

立法會
Legislative Council

LC Paper No. CB(1)2009/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/7/10/2

Bills Committee on Lifts and Escalators Bill

Twelfth meeting on
Friday, 2 December 2011, at 10:45 am
in Conference Room 2B of the Legislative Council Complex

Members present : Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP (Chairman)
Hon 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 IP Kwok-him, GBS, JP
Hon Alan LEONG Kah-kit, SC

Members absent : Hon IP Wai-ming, MH

Public officers : Mr Jimmy CHAN Pai-ming
Attending Principle Assistant Secretary for Development (Works) 3

Mr Jacky WU Kwok-yuen
Assistant Secretary for Development (Works Policies) 7

Mr Harry LAI Hon-chung
Assistant Director/Gas and General Legislation
Electrical and Mechanical Services Department

Mr CHUI Wai-sing
Chief Electrical and Mechanical Engineer/General
Legislation
Electrical and Mechanical Services Department

Ms Frances HUI Hang-ka
Senior Government Counsel
Department of Justice

Ms Angie LI Sau-lee
Senior Government Counsel
Department of Justice

Clerk in attendance : Ms Anita SIT
Chief Council Secretary (1)5

Staff in attendance : Mr Kelvin LEE
Assistant Legal Adviser 1

Mr Hugo CHIU
Council Secretary (1)5

I Meeting with the Administration

Follow-up to issues arising from previous meetings

(LC Paper No. CB(1)503/11-12(01) — Administration's response to issues raised at the meetings on 24 November 2011 and 29 November 2011

LC Paper No. CB(1)503/11-12(02) — List of follow-up actions arising from the discussion at the meeting on 24 November 2011

LC Paper No. CB(1)503/11-12(03) — List of follow-up action arising from the discussion at the meeting on 29 November 2011

LC Paper No. CB(1)503/11-12(04) — Administration's response to the submission dated 21 November 2011 from MTR Corporation Limited

LC Paper No. CB(1)446/11-12(01) — Submission dated 21 November 2011 from MTR Corporation Limited (English version only)

Clauses-by-clause examination of the Bill (starting with clause 119)

(LC Paper No. CB(3)684/10-11 — The Bill

LC Paper No. CB(1)182/11-12(01) — Administration's paper on "Corresponding provisions of Lifts and Escalators Bill and Lifts and Escalators (Safety) Ordinance (Cap. 327)"

Discussion

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

Admin

Follow-up actions to be taken by the Administration

3. The Administration was requested to take follow-up actions as follows:

- (a) in respect of clause 120(5), consider setting a time limit for the appeal board for sending written notification of its decision to the parties to the hearing;
- (b) in respect of clause 126(2)(c), consider replacing the term "suffer" ("容受") by a more common term used nowadays;
- (c) review clauses 129(2)(a) and 131(2)(a), including consider whether it is acceptable to delete "access to";
- (d) regarding clause 135(3)(b), consider using the alternative wording of "where necessary, break into the premises";
- (e) review clauses 132(2), 133(2), 134(2) and 135(2), taking into account existing general provisions regarding the issuance of warrants by a court under other legislation;
- (f) examine whether the existing provisions in the Bill are sufficient to enable the Director of Electrical and Mechanical Services or an authorized person to:

- (i) require a relevant party to produce or provide documents or information that are protected by a password; and
- (ii) obtain documents or information located outside Hong Kong; and
- (g) consider adding a provision under clauses 40 and 70 to require the registered lift contractor concerned to post a notice about the lift/escalator incident.

II Any other business

Date of next meeting

4. The Chairman reminded members that the next two meetings would be held on 6 and 13 December 2011.
5. There being no other business, the meeting ended at 12:40 pm.

