bills Committee members' concern, the Administration has revisited the issue in consultation with the Lifts and Escalators Contractors Association ("LECA"), and come to the view that

there are rooms to enhance the existing control over the emergency devices. The Administration proposes to introduce an attendance and notification mechanism in the regulation to be made under clause 154 after enactment of the Bill. Under the proposed mechanism, a registered contractor responsible for maintenance of a lift is required to attend to any reported failure of the alarm system, emergency lighting, intercom system and ventilation fan of a lift within a specified period. If the registered contractor considers that the failed device cannot be reinstated within another specified period of the reported failure, the registered contractor is required to notify the Director in a specified form. With the proposed mechanism in place, the Director can effectively monitor the timeliness of reinstatement of the concerned emergency devices. Furthermore, if considered necessary, the Director may issue an order prohibiting the use of the lift.

68. The Bills Committee supports the proposed attendance and notification mechanism and has enquired about the time periods allowed for performance of the attendance and notification requirements by the registered contractor. The Administration has advised that the exact time periods will be determined having regard to the views of the industry and public expectation. The preliminary thinking is that the contractor should attend to any reported failure of the emergency devices within four hours, and if the contractor fails to reinstate the failed device in 24 hours, the contractor shall notify the Director of the incident. The Administration has advised that it will specify the time periods in the relevant CoP or in the regulation to be made under clause 154.

#### Subcontracting of lift or escalator works (clauses 38 and 68)

69. Clauses 38 and 68 impose restrictions on the subcontracting of lift and escalator works to the extent that the approval of the Director is required before the works or any parts of the works (except works concerning the installation or demolition of lifts or escalators) can be subcontracted by a registered lift/escalator contractor to a non-registered lift/escalator contractor. The Bill however does not impose restrictions on multi-layered subcontracting of the works so long as all the contractors involved are registered lift/escalator contractors under the Bill. The Bills Committee notes that the Bill has not proposed changes to the current regulatory regime in this regard.

70. The Chairman and some members including Hon IP Wai-ming and Prof Hon Patrick LAU have pointed out that multi-layered subcontracting could give rise to risks affecting the safety of lifts and escalators, and past

experience of the construction industry has revealed that multi-layered subcontracting could give rise to serious problems. The members have requested the Administration to consider imposing restrictions in the proposed legislation on multi-layered subcontracting even if all the contractors involved are registered lift/escalator contractors.

71. The Administration has responded that it should not be necessary to impose further restriction in the proposed legislation on multi-layered subcontracting if the subcontracted works are to be undertaken by registered lift/escalator contractors. This is because registered lift/escalator contractors are subject to the same regulatory control provisions stipulated in the Bill, irrespective of whether they are carrying out lift or escalator works as a principal contractor or a subcontractor. Moreover, since registered lift or escalator contractors are by themselves eligible for carrying out lift or escalator works without being subcontracted under another registered lift/escalator contractor, there are indeed no incentives for registered contractors to carry out lift or escalator works in the form of subcontracts.

72. In view of the Administration's response, the Chairman and Hon IP Wai-ming have commented that the number of registered lift contractors and registered escalator contractors may increase substantially in future and multi-layered subcontracting of lift or escalator works may become common in the industry. Past experience of other fields in the construction industry has indeed revealed that, if left unregulated, multi-layered subcontracting could give to serious problems including safety problems. Hon Prof Patrick LAU has also pointed out that the Hong Kong Housing Authority imposes restrictions on multi-layered subcontracting and requires the names of sub-contractors to be properly recorded. These members have requested the Administration to further consider imposing restrictions in the proposed legislation on multi-layered subcontracting of lift and escalator works.

