

## Lifts and Escalators Bill

Submission by Schindler Lifts (HK) Ltd

### Executive Summary

As an organization we understand that improving the safety of lifts and escalators is paramount to the people of Hong Kong and we applaud any measure that meets this objective. Contained within the new Bill we see many points of merit including clearer definition of owner's responsibilities and more rigorous registration requirements for lift and escalator contractors and workers.

At the same time as an Industry Contractor we must express concern that the Bill may actually be creating more problems than it is solving, these would include:

- The rigid qualification requirements for competent workers may serve as a barrier for good and qualified lift and escalator workers to work for registered contractors. We believe the ordinance should only contain the objectives aimed at ensuring that only qualified and competent workers perform lift or escalator works. The specific details and mechanics of achieving those objectives should be embodied in the relevant code of practice (COP) or guidelines taking into account the changing environment and needs of the Hong Kong public, technical and safety requirements, availability of qualified in the labour market, as well as the training and qualification processes provided by registered contractors.

We are of the view that the imposition of fines and penalties against individual workers will not enhance the objective of ensuring the good quality and competence of lift and escalator workers.

- Many of the clauses within the Bill are not clearly defined or described and will rely on a Code of Practice (COP) to permit proper implementation. The COP however has the potential to create further obstacles to the practical operation of the industry and will be not vetted with the same rigor as the current Bill. We would strongly recommend that the COP or any subsequent amendment / revision thereof also undergoes a proper consultation process involving all the relevant parties.
- The expanded coverage of major alterations subject to reporting and application for permit (i.e. safety components are now included) will dramatically increase the downtime of equipment that in the past had been replaced safely and efficiently under normal maintenance regimes. This will severely impact building owners and the services they supply their tenants and residents.

We support the intention to exclude "like for like" replacement (i.e. replacement without changing the type or model) from the coverage of Schedule 1 (Major Alterations) in order to reflect the current trade practice.

- We noticed that certain powers to be afforded to the DEMS under this Bill<sup>1</sup> do not come with the appropriate checks and balances. We are concerned that in certain cases<sup>2</sup> proper consultation with Industry experts will no longer continue as per the current practice. We propose a requirement that the EMSD continues its cooperative consultation process.

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<sup>1</sup> For example, clause 36, clause 129 (e), clause 131 (f)

<sup>2</sup> For example, clauses 145 (1) and (3) and clause 146 (1) and (3)

We are also concerned that in certain cases there are no definite timelines given to DEMS<sup>3</sup> to act on an application which might cause considerable downtime or equipment.

- The Improvement Orders issued pursuant to clause 36(1) should be addressed to responsible people (as defined in the Bill) only. To order a registered contractor to work on the Owner's property is unreasonable and it may cause much disputes between the registered contractor and the Owner.

We accept the proposition that, as an Industry, improvements can be made to the safety of lifts and escalators. That being said the vast majority of accidents today are related to user practice and not equipment maintenance. In its current form this Bill imposes unnecessary restrictions and conditions that would clearly see an increase in cost and inconvenience to Hong Kong's Public without the resulting benefits.

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<sup>3</sup> For example, Clause 27(2) and 28 (4)

*Views submitted by Schindler Lifts (HK) Ltd on certain clauses of the Lifts and Escalators Bill*

Clauses in the Lifts and Escalator Bills	Comments by Schindler Lifts (HK) Ltd	Concerns expressed by the Panel on Development (Please refer to "Note" below)
<b>Part 1</b>		
<p><b>Clause 4:</b> <i>Ordinance applies to Government etc.</i></p> <p>(1) <i>This Ordinance applies to the Government.</i></p> <p>(2) <i>Despite subsection (1), the Government—</i></p> <p>(a) <i>is not liable to be prosecuted for an offence under this Ordinance; and</i></p> <p>(b) <i>is not required to pay any prescribed fee.</i></p>	<p><i>Clarification on whether "consular offices" of other countries should be covered is necessary.</i></p>	<p>(b), (d)</p>
<p><b>Clause 5:</b> <i>Jointly owned etc. lift or escalator</i></p> <p><i>If this Ordinance imposes a requirement on the responsible person for a lift or escalator, and there are 2 or more responsible persons for the lift or escalator, compliance with the requirement by one of those responsible persons is to be regarded as compliance with the requirement by every other responsible person for the lift or escalator.</i></p>	<p><i>The public at large (including the building owners, lifts owners, property managers, etc. with whom the RLCs have contracts with) have to be made aware of their duties and responsibilities under the new law. Communication should be made before the bill is passed into law to give the parties concerned time to prepare for the new law.</i></p>	<p>(b), (e)</p>
<b>Part 2</b>		
<p><b>Clause 8-11:</b> <i>Only qualified persons or specified persons to personally carry out lift works, etc.</i></p> <p>8. <i>Only qualified persons or specified persons to personally carry out lift works, etc.</i></p> <p>9. <i>Prohibition against using or operating lifts in certain circumstances</i></p> <p>10. <i>Prohibition against carriage of persons in lifts specified in Schedule 4</i></p> <p>11. <i>Prohibition against overloading lifts specified in Schedule 4</i></p>	<p><i>It is necessary to have the meaning of "at the place at which the works are carried out" clarified (e.g. does machine room or lift shaft fall under the definition?). The definition should be applied consistently across the related provisions of the ordinance.</i></p> <p><i>Non-competent workers can perform certain tasks satisfactorily in the industry provided that they receive proper process and safety training, e.g. light, indicator checking floor landing, etc. which do not require supervision of a qualified person at sight.</i></p>	<p>(b), (d), (e)</p>

