

立法會
Legislative Council

LC Paper No. CB(1)2082/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/7/10/2

Bills Committee on Lifts and Escalators Bill

Thirteenth meeting on
Tuesday, 6 December 2011, at 10:45 am
in Conference Room 2A 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 LI Fung-ying, SBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon IP Wai-ming, MH
Hon Alan LEONG Kah-kit, SC

Members absent : Hon Abraham SHEK Lai-him, SBS, JP
Hon CHEUNG Hok-ming, GBS, JP
Hon IP Kwok-him, GBS, JP

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 Alfred SIT Wing-hang
Deputy Director/Regulatory Services
Electrical and Mechanical Services Department

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

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

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

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

Staff in attendance : Mr Kelvin LEE
Assistant Legal Adviser 1

Mr Hugo CHIU
Council Secretary (1)5

I Meeting with the Administration

Clauses-by-clause examination of the Bill (starting with clause 140)

(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**).

3. The Administration was requested to take the follow-up actions set out below:

(a) review clause 141, taking into account members' concern that the provisions therein impose unduly onerous liabilities on the persons

concerned and this would discourage the public from participating in the management of their own properties; and

- (b) review whether the definition of "prescribed period" under proposed section 5(4) of Schedule 15 accurately reflects the intended period to be covered.

Admin
and ALA1

4. The Administration and the legal adviser of the Bills Committee were requested to provide examples of provisions in other legislation that were formulated in a manner similar to clause 141 of the Bill, with information about the contexts of those provisions.

II Any other business

Date of next meeting

5. The Chairman reminded members that the next two meetings would be held on 13 December 2011 and 15 December 2011.

6. There being no other business, the meeting ended at 12:50 pm.

Council Business Division 1
Legislative Council Secretariat
1 June 2012

**Proceedings of the
Bills Committee on Lifts and Escalators Bill
Thirteenth meeting on Tuesday, 6 December 2011, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000903 – 000948	Chairman	Introductory remarks	
000949 – 001613	Administration	<p style="text-align: center;"><u>Clause-by-clause examination of the Bill</u></p> <p>Division 3 – Offences</p> <p><u>Clause 140 – Miscellaneous offences</u></p> <p><u>Clause 141 – Offences committed by bodies corporate and partners</u></p>	
001614 – 001908	Mr IP Wai-ming ALA1	<p>Mr IP requested ALA1 to advise whether the following understanding regarding clause 141 was accurate: if a body corporate committed an offence under the Bill, it would be presumed that the offence was attributable to persons concerned in the management of the body corporate and such persons had to prove the contrary themselves. Mr IP also enquired whether similar provisions were present in other legislation.</p> <p>ALA1 advised that Mr IP's understanding on the presumption was accurate. However, the person concerned needed not to prove the contrary by himself. The presumption under clause 141 is rebuttable under clause 141(5). The person concerned needed to adduce sufficient evidence to raise an issue as to whether he or she was managing the corporation. The prosecution needed to disprove the issue before the court may convict the person. Presumption having similar legal effect is also found in other ordinances.</p> <p>Mr IP requested both ALA1 and DoJ to provide examples of provisions similar to clause 141 in other legislation.</p>	
001909 – 002801	Ms LI Fung-ying Chairman Administration	Ms LI expressed concern that the scope of persons caught by clause 141 might be too wide. She pointed out that members of owners' corporations (OCs) were ordinary citizens taking part in management of their own property voluntarily. It appeared that under clause 141, these ordinary	

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		<p>citizens might commit an offence under the Bill inadvertently. Ms LI opined that this would discourage the public from participating in community affairs.</p> <p>The Administration replied as follows:</p> <ul style="list-style-type: none">(a) Clause 141 would not be applicable to a person concerned in the management of a body corporate unless the body corporate had committed an offence under the Bill;(b) Clause 141(5) offered sufficient protection for a person concerned in the management of a body corporate; and the person would not be criminally liable under clause 141 if the requirements in clause 141(5) were satisfied; and(c) Clause 141 was necessary; the effectiveness of the Bill would be affected if (a) an offence was committed by a body corporate under the Bill but certain persons concerned in the management of a body corporate would not be criminally liable for the like offence; or (b) an offence was committed by a partner in a partnership under the Bill but certain other persons concerned in the management of firm would not be criminally liable for the like offence. The Administration had to strike a balance between protecting the rights of individuals and securing the effectiveness of the Bill. <p>The Chairman remarked that the provisions in the Bill should be clear and reasonable. Ms LI expressed reservation over the Administration's reply and pointed out that the management of many old buildings (particularly the stand-alone residential buildings) was usually poor and disorganized. Clause 141 of the Bill might impose unduly onerous liabilities on the flat owners of such buildings, which would discourage them from participating in community affairs like forming OCs. Given that the Government's policy was to encourage the public to actively participate in the management of their own properties, Ms LI suggested the Administration to review clause 141 so as to mitigate the potential liabilities on ordinary citizens and offer greater protection for them.</p>	