73. The Administration has subsequently agreed to impose further control over subcontracting works, including the lift or escalator works subcontracted to any other registered contractors, under the new regulatory regime, and proposes to introduce a notification mechanism regarding subcontracting in the regulation to be made under clause 154 after the enactment of the Bill. Under the proposed notification mechanism, all registered lift/escalator contractors are required to notify the Director in the specified form within a specified period of time in respect of the undertaking of any lift or escalator works from another contractor or subcontracting any lift or escalator works to another

contractor. Any registered contractor who without reasonable excuse contravenes the requirement will be liable to criminal sanction. This arrangement will enable EMSD to effectively monitor the subcontracting of works by registered contractors and the respective subcontracting arrangements. Apart from the notification mechanism, the Administration will also step up various control and publicity measures pertinent to subcontracting of lift and escalator works.

74. The Bills Committee supports the proposed notification mechanism and the related enhancement measures. Hon IP Wai-ming considers that the information on the subcontracting of lift or escalator works should be accessible to responsible persons and users for them to monitor the performance of registered contractors. In response to Mr IP's suggestion, the Administration has advised that registered lift/escalator contractors, including main contractors and subcontractors, responsible for the day-to-day maintenance of a lift/escalator are to enter their names and other specified information into the log-book for the lift/escalator concerned. Furthermore, they would also be required to provide their names in a conspicuous place near the lift/escalator concerned, such as the main landing of the lift/escalator. Details of the arrangement described above will be specified in the CoPs.

#### Posting notice of lift or escalator incident for users' information

75. The Bills Committee notes that under the Bill, after the occurrence of a lift incident specified in Schedule 7 of the Bill, the registered lift contractor concerned must cause a registered lift engineer to among others submit an incident investigation report to the Director. If considered appropriate, the Director will issue an order to prohibit the use or operation of the lift. Such order may be displayed at a suitable location. The same arrangements apply to escalators.

76. Hon Andrew CHENG opines that the relevant users should be duly informed when a lift incident occurs, and has suggested imposing a requirement on the registered lift contractor concerned to post a notice at a suitable location with information about the incident, such as the nature of the incident and the follow-up actions that have been and are being undertaken by the contractor.

77. The initial response of the Administration was that while it is a good practice to notify affected users of the lift incident leading to suspension of the lift service, registered lift contractors might encounter practical difficulties in posting such a notice in premises not under their

management or control in discharging such a statutory duty. As such, the Administration considered that the posting of the notice should best be undertaken by a responsible person for the lift concerned who has the management or control of the lift. The Administration considered that not imposing the suggested statutory duty on registered lift contractors would not jeopardize public safety. If considered necessary, the Director would issue a prohibition order prohibiting the lift concerned from being used or operated pursuant to clause 30. Under such circumstances, the Director would post the order in a conspicuous part of the building or the lift stating the reasons for issuing the order.

78. Hon Andrew CHENG did not accept the Administration's response and pointed out that in a lift incident, the responsible person would have to rely on the registered lift contractor to provide the relevant information to prepare the incident notice. Moreover, given that some buildings are not well managed, it is not practical to expect that all responsible person(s) to follow the practice of posting lift incident notices for users' information in a timely manner. He considers that if the posting of lift incident notices is made a statutory duty, responsible persons and other relevant parties would not obstruct registered lift contractors in performing the statutory duty. Furthermore, the severity of some lift incidents may not warrant the issuance of a prohibition order by the Director.

79. After further consideration of Mr CHENG's view, the Administration has proposed to introduce a regulatory scheme by way of regulation to be made under clause 154 after the enactment of the Bill in relation to the incidents specified in Schedule 7 to the Bill. Under the proposed regulatory scheme, a registered contractor responsible for the maintenance of a lift or escalator is required to post a notice to alert users that the service of a lift or escalator has been suspended and cannot be resumed within a specified period. To cater for the incorporation of the proposed regulatory scheme, the Administration will move a CSA to amend clause 154(2) to enable the making of regulation by the Secretary to provide for the display of such notices.

80. Hon Andrew CHENG has enquired about the time period allowed for the contractor to post a notice. The Administration has advised that the exact time period will be determined having regard to the views of the industry and public expectation. The preliminary thinking is that the contractor should post a lift incident notice in a specified form within 10 hours upon its knowledge of a lift incident specified in Schedule 7 of the Bill if the service of the lift/escalator cannot be reinstated within the specified time limit. The Administration has advised to that it will specify

the time period in the relevant CoP or the regulation to be made under clause 154.