<p><b>Clause 12-15: Duties of responsible persons for lifts</b>  12. Duties of responsible persons to ensure that lifts are in proper state of repair and in safe working order  13. Duties of responsible persons in respect of use and operation of lifts  14. Additional duties of responsible persons regarding lifts specified in Schedule 4  15. Duties of responsible persons to ensure that registered lift contractors undertake maintenance works and certain other lift works</p>	<p><i>The public at large (including the building owners, lifts owners, property managers, etc. with whom the RLCs have contracts) have to be made aware of their duties and responsibilities under the new law. Communication should be made before the bill is passed into law to give the parties concerned time to prepare for the new law.</i></p>	<p>(e)</p>
<p><b>Clause 16(a)(b)-18(b), 16(c):</b>  16-18(b) A registered lift contractor / A registered lift engineer / A registered lift worker who undertakes / engages any lift works must ensure that—  adequate safety precautions are taken to prevent injury to any person or damage to any property while the works are being carried out;  16(c) A registered lift contractor who undertakes any lift works must ensure that—  there is sufficient workforce to carry out the works;</p>	<p><i>Some of the terms used in these clauses are not clearly defined or described, such as “sufficient workforce” and “damage to property”.</i></p> <p><i>The COP should be the basis and only local guidelines for ensuring safe and proper lift works, and it should be clearly spelled out in the new bill as in the CAP 327.</i></p>	<p>(b)</p>
<p><b>Clause 19: Interpretation</b>  For the purposes of this Division, a lift or any part of a lift, or any associated equipment or machinery of a lift, is examined by a registered lift engineer only if the lift or part, or the associated equipment or machinery, is personally examined by the engineer or any other person who is under the direct and proper supervision of the engineer at the place at which the examination takes place.</p>	<p><i>It is necessary to have the meaning of “at the place at which the works are carried out” clarified (e.g. does machine room or lift shaft fall under the definition?). The definition should be applied consistently across the related provisions of the ordinance.</i></p> <p><i>Each team of competent lift workers usually handles multiple workplaces. The limited RLE resources available in the market is also foreseen to pose a practical challenge in the implementation of the requirements under this clause. [ Only the key lift components should be personally examined by RLEs. ]</i></p>	<p>(b)</p>
<p><b>Clause 21: Examination of lifts after major alterations</b>  (1) If any major alteration has been made in respect of a lift, before the normal use and operation of the lift is resumed, the responsible person for the lift must cause a registered lift engineer—  (a) to thoroughly examine the lift and all its associated equipment or machinery; or  (b) to examine the affected part of the lift in accordance with section 25(1).</p>	<p><i>The definition and scope of “thoroughly examine” are not clear.</i></p>	<p>(b)</p>
<p><b>Clause 24(6): Issue of safety certificates by registered lift engineers</b>  (6) If on examination under this section the registered lift engineer is of the opinion that</p>	<p><i>The phrase “not of good design and construction or is not in safe working condition” is not clearly defined or explained.</i></p>	<p>(b)</p>