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		<p>The Administration responded that there were different levels of protection for OCs and flat owners of buildings:</p> <ul style="list-style-type: none"> (a) The prosecution had to prove beyond reasonable doubt all the elements of an offence under the Bill; (b) In relation to certain offences under the Bill, the person charged would not be convicted of the offence if the person had reasonable excuse or the relevant statutory defence could be established (as the case may be); (c) In so far as a responsible person for a lift or escalator was concerned, clause 141 would be applicable only if the body corporate had committed an offence; (d) Despite the fact that the body corporate committed an offence under the Bill would trigger the operation of clause 141, a person concerned in the management of the body corporate would not be criminally liable under that clause if the requirements set out in clause 141(5) were satisfied; and (e) The Administration would issue relevant guidelines for responsible persons of lifts and escalators to facilitate their compliance with the requirements of the Bill. 	
002802 – 004544	Mr James TO Administration ALA1	<p>Mr TO requested the Administration to comment on the following hypothetical situations so as to help members assess whether a body corporate would commit an offence under the Bill easily:</p> <ul style="list-style-type: none"> (a) If a body corporate (like an OC) had engaged a registered lift contractor for the maintenance of a lift, whether it would be unlikely for the body corporate to commit an offence under the Bill; (b) If a body corporate did not engage a registered lift contractor for the maintenance of a lift, whether it would be likely for the body corporate to commit an offence under the Bill; 	

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		<p>(c) If members of a body corporate had divided opinions over how a registered lift contractor for a lift should be engaged (e.g. how the tendering exercise should be conducted) and resulted in the delay of the repair and maintenance works of the lift, whether it would be likely for the body corporate to commit an offence under the Bill; and</p> <p>(d) Whether there were any scenarios in which a body corporate would likely commit an offence under the Bill even if it had engaged a registered lift contractor for the maintenance of the lift.</p> <p>The Administration replied as follows:</p> <p>(a) The responsible person of a lift was required under the Bill to engage a registered lift contractor to conduct repair and maintenance works for the lift; and</p> <p>(b) The responsible person of a lift had certain legal responsibilities like ensuring that the lift was subject to proper maintenance and was in safe working condition. For instance, the responsible person of a lift should take necessary actions to ensure the lift was in safe working condition when the registered lift contractor advised the need to replace certain components and/or equipment of the lift.</p> <p>Mr TO pointed out that unless the registered lift contractor advised that the lift would pose immediate danger and had to be stopped immediately, the OC would normally take some time to consider the registered lift contractor's advice. Mr TO enquired about the legal liabilities of the OC if a lift incident happened during such period. He opined that (a) the legal liabilities of the OCs should be clearly specified; and (b) an OC should be given a reasonable period of time to consider the relevant advice provided by the registered lift contractor.</p> <p>The Administration replied as follows:</p> <p>(a) A lift should be subject to proper maintenance by a registered lift contractor. The OC must stop the lift's operation if the registered lift</p>	