Offences committed by bodies corporate and partners (clause 141)

81. Clause 141 provides 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 under the Bill. Hon LI Fung-ying and Hon IP Wai-ming have expressed concern that the provisions under clause 141 may impose unduly onerous liabilities on those persons taking part in the management of OCs (which are body corporate) and this would discourage the public from participating in the management of their lifts or escalators. The Bills Committee has thus requested the Administration to review clause 141 and provide examples of similar provisions in other legislation.

82. The Administration has advised the following –

- (a) the provisions under Clause 141 are modelled on the provisions under section 43Q of the Employment Ordinance (Cap. 57). The purpose of clause 141 is to provide necessary deterrence against contravention of any other legislative requirements under the Bill by a body corporate or a person who is a partner in a partnership. Thus, under the clause, certain other persons connected with the body corporate or partnership are also liable. To avoid catching any person who is not equally culpable as a person having a managing role in the body corporate or partnership, clause 141 expressly targets those concerned in the management of the body corporate or partnership.
- (b) Similar to section 43Q of the Employment Ordinance (Cap. 57), clause 141 operates to ensure vigilant compliance with the proposed legislation by imposing criminal liability also on certain persons concerned in the management of a body corporate or partnership for their role in causing or contributing to the offending conduct, while at the same time addressing the difficulty in proving the relevant knowledge, consent etc. of such persons, which are matters within the personal knowledge of the persons concerned. The prosecution nevertheless bears the burden to prove beyond a reasonable doubt that the offence is committed with the consent or connivance of a manager/partner, or is otherwise

attributable to his neglect or omission, if there is evidence that this may not have been so.

- (c) The arrangement provides a fair balance between effective enforcement and protection of the innocent. With the built-in safeguard, the Administration is of the view that the provision will not create unduly onerous liabilities to discourage people from participating in the management of their own properties. The Administration plans to launch a series of publicity and promotional activities to enable responsible persons to understand the requirements under the proposed legislation and to raise their safety awareness on lifts and escalators.
- (d) Examples of other pieces of legislation having similar provisions include section 28 of the Building Management Ordinance (Cap. 344), sections 5 and 11 of the Building Management (Third Party Risks Insurance) Regulation (Cap. 344 sub. leg. B), section 118 and 119B of the Copyright Ordinance (Cap. 528), section 60 of the Unsolicited Electronic Messages Ordinance (Cap. 593), section 31 of LESO and section 56 of the Electricity Ordinance (Cap. 406).

83. Taking note of the Administration's explanation, Hon LI Fung-ying remains concerned that many people take part in the management of an OC on a voluntary basis, and these ordinary citizens may not be fully aware of their potential liabilities under the Bill. Given that the Government's policy is to encourage the public to actively participate in the management of their own property, Ms LI has urged the Administration to ensure that the public would be fully aware of the potential liabilities that they would be subject to under the Bill if they take part in the management of an OC. The Administration has assured the Bills Committee that it will conduct publicity programmes and public education on the requirements of the Bill, including organizing briefing sessions for property management agencies and property owners. EMSD would also prepare pamphlets and guidelines for flat owners and stakeholders.

Assistance to owners

*Registered contractors' performance rating schemes*

84. The Bills Committee notes that EMSD has implemented the Registered Lift Contractors' Performance Rating Scheme and the Registered Escalator Contractors' Performance Rating Scheme ("CPR schemes") since June 2009 and September 2011 respectively to provide reference for owners and their building management companies in selecting suitable contractors for maintaining and repairing the lifts and escalators of their property. Besides, EMSD has published the following information relating to the CPR schemes on EMSD's website for reference of the public –

- (a) introduction to the CPR schemes;
- (b) current and past performance indexes of the registered lift/escalator contractors;
- (c) list of warning letters issued to registered lift/escalator contractors; and
- (d) reported lift and escalator incident records.