Council Business Division 1
Legislative Council Secretariat
25 May 2012

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

Time Marker	Speaker	Subject(s)	Action Required
000347 – 000417	Chairman	Introductory remarks	
000418 – 000812	Administration	Briefing by the Administration on LC Paper No. CB(1)503/11-12(01), which was tabled at the meeting.	
000813 – 000920	Chairman Administration	The Chairman enquired whether the Administration would consider adding lay members to the disciplinary boards and appeal boards provided in the Bill. The Administration responded that it would study the relevant arrangements of other comparable legislation before submitting a substantive response on the issue.	
000921 – 001447	Administration	Briefing by the Administration on LC Paper No. CB(1)503/11-12(04), which was tabled at the meeting.	
001448 – 001514	Chairman Administration	The Chairman enquired whether the Administration would send its written response to the MTR Corporation Limited direct. The Administration replied in the affirmative.	
001515 – 001625	Mr Abraham SHEK	Mr SHEK declared that he was a non-executive director of the MTR Corporation Limited.	
001626 – 001816	Administration	<u>Clause-by-clause examination of the Bill</u> <u>Clause 119 – Determination of appeal</u>	
001827 – 001830	Mr IP Kwok-him Administration	In reply to Mr IP's enquiry, the Administration advised that at the time being, the amount of a fine at level 5 was \$50,000.	
001831 – 002030	Administration	<u>Clause 120 – Supplementary provisions to section 119</u>	
002031 – 002158	Ms LI Fung-ying Administration Chairman	Ms LI referred to clause 120(5) and enquired whether the appeal board was required to send the written notification of its decision to the parties to the hearing within a certain time period. The Administration responded that while no time limit	