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		<p>contractor advised that the lift's operation posed immediate danger. However, the OC could seek a second opinion by asking another registered lift contractor or a registered lift engineer; and;</p> <p>(b) The OC might notify the Electrical and Mechanical Services Department (EMSD) to examine the lift, and EMSD would (where appropriate) issue a prohibition order (under which the lift must stop operation immediately) or an improvement order (under which relevant improvement works of the lift had to be conducted within a specified period of time) as appropriate.</p> <p>Noting that clause 24 provided that a registered lift engineer should not issue a safety certificate for a lift which was not in safe working condition, Mr TO enquired whether the following understanding was accurate: members of a body corporate (such as an OC) could discuss the advice offered by the registered lift contractor (like replacement of certain components and equipment of the lift which were not classified as safety components nor safety equipment under the Bill) within a reasonable timeframe and would not be held liable for any lift incidents happened during this period if the following three conditions were met:</p> <p>(a) the body corporate did not receive a prohibition order nor an improvement order from EMSD;</p> <p>(b) the registered lift contractor of the lift did not indicate that the lift had to stop operation immediately; and</p> <p>(c) the safety certificate issued by the registered lift engineer for the lift had not been revoked.</p> <p>The Administration responded that the prevailing circumstances of each incident would have to be considered. Mr TO asked about the circumstances under which the body corporate would be held liable for a lift incident even if the three conditions mentioned by him had been met. The Administration replied that if the conditions mentioned by Mr TO were met, the body corporate should be regarded as having fulfilled its</p>	

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		<p>responsibilities. The Chairman opined that the body corporate would have sufficient reasonable excuse in that situation.</p>	
<p>004545 – 005236</p>	<p>Mr IP Wai-ming Administration</p>	<p>Mr IP pointed out that the replacement of lift components and equipment usually involved high costs. An OC would understandably need some time to discuss the issue and if necessary, organize an owners' meeting to obtain the approval of flat owners of the building. Mr IP was concerned whether the OC would incur liabilities during this window period. Mr IP also opined that clause 141 might generate considerable pressure on members of OCs. He urged the Administration to review clause 141.</p> <p>The Administration responded that the registered lift contractor should conduct regular examination of the lift frequently and advise the OC the need to replace the lift's components and equipment as soon as it noticed any problems. As the time between two successive regular examinations was relatively short, the OC should have sufficient time to consider the advice given by the registered lift contractor.</p> <p>Mr IP remarked that the Administration's reply might not be applicable to old buildings, the management of which was poor and disorganized. Mr IP also pointed out that registered lift contractors might subcontract their works. This would further complicate the issue and might lead to disputes between the OC and the registered lift contractor. The repair and maintenance works of the lift might subsequently be delayed. Mr IP considered that the Administration should take these factors into account.</p> <p>The Chairman requested the Administration to review clause 141, taking into account members' concerns.</p> <p>Mr IP requested ALA1 and DoJ to provide examples of provisions in other legislation that were formulated in a manner similar to clause 141 of the Bill, with information about the contexts of those provisions. The Administration undertook to provide such information.</p>	<p>The Administration to take action as per paragraph 3 of the minutes.</p> <p>The Administration and ALA1 to take action as per paragraph 4 of the minutes.</p>

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005237 – 005711	Administration	<p><u>Clause 142 – Time limit for prosecutions</u></p> <p>Members raised no question on clause 142.</p> <p>Division 4 – General</p> <p><u>Clause 143 – Lifts and escalators to be marked with identification marks</u></p> <p><u>Clause 144 – Recovery of costs</u></p>	
005712 – 005810	Mr IP Wai-ming Administration	<p>Mr IP referred to clause 144(5) and enquired about the arrangements for the following scenario: the recipient could not or declined to receive the copy of certificate. The Administration advised that clause 149 was a provision providing for the service or sending of a notice or document permitted or required to be served or sent under the Bill (if enacted).</p>	
005811 – 010718	Prof Patrick LAU Administration Mr James TO	<p>Prof LAU referred to clause 143 and enquired (a) whether the clause was applicable only to newly installed lifts and escalators and lifts and escalators that had just undergone repair and maintenance works were not covered; and (b) whether it would be sufficient to submit the plan to EMSD only once.</p> <p>The Administration replied both enquiries in the affirmative, and pointed out that the Government would prepare the plan if the responsible person failed to submit it.</p> <p>Prof LAU pointed out that in accordance with the Buildings Ordinance (Cap. 123), plans had to be submitted to the Central Processing Unit (CPU) of the Buildings Department and fees were collected in the process. Prof LAU opined that CPU instead of the responsible person should send a copy of the plan to EMSD to fulfill the requirement in clause 143.</p> <p>In reply, the Administration advised that the plan prepared in accordance with the Buildings Ordinance might be amended by the Buildings Department. It was more desirable for the plan to be submitted by the responsible person because he would possess the final version of the plan. The Chairman concurred with the Administration and remarked that it would be more appropriate to use</p>	