85. The Bills Committee has examined whether the CPR schemes should be incorporated into the Bill so as to provide a legal basis for EMSD in deciding whether or not to revoke or suspend the licence of a registered contractor in the case of misconduct.

86. The Administration has explained that the CPR schemes aims at providing information to the general public by using a simple and easily understood point-deduction system to reflect the overall performance of the contractors in the past year in quality of maintenance service and safety aspects. Based on the non-compliance identified during audit inspections as well as any court judgments and disciplinary board orders, EMSD will deduct points of a contractor according to an established mechanism of the CPR schemes. The Administration does not consider it necessary or appropriate to include the CPR schemes in the proposed legislation because EMSD will take appropriate enforcement action for non-compliance or disciplinary offence, irrespective of whether points are deducted. In addition, some point-deduction items, including the above-mentioned items reflecting the general quality of the service provided by the contractors and disciplinary board orders, may not involve

contravention of the legislative requirements. On the other hand, by omitting some point-deductible items for the purpose of including CPR schemes in the proposed legislation, it will defeat the original intention for the setting up of the schemes to reflect the overall performance of the contractors.

87. The Bills Committees has noted that the Administration's analysis of the relationship between lifts incidents and the performance ratings of lift maintenance contractors<sup>17</sup> does not reveal any significant association between the performance ratings of contractors and the number of equipment fault incidents they are involved. The Administration has explained that the reason for the apparent lack of association is that Hong Kong has around 58 000 lifts, yet the number of incidents in each year is rather small (around 20 to 30 cases). Besides, in order to allow lift owners to know the overall performance of registered lift contractors, the performance rating is determined by a host of factors and not just incident-related ones. The public can look up information on whether a particular registered lift contractor has been involved in equipment fault incidents on EMSD's website.

88. The Bills Committee considers that the performance ratings of contractors is an important reference for lift and escalator owners, and apparently the occurrence of equipment fault incidents is not reflected appropriately in the performance ratings of contractors at present. The Bills Committee has therefore urged the Administration to review the CPR schemes. In this connection, the Bills Committee has requested the Administration to enhance the dissemination of information on the contractors' performance to the public and examine the feasibility of providing benchmark prices for contracts of maintenance services for reference by owners of lifts and escalators.

89. In view of the Bills Committee's concern and comments, the Administration has revisited the existing assessment criteria of the CPR schemes in consultation with the trade and representatives of property management associations. To properly reflect the occurrence of equipment fault incidents in the performance rating of maintenance contractors, the Administration has proposed to include a new point-deductible item for the occurrence of equipment fault incidents. The Administration has also proposed to increase the demerit point for failure of some components including alarm system, inter-communication system, levelling devices, etc. The Bills Committee supports these

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<sup>17</sup> LC Paper No. CB(1)3074/10-11(01)

proposed improvements to the CPR schemes, and notes that the Administration plans to implement the proposed assessment criteria in the first quarter of 2012.

90. On the Bills Committee's suggestion of enhancing the dissemination of information on the performance of registered contractors to the public, the Administration has advised that it will consolidate relevant contractors' performance information for dissemination on EMSD's website in a more user-friendly, easy to understand and direct manner. Under the planned improvements, when a user clicks on the name of a registered contractor in relevant webpage, the user can access all information regarding the performance of that contractor, including its past performance ratings, equipment fault incidents, warning letters and records of prosecution and disciplinary cases that the contractor is involved. The Administration plans to launch the new webpage in the first quarter of 2012.

91. As regards the provision of reference information on prices of lift maintenance services to lift owners, the Administration has advised that it has approached the trade and representatives of property management associations to discuss the matter. According to the preliminary advice collected, lift owners or property management companies in procuring lift maintenance services will normally have their own tendering requirements, such as scope of works, the contractor's technical expertise, capacity of dealing with emergencies, contract duration, payment terms and routine maintenance frequency. Registered contractors in determining their tender prices would consider a host of factors, such as the number of lifts in an estate or building, the age of the lifts, the degree of complexity of lifts, the working environment, frequency of use, and number of landings, etc. It is therefore difficult to compare the maintenance cost without knowing the details of the services under individual contract. Despite the difficulty, EMSD will continue to work with the trade and the Task Force to further explore the feasibility of establishing any reference information on prices of lift maintenance services.