Time Marker	Speaker	Subject(s)	Action Required
		<p>was stipulated in the Bill, the appeal board was expected to send the written notification within a reasonable time.</p> <p>Ms LI requested the Administration to consider setting a time limit for the appeal board for sending written notification of its decision to the parties to the hearing. The Chairman concurred with Ms LI. The Administration agreed to examine the issue having regard to the relevant arrangements in other comparable legislation.</p>	<p>The Administration to take action as per paragraph 3 of the minutes.</p>
002159 – 002433	Administration	<p><u>Clause 121 – Privileges and immunities of members of appeal board, etc.</u></p> <p>Members raised no question on clause 121.</p> <p><u>Clause 122 – Appeal to Court of First Instance on point of law</u></p>	
002434 – 002716	Mr IP Kwok-him Department of Justice (DoJ) ALA1	<p>Mr IP referred to clause 122(2) and requested the Administration to clarify the term "a point of law"("法律觀點").</p> <p>DoJ advised that clauses similar to clause 122(2) were present in other legislation. Under that clause the person could appeal against the decision of the appeal board only on a point of law and not otherwise.</p> <p>ALA1 supplemented that an example of "a point of law" was how the legal liabilities of a responsible person of a lift or escalator under the Bill were interpreted.</p>	
002717 – 002830	Administration	<p>Part 7</p> <p>Administration and Enforcement</p> <p>Division 1 – Administration</p> <p><u>Clause 123 – Director's power to authorize persons to personally carry out any lift works or escalator works</u></p>	
002831 – 003217	ALA1 DoJ Administration	<p>ALA1 enquired whether a reference to clause 123 should be included in clause 8 as the arrangement under clause 123 appeared to be an exception to the requirement stipulated in clause 8.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>The Administration advised that the definition of the term "specified person" was defined under clause 2 and it covered "a person authorized by the Director (i.e. the Director of Electrical and Mechanical Services) under clause 123". Under clause 8, a specified person was allowed to personally carry out lift works. Thus clause 8 also covered a person authorized by the Director under clause 123 to carry out lift works.</p>	
003218 – 003754	Administration	<p><u>Clause 124 – Appointment of enforcement officers</u></p> <p><u>Clause 125 – Delegation</u></p> <p>Members raised no question on clauses 124 and 125.</p> <p><u>Clause 126 – Confidentiality</u></p>	
003755 – 004651	Mr IP Kwok-him Administration DoJ ALA1 Chairman	<p>Mr IP referred to the Chinese version of clause 126(2)(c) and enquired whether the term "容受" meant "容許接受". DoJ advised that the English equivalence for the term "容受" was "suffer", and the term was used in a number of ordinances. The term "容受" meant "容忍及接受". DoJ added that the expression "容許" was not used because it was usually used as a rendition for "allow". To maintain consistency with other ordinances, the term "容受" should be used in the Bill.</p> <p>ALA1 pointed out that the term "容受" was used in other legislation like the Road Traffic Ordinance (Cap. 374). While expressing support to Mr IP's view that the general public might not easily understand the meaning of the term "容受", ALA1 remarked that he appreciated the need to maintain consistency with other ordinances in the use of terms.</p> <p>The Chairman suggested the Administration consider replacing the term "suffer" ("容受") by a more common term used nowadays. The Administration undertook to examine the issue.</p> <p>Mr IP referred to clause 126(5) and requested the Administration to provide a concrete example to illustrate the term "defence" (免責辯護). In reply, the Administration provided the following example:</p>	<p>The Administration to take action as per paragraph 3 of the minutes.</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>A person, A, obtained two pieces of information (say X and Y) from another person, B, and sought the approval of B to disclose such information. Owing to misunderstanding in the communication between A and B, B granted A the right to disclose information Y only yet A believed that B granted him the right to disclose information X. If A disclosed information X and was charged with an offence under clause 126, to rely on sub-clause 5, A would need to prove that among other things, he believed B had granted him the right to disclose information X.</p>	
004652 – 005110	Administration	<p><u>Clause 127 – Protection of public officers</u></p> <p>Division 2 – Enforcement</p> <p>Subdivision 1 – Power to Obtain Documents etc.</p> <p><u>Clause 128 – Powers to obtain documents and information</u></p> <p>Members raised no question on clauses 127 and 128.</p> <p>Subdivision 2 – Power to Enter Premises without Warrant</p> <p><u>Clause 129 – Power to enter non-domestic premises for purposes of section 41 or 71</u></p>	
005111 – 010357	Chairman Administration DoJ Prof Patrick LAU Ms LI Fung-ying Mr Alan LEONG	<p>The Chairman referred to clause 129(2)(a) and considered that it might not be appropriate to render the term "access to" as "接觸". The Chairman also noted that the term "access to" in clause 131(2)(b) was translated as "進入".</p> <p>The Administration advised that the Chinese term "接觸" was more appropriate than "進入" in the context of clause 129(2)(a) which empowered an enforcement officer to require access to and examination of the lift or escalator.</p> <p>The Chairman maintained his reservation about the use of the term "接觸" in clause 129(2)(a). Prof LAU suggested that the term "access to" in clause 129(2)(a) might be changed to "contact of". Mr LEONG remarked that it appeared that the phrase "access to" in clause 129(2)(a) could be</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>deleted. The Administration was requested to review clauses 129(2)(a) and 131(2)(a), including consider whether it was acceptable to delete "access to".</p>	<p>The Administration to take action as per paragraph 3 of the minutes.</p>
<p>010358 – 011827</p>	<p>Administration</p>	<p><u>Clause 130 – Power to enter non-domestic premises for purposes of section 111(1)(d) or 119(1)(d)</u></p> <p><u>Clause 131 – Power to enter non-domestic premises etc. for routine checking</u></p> <p>Subdivision 3 – Power to Enter Premises with Warrant</p> <p><u>Clause 132 – Warrant to enter premises for purposes of section 41 or 71</u></p> <p><u>Clause 133 – Warrant to enter premises for purposes of section 111(1)(d)</u></p> <p><u>Clause 134 – Warrant to enter premises for purposes of section 119(1)(d)</u></p> <p>Members raised no question on clauses 130 to 134.</p> <p><u>Clause 135 – Warrant to enter and search premises in any other cases</u></p>	
<p>011828 – 012406</p>	<p>Ms LI Fung-ying Chairman Administration ALA1</p>	<p>Referring to clause 135(3)(b), Ms LI requested the Administration to explain the meaning of "合理的武力" ("any force that is reasonable") and enquired whether such term existed in the Lifts and Escalators (Safety) Ordinance (Cap. 327) (LESO). The Chairman enquired whether the meaning of the term covered the use of tools.</p> <p>The Administration advised that clause 135(3)(b) empowered the enforcement officer to use reasonable force if required to gain entry into the premises. Section 37(1) of LESO stipulated that "where necessary, in the presence of a police officer, break into any premises, other than a part of any premises which is actually used for dwelling purposes".</p> <p>Both the Chairman and Ms LI considered the wording of "強行進入" more appropriate than "使用武力". The Chairman also pointed out that the</p>	