<p><i>the lift or any of its associated equipment or machinery is not of good design and construction or is not in safe working condition, the engineer—</i></p> <p><i>(a) must not issue a certificate under subsection (4); and</i></p> <p><i>(b) must within 24 hours after the examination is completed—</i></p> <p><i>(i) notify in writing the responsible person specified in subsection (10) of the reasons for not issuing the certificate; and</i></p> <p><i>(ii) report to the Director the result of the examination and the opinion of the engineer.</i></p>	<p><i>Different engineers might have different interpretations of this phrase, and so a common reference or standard should be set out.</i></p> <p><i>24 hours is impractical for notification purposes. Longer time period should be provided.</i></p> <p><i>The phrase “no immediate danger” as appearing in the current CAP 327 provides a clearer standards and guidance for all the parties concerned.</i></p>	
<p><b>Clause 25(1):</b> <i>Issue of safety certificates by registered lift engineers after major alterations</i></p> <p><i>(1) A registered lift engineer who undertakes to examine any affected part of a lift must ensure that the lift and its associated equipment or machinery are thoroughly examined by the engineer, in so far as is necessary to determine whether the affected part is in safe working order.</i></p>	<p><i>The definition and scope of “thoroughly examine” are not clear.</i></p>	(b)
<p><b>Clause 27(2):</b> <i>Validity period of use permits</i></p> <p><i>A permit issued under section 26(1)(b) relating to an examination of a lift that was completed within the period of 2 months ending on the date of expiry of the preceding use permit of the lift—</i></p>	<p><i>Clear time frame for each party concerned should be laid down.</i></p> <p><i>There is no clear time line given to the EMSD to issue the permit or release any response on the application for permit.</i></p>	(b)
<p><b>Clause 28(4):</b> <i>Issue etc. of resumption permits</i></p> <p><i>If the Director decides to refuse an application or refuse to issue a permit under this section, the Director must as soon as reasonably practicable after making the decision notify in writing the applicant of—</i></p> <p><i>(a) the decision;</i></p> <p><i>(b) the reasons for the decision; and</i></p> <p><i>(c) (if applicable) the work that in the opinion of the Director is necessary to put the affected part of the lift in safe working order.</i></p>	<p><i>The phrase “as soon as reasonably practicable” is not clear, and a definite time line should be specified for the EMSD to act on an application for permit.</i></p>	(b)
<p><b>Clause 30-35 &amp; 37; Clauses 128 - 131:</b> <i>Powers of Director (Miscellaneous)</i></p>	<p><i>The DEMS powers are expanded under the bill, e.g. issue of improvement orders, seizure and detention orders, revocation of COP without specific mechanism for prior consultation, etc .</i></p>	(b)

<p><b>Clause 36(1): Improvement orders</b></p> <p>(1) If the Director has reasonable grounds to believe that—</p> <p>(a) any provision of this Ordinance has been contravened or is being contravened in relation to a lift or any associated equipment or machinery of a lift;</p> <p>(b) a lift or any associated equipment or machinery of a lift is in a state that will cause or be likely to cause a risk of injury to any person or damage to any property;</p> <p>(c) any lift works have been carried out or are being carried out in a manner that will cause or be likely to cause a risk of injury to any person or damage to any property; or</p> <p>(d) it is otherwise desirable to do so in the interest of safety,</p> <p>the Director may by order served on the related person of the lift direct the person to carry out any work specified in the order, in order to rectify or remedy or otherwise put an end to the contravention or to eliminate or reduce any risk of injury to any person or damage to any property.</p>	<p><i>To order an RLC to work on the Owner's property is unreasonable and it may cause much disputes between RLC and the Owner.</i></p>	<p>(b), (e)</p>
<p><b>Clause 38(1): Subcontracting restricted</b></p> <p>Except with the written approval of the Director, a registered lift contractor who undertakes any lift works must not subcontract the works or any part of the works to any other person who is not a registered lift contractor.</p>	<p><i>This clause is impractical as there are certain lift works that are not part of RLC's scope of work and therefore may be subcontracted to specialist subcontractors, e.g. CCTV, car decoration, electrical devices, communication devices, etc.</i></p>	<p>(b), (d)</p>
<p><b>Part 4</b></p>		
<p><b>Clause 82(2)(a): Registration – Lift Workers</b></p> <p>The Registrar must not grant a registration under subsection (1) unless—</p> <p>(a) the requirements for an applicant set out in Part 1 of Schedule 10 are satisfied;</p>	<p><i>Referring to Part 1 of Schedule 10, there list 6 different requirements for a person to be qualified as registered lift worker with completion of related course or sufficient training and at least 4 years' relevant working experience or passing a trade test and at least 8 years' relevant working experience. But it will limit the possible option of allowing candidates with higher qualification, e.g. degree holder or equivalent, with proper &amp; sufficient training as well as practical experience in the 2-3 years' service in the company, which enable them to carry out different kinds of lift works independently.</i></p>	<p>(a)</p>
<p><b>Part 5</b></p>		
<p><b>Clause 126 &amp; 128: Confidentiality</b></p> <p>126 (3) Subsection (2) does not apply to—</p> <p>(a) the disclosure or giving of information in the person's performance of functions under this Ordinance or in carrying into effect or doing anything authorized by this</p>	<p><i>Clause 126(3)(a) is too broad that it might defeat subsection (2) which protects confidentiality of the information.</i></p>	<p>(b)</p>