#### Consistency of the terms used to name various types of lifts and escalators in legislation and government publications

92. Prof Hon Patrick LAU has expressed concern that different government departments are using different terms for various types of lifts and this has caused confusion to industry practitioners. Given that the terms describing different types of lifts are defined in the Bill, Prof LAU has requested the Administration to take measures to ensure that the

terms on lifts used by various Government departments are consistent with those used in the LEO to be enacted, and that industry practitioners should be well informed of the terminology.

93. The Administration has subsequently reviewed the Buildings Ordinance (Cap. 123) and advised that it does not find any inconsistency between the terms regarding lifts used in the Bill and those related terms used in the Buildings Ordinance (Cap. 123). The Administration has also advised that to maintain consistency among legislation and government publications, the Buildings Department and the Labour Department have been requested to take note of the interpretation of the terms "escalator", "goods lift", "lift", "mechanized vehicle parking system" and "service lift" under clause 2 of the Bill when they prepare any government publication including practice notes, circulars and guidelines in association with the Buildings Ordinance (Cap. 123) and the Factories and Industrial Undertakings (Goods Lifts) Regulations (Cap. 59 sub.leg. O).

Scope of works being classified as major alteration (clause 2(1) and Schedule 1)

94. Under the Bill, replacement of a step or pallet of escalators or a safety circuit that contains any electronic component of a lift is classified as "major alteration". Under this classification, a resumption order has to be issued by EMSD before operation can be resumed. Two deputations<sup>18</sup> have expressed concern that due to the need to await the issuance of the resumption order, there will be substantial delay in resumption of the service concerned and a lot of passengers/users will be affected. The Administration has advised that it has received similar views from other stakeholders after the introduction of the Bill.

95. Taking into account stakeholders' concerns and on balancing between ensuring public safety and causing undue inconvenience to users, the Administration has proposed to introduce a new measure by amending clauses 16, 17, 47 and 48. Under the new measure, type approval of safety components (including a step or pallet of an escalator and safety circuit of a lift) by the Director is required before any of the safety components could be used in any lift/escalator works. With the new requirement in place, the Administration also proposes to amend Schedule 1 to the Bill to exclude the replacement of a step or pallet of an escalator and the replacement of a safety circuit that contains any

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<sup>18</sup> The MTR Corporation Limited and the Lifts and Escalators Contractors Association

electronic component of a lift from the scope of works being classified as major alteration. The Bills Committee supports the proposed new measure and the relevant CSAs proposed by the Administration.

### Manpower engaged in lift and escalator works

96. The Chairman and some members including Hon LI Fung-ying and Hon IP Wai-ming have expressed concern whether there would be sufficient manpower supply to meet the needs for lift and escalator works and maintenance services when the new regulatory requirements come into operation. In this regard, the Bills Committee has asked the Administration to provide an analysis of the relevant service needs and manpower supply.

97. According to the Administration, there are about 58 000 lifts and 8 000 escalators in Hong Kong at present. In the past three years, the numbers of lifts and escalators, on average, increased by about 780 (about 1.3%) and 170 (about 2.1%) respectively each year. On the manpower supply side, there are 277 registered engineers and 4 950 competent workers engaged in lift and escalator works.