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		<p>wording of "強行進入" was used in the Building (Minor Works) Regulation (Cap. 123N) and the Administration might need to maintain the Bill's consistency with it. Ms LI further suggested revising the Chinese version of clause 135(3)(b) to "可用合理方式強行進入該處所" and sought the views of ALA1 on the issue.</p> <p>In reply, ALA1 advised that the wording of "合理的武力" appeared in a number of ordinances and in general covered the meaning of "breaking into the premises" (爆門) and "use of reasonable force" (使用合理武力).</p> <p>The Chairman suggested the Administration consider using the alternative wording of "where necessary, break into the premises" for clause 135(3)(b). The Administration undertook to examine the issue.</p>	<p>The Administration to take action as per paragraph 3 of the minutes.</p>
012407 – 012502	Administration	<p><u>Clause 136 – Offences on obstruction and contravention of requirements</u></p>	
012503 – 013432	Mr Alan LEONG DoJ Administration Chairman	<p>Mr LEONG pointed out that the magistrates' courts could issue warrants in accordance with the relevant provisions of the Magistrates Ordinance (Cap. 227) (MO). Noting that clauses 132 to 135 involved the request to issue a warrant by a court, Mr LEONG enquired whether the terms of any such warrant would be in conflict with the terms of any warrant issued by a magistrates' court in accordance with MO.</p> <p>DoJ responded that the expression "court" was defined in clause 2 of the Bill. In the context of those clauses, the expression was to be construed to mean a court as defined by section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) or a magistrate. A warrant issued under the relevant clause of the Bill was a warrant issued by a "court" as defined by the Bill. Whether there could be a clash between the terms of a warrant under the Bill and one issued under the MO would require further examination of the relevant legislation. In this connection, Mr LEONG expressed doubt over the necessity of those clauses, pointing out that if clear rules on the issuance of warrants by the magistrates' courts were already in place, the provision under clause</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>134(2) and other similar provisions in the Bill might give rise to disputes over the interpretation of the warrants concerned.</p> <p>The Administration advised that clause 134(2) was added to cater for the scenario that the warrant issued by a court had not specified the warrant's validity period.</p> <p>The Administration was requested to review clauses 132(2), 133(2), 134(2) and 135(2), taking into account existing general provisions regarding the issuance of warrants by a court under other legislation.</p>	<p>The Administration to take action as per paragraph 3 of the minutes.</p>
013433 – 013924	Mr Andrew CHENG Administration Chairman	Mr CHENG remarked that if the Administration did not have further responses regarding the issue of requiring registered lift contractors to post notice of lift incident, he would request ALA1 to prepare the relevant Committee Stage amendment (CSA) and seek members' agreement to move the CSA in the name of the Bills Committee. The Administration remarked that it would further consider the issue.	The Administration to take action as per paragraph 3 of the minutes.
013925 – 014003	Administration	<p>Subdivision 4 – Duty to Produce Evidence of Authority</p> <p><u>Clause 137 – Duty to produce evidence of authority</u></p>	
014004 – 014027	Chairman	The Chairman remarked that the Administration should also examine whether Mr LEONG's comment in respect of the issuance of warrants was also applicable to clause 137(c).	
014028 – 014439	Administration	<p>Subdivision 5 – Forfeiture and Compensation</p> <p><u>Clause 138 – Return and forfeiture of things seized</u></p> <p>Members raised no question on clauses 138.</p> <p><u>Clause 139 – Compensation for seizure etc</u></p>	
014440 – 015635	Mr James TO DoJ ALA1 Administration	Mr TO requested the Administration to examine whether the existing provisions in the Bill were sufficient to enable the Director or an authorized person to:	The Administration to take action as per paragraph 3 of the minutes.

Time Marker	Speaker	Subject(s)	Action Required
		<p>(a) require a relevant party to produce or provide documents or information that are protected by a password; and</p> <p>(b) obtain documents or information located outside Hong Kong.</p> <p>The Chairman remarked that the Administration should provide a response to address Mr TO's concerns.</p>	
015636 – 015706	Chairman	The Chairman remarked that the next two meetings would be held on 6 and 13 December 2011.	

Council Business Division 1
Legislative Council Secretariat
25 May 2012