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		<p>as-built drawing instead of the plan sent to CPU to satisfy the requirement stipulated in clause 143.</p> <p>Pointing out that a plan had to be submitted to the Buildings Department for the application of lift certificates and occupation permits (OPs), Prof LAU expressed doubt about the necessity of clause 143. The Administration explained that there was a time gap between the issuance of an OP and the actual occupation of the building. Thus a plan had to be submitted to EMSD in accordance with clause 143.</p>	
010719 – 013924	Administration	<p><u>Clause 145 – Issue of codes of practice</u></p> <p><u>Clause 146 – Approval of codes of practice etc. issued by other persons</u></p> <p><u>Clause 147 – Use of codes of practice in legal proceedings</u></p> <p><u>Clause 148 – Exemptions</u></p> <p><u>Clause 149 – Service of notices etc.</u></p> <p><u>Clause 150 – Applications to comply with regulations made under section 154 etc.</u></p> <p><u>Clause 151 – Evidence by documents</u></p> <p><u>Clause 152 – Paid fees not refundable</u></p> <p><u>Clause 153 – Powers to specify forms</u></p> <p><u>Clause 154 – Regulations—General</u></p> <p><u>Clause 155 – Regulations—Fees</u></p> <p><u>Clause 156 – Amendment of Schedules</u></p> <p><u>Clause 157 – Lifts and Escalators (Safety) Ordinance repealed</u></p> <p><u>Clause 158 – Transitional provision for lifts installed on or before 18 March 1994 or being installed on 18 March 1994</u></p> <p><u>Clause 159 – Transitional provision for escalators installed on or before 18 March 1994 or being installed on 18 March 1994</u></p> <p>Members raised no question on clauses 145 to 159.</p>	

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		<p><u>Clause 160 – Transitional and savings provisions, and consequential or related amendments</u></p> <p><i>Schedule 15 – Transitional and Savings (Parts 1 and 2)</i></p>	
013925 – 014018	ALA1 Administration	ALA1 referred to the proposed section 2(5) of Schedule 15 and sought clarification on whether the validity period of the registration period of a registered person was five full years. The Administration replied in the affirmative.	
014019 – 015015	Administration	<i>Schedule 15 – Transitional and Savings (Parts 3 and 4)</i>	
015016 – 015134	Chairman Administration ALA1	The Chairman enquired about (a) the details of the term "prescribed examination with load"; and (b) whether the issue of overloading would be taken into account. The Administration advised that Schedule 6 of the Bill set out the relevant details and confirmed that the issue of overloading would be taken into account.	
015135 – 015852	Administration	<i>Schedule 15 – Transitional and Savings Provisions (Part 4)</i>	
015853 – 020609	Mr Alan LEONG Administration DoJ Chairman	<p>Noting that the term "relevant date" in the proposed section 1 of Schedule 15 referred to the date on which section 157 (which repealed the existing Lifts and Escalators (Safety) Ordinance (Cap. 327) (LESO)) came into operation, Mr LEONG enquired whether this "relevant date" was the same as the date on which the Lifts and Escalators Ordinance came into operation.</p> <p>The Administration advised that (a) after the enactment of the Bill, different provisions of the Bill would need to come into operation on different dates. Thus, certain provisions of the Bill would commence earlier than the date on which the LESO was to be repealed (i.e. earlier than the commencement of clause 157). The Government would review the situation nearer the time to determine the commencement date of clause 157 to repeal LESO.</p> <p>Mr LEONG enquired how the Government would announce the commencement date of clause 157. The Administration advised that the Secretary for Development would appoint the date by notice</p>	

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		<p>published in the Gazette, and different dates might be appointed by the Secretary for Development for the commencement of different provisions of the enacted Ordinance.</p> <p>Mr LEONG enquired whether the arrangement mentioned by the Administration was set out in the Bill. DoJ advised that clause 1(2) of the Bill, as read in section 20 of the Interpretation and General Clauses Ordinance (Cap. 1) (IGCO), empowered the Secretary for Development to appoint different dates for different provisions of the Bill to commence.</p> <p>Mr LEONG requested the Administration to review whether the definition of "prescribed period" under proposed section 5(4) of Schedule 15 accurately reflected the intended period to be covered.</p>	The Administration to take action as per paragraph 3 of the minutes.
020610 – 020707	Chairman	The Chairman remarked that the next two meetings would be held on 13 December 2011 and 15 December 2011.	