### *Supply of registered engineers*

98. According to the Administration's estimation, registered engineers will need to complete about 76 000 and 86 000 examinations<sup>19</sup> in 2011 and 2016 respectively. In 2010, 188 registered engineers (68% of the total number of registered engineers) were engaged in conducting examinations and issued safety certificates for lifts or escalators. Taking into account the number of newly registered<sup>20</sup> and retired<sup>21</sup> engineers, it is estimated that there will be about 210 registered engineers who can provide examination and certification service in 2016. Calculating on the basis of 250 working days a year, if registered engineers can complete on average the examination of three lifts or escalators in two days, the demand for examination service in 2011 and 2016 can be met. As such,

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<sup>19</sup> The Bill requires that a lift and an escalator shall be periodically examined at least once and twice a year respectively by a registered engineer. In addition, about 2 000 examinations are required to be conducted for newly installed lifts or escalators or those which have undergone major alterations each year.

<sup>20</sup> In the past three years, there were 35 persons (11 person on average each year) registered as lift or escalator engineers.

<sup>21</sup> Of the 188 registered engineers, 60 are aged 50 or above. Based on this data, the Administration estimates there will be on average about 6 registered engineers retiring each year.

the Administration's preliminary estimate is that the number of registered engineers in the short-term should be adequate.

*Supply of competent lift/escalator workers*

99. As for competent workers, the Administration has advised that their main duties are to carry out various kinds of lift and escalator works including installation, maintenance and repair according to the instructions of registered contractors.

100. According to the Administration's estimation, competent workers are required to complete about 1 584 000 and 1 698 000 periodic maintenance<sup>22</sup> in 2011 and 2016 respectively. At present there are about 3 220 competent workers (or 65% of the total number of competent workers) engaged in periodic maintenance work. Taking into account the number of new<sup>23</sup> and retired<sup>24</sup> competent workers, there will be about 3 360 competent workers (or registered workers under the proposed legislation) engaged in periodic maintenance work in 2016. Calculating on the basis of 250 working days a year and the conservative assumption of two pair-up workers in a team, the demand for maintenance can be met if each team can, on average, complete periodic maintenance for 4 lifts or escalators a day. As such, the Administration's preliminary estimate is that the number of competent workers in the short-term should be adequate to meet the service demand for maintenance work for lifts and escalators.

101. Apart from providing periodic maintenance services to lifts and escalators, the duties of competent workers also include installation and repair of lifts and escalators as well as the provision of incident support service. The Administration has advised that discounting those engaged in periodic maintenance works, there are at present about 1 730 competent workers (about 35% of the total number of competent workers)<sup>25</sup> engaged in installation and repair of lifts and escalators as well

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<sup>22</sup> Under LESO or the Bill, periodic maintenance, at intervals of not exceeding one month, is required for each lift or escalator.

<sup>23</sup> According to the information provided by registered contractors, they are now employing over 690 general workers. When these workers have gained 4 years' relevant working experience, they may acquire the status of competent workers under LESO according to their qualification, or apply for registration as registered lift workers or registered escalator workers under the proposed legislation.

<sup>24</sup> According to the latest information provided by registered contractors, 938 out of 4 950 competent workers are aged 50 or above. Based on this data, the Administration estimates that there will be on average about 94 competent workers retiring each year.

<sup>25</sup> According to the Administration's conservative estimate, at present there are about 3 220 competent workers (or 65% of the total number of competent workers) engaged in periodic maintenance work.

as the provision of incident support service<sup>26</sup>. Having regard to the number of new<sup>27</sup> and retired<sup>28</sup> competent workers, there will be about 1 890 competent workers (or registered workers under the proposed legislation) engaged in the relevant works in 2016, representing a net increase of about 9.2%. During the same period, the number of lifts and escalators is estimated to be increased by 4 750, which is equivalent to an increase of 7.2% over the total number of lifts and escalators in 2011. Since the manpower demand on installation<sup>29</sup> and repair of lifts and escalators and provision of incident support service is proportional to the total number of lifts and escalators, the Administration estimates that there will be adequate manpower resources for installation and repair of lifts and escalators and provision of incident support service in the coming years.

102. The Chairman and Hon IP Wai-ming have pointed out that while the short-term labour supply of the lift and escalator industry may be sufficient, the Administration should devise measures to attract more people to work in the industry to ensure sufficient manpower supply in the long term.