*Ordinance: (b) the disclosure or giving of information with the consent in writing of the person from whom the information was obtained or received and, if the information relates to another person, with the consent also of that other person;*

*(c) the disclosure or giving of information with a view to bringing, or otherwise for the purposes of, any*

*disciplinary proceedings or appeal proceedings under this Ordinance, including any*

*proceedings arising from those proceedings; (d) the disclosure or giving of information*

*with a view to bringing, or otherwise for the purposes of, any civil proceedings under*

*this Ordinance, including any appeal proceedings or other proceedings arising from*

*those civil proceedings; (e) the disclosure or giving of information with a view to*

*bringing, or otherwise for the purposes of, any criminal proceedings or any investigation*

*carried out under the laws of Hong Kong including any appeal proceedings or other*

*proceedings arising from those criminal proceedings or investigation; (f) the disclosure*

*or giving of information in the form of*

*a summary compiled from similar information obtained or received from a number of*

*persons under*

*this Ordinance, if the summary is compiled to prevent particulars relating to the business*

*or identity, or the trading particulars, of— (i) any of those persons who have produced*

*or provided the information; or*

*(ii) any persons to whom the information relates, from being ascertained from the*

*summary; (g) the disclosure or giving of information which has already been lawfully*

*disclosed or made available to*

*the public; (h) the disclosure or giving of information for the purposes of seeking advice*

*from, or giving advice by, a counsel or a solicitor or any other professional adviser*

*acting or proposing to act in a professional capacity in connection with any matter*

*arising under this Ordinance; (i) the disclosure or giving of information in accordance*

*with an order of a court or in accordance with a law or a requirement made by or under*

*a law.*

*128(1) If the Director has reasonable grounds to believe that a person has, or may have*

*in the person's possession or control, any document or information that the Director may*

*reasonably require for the purposes of performing any function of the Director under*

<p><i>this Ordinance, the Director may by notice in writing request the person to produce or provide the document or information.</i></p>		
<p><b>Clause 129(2)(e), 131(2)(f), 132(2)(e) &amp; 135(4)(g)</b>  <i>Power to enter non-domestic premises without warrant to seize, remove and detain anything that the officer has reasonable grounds to believe to be relevant to an offence under Part 2 or 3</i></p>	<p><b><i>Warrant is usually required for enforcement officers to seize, remove and detain anything from the premises. Legal advice confirming the authority of the EMSD to seize, remove or detain things without warrant should be obtained.</i></b></p>	<p><b>(b)</b></p>
<p><b>Clause 145(3)&amp;(5): Issue of codes of practice</b>  <i>(3) The Director may from time to time revise the whole or any part of a code of practice issued under subsection (1).  (5) The Director may revoke a code of practice or any part of a code of practice issued or revised under this section.</i></p>	<p><b><i>Adequate public consultation is necessary for revising, supplementing or revoking the COPs.</i></b></p>	<p><b>(b)</b></p>
<p><b>Clause 147(2): Use of codes of practice in legal proceedings</b>  <i>(2) Despite subsection (1), 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 code of practice  may be relied on by a party to the proceedings as tending to establish or negate that matter.</i></p>	<p><b><i>The COPs should be the basis and only local guidelines for ensuring safe and proper lift works, and it should be clearly spelled out in the new bill as in the CAP 327.</i></b></p>	<p><b>(b)</b></p>

**Note**

Concerns expressed by the members of Panel on Development on the Lifts and Escalator Bill, as on the Paper for the House Committee Meeting on 13 May 2011 (LC Paper No. LS59/10-11):

- (a) the upgrading of the qualifications of lift and escalator engineers;
- (b) the responsibilities and liabilities of concerned parties in maintenance and repair of lifts and escalators;
- (c) the increase of the penalty level of offences;
- (d) the number of lifts and escalators in a lift or escalator maintenance team should handle; and
- (e) the need for the Administration to enhance education and publicity measures on lift and escalator maintenance for owners' corporations to facilitate them in selecting qualified contractors and monitoring contractors' performance.