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1 November 2011

Clerk to the Bills Committee,
LegCo Secretariat,
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

(Attn: Ms Anita SIT)

Dear Ms SIT,

**Bills Committee on Lifts and Escalators Bill
Administration's Response to Follow-up Items**

In response to Members' discussion at the meeting of the Bills Committee on Lifts and Escalators Bill on 25 October 2011, we provide herewith the following information.

1. Definition of "qualified person"

The expression "qualified person" in the Lifts and Escalators Bill (the Bill) seeks to set out the kinds of persons who may personally carry out any particular lift works or escalator works. The definition covers a wide range of persons, including certain kinds of registered lift workers, registered escalator workers, competent lift workers and competent escalator workers who are "qualified to carry out the works" (see paragraphs (a)(ii) and (iii), (b)(ii) and (iii), (c)(ii) and (iii) and (d)(ii) and

(iii) of the definition of “qualified person”).

The purpose of clause 2(2) is to supplement those paragraphs and set out the criteria for determining whether any such worker is “qualified to carry out” the particular lift works or escalator works.

To address Members’ concern that the relationship between the definition and the clause is not clear, we would consider further amending the note to make clearer the relationship of the definition and clause 2(2).

2. Trade-specific Terms

Regarding the view expressed by a member of the Bills Committee that the term “goods lift” in the Bill might not be consistent with those used in other related ordinances such as the Buildings Ordinance (Cap. 123), we have reviewed the Buildings Ordinance (Cap. 123) and do not find any inconsistency between the term “goods lift” and those related terms used in the Buildings Ordinance (Cap. 123).

3. The Code of Practice under the Bill

The Electrical and Mechanical Services Department (EMSD) has issued two sets of Code of Practice under the existing Ordinance, namely “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; the other one is “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. Due to rapid technological advancements of lifts and escalators, the relevant Codes must be timely amended for compliance by the industry. In regard to the mechanism for amending the Codes, this has all along been done through close discussion between EMSD and the industry, including the relevant trade and labour associations, and that EMSD would only issue the amended Codes after consensus has been reached. In the past three years, there were a total of ten amendments made to the two Codes, and the time taken in discussing with the industry for each amendment varied between two months and 24 months. Overall, the industry is satisfied over the existing discussion, amendment, and promulgation procedures.

In response to the Bill, EMSD has started drafting a new set of Code

of Practice to provide guidance on matters relating to lift and escalator safety. In preparing the Code of Practice, EMSD will continue to adopt the existing well established and effective mechanism, by engaging the industry including the Task Force on Legislative Amendments to the Lifts and Escalators (Safety) Ordinance, in discussion so as to ensure that the Code of Practice would be available in good time to provide reference on the enforcement of the ordinance, after the passage of the Bill.

4. Codes of Practices in respect of Clause 2(5) in the Bill

For the nine matters stated in paragraphs (a) to (i) of clause 2(5), relevant guidance for most of these matters has been given in the existing “Code of Practice for Lift Works and Escalator Works” and “Code of Practice on the Design and Construction of Lifts and Escalators”. A set of these Codes is enclosed for reference. We are drafting a new set of Code of Practice to cover all the relevant matters.

5. Penalty Level

When preparing the relevant penalty clauses in the Bill, we have taken due account of the nature, seriousness, defence provisions and onus of proof, etc., as well as considering the maximum penalty levels of similar offences in other ordinances, in setting the relevant penalty levels. If grouped according to the maximum fine and imprisonment period, the penalties in the Bill could be grouped into eight categories, from the highest penalty of a fine of \$200,000 and imprisonment for 12 months, to the lowest level of a fine at level 1 (i.e. \$2,000). Taking the highest penalty as an example, this penalty is applicable to offences of very serious nature and which may lead to serious consequences, such as when a person allows a lift / escalator to be used although he knows that the enforcement authority, because of the imminent unsafe condition of the lift, has already issued a Prohibition Order to prohibit the usage of such. As regards the second highest penalty¹, it is mainly applicable to responsible person who consents an unsafe lift / escalator to be used or operated, such as clause 13(4), which targets the installation and use of non-approved type of lift, and the installation and maintenance of which are also not carried out by registered contractors. Other less serious offences than those mentioned above are grouped into the remaining six

¹ Fine at level 6 (i.e. a maximum fine of \$100,000) and imprisonment period of 12 months.

categories according to their nature and seriousness etc, such as those purely procedural or technical standard non-compliance not involving safety contraventions².

Comparison of the penalties between clause 8(3) and 13(4) of the Bill

Clause 8(1) prohibits a person against personally carrying out any lift works unless the person is a qualified person or specified person under the Bill or the person is under the direct supervision of a qualified person at the place at which the works are carried out. Clause 8(3) provides that any person who knowingly causes or permits any person to carry out any lift works in contravention of subclause (1) commits an offence and is liable to a fine of level 5 (i.e. \$50,000) and imprisonment period of 6 months.

Clause 13(1), clause 13(2) and clause 13(3) impose duties on a responsible person for a lift to ensure that (a) the lift is not used or operated before the completion of any of the lift works specified in clause 13(1); (b) the lift is not used or operated when there is no use permit in force in respect of the lift; and (c) the lift is not used or operated after any major alteration of the lift when a resumption permit has not been issued in relation to the alteration. Clause 13(4) provides that if a responsible person for a lift contravenes clause 13(1), (2) or (3), the person commits an offence and is liable on conviction to a fine at level 6 (i.e. \$100,000) and imprisonment period of 12 months (i.e. the second highest penalty mentioned above).

If a lift is used or operated in contravention of clause 13(1), (2) or (3), this would pose serious threat to the safety of the public. Similar cases also happened in the past and injuries to persons and damage to properties were caused in those cases³. Although clause 13 applies generally to a responsible person for a lift, such a responsible person would not commit an offence under that clause if the use or operation of the lift is without the person's consent or connivance and that the person has taken all reasonable steps to prevent the use or operation of the lift. Compared to clause 8, the offence under clause 13 is more serious,

² For example, a registered person whose registration is cancelled or suspended fails to return within 14 days after being notified by the Registrar pursuant to clause 103 of the Bill.

³ There was one similar incident in 2010. The incident led to injury to the user of the lift, and the owner of the lift was convicted. There were two similar incidents in 2011, and both incidents caused injuries to the users of the lifts. EMSD is initiating prosecution action for these two incidents.

because it will pose a bigger threat to public safety and therefore must be deterred. We consider that setting a higher penalty level for clause 13(4) than clause 8 is appropriate.

Yours sincerely,



(Jimmy PM CHAN)
for Secretary for Development

Encl.

c.c. w/encl.

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Law Draftsman, Department of Justice (Attn: Ms Frances HUI and Ms Angie LI)