103. The Administration has assured the Bills Committee that it would keep monitoring the manpower situation of the industry and would stay vigilant to any signs of manpower shortage. It would also maintain liaison with stakeholders on relevant issues such as implementing measures to attract more people to work in the industry and enhancing manpower training.

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<sup>26</sup> Incident support service includes release of passengers trapped in breakdown lifts, repair works for handling equipment fault incidents and emergency call duty, etc.

<sup>27</sup> According to the information provided by registered contractors, they are now employing over 690 non-qualified workers. When these workers have gained 4 years' relevant working experience, they may acquire the status of competent workers under the existing LESO according to their qualification, or apply for registration as registered lift workers or registered escalator workers under the proposed legislation. The estimate has not taken into account those who completed the recognized training course held by the Vocational Training Council and gained relevant working experience to be competent workers each year (we estimate on average there are about 50 graduates each year satisfying the qualification requirements).

<sup>28</sup> According to the latest information provided by registered contractors, 938 out of 4 950 competent workers are aged 50 or above. Based on this data, the Administration estimates that there will be on average about 94 competent workers retiring each year.

<sup>29</sup> As the annual growth rate of lifts and escalators is relatively stable, the demand for lift and escalator installation works is relatively stable.

### **Committee Stage amendments**

104. The Bills Committee agrees to the CSAs to be moved by the Administration. The Bills Committee has not proposed any CSA in its name.

### **Recommendation**

105. The Bills Committee supports the resumption of the Second Reading debate on the Bill on 18 April 2012.

### **Consultation with the House Committee**

106. The House Committee was consulted on 24 February 2012 and supported the recommendation of the Bills Committee in paragraph 105.

Council Business Division 1  
Legislative Council Secretariat  
13 April 2012

**Bills committee on  
Lifts and Escalators Bill**

**Membership List**

**Chairman** Ir Dr Hon Raymond HO Chung-tai, SBS, S.B. St.J., JP

**Members** 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 CHAN Hak-kan (up to 11 October 2011)  
Hon IP Wai-ming, MH  
Hon IP Kwok-him, GBS, JP  
Hon Alan LEONG Kah-kit, SC

(Total : 10 members)

**Clerk** Ms Anita SIT

**Legal Adviser** Mr Kelvin LEE

**Bills Committee on Lifts and Escalators Bill**

**List of organizations and individuals which/who have submitted views to the Bills Committee**

1. Anlev Elex Elevator Ltd.
2. Building Services Operation and Maintenance Executives Society
3. Cheerwell Engineering Limited
4. Chun Ming Elevator Co. Ltd.
5. Chevalier (HK) Limited
6. Construction Industry Council
7. Elevator Parts Engineering Company Limited
8. Eugene Engineering Co. Limited
9. The Federation of Hong Kong Electrical & Mechanical Industries Trade Unions
10. Fujitec (HK) Co. Ltd.
11. Holake Hong Kong Lifts Ltd.
- \*12. The Hong Kong Association of Property Management Companies
13. The Hong Kong Federation of Electrical & Mechanical Contractors Limited
14. Hong Kong General Union of Lift and Escalator Employees

- \*15. The Hong Kong Institution of Engineers
16. The Hong Kong Institute of Surveyors
17. Hongkong International Terminals Limited
18. The International Association of Elevator Engineers (HK - China Branch)
19. The Lift and Escalator Contractors Association
20. Mitsubishi Elevator Hong Kong Co. Ltd.
- \*21. MTR Corporation Limited
22. Otis Elevator Company (HK) Ltd
23. Pro-Act Training and Development Centre (Electrical) Vocational Training Council
24. Registered Elevator and Escalator Contractors Association Ltd.
25. Ryoden Lift Services Ltd.
26. Schindler Lifts (Hong Kong) Ltd.
27. Mr SZE Leung-man
28. ThyssenKrupp Elevator (HK) Limited
- \*29. Mr YEUNG Wai-sing, MH, Eastern District Council Member

\* *submitted written